



## County of Hawai'i

### LEEWARD PLANNING COMMISSION

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MAR - 1 2016

Ms. Suzanne Case, Chairperson  
State of Hawai'i  
Department of Land and Natural Resources  
P.O. Box 621  
Honolulu, HI 96809

Dear Ms. Case:

**SUBJECT: Special Management Area Use Permit No. SMA 15-000062**  
**Shoreline Setback Variance No. SSV 15-000010**  
**Applicant: State of Hawai'i, Department of Land and Natural Resources**  
**Approved Use: Facility Improvements at the Kekaha Kai State Park**  
**(Phase II)**  
**Tax Map Key: 7-2-004:003, 009, 017 & 019; 7-2-005:002, 003, 007 &**  
**7-3-043:portion of 001**

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The Leeward Planning Commission, at its duly held public hearing on February 18, 2016, voted to approve the above-referenced request to allow facility improvements at the Kekaha Kai State Park (Phase II), that will include minor repair and safety improvements to park access roadways and parking, a stairway to replace a dilapidated ramp, new storage and water tank building to provide water for facility cleaning and maintenance, two showers, several new or refurbished accessible picnic tables and BBQ pits, and other miscellaneous features and improvements. These improvements will be focused on a 3-acre portion of the 1,642-acre Kekaha Kai State Park situated at both Manini'ōwali Beach and Mahai'ula Beach locations, including improvements within a 0.5-acre area situated within the 40-foot wide shoreline setback area. The project site is situated makai of Queen Ka'ahumanu Highway and includes the area adjacent to Kua Bay, Manini'ōwali, Kukio 2<sup>nd</sup> and Mahai'ula, North Kona, Hawai'i.

Approval of this permit is subject to the following conditions:

**Special Management Area Use Permit No. SMA 15-000062**

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.

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2. Construction of the proposed facility improvements shall be substantially completed within 10 years from the effective date of this permit. Prior to commencing construction, Final Plan Approval for the proposed development, as represented in the plans submitted with the application, shall be secured from the Planning Department. Plans shall identify existing and proposed structures, paved driveway access, parking stalls and public access associated with the proposed use except as modified by agreement between the County Planning Department and the Division of State Parks.
3. During construction, measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawai'i.
4. All utilities shall be placed underground to minimize visual impacts.
5. All approved plans and recommendations shall continue to be complied with, including but not limited to, the Shoreline Public Access Plan, the Archaeological Preservation Plan, the Trail Management and Restoration Plan, and the Anchialine Pond Management and Restoration Plan.
6. Should any remains of unidentified historic sites such as rock walls, terraces, platforms, or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.
7. All wastewater shall be treated at an approved secondary wastewater treatment facility to R-2 standards.
8. Comply with all applicable laws, rules, regulations, and requirements of affected agencies, including the Department of Public Works, the Department of Health and the State Department of Transportation for the proposed project.

9. An initial extension of time for the performance of conditions within this permit may be granted by the Planning Director upon the following circumstances:
  - A. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
  - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
  - C. Granting of the time extension would not be contrary to the original reasons for the granting of this permit.
  - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).
  - E. If the applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the Planning Commission for appropriate action.

**Shoreline Setback Variance No. SSV 15-000010**

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant shall comply with all conditions of Special Management Area Use Permit No. 15-000062.
3. During construction, measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawai'i.
4. The applicant shall comply with Hawai'i County Code, Chapter 10, Erosion and Sedimentation Control as required by the Department of Public Works.

Ms. Suzanne Case, Chairperson  
State of Hawai'i  
Department of Land and Natural Resources  
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5. The applicant shall comply with Chapter 27, Floodplain Management, of the Hawai'i County Code.
6. The applicant shall comply with Chapter 11-55, Water Pollution Control, Hawai'i Administrative Rules, Department of Health, which requires an NPDES permit for certain construction activities.
7. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

Should any of the conditions not be met or substantially complied with in a timely manner, the Planning Director may initiate to revoke this permit.

This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies

Approval of this permit is based on the reasons given in the attached Findings Reports.

Should you have any questions, please contact Jeff Darrow of the Planning Department at 961-8158.

Sincerely,



Thomas Whittemore, Chair Pro-tem  
Leeward Planning Commission

LDLNRSM15-062SSV15-010lpc  
Enclosure: PC Findings Reports

cc: Ron Terry, Geometrician Associates  
Department of Public Works  
Department of Water Supply  
County Real Property Tax Division - Hilo  
Department of Land & Natural Resources - HPD  
Department of Transportation-Highways  
Ms. April Surprenant  
Mr. Gilbert Bailado

**COUNTY OF HAWAI'I**  
**PLANNING COMMISSION FINDINGS**

**STATE OF HAWAI'I DEPARTMENT OF LAND & NATURAL RESOURCES,  
DIVISION OF STATE PARKS  
SPECIAL MANAGEMENT AREA USE PERMIT APPLICATION (SMA 15-000062)**

The applicant, State Department of Land and Natural Resources-Division of State Parks, has submitted an application for a Special Management Area (SMA) Use Permit to allow facility improvements at the Kekaha Kai State Park (Phase II), which includes minor repair and safety improvements to roadways and parking, a stairway to replace a dilapidated ramp, a new storage and water tank building to provide water for cleaning and maintenance, provision of two showers, several new or refurbished accessible picnic tables and BBQ pits, and miscellaneous other features and actions. The improvements would be on a 3-acre portion of the 1,642-acre Kekaha Kai State Park within the Special Management Area. The applicant has also submitted a Shoreline Setback Variance application concurrently.

When reviewing proposed developments within the Special Management Area (SMA), the Planning Commission should follow the below listed guidelines as established within HRS 205A-26 (Special Management Area guidelines):

- 1) All development in the Special Management Area shall be subject to reasonable terms and conditions set by the authority in order to ensure:
  - (A) Adequate access, by dedication or other means, to publicly owned or used beaches, recreation areas, and natural reserves is provided to the extent consistent with sound conservation principles;
  - (B) Adequate and properly located public recreation areas and wildlife preserves are reserved;
  - (C) Provisions are made for solid and liquid waste treatment, disposition, and management which will minimize adverse effects upon special management area resources; and
  - (D) Alterations to existing land forms and vegetation, except crops, and construction of structures shall cause minimum adverse effect to water resources and scenic and recreational amenities and minimum danger of floods, wind damage, storm surge, landslides, erosion, siltation, or failure in the event of earthquake.
- (2) No development shall be approved unless the authority has first found:
  - (A) That the development will not have any substantial adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interests. Such adverse effects shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect, and the elimination of planning options;
  - (B) That the development is consistent with the objectives, policies, and Special Management Area guidelines of this chapter and any guidelines enacted by the legislature; and

- (C) That the development is consistent with the county general plan and zoning. Such a finding of consistency does not preclude concurrent processing where a general plan or zoning amendment may also be required.

**In review of the SMA guidelines as listed under HRS 205A-26(1) (A through D) above, the proposed facility improvements of the Kekaha Kai State Park Phase II at Kua Bay and Mahai'ula will have terms and conditions issued by the Planning Commission as part of this SMA approval to continue to provide adequate access, to have reserved portions of the project for public recreation and for preserves, to have made provisions for waste treatment and have developed structures that cause minimum adverse effects to water resources, and scenic and recreational amenities.**

In review of the application for the proposed facility improvements to Kekaha Kai State Park at Kua Bay and Mahai'ula (Phase II) along with the original application (Phase I), the project has substantially and adequately provided adequate access, reserved portions of the project for public recreation and for preserves, is making provisions for waste treatment, and has developed and will continue to develop structures that cause minimum adverse effects to water resources, and scenic and recreational amenities.

**In review of the SMA guidelines as listed under HRS 205A-26(2) (A) above, the proposed facility improvements of the Kekaha Kai State Park Phase II at Kua Bay and Mahai'ula will not have any significant adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest.** In considering the significance of potential environmental effects, the Director shall consider the sum of those effects that adversely affect the quality of the environment and shall evaluate the overall and cumulative effects of the action. Such adverse effect shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect and elimination of planning options.

A "substantial adverse effect" is determined by the specific circumstances of the proposed use, activity, or operation. In determining whether a proposal may have a substantial adverse effect on the environment, the Director shall consider every phase of a proposed action and expected consequences, either primary or secondary, or the cumulative as well as short or long-term effect of the proposal. The project has been reviewed against the factors that may constitute a substantial adverse effect as listed under Planning Commission Rule 9-10 (H) (1 through 10)

- (1) involves an irrevocable commitment to loss or destruction of any natural or cultural resource, including but not limited to, historic sites and view planes outlined in the General Plan or other adopted plans;
- (2) curtails the range of beneficial uses of the environment;
- (3) conflicts with the long-term environmental policies or goals of the General Plan or the State Plan;
- (4) substantially affects the economic or social welfare and activities of the community, County or State;
- (5) involves substantial secondary impacts, such as population changes and effects on public facilities;

- (6) in itself has no substantial adverse effect but cumulatively has considerable adverse effect upon the environment or involves a commitment for larger actions;
- (7) substantially affects a rare, threatened, or endangered species of animal or plant, or its habitat;
- (8) detrimentally affects air or water quality or ambient noise levels;
- (9) affects an environmentally sensitive area, such as flood plain, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh water or coastal water; or
- (10) is contrary to the objectives and policies of the Coastal Zone Management Program and the Special Management Area Guidelines of Chapter 205A, HRS.

In this review, it has been determined that the proposed Kekaha Kai State Park facility improvements on the subject properties will not have a significant adverse environmental or ecological effect upon the Special Management Area. The applicant has also conducted an Environmental Assessment for the project, which resulted in a Finding of No Significant Impact (FONSI).

It should be noted that under Planning Commission Rule 9-10 (H) (9), a proposed use, activity or operation may constitute a substantial adverse impact if it affects an environmentally sensitive areas, such as flood plain, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh water or coastal water. Although the portions of the subject properties are located within Flood Zone VE and AE, the proposed facility improvements must meet local flood control standards for construction within this flood zone. As such, the proposed development will not create a substantial adverse effect on these environmentally sensitive areas. Kekaha Kai State Park is being developed in phases as funding becomes available. The original improvements at Kua Bay was the first phase of three phases planned to improve Kekaha Kai State Park. Phase II is currently being proposed, which will allow facility improvements including minor repair and safety improvements to roadways and parking, a stairway to replace a dilapidated ramp, a new storage and water tank building to provide water for cleaning and maintenance, provision of two showers, several new or refurbished accessible picnic tables and BBQ pits, and miscellaneous other features and actions. Additionally, the applicant has submitted a concurrent request for a Shoreline Setback Variance for five minor, free-standing facilities located within the shoreline setback area that are on approximately 0.5 acre of land. These include the replacement of a dilapidated and hazardous ramp with a new, safe stairway at Manini'ōwali and installation of one new accessible BBQ pit and refurbishment of three existing BBQ pits at Mahai'ula.

According to the Park Development Plan (PDR) that was submitted in the original Phase I application, the applicant is proposing to create a "wilderness" park that will emphasize the sustainability of natural and cultural resources in balance with public use. Natural landforms, flora and fauna and open spaces are the heart of the wilderness experience. The applicant is proposing to create this "wilderness" theme by the following actions; 1) cultural landscapes will be preserved within the park, 2) modern amenities, facilities and conveniences will be limited, 3) wide-open natural spaces will be preserved and enhanced as much as possible, 4) recreational uses will be more passive, such as hiking, camping and beach going, rather than active recreation associated with improved facilities, 5) access to many areas will remain "unimproved" or "managed for low impact." 6) paved or graded areas such as roads and parking areas will be

“managed for low impact.” 6) paved or graded areas such as roads and parking areas will be buffered with appropriate xeriscape, 7) comfort stations and new park structures will be clustered to minimize impact, and 8) landscape improvements will be kept at a minimal level. By following these actions through plans that will be required by conditions of approval, such as archaeological mitigation and preservation and burial treatment plans, anchialine pond preservation and restoration plans, trail preservation and restoration plans, shoreline public access plans, etc., any significant adverse environmental or ecological effect will be minimized.

**In review of the SMA guidelines as listed under HRS 205A-26(2) (B) above, the proposed development is consistent with the objectives and policies as provided by Chapter 205A, HRS, and Special Management Area guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure.**

The purpose of Chapter 205A, Hawai‘i Revised Statutes (HRS) and Special Management Area Rules and Regulations of the County of Hawai‘i, is to preserve, protect, and where possible, to restore the natural resources of the coastal zone areas. Therefore, special controls on development within an area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options.

The proposed facility improvements are consistent with the objectives and policies of the Coastal Zone Management Program (Chapter 205A, Hawai‘i Revised Statutes) including:

Recreational Resources:

**Objective:** To provide coastal recreational opportunities accessible to the public.

**Policies:**

- (B) Provide adequate, accessible, and diverse recreational opportunities in the coastal zone management area by:
  - (iii) Providing and managing adequate public access, consistent with the conservation of natural resources, to and along the shorelines with recreational value.
  - (iv) Providing an adequate supply of shoreline parks and other recreational facilities suitable for public recreation.

The development has provided valuable public shoreline accesses to Kua Bay and Mahai‘ula within Kekaha Kai State Park. Before these improvements, access was via an unimproved road accessible by foot or by 4-wheel drive vehicles. This development is providing a planned shoreline park that focuses on the conservation of the natural, cultural, and historical resources in the area while providing a limited amount of facilities for public recreation. Phase II will be providing facility improvements including minor repair and safety improvements to roadways and parking to further enhance Kekaha Kai State Park.

Historic Resources:

**Objective:** To protect, preserve, and, where desirable, restore those natural and manmade historic resources in the coastal zone management area that are significant in Hawaiian and American history and cultural.

**Policies:**

- (A) Identify and analyze significant archaeological resources;

One of the features of Kekaha Kai State Park is its rich archaeological heritage, which guided the location and design of both the initial and Phase II improvements. Archaeological sites are present near but not within the areas that will be disturbed.



In order to minimize the potential for any impacts to archaeological sites, and in accordance with the Archaeological Preservation Plan for improvements at Kekaha Kai State Park, Manini'ōwali Section, the applicant will implement and follow the prescribed measures within the Plan.

Scenic and Open Space Resources:

Objective: Protect, preserve, and, where desirable, restore or improve the quality of coastal scenic and open space resources.

Policy:

- (C) Preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources.

The proposed facility improvements will improve public access to two of the most beautiful shoreline areas on the Kona Coast. It will allow local residents and visitors to experience valuable scenic resources and open spaces preserved on the Big Island.

**In review of the SMA guidelines as listed under HRS 205A-26(2) (C) above, the proposed development is consistent with the County General Plan, the Zoning Code and the Kona Community Development Plan.** The proposed project conforms to the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, which designates this area as Open Area. This type of designation includes areas for open space recreational uses. The applicant proposes to conduct facility improvements, including minor repair and safety improvements to roadways and parking, a stairway to replace a dilapidated ramp, a new storage and water tank building to provide water for cleaning and maintenance, provision of two showers, several new or refurbished accessible picnic tables and BBQ pits, and miscellaneous other features and actions that will enhance the improvements that were previously developed. The proposed project will also compliment the Historic Sites, Natural Beauty, Natural Resources and Shoreline, Recreation and Economy goals and policies of the General Plan.

Additionally, the proposed project also conforms with the Zoning Code as the zoning for the property is designated as Open, which allows for public parks as a permitted use.

Lastly, the Kona Community Development Plan (CDP) was adopted by the Hawai'i County Council by Ordinance No. 08-131 on September 25, 2008. The project site is located outside of the Kona Urban Area (KUA) but within the area governed by the Plan.

The Plan has many elements and wide-ranging implications, but there are several major strategies that embody the guiding principles related to the economy, environmental quality, energy, flooding and other natural hazards, historic sites, natural beauty, natural resources and shoreline, housing, public facilities, public utilities, recreation, transportation and land use.

The proposed recreational improvements are being developed in accordance with the existing zoning. However, an SMA permit is required for this project. In reviewing SMA permits, two Kona CDP Land Use Policies are applicable. These are:

LU-1.5: Enhanced Shoreline Setback. This policy states in part that:

It shall be a priority to maintain a minimum of 1,000-foot open space no-build setback for undeveloped lands adjacent to the shoreline on parcels that exceed 1,000 feet in depth in

discretionary land use approvals such as SMA major permits, rezonings, and state land use boundary amendments.

LU-1.6        17-Mile Protected Coastline. This policy applies to the 17 mile stretch of shoreline that extends from Makaeo north to Kikaua Point at the Kuki'o development.

The project site is within 1,000 feet of the shoreline and the 17-mile stretch of identified coastline. It does not involve development, but rather improvement of recreational facilities, and consistent with these policies.

**The proposed development will not have a significant adverse impact to traditional and customary Hawaiian rights:** In view of the Hawai'i State Supreme Court's "PASH" and "*Ka Pa'akai O Ka'Aina*" decisions, the issue relative to native Hawaiian rights, such as gathering and fishing rights, must be addressed. These rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site:

Investigation of valued resources: The applicant presented a Final Environmental Assessment (FEA) along with this Special Management Area Use Permit application. There have been numerous archaeological, cultural and botanical surveys conducted in this area in the past. The FEA provided a summary of these reports. Additionally, the applicant has previously submitted several management plans including a shoreline public access plan, an archaeological preservation plan, a trail management and restoration plan, and an anchialine pond management and restoration plan, as part of the Phase I approval.

The valuable cultural, historical, and natural resources found in the permit area: One of the features of Kekaha Kai State Park is its rich archaeological heritage. Archaeological sites are present near but not within the areas that will be disturbed. The following is a summary of an archaeological inventory survey that was previously conducted of the portions of the Kekaha Kai State Park, the area of the survey consisted of approximately 583 acres on the northern portion of Kekaha Kai State Park. It included the whole of Awake'e ahupua'a makai of Queen Ka'ahumanu Highway, and approximately 1,000 foot wide strip of land that takes in the seaward ends of Manini'owali and Kuki'o 2<sup>nd</sup> ahupua'a. The survey areas are portions of the park that have been identified as desirable locations for public park facilities. They include planned improvement areas and road and trail corridors with a combined area of approximately 120 acres. The largest and best preserved site, 50-10-18-23355, is located at Kākapa Bay. A total of 359 features was recorded here (Kākapa Bay). Settlement pattern analysis indicates that this site comprises seven household clusters preferentially located on a'ā lava flows near the cobble and white sand beach. Also present are a heiau reported to have been one of Kamehameha's as well as several large boulders and lava slabs that have been bashed with cobble hammerstones to expose an interior layer of red, often ropy, lava. The heiau, which is the largest religious structure recorded during the survey, is one indication of the local importance of the Kākapa Bay community. Another is the network of transportation routes that serve the settlement. Four major trails terminate at the village. The entire site offers an outstanding opportunity for interpretation and display.

Site 50-10-18-23356 is the remains of a small village with a total of 348 features recorded at this site (Kua Bay). Intact canoe shed walls, burials, and shelters were found in this area. Many lava tubes used for shelter, storage, and burials are also located in this area. The Ala Kahakai trail runs along the coastline near Kua Bay. There is an anchialine pond located approximately 250 feet from the beach.

For the Kekaha Kai State Park Phase II facility improvements project, the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD) provided several comment letters. By letter of August 2, 2013, the DLNR-SHPD provided concurrence with a determination of no historic properties affected for the parking and roadway improvements on the Mahai'ula Access Road. By letter of April 19, 2014, the DLNR-SHPD provided concurrence with a determination of no historic properties affected in the Manini'ōwali section of the park. By letter of July 8, 2014, the DLNR-SHPD provided concurrence with a determination of no historic properties affected in the Mahai'ula shoreline area, given the absence of historic sites from the specific area of improvements and construction staging.

With regard to mammals, two endemic species have been recorded in the area: the Hawaiian hoary bat and recently, the Hawaiian Monk Seal. Although there have been three types of endangered plant species identified in the botanical study, these were not observed at area where the improvements are proposed. The property borders the shoreline. Along the shoreline and in the offshore waters, important natural resources include fish and shellfish found in the Hawaiian waters. The coastal water quality is very high.

Possible adverse effect or impairment of valued resources: The park development has required site grading and grubbing, and construction of various improvements such as the roadway, parking areas and buildings (comfort station, restroom, shower and picnic facilities) in the initial phase of project. Phase II of this project is proposing minor repair and safety improvements to roadways and parking, a stairway to replace a dilapidated ramp, a new storage and water tank building to provide water for cleaning and maintenance, provision of two showers, several new or refurbished accessible picnic tables and BBQ pits, and miscellaneous other features and actions. The improvements would be on a 3-acre portion of the 1,642-acre Kekaha Kai State Park. Mitigative measures to minimize possible effects or impairments of valued resources will be addressed within the mitigation and preservation plans required by the conditions of approval. If the applicant continues to follow these mitigation measures, there will continue to be minimal impact to archaeological and historical resources, and other natural resources associated with the shoreline and coastal waters.

Feasible actions to protect native Hawaiian rights: The natural and cultural resources related to traditional and customary cultural practices are easily accessible from the proposed improved areas. Given the fact that the applicant is committed to providing easy access to the shoreline and improved public facilities, the development should have minimal potential for adverse impacts to cultural resources or the various cultural resource users. State Parks has represented that none of the archaeological features will be harmed in the construction and improvements of the park facilities.

The quality of ocean water should be protected by conditions of approval that require the restroom to be connected to a secondary-level wastewater treatment plant, and by normal construction period safeguards.

Based on the above findings, it is determined that the proposed development will not have any substantial adverse impacts on the surrounding area, nor will its approval be contrary to the objectives and policies of Chapter 205A, HRS, relating to Coastal Zone Management and Rule No. 9 of the Planning Commission relating to the Special Management Area. Approval of this request is subject to the following conditions. Should any of the foregoing conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke the Special Management Area Use Permit.

Based on the above findings, the request for a Special Management Area Use Permit to allow the facility improvements at the Kekaha Kai State Park (Phase II) and related improvements on approximately 3 acres of land within the Special Management Area is approved.

**COUNTY OF HAWAII**  
**PLANNING COMMISSION FINDINGS**

**STATE OF HAWAII DEPARTMENT OF LAND & NATURAL RESOURCES,  
DIVISION OF STATE PARKS  
SHORELINE SETBACK VARIANCE NO. 15-000010 (SSV 15-000010)**

The applicant, Department of Land and Natural Resources-Division of State Parks (DLNR Division of State Parks), is requesting a shoreline setback variance for five minor, free-standing facilities at Kekaha Kai State Park. At Manini'ōwali, DLNR-Division of State Parks is requesting to replace a dilapidated and hazardous ramp within the shoreline setback with a new, safe stairway. At Mahai'ula, the request covers installation of one new accessible BBQ pit that lies partially within the shoreline setback, and refurbishment of three existing BBQ pits within the shoreline setback area. One of the BBQ pits is *makai* of the certified shoreline, and DLNR-Division of State Parks is coordinating with DLNR Office of Conservation and Coastal Lands to secure permitting. The applicant has also concurrently submitted a Special Management Area (SMA) Use Permit for these improvements as well as other facility improvements in the SMA but outside of the shoreline setback area.

The Shoreline Setback Law was enacted by the State Legislature in 1970 for the protection of the shoreline from undue man-made improvements. Many of these structures and activities have disturbed the natural shoreline processes and caused erosion of the shoreline. Concrete masses along the shoreline are contrary to the policy for the preservation of the natural shoreline and the open space. Unrestricted removal of sand, coral, rocks, etc., for commercial uses can only deteriorate the shoreline and remove it from public use and enjoyment. Moreover, the Hawaiian Islands are subject to tsunamis and high waves, which endanger residential dwellings and other structures which are built too close to the shoreline. For these reasons, it is in the public interest to establish shoreline setbacks and to regulate uses and activities within the shoreline setback area.

The Legislature, however, also recognized that certain activities and improvements may be constructed within the shoreline setback area if these improvements are clearly in the public interest. In recognizing this need, the Legislature authorized the respective authorities within the various counties, in this case the Planning Commission, to grant variances for certain activities and improvements within the shoreline setback area. In accordance with Section 205A-46(a)(7) of the Hawai'i Revised Statutes, and Section 8-10 of the Planning Commission's Rule 8, relating to Shoreline Setback, the Planning Commission may grant variances from the shoreline setback regulations.

**The proposed request would meet the Public Interest Standard of Rule 8, Section 8-10(b)(2).** In reviewing the request against the criteria to allow a variance, the Planning Director has determined that the request for a Shoreline Setback Variance to allow improvements and replacements of for five minor, free-standing facilities at Kekaha Kai State Park within the shoreline setback area **does meet the criteria** set forth in Rule 8, Section 8-10 (b)(2) (Public Interest Standard).

Section 8-10(b) states, "A variance may also be granted upon a finding that, based upon the record, the proposed structure or activity meets one of the following standards of this subsection:

**(2) Public Interest Standard.**

A variance may be granted for an activity or structure which is undertaken by a public agency or by a public utility regulated under Chapter 269, Hawai'i Revised Statutes, or a private facility or improvement which is undertaken by a private entity and is clearly in the public interest; provided that the proposal is the practicable alternative which best conforms to the purpose of this rule.

The proposed request meets the "Public Interest Standard" for the following reasons:

The applicant, Department of Land and Natural Resources-Division of State Parks (DLNR Division of State Parks), is requesting a shoreline setback variance to replace a dilapidated and hazardous ramp within the shoreline setback with a new, safe stairway at Manini'ōwali and the installation of one new accessible BBQ pit that lies partially within the shoreline setback, and refurbishment of three existing BBQ pits at Mahai'ula within the shoreline setback area. The purpose of the project is to provide improvements at Kekaha Kai State Park to safely, equitably, and efficiently accommodate the existing level of use at these parks. This project will enhance public use of the park and making it safe for park users, thereby meeting the Public Interest Standard for granting a shoreline setback variance.

Additionally, Section 8-10(c) states "No variance shall be granted unless appropriate conditions are imposed as applicable:

- (1) To comply with Chapters 10 and 27 of the Hawai'i County Code (HCC) relating to Erosion and Sedimentation Control and Flood Control, respectively;

Response: The applicant will be required to comply with all provisions of Chapters 10 and 27.

- (2) To maintain safe lateral access along the shoreline or adequately substitute for its loss;

Response: None of the proposed features negatively impact the lateral access along the shoreline. The improvements within the shoreline setback area are very minimal – at Manini'ōwali, replacement of a ramp with a stairway, and at Mahai'ula, one new accessible BBQ pit partially within the shoreline setback and refurbishment of three existing BBQ pits (one lying just *makai* of the shoreline, the others inside the shoreline setback). They are very minor structures that will not affect public access. The new stairway will facilitate public access to and along the shoreline.

- (3) To minimize risk of adverse impacts on beach processes;

Response: The proposed action involves very minor structures. Those that are on the sandy shoreline area already existing and are simply refurbishments. They will not negatively impact erosional or accretional processes. While it is recognized that the shoreline at Manini'ōwali is subject to erosion in winter and accretion in summer, which substantially affects the extent of sandy area and the beach profile at any given time, the foot of the proposed stairway is located more than 14 feet above sea level, and its substitution for an existing dilapidated ramp would not negatively impact beach processes.

- (4) To minimize risk of structures failing and becoming loose rocks or rubble on public property; and

Response: The improvements are designed and constructed to withstand coastal processes. The BBQ pits are small, sturdy, and not susceptible to easy destruction. The action will remove the damaged and hazardous ramp that is constantly used by the public, and replace it with a new stairway that the DLNR Division of State Parks will actually be able to maintain. The stairway would not become rubble on public property.

- (5) To minimize adverse impacts on public views to, from, and along the shoreline.

Response: The proposed replacements, refurbishments and one new BBQ pit will not impact the existing scenic and open space resources in any way. The proposed stairway will improve the visual characteristics by replacing a dilapidated ramp. It is *makai* of a slope below the shower area, which has views of Kua Bay, and it would not affect view planes to, from, or along the shoreline. The BBQ pits on the sand already exist. The one new accessible BBQ pit is adjacent to a paved and developed area. These improvements will not be unduly visually imposing or out of character, and are consistent with uses in a State Park.

In review of the possible alternatives to the proposed improvements within the shoreline setback area, the best practical alternative is to improve these facilities in place rather than attempt to move them out of the shoreline setback area at this time. If the BBQ pits are demolished and replaced with new ones outside the setback area, they must be placed in areas with a number of kiawe trees, causing problems with fire danger and thorny branches. In the case of the stairway, because of slope, coastal vegetation, and archaeological sites, it is the only feasible location to conduct visitors down to the south end of the beach. If the stairway is not built, the visitors will continue to use an unsafe ramp. If the ramp is removed, visitors will walk on the steep, rocky area, which is also unsafe.

Based on the above findings, the request for a shoreline setback variance for five minor, free-standing facilities and related improvements at Kekaha Kai State Park (Phase II) on approximately 0.5 acres of land within the shoreline setback area is approved,