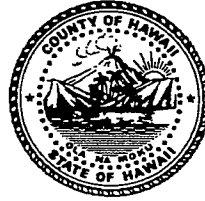


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County of Hawai'i

LEEWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

JUL 1 2 2021

Mr. Kevin Sakai
County of Hawai'i
Department of Parks and Recreation
101 Pauahi Street, Ste. 6
Hilo, HI 96720

Dear Mr. Sakai:

SUBJECT: Special Management Area Use Permit Application (SMA 21-000080)
Applicant: County of Hawai'i, Department of Parks and Recreation
Approved Use: Allows Facility Improvements and American with
Disabilities Act (ADA) Upgrades to the Existing Magic
Sands Beach Park
Tax Map Key: 7-7-008:017, 094, 107 & 7-7-010:036

The Leeward Planning Commission, at its duly held public hearing on June 16, 2021, voted to approve the above-referenced request for a Special Management Area Use Permit to allow the improvements on the 0.43-acre Magic Sands Beach property as well as within the Ali'i Drive right-of-way fronting the subject properties. The properties are located makai of Ali'i Drive, approximately 538 feet north of its intersection with La'aloa Avenue, Kapala'alaea 2nd, North Kona District, Hawai'i.

Approval of this Special Management Area Use Permit is subject to the following conditions:

1. The applicant(s), its successor(s) or assign(s) (Applicant) shall be responsible for complying with all stated conditions of approval.

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2. The Applicant shall secure all necessary approvals and permits from other affected federal, state, and county agencies as necessary to comply with all applicable laws and regulations.
3. The Applicant shall develop an overall master plan for the use of Magic Sands Beach Park, La'aloa Beach Park, and Kīpapa Beach Park within five (5) years from the effective date of this permit to ensure future improvements align with the overall master plan for the area.
4. Construction of the proposed facility improvements shall be completed within five (5) 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 and public access associated with the proposed use.
5. The Applicant shall comply with Hawai'i Revised Statutes, Section 205A-30.5 related to the use of artificial light on shoreline and ocean waters.
6. No nighttime construction shall occur during the seabird fledgling season, from September 15 to December 15 each year.
7. The method of sewage disposal shall meet with the requirements of the Department of Environmental Management.
8. The Applicant shall create a clearly demarcated public access route to Site 21220 (Kū'ula) using appropriate signage which will remain in-place until construction is completed.
9. The Applicant shall adhere to all conditions of the State Historic Preservation Division (SHPD) approved preservation plan and shall establish a reasonable buffer around Site 21220 (Kū'ula) using appropriate signage and other markers which will remain in place until construction is completed.
10. The area makai of the 40-foot shoreline setback line shall be kept clear of any rubbish or debris resulting from construction activities at all times.
11. 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.

12. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties. All earthwork and grading shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai'i County Code.
13. The Applicant shall ensure that excessive siltation and turbidity in the ocean is minimized through the use of silt containment devices or barriers.
14. 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.
15. In the event that surface or subsurface historic resources, including human skeletal remains, structural remains (e.g., rock walls, terraces, platforms, etc.), cultural deposits, marine shell concentrations, sand deposits, or sink holes are identified during the demolition and/or construction work, the Applicant shall cease work in the immediate vicinity of the find, protect the find from additional disturbance and contact the State Historic Preservation Division at (808) 933-7651. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.
16. The Applicant shall comply with all applicable County, State and Federal laws, rules, regulations, and requirements.
17. An extension of time for the performance of the conditions contained herein 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 original reasons for the granting of the permit; and
 - c) The time extension granted shall be for a period of not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended up to one additional year).
18. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director shall initiate procedures to revoke the permit.

Mr. Kevin Sakai
County of Hawai'i
Department of Parks and Recreation
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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 Report.

Should you have any questions, please contact Alex Roy of the Planning Department at 961-8140.

Sincerely,

Michael Vitousek

Michael Vitousek, Jul 12, 2021 15:13 HST

Michael Vitousek, Chairman
Leeward Planning Commission

LP&RSMA21-080|pc.doc

Enclosure: PC Findings Report

cc: Ron Terry, Geometrician Associates
Department of Public Works
Department of Water Supply
County Real Property Tax Division
Department of Environmental Management
State Department of Health
GIS Section (via email)

COUNTY OF HAWAI'I PLANNING DEPARTMENT
PLANNING COMMISSION FINDINGS

COUNTY OF HAWAI'I DEPARTMENT OF PARKS AND RECREATION
SPECIAL MANAGEMENT AREA USE PERMIT APPLICATION (SMA 21-000080)

At the Planning Commission meeting on June 16, 2021, the Leeward Planning Commission (LPC) voted to approve the subject Special Management Area Use Permit No. 21-000080 with an amendment to Condition No. 8, adding language regarding SHPD conditions for the approved preservation plan. The LPC also included a new condition (Condition No. 18) that the Department of Parks and Recreation develop a Master Plan for the use of the various parks located in the vicinity of the approved project (i.e., Kīpapa, Magic Sands, La'aloa). Based on the following findings Special Management Area Use Permit No. 21-000080 is hereby approved to allow facility upgrades and ADA improvements to the Magic Sands Beach Park on 0.43 acres of land situated within the Special Management Area. The subject properties are located makai of Ali'i Drive, approximately 538 feet north of its intersection with La'aloa Avenue, Kapala'alaea 2nd, North Kona District, Hawai'i, TMK(s): (3) 7-7-008:017, 094, 107 & (3) 7-7-010:036.

The applicant, County of Hawai'i Department of Parks and Recreation, is requesting a Special Management Area Permit to allow facility improvements and American with Disabilities Act (ADA) upgrades to the existing Magic Sands Beach Park, which includes demolition of the existing comfort station, construction of a new ADA compliant comfort station, construction of ADA compliant parking spaces, new showers, new accessible picnic table and grill area, new accessible walkways and ramps connecting the park to Ali'i Drive, utility improvements, waterline improvements, pavement restriping and tree removal. The proposed improvements will occur on the 0.43-acre Magic Sands Beach Park property as well as within the Ali'i Drive right-of-way fronting the subject properties, all located within the Special Management Area.

In review of the SMA guidelines as listed under HRS 205A-26(1), the proposed upgrades and improvements to the Magic Sands Beach Park will have terms and conditions issued by the Planning Commission as part of this SMA approval to continue to provide adequate access to coastal resources, to have reserved portions of the project for public recreation, to have made provisions for waste treatment, to have developed structures that cause minimum adverse effects to water resources, and to preserve scenic and recreational amenities.

In review of the SMA guidelines as listed under HRS 205A-26(2)(A) the proposed development 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.

The applicant has conducted an Environmental Assessment for the project, which resulted in a Finding of No Significant Impact (FONSI). Thus, it has been determined that the proposed Magic Sands Beach Park facility upgrades, and ADA improvements will not have a significant adverse environmental or ecological effect upon the Special

Management Area.

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. Most of the park is depicted within FEMA Flood Zone VE (coastal high hazard area) with a base flood elevation of 13 feet. The majority of the project site is a sandy beach between two basalt rock shelves which is strewn with rounded boulders deposited by large waves. The white sand deposits accumulate during summer, only to be transported offshore during winter storms – hence the name “Magic Sands” or “Disappearing Sands”. The proposed action has been designed to minimize construction in the VE Flood Zone while accomplishing the key goal of providing accessible facilities. The footprint of the existing comfort station is partially within the VE flood zone while the proposed comfort station will be relocated outside of the flood zone (Flood Zone X) thus minimizing impacts from flooding. It should be noted that the existing comfort station, showers, and lifeguard station were designed to be resilient to occasional flooding, and structures on the property have not suffered any significant damage from activity in the recent past, including the tsunami of March 11, 2011.

The applicant has considered the risk of sea level rise (SLR) and determined that given the long-time scenario and uncertainty associated with the risk, it is still prudent to undertake this project. The public benefits outweigh a no action alternative which could lead to losing critical functionality at a heavily used public recreational site. As such, the proposed development will not create a substantial adverse effect on these environmentally sensitive areas.

Although the County Department of Parks and Recreation (DPR) is steadily improving the accessibility of its facilities through individual projects, they are scattered around the island and would not tend to produce adverse cumulative impacts. Furthermore, the proposed project is not related to other non-DPR activities in the region in such a way as to produce adverse cumulative effects or involve a commitment of larger actions. Because of the limited scale of development and planned mitigation, impacts to any terrestrial biological, beach, ocean, and aquatic resources can be avoided through adherence to Best Management Practices (BMPs).

The project site is an existing landscaped park in heavy use with an existing comfort station requiring extensive maintenance and redesign that is required by a legal settlement to become ADA-accessible. In review of the application for the proposed upgrades and improvements to the existing Magic Sands Beach Park, the project use would be consistent with SMA guidelines as it would benefit and not adversely affect public access to a heavily used recreational resource, as well as improving access to historic, scenic, and open space resources. The proposed project expands recreational use for disabled users of the park; however, it will not restrict any shoreline uses such as fishing. The proposed project will include upgrades to the outdoor shower to eliminate run-off going into the ocean. Additional work will include moving the comfort station mauka to minimize impacts from storm and high waves, thus protecting the nearshore water quality of the beach park. The proposed improvements would not interfere with or detract from the line of sight towards the sea from the State Highway nearest the coast.

Furthermore, the proposed project maintains the quality of the scenic and open space resources by leaving the coastal area in an open, recreational supportive condition. As this park has been in use for decades and has included some form of restroom facility (which was chemical toilets in the past), the proposed project would be compatible with the visual environment in the area.

In review of the SMA guidelines as listed under HRS 205A-26(2)(B), 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 objectives and policies of Chapter 205A, HRS include, but are not limited to, the protection of coastal recreational resources, historic resources, scenic and open space resources, coastal ecosystems, marine resources, beaches, and controlling development in coastal hazard areas.

The proposed facility upgrades, and 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 existing beach park has provided valuable public access to Magic Sands Beach and the ocean. The proposed accessibility improvements would not in any manner adversely affect any recreational resources, and the proposed project expands and improves recreational uses for disabled users of the park. The proposed project would not restrict any shoreline uses such as fishing, surfing, and other water-dependent activities. Additionally, the proposed project would help DPR in its mission to provide adequate, accessible, and diverse recreational opportunities for the public.

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.

The proposed project has involved the appropriate surveys and research by professional archeologists to determine the presence and significance of historic sites in

this area. The proposed upgrades and facility improvements and reconstruction of a comfort station will allow Magic Sands Beach Park to continue to be used as a gathering place for residents and visitors and will help ensure the safety of visitors to the park. Magic Sands Beach Park, since its inception in the 1970's, has historically been utilized as a popular recreation area along the Kona coastline. Historic sites, located adjacent to the project area, will not be impacted and work occurring nearby includes measures to protect those sites from construction impacts. Thus, given the negative findings of the archeological assessment survey (AAS), the determination of effect for the proposed project is "no historic properties affected" which was confirmed by letter from SHPD.

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 project would not adversely affect any sight lines or scenic resources in any way. While Magic Sands Beach Park is not explicitly listed as an example of natural beauty in the General Plan, the site is highly scenic. Along with the more extensive shoreline frontage near Kamo'a Point and Kahalu'u County Beach Park, Magic Sands is one of the few locations along Ali'i Drive where development does not block ocean and beach views. The proposed project will maintain the existing scenic views from Ali'i Drive.

Coastal Ecosystems and Marine Resources:

Mitigative measures to minimize possible effects or impairments of valued resources will be addressed and are included as part of the best management practices (BMPs) for the proposed project. The proposed project is designed to have a minimal impact to natural resources associated with the shoreline and coastal waters.

Based upon the above information, the proposed development is consistent with the objectives and policies of Chapter 205A, HRS.

In review of the SMA guidelines as listed under HRS 205A-26(2)(C), the proposed development is consistent with the County General Plan, the Zoning Code and the Kona Community Development Plan. The project site is zoned both "Open" and Resort-Hotel (V-1.25), both of which support park use.

The proposed project conforms to the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, which designates this area as "open". This type of designation includes areas for open space recreational uses and parks, such that the continued use of the project site for a park is consistent with this LUPAG designation.

The applicant proposes to demolish the existing non-ADA compliant comfort station and replace it with an accessible facility, construct a new concrete ADA-compliant parking, new accessible showers, a new accessible picnic table and barbeque grill, and new accessible walkways and ramps connecting the beach park to Ali'i Drive. Also included in the project is related and necessary replacement (or improvements) to drain sumps, sand interceptors, utility tie-ins and waterlines, and pavement reconstruction and restriping. Of the several dozen trees on the project site, two (2) banyan trees will also be removed. Based on the details and proposed actions. The proposed project will complement the Historic Sites, Natural Beauty, Natural Resources and Shoreline,

Recreation and Economy goals and policies of the General Plan.

Lastly, the current Kona Community Development Plan (KCDP) was adopted by the Hawai'i County Council by Ordinance No. 19 91 on September 18, 2019. The KCDP planning area encompasses both judicial districts of North and South Kona. The KCDP has policies relevant to promoting park uses and providing recreational opportunities for residents and visitors. Additional strategies include improving public facilities that enhance the sense of community and improve the quality of life for the residents of Kona.

Maintenance and upgrade actions in La'aloa area parks are specifically addressed in a prescribed action of the KCDP, which the applicant believes is fulfilled by the proposed project: Action PUB-7.2c: *Provide for upgrading and maintenance to the public facilities in critical need of attention. Develop a strategic management plan for upgrading facilities at La'aloa Bay Beach Park* (which includes La'aloa Bay Beach Park, Kīpapa Park, and Magic Sands Beach Park).

The proposed accessibility improvements are consistent with various transportation-related elements of the KCDP, such as: Policy TRAN-3.1: Street Standards. *County street standards should be pedestrian friendly, safely accommodate bicycles, accessible to the disabled, and appropriate for its surrounding land use context,* and Action PUB-3.4c: *Continue to implement curb ramp program for streets and sidewalks and parks and recreation program facilities.*

Furthermore, the proposed project accomplishes the objective of improving recreation for all while preserving environmental values and the visual quality and character of the Kailua-Kona Urban Area, which is consistent with many aspects of the KCDP. This includes the guiding principle of providing recreational opportunities for the public and advocating for programs and projects that serve disabled residents and visitors.

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 and in preparation for this proposed project. The FEA provided a summary of these reports.

The valuable cultural, historical, and natural resources found in the permit area: From the information presented in this study it is evident that sites within the immediate project area vicinity, as well as those located in the greater La'aloa Beach Park, are part of a cultural landscape that has and continues to be deeply valued by descendant communities. Many of these individuals have been engaged in past issues relating to the areas significant cultural resources and they continue to advocate for the culturally appropriate treatment of these sites. As part of their right to exercise their traditional customary practices, the consultation process revealed that several of the consulted

parties continue to utilize some of the sites for ceremonial purposes, most notably the reconstructed Kū'ula.

It is likely that the community will continue to access this Kū'ula to conduct ceremonies and give offerings during and after the construction of the proposed project. To ensure that this site and its associated cultural practices and ceremonies are not impeded upon or disrupted by the proposed project, a clearly demarcated access route to this site should be established during the construction process. Likewise, a reasonable buffer should be created around the site and caution should be taken when working or operating heavy equipment near the vicinity of the Kū'ula. Implementation of these measures will help to safeguard against disrupting the site and any associated customary practices.

Possible adverse effect or impairment of valued resources: The Park development will require some site grading and grubbing, and construction of various improvements such as the new ADA comfort station and shower. Additional improvements include ADA upgrades for improved access to the park facilities. Mitigative measures to minimize possible effects or impairments of valued resources will be addressed and are included as part of the BMPs for the proposed project. The proposed project is designed to have a minimal impact to archaeological and historical resources located adjacent to the project area, and other natural resources associated with the shoreline and coastal waters. While it is not anticipated that the proposed project would have any direct physical impacts to the identified cultural resources, from a cultural perspective and as articulated by the consulted parties, keeping the comfort station in its existing location has been and will still be considered culturally inappropriate.

Feasible actions to protect native Hawaiian rights: As voiced by most of the consulted parties, relocating the comfort station from its existing location to a position mauka of Ali'i Drive is considered to be the most culturally appropriate way of mitigating the potential for adverse cultural impacts. While relocation of the comfort station may not be feasible at this time, it is recommended that the County and its planners continue to work with the descendant communities to identify processes that will ultimately result in the relocation of the comfort station facility at La'aloa Beach Park to a more culturally and environmentally suitable location. To ensure that the Kū'ula site and its associated cultural practices and ceremonies are not impeded upon or disrupted by the proposed project, a clearly demarcated access route to this site should be established during the construction process.

Lastly, this approval is made with the understanding that the Applicant remains responsible for complying with all other applicable governmental requirements in connection with the approved use, prior to its commencement or establishment upon the subject property. Additional governmental requirements may include the issuance of building permits, the installation of approved wastewater disposal systems, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.

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.