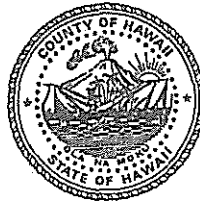


Susan

Harry Kim  
Mayor



Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
(808) 961-8288 • Fax (808) 961-8742

August 22, 2005

Mr. Edward J. Rapoza  
P O Box 2077  
Kailua-Kona, HI 96745

Dear Mr. Rapoza:

**SUBJECT: Special Management Area Use Permit Assessment Application (05-000071)**  
**Special Management Area Minor Permit No. 05-000014 (SMM No. 05-000014)**  
**Applicant: Edward J. Rapoza**  
**Land Owner: Edward J. Rapoza**  
**Request: Demolish two existing structures and its foundations, remove debris and clean up existing vegetation, and filling in of an existing artificial pool located within the shoreline setback area**  
**Tax Map Key: 7-5-18:20, Waiaha 1<sup>st</sup>, North Kona, Hawaii**

This is in response to the above-referenced Special Management Area Assessment Application to demolish two existing structures and its foundations, remove debris and clean up existing vegetation, and filling in of an existing artificial pool located within the shoreline setback area of the subject property. The proposed project is to create a beach park for the community and the County.

The property is zoned Resort-Hotel (V-.75) by the County and designated Urban by the State Land Use Commission. It is also designated Resort Node and Open by the Hawaii County General Plan Land Use Pattern Allocation Guide (LUPAG) Map. A beach park is a permitted use within those land use designations.

Chapter 205A-22, HRS, and Planning Commission Rule 9-4(10)A, relating to the Special Management Area, states "development" includes the following:

- (i) "Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;"
- (v) "Construction, reconstruction, demolition, or alteration of the size of any structure."

Mr. Edward J. Rapoza

Page 2

August 22, 2005

Therefore, the proposed project requires a Special Management Area (SMA) Minor Permit.

Pursuant to Planning Department Rule 11-7(a)(4), "*a minor structure or activity approved in accordance with section 11-8*" may be permitted within the shoreline setback area provided written clearance is secured from the Planning Department. Section 11-8 states: "*A minor structure or activity proposed in the shoreline setback area shall not need a shoreline setback variance if the Planning Department determines that it would not affect beach processes or artificially fix the shoreline and would not interfere with public access or public views to and along the shoreline.*"

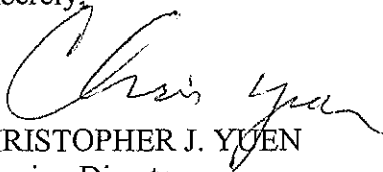
For this reason, the Planning Department has determined that the proposed activities are "minor activities" that will not affect beach processes or artificially fix the shoreline and will not interfere with public access or public views to and along the shoreline.

Based on the above, and pursuant to Planning Commission Rule Section 9-10(E), Special Management Area Minor Permit No. 05-000014 is hereby issued to allow for the proposed activities on the subject property, subject to the applicant's compliance with the conditions of approval as specified in the permit.

Please note, however, that any further activity on or development of the property will require the submittal of another Special Management Area Use Permit Assessment Application for the proposed use.

Should you have questions, please feel free to contact Alice Kawaha of this department at 961-8288.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

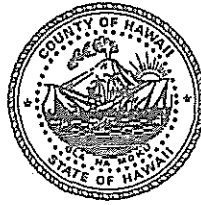
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Enclosures: SMM No. 05-000014  
Department of Public Works August 22, 2005 Memorandum

xc w/encls: Long Range Planning - Ms. Susan Gagorik  
Planning Commission - Mr. Norman Hayashi  
Planning Department - West Hawaii Office

Harry Kim  
Mayor



Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
(808) 961-8288 • Fax (808) 961-8742

#### Special Management Area Minor Permit No. 05-000014

**Project:** Demolish two existing structures and its foundations, remove debris and clean up existing vegetation, and filling in of an existing artificial pool located within the shoreline setback area  
**Applicant:** Edward J. Rapoza  
**Land Owner:** Edward J. Rapoza  
**Location:** Waiaha 1st, North Kona, Hawaii  
**TMK:** (3) 7-5-018:20 **Land Area:** 29,414 square feet

#### Applicant's Request

##### 1. Project Description:

The applicant proposes to demolish two existing one-story structures and its foundations, remove all debris from the site and clean up existing vegetation, and filling in of an existing artificial pool located within the shoreline setback area.

##### 2. Purpose of Project:

The project is to create a beach park for the community and enhance the existing recreational opportunities at the beach. The project would provide the public with a safe, clean and improved outdoor recreational area, and to enhance the open and scenic views and vistas at the site. The property is proposed to be transferred to the County of Hawaii in the future.

##### 3. Project Valuation: \$15,000.00

##### 4. Determination:

Chapter 205A-22, HRS, and Planning Commission Rule 9-4(10)A, relating to the Special Management Area, states "development" includes the following:

- (i) "Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;"
- (v) "Construction, reconstruction, demolition, or alteration of the size of any structure."

Therefore, the proposed project requires a Special Management Area (SMA) Minor Permit.

## State and County Plans

1. **State Land Use District:** The subject property is designated Urban by the State Land Use (SLU) Commission.
2. **General Plan:** The Hawaii County General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the subject property for Resort and Open uses.
3. **County Zoning:** The subject property is zoned Resort-Hotel (V-.75) by the County of Hawaii.
4. **Special Management Area:** The subject property is located in the SMA.
5. **Flood Zone:** The Flood Insurance Rate Map (FIRM) designates a portion of the project site as within 100-year flood plain, Zone AE and VE, with base flood elevation of 10 feet above sea level. The remaining area is within Zone X.
6. **Existing Structures:** The two existing structures were built as dwellings in the 1950s. In 1984, the use of one of the structures was converted into a massage therapy office. A corner of a roof overhang for one of the structure protrudes about 2-3 feet into the 20-foot shoreline setback area. According to Real Property Tax records, the existing artificial pool within the shoreline setback area was permitted on March 25, 1964 (Permit #28965). Further, the Planning Department records show that the pool is visible from an aerial photograph taken on August 21, 1969 by R. M. Towill. Therefore, the roof overhang protrusion and artificial pool within the shoreline setback area are considered legal non-conforming structures since they were built prior to June 22, 1970. Act 136 (S.B. No. 1139-70) relating to the Land Use Law, Session Laws of Hawaii, was enacted on June 22, 1970. This Act 136 amended Chapter 205 and added a section on Shoreline Setbacks.
7. **Existing Seawall:** According to Planning Department records, the seawall running lateral for more than three-fourths of the parcel is visible from an aerial photograph taken on August 21, 1969 by R. M. Towill. As such, the existing seawall is considered a legal structure since it was built prior to June 22, 1970, adoption of the shoreline setback laws. It is pointed out that the seaward or makai face of the seawall was previously certified by the Chairperson of the Department of Land and Natural Resources on several shoreline survey maps dated October 23, 1980, January 7, 1982, March 8, 1991 and May 14, 1997. Therefore, the shoreline is considered fixed by this man-made seawall structure, pursuant to Planning Department Rule 11-4 relating to shoreline certification.
8. **Previous Approval:** By letter dated December 30, 1999, the Planning Commission reaffirmed its approval granting Special Management Area Use Permit No. 387 to SoBay Hawaii, Inc. The project was for the proposed construction of a 21-unit residential condominium and related improvements. SoBay Hawaii, Inc. has not proceeded with its proposed project and has since sold the property.

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<b>Compliance with Objectives and Policies of Chapter 205A, Hawaii Revised Statutes (HRS), Regarding the Special Management Area</b>
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The project site is a shoreline property and safety concerns necessitate that short term public access to the recreational resources along the shoreline may be restricted during the demolition and clearing operations. As specified in the conditions of approval for this permit, the applicant shall preserve and maintain all existing shoreline public access pathways.

Some minimal or minor demolition and clearing activities would occur within the 20-foot shoreline setback area. However, those activities would occur a minimum of 15 feet mauka of the existing seawall and would not affect beach processes or artificially fix the shoreline and would not interfere with public access or public views to and along the shoreline. The existing artificial pool is hazardous and therefore; filling in the pool with appropriate material will provide a much safer condition.

Check all objectives and policies found to be consistent with proposed development. Issuance of SMA Minor Permit requires that activity be consistent with all objectives & policies.

The proposed development is consistent with the following objectives and policies:

- ☒ 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. 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 the elimination of planning options.
- ☒ The proposed development is consistent with the Hawaii County General Plan and the Zoning Code.
- ☒ The proposed development does not conflict with the following objectives of Chapter 205A, HRS, to:
  - ☒ Provide coastal recreational opportunities accessible to the public.
  - ☒ Protect, preserve, and where desirable, restore those natural and man-made historic and pre-historic resources in the coastal zone management area that are significant in Hawaiian and American history and culture.
  - ☒ Protect, preserve, and where desirable, restore or improve the quality of coastal scenic and open space resources.
  - ☒ Protect valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems.
  - ☒ Provide public or private facilities and improvements important to the State's economy in suitable locations.

- ☒ Reduce hazard to life and property from tsunامي, storm waves, stream flooding, erosion, subsidence and pollution.
- ☒ Improve the development review process, communication, and public participation in the management of coastal resources and hazards.
- ☒ Stimulate public awareness, education, and participation in coastal management.
- ☒ Protect beaches for public use and recreation.
- ☒ Promote the protection, use, and development of marine and coastal resources to assure their sustainability.
- ☒ The proposed development is consistent with the following policies of Chapter 205A, HRS, relating to:
  - ☒ Recreational Resources
  - ☒ Historic Resources
  - ☒ Scenic and Open Space Resources
  - ☒ Coastal Ecosystems
  - ☒ Economic Uses
  - ☒ Coastal Hazards
  - ☒ Managing Development
  - ☒ Public Participation
  - ☒ Beach Protection
  - ☒ Marine Resources
- ☒ The proposed development conforms to the requirements of Chapter 343, HRS, regarding Environmental Impact Statements.

### Findings

As discussed above, the project is proposed to create a beach park for the community and enhance the existing recreational opportunities at the beach. The project would provide the public with a safe, clean and improved outdoor recreational area, and to enhance the open and scenic views and vistas at the site. The proposed project 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 interest.

The proposed development is consistent with the Hawaii County General Plan and Zoning Code.

The proposed development is consistent with the objectives, policies, and SMA guidelines of Chapter 205A, HRS.

The estimated project cost of approximately \$15,000 is not in excess of \$125,000.

The Department of Public Works (DPW) – Engineering Division has reviewed the proposed project for compliance with Chapter 27, Flood Control, of the Hawaii County Code and has provided the following comments. A copy of DPW's memorandum dated August 22, 2005 is enclosed.

1. *Buildings shall conform to all requirements of code and statutes pertaining to building construction. A building permit is required for demolition of structures.*
2. *Flood Zone "AE", affects the subject parcel as designated by the Flood Insurance Rate Map (FIRM), dated June 2, 1995. Any new construction or substantial improvements within Zone AE will be subject to the requirements of Chapter 27 – Flood Control, of the Hawaii County Code.*  
*Chapter 27 does not apply to demolition of structures. All demolition materials and debris should be removed from the site and disposed of as recommended by appropriate agencies. Care should be taken not to disturb natural coastal dunes and vegetation, if any, protecting the beach.*
3. *All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control, of the Hawaii County Code.*
4. *The applicant shall comply with chapter 11-55, Water Pollution Control, Hawaii Administrative Rules, Department of Health, which requires an NPDES permit for certain construction activity.*

Pursuant to Planning Commission Rule Section 9-10(E), **Special Management Area Minor Permit No. 05-000014** is hereby approved to allow for the demolition of two existing structures and its foundations, removal of debris and clean up of existing vegetation, and filling of existing pool. This approval is subject to the applicant's compliance with the conditions of approval as specified below.


<b>Conditions of Approval</b>
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The Planning Director has approved **SMA Minor Permit No. 05-000014** subject to the following conditions:

1. The applicant, its successors or assigns shall be responsible for complying with all stated conditions of approval.
2. Existing shoreline access on the subject property shall be retained and maintained by the applicant as necessary to afford public access to and along the shoreline. The public access shall remain open to the public except during periods of actual demolition and clearing activities where closure of the affected portions of the public access may be necessary to ensure the public safety.

3. Demolition of the two structures and its foundations, clearing of debris and vegetation activities, and filling in the artificial pool approved by this permit shall be completed within one (1) year from the date of this permit.
4. A building permit for the demolition of each structure shall be secured from the Department of Public Works, Building Division.
5. Activities within the shoreline setback area are minor and limited to the proposed project. No other land activities, or improvements shall be permitted within the shoreline setback area without proper approval from the Planning Department.
6. All debris resulting from demolition activities shall be removed from the shoreline setback area and near shore waters, if any, on a daily basis.
7. Flood Zone "AE and VE" affects a portion of the subject parcel as designated by the Flood Insurance Rate Map (FIRM). All proposed activities shall comply with and meet the requirements of the Department of Public Works.
8. The applicant shall comply with all applicable requirements of all Federal, State and County of Hawaii departments and agencies.
9. 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).
10. 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.

APPROVED:

  
\_\_\_\_\_  
CHRISTOPHER J. YUEN  
Planning Director

8/22/05  
Date




DEPARTMENT OF PUBLIC WORKS  
COUNTY OF HAWAII  
HILO, HAWAII

DATE: August 22, 2005

**Memorandum**

TO : Christopher J. Yuen, Planning Director  
Planning Department

FROM : Galen M. Kuba, Division Chief   
Engineering Division

SUBJECT : SMA Assessment Application (SAA 05-71 )  
Applicant: Edward Rapoza  
Location: Waiaha, N. Kona, HI  
TMK: 3 / 7-5-018:020

We reviewed the subject application and our comments are as follows:

1. Buildings shall conform to all requirements of code and statutes pertaining to building construction. A building permit is required for demolition of structures.
2. Flood Zone "AE", affects the subject parcel as designated by the Flood Insurance Rate Map (FIRM), dated June 2, 1995. Any new construction or substantial improvements within Zone AE will be subject to the requirements of Chapter 27 - Flood Control, of the Hawaii County Code.  
Chapter 27 does not apply to demolition of structures. All demolition materials and debris should be removed from the site and disposed of as recommended by appropriate agencies. Care should be taken not to disturb natural coastal dunes and vegetation, if any, protecting the beach.
3. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control, of the Hawaii County Code.
4. The applicant shall comply with chapter 11-55, Water Pollution Control, Hawaii Administrative Rules, Department of Health, which requires an NPDES permit for certain construction activity.

Should there be any questions concerning this matter, please feel free to contact Kiran Emler of our Kona Engineering Division office at 327-3530.

KE  
copy: ENG-HILO/KONA  
PLNG-KONA