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### Special Management Area Minor Permit No. 13-000282

**Project:** "Unpermitted" Rock Walls and Landscaping Improvements  
and Relocation of the Unpermitted Gazebo  
**Applicant:** Lyon Associates, Inc. & American Bank  
**Landowner:** American Bank  
**Location:** South Kohala, Hawai'i  
**TMKs:** 6-9-2:4 Land Area: 22,827 s.f.  
6-9-2:24 Land Area: 19,479 s.f.  
6-9-2:25 Land Area: 29,043 s.f.

#### Applicant's Request

##### 1. Project Description:

A Notice of Violation and Order (File No. 2010-112W & SMA 10-112W) was issued on May 3, 2011 for the unpermitted placement of a gazebo that straddle Parcels 24 and 25 and that is within the shoreline setback area. On Parcel 4, unpermitted rock walls were constructed along Puakō Beach Drive that continued makai (seaward) along the western property line up to approximately 95 feet from the makai boundary pin. On Parcel 25, the unpermitted walls were constructed along the east property line, with portions of the makai section within the shoreline setback area as well as on the adjacent TMK: 6-9-2:3 and TMK: 6-9-2:20.

The gazebo will be relocated outside of the shoreline setback area of Parcels 24 and 25 and onto Parcel 4. A small crane will be placed outside the shoreline setback area with the boom swinging over to the current gazebo location. No heavy equipment or machinery will be placed or operated within the shoreline setback area.

Applicant would like to retain the unpermitted rock walls on Parcels 4 and 25.

Landscaping improvements include the trimming and cutting of trees as well as the planting of shrubs and palms along Puakō Beach Drive. Gravel was placed onsite and a gravel driveway installed across the three parcels, leading to the gazebo.



**2. Purpose of Project:** This application was submitted to address the violations.

**3. Project Valuation:** \$5,500

**4. Determination:**

Chapter 205A-22, HRS, and Planning Commission Rule No. 9-4(e)(1), relating to the Special Management Area, states that "Development" includes:

"(A) Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste";

"(B) Grading, removing, dredging, mining, or extraction of any materials"; and

"(E) Construction, reconstruction, demolition, or alteration of the size of any structure".

Insofar as this application did not include a current certified shoreline survey for the subject parcels, we are unable to properly identify the location of the shoreline setback line.

Therefore, the following after-the-fact SMA Minor Permit is issued for the following uses, activities and operations only.

- a. The gazebo shall be removed from its current location and may be relocated on one of the three parcels such that it is sited entirely on one parcel only in accordance with the yard and open space requirements of Chapter 25 (Zoning Code), HCC, and mauka (inland) of the Flood Zone VE/AE line, as depicted in pink on the Gazebo Relocation Plan Sheet R-1, dated August 16, 2011.
- b. For all three parcels, all rock walls that do not exceed six (6) feet in height that are situated mauka of the Flood Zone VE/AE line may remain as constructed provided that any portions exceeding six (6) feet in height are either reduced to a maximum of six (6) feet in height or a building permit is issued as may be required under the Building Code, and that any portions that encroach upon either the parcels adjacent to the subject properties or the Puako Beach Drive right-of-way shall be removed.
- c. That portion of the gravel driveway mauka of the Flood Zone VE/AE line may remain as constructed and maintained, but shall not be paved or further graded without further review against the SMA Guidelines.
- d. Landscaping improvements, including plantings and tree trimming previously conducted.

Pursuant to Rule 11-6 (b), Planning Department Rules of Practice and Procedure (PD Rules), relating to the Shoreline Setback, "*all structures and activities which do not qualify under section 11-7(a) through (c)*" are prohibited within the Shoreline Setback Area. Insofar as the rock walls constructed along the west property line on Parcel 4 and the east property line of Parcel 25 and the gravel driveway/parking area improvements that are makai of the Flood Zone VE/AE line are not include among the structures and activities permitted within the Shoreline Setback Area, the following will be required.

- a. All such improvements shall be removed and the ground restored to its original condition; or
- b. A written request in the form of a separate Special Management Area Assessment application that includes a current (not more than 12 months old from date of certification by the Chair of the Board of Land and Natural Resources) shall be



submitted to the Planning Department requesting a Determination of Minor Structure and Minor Activity under Rule 11-8, PD Rules; or

- c. The approval of a Shoreline Setback Variance by the Leeward Planning Commission in accordance with Rule 8, Planning Commission Rules of Practice and Procedure.

#### **State and County Plans**

1. **State Land Use District:** The subject properties are designated Urban.
2. **General Plan:** They are designated Resort by the Hawaii County General Plan Land Use Pattern Allocation Guide (LUPAG) Map.
3. **County Zoning:** The subject properties are zoned Resort-Hotel (V-1.25).
4. **Special Management Area (SMA):** The subject properties are located in the SMA and all have frontage along the shoreline.
5. **Flood Zone:** Flood Zone "VE" for the unpermitted gazebo location, with other areas VE, AE and AO.

#### **Compliance with Objectives and Policies of Chapter 205A, Hawai'i Revised Statutes (HRS), Regarding the Special Management Area**

The subject properties have frontage along the ocean. However, the new location for the gazebo will be mauka of the Flood Zone VE/AE line. Also, there are Existing Easements "A-1" and "A-2" for Pedestrian Shoreline Access Purposes along the shoreline. Therefore, the proposed project will not affect the recreational resources available to the public.

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 tsunamis, 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, Environmental Impact Statements.

<b>Findings</b>
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The proposed development, as limited in the determination provided above, 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 approved after-the-fact and proposed development is consistent with the Hawaii County General Plan and Zoning Code.



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

The estimated project cost of approximately \$5,500 is not in excess of \$500,000.

The enclosed Department of Public Works, Engineering Division revised memorandum dated November 16, 2011 states the following:

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

*We have determined that the subject property is located within Flood Zone "VE" according to the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA).*

*Alteration of, or any new construction, improvements to repetitive loss structures or substantial improvements of structures within Parcel 6-9-002:004, 024, 025 will be subject to the requirements of Chapter 27 – Flood Plain Management, of the Hawai'i County Code. A building permit is required for moving of the unpermitted structure."*

Pursuant to Planning Commission Rule Section 9-10(E), **Special Management Area Minor Permit No. 13-000282 is hereby approved for only the relocation of the unpermitted gazebo and the unpermitted rock walls and landscaping improvements that are mauka of the Flood Zone VE/AE line as described in the determination above**, 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. 13-000282, subject to the following conditions:**

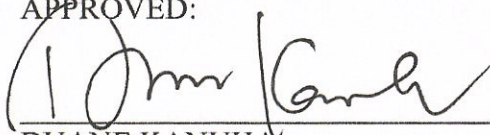
1. The applicant, its successors or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant shall comply with all applicable requirements of other affected agencies.
3. Final Plan Approval for the gazebo will be required prior to the issuance of the building permit for the gazebo. An application for Plan Approval shall be submitted to the Planning Department within 60 days from the date of this permit.
4. Within six (6) months from the date of this permit, the applicant shall secure a building permit to remove and/or relocate the unpermitted gazebo.
5. A sediment barrier, meeting with the approval of the Planning Director, shall be erected along the makai side of the existing gazebo not more than six (6) feet from the makai side of the gazebo and extending laterally along the shoreline for not less than twenty (20) feet beyond each side of the gazebo prior to the commencement of any activity and shall remain in place until the work is completed.

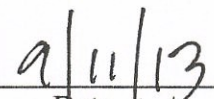


6. The sedimentation barrier must be shown and properly noted on the plan submitted with any permit required for land altering or construction activities. The construction notes on the plan must include the following statement, "the sedimentation barrier must be erected prior to any land altering or construction activities, and must remain in place until final inspection by Department of Public Works."
7. No heavy machinery, including a crane or mechanized equipment, is allowed makai of forty (40) foot setback line as depicted in blue on the Gazebo Relocation Plan Sheet R-1, dated August 16, 2011.
8. Within six (6) months from the date of this permit, the applicant shall either remove all of the improvements makai of the Flood Zone VE/AE line as described above or have secured a certified shoreline survey and submitted either a Determination of Minor Structure or Minor Activity to the Planning Department or an application for a Shoreline Setback Variance for approval by the Leeward Planning Commission.
9. Public access to and along the shoreline over Easement "A-1" as depicted on the Final Plat Map for Subdivision No. 07-000574. Contact Planning Inspector Randy Lovato at 323-4781 or Horace Yanagi at 323-4782 to inform them of the date and time that the gazebo will be moved. They will be there to confirm the required placement of the sediment barrier and to monitor all activities.
10. Best Management Practices (BMPs) shall be implemented to prevent contamination of the area from leaking oil and other fluids from the use of mechanized equipment/machinery.
11. Submit a landscaping plan for any additional proposed activities mauka of the Flood Zone VE/AE line.
12. Any change in the siting of the gazebo that is makai or closer to the ocean after relocation will require the submittal and approval of another Special Management Area Use Permit Assessment Application that is accompanied by a current certified shoreline survey.
13. 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 and may result in the assessment of additional civil fines as stipulated in Notice of Violation and Order No. 2010-112W & SMA 10-112W.

Should you have questions, please contact Esther Imamura at (808) 961-8139.

APPROVED:

  
DUANE KANUHA  
Planning Director

  
Date