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## County of Hawai'i

### PLANNING DEPARTMENT

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### **Special Management Area Minor Permit No. 12-000205**

**Project:** 5-Room Bed and Breakfast Within Two Existing Dwellings  
**Applicant:** Kenneth Okagi and Erin Rene  
**Land Owner:** Kenneth Okagi, Erin Rene, Pong Sun Okagi and Robert Okagi (deceased)  
**Location:** South Kona, Hawai'i  
**TMK:** 8-2-8:57 **Land Area:** 1.428 acres

#### **Applicant's Request**

**1. Project Description:**

There is an existing 5-room bed and breakfast, 3 units within the larger dwelling and two units within the other dwelling. No excavations or building additions are proposed.

**2. Purpose of Project:**

This application is in response to a September 6, 2011 Warning Letter issued for operating a Bed & Breakfast without a Special Permit. Further, the project will promote responsible growth and economic development that supports the tourist trade.

**3. Project Valuation:** up to \$45,000

**4. Determination:**

According to Chapter 205A-22, HRS and Planning Commission Rule 9-4(e)(1)(C) relating to the Special Management Area, the establishment of a 5-room bed and breakfast within two existing dwellings is considered *"Change in the density or intensity of use of land, including, but not limited to the division or subdivision of land."* Therefore, a Special Management Area Minor Permit is required.

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

- 1. State Land Use District:** The subject property is designated Agricultural.
- 2. General Plan:** The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the subject property as Important Agricultural Land.
- 3. County Zoning:** The subject property is zoned Family Agricultural (FA-1a). Pursuant to §25-5-62(c)(2) of the Hawai'i County Zoning Code, *"Bed and breakfast establishments, as permitted under section 25-4-7"* may be permitted within the Agricultural district, provided that a special permit is obtained.

At a December 19, 2011 site inspection, our Kona Zoning Inspectors documented a microwave oven and a bar sink installed in three of the bedrooms.

According to the Hawai'i County Zoning Code, §25-1-5(b), "Dwelling unit" means one or more rooms designed for or containing or used as the complete facilities for the cooking, sleeping and living area of a single-family only and occupied by no more than one family and containing a single kitchen. Kitchen" means a room or a portion of a room designed to be used for the preparation of food and containing at least one item from both of the following categories: (A) Fixtures, appliances or devices for heating or cooking food; and (B) Fixtures, appliances or devices for washing utensils used for dining and food preparation and/or for washing and preparing food.

Based on the foregoing, the presence of a microwave oven with each bar sink constitutes a "kitchen"; therefore, it is a Zoning Code violation. Since only one kitchen is allowed per dwelling, either the device for heating or cooking food or the device for washing utensils or food must be removed from all the bedrooms.

4. **National and Hawai'i Register of Historic Sites:** Although the subject parcel is within the Kealahou Bay Historical District, no excavation or new construction will be required for the bed and breakfast operation.
5. **Building Permits:** According to Real Property Tax Office records, one dwelling was constructed in 1998 and the other dwelling was constructed in 2001.
6. **Special Management Area (SMA):** The subject property is located in the SMA. However, it is approximately 2/3 of a mile from the ocean. Therefore, it is not located in a "shoreline area" as defined by Section 205A-41, Hawai'i Revised Statutes (HRS).
7. **Flood Zone:** "X"

<p style="text-align: center;"><b>Compliance with Objectives and Policies of Chapter 205A, Hawai'i Revised Statutes (HRS), Regarding the Special Management Area</b></p>
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The subject parcel does not have frontage along the coastline. Therefore, the proposed activity will not affect public access to the shoreline or negatively affect shoreline 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 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 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 proposed development is consistent with the Hawai'i 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 less than \$45,000 is not in excess of \$500,000.

The enclosed Department of Public Works, Engineering Division memorandum dated January 5, 2012, states the following:

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

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

*According to the encroachment survey provided, a wall and fence encroach on the County right-of-way. The applicant shall remove any encroachments or obstructions within the County right-of-way.*

*Our records indicate Building Permit Number 986328 for the swimming pool has not been given final approvals.*

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

Pursuant to Planning Commission Rule Section 9-10(e), **Special Management Area Minor Permit No. 12-000205** is hereby approved to allow for the 5-room bed and breakfast within the two existing dwellings, subject to the applicant's compliance with the conditions of approval as specified below.

## Conditions of Approval

The Planning Director has approved **SMA Minor Permit No. 12-000205** subject to the following conditions:

1. The applicant, its successors or assigns shall be responsible for complying with all stated conditions of approval.
2. SMA Minor Permit No. 12-000205 will be effective only upon the granting of a Special Permit from the Planning Commission. The Special Permit shall be secured within one (1) year from the Planning Director's date of approval of this permit.
3. 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.

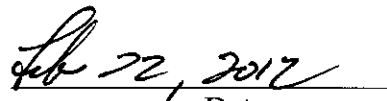
4. Immediately remove either the microwave oven or remove the bar sink from all bedrooms so that it does not meet the County Zoning Code definition of a kitchen. Upon compliance with this condition, please contact the Zoning Inspectors in Kona at (808) 323-4787 to arrange for a site inspection.
5. Prior to submitting a Special Permit Application for the bed and breakfast operation, comply with the following requirements in the January 5, 2012 Department of Public Works memorandum:
  - a. Obtain final building permit approval for the swimming pool.
  - b. Remove the wall and fence encroachments on the County's right-of-way.
6. 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).
7. 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.

If you have questions, please contact Esther Imamura of this office at 961-8139.

APPROVED:

  
BJ LEITHEAD TODD

Planning Director

  
Date