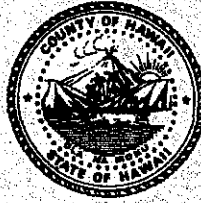


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

West Hawai'i Office
74-5044 Anē Keōhiokaloie Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i
PLANNING DEPARTMENT

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

November 21, 2012

Mr. Steven S.C. Lim, Esq.
Carlsmith Ball LLP
P.O. Box 686
Hilo, HI 96721-0686

Dear Mr. Lim:

SUBJECT: Special Management Area Use Permit Assessment Application (SAA 12-000878)
Special Management Area Minor Permit No. 12-000246
Applicant: David W. Venuti and Kelly A. Sheahan
Landowner: David W. Venuti and Kelly A. Sheahan
Request: "As-Built" Attached Ohana Dwelling
Tax Map Key: 6-9-4:32, Lalamilo, South Kohala, Hawai'i

This is to follow up on our October 24, 2012 letter relating to the above-referenced Special Management Area assessment for the "as-built" attached ohana dwelling on the subject parcel.

The 16,068 square foot parcel is zoned Single-Family Residential (RS-10) by the County and designated Urban by the State Land Use Commission. Although it is in the Special Management Area, the parcel is not located in a "shoreline area" as defined by Section 205A-41, Hawai'i Revised Statutes (HRS). Further, since the parcel is mauka of Puakō Beach Drive, the requirement to submit a current certified shoreline survey was waived.

According to Chapter 205A-22, Hawai'i Revised Statutes (HRS), and Planning Commission Rule No. 9-4(e)(1)(E) relating to Special Management Area, the "as-built" attached ohana dwelling is considered "Construction, reconstruction, demolition, or alteration of the size of any structure" and defined as "development". Therefore, a Special Management Area Minor Permit is required.

For this reason and pursuant to Planning Commission Rule Section 9-10(E), Special Management Area Minor Permit No. 12-000246 hereby issued for the "as-built" attached ohana dwelling, subject to the applicant's compliance with the conditions of approval as required by the permit.


NOV 23 2012

Mr. Steven S.C. Lim, Esq.
Carlsmith Ball LLP
November 21, 2012
Page 2

Finally, all other applicable Zoning and Building Code requirements must also be satisfied.

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

Sincerely,


BJ LEITHEAD TODD
Planning Director

ETI:cs

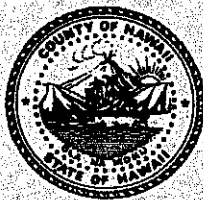
P:\Wpwin60\CZMSMM\2012\SMM 12-246L Venuti Lim.Rtf

Enclosures - SMM No. 12-000246
Department of Public Works October 30, 2012 Memo

cc w/Encls: Long Range Planning
Planning Department, Kona
Mr. Horace Yanagi, Kona Zoning Inspector
Planning

cc ltr. only: Mr. Jesse K. Souki, Director
Office of Planning
State of Hawaii Department of Business, Economic
Development & Tourism
P.O. Box 2359
Honolulu, HI 96804-2359

William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i PLANNING DEPARTMENT

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

Special Management Area Minor Permit No. 12-000246

Project: "As-Built" Attached Ohana Dwelling
Applicant: David W. Venuti and Kelly A. Sheahan
Location: Lalamilo, South Kohala, Hawai'i
TMK: 6-9-4:32 16,068 square feet

Applicant's Request

- 1. Project Description:** The application is for the "As-Built" attached ohana dwelling on the subject property. The approximately 483 square feet ohana dwelling is on the first floor and consists of a den, powder room by the den, kitchenette/hall, breakfast nook and a powder/washer/dryer room. The 85 square feet tub room is a shared area.
- 2. Purpose of Project:** On April 30, 2012, a Notice of Violation and Order (ZCV 2011-094W and SMA 11-094W) was issued for "alleged illegal dwelling units and alleged illegal rentals. Although Ohana Dwelling Permit No. OD 86-121 was issued on December 17, 1986 for an additional single-family dwelling, an attached ohana dwelling was constructed without required building permit(s) or Special Management Area approval.
- 3. Project Valuation:** \$155,510
- 4. Determination:** According to Chapter 205A-22, HRS, and Planning Commission Rule No. 9-4(e)(1)(E) relating to the Special Management Area, the "*Construction, reconstruction, demolition or alteration of the size of any structure*" is defined as "development." Therefore, the "as-built" ohana dwelling requires a SMA Minor Permit.

State and County Plans

- 1. State Land Use District:** The subject property is designated Urban by the State Land Use Commission.
- 2. General Plan:** The Hawaii County General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the parcel as Low Density Urban.

3. **South Kohala Community Development Plan:** Chapter 7, Puakō Community Plan, Policy 1. Manage the Effects of Growth and Development, Strategy 1.2, Mitigate the impacts of development within the Puakō Community states that *"Multi-family, resort related, and multi-story structures should be prohibited"*. However, the Ohana Dwelling permit was issued in 1986 and the South Kohala CDP was adopted on November 20, 2008.
4. **County Zoning:** The subject property is zoned Single-Family Residential (RS-10).
5. **Special Management Area (SMA):** The subject property is located in the SMA, but is mauka of Puakō Beach Drive. Therefore, it is not located in a "shoreline area" as defined by Section 205A-41, Hawai'i Revised Statutes (HRS).
6. **Flood Zone:** According to the Flood Insurance Rate Map (FIRM), the subject property is located within Flood Zone "AE and AO".

<p style="text-align: center;">Compliance with Objectives and Policies of Chapter 205A, Hawaii Revised Statutes (HRS), Regarding the Special Management Area</p>

The subject parcel is mauka of Puakō Beach Drive and does have frontage along the coastline. Therefore, the "as-built" ohana dwelling 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 tsunami, 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 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 construction cost of \$155,510 is not in excess of \$500,000.

By enclosed memorandum dated October 30, 2012, the Department of Public Works, Engineering Division stated that:

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

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

New construction, improvements to repetitive loss structures and substantial improvements of structures are all subject to the requirements of Chapter 27 – Flood Plain Management, of Hawai'i County Code."

Pursuant to Planning Commission Rule Section 9-10(E), **Special Management Area Minor Permit No. 12-000246** is hereby approved for the "as-built" attached ohana dwelling, subject to the applicant's compliance with the conditions of approval as specified below.

Conditions of Approval

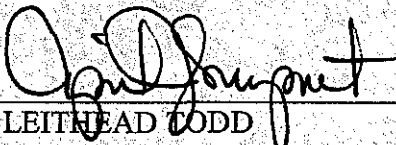
The Planning Director has approved **SMA Minor Permit No. 12-000246** subject to the following conditions:

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 the State Department of Health, the Hawaii County Department of Public Works and applicable requirements of other affected agencies.
3. The Building Permit for the "as-built" attached ohana dwelling shall be issued within one (1) year from the date of approval of this permit.
4. Discovery of any unidentified sites or remains, such as artifacts, shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls will require that all work in the immediate area shall cease. The Planning Director shall be immediately notified. Work may proceed with an archaeological clearance from the Planning Director. The archaeological clearance requires a finding that sufficient mitigative measures are taken for the discovery, with written guidance from the State Historic Preservation Division of the Department of Land and Natural Resources.
5. 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).
6. 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 department at 961-8139.

APPROVED:


for BJ LEITHEAD TODD

NOV 21 2012

Date

**DEPARTMENT OF PUBLIC WORKS
COUNTY OF HAWAII
HILO, HAWAII**

PLANNING DEPARTMENT

County of Hawaii

**74-5044 Ane Keohokalole Hwy.
Kailua-Kona, HI 96740**

RECEIVED OCT 30 2012

DATE: October 30, 2012

Memorandum

TO : B. J. Leithead-Todd, Planning Director
Planning Department

FROM : Ben Ishii, Division Chief *[Signature]*
Engineering Division

SUBJECT : Special Management Area Use Permit
Assessment Application (SAA 12-000878)
Applicant: David W. Venuti and Kelly A. Sheahan
Request : "As Built" Attached Ohana Dwelling
Location: Lalamilo S. Kohala, HI
TMK: 3 / 6-9-004: 032

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

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

New construction, improvements to repetitive loss structures and substantial improvements of structures are all subject to the requirements of Chapter 27 – Flood Plain Management, of Hawaii County Code.

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

SCANNED

OCT 31 2012

By: 081839

William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i
PLANNING DEPARTMENT

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

December 3, 2013

Steven S.C. Lim, Esq.
Carlsmith Ball LLP
P.O. Box 686
Hilo, HI 96721-0686

Dear Mr. Lim:

**Subject: Request for Administrative Time Extension
Special Management Area Minor Permit (SMM 12-000246)**
Applicants: David W. Veuti and Kelly A. Sheahan
Tax Map Key: 6-9-004:032 Lālāmilo, South Kohala, Hawai'i

This is in response to your letter dated November 5, 2013 requesting an administrative extension of time to comply with the conditions of approval of SMM 12-000246.

SMM 12-000246 was approved on November 21, 2012. Condition No. 3 stated that "The Building Permit for the "as-built" attached ohana dwelling shall be issued within one (1) year from the date of approval of this permit". Condition No. 5 allowed for a one (1) year time extension to comply with the conditions of approval, provided that the non-performance was the result of conditions that could not have been foreseen or are beyond the control of the applicant and that are not the result of their fault or negligence.

According to the copy of Building Permit No. A2013-BH00727, the final approval required is from the Electrical section of the Building Division. All other agency approvals were obtained from April 30, 2013 to October 17, 2013. Therefore, the delay in obtaining the building permit is attributed, in part, to the County's administrative process.

In view of the foregoing, we are granting a one (1) year time extension or until November 21, 2014 in which to comply with Condition No. 3. Please note that no further time extensions for Condition No. 3 can be granted.

Steven S.C. Lim, Esq.
Carlsmith Ball LLP
December 3, 2013
Page 2

We sincerely apologize for the lateness of this response. If you have questions, please contact Esther Imamura of this office at 961-8139.

Sincerely,



 DUANE KANUHA
Planning Director

ETI:cs

P:\Wpwin60\CZM\Letters\2013\SMM 12-246 Lim Venuti.Doc

cc: Long Range Planning
Planning Department, Kona
Mr. Horace Yanagi, Kona Planning Inspector