



County of Hawai'i

PLANNING COMMISSION

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

December 13, 2005

Mr. Romano deCesare
HCR1 Box 5645
Keaau, HI 96749

Dear Mr. deCesare:

Special Permit Application (SPP 05-019)

Applicant: Romano deCesare

Request: Home Office for Real Estate Acquisition and Management
Within Existing Single Family Dwelling on 9.5-Acre Property Within
The State Land Use Agricultural District

Tax Map Key: 1-6-3:85

The Planning Commission at its duly held public hearing on December 2, 2005, voted to approve the above-referenced application to allow the establishment of a home office for real estate acquisition and management within an existing single family dwelling situated on a 9.5-acre property within the State Land Use Agricultural District. The existing dwelling is the former Puna Sugar Co. manager's residence situated along the northeast side of the old Keaau-Pahoa Road, Keaau, Puna, Hawaii.

Approval of this request is based on the following:

The applicant, Romano deCesare, is requesting a Special Permit to allow the establishment of a home office for real estate acquisition and management within an existing single family dwelling on the subject property. The applicant resides within the existing main single family dwelling, which was built in 1917. The applicant is requesting to use two rooms (the study and a bedroom with bathroom) on the main floor for the home occupation. The business will be operated Monday through Fridays, from 9:00 a.m. to 5:00 p.m., with the applicant and one employee. There will be no clientele and no deliveries to the property for the home occupation business.

The proposed use is an unusual and reasonable use of land situated within the State Land Use Agricultural District and will not substantially alter or change the essential character of the land and the present use. The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands in the State for those uses to which they are best suited in the interest of the public health

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and welfare of the people of the State of Hawaii. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. In recognizing that lands within the agricultural districts might not be best suited for agricultural activities and yet classified as such, and in recognition that certain types of uses might not be strictly agricultural in nature, yet reasonable in such districts, the legislature has provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural District. The subject property is 9.255 acres in size and situated within the County's Agricultural (A-20a) zoned district. The applicant currently resides within an existing dwelling as his primary residence. The applicant is requesting to operate a real estate acquisition and management business within two rooms of the existing dwelling. The use is considered a home occupation and is accessory to the single-family dwelling. Therefore, the subject request is considered an unusual and reasonable use of the agricultural land and will not substantially change the essential character of the land and the present use.

The existing use is situated within the State Land Use Agricultural District and is not contrary to the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes (HRS), as amended. The soil within the subject property is classified as "D" or Poor for agricultural productivity and Prime by the Agricultural Lands of Importance to the State of Hawaii (ALISH) Map. The subject property has been developed with several structures, which includes a large two-story main house with a basement and attic, an additional single family dwelling, a stable, a nursery and a swimming pool. The property is landscaped with lawn and a variety of plants and trees, consisting of palm trees, fruit trees, a large Banyan tree, ginger, heliconias, etc. Given the fact that the use will be located within an existing dwelling, it is not anticipated that the home occupation business will displace any agricultural activity nor diminish the agricultural potential of the area. Furthermore, the Special Permit process, established by legislation, allows for other uses to be established for which the district is classified, provided the objectives of Chapter 205, HRS, are promoted. Thus, this request is not contrary to the objectives of the State Land Use Law for the Agricultural District.

The proposed request will not adversely affect surrounding properties. Surrounding properties are similarly zoned Agricultural (A-20a and A-1a) and consist of two schools, scattered single-family dwellings, vacant lands and lands being used for agricultural purposes. The home occupation will be operated within the existing single family dwelling. There will be no clientele and no deliveries to the property for the home occupation business. Based on size of the property and the limited use of the business, it is not anticipated that the use will adversely impact surrounding properties.

The proposed request will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and police and fire protection. Access to the property is from the Keaau-Pahoa Road fronting the 1-mile marker across from the Keaau High School. Keaau-Pahoa Road is a State owned and maintained roadway with an 80-foot right-of-way width. County water is available to the property. Wastewater disposal

shall be disposed of within an existing cesspool. Police and Fire services are located in Keaau, approximately one mile away. All other essential utilities and facilities are available to the property.

The request is not contrary to the General Plan's Land Use Pattern Allocation Guide (LUPAG) Map that defines the subject property and immediately surrounding area for Rural. The request is not contrary to the goals, policies and standards of the General Plan. The approval of the subject request would support, among others, the following goals and policies of the General Plan:

Economic Element:

- Provide residents with opportunities to improve their quality of life through economic development that enhances the County's natural and social environments.
- The County shall provide an economic environment that allows new, expanded, or improved economic opportunities that are compatible with the County's cultural, natural and social environment.

Land Use Element:

- Designate and allocate land uses in appropriate proportions and mix in keeping with the social, cultural, and physical environments of the County.
- Encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

Approval of the request will allow the applicant an opportunity to improve the quality of their life while not displacing any agricultural activity nor diminishing the agricultural potential of the area.

The granting of this request would promote the effectiveness and objectives of Chapter 205A, Hawaii Revised Statutes, relating to Coastal Zone Management Program (CZMP). Given the fact that the property has been previously cleared and developed, it is unlikely that any archaeological features and threatened species of plants or animals are present on the property. According to the August 26, 2005 letter from the Department of Land and Natural Resources-Historic Preservation Division to the applicant, no alterations or new construction is planned; and thus, it believes that "no historic properties will be affected" by this undertaking. There is no designated public access to the mountain areas nor to the shoreline over the property. The project site is located more than 4 miles from the nearest shoreline and is in close proximity to an existing mix of agricultural, residential-based and vacant lands. The development will not impact any recreational resources, including access to and along the shoreline, mountain access,

scenic and open space nor visual resources, coastal ecosystems, and marine coastal resources. Further, the property will not be affected by any coastal hazards nor beach erosion. Therefore, the approval of the subject request shall not be contrary to the objectives and policies of the Coastal Zone Management Program.

Based on the above, the approval of the Special Permit request would be supportive of the objectives sought to be accomplished by the Land Use Law and Regulations. This permit application is an opportunity to discuss general attitudes toward special permits for small scale home businesses, as compared to special permits for large commercial enterprises. In residential zones, small home businesses are allowed as "home occupations." The major limits for "home occupation" are listed in HCC sec. 25-4-13(b) and (e).

In general, home occupations have not created serious problems in residential areas. In the state land use agricultural district, however, such businesses currently need a special permit. There are undoubtedly hundreds of such businesses operating without special permits, but they only come to the attention of the Planning Department when there is a complaint.

The Planning Director sought an amendment to Chap. 205 at the state legislature in 2002 and 2003 to allow the counties to treat home occupations in the agricultural district the same as in residential areas, but it did not pass. (It may be possible to accomplish this on the county level by amending the zoning code, for dwellings in the agricultural district that do not have to be "farm dwellings". These are dwellings on lots created before June 4, 1976.) The Planning Director believes that the same principles that allow small scale businesses in residential areas as "home occupations" should apply in the agricultural district, with perhaps some greater flexibility given that the lots are normally larger.

The impacts of all special permits have to be judged on a site-specific basis. The potential negative impacts can be dealt with by conditions of approval. Approval of this request is subject to the following conditions:

1. The applicant, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. The applicant shall comply with all applicable requirements of Section 25-4-13 of the Zoning Code, relating to Home Occupations.
3. The proposed home occupation shall be established within one (1) year from the effective date of this permit. This time period shall include securing Final Plan Approval for the proposed use from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code. Plans shall identify all existing and/or proposed structures, paved driveway access and

- parking stalls associated with the home occupation. Landscaping shall also be indicated on the plans for the purpose of mitigating any adverse noise or visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements).
4. The hours of operation shall be limited from 9:00 a.m. to 5:00 p.m.; Monday through Friday.
 5. Only one employee shall be permitted in addition to household members.
 6. No off-site parking shall be allowed.
 7. The applicant shall install a backflow preventer (reduced pressure type) by a licensed contractor on private property just after the existing meter within 90 days from the effective date of this permit. The installation and assembly of the backflow preventer shall be inspected and approved by the Department of Water Supply.
 8. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources - State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
 9. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
 10. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of this permit. The report shall include, but not be limited to, the status of each condition and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.
 11. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
 - A. 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 General Plan or Zoning Code.
- C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
- D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke this permit.

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.

Should you have any questions, please contact Norman Hayashi of the Planning Department at 961-8288.

Sincerely,



for
Fred Galdones, Chairman
Planning Commission

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cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Department of Land & Natural Resources-HPD/Kona
Rodney Haraga, Director/DOT-Highways, Honolulu