

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

May 26, 2006

Mr. David Bernard Rose
P.O. Box 1534
Kapaau, HI 96755

Dear Mr. Rose:

Special Permit Application (SPP 06-000024)

Applicant: Hui O Mana, LLC

Request: To Allow a Health and Wellness Retreat Facility Within
The SLU Agricultural District

Tax Map Key: 4-4-13:portion 10

The Planning Commission at a duly advertised public hearing on May 5, 2006, considered the above-referenced request for a Special Permit in accordance with Chapter 205-6, Hawaii Revised Statutes, and Rule 6 of the Planning Commission, to allow the establishment of a Health and Wellness Retreat Facility on a 3.167-acre area situated within the State Land Use Agricultural District. The area involved is located between Waikaalulu Road and Kalopa Gulch, approximately 4 miles mauka of State Highway 19 (40-mile marker), Kaapahu, Hamakua, Hawaii.

The Commission voted to deny your request. Enclosed is the Planning Commission's Findings of Fact, Conclusions of Law and Decision and Order.

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

Sincerely,

C. Kim Alameda, Chairman
Planning Commission

Lhuiomanadenial01pc

Enclosure

cc/enc: State Land Use Commission
Department of Public Works
Department of Water Supply
Corporation Counsel
Mr. John Lindelow/Hui O Mana, LLC

MAY 26 2006

PLANNING COMMISSION OF THE COUNTY OF HAWAI'I

STATE OF HAWAI'I

Application of)	SPP No. 06-000024
)	
HUI O MANA, LLC)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW AND DECISION AND ORDER
Special Permit to Allow the Establishment of)	
a Health and Wellness Retreat Facility on a)	
3.167-acre area of land within the State Land)	
Use Agricultural District at Kaapahu,)	
Hamakua, Hawaii, Tax Map Key: 4-4-13:)	
portion of 10.)	
_____)	

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECISION AND ORDER**

I. FINDINGS OF FACT

A. Background

This matter involves an application submitted by HUI O MANA, LLC (referred to as "Applicant") for a Special Permit to allow the establishment of a Health and Wellness Retreat Facility on a 3.167-acre area situated within the State Land Use Agricultural District. The property involved is located between Waikaalulu Road and Kalopa Gulch, approximately 4 miles mauka of State Highway 19 (40-mile marker), at 44-5350 Waikaalulu Road, Kaapahu, Hamakua, Hawaii, Tax Map Key: 4-4-13: portion of 10.

1. ***Proposed Development:*** The Applicant is requesting a Special Permit to allow the establishment of a health and wellness retreat facility on a 3.167-acre portion of a 24.091-acre property. The applicant proposes to conduct health and healing, spiritual and educational retreat programs year round, which include subjects ranging from health lifestyles

and nutrition, meditation, yoga, Rolwing®, which is deep tissue structural body work, and other forms of recognized health promoting body work. The retreat facility consists of the following structures:

(a) Main Building and Round Room, which consists of a single-story, 11-bedroom, 5-bathroom dwelling with a kitchen, living room, library, office and covered lanai areas. There is also a large round room attached to the main dwelling, which will be used as a private yoga studio and for classes and meetings. The dwelling consists of 4,488 square feet and the covered lanais consist of 3,244 square feet.

(b) Greenhouse/Cabin, which consists of a single-story, 1 bedroom with no kitchen, which will be used for dwelling purposes for the staff. The structure is 416 square feet in size and is unpermitted.

(c) Barn/Utility Building, which consists of a single-story, mainly open covered storage for vehicles and farm equipment. There is a worker's bathroom but no kitchen facilities. There is a utility room attached, which contains solar photovoltaic and water filtration system. The barn structure is 1,008 square feet in size and the utility room is 244 square feet in size and is unpermitted.

2. **Guests:** The Applicant is proposing to have up to twenty four (24) guests, who will stay within one of the eleven bedrooms in the main building.

3. **Employees:** There will be two (2) staff members initially, who will stay in the cabin structure. Additional staff members will be hired, if needed.

4. **Parking:** There are sixteen (16) off street parking stalls available for guests.

5. ***Supportive Information:*** The Applicant, with authorized signatures from the listed owners (John Eric Lindelow, Sally Jo Klemm and Rosalind Geradette Rapozo), has submitted the Special Permit application.

B. Procedural Matters

1. On February 6, 2006 the Planning Department received the Special Permit Application. On February 6, 2006, the Applicant mailed notice of the application to surrounding property owners within 500 feet of the property. Along with the application, the Planning Department received the Applicant's list of surrounding property.

2. On March 2, 2006, the Planning Department acknowledged receipt of the Special Permit Application (SPP 06-000024).

3. On March 2, 2006, the Planning Director sent a request for written comment to public and interested private agencies, and provided a request for written comments no later than March 30, 2006. The agencies included the Department of Public Works, Department of Water Supply, Hawaii County Police Department, Hawaii County Fire Department, Department of Environmental Management, Natural Resources Conservation Service, Department of Land and Natural Resources - Land Division and State Historic Preservation Division, Department of Health, State Land Use Commission, and the Department of Transportation.

4. On March 16, 2006, the Planning Director sent a request for written comment to Paauilo Mauka-Kalopa Community Association, and provided a request for written comments no later than April 6, 2006.

5. By letter dated April 6, 2006, the Planning Department notified the Applicant that the Planning Commission would hold a public hearing on the application on May

5, 2006, in the County Building, Councilroom-Room 201, 25 Aupuni Street, Hilo, Hawai'i.

Notice of the public hearing was published by the Planning Commission on April 14, 2006 in the Hawaii Tribune-Herald and the West Hawaii Today.

6. On April 25, 2006, the Applicant mailed a notice of public hearing to property owners within 500 feet of the subject property.

7. The Commission reviewed evidence and heard testimony at the public hearing on the application held on May 5, 2006. David Bernard Rose and John Eric Lindelow appeared for the Applicant. The County of Hawaii Planning Department was a party to this contested case hearing pursuant to Rule 4-7(a) of the Hawaii County Planning Commission Rules of Practice and Procedure. Commissioners Rodney Watanabe, Rene Siracusa and Jeff McCall were absent.

8. At the conclusion of the hearing, the hearing was closed to further testimony and evidence.

C. Description of Property and Surrounding Areas

1. ***Subject Property and Existing Land Use Designation:*** The property is located at 44-5350 Waikaalulu Street. It is roughly rectangular in shape and consists of 24.091 acres. There are several existing structures including a main dwelling, a cabin, and a barn/utility building. There are no other structures on the property. The remaining 20+ acres is partially used for agricultural purposes and the remainder is vacant of uses. The property is zoned Agricultural-5 acre (A-5a), is designated as Important Agricultural Land and Extensive Agriculture under the General Plan, and classified as Agricultural under the State Land Use classification.

2. **Surrounding Zoning/Land Uses:** The surrounding properties are zoned A-5a and A-40a. Surrounding land uses include ranching, agricultural farming, vacant land and scattered dwellings. According to building permit records, the closest dwelling to the subject property is located across Waikaalulu Road to the east on TMK No. (3) 4-4-13: 09.

3. **U.S. Soil Survey:** Soil is classified as MLD (Maile silt loam, 6 to 20 percent slopes).

4. **Land Study Bureau Soil Rating:** Soil within the property is classified as "C" or "Fair" and "D" or "Poor" for agricultural productivity.

5. **ALISH:** "Other Important Agricultural Land".

6. **FIRM:** The property is located within Zone X, an area outside the 500-year flood plain.

7. **Floral/Fauna Resources:** No formal flora/fauna study was submitted. According to the applicant, there are no known threatened and/or endangered species on the subject property. The property has undergone various agricultural uses including cattle grazing for over 75 years. The property consists of grasses, fruit trees, several species of eucalyptus and guava, ironwood, ohia, koa, and other invasive trees and shrubbery.

8. **Archaeological/Historical Resources:** By memo dated November 30, 2005, the Department of Land and Natural Resources Historic Preservation Division has stated that "no historic properties will be affected" by this undertaking. There is no record of any significant historic sites in the project area.

9. **Cultural Resources:** It is unlikely that there are any valued cultural, historical or natural resources and no traditional and customary Native Hawaiian rights

being practiced on the site, as it has been developed and has undergone various agricultural uses including cattle grazing for over 75 years.

D. Public Services and Facilities

1. ***Roads:*** Access to the property is from Waikaalulu Road, which is County-owned and maintained up to the intersection of Pohakealani Street, approximately ½ mile from the subject property. The County-maintained portion of Waikaalulu Road consists of a paved section and a gravel section of the roadway. The portion of Waikaalulu Road from Pohakealani Street to the subject property is considered a “road in limbo,” which is identified as County owned road but not regularly maintained. This portion of the roadway consists of gravel. The width along the roadway varies between 12 to 20 feet wide.

All of the public testifiers use Waikaalulu Road and/or Ho`o Kahua road or Pauuilo Mauka Road, which provide access to the subject property. All testifiers spoke or signed letters speaking of the conditions of these roads. Ho`o Kahua and Waikaalulu are largely narrow one lane roads with unimproved shoulders, of which the last mile to the subject property is unpaved. There are three blind curves and two blind hills on this route, with driveways nearby. There are curves with steep drop-offs on one side and high cut-dirt banks on the other.

The Pauuilo Mauka road includes Sand Gulch, where the road is very steep and narrow. Sand Gulch involves a 100-foot dropoff from the road to the bottom of the gulch, and downhill traffic must yield in three places. Boulders have fallen onto the road. During a heavy rainstorm in spring 1994 the bridge across Sand Gulch was washed out and closed for several weeks. Hiloward access across Pauuilo Mauka Road has several one-lane bridges and is one-lane for much of its width.

There are several cattle operations, including one with 900 cows, which use these roads. The cattle ranching involves hauling of cattle and ranching equipment through these same roads which the proposed project would use.

The area of these roads is subject to frequent fog and rain, exacerbating the limitations presented by the road conditions.

2. **Water:** County water is not available to the subject property. The property is serviced by 40,000-gallon water catchment tank.

3. **Wastewater:** Wastewater is presently disposed of into four (4) existing septic systems.

4. **Police, Fire and Medical Services:** Police, fire and medical facilities are available in Honokaa, approximately five to six miles from the property.

5. **Utilities:** The subject property is not serviced with electricity from Helco. Electricity is provided by a self-sufficient photovoltaic solar electricity system. Telephone services are available through radio telephone.

E. Comments from Public Agencies

1. The following public and interested private agencies submitted comments in response to the Planning Department's request for written comments: Department of Public Works, Department of Environmental Management, Department of Water Supply, Police Department, Fire Department, Department of Health, Department of Transportation, Land Use Commission and the Pauuilo Mauka-Kalopa Community Association. The following agencies submitted comments with listed concerns:

2. **Pauuilo Mauka-Kalopa Community Association:** April 3, 2006 Letter. Thank you for your memorandum of March 16 seeking input from the Pauuilo Mauka

Kalopa Community Association and discussions with residents of Waikaalulu Road, the following concerns have been raised. Firstly, our major concern, as with all development on the Big Island is infrastructure, or rather the lack of it. As you may know, Waikaalulu Road, where this property is located is at this time only half paved. The upper portion of the county road is still gravel. Further, above the county road is a stretch of state road, that although also gravel, is much steeper and in poorer condition than the county road. Should any emergency such as a fire or medical occur, access to and from the applicant's property could be severely limited. Even the county road, with water diversions and constantly falling debris from the eucalyptus trees poses a hazard, especially to visitors from elsewhere in rental vehicles who would be unaware of these potential dangers. Who would be liable for any damage to persons or vehicles occurring on the county road? Our second concern is with the scope and use of the proposed facility. Currently, any 'public' use of this property has been rather low-key. However, we do not know if the granting of the special permit would encourage more intensive use of the facility. Would the granting of such a permit allow for future expansion of this facility or a change in the nature of the facility, such as a B&B or motel? Also, whatever the intentions of the applicants, any future owners of the property may not be so sensitive to the community's ambience. Finally, concern has been expressed about the 'opening of the door'. If such a special permit is granted, can future applications be refused or must they also be granted. This would seem to be contrary to the purpose of zoning and would defeat the 'agriculture' designation of this area. Of course, people who are residents of this community have come here precisely because of it's designation as 'ag land'. It has been suggested that this matter be brought before the Hamakua Traffic Safety Committee. I propose to do this at the next meeting, which will occur in the beginning of May. PMKCA is not 'anti-development'. We do favor and try to encourage a safe and responsible

approach to any development. PMKCA cannot and does not speak for every resident of the community. We believe that at the present time there is not enough information available for the community association to form an opinion one way or the other regarding the granting of the special use permit. Thank you for your interest in this matter and for soliciting the community's input. We would appreciate being kept informed about this matter, particularly being advised about any public hearings so that members of the community may attend if they so wish.

3. ***Department of Health:*** March 10, 2006 Memo. Dispensing site locations and food preparation areas would need to meet the requirements of Chapter 12, Food Establishment Sanitation Code. The applicant may call Ph. 933-0917 to discuss the content of this communication. The Department of Health's Safe Drinking Water Branch authority on drinking water quality is based on the definition of a "public water system." A "public water system" means a system which provides water for human consumption through pipe or other constructed conveyance if such system has fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. All public water systems are regulated by the Department of Health and shall be in compliance with the Hawaii Administrative Rules, Title 11, Chapter 20. Recommend the subdivision lots be connected to an existing public water system. Concerns on water quality for lead, copper, algae and microbiological and chemical contaminations in private water systems have identified the need for self monitoring. The Department of Health does not support the use of these private rain catchment systems for drinking purposes since the quality may not meet potable water standards. Wastewater Branch is unable to make comments to the proposed project at this time. Before we can offer any comments, the applicant needs to address the location of the existing wastewater systems. If a non-residential facility is using an existing cesspool which serves 20 or

more persons per day, the cesspool is considered a large capacity cesspool (LCC). EPA requires closure or upgrade of the large capacity cesspool by April 5, 2005 or the owner could face enforcement action by the EPA, including a fine of \$32,000 per day per cesspool. The wastewater system is inadequate for the proposed project. Have your engineer submit to DOH a revision to the existing wastewater system. Wastewater branch has no record of any septic design. It appears that the retreat intends to raise goats. The serving of goats milk and its by-product shall comply with Title 11, Administrative Rules, Department of Health, Chapter 15, Milk.

4. ***Land Use Commission:*** March 16, 2006 Letter. We have reviewed the subject application of the request forwarded by your memorandum dated March 2, 2006, and confirm that the subject parcel, consisting of approximately 24.091 acres, is designated within the State Land Use Agricultural District. We understand that the applicant proposes to incorporate small-scale residential retreat center activities in existing buildings located on a surveyed 3.167-acre portion of the subject parcel. Activities would include health, spiritual, and educational programs on topics such as nutrition, meditation, and yoga. No additional structures are proposed to support these programs. We further understand that as many as 24 overnight guests may be accommodated at the center in the existing 11 bedrooms in the main building. The remaining portion of the subject parcel is in active agricultural use, with a 5,000-square-foot vegetable garden, fruit trees, and beehive areas. Small farm animals including goats, ducks, and chickens, and hardwood trees are also present in these areas. The applicant plans to increase food production on the parcel to feed the guests of the center and to continue to refine its agricultural methods for use as a teaching tool for guests and the community. Although the 3.167-acre project site would encompass the use for which the special

permit is being requested, we believe that consideration should also be given to include the entire 24.091 acres in the application inasmuch as the entire parcel appears to be an integral part of the residential retreat center. Such treatment of the proposed use would be consistent with circuit court decisions affirming the comprehensive and integrated manner in which developments and their potential impacts should be reviewed. In the alternative, we suggest that the County consider a condition providing for an agricultural conservation easement or other similar mechanism to ensure that the undeveloped portions of the parcel remain so for the life of the special permit. Finally, review of the application indicates that while potential impacts of the proposed use upon the environment are discussed, there is no specific assessment provided within the context of each of the ten objectives of the Coastal Zone Management program under chapter 205A, Hawaii Revised Statutes (HRS). As you know, the regulatory provisions of §205-6, HRS, and §15-15-95, Hawaii Administrative Rules, require that such an assessment be made before the use is considered “unusual and reasonable” and permitted within the Agricultural District. We believe the applicant should provide this assessment before any action is taken on the application.

F. Comments from Members of the Public

1. The following person sent a letter in opposition to the proposed health and wellness retreat facility, which was received by the Planning Department and the Planning Commission: Karen Clarkson. Mainly the letter spoke in opposition because of safety concerns along Waikaalulu Road and Hoo Kahua Road, the increased traffic the facility would generate and the Hamakua Agriculture Plan Steering Committee recommending against special permits on ag-zoned land that are not related to agriculture.

2. Several letters of opposition with signatures of people opposed to the health and wellness retreat facility were submitted at the public hearing held for this application. The letters spoke mainly of the unsafe roadways and increased traffic concerns. The letters are part of the record.

3. The following members of the public testified at the public hearings held for this application: Addison Bowman, Doug Fernandez, Bernice Fernandez, Jeri Moniz, Jo Kim, Karen Clarkson and Diane S. Higgins. All but Ms. Higgins spoke against approval of the Special Permit. All either spoke or signed letters warning of the poor condition of the roads which provide access to the subject property. Their testimonies are part of the record.

G. Adverse Impacts on Surrounding Properties

1. The proposed use would adversely affect the surrounding property owners by increasing the traffic impacts along Waikaalulu Road, as well as Ho`o Kahua and Pauilo Mauka Roads. Given the conditions of the roads providing access, the Planning Commission finds that the traffic to be generated by the proposed retreat facility would significantly adversely affect property owners who utilize Waikaalulu Road to gain access to their properties. The roadway varies in width with a majority of the roadway not being wide enough to allow for two-way traffic. Applicant proposes to reduce traffic by offering 15-passenger van service from the airport or a remote parking lot. The van would present its own impacts, and the extent of use by the guests remains uncertain. The additional traffic caused by the projected 24 guests, staff, and

suppliers would place an unreasonable burden on surrounding property owners who use this road for access.

2. Increased commercial visitor, staff and support traffic would also put additional physical strain upon the already substandard road infrastructure, including pavement, unpaved shoulders, and bridges. This would create additional burdens upon the County to maintain both the acknowledged County road and the road in limbo portion. This could also foreseeably increase the potential for County liability for traffic accidents.

H. Reasonableness of Use

1. Based on the foregoing, the Planning Commission found that the proposed use is an unreasonable use of land situated within the State Land Use Agricultural District. In recognizing 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. In this case, the Planning Commission did not determine this use to be reasonable, but unreasonable, based on upon the record presented before the Commission.

II. CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Planning Commission adopts the following conclusions of law, including mixed findings of fact and conclusions of law.

1) ***HRS Chapter 205-6 provides in pertinent part as follows:***

§ 205-6. Special permit

(a) The county planning commission may

permit certain unusual and reasonable uses within agricultural and rural districts

other than those for which the district is classified. Any person who desires to use the person's land within an agricultural or rural district other than for an agricultural or rural use, as the case may be, may petition the planning commission of the county within which the person's land is located for permission to use the person's land in the manner desired. Each county may establish the appropriate fee for processing the special permit petition.

* * *

(c) The county planning commission may, under such protective restrictions as may be deemed necessary, permit the desired use, but only when the use would promote the effectiveness and objectives of this chapter; provided that a use proposed for designated important agricultural lands shall not conflict with any part of this chapter. A decision in favor of the applicant shall require a majority vote of the total membership of the county planning commission.

2) ***Rule 6-6 of the Planning Commission Rules provides that the Commission shall not approve a Special Permit unless it is found that the proposed use:***

(a) Is an unusual and reasonable use of land situated within the Agricultural or Rural District, whichever the case may be; and

(b) Would promote the effectiveness and objectives of Chapter 205; Hawaii Revised Statutes, as amended.”

3) ***Rule 6-3(b)(5) of the Planning Commission Rules provides that in considering how the proposed use would promote the effectiveness and objectives of***

Chapter 205 and constitute an unusual and reasonable use of the land, the following criteria should be addressed:

(b)(5) A statement of the reasons for the granting of the Special Permit citing how the proposed use would promote the effectiveness and objectives of chapter 205, HRS, and why the proposal is an unusual and reasonable use of the land. The following criteria shall also be addressed:

(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations;

(B) The desired use shall not adversely affect surrounding properties;

(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection;

(D) Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established;

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district;

(F) The proposed use will not substantially alter or change the essential character of the land and the present use; and

(G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans.

4) *Hawai'i Administrative Rules ("HAR") Section 15-15-95(b)(1)-(5) reiterates Rule 6-3(5)(A)-(D) of the Planning Commission Rules of Practice and Procedure*

5) *H.R.S. Section 205-6(d) and HAR Section 15-15-95(b) delegate the authority to grant special permits to the County Planning Commission for proposals involving less than 15 acres.*

6) In determining whether a proposed Special Permit use is "unusual and reasonable," the Planning Commission should consider the impacts of the proposed use. The Special Permit provides a mechanism for addressing the nature and impact of proposed uses.

Curtis v. Board of Appeals, 90 Hawaii 384, 397, 978 P.2d 822, 835, (1999)

7) As explained in the findings of fact, the record clearly shows that the roads to be used for access to the property are largely single-lane, with unimproved shoulders, blind hills and curves, steep grades and bridges subject to flood damage. These roads are ill-suited to commercial visitor traffic. The addition of commercial visitor, retreat staff and retreat support traffic, whether by single autos or combined with bus traffic, would adversely impact the existing agricultural and residential uses existing upon the surrounding properties.

8) Increased commercial visitor and retreat staff and support traffic would also put additional physical strain upon the already substandard road infrastructure, including pavement, unpaved shoulders, and bridges. This would create additional burdens upon the County to maintain both the acknowledged County road and the road in limbo portion.

9) Therefore, the proposed Special Permit uses are inconsistent with Commission Rule 6-3(b)(5)(B), as the proposed uses create substantial adverse impacts upon the surrounding properties.


10) Under the foregoing circumstances, the Commission finds and concludes that the proposed Special Permit uses, while “unusual” are not “reasonable” for Chapter 205-6 purposes, under the particular facts of this case. Therefore, the Commission finds that the instant Special Permit application should be denied.

11) Neither does the record show that Applicant has carried its burden of showing that allowance of the proposed uses would in any way promote the objectives and effectiveness of Chapter 205, HRS, under the particular facts of this case.

III. DECISION AND ORDER

Based on the above findings of fact and conclusions of law, the request to allow the establishment of a Health and Wellness Retreat Facility on a 3.167-acre area situated within the State Land Use Agricultural District is not a reasonable use of the land for purposes of compliance with the requirements of HRS Section 205-6, and would not support the objectives sought to be accomplished by the Land Use Law and Regulations. Special Permit Application No. 06-000024 is hereby DENIED.

DATED: Hilo, Hawai‘i, May 26, 2006.

By  _____
C. Kimo Alameda, Chairman
Planning Commission