

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

November 24, 2008

Daniel and Susanne Paleka
P.O. Box 1287
Kurtistown, HI 96760

Dear Mr. and Mrs. Paleka:

Special Permit Application (SPP 08-000067)
Applicant: Daniel and Susanne Paleka
Request: Two Bedroom Bed and Breakfast
Tax Map Key: 1-6-57:17

The Planning Commission at its duly held public hearing on November 6, 2008, voted to approve the above-referenced application to allow the establishment of a two bedroom bed and breakfast operation within an existing single family dwelling situated on 3 acres of land within the State Land Use Agricultural District. The property is located along the east side of Poouli Road (Road 10), approximately 300 feet southeast of the Kea Road-Poouli Road intersection, Hawaiian Acres Subdivision, Kurtistown, Puna, Hawaii.

Approval of this request is based on the following:

The applicants are requesting a Special Permit to allow a 2-bedroom bed and breakfast operation within an existing 2,500-square foot, 2-story, 3-bedroom, and 3-bathroom cedar log dwelling on the subject property. A lower level bedroom with nearby bathroom and upper level bedroom with a private attached bathroom will be used to accommodate the guests. The living room, dining area, loft and decks will be considered common areas for use by the guests and applicants. The applicants will continue to reside in one bedroom. Additionally, the kitchen will only be used by the applicants. A continental breakfast of foods not requiring certification by the State Department of Health will be served to the guests from 7:00 a.m. to 9:00 a.m. The bed and breakfast operation will accommodate between 1 and 4 guests per day.

The grounds for approving a Special Permit are based on Rule 6-6 in the Planning Commission Rules. It states that the Planning 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 District; and (b) the proposed use would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended.

The proposed use is an unusual and reasonable use of land situated within the Agricultural District. In recognizing that lands within 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. Although the three acre property is zoned Agricultural by the County and designated Agricultural by the State Land Use Commission, its soils are considered very poor and are therefore not optimal for agricultural use. The proposed use is unusual in that it is not agricultural in nature, but is reasonable because it will take place completely within an existing dwelling and therefore will not reduce the potential for the land to be used for agriculture in the future. Therefore, the subject request is considered an unusual and reasonable use of the agricultural land.

The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands for those uses to which they are best suited in the interest of the public 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. The property is situated on soil characterized as Pahoe-hoe lava flows. The use will be located within a proposed 3-bedroom dwelling, which is situated within an area where soils are classified as "E" or "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating and is unclassified by the Department of Agriculture's ALISH Map. The proposed bed and breakfast use will be subordinate and incidental to the principal use of the residence by the applicants and will not displace any existing agricultural activity or diminish the agricultural potential of the subject property. Therefore, the proposed use will not adversely affect the preservation and agricultural use of the County's prime agricultural lands, and is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

In addition to the above listed criteria, the Planning Commission shall also consider the criteria listed under Section 6-3(b)(5) (A) through (G). In considering the criteria, the Planning Director recommends the following:

(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. This criterion has been met because the proposed use is considered an unusual and reasonable use of the agricultural land that will not adversely affect the preservation and agricultural use of the County's prime agricultural lands.

(B) The desired use would not adversely affect surrounding properties. The surrounding area is zoned Agricultural (A-3a) and consists of scattered dwellings, agricultural uses and vacant land. The nearest dwellings are located on the adjacent properties to the north and south. However, the property is of sufficient size (3 acres) to minimize potential impacts to surrounding properties. It is not anticipated that the requested use will have an adverse affect on the surrounding properties. Based on the above information, the applicants have met this criterion.

(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. Access to the property is via private subdivision roadways within 40-foot wide easements that are owned collectively by the subdivision lot owners and maintained by the Hawaiian Acres Road Corporation. Road 9 is paved, Roads B and 10 are gravel and in good condition. Electricity and telephone service is available to the property. The applicants will utilize an existing cesspool system for wastewater. The applicants use an existing water catchment system for water, but will provide bottled water to the bed and breakfast guests. Medical and fire services are available about 4.5 miles from the property, in Keaau. Based upon the above, the proposed use will not burden public agencies to provide additional services.

(D) Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established. In the 1960's and 1970's, the State's agricultural district boundaries and regulations were established and subsequently amended pursuant to HRS Chapter 205. The State Land Use Commission was created in 1961, and interim regulations and temporary district boundaries became effective in 1962. Subsequently, the regulations and Land Use District Boundaries became effective in August of 1964. Since then the Hawaiian Acres subdivision has become more residential in nature; however, the property and surrounding areas are designated for agricultural uses by both State and County land use laws. Through the issuance of a Special Permit, various "non-agricultural" services may be allowed. The request to allow a 2-bedroom bed and breakfast operation in this area is in line with the intent for allowing the issuance of a Special Permit. Based on the above discussion, the applicants have met this criterion.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The property is situated on soil identified as Pahoehoe lava, classified as "E" or "Very Poor" by the Land Study Bureau's Overall Master Productivity

Rating and is unclassified by the Department of Agriculture's ALISH Map. The applicant's will continue to grow vegetables and fruits on the property for personal consumption. Additionally, the proposed use will be conducted entirely within the existing dwelling.

(F) The use will not substantially alter or change the essential character of the land and the present use. The character of the land in this area is residential and agricultural in nature. The bed and breakfast operation will be conducted entirely within the existing dwelling on the 3-acre parcel. Therefore, the proposed request will not substantially alter or change the essential character of the land or its present use.

(G) The request will not be contrary to the General Plan, Puna Community Development Plan or Hawaiian Acres Master Plan. The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County. The property is located in area identified as Extensive Agriculture in the General Plan. This category includes lands not capable of producing sustained, high agricultural yields without the intensive application of modern farming methods and technologies due to certain physical constraints such as soil composition, slope, machine tillability and climate. Other less intensive agricultural uses such as grazing and pasture may be included in the Extensive Agriculture category. As the use will be conducted entirely within the proposed dwelling and soils on the property are considered very poor for agricultural use, the request will not be contrary to the Land Use Pattern Allocation Guide (LUPAG) Map designation for this area. Additionally, the approval of the subject request would support the goals and policies of the Land Use and Economic elements of General Plan.

Land Use Element

- Encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

Economic Element

- Provide residents with opportunities to improve their quality of life through economic development that enhances the County's natural and social environments.
- Encourage the development of a visitor industry that is consistent with the social, physical and economic goals of the residents of the County.

The proposed request will allow the applicants an opportunity to improve their quality of life and support the development of the visitor industry for Hawaii.

The 2008 Puna Community Development Plan does not specifically object to commercial uses that are accessory in nature to an existing dwelling, such as a bed and breakfast establishment or other "home occupations." The 1999 Hawaiian Acres Master Plan accepts the approval of special permits to establish bed and breakfast establishments as defined in County Code Section 25-4-7 so long as there is no opposition by neighboring residents or lot owners.

The proposed use is not contrary to the objectives sought to be accomplished by Chapter 205A, Hawaii Revised Statutes, relating to the coastal zone management program. In a letter dated August 27, 2008 the DLNR-SHPD determined that no historic resources will be affected by the proposed use. The subject property is located over eight miles to the nearest shoreline and therefore will not cause beach erosion or affect marine resources, coastal ecosystems, and coastal recreational opportunities. Nor will the property be affected by coastal hazards. Additionally, there is no designated public access to the mountain areas over the property. The applicants are part of an extended Native Hawaiian family that will continue to conduct various cultural practices on the property such as like gathering, mele and hula performance and native plant cultivation. Therefore, the proposed use is not contrary to the objectives of Chapter 205A, Hawaii Revised Statutes.

Based on the above considerations, the proposed 2-bedroom bed and breakfast operation is an unusual and reasonable use of land, and would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes.

Approval of this request is subject to the following conditions:

1. The applicants, successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicants shall comply with all applicable requirements of Section 25-4-7 of Chapter 25, Hawaii County Code, (Zoning Code), relating to Bed and Breakfast Establishments, including the provision of off-street parking stalls.

Daniel and Susanne Paleka

Page 6

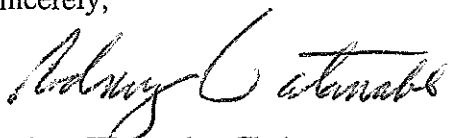
3. The bed and breakfast operation shall be limited to the use of two (2) bedrooms.
4. The applicants shall be limited to providing to the guests a continental breakfast of foods not requiring certification by the State Department of Health.
5. The applicants shall provide bottled water for guests of the bed and breakfast operation.
6. The applicants shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

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 Special 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,



Rodney Watanabe, Chairman
Planning Commission

Lpaleka01PC

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Department of Health
Mr. Gilbert Bailado ✓