



## County of Hawai'i

### WINDWARD PLANNING COMMISSION

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

JAN 18 2013

Mr. Matthew E. Castro  
HC2 Box 6068  
Kea'au, HI 96749

Dear Mr. Castro:

Special Permit Application (SPP 12-000144)

Applicant: Matthew W. Castro

Request: To Construct and Operate a Certified Cold Kitchen for  
Preparing Dried Fish

Tax Map Key: 1-5-033:130

The Windward Planning Commission, at its duly held public hearing on January 10, 2013, voted to approve the above-referenced request to allow the construction and operation of an approximately 225 square foot certified cold kitchen facility for the preparation of dried fish on a one-acre parcel situated within the State Land Use Agricultural district. The subject property is located along the southwest (mauka) side of 29<sup>th</sup> Avenue, approximately 1,200 feet from its intersection with Paradise Drive, Hawaiian Paradise Park Subdivision, Puna, Hawai'i.

Approval of the request is based on the following:

The applicant requests a Special Permit to establish a cold certified kitchen for the preparation of dried 'Ahi and Aku fish products. The applicant proposes to construct an approximately 225-square foot certified kitchen behind the two existing farm dwellings on the property. The applicant will bring whole fish to the property from off-site for processing, which involves cutting and drying the fish to make snacks. The finished product will be delivered by the applicant to customers off-site. The applicant will be the only employee. Hours of operation will be Monday through Friday from 6:00 a.m. to 6:00 p.m.

**The proposed use is an unusual and reasonable use of land situated within the State Land Use Agricultural District and would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes (HRS), as amended.** 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 and welfare of the people of the State of Hawai'i. 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 district may 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 proposed use is considered unusual since it is not agricultural in nature, but it is a reasonable use as it will provide the landowner will a supplemental source of income upon land that is very poorly suited for agricultural activities. The limited nature of the proposed use as a one-man operation within a small, 225-square foot structure with no on-site sales, conveys the reasonableness of the applicant's request. All this upon a one-acre lot that is already substantially improved with two dwellings with soils that are considered very poorly suited for agricultural pursuits, and we get a clear understanding that 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.

In addition to the above listed criteria, the Planning Commission shall also consider the following criteria listed under Section 6-3(b)(5) (A) through (G) of its rules of practice and procedure:

**(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.** The subject property is not classified as prime agricultural land, and due to its poor soil characteristics does not have a high potential for sustained agricultural yields. The requested use will be contained within a small, 225-square foot facility within a portion of the property that has already been extensively altered by the establishment of two dwellings. Thus, this request is not contrary to the objectives of the State Land Use Law for the Agricultural District.

**(B) The desired use would not adversely affect surrounding properties.** Surrounding properties are zoned A-1a and primarily vacant or in residential use. The closest dwelling is located about 50 feet from the subject property on the adjacent lot to the northwest. There are dwellings on both sides of the property and directly across 29<sup>th</sup> Avenue. As a condition of approval, the applicant will be required to provide landscaping to mitigate any potential adverse noise or visual impacts upon residences adjacent to the affected property. The applicant is expected to comply with all applicable

requirements of affected agencies, such as the State Department of Health, to manage the proper disposal of waste products and food preparation associated with the certified cold kitchen. With the implementation of the landscaping condition and regulatory compliance regarding food handling and waste disposal, it is not anticipated that the use of the property for the proposed non-agricultural use will have an adverse impact upon surrounding properties.

**(C) The proposed 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 from Paradise Drive to 29<sup>th</sup> Avenue. Paradise Drive is a two-lane paved roadway with grass shoulders. 29<sup>th</sup> Avenue is an approximately 18-foot wide paved road within a 40-foot right-of-way. All roads within the subdivision are privately owned and maintained. County water is not available in the area. Water will be provided from a water catchment tank. A cesspool currently services the two existing farm dwellings on the property. According to the Department of Health, State wastewater rules no longer allow two dwellings to be serviced by one cesspool. Therefore, the applicant will need to upgrade the existing cesspool to a septic system. A new septic system meeting the requirements of the Department of Health will also need to be installed for the proposed certified cold kitchen. County police and fire facilities are located about 8 miles from the property in Kea'au and Pāhoa. There is also a volunteer fire station in HPP about one mile away on 21<sup>st</sup> Avenue and Paradise Drive. Medical services are available in Hilo. All other essential utilities are available to the site.

**(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. 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, a community may establish various non-agricultural services that may not be available or allowed by zoning for its residents. Since the district boundaries were established in the 1960's, Puna's population has grown substantially and the establishment of community services, such as schools and village commercial centers, has not kept pace with this growth. There have also been numerous requests for commercial and industrial uses in agriculturally designated areas within this portion of Puna over the last two decades. Unfortunately, the State Land Use Commission has not designated new urban lands where these uses can be established, therefore a Special Permit is the only way to provide these services to the community. Consider that point along with the recognition that a number of subdivisions in Puna, including Hawaiian Paradise Park subdivision, consist of relatively small lots that are ill-suited for extensive or intensive agricultural uses. Hawaiian Paradise Park subdivision consists of roughly 8,800 one-acre lots packed

together as one large residential community that is suffering from rapid residential growth over the years without the commensurate development of more urban-level type of services and support facilities typical of a village community. Approval of this Special Permit will provide a homeowner with an occupational opportunity of a limited scale in an area that does not yet accommodate these types of activities in a centralized village center, as being promoted by the Puna Community Development Plan.

**(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district.** Soils on the property are classified as "E" or "Very Poor" for agricultural productivity by the Land Study Bureau and is unclassified by the Agricultural Lands of Importance to the State of Hawaii (ALISH) Map. The U.S. Soil Survey Type for the subject property is Pāhoehoe lava flows, (rLW). Pāhoehoe lava has no soil covering and is typically bare of vegetation except for mosses and lichens. The property has not been used for commercial agriculture in the past and due to its poor soil qualities is not ideal for producing sustained high agricultural yields. Further restricting use of the property for agricultural activities is the fact that the property has been maintained as a homesite since 1978, with another home built in 1993. Thus, the land upon which the proposed use is sought is unsuited for the uses permitted within the district.

**(F) The use will not substantially alter or change the essential character of the land and the present use.** The essential character of the area is rural residential. Residential uses were established on the property when a farm dwelling was constructed in 1978. The proposed certified cold kitchen structure will be constructed behind the existing houses and will be small in size; with the proposed use to be confined to the facility. As such, there will be no change to the rural character of the land and its present use.

**(G) The request will not be contrary to the goals, policies, objectives and actions of the General Plan, Puna Community Development Plan (CDP) and other documents such as Design Plans.** 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 designated Rural. This designation includes existing subdivisions in the State Land Use Agricultural and Rural districts that have a significant residential component, including the Orchidland Estates, 'Āinaloa, and Hawaiian Paradise Park (HPP) subdivisions. Typical lot sizes vary from 9,000-square feet to two acres. These subdivisions may contain small farms, wooded areas, and open fields as well as residences. Allowable uses within these areas, with appropriate zoning, may include

commercial facilities that serve the residential and agricultural uses in the area, and community and public facilities.

The subject property is located near (about 2,000 from) the proposed Hawaiian Paradise Park regional town center along Kaloli Drive between 22<sup>nd</sup> and 28th Avenues and outside of the designated Village Center in the PCDP. The intent of these town/village centers is to contain all service and community uses within these areas to reserve outlying areas for residential and agricultural uses. However, the types of commercial uses targeted for these village centers should be taken into consideration when determining the appropriateness of establishing a proposed use through the Special Permit process. For instance, a convenience store, church or school provides a service to the surrounding community and thus, could have a greater adverse impact on immediately surrounding properties by its attractant nature. Compare this with the applicant's proposal of a one-man operation that does not include on-site retail activities. The applicant's proposal does not provide a direct service to the surrounding community and therefore, there is no compelling need to centralize this use within a village center. The applicant did not specifically address the appropriateness of this request against the guidelines in the PCDP. However, the applicant did state that "there is a need for jobs and services in this area. This is also an opportunity to avoid the 15-mile commute to Hilo and not becoming another car in our already congested roads....the applicant will be adding to the economic strength to HPP."

**The proposed use is not contrary to the objectives sought to be accomplished by Chapter 205A, Hawai'i Revised Statutes, relating to the Coastal Zone Management Program.** The property is located well outside of the Special Management Area (SMA) and tsunami evacuation zone. There is no designated public access to the mountain or shoreline areas over the property. Therefore, the proposed use will not adversely impact any recreational resources, including access to and along the shoreline, scenic and open space nor visual resources, coastal ecosystems, and marine and coastal resources. Further, the property will not be affected by any coastal hazards or beach erosion. Therefore, the proposed use is not contrary to the objectives of Chapter 205A, Hawai'i Revised Statutes.

Based on the above considerations, the approval of the request to allow the establishment of a certified cold kitchen facility on one acre of land situated within the State Land Use Agricultural District would support the objectives sought to be accomplished by the Land Use Law and Regulations. Approval of this request is subject to the following condition.

1. The applicant, successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. The proposed certified kitchen shall be established within three (3) years 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, driveway access and parking stalls associated with the certified cold kitchen use. The pavement of the driveway and parking space(s) are not required, and any material may be used that will eliminate erosion, mud and standing water. Landscaping along portions of the project site boundaries in proximity to the certified cold kitchen facility shall also be indicated on the plans. The extent of landscaping along the project site boundaries shall be sufficient to reasonably mitigate visual and noise impacts upon nearby residences on adjoining properties.

3. Employees associated with the operation of the certified cold kitchen shall be limited to residents residing upon the affected property.
4. Prior to commencing operation of the certified cold kitchen facility or the issuance of a certificate of occupancy for same, whichever is appropriate, the applicant shall obtain a building permit and complete all required improvements necessary to legitimize all structures on the subject property that were constructed without proper governmental approvals.
5. The hours of operation shall be limited to Monday through Friday from 6:00 a.m. to 6:00 p.m.
6. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
7. The method of sewage disposal for the two dwellings and certified cold kitchen facility shall meet the standards and requirements of the State Department of Health.
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 initial extension of time for the performance of conditions may be granted by the Planning Director upon the following circumstances:

Mr. Matthew E. Castro  
Page 7

- 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 manner, 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 Daryn Arai of the Planning Department at 961-8288.

Sincerely,



Dean Au, Chairman Pro Tem  
Windward Planning Commission

Lcastrosp12-000144wpc

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