



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

DEC 15 2015

Mr. Mark Frost
14-4838 Kapoho Beach Road
Pāhoa, HI 96778

Dear Mr. Frost:

SUBJECT: Special Permit No. SPP 15-000184
Applicant: Mark Frost
Approved Use: Establishment of a Five-Bedroom Bed and Breakfast
Operation Within Two Detached Two-Bedroom Suites and
One One-Bedroom Guest House
Tax Map Key: 1-4-072:001

The Windward Planning Commission, at its duly held public hearing on December 3, 2015, voted to approve the above-referenced request to allow the establishment of a five-bedroom bed and breakfast operation within two detached two-bedroom suites and one one-bedroom guest house on a portion of a 6.025-acre property situated within the State Land Use Agricultural District. The project site is situated at 14-4838 Kapoho Beach Road on the southwest corner at the intersection of Kapoho Beach Road and Ililani Street, Kapoho, Puna, Hawai'i.

Approval of this permit is subject to the following conditions:

1. The applicant, successors or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant shall comply with all applicable requirements of Section 25-4-7 of Chapter 25, Hawai'i County Code, (Zoning Code), relating to Bed and Breakfast Establishments.
3. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations, and requirements.

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4. An initial extension of time for the performance of conditions of 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 the Zoning Code.
 - c) Granting of the 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).

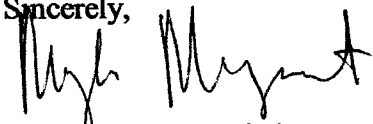
Should any of these conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke this Special Permit.

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

Approval of this permit is based on the reasons given in the attached Findings Report.

Should you have any questions, please contact Jeff Darrow of the Planning Department at 961-8158.

Sincerely,



Myles Miyasato, Chairman
Windward Planning Commission

LFrostSPP15-184wpc

Enclosure: PC Findings Report

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

COUNTY OF HAWAI'I
PLANNING COMMISSION FINDINGS

MARK FROST

SPECIAL PERMIT APPLICATION NO. 15-000184 (SPP 15-000184)

Based on the following, Special Permit No. 15-000184 is hereby approved by the Planning Commission to allow the establishment of a 5-bedroom bed and breakfast operation within two detached two-bedroom suites and one one-bedroom guest house on a portion of a 6.025-acre property situated within the State Land Use Agricultural District.

The property is located at 14-4838 Kapoho Beach Road. It is located the southwest corner at the intersection of Kapoho Beach Road and Ililani Street, Kapoho, Puna, Hawai'i, TMK: 1-4-072:001.

Mark Frost has submitted an application for a Special Permit to allow the establishment of a five-bedroom bed and breakfast operation within two detached two-bedroom suites and one one-bedroom guest house on a portion of a 6.025-acre property situated within the State Land Use Agricultural District. The property also has the primary farm dwelling, a barn, a propagation shed and two shade houses used for the propagation and cultivation of palm trees. There will be no additional employees for the bed and breakfast operation at this time. The bed and breakfast establishment will operate seven days a week. Parking will be provided on-site.

The criteria for approving a Special Permit are based on Rule 6-7 in the Planning Commission Rules. Rule 6-7 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, Hawai'i Revised Statutes, as amended.

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 the State Land Use Law and Regulations and Chapter 205, HRS, as amended. In recognizing that lands within agricultural district 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 property is 6.025 acres in size and is rectangular in shape, which is situated within the County's Agricultural (A-1a) zoned district, and is currently being used for palm propagation and cultivation. The proposed bed and breakfast operation will be subordinate and incidental to the principal use of the residence and will not diminish the potential for any current or future agricultural activity on the property. Therefore, the subject request is considered an unusual and reasonable use of agricultural land.

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 Hawai'i. 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 not classified by the State or County as important or prime agricultural land. In fact, soils on the property are identified as pahoehoe lava and classified by the Land Study Bureau's Land Classification System as "E" or "Very Poor" for agricultural productivity. 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. The subject request is considered an unusual and reasonable use of the agricultural land and the proposed use 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 property is part of the Vacationland Hawai'i Unit II Subdivision, which is located on the southwest corner at the intersection of Kapoho Beach Road and Ililani Street. The property is 6.025 acres in size and is roughly and is rectangular in shape. The surrounding properties are similarly zoned A-1a that are approximately 5 acres in size and consist of scattered dwellings and agricultural activities. Kapoho Beach Lots Subdivision is located just to the east and is zoned RS-10. The nearest residence is located approximately 150 feet away on the adjoining property to the south. As the proposed use will occur within detached bedrooms and a guest house associated with the primary dwelling, it is not anticipated to have an adverse effect on the 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. The requested use will not burden public agencies to provide additional services. Access to the subject property is from Kapoho Beach Road that has an approximately 20-foot wide paved road within a 100-foot right-of-way. Kapoho Beach Road is a private road owned by the Kapoho Beach Community Association. Any increase in traffic generated by the bed and breakfast operation would be minimal.

County water is available to the property from an existing 8-inch waterline. Wastewater from the existing dwelling, detached bedrooms and guest house are currently disposed of into approved individual wastewater systems.

The property is situated within an area designated as Flood Zone X, an area determined to be outside the 500-year flood plain. Electricity and telephone are available to the property and police and fire services are available nearby in Pāhoa. A condition of approval will be included to require the applicant meet all applicable County, State and Federal laws, rules, regulations and requirements.

(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. Many of the subdivisions in Puna that were created during this time on agricultural-zoned land have been transitioning to residential uses. Although 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.

(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 that is unclassified by the Department of Agriculture's ALISH Map, is identified as pahoe-hoe lava and is classified as "E" or "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating. The proposed request will be conducted entirely within existing detached bedrooms and a guest house that are accessory to the main dwelling on a property that has been significantly developed as a home site with active agricultural uses.

(F) **The use will not substantially alter or change the essential character of the land and the present use.** As previously mentioned, the proposed request will be conducted entirely within existing detached bedrooms and a guest house that are accessory to the main dwelling on a property that has active agricultural uses. A slight increase in traffic will occur but is not expected to change the character of the land or its present use. Thus, the proposed use will not substantially alter or change the essential residential character of the land or its present use.

(G) **The request will not be contrary to 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 located in an area identified as Extensive Agriculture in the General Plan. Extensive Agriculture is classified as those lands not classified as Important Agricultural Land. Includes lands that are 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 existing detached bedrooms and guest house, the request will not be contrary to the 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.
- Strive for an economic climate which provides its residents an opportunity for choice of occupation.
- Encourage the development of a visitor industry that is consistent with the social, physical and economic goals of the residents of the County.

The primary land use goal of the Puna CDP is to direct urban uses towards "village centers." The subject property is not located within or near the neighborhood village centers, community village centers and regional town centers identified in the PCDP, however, as the bed

and breakfast establishment will occur within existing detached bedrooms and a guest house and will provide the applicant an additional source of income. Thus, the request is consistent with the goals and objectives of the Puna CDP.

The proposed use is not contrary to the objectives sought to be accomplished by Chapter 205A, Hawai'i Revised Statutes, relating to coastal zone management program. The subject property is located approximately 2,000 feet from the closest shoreline and is not located within the Special Management Area. Given the fact that the property has been extensively cleared, developed with a dwelling and accessory structures and over 4,000 palms planted, it is unlikely that any archaeological features and threatened plant, animal or avian species will be adversely affected. There is no designated public access to the mountain 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 resources, coastal ecosystems, and marine and coastal resources. Further, the property will not be affected by any coastal hazards or beach erosion.

Lastly, this approval is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements in connection with the approved use, prior to its commencement or establishment upon the subject properties. Additional governmental requirements may include the issuance of building permits, the installation of approved wastewater disposal systems, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.