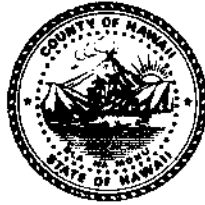


Mitchell D. Roth  
Mayor

Lee E. Lord  
Managing Director

West Hawai'i Office  
74-5044 Ane Keohokālole Hwy  
Kailua-Kona, Hawai'i 96740  
Phone (808) 323-4770  
Fax (808) 327-3563



## County of Hawai'i PLANNING DEPARTMENT

Zendo Kern  
Director

Jeffrey W. Darrow  
Deputy Director

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

May 21, 2021

Bruce and Laura Gilmore  
PO Box 1156  
Volcano, HI 96785

Dear Bruce and Laura Gilmore:

**Special Use Permit No. 19-000211**  
**Subject: Request to Cancel Permit**  
**Tax Map Key: (3) 1-9-011:030**

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Thank you for your letter dated March 16, 2021, and follow up email dated April 15, 2021, requesting that the subject special permit be cancelled because you did not establish a Religious Retreat Center, as established in the special permit, and you do not intend to operate a Religious Retreat Center in the future. Special Permit No. 19-000211 was approved by the Planning Commission on January 8, 2020, to allow for the establishment of a Religious Retreat Center with Overnight Accommodations and the Construction of a Caretaker's Residence with Associated Improvements.

Rule 6-11(a) of the Planning Commission Rules of Practice and Procedure allows the Planning Director to revoke a Special Permit if the property owner makes the request and confirms that the development approved by the permit has not been established or has been abandoned. Based on your request, Special Permit No. 19-000211 is revoked.

If you have any questions, please feel free to contact Jessica Andrews at 961-8155.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey W. Darrow".

JEFFREY W. DARROW  
Deputy Planning Director

JMA:

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Bruce and Laura Gilmore

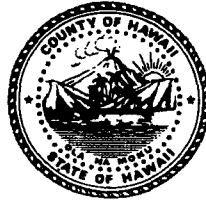
May 21, 2021

Page 2

cc :           Windward Planning Commission  
                Planning Department- GIS Section  
                Real Property Tax Office

Harry Kim  
Mayor

Roy Takemoto  
Managing Director



Joseph Clarkson, Chair  
Thomas Raffiyy, Vice Chair  
Gilbert Aguinaldo  
Dean Au  
Donn Dela Cruz  
John Replogle

## 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 21 2020

Mr. Zendo Kern  
Zendo Kern Planning Consultant, LLC  
194 Wiwoole Street  
Hilo, HI 96720

Dear Mr. Kern:

**SUBJECT; Special Permit No. SPP 19-000211**  
**Applicant: Bruce and Laura Gilmore**  
**Permitted Use: Allows the Establishment of a Religious Retreat Center with Overnight Accommodations and the Construction of a Caretaker's Residence with Associated Improvements**  
**Tax Map Key: 1-9-011:Por. 030**

The Windward Planning Commission, at its duly held public hearing on January 8, 2020, considered the above-referenced request to allow the establishment of a religious retreat center with overnight accommodations and the construction of a caretaker's residence with associated improvements on an approximately 1.1-acre portion of a 5-acre property situated in the State Land Use Agricultural District. The property is located at 19-4251 Haunani Road, about 1,800 feet northwest of the intersection with Maile Avenue, Volcano, Puna, Hawai'i.

Approval of this permit is subject to the following conditions:

1. The applicants, its successors or assigns shall be responsible for complying with all the stated conditions of approval.
2. The operation of the religious retreat center and related improvements shall be conducted in a manner that is substantially representative of plans and details contained within the Special Permit Application dated October 14, 2019, and in

JAN 21 2020

accordance with the decision of the Planning Commission. Any substantial expansion of the facility or uses beyond what is represented in these documents shall require an amendment to this permit.

3. Construction of the proposed religious retreat center with overnight accommodations shall be completed within five (5) years from the effective date of this permit. Prior to construction, the applicants, successors or assigns shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Chapter 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and/or proposed structures, fire protection measures, parking stalls, and other improvements associated with the proposed use. Landscaping shall be included in the development plans to mitigate any potential adverse noise or visual impacts to adjacent properties in accordance with the Planning Department's Rule No. 17 (Landscaping Requirements).
4. The driveway access to the religious retreat center facility shall be limited to Haunani Road only.
5. The driveway connection to Haunani Road shall conform to Chapter 22, Streets and Sidewalks, of the Hawai'i County Code.
6. Individual wastewater systems, meeting with the standards and requirements of the State Department of Health, shall be installed prior to the issuance of a Certificate of Occupancy/Final Inspection.
7. The proposed retreat operation shall not register, advertise or operate as a short-term vacation rental (STVR).
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. To protect any Hawaiian hoary bats in the vicinity of the property, barbed wire fencing shall not be used in the permit area and woody vegetation over 15 feet in height shall not be disturbed, trimmed or removed during bat birthing and pup

rearing season of June 1st to September 15th without first conducting surveys for bat nests and coordinating with US Fish and Wildlife Service (USFWS) if nests are found. Surveys shall be conducted by a qualified biologist.

10. To protect any Hawaiian hawks in the vicinity of the property, ground clearing, grubbing activities and construction shall not occur in the permit area during hawk breeding season of March 1st to September 30<sup>th</sup> without first conducting surveys for hawk nests and coordinating with USFWS if nests are found. Surveys shall be conducted by a qualified ornithologist and are only valid for 14 days. Ground clearing or construction shall not occur within 1,600 feet of any active Hawaiian hawk nest during the breeding season. Regardless of the time of year, trimming or cutting trees containing a hawk nest is prohibited.
11. To protect any seabirds (Hawaiian petrels, Newell's shearwaters and band-rumped storm petrel) in the vicinity of the property, any lighting shall be fully shielded so that the bulb can only be seen from below bulb height. The lights shall be turned off when human activity is not occurring in the lighted area.
12. To avoid and minimize potential project impacts to the endangered Hawaiian goose (Nēnē) the applicants shall implement the following applicable measures: Do not approach, feed, or disturb Nēnē. If Nēnē are observed loafing or foraging within the project area during the Nēnē breeding season (September through April), have a biologist familiar with the nesting behavior of Nēnē survey for nests in and around the project area prior to the resumption of any work. Repeat surveys after any subsequent delay of work of three or more days (during which the birds may attempt to nest). Cease all work immediately and contact the US Fish and Wildlife Service for further guidance if a nest is discovered within a radius of 150 feet of proposed work, or a previously undiscovered nest is found within said radius after work begins. In areas where Nēnē are known to be present, post and implement reduced speed limits, and inform project personnel and contractors about the presence of endangered species on-site.
13. To protect the 'I'iwi, the applicants shall avoid conducting activities within the forest bird habitat that: 1) Promote the spread or survival of invasive species; 2) Increase mosquito populations or stagnant water habitat; 3) Increase wildfire threat to montane forest habitats; and 4) Remove tree cover during the peak breeding season between January 1 and June 30.

14. To prevent the spread of Rapid 'Ōhi'a Death, a survey of the proposed site shall be conducted two weeks prior to any tree cutting to determine if there are any infected 'Ōhi'a trees. If infected 'Ōhi'a are suspected at the site, the applicants shall contact the appropriate agencies at UH-Hilo and USDA for further guidance. If 'Ōhi'a trees will be cut during construction, the applicants shall follow procedures as described in the comments letter from US Fish and Wildlife Service, dated November 8, 2019.
15. To prevent the spread of harmful invasive species, the applicants shall follow biosecurity protocols as described in the comments letter from US Fish and Wildlife Service, dated November 8, 2019.
16. The applicants shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
17. An initial extension of time for the performance of conditions 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 applicants, 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.

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

Mr. Zendo Kern  
Zendo Kern Planning Consultant, LLC  
Page 5

Should you have any questions, please contact Alex Roy of the Planning Department at 961-8140.

Sincerely,

Joseph B.  
Clarkson

Digitally signed by Joseph  
B. Clarkson  
Date: 2020.01.21  
17:27:12 -10'00'

Joseph Clarkson, Chairman  
Windward Planning Commission

LGilmoreSPP19-211wpc

Enclosure: PC Findings

cc: Bruce and Laura Gilmore  
Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
State Land Use Commission  
State DLNR-HPD  
US Fish and Wildlife Service  
Plan Approval Section  
GIS Section

**COUNTY OF HAWAI'I**  
**PLANNING COMMISSION FINDINGS**

**BRUCE AND LAURA GILMORE**  
**SPECIAL PERMIT APPLICATION (SPP 19-000211)**

Based on the following findings, Special Permit No. 19-000211 is hereby approved to allow the establishment of a religious retreat center with overnight accommodations and the construction of a caretaker's residence with associated improvements on an approximate 1.1-acre portion of a 5-acre property situated in the State Land Use Agricultural District. The subject property is located at 19-4251 Haunani Road, about 1,800 feet northwest of the intersection with Maile Avenue, Volcano, Puna, Hawai'i, TMK: 1-9-011:Por.030.

The applicants are proposing to establish a religious retreat center with overnight accommodations and the construction of a caretaker's residence with associated improvements on approximately 1.1 acres of a 5-acre parcel. There is currently a 2-bedroom, 2-bath, 1,013 square-foot dwelling on the subject property that will be converted into a retreat center. The site plan indicates a proposed new 2-bedroom dwelling of no more than 1,700 square feet, with a detached 2-car carport, to serve as the owners' residence. Additionally, the site plan includes gravel trails through the property's native forest, where small prayer shelters, less than 50 square feet each, will provide space for prayer and quiet reflection. The retreat center will include a library, gathering space, outdoor deck, interior stairs, 2 bedrooms and 2 bathrooms. The applicants do not intend to serve meals to retreat guests and propose removing the existing kitchen. A change of use building permit will be obtained for all proposed alterations. The total number of visitors will be no more than 10 for day retreats, and 4 for overnight accommodations. The facility will be open five days a week from 10:00am to 5:00pm, with overnight accommodations offered by reservation. The applicants anticipate a maximum of 12 overnight guests per month. The applicants request the Special Permit to establish a retreat center for religious purposes and for guests to experience the natural native forest in quiet prayer and reflection.

**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 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.

Soils on the property are classified as "D" or "Poor" for agricultural productivity by the Land Study Bureau and Other Important Agricultural Lands (OIAL) by the Agricultural Lands of Importance to the State of Hawai'i (ALISH) Map. The OIAL designation includes lands other than Prime or Unique Agricultural Land that are also of statewide or local importance for agricultural use. The property is currently not in active agricultural use. As only a 1.1-acre portion of a 5-acre parcel



will be used for the retreat center and related uses, it is not anticipated that the proposed use will displace any agricultural activity nor diminish the agricultural potential of the area. Thus, this request is not contrary to the objectives of the State Land Use Law for the Agricultural District.

**The desired use will not adversely affect surrounding properties.** The surrounding parcels are zoned Agricultural (A-5a to the north and northwest with a few A-1a parcels to the east) and Single-Family Residential (RS-10) to the south. There is a single-family residence to the southeast along Haunani Road. Additionally, building permit records indicate that there are single-family residences across from the property on Haunani Road. The property is 5-acres in size and large enough to minimize any impacts from the proposed development. The applicants will establish and maintain landscaping to provide screening from neighbors and in keeping with the character of the area. All visitors will park onsite in four (4) new parking stalls. Due to the limited nature of the proposed use, it is not anticipated that the use will adversely impact surrounding properties. Finally, as of the date of this writing, the Planning Department has not received any opposition from neighbors or the general public on this application.

**The establishment of a religious retreat center will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection.** Access to the site is from Haunani Road, a County-owned and maintained roadway with an 18-foot wide pavement within a 40-foot right-of-way.

While there is no County water system present in the area, retreat guests will be provided with bottled water for drinking purposes in compliance with Department of Health standards. Other water demands, including sanitation and fire suppression, will be provided by a private rainwater catchment system. The applicants will ensure that sufficient water is provided for firefighting, per Fire Code, by ensuring that water for domestic use is not drawn from water reserved for firefighting.

There is no County sewer system in the area, so a septic system meeting with the requirements of Department of Health will be installed.

Police services are located in Kea'au, and fire services are available from the volunteer fire station in Volcano Village. All other essential utilities and facilities are available to support the proposed use.

**Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established.** The project site and surrounding areas are designated for agricultural uses by both State and County land use laws. However, through the issuance of a Special Permit, various "non-agricultural" services and uses may and have been established. The population of the Volcano area has increased over the years; services and recreational opportunities have not. Allowing a Special Permit to conduct a small, family-owned and operated retreat center will offer a unique recreational and spiritual opportunity for residents in a uniquely beautiful setting while preserving the native forest of Volcano.

**The request will conform to, among others, the Land Use and Economic elements of the General Plan and is not contrary to the goals, policies and standards of the General Plan and Community Development Plan (CDP).** 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 Low Density Urban and soils on

the property are classified as "D" or "Poor" for agricultural productivity and Other Important Agricultural Lands by the Agricultural Lands of Importance to the State of Hawai'i (ALISH) Map. While the potential for agricultural uses may exist, the soil conditions within the property and surrounding area would preclude such agricultural activities from being conducted. The proposed use is consistent with the following goals and policies of the Land Use, Recreation and Economic elements of the General Plan:

Land Use Element

- Designate and allocate land areas in appropriate proportions and mix and 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.

Recreation Element

- Provide a wide variety of recreational opportunities for the residents and visitors of the County.
- Maintain the natural beauty of recreation areas.
- Provide a diversity of environments for active and passive pursuits.

Economic Element

- Provide residents with opportunities to improve their quality of life through economic development that enhances the County's natural and social environments.
- Economic development and improvements shall be in balance with the physical, social and cultural environments of the island of Hawai'i.
- Provide an economic environment which allows new, expanded, or improved economic opportunities that are compatible with the County's cultural, natural and social environment.
- Strive for an economic climate which provides its residents an opportunity for choice of occupation.

The Puna Community Development Plan (PCDP) has a goal to retain Puna's rural character while protecting its native natural and cultural resources (Goal 3.1.1.a). The proposed project will protect the natural, native forest by containing development to the project area that has been previously cleared. Another goal of the PCDP is to improve the quality of life and economic opportunity for Puna's residents (Goal 3.1.1.b). The proposed project will promote this goal by encouraging visitors to support businesses and restaurants located near the subject property in the Volcano Community Village Center.

There is a concern that the proposed retreat facility can be operated as a short-term vacation rental apart from the proposed retreat operation. A condition was added that the proposed retreat operation shall not register, advertise or operate as a short-term vacation rental (STVR).

**The request is consistent with the objectives and policies as provided by Chapter 205A, HRS, and Special Management Area guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure.** The project site is located in Volcano, approximately 12 miles from the nearest shoreline, and therefore will not be impacted by coastal hazard and beach erosion. There are no identified recreational resources, historic resources, public access to the shoreline or mountain areas, scenic and open space preserves, coastal ecosystems, marine resources or other natural and environmental resources in the area. Presently, there is no evidence of any traditional and customary Native Hawaiian rights being practiced on the site, nor

existence of known valued cultural, historical or native resources in the area. Thus, it is not anticipated that the proposed request will have any adverse impact on cultural or historical resources in the area.

No commissioned archaeological inventory survey of the area was conducted. However, according to a November 8, 2019 letter provided by US Fish and Wildlife Service, there are four listed animal species in the immediate vicinity of the project area, and three other animal species that transit the area. Conditions of approval were included to mitigate impacts on these faunal resources.

In view of the Hawai'i State Supreme Court's "PASH" and "*Ka Pa'akai O Ka'Aina*" decisions, the issue relative to native Hawaiian gathering and fishing rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site:

Investigation of valued resources: No formal archaeological reconnaissance survey, oral history of kamaaina accounts of the area, historical survey of documentary records, botanical and/or fauna study was submitted.

The valuable cultural, historical, and natural resources found in the affected area: It is possible that rare or endangered floral or faunal resources will be on the subject property, as noted in the comments letter from US Fish and Wildlife Service, dated November 8, 2019. Conditions of approval will be included to mitigate the impact of the proposed development.

Possible adverse effect or impairment of valued resources: Native plants could be destroyed by construction and ground alteration. The property does not abut the shoreline, therefore Hawaiian gathering and fishing rights is not an issue.

Feasible actions to protect native Hawaiian rights: A condition of approval will be included to require the applicants to notify the DLNR-SHPD should any unidentified sites or remains be encountered and proceed only upon an archaeological clearance from the DLNR-SHPD. The applicants have stated that there is no evidence of any traditional or customary Native Hawaiian rights being practiced on the site, nor existence of any known valued cultural, historical or native resources in the area. Thus, it is believed that the project would have no adverse impact relative to the cultural and historical resources of the area. To the extent to which traditional and customary Native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights.

Based on the preceding findings, the approval of the request to establish a religious retreat center with overnight accommodations supports the objectives sought to be accomplished by the Land Use Law and Regulations.