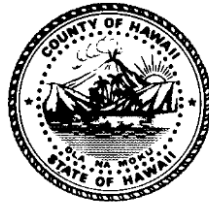


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## County of Hawai'i

### WINDWARD PLANNING COMMISSION

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

August 08, 2023

Riaan Mattheus  
P. O. Box 10517  
Hilo, HI 96721-5517  
VIA EMAIL

Dear Mr. Mattheus:

**SUBJECT: Special Permit Application (PL-SPP-2023-000041)**  
**Applicant: Riaan Mattheus**  
**Permitted Use: Allows the Operation of a Four (4)-Bedroom Bed and Breakfast Establishment Within an Existing Dwelling**  
**Tax Map Key: (3) 1-6-050:058 (por.); Hawaiian Acres, Puna, Hawai'i**

The Windward Planning Commission, at its duly held public hearing on August 3, 2023, voted to approve the above-referenced request to allow the operation of a four (4)-bedroom bed and breakfast establishment within an existing dwelling. The project site is located at 16-1456 Moho Road, approximately 2.6 miles southeast (makai) of its intersection with Highway 11, Hawaiian Acres, Kea'au, Puna, Hawai'i.

Approval of this permit is subject to the following conditions:

1. The applicant, their successor(s), or assign(s) ("Applicant") shall be responsible for complying with all stated conditions of approval.
2. The operation of the four-bedroom bed and breakfast shall be conducted in a manner that is substantially representative of plans and details contained within the Special Permit Application received by the Planning Department and any representations made to the Windward Planning Commission. Any substantial expansion or uses beyond what is represented in these documents shall require an amendment to this permit.
3. The Applicant shall comply with all applicable requirements of Section 25-4-7 of the Zoning Code, as amended, relating to Bed and Breakfast Establishments.

4. The bed and breakfast operation shall be limited to the use of four (4) bedrooms.
5. Should the proposed use exceed the existing individual wastewater system capacity of 1,000 gallons per day, the Applicant shall upgrade the wastewater system meeting with the requirements of the State Department of Health.
6. The Applicant shall comply with food service operations notification and permit requirements in the State Department of Health's Administrative Rules, Title 11, Chapter 50, Food Safety Code, as it pertains to bed and breakfast operations.
7. The Applicant shall comply with all applicable County, State and Federal laws, rules, regulations, and requirements in connection with the approved use, prior to its commencement or establishment upon the subject properties.
8. Should any of these conditions not be met or substantially complied with in a timely manner, 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 request is based on the reasons given in the enclosed Findings Report.

Should you have any questions regarding the above, please contact Christian Kay of the Planning Department at (808) 961-8136 or by email at [christian.kay@hawaiicounty.gov](mailto:christian.kay@hawaiicounty.gov)

Sincerely,

*Louis V. Daniele III*  
Louis V. Daniele III (Aug 8, 2023 12:41 HST)

Louis Daniele III, Vice-Chairperson  
Windward Planning Commission

P:\wp60\PC\PCC2023-3\LMattheusPL-SPP-2023-041\wpc

Enclosure: Planning Commission Findings Report

cc w/enclosure via email: County Real Property Tax Division  
Land Use Commission  
State Department of Health  
GIS Section

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

**RIAN MATTHEUS**  
**SPECIAL PERMIT APPLICATION NO. PL-SPP-2023-000041**

Based on the following findings, a Special Permit to operate a 4-bedroom bed and breakfast establishment within an existing dwelling on approximately 3.0 acres of land in the State Land Use Agricultural District is hereby approved by the Planning Commission. The subject property is located at 16-1456 Moho Road, approximately 2.6 miles southeast (makai) of its intersection with Highway 11, Hawaiian Acres, Kea‘au, Puna, Hawai‘i, TMK: (3) 1-6-050:058.

The applicant is requesting a Special Permit to allow a four-bedroom bed and breakfast establishment within the existing footprint of a permitted, 3,256 square-foot, five-bedroom single-family dwelling. The rentable bedrooms and bathrooms will comprise a total of 1,244 square feet, including a 700 square-foot bedroom that can accommodate up to 4 guests, for a maximum total of 10 guests at any one time. Breakfast meals will be offered to guests, including fruit grown on the subject property.

The applicant currently operates a four-bedroom, hosted vacation rental to help offset the cost of the mortgage and to maintain and improve the property’s extensive landscaping. Based on the applicant’s hosting experiences, a bed and breakfast establishment will allow the applicant more opportunity to be present with and interact with their guests, including helping them plan visits around the island and gain a better understanding of the area.

The applicant will continue to reside on site and operate the bed and breakfast. Off-street parking is available as the applicant has designated six parking stalls plus one overflow parking stall for guests of the bed and breakfast operation. The applicant intends to begin operating the bed and breakfast upon approval of the Special Permit and does not anticipate construction costs associated with the project.

The criteria for approving a Special Permit are based on Rule 6-7 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 or Rural District, whichever the case may be, and (b) the proposed use would promote the effectiveness and objectives of Chapter 205, Hawai‘i Revised Statutes, as amended.

**The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawai‘i Revised Statutes, 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. The soils for the subject property are classified as “E” or “Very Poor” by the Land Study Bureau’s Overall Master Productivity Rating, the General Plan designation is a combination of Important Agricultural Land and Extensive Agriculture, and the Department of Agriculture’s ALISH Map designates 90% of the property as “Other” with a small portion at the northeast corner being “Undesignated.”

As the proposed use will occur within the footprint of the existing single-family dwelling, the agricultural potential of the subject property will not be diminished. The property currently has extensive agricultural uses including fruit and nut producing trees and vegetable gardens which will continue and be incorporated into the proposed bed and breakfast operation. Therefore, the proposed use will not adversely affect the preservation and agricultural use of prime agricultural lands and is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

**The proposed use is an unusual and reasonable use of land situated within the State Land Use 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. The subject property is approximately 3.0 acres in size and situated within the County's Agricultural-3 acre (A-3a) zoned district. The applicant currently resides in the existing single-family dwelling on the subject property and the proposed four-bedroom bed and breakfast will operate within the existing dwelling's footprint. As previously noted, the applicant will maintain agricultural uses on the property, including existing fruit tree and vegetable garden cultivation. Given the above, the proposed bed and breakfast will not diminish the potential for any future agricultural activity on the subject property.

Based on the preceding, the subject request is considered an unusual and reasonable use of the agricultural land.

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 shall not adversely affect the surrounding properties.** Surrounding properties are zoned Agricultural 3-acre (A-3a) and consist primarily of agricultural and residential uses and undeveloped land. Bed and breakfast operations are by definition accessory to a single-family dwelling use and given that the applicant will be the operator, there should be no more impact than that of the existing dwelling. According to the applicant, the existing dwelling was sited to maintain a one-acre buffer of dense vegetation between the subject property and the adjacent neighbor to the rear of the property. The applicant has been operating a hosted vacation rental for several years and while the Planning Department has a record of a complaint from a member of the public, the case was successfully closed as there was no substantiated code violation occurring on the subject property. At the time of this writing the Department has received six letters of support from surrounding and adjacent neighbors of the subject property and has received no opposition testimony from the public. Based on the preceding, it is not anticipated that the proposed use will adversely affect 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 applicants anticipate that traffic to be generated by the proposed four-bedroom bed and breakfast operation would be minimal. Access to the site is from Moho Road, a privately-owned roadway with a 40-foot-wide right-of-way and a 20-foot-wide pavement. While privately-owned, Moho Road has a public access easement in favor of the County as part of the “Puna Emergency Access Route”, or PEAR, which included a condition that the County maintains the road. By letter dated June 26, 2023, the Police Department states they do not anticipate any significant impact to traffic and/or public safety concerns.

There is no municipal sewer system in the subdivision and the dwelling currently utilizes an existing, permitted cesspool to dispose of wastewater. According to the Department of Health (DOH) – Wastewater Branch, if total flow exceeds 1,000 gallons per day, or an average of 200 gallons per day per bedroom, the applicant will need to upgrade the wastewater system, meeting with DOH requirements. According to the DOH – Sanitation Branch, if the bed and breakfast offers non-hazardous breakfast foods such as commercial cereal, certain pastries, breads, fruits, coffee, tea, or juice, then a food establishment permit is not required, however the limited menu must be documented with DOH. Additionally, DOH notes that according to their sanitation code, a bed and breakfast establishment is defined as a single-family dwelling in which overnight accommodation and breakfast is included, and the number of guests does not exceed 6. If the applicant exceeds these parameters, DOH rules state that the applicant will need to obtain a food establishment permit, which may include the construction of a separate commercial kitchen.

By contrast, Hawai‘i County Zoning Code states that a bed and breakfast may accommodate up to 10 guests. The Planning Director believes that the subject property’s existing agricultural uses, including fruit trees and vegetable gardens, will be supported by a thriving bed and breakfast establishment, a desirable goal given that the property is located in a subdivision with a limited amount of productive agriculture being maintained. However, conditions of approval will be included stating that the applicant will be responsible for complying with DOH regulations.

The property is situated within an area designated as Flood Zone X on the Flood Insurance Rate Map (FIRM) by FEMA, an area of minimal flood hazard located outside the 500-year flood plain. Electrical and telephone services are available to the property. Fire, medical and police services are available in Kea‘au.

A condition of approval will be included requiring the applicants to meet all applicable County, State and Federal laws, rules, regulations, and requirements. Based on the preceding, the requested 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.

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 and uses may be allowed. Since the district boundaries were established, demand has increased for accommodations for guests who seek an alternative to resort venues. The proposed use would meet this demand by providing visitors an opportunity to experience a small-scale bed and breakfast that emphasizes a connection to agriculture by serving produce grown on-site for the breakfast element of the establishment.

**(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district.** The property is currently being used for agriculture with several fruit and nut producing trees onsite. As previously stated, the bed and breakfast will take place entirely within the existing single-family dwelling and thus will not reduce the land available for agricultural use.

**(F) The proposed use will not substantially alter or change the essential character of the land and the present use.** The character of the surrounding lands is predominantly residential/agricultural in nature, with present uses including small-scale agriculture, dwellings and undeveloped land. On-site parking will be provided and the applicant does not anticipate significantly adverse traffic impacts on the local roadway system. Present use of the property includes extensive landscaping with productive fruit and nut trees, vegetable gardens, ornamental shrubs and flowering plants, which will be further maintained by the proposed bed and breakfast use, as described in the application.

Based on the preceding, the proposed request will not substantially change the essential character of the land and the present use.

**(G) The request will not be contrary to the General Plan and official Community Development Plan 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 subject property is designated as Important Agricultural Lands and Extensive Agriculture by the General Plan. Important Agricultural Lands are those with better potential for sustained high agricultural yields because of soil type, climate, topography, or other factors. Extensive Agriculture 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 mentioned previously, the proposed use occurs entirely within an existing dwelling and will not diminish present agricultural use of the subject property.

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

- Designate and allocate land areas in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County.
- The County shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

Economic Element

- Economic development and improvements shall be in balance with the physical and social environments of the island of Hawai‘i.
- The County shall provide an economic environment which allows new, expanded, or improved economic opportunities that are compatible with the County's natural and social environment.
- The County shall strive for diversification of its economy by strengthening existing industries and attracting new endeavors.
- The County of Hawai‘i shall encourage the development of a visitor industry that is in harmony with the social, physical, and economic goals of the residents of the County.

The proposed request will allow the applicant an opportunity to improve their quality of life, provide an economic environment which allows this new opportunity and increase the development of the visitor industry for Hawai‘i.

Based on the preceding, the proposed request is consistent with the Land Use and Economic goals and policies of the General Plan.

The Puna Community Development Plan (PCDP), adopted by the Hawai‘i County Council, Ordinance 08 116, on September 10, 2008, does not show the subject property as being located within or near a village/town center. Section 3.2 of the PCDP, Agriculture and Economic Development, notes that Agricultural tourism presents an opportunity for the area in that it “generates income by providing community-based services to visitors of natural and cultural sites in a way that protects and nurtures the natural and cultural systems, in a manner that is economically sustainable.” Included in the goals and objectives of the PCDP is to encourage local job growth in “green” industries such as agriculture and eco-tourism and promote farm businesses such as “farm stay” bed and breakfasts.

As the proposed bed and breakfast operation will be located within an existing dwelling and incorporate existing agricultural uses, it will provide the applicant with supplemental income, encourage agriculture and eco-tourism and promote an existing farm business. Given the preceding, the request is consistent with the goals and objectives of the PCDP.

**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 7.5 miles from the nearest shoreline, is not within the Special Management Area and will not be impacted by coastal hazard and beach erosion. 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. Therefore, the proposed use is not contrary to the objectives of Chapter 205A, Hawai‘i Revised Statutes.

**The request will not have a significant adverse impact to traditional and customary Hawaiian Rights.** 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 kama‘āina accounts of the area, historical survey of documentary records, or botanical study was included in the application.

The valued cultural, historical, and natural resources found in the special permit area: No archeological or historical features are known to exist on the subject property nor is the property listed as a historic site on the State or National Register of Historic Places.

The subject property has been cleared for construction of a dwelling and related accessory structures. The subject property is extensively landscaped with fruit and nut trees, ornamental and flowering shrubs and vegetable gardens. There are no known endangered or listed plant species on the property.

No professional surveys were conducted of the flora/fauna resources on the property. According to the applicants, the likelihood of any rare or endangered species, habitat or flora on the property is remote given the developed nature of the property and surrounding area.

Possible adverse effect or impairment of valued resources: Native plants and/or endangered species are unlikely to be impacted by the proposed development due to the already impacted property as mentioned above.

Feasible actions to protect native Hawaiian rights: To the extent to which traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights; therefore, no action is necessary to protect these rights.

Lastly, this recommendation is made with the understanding that the applicants remain responsible for complying with all other applicable governmental requirements in connection with the proposed use, prior to its commencement or establishment upon the subject properties. Additional governmental requirements may include the issuance of building permit, 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.