

COUNTY OF HAWAI‘I PLANNING DEPARTMENT
RECOMMENDATION

MARY FOX

SPECIAL PERMIT APPLICATION NO. PL-SPP-2024-000074

Upon review of the request against the guidelines under Rule 6 of the Planning Commission Rules of Practice and Procedures for granting a Special Permit, the Planning Director is recommending that this request **allow for a home occupation to operate a home office within an existing farm dwelling be approved** by the Planning Commission. Since this recommendation is made without the benefit of public testimony, the Planning Director reserves the right to modify and/or alter this recommendation based upon additional information presented at the public hearing. This approval recommendation is based on the following findings:

The applicant is requesting a Special Permit to establish a home occupation to operate a home office for the management of a vacation rental business within a 100-square foot portion of an existing farm dwelling. The proposed home office space will consist of a computer, desk, printer, and filing cabinet within the applicant’s former dining room. Additionally, the business will be strictly administrative, with no client visits, vendor interactions, or commercial signage on the property.

The applicant is requesting to use a small portion in the existing dwelling to manage the downsized vacation rental business, which has been reduced from managing approximately 30 vacation homes, down to 6 vacation homes. The applicant was leasing a commercial business space in Puakō, but did not intend to renew the commercial lease due to the downsizing of the business.

The proposed operating hours will be Monday through Friday, from 9:00 a.m. to 5:00 p.m. The applicant will be the only employee.

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 proposed use is an unusual and reasonable use of land situated within the Agricultural District that would not be contrary to the effectiveness and objectives of Chapter 205, Hawai‘i Revised Statutes, as amended.

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 request is unusual in that the proposed home occupation for a home office is not strictly agricultural in nature. However, the proposed use will occur entirely within the existing farm dwelling and will not require any further clearing of the parcel, thus there will be no diminished potential for agricultural activity on the property. Therefore it is reasonable that this use be allowed in the Agricultural district.

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. As evaluated above, the applicant’s request is considered an unusual and reasonable use of agricultural land that will not adversely affect the preservation of lands with high agricultural potential in the County of Hawai‘i.

Soils for this site are classified as Waikui-Hāpuna complex, 2 to 10 percent slopes. This soil type is made from basic volcanic ash over a‘a lava. It is considered well-drained, has a low to high runoff class, and is not considered prime farmland. The parcel is designated as “E” or “Very Poor” for agricultural productivity by the Land Study Bureau’s Detailed Land Classification System. The property is also considered “unclassified” on the Agricultural Land by the Department of Agriculture’s ALISH Map. These soil characteristics and designations are not suitable for commercial agriculture;

therefore, the use will not adversely affect the preservation and agricultural use of the County's agricultural lands of high agricultural potential and is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

(B) The desired use shall not adversely affect the surrounding properties.

All adjacent land to the east, south, and west are zoned Agricultural-3 Acres (A-3a) and contain single-family residences. Other surrounding properties are residential in nature, but mostly unimproved. The closest building is a dwelling approximately 90 feet to the northwest on an abutting parcel. An acupuncture clinic is located approximately 2,000 feet to the west on a neighboring parcel which was approved by Special Permit number SPP 13-000154.

The home office will not adversely affect the surrounding properties because the business operations will be confined indoors with no external modifications or visible signage. The absence of client visits and vendor interactions ensures that traffic and noise levels will be minimal. This ensures that the residential and rural ambiance of the area is preserved, and the neighbors are not disturbed by the business activities.

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. Access to the subject parcel and permit area will be provided by a single paved driveway from privately owned roadway, Ala Kahua Drive, which connects to Akoni Pule Highway approximately 1 mile to the west. Water is available from a private water system. The dwelling where the home occupation will occur is currently serviced by a cesspool system.

The property is situated within an area designated as Flood Zone X on the Flood Insurance Rate Map (FIRM) by FEMA, an area determined to be outside the 500-year flood plain. Electrical and telephone services are available to the property. Police, fire, and medical services are available in Waimea. 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. Since 2019 there has been a drastic increase in the need to be able to work from home as well as operate small businesses as an in-home occupation. Additionally, many technological changes have occurred, such as the internet, which make it easier for people to operate home-based businesses. 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. Thus, the issuance of a Special Permit for the proposed "non-agricultural" use is appropriate.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The proposed use will take place within the existing dwelling; therefore, the proposed home office use will not have a negative impact on the agricultural use of the property.

(F) The proposed use will not substantially alter or change the essential character of the land and the present use.

The current character of the property and surrounding area is residential and agricultural with farm dwellings. A portion of the existing farm dwelling will be used for the home office. As noted previously, since all the activities associated with the proposed use will take place within the existing dwelling, the essential character of the land is not expected to change.

(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 project area is designated as Extensive Agriculture by the LUPAG Map, which 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. Given that the proposed use will occur within the existing dwelling, it should not have any impact on the agricultural use of the surrounding land.

The approval of the subject request would support the goals and policies of the Economic elements of the General Plan.

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 diversity and stability in the economic system.*
- *Strive for an economic climate that provides its residents an opportunity for choice of occupation.*

Based on the preceding, the proposed request is consistent with the Extensive Agriculture LUPAG designation and Economic goals and policies of the General Plan.

The subject property is situated in the North Kohala Community Development Plan (NKCDP). The NKCDP supports efforts to promote small business development which is consistent with the rural, agricultural, and historic character of the area. Based on the preceding, the request is consistent with the goals and objectives of the NKCDP.

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 1.3 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 known designated public access to the mountain or shoreline areas over the property. As such, 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 or botanical studies were included in the application.

The valued cultural, historical, and natural resources found in the special permit area: As the subject parcel has been improved with a farm dwelling and an additional farm dwelling, it is unlikely that any valued historical resources exist. Furthermore, there are no listed or endangered floral or faunal species likely to be found on the subject property.

According to the applicant, no historic properties will be affected by the proposed home office. It is not known whether the subject site or immediate area was ever used for traditional and customary rights by native Hawaiians. However, the applicant respects the cultural and historical significance of the area and preserves the ability of Native Hawaiians to continue their traditional practices without interference.

Possible adverse effect or impairment of valued resources: As there are no valued resources found on the property and all activities are held in the dwelling, there are no possible adverse impacts or impairment from the proposed development.

Feasible actions to protect native Hawaiian rights: As stated by the applicant, it is not known whether the subject site or immediate area was ever used for traditional and customary rights by native Hawaiians. Thus, 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 applicant remains 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.

Based on the preceding findings, the Planning Director recommends that the request to establish and operate a home occupation within an existing dwelling be approved. Approval of this request 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 home office shall be conducted in a manner that is substantially representative of plans and details contained within the Special Permit application dated July 24, 2024 and representations made to the Leeward Planning Commission.
3. The Applicant shall comply with Section 25-4-13 of the Zoning Code (Chapter 25), County of Hawai‘i related to Home Occupations.
4. The Applicant shall comply with all applicable County, State and Federal laws, rules, regulations, and requirements in connection with the approved use.
5. Should any of these conditions not be met, the Planning Director may initiate procedures to revoke this Special Permit.