

COUNTY OF HAWAI‘I PLANNING DEPARTMENT
AMENDED RECOMMENDATION

TIRTHA LUITEL
SPECIAL PERMIT APPLICATION (PL-SPP-2024-000062)

Upon review of the request against the guidelines for granting a Special Permit, the Planning Director recommends that the request to allow the development and operation of a 29-stall commercial parking lot on an approximately 12,700-square foot portion of a larger 98.2850-acre parcel in the State Land Use Agricultural District **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 operate a commercial parking lot for visitors to ‘Akaka Falls State Park. The original request was for an 18,000-square foot permit area to accommodate a 49-stall parking lot. However, the applicant has subsequently downsized the request to a proposed 12,700-square foot permit area to accommodate a 29-stall parking lot, including an existing approximately 11,200-square foot concrete pad and a proposed 8-foot-wide pedestrian path. An automatic gate system is proposed for vehicular access and the applicant will provide a pedestrian gate for visitors to access ‘Akaka Falls State Park.

According to the applicant, the existing parking lot at ‘Akaka Falls State Park is insufficient to handle the daily vehicular traffic of visitors, resulting in congestion and hazardous conditions due to overflow parking along ‘Akaka Falls Road. The applicant proposes to utilize an existing concrete area on the subject property for paid parking to alleviate the problem of roadside parking and pedestrian hazards. The parking lot is proposed to be operated by the applicant and an attendant, who will be present to manage the parking lot. The applicant anticipates completing construction within 6 months, at an estimated cost of between \$400,000 to \$500,000.

The grounds 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 District, and (b) the proposed use would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes (H.R.S.), 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 proposed permit area for the development and operation of a commercial parking lot is located in an area designated Agricultural by the State Land Use Commission. As the requested use is not permitted in the State Land Use Agricultural District, a Special Permit is required to allow for the use to be permitted.

The 12,700-square foot permit area is classified as "C" or "Fair" soil by the Land Study Bureau's Overall Master Productivity Rating. Additionally, the permit area is located on a portion of the subject property classified as "Prime Agricultural Land" by the Agricultural Lands of Importance to the State of Hawaii (ALISH) Map. Prime Agricultural Land is land best suited for the production of food, feed, forage and fiber crops. The land has the soil quality, growing season and moisture supply needed to produce sustained high yields of crops economically when treated and managed, including water management, according to modern farming methods. Although the land has been identified as having high agricultural potential for agriculture uses, the Planning Director believes that the request is an unusual and reasonable use of the permit area as long as the proposed parking lot is limited to the area of the existing concrete pad, a requirement that will be addressed with a condition of approval. This would allow the

remainder of the property to be used for productive agriculture, and only a small portion to be used for the proposed parking lot.

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 would 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. As previously noted, since the request will limit parking to the area of the existing concrete pad, the proposed use will not adversely affect the preservation and potential agricultural use of the County's prime agricultural lands.

(B) The desired use will not adversely affect the surrounding properties. Surrounding properties are zoned Agriculture 20-acres (A-20a), Forest Reserve (FR) and Family-Agricultural 1-acre (FA-1a), with agricultural land uses, farm dwellings and State Park use. The closest residence to the proposed permit area is located approximately 0.25 miles to the south. The Planning Department has received two letters of public testimony in opposition to the proposal, which raise concerns with the commercial use of prime agricultural land, not retaining the essential character of the land, negative visual and traffic impacts, and potential impacts on nearby cultural and natural resources.

By letter dated August 1, 2024, the Department of Land and Natural Resources, Division of State Parks (DSP) notes that the project may result in overcrowding at 'Akaka Falls State Park, reducing the quality of visitor experiences. Additionally, the DSP anticipates establishing a visitor reservation system and a mobile food service at the park, which may affect the viability of the applicant's proposal. The applicant's response to DSP states that they believe the overcrowding concern is unwarranted and that the reservation system and mobile food service are not anticipated to affect their proposal. Further, in a telephone conversation with Planning Department staff, DSP staff noted that the proposed commercial parking lot may result in diverting visitor parking fees away from the current State Park-operated parking lot at 'Akaka Falls which provides funding to State Parks. Additionally, DSP noted that they do not support setting a precedent with the Special

Permit and expressed doubts that the establishment of a non-State Parks, commercial parking lot would provide a solution to overcrowding at State Parks. Notwithstanding the preceding issues, the Planning Director recommends approval given that the proposed use will be limited to the existing concrete pad, and may alleviate parking along the shoulders of 'Akaka Falls Road. Furthermore, the Applicant has indicated that they will continue to work with DSP to ensure that the project does not adversely affect the State Park.

(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 property is from 'Akaka Falls Road, a State-owned and maintained roadway with an approximately 30-foot-wide pavement. The applicant proposes to use an existing paved driveway, located approximately 200 feet south of the 'Akaka Falls State Park parking lot, for access to the permit area. Additionally, the applicant will construct a gate to limit access to paying customers. According to the Hawai'i Department of Transportation (HDOT), access driveway connection to 'Akaka Falls Road (State Route 220) must meet all applicable engineering criteria set forth by the HDOT, Hawai'i District, including design standards, sight distance requirements, and all necessary permits prior to any construction work. The applicant notes that existing traffic conditions may improve by providing a safer alternative to overflow parking that currently congests 'Akaka Falls Road.

Although the subject property is not served by the existing county water system, the applicant indicated that water is not necessary for the proposed parking lot use. The subject property is not served by the existing county sewer system therefore any wastewater system must meet Department of Health requirements.

Given the preceding, the proposed use is not anticipated to unreasonably burden public agencies.

(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. The applicant’s proposed commercial parking lot would provide visitors to ‘Akaka Falls State Park an alternative parking area and may help to alleviate congestion created by parking along the road.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. Although the proposed permit area is suited for agricultural purposes, since the parking lot will be limited to the existing concrete pad, the Planning Director finds it to be reasonable.

(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 agricultural/residential in nature, with uses including agriculture, dwellings, and undeveloped land, in addition to ‘Akaka Falls State Park to the north of the subject property. Given that the proposed use will be limited to the existing concrete pad, the existing essential character of the land will not be substantially altered.

(G) The request would not be contrary to the General Plan and Hāmākua Community Development Plan (HCDP). The County of Hawai‘i’s General Plan (General Plan) is the policy document for the long-range comprehensive development of the island of Hawai‘i. One of the purposes of the General Plan is to guide the pattern of future development of the County based on long-term goals. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the property as Important Agricultural Lands (IAL), which includes lands with better potential for sustained high agricultural yields because of soil type, climate, topography, or other factors. The proposed development and operation of a commercial parking lot is not agricultural in nature and is thus inconsistent with the Important Agricultural Lands LUPAG designation, however, as mentioned previously, the Planning Director believes that the request is reasonable as long as the proposed parking lot is contained to the area of the existing concrete pad.

The General Plan indicates that the Community Development Plan (CDP) is intended to implement the broad goals within the General Plan on a regional basis. The CDP should direct physical development and public improvements within a specific area and may contain detailed land use and zoning guide maps, plans for roadways, drainage, parks and other infrastructure and public facilities, architectural design guidelines, planning for watershed and other natural features.

The subject property is located within the boundaries of the Hāmākua Community Development Plan (CDP) which encourages the concentration of new commercial development in existing, walkable, mixed use town centers with the goal of preserving historic and cultural resources and limiting rural sprawl (Section 4.1.1). Although the subject property is not situated within an area designated for development in the HCDP, as mentioned previously, since the permit area will be contained to the existing concrete pad, the Planning Director finds the request to be reasonable.

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 Special Management Area (SMA) is part of the Coastal Zone Management Program regulated by the County. The subject property is not proximate to the shoreline and will not be impacted by coastal hazards or affect beach erosion, coastal ecosystems, and marine resources. There is no designated public access to the mountain or shoreline areas over the property and the proposed use will not adversely impact any recreational resources, including access to and along the shoreline, scenic and open space nor visual 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 area: According to the applicants, no cultural or historical features are known to exist on the subject property. Vegetation on the property consists of areca palm, albizia, coconut palm, ti, hapu‘u, octopus tree, swiss cheese plant, guinea grass, gunpowder tree and African tulip tree. In addition, animal species present include dove, Japanese White-eye, house finch and myna as well as domestic animals such as cats, dogs, goats, chickens and feral animals such as rats and pigs. The applicant states that there is a possibility that endangered or threatened species such as the Hawaiian Hawk and Hawaiian Hoary Bat are present on or near the subject property. As such, the applicant notes that mitigation measures will be followed and, if necessary, consultation will occur with the Department of Land and Natural Resources -Division of Forestry and Wildlife (DOFAW).

Possible adverse effect or impairment of valued resources: Native plants and/or endangered species are unlikely to be impacted since the proposed parking lot will be limited to the existing concrete pad.

Feasible actions to protect native Hawaiian rights: To the extent 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 approved use, prior to its commencement or establishment upon the subject property. Additional governmental requirements may include the issuance of building permits, the installation of approved water 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.

Based on the preceding considerations, the Planning Director is recommending that the Planning Commission approve this application to allow the development and operation of a 29-stall commercial parking lot on an approximately 12,700-square foot portion of a larger 98.2850-acre parcel in the State Land Use Agricultural District. Approval of this request is subject to the following conditions:

1. The applicant(s), its successor(s) or assign(s) (“Applicant”) shall be responsible for complying with all of the stated conditions of approval.
2. The operation of the proposed use shall be conducted in a manner that is substantially representative of plans and details as contained within the Special Permit application received by the Planning Department and representations made to the Windward Planning Commission. Any expansion of uses beyond what is represented in these documents shall require an amendment to this permit.
3. Prior to establishing the proposed use, the Applicant shall secure Final Plan Approval for the parking lot and related improvements from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai‘i County Code. Plans shall identify all existing and/or proposed structure(s), fire protection measures, driveway access and parking stalls, outdoor lighting (if any), and other improvements associated with the proposed development.
4. Prior to establishing the proposed use, the Applicant shall install a fence around the boundary of the existing concrete slab. At no time shall the activities permitted under this Special Permit take place outside of the 12,700-square foot permit area.
5. The access driveway connection to ‘Akaka Falls Road (State Route 220) must meet all applicable engineering criteria set forth by the State Department of Transportation, Hawai‘i District, including design standards, sight distance requirements, and all necessary permits prior to establishing the proposed use. The Applicant shall provide the Planning Department a copy of any necessary permits for the access driveway.
6. All development-generated runoff shall be disposed of onsite and shall not be directed toward any adjacent properties. Additionally, a drainage study shall be prepared prior to Plan Approval and the recommended drainage system shall be constructed meeting the

approval of the Department of Public Works, Engineering Division, prior to establishing the proposed use.

7. All activities shall comply with the requirements of Hawai'i County Code, Chapter 10, Erosion and Sedimentary Control.
8. In the event that surface or subsurface historic resources, including human skeletal remains, structural remains (e.g. rock walls, terraces, platforms, etc.), cultural deposits, marine shell concentrations, sand deposits, or sink holes are identified during the demolition and/or construction work, the Applicant shall cease work in the immediate vicinity of the find, protect the find from additional disturbance and contact the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD) at (808) 933-7651. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.
9. 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 property.
10. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke this Special Permit.