

COUNTY OF HAWAI‘I PLANNING DEPARTMENT
RECOMMENDATION

NANI PANIAU ESTATE LLC
USE PERMIT APPLICATION (PL-USE-2024-000031)

Upon review of the request against the guidelines for granting a Use Permit, the Planning Director recommends that this **request to allow the establishment of a 5-bedroom bed & breakfast operation within an existing dwelling on a 1.63-acre parcel of land in the Single-Family Residential zoning district be approved by the Planning Commission.** Since this recommendation is made without benefit of public testimony, the Director reserves the right to modify and/or alter this recommendation based upon additional information presented at the public hearing. The recommendation for approval is based on the following findings:

The applicant is requesting a Use Permit to establish a 5-bedroom bed and breakfast operation within an existing, 6-bedroom dwelling on the subject property. The bed and breakfast will provide overnight accommodation in 5 rentable rooms for a maximum of 10 guests for a period of less than 30 days. A sixth bedroom will serve as the primary residence of the property’s caretaker. Breakfast will be provided for registered guests only and no other meals will be provided. Six parking stalls will be available for guests and the bed and breakfast establishment will be operated by an on-site caretaker.

The applicant has requested to establish a bed and breakfast to provide visitors to Hawai‘i with an alternative lodging experience, outside of the typical resort environment. The proposed use will also provide housing for the bed and breakfast operator.

In considering a Use Permit for any proposed use, Rule 7 of the Planning Commission relating to Use Permit, requires that such action conform to the following guidelines:

- A. The granting of the proposed use shall be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code, and the County General Plan;

- B. The granting of the proposed use shall not be materially detrimental to the public welfare nor cause substantial adverse impact to the community's character or to surrounding properties; and
- C. The granting of the proposed use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection and other related infrastructure.

The proposed use meets the guidelines for approval of a Use Permit, for the reasons listed below:

The granting of the proposed use shall be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code and Community Development Plan (CDP) and the County General Plan. The Use Permit process provides an avenue to review and analyze a proposed project on a case-by-case basis relative to infrastructure and impacts on surrounding properties and existing uses, as well as consistency with the goals and policies of the General Plan. According to the Zoning Code, Single-Family Residential districts "provide for lower or low and medium density residential use, for urban and suburban family life." This includes bed and breakfast operations, which are considered accessory or subordinate to the principal use of the property as a residence. The County Zoning Code, Section 25-4-7, provides standards for bed and breakfast operations. Based upon the applicant's representation, the proposed bed and breakfast operation will meet with the requirements of the Zoning Code, Section 25-4-7, regarding bed and breakfast establishments.

Bed and breakfast establishments are becoming increasingly popular with visitors to the island, who seek a quieter, more authentic experience of local life. Bed and breakfast establishments also provide an economic opportunity for residents of Hawai'i County, who can supplement their incomes by sharing their homes with visitors. On residential zoned lands, impacts from bed and breakfast operations can be properly addressed and mitigated through the approval of a Use Permit.

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 General Plan designation for this property is primarily Low Density Urban which allows for residential, with ancillary community and public uses, and neighborhood and convenience-type commercial uses; overall residential density may be up to 6 units per acre. A small portion of the parcel along the makai boundary line is designated Open, considered as land that is not used for buildings or structures and is characterized by scenic beauty, existing openness, and natural conditions.

Goals within the Economic element of the General Plan state a project should provide residents with opportunities to improve their quality of life through economic development that enhances the County's natural and social environments, and that those developments shall be in balance with the social, physical, and cultural environments of the island of Hawai'i. Additionally, the project should strive for diversification of the economy by strengthening existing industries and attracting new endeavors.

Given that surrounding properties are primarily used for residential purposes, this project aligns with the Land Use policy encouraging the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment. The General Plan encourages the development of small-scale accommodations which enable visitors to take advantage of natural and cultural resources throughout the County versus large resorts that often focus on coastal or resort-type recreational activities.

The proposed request will provide an economic opportunity for the applicant 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 South Kohala Community Development Plan (SKCDP) identifies the preferred land use pattern for the South Kohala district. Although the SKCDP does not provide guidance on Use Permit applications for the Puakō area, Section 2.4.1 identifies the importance of encouraging alternative tourist accommodations as this would be consistent with community vision and values. As the bed and breakfast operation will

host visitors within an existing dwelling, providing an alternative to resort accommodations, the request is consistent with the goals and objectives of the SKCDP.

Based on the preceding, the proposed use will not be contrary to the General Plan, Community Development Plan, or the Zoning Code.

The granting of the proposed use shall not be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character or to surrounding properties. The immediate surrounding area consists primarily of single-family residential uses within the Nani Paniau Subdivision. The subject property is improved with a 2-story, 6-bedroom, 8.5-bath single-family dwelling, a driveway and parking area, and there are several easements on the subject property, for identified archeological sites, public access, and electrical purposes. The remainder of the property consists of landscaping plants typical of the area, including areca and fan palms, hibiscus, and ti. As previously mentioned, since the proposed use will be contained to an existing dwelling, the use will not alter the appearance or character of the neighborhood. Six parking stalls will be available for guests and the applicant anticipates little effect on traffic in the area, as traffic will be limited to bed and breakfast guests. Given the preceding, the proposed use is not anticipated to have a detrimental impact on the community's character or surrounding properties.

The granting of the proposed use will not unreasonably burden public agencies to provide roads and streets, sewer, water, drainage, school improvements, police and fire protection and other related infrastructure. Traffic impacts are not anticipated to be significant, given the small scale of the proposed bed and breakfast establishment and since traffic will be limited to guests. The subject property has one driveway from Paniau Place, a privately owned and maintained, paved roadway. The property is currently served with County water and by two permitted individual wastewater systems. The Department of Health (DOH) notes that solid waste shall be properly disposed of at DOH-permitted solid waste management facilities.

The Department of Public Works, Building Division, notes that change of use building permits would be required if rooms are not used for their originally permitted use, however this should not be an issue since the dwelling has 6 permitted bedrooms. Electrical

and telephone are available to the subject property, the South Kohala Fire Station is located 5 miles east of the subject property and police services are located in Waimea, approximately 16 miles northeast of the subject property. Based on the preceding, granting the request will not unreasonably burden public agencies to provide needed services and infrastructure.

In addition to the criteria for granting a Use Permit, the request is not contrary to Chapter 205A, Hawai‘i Revised Statutes, relating to Coastal Zone Management Area. The property is within the County's Special Management Area (SMA) and is located between 10-30 feet from the nearest shoreline. On April 15, 2024, the applicant requested an SMA determination, to permit proposed construction on the subject property, including demolition of an existing pool, and new construction to include 1,200-square feet of pavement, a new pool, an 1,800-square foot deck and a 300-square foot pool equipment building. The Planning Director determined that the proposed construction is consistent with the approval and conditions of SMA 326, originally approved on December 3, 1991, allowing a 10-lot residential subdivision and related improvements. As such, the request is not contrary to Chapter 205A, Hawai‘i Revised Statutes, relating to Coastal Zone Management Area.

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: An archeological inventory survey, archeological data recovery plan and a mitigation program were prepared and approved by the State Historic Preservation Division (SHPD) as part of the SMA review process, for SMA Use Permit No. 326. Specifically, the Archeological Inventory Survey for the Paniau Development Parcel Project Area was approved by SHPD by letter dated July 28, 1992. Subsequently, the *Archeological Mitigation Program, Paniau Development Parcel Project Area, titled the Mitigation Plan for Data Recovery, Interim Site Preservation, Contingency Burial Treatment, and Monitoring* was approved by SHPD by letter dated September 21,

1992. No new archaeological, historical or biological studies were included with the Use Permit application as the proposed use will occur within the existing dwelling.

The valued cultural, historical, and natural resources found in the area: Following the above referenced SHPD approvals, several easements were established on the subject property to preserve and buffer identified archeological features and anchialine ponds. An existing public access easement runs along the shoreline, perpendicular to the subject property. Additionally, a mauka-makai public access easement, originally located along the southern boundary of the subject property (Easement 18), was relocated to the adjacent property (TMK 6-9-001:023) following the recordation of an amended declaration, dated February 12, 2021.

Possible adverse effect or impairment of valued resources: The existing public accesses and other easements are unlikely to be impacted by the proposed use since activities will primarily occur within the existing dwelling.

Feasible actions to protect native Hawaiian rights: The applicant states they are unaware of use of the subject property by Native Hawaiians for gathering purposes, however they will honor documented claims of gathering or access rights.

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 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 findings, it is recommended that the request for a Use Permit to allow the establishment of a 5-bedroom bed and breakfast operation be

approved by the Leeward Planning Commission. 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 bed and breakfast shall be conducted in a manner that is substantially representative of plans and details as contained within the Use Permit application received by the Planning Department, dated November 7, 2024 and representations made to the Leeward Planning Commission. Any expansion or uses beyond what is represented in these documents shall require an amendment to this permit.
3. The Applicant shall comply with all requirements of Section 25-4-7 of the County of Hawai‘i Zoning Code, as amended, relating to bed and breakfast establishments.
4. The bed and breakfast operation shall be limited to the use of five (5) bedrooms.
5. The applicant shall comply with Hawai‘i Administrative Rules, Department of Health, Chapter 11-50 (Food Safety Code) related to food service for bed and breakfast establishments.
6. The Applicant shall comply with all applicable County, State and Federal laws, rules, regulations, and requirements.
7. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke this permit.