

COUNTY OF HAWAI‘I PLANNING DEPARTMENT
RECOMMENDATION

THOMAS L. SCHAGER AND JOSEPH B. SWICK
SPECIAL PERMIT APPLICATION (PL-SPP-2025-000103)

Upon review of the request against the guidelines for granting a Special Permit, the Planning Director recommends that this request to allow the establishment of a 1-bedroom bed and breakfast operation within an existing farm dwelling on an approximately 1.8-acre parcel of land **be approved by the Windward 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 applicants are requesting a Special Permit to establish a 1-bedroom bed and breakfast operation within an existing 640-square foot, 1-bedroom farm dwelling. The applicants reside in an existing, 3,234 square-foot, 2-bedroom additional farm dwelling and will act as on-site operators of the bed and breakfast. The bed and breakfast will provide overnight accommodation and breakfast for a maximum of 4 guests. The bed and breakfast establishment will be operated by the applicants; 2 parking stalls will be designated for guests and quiet hours will be from 9:00 PM to 8:00 AM.

The applicants would like to operate a bed and breakfast to generate supplemental income by offering a room to short-term guests. The current property owners and applicants manage the majority of agricultural activities on the property themselves and no longer require the use of the primary dwelling for farm labor housing.

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 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. In this case, the County designates the property as important agricultural lands, the soils are classified as both “C” or “Fair” by the Land Study Bureau’s Overall Master Productivity Rating and designated as both “Prime” and “Unclassified” by the Department of Agriculture’s ALISH Map.

As the proposed use will occur within the footprint of an existing dwelling, the agricultural potential of the subject property will not be diminished. The applicants intend to continue operating the existing farm including agricultural uses such as cultivation of a variety of fruit trees, including bananas, citrus, Brazilian cherry, papaya, soursop and coconut. 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 1.869 acres in size and situated within the County’s Agricultural-20 acre (A-20a) zoned district.

The applicant currently resides in the existing additional farm dwelling on the subject property and as previously noted, the proposed bed and breakfast will operate within the footprint of an existing first farm dwelling, and the applicants will maintain agricultural uses on the property. 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 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 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, 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. Properties surrounding the subject property are zoned Agricultural-20 acres (A-20a), with uses consisting of agriculture, farm dwellings, and vacant lands. The closest residence to the subject property is located approximately 20 feet to the northwest. The operation of a bed and breakfast is considered an accessory land use to a single-family dwelling use, and as such, should not have any greater impact than the existing dwelling. The applicants propose to establish daily quiet hours from 9:00 PM to 8:00 AM and note that existing vegetation will help to mitigate effects on neighboring properties. 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 property is from a shared access easement from Hawai'i Belt Road with 14-foot-wide pavement and a 50-foot-wide right-of-way. Guests will utilize an existing concrete driveway to cross the subject property and access guest parking stalls. On-site parking will be provided, and traffic will be limited to registered guests, therefore, the applicant does not anticipate significantly adverse traffic impacts on the local roadway system.

Since the subject property is not served by the existing county sewer system, the project shall follow Department of Health (DOH) regulations for wastewater. The

applicants propose to continue using existing cesspools, currently serving the primary farm dwelling and the additional farm dwelling.

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, including a single guest house, 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.

The subject property is not connected to County water and there is a private well for residential and agricultural needs. In addition, the applicant notes that they assume responsibility to provide water to the property for potable use and fire suppression. A condition of approval will address the preceding.

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, telephone and emergency services are available to the subject property. 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 bed and breakfast that emphasizes a connection to agriculture and provides a way for guests to learn about small farm agriculture in Hawai‘i.

(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 as a farm. As previously noted, the bed and breakfast will operate within the footprint of an existing dwelling, and the proposed use 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 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 agricultural cultivation, 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 Land (ial) which refers to land that has better potential for sustained high agricultural yields because of soil type, climate, topography, or other factors. As previously stated, the proposed use 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 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.
- 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 applicants 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 Hāmākua Community Development Plan (HCDP), originally adopted by the Hawai‘i County Council as Ordinance 2018-078 in August 2018, does not have policies that prohibit Special Permits of this type. The applicant’s request is in alignment with several HCDP policies:

Land Use Policy No. 21: To preserve the agricultural character of Hāmākua and to reinforce existing protections, the CDP Land Use Guide Map designates agricultural lands

in the Hāmākua Planning Area to be preserved for agriculture and open space. Development and construction in the Agricultural designation shall be limited to agriculture, related economic infrastructure and cottage industries, renewable energy, open area recreational uses, and community facilities, unless otherwise permitted by law.

County Action Policy 124: Encourage the development of small “bed and breakfast” type visitor accommodations, in particular those with heritage, agriculture, wellness, or similar themes.

Kōkua Action 74: Encourage appropriate visitor-related uses and facilities (such as Bed and Breakfasts).

The proposed bed and breakfast will provide the applicants with supplemental income and support existing agricultural uses. Given the preceding, the request is consistent with the goals and objectives of the HCDP.

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 on the shoreline and will not be impacted by coastal hazards or affect beach erosion, coastal ecosystems, and marine resources as the property sits above a steep sea cliff. 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 formal flora/fauna study was conducted. The subject property was previously cleared for construction of the existing dwellings and previously used for extensive sugar cane cultivation. Vegetation on the property primarily includes fruit trees that make up the majority of the applicants’ agricultural products. In addition, animal species consist of dove, Japanese White-eye, house finch and myna are common in the area. Domestic animals such as cats, dogs, goats, chickens and other animals such as rats and feral pigs are also common and are not considered endangered. It is possible that the Hawaiian Hawk (*Buteo solitarius*) and Hawaiian owl (*Asio flammeus sandwichensis*) may use the area. The endemic Hawaiian hoary bat (*Lasiurus cinereus semotus*) also may utilize the site as they are far ranging and utilize diverse habitats across the island. However, as no new construction is proposed, potential impacts to native birds and the Hawaiian hoary bat should be negligible.

Possible adverse effect or impairment of valued resources: Native plants and/or endangered species are unlikely to be impacted by the proposed use since activities will primarily occur within the existing first farm dwelling. The State Department of Land and Natural Resources (DLNR) – State Historic Preservation Division (SHPD) and the Engineering Division provided a response of no comment or concern.

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 findings, it is recommended that the request for a Special Permit to allow the establishment of a 1-bedroom bed and breakfast operation be approved by the Windward 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 Special Permit application received by the Planning Department and 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. Prior to commencing the proposed use and during the duration of its operation on the property, the Applicant shall implement and continue complying with the requirements of the farm plan.
4. 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.
5. The bed and breakfast operation shall be limited to the use of one (1) bedroom.
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 proposed use, prior to its commencement or establishment upon the subject property.
8. 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.