

**COUNTY OF HAWAI'I PLANNING DEPARTMENT
RECOMMENDATION REPORT**

**KRUA & BRET KLINE
SPECIAL PERMIT APPLICATION (PL-SPP-2025-000112)**

Upon reviewing the request against the guidelines for granting a Special Permit, the Planning Director recommends that this request to allow the establishment of food vendors, agricultural training classes and sale of fresh produce on an approximately 1.6-acre parcel of land in the State Land Use Agricultural District **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 vendor market comprised of food vendors, agricultural training classes and produce vendors. The operation will include 5 structures to be used as vendor stalls and an additional structure to be used as storage. A 600 square-foot future restroom structure is proposed located in proximity to the 33rd Ave entrance. The applicants have provided a cindered parking area able to accommodate up to 18 vehicles. The market will operate daily between 11:00 am and 7:00 pm with agricultural classes occurring twice per month between the hours of 9:00 am and 4:00 pm with approximately 20 attendees. The proposed business activities will employ between 8 and 12 people to operate the multiple vendor booths and provide the agricultural classes.

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 rural, the soils are classified as both "LV" or Lava Flows, which consist of rough broken lava with no significant soil cover by the Land Study Bureau's Overall Master Productivity Rating and designated as "Unclassified" by the Department of Agriculture's ALISH Map.

As the proposed use will occur within the new structures and some outdoor areas, the agricultural potential of the subject property will not be diminished. The agricultural classes taking place will produce hydroponic produce and mushroom cultivation. Therefore, the proposed use will not adversely affect the preservation and agricultural use of unclassified 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 1.6 acres in size and situated within the County's Agricultural-1 acre (A-1a) zoned district.

The applicant currently does not reside on the subject property and as previously noted, the proposed operation will be within the subject property and the applicants will maintain agricultural uses on the property. Given the above, the proposed vendor market 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-1 acres (A-1a), with uses consisting of agriculture, farm dwellings, and vacant lands. There are multiple special permits that have been granted for land uses such as base yards and an automotive shop along 33rd Avenue. The closest residence to the subject property is located approximately 50 feet to the southeast. 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 by two separate proposed driveways; one from Kea'au-Pāhoa Road (Highway 130), a two-lane State highway, the second access point is from Kea'au-Pāhoa Road (Highway 130) onto Maku'u Drive and 33rd Avenue. Uluhe Street (33rd Avenue) is a private roadway that is partially paved by the nearby permittees as a condition of their special permits. The driveway apron, parking area and roadway fronting the property along 33rd Avenue is an existing compact gravel and red cinder surface. The applicant does not anticipate significant adverse traffic impacts on the local roadway system. The State Department of Transportation (HDOT) reviewed the proposed Special Permit request and had no objection to the project as proposed. HDOT noted that the use is not expected to significantly impact State highway operations but recommended that any access improvements, work within State highway right-of-way, parking circulation, drainage considerations, and future

project expansions be coordinated with and reviewed by HDOT as applicable. HDOT also encouraged incorporating sustainable and energy-efficient design practices where feasible. As discussed in Criteria G of this recommendation, since the Puna Community Development Plan (PCDP) supports no direct access onto Highway 130, the Director is recommending to limit access to the subject property to come only from 33rd Avenue.

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 utilize a temporary restroom facility with a proposed permanent restroom facility in the future.

According to the DOH – Sanitation Branch, the establishment of food vendors needs to meet the requirements of H.A.R. Title 11 Chapter 50. Food Safety Code.

The subject property is not connected to County water and DWS has stated that water can be made available from a 12-inch waterline within Kea'au-Pāhoa Road fronting the property, subject to the applicant meeting DWS conditions. 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, the trend has increased for roadside vendor markets venues. The proposed use would meet this demand by providing residents and visitors an opportunity to support 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 not being used for agriculture as a farm. As previously noted, the property sits cleared with the proposed structures and limited landscaping, 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, undeveloped land and multiple special permits that allow for base yarding and auto repairs. On-site parking will be provided, and the applicant does not anticipate significantly adverse traffic impacts on the local roadway system. Currently, the property remains cleared and graveled with the six structures proposed to be used as vendor stalls and a storage building. The property is planted with ti leaves along the perimeter, which will be further maintained by the proposed agricultural classes 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 Rural (RUR) which refers to land that includes existing subdivisions in the State Land Use Agricultural and Rural districts that have a significant residential component. Typical lot sizes vary from 9,000 square feet to two acres. These subdivisions may contain small farms, wooded areas, and open fields as well as residences. Allowable uses within these areas, with appropriate zoning, may include commercial facilities that serve the residential and agricultural uses in the area, and community and public facilities. The Rural designation does not necessarily mean that these areas should be further subdivided to smaller lots. Most lack the infrastructure necessary to allow further subdivision.

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

- Enhance the role of existing and new village/town centers by allowing expanded commercial uses, facilitating the development of farmers markets and community gathering places, opportunities for special needs housing, and infrastructure to support more compact development form and multi-modal travel.

Economic Element

- Provide infrastructure support for youth education and job training in the technology and agricultural sectors.

The proposed request will allow the applicants an opportunity to improve their quality of life, provide an economic environment which allows this opportunity and increase the development of the agricultural and 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) was adopted in 2008, with the subject parcel located within the Hawaiian Paradise Park Subdivision. The proposed vendor market 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 PCDP.

As mentioned above, while the State Department of Transportation (HDOT) did not object to the proposed Special Permit request, its comments indicate that support is conditional and dependent upon ensuring that the project does not adversely affect State highway operations. HDOT emphasized coordination for access, parking circulation, drainage, and any future expansion that could increase transportation impacts. These comments suggest concern with operational compatibility rather than opposition to the proposed use.

With respect to the Puna Community Development Plan (PCDP), the project site is not located within the identified Hawaiian Paradise Park Regional Town Center where commercial activity is generally encouraged. Although the site is within an area identified as having potential for light industrial development, the proposed vendor market represents a commercial use within an Agricultural District and adjacent to residential and agricultural uses. Therefore, the project does not directly advance the PCDP's preferred concentration of commercial activities within designated town or village centers. Additionally, Table 5-1 of the PCDP states the goal of "access to a paved road, except that there should be no direct access or visibility from either Highway 11 or Highway 130; no "drive-thru" commercial use." Highway 130 serves as the primary arterial roadway into and out of lower Puna. Arterials roadways are meant to carry a high volume of vehicles from one region to another; however, when commercial driveways directly access the highway, it reduces the function of the roadway and can decrease traffic safety. Given that the PCDP supports no direct access onto the highway, the Director recommends including a condition to limit access to come only from 33rd Avenue and to require a landscape buffer at the property's frontage on Kea'au-Pāhoa Road (Highway 130).

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 in proximity of the shoreline and will not be impacted by coastal hazards or affect beach erosion, coastal ecosystems, and marine resources as the

property sits approximately 4 miles from the closest shoreline. 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: The subject property is a previously disturbed agricultural lot located within an established subdivision. Review of available agency records, project materials, and GIS databases did not identify any known archaeological sites, historic properties, traditional gathering areas, cultural sites, or ongoing Native Hawaiian traditional and customary practices within the project area. No evidence was presented (in the application or by the applicant) indicating the exercise of protected Native Hawaiian rights on the subject parcel.

Possible adverse effect or impairment of valued resources: The proposed project consists of 5 vendor structures and 1 storage building located on a previously developed lot. No cultural resources or traditional customary Native Hawaiian practices were identified within the project area. Because no protected resources or practices were identified, the proposal is not expected to adversely affect or impair traditional and customary Native Hawaiian rights.

Feasible actions to protect native Hawaiian rights: Because no cultural resources, traditional customary practices, or Native Hawaiian rights were

identified within the project area, no specific protective measures are necessary. Based on the available record, approval of the proposed action will not impair the exercise of protected 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 vendor market 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 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, received on November 19, 2025, 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. 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 the proposed operations.
4. Prior to the issuance of a water commitment by the Department of Water Supply, the applicant shall submit the anticipated maximum daily water

usage calculations as recommended by a registered engineer, and a water commitment deposit in accordance with the “Water Commitment Guidelines Policy” to the Department of Water Supply within one hundred eighty (180) days from the effective date of this permit.

5. Prior to commencement of the proposed use, the Applicant shall secure Final Plan Approval from the Planning Director in accordance with the Zoning Code, Sections 25-2-71(f), 25-2-72, 25-2-76 and 25-2-77. Plans shall identify existing and proposed structures, fire protection measures, landscaping, signage, parking stalls, driveways and other improvements associated with the uses.
6. Prior to commencement of the proposed use, the Applicant shall secure and finalize all required building permits for the vendor stalls and storage structures to be used for the proposed use, meeting with approval of the Department of Public Works.
7. Construction of the proposed restroom facility shall be completed within two (2) years from the effective date of this permit.
8. A thick landscape screen shall be provided for the purpose of mitigating any adverse noise or visual impacts to adjacent properties and for limiting the visibility of the vendor market from the highway. Landscaping shall be established and maintained at a minimum height of ten (10) feet and minimum depth of four (4) feet within and along the west property boundary and be designed to provide a complete visual screen from Highway 130 when the landscaping is fully mature. The Applicant shall immediately replace any trees that die in the future with fully mature trees. Landscaping shall be established and maintained at a minimum height of ten (10) feet and minimum depth of four (4) feet within and along the north, east and south property boundaries, unless otherwise agreed to with neighboring property owners.
9. Access to the subject property shall be limited to 33rd Avenue. Access to and from Highway 130 is prohibited.

10. The hours of operation shall be limited to 9:00 am to 7:00 pm daily.
11. 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.
12. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
 - A. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the Applicant and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
 - C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
 - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).
13. 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.