



Planning Commission

LORRAINE R. INOUIYE
Mayor

25 Aupuni Street, Rm. 109 • Hilo, Hawaii 96720 • (808) 961-8288

CERTIFIED MAIL

March 5, 1991

Mr. Douglas Gabriel
Administrative Director
Malamalama Schools, Inc.
SR 13031
Keaau, HI 96749

Dear Mr. Gabriel:

Special Permit Application
Applicant: Malamalama Schools, Inc.
TMK: 1-5-17:61

The Planning Commission at its duly held public hearing on February 21, 1991, voted to approve your application, Special Permit No. 770, to allow the continuation of a pre-school and day care center on one acre of land situated within the State Land Use Agricultural District. The property is located at the western corner of the Paradise Drive-31st Street intersection, approximately 1,350 feet makai of the Pahoa Road, Hawaiian Paradise Park Subdivision, Keaau, Puna, Hawaii.

Approval of this request is based on the following:

The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawaii 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 Hawaii. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. The Agricultural District includes areas which are not used for, or which are not suited to, agricultural and ancillary activities by reason of topography, soils, and related characteristics. The land is identified by the Soil Conservation Service as pahoehoe lava. The soil is classified as Very Poor by the Land Study Bureau's Overall Master Productivity Rating. Furthermore, the land is

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classified as Existing Urban Development by the Department of Agriculture's ALISH map. The applicant proposes to continue a temporary school use which was established in 1981. No additional structures will be constructed. It is determined that the continuation of the preschool and daycare use will not affect the agricultural productivity of the property or the region.

The desired use will not adversely affect the surrounding properties. The size of the property is adequate to buffer impacts to neighboring properties from the school use. As previously mentioned, the facility has been operating at this site for over nine years on a temporary basis. Since the preschool/day care center has become a permanent, rather than a temporary, use, it is recommended that the driveway, parking and drop-off area be paved in order to minimize dust and noise and to assure safe access to the facility.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection. Access to water for fire fighting capability has been provided by the applicant. The 20-foot wide paved roadway accessing the property is adequate to accommodate the existing and proposed traffic. The Paradise Hui Hanalike, who maintains the private road system, had no objection to the proposed use of the road. Consulted agencies had no objection to the request.

Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established. The Puna district has experienced tremendous growth in population in recent years. The proximity of the 8,000+-lot Paradise Park Subdivision to the Hilo urban and employment center has contributed to this growth. Because of the number of households with working parents in the subdivision, there is a need for local child care services. The proposed center will help to fill this need.

The use will not substantially alter or change the essential character of the land and the present use. The proposed use will be conducted within an existing structure. Because of the small scale of the project, the rural atmosphere will be maintained and there will be no significant change in the character of the land.

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The proposed use is consistent with the General Plan goals of the Land Use Element to "Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the county" and "The county shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment."

Based on the above considerations, it is determined that a preschool and day care center is an unusual and reasonable use of land, which would not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

Approval of this request is subject to the following conditions:

1. The applicant, successors or assigns shall comply with all of the stated conditions of approval.
2. Final Plan Approval for the proposed preschool and related improvements shall be secured from the Planning Department within one year from the effective date of the permit. To assure adequate time for plan approval review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted a minimum of forty-five days prior to the date by which plan approval must be secured. Plans shall identify structures, landscaping, paved parking stalls, and paved driveway and drop-off area associated with the proposed use. Parking shall comply with the requirements of Chapter 25 (Zoning Code). No parking variance from the Code shall be applied for or granted. Parking for all functions shall be maintained on the subject property.
3. Construction of any required improvements shall commence within one year of receipt of Final Plan Approval and be completed within one year thereafter.
4. The preschool/daycare use shall be limited to no more than twenty-six (26) children. Hours of operation shall be limited to Monday through Friday, 7:00 am to 2:30 pm.
5. Comply with all other applicable laws, rules, regulations and requirements.
6. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the

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permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.

7. 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, successors or assigns, and that are not the result of their fault or negligence; b) the 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; and 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). Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate procedures to revoke the permit.

This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

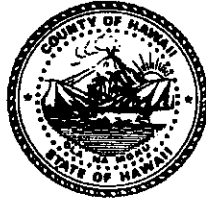
Please feel free to contact the Planning Department if there are any questions on this matter.

Sincerely,



Fred Y. Fujimoto
Chairman, Planning Commission

xc: Department of Public Works
Department of Human Services-Clyde Nekoba
Department of Water Supply
County Real Property Tax Division
State Land Use Commission



County of Hawai'i

WINDWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

JUN 30 2011

Reverend R. Taggart
HCR 2 Box 6277
Kea'au, HI 96749

Dear Reverend Taggart:

Special Permit (SPP 770)

Applicant: 1st Church of Religious Science

Request: Amend SPP 770 to Allow a Spiritual Center and Educational Annex

Tax Map Key: 1-5-017:061

The Windward Planning Commission at its duly held public hearing on June 2, 2011, voted to approve the above-referenced request for an amendment to Special Permit No. 770 to allow the establishment of a spiritual center and educational annex/meeting hall in addition to the existing preschool and day care center complex that was permitted on the subject property through the issuance of Special Permit No. 770. The 1.0 acre property, located within the State Land Use Agricultural District, is situated at the southeastern corner of Paradise Drive and 31st Avenue, approximately 1,350 feet makai (northeast) of the Kea'au-Pāhoa Highway and Paradise Drive intersection, Hawaiian Paradise Park Subdivision, Kea'au, Puna, Hawai'i.

Approval of the request is based on the following:

Special Permit No. 488 was issued to Malamalama School on June 9, 1981 to allow the establishment of a preschool and daycare center on the subject property. This permit expired on April 25, 1990. In order to continue operating the preschool and daycare center, Malamalama School applied for and received Special Permit No. 770 on February 21, 1991. In 1998, Malamalama School relocated their preschool/daycare operations to another property within the subdivision.

Since purchasing the property in 1998, the applicant has been operating a spiritual center and educational annex within the former preschool/daycare building. On

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JUN 30 2011

February 23, 2011, the applicant submitted an application for plan approval to establish a meeting hall on the property. The Planning Department returned the application and notified the applicant that the proposed meeting hall was beyond the scope of Special Permit No. 770 and, therefore, approval of an amendment would be required before the meeting hall could be established.

The applicant is requesting to amend Special Permit No. 770 in order to legitimize the operation of an educational annex within the former preschool/daycare building and to allow the establishment of a spiritual center/meeting hall on the property. The applicant would like to continue the educational use of the property by allowing students (such as students of the Hawai'i Academy of Arts and Science Charter School) to use the existing building as an education annex rather than as a preschool/day care center. The annex will be used for student testing and individual tutoring during the week between 8 a.m. and 5 p.m. Up to six teachers and twelve students would utilize the facility at one time. The applicant also proposes to construct an approximately 2,400-square foot meeting hall/spiritual center. This facility will be used primarily for a Sunday service between 10 a.m. to noon and for other activities associated with the spiritual center such as choir practice, classes and workshops held in the evenings and on the weekends, mid-week meditation groups, Alcoholics Anonymous meetings, and special events. Parking will be provided on-site.

The criteria for approving a Special Permit are based on Rule 6-6 in the Planning Commission Rules. Rule 6-6 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, as amended.

The proposed use is an unusual and reasonable use of land situated within the State Land Use Agricultural District and would promote the effectiveness and objectives of the State Land Use Law and Regulations and Chapter 205, HRS, as amended. In recognizing that lands within agricultural district 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 use is unusual in that it is not agricultural in nature. However, community facilities such as educational buildings and churches are considered reasonable, particularly in rural areas and on property that is not ideal for agricultural productivity.

The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands for those uses to which they are best suited in the

interest of the public 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. The property is not classified by the State or County as important or prime agricultural land. Therefore, the proposed use will not adversely affect the preservation and agricultural use of the County's prime agricultural lands, and is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

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. 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 would not adversely affect surrounding properties. Surrounding properties are similarly zoned A-1a and are approximately 1 acre in size. The nearest residence is located about 120 feet away across Paradise Drive. All other adjacent properties are either vacant or developed with residences. A temporary increase in noise and dust may occur during construction of the meeting hall/ spiritual center. The growth of natural vegetation on surrounding properties already provides significant landscape buffers between the subject property and neighboring properties; however a condition of approval will require the applicant provide landscaping around the perimeter of the property to fill in any "gaps" in the natural growth. A standard condition that is normally required of churches and other community-type land uses is the paving of any driveways and parking stalls in order to reduce dust at the site from adversely affecting surrounding properties. With the implementation of these conditions, the proposed use is not anticipated to have an adverse affect on 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. The property has an existing access from Paradise Drive that has been in use since the property was first developed in the 1960's which the applicant proposes to limit to an ingress-only access. A new egress-only access is proposed onto 31st Avenue. Both of the roadways are maintained by the Hawaiian Paradise Park Owners Association. In July 2009, the Hawaiian Paradise Park Owners Association added a restricted driveway policy to their bylaws. The policy prohibits new accesses onto Paradise Drive and the other main mauka-makai roadways within the subdivision. In their letter, the Association requests that the applicant close the Paradise Drive access and restrict all ingress and

egress to a new access on 31st Avenue. The applicant has proposed to restrict the existing driveway to an ingress-only access in order to reduce the number of vehicle movements at this access. The Planning Department believes that this is a reasonable compromise since the access on Paradise Drive has been in place for years and existed prior to the Association's bylaw change. Traffic in the area would increase by about 20 vehicles on Sundays as a result of the proposed spiritual center use. Traffic is unlikely to substantially increase due to the proposed educational annex use. County water is available to the property. The applicant may be required to install a larger or additional water meter if water usage from the proposed use exceeds the existing meter's allocation. Wastewater from the existing preschool/daycare building is disposed of into a cesspool and wastewater from the proposed spiritual center/meeting hall will be disposed of into a septic system. The property is situated within an area designated as Flood Zone X, an area determined to be outside the 500-year flood plain. Electricity and telephone are available to the property and police and fire services are available nearby in Pāhoa. A condition of approval will be included to require the applicant meet all applicable County, State and Federal laws, rules, regulations and requirements. Thus, 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. Many of the subdivisions in Puna that were created during this time on Agricultural-zoned land have been transitioning to residential uses. 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 may be allowed.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The property is situated on soil that is unclassified by the Department of Agriculture's ALISH Map, and is classified as "E" or "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating. The properties soil type is pāhoehoe lava which has no soil covering and is typically bare of vegetation except for mosses and lichens. The property is located on lands designated Agricultural by the State Land Use Commission and zoned Agricultural-1 acre (A-1a) by the County; however due to the properties poor soil quality and relatively small size (1 acre) it is not well suited for agricultural productivity.

(F) The use will not substantially alter or change the essential character of the land and the present use. The property was developed in 1960 with a single-

family dwelling. In 1981 the dwelling was converted and used by Malamalama School as a preschool/day care center until 1998. Since 1998 this building has been used by the applicant as a spiritual center and educational annex. As part of the applicant's request, a new meeting hall will be constructed and used as a spiritual center. A slight increase in traffic on Sundays will occur but is not expected to change the character of the land. Thus, the proposed use will not substantially alter or change the essential character of the land or its present use.

(G) The request will not be contrary to the General Plan, Puna Community Development Plan (CDP) 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 property is located in an area identified as Rural in the General Plan. This category includes existing subdivisions in the State Land Use Agricultural and Rural districts that have a significant residential component. 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 property has been used for educational purposes since 1981. Continuation of the educational use of the property and the addition of a spiritual center/meeting hall which is also considered a community-type land use is consistent with the LUPAG map designation. The primary land use goal of the Puna Community Development Plan (PCDP) is to direct urban uses towards "village centers." The subject property is located outside of the Hawaiian Paradise Park regional town center and village centers; however, the educational use of the property was established prior to creation or adoption of the PCDP. Thus, it is reasonable to allow the continued use of the property for educational and other community-type land uses such as a meeting hall/spiritual center.

Based on the above, the request to amend Special Permit No. 770 to allow the establishment of a spiritual center/meeting hall and conversion of a preschool/daycare center to an educational annex is an unusual and reasonable use of land within the State Land Use Agricultural District, and would not be contrary to the objectives sought to be accomplished by the State Land Use Law Rules and Regulations or the original reasons for approving this permit. Approval of this request is subject to the following conditions. Material to be added is underscored; material to be deleted is bracketed and struck through.

~~[1. The applicant, successors or assigns shall comply with all of the stated conditions of approval.~~

- ~~2. Final Plan Approval for the proposed preschool and related improvements shall be secured from the Planning Department within one year from the effective date of the permit. To assure adequate time for plan approval review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted a minimum of forty-five days prior to the date by which plan approval must be secured. Plans shall identify structures, landscaping, paved parking stalls, and paved driveway and drop-off area associated with the proposed use. Parking shall comply with the requirements of Chapter 25 (Zoning Code). No parking variance from the Code shall be applied for or granted. Parking for all functions shall be maintained on the subject property.~~
- ~~3. Construction of any required improvements shall commence within one year of receipt of Final Plan Approval and be completed one year thereafter.~~
- ~~4. The preschool/daycare use shall be limited to no more than twenty-six (26) children. Hours of operation shall be limited to Monday through Friday, 7:00 am to 2:30 pm.~~
- ~~5. Comply with all other applicable laws, rules, regulations and requirements.~~
- ~~6. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.~~
- ~~7. 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, successors or assigns, and that are not the result of their fault or negligence; b) the 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~~

Based on the above, the request to amend Special Permit No. 770 to allow the establishment of a spiritual center/meeting hall and conversion of a preschool/daycare center to an educational annex is an unusual and reasonable use of land within the State Land Use Agricultural District, and would not be contrary to the objectives sought to be accomplished by the State Land Use Law Rules and Regulations or the original reasons for approving this permit. Approval of this request is subject to the following conditions. Material to be added is underscored; material to be deleted is bracketed and struck through.

- ~~[1. The applicant, successors or assigns shall comply with all of the stated conditions of approval.~~

3. Within six (6) months from the effective date of this permit the applicant shall submit anticipated maximum daily water usage calculations prepared by a licensed engineer to the Department of Water Supply. Prior to issuance of a Certificate of Occupancy for the meeting hall, the applicant shall install an additional or larger water meter if required by the Department of Water Supply. The applicant shall promptly install any improvements (such as a water catchment tank) recommended by the Fire Department to provide adequate fire protection for the proposed use.
4. Final Plan Approval shall be secured from the Planning Department prior to securing building permits for the proposed use or within one year from the effective date of the amended permit (whichever occurs first) in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify existing and proposed structures, fire protection measures, driveway and parking stalls (gravel, grass-pavers, asphalt or asphalt-concrete) and landscaping associated with the proposed uses. Parking for all functions shall be maintained on the subject property and comply with the requirements of Chapter 25 (Zoning Code). Detailed landscaping plans shall include landscaping buffers along the property boundaries compliant with Planning Department Rule 17-6(b)(2)(B).
5. Building permits shall be secured and finalized for the proposed meeting hall/spiritual center five (5) years from the effective date of the amended permit.
6. The existing driveway on Paradise Drive shall be eliminated.
7. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources - State Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-HPD when it finds that sufficient mitigation measures have been taken.
8. Comply with all applicable County, State and Federal laws, rules, regulations and requirements.
9. An initial extension of time for the performance of conditions within the amended permit may be granted by the Planning Director upon the following circumstances:
 - A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors, or assigns and that are not the result of their fault or negligence.

Reverend R. Taggart

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- 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).

Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke the permit.

This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Should you have any questions, please contact Daryn Arai of the Planning Department at 961-8288.

Sincerely,



Zendo Kern, Chairman
Windward Planning Commission

L1stchurchofreligioussciencepp770

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Department of Land & Natural Resources-HPD
Mr. Gilbert Bailado