

## County of Hawai'i

### PLANNING COMMISSION

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June 16, 2006

Mr. Gregory Mooers  
P.O. Box 1101  
Kamuela, HI 96743

Dear Mr. Mooers:

Special Permit Application (SPP 06-000025)

Applicant: New Moon Foundation

Request: Development of a Contemplative Education Center on 13.6 Acres of  
Land Within the State Land Use Agricultural District

Tax Map Key: 5-3-5:pors 5, 24, 39, 43, 45-47

The Planning Commission at its duly held public hearing on May 26, 2006, voted to approve the above-referenced application to allow the establishment of a Contemplative Education Center on 13.649 acres of land situated within the State Land Use Agricultural District. The center will include accommodations for a maximum of 80 overnight guests. The property, which includes a portion of the Bond Historic District, is located off Iole Road, approximately 4,000 feet southwest of the Iole Road and Akoni Pule Highway (Highway 270) intersection, Iole, North Kohala, Hawaii.

Approval of this request is based on the following:

The applicant is requesting a Special Permit to allow the establishment of a Contemplative Education Center (CEC) on a 13.649-acre portion of 44.882 acres of land within and adjacent to the Bond Historic District. New Moon Foundation will offer practices, programs, workshops and grants in the areas of Healing Encounters, Inspired Leadership, Land Stewardship and Roots of our Present to local and global communities. The CEC will offer the following proposed services:

- Sleeping accommodations with a total of 39 units to accommodate a total of 80 overnight guests
- Single and multi-day programs
- Meeting and conference space

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- Venue for special events.

New Moon Foundation will be preserving and restoring all historic buildings in the Bond Historic District, which includes the Kohala Girls' School, associated buildings and the Homestead area. Only very limited construction will occur within the actual Historic District. The applicant will be retaining the existing Kohala Girls' School structures and adding new structures and features outside of the Historic District. The following is a list of the existing and proposed structures within the Bond Historic District.

The existing Kohala Girl's School structures to be preserved include:

- The Carriage House
- The Infirmary
- The Bake House
- The Chapel
- The Dormitory
- The Carter College
- The Dining Hall.

The proposed structures and features include:

- Outdoor dining pavilion with open decking
- Nursery and garden, along with walking paths.

The only existing structure outside of the Bond Historic District is a gazebo. The following is a list of the proposed structures and features to be constructed outside of the Bond Historic District:

- Contemplative Hall
- Support Center
- 10 tent structures (tentallows) on wooden platforms
- Amphitheater
- Hydroelectric facility
- Pool area
- Stone campfire pit
- 10,000-square foot parking area.

The grounds for approving a Special Permit are based on Rule 6-6 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, Hawaii 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 Chapter 205, Hawaii Revised Statutes (HRS), as amended. In recognizing that lands within the 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. In addition, 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 land on which the proposed use will be located is classified as "C" or "Fair" for agricultural productivity by the Land Study Bureau. The Agricultural Lands of Importance to the State of Hawaii (ALISH) Map classifies the project site as Existing Urban Development at the area of the Kohala Girls' School. The remainder of the site is classified as Prime Agricultural Land and unclassified. The project site is 13.649 acres in size and has existing historical structures within the portion of the project site in the Bond Historic District. The proposed use as a Contemplative Education Center will be a continuation of educational uses, which have been occurring on this site for over a century. The area outside of the Historic District is mainly vacant of structures and has traditionally been used for agricultural uses, including taro loi, sugar, and macadamia nut cultivation, and ranching activities. The project site and proposed programs will enhance the agricultural uses and will provide educational opportunities for visitors and residents that would not otherwise be available.

Although the granting of the proposed use would establish non-agricultural uses on the property, the proposed use would meet the needs of the existing community by providing educational and cultural opportunities for the area. Therefore, the approval of the proposed request will not have a significant adverse effect on the County's agricultural land inventory. It is determined that the proposed use is an unusual and reasonable use of land situated within the Agricultural District and will not be contrary to the objectives of Chapter 205, HRS, as amended.

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 as follows:

(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. The applicant has met this criterion based on the previous discussion listed above, mainly that 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. The approval to establish a contemplative education center on the property is not anticipated to have a significant adverse effect on the County's agricultural land inventory.

(B) The desired use would not adversely affect surrounding properties. The project site is located on Iole Road in North Kohala, with a portion of the site located within the Bond Historic District. The surrounding properties are similarly zoned A-20a and consist mainly of larger lots with agricultural uses. The applicant owns a majority of the surrounding properties and Kamehameha Schools owns several larger parcels to the east. The nearest residences are located on Iole Road closer to the Akoni Pule Highway. Possible noise generated by the proposed use is not expected to be significant. The project site is of sufficient size for adequate setbacks and buffers that will minimize any physical, social, or other impacts. As of the date of this writing, the Planning Department has not received any letters of opposition for this proposed request.

Based on the above discussion, the approval to establish a contemplative education center on the subject property is not anticipated to adversely affect the surrounding property owners. Based on the above discussion, the applicant has met this criterion.

(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 property is from Iole Road (formerly Bond Road), which has a 15 to 18 foot pavement width within an approximate 20-foot right-of-way. There is a private roadway lot (parcel 54) owned by the applicant that abuts Iole Road along the east side of the road. The private roadway is unimproved and continues mauka beyond the end of Iole Road.

A Traffic Impact Analysis Report (TIAR) was prepared for the project by Phillip Rowell and Associates in October of 2005. The report summarized and concluded that because the levels-of-service are high, the traffic impacts of project generated traffic is insignificant and no mitigation is recommended. A separate left turn lane from Akoni-Pule Highway into the project is not required based on guidelines described by the

Transportation Research Board. The proposed use will increase the amount of traffic on Iole Road to the project site. Based on this, a condition of approval will be added to require the applicant to widen the paved roadway width to 20 feet within the existing Iole Street right-of-way from the Akoni-Pule Highway to the parking area entrance and the Kohala Girls' School entrance.

County water can be made available to the project site from the Akoni-Pule Highway. The applicant will be installing a 70,000-gallon water tank for fire protection. Wastewater will be disposed of by either modifying the existing system(s) or by installing new wastewater treatment systems in conformance with the requirements of the State Department of Health. The applicant is proposing to construct a hydroelectric plant to provide self-sustainable electricity to the project site, which will be supplemented by a combination of photovoltaic (solar), wind-power, and propane. Telephone service will be made available to the property. The applicant is proposing to place all utility lines underground. All other essential services are available to the site. Based on the above discussion, the applicant has met this criterion.

(D) Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established. 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, a community may establish various "non-agricultural" services that may not be available or allowed by zoning for its residents. The request to allow a contemplative education center in this area is in line with the intent for allowing the issuance of a Special Permit. The approval of this request will also preserve an area in North Kohala known for its historical, cultural and architectural significance. Based on the above discussion, the applicant has met this criterion.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The project site is situated on land characterized as Ainakea silty clay loam, 3 to 12 percent slopes and Rough Broken Land. The soil is classified as "C" or "Fair" for agricultural productivity. The Agricultural Lands of Importance to the State of Hawaii (ALISH) Map classifies the project site as Existing Urban Development at the area of the Kohala Girls' School, and the remainder of the site as Prime Agricultural Land & unclassified. These classifications reveal that the soil conditions of portions of the project site are fairly suited for agricultural uses. The area of the Kohala Girls' School is an exception, which comprises approximately 1/3 of the project site, which has been established in urban uses for over a century. Additionally, the proposed request will utilize only a 13.649-acre portion of 44.882 acres of land, with agricultural uses are being conducted on portions of the properties not included in the project site. Lastly, the applicant is proposing to restore forests for watershed and wildlife habitat, re-

introduce native and/or endangered species to the area, and other restoration projects to revive inactive agricultural uses in the area. Therefore, based on the above information, this criterion has been met.

(F) The use will not substantially alter or change the essential character of the land and the present use. The proposed request to establish a contemplative education center in this area would alter and change the essential character of the land and its present use, but the change would not be considered substantial because of the existing historical structures and the continuation of educational uses that have been occurring on this site for over a century. The changes would occur mainly by the increased traffic to the area and the addition of the additional structures, such as the Contemplative Hall, the Support Center, the tentalows, amphitheater, hydroelectric facility and parking area outside of the Bond Historic District, which is presently vacant of structures. The proposed contemplative education center will be conducted mainly within the existing historical structures and several proposed structures on-site. A condition of approval will be added to require that overnight guests be enrolled in the available programs, classes or other activities offered at the education center. The intention for this requirement is to keep the approved use as a contemplative education center and not as a place to offer overnight accommodations unrelated to an activity. The patrons attending the center will be there as part of the offered programs. Based on the above discussion, this criterion has been met.

(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 area where the proposed request would be located is designated as Important Agricultural Land, which includes lands with better potential for sustained high agricultural yields because of soil type, climate, topography, or other factors. The proposed request will be preserving and utilizing the existing historical structures within the Bond Historical District.

The proposed request would complement the following goals, policies and standards of the following elements of the General Plan:

Economic Element:

- Economic development and improvement shall be in balance with the physical, social and cultural environments of the island of Hawaii.

- Provide an economic environment that allows new, expanded, or improved economic opportunities that are compatible with the County's cultural, natural and social environment.

Land Use Element:

- Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County.
- Encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

Historic Sites:

- Protect, restore, and enhance the sites, buildings, and objects of significant historical and cultural importance to Hawaii.
- Appropriate access to significant historic sites, buildings, and objects of public interest should be made available.
- Encourage the restoration of significant sites on private lands.

One of the main assets of the proposed request will be to protect, restore and enhance the Kohala Girls' School within the Bond Historic District. It will also provide an economic environment that allows for new economic opportunities, compatible with the County's cultural environment in North Kohala. The proposed request will allow a contemplative education center to be established in the community to help meet the needs of its residents in keeping with the social, cultural, and physical environments of this area within the County. Thus, the proposed request is consistent with the Land Use, Economic and Historic Sites goals and policies of the General Plan. Based on the above discussion, the applicant has met this criterion.

The proposed use is not contrary to the objectives sought to be accomplished by Chapter 205A, Hawaii Revised Statutes, relating to coastal zone management program. There is no record of a designated public access to the shoreline or mountain areas traversing the property. Due to the project site's distance from the shoreline, the property will not impact any recreational resources, scenic and open space or visual resources, coastal ecosystems and marine coastal resources.

The request will not have a significant adverse impact to traditional and customary Hawaiian Rights. In view of the recent Hawaii 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: The applicant has presented the following information from which the Planning Commission can determine the valued cultural, historical, and natural resources within the area sought for the Special Permit:

- A Biological Survey of the Bond Historic District conducted on December 1999 by several trained and experienced professional biologists from the Department of Natural Sciences at Bishop Museum.
- An Archaeological Inventory Survey for the proposed New Moon Contemplative Education Center conducted by Thomas R. Wolforth, M.S. of Scientific Consultant Services, Inc in August of 2005, which includes a Cultural Impact Assessment conducted by Ms. Lani Bowman.

The valuable cultural, historical, and natural resources found in the permit area: As the Bond Historic District is included in the National and Hawaii Historic Registers (Site No. 10-02-7100), the historical and cultural importance of the well-inventoried collection of historic buildings within the unique 19<sup>th</sup> century landscape that comprises the Bond Historic District has already been recognized, documented and protected.

Possible adverse effect or impairment of valued resources: A major part of the permit request is the restoration and preservation of the existing historic Kohala Girls' School structures within the Bond Historic District. The applicant has been working with the State Historic Preservation Division (SHPD), to restore and renovate the various historic structures, which received little maintenance and were deteriorating rapidly. In regards to traditional and customary Native Hawaiian rights being practiced on the site, the Cultural Impact Assessment conducted by Ms. Lani Bowman concluded, based on the discussions and the historical documentation cited in the report, that there are no ongoing cultural practices being conducted on, or associated with, the property. Further, the subject property does not abut the shoreline, therefore Hawaiian gathering and fishing rights is not an issue. From a biological perspective, the Bond Historic District is a highly human-modified environment in which almost no native plants or animals now occur. Apart from the Hawaiian hawk, no federally listed endangered or threatened species, proposed or candidate endangered or threatened species, or species of concern were recorded during the survey. The few other native species recorded are not considered rare or threatened. From a conservation perspective, the area is of virtually no concern and therefore no conservation action is recommended.

Feasible actions to protect native Hawaiian rights: To the extent to which traditional and customary native Hawaiian rights are exercised, the proposed action will



not affect traditional Hawaiian rights. The proposed project will not restrict the use of natural resources along the shoreline, as the property is not in close proximity to the shoreline. A condition of approval will protect any unidentified cultural, historical, and natural resource in the event any are encountered during construction.

Based on the above considerations, the request to establish a contemplative education center on the subject project site would be 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.

Approval of this request is subject to the following conditions:

1. The applicant, successor or assigns shall be responsible for complying with all stated conditions of approval.
2. Prior to the issuance of a water commitment by the Department of Water Supply, the applicant shall submit the anticipated maximum daily potable water usage calculations as recommended by a professional engineer licensed in the State of Hawaii, and a water commitment deposit in accordance with the "Water Commitment Guidelines Policy" to the Department of Water Supply within ninety days from the effective date of this permit. The applicant shall submit an Elevation Agreement, which shall include a schematic diagram prepared by a professional engineer licensed in the State of Hawaii showing how each lot will receive adequate pressure. The agreement shall be executed for each parcel served. The applicant shall execute an Out-of-Bounds Agreement with the Department of Water Supply for service to the parcels.
3. The project shall be operated as a contemplative education center. All overnight guests shall be enrolled in a program, class or other activity offered at the center. All advertising shall be consistent with this requirement.
4. A description of the 13.649-acre permit area in map and written form by metes and bounds as certified by a registered surveyor shall be submitted to the Planning Department prior to the receipt of Final Plan Approval. All activities associated with the proposed use shall be conducted entirely within the permit area.
5. Construction of the proposed contemplative education center shall be completed within five (5) years from the effective date of this permit. Prior to construction, the applicant, successors or assigns shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-

2-70, Chapter 25 (Zoning Code), Hawaii County Code. Plans shall identify all existing and/or proposed structures, paved driveway access and paved parking stalls associated with the proposed development. Landscaping shall also be indicated on the plans for the purpose of mitigating any adverse noise or visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements).

6. The contemplative education center shall be limited to 39 guest rooms and 80 overnight guests at any given time. Additional day time guests are allowed.
7. Special events held in the amphitheater in the evening shall be limited to one event per month and shall end no later than 9:00 p.m.
8. The applicant shall provide improvements to the County maintained Iole Road meeting with the approval of the Planning Director in consultation with the Department of Public Works. The road shall be widened and paved to provide as wide a pavement as possible, up to 20-feet, while still maintaining the historic rock walls and mature trees. Relocation of utility lines and drainage improvements will meet with the approval of the Department of Public Works. Turnouts will be provided where possible to accommodate two-way traffic.
9. The applicant shall provide fire protection measures meeting with the approval of the Fire Department prior to the issuance of a certificate of occupancy.
10. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of a Certificate of Occupancy.
11. The applicant shall install a wastewater system meeting with the approval of the Department of Health.
12. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties. A drainage study shall be prepared by a licensed civil engineer and submitted to the Department of Public Works prior to issuance of a construction permit. Any recommended drainage improvements, if required, shall be constructed meeting with the approval of the Department of Public Works prior to receipt of a Certificate of Occupancy.

13. An Archaeological Data Recovery and Preservation Plan shall be submitted for the review and approval of the Planning Director, in consultation with the Department of Land and Natural Resources – State Historic Preservation Division (DLNR-SHPD). A copy of the approved Final Archaeological Data Recovery and Preservation Plan shall be submitted to the Planning Director for its files prior to submitting plans for Final Plan Approval review or prior to the issuance of any land alteration permits, whichever occurs first.
14. 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 Resource – State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.
15. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
16. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of effective date of this 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.
17. An initial extension of time for the performance of conditions within this 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, successor, or assigns, and that are not the result of their fault or negligence.
  - B. Granting of the time extension would not be contrary to the original reasons for granting of the permit.
  - C. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
  - D. The time extension granted does not 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).


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Further, should any of these conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke this Special 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 Norman Hayashi of the Planning Department at 961-8288, ext no. 205.

Sincerely,



C. Kimo Alameda, Chairman  
Planning Commission

Lnewmoon01PC

cc: New Moon Foundation  
Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
Planning Department - Kona  
State Land Use Commission  
Department of Land & Natural Resources  
Rodney Haraga, Director/DOT-Highways, Honolulu