



County of Hawai'i

WINDWARD PLANNING COMMISSION

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MAY 24 2011

Ted H. S. Hong, Esq.
P.O. Box 4217
Hilo, HI 96720

Dear Mr. Hong:

Special Permit Application (SPP 11-000115)
Applicant: Arts & Sciences Center
Request: To Establish a Charter School Campus
Tax Map Key: 1-5-006:012, 026, and Portion 002

The Windward Planning Commission at its duly held public hearing on May 4, 2011, voted to approve the above-referenced Special Permit to allow the establishment of a charter school campus offering a full range of academic and extracurricular opportunities for up to 400 students from Kindergarten through 12th grade, and provide continuing education and meeting facilities for the larger Pāhoa community on 14.251 acres of land situated within the State Land Use Agricultural District. The subject property is situated southeast of the Pāhoa Bypass Road and Post Office Road intersection, Nānāwale Homesteads, Pāhoa, Puna, Hawai'i.

Approval of the request is based on the following:

The applicant requests a Special Permit to allow the establishment of a charter school campus offering a full range of academic and extracurricular opportunities for up to 400 students from Kindergarten through 12th grade, and provide continuing education and meeting facilities for the larger Pāhoa community. The property is located approximately 0.5 miles northeast of Pāhoa Town, and consists of three parcels totaling 14.251 acres in size which are bordered on the southwest by Pāhoa Bypass (Highway 130) and on the northwest by Post Office Road.

In 2001 the Hawai'i Academy of Arts and Science New Century Public Charter School (HAAS) began operating on the subject property and today serves 250 students

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on-site. This permit request seeks to legitimize the current operation and allow the expansion of the charter school campus to serve up to 400 students on-site, as well as provide continuing education and meeting facilities for the larger Pāhoa community. Upon full enrollment, approximately 60 staff members will be needed to serve the student population. Hours of operation for the overall campus will be from 7:00 a.m. to 10:00 p.m. daily. Class times will be staggered beginning between 8:00 a.m. and 8:30 a.m. and ending between 1:45 p.m. and 2:30 p.m. The applicant estimates about 90% of the use of the campus will occur Monday through Friday, 7:00 a.m. to 4:00 p.m. In addition, the campus will be available for open houses, parent meetings, an annual haunted house event, and about two school dances per semester that will end by 10:00 p.m. Meetings, workshops, and arts and sciences instruction that is aligned with the applicant's goals of providing community based learning opportunities will occur on the campus during weekends. The timing of expansion of the campus beyond the existing facilities and enrollment is not known at this time.

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, Hawai'i Revised Statutes, as amended.

The proposed use is an unusual and reasonable use of land situated within the Agricultural District that would not be contrary to the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended. 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 applicant is requesting to establish a charter school and provide continuing education and meeting facilities for the larger Pāhoa community. The request is unusual in that a school is not normally considered agricultural in nature. However, it is reasonable that the proposed use be established on land located in the Agricultural district because a component of the school's curriculum is agricultural education and the applicant proposes to allow meeting facilities and a space for community events such as orchid, papaya and food festivals (i.e. Taste of Puna) that would support various agricultural-industries. Additionally, when the applicant began to establish the charter school campus in 2001, the Planning Department erred in determining that new century charter schools were exempt from the State Land Use Law, which requires a Special Permit to establish a school in the State Land Use Agricultural district. The applicant relied on the County's initial determination and established the initial component of the

charter school, thereby committing their resources and the use of these lands to the establishment of the school. It is reasonable to carefully weigh how the existing school evolved and how its continued operation and expansion on the subject properties will promote the effectiveness and objectives of the State Land Use Law. In this particular case, approval of this Special Permit to legitimize the existing charter school as well as accommodate its expansion upon the subject properties is also a reasonable use of these agricultural lands for the reasons detailed within this report.

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 uses shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. 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 considered important agricultural land. In fact the property's soils are designated "D" or "Poor" for agricultural productivity by the Land Study Bureau Soil Classification System and are unclassified by the Department of Agriculture's ALISH Map. Thus, establishment of the proposed use will not be contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

(B) The desired use would not adversely affect surrounding properties. Surrounding properties are zoned Agricultural (A-5a and A-1a) and are either undeveloped or in agricultural use. The proposed use will likely cause an increase in noise due to school bells, fire drills, students participating in outdoor recreation and agricultural instruction, and community functions such as an annual haunted house event. Use of outdoor lighting at night also has the potential to affect surrounding properties. As the campus expands in the future, construction of new buildings will temporarily increase noise, dust and traffic. However, it is unlikely that an increase in noise, dust, traffic and nighttime outdoor lighting will adversely affect surrounding properties since the immediately surrounding properties are primarily unused agricultural land and the closest dwellings are located over 400 feet away, to the north and west of the site. Providing landscaping along the perimeter of the property can further reduce any effects caused by noise, dust and nighttime outdoor lighting. As a condition of approval, the applicant will be required to provide on-site parking, drainage improvements and landscaping as necessary. These additional requirements should further minimize the possibility of impacts to the surrounding area. The existing charter school has been in operation for about 10 years. During this time, the Planning Department is not aware of a

significant number of complaints regarding operational impacts upon the surrounding properties. As of this writing, no comments or concerns have been received from surrounding property owners.

(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 from Pāhoa Bypass to the property is via Post Office Road which is also known as Nānāwale Homestead Road or Homestead Road. The speed limit for the Pāhoa Bypass has recently been reduced from 55 mph to 45 mph. The intersection of Pāhoa Bypass and Post Office Road is stop-controlled with stop signs on Post Office Road. The Pāhoa Bypass is a two-lane paved State roadway with approximately 8-foot wide paved shoulders, all within a 100-foot right-of-way. Post Office Road is a road-in-limbo, which means that although the public has a right of access through this right-of-way, it is not presently maintained by any government entity and there is no assurance that it will ever be subject to such maintenance. Post Office Road is paved approximately 30 feet in from the bypass. The remaining portion which consists of gravel and dirt, has been maintained by the applicant, and varies between 14 and 28 feet wide within an approximately 29-foot wide right-of-way. There are three graveled accesses off of Post Office Road leading into the campus and a gravel driveway runs throughout the campus circling the main buildings. The Planning Department's standard roadway requirement for dead-end streets in agricultural areas is a 20-foot wide paved roadway within a 50-foot wide right-of-way. Therefore, conditions of approval have been included to meet this requirement.

As part of the Kea'au-Pāhoa Highway (Highway 130) Improvements Project, the State Department of Transportation plans to install left-turn lanes on the Pāhoa Bypass for Kalapana-bound traffic and Kea'au-bound traffic, as well as install a right-turn lane on Post Office Road for vehicles entering the highway heading Kea'au-bound. However, these improvements are planned to be developed no sooner than 2018 as the final phase of the Highway 130 Improvement Project. *A Traffic Impact Analysis Report (TIAR) for Hawai'i Academy of Arts and Science New Century Public Charter School* was prepared on November 5, 2010 by Phillip Rowell and Associates to evaluate the impact of traffic generated by the proposed use. The report concluded that various transportation improvements will be required at the Pāhoa Bypass - Post Office Road intersection in order to reduce traffic delays and provide a safe intersection for motorists and pedestrians. Additionally, the Department of Transportation and Police Department recommend implementation of some of the same improvements that are recommended in the TIAR. Thus, conditions of approval have been added to require these improvements prior to expansion of the charter school campus. Since the school receives limited public funding

and operates as a non-profit organization, it does not have the ability to fund the needed transportation improvements on its own. Therefore, the applicant will need to partner with other entities to explore funding to implement these improvements.

Currently the property does not have direct connection to a County water meter on-site. Instead, the applicant has a private water agreement to get County water through a private waterline over TMK 1-5-006:005 from an existing 1.5-inch meter assigned to Tax Map Key 1-5-116:017. According to the Department of Water Supply, current water availability conditions in the area allow for up to 14 units or an average of 5,600 gallons per day per existing lot of record. The applicant estimates the school will require about 3,700 gallons per day at full campus build-out, thus the existing 1.5-inch water meter is adequate for providing potable water to the property. If this water source becomes unavailable in the future due to cancellation of the private water agreement, a different potable water source will need to be provided. This could be achieved by implementing one of the alternatives listed in the *Analysis of Water Need and Solutions* prepared by Paul Nash (Appendix D of the application). However, one of the alternatives (trucking potable water to the site) is not recommended by the Planning Department because it would increase truck traffic at the Post Office Road/Pāhoa Bypass intersection and may not meet Department of Health standards for public water systems. There are three 10,000-gallon catchment tanks on the property that store water for fire protection.

There is no municipal sewer system available in the area. Wastewater from the existing restroom facilities, which are located in the longhouse building on parcel 12 and in a duplex classroom building on parcel 26, is disposed of into two septic systems that have been approved by the Department of Health. Additional individual wastewater systems meeting with Department of Health requirements will be installed as needed as the campus expands in the future.

Telephone and electrical services are available to the property. Additionally, there is a 25 kilowatt net metering system with 4-6 kilowatt inverters and 144 solar photovoltaic panels installed on the property to provide an alternative energy source. Police and fire services are available about one mile to the northwest along Highway 130. Medical services are available in Pāhoa and Hilo.

Several buildings have been constructed without proper building permits. However, the applicant has been consistently working towards rectifying these building code violations and upon approval of this special permit is prepared to submit building permit applications for all unpermitted structures. Additionally, a condition of approval has been added to require continued compliance with the building code. In the future,

should the applicant not perform this condition, the Director may ask the Planning Commission to revoke the permit. Based on the above, 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. 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. Since the district boundaries were established in the 1960's, Puna's population has grown substantially and the establishment of community services, such as schools, has not kept pace with this growth. The State Land Use Commission has not designated new urban lands where these community services can be established, thus a Special Permit is the only way to provide these much needed services to the community.

(E) The land upon which the proposed use is sought is suited for the uses permitted within the district. In the past, the property was used to cultivate sugar cane and macadamia nuts. A portion of parcel 26 is still planted in macadamia nut trees. Although the property's soils are considered poor for agricultural productivity, the applicant has incorporated agriculture into the school's curriculum by creating aquaculture ponds and gardens and rehabilitating the macadamia nut orchard. Thus, the land is suitable for agriculture and the applicant will continue to use a portion of the site for agriculture-related education.

(F) The use will not substantially alter or change the essential character of the land and the present use. Prior to establishment of the existing campus in 2001, the property was abandoned farm land with overgrown sugar cane on parcels 2 and 12 and a macadamia nut orchard on parcel 26. The property was altered with construction of the existing campus buildings but the essential character of the area still remains rural, particularly on parcel 26 where the existing buildings are surrounded on three sides by a macadamia nut orchard. The campus buildings have been designed to match the surrounding rural character rather than having an institutional character typical of a public school campus. As such, there will be no change to the rural character of the land and its present use.

(G) The request will not be contrary to the General Plan and Community Development Plan. 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 project site is identified by the LUPAG map as Urban Expansion, which allows for a mix of high density, medium density, low density, industrial, industrial-commercial and/or open designations in areas where new settlements may be desirable, but where the specific settlement pattern and mix of uses have not yet been determined. Establishment of a school which is considered a community facility is consistent with the LUPAG Map designation for this area.

When the applicant initially established the charter school in 2001 the Puna Community Development Plan (PCDP) had not yet been developed and the applicant relied on the General Plan when deciding on an appropriate location for the charter school. Therefore, the charter school is located outside of the Pāhoa regional town center boundary identified in Figure 5-2 of the PCDP. The Puna CDP calls for public schools to be located within designated village/town centers so that it is convenient for students to walk or bicycle between school and home. Based on this, it would be more appropriate if this charter school was located on the same side of the Pahoia Bypass as the Pahoia town center. However, most of the students attending this charter school live outside of Pahoia Town in the agricultural subdivisions throughout lower Puna, and travel to and from school by car rather than by walking or bicycling. The PCDP recognizes schools as an important social resource, serving not only as educational institutions, but also as de facto community centers and recreation areas in rural areas where few other venues are available for meetings, events, and organized or informal sports. Legitimizing the proposed use would support these educational goals of the PCDP.

The request is not contrary to Chapter 205A, Hawai'i Revised Statutes, relating to Coastal Zone Management. The property is not proximate to the shoreline and will not be impacted by coastal hazards or affect beach erosion, coastal ecosystems and marine resources. Additionally, it is not located in the Special Management Area. There is no record of a designated public access to the shoreline or mountain areas that traverses the property. According to the applicant, no valued cultural or natural resources exist on the property and there is no evidence of any traditional and customary Native Hawaiian rights being practiced at the site. By letter dated February 6, 2009, the DLNR-State Historic Preservation Division has indicated that no historic properties will be affected because previous grubbing/grading has altered the land.

Based on the above, approval of the request to allow the establishment of a charter school campus offering a full range of academic and extracurricular opportunities for up

to 400 students from Kindergarten through 12th grade, and provide continuing education and meeting facilities for the larger Pāhoa community on approximately 14.251 acres of land would support 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, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. The proposed use shall be conducted in a manner that is substantially representative of plans and details contained within the Application for Special Permit (Planning Department Exhibit 1) and the representations made before the Windward Planning Commission on May 4, 2011.
3. Should the private water agreement between the applicant and landowners of TMK 1-5-116:017 and 1-5-006:005 be cancelled, the applicant shall install water system improvements as required by the Department of Water Supply in order to provide County water to the site for the charter school campus.
4. Within five years from the effective date of this permit, the applicant shall secure Final Subdivision Approval for the consolidation of Parcel 12 and 26 in order to remedy any violations of the yard and open space requirements in the Zoning Code.
5. The applicant shall secure Final Plan Approval for the existing charter school campus from the Planning Director in accordance with Chapter 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code within one hundred eighty (180) days of approval of this permit. Plans shall identify all existing and proposed structures, fire protection measures, unpaved driveways and parking spaces, and other improvements associated with the use. The pavement of parking spaces is not required, and any material may be used that will eliminate erosion, mud and standing water. Landscaping along the perimeter of the project site shall also be indicated on the plans in accordance with the Planning Department's Rule No. 17 (Landscaping Requirements) buffer yard requirements for the Village Commercial (CV) zone adjoining a Single-Family Residential (RS) zone. The applicant shall also secure Final Plan Approval for each new structure (except structures used solely for agricultural purposes) from the Planning Director prior to obtaining building permits.
6. Within one year from the effective date of this permit, the applicant shall secure and finalize any building permits required by the Department of Public Works-Building Division for existing structures.

7. Access to this property is provided by Post Office Road, which is a public road. Although the public has a right of access through this right-of-way, it has not been maintained by any government entity in recent years. Furthermore, there is no assurance that it will ever be subject to such maintenance.
8. A ten-foot wide future road widening strip along the properties Post Office Road frontage shall be delineated on the plans submitted for Plan Approval review. The future road widening strip shall be subdivided and dedicated when requested by the County.
9. Prior to commencement of the Fall 2011 school year, the applicant shall hire a crossing guard to prevent students from crossing the Pāhoa Bypass before and after school, and shall implement such efforts to prevent students from crossing the Pāhoa Bypass to include:
 - Requiring students and parents to sign agreements that students will not walk across the Pāhoa Bypass;
 - The School shall provide alternative means for students to cross over the Bypass on a regular basis by making available school vans to transport students safely across the Bypass; and
 - The crossing guard shall have and be able to utilize a walkie-talkie or two-way communication system to request a school van for students who seek to walk across the Bypass.
10. On-site student enrollment shall not exceed 300 students until all of these improvements have been constructed:
 - Pave Post Office Road to a width of twenty (20) feet from the Pāhoa Bypass to the easternmost campus access.
 - Reconfigure the east leg of the intersection to provide a separate right-turn lane and left-turn/through lane on Post Office Road for vehicles entering onto the Pāhoa Bypass.
 - Construct an exclusive left-turn lane on the Pāhoa Bypass heading towards Kalapana for vehicles entering onto Post Office Road.

- Construct a left-turn refuge on the Pāhoa Bypass for vehicles turning left out of Post Office Road heading towards Kalapana.
 - Construct a right-turn (deceleration) lane or taper on the Pāhoa Bypass for Keaau-bound vehicles exiting the bypass turning right onto Post Office Road.
 - Provide a traffic signal at the Pāhoa Bypass - Post Office Road intersection if required by the Department of Transportation.
11. The applicant shall continue to implement a traffic management plan by staggering school pick-up and drop-off times, encouraging carpooling, bus and van services.
 12. Special events are intended for community gatherings and meetings and shall be limited in size to no more than 100 participants at the site at one time and shall not extend beyond 10:00 p.m.
 13. All development-generated runoff shall be disposed of onsite and shall not be directed toward any adjacent properties.
 14. The method of sewage disposal shall meet with the requirements of the Department of Health.
 15. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to Final Plan Approval for the existing campus.
 16. 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-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
 17. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
 18. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of this Special Permit. The report shall include, but not be limited to, the status of the development and the extent to which the

conditions of approval are being satisfied. This condition shall remain in effect until all of the conditions of approval have been satisfied and the Planning Director acknowledges that further reports are not required.

19. An initial extension of time for the performance of conditions 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.
 - 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).
 - E. If the applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the Planning Commission for appropriate action.

Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning 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.

Ted H. S. Hong, Esq.
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Should you have any questions, please contact Daryn Arai of the Planning Department at 961-8288.

Sincerely,



Zendo Kern, Chairman
Windward Planning Commission

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cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Department of Land & Natural Resources-HPD
DOT-Highways, Honolulu
Mr. Gilbert Bailado
Mr. Scott Leonard, Zoning Inspector, Hilo
Ms. Gail Clarke/Mr. Steve Hirakami - HAAS