



## County of Hawai'i

### WINDWARD PLANNING COMMISSION

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**JAN 07 2014**

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

Dear Mr. Hong:

Special Permit Application (SPP 13-000153)  
Applicant: Michael and Cynthia Greenlaw  
Request: To Establish a Satellite Learning and Education Center and  
Water Catchment Tank Business  
Tax Map Key: 1-5-021:054, 055, 056 and 057

The Windward Planning Commission, at its duly held public hearing on December 5, 2013, considered the above-referenced request to allow the establishment of a satellite learning and education center (school) and water catchment tank business on 4 acres of land situated within the State Land Use Agricultural District. The property consists of four lots and is located at the very end of 19<sup>th</sup> Avenue on the west (mauka) side of the road, approximately 2,200 feet southeast of the intersection of 19<sup>th</sup> Avenue and Maku'u Drive, Hawaiian Paradise Park Subdivision, Puna, Hawai'i.

The Commission voted to approve the request for the establishment of a satellite learning and education center and deny the request for a water catchment tank business. Approval of the satellite learning and education center is based on the following:

The applicants, Michael and Cynthia Greenlaw, are requesting a Special Permit to legitimize the establishment and operation of a satellite learning and education center (school), known as Paradise Hui Haumana, for up to 44 students from kindergarten to grade 6. The school began operating on the property as a home schooling group in 1981

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and came under partial contract to Hawai'i Academy of Arts and Science New Century Public Charter School (HAAS) in 2004 and full contract in 2006 as a satellite learning and education center. The applicants have been using the existing mauka dwelling and exercise/storage room on parcel 55 as classrooms for schoolchildren grades kindergarten through 6<sup>th</sup>. The mauka dwelling is approximately 600 square feet in size and the exercise/storage room is approximately 864 square feet in size not including covered carport and deck areas. These structures are identified as "A" and "C" respectively on Lot 1472 of a survey map dated June 28, 2013. The applicants request to continue operating the school by converting these structures to classrooms for up to forty four (44) children, as well as use all four parcels as play areas for the students. Originally the applicants proposed a school for 55 children; however, due to building/fire code occupancy limitations of the two structures the applicants are downsizing the request to 44 students at this time. There are four staff members, one of which is the applicant, Cynthia Greenlaw. The school follows a traditional school calendar and operates Monday to Friday generally between the hours of 7:00 a.m. and 3:00 p.m. Approximately eight (8) special events associated with programs, award assemblies, plays and student gatherings are proposed to be held annually and would conclude by 8:00 p.m.

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 applicants are requesting to allow the continued operation of a K-6 school on the property in order to provide alternative education opportunities to the Hawaiian Paradise Park community. The proposed use is considered unusual since it is not agricultural in nature, but it is a reasonable use as the educational services provided will support the surrounding rural community. Thus the proposed use is considered an unusual and reasonable use of the agricultural land that will not adversely affect the preservation and agricultural use of the County's prime agricultural lands.

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) of its rules of practice and procedure.

**(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 subject property is not classified as prime agricultural land and due to its poor soil characteristics does not have a high potential for sustained agricultural yields. Therefore, the continuation of the existing school use is not 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 A-1a and primarily vacant or developed with dwellings. A large undeveloped State-owned parcel, which is zoned A-5a, is located immediately southeast of the property. Three letters of support for the school were submitted from neighbors living directly behind and across 19<sup>th</sup> Avenue from the subject property. One letter was submitted from a resident living along 19<sup>th</sup> Avenue that had concerns about the increase in traffic on 19<sup>th</sup> Avenue, which is an unpaved road. This neighbor recommended that 19<sup>th</sup> Avenue be paved in order to reduce dust and wear and tear of the gravel road surface. It should be noted that in December 2012 the Windward Planning Commission approved a special permit for another satellite learning and education center located on 5<sup>th</sup> Avenue (an unpaved road) in HPP. At that time, the Hawaiian Paradise Park Community Association (HPPOA) recommended the school operator pave 5<sup>th</sup> Avenue approximately 1,500 feet from Kaloli Drive to the school site. The Association made this recommendation based on complaints of increased traffic and dust from residents living on the street. The Commission felt that requiring the school operator to pave 5<sup>th</sup> Avenue would be an unreasonable financial burden and instead included a condition of approval that the operator pays a "commercial-scale road maintenance fee" in the future if the HPPOA adopts this type of road fee schedule. The HPPOA has not expressed the same wear and dust concerns related to 19<sup>th</sup> Avenue, however the Planning Department recommends the same condition of approval be added to this permit since 19<sup>th</sup> Avenue is an unpaved road and the school generates more traffic than the surrounding agricultural and residential properties along 19<sup>th</sup> Avenue. To encourage carpooling in an effort to further reduce traffic volumes along this roadway, a condition of this approval will require that a carpooling policy be established by the school and provided to parents at the beginning of each school year.

Hours of operation for the school will be Monday to Friday from 7:00 a.m. to 3:00 p.m., with up to eight annual special events held until 8:00 p.m. As a condition of approval, the applicants will be required to provide on-site gravel parking, drainage improvements (if necessary) and landscaping along the property boundaries. These additional requirements should further minimize the possibility of adverse impacts to the surrounding area.

**(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and police and fire protection.** Access to the property is from Maku'u Drive to 19<sup>th</sup> Avenue. 19<sup>th</sup> Avenue is an approximately 14- to 18-foot wide gravel road within a 40-foot right-of-way. All roads within the subdivision are privately owned and maintained. Two U-shaped gravel driveways extend from 19<sup>th</sup> Avenue to a gravel parking area on parcel 55 near the exercise/storage room. These driveways allow for pick-up and drop-off of students on-site, rather than along 19<sup>th</sup> Avenue. The applicants propose to use the two lots that they own across 19<sup>th</sup> Avenue (TMK 1-5-021:022 and 023) for overflow parking during special events. The Planning Department recommends against the use of these two lots for overflow parking since these lots were not identified as part of the special permit area and thus surrounding neighbors were not given the opportunity to comment on this aspect of the proposal. Additionally, there is ample space for overflow parking to be provided on the remaining four acres of the subject property. County water is not available in the area. Non-potable water for bathrooms and sinks is currently provided from a water catchment tank. There is currently no potable water for drinking at the property. Therefore, potable water will need to be brought in and stored on-site. A condition of approval will require the applicants provide bottled drinking water to the students and employees. A second water catchment tank will be installed to provide non-potable water for fire protection. Department of Health (DOH) records indicate that a cesspool was installed on parcel 57 to serve the garage/storage building; however the cesspool is not approved since it has not received a final inspection. The DOH does not have records of a cesspool for the dwelling and exercise room/storage building that is proposed to be used as a school on parcel 55; however the applicants indicate that one cesspool currently serves both structures. According to the DOH, the EPA requires an existing cesspool serving 20 or more persons in any one day to be upgraded to a septic system. Therefore, the applicants will need to convert the existing cesspool into a septic system or install a new septic system to serve the school. County police and fire facilities are located about 6 miles from the property in Pāhoa. There is also a volunteer fire station in HPP about 2 miles away on 21<sup>st</sup> Avenue and Paradise Drive. Medical services are available in Hilo. Based on the above, the requested use will not burden public agencies to provide additional service.

**(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. 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. There has also been a recent shift over the last two decades, through the formation of charter schools, to provide alternative education options to public schools. Unfortunately, the State Land Use Commission has not designated new urban lands where these community services can be established, therefore 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 unsuited for the uses permitted within the district.** Soils on the property are classified as "E" or "Very Poor" for agricultural productivity by the Land Study Bureau and is unclassified by the Agricultural Lands of Importance to the State of Hawai'i (ALISH) Map. The U.S. Soil Survey Type for the subject property is Pāhoehoe lava flows, (rLW). Pāhoehoe lava has no soil covering and is typically bare of vegetation except for mosses and lichens. The property has not been used for commercial agriculture in the past and due to its poor soil qualities is not ideal for producing sustained high agricultural yields. Thus, the land upon which the proposed use is sought is unsuited for the uses permitted within the district.

**(F) The use will not substantially alter or change the essential character of the land and the present use.** The essential character of the area is agricultural and residential. The school has been operating on the subject property since 1981. Therefore, there will be no change to the residential and agricultural character of the land and its present use.

**(G) The request will not be contrary to the General Plan and Puna Community Development Plan (CDP).** 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 designated Rural. This designation includes existing subdivisions in the State Land Use Agricultural and Rural districts that have a significant residential component,

including the Orchidland Estates, 'Āinaloa, and Hawaiian Paradise Park (HPP) subdivisions. 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 proposed use is considered a community facility as it will provide additional education choices to the children living within the HPP subdivision and surrounding areas. Additionally, Section 3.3.3 (i) 2 supports the concept of smaller schools being dispersed throughout the community.

Based on the above considerations, approval of the request to allow the continued operation of a satellite learning and education center 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 applicants, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. The satellite learning and education center (school) shall be conducted in a manner that is substantially representative of plans and details contained within the Application for Special Permit and the representations made before the Planning Commission.
3. Prior to submitting plans for Plan Approval, the applicants shall secure Final Subdivision Approval to consolidate Tax Map Key Nos. 1-5-021:054, 055, 056 and 057 into a four-acre lot.
4. Within one (1) year from the effective date of this permit, the applicants shall secure Final Plan Approval for the school from the Planning Director in accordance with Chapter 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and/or 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.
5. Within two (2) years from the effective date of this permit, the applicants shall secure and finalize any building permits required by the Department of Public

Works- Building Division for the existing structures, including but not limited to, a "change of use" building permit to convert the dwelling and exercise room/storage structure (identified as "A" and "C" on Lot 1472 of P.D. Exhibit 1) into classrooms for the school. In addition, the school use shall be limited to these two structures and outdoor play areas.

6. Enrollment shall be limited to 44 students.
7. The hours of operation shall be limited to Monday through Friday from 7:00 a.m. to 3:00 p.m. Approximately eight (8) special events associated with school programs such as award assemblies, plays and student gatherings may be held annually and shall conclude by 8:00 p.m.
8. Bottled water for drinking shall be provided to the students and employees of the school.
9. Upon establishment of a road maintenance fee policy related to commercial-scale road maintenance by the Hawaiian Paradise Park Owners Association, the applicants shall pay a commercial-scale road maintenance fee in a timely manner.
10. Adequate parking and pick-up/drop-off areas shall be provided on-site to prevent parking along 19<sup>th</sup> Avenue. Parking on the applicant's lots across 19<sup>th</sup> Avenue, which is outside the permit area, shall be prohibited.
11. The applicants shall establish a carpool policy and submit it to the Planning Director for review and approval prior to issuance of Final Plan Approval. A copy of the policy shall be provided to parents at the beginning of each school year.
12. All development-generated runoff shall be disposed of onsite and shall not be directed toward any adjacent properties.
13. The method of sewage disposal for the school shall meet the standards and requirements of the State Department of Health.

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 Resources - State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-HPD when it finds that sufficient mitigative measures have been taken.
15. The applicants shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
16. 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 applicants, 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).

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

The operation of the water catchment tank and pool service business on Lot 57 is denied; accordingly, the applicants have ten years to wind down the business on or before December 31, 2023, based on the following findings:

The applicants, Michael and Cynthia Greenlaw are requesting a Special Permit to allow the continued operation of a water catchment tank and pool services business known as Paradise Pools. For several years the applicants have been operating a water catchment tank and pool services business on parcel 57 in an approximately 1,274-square foot building (constructed and permitted in 1996 as a garage/storage building for personal use) and a temporary container/carport structure on the adjacent State land. The applicants request to continue operating the catchment tank/pool services business in the



garage/storage building, which would be used to store materials and four large trucks and business vehicles. This structure is identified as "A" on Lot 1474 of a survey map dated June 28, 2013. The business employs four workers (including the applicant, Michael Greenlaw) that are dispatched from the property to provide water catchment, hauling and pool construction, repair, maintenance services throughout Puna. Hours of operation are Monday to Friday generally between 8:00 a.m. and 4:00 p.m. Employee parking will be provided on-site. It should be noted that the temporary storage/carport structure that the applicants erected on the adjacent State land has been removed. The applicants are also proposing to remove a water catchment tank located entirely on the State land and portions of the existing garage/storage building that are encroaching on State land and within the minimum 20-foot side yard setback required by the zoning code.

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 uses (a) are an unusual and reasonable use of land situated within the Agricultural or Rural District, whichever the case may be; and (b) the proposed uses would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, 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) of its rules of practice and procedure.

The primary reason for the denial recommendation is that the continued operation of a water catchment tank business on the subject property does not meet criteria "G" which states that the proposed use must not be contrary to the General Plan and Puna Community Development Plan (CDP). The subject property is located in an area designated as Rural in the General Plan Land Use Pattern Allocation Guide (LUPAG) Map. This designation includes existing subdivisions in the State Land Use Agricultural and Rural districts that have a significant residential component, including the Orchidland Estates, 'Ainaloa, and Hawaiian Paradise Park (HPP) subdivisions. 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 proposed use is not consistent with the LUPAG Map designation because it is not a neighborhood or convenience-type commercial use. The applicants business is not limited to clientele in the HPP subdivision, but rather the business appears to be providing a regional water catchment tank and pool service to the general public. Both the General Plan and CDP

recommend that light-industrial businesses providing a service to clients throughout a region should be centralized within industrial-designated areas near 33<sup>rd</sup> Avenue in HPP subdivision or near Pāhoa and Kea'au towns. The light-industrial area along 33<sup>rd</sup> Avenue is a more appropriate location for the proposed use than the subject property because 33<sup>rd</sup> Avenue is already paved. Whereas trucks from the water catchment tank business increase the wear and tear on 19<sup>th</sup> Avenue and generate more dust since 19<sup>th</sup> Avenue is not paved. One letter was submitted from a resident living along 19<sup>th</sup> Avenue that had concerns about the increase in traffic on 19<sup>th</sup> Avenue. This neighbor recommended that 19<sup>th</sup> Avenue be paved in order to reduce dust and wear and tear of the gravel road surface.

There are specific areas identified in the General Plan for light industrial uses in Puna from Keaau to Pahoia designed to accommodate these types of industrial uses. These include Shipman Industrial Park and the area north of Milo Street in Keaau; and an urban expansion area around the west perimeter of Pahoia Town, which includes the Malama Market property, zoned Industrial-Commercial Mixed (MCX). Additionally, there is an area identified for light industrial uses within the Hawaiian Paradise Park Subdivision on Kaloli Drive between 13<sup>th</sup> and 15<sup>th</sup> Avenues where there is a self storage facility. Light industrial uses should be directed towards these designated locations so that proper facilities and complimentary services can be provided that will support an established light industrial area.

Based upon the information above, approval of the request to allow the continued operation of a water catchment tank and pool services business would not support the objectives sought to be accomplished by the Land Use Law and Regulations.

The approval of the satellite learning and education center 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,



Wallace A. Ishibashi, Jr., Chairman  
Windward Planning Commission

IGreenlawFinalSPP13-153

cc: Michael & Cynthia Greenlaw  
Department of Public Works  
Department of Public Works – Building Division  
Department of Water Supply  
County Real Property Tax Division  
State Land Use Commission  
State DLNR-HPD  
State Department of Health  
Mr. Gilbert Bailado, GIS Analyst  
HPP Owners Association