



## County of Hawai'i

### LEeward PLANNING COMMISSION

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

MAR 06 2015

Robert D. Triantos, Esq.  
Carlsmith Ball, LLP  
75-1000 Henry Street, Suite 209  
Kailua-Kona, HI 96740

Dear Mr. Triantos:

Special Permit (SPP 14-000171)

Applicant: King of Kings Church (Congregational)

Request: To Establish the King of Kings Church (Congregational) and Related Uses and Improvements, Including the Establishment of a New Private Cemetery

Tax Map Key: 7-8-005:026

The Leeward Planning Commission, at its duly held public hearing on February 19, 2015, voted to approve the above-referenced request to establish the proposed King of Kings Church (Congregational) and related uses and improvements, including the establishment of a new private cemetery, on approximately 3.048 acres of land situated within the State Land Use Agricultural District. The project site is situated adjacent to the north of Harold H. Higashihara Park on East Honalo Road which parallels Kuakini Highway, Keauhou 2<sup>nd</sup>, North Kona, Hawai'i.

Approval of this permit is subject to the following conditions:

1. The applicant, successor or assigns shall be responsible for complying with all stated conditions of approval.
2. Construction of the proposed church building and related improvements shall be completed within five (5) years from the effective date of this permit. Prior to construction, the applicant shall secure Final Plan Approval from the Planning Director in accordance with the requirements of the Zoning Code. Plans shall identify all existing and proposed structures, signage, fire protection measures, paved driveway access and parking stalls, outdoor lighting (if any), and other improvements associated with the proposed development. In addition, prior to development of the private cemetery, the applicant shall comply with all requirements of HCC Chapter 6, Article 1. Cemeteries.

*Hawai'i County is an Equal Opportunity Provider and Employer*

MAR 06 2015

3. The construction and operation of the proposed church building and related improvements shall be conducted in a manner that is substantially representative of plans and details contained within the Special Use Permit Application dated received November 21, 2014. Any substantial expansion of the church facility or uses beyond what is represented in these documents shall require an amendment to this permit.
4. Prior to the issuance of a water commitment by the Department of Water Supply, the applicant(s) shall submit the anticipated maximum daily water usage calculations as prepared by a professional engineer licensed in the State of Hawai'i for review and approval. In addition, the applicant shall seek and comply with any Fire Department fire protection requirements relative to fire flow capacity.
5. Congregation related activities and special events on the subject property (excluding church services and administrative functions) shall be limited to no more than 200 persons per activity/event, and held between the hours of 9:00 a.m. and 10:00 p.m.
6. The applicant shall comply with all appropriate requirements of the State Department of Transportation to mitigate impacts generated by the proposed church.
7. During construction, measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawai'i.
8. All earthwork activity, including grading and grubbing, shall conform to Chapter 10, Erosion and Sedimentation Control, of the Hawai'i County Code.
9. Comply with Chapter 11-55, Water Pollution Control, Hawai'i Administrative Rules, Department of Health, which requires a NPDES permit for certain construction activity.
10. Construction activities must comply with the provisions of Hawai'i Administrative Rules, Chapter 11-46, "Community Noise Control."

11. The applicant shall install an individual wastewater system meeting with the requirements of the Department of Health prior to the issuance of a Certificate of Occupancy.
12. 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.
13. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
14. An initial extension of time for the performance of conditions within the permit may be granted by the 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) 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 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).
15. 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 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

Approval of this permit is based on the reasons given in the attached Findings Report.

Robert D. Triantos, Esq.  
Carlsmith Ball, LLP  
Page 4

Should you have any questions, please contact Christian Kay of the Planning Department at 961-8136.

Sincerely,



Brandi K. Beudet, Chairman  
Leeward Planning Commission

LKingofkingschurchSPP14-1711pc  
Enclosure: PC Findings Report

cc: King of Kings Church (Congregational)  
Department of Public Works  
Department of Water Supply  
County Real Property Tax Division - Hilo  
Department of Land & Natural Resources - HPD  
Department of Transportation  
Mr. Gilbert Bailado

**COUNTY OF HAWAI'I**  
**PLANNING COMMISSION FINDINGS**

**KING OF KINGS CHURCH (CONGREGATIONAL)**

**SPECIAL PERMIT APPLICATION NO. 14-000171 (SPP 14-171)**

The applicant is proposing to establish King of Kings Church (Congregational) and related uses and improvements, including the establishment of a new private cemetery, on approximately 3.048 acres of land situated within the State Land Use Agricultural District. The project site is located adjacent to the north of Harold H. Higashihara Park on East Honalo Road which parallels Kuakini Highway, Keauhou 2<sup>nd</sup>, North Kona, Hawai'i, TMK: 7-8-005:026.

The applicant plans to develop an approximately 1,701 square foot, single-story church and an approximately 612 square foot meeting room/ administrative office, which will be connected by a 6- ft. wide breezeway. In addition, the applicant plans to develop an interior 24-foot wide asphalt paved driveway with vehicular turnaround leading to a paved, on-site asphalt parking area to accommodate up to 29 vehicles and ADA accessible stalls. There are approximately a dozen current congregants, with an expected increase to approximately 30 congregants this year and 200 congregants within 10 years. Church services will be held on Sundays from 9 a.m. to 1 p.m., with occasional church related social or spiritual gatherings, fellowship functions, meetings and special events, not to exceed 10:00 p.m. to be held throughout the week. Administrative operations and functions will be conducted on Monday, Wednesday and/or Friday between 8:00 a.m. to 4:30 p.m. The church will have one part-time employee, the pastor and volunteers. In addition the applicant plans to develop a new private cemetery pursuant to Chapter 6, Article 1, Hawai'i County 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 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 Chapter 205, Hawai'i Revised Statutes (HRS), 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. 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 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 a vacant 3.048-acre parcel that is not actively being used for agriculture. The applicant proposes to establish an approximately 1,701 square foot, single-story church and related uses on the subject parcel. While the land on which the proposed use will be located is classified as "C" or "Fair" for agricultural productivity by the Land Study Bureau, it is unclassified by the Agricultural Lands of Importance to the State of Hawai'i (ALISH) Map.

Additionally, the soil is classified as Punalu'u extremely rocky peat (rPYD) and Honuaulu very stony silty clay loam (HUD). As a result, 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 following criteria listed under Section 6-3(b)(5) (A) through (G) of its rules of practice and procedure:

**(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.** The proposed use is considered an unusual and reasonable use of agricultural land that 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 primarily zoned A-5a and are a mix of vacant, agricultural, recreational (Higashihara Park), single-family residential, and private cemetery uses. The nearest dwellings are located to the north approximately 500 feet from the property boundaries and across Kuakini Highway to the east approximately 225 feet from the property boundaries. Church services will be held on Sundays from 9:00 a.m. to 1:00 p.m., with occasional church related social or spiritual gatherings, fellowship functions, meetings and special events, not to exceed 10:00 p.m. to be held throughout the week. Administrative operations and functions will be conducted on Monday, Wednesday and/or Friday between 8:00 a.m. to 4:30 p.m. While these activities and events could generate noise, the surrounding land uses (County Park and private cemetery), naturally sloping topography, and distance away from other dwellings should control noise to reasonable levels. The applicant is proposing to pave the driveway and parking areas to control noise and dust. To control noise and traffic, the applicant has agreed to limit activities and special events to 200 participants per activity or event, and not to go beyond 10:00 p.m. The proposed private cemetery will not have an adverse impact on public health and water resources since a County Council by resolution is required prior to establishment that involves an application process directed by Hawai'i County Code Chapter 6, Article 1. This process requires clearance by the State Department of Health, Department of Water Supply, and a recommendation by the Planning Commission prior to final County Council action. The applicant will be required to comply with the requirements of HCC Chapter 6, Article 1, as a condition of approval for this permit before they can construct and operate the proposed private cemetery. Based on the preceding, it is not anticipated that the requested use will have a significant, adverse effect 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.** Access to the subject property is via a single entrance/exit from the State Department of Transportation (DOT) owned and maintained Kuakini Highway and East Honalo Road. The applicant does not anticipate a significant increase on peak hour traffic caused by the proposed project, however, as of this writing the DOT has not commented on possible impacts from the proposed church. For this reason, should DOT require any mitigation for impacts generated by the proposed church, the applicant will be required to comply through a condition of this approval. The applicant will install an individual wastewater system for wastewater approved by the State of Hawai'i Department of Health. According to the Department of Water Supply (DWS), one unit of water (Average 400 gallons/day, Maximum 600 gallons on any one day) is

available to the parcel. DWS has requested that the applicant submit estimated maximum daily water usage calculations to determine if the existing service is sufficient. In addition, they have requested that the applicant contact the Fire Department to determine if there are additional fire protection requirements. Compliance with these requests will be conditions of approval of this permit. According to the applicant, any increase in storm water runoff will be managed by the installation of an on-site drainage sump or seepage pits. Electricity and telephone service is available to the property. Police and fire services for the proposed Project are provided by facilities located at the Hawai'i County police station and fire station located in Kailua-Kona or Keauhou. The nearest available health facility is the Kona Community Hospital in Kealahou. Based upon the preceding, the proposed use will not burden public agencies to provide additional services to support the requested use.

**(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. Due to population growth in the Kona region's rural areas, there is a need to provide area residents with choices to participate in fellowship and spiritual gatherings outside of the urban core, thereby enhancing local community life, providing a community-based service, and fostering the continued growth and development of families. Although the Property and surrounding areas are designated for agricultural uses by both State and County land use regulations, through the issuance of a Special Permit, various "non-agricultural" uses may be allowed, including churches.

**(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district.** The property has soils designated by the LSB as "C" (or Fair), and is not classified as "Prime", "Unique" or Other Important Agricultural Lands" under the ALISH map. These soils are most suitable for pasture use, orchard and truck crops, and is unsuited for large-scale agricultural uses permitted within the Agricultural District. Based on the agricultural potential of the subject property, the establishment of the proposed project does not prevent the preservation and agricultural use of the County's prime agricultural lands, and is compatible with, other uses permitted in the State Agricultural District. Although the property is located within the State Land Use Agricultural District, it is not well suited for agricultural purposes, and the proposed project will provide a community service as proposed.

**(F) The use will not substantially alter or change the essential character of the land and the present use.** The essential character of the subject property and surrounding area is rural with the surrounding properties being a combination of vacant, agricultural, recreational (Higashihara Park), single-family residential, and private cemetery uses. Due to the topography along Kuakini Highway and East Honalo Road (which parallels Kuakini Highway), the proposed project will be setback over 250 feet from the highway and therefore, the visual characteristics of the area will not be adversely affected. Although the church will utilize the entire 3.048-acre Property, the majority will remain undeveloped in open space use and the church will be developed in harmony with the existing rural character of the area. Therefore, the essential character and use of the proposed project would be consistent with the essential character of land in the State Land Use Agricultural District.

**(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 property is located in area identified as Important Agricultural Lands in the General Plan. Important agricultural lands are those with better potential for sustained high agricultural yields because of soil type, climate, topography, or other factors. While the proposed use is contrary to the Land Use Pattern Allocation Guide (LUPAG) Map designation for this area, the land upon which the uses are proposed are classified "C" or "Fair" soils by the LSB and unclassified by the ALISH. Also, the subject parcel is vacant and has not been used for agricultural purposes for many years.

The proposed use would support the goals and policies of the Land Use and Public Facilities elements of General Plan.

Land Use Element

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

Public Facilities Element

- North and South Kona Course of Action: New privately owned cemetery sites to serve future needs shall be sought.
- Standard: Private and public cemeteries shall be compatible with surrounding land uses and provided with adequate access and drainage system.

The development of the Church will allow the applicant to further enhance community life, and the development of the future private cemetery is compatible with the surrounding land uses since the private Kona Chinese Cemetery is located adjacent to and north east of the subject property. The approval of the Special Permit supports the balance in use of the property, while continuing to protect and maintain important agricultural lands on the island of Hawai'i. Additionally, any runoff caused by the proposed project can be sufficiently mitigated via installation of drainage sump or seepage pits on-site.

The Kona Community Development Plan (KCDP) directs growth in the Kona Urban Area and Rural TOD. The proposed project is located outside of the Kona Urban Area, TODs and Rural TOD, and any concurrency zones. The KCDP does not speak specifically to Special Permits for Churches on agricultural land, but the Church use is generally consistent with the relevant guiding principles, goals, objectives, policies and actions of the KCDP, as an infill project where it seeks to revitalize and enhance the viability of existing rural lifestyle and culture.

**The proposed use is not contrary to the objectives sought to be accomplished by Chapter 205A, Hawai'i Revised Statutes, relating to the coastal zone management program.** The subject property is located over 1.5 miles to the nearest shoreline and therefore will not cause beach erosion or affect marine resources, coastal ecosystems, and coastal recreational opportunities. Nor will the property be affected by coastal hazards. Additionally, there is no designated public access to the ocean or mountain areas over the property. There is



no record of traditional Hawaiian rights being practiced on the property. Therefore, the proposed use is not contrary to the objectives of Chapter 205A, Hawai'i Revised Statutes.

Lastly, this approval is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements in connection with the approved use, prior to its commencement or establishment upon the subject properties. Additional governmental requirements may include the issuance of building permits, the installation of approved wastewater disposal systems, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.

Based on the above considerations, Special Permit No. 14-000171 is approved to establish the proposed King of Kings Church (Congregational) and related uses and improvements, including the establishment of a new private cemetery, on approximately 3.048 acres of land situated within the State Land Use Agricultural District on TMK: 7-8-005:026.