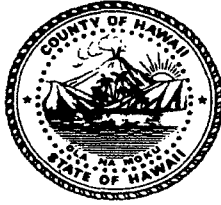


Harry Kim
Mayor



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County of Hawai'i

WINDWARD PLANNING COMMISSION

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Phone (808) 961-8288 • Fax (808) 961-8742

FEB - 1 2018

Mr. Jason Wong, Director
Na Wai Ola Public Charter School
18-1355 Volcano Highway
Mountain View, HI 96771

Dear Mr. Wong:

SUBJECT: Special Permit No. SPP 17-000193
Applicant: Na Wai Ola Public Charter School
Permitted Use: Allowed the Expansion of an Existing Charter School
Tax Map Key: 1-8-004:104

The Windward Planning Commission, at its duly held public hearing on January 4, 2018 voted to approve the above-referenced request to allow the expansion of an existing public charter school on 3.6 acres of land in the Single-Family Residential – 20,000 square feet (RS-20) zoning district and one acre of land in the State Land Use Agricultural District. The subject property is located along the south (makai) side of Volcano Highway, approximately 150 feet east of its intersection with Nichols Road in Mountain View, Puna District, Hawai'i.

Approval of this permit is subject to the following conditions:

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The school shall be limited to 185 students. Any increase in the amount of students will require an amendment of the Special Permit before the Planning Commission.
3. The applicant shall comply with Department of Water Supply (DWS) requirements by implementing conservation measures in order to limit their water consumption to an average of 400 gallons per day on parcel 006, an average of 1,000 gallons per day on parcel 049, and an average of 400 gallons per day on

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parcel 104, which is the current water allocation based on the existing water meter size. If the applicant can obtain permission from DWS to enlarge the existing water meters, they may increase their consumption to match DWS's allocations.

4. Prior to issuance of Final Plan Approval, the applicant shall install reduced pressure type backflow prevention assemblies within five (5) feet of the existing water meters on private property and have the assemblies inspected and approved by the Department of Water Supply.
5. The applicant shall submit plans for Plan Approval for the expanded school to the Planning Director within one hundred and eighty (180) days from the effective date of this permit in accordance with Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing structures, paved driveway accesses and parking stalls associated with the proposed development. Parking on RS-zoned land shall be paved. Any parking on the adjacent parcel 104 for the school does not need to be paved but a material must be used that will eliminate erosion, mud, and standing water. Landscaping shall be included on the plans to mitigate any potential adverse noise or visual impacts to adjacent properties in accordance with the Planning Department's Rule No. 17 (Landscaping Requirements).
6. Prior to expansion of the school, the applicant 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, interior alterations of converting the church buildings to school use and interior alterations of converting the dwelling to an administrative office for the school.
7. Parking is prohibited in the grassy berm area between Volcano Highway and Old Volcano Road.
8. The applicant shall provide any improvements required by the State Department of Transportation to improve traffic safety along Volcano Highway, including but not limited to installing 'No Parking' signs along the highway shoulders.
9. Prior to expansion of the school, the applicant shall provide a Traffic Management Plan to the Planning Department for review and approval. It is recommended that the plan is reviewed by the State Department of Transportation-Highways Division prior to submittal to the Planning Department. The plan shall identify: student drop-off and pick-up areas, parent and staff parking during regular school operations, parking during special events. Parking and student drop-off and pick-up areas must be on the subject properties unless written permission, in

compliance with the Zoning Code, is provided by the landowner of the property where student drop-off and pick-up and parking is proposed. All student drop-off and pick-up activity shall not result in queuing of vehicles on any County or State road. The applicant shall encourage carpooling, bus and van services, and staggering school drop-off and pick-up times within the plan. The plan shall be implemented upon approval.

10. Prior to expansion of the school, individual wastewater system(s) shall be installed, meeting with the standards and requirements of the State Department of Health.
11. Prior to issuance of Final Plan Approval, the applicant shall provide fire protection measures appropriate for the school use meeting with the approval of the Fire Department.
12. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
13. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walls 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 the DLNR-SHPD when it finds that sufficient mitigated measures have been taken.
14. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
15. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
 - A. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.

- C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
- D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

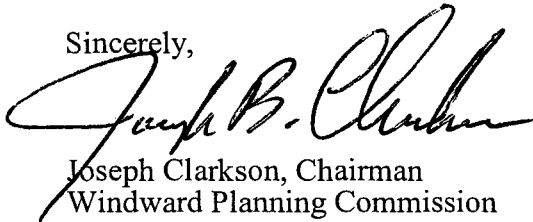
Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate the revocation of the Special Permit.

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.

Should you have any questions, please contact Maija Jackson of the Planning Department at 961-8159.

Sincerely,



Joseph Clarkson, Chairman
Windward Planning Commission

LNawaiolapubliccharterschoolSPP17-193wpc
Enclosure: PC Findings Report

cc: Robyn Ito P.E., PMP, SSFM International Inc.
Department of Public Works
Department of Water Supply
County Real Property Tax Division - Hilo
Department of Land & Natural Resources - HPD
State Department of Transportation
State Land Use Commission
GIS Section

COUNTY OF HAWAI'I
PLANNING COMMISSION FINDINGS

NA WAI OLA PUBLIC CHARTER SCHOOL
SPECIAL PERMIT APPLICATION NO. 17-000193 (SPP 17-193)

Based on the following findings, Special Permit No. 17-193 is hereby issued to allow the expansion of an existing public charter school on 1 acre of land in the State Land Use Agricultural District. The subject property is located along the south (makai) side of Volcano Highway, approximately 150 feet east of its intersection with Nichols Road in Mountain View, Puna District, Hawai'i, Tax Map Key: 1-8-004:104.

The applicant is requesting a Special Permit in order to expand an existing public charter elementary school on the subject property (TMK 1-8-004:104) which is located in the County Agricultural (A-20a) zoning district. The current campus is located on the subject property and two other adjacent properties to the east (TMK 1-8-002:006 & 049), which are located in the Single Family Residential - 20,000 square feet (RS-20) zoning district. The current campus includes 185 students, 9 classroom teachers and 14 staff. Hours of operation are from 7:00 a.m. to 5:00 p.m. The school utilizes various structures on three properties as follows:

- Parcel 104 is a one-acre property situated in the State Land Use Agricultural district. It contains a 2,112-square foot dwelling and 160-square foot enclosed storage building. The school currently uses this dwelling for school administrative operations. The school uses a small portion of the property for the school Māla (garden) Program, which teaches youth to grow food, medicines and plants. The program is part of a statewide campaign, E Ola Pono, to encourage youth to promote peace, pono and respect in their schools and communities. A Special Permit is required to use this property and building for school uses. Should this permit be approved, a building permit will be required to change the use of the structure from a dwelling to school administrative office.
- Parcel 006 is a 1.44-acre property situated in the State Land Use Urban district and County Single-Family Residential (RS-20) zoning district. St. Theresa's Catholic Church is located on this property. The church was constructed and used as a school prior to adoption of the Zoning Code and therefore the school use is considered a nonconforming use within the church building. The property contains a church, rectory and hall. The school currently uses the rectory and hall building for classrooms. A Use Permit is required to expand school uses into the rectory and hall on the property.
- Parcel 049 is a 2.19-acre property situated in the State Land Use Urban district and County Single-Family Residential (RS-20) zoning district. The Mountain View Gym, operated by the County of Hawai'i Department of Parks and Recreation, is located on this property. The school currently uses the gym for recreational purposes and originally proposed to place a modular building on the southwest corner of the property for additional classroom use, but in a letter dated December 6, 2017 requested removal of the modular building from the current request. Based on the requested removal of the modular building and the fact that the school use for recreation on Parcel 049 would be no different from that of the general public, the Planning Director recommended and the Planning Commission agreed to remove parcel 049 from the requested permit area.

Currently, the school has permission from the County Department of Parks and Recreation to use the Mountain View gymnasium parking lot for the school on a first come, first served basis. Section 25-4-51(c) of the Zoning Code requires a shared parking agreement between the County and applicant during the life of the school use in order to use the gym parking lot for the school. Since the County is only offering use of this parking lot on a first come, first served basis, the school is proposing two other options for parking and pick-up/drop-off areas. The first option is to continue to park along Old Volcano Highway, along the rock wall that fronts the church only. The applicant will seek permission from Department of Transportation (DOT) to use this area for parking since this portion of the highway is under their jurisdiction. The second option, if the applicant is unable to get permission from DOT for the first option, is to provide the required parking (15 stalls) on-site on parcel 104. Students will be dropped-off and picked-up by bus or vehicle behind the church buildings.

The grounds for approving a Special Permit are based on Rule 6-7 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 State Land Use Agricultural District and would promote the effectiveness and objectives of the State Land Use Law and Regulations and Chapter 205, HRS, as amended. 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 1.013 acres in size and is developed with a dwelling that is about 2,000 square feet in size. The property is not classified as prime agricultural land and due to its relatively small size and close proximity to Mountain View Village it is unlikely the property will be used for commercial agriculture. The request to use the existing dwelling as an administrative office for the school and to use a portion of the property for the school's gardening program is an unusual and reasonable use of land in the State Agricultural district.

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) The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended. As evaluated above, the applicant's request 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. School uses have been occurring on the properties since at least the 1960's within the church and the Mountain View gym property has been used for recreational purposes by the public for decades as well. There are other community uses in the immediate area such as a post office and public ball field/park. The closest dwelling is located immediately west of the subject property and

about 80 feet to the southwest of the church property. Expansion of the school into the church buildings on parcel 006 and dwelling on the subject property is not expected to significantly increase noise levels or traffic since these structures are already being used by the school.

Testimony was received from Mr. Glenn Toyama expressing concern that the federal law that prohibits possessing or shooting firearms within 1,000 feet of a school will not allow him to shoot wild pigs and chickens that eat the waste from his sweet potato farm on TMK 1-8-004:098, which is located about 300 feet southeast of the Mountain View gym and about 150 east of the subject property. Based on research and discussions with the Police Department, it has been determined that there is an exception to this federal law if the firearm possession and shooting occurs on private property. However, a gun owner is responsible at all times for possessing and shooting a firearm in a safe manner. This information was shared with Mr. Toyama.

Testimony was also received from Ms. Susan Langer expressing concern with the current traffic safety situation at Volcano Highway. She indicates it is dangerous when vehicles from the school that park on the berm between Volcano Highway and Old Volcano Highway pull out onto the highway at multiple access points because there is not adequate sight distance to see vehicles traveling on the highway and waiting to pull out from Nichols Road located across the highway. She suggests measures such as limiting access to one point with a stop sign, requiring parallel parking along Old Volcano Highway fronting the church property, reducing the current speed limit (45 mph) on the highway, and flashing lights to warn vehicles on the highway to slow down near the school. In their letter dated November 17, 2017, the State Department of Transportation (DOT) indicated that parking along in the grassy berm area between Volcano Highway and Old Volcano Highway is prohibited. DOT also reviewed a sight distance safety study that was submitted by the applicant and determined that the applicant will need to install "No Parking" signs on the highway shoulders near the school. The applicant has agreed to install these signs and implement a plan that prohibits parking on the berm and provides safe access, parking and drop-off/pick-up areas so that there are no traffic safety issues on the highway. With the implementation of these mitigation measures, the proposed use is not expected to have an adverse effect on surrounding properties or the general public.

(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 classrooms located in the church buildings and Mountain View Gym is via Volcano Highway onto an unnamed two-lane paved County road. Access to the administrative office on parcel 104 is via Volcano Highway onto a two-lane gravel road located west of the church property. To improve traffic safety in this area, the State Department of Transportation has prohibited parking on the grassy berm area between Volcano Highway and Old Volcano Road fronting the church property. Currently, the applicant is proposing student drop-off and pick-up to behind the church buildings. Buses and parent vehicles would turn off of Volcano Highway onto Ueyama Village Road, onto parcel 006 near the gym, and then exit onto the Volcano Highway over the driveway on parcel 104. The Planning Director recommends including a condition of approval for the applicant to prepare and implement a Traffic Management Plan so that school-related traffic will not queue onto the State highway or County roads.

The subject properties are currently served by County water through one water meter on each parcel. According to the Department of Water Supply, water usage over the last year on the church property (parcel 006) has exceeded the water availability for the water meter. Additionally, the current water availability in the area cannot provide any additional water

beyond the current water allocations for these three meters; therefore, the applicant will need to implement conservation measures to reduce water usage. The nearest fire hydrant is connected to the existing 6-inch waterline within Ueyama Village Road which is inadequate to provide the required 2,000 gallons per minute fire-flow required for school facilities. The applicant will be required to submit plans showing the water system improvements necessary to provide the required fire-flow.

Each parcel is currently served by a cesspool. The Department of Health (DOH) indicated that the existing cesspools are inadequate for the proposed project. The applicant will need to submit plans to DOH to add new individual wastewater systems or upgrade the existing cesspools to septic systems for each parcel.

The property is situated within an area designated as Flood Zone X, an area determined to be outside the 500-year flood plain. Electricity, telephone, police, fire, and medical services are available to the property. A condition of approval is included to require that the applicant meet all applicable County, State and Federal laws, rules, regulations and requirements.

(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 then, the Puna District has experienced substantial population growth and public infrastructure funding to support commercial zoning in order to provide goods, services and community facilities such as schools has not kept pace with this growth. In fact, the Puna district is one of the most underserved districts in the State.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The property is situated on soil identified as Ohia series soils which area typically use for pasture and woodland, classified as "D" or "Poor" by the Land Study Bureau's Overall Master Productivity Rating and is unclassified by the Department of Agriculture's ALISH Map. The school will use the subject property for parking and an administrative office within an existing dwelling. Although soils on the property are not ideal for agriculture, a portion of the property will also be used for the school's gardening program.

(F) The use will not substantially alter or change the essential character of the land and the present use. The land uses in the immediate area are a mix of residential and community uses with Mountain View Village located across the highway to the north east. Surrounding properties are zoned Open, RS-10 and CV-10 and consist of a County park, residences, and the Mountain View Post Office. Expansion of the existing school will not adversely affect the community's character since school uses have taken place on the adjacent property for several decades and are consistent with other surrounding community uses.

(G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans. The County of Hawai'i's General Plan is the policy document for the long range comprehensive development of the island of Hawai'i. One of the purposes of the General Plan is to guide the pattern of future development in this County based on long-term goals. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the property as Medium Density Urban and Low

Density Urban. These are areas of village and neighborhood commercial, single family and multiple family residential (up to 35 units per acre), ancillary community and public uses, and related functions.

A school is considered a community facility that will complement the Public Facilities-Education element of the General Plan:

Public Facilities-Education

- Encourage combining schoolyards with county parks and allow school facilities for afterschool use by the community for recreational, cultural, and other compatible uses.

The subject properties are located within the proposed Mountain View Community Village Center Boundary identified in the Puna Community Development Plan. Expansion of the school in this location would continue to meet the CDP objective of locating community facilities, such as schools, in designated village and town centers.

Based on the preceding, expansion of the public charter school facility is consistent with the General Plan designation and is in keeping with the goals, policies and standards of the General Plan.

The proposed use is not contrary to the objectives sought to be accomplished by Chapter 205A, Hawai'i Revised Statutes, relating to coastal zone management program. The SMA is part of the Coastal Zone Management Program regulated by the County. The subject properties are located outside of the Special Management Area about 10 miles from the nearest shoreline. The entire site has been completely cleared and in urban use for several decades. As such, there are no valued cultural, historical or natural resources on the property and no evidence of any traditional and customary Native Hawaiian rights being practiced on the site. Thus, it is not anticipated that the proposed request will have any adverse impact on cultural or historical resources in the area.

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 property. 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.