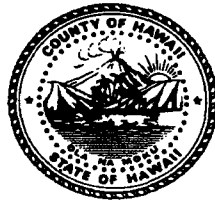


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County of Hawai'i

LEEWARD PLANNING COMMISSION

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

MAR - 9 2020

Ms. Faith Stone
77-447 Hoomaluhia Drive
Kailua-Kona, HI 96740

Dear Ms. Stone:

SUBJECT; Special Permit No. SPP 19-000210
Applicant: SGRY dba Konalani Yoga Ashram
Permitted Use: Allows to Legitimize the Development and Operation of a Residential Yoga Ashram, Establish and Operate a Church Facility with a Meditation Temple, Classrooms, Six Guest Bedrooms, a Commercial Kitchen and Related Improvements
Tax Map Key: 7-7-004:065 (por.)

The Leeward Planning Commission, at its duly held public hearing on February 20, 2020, considered the above-referenced request to legitimize the development and operation of a residential yoga ashram, and the establishment and operation of a church facility with a meditation temple, classrooms, six (6) guest bedrooms, a commercial kitchen and related improvements on an approximately one (1) acre portion of a larger 5.1570-acre property situated in the State Land Use Agricultural District. The property is located at 77-0447 Ho'omaluhia Drive, at the southern terminus of Sea View Circle, Hōlualoa 3rd – Kaumalumu-Beach Sec., North Kona, 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. Development and operation of the proposed Residential Yoga Ashram, Ashram Temple facility and related facilities shall be conducted in a manner that is substantially representative of plans and details contained within the Special Permit Application dated

September 30, 2019, any supplemental materials, and the representations made before the Leeward Planning Commission. Any substantial expansion of the facility or uses beyond what is represented in this document shall require an amendment to this permit.

3. Construction of the proposed development shall be completed within five (5) years from the effective date of this permit. Prior to construction, the applicant shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and proposed structures, fences, signage, water sources (potable and non-potable), wastewater systems, fire protection measures, paved driveway access and paved and unpaved parking stalls as approved by the Director, outdoor lighting (if any, lighting must be shielded with light directed downwards), and other improvements associated with the proposed development. Further, any unpaved parking stalls shall be constructed of a material that will eliminate or minimize erosion, mud, and standing water. Landscaping shall be indicated on the plans for the purpose of mitigating any adverse noise or visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements) and Chapter 25 (Zoning Code), Hawai'i County Code.
4. Should the Department of Public Works, Building Division, require it, and prior to resumption of public activities on the property and within the proposed Residential Yoga Ashram, the applicant shall secure change of use and 'as-built' building permits and be granted a Certificate of Occupancy meeting with the requirements of the Department of Public Works, Building Division, and/or as articulated in Building Division's December 27, 2019 memorandum.
5. As represented by the applicant, any new structures within the Special Permit Area shall be limited to a height of thirty-five (35) feet.
6. Vehicular access for members of the public to the subject property shall be limited to Sea View Circle. All driveway connections to Sea View Circle and any work within the County Right-of-Way shall conform to Chapter 22, County Streets, of the Hawai'i County Code.
7. Any new or 'as-built' building permits and development/construction activities within the Kaunalumalu Tributary Number. 3 as shown on Subdivision Map No. 7022 shall conform to Chapter 27 - Floodplain Management - of the Hawai'i County Code.

8. Prior to issuance of a Certificate of Occupancy, the applicant shall provide fire protection measures appropriate for the proposed use meeting with the approval of the Fire Department, including but not limited to water storage for firefighting purposes, water supply with sufficient fire flow rate, and providing fire department access roads with adequate turning radiuses to support the proposed development.
9. Prior to the issuance of Plan Approval, the applicant shall submit for all uses on the property, estimated maximum daily water usage calculations, prepared by a professional engineer licensed in the State of Hawai'i, for review and approval by the Department of Water Supply (DWS). The water usage calculations shall include the estimated peak flow in gallons per minute (GPM) and the total estimated maximum water usage in gallons per day (GPD). The calculations should also include information pertaining to how non-potable water use will be addressed for the agricultural activities. If required, a water commitment deposit shall be paid to the DWS prior to issuance of Final Plan Approval in accordance with Rule 5 of the DWS Rules and Regulations. The applicant shall construct necessary water system improvements as required by the DWS.
10. The applicant shall install a reduced pressure type backflow prevention assembly within five (5) feet of any additional water meters on private property, which must be inspected and approved by DWS.
11. Prior to issuance of a Certificate of Occupancy, individual wastewater system(s) shall be installed, meeting with the standards and requirements of the State Department of Health.
12. The proposed certified kitchen shall meet the requirements of Chapter 50, Food Safety Code. The applicant shall secure a food establishment permit from the State Department of Health, prior to commencement of any food service to the public. A copy of the permit shall be provided to the Planning Department prior to issuance of a Certificate of Occupancy. Preparation of food in the commercial kitchen shall be limited to the premises and not for the public offsite.
13. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties. All earthwork and grading shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai'i County Code.
14. 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.

15. In the unlikely event that surface or subsurface historic resources, including human skeletal remains, structural remains (e.g. rock walls, terraces, platforms, etc.), cultural deposits, marine shell concentrations, sand deposits, or sink holes are identified during the demolition and/or construction work, cease work in the immediate vicinity of the find, protect the find from additional disturbance and contact the State Historic Preservation Division at (808) 933-7651. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.
16. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
17. 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 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.

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

Ms. Faith Stone

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

Sincerely,

**Nancy Carr
Smith**

Digitally signed by Nancy
Carr Smith
Date: 2020.03.09
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Nancy Carr Smith, Chair
Leeward Planning Commission

LSGRYSPP19-210lpc

Enclosure: PC Findings

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
State DLNR-HPD
State Department of Health
Plan Approval Section
GIS Section

COUNTY OF HAWAI'I
PLANNING COMMISSION FINDINGS

SGRY DBA KONALANI YOGA ASHRAM
SPECIAL PERMIT APPLICATION (SPP 19-000210)

Based on the following findings, Special Permit No. 19-000210 is hereby approved to legitimize the development and operation of a Residential Yoga Ashram, and allow the establishment and operation of a church facility with a meditation temple, classrooms, six (6) guest bedrooms and a commercial kitchen and related improvements on an approximately one (1)-acre portion of a larger 5.1570-acre property in the State Land Use Agricultural District. The subject property is located at 77-0447 Ho'omaluhia Drive, at the southern terminus of Sea View Circle, Hōlualoa 3rd – Kaunalumalu – Beach Sec., North Kona, Hawai'i, TMK: (3) 7-7-004:065 (por).

The applicant is requesting a Special Permit to legitimize the development and operation of a Residential Yoga Ashram within an existing, 3,186 square-foot dwelling. According to the applicant, a Residential Yoga Ashram is a religious entity most similar to a monastery, for clergy and dedicated meditation practitioners to live and practice together. The dictionary defines an ashram as a hermitage, monastic community, or other place of religious retreat. Konalani Yoga Ashram has functioned as such since purchasing the property in 1999. This structure will be used for clergy and resident practitioners to live and worship.

The applicant is also requesting to develop and operate a new, 4,800 square-foot church facility with a meditation temple, a multi-purpose religious educational classroom, commercial kitchen and six (6) retreat bedrooms for yoga and meditation retreat and immersion programs. According to the applicant, all other public uses on the property will occur within this structure in support of the applicant's mission of sharing its spiritual practices of yoga and meditation. In addition, the applicant proposes to develop a ten (10)-stall, gravel improved parking area. An additional unimproved parking area can also be made available adjacent to the improved parking area. Landscaping will also be provided per Planning Department Rule 17. The applicant anticipates utilizing approximately one (1)-acre of the larger 5.1570-acre property for the proposed uses.

In the near term, the applicant has represented a desire to continue Ashram Meditation Practice three (3) nights a week (Monday, Thursday and Friday evenings) for about 14 church members at the proposed Residential Yoga Ashram (existing dwelling). Once the new Ashram Temple facility is built, the applicant proposes to resume the following activities on the subject property: Three (3) weekly drop-in meditation classes and three (3) weekly yoga classes open to the public. Classes generally range from three (3) to ten (10) students and range from one (1) to two (2) hours. On occasion, the applicant would also offer special classes and workshops for Hindu/Buddhist Holidays and Sacred Art.

The applicant also proposes to hold an estimated four (4) to eight (8) retreats each year (both meditation retreats and Yoga Teacher Training retreats). Based on past practice, the retreats range from one (1) to three (3) weeks and retreat attendance ranges from three (3) to ten (10) students, serving an estimated 18 to 36 retreatants per year. Meals for retreatants will be prepared in the proposed certified kitchen and overnight accommodations will be provided within the proposed six (6) guest bedrooms.

The applicant submitted the Special Permit application in response to a Planning Department warning letter issued for a possible Zoning Code violation for allegedly operating an unpermitted, non-agricultural yoga training business in an agricultural zone and providing overnight accommodations to yoga students without a Special Permit. The applicant countered that they were operating a Residential Yoga Ashram and providing Hindu/Buddhist religious/church services, which included yoga instruction and overnight accommodations to yoga students as part of the practice. Churches, Residential Yoga Ashrams and yoga instruction with overnight accommodations are not permitted uses within the State Land Use Agricultural District and thus require a Special Permit to operate. According to the applicant, all public uses of the property have ceased while they are going through the required Special Permit/SMA Use Permit application processes.

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. 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 proposed Residential Yoga Ashram, Ashram Temple facility and related improvements will be situated on an approximately one (1)-acre portion of a larger 5.1570-acre property. Soils for this site are classified as within Kainaliu-Wai'aha complex, 10 to 20 percent slopes and Wai'aha medial silt loam, 10 to 20 percent slopes. Soils on the property are designated as "E" or "Very Poor" by the Land Study Bureau's Detailed Land Classification System. The property is also considered "unclassified" on the Agricultural Land by the Department of Agriculture's ALISH Map. In addition, a portion of the parcel is affected by the Kaumalumu Tributary Number 3, which runs through the parcel from the eastern property boundary makai through the southern property boundary. Despite these less than ideal agricultural conditions, the applicant has been conducting agricultural uses on the subject property, including a mango orchard, citrus trees, breadfruit, tamarind, macadamia nuts, bananas, papayas, sacred Rudraksha seeds, flowers for religious ceremony, herbs, and vegetables.

Based on the preceding, the proposed Residential Yoga Ashram, Ashram Temple facility and related improvements are an unusual use in that they are not agricultural in nature and are considered reasonable as 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 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 of lands with high agricultural potential in the County of Hawai'i.

(B) The desired use would not adversely affect surrounding properties. The subject property is bounded to the north by the Kona Sea View Subdivision, which is zoned Single-Family Residential and Multiple-Family Residential and consists of single-family residential and apartment/condominium uses. The subdivision is bounded to the east (mauka) by Kuakini Highway, which includes Neighborhood Commercial zoning and uses. Properties to the east, south and west of the subject parcel are part of the multi-phased Ho'omalua on Ali'i subdivision and are similarly zoned Agricultural (A-5a) by the County. Surrounding uses include residential, some agricultural and vacant land. The closest dwellings to the subject parcel's property boundaries are approximately ten (10) feet to the north and 25 feet to the west (makai).

The Planning Department received several comment letters both in support and opposition from surrounding property owners within Sea View Estates Subdivision an Ho'omalua on Ali'i Subdivision. The majority of the support letters identify the benefits of yoga and meditation offerings at the property as well as a spirit of community. Several support letters from surrounding neighbors have also indicated that there is minimal traffic, noise, community disruption or nuisance impacts on the neighborhood. Conversely, the majority of the letters of opposition primarily cite concerns over increased traffic, speeding and reckless driving through Sea View Circle related to the ashram operation, questions about the property's legal access through the subdivision, concerns over the 20-year duration of the illegal operation, and interpersonal issues with the applicant.

In response to neighborhood concerns, the applicant conducted a community meeting on November 23, 2019 and conducted door-to-door neighbor engagement to understand directly address concerns. In summary, the applicant feels that a couple of neighbors with whom they have had past issues with were spreading misinformation about the legal access from Sea View Circle and other negative aspects of the project which precipitated the other neighbor complaints

Additionally, the applicant submitted the results of an informal, visual traffic survey in their application. According to the informal survey, the highest number of daily trips were on Monday, Wednesday and Saturday and are related to drop-in, public yoga/meditation classes. A second, informal traffic study represented that traffic to the subject property through the Kona Sea View subdivision accounted for less than 1% (0.4%) of all daily traffic through the subdivision

According to the applicant, no drop-in/public yoga/meditation classes nor yoga teacher training or immersive meditation retreats will be offered until the new Ashram Temple structure is built. Construction of this facility is estimated to take two (2) to five (5) years to complete, so in the near term, traffic will decrease significantly.

Once the Ashram Temple structure is complete, classes will be offered three (3) times a week on Monday, Wednesday and Saturday from 8:30 am to 10:00 am. The applicant expects these classes to generate 8-16 vehicle trips per class outside of AM peak hour times. For the proposed Yoga Teacher Training and Immersive Meditation retreats, participants are generally shuttled to the property by the applicant, and usually stay on site for the duration of the retreat, so expected traffic for those activities is expected to be minimal.

Additionally, once the Residential Yoga Ashram facility is issued a Certificate of Occupancy by the DPW-Building Division, the applicant can resume Ashram Meditation Practice for members of the public who are church members. These classes are operated on Monday, Thursday and Friday evenings, with a similar expected 8 to 16 vehicle trips for those classes outside of PM peak hour times.

To mitigate noise impacts, the applicant has already planted appropriate landscaping along the border of the property and the orchards and forest contribute to the tranquility of the property. Additionally, the applicant has indicated that all residents and guests will comply with "quiet hours" between 9:00 PM and 7:00 AM. Development and operation of the proposed uses as substantially represented by the applicant will be added as a condition of approval.

Furthermore, to minimize potential short-term noise impacts during the construction, development of this project - particularly the site work will be limited to daylight hours and on weekdays. Contractors will also be required to comply with established State Department of Health guidelines and standards relating to noise and emission controls.

Finally, to minimize any visual impacts, any new structures will be restricted to not exceed the 35-foot height limit, which is the maximum allowable height limit in the Single Family Residential Zone and less than the maximum allowable height in the agricultural zoned district (45 feet); This will be added as a condition of approval.

(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. The subject property is improved with a permitted, 3,186 square-foot, three (3) bedroom, two (2) bathroom residence. Since the dwelling received final inspection in 1999, the applicant has converted the permitted family room into three (3) additional bedrooms, converted the permitted exercise room into a shrine/worship area and constructed an unpermitted, 1,196 square-foot covered yoga deck attached on the eastern side of the permitted dwelling. In addition, the applicant constructed a second farm dwelling, two (2) detached cabana rooms used as sleeping areas for retreat guests, two (2) wooden platforms for overnight tents covered with canopies, a bathhouse/outdoor shower facility, a gazebo/shrine and barn structure. According to the applicant, the cabanas, tent platforms, and bathhouse have been removed and the applicant is currently in process of securing a demolition permit for the second farm dwelling, which will be removed as soon as demolition permit is granted.

As required by the DOH Wastewater citation, the applicant applied for obtaining 'as-built' or 'after the fact' building permits for the barn, gazebo/shrine, yoga deck, as well as the additional bedrooms and shrine/worship area within the existing dwelling, however, the building permits were rejected and new permit applications were required to meet the following Building Code requirements.

According to the Department of Public Works-Building Division, per the 2006 International Building Code, the proposed 'as-built' permit request for three (3) unpermitted bedrooms would require a change of use permit to R-2 (Monastery) Occupancy and is required to meet all the Code requirements for R-2 Occupancy. Additionally, the Building Division indicated that the applicant should submit a separate 'as-built' building permit for the 1,196 square-foot covered lanai that is used for meditation and yoga instruction and should meet all the requirements of A-3 Occupancy (Places of religious worship); the 144 square-foot pavilion should be permitted under Occupancy B having an occupant load under 50; and the detached barn, Occupancy U as

long as it is used for agricultural activities. All applications are to be submitted as Non-Residential structures for a licensed religious facility. Each structure once permitted will be allowed to be used after final inspection and certificate of occupancy is issued.

Throughout the Special Permit process, the applicant has been adamant that the proposed Residential Yoga Ashram can be accommodated within the existing single-family dwelling without the need to change use or occupancy, however, these change of use requirements are consistent with County Building Code and are required in order to support the applicants request for the dwelling to be permitted/recognized as a church related residence similar to a monastery. Moreover, the Planning Department has routinely added change of use permit requirements as conditions of approval of similar Special Permit requests where a structure permitted as a residence is changing to a non-residential use. Based on the preceding, a condition of approval will be added requiring compliance with these requirements prior to resumption of public uses on the property and within the proposed Residential Yoga Ashram.

Additionally, the new 4,800 square-foot Ashram Temple facility shall be constructed meeting with the requirements of DPW-Building Division and DOH requirements for the certified kitchen. The preceding will be added as a condition of approval.

According to the Department of Public Works – Engineering Division (DPW-Engineering), the subject property is located in Flood Zone “X”, which is an area determined to be outside of the 500-year floodplain. However, the Kaunalumu Tributary Number 3 (Tributary) splits the subject property, the extent of which was mapped on Subdivision No. 7022 and recorded against the deed to the property. Based on the applicant’s submitted site plan, it appears that a portion of the existing dwelling and the unpermitted yoga deck is situated within the extent of the Tributary. Furthermore, the proposed location for the new Ashram Temple and parking area appears to be fully within the extent of the Tributary.

Per DPW-Engineering, if any of the current structures that are built above/within the Tributary are unpermitted and are seeking ‘as-built’ building permits, those structures shall comply with the requirements of Chapter 27 - Flood Control - of the Hawai‘i County Code and may need to be brought up to current code requirements. Any additional improvements situated within the Tributary will also be subject to the requirements of Chapter 27. A flood study may be required to determine base flood elevations of the Tributary as directed by the Department of Public Works. Based on subsequent conversations with the applicant, they are open to relocating the new Ashram Temple Structure outside of the Tributary. Compliance with Chapter 27 will be added as a condition of approval.

The applicant is proposing dual access to the subject property via driveways from Sea View Circle and Ho‘omaluhia Drive. Sea View Circle is a County owned and maintained road with approximately 29 feet of pavement within an approximately 44-foot-wide right-of-way on the north side of the subject parcel. Ho‘omaluhia Drive is a private roadway with approximately 42 feet of pavement within two (2) roadway easements on the south side of the subject property.

The applicant’s existing driveway from Ho‘omaluhia Drive also crosses the historic Judd Trail, which includes a fifteen (15)-foot wide, State managed trail way easement running parallel and adjacent to the north of Ho‘omaluhia Drive fronting the subject property. According to the applicant, the subject property was one of eight (8) properties within the subdivision that were granted a perpetual easement for ingress, egress and utility purposes, over and across the Judd Trail by the original developer of the Subdivision, Nahona Partners Inc. However, according to the DLNR-Land Division, no such easements have been executed.

Based on subsequent conversations with Land Division, Nahona Partners, Inc. did purchase eight (8) Judd Trail easements in 1999, but the Attorney General's Office never finalized grant-of-easement documents due to lack of compliance with the following condition of the easement sale: "*Nahona Partners, Inc., its successors and permitted assigns, at their own expense, shall implement preservation and mitigation recommendations made by the Department of Land and Natural Resources, State Historic Preservation Division. Recommendations shall be incorporated into the easement document and shall be implemented by the Applicant no later than one (1) year after execution of the easement document.*" Once the Final Subdivision approval was granted, Nahona Partners Inc. dissolved and therefore never followed through with those requirements. At the date of this writing, SHPD is in the process of determining what those preservation and mitigation recommendations will entail.

During their research on Judd Trail easements, staff also found no evidence of an executed/recorded grant of easement providing the applicant legal access over Ho'omaluhia Drive from Ali'i Drive. When staff communicated their findings, the applicant indicated that they had secured legal access as part of the purchase of their property and subsequent BLNR Judd Trail easement sale approvals. Based on the preceding, the applicant has been traversing Ho'omaluhia Drive and the Judd Trail for close to twenty (20) years. Since being informed of the lack of proper easements, the applicant has been working closely with DLNR and the Ho'omaluhia Roadway Maintenance Association to determine the process to obtain legal access.

As the applicant has not yet secured legal access across Ho'omaluhia Drive or the Judd Trail, a condition of approval will limit vehicular access to come from Sea View Circle, the property's only existing legal access. Once the applicant secures legal access across Ho'omaluhia Drive and the Judd Trail, they can request to amend this permit to allow the second access.

According to the Department of Water Supply (DWS), there is an existing six (6)-inch water line within Sea View Circle. The subject property is currently served with two (2) 5/8-inch water meters, which provides an average of 800 gallons per day. DWS requests that the applicant submit estimated maximum daily water usage calculations for the proposed uses, prepared by a professional engineer licensed in the State of Hawai'i, for review and approval. The water usage calculations should include the estimated peak flow in gallons per minute and the total estimated maximum daily water usage in gallons per day. After review of the calculations, DWS will determine the appropriate service lateral and meter size required. Additionally, based on the proposed land use, a reduced pressure type backflow prevention assembly would have to be installed on the private property within five (5) feet of the existing/proposed meter(s). The installation of the backflow prevention assembly must be inspected and approved by DWS before commencement/continuation of water service. Finally, DWS indicated that the existing (6)-inch water line within Sea View Circle is inadequate to provide 2,000 gallons per minute flow for fire protection, as required, per DWS Water System Standards for the proposed type of land use. Through the change of use building permit process, the applicant will be required to comply with Fire Code for fire protection facilities and requirements. The preceding will be added as conditions of approval.

There is no County sewer system in the vicinity of the subject parcel. The existing single-family dwelling (proposed Residential Yoga Ashram) on the subject parcel is served by two (2) existing cesspools that were approved by the State Department of Health (DOH), however, it is likely the applicants will be required to convert those to a septic system during the change of use

building permit process. Additionally, the applicant proposes to install a septic system, meeting with the requirements of DOH for the new Ashram Temple facility. Compliance with State DOH requirements for Individual Wastewater Systems will be added as a condition of approval.

There is no municipal garbage pickup in the County of Hawai'i. According to the applicant, solid waste from the proposed development will be hauled by commercial disposal operators to the County's West Hawai'i Sanitary landfill in Pu'uana'hulu, which has several decades of capacity. While the application references the requirement to develop a solid waste management Plan, the Department of Environmental Management- Solid Waste Division did not require one for the proposed project.

Police, fire, emergency medical and hospital services are located nearby in Kailua-Kona, Kealakehe, and Kealahou. Electrical power, telephone and internet utilities already service the subject property.

(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. While they are zoned Agricultural, the subject properties are situated within the Kona CDP Urban Area and are within close proximity to residential subdivisions that are consistent with adjacent urban land uses and zoning designations. Due to population growth in the Kona region, there is a need to provide area residents with additional opportunities to participate in fellowship and spiritual gatherings, thereby enhancing local community life, providing a community-based service, and fostering the continued growth and development of families.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. As previously stated, soils for this site are classified as within Kainaliu-Wai'aha complex, 10 to 20 percent slopes and Wai'aha medial silt loam, 10 to 20 percent slopes. Soils on the property are designated as "E" or "Very Poor" by the Land Study Bureau's Detailed Land Classification System. The property is also considered "unclassified" on the Agricultural Land by the Department of Agriculture's ALISH Map. In addition, a portion of the parcel is affected by the Kaumalumu Tributary Number 3, which runs through the parcel from the eastern property boundary makai through the southern property boundary. Based on the preceding, the property is not well suited for commercial agriculture. Despite these less than ideal agricultural conditions, the applicant has been conducting agricultural uses on the subject property, including a mango orchard, citrus trees, breadfruit, tamarind, macadamia nuts, bananas, papayas, sacred Rudraksha seeds, flowers for religious ceremony, herbs, and vegetables and will continue to do so.

(F) The use will not substantially alter or change the essential character of the land and the present use. The site will be altered from its current state as the applicant is proposing to build new facilities and related improvements on the subject property. As previously stated, the applicant has also removed other unpermitted structures related to the previous ashram operation. However, the property has been used for religious and agricultural purposes in some form over the last twenty (20) years. Furthermore, as the project site is located adjacent to a residential community, the proposed religious facility uses is consistent with the character of the surrounding area. Based on the preceding, the use is not anticipated to alter or change the essential character of the land and the present use.

(G) The request will not be contrary to the General Plan and Kona 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 subject property 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. Churches, religious institution and other houses of worship are typically found within and adjacent to urban/residential areas and thus would be consistent with this LUPAG designation.

In addition, the proposed use would support the goals and policies of the Land Use element 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.

The Kona Community Development Plan (KCDP) directs growth in the Kona Region. The subject parcel is situated within the Kona Urban Area. The KCDP does not speak specifically to Special Permits for religious institutions on agricultural land, but given the subject properties’ location within proposed urban growth areas, the those uses are generally consistent with the relevant guiding principles, goals, objectives, policies and actions of the KCDP, including guiding growth in the Kona Urban Area as being primarily within “compact villages.”

Based on the preceding, request will not be contrary to the General Plan and Kona Community Development 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 subject property is located in the SMA and the applicant has concurrently applied for an SMA Use Permit for the proposed use for which the Planning Director is also recommending approval because the proposed use meets the criteria for granting an SMA Permit.

The request will not have a significant adverse impact to traditional and customary Hawaiian Rights. In view of the Hawai‘i State Supreme Court’s “PASH” and “Ka Pa‘akai O Ka‘Aina” decisions, the issue relative to native Hawaiian rights, such as gathering and fishing rights, must be addressed. These rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site.

Investigation of valued resources: An Archaeological Inventory Survey entitled, “Inventory Survey of Ho‘omalulu on Ali‘i Subdivision Increment 1” (included as Appendix A of the application), was prepared in August 1998 by Jack David Henry, B.A. and Thomas R. Walforth, M.S. for PHRI.

No formal floral or fauna study was submitted with the application. According to the applicant, the site has been planted with a mango orchard, citrus trees, breadfruit, tamarind, macadamia nuts, bananas, papayas, sacred Rudraksha seeds, flowers for religious ceremony, herbs, and vegetables. Due to the already developed state of the subject property and its immediate surrounding area. the applicant does not believe that rare or endangered faunal resources are likely to be found within or proximate to the subject site.

The valuable cultural, historical, and natural resources found in the area: The AIS identified by 26 historic sites, six (6) of which were situated partially or in whole on Lot 5. None of the other sites or features will be impacted by the proposed development. Those sites included Site 8124: Corral Enclosure; Site 8125: Agricultural Enclosure; Site 8126 Corral Wall; Site 21384: Agricultural Enclosure; Site 21385: Agricultural Terrace; and Site 21394: Agricultural Complex. Additionally, Site 6329: Wall, formed the northern boundary of Lots 4, 5, and 6 and has been capped and mortared with concrete in many areas or has been destroyed completely. The AIS assigned all of the preceding sites with a Significance Criteria "D": Have yielded, or is likely to yield, information important for research and all of the sites were recommended for "No further work." SHPD concurred with those evaluations and did not object to further development work on the subject parcel.

While not situated on the subject parcel, Site 6343: Judd Trail, which includes a fifteen (15)-foot wide, State managed trail way easement running the entire southern boundary of the subject parcel. The AIS recommended the trail be preserved in place and that a ten (10)-foot wide no building easement from the edge of the trail alignment be recorded against the deeds of adjacent properties.

Possible adverse effects or impairment of valued resources: The property does not abut the shoreline, therefore Hawaiian gathering and fishing activities will not be affected by the development.

The applicant constructed and utilizes a gravel driveway across the Judd Trail alignment from Ho'omaluhia Drive. The applicant has applied for an easement from the State to travers this section of the trail, but finalizing that easement is on hold pending development and SHPD approval of preservation treatments for that section of the trail.

Feasible actions to protect native Hawaiian rights: Should any unidentified cultural or historical resource be encountered during construction activities; the applicant will cease work until the DLNR-SHPD has provided clearance to continue work.

As the applicant has not yet secured legal access across the Judd Trail, a condition of approval of the concurrent Special Permit request will limit vehicular access to come from Sea View Circle, the property's only existing legal access. Once the applicant secures legal access across Ho'omaluhia Drive and the Judd Trail, they can request to amend this permit to allow the second access.

With implementation of the conditions of approval, the proposed action will not affect traditional Hawaiian rights.

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.