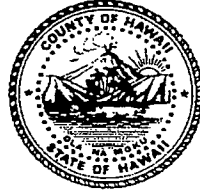


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County of Hawai'i

WINDWARD PLANNING COMMISSION

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

JUL 14 2021

Mr. Ronald N.W. Kim
Law Offices of Yeh & Kim
505 Kīlauea Avenue Suite B
Hilo, HI 96720-3059

Dear Mr. Kim:

SUBJECT: Special Permit Application (SPP 20-000220)
Applicant: Kirpal Meditation and Ecological Center, LLC
Approved Use: Legitimizes the Operation of a Meditation and Ecological Center and Retreat
Tax Map Key: 1-3-008:005

The Windward Planning Commission, at its duly held public hearing on July 1, 2021, voted to approve the above-referenced request to legitimize the operation of a meditation and ecological center and retreat on 10 acres of land. The property is located at 13-260 Pohoiki Road, approximately 0.5 miles west, or mauka, of the intersection with Kalapana-Kapoho Beach Road, Pohoiki, Puna, Hawai'i.

Approval of this permit is subject to the following conditions:

1. The applicant, its successors or assigns shall be responsible for complying with all stated conditions of approval.
2. The operation of the meditation and ecological center and retreat and related improvements shall be conducted in a manner that is substantially representative of plans and details contained within the Special Permit Application dated September 30, 2020. Any substantial expansion of the facility or uses beyond what is represented in these documents shall require an amendment to this permit.

3. Applicant shall remove all existing structures that are in the yard setback area adjacent to Tax Map Key Parcel No. (3) 1-3-008:067 and close all cesspools/cesspits according to the requirements of the Hawai'i Department of Health and/or Zoning Code. Structures labeled Shed 7 and Shed 22 on applicant's plot plan shall be removed and relocated out of the setback within six (6) months of the County's issuance of the final building permit for those structures in their new locations outside of the setback.

Applicant shall remove Building 21 completely from the setback within six (6) months of the County's issuance of the final certificate of occupancy for the new proposed community center building, labeled 24 on the applicant's plot plan, which will include the laundry and showers currently housed in Building 21. During the Plan Approval process the applicant shall either secure a yard setback variance from the Planning Department or make a plan to remove any other existing structures from within yard setbacks that are not adjacent to Tax Map Key Parcel No. (3) 1-3-008:067. This special permit does not automatically grant a yard setback variance to the subject property.

4. Construction of the proposed new buildings, conversion of the existing buildings 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, landscaping, signage, fire protection measures, driveway access and parking stalls, outdoor lighting (if any), and other improvements associated with the proposed development.
5. Prior to commencement of the proposed use, the applicant shall secure and finalize all required building permits from the Department of Public Works Building Division for the meditation and ecological center and retreat facility, including change of use building permits for existing structures to be used for the proposed use.
6. The applicant shall install, construct, and maintain improvements for Fire Department Access Road (FDAR) access to the subject property and fire suppression improvements on the subject property, including but not limited to on-site water storage, as required by the Fire Department. Upon successful completion of the improvements and prior to the commencement of the proposed use, the applicant shall provide the Planning Department documentation from the Fire Department that the improvements meet Fire Code standards.

7. As represented by the applicant, retreat events shall be limited to 10 per year with an average of 15 guests per event. Additionally, no more than 28 non-retreat guests per day will be allowed during the time periods when retreats are not being conducted.
8. As represented by the applicant, all retreat events shall occur between 7:00 a.m. and 9:00 p.m. Quiet hours will be from 9:00 p.m. to 9:00 a.m., with the exception of grounds maintenance such as mowing and weed whacking, which may begin at 8:00 a.m.

During non-quiet hours in the daytime, from 9:00 a.m. to 9:00 p.m. (with the exception of the 8:00 a.m. to 9:00 a.m. grounds maintenance allowance) sound levels up to 70 decibels at the boundary between the applicant's property, identified as TMK No. (3) 1-3-008:005, and the neighboring property, identified as TMK No. (3) 1-3-008:067, will be allowed. During quiet hours in the nighttime, from 9:00 p.m. to 9:00 a.m. (with the exception of the 8:00 a.m. to 9:00 a.m. grounds maintenance allowance), sound levels up to 45 decibels at this property boundary will be allowed. The parties hereto agree to an exception that any construction related noise shall adhere to the applicable County and/or State rules in place for construction related noise on the applicant's property. The current County rules allow for construction from 7:00 a.m. to 6:00 p.m. Monday through Friday and 9:00 a.m. to 6:00 p.m. on Saturdays and no construction on Sundays or holidays.

9. Prior to the commencement of the proposed use, an individual wastewater system(s) shall be installed, meeting with the standards and requirements of the State Department of Health.
10. The property shall not be used as a venue for weddings and concerts. The whole site will not be rented out for a wedding party or for a concert. A concert is defined as guests coming to the property exclusively for the purposes of a musical performance, either free or ticketed. If, on occasion, a wedding or concert is held on the property, it will be limited to the maximum number of people as provided in Condition No. 7 of this permit.
11. The applicant shall provide potable water from a system approved by the State Department of Health to guests of the retreat facility.
12. The applicant shall secure a food establishment permit and construct a certified kitchen meeting the requirements of the State Department of Health, prior to commencement of meal service to guests. A copy of the permit shall be provided to the Planning Department prior to commencement of the proposed use.

13. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to commencement of the proposed use.
14. All earthwork and grading activity shall conform to Chapter 10, Erosion and Sediment Control of the Hawai'i County Code.
15. All development generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
16. 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.
17. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations, and requirements.
18. The applicant shall submit a final status report to the Planning Department once all conditions of approval have been met. The report shall include, but not be limited to, information proving compliance with the conditions of approval.
19. An initial extension of time for the performance of conditions may be granted by the Planning Director upon the following circumstances:
 - A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors, or assigns and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
 - C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
 - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

- E. If the applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the Planning Commission for appropriate action.
- 20. Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke the permit.

This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

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

Should you have any questions, please contact Jessica Andrews of the Planning Department at 961-8155.

Sincerely,

John R Replogle
John R Replogle (Jul 14, 2021 13:51 HST)

John R. Replogle, Chair
Windward Planning Commission

Kirpa;SPP20-220wpc
Enclosure: PC Findings

cc/att: Mr. Leonard Sussman, Kirpal Meditation and Ecological Center, LLC (via email)
Department of Public Works
Department of Water Supply
County Real Property Tax Division
Land Use Commission
State Department of Health
County Fire Department
Department of Environmental Management
GIS Section (via email)

COUNTY OF HAWAI'I
PLANNING COMMISSION FINDINGS

KIRPAL MEDITATION AND ECOLOGICAL CENTER, LLC
SPECIAL PERMIT APPLICATION NO. 20-000220 (SPP 20-000220)

Based on the following findings, the requested Special Permit to legitimize the operation of a meditation and ecological center and retreat on 10 acres of land situated within the State Land Use Agricultural District is hereby **approved by the Planning Commission**. The subject property is located at 13-260 Pohoiki Road, approximately 0.5 miles west, or mauka, of the intersection with Kalapana-Kapoho Beach Road, Pohoiki, Puna, Hawai'i, TMK: (3)1-3-008:005.

Kirpal Meditation and Ecological Center, LLC is seeking a Special Permit to legitimize the operation of a meditation and ecological center and retreat, including instruction in meditation, yoga, health, and fitness, and providing overnight accommodations for up to 28 guests in 17 cabin-style units and 2 residential hales with bathrooms. The applicant's proposal includes construction of a new 2,500 square-foot (50'x50') community building with a certified kitchen, community bath, shower facilities and storage. In addition, the applicant is proposing to obtain building permits to convert an existing hexagonal structure into a 289 square-foot (17'x17') meditation building, convert an existing shed structure into a 190 square-foot yoga hale, convert two existing 1-bedroom structures into 900 square-foot residential hales with bathrooms, and convert 17 existing shed structures into cabin-style units of no greater than 500 square feet each. The applicant intends to maintain the dwelling as the residence of the landowner. According to the applicant's site plan, there are 18 unpermitted structures, including a 1,920 square-foot covered exercise area, two 1-bedroom residences, a 289 square-foot hexagonal hut, a 256 square-foot hexagonal hut and sheds of various sizes. These structures will either be permitted and converted into buildings for the proposed use or demolished. The applicant is proposing to offer 10 group retreats a year for approximately 7 days per retreat. The retreat groups are proposed to average 15 people. During the periods when retreats are not being conducted the applicant is proposing to offer their cabins and hales to the public for overnight accommodations for up to 28 guests. The applicant will provide guests transportation to and from the Hilo Airport as well as provide on-site parking for six guest vehicles.

The mission of Kirpal Meditation & Ecological Center, as envisioned by its founder, Leonard Sussman, is: "For the weary Soul to rest from its entanglements, be able to distinguish itself from the mind and enjoy inner peace."

The number of part-time and full-time employees will range between 4 and 12 employees, depending on the number of guests and activities.

The applicant is proposing that hours of operation for center activities will be between 7:00 AM and 9:00 PM. Meditation and quiet time are mandated between 9:00 PM and 9:00 AM.

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 Agricultural District that would not be contrary to the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended.

In recognizing that lands within agricultural districts might not be best suited for agricultural activities and yet classified as such, and in recognition that certain types of uses might not be strictly agricultural in nature, yet reasonable in such districts, the legislature has provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural district. The subject property is 10 acres in size and is situated within the County's Agricultural (A-1a) zoning district. There is an existing greenhouse on the property and the applicant will continue to cultivate small-scale, sustainable agriculture. The request is unusual in that the proposed uses are not strictly agricultural in nature. However, the proposed meditation and ecological retreat center's activities will primarily occur in an area that has been previously cleared and improved, contained to approximately 30% of the subject parcel. Additionally, the applicant proposes to encourage visitors to participate in agricultural cultivation of the property, including a greenhouse, vegetable garden and fruit tree orchard. The remaining 70% of the subject parcel can be used for small-scale agriculture, thus the proposed use will not diminish the potential for agricultural activity on the property. Therefore, it is reasonable that this use be allowed in the Agricultural district. 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 uses shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands for those uses to which they are best suited in the interest of the public welfare of the people of the State of Hawai'i. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. The soils on the property are classified by the Land Study Bureau's rating system as class "D" or "Poor" soils for agricultural productivity and designated "Other" on the ALISH map. As the proposed uses will be conducted in an area that has already largely been improved and established for non-cultivable activities (the existing single-family dwelling and its immediate surrounding grounds), it will not displace any existing agricultural activity or diminish the agricultural potential of the property. Therefore, the use will not adversely affect the preservation and agricultural use of the County's agricultural lands of high agricultural potential and is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

(B) The desired use would not adversely affect surrounding properties.

The surrounding parcels are zoned A-1a and A-10a, with the smallest nearby parcel being five acres in size. In the mid-1990's much of the surrounding land was cleared and plowed for the conversion to papaya farming, including the subject parcel. Prior to acquisition by the applicant in 2004, the subject parcel was cleared and plowed again. Today the subject parcel and surrounding land consist of non-native shrubland and forest consisting of a diverse array of invasive species and native plants. The majority of the surrounding lots are used for agriculture or are vacant and undeveloped, with few permitted dwellings. There is a 777-acre vacant parcel of land to the southeast, a 5-acre parcel of land with a 500 square-foot storage structure to the west, and four vacant parcels of land to the northeast, ranging in size from 10 acres to 71 acres. Much of the surrounding area was inundated by lava during the 2018 eruption of Kilauea volcano and the subject parcel is designated by the County of Hawai'i as part of the Lava Recovery Area. The proposed uses are not in close proximity to permitted dwellings and should not adversely affect surrounding properties.

Most guests either stay on site or are able to walk to Pohoiki to enjoy ocean recreation. The applicant estimates that the number of guest vehicles on site will not exceed 6 on a daily basis and guest vehicle trips run between 0 to 2 per day, primarily during daylight hours. Employee vehicle trips are anticipated to occur in the morning and afternoon. Given the low traffic levels anticipated by the proposed use, the applicant does not propose any road improvements beyond the County's existing plan to repair the upper portion of Pohoiki Road.

Retreat activities will be primarily concentrated on the mauka portion of the subject parcel. Additionally, the applicant has stated that meditation and quiet time will be mandated between 9:00 PM and 9:00 AM. Conditions limiting the number of guests and limiting noise will be added to mitigate adverse impact on 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.

The subject property is accessible from Pohoiki Road and by way of Highway 137 from the Kalapana area. The section of Pohoiki Road fronting the subject property was not damaged in the 2018 lava flow, unlike upper sections of Pohoiki Road from the Pahoia direction. The County of Hawai'i has recently announced that it will restore the lava damaged sections of Pohoiki Road, which will provide better, quicker access to the property from Pahoia. Pohoiki Road in the vicinity of the property consists of pavement sections 16 feet in width, with approximately 2-foot wide shoulders. The driveway entrance to the property consists of gravel. According to the applicant, sight distance from the driveway access is good in both directions. The applicant will provide guests transportation to and from the Hilo Airport as well as provide on-site parking for six guest vehicles.

According to comments from the Fire Department, the access road and driveway shall provide access to buildings and shall meet Fire Code requirements for Fire Department Access Road (FDAR) width and surface. Fire Code requires, "...an unobstructed width of not less than 20 feet with an approved turn around area if the FDAR exceeds 150 feet." In addition, the applicant may need to provide a sprinkler system, additional water storage, and a pump system to the proposed retreat facility as required by the Fire Department. According to Fire Code, engineered plans for the FDAR as well as engineered plans for any necessary sprinkler system and related fire suppression improvements shall be submitted to the Fire Department for review and approval prior to construction and operation of the proposed use. Conditions reflecting these requirements will be added to this approval.

According to the Department of Water Supply (DWS), the parcel is not within the service limits of the Department's existing water system. The applicant is proposing to utilize four existing rainwater catchment tanks to support the proposed project operations; however, the Department of Health Safe Drinking Water Branch does not support the use of rainwater catchment systems for drinking purposes since the quality may not meet potable water standards. According to the Department of Health (DOH), if the proposed use meets the definition of a "public water system", serving 25 or more individuals at least 60 days per year or has at least 15 service connections, the applicant shall be required to meet minimum capacity requirements, including demonstrating that the system will have satisfactory technical, managerial, and financial capacity to enable the system to comply with safe drinking water standards and requirements. Projects that propose development of new sources of potable water serving or proposed to serve a public water system must comply with the terms of HAR 11-20-29. According to the Fire Department, additional water storage capacity may be required to meet fire

code for fire suppression purposes. Conditions reflecting these requirements will be added to this approval.

The subject property is not currently serviced by the County sewer system. According to the applicant, wastewater disposal is currently through individual cesspools, but will be upgraded to a leach field septic system design to handle its wastewater needs which the Department of Health has approved. Per this proposal, one septic system will serve a central area located in proximity to guest cabins and a community bathroom and kitchen, and the other system will serve the two residence halves that have bathroom facilities. A condition of approval will require that the applicant provide individual wastewater system(s) meeting with DOH approval to accommodate the proposed uses.

According to the Department of Environmental Management – Solid Waste Division, the applicant will be required to submit a Solid Waste Management Plan to the Department of Environmental Management for review and approval. This will be added as a condition of approval of this permit.

All essential utilities and services are available to the site. Fire and Police service is located in Pāhoa, approximately 20 miles from the site via Highway 137 through Kalapana. When the upper portion of Pohoiki Road is opened up and repaired, services in Pāhoa will be just 7 miles away from the subject property. The nearest health facility is Puna Community Medical Center in Pāhoa.

(D) Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established. In the 1960's and 1970's, the State's agricultural district boundaries and regulations were established and subsequently amended pursuant to HRS Chapter 205. The State Land Use Commission was created in 1961, and interim regulations and temporary district boundaries became effective in 1962. Subsequently, the regulations and Land Use District Boundaries became effective in August of 1964. The property and surrounding areas are designated for agricultural uses by both State and County land use laws. Through the issuance of a Special Permit, a community may establish various non-agricultural uses/services that may not be available or allowed by zoning for its residents. Since the district boundaries were established, demand has increased for alternative health and wellness tourism for guests who seek a more peaceful, remote environment as an alternative to resort venues. The proposed uses would meet this demand by providing visitors an opportunity to participate in wellness retreats, classes, and workshops in a remote, peaceful environment.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. Soils within the permit area site are classified as "D" or "Poor" for agricultural productivity and are classified as "Other" under the ALISH map. These soils are most suitable for pasture use, and are unsuited for large-scale, commercial agricultural uses permitted within the State Land Use Agricultural District. With that being said, there is an existing greenhouse on the property and the applicant cultivates small-scale agriculture. The property is not well-suited for intensive agriculture on an economically viable scale, given the triangular shape and small parcel size. The improved area of the site occupies approximately 30% of the subject parcel. Based on the discussion above, the proposed uses will not diminish agricultural opportunities on the subject property and thus will not adversely impact the agricultural potential of the land.

(F) The use will not substantially alter or change the essential character of the land and the present use. The essential character of the property and surrounding area is

agricultural with some residential uses. The applicant will continue to practice and enhance small-scale sustainable agriculture. The improvements and activities are screened from view by heavy perimeter vegetation, which will be maintained, and retreat activities are consistent with the rural character of the neighborhood. The applicant's development of the land has not required mass grading but has utilized the existing topography and has been sensitive to the land and its character. Therefore, it is not anticipated that the proposed use will substantially alter the essential character of the area.

(G) The request will not be contrary to the General Plan and Community Development Plan (CDP) and Zoning Code. The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County. The project site is identified by the LUPAG map as Important Agricultural Lands, which are lands with better potential for sustained high agricultural yields because of soil type, climate, topography, or other factors. As previously mentioned, the proposed request will not displace any active or potential agricultural activity on the property. The proposed request is consistent with the following goals and policies of the Land Use and Economic elements of General Plan.

Land Use Element

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

Economic Element

- Provide residents with opportunities to improve their quality of life through economic development that enhances the County's natural and social environments.
- Economic development and improvements shall be in balance with the physical, social, and cultural environments of the island of Hawai'i.
- Provide an economic environment which allows new, expanded, or improved economic opportunities that are compatible with the County's cultural, natural, and social environment.
- Strive for an economic climate which provides its residents an opportunity for choice of occupation.
- Encourage the development of a visitor industry that is consistent with the social, physical, and economic goals of the residents of the County.

The proposed request will allow the applicant an opportunity to improve their quality of life, provide an economic environment that allows this new, economic opportunity and increase the development of the wellness visitor industry for Hawai'i.

According to Section 25-1-5(b) of the Zoning Code, a "lodge" means a building or group of buildings, under single management, containing transient lodging accommodations without individual kitchen facilities, and no more than forty guest rooms or suites, and generally located in agricultural, rural, or other less populated areas. The proposed Center meets this definition of lodge as 17 transient lodging accommodations without individual kitchen facilities will be provided for guests on the property, the Center will operate under single management, and the

property is located in an agricultural area. Accordingly, the proposed Center will not be contrary to Zoning Code.

The request is not contrary to Chapter 205A, Hawai'i Revised Statutes, relating to Coastal Zone Management. The property is located approximately half a mile away from the nearest shoreline and will not be impacted by coastal hazards or affect beach erosion, coastal ecosystems, and marine resources. Additionally, it is not located in the Special Management Area. There is no record of a designated public access to the shoreline or mountain areas that traverses the property. The applicant is unaware whether the subject permit area or immediate surrounding area was ever used for the gathering of plants by native Hawaiians. However, the site has been historically used for papaya farming and other agricultural uses and has had a single-family home on it since 2007. A draft Archeological Impact Statement was included with the application dated September 2016. The AIS identified a single archeological feature onsite, a portion of a rock wall, which is not being disturbed by the applicant's proposed land use. Based on the preceding, the proposed use is not contrary to the objectives of Chapter 205A, Hawai'i Revised Statutes relating to Coastal Zone Management.

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 Building Code and 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.

On February 4, 2021, the Windward Planning Commission granted standing to participate in a contested case hearing to Petitioner Margaret "Keri" Dickie Clark. On May 7, 2021, the Parties held a mediation conference and came to an agreement. Based on this agreement the Planning Director revised Conditions No. 3, 8 and 10 of his recommendation. Also based on the agreement, Ms. Dickie Clark withdrew her petition for standing in a contested case hearing on June 8, 2021. At its hearing on July 1, 2021, the Windward Planning Commission agreed with the Planning Director's revised recommendation and voted to approve the permit.