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County of Hawai'i

LEEWARD PLANNING COMMISSION

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APR 27 2021

Mr. Pablo Penazola
75-378 Nani Kailua Drive
Kailua-Kona, HI 96740

Dear Mr. Penazola:

SUBJECT; Special Permit No. SPP-20-000221
Applicant: Pablo Penazola
Approved Use: Construct and Operate a Childcare Center/Preschool Facility
Tax Map Key: 7-5-017:045

The Leeward Planning Commission, at its duly held public hearing on April 15, 2021 voted to approve the above-referenced request to construct and operate a childcare center/preschool facility on a two (2) acre portion of a 5.3-acre parcel. The property is located 75-477 Hualālai Road, approximately 988 feet east (mauka) of its intersection with Queen Ka'ahumanu Highway, Wai'aha 1st, North Kona, Hawai'i.

Approval of this permit is subject to the following conditions:

1. The applicant(s), its successor(s) or assign(s) shall be responsible for complying with all of the stated conditions of approval.
2. The proposed school shall be conducted in a manner that is substantially representative of plans and details contained within the Special Permit Applications dated November 19, 2021 and March 4, 2021, any supplemental material, and the representations made before the Leeward Planning Commission. Any expansion of uses beyond what is represented in this document shall require an amendment to this permit.

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APR 28 2021

3. Prior to the issuance of a water commitment by the Department of Water Supply (DWS), the applicant(s) shall submit the anticipated maximum daily water usage calculations as prepared by a professional engineer licensed in the State of Hawai'i to the DWS. A water commitment deposit shall be paid to the DWS within 180 days from the effective date of this ordinance in accordance with Rule 5 of the Department of Water Supply's Rules and Regulations. The applicant is responsible for maintaining valid water commitments to support the proposed use until such time that required water facilities charges are paid in full.
4. Water usage via the existing County water meter shall not exceed an average daily usage of 400 gallons for the proposed use. The Department of Water Supply may install a flow reducing device on the meter should the consumption through the existing meter exceed its rated capacity. Additional potable water requirements will be the responsibility of the applicant to develop, construct and maintain for the school use.
5. The applicants shall install a reduced pressure type backflow prevention assembly within five (5) feet of the existing water meter and any additional water meters on private property, which must be inspected and approved by the Department of Water Supply.
6. Enrollment shall be limited to 72 students.
7. Construction of the proposed development shall be completed within five (5) years from the effective date of this permit. Prior to construction, the applicant(s), successor(s) or assign(s) 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/or proposed structure(s), paved driveway access and parking stalls associated with the proposed development. 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.
8. Access to the project site from Hualālai Road shall meet with the approval of the Department of Public Works.
9. Prior to issuance of a Certificate of Occupancy, the applicants shall provide fire protection measures appropriate for the proposed use meeting with the approval of the Fire Department, including but not limited to, a charged water fire suppression system using an onsite holding tank and pump with back-up generator.

10. 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.
11. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties. Additionally, the project generated runoff shall not be directed toward Kakalina Road, the access easements, nor the Wai'aha Drainageway and Wai'aha Drainageway Splitflow No. 1. A drainage study shall be prepared by a professional civil engineer licensed in the State of Hawai'i and submitted to the Department of Public Works prior to issuance of Final Plan Approval. Any recommended drainage improvements, if required, shall be constructed meeting with the approval of the Department of Public Works prior to receipt of a Certificate of Occupancy.
12. All earthwork and grading activity shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai'i County Code.
13. 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.
14. The applicant(s) its successor(s), or assign(s) 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 applicants, successors or assigns, and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
 - C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.

- D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).
16. 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.

Should you have any questions, please contact Alex Roy of the Planning Department at 961-8140.

Sincerely,


Michael Vitousek (Apr 27 2023 17:03:45T)

Michael Vitousek, Chair
Leeward Planning Commission

LPenalozaSPP20-2211pc

Enclosure: PC Findings

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
County Fire Department
State Department of Health
GIS Section (via email)

COUNTY OF HAWAI'I PLANNING DEPARTMENT
RECOMMENDATION

PABLO PENALOZA
SPECIAL PERMIT APPLICATION (SPP 20-000221)

Based on the following findings, the requested Special Permit to develop and operate a childcare center/preschool facility on a two (2)-acre portion of a 5.3-acre parcel situated in the State Land Use Agricultural District is hereby **approved by the Leeward Planning Commission**. Staff notes that the Leeward Planning Commission voted to remove specific language from the project description to only include the preceding uses.

The applicant is requesting a Special Permit to develop and operate a preschool/childcare/after-school care center on 2.0-acre of land within the SLU Agricultural District. The applicant currently operates Alaka'i Academy, a preschool in the Old Industrial Area in Kona. The existing school is licensed under Department of Human Services for 72 students; the applicant is looking to relocate the school to the new location described in the Special Permit application that will accommodate 72 students and approximately 15 staff. The school will be housed in a set of buildings totaling approximately 10,000 square feet. The buildings will consist of classrooms, bathrooms, and cafeteria with a kitchen, lobby, administrative office space and storage rooms. In addition to the buildings, a tent-like pavilion will be constructed for student use associated with the school, such as outdoor performances and gatherings.

The school will operate Monday through Friday 7:00AM to 5:00 PM and will be closed on weekends and major holidays, however it will be open during the summer and non-holiday Department of Education (DOE) school breaks. When the school is not in session, the applicant plans to rent out the venue for events such as fundraisers. Other events include outdoor gatherings of 50 people which will occur Saturdays and Holidays (no Sundays) from 9:00AM to 8:00PM; community events of 25 people who will use classrooms and/or outdoor areas which will occur Monday through Friday from 6:00PM to 9:00PM. Approximately once a year the applicant plans on hosting a larger school fundraiser that could host up to 100 people and will be held entirely outdoors; hours for this event will be 10:00AM to 2:00PM.

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 proposed placement of a preschool/childcare/afterschool care facility on a 2.0-acre portion of a 5.3-acre parcel is unusual in that it is not an agricultural use of that property. The use is reasonable in the Agricultural District because the property does not have a high potential for agriculture and could better serve the community through its use as a school. It is therefore determined that the proposed use is an unusual and reasonable use within the Agricultural District and will not be contrary to the objectives of 205A, HRS, as amended.

In addition to the above listed criteria, the Planning Commission shall also consider the criteria listed under Section 6-3(b)(5) (A) through (G). In considering the criteria, the Planning Director recommends the following:

(A) Such use would 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 and 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 uses. The property is not considered to have high agricultural potential from a resource perspective due to the soil type and its low productivity rating, which is typically used for grazing pasture lands and not agriculture. The property is not considered important agricultural land as the property's soils are designated "E" or "Very Poor" and "C" or "Fair" for agricultural productivity by the Land Study Bureau Soil Classification System and are considered "unclassified" by the Department of Agriculture's ALISH Map. As evaluated above, the applicants' 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. Thus, the establishment of the proposed use will not be 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. All of the immediately surrounding properties are zoned Agricultural (A-5a) and are over 5 acres in size. The Kona Heights subdivision, with properties zoned RS-15, is located approximately 1,300 feet to the north. The Hualālai Colony Subdivision, with properties zoned RS-15, is located about 500 feet east of the property. The vacant lands to the south are zoned A-1a, while properties directly east and west of the subject parcel are similarly zoned A-5a. Directly north of the subject parcel is the Innovations Public Charter School with a 9.3-acre campus that serves grades K through 12; the Innovations School was approved by Special Permit No. 1262 in 2005 with an amendment for expansion approved in 2012. The surrounding land uses include agricultural/pasture uses, residences and vacant lands. The operation of the school will likely cause an increase in noise due to school bells, fire drills, and students participating in outdoor recreation. Construction of new buildings will temporarily increase noise, dust, and traffic. However, it is unlikely that an increase in noise, dust, and traffic will adversely affect surrounding properties since the immediately surrounding properties are primarily unused agricultural lands, a developed K through 12 school (Innovations), and the closest dwellings are located approximately 500 feet east of the site. As a condition of approval, the applicant will be required to provide on-site

parking, drainage improvements and landscaping necessary to minimize the fugitive effects of noise, drainage, and dust that could be created by the school use upon the surrounding area. The existing school located north of the project site has been in operation for almost 20 years, and the Planning Department is not aware of any complaints regarding operational impacts of the school upon the surrounding properties.

Once operational, there should be minimal noise associated with the operation of the school, and only a modest increase in traffic to the project site along Kakalina Extension.

(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 applicant proposes to utilize the existing paved Kakalina Extension access road that leads to Hualālai Road for two-way ingress/egress to the school. Kakalina Extension (street) is a 35-foot wide, 2-lane paved road located off Hualālai Road that is within a 60-foot-wide access easement. The entire Kakalina Extension is within the subject property's boundaries so the proposed use would have unrestricted access and use of the road. There are several easements granted to neighboring properties, including the Innovations School, to access their properties. A Traffic Impact Analysis Report (TIAR) was prepared by Island Engineering, LLC on November 4, 2020 for the proposed project. It should be noted that the traffic count data collected in the field is not representative of normal operations due to the ongoing Covid-19 pandemic. Visitor and school traffic could not be accounted for due to the travel restrictions and school closures. Since data regarding current visitor distribution to the island could not be found, the traffic analysis inflated the measured traffic counts to account for the diminished use. Hualālai Road has a dedicated 250-foot-long right and left-turn lands for turning movements onto State Route 11. The right and left-turn lanes were observed to have a maximum of two (2) vehicles during the AM and PM peak hour of traffic. The project site intersects Hualālai Road and Kakalina Extension which was measured to have satisfactory geometry and adequate stopping sight distance in both directions along Hualālai Road. At the intersection, Kakalina Extension is a 28-foot-wide paved road with a stop bar and stop sign. There is currently no dedicated left or right turn lane onto Kakalina Extension. The applicant has stated they will not have confined pick-up and drop-off times as each family will have flexibility to drop-off between 7AM and 9AM and pick-up times between 3pm and 5pm. It should be noted that the Department of Public Works (DPW) Engineering Division commented that the traffic count inflation for COVID-19 and school closure is too low in the TIAR. However, DPW Engineering will defer to comments from the DPW Traffic Division and the State Department of Transportation (DOT) as they are the jurisdictional agencies over Hualālai Road and State Route 11. To date, DPW-Traffic Division had no comments on the proposed project, however, the State DOT provided comments regarding the proposed number of students and staff reported in the TIAR which was lower than the estimate provided in the application. HDOT requested that the TIAR be updated. Additionally, HDOT requested more information on trip generations from the proposed secondary uses, and any impacts to the State's Queen Ka'ahumanu Highway.

With regards to drainage, DPW Engineering stated that all development generated runoff shall not be directed towards any adjacent properties, more specifically towards Kakalina Road, the access easements, or the Wai'aha Drainageway and Wai'aha

Drainageway Splitflow No. 1. DPW requested that a drainage report be prepared and submitted to DPW Engineering for review and approval. According to DPW, Kakalina Extension was approved via Grading Permit No. 9-2457. As part of that review, a no-rise certification addressing the Kakalina Extension portion that crosses the Wai'aha Drainageway Flood zone was approved by DPW. However, a final inspection for that certification was not performed to date.

According to the Department of Water Supply (DWS), the existing 8-inch waterline fronting the subject property is inadequate to provide the required 2,000 gallons per minute flow for fire protection. Due to the inadequate flow for fire protection the applicant will provide a charged water fire suppression system using an onsite holding tank and pump with back-up generator, with design and capacity to be approved by the Hawai'i County Fire Department. Auxiliary standpipes will also be installed that can be used by HFD for any local fire response. The DWS has commented that the water availability in the area of the subject parcel provides for the same number of water units as the number of lots allowable under the current zoning. As the current zoning is A-5a and the subject parcel is 5.3-acres, only one (1) unit of water is available to the project site. The subject parcel is limited to the one (1) existing 5/8-inch meter assigned to the parcel. For reference, one (1) unit of water is equal to an average daily use of 400 gallons, which is suitable for one (1) single-family dwelling. At this time, the DWS is requesting that the applicant submit revised estimated average daily water demand calculations to determine the appropriate water commitment deposit and prevailing facilities charge to be paid. According to the applicants engineer, the estimated average daily consumption for the proposed project is 2,270 gallons per day with a max daily consumption of 3,800 gallons per day. The applicant has stated the actual use will be far less based on the usage at the school's current location, and that the school could operate with the allotted one (1) unit of water. A condition of approval will limit water usage to one unit and require additional water storage (e.g., water tanks) to be developed by the applicant to accommodate additional water needs. Additionally, the proposed use will require the installation of a reduced pressure type backflow prevention assembly within five (5) feet of the meter on private property. The installation of the backflow prevention assembly must be inspected and approved by DWS before the commencement or continuation of water service. A condition of approval will be added requiring the applicant to comply with the requirements of DWS regarding the availability of water prior to construction of the new school.

According to the State Department of Health (DOH), the Wastewater Branch was unable to make comments on the proposed project due to the lack of information. Before comments and recommendations can be provided the applicant will need to submit wastewater generation calculations and a management plan for wastewater disposal. Police, fire, and medical services are available within reasonable distances of the proposed project site and all essential utilities are available to the 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 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 services that may not be available or allowed by zoning. Since the district boundaries were established in the 1960's, Kona's population has grown substantially and the establishment of community services, such as schools, has not been able to keep pace with this growth. The State Land Use Commission has not designated new urban lands where these community services can be established, therefore, a Special Permit is the only way to provide these much-needed services to the community.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The proposed use is situated on lands whose soils are classified as "E" or "Very Poor" and "C" or "Fair" for agricultural productivity by the Land Study Bureau's Overall Master Productivity Rating. The Department of Agriculture's ALISH map does not classify the subject property as having any agricultural importance. In this case, the land is unsuited for agricultural activities and yet is classified for such uses. The existing uses of the area include only pasture or grazing and as such no lands of high agricultural potential will be removed with the approval of this request.

(F) The use will not substantially alter or change the essential character of the land and the present use. The character of the surrounding area is primarily pasture with residential subdivisions located approximately 500 and 1300 feet from the project parcel. The Innovations school, located on the adjacent parcel to the north, has been in operation since 2006, with an expansion of the campus occurring in 2012. Based on the limited use of the land and the existing school adjacent to the proposed new school, the proposed use would not substantially alter the essential character of the land.

(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 and proposed Special Permit area as Urban Expansion (ue). The Urban Expansion designation allows for a mix of a high density, medium density, low density, industrial-commercial and/or open designations in area where new settlements may be desirable, but where the specific settlement pattern and mix of uses have not been determined. The proposed use is also consistent with the following goals and policies of the General Plan:

Public Facilities

- Improve basic school facilities to meet current standards.

Economic

- Support all levels of educational, employment and training opportunities and institutions.
- Provide an economic environment that allows, new, expanded, or improved economic opportunities that are compatible with the County's cultural, natural, and social environment.

Land Use

- 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.

The applicant currently operates the Alaka'i Academy, a preschool in the Old Industrial Area in Kona. The existing school is currently licensed under the Department of Human Services to care for over 72 children at one time. The development of the new school will provide the capacity to serve the current license capacity of 72 students with the potential for expansion in the future as well as providing more non-school hour opportunities for students and their families.

The proposed use is also consistent with the Kona Community Development Plan (CDP). The subject property is located within the Kona Urban area and within the Pua'a-Wai'aha Village Transit Oriented Development (TOD) center. It should be noted that while the project falls within a target TOD the applicant is not seeking to change the zoning of the land which would trigger the need for compliance with the Kona CDP TOD requirements. With regards to this specific project, the Kona CDP, Policy PUB-6.6, '*Important Role of Schools in Creating a Sense of Community*', supports the creation of charter schools in the Kona Community.

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 Special Management Area (SMA) is part of the Coastal Zone Management Program regulated by the County. The subject property is not proximate to the shoreline and will not be impacted by coastal hazards or affect beach erosion, coastal ecosystems, and marine resources. Additionally, the project site is not located in the SMA, and there is no record of a designated public access to the shoreline or mountain areas that traverses the property. According to the applicant, no valued cultural or natural resources exist on the property and there is no evidence of any traditional and customary Native Hawaiian rights being practiced at the site.

Based on the preceding, the proposed School Facility will not adversely impact any recreational resources, including access to and along the shoreline, scenic and open space resources, coastal and dune ecosystems, and marine and coastal resources. Further, the property will not be affected by any coastal hazards or beach erosion.

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 a liquor license, issuance of building permits, 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 affected agencies.

Based on the above, the request to develop a childcare/school facility on the subject parcel is approved.