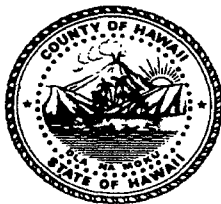


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## County of Hawai'i

### WINDWARD PLANNING COMMISSION

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

FEB - 1 2018

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

Dear Mr. Wong:

**SUBJECT: Use Permit No. USE 17-000070**  
**Applicant: Na Wai Ola Public Charter School**  
**Permitted Use: Allowed the Expansion of an Existing Charter School**  
**Tax Map Key: 1-8-002:006**

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The Windward Planning Commission, at its duly held public hearing on January 4, 2018 voted to approve the above-referenced request to allow the expansion of an existing public charter school on 3.6 acres of land in the Single-Family Residential – 20,000 square feet (RS-20) zoning district and one acre of land in the State Land Use Agricultural District. The subject property is the site of St. Theresa's Catholic Church and is located along the south (makai) side of Volcano Highway, approximately 150 feet east of its intersection with Nichols Road in Mountain View, Puna District, Hawai'i. The Planning Commission has removed the County of Hawai'i property tax map key 1-8-002:049 from the permit.

Approval of this permit is subject to the following conditions:

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

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

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

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

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

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


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

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

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

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

Sincerely,



Joseph Clarkson, Chairman  
Windward Planning Commission

LNawaiolapubliccharterschoolUSE17-070wpc  
Enclosure: PC Findings Report

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

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

**NA WAI OLA PUBLIC CHARTER SCHOOL**  
**USE PERMIT APPLICATION NO. 17-000070 (USE 17-070)**

Based on the following findings, Use Permit No. 17-070 is hereby issued to allow the expansion of an existing public charter school on 1.44 acres of land in the Single Family Residential - 20,000 square feet (RS-20) zoning district. The subject property is the site of St. Theresa Catholic Church and is located along the south (makai) side of Volcano Highway, approximately 150 feet east of its intersection with Nichols Road in Mountain View, Puna District, Hawai‘i, Tax Map Key: 1-8-002:006. Please note, the applicant originally requested TMK 1-8-002:049 be covered under this permit as they were proposing to construct a modular classroom building on the property as well as requesting the use of the Mountain View Gym. However, in a letter dated December 6, 2017, the applicant requested removal of the modular building from the current request. Based on the requested removal of the modular building and the fact that the school use for recreation on Parcel 049 would be no different from that of the general public, the Planning Director recommended and the Planning Commission agreed to remove parcel 049 from the requested permit area, therefore, **this Use Permit approval only covers TMK 1-8-002:006.**

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

- Parcel 104 is a one acre property situated in the State Land Use Agricultural district. It contains a 2,112-square foot dwelling and 160-square foot enclosed storage building. The school currently uses this dwelling for school administrative operations. The school uses a small portion of the property for the school Māla (garden) Program, which teaches youth to grow food, medicines and plants. The program is part of a statewide campaign, E Ola Pono, to encourage youth to promote peace, pono and respect in their schools and communities. A Special Permit is required to use this property and building for school uses.
- Parcel 006 is a 1.44 acre property situated in the State Land Use Urban district and County Single-Family Residential (RS-20) zoning district. St. Theresa’s Catholic Church is located on this property. The church was constructed and used as a school prior to adoption of the Zoning Code and therefore the school use is considered a nonconforming use within the church building. The property contains a church, rectory and hall. The school currently uses the rectory and hall building for classrooms. A Use Permit is required to expand school uses into the rectory and hall on the property. Should this permit be approved, building permits may be required to change the use of these structures to a school.

- Parcel 049 is a 2.19 acre property situated in the State Land Use Urban district and County Single-Family Residential (RS-20) zoning district. The Mountain View Gym, operated by the County of Hawai'i Department of Parks and Recreation, is located on this property. The school currently uses the gym for recreational purposes and originally proposed to place a modular building on the southwest corner of the property for additional classroom use, but in a letter dated December 6, 2017 requested removal of the modular building from the current request.

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

In considering a Use Permit for any proposed use, Rule 7 of the Planning Commission relating to Use Permits requires that such action conform to the following guidelines:

- A. The granting of the proposed use shall be consistent with the general purpose of the zoned district, the intent and purpose of the Zoning Code and the County General Plan;
- B. The granting of the proposed use shall not be materially detrimental to the public welfare nor cause substantial adverse impact to the community's character or to surrounding properties; and
- C. The granting of the proposed use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection and other related infrastructure.

The proposed school use meets the guidelines for approval of a Use Permit, for the reasons outlined below:

**The granting of the proposed use shall be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code, and the County General Plan.** The intent and purpose of the Zoning Code is to promote health, safety, morals or the general welfare of the community through regulations and restrictions relative to the location and use of buildings, off-street parking, the percentage of lots that may be occupied, the density of population and land for trade, industry, residence or other purposes. The proposed use is situated within the State Land Use Urban district and County's Single Family Residential (RS-20) zoning district. According to the Zoning Code, schools may be permitted in the RS district, provided that a Use Permit is obtained from the Planning Commission. The Use Permit process provides an avenue to review and analyze a proposed project on a case-by-case basis relative to infrastructure and impacts on surrounding properties and existing uses as well as the goals and policies of the General Plan.

Based on evidence provided to the Planning Department in 2008, the Planning Director determined that the school use within the St. Theresa Church parish was a nonconforming use since it was established prior to adoption of the Zoning Code in 1967. However, any time a nonconforming use is enlarged or expanded to occupy a greater area of land, the use must conform to current code. This is why a Use Permit is required to expand the school uses onto the Mountain View gym property and to other structures on the St Theresa Church property.

A condition of approval will require the applicant to secure Final Plan Approval for the proposed development from the Planning Director. Plan Approval provides a method of allowing closer inspection of the proposed development in order to ensure conformance with the General Plan, to assure that the intent and purpose of the Zoning Code as described above are carried out, and to ensure that any pertinent conditions of previous approvals related to the development have been implemented. Based on this information, the proposed request is consistent with the general purpose of the zoning district and the intent and purpose of the Zoning Code.

Another condition of approval will require the applicant to secure the necessary Building Permit(s) for the interior alterations and any proposed related structures. The Building Permit will allow other agencies to review for compliance with various county and state codes, including but not limited to Fire Code, Health Codes, ADA accessibility, electrical, plumbing and structure regulations.

The County of Hawai'i's General Plan is the policy document for the long range comprehensive development of the island of Hawai'i. One of the purposes of the General Plan is to guide the pattern of future development in this County based on long-term goals. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the property as Medium Density Urban and Low Density Urban. These are areas of village and neighborhood commercial, single family and multiple family residential (up to 35 units per acre), ancillary community and public uses, and related functions.

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

**Public Facilities-Education**

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

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

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

**The granting of the proposed use shall not be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character or to surrounding properties.** The land uses in the immediate area are a mix of residential and community uses with Mountain View Village located across the highway to the north east. Surrounding properties are zoned Open, RS-10 and CV-10 and consist of a County park, residences, and the Mountain View Post Office. School uses have been occurring on the properties since at least the 1960's within the church and the Mountain View gym property has been used for recreational purposes by the public for decades as well. The closest dwelling is located

immediately west of the subject property and about 80 feet to the southwest of the church property. Expansion of the school into the church buildings on parcel 006 and dwelling on parcel 104 is not expected to significantly increase noise levels or traffic since these structures are already being used by the school.

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

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

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

The subject properties are currently served by County water through one water meter on each parcel. According to the Department of Water Supply, water usage over the last year on the church property (parcel 006) has exceeded the water availability for the water meter. Additionally,



the current water availability in the area cannot provide any additional water beyond the current water allocations for these three meters; therefore, the applicant will need to implement conservation measures to reduce water usage. The nearest fire hydrant is connected to the existing 6-inch waterline within Ueyama Village Road which is inadequate to provide the required 2,000 gallons per minute fire-flow required for school facilities. The applicant will be required to submit plans showing the water system improvements necessary to provide the required fire-flow.

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

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

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

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