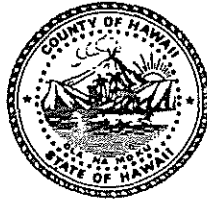


Harry Kim
Mayor



County of Hawaii

PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

CERTIFIED MAIL
7000 0600 0024 2903 8407

AUG 14 2001

Robert D. Triantos, Esq.
Carlsmith Ball LLP
P. O. Box 1720
Kailua-Kona, HI 96745

Dear Mr. Triantos:

Special Permit Application (SPP 1011)

Applicant: Hualalai Academy Inc.

Request: Amendment to Condition No. 2 (Increase Number of Students from 150 to 210)

Tax Map Key: 7-4-8:64

The Planning Commission at its duly held public hearing on August 3, 2001, voted to approve the above-referenced request to amend Condition No. 2 (increase maximum student enrollment from 150 to 210) of Special Permit No. 1011, which allows the development of a private school and related improvements on approximately 14.785 acres of land situated in the State Land Use Agricultural District. The property is located on the west side (makai) of the Kealakea Street – Hao Kuni Street intersection and Paniolo Country Subdivision, approximately 2,300 feet north of the Kealakehe Elementary and Intermediate School Complex, Honokohau 2nd, North Kona, Hawaii.

Approval of this request is based on the following:

Approval of this request would not be contrary to the original reasons for the granting of Special Permit No 1011. The County General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates this area for Low Density Uses. The property is situated within the County's Agricultural (A-5a) zoned district. The original Special Permit No. 1011 was approved by the Planning Commission, effective October 26, 1988 for 150 students with the expressed goal that they would like to have an enrollment of 300 students. This request to increase enrollment of an additional 60 students is consistent with the original reasons that this site is appropriate for a school.

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AUG 14 2001

The proposed expansion will not adversely affect the surrounding properties. The surrounding area is characterized by urban uses. The subject property is located at the end of Kealakaa Street. Eventually when development occurs on the adjacent property, Kealakaa Street will be improved and extended. The Kealakehe Baptist Church is located on the south side of the subject property. In the immediate area, there are homes with backyard coffee, macadamia nuts, and small-scale agricultural activities. There are also other schools, single family residential development and some housing projects in the area. The Kealakehe Elementary and Intermediate Schools, Kealakehe Housing, Jack Hall Housing, Lai'lani Housing, Kona ChoCho Estates, Kona Macadamia Acres Subdivisions are to the south of the subject area. Paniolo II Subdivision is to the east of the subject property. The lands north and to the west are large acreages, and vacant lands. The applicant is in the process of acquiring the subject property which has already been subdivided and approved by the County. As such, the impact to immediate adjoining property owners should not be adversely significant. The property is of sufficient size to allow for adequate setbacks and landscape buffers in minimizing any physical, social or other impacts that this school use may have on the neighborhood.

The proposed expansion will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage improvements, and police and fire protection. The Department of Public Works has expressed concern that Palani Road is overburdened and that the Ulu'aoa intersection is operating at a Level of Service E. The Planning Director, however, does not feel that the school should be penalized for the already overburdened Palani Road. The Kealakehe Elementary and Intermediate Schools are also located on Kealakaa Street. In addition, the school has informed us that school hours for Hualalai Academy for elementary are 7:50 A.M. to 2:20 P.M. and middle school (Grades 6-8) are 7:50 A.M. to 2:40 P.M. The schedule has been designed to minimize overlapping traffic with Kealakehe Elementary (8:30 A.M. to 2:35 P.M.) and Kealakehe Intermediate (8:20 A.M. to 2:40 P.M.). Further, for the 2000-2001 school year, the school has stated that approximately 60 out of 122 families were carpooling their children to school. The school has also informed us that approximately 129 out of 150 students would otherwise attend Kealakehe Elementary or Intermediate School. As a result, the additional enrollment of 60 students should not significantly impact Palani Road, Ulu'oa Road, and Kealakaa Street. The traffic study assessed the Ulu'oa Street/Palani Road intersection as parents have been encouraged to take access off of Ulu'oa Street. At some point in the future, when the adjacent parcel to the north is developed, the proposed Kealakaa Street extension will provide a connection to the future Kealakehe Parkway. Until the Kealakaa Street extension or the Kealakehe Parkway roads are constructed, access to Kealakaa Street and Ulu'oa Street is from Palani Road.

Palani Road is a County roadway serving the area between the Queen Kaahumanu Highway and the Mamalahoa Highway. It is a two-lane County roadway at the point with a posted speed of 35 miles per hour, except in the area of the Kealakaa Street/Palani

Road intersection where it drops to 25 miles per hour. Both streets are stop-controlled with stop signs. There are no turning or storage lanes on Palani Road at the Kealakaa Street intersection or at the Ulu'a Street intersection. It is anticipated that with a carpooling plan as the applicant has proposed, the additional 60 students should not significantly impact the existing roadways. Therefore, a new Condition No. 2 is being proposed to require that a Carpooling Policy and Plan, which includes a method for determining the number of students carpooling during a school year, be submitted to the Planning Department prior to any increase in student enrollment. The school may want to provide incentives to families to encourage carpooling. Also, to provide a means to monitor traffic conditions, Condition No. 11 is being revised to require the submittal of a traffic study with any future requests to increase student enrollment, and not only prior to Phase II.

Finally, ingress and egress to the proposed school is from an existing 24 foot wide driveway from Kealakaa Street which should adequately accommodate the increase in 60 students. All essential utilities such as electricity, water and telephone are available to the subject property. The Department of Health regulations in regards to sanitation shall be complied with prior to the increase in enrollment. Consulted agencies had no objections to the request.

In addition, the new Condition No. 3 is amended to require a revised plan approval for any new structures in Phase I. Finally the new Condition No. 12 requires the submittal of a traffic study for any increase in enrollment rather than by phases of development.

Based on the above considerations, the request to increase the student enrollment from 150 students to 210 students would not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations nor the original reasons for approving this permit.

Approval of this request is subject to the following conditions. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke the permit. (Material to be deleted is bracketed and material to be added is underscored):

1. The applicant, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. A Carpooling Policy and Plan, to include a method for determining the number of families that have carpoled in a given year shall be submitted to the Planning Director for review and approval prior to any increase in student enrollment above 150 students.

- [2.]3. [Construction of] Phase I of the school facility, shall accommodate [of] not more than [150] 210 students, [of the school facility] and shall be completed within five (5) years from the effective date of [the Special Permit] this amendment. [Prior to the start of construction, the applicant shall secure] A revised Final Plan Approval, in accordance with Chapter 25-2-70 (Zoning Code), shall be secured from the Planning Department for any new structures to be used within Phase I of the development. Plans shall identify structures, landscaping, fire protection measures and parking stalls in accordance with Chapter 25 (Zoning Code).
- [3.]4. A Traffic Impact Analysis Report (TIAR) shall be submitted to the Department of Public Works, Engineering Division for review and approval prior to the issuance of Final Plan Approval.
- [4.]5. The driveway access from Kealakaa Street shall be constructed in a manner meeting with the requirements and approval of the Department of Public Works, Engineering Division. This should be designed in accordance with the Statewide Uniform Design Manual and Standard Detail R-32.
- [5.]6. A drainage study shall be prepared and a drainage system installed meeting with the approval of the Department of Public Works, prior to the issuance of a certificate of occupancy.
- [6.]7. A Solid Waste Management Plan for the development shall be prepared meeting with the approval of the Department of Public Works prior to issuance of a certificate of occupancy for any portion of the project. The Plan shall include, but not be limited to, the management of solid waste generated from the construction and operating phase(s) of the proposed development.
- [7.]8. The applicant shall comply with Department of Water Supply requirements.
- [8.]9. The applicant shall comply with Department of Health requirements, which shall include applicable air quality, noise level, sanitation and health standards.
- [9.]10. A data recovery and mitigation plan of the subject property shall be prepared and submitted for review and approval to the Planning Department, in consultation with the State Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD), prior to the submittal of plans for plan approval review or any land alteration activity, whichever occurs first. Should significant historical sites be found within the subject property which merit preservation or the implementation of mitigative measures, the applicant shall prepare and submit an archaeological preservation/mitigation plan for review and approval by the Planning Director in consultation with the DLNR-HPD prior to the issuance of

Final Plan Approval or any land alteration activity of the subject property, whichever occurs first.


- [10.]11. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials, be encountered, work in the immediate area shall cease and the DLNR-HPD shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.
- [11.]12. [Upon completion of Phase I of the school development, the applicant shall submit further traffic study for Phase II to be reviewed and approved by the Planning Commission, in consultation with the Department of Public Works. Phase II shall not proceed without the approval of the Planning Commission.] A traffic study shall be submitted concurrently with any request to increase student enrollment of the school.
- [12.]13. 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).

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.

Robert D. Triantos, Esq.
Page 6

Should you have any questions, please contact Alice Kawaha or Susan Gagorik of the Planning Department at 961-8288.

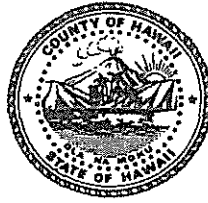
Sincerely,

A handwritten signature in cursive script that reads "Geraldine M. Giffin".

Geraldine M. Giffin, Chairman
Planning Commission

HualalaiAppltr

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Kona Planning Office
State Land Use Commission
Brian Minaai, Director/DOT-Highways, Honolulu
Hualalai Academy, Inc.



County of Hawai'i

PLANNING COMMISSION

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

June 3, 2005

Steven S. C. Lim, Esq.
Carlsmith Ball, LLP
121 Waiuanuenue Avenue
Hilo, HI 96720

Dear Mr. Lim:

Special Permit (SPP 1011)
Applicant: Hualalai Academy, Inc.
Request: Amendment to Condition No. 3 of SPP 1011 to Increase
Student Enrollment from 210 to 360
Tax Map Key: 7-4-8:4

The Planning Commission at its duly held public hearing on May 20, 2005, voted to approve the above-referenced request for an amendment to Condition No. 3 (increase enrollment from 210 to 360 students) of Special Permit No. 1011, which allowed the development of a private school and related improvements on approximately 14.785 acres of land situated within the State Land Use Agricultural District. The property is the existing site of the Hualalai Academy School situated on the west (makai) side of the Kealakaa Street – Hao Kuni Street intersection, approximately 2,300 feet north of the Kealakehe Elementary and Intermediate School Complex, Honokohau 2nd, North Kona, Hawaii.

Approval of this request is based on the following:

Hualalai Academy, Inc. is requesting an amendment to Condition No. 3 of Special Permit No. 1011 to increase the maximum school to 360 students (an increase of 150 students). The applicant is also requesting that the increase be allowed to take place over a 10-year period. The proposed enrollment will represent the final capacity for this site.

The proposed request is an unusual and reasonable use of land situated within the State Land Use Agricultural District. 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

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COR 05-000585
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allow certain unusual and reasonable uses within the Agricultural district. Hualalai Academy School has been previously approved and is presently established and operating on the 14.785-acre property. The applicant proposes to increase the maximum number of students from 210 to 360 (an increase of 150 students). The school will utilize existing buildings and will construct additional structures, which will represent the final capacity for this site. The use of the school on the property has been determined to be an unusual and reasonable use within the Agricultural District, which will not be contrary to the objectives of Chapter 205, HRS, as amended.

The proposed request will not adversely affect the surrounding properties. The surrounding area is characterized by urban uses. The subject property is located at the end of Kealakaa Street. The Kealakehe Baptist Church is located on the south side of the subject property. There are other school in the area, single family residential developments and some housing projects in the area. The Kealakehe Elementary and Intermediate Schools, Kealakehe Housing, Jack Hall Housing, Lai'lani Housing, Kona ChoCho Estates, Kona Macadamia Acres Subdivisions are to the south of the subject area. Paniolo II Subdivision is northeast of the subject property. The lands north and to the west are large acreage and vacant lands. Hualalai Academy has been established in on this property for over 5 years and as such, the increase of 150 students should not significantly impact surrounding property owners. The property is of sufficient size to allow for adequate setbacks and landscape buffers to minimize any physical, social or other impacts that this school use may have on the neighborhood. Additionally, if the students did not attend Hualalai Academy, they would likely attend the other schools within the immediate area.

The proposed expansion will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage improvements, and police and fire protection. An Updated Traffic Impact Analysis was prepared for Hualalai Academy by Witcher Engineering LLP of Kailua-Kona dated May 8, 2001. The report based the enrollment on 207 students with an increase to 360 students by the year 2014. The report concluded that the traffic situation at the intersection of Uluaoa Street and Palani Road has already deteriorated to a level of service of "F" for turns from Uluaoa Street. The volume of this traffic cannot be attributed to the Hualalai Academy. There is other activity in this area. It can be assumed that much of this traffic is from people using Uluaoa Street to get to Kealakehe Elementary School and Kealakehe Intermediate School since there may be less time consumed than using Kealakaa Street. The report also notes that if Hualalai Academy did not exist, many of the students now attending Hualalai Academy would necessarily have to attend school elsewhere. That elsewhere would probably be the other schools in the area. Therefore, no real change would occur in the traffic situation.

The Police Department commented that any expansion of the school would increase traffic into the Kealakehe complex.

The Kona Traffic Safety Committee commented that they agree that because most Hualalai Academy students would attend the two public schools if the Academy didn't exist, there would be little change in traffic volume during peak hours if the Special Permit were amended. They also note, with approval, that the applicant has taken several actions designed to mitigate its effects on traffic volume in the area.

The Kealakehe Elementary and Intermediate Schools are also located on Kealakaa Street. Hualalai Academy has designed their schedule to minimize overlapping traffic with Kealakehe Elementary and Kealakehe Intermediate. Further, Hualalai Academy has implemented a carpooling policy and plan that has resulted in minimizing the amounts of vehicles used to pick up and drop off students and staff at the school. As a result of these implemented measures, the additional enrollment of 150 students should not significantly impact Palani Road, Uluaoa Road, and Kealakaa Street.

There are several future road projects proposed for this area that will significantly minimize traffic congestion and allow for further road connectivity. Approximately \$5 million in funding has been set aside for the Palani Road improvements at Kealakaa Street. The project will realign Kealakaa Street with Paliholo Street in the Queen Liliokulani Subdivision approximately 600 feet makai of the existing Palani Road/Kealakaa Street intersection and will be controlled by a 4-way traffic light. This project will improve ingress and egress onto Kealakaa Street from Palani Road. Additionally, at some point in the future, when the adjacent parcel to the north is developed, the proposed Kealakaa Street extension will provide a connection to the future Kealakehe Parkway. The connection of Kealakaa Street to Hao Kuni Street will create an additional access to Palani Road for the school.

Palani Road is a County roadway serving the area between the Queen Kaahumanu Highway and the Mamalahoa Highway. It is a two-lane County roadway at the point with a posted speed of 35 miles per hour, except in the area of the Kealakaa Street/Palani Road intersection where it drops to 25 miles per hour. There are no turning or storage lanes on Palani Road at the Kealakaa Street intersection or at the Uluaoa Street intersection. Both streets are controlled with stop signs at their intersection with Palani Road. Both Kealakaa Street and Uluaoa Street also serve as access for the Kealakehe Elementary and Intermediate Schools. It is anticipated that with the continued use of the carpooling plan and the rescheduling of classes and activities to avoid conflicts and overlaps with other schools in the area, the additional 150 students should not significantly impact the existing roadways.

All essential utilities such as electricity, water and telephone are available to the subject property.

The land upon which the proposed use is sought is suited for the uses permitted for the district. The proposed use will be located within an area where soils are classified as "E" or "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating. The Department of Agriculture's ALISH Map classifies the property as "Other Important Agricultural Land", which is defined as "land other than Prime or Unique Agricultural Land that is also of statewide or local importance for agricultural use." In this case, the land could be suited for agricultural activities. The land is not identified as prime or unique agricultural lands and no lands of high agricultural potential will be removed with the approval of this request, but will remain preserved. The General Plan encourages the provision of public educational facilities that effectively service community needs and seek ways of improving public service through better and more functional facilities which are in keeping with the environmental and aesthetic concerns of the community. The public use of this parcel is not strictly agricultural in nature, yet is a reasonable use within the Agricultural district.

The proposed use will substantially alter or change the essential character of the land and the present use. In this case, the establishment of the school on this property has substantially altered the character of the land. Under Rule 6 and H.R.S. sec. 205-6, the ultimate issue in deciding a special permit is whether the use is an "unusual and reasonable" use of the property. In making this decision, the Commission must consider the seven listed criteria in Rule 6.3(b)(5)(A-G). The proposed use does not have to meet all of the listed criteria in order to be approved as long as the Commission finds, on balance, that the proposal is "unusual and reasonable." Given the fact that the subject property has been developed with the establishment of Hualalai Academy School, the character of essential character of the land has been changed. The Department of Land and Natural Resources-State Historic Preservation Division has issued a "no-effect" letter dated January 26, 2005 stating that this project has already gone through the historic preservation review process and mitigation has been completed. Thus, they believe that "no historic properties will be affected" by this undertaking. Nevertheless, a condition will be included to require the notification of the Department of Land and Natural Resources-State Historic Preservation Division should any archeological sites be encountered during the course of development. Additionally, as the land has been developed with a school, it is unlikely that any endangered or threatened species of flora or fauna exist on the property.

The request will not be contrary to the General Plan. The proposed amendment request is not contrary to the General Plan LUPAG Map, which designates the property for Urban Expansion uses. The proposed amendment to increase the enrollment for Hualalai Academy will support the urban land use pattern as reflected in the General Plan. The proposed use is consistent with the following goals and policies of the General Plan.

Public Facilities

- Continue to seek ways of improving public service through the coordination of service and maximizing the use of personnel and facilities.
- Coordinate with appropriate State agencies for the provision of public facilities to serve the needs of the community
- Improve basic school facilities to meet current standards

Economic

- Economic development and improvement shall be in balance with the physical, social and cultural environments of the island of Hawaii.
- Strive for diversity and stability in its economic system.
- 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.

Hualalai Academy currently serves 207 students in grades Kindergarten through 11th Grade at its current location. The proposed increase enrollment will help reduce overcrowding in West Hawaii schools and provide an additional elementary, intermediate and high school to the residents in this area.

Approval of this request would not be contrary to the original reasons for the granting of Special Permit No. 1011. The original Special Permit No. 1011 was approved by the Planning Commission, effective October 26, 1988 for 150 students with the expressed goal that they would like to have an enrollment of 300 students. Subsequently, the applicant requested to increase the enrollment from 150 students to 210 students, which was approved by the Planning Commission on August 3, 2000. The proposed amendment request is not contrary to the original reasons that approved Hualalai Academy. This request to increase the enrollment from 210 to 360 students would be

consistent with the original reasons that approved this location as an appropriate site for a school and would not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

Based on the above considerations, the request to increase the student enrollment from 210 students to 360 students would not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations nor the original reasons for approving this permit.

Approval of this request is subject to the following conditions. (Material to be deleted is bracketed and material to be added is underscored):

1. The applicant, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. [~~A Carpooling Policy and Plan, to include a method for determining the number of families that have carpoled in a given year shall be submitted to the Planning Director for review and approval prior to any increase in student enrollment above 150 students~~] The approved Carpool Policy and Plan shall be implemented for the length of this permit. Hualalai Academy shall designate a carpool coordinator to oversee the implementation of the policy and plan. Hualalai Academy shall make efforts to increase the amount of students and staff utilizing the policy and plan.
3. Hualalai Academy shall be limited to 360 students. [~~Phase I of the school facility, shall accommodate not more than 210 students, and shall be completed within five (5) years from the effective date of this amendment~~]. A revised Final Plan Approval, in accordance with Chapter 25-2-70 (Zoning Code), shall be secured from the Planning Department for any new structures to be used within Phase II of the development. Plans shall identify structures, landscaping, fire protection measures and parking stalls in accordance with Chapter 25 (Zoning Code).
- [4. ~~A Traffic Impact Analysis Report (TIAR) shall be submitted to the Department of Public Works, Engineering Division for review and approval prior to the issuance of Final Plan Approval.~~]
- 4.[5. ~~The driveway access from Kealakaa Street shall be constructed in a manner meeting with the requirements and approval of the Department of Public Works, Engineering Division. This should be designed in accordance with the Statewide Uniform Design Manual and Standard Detail R-32.~~] Access to Kealakaa Street shall meet with the approval of the Department of Public Works.

- ~~5.[6-]~~ A drainage study shall be prepared and a drainage system installed meeting with the approval of the Department of Public Works, prior to the issuance of a certificate of occupancy.
- 6.[7-] A Solid Waste Management Plan for the development shall be prepared meeting with the approval of the Department of Public Works prior to issuance of a certificate of occupancy for any portion of the project. The Plan shall include, but not be limited to, the management of solid waste generated from the construction and operating phase(s) of the proposed development.
- 7.[8-] The applicant shall comply with Department of Water Supply requirements. The applicant shall limit their water consumption to 14 water credits allowed by their water allocation. If the applicant can obtain additional credits, they may increase their consumption to match their credits. The applicant shall pay for facilities charges for 4 additional water credits and all facilities charges for any additional credits. The applicant shall report annually in writing on their water usage with a copy being sent to the Department of Water Supply.
- 8.[9-] The applicant shall comply with Department of Health requirements, which shall include applicable air quality, noise level, sanitation and health standards.
- ~~[10-] A data recovery and mitigation plan of the subject property shall be prepared and submitted for review and approval to the Planning Department, in consultation with the State Department of Land and Natural Resources Historic Preservation Division (DLNR-HPD), prior to the submittal of plans for plan approval review or any land alteration activity, whichever occurs first. Should significant historical sites be found within the subject property which merit preservation or the implementation of mitigative measures, the applicant shall prepare and submit an archaeological preservation/mitigation plan for review and approval by the Planning Director in consultation with the DLNR-HPD prior to the issuance of Final Plan Approval or any land alteration activity of the subject property, whichever occurs first.]~~
- 9.[11-] Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials, be encountered, work in the immediate area shall cease and the DLNR-HPD shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.
- ~~[12-] A traffic study shall be submitted concurrently with any request to increase student enrollment of the school.~~

13. ~~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).]~~
10. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke the permit.

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

Should you have any questions, please contact Norman Hayashi of the Planning Department at 961-8288.

Sincerely,

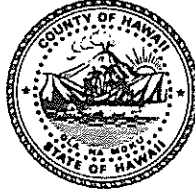


Fred Galdones, Chairman
Planning Commission

Lhualalaispp1011

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department - Kona
State Land Use Commission
Department of Land & Natural Resources-HPD/Kona
Rodney Haraga, Director/DOT-Highways, Honolulu

Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 Fax (808) 961-9615

CERTIFIED MAIL
Z 095 324 274

OCT 26 1998

Mr. Rick Vidgen
78-630 Ihilani Place
Kailua-Kona, HI 96740

Dear Mr. Vidgen:

Special Permit Application (SPP 98-14)
Applicant: Hualalai Academy
Request: Construction of a Private School and Related Improvements
Tax Map Key: 7-4-8; Portion of 57

The Planning Commission at its duly held public hearing on October 16, 1998, voted to approve the above-referenced application. The Commission also voted to deny standing to a contested case hearing procedure for Joel W. Nye, Grant R. Baseman and Ronald Freitas. The Commission felt that, in accordance with Rule 4-7(b) 1) and 4) of the Planning Commission relating to Contested Case, their concerns were no different from that of the general public.

Special Permit No. 1011 is hereby issued to allow the construction of a private school and related improvements on approximately 14.785 acres of land situated within the State Land Use Agricultural District. The property is located on the west (makai) side of the Kealakea Street-Hao Kuni Street intersection and Paniolo II Subdivision approximately 2,300 feet north of the Kealakehe Elementary and Intermediate School Complex at Honokohau 2nd, North Kona, Hawaii.

Approval of this request is based on the following:

The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. 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 Hawaii. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. The proposed project will be located within an area whose soils are identified as of the Punaluu (rPYD) and Kaimu (rKED) soil. The Land Study Bureau's

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Mr. Rick Vidgen

Page 2

overall master productivity rating for agricultural use is Class "E" or Very Poor. The State of Hawaii Agricultural Lands of Importance (ALISH) Map does not classify the subject property. The property has been in pasture for many years. The proposed use would not displace any intensive agricultural activity nor diminish the agricultural potential of the area. Therefore, the proposed use would not be contrary to the objectives of the State Land Use Law for Agricultural district.

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 desired use will not adversely affect the surrounding properties. The surrounding area is characterized by rural and residential uses. The Kealakehe Baptist Church is located on the south side of the subject property. In the immediate area, there are homes where backyard coffee, macadamia nuts, and small-scale agricultural activities are found. There are also other schools, single family residential development and some housing projects in the area. The Kealakehe Elementary and Intermediate Schools, the Jack Hall Housing, Lai'ani Housing, Kona ChoCho Estates, Kona Macadamia Acres subdivisions are to the south of the subject area. Paniolo Country subdivision is to the east of the subject property. The lands north and to the west are large acreages, and vacant lands. The applicant is in the process of acquiring the subject property which has already been subdivided and approved by the County. As such, the impact to immediately adjoining property owners should not be adversely significant. The property is of sufficient size to allow for adequate setbacks and landscape buffers in minimizing any physical, social or other impacts that this school use may have on the neighborhood.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage improvements and police and fire protection. The proposed use will take access off of Kealakaa Street which is a County dedicated roadway with a 60-foot wide right-of-way with full improvements including a fully paved roadway, with on street parking and curb, gutter and sidewalks. Access to the subject property can also be reached from Ulua'oa Street which is a County dedicated roadway with a 50-foot right-of-way with full improvements including a fully paved roadway, with on street parking and curb, gutter and sidewalks. Hao Kuni Street is also planned for a connection to Kealakaa Street and stubouts have been included in the approved Paniolo II Subdivision, Increment 1 plan. In the approval of this subdivision, the connection between Hao Kuni Street and Kealakaa Street was included, but it was not improved. Therefore, a roadway lot B at the southeast corner of the subject property was created for access to the proposed school from the end of Kealakaa Street. This roadway lot has been fully improved with pavement and curb, gutter and sidewalks. The proposed Kealakaa Street extension is shown on the approved subdivision map. Kealakaa Street is planned for connection to the future Kealakaa Drive extension in the County's Keahole to Kailua Plan. Until the Kealakaa Street extension or the Kealakehe Drive roads are constructed, access to Kealakaa Street and Ulua'oa Street will be from Palani Road.

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While Palani Road is now the main access to the subject property, access off of Ulua'oa Street and Kealakaa Street which are both fully improved streets with curb, gutter and sidewalk improvements as well as allowing for on-street parking is adequate for access to the proposed school. In addition, Kealakaa Street is also being proposed to be a north-south arterial which will connect to the proposed Kealakehe Drive and Hina-Lani Drive. Hina-Lani Drive is already constructed from the Hawaii Belt Road to the Queen Kaahumanu Highway. Therefore, the traffic planning for this area is nearly complete and the implementation of it will facilitate traffic to the subject area from the nearby regional subdivisions.

Palani Road is a County roadway serving the area between the Queen Kaahumanu Highway and the Mamalahoa Highway. It is a two-lane County roadway at the point with a posted speed of 35 miles per hour, except in the area of the Kealakaa Street/Palani Road intersection where it drops to 25 miles per hour. The intersection of Palani Road with Kealakaa Street and Ulua'oa Street are both a T-intersections. Both streets are stop-controlled with stop signs. There are no turning or storage lanes on Palani Road at the Kealakaa Street intersection or at the Ulua'oa Street intersection.

Hualalai Academy will inform all of their parents, that access to the school should be taken off of Ulua'oa Street. This will avoid any further congestion at the Kealakaa Street/Palani Road intersection.

Ingress and egress to the proposed school would be from a 24 foot wide driveway from Kealakaa Street. A loading and unloading area will be provided for drop-off and pick-up of the children at the front entrance of the school for the safety of the children. All essential utilities such as electricity, water and telephone are available to the subject property. All requirements of the Department of Health, Department of Public Works and Fire Department shall be complied with prior to establishment of the proposed use. Consulted agencies had no objection to the request.

The use will not substantially alter or change the essential character of the land and the present use. The proposed Hualalai Academy School would not be inconsistent with the character of the area. The proposed school would be in character with the existing Kealakehe School complex, residential subdivisions and housing projects in the surrounding areas. The construction of the new school would allow for additional educational opportunities for the West Hawaii district. In this regard, the new school would provide a greater and more convenient access to the students in the area and district, thereby providing the needed area to continue and expand educational programs and facilities which in turn enhance the State's education objectives.

The land upon which the proposed use is sought is not unsuitable for the uses permitted within the district. The subject site is designated Zone X, an area outside of the 500-year flood plain. On-site drainage improvements will be designed and implemented to County Department of Public Works design and requirement standards. These lands are gently sloping to moderately steep soils on uplands at an elevation ranging from 800 feet. The Land Study Bureau's overall master productivity rating for agricultural use is Class "E" or Very Poor. The land is not classified by the ALISH Map. However, the limited nature of the request and the land area it will occupy will not adversely affect permitted uses located within adjoining areas. The 14.785 acres of

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land is not significant in the overall context of agricultural resources. The General Plan encourages the provision of public educational facilities that effectively service community needs and seek ways of improving public service through better and more functional facilities which are in keeping with the environmental and aesthetic concerns of the community. The public use of this parcel is not strictly agricultural in nature, yet is a reasonable use within the Agricultural district.

The request is not contrary to the General Plan. The County General Plan Use Pattern Allocation Guide (LUPAG) Map designates this area for Low Density Uses. The property is situated within the County's Agriculture (A-5a) zoned district. The request is consistent with the Land Use element of the General Plan which is to "Designate and allocate lands in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County" and to "...encourage the development and maintenance of the communities meeting the needs of its residents in balance with the physical and social environment." It is also consistent with the following goals, policies and standards of the Public Facilities Education Element of the General Plan.

GOALS

- o Encourage the provision of public facilities that effectively service community needs and seek ways of improving public service through better and more functional facilities which are in keeping with the environmental and aesthetic concerns of the community.

POLICIES

- o The County shall continue to seek ways of improving public service through the coordination of service and by maximizing the use of personnel and facilities.
- o The County shall coordinate with appropriate State agencies for the provision of public facilities to serve the needs of the community.
- o The County of Hawaii shall take positive action to further maintain the quality of the environment for residents both in the present and in the future.
- o Encourage the provision of public facilities that effectively service community needs and seek ways of improving public service through better and more functional facilities which are in keeping with the environmental and aesthetic concerns of the community.

STANDARDS

(1) EDUCATION

POLICIES

Educational policies here relate to the provision of facilities rather than programs, which are the province of the State. It is nevertheless recognized

that the facilities and programs are the tools necessary to improve total educational service.

STANDARDS

- o In proposed communities, sufficient acreage shall be reserved for school facilities. Sites shall be free from flooding and drainage problems, excessive slope and shall incorporate appropriate street and driveway design and location to minimize traffic interference, pedestrian hazard, and to enable safe and easy access for vehicles, bicycles and pedestrians.

Therefore, the proposed school is consistent with this policy and standards set forth in the General Plan.

Based on the above considerations, the proposed school is considered an unusual and reasonable use of land, which would not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

Approval of this request is subject to the following conditions. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke the permit.

1. The applicant, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. Construction of Phase I, of not more than 150 students, of the school facility shall be completed within five (5) years from the effective date of the Special Permit. Prior to the start of construction, the applicant shall secure Final Plan Approval, in accordance with Chapter 25-2-70 (Zoning Code), from the Planning Department. Plans shall identify structures, landscaping, fire protection measures and parking stalls in accordance with Chapter 25 (Zoning Code).
3. A Traffic Impact Analysis Report (TIAR) shall be submitted to the Department of Public Works, Engineering Division for review and approval prior to the issuance of Final Plan Approval.
4. The driveway access from Kealakaa Street shall be constructed in a manner meeting with the requirements and approval of the Department of Public Works, Engineering Division. This should be designed in accordance with the Statewide Uniform Design Manual and Standard Detail R-32.
5. A drainage study shall be prepared and a drainage system installed meeting with the approval of the Department of Public Works, prior to the issuance of a certificate of occupancy.
6. A Solid Waste Management Plan for the development shall be prepared meeting with the approval of the Department of Public Works prior to issuance of a certificate of occupancy for any portion of the project. The Plan shall include,

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but not be limited to, the management of solid waste generated from the construction and operating phase(s) of the proposed development.

7. The applicant shall comply with Department of Water Supply requirements.
8. The applicant shall comply with Department of Health requirements, which shall include applicable air quality, noise level and health standards.
9. A data recovery and mitigation plan of the subject property shall be prepared and submitted for review and approval to the Planning Department, in consultation with the State Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD), prior to the submittal of plans for plan approval review or any land alteration activity, whichever occurs first. Should significant historical sites be found within the subject property which merit preservation or the implementation of mitigative measures, the applicant shall prepare and submit an archaeological preservation/mitigation plan for review and approval by the Planning Director in consultation with the DLNR-HPD prior to the issuance of Final Plan Approval or any land alteration activity of the subject property, whichever occurs first.
10. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials, be encountered, work in the immediate area shall cease and the DLNR-HPD shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.
11. Upon completion of Phase I of the school development, the applicant shall submit further traffic study for Phase II to be reviewed and approved by the Planning Commission, in consultation with the Department of Public Works. Phase II shall not proceed without the approval of the Planning Commission.
12. 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).

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Mr. Rick Vidgen
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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.

Should you have any questions, please feel free to contact Alice Kawaha of the Planning Department at 961-8288 or Royden Yamasato of the Planning Department West Hawaii Office at 327-3510.

Sincerely,



K Kevin M. Balog, Chairman
Planning Commission

LHuala01.PC

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
West Hawaii Office
State Land Use Commission
Department of Land & Natural Resources
Kazu Hayashida, Director/DOT-Highways, Honolulu
Corporation Counsel
Hualalai Academy
Mr. Joel W. Nye
Mr. Grant R. Baseman
Mr. Ronald Freitas
Mr. Terry Neumann

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