



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

DEC 21 2012

Ted H. S. Hong, Esq.
P.O. Box 4217
Hilo, HI 96720

Dear Mr. Hong:

Special Permit Application (SPP 12-000141)

Applicant: Suzanne Bennett & Jean McKeague

Request: To Legitimize the Establishment and Operation of a School for
K-6th Grade Instruction

Tax Map Key: 1-5-053:142

The Windward Planning Commission, at its duly held public hearing on December 6, 2012, voted to approve the above-referenced request for a Special Permit to allow the establishment of a satellite learning and education center (school) on one acre of land situated within the State Land Use Agricultural District. The property is located on 5th Avenue approximately 1,000 feet northwest of the intersection of 5th Avenue and Kaloli Drive, Hawaiian Paradise Park Subdivision, Puna, Hawai'i.

Approval of the request is based on the following:

The applicants established Shady Grove School in 1993 as a homeschooling site. Since 2003 the school has been operating as a satellite learning and education center under the charter of the Hawai'i Academy of Arts and Science New Century Public Charter School (HAAS) whose main campus is located in Pāhoa. The applicants are requesting a Special Permit in order to legitimize the establishment and operation of a satellite learning and education center (school) for up to 38 students from kindergarten to grade 6.

The applicants propose to utilize the existing structures on the property which include a two-story farm dwelling, classroom building, storage building and stage, and

two open-air miscellaneous buildings. No new structures are proposed by the applicants. The lower level of the farm dwelling will be used as a classroom and the upper level will remain as a residence for the applicants or a property caretaker. There is a restroom located on the lower level of the farm dwelling for the students and employees to use. The open-air buildings will be used for storage and as a tree house.

It should be noted that the storage building and stage structure and the open-air miscellaneous building located on the north side of the property are situated within the minimum yard setbacks. The Zoning Code requires a minimum 30-foot front and rear yard setback and 20-foot side yard setback; therefore, should the Special Permit be approved, these structures will need to be relocated or removed. Hours of operation will be from 7:30 a.m. to 3:30 p.m. Monday through Friday. A U-shaped driveway from 5th Avenue and on-site parking will be provided.

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 Chapter 205, Hawai'i Revised Statutes (HRS), 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 Hawai'i. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. In recognizing that lands within the 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 applicants are requesting to establish a K-6 school on the property in order to provide alternative education opportunities to the Hawaiian Paradise Park community. The proposed use is considered unusual since it is not agricultural in nature, but it is a reasonable use as the educational services provided will support the surrounding rural community. Thus the proposed use is considered an unusual and reasonable use of the agricultural land that will not adversely affect the preservation and agricultural use of the County's prime agricultural lands.

In addition to the above listed criteria, the Planning Commission shall also consider the following criteria listed under Section 6-3(b)(5) (A) through (G) of its rules of practice and procedure:

(A) **Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.** The subject property is not classified as prime agricultural land and due to its poor soil characteristics does not have

a high potential for sustained agricultural yields. Thus, this request is not contrary to the objectives of the State Land Use Law for the Agricultural District.

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

Surrounding properties are zoned A-1a and primarily vacant or in residential use. The closest dwelling is located about 50 feet from the subject property on the adjacent lot to the east. There is also a dwelling on the adjacent lot to the north and across 5th Avenue to the west. The adjacent lot to the south is vacant. Shady Grove school has been operating on the property for the past 19 years. The applicants are not proposing to expand school enrollment beyond existing levels and are not proposing the construction of any new structures on the property. During the time the school has been operating, the Planning Department has not received any complaints from surrounding neighbors related to noise or traffic. As a condition of approval, the applicants will be required to comply with the Planning Department's Rule No. 17 (Landscaping Requirements) to mitigate any potential adverse noise or visual impacts to surrounding properties. With the implementation of this condition, it is not anticipated that the continued use of the property as a school would adversely impact surrounding properties.

(C) The proposed use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. Access to the property is from Kaloli Drive, to 5th Avenue. Kaloli Drive is a two-lane paved roadway with grass shoulders. 5th Avenue is an approximately 16- to 17-foot wide gravel road within a 40-foot right-of-way. All roads within the subdivision are privately owned and maintained by the Hawaiian Paradise Park Owners Association (HPPOA). In a letter dated October 3, 2012, the HPPOA states they have received numerous complaints from the residents on 5th Avenue regarding the number and speed of vehicles and the increased dust on dry days. The Association recommends the applicants pave 5th Avenue from Kaloli Drive through the school site in order to reduce fugitive dust caused by vehicles traveling to and from the school. In June 2012, the State Department of Health issued an informal notice of violation to HPPOA over the subdivision's unpaved roads, indicating that the dust produced by passing vehicles on dry days violates air quality regulations. The Planning Director believes the fugitive dust generated by vehicles traveling to and from the school would contribute minimally to the fugitive dust generated by all vehicles traveling within the subdivision. Therefore, the Association will need to find a subdivision-wide solution rather than rely on a single landowner to pave subdivision roads on a piecemeal basis which will be cost prohibitive. Additionally, since non-residential uses typically have a greater impact on road maintenance, the Association could assess a commercial-scale road maintenance fee for commercial, light-industrial and community uses within the subdivision similar to the fee assessment implemented by the nearby Orchidland Community Association. The Director is recommending a condition of approval be included to require the applicants pay a commercial-scale fee should the Association implement this assessment fee in the

future. Currently 10 students are transported to the school in a van from the main HAAS campus in Pāhoa. The applicants have agreed to implement a carpool program, which will further reduce the number of vehicles traveling to and from the school on 5th Avenue.

County water is not available in the area. Non-potable water for bathrooms and sinks is currently provided from a water catchment tank. A second water catchment tank will be installed to provide non-potable water for fire protection. There is currently no potable water for drinking at the property. Therefore, the applicants will either have to drill a well or potable water will need to be brought in and stored on-site. A condition of approval will require the applicants provide bottled water to the students and employees.

A cesspool currently services the existing farm dwelling on the property. According to the Department of Health, the EPA requires an existing cesspool serving 20 or more persons in any one day be upgraded to a septic system. A condition of approval will require that the applicants convert the existing cesspool into a septic system or install a new septic system meeting the requirements of the Department of Health.

County police and fire facilities are located about 8 miles from the property in Kea'au and Pāhoa. There is also a volunteer fire station in HPP about 3 miles away on 21st Avenue and Paradise Drive. Medical services are available in Hilo. All essential utilities are available to the site.

(D) Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established. In the 1960's and 1970's, the State's agricultural district boundaries and regulations were established and subsequently amended pursuant to HRS Chapter 205. The State Land Use Commission was created in 1961, and interim regulations and temporary district boundaries became effective in 1962. Subsequently, the regulations and Land Use District Boundaries became effective in August of 1964. The property and surrounding areas are designated for agricultural uses by both State and County land use laws. Through the issuance of a Special Permit, a community may establish various non-agricultural services that may not be available or allowed by zoning for its residents. Since the district boundaries were established in the 1960's, Puna's population has grown substantially and the establishment of community services, such as schools, has not kept pace with this growth. There has also been a recent shift over the last two decades, through the formation of charter schools, to provide alternative education options to public schools. Unfortunately, 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. Soils on the property are classified as "E" or "Very

Poor" for agricultural productivity by the Land Study Bureau and is unclassified by the Agricultural Lands of Importance to the State of Hawaii (ALISH) Map. The U.S. Soil Survey Type for the subject property is Pāhoehoe lava flows, (rLW). Pāhoehoe lava has no soil covering and is typically bare of vegetation except for mosses and lichens. The property has not been used for commercial agriculture in the past and due to its poor soil qualities is not ideal for producing sustained high agricultural yields. Thus, the land upon which the proposed use is sought is unsuited for the uses permitted within the district.

(F) The use will not substantially alter or change the essential character of the land and the present use. The essential character of the area is rural residential. Prior to establishment of the school in 1993, the property was developed with a farm dwelling. A portion of the farm dwelling will be used for the school use as well as additional structures that were constructed since the school began operating. The school buildings have been designed to match the surrounding rural character rather than having an institutional character typical of public school buildings. As such, there will be no change to the rural character of the land and its present use.

(G) The request will not be contrary to the goals, policies, objectives and actions of the General Plan, Puna Community Development Plan (CDP) and other documents such as Design Plans. The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County. The property is designated Rural. This designation includes existing subdivisions in the State Land Use Agricultural and Rural districts that have a significant residential component, including the Orchidland Estates, 'Āinaloa, and Hawaiian Paradise Park (HPP) subdivisions. Typical lot sizes vary from 9,000-square feet to two acres. These subdivisions may contain small farms, wooded areas, and open fields as well as residences. Allowable uses within these areas, with appropriate zoning, may include commercial facilities that serve the residential and agricultural uses in the area, and community and public facilities. The proposed use is considered a community facility as it will provide additional education choices to the children living within the HPP subdivision and surrounding areas.

The proposed use is not contrary to the objectives sought to be accomplished by Chapter 205A, Hawai'i Revised Statutes, relating to the Coastal Zone Management Program. The property is located well outside of the Special Management Area (SMA) and tsunami evacuation zone. There is no designated public access to the mountain or shoreline areas over the property. Therefore, the proposed use will not adversely impact any recreational resources, including access to and along the shoreline, scenic and open space nor visual resources, coastal ecosystems, and marine and coastal

resources. Further, the property will not be affected by any coastal hazards or beach erosion. Therefore, the proposed use is not contrary to the objectives of Chapter 205A, Hawai'i Revised Statutes.

Based on the above considerations, the approval of the request to allow the establishment of a satellite learning and education center (school) on one acre of land situated within the State Land Use Agricultural District would support the objectives sought to be accomplished by the Land Use Law and Regulations. Approval of this request is subject to the following condition.

1. The applicant(s), successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. The satellite learning and education center (school) shall be conducted in a manner that is substantially representative of plans and details contained within the Application for Special Permit and the representations made before the Windward Planning Commission.
3. The applicants shall secure Final Plan Approval for the school from the Planning Director in accordance with Chapter 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and/or proposed structures, fire protection measures, unpaved driveways and parking spaces, and other improvements associated with the use. The pavement of parking spaces is not required, and any material may be used that will eliminate erosion, mud and standing water. Landscaping along the perimeter of the project site shall also be indicated on the plans in accordance with the Planning Department's Rule No. 17 (Landscaping Requirements) buffer yard requirements for the Village Commercial (CV) zone adjoining a Single-Family Residential (RS) zone.
4. Within two (2) years from the effective date of this permit, the applicants 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, a "change of use" building permit to convert the lower level of the existing farm dwelling into a classroom.
5. Enrollment shall be limited to 38 students.
6. The hours of operation shall be limited to Monday through Friday from 7:30 a.m. to 3:30 p.m.

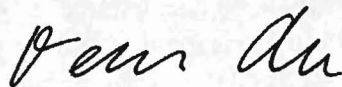
7. The upper level of the farm dwelling shall be maintained as a residence for the applicants and/or a school caretaker.
8. Bottled water for drinking shall be provided to the students and employees of the school.
9. Upon establishment of a road maintenance fee policy related to commercial-scale road maintenance by the Hawaiian Paradise Park Owners Association, the applicants shall pay a commercial-scale road maintenance fee in a timely manner.
10. Adequate parking and pick-up/drop-off areas shall be provided on-site to prevent parking along 5th Avenue.
11. The applicants shall establish a carpool policy and submit it to the Planning Director for review and approval prior to issuance of Final Plan Approval. A copy of the policy shall be provided to parents at the beginning of each school year.
12. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
13. The method of sewage disposal shall meet the standards and requirements of the State Department of Health.
14. 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 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 DLNR-HPD when it finds that sufficient mitigative measures have been taken.
15. The applicants shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
16. An initial extension of time for the performance of conditions may be granted by the Planning Director upon the following circumstances:

- A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the 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).
17. Should any of these conditions not be met or substantially complied with in a timely manner, the Planning Director may initiate procedures to revoke this 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.

Should you have any questions, please contact Maija Cottle of the Planning Department at 961-8288, ext. 8159.

Sincerely,

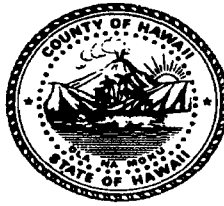


Dean Au, Chairman Pro Tem
Windward Planning Commission

Lshadygrovelsyhf

cc: Suzanne Bennett & Jean McKeague
Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Department of Land & Natural Resources-HPD
Mr. Gilbert Bailado
Hawaiian Paradise Park Owners Association

Harry Kim
Mayor



Gregory Henkel, Chair
Myles Miyasato, Vice Chair
Joseph Clarkson
Donn Dela Cruz
Donald Ikeda
Raylene Moses

County of Hawai'i

WINDWARD PLANNING COMMISSION

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FEB 14 2017

Ms. Suzanne Bennett and Ms. Jean McKeague
337 Lyman Avenue
Hilo, HI 96720

Dear Ms. Bennett and Ms. McKeague

SUBJECT: Special Permit (SPP 12-000141)
Applicant: Suzanne Bennett and Jean McKeague
Request: Five-Year Time Extension to Comply with Condition No. 4
(Secure and Finalize Building Permits)
Tax Map Key: 1-5-053:142

The Windward Planning Commission, at its duly held public hearing on February 1, 2017, voted to approve the above-referenced request to amend Condition No. 4 of Special Permit No. SPP-12-00141 to allow a 2-year time extension with the opportunity for an administrative 2-year time extension rather than the 5-year time extension requested by the Applicants. The project site is located on 5th Avenue, approximately 1,000 feet northwest of the intersection of 5th Avenue and Kaloli Drive, Hawaiian Paradise Park Subdivision, Puna, Hawai'i.

Approval of this amendment is subject to the following conditions:

1. The applicant(s), successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. The satellite learning and education center (school) shall be conducted in a manner that is substantially representative of plans and details contained within the Application for Special Permit and the representations made before the Windward Planning Commission.
3. The applicants shall comply with the conditions of Plan Approval (PLA-15-001189).

FEB 14 2017

4. Within two (2) years from the effective date of this amended permit, the applicants 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, a “change of use” building permit to convert the lower level of the existing farm dwelling into a classroom.
5. Enrollment shall be limited to 38 students.
6. The hours of operation shall be limited to Monday through Friday from 7:30 a.m. to 3:30 p.m.
7. The upper level of the farm dwelling shall be maintained as a residence for the applicants and/or a school caretaker.
8. Bottled water for drinking shall be provided to the students and employees of the school.
9. Upon establishment of a road maintenance fee policy related to commercial-scale road maintenance by the Hawaiian Paradise Park Owners Association, the applicants shall pay a commercial-scale road maintenance fee in a timely manner.
10. Adequate parking and pick-up/drop-off areas shall be provided on-site to prevent parking along 5th Avenue.
11. A copy of the approved carpool policy shall be provided to parents at the beginning of each school year.
12. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
13. The method of sewage disposal shall meet the standards and requirements of the State Department of Health.
14. 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 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 DLNR-HPD when it finds that sufficient mitigative measures have been taken.

15. The applicants shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
16. An initial extension of time for the performance of conditions may be granted by the Planning Director upon the following circumstances:
 - A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the 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).
17. Should any of these conditions not be met or substantially complied with in a timely manner, the Planning Director may initiate procedures to revoke this permit.

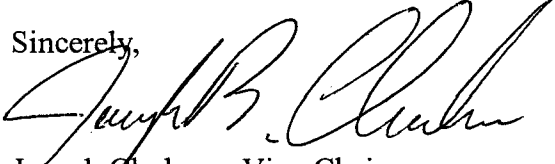
[Note: Ramseyer version available upon request.]

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

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

Ms. Suzanne Bennett and Ms. Jean McKeague
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Should you have any questions, please contact Maija Jackson of the Planning Department at 961-8136.

Sincerely,

Joseph Clarkson, Vice-Chairman
Windward Planning Commission

LBennett&McKeagueAmendSPP12-141wpc
Enclosure: PC Findings Report

cc w/enclosures: Department of Public Works
Department of Water Supply
County Real Property Tax Division - Hilo
Department of Land & Natural Resources - HPD
State Land Use Commission
GIS Section
Hawaiian Paradise Park Owners Association

COUNTY OF HAWAI‘I
PLANNING COMMISSION FINDINGS

SUZANNE BENNETT AND JEAN MCKEAGUE
AMENDMENT TO SPECIAL PERMIT NO. 12-141 (SPP 12-141)

Based on the following considerations, an amendment to Condition No. 4 of Special Permit No. 12-141 to allow a 2-year time extension with opportunity for an administrative 2-year time extension is approved.

SUZANNE BENNETT AND JEAN MCKEAGUE have submitted a request to amend Special Permit No. 12-141, which allowed the establishment and operation of a school for K-6th grade instruction for up to 38 children on one acre of land situated within the State Land Use Agricultural District. The amendment request is for a 5-year time extension to comply with Condition No. 4 to secure and finalize building permits. The property is located on 5th Avenue approximately 1,000 feet northwest of the intersection of 5th Avenue and Kaloli Drive, Hawaiian Paradise Park Subdivision, Puna, Hawai‘i, TMK: 1-5-053:142.

The applicants established Shady Grove School in 1993 as a homeschooling site. Since 2003 the school has been operating as a satellite learning and education center under the charter of the Hawai‘i Academy of Arts and Science New Century Public Charter School (HAAS) whose main campus is located in Pāhoa.

Special Permit No. 12-141 was issued on December 21, 2012 to allow the establishment and operation of a school for K-6th grade instruction for up to 38 children on one acre of land situated within the State Land Use Agricultural District. The applicants proposed to use the existing structures on the property which include a two-story dwelling, classroom building, storage building and stage, and two open-air buildings. A building permit was required to change the use of the dwelling and other structures to a school. The applicants are requesting a 5-year time extension to comply with Condition No. 4, which states:

“Within two (2) years from the effective date of this permit, the applicants 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, a “change of use” building permit to convert the lower level of the existing farm dwelling into a classroom.”

The applicants have been fundraising continually over the past four years in an attempt to comply with the permit conditions. On July 21, 2014 the Planning Director granted a 2-year administrative time extension to comply with Condition No. 4 and on June 23, 2015 the Director issued Final Plan Approval for the school.

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. Since issuance of the Special Permit in 2012, the applicants have consistently made an effort to comply with the conditions of the Special Permit. They have received Plan Approval, created a parking area and vehicle turnaround, installed a septic system (although it has not yet been approved by the State Department of Health), established and implemented a carpool policy, installed a wheel chair accessibility ramp, and installed landscaping. The applicant’s non-

performance of Condition 4 was the result of Hurricane Iselle, which affected lower Puna in August 2014, and resulted in several ironwood trees falling on the property and damaging the roof and shear walls of the outdoor stage structure, play structure and swing set. To comply with Condition No. 4 of the permit, the applicants recently submitted plans for a building permit to change the use of the structures on the property to a school. However, the plans were incorrectly drawn and therefore the applicants will need more time to resubmit correctly drawn plans. These setbacks have made it costly and difficult to comply with the condition by the deadline. The two situations could not have been foreseen and were beyond the control of the applicants.

In a letter dated December 9, 2016, the Hawaiian Paradise Park Owners Association (HPPOA) indicated they are opposed to a 5-year time extension but are not opposed to a 2-year time extension. The HPPOA believes two years is a sufficient amount of time for the applicants to complete the conditions of the permit and they refer to Condition 16d of the permit which states that an administrative time extension granted by the Planning Director shall not exceed the period originally granted for performance. It should be noted that a 2-year administrative time extension was granted by the Planning Director in 2014. Since the Director does not have the authority to grant an additional time extension, the applicants have applied for a time extension to the Planning Commission, which has the authority to grant a time extension for any period of time they feel is necessary and reasonable to fulfill the permit conditions.

The Planning Director is concerned that the applicants have been operating for several years on the property but have not yet secured and finalized a building permit to convert the first floor of the dwelling and other structures to a school. However, the Director also recognizes the financial difficulties the school has faced in light of the recent storm damage and incorrect building plans. For example, charter schools in Hawai'i do not receive funding from the State for facilities development. Since charter schools cannot charge tuition like a private school, many public charter schools must raise funds other ways in order to build new facilities or convert existing buildings into school facilities. Thus, the Director recommends granting a 2-year time extension with the option of an additional 2-year time extension that can be granted administratively by the Planning Director.

Granting of the time extension would not be contrary to the General Plan, Zoning Code or original reasons for granting the permit. The General Plan designation and policies for the property have not changed since the original permit was issued in 2012. The General Plan designation for the property is Rural. This designation includes existing subdivisions in the State Land Use Agricultural and Rural districts that have a significant residential component, including the Orchidland Estates, 'Ainaloa, and Hawaiian Paradise Park (HPP) subdivisions. Typical lot sizes vary from 9,000-square feet to two acres. Allowable uses within these areas, with appropriate zoning, may include commercial facilities that serve the residential and agricultural uses in the area, and community and public facilities. The school use is considered a community facility as it will continue to provide additional education choices to the children living within the HPP subdivision and surrounding areas. The subject property is located near (about 1,000 from) the proposed Hawaiian Paradise Park neighborhood village center, along Kaloli Drive between 4th and 5th Avenues, that is identified in the Puna Community Development Plan (CDP), which was adopted in 2008. Although the CDP recommends situating commercial and community land uses in village centers throughout Puna, these village centers have not been established due partly to the lack of public and private funding for infrastructure. Therefore, approval of a 2-year time extension will not

be contrary to the General Plan or Zoning Code or the original reasons for granting the permit.

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

Based on the above considerations, the approval of a 2-year time extension to give the applicants time to comply with Condition No. 4 of the permit would support the objectives sought to be accomplished by the Land Use Law and Regulations.