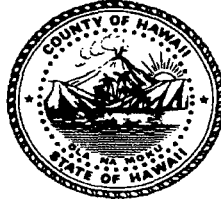


Harry Kim
Mayor



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

County of Hawai'i

WINDWARD PLANNING COMMISSION

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

JUL 14 2017

Ms. Kathryn Tydlacka
P.O. Box 809
Nā'ālehu, HI 96772

Dear Ms. Tydlacka:

SUBJECT: Special Permit No. SPP 14-000172
Applicant: Kathryn Tydlacka
Request: Amendment to Increase Enrollment from 65 to 100 Students
and Related Improvements
Tax Map Key: 9-4-001:019

The Windward Planning Commission, at its duly held public hearing on July 6, 2017, voted to approve the above-referenced request to amend Special Permit No. 14-172 to increase permitted enrollment at the Ka'ū Learning Academy public charter school from 65 students to 100 students and to allow for related facility improvements to accommodate the increase in enrollment. The project site is located at 94-1581 Kaula Circle, Discovery Harbour Subdivision, Unit 1, Ka'ū, Hawai'i.

Approval of this amendment is subject to the following conditions:

1. The applicant, successors or assigns shall be responsible for complying with all stated conditions of approval.
2. Within 90 days from the effective date of this amendment, the applicant(s) shall submit the anticipated maximum daily water usage calculations as prepared by a professional engineer licensed in the State of Hawai'i to the Department of Water Supply (DWS). The water usage calculations should include the estimated peak flow in gallons per minute and the total estimated daily water usage in gallons per day.

3. The applicant shall install a reduced pressure type backflow prevention assembly within five (5) feet of the existing water meter and any additional water meters on private property, which must be inspected and approved by the Department of Water Supply before water service can be activated.
4. The applicant, successors, or assigns shall implement any improvements required by the Fire Department and/or Department of Water Supply to ensure that fire protection requirements can be met.
5. Prior to the construction of any additional structures, the applicant(s), successor(s) or assign(s) shall secure Final Plan Approval from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and/or proposed structure(s), paved driveway access and parking stalls associated with the proposed development.
6. 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 structure.
7. If the school use ceases, the use of the facility may revert back to its grandfathered use as a golf course clubhouse with a restaurant.
8. The Traffic Management Plan shall be implemented and provide traffic management strategies that reduce traffic congestion on surrounding County roads during student pick-up/drop-off activities for the school. The applicant shall provide active traffic management of all student pick-up/drop-off areas so that drop-off and pick-up activity does not result in queuing of vehicles on any County Road. The applicant shall encourage carpooling, bus and van services, and staggering school pick-up and drop-off times within the plan.
9. The method of sewage disposal shall meet with the requirements of the Department of Health. The applicant shall provide a copy of the school's water bill at the end of each school year to the Department of Health and provide any additional wastewater improvements, if required.
10. The applicant shall provide the Fire Department with the occupant count to assure that the facility can accommodate the increase in occupants and whether any additional fire protection measures are required.

11. The pool shall be covered and the pool area shall be gated and locked for safety reasons as proposed by the applicant. If the pool will be utilized by the school in the future, the above restrictions will apply when the pool is not in use.
12. The school is limited to 100 students.
13. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
14. 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 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).
15. Should any of these conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke this Special Permit.

[Note: Ramseyer version available upon request.]

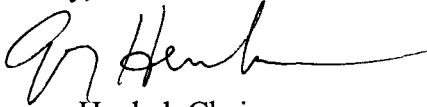
This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies

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

Ms. Kathryn Tydlacka
Page 4

Should you have any questions, please contact Shancy Watanabe of the Planning Department at 961-8144.

Sincerely,



Gregory Henkel, Chairman
Windward Planning Commission

LTydlackaAmendSPP14-172wpc
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
 County Fire Department
 State Land Use Commission
 Department of Health
 GIS Section

COUNTY OF HAWAI'I
PLANNING COMMISSION FINDINGS

KATHRYN TYDLACKA

AMENDMENT TO SPECIAL PERMIT NO. 14-000172 (SPP 14-172)

Based on the following considerations, an amendment to Special Permit No. 14-172 to increase the permitted enrollment at the Ka'ū Learning Academy public charter school from 65 students to 100 students and to allow for related facility improvements to accommodate the increase in enrollment is approved.

KATHRYN TYDLACKA has submitted a request to amend Special Permit No. 14-172 to increase the permitted enrollment at the Ka'ū Learning Academy public charter school from 65 students to 100 students and to allow for related facility improvements to accommodate the increase in enrollment. Special Permit No. 14-172 was originally approved to allow the establishment of a public charter school and related uses with a maximum enrollment of 65 students within the former Discovery Harbour Golf Course clubhouse which is situated on 3.693 acres of land within the State Land Use Agricultural District. The property is located at 94-1581 Kaulua Circle, Discovery Harbour Subdivision, Unit I, Ka'ū, Hawai'i, TMK: (3) 9-4-001:019.

The applicant has submitted an amendment request to increase the permitted enrollment at the Ka'ū Learning Academy public charter school from 65 students to 100 students and to allow for related facility improvements to accommodate the increase in enrollment. Special Permit No. 14-172 was approved on March 5, 2015 to allow the establishment of a charter school and related uses for 65 students and a maximum of 10 employees within an existing facility situated on 3.69 acres of land. The charter school is called the "Ka'ū Learning Academy" (KLA) and has received approval to become a Public Charter School by the Hawai'i State Public Charter School Commission on May 8, 2014. The existing facility is the Discovery Harbour golf course clubhouse, which has been used previously for restaurant type activities.

The objectives for the amendment request is to increase the amount of students from 65 to 100 and to expand the school to include grades three through eight. The applicant submitted two letters to the Planning Department. The June 1, 2017 letter stated that the applicant would like to move forward with their amendment to the Special Permit to be considered at the July 6, 2017 Windward Planning Commission. The June 2, 2017 letter, the applicant stated that their current occupancy will allow up to 100 people, which will meet their enrollment of 92 students plus 8 staff for the 2017-2018 school year. Currently, there are eight (8) employees, which includes administrative staff and teachers. At the present location, the future goals for the applicants are to increase their enrollment to 150 students as the school plans to build more classrooms in compliance with the County Building Division requirements. The applicant's long-term goals is to find and/or develop a more suitable, permanent campus and returning the golf course clubhouse with a restaurant to its original use. Currently, five (5) acres of land was generously donated to the school for a permanent campus and the owners hope to begin to develop that property within two (2) years. Please

note that this amendment to Special Permit 14-172 will be for the increase from 65 to 100 students in grades 3 through 8. The maximum number of employees will remain as originally approved at a maximum of 10 employees.

The applicant's overall objective and long term vision is to give students the academic and social roots that they need to grow strong in curiosity, creativity, leadership, and a general passion for life. Students will be able to master all the necessary social and academic skills that colleges and businesses seek when recruiting.

A "charter school" or "public charter school" refers to those public schools and their respective governing boards, as defined in Section 302D (HRS), that are holding current charter contracts to operate as charter schools under this chapter, including start-up and conversion charter schools, and that have the flexibility and independent authority to implement alternative frameworks with regard to curriculum, facilities management, instructional approach, virtual education, length of the school day, week, or year, and personnel management. Each charter school is responsible for selecting their own sites.

In 1999, the Legislature of the State of Hawai'i created a new educational initiative with the passage of Act 62, SLH 1999 or "The New Century Charter Schools" law. Charter schools are more autonomous with greater flexibility in decision-making. Charter schools are excluded from many State laws and department rules and regulations. However, charter schools are public schools in that they receive public funds. These schools must still meet all applicable federal, State and County requirements and are not exempt from collective bargaining, discriminatory practice laws, health and safety laws and standards, and the implementation of the Hawai'i content and performance standards.

The grounds for approving a Special Permit and amendments are based on Rule 6-7 in the Planning Commission Rules. It states that the Planning Commission shall not approve a Special Permit unless it is found that the proposed use (a) is an unusual and reasonable use of land situated within the Agricultural or Rural District, whichever the case may be; and (b) the proposed use would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended.

The proposed amendment is an unusual and reasonable use of land situated within the State Land Use Agricultural District and would promote the effectiveness and objectives of the State Land Use Law and Regulations and Chapter 205, HRS, as amended. The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands for those uses to which they are best suited in the interest of the public welfare of the people of the State of Hawai'i. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use.

The original request to allow the charter school on the subject property was reviewed and evaluated by the Planning Director and Planning Commission, who found that the use is unusual in that a school is not normally considered agricultural in nature. They also found it a reasonable use for a school to be considered within the Agricultural district because communities within agricultural districts require certain services that support the agricultural community in which they are located, including schools. This criterion will continue to be met with the proposed request to increase the amount of students from 65 to 100.

In recognizing that lands within the Agricultural district 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. Schools may be permitted the in Agricultural district, provided that a Special Permit is issued for the use, which was issued for the subject property by the Windward Planning Commission on March 5, 2015.

The subject property is 3.693 acres in size and is developed with a golf course clubhouse, swimming pool, tennis courts and parking areas. It is situated within the State Land Use Agricultural district and County's Open zoning district. The land on which the proposed use is located is unclassified by the Agricultural Lands of Importance to the State of Hawai'i (ALISH) Map. Additionally, the soil is classified as "E" or "Very Poor" by the Land Study Bureau's Detailed Land Classification System and is identified mainly as Kaimu, extremely stony peat, 6 to 20 percent slopes (rKED) by the U.S. Soil Survey.

The proposed amendment request will be established within an existing building (golf course clubhouse) and a proposed additional classroom building. The proposed amendment is considered an unusual and reasonable use of agricultural land that will not adversely affect the preservation and agricultural use of the County's prime agricultural lands, and is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

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

(A) The granting of this amendment request would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. As evaluated above, the proposed amendment request is considered an unusual and reasonable use of the agricultural land and the proposed use will not adversely affect the preservation and agricultural use of the County's prime agricultural lands.

(B) The desired use would not adversely affect surrounding properties. The property is located on Kaulua Circle in the Discovery Harbour Subdivision. The location of the charter school is on the property previously used for a golf course clubhouse and related facilities that has served the golf course located within the subdivision.

The adjacent properties are zoned A-1a and consist of single-family dwellings, the community association building and vacant parcels. There are also Open zoned areas in the immediate area that consist of the Discovery Harbour Golf Course. Portions of the golf course are located within the Discovery Harbour subdivision. The nearest dwellings are located across Kaulua Circle to the northeast and across Kahiki Street to the west. Additionally, the community center for the subdivision is located just west across Kahiki Street from the golf course clubhouse. The subject property currently has trees and vegetation that will help minimize any possible adverse noise and visual impacts.

Based on the above discussion, the proposed use is not anticipated to have a substantial adverse impact on the surrounding properties, but any possible impacts can be minimized through conditions of approval.

(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. The proposed amendment will not burden public agencies to provide additional services. Access to the property from Kaulua Circle, which is a County road with a 20-foot pavement within a 40-foot right-of-way. Electricity and telephone are available to the property. County water is available to the property. The property is situated within an area designated as Flood Zone X, an area determined to be outside the 500-year flood plain. A condition of approval is included to require that the applicant meet all applicable County, State and Federal laws, rules, regulations and requirements.

A Traffic Impact Analysis Report (TIAR) was required in 2014 as a condition to the approved related Special Permit No. 14-000172. In a letter dated July 23, 2016, Peter JK Dahlberg, PE dba Aina Engineers Inc. stated that the increased enrollment has no measurable increase on the trip generation predictions provided in the original TIAR. The addition of 35 students should not alter the existing Level of Service (LOS-A). The original TIAR submitted to the Planning Department in 2014 stated that the anticipated traffic generation was 28 trips to and from the project from surrounding areas.

The Police Department has no comments or concerns. Additionally, the Fire Department previously commented that the prior to occupancy of the school within the facility, the applicant must install a Fire Alarm system. The applicant has met this condition. In response to the proposed amendment, the Fire Department asked that the occupant count be re-evaluated to assure the facility can accommodate the increase in occupants. A condition of approval will be include that the occupant count be re-evaluated by the Fire Department to assure that the facility will accommodate the increase in occupants.

The Department of Health (DOH) commented that design capacity for the septic system on the property is 1,000 gpd. The DOH asked that the applicant submit calculations showing estimated flows based on HAR 11-62 Appendix D Table 1. In response to DOH's comments, the applicant's engineer submitted the information to confirm water usage of the school. In response to this new information, DOH revised their comments in an email dated July 1, 2016 stating the following:

“Regarding the proposed amendment to SPP 14-00172. Thank you for providing the water bills for Ka’ū Learning Academy. Based on usage history shown in the bills, the maximum daily usage is currently in the 300-400 gallon/day range. This is less than half of the design capacity of the septic system on the property. Given this historic usage as a guide, I would like to revise my previous comments requiring an additional septic system for the school to increase enrollment as follows:

I have no objections to the proposed enrollment of 15-35 additional students without an additional septic system to accommodate the additional wastewater load, provided usage remains below 1000gpd and the school provides documentation to confirm that. In order to go forward with the proposed alteration to the school's special use permit please ensure that a copy of the school's water bill to my office at the end of each school year for as long as the special permit is in effect and the number of students and staff exceeds the design specifications for IWS design per HAR Ch. 11-62 Appendix D, table I.”

In response to DOH's revised comments, a condition of approval will be added requiring the applicant to submit a copy of the school's water bill to DOH at the end of each school year and to comply with any proposed changes that may be required by the Department of Health.

(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, various "non-agricultural" services may be allowed, including a charter school.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The property is situated on soil identified as Kaimu extremely stony peat, classified as "E" or "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating and is unclassified by the Department of Agriculture's ALISH Map. The existing school, along with the increase of students, will be conducted within the existing building and a proposed additional portable classroom. Based on the above information, the land on which the proposed use is sought is unsuited for the uses permitted within the agricultural district.

(F) The use will not substantially alter or change the essential character of the land and the present use. The proposed charter school will be conducted within an existing 2,700 square-foot golf course clubhouse developed on the property and a proposed approximately 600 square-foot portable classroom. There will be no significant changes to the existing structure or to the property. Although the proposed charter school will alter or change the present use of the property, the changes are not be anticipated to be substantial.

(G) The request will not be contrary to the General Plan and official Community Development Plan 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 located in area identified as Rural in the General Plan. This category includes existing subdivisions in the State Land Use Agricultural and Rural districts that have a significant residential component. 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 school and proposed amendment request will not be contrary to the LUPAG Map designation for this area.

The General Plan has a Public Facilities-Education Element, which speaks to the available public facilities within the Ka'ū District. It states that the Ka'ū High School complex is comprised of Ka'ū High School, Pahala Elementary School, and Nā'ālehu Elementary and Intermediate School, and serves students from kindergarten through the 12th grade level. Additionally, the Plan has a Course of Action that states "Encourage the State Department of Education to plan a K-8 School at Ocean View." The long term vision of the applicant is to relocate the school to the Hawaiian Ocean View Estates Subdivision. Currently, students who live in Ocean View have to travel to Nā'ālehu or Pahala for their education. The location of the charter school in Discovery Harbour subdivision helps alleviate students in Ocean View from having to travel such long distances.

Based on the above, the proposed request is not contrary with the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, which is Rural and allows ancillary community and public uses and it is working towards meeting a Course of Action goal of providing a school within the Ocean View area.

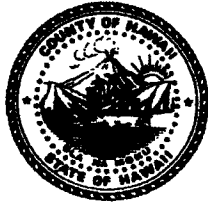
Additionally, the Ka'ū Community Development Plan (KCDP) is being created. The KCDP is currently in draft form. The expansion of educational opportunities in Ka'ū, which includes both standard DOE schools as well as charter schools, is a high priority in the proposed plan, especially in the Ocean View area. The use of a charter school in this area is supported through several objectives, policies and community action statements specified within the draft plan.

The proposed amendment is not contrary to the objectives sought to be accomplished by Chapter 205A, Hawai'i Revised Statutes, relating to coastal zone management program. The subject property is located over four (4) miles from the closest shoreline and is not located within the Special Management Area. Given the fact that the property has been cleared, landscaped and developed, it is unlikely that any archaeological features and threatened plant, animal or avian species will be adversely affected. There is no designated public access to the mountain areas over the property.

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

Lastly, this approval is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements in connection with the approved use, prior to its commencement or establishment upon the subject property. Additional governmental requirements may include the issuance of 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 findings, the approval of the amendment to Special Permit No. 14-172 to increase enrollment from 65 students to 100 students and related improvements would support the objectives sought to be accomplished by the Land Use Law and Regulations.



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

MAR 20 2015

Ms. Kathryn Tydlacka
P.O. Box 809
Nā'ālehu, HI 96772

Dear Ms., Tydlacka:

Special Permit Application (SPP 14-000172)

Applicant: Kathryn Tydlacka

Request: To Allow a Charter School and Related Uses for 65 Students Within an Existing Facility Situated on 3.69 Acres of Land Within the State Land Use Agricultural District

TMK: 9-4-001:019

The Windward Planning Commission, at its duly held public hearing on March 5, 2015, voted to approve the above-referenced request to allow the establishment of a charter school and related uses for 65 students within an existing facility situated on 3.69 acres of land within the State Land Use Agricultural District. The project site is situated at 94-1572 Kaulua Circle, Discovery Harbour Subdivision, Unit I, Ka'u, Hawai'i.

Approval of this permit is subject to the following conditions:

1. The applicant, successors or assigns shall be responsible for complying with all stated conditions of approval.
2. The charter school shall be established on the subject property within one year from the effective date of this permit. Prior to the establishment of the charter school, the applicant(s), successor(s) or assign(s) shall secure Final Plan Approval from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and/or proposed structure(s), paved driveway access and parking stalls associated with the proposed development.

MAR 20 2015

3. The use of the facility as a restaurant, along with the serving of alcohol shall ceased once the school has been established. If the school use is ceases, the use of the facility may revert back to its grandfathered use as a golf course clubhouse with a restaurant.
4. The applicant shall submit a Traffic Management Plan prior to the receipt of Final Plan Approval. The plan shall be implemented and provide traffic management strategies that reduce traffic congestion on surrounding County roads during student pick-up/drop-off activities for the school. The applicant shall provide active traffic management of all student pick-up/drop-off areas so that drop-off and pick-up activity does not result in queuing of vehicles on any County Road. The applicant shall encourage carpooling, bus and van services, and staggering school pick-up and drop-off times within the plan.
5. The method of sewage disposal shall meet with the requirements of the Department of Health. The applicant shall provide information of the amount of wastewater to be generated by the proposed school to the Department of Health and provide any additional wastewater improvements, if required.
6. The applicant shall install a Fire Alarm System meeting with the approval of the Fire Department.
7. The pool shall be covered and the pool area shall be gated and locked for safety reasons as proposed by the applicant. If the pool will be utilized by the school in the future, the above restrictions will apply when the pool is not in use.
8. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
9. 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 or 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 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 these conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke this Special 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 Jeff Darrow of the Planning Department at 961-8158.

Sincerely,



Raylene Moses, Chairman Pro Tem
Windward Planning Commission

LKtydlackaSPP14-172wpc

Enclosure: PC Findings Report

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division - Hilo
Department of Land & Natural Resources - HPD
Department of Health
Mr. Gilbert Bailado

COUNTY OF HAWAI‘I
PLANNING COMMISSION FINDINGS

KATHRYN TYDLACKA
SPECIAL PERMIT APPLICATION (SPP 14-000172)

The applicant is requesting a Special Permit application to allow the establishment of a charter school and related uses for 65 students within an existing facility situated on 3.69 acres of land within the State Land Use Agricultural District on TMK: 9-4-001:019.

The applicant is requesting a Special Permit to allow the establishment of a charter school and related uses for 65 students in grades 4 through 6 and a maximum of 10 employees within an existing facility situated on 3.69 acres of land. The charter school will operate Monday through Fridays between the hours of 7:00 a.m. and 4:00 p.m. along with tutoring on Saturdays.

The charter school is called the “Ka‘u Learning Academy” (KLA) and has received approval to become a Public Charter School by the Hawai‘i State Public Charter School Commission on May 8, 2014. The existing facility is the Discovery Harbour golf course clubhouse, which has also been used for restaurant type activities. The applicant is requesting to operate the school at this location for approximately three (3) years at which time they intend to relocate to the Hawaiian Ocean View Estates (HOVE) area. As part of the request, the applicant is requesting to preserve the non-conforming (grandfathered) use of the golf course clubhouse and restaurant type activities once the school is relocated.

The applicant’s objective and long term vision is to give students the academic and social roots that they need to grow strong in curiosity, creativity, leadership, and a general passion for life. Students will be able to master all the necessary social and academic skills that colleges and businesses seek when recruiting.

A "charter school" or "public charter school" refers to those public schools and their respective governing boards, as defined in Section 302D (HRS), that are holding current charter contracts to operate as charter schools under this chapter, including start-up and conversion charter schools, and that have the flexibility and independent authority to implement alternative frameworks with regard to curriculum, facilities management, instructional approach, virtual education, length of the school day, week, or year, and personnel management. Each charter school is responsible for selecting their own sites.

In 1999, the Legislature of the State of Hawai‘i created a new educational initiative with the passage of Act 62, SLH 1999 or “The New Century Charter Schools” law. Charter schools are more autonomous with greater flexibility in decision-making. Charter schools are excluded from many State laws and department rules and regulations. However, charter schools are public schools in that they receive public funds. These schools must still meet all applicable federal, State and County requirements and are not exempt from collective bargaining, discriminatory practice laws, health and safety laws and standards, and the implementation of the Hawai‘i content and performance standards.

The grounds for approving a Special Permit are based on Rule 6-6 in the Planning Commission Rules. It states that the Planning Commission shall not approve a Special Permit unless it is found that the proposed use (a) is an unusual and reasonable use of land situated within the Agricultural or Rural District, whichever the case may be; and (b) the proposed use would promote the effectiveness and objectives of Chapter 205, Hawai‘i Revised Statutes, as amended.

The proposed use is an unusual and reasonable use of land situated within the State Land Use Agricultural District and would promote the effectiveness and objectives of the State Land Use Law and Regulations and Chapter 205, HRS, as amended. The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands for those uses to which they are best suited in the interest of the public welfare of the people of the State of Hawai'i. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use.

The request is unusual in that a school is not normally considered agricultural in nature. However, it is reasonable use that a school be considered within the Agricultural district because communities within agricultural districts require certain services that support the agricultural community in which they are located, including schools.

In recognizing that lands within the Agricultural district 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. Schools may be permitted the in Agricultural district, provided that a Special Permit is issued for the use.

The subject property is 3.69 acres in size and is developed with an existing golf course clubhouse, swimming pool, tennis courts and parking areas. It is situated within the State Land Use Agricultural district and County's Open zoning district. The land on which the proposed use is located is unclassified by the Agricultural Lands of Importance to the State of Hawai'i (ALISH) Map. Additionally, the soil is classified as "E" or "Very Poor" by the Land Study Bureau's Detailed Land Classification System and is identified mainly as Kaimu extremely stony peat, 6 to 20 percent slopes (rKED) by the U.S. Soil Survey.

Since the proposed school will be established within an existing building, the proposed establishment of a school on this property is considered an unusual and reasonable use of agricultural land that will not adversely affect the preservation and agricultural use of the County's prime agricultural lands, and is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

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

(A) The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended. The subject request is considered an unusual and reasonable use of the agricultural land and the proposed use will not adversely affect the preservation and agricultural use of the County's prime agricultural lands.

(B) The desired use would not adversely affect surrounding properties. The property is located on Kaulua Circle in the Discovery Harbour Subdivision. Currently, the property has an existing golf course clubhouse, swimming pool, tennis courts and parking areas that has served the golf course located within the subdivision. The clubhouse has been used recently as the location of Giligan's Café to help raise monies for the proposed charter school.

The adjacent properties are zoned A-1a and consist of single-family dwellings, the community association building and vacant parcels. There are also Open zoned areas in the immediate area that consist of the Discovery Harbour Golf Course. Portions of the golf course are located to the north, south and west of the property. The nearest dwellings are located across

Kaulua Street to the northeast and across Kahiki Street to the west. Additionally, the community center for the subdivision is located just west across Kahiki Street from the golf course clubhouse. The property currently has trees and vegetation that will help minimize any possible adverse impacts, such as noise.

Based on the above discussion, the proposed use is not anticipated to have a substantial adverse impact on the surrounding properties, but any possible impacts can be minimized through conditions of approval.

(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. The requested use will not burden public agencies to provide additional services. Access to the property from Kaulua Circle, which is a County road with a 20-foot pavement within a 40-foot right-of-way. Electricity and telephone are available to the property. County water is available to the property. The applicant will utilize a newly installed septic system for wastewater. The property is situated within an area designated as Flood Zone X, an area determined to be outside the 500-year flood plain. A condition of approval will be included to require that the applicant meet all applicable County, State and Federal laws, rules, regulations and requirements.

The Police Department commented that the proposed charter school appears to be the same location as Gilligan's Café. Gilligan's Café is a restaurant that serves wine and beer and is open for dinner on Friday and Saturday nights. They expressed concerns that the school will be located in a facility that currently stores and serves alcohol. The applicant responded to the Police Department's concerns by stating that the restaurant operations will be shut down prior to the start of the charter school and that no alcohol will be stored onsite.

Additionally, the Fire Department commented that the prior to occupancy of the school within the facility, the applicant must install a Fire Alarm system. A condition of approval will be added to require this request.

Lastly, the Department of Health (DOH) commented that their Wastewater Branch had concerns regarding the amount of wastewater to be generated and that they have not received a final inspection report from the IWS engineer for the project. The applicant has submitted the IWS engineer's final inspection report that was submitted to DOH and a condition of approval will be added requiring the applicant to inform the DOH of the amount of wastewater to be generated by the proposed school.

(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, various "non-agricultural" services may be allowed.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The property is situated on soil identified as Kaimu extremely stony peat, classified as "E" or "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating and is unclassified by the Department of Agriculture's ALISH Map. The proposed request will be conducted entirely within the existing main dwelling. Based on the above

information, the land on which the proposed use is sought is unsuited for the uses permitted within the agricultural district.

(F) The use will not substantially alter or change the essential character of the land and the present use. The proposed charter school will be conducted within an existing 2,700 square-foot golf course clubhouse developed on the property. There will be no significant changes to the structure or to the property. Although the proposed charter school will alter or change the present use of the property, the changes will not be substantial.

(G) The request will not be contrary to the General Plan and official Community Development Plan 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 located in area identified as Rural in the General Plan. This category includes existing subdivisions in the State Land Use Agricultural and Rural districts that have a significant residential component. 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 request will not be contrary to the LUPAG Map designation for this area. Additionally, the approval of the subject request would support the following goals and policies of the Economic, Public Facilities and Land Use elements of General Plan.

Economic Element

- Provide an economic environment that allows new, expanded, or improved economic opportunities that are compatible with the County's cultural, natural and social environment.
- Provide residents with opportunities to improve their quality of life through economic development that enhances the County's natural and social environments.

The General Plan has a Public Facilities-Education Element, which speaks to the available public facilities within the Ka'u District. It states that the Ka'u High School complex is comprised of Ka'u High School, Pahala Elementary School, and Nā'ālehu Elementary and Intermediate School, and serves students from kindergarten through the 12th grade level. Additionally, the Plan has a Course of Action that states "Encourage the State Department of Education to plan a K-8 School at Ocean View." The long term vision of the applicant is to relocate the school to the Hawaiian Ocean View Estates Subdivision. Currently, students who live in Ocean View have to travel to Nā'ālehu or Pahala for their education.

Based on the above, the proposed request is not contrary with the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, which is Rural and allows ancillary community and public uses and it is working towards meeting a Course of Action goal of providing a school within the Ocean View area.

Additionally, the Ka'u Community Development Plan (KCDP) is being created. The KCDP is currently in draft form. The expansion of educational opportunities in Ka'u, which includes both standard DOE schools as well as charter schools, is a high priority in the proposed

plan, especially in the Ocean View area. This is supported through several objectives, policies and community action statements specified within the draft plan.

The proposed use is not contrary to the objectives sought to be accomplished by Chapter 205A, Hawai'i Revised Statutes, relating to coastal zone management program. The subject property is located over 4 miles from the closest shoreline and is not located within the Special Management Area. Given the fact that the property has been cleared, landscaped and developed, it is unlikely that any archaeological features and threatened plant, animal or avian species will be adversely affected. There is no designated public access to the mountain 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 resources, coastal ecosystems, and marine and coastal resources. Further, the property will not be affected by any coastal hazards or beach erosion.

Lastly, this approval is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements in connection with the approved use, prior to its commencement or establishment upon the subject property. Additional governmental requirements may include the issuance of 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, Special Permit No. 14-000172 is approved to allow the establishment of a charter school and related uses for 65 students within an existing facility situated on 3.69 acres of land within the State Land Use Agricultural District on TMK: 9-4-001:019.