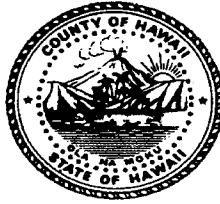


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Mayor



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## County of Hawai'i

### WINDWARD PLANNING COMMISSION

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

OCT 18 2017

Ms. Olani Lilly, Principal  
Ka 'Umeke Kā'eo Public Charter School  
1500 Kalaniana'ole Avenue  
Hilo, HI 96720

Dear Ms. Lilly:

**SUBJECT: Use Permit No. USE 17-000071**  
**Applicant: Ka 'Umeke Kā'eo Public Charter School**  
**Permitted Use: Allows the Establishment of a Public Charter School**  
**Tax Map Key: 2-2-032:024**

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The Windward Planning Commission, at its duly held public hearing on October 5, 2017 voted to approve the above-referenced request to allow the establishment of a Hawaiian language charter elementary school (grades K-2) for 100 students, six (6) teachers and four (4) operations and support staff in an existing facility situated on 1.2042 acres of land within the Industrial-Commercial Mixed Use – 20,000 square foot (MCX-20) zoned district. The project site is situated at 313 Kuawa Street, which is on the northeast corner of Kalanikoa Street and Kuawa Street, Waiākea, Hilo, Hawai'i.

Approval of this permit is subject to the following conditions:

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The life of the permit shall be five (5) years from the effective date of this Use Permit.
3. Prior to the issuance of a water commitment by the Department of Water Supply, the applicant shall submit the estimated maximum daily water usage calculations prepared by a Hawai'i licensed professional engineer, and a water commitment deposit in accordance with the "Water Commitment Guidelines Policy" to the Department of Water Supply within one hundred and eighty (180) days from the effective date of this permit.

OCT 18 2017

4. Prior to the commencement of water service, the applicant shall install a reduced pressure type backflow prevention assembly by a Hawai'i licensed contractor within five (5) feet of the meter on private property. If a larger or additional meter is required, a backflow prevention assembly will also be required for that meter. The installation of the backflow prevention assembly(s) must be inspected and approved by the Department of Water Supply before the commencement of water service.
5. The applicant, its successors or assigns shall be responsible for the relocation and adjustment of the Department of Water Supply's affected water system facilities, should they be necessary.
6. The applicant, its successors or assigns shall submit for Plan Approval for the school from the Planning Director within one hundred and eighty (180) days in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and/or proposed structures, paved driveway accesses and parking stalls associated with the proposed development. Landscaping shall be included on the plans to mitigate any potential adverse noise or visual impacts to adjacent properties in accordance with the Planning Department's Rule No. 17 (Landscaping Requirements).
7. Within two (2) years from the effective date of this permit, the applicant shall secure and finalize any building permits required by the Department of Public Works-Building Division for the existing and any proposed structures, including but not limited to, the interior alterations of converting from the church to school use, ADA accessibility and meeting all current Fire Code Requirements. Whenever possible, sound attenuated material shall be safely incorporated to mitigate any noise impacts from aircraft overflights at the Hilo International Airport. The sound attenuated material shall meet all reviewing agency codes, rules and regulations. The sound attenuated material shall not prevent hearing or receiving notification of any Civil Defense sirens, when the Civil Defense sirens are activated.
8. The school shall be limited to 100 students. Any increase in the amount of students will require an amendment of the Use Permit before the Planning Commission.
9. The applicant, its successors and/or assigns shall continue to work with the County of Hawai'i Civil Defense to establish a tsunami evacuation plan, as well as any other evacuation plans deemed necessary by Civil Defense. School staff,

students and parents shall be aware of the approved evacuation plans. The approved evacuation plans shall be practiced routinely and in coordination with Civil Defense.

10. The applicant, its successors and/or assigns shall comply with HAR 11-11 Sanitation, HAR 11-50 Food Safety Code and HAR 11-39 Air Conditioning and Ventilation. The applicant, its successors and/or assigns shall consult with the State Department of Health prior to commencement of preparing school meals on-site.
11. Upon approval of the permit, the applicant shall submit to the Planning Department an active traffic management plan 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 or State road. It is recommended that the traffic management plan is reviewed and approved by the Department of Public Works-Traffic Division and State Department of Transportation-Highways Division in consultation with the Police Department. The comprehensive plan shall be implemented upon approval and shall provide traffic management strategies that reduce traffic congestion on surrounding County and State roads during special events and student pick-up/drop-off activities for the school campus.
12. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
13. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of a Certificate of Occupancy.
14. The applicant shall provide fire protection measures appropriate for the school use meeting with the approval of the Fire Department.
15. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when it finds that sufficient mitigated measures have been taken.

16. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
17. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
  - A. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
  - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
  - C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
  - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

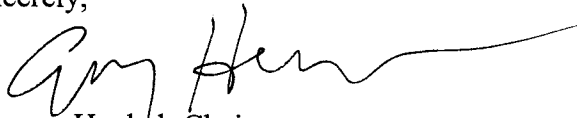
Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate the revocation of the Use Permit.

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

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

Should you have any questions, please contact Shancy Watanabe of the Planning Department at (808) 961-8144.

Sincerely,



Gregory Henkel, Chairman  
Windward Planning Commission

Ms. Olani Lilly, Principal  
Ka 'Umeke Kā'eo Public Charter School  
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cc: Department of Public Works  
Department of Water Supply  
County Real Property Tax Division - Hilo  
Department of Land & Natural Resources - HPD  
State Department of Transportation  
State Department of Health  
Department of Environmental Management  
Department of Civil Defense  
County Fire Department  
GIS Section

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

Based on the following considerations, a Use Permit to allow the establishment of a public charter school (grades K-2) for 100 students, six (6) teachers and four (4) operations and support staff in an existing facility situated on 1.2042 acres of land within the Industrial-Commercial Mixed Use - 20,000 square foot (MCX-20) zoned district is approved.

**KA ‘UMEKE KĀ‘EO PUBLIC CHARTER SCHOOL** is requesting a Use Permit to allow the establishment of a public charter school in an existing facility situated on 1.2042 acres of land within the Industrial-Commercial Mixed Use - 20,000 square foot (MCX-20) zoned district. The public charter school is called “Ka ‘Umeke Kā‘eo” and received approval to become a Public Charter School by the Hawai‘i State Public Charter School Commission in 2001. Prior to becoming a charter school, Ka ‘Umeke Kā‘eo became the first Hawaiian immersion program in the State of Hawai‘i in 1987. The applicant proposes to convert a 10,500-square foot portion of an existing building formerly used as a church into school use. The school facility will consist of the following:

- A maximum enrollment of 100 students in grades K through 2, six (6) teachers and four (4) operations and support staff.
- The proposed floor plan for the school consists of an open-covered entry, two (2) separate lobby areas, three (3) separate offices, hallway, eight (8) classrooms and a multi-purpose room. Based on the square footage and the occupancy factor provided, the total occupant count allowed is 357, however, the applicant’s request stated that the maximum enrollment is 100 students in grades K-2 and a total of ten (10) operations and support staff.

Ka ‘Umeke Kā‘eo requested a Use Permit to allow the relocation of their existing public charter school on the campus of Keaukaha Elementary School, where they have been located since 1987, to their current location in an existing building at 313 Kuawa Street. Ka ‘Umeke Kā‘eo plans to lease the proposed site for the next five (5) years. From June 2017, Ka ‘Umeke Kā‘eo was obligated to move their charter school from the Keaukaha Elementary School campus. Ka ‘Umeke Kā‘eo continues to work with Kamehameha Schools to seek a permanent site for their entire school on about ten (10) acres of land owned by Kamehameha Schools.

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

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

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

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

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

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

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

The school facility will complement the following goals, policies and standards of the Economic and Land Use elements of the General Plan:

**Economic Element**

- Economic development and improvements shall be in balance with the physical, social and cultural environments of the island of Hawai'i.
- 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 Element

- Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County.
- Promote and encourage the rehabilitation and use of urban areas that are serviced by basic community facilities and utilities.
- Encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

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

**The granting of the proposed use shall not be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character or to surrounding properties.** The land uses in the immediate area are a mix of commercial and industrial uses. The Hilo International Airport is industrially-zoned (ML-20) and located east, southeast of the subject property. Commercial and/or industrial uses nearby include warehousing, aviation-related uses, and office buildings. Ken's House of Pancakes is located diagonally of the subject property to the north and is commercially zoned (CN-10). The Waiākea Kai Shopping Plaza is the adjacent property to the east and is zoned industrial-commercial mixed-use district. The Department of Public Works-Traffic Division stated in their Memo No. 2017-835 that signal adjustments will be made at Kanoelehua/Kamehameha Avenue to improve traffic flow later this year. Based on the assertions in the report and discussion in the application, the project is not anticipated to have a significant impact to State highways. However, should unexpected traffic issues to State highways attributable to the operation of the school arise, they are expected to mitigate those issues to the satisfaction of the DOT-HWY Hawai'i District Engineer. Therefore, it is not anticipated that the granting of the proposed use will be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character or to surrounding properties.

**The proposed use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection and other related infrastructure.** The anticipated vehicular traffic route is a one-way ingress from the Kalanikoa Street entrance which proceeds around the back of the building for student drop-off/pick-up with the Ka Umeke Kaeo staff standing by to facilitate the student drop-off and pick-up. Egress is on Kuawa Street. The proposed staff parking is in the front of the building. A condition for a traffic management plan will be added.

In a memo dated August 23, 2017, the Department of Public Works Engineering Division stated that the construction plans and drainage calculations have not yet been submitted to comply with items E, F, G and H of Change of Zone Ordinance No. 09 167. The Zoning Map (Ordinance No. 187) classifies Kalanikoa and Kuawa Streets as collectors with existing right-of-way widths of 60 feet. There is an existing 20-ft corner radius "Road Reserve" at the intersection of Kalanikoa and Kuawa Streets. This 86 square feet Road Reserve created by Final Subdivision No. 2708 should be dedicated to the County. American Trading Company was granted an Administrative Time Extension until December 30, 2019 to comply with Condition D (Construction Completion) of Change of Zone No. 09 167. As such, the Planning Director will not be



recommending a condition for Ka 'Umeke Kā'eo to dedicate the 86-square foot radius to the county nor any of the other conditions of Change of Zone Ordinance No. 09 167. The conditions of the Change of Zone Ordinance is the responsibility of the landowner, which the Planning Department will work with the owner separately from this Use Permit Application.

The State of Hawai'i Department of Transportation Highways Division (DOT-HWY) stated that there was no traffic assessment accompanying the Use Permit Application. However, a Traffic Observation report was prepared. The report indicated that 30% of the students would use provided bus transportation and an estimated 56 vehicles would be in-bound to the school to drop off students. Based on the assertions in the report and discussion in the application, the project is not anticipated to have a significant impact to State highways. However, should unexpected traffic issues to State highways attributable to the operation of the school arise, the applicant is expected to mitigate those issues to the satisfaction of the DOT-HWY Hawai'i District Engineer. A condition will be made to address any unexpected traffic issues should they arise.

According to the State of Hawai'i Department of Transportation Airports Division, the subject property is located in between the 60 to 65 Day-Night Sound Level noise contours. The site is directly below the approach and departure flight tracks for the airport. The applicant needs to be aware of the noise impacts from aircraft overflights at the Hilo International Airport (ITO). While the Federal Aviation Administration (FAA) Land Use Compatibility Guidelines – 14 Code of Federal Regulations Part 150 allows noise sensitive uses, such as schools, within this noise exposure level, the State of Hawai'i Department of Transportation Land Use Compatibility guidelines recommend that the proposed school incorporate sound attenuation measures into the existing building. To facilitate a better learning environment for students and staff, a condition will be included to address the noise impacts from aircraft overflights at the Hilo International Airport (ITO).

According to the applicant, there will be no meals prepared at the subject property. All meals will be delivered to the student population daily via an outside licensed vendor. The State Department of Health states that the applicant shall comply with their rules on Sanitation, Food Safety Code and Air Conditioning and Ventilation. There have been numerous cases of food borne illnesses within the past decade statewide, which have caused great concern for food safety. The Planning Director recommends conditions to address these concerns.

The project site is located within an area adequately served with essential services and facilities such as county water, fire services, police services, transportation systems, and other utilities and will not unreasonably burden public agencies.

**The subject request is not contrary to Chapter 205A, Hawai'i Revised Statutes, relating to Coastal Zone Management Area.** The SMA is part of the Coastal Zone Management Program regulated by the County. The entire subject property is located within the Special Management Area. The closest property line is located approximately 1,216 feet from the nearest coastline. The nearest Civil Defense siren is located about 140 feet away from the subject property at the Kamehameha Avenue/Kanoelehua Avenue intersection. A condition will be made to ensure that the school establishes a valid evacuation route and provide adequate training to staff, students and parents.

There is no record of a designated public access to the shoreline or mountain areas that traverses the property. According to the Flood Insurance Rate Map (FIRM), the property is located in Zone "X", area outside of the 500-year flood plain. The entire site has been completely cleared and in urban use for over several decades. As such, there are no valued cultural, historical or natural resources on the property and no evidence of any traditional and customary Native Hawaiian rights being practiced on the site. Thus, it is not anticipated that the proposed request will have any adverse impact on cultural or historical resources in the area.

**The proposed request will not have a significant adverse impact to traditional and customary Hawaiian Rights.** In view of the recent Hawai'i State Supreme Court's "PASH" and "*Ka Pa'akai O Ka'Aina*" decisions, the issue relative to native Hawaiian gathering and fishing rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site:

Investigation of valued resources: No formal archaeological reconnaissance survey, oral history of kama'āina accounts of the area, historical survey of documentary records, botanical and/or fauna study was submitted.

The valuable cultural, historical, and natural resources found in the project area: The property is not adjacent and/or proximate to the shoreline. As such, gathering of marine life and coastal access is not an issue. There are no known established valued cultural rights being exercised on the property. The likelihood of any rare or endangered species, habitat of flora or fauna or any archaeological features is remote in this area based on urbanization and the development that has occurred.

Possible adverse effect or impairment of valued resources: As the entire site has been completely cleared and in urban use for over sixty years, it is not anticipated that there will be any adverse effect or impairment of valued resources.

Feasible actions to protect native Hawaiian rights: To the extent to which traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights and no action is necessary to protect these rights. A condition of approval will be included to require the applicant to notify the DLNR-SHPD should any unidentified sites or remains be encountered, and proceed only upon an archaeological clearance from the DLNR-SHPD.

Based on the above findings, the approval of Use Permit No. 17-000071 to establish a public charter school (grades K-2) for 100 students with six (6) teachers and four (4) operations and support staff in an existing facility situated on 1.2042 acres of land within the Industrial-Commercial Mixed Use - 20,000 square foot (MCX-20) zoned district would support the objectives sought to be accomplished by the Land Use Law and Regulations.