

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Petition of)
STATE OF HAWAII, DEPARTMENT OF)
ACCOUNTING AND GENERAL SERVICE,)
For a Special Permit to Establish)
and Operate a High School on)
Approximately 38.00 Acres Within)
The State Land Use Agricultural)
District at Keaau, Puna, Hawai'i;)
Tax Map key No.: 1-6-03: portion of)
3, portion of 15, and portion of 68)

DOCKET NO. SP97-391
FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION AND ORDER

LAND USE COMMISSION
STATE OF HAWAII
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FINDINGS OF FACT, CONCLUSIONS OF LAW,
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The State of Hawaii, Department of Accounting and General Services (hereinafter "Applicant") initiated this proceeding pursuant to Section 205-6, Hawaii Revised Statutes (hereinafter "HRS"), and Sections 15-15-95 and 15-15-96, Hawaii Administrative Rules (hereinafter "HAR"). The Land Use Commission (hereinafter "LUC"), having considered the entire record on this matter, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On April 10, 1997, a Special Permit Application (hereinafter "Application") to allow construction and operation of a new high school on approximately 50 acres at Keaau, Puna, Hawaii, was filed by the Applicant with the County of Hawaii Planning Department (hereinafter "Planning Department").

2. On May 22, 1997, the County of Hawaii Planning Commission (hereinafter "Planning Commission") conducted a public hearing on the Application. No oral public testimony was received by the Planning Commission.

3. On May 22, 1997, after due deliberation, the Planning Commission voted to recommend approval of the Application to the LUC subject to twenty-one (21) conditions.

4. On June 4, 1997, the LUC received a portion of the record of the proceedings for the Application before the Planning Commission. The record was deemed incomplete, pending the receipt of the minutes or transcripts of the May 22, 1997 Planning Commission meeting.

5. On June 13, 1997, the LUC received an excerpt of the transcripts of the May 22, 1997 meeting of the Planning Commission regarding the Application. Upon receipt of the transcripts, the Application was accepted for consideration by the LUC.

6. On June 26, 1997, the LUC held a meeting in Honolulu, Oahu on the Application. Mr. Ralph Morita represented the Applicant and Ms. Alice Kawaha represented the Planning Department.

DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA

7. The Special Permit area, as initially filed with the Planning Department, consists of approximately 50 acres located at Keaau, Puna, Hawaii, and is identified as Tax Map Key No.: 1-6-03: portion of 3, portion of 15, and portion of 68.

8. By memorandum dated April 24, 1997, Applicant's consultant, DKI & Associates, Inc. provided clarification that approximately 37.24 acres of the 50 acre school site were within the State Land Use Agricultural District, and approximately 23.96 acres were within the State Land Use Urban District. The consultant also clarified that an approximately 9.9639 acre drainage area bisects the 50 acre school site. This drainage area will be leased to the State by W.H. Shipman, Limited, and is not part of the 50 acre school site that the State will purchase from W.H. Shipman, Limited.

9. At the time of submittal to the Planning Department, the Application represented that W.H. Shipman, Limited would donate the approximately 50 acre school site to the Department of Education (DOE). However, the DOE has determined that W.H. Shipman Limited's fair share contribution for school facilities pursuant to LUC Docket No. BR93-699, would be the donation of lands for the new Keaau II Elementary School. The DOE also indicated that in the event that another school (elementary, middle, or high) site is needed, it would negotiate a purchase of the site with W.H. Shipman, Limited.

10. The approximately 37.24 acre portion, that is the subject of the Special Permit Application, and further identified as TMK: 1-6-03: portion of 3, portion of 15, and portion of 68 (hereinafter "Property"), is currently owned by W.H. Shipman, Limited. W.H. Shipman, Limited has authorized filing of the Application.

11. The Property is located on Keaau-Pahoa Road immediately south of the town of Keaau. The Property is located approximately six (6) miles southeast of Hilo and approximately one and one-half (1½) miles from Keaau.

12. The Property is located across Keaau-Pahoa Road from the Keaau II Elementary School currently under construction.

13. Current access to the Property is from Keaau-Pahoa Road, and is limited to cane haul roads and agricultural roads to a macadamia nut orchard. Access to the proposed high school will be through three (3) access points - two (2) along Keaau-Pahoa Road, and a third from a proposed connector road along the northern boundary of the school site.

14. The proposed connector road will join Keaau-Pahoa Road and the proposed Keaau By-Pass Road which will run along the southeastern boundary of the Property.

15. The Property is currently fallow sugarcane land with various trees along the Property's northwest side. Fields of ornamental plants and a macadamia nut orchard are located on a portion of the Property.

16. The Property is bounded on the northwest by existing Urban District lands, to the west by Keaau-Pahoa Road, and to the south and east by the proposed Keaau By-Pass Road.

17. According to the United States Department of Agriculture, Soil Conservation Service, soils on the Property are identified as Hilo silty clay loam (HoC), Olaa extremely stony silty clay (OID), and Olaa silty clay loam (OaC). The soils have

rapid permeability, slow runoff and slight erosion hazard characteristics.

18. Average slopes on the Property are gentle with minor variation due to underlying lava flows. The main campus of the proposed high school site, which includes the Property, has an average slope of approximately 2 percent and is generally flat. Approximate elevation of the Property is three hundred (300) feet above sea level.

19. The Land Study Bureau's Detailed Land Classification System (with "A" being the best and "E" being the worst) classifies the overall productivity rating of agricultural lands in the area as "D", or poor productivity rating.

20. The Agricultural Lands of Importance to the State of Hawaii (ALISH) system classifies the lands in the area as "Prime" Agricultural Lands.

21. Flood Insurance Rate Maps (FIRM) show that the Property is located in Zone X (outside of the 500 year flood plain).

DESCRIPTION OF PROPOSED USES

22. The Applicant is requesting the Special Permit to construct and operate a new high school. The current service area in which the new high school will be located spans from South Hilo to Orchardland Estate and further extending to the Ka'u edge of the Volcanoes National Park.

23. The new high school will be designed to accommodate a student population of approximately 1,400 students

in grades 9 through 12, with an overall enrollment of 2,100 if the school implements a year-round, multi-track schedule.

24. The Applicant projects that the new high school will open in Fall 1999.

25. The new high school is proposed to be developed in four increments and will eventually include the following:

Increment 1: Administration building, library, cafeteria/music building, natural resources classroom building, physical education classroom and locker/shower building. Also included are related and adjacent site improvements, covered play court, staff parking, bus loading area, grass playfield, and mass grading to accommodate the entire project.

Increment 2: Gymnasium, student parking and "L" shaped classroom buildings.

Increments 3/4: Industrial/engineering building, auto technology/aquaculture/agriculture building, athletic locker/shower facilities, football/track/soccer and baseball fields, bleachers, tennis courts, and additional landscaping as needed.

Other improvements: Swimming pool, auditorium, gymnasium expansion, and additional football bleachers, warehouse/materials storage facility, aquaculture facility/fields, and agricultural fields.

(hereinafter collectively referred to as "Project")

26. Estimated completion date of Increments 1 through 4 is Fall 2002 (approximately 5 years). Complete buildout for the school is estimated at approximately 15 years.

27. Applicant projects that Increment 1 will be completed in Fall 1999 in order to allow 9th grade students to attend the school.

28. Applicant projects that a portion of Increment 2 will be completed in Fall 2000 to accommodate 9th and 10th grade students.

29. Addition of additional grades will continue on a yearly basis as subsequent construction increments are completed.

30. Improvements outside of the Property would include infrastructure improvements such as water supply, electric, telecommunications, street lighting, and a possible substation upgrade.

NEED FOR PROPOSED USE

31. The Project is intended to have a service area from South Hilo to Orchardland Estate and further extending to the Ka'u edge of the Volcanoes National Park, and to accommodate the continued population growth occurring in the Puna District.

32. Currently, only Waiakea High School services the area. Student population at Waiakea High School has grown consistently and the 1998 enrollment is projected to be 66.7% above Waiakea High School's design enrollment of 1,500 students. Adjustments have been made to raise the capacity to 2,180 students, however, the Department of Education feels that this is an undesirable number for a high school population. Thus, the current Waiakea High School facilities are inadequate to serve the growing region.

33. The Project is being proposed to relieve the continuing and projected enrollment increase in the Waiakea High School service area.

STATE AND COUNTY PLANS AND PROGRAMS

34. The Property is situated within the State Land Use Agricultural District, as depicted on the State Land Use District Boundary Map H-67 (Mountain View).

35. The County of Hawaii General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the area as Low Density Urban and Orchards.

36. The Project is consistent with the County of Hawaii's General Plan in terms of the Land Use Element, Public Facilities, Public Facilities (Education), and Economic Element.

37. Current zoning for the Property is Agricultural - 20 acres (A-20a). Schools may be allowed within the Agricultural Zoning District through a Use Permit. A Use Permit was approved by the Planning Commission during the proceedings on the Application.

38. Although the Property is within the Coastal Zone Management Area, the Property is not located within the Special Management Area as designated by the County of Hawaii.

39. A Final Environmental Impact Statement ("FEIS") for the site selection and the Project was accepted by the Governor on May 27, 1997.

40. Additional permits that may be required include those required by County and State agencies, including but not limited to, subdivision approval, Final Plan Approval, building permits, grading and grubbing permits, and work within a State highway.

SUMMARY OF COUNTY, STATE AND FEDERAL AGENCY COMMENTS

County Agencies

41. The Department of Public Works commented on a number of items including conformance to code and statutes for building construction, erosion and sediment control, disposal of development generated runoff, driveway connections to County roads, disposal of construction solid waste, provision of adequate off-street parking, loading/unloading areas and storage lanes, provision of all improvements for roadways being dedicated to the County of Hawaii, installation of street lights, signs and markings, and improvements to a major drainageway on the Property.

42. The Police Department commented that the Project will have an impact on crime and traffic patterns, and will require restructuring of patrol and beat assignments, as well as increased staffing for police services.

43. The County Civil Defense Agency commented that the Puna District has limited facilities that can serve as a safe shelter during damaging winds and other hazards. It recommended that the Project be designed to also serve as a safe shelter.

44. The Department of Finance - Real Property Tax commented that the macadamia nut orchard, which involves a portion of the Property, is approximately 81.851 acres in size and is dedicated for such use for 20 years. The nursery/foilage fields is approximately 275 acres and pasture use involves 5.208 acres. Both uses involve a portion of the Property. The fields and pasture uses are not dedicated. Further, the Department of

Finance commented that rollback taxes may be possible if the dedicated macadamia nut crop is discontinued. For those uses that are not dedicated, rollback taxes would be applicable if lots are subdivided into parcels of less than 5.000 acres.

45. The Department of Water Supply commented that water can be made available from the existing 12-inch waterline along Keaau-Pahoia Road. However, they also recommended that 3,200 feet of 12-inch waterline be installed to provide water for peak-flow and fire-flow conditions. Further, the Department of Water Supply recommended that the anticipated daily water usage be submitted for the department's review during design stage of the Project.

46. No comments were provided by the Department of Parks and Recreation.

State Agencies

47. The LUC staff confirmed that the total school site was partially within the State Land Use Urban District and partially within the State Land Use Agricultural District. Further, the LUC staff requested clarification as to the basis for not having the Project within the existing Urban District that was reclassified pursuant to approval of LUC Docket No. BR93-699/Office of State Planning.

48. The Department of Health (DOH) provided a number of comments for consideration. Comments included the requirement of meeting standards pursuant to various chapters of the Hawai'i Administrative Rules (those relating to the DOH), including but not limited to, underground injection controls, ventilation

requirements, sanitation and obtaining necessary permits such as the National Pollution Discharge Elimination System (NPDES) permit.

49. The Departments of Agriculture and Land and Natural Resources did not provide any comments on the Project.

SOCIO-ECONOMIC IMPACTS

50. According to the Final Environmental Impact Statement for the new high school, the Project has a positive effect on the economic and social welfare of the State. With the Project, overcrowded conditions at Waiakea will be alleviated and the DOE standards and policies will be met.

51. Construction activity for the new high school is anticipated to provide economic stimulus to a region with high unemployment. Jobs provided are anticipated to be long-term as operation of the school progresses.

52. A negative economic impact is the displacement of a portion of the macadamia nut and ornamental plant operations, however, relocation of these operations are being pursued.

IMPACTS UPON THE RESOURCES OF THE AREA

Agricultural Resources

53. The relocation of agricultural operations on portions of the Property are unresolved. However, the State of Hawai'i has agreed to some compensation to farmers, with landowner W.H. Shipman, Limited offering land to which the farmers can relocate. The Applicant anticipates resolution of this issue prior to the commencement of construction of the Project.

Scenic Resources

54. Views from the Property consists mainly of surrounding rural lands. The new high school is anticipated to change the appearance of the Property, however, perimeter trees will be established to provide visual buffers between the school and adjacent land uses.

Archaeological and Cultural Resources

55. No archaeological sites were identified on the Property with the exception of an old railroad berm that runs through the school site. The berm was tentatively assessed as significant for informational value, and options are being explored to secure more information on the berm.

56. No lava tubes or caves were encountered in the survey of the Property, and the likelihood of finding historical or archeological features are remote due to prior sugarcane cultivation.

Flora/Fauna

57. The Property is former sugarcane lands with macadamia nut orchards and fields of ornamental plants currently growing on a portion of the Property. The Property has been invaded by California grass, weedy trees, and scrub. No endangered or threatened plant species have been found on the Property, nor are there any candidates for such endangered or threatened classification on the Property.

58. Domestic pets, feral animals, livestock, and rodents have been found on the Property. The Hawaiian Hoary Bat may be found but was not observed. Introduced species such as

doves and mynah, Hawaiian Owl (Pueo), Hawaiian Hawk (I'o), and Newell shearwater ('A'o) may traverse the area, but none were observed. No native habitats were found, and no endangered or threatened birds or bats were detected.

ADEQUACY OF PUBLIC FACILITIES AND UTILITIES

Highway and Roadway Facilities

59. The Project will be accessible from three (3) access points: two (2) from Keaau-Pahoa Road, and a third from the proposed connector road along the school site's northern boundary.

60. Applicant has represented that improvements will be made along Keaau-Pahoa Road and will be coordinated with the State Department of Transportation and the County Department of Public Works.

61. Applicant has represented that improvements will be provided to accommodate an increase in pedestrian and bicycle traffic in the vicinity of the new high school.

Drainage

62. The existing drainage of the Property is generally good. There are some pockets of localized ponding, however soils are porous and underlying lava bedrock is highly permeable.

63. Runoff is currently carried by 3 natural drainage channels which connect to four culverts under Keaau-Pahoa Road. One of the channels divide the approximately 50 acre school site into two parts. Culverts will be improved to accommodate additional runoff, and the natural drainage channel on the west side of the school will not be disturbed. Runoff during

construction will be accommodated on-site via shallow swales directing runoff to drywells on the Property.

Air Quality

64. The Property has generally good air quality. Other sources such as those from vehicles are small, dispersed and intermittent, thus having little or no lasting impacts.

65. The significant source of air quality impact is from volcanic eruptions. Planned air conditioning for the school will help to mitigate this problem.

Noise

66. The Puna District is quiet and noise conditions are good except in areas immediately adjacent to highways and commercial areas.

67. The planned air conditioning will assist to mitigate impacts of noise. Perimeter trees will also act as a buffer between school and adjacent land uses.

Water

68. Water requirements for the Project will be supplied by the Hawaii County Department of Water Supply. Water for the Property will be available from a 12-inch main running in front of the Property along Keaau-Pahoa Road.

Sewage

69. Sewage generated from the proposed high school will be accommodated by 6 septic tanks installed throughout the approximately 50 acre school site. The leaching field will be expanded incrementally as the high school develops.

Solid Waste

70. Solid waste disposal needs are anticipated to be served by a private contractor.

Electricity and Telephone Service

71. Electric and telephone lines are available for the Property.

Police/Fire Protection

72. Police service is available from the Keaau Station. An additional police substation is located in Pahoa.

73. Fire service is also available from Keaau town, with additional fire stations from Hawaiian Paradise Park and Pahoa.

CONFORMANCE WITH SPECIAL PERMIT CRITERIA

73. The Planning Department, in its report to the Planning Commission on the Application, provided the following findings in regards to the Applicant's conformance with the guidelines for "unusual and reasonable use" authorized by a Special Permit under Section 15-15-95(b), Hawai'i Administrative Rules:

- (A) The use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the commission.

"The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands from those uses to which they are best suited in the interest of the public welfare of the people of the State of Hawaii. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. The State proposes to build a new high school with a design capacity to accommodate approximately 1,400 students with a (sic) overall enrollment of 2,100 students in a

year round multi-track schedule. Based on existing and projected enrollments, the current Waiakea High School facilities are inadequate to serve the growing student population for that region. The new school would serve grades 9 through 12 and accommodate the present and projected enrollment increases. The projected opening date for the Keaau High School is 1999. This is about one year after the opening of the new Keaau II Elementary School, which is to be located immediately west of the high school across the Keaau-Pahoa Road. Plans are for the proposed high school to be constructed in four increments and completed by the year 2002. Full buildout of all school facilities is expected in 15 years. The selected site allows for the high school to be built closer to the resident population it serves. The subject lands involve large acreages of zoned A-20a that will require consolidation and resubdivision into two buildable lots for the high school. Approximately 42.54 acres will be fully developed in four increments, with approximately 36 acres within the State Land Use Agricultural district and approximately 14 acres within the State Land Use Urban district. Development will consist of the school facilities, parking areas, driveways, a new connector road, drainage improvements, fencing and other related improvements. The subject parcels are owned by W.H. Shipman, Limited, who is donating the land to the State. Although, original plans were to have the school developed within the State Land Use Urban district, assessment of the land area determined that due to three large drainage ditches, the most usable large piece of land fell within the State Land Use Agricultural district. The selected site lies on high ground which minimizes excavation, grading and drainage expenses. In addition, selection was also based on the alignment of the Keaau Bypass Road, and upon finalization of the alignment, a favorable site was finally selected with the Keaau-Pahoa Road and the Keaau Bypass Road bordering the school site. The properties are located in an area with soils classified as the Hilo silty clay and Olaa series, which are soils that are generally used for sugarcane. The subject properties were previously used by the Puna Sugar Company for sugar cane production. The Mill ceased operations in 1984; and since then, the portions of the area proposed for the high school have been used as a macadamia nut orchard and fields of ornamental plants. Other remaining areas are in

fallow cane land. The State of Hawaii proposes to compensate these farmers for their operations, with W.H. Shipman offering land on which to relocate these operations. Although, the ALISH maps identify the subject properties as Prime Agricultural Lands, the subject properties have a soil rating of "D" or "Poor". These lands, noted as prime, were probably identified as such, when sugar cane production was at its peak. With compensation and relocation of the farmers, the proposed development would allow for the farmers to continue their operations if they choose to. The removal of 36 acres from the State Land Use Agricultural District is not expected to significantly impact the inventory of agricultural lands and therefore, would not be contrary to the objectives of the State Land Use Law for the Agricultural District."

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

"Immediate surrounding uses include vacant cane land, agricultural activities, single family and urban uses. In 1994 the Office of State Planning petitioned the State Land Use Commission and secured a boundary amendment from Agricultural to Urban to accommodate the rapidly growing population in the Puna district and to allow for the expansion of the existing Keaau urban core. Although zoning for the area is still agricultural, the redesignated State designation of these lands supported W.H. Shipman's long range master plans for the area. A portion of the school site falls within this redesignated Urban District and a portion remains within the State Land Use Agricultural District. The subject site, located approximately one mile from the Keaau Town commercial core, is basically (sic) adjacent to an area of urban activity. West of the subject area, is the location of the proposed Keaau II Elementary School that was approved by the Planning Commission and is now under construction. To the west of the elementary school is the Keaau Agricultural Lots Subdivision. Across the subject properties along Keaau-Pahoa Road, is the Banyan House Restaurant (Old Puna Sugar Company Manager's House), TMK: 1-6-3:85, that secured Special Permit No. 622 for a restaurant and inn in 1986. Zane Development Group, Inc. (TMK: 1-6-3:10), adjacent to the Banyan House Restaurant and across from the proposed high school, secured a change in zone effective August 31, 1995, from A-20a to A-1a for

35 one-acre lots. A Special Permit No. 908 was also secured by the same to construct a visitor center featuring cocoa and chocolate production and a restaurant and party hall. A majority of the lands surrounding the school site are zoned A-20a, however, lands adjacent and to the northwest are within the State Land Use Urban District. As immediate surrounding properties are vacant, in agricultural, residential and urban uses, it is not expected that the school would cause significant adverse impacts to surrounding properties. The school site will eventually be subdivided out from the larger portions of the subject lands into two separate parcels and a drainage ditch parcel. Any detailed landscaping or safety buffers can be reviewed during Final Plan Approval. During construction, there will actually be three major projects ongoing. It is anticipated that there will be temporary disruption to the area due to traffic, noise and dust. However, the applicant would be required to comply with applicable county, state and federal requirements to ensure a safe environment for workers and the general public. Prior to the start of construction for the high school, the applicant proposes to hold a pre-construction meeting to inform the contractor of ongoing projects in the area and to work towards coordinating construction contractors. A condition will also be included to require the applicant to install construction screen barriers to mitigate any noise and dust generated from the project and submit a traffic mitigation plan to address possible traffic congestion during construction. Overall, it is not anticipated that the immediate surrounding parcels would be significantly impacted by the development of the school."

- (C) The use would not unreasonably burden public agencies to provide roads and streets, sewers, water drainage and school improvements, and police and fire protection.

"The project site is located within an area adequately served with essential services and facilities such as water, police and fire services. Access to the subject property is from Keaau-Pahoa Road, a State highway. Sewage is proposed to be handled by six septic systems. New drainage culverts are proposed to be installed to handle any runoff on site. Access to the subject property will be from the Keaau-Pahoa Road and

from a new two-lane connector road, to be built and dedicated to the County, along the northern boundary of the subject site. The State Department of Transportation is also constructing a new Keaau Bypass Road which will run along the eastern property boundary and divert traffic between lower Puna and Hilo area to travel around the village of Keaau. The bypass road is anticipated to be completed prior to the opening of the elementary school in 1998. As a result, the existing Keaau-Pahoa Road would be used for local traffic. An increase in traffic can be expected from the high school development. A Traffic Study was prepared by Julian Ng dated November 1996, to address traffic concerns from both the proposed elementary and high school. As the Keaau By-Pass Road is also proposed to align along the northern boundary of the high school, some traffic that would otherwise travel in the Hilo or Pahoa-bound direction would be diverted from the Keaau-Pahoa Road. However, as there will be local school traffic and traffic bound for Keaau, to minimize any adverse impacts from the increase in traffic and to ensure public safety and safety of students and pedestrian traffic, a condition is included to require that curb, gutter and sidewalk improvements be installed along the subject school frontage along the Keaau-Pahoa Road from the Keaau By Pass intersection to the proposed connector road intersection. The proposed connector road will also be constructed meeting with approval of the Department of Public Works and dedicated to the County of Hawaii. Also, bicycle and pedestrian facilities, if required, shall be provided along the Keaau-Pahoa road and the proposed connector road school frontages. In addition, all roadway and driveway improvements shall conform to the Department of Transportation - Highways Division and Department of Public Works requirements, whichever is applicable. In addition to the above, to further ensure the safety of students, a condition is being included to require the applicant to construct a chain link fence surrounding the perimeter of the property prior to opening of the first increment. For safety and of benefit to the community, a condition is also included for the applicant to confer with the Office of Civil Defense, regarding use of the school as emergency shelters. Electricity, water, wastewater disposal facilities and other essential services are or will be made available for high school and related improvements. Furthermore, agencies reviewing the

request had no objections to the proposed development."

- (D) Unusual conditions, trends and needs have arisen since the district boundaries and rules were established.

"The Puna District has been one of the largest growth areas on the island. The County of Hawaii Data Book 1994, shows a population of 11,751 in 1980 and a population of 20,781 in 1990. This is an approximate 76% increase in 10 years. The existing Waiakea High School facilities are inadequate and unable to accommodate the growing student population. Allowing for the development of a new public high school in this district would help meet the educational needs of the expanding population in this area. The school development will occur on lands that fall within the State Land Use Agricultural and Urban district, with approximately 36 acres within the State Land Use Agricultural district. The subject site is located approximately one mile from the Keaau Town Center where there is ongoing urban activity. The Special Permit in the Agricultural District and the Use Permit in the Urban District are the appropriate vehicles for establishing schools in needed areas."

- (E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

"The property was previously used for sugar cane cultivation and portions are in active agricultural use as a macadamia nut orchard and ornamental plants. However, the applicant is working on an agreement for compensating and relocating these farmers. Therefore, although agricultural activity will be diminished at this specific location, it may be relocated to another area. Although the zoning for the property is Agricultural - 20 acres (A-20a); a majority of the lands to the northwest and including portions of the subject properties, fall within the State Land Use Urban District and are either in urban use or being planned for future urban uses. The 36 acres that fall within the State Land Use Agricultural District are adjacent to State Land Use Urban lands, that were reclassified in 1994 and should not significantly reduce the existing agricultural inventory."

PLANNING COMMISSION RECOMMENDATION

74. At its meeting on May 22, 1997, the Planning Commission recommended approval of the Application to the LUC, subject to the following conditions:

- 1) The applicant, successors or assigns shall comply with all of the stated conditions of approval.
- 2) The applicant, successors or assigns shall comply with all applicable conditions of approval of the Use Permit.
- 3) Final Consolidation/Subdivision Approval of the high school site shall be secured prior to the completion of Increment I.
- 4) Prior to the start of any land alterations on the subject property, all outstanding issues regarding mitigation measures for the old railroad berm shall be resolved with written clearance to proceed from the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) with a copy of this clearance submitted to the Planning Director.
- 5) Prior to commencing construction or land alterations, the applicant shall install construction screen barriers to mitigate any noise and dust generated from the project and submit a traffic mitigation plan to address possible traffic congestion during construction.
- 6) Construction of the high school and related improvements shall be completed within 15 years from the effective date of the permit. Prior to the start of construction for each increment, Final Plan Approval shall be secured from the Planning Department. Plans shall identify existing and proposed structures, fire protection measures, paved driveway and paved parking stalls (asphalt or asphalt-concrete), fencing and detailed landscaping associated with the proposed increment or development.
- 7) A Flood Study and all recommended improvements shall be submitted to the Department of Public Works and Department of Transportation for review and approval in conjunction with Final Plan Approval or earlier.
- 8) A Solid Waste Management Plan shall be submitted for review and approval to the Department of Public Works

in conjunction with the submittal of plans for Plan Approval.

- 9) The applicant shall install a chain link fence surrounding the entire perimeter of the main campus, prior to the opening of Increment I. The height of the fence shall be determined during Final Plan Approval.
- 10) Concrete curb, gutter and sidewalk improvements shall be constructed along the entire school frontage along the Keaau-Pahoa Road from the proposed connector road to the Keaau By Pass intersection meeting with the requirements of the Department of Public Works and State Department of Transportation-Highways Division prior to Increment III, or upon dedication to the County, whichever comes first.
- 11) The proposed connector road, including concrete curb, gutter and sidewalk improvements, shall be constructed meeting with the approval of the Department of Public Works and dedicated to the County of Hawaii prior to opening of Increment I.
- 12) Street lights, signs and markings, if required, shall be installed meeting with the approval of the Department of Public Works of the State Department of Transportation-Highways Division, whichever is applicable.
- 13) All applicable roadway improvements and driveway accesses shall meet with the approval of the Department of Public Works or the State Department of Transportation-Highways Division, whichever is applicable.
- 14) Pedestrian and bicycle facilities, if required, shall be provided meeting with the approval of the Department of Transportation-Highways Division or the Department of Public Works, whichever is applicable, prior to the completion of Increment I.
- 15) The applicant shall consult with the Office of Civil Defense regarding use of school buildings as emergency shelters.
- 16) Construction barriers shall be installed between existing development and increment under construction, prior to the opening of Increment I.
- 17) Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell (sic) concentrations or human burials be encountered, work in the immediate area shall cease and the Department of

Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.

- 18) Comply with all applicable laws, rules and regulations of the affected agencies for this project prior to opening.
- 19) Upon compliance with applicable conditions of approval, and prior to the opening of each increment, the applicant shall submit a status report, in writing, to the Planning Director, Planning Commission and State Land Use Commission.
- 20) An initial extension of time for the performance of conditions of the permit 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 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 the Zoning Code.
 - C) Granting of the 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).
- 21) Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke this permit.

75. Any findings of fact that may be a conclusion of law shall be deemed a conclusion of law.

CONCLUSIONS OF LAW

The construction and operation of a high school is not a permitted use within the State Land Use Agricultural District pursuant to Section 205-2, HRS. However the Special Permit Application to construct and operate a new high school constitutes an "unusual and reasonable" use as provided in Section 205-6, HRS, and as established in Section 15-15-95(b), Hawai'i Administrative Rules, and the proposed use is not contrary to the objectives sought to be accomplished by the State Land Use Law to preserve, protect, and encourage development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare.

ORDER

IT IS HEREBY ORDERED that the Special Permit Application that is the subject of LUC Docket No. SP97-391, requesting the construction and operation of a new high school on approximately 37.24 acres of land designated within the State Land Use Agricultural District, and identified as Tax Map Key No.: 1-6-03: portion of 3, portion of 15, and portion of 68, situated at Keaau, Puna, Hawaii, and approximately identified on "Exhibit A" attached hereto and incorporated by reference herein, is hereby approved and subject to the following conditions:

1. The Applicant, successors or assigns shall comply with all of the stated conditions of approval.
2. The Applicant, successors or assigns shall comply with all applicable conditions of approval of the Use Permit.

3. Final Consolidation/Subdivision Approval of the high school site shall be secured prior to the completion of Increment I.

4. Prior to the start of any land alterations on the subject property, all outstanding issues regarding mitigation measures for the old railroad berm shall be resolved with written clearance to proceed from the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) with a copy of this clearance submitted to the Planning Director, and the Land Use Commission.

5. Prior to commencing construction or land alterations, the Applicant shall install construction screen barriers to mitigate any noise and dust generated from the project and submit a traffic mitigation plan to address possible traffic congestion during construction.

6. Construction of the high school and related improvements shall be completed within 15 years from the date of issuance of the Land Use Commission's decision and order. Prior to the start of construction for each increment, Final Plan Approval shall be secured from the Planning Department. Plans shall identify existing and proposed structures, fire protection measures, paved driveway and paved parking stalls (asphalt or asphalt-concrete), fencing and detailed landscaping associated with the proposed increment or development.

7. A Flood Study and all recommended improvements shall be submitted to the Department of Public Works and

Department of Transportation for review and approval in conjunction with Final Plan Approval or earlier.

8. A Solid Waste Management Plan shall be submitted for review and approval to the Department of Public Works in conjunction with the submittal of plans for Plan Approval.

9. The Applicant shall install a chain link fence surrounding the entire perimeter of the main campus, prior to the opening of Increment I. The height of the fence shall be determined during Final Plan Approval.

10. Curb, gutter and sidewalk improvements shall be constructed along the entire school frontage along the Keaau-Pahoa Road from the proposed connector road to the Keaau By-Pass intersection meeting with the requirements of the Department of Public Works and State Department of Transportation-Highways Division upon completion of Increment III, or upon dedication to the County, whichever comes first.

11. The proposed connector road, including concrete curb, gutter and sidewalk improvements, shall be constructed meeting with the approval of the Department of Public Works and dedicated to the County of Hawaii prior to opening of Increment I.

12. Street lights, signs and markings, if required, shall be installed meeting with the approval of the Department of Public Works or the State Department of Transportation - Highways Division, whichever is applicable.

13. All applicable roadway improvements and driveway accesses shall meet with the approval of the Department of Public

Works or the State Department of Transportation - Highways Division, whichever is applicable.

14. Pedestrian and bicycle facilities, if required, shall be provided meeting with the approval of the Department of Transportation - Highways Division or the Department of Public Works, whichever is applicable, prior to the completion of Increment I.

15. The Applicant shall consult with the Office of Civil Defense regarding use of school buildings as emergency shelters.

16. Construction barriers shall be installed between existing development and increment under construction, prior to the opening of Increment I.

17. 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-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.

18. The Applicant, successors or assigns shall comply with all applicable laws, rules and regulations of the affected agencies for this project prior to opening of the school.

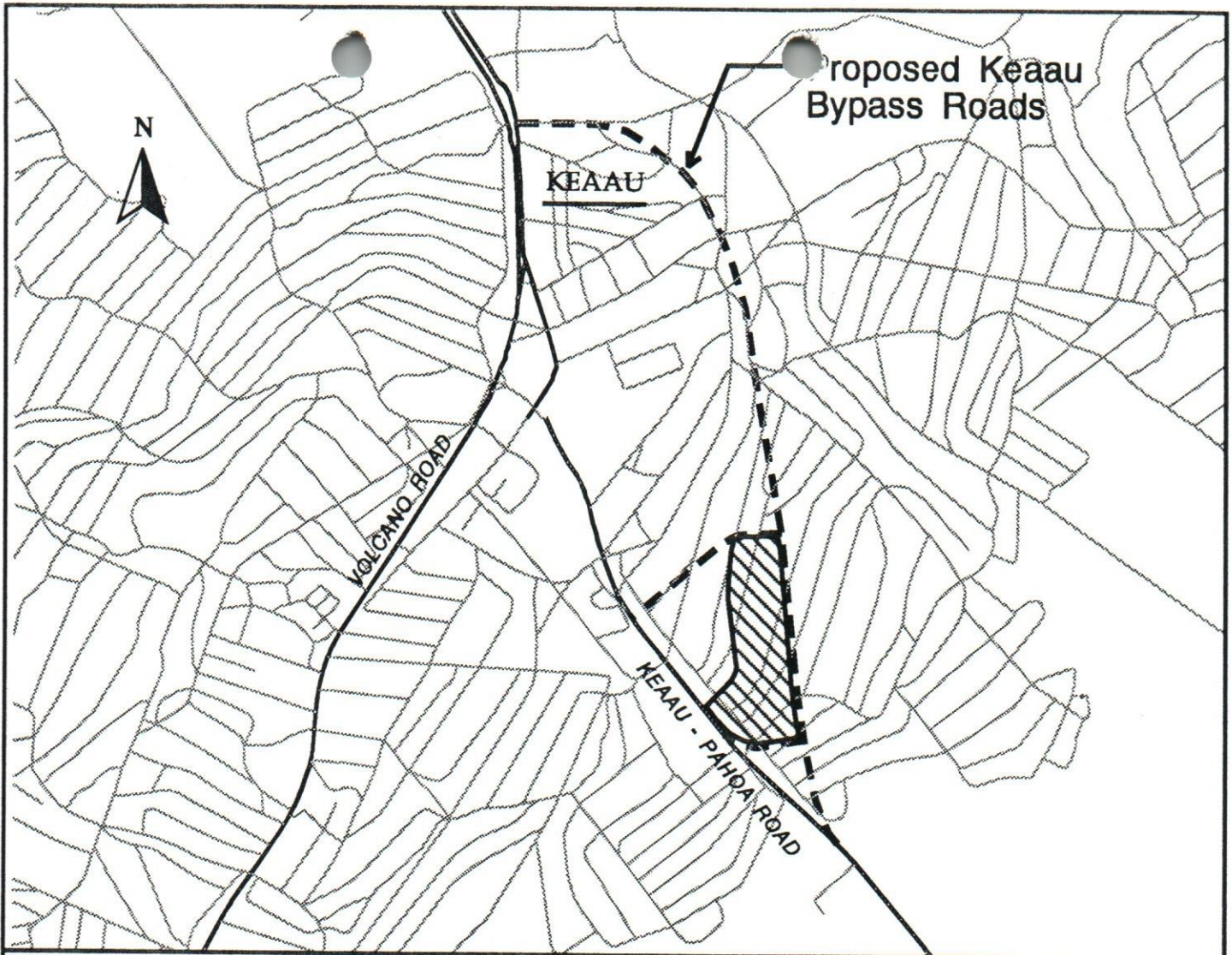
19. The Applicant shall timely provide without any prior notice, annual reports to the County of Hawaii Planning Department and the Land Use Commission in connection with the

status of the subject project and the Applicant's progress in complying with the conditions imposed herein. The annual report shall be due prior to or on the anniversary date of the issuance of this decision and order. The annual report shall be submitted in a form prescribed by the Executive Officer of the Land Use Commission.

20. An initial extension of time for the performance of conditions of the permit 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 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 the Zoning Code.
- C. Granting of the 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).

21. Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke this permit.



**SP97-391 / State of Hawaii,
Department of Accounting &
General Services**

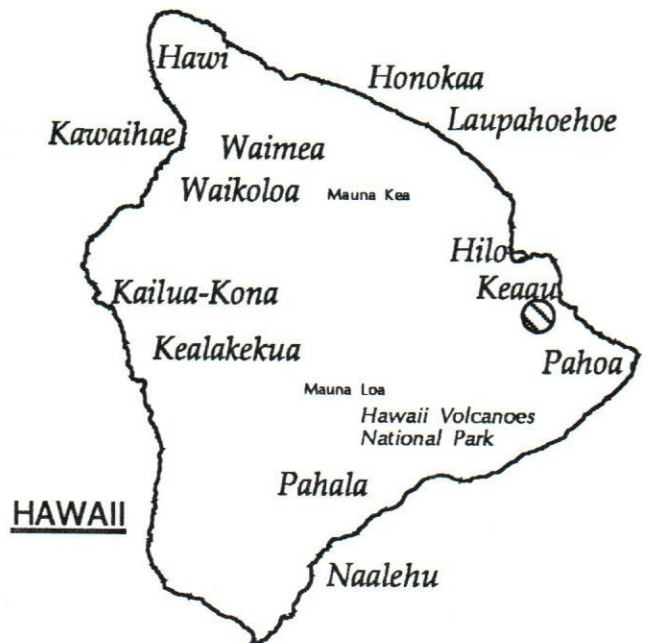
LOCATION MAP

TAX MAP KEY: 1-6-03: por. 3,
por. 15 & por. 68

Keaau, Puna, Hawaii

 PERMIT AREA
(APPROXIMATE)


EXHIBIT "A"

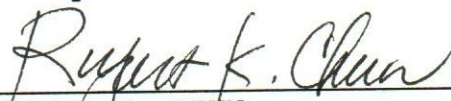



DOCKET NO. SP97-391 - STATE OF HAWAII, DEPARTMENT OF ACCOUNTING AND
GENERAL SERVICES

DONE at Honolulu, Hawaii, this 5th day of August 1997,
per motions on June 26, 1997 and July 31, 1997.

LAND USE COMMISSION
STATE OF HAWAI'I


By 
TRUDY K. SENDA
Chairperson and Commissioner

By 
RUPERT K. CHUN
Vice Chairperson and Commissioner

By 
LAWRENCE N.C. ING
Commissioner

By (opposed)
M. CASEY JARMAN
Commissioner

By (absent)
HERBERT S.K. KAOPUA, SR.
Commissioner

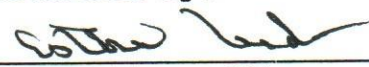
By 
LLOYD F. KAWAKAMI
Commissioner

By (absent)
MERLE A. K. KELAI
Commissioner

By (absent)
EUSEBIO LAPENIA, JR.
Commissioner

Filed and effective on
August 5, 1997

Certified by:


Executive Officer

By 
JOANN N. MATTSON
Commissioner

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
STATE OF HAWAII, DEPARTMENT OF)
ACCOUNTING AND GENERAL SERVICE,)
DOCKET NO. SP97-391
For a Special Permit to Establish)
and Operate a High School on)
Approximately 38.00 Acres Within)
The State Land Use Agricultural)
District at Keaau, Puna, Hawai'i;)
Tax Map key No.: 1-6-03: portion of)
3, portion of 15, and portion of 68)
CERTIFICATE OF SERVICE

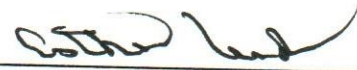
CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings of Fact, Conclusions of Law, and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

CERT. VIRGINIA GOLDSTEIN, Planning Director
Planning Department, County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

CERT. GORDON MATSUOKA, State Public Works Engineer
Division of Public Works
Department of Accounting & General Services
1151 Punchbowl Street, Room 430
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 5th day of August 1997.


ESTHER UEDA
Executive Officer