BEFORE THE PLANNING COMMISSION

OF THE COUNTY OF HAWAI'I

In the matter of the Application of PARKER SCHOOL BOARD OF DIRECTORS For a Use Permit To Allow the Establishment of an Elementary School (Grades K to 5) on a 2.635 acre Area Zoned Agricultural 1-acre (A-1a) within the State Land Use Urban District at Waimea, South Kohala, Hawai'i, TMK: (3) 6-5-4: por. 25.	USE 05-001 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

1. This matter came on for contested case hearing before Hearings Officer Sherry Broder on July 11, 2005. Applicant, Parker School Board of Directors (hereinafter "Applicant'), was represented by its counsel Roy A. Vitousek, III. The County of Hawai'i Planning Department (hereinafter "Department" or "Planning Department") was represented by Deputy Corporation Counsel, Bobby Jean Leithead-Todd, and Norman Hayashi present on behalf of the Department. Intervenor Linda Copman (hereinafter "Intervenor" or "Copman") was represented by Allen Woodell, Esq.

2. The hearing took place on the Parker School campus, and was attended by members of the Parker School Board of Directors, staff, parents, and interested members of the community.

3. Applicant Parker School objected to the Intervenor's forms entitled "Survey of Pedestrian Traffic on Kapiolani Road," (hereinafter "Community Pedestrian Surveys") because the surveys contain numerous statements that purport to be statements of pedestrians who were not identified nor made available for cross-examination, were submitted for the truth of the contents of those statements, and therefore constitute hearsay. Applicant did not object to the surveys that count vehicles, (hereinafter

"Community Traffic Surveys"), provided those individuals who took the surveys would be present to testify to their observations.

4. The Hearings Officer decided to allow the contents of the Community Pedestrian and Traffic Surveys including the hearsay statements because even though they were not a regularly conducted business activity, they were a community activity. The Hearings Officer decided that she would weigh the Community Pedestrian and Traffic Surveys for their probative value and hold the research contained in the surveys to a professional standard that would pass peer review.

5. The Exhibits of the Applicant, the Intervenor, and the County were accepted into the record.

6. The Hearings Officer excluded the written testimony of witnesses who were not present to be cross-examined. However, the Hearings Officer did admit the written testimony of witnesses who were not present to the extent that they worked on the Community Pedestrian and Traffic Surveys. Copman testified that everyone participated in the Community Pedestrian and Traffic Surveys together and that she was the organizer. Copman was available for cross-examination.

7. After considering all of the evidence presented at the hearing, the Hearings Officer makes the following findings of facts and conclusions of law:

FINDINGS OF FACT

The Parties

1. Parker School, founded in 1976, is a small independent day school. At the time of the Use Permit application, Parker School served 191 students in grades 6 through 12. It is located on a parcel, TMK: (3) 6-5-4:27, which is adjacent to the subject property and is a permitted use under Section 25-5-122(a) (44) of the Hawai'i County Code.

2. In August 2005, Parker School opened its elementary school for K-5 which is currently located on the existing main Parker School campus.

3. Parker School's Main Hall contains a 200-seat theater, a computer lab, two administrative offices, a college counseling center, a science lab, a study area, a snack shop, two common areas, and classrooms. Adjacent buildings contain administrative offices, a faculty lounge, and Middle School classrooms. The school uses

Waimea public recreational facilities and fields, the Waimea Library, and Waimea eating establishments to supplement school facilities and resources.

4. Parker School owns only the Parker School main building and courtyard, and leases the land under the remaining school buildings under a 99-year lease from Parker School Trust Corporation.

5. The Parker School Trust Corporation will transfer the 2.635 acres of the pasture land sited for the proposed elementary school (hereinafter "Proposed Site") to Parker School if the Use Permit is granted. Parker School does not have permission to use the entire 12-acre parcel.

6. Applicants do not own the strip of land between the main campus and the Proposed Site.

7. The Parker School Trust Corporation has not authorized or approved a connector road over that strip of land to connect the main campus to the Proposed Site.

8. The Parker School Trust Corporation will allow Parker School to use the connecting strip of land between the campus and the Proposed Site to access the Waimea Trails and Greenways trail.

9. Intervenor owns a house at 65-1146 Spencer Road, down the street from the Proposed Site.

10. Intervenor purchased her house in 2000, and was aware at the time she purchased the house that the 12-acre parcel was owned by the Parker School Trust Corporation.

11. Intervenor's property (TMK: (3) 6-5-4: 17) is located northeast of the subject property near the corner of Kapiolani Road and Spencer Road. Intervenor's property is 100 feet off of the eastern end of the 12-acre parcel, the location for the Proposed Site is on the western end of the 12-acre parcel, and Intervenor cannot see Proposed Site from her home.

12. Intervenor testified that she did not have any education or background in transportation engineering, that she did not have any professional experience in designing and coordinating traffic impact analyses, and that she was not familiar with the guidelines of the Institute of Transportation Engineers. Nor did anyone else who worked on the Community Pedestrian and Traffic Surveys. Intervenor testified that the Community

Pedestrian and Traffic Surveys were not professional survey results. The Hearings Officer finds that little weight should be given to the results of the Community Pedestrian and Traffic Surveys.

13. A Petition for Standing in a Contested Case Hearing received was from Intervenor on February 8, 2005, with the proper filing fee of $100.

The Application

14. **PARKER SCHOOL BOARD OF DIRECTORS** ("Applicants"), in response to the rapid growth of the Waimea community, overcrowding in Waimea public schools, and requests from existing Parker School students' parents, seeks to expand its campus to accommodate its newly added K-5 students.

15. Applicants submitted an application for a Use Permit to allow the establishment of an elementary school on the Proposed Site, a 2.635-acre portion of a 12.166-acre parcel of land zoned Agricultural (A-1a) with the State Land Use Urban District. The property is located along the southeast side of Kapiolani Road, approximately 550 feet east of the Kapiolani Road-Lindsey Road intersection, Waimea, South Kohala, Hawai'i, TMK: (3) 6-5-4: Por. 25.

16. The Applicants are requesting a Use Permit to allow the establishment of an elementary school for grades K to 5 on the Proposed Site. The project will consist of six classrooms, an office, a break area and two restrooms. Although the application indicated 75, the actual number of students is anticipated to be no more than a maximum of 90 students attending the school. The site plan indicates a parking and turn-around area in the northwestern portion of the site.

17. Parker School elementary school will have six elementary school teachers and one administrator.

18. Parker School's goal is to have a single-use facility, the elementary school campus, designed specifically for the education of elementary school-aged children.

19. On April 9, 2002, the Planning Director determined the expansion of the school with 5 new classrooms was a permitted use under the zoning code. The buildings that comprise the Middle School were built and are currently in use or being constructed.

20. Parker School has informed local residents of its proposal to expand Parker School by holding community meetings on October 18, 2004 and January 7, 2005.

21. In response to feedback received at the community meetings, Parker School altered plans for the Proposed Site to increase the distance between the proposed driveway entrance to the elementary school and the neighboring Puuki Street block.

Land Use and Zoning

22. **State Land Use Designation:** The State Land Use classification is Urban. There is only a small percentage of the land in the County of Hawai'i classified as Urban.

23. **County Zoning:** The County zoning is Agricultural-1 acre (A-1a).

24. **General Plan LUPAG Map:** The property is designated as Medium Density Urban in the County's General Plan. An area designated Medium Density by the General Plan could be used for commercial development, higher density multiple residential uses as well as single family residential uses.

25. **Coastal Zone Management, HRS, Chapter 205A:** The entire State of Hawai'i lies within the Coastal Zone Management Area, so the subject property is also within the CZMA.

26. **Special Management Area:** The Special Management Area (SMA) is a part of the Coastal Zone Management Program regulated by the County. The project site is not within the County's SMA.

Description of the Project Site and Surrounding Area

27. **Project Site:** The project site is an approximately 2.635-acre portion of a 12.166-acre parcel of land located east of the Parker School and Anuenue Playground. The property has been graded and used for pasturage for over 80 years. Waikoloa Stream borders the property to the south/southeast.

28. **Surrounding Zoning/Land Uses:** Surrounding properties are zoned Agricultural 1-acre (A-1a) to the north on Kapiolani Road, Single-Family Residential (RS-7.5) to the west towards Lindsey Road, and Village Commercial (CV-7.5) to the south and east. The area is characterized by residential, recreational and commercial uses. The Parker School 6-12 campus is located to the west, and to the north are residential lots along Lindsey Road and Kapiolani Road. To the east are vacant lands and the Waimea Center commercial shopping center.

29. **U.S.D.A. Soil Type:** The property is composed of Kikoni, Palapalai and Punohu soil series. This soil is non-stony to slightly stony and well-drained. The erosion hazard is slight.

30. **Land Study Bureau Productivity Rating:** The property is classified as Urban.

31. **Agricultural Lands of Importance to the State of Hawai'i (ALISH) Map:** The property is unclassified.

32. **FIRM:** Zone X, areas determined to be outside the 500-year flood plain. A portion of the project site bordering Waikoloa Stream is designated as Zone "AE". No construction is proposed in Zone "A".

33. **Floral and Fauna Resources:** The properties have been completely graded and been in pasture for over 80 years. There were no professional surveys conducted of floral or faunal resources, and the Applicant believes that there are no rare or endangered floral resources on the site. The project site is a mixture of grasses, predominately kikuyu. The site is not known to be a habitat for any endangered animal life.

34. **Archaeological/Historical Resources:** As the property has been previously used for grazing, the applicant states that the likelihood of any archaeological or historical resources is remote. By letter dated December 16, 2004, the applicant has requested a letter of "no effect" from the State Department of Land and Natural Resources Historic Preservation Division DLNR-HPD.

35. **Public Access:** There is no record of a designated public access to the mountains or the shoreline that traverses through the properties.

36. **Valued Cultural Resources:** There is no evidence of traditional and customary Native Hawaiian Rights being practiced on the properties, nor existence of any known valued cultural, historical or native resources in the area.

37. **Recreational Resources:** The Department of Parks and Recreation has been working with the Waimea community to establish a trail system through Waimea town and generally along Waikoloa Stream. The Applicant supports the Waimea Trails system and will work with the Department of Parks and Recreation to provide an easement for this trail over the property.

38. Applicant testified that the existence and location of the Waimea trail will facilitate pedestrian access to its campus for students from the east side of Waimea, and public recreational opportunities and alternative transportation options for local residents.

Traffic and Related Issues

39. The Applicant testified that the proposed school is a day school, students will be from the community and will not increase the number of students in the immediate area. According to the Applicant, the proposed school will divert students from the Waimea Elementary School located less than 1/3 mile to the new campus.

40. The incoming class of elementary school students consists of 65 students. 40% of those students are siblings of existing Parker School students.

41. Special events and programs for the elementary school will take place on the main campus, adjacent to the property, where the theater and other specialty facilities are located.

42. Parent-teacher conferences will be held on days when school is not in regular session.

43. A condition of approval proposed by the Planning Director is that a "Carpooling Policy and Plan" to include a method of determining the number of families that carpool, shall be submitted to the Planning Director and implemented prior to the opening of the new school facilities proposed under the application. The Carpooling Policy and Plan will be reviewed and enforced by the Department. The Department will monitor the policy if it receives complaints relative to the policy or its implementation.

44. Parker School is developing its Carpooling Policy and Plan including staggered start times for elementary, middle, and high school students, and has a record of successfully encouraging parents to drop off and pick up students at designated places and times. Parker School parents do not use the access to the School on Puuki Street.

45. In order to shield the adjoining residential lots from any adverse external effects of the proposed use, the Planning Director recommended that a landscape buffer be placed to create a special separation and to lessen any noise impacts. Normally, Rule 17-6(b)(2)(B) of the Planning Department regarding landscape buffers is applied to commercial districts. The buffer is required to be opaque from the ground to a height of

at least three feet, with intermittent visual screening from the opaque portion to a height of at least 20 feet.

46. Mr. Hayashi conducted a site inspection of the property and saw some individuals walking alongside the road.

47. The roads making up the block of Kapiolani Road, Spencer Road, Hokuula Road, and Lindsey Road are existing nonconforming roads under the subdivision code.

48. There is no subdivision application pending before the Department relative to the Parker School elementary school project and therefore the subdivision code does not apply to the Use Permit Application.

49. Mr. Emler testified that to assess the potential impact of the proposed elementary school campus, the Department of Public Works looked at the number of students being proposed as a maximum, checked the building size and its potential maximum occupancy, looked at the trip generation manual from the Institute of Transportation Engineers to determine the average number of trips for peak hours, and checked standard thresholds for requiring a traffic impact analysis report.

50. **A Traffic Assessment Report:** A Traffic Impact Analysis Report (TIAR) was not required by the Department of Public Works.

51. The Department of Public Works found that the proposed elementary school did not meet the threshold for requiring a traffic impact study. The Planning Department came to the same conclusion. The Planning Department and the Department of Public Works found that the proposed use would not significantly increase traffic in the area. The Commission does find that there will be some significant traffic increase during the beginning and the end of school days but that under the particular facts this does not rise to the level of being a substantial adverse impact that would preclude the granting of this permit.

52. The Department of Public Works threshold for ordering a traffic impact analysis report for an elementary school is 150 students.

53. The County has no plans to change any of the intersections in the block surrounding Parker School.

54. Mr. Emler testified that he would not agree with the Intervenor's testimony that the four intersections, Kapiolani/Lindsey, Lindsey/Hokuula, Kapiolani/Spencer and Hokuula/Spencer were among the four most dangerous intersections in Waimea, possibly the Island.

55. Any nonconforming roadways surrounding the proposed campus were consistent with County requirements at the time they were dedicated to the County.

56. Mr. Emler testified that he was familiar with recent rezoning in Waimea where new subdivisions were exempted from providing sidewalks because of the Waimea community's preference for grassy shoulder sidewalks based on the rural character of the community.

Public Facilities, Utilities and Services

59. **Access:** Access to the project site is from Kapiolani Road, a County-owned and maintained roadway with an approximately 18-20 foot pavement in good condition and 2-4 foot wide grass shoulders within a 40-foot right-of-way. According to the Department of Public Works, Kapiolani Road is substandard based on width and has no sidewalks or streetlights conducive to safe pedestrian access. Kapiolani Road intersects Lindsey Road. Lindsey Road has a right-of-way of 50 feet with a 20-foot wide pavement and 6-foot wide graveled shoulders.

60. **Water:** Water can be made available from an existing 6-inch waterline along Kapiolani Road fronting the property.

61. **Wastewater:** A wastewater system complying with the State Department of Health will be developed and utilized.

62. **Solid Waste**: Solid waste will be handled by private haulers.

63. **Other Essential Utilities and Services:** Telephone and electrical services are available to the site. Police and Fire services are located less than two miles from the property.

64. The Waimea community, along with its neighboring communities is experiencing an unprecedented growth in residential and commercial development. The town's population has doubled in the last 15 years.

65. Although located within the State Urban District, the land is zoned by the County as Agricultural 1-acre (A-1a). A Use Permit is required under Section 25-5-72 (d) (7) of the Hawai'i County Code.

66. The current school has been in operation for over twenty–five years. The existing school is located on a parcel that is zoned CV-7.5 and RS-7.5 and is surrounded by parcels similarly zoned that have been and will continue to be used as for residential and commercial purposes.

67. The proposed elementary school will create noise and have a visual impact on the residential lots along Puuiki Road, immediately to the west of the proposed school site. This disruption will be during normal school hours between 7:30 a.m. and 3:30 p.m. weekdays.

68. The requested use will alter the existing physical character of the site by adding the school building. No grading will be required to construct the proposed classroom. The site is a level pasture that will only require grubbing of vegetative material.

69. The development of the school operation will not result in the loss of any active agricultural pursuits in the area nor significantly diminish the agricultural land inventory in the County of Hawai'i in a negative fashion. The subject parcel is vacant and presently unused for any agricultural activity.

70. The use will not substantially alter or change the essential character of the land and the present uses.

71. The establishment of an elementary school in the State Land Use Urban District and the County zoned Agricultural (A-1a) land may be allowed through the granting of a Use Permit.

72. The proposed use will complement the goals, policies and standards of the Land Use and Economic Elements of the General Plan.

73. After review of the application and agency comments against the guidelines for granting a Use Permit under Rule 7-6 of the Planning Commission Rules of Practice and Procedure, the Planning Director recommended approval of Parker School's request, subject to 13 conditions, finding that the application satisfied all of the criteria for granting a use permit under Section 7-6.

74. The Applicant has reviewed the Recommendation of the Planning Department including the recommended 13 conditions and has agreed to follow all of the conditions. The Applicant has already begun work on its carpooling policy. The applicant has agreed to increased landscaping to buffer potential adverse noise or visual impacts from Puuki Street in accordance with Planning Department Rule 17-6(b)(2)(b).

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Planning Commission makes the following Conclusions of Law, including mixed findings of fact and conclusions of law:

1. The Planning Commission has jurisdiction over this Application.

2. The proposed use is consistent with the general purpose of the zoning district, the intent and purpose of the zoning code and the general plan.

3. The granting of the proposed use will not be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character or to surrounding properties.

4. The granting of the proposed use will not unreasonably burden pubic agencies to provide roads and streets, sewer, water, drainage, schools, police and fire protection and other related infrastructure.

5. The Planning Commission has considered all proposed Findings of Fact and Conclusions of Law and Exceptions, and to the extent that the proposed findings or conclusions or exceptions are inconsistent with this decision, they are rejected, and to the extent that the proposed findings or conclusions are consistent with this decision, their intent is captured herein, with the specific language of this Findings of Fact, Conclusions of Law and decision to govern.

ORDER

IT IS HEREBY ORDERED that the Use Permit filed by Parker School Board of Directors to allow the establishment of an Elementary School (K to 5) on a 2.635-acre area zoned Agricultural 1-acre within the State Land Use Urban District at Waimea, South Kohala, Hawaii, identified by TMK: 6-5-4:portion of 25, shall be and is hereby approved subject to the following conditions:

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.

2. Construction of the proposed improvements shall be completed within five (5) years from the effective date of this permit. Prior to construction, the applicant, successors or assigns shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawaii 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 on Puuki Street, specifically in accordance with the Planning Department's Rule No. 17-6(b)(2)(B), Landscaping Requirements for CV zones adjoining a RS zone.

3. Enrollment shall be limited to 90 students.

4. A Carpooling Policy and Plan, to include a method for determining the number of families that have carpooled in a given year, shall be submitted to the Planning Director and implemented prior to the opening of the new school facilities proposed under this Use Permit.

5. All driveway connections to Kapiolani Road shall conform to Chapter 22, Streets and Sidewalks, of the Hawaii County Code.

6. A drainage study shall be prepared by a licensed civil engineer and submitted to the Department of Public Works prior to the issuance of a construction permit. Drainage improvements, if required, shall be constructed, meeting with the approval of the Department of Public Works prior to receipt of a Certificate of Occupancy.

7. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.

8. Septic tank(s) shall be installed, meeting with the standards and requirements of the State Department of Health, prior to the issuance of a Certificate of Occupancy.

9. 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.

10. The applicant shall provide an easement on the subject property for the Waimea Trail.

11. 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-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.

12. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

13. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:

A. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the 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.

DATED: Hilo, Hawaii, December 7, 2005.

FRED GALDONES, Chairman
Planning Commission