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LAND USE COMMISSION

STATE OF HAWAI'I

HEARING AND ACTION

via Video Conference)
SP87-364 KAHILI ADVENTIST SCHOOL)
(Kauai))
_____)

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for a Public Hearing
at ICSD Kalanimoku Building Video-conference Center,
Punchbowl Street, Honolulu, Hawai'i and Lihue Airport
DOT commencing at 9:10 a.m. on April 9, 2010 pursuant
to Notice.

REPORTED BY: HOLLY M. HACKETT, CSR #130, RPR
Certified Shorthand Reporter

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A P P E A R A N C E S

COMMISSIONERS: SITE LOCATION

KYLE CHOCK	Honolulu
THOMAS CONTRADES	Kauai
VLADIMIR DEVENS	Honolulu
LISA M. JUDGE	--
DUANE KANUHA	Honolulu
NORMAND LEZY	--
RANSOM PILTZ (Chairman)	Honolulu
NICHOLAS TEVES, JR.	Honolulu
REUBEN WONG	

EXECUTIVE OFFICER: ORLANDO DAVIDSON	- Kauai
ACTING CHIEF CLERK: RILEY HAKODA	- Kauai
STAFF PLANNERS:BERT SARUWATARI	- Kauai

SCOTT DERRICKSON - Honolulu

DEPUTY ATTORNEY GENERAL: DIANE ERICKSON, ESQ.

--Honolulu

Docket No. SP87-364 Kahili Adventist School

For the Petitioner: MARK VALENCIA, ESQ.

For the County:	IAN JUNG, ESQ.
	Deputy Corporation Counsel

For the State:	BRYAN YEE, ESQ.
	Deputy Attorney General
	ABE MITSUDA
	Office of Planning

Also Present:	PASTOR ROB LLOYD
	Executive Secretary

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RAY McCORMICK	23

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1 CHAIRMAN PILTZ: Good morning. This a
2 meeting, a video conference meeting. And I have
3 designated Commissioner Contrades to be presiding
4 officer on Kaua'i to conduct that portion of this
5 meeting.

6 PRESIDING OFFICER CONTRADES: Thank you,
7 Randy. This is an action meeting on SP87-364 Kahili
8 Adventist School, Kaua'i, to consider a request from
9 the Conference of Seventh-Day Adventist to amend
10 Conditions No. 1 and 2 of Special Permit SP87-13, LUC
11 Docket No. SP87-364, class IV Zoning Permit
12 Z-IV-87-51.

13 On March 1st, 2010 the Commission received
14 copies of the Kaua'i Planning Commission's decision to
15 amend Conditions 1, 2 and 3 of SP87-364 and the
16 complete record on the request.

17 On April 7th, 2010 the Commission received a
18 written correspondence from the Department of
19 Transportation Raymond J. McCormick, district
20 engineer.

21 Let me briefly describe our procedure for
22 today on this docket. First, we'll have the parties
23 identify themselves for the record. I will then call
24 for those individuals desiring to provide public
25 testimony to identify themselves. All such

1 individuals will be called in turn to our witness box
2 where they will be sworn in prior to their testimony.
3 After completion of the public testimony portion of
4 the proceedings, staff will provide its report.

5 After staff has provided its report the
6 Applicant will make its presentation. After the
7 completion of the Applicant's presentation the County
8 of Kauai will provide its comments and the Office of
9 Planning will then provide its public comments.

10 After we receive public comments from the
11 State Office of Planning, the Commission will conduct
12 its deliberations. Are there any questions on our
13 procedure today from anyone? (No response). Hearing
14 none, will the parties please identify themselves for
15 the record.

16 MR. KAMM: I'm Gregg Kamm, authorized agent
17 for the Conference of Seventh-Day Adventist.

18 MR. VALENCIA: Good morning. I'm Mark
19 Valencia. I'm the attorney for the Hawai'i
20 Conference. I'm here with Pastor Rob Lloyd.

21 PASTOR LLOYD: I'm Rob Lloyd. I'm the
22 Executive Secretary of the Hawai'i Conference of
23 Seventh-Day Adventist.

24 MR. JUNG: Good morning, Commissioners.
25 Deputy County Attorney Ian Jung for the County of

1 Kaua'i.

2 PRESIDING OFFICER CONTRADES: Thank you and
3 good morning. Is there anyone here who wishes to
4 provide public testimony on this matter? Seeing none
5 we will then proceed. Mr. Valencia, would you like to
6 make your presentation.

7 MR. VALENCIA: I'll turn this over to Gregg
8 Kamm in just a moment. I wanted to thank the
9 Commission for the way this has been conducted. The
10 last time we were here, which was over a year ago, we
11 were with our Conference Secretary Mr. Ron Lindsey. I
12 don't know if you recall that he was battling cancer.
13 He lost his battle. We are here with Mr. Rob Lloyd
14 who's the Executive Secretary now.

15 We have done what the Land Use Commission
16 asked us to do and allowed us to do, which is go back
17 to the County and to the agencies to find out sort of
18 the history of some of these conditions and whether or
19 not some of them needed to be amended or could be
20 amended.

21 And we've done a lot of work. And I'll let
22 Gregg Kamm talk about that. I believe we have done
23 everything we have been asked to do. And the County
24 made a solid recommendation and approval of the report
25 that we provided. I'd like to thank Mr. McCormick as

1 well because we met with him a while ago. He helped
2 us get through some of the issues regarding the road.
3 With that I'll turn it over to Gregg.

4 MR. KAMM: Thank you very much, Mark.
5 Again, my name is Gregg Kamm.

6 MS. ERICKSON: Let's have you swear the
7 witness in, please.

8 GREGG KAMM
9 being first duly sworn to tell the truth, was examined
10 and testified as follows:

11 THE WITNESS: I do.

12 MR. DAVIDSON: I actually think,
13 Mr. Chairman, that we should perhaps hear from Bert
14 Saruwatari for the staff report. Sorry to jump in on
15 that. But I think that would be appropriate and then
16 back to Mr. Kamm.

17 PRESIDING OFFICER CONTRADES: Go ahead,
18 Bert.

19 MR. SARUWATARI: This docket last came
20 before the Commission in August 2008 when the
21 Commission by written order required the Applicant to
22 file a written status report on the filing of
23 amendments to the special permit to the County of
24 Kauai, and to update the Commission not later than one
25 year from this date in connection with the status of

1 the special permit.

2 The Applicant filed a compliance and status
3 report in November 2009 and an update in
4 February 2010. As noted earlier the Applicant filed a
5 written request to amend Condition Nos. 1 and 2 with
6 the County in November 2009.

7 The Planning Commission held a hearing on
8 the matter in January 2010, and recommended approval
9 of the amendments to Condition Nos. 1, 2, 3 to the
10 Commission.

11 On March 1st, 2010 the Commission received
12 copies of the decision and the complete record. Staff
13 reviewed the materials in the record. And given the
14 time that has passed since the initial approval of a
15 special permit in 1987, and the lack of an annual
16 report condition, believes that the Applicant should
17 update the Commission on the specific uses and
18 facilities that are currently on the subject property
19 as well as those that have not been undertaken and are
20 no longer part of the master plan that had identified
21 several uses and facilities back in 1987. Those uses
22 were listed in the 1987 D&O.

23 Also because of this lack of an annual
24 report condition staff believes that an additional
25 condition should be imposed similar to the annual

1 report condition in other Special Use Permit to read
2 as follows:

3 "On each anniversary date of this Decision
4 and Order the Applicant shall file annual reports to
5 the Land Use Commission and the County of Kaua'i
6 Planning Department in connection with the status of
7 the subject Project and the Applicant's progress in
8 complying with conditions imposed. The annual report
9 shall be submitted in a forum described by the
10 Executive Officer of the Commission."

11 Finally, to correct a typographical error in
12 Condition No. 8 staff suggests that the word "an" in
13 the first sentence be amended to "and" a-n-d. So the
14 sentence would read, "The Applicant is advised that
15 prior to and/or during construction and use,
16 additional government agency conditions may be
17 imposed." The rest of the condition would remain the
18 same. That concludes my staff report.

19 PRESIDING OFFICER CONTRADES: Commissioners,
20 do you have any questions?

21 COMMISSIONER PILTZ: None here.

22 PRESIDING OFFICER CONTRADES: Thank you.
23 Gregg, you can proceed now.

24 MR. KAMM: Okay. When this application was
25 initially filed the Applicant had fairly extensive

1 plans which were approved by the Land Use Commission
2 and the county for health facilities, for the school
3 which did, in fact, occur, for agricultural
4 facilities, for recreational facilities and health
5 conditioning, physical and spiritual retreat
6 facilities, as well as a park/vacation facility which
7 did occur.

8 What did not occur is full buildout of all
9 of these facilities. And currently on site there are
10 -- as well as an extensive agricultural program --
11 what did occur on site, and what exists there today is
12 a very large lychee orchard, pasture, gardens which
13 are worked in part by the students as part of the
14 curriculum; a school with extensive classroom and
15 recreational facilities, gym, very nice gym, as well
16 as cabins and cabinettes which serve for vacation
17 rentals as approved, and serve as staff housing as
18 approved.

19 So other things which were conditions are
20 each reviewed in my application to the Planning
21 Commission which I believe is part of the complete
22 record which is before the Commission. And each of
23 the conditions is reviewed.

24 We initiated this status report in part
25 because we also felt enough time had passed that the

1 Commission should know what had occurred, what had not
2 occurred, and what the condition of the campus was at
3 this time.

4 So we took this to the Planning Commission.
5 We resolved a number of the conditions and the
6 commission saw fit to -- the Planning Commission saw
7 fit to recommend approval of modification of three of
8 the conditions. And that is as per their letter of
9 January 26th, 2010.

10 The other piece -- and I had had a
11 discussion with staff on this -- is that there is no
12 place in this letter where the Planning Commission
13 states they affirmatively accept the compliance. I'm
14 an alumnus of the planning department. And what they
15 did do was receive it for the record which is in this
16 county effectively accepting it as is. So in my view,
17 at least, they did accept the compliance and status
18 report as well as amend the three conditions.

19 I'd be happy to address any questions
20 Commissioners or staff has.

21 PRESIDING OFFICER CONTRADES: Any of you
22 have any questions?

23 MR. JUNG: Good morning, Commissioners. I
24 have no questions for you. The packet that was sent
25 out on February 23rd gives the entire record. I

1 apologize. Mike Laureta, our staff planner, is unable
2 to be here to field any questions. But if I could be
3 of any assistance let me know.

4 PRESIDING OFFICER CONTRADES: State, do you
5 have any questions?

6 MR. YEE: We have no questions. We have
7 comments but no questions. Would you like us to give
8 our comments at this point?

9 PRESIDING OFFICER CONTRADES: Commissioners?
10 If you want to.

11 COMMISSIONER PILTZ: Go ahead.

12 MS. ERICKSON: I think you should swear him
13 in because he's a public witness.

14 PRESIDING OFFICER CONTRADES: He has to be
15 sworn in?

16 MS. ERICKSON: I think so.

17 PRESIDING OFFICER CONTRADES: Okay, Bryan,
18 would you raise your right hand.

19 BRYAN YEE,
20 being first duly sworn to tell the truth, was examined
21 and testified as follows:

22 MR. YEE: I promise. Our comments -- we
23 have two comments. First, let me preface my remarks
24 by saying the Office of Planning does support the
25 granting of a special permit or the amended special

1 permit, but we do have two particular comments and
2 suggestions.

3 The first involves Condition 3 which is a
4 DOT condition. It changes the existing condition
5 requiring certain improvements to be made within five
6 years to a requirement to do a Traffic Operational
7 Analysis in five years. And then to do whatever
8 improvements are required under the Traffic
9 Operational Analysis. And that's fine. There is not
10 a problem with the concept of it.

11 We are requesting that you also include a
12 requirement that the Traffic Operational Analysis be
13 approved by the State DOT since it's not just --
14 currently the language only provides for submittal to
15 DOT. So that's, hopefully, a minor amendment to the
16 condition.

17 The second issue is maybe a little more
18 problematic. It's an issue that was raised in a prior
19 case. Having been brought to our attention we are
20 raising it now since it was brought up in this case.
21 That involves a time limit, durational limit for the
22 permit.

23 As we read this particular special permit
24 it's a fairly broad permit that was done about 20
25 years ago. There's no durational limit so it seems to

1 last forever. And the permit allows for a significant
2 number of things which may be not currently intended
3 to move forward, but would be allowed for under the
4 special permit. And there's no provision, at least as
5 we could see it, for any further LUC review of the
6 permit if they intend to move forward.

7 In Neighborhood Board No. 24 vs. State Land
8 Use Commission we cited to you in a prior case, in
9 that case the Hawai'i Supreme Court found that a
10 special permit to allow 103 acres within an Ag
11 District to be used on an amusement park, cultural
12 theme rides, restaurant, fast food, retail, and
13 several other things, was not an unusual and
14 reasonable use which qualified for a special permit.
15 They said that was more appropriately done through a
16 district boundary amendment.

17 In this case -- and the Court talked about
18 how you shouldn't be using a special permit to
19 essentially circumvent all the protections and
20 procedures that are set forth in the district boundary
21 amendment process.

22 In this case, at least according to the 1990
23 findings of fact, conclusions of law, decision and
24 order, the Kahili Adventist School would be allowed to
25 use approximately 196 acres in the Ag District for a

1 church, school, residential units.

2 And the number of units wasn't clear to me
3 when I read the permit. It might be 20. It might be
4 34. The language, as I said, I wasn't quite clear
5 about the requirement.

6 But in any case they were allowed to have
7 residential units. As they said they do have vacation
8 rentals, a health museum, a retirement or health
9 conditioning center, a lodge or retreat pavilion.

10 And from a policy perspective it seems to us
11 that circumstances do change over time. And without a
12 durational limit neither the county nor the LUC would
13 have a clear basis to review this permit if they
14 proceed to move forward with any or all of those
15 items. So a durational limit for the special permit
16 would be a logical requirement.

17 From a legal perspective, a special permit
18 also appears, if it's allowed to be used this way,
19 could be used as a way to circumvent the district
20 boundary amendment procedures.

21 Given the extent of the proposed
22 development, including the size of permitted area, the
23 sort of limited connection to agricultural uses for
24 these things, we do recommend that in order to avoid
25 the violations identified in Neighborhood Board No. 24

1 vs. State Land Use Commission, that the Commission
2 should impose some reasonable time period for the
3 duration of this amended special use permit.

4 We are certainly open to reasonable
5 suggestions about what that time period should be. In
6 the absence of any other suggestions one reasonable
7 proposal could be for a 10-year duration with the
8 possibility of a 10-year extension.

9 We note that this is consistent with the
10 Land Use Commission rules, more specifically 15-15-95E
11 which states, "The County" -- this is talking about
12 special use permits, "The County Planning Commission
13 may establish -- or shall establish, among other
14 conditions, a reasonable time period -- time limit for
15 establishing the particular use and if appropriate a
16 time limit for the duration of the particular use
17 which shall be a condition of the special permit." It
18 goes on to say how the Planning Commission may allow
19 for extensions.

20 So in summary we have two concerns. One is,
21 hopefully, a fairly minor one, to allow the DOT to
22 approve the TOA.

23 The second would be a recommendation to
24 impose some type of durational limit for the special
25 permit so it doesn't appear to be simply a district

1 boundary amendment proceeding through the special use
2 permit process. Thank you.

3 PRESIDING OFFICER CONTRADES: Gregg, do you
4 have any response to that?

5 MR. KAMM: My response is that the school
6 has invested literally millions of dollars in school
7 facilities, in cabins, in structure. And I can see
8 that perhaps a durational limit on the expansion of
9 those uses or expansion into other uses previously
10 approved is appropriate.

11 But they went ahead in good faith and built
12 the school based on the permits that were issued at
13 the time, and the cabins. And I would respectfully
14 request that those be allowed to continue.

15 I do understand expansion into areas such as
16 health conditioning, retreats, things which don't, are
17 not currently in effect. I can see the justification
18 in putting a limit on that or need for a Land Use
19 Commission review at that point.

20 Also I want to emphasize that there are
21 probably 70 acres of lychee trees. So they are
22 seriously into agriculture.

23 MR. VALENCIA: This is Mark Valencia. I'd
24 just like to add there are approximately 36 years
25 remaining on the school's lease.

1 PRESIDING OFFICER CONTRADES: Commissioners,
2 do you have any questions? Go ahead, Vlad.

3 COMMISSIONER DEVENS: Can I just ask Mr. Yee
4 for further clarification. I don't think I quite
5 understood completely what the law was or what he was
6 trying to explain. That's probably my fault, Mr. Yee.
7 If you don't mind breaking it down for us so we know
8 what legal obligation we may have, if any, on any kind
9 of time frames. I do understand and sympathize with
10 the arguments Mr. Kamm is making.

11 MR. YEE: Let me first go over the
12 particular case. In neighborhood Board No. 24 vs.
13 State Land Use Commission there was a special use
14 permit that was allowed which granted 103 acres in the
15 Agricultural District to be used for an amusement
16 park. It had rides, restaurants, retail shops,
17 exhibits, theater, amphitheater, bank, nursery,
18 parking, sewage treatment plant. That was all done
19 through a special permit.

20 The Supreme Court struck that down. That's
21 not an unusual and reasonable use which qualifies for
22 a special permit. It was really appropriately the
23 subject of a district boundary amendment. So you
24 can't use a special permit, the Supreme Court said, to
25 circumvent what is appropriately a land use

1 reclassification.

2 And then it sort of went on to talk about
3 the protections that are associated with district
4 boundary amendment procedures and why that distinction
5 was important.

6 I will say it's not -- to be completely
7 honest it wasn't particularly clear to me from the
8 case that there was a clear sort of like a three-prong
9 standard I could give you to tell you what it is.

10 I could only give you the facts of that case
11 suggest that these facts -- at least based upon the
12 existing special permits -- these facts are similar.
13 In the fact it's a very large piece of acreage.

14 The permit itself goes beyond the school.
15 It allows for a variety of other uses which I think is
16 probably related to plans to expand the residential
17 component.

18 If I could just maybe spend a little bit of
19 time on the remarks by the Petitioner, his suggestion
20 that it only applies to the condition, the uses that
21 are not currently being used.

22 We certainly appreciate the fact that we do
23 have a variety of permits, special or otherwise,
24 which, you know, have been done in a particular way.
25 That's the way it was always done. At the very least

1 we think you should be examining, then, perhaps just
2 eliminating in the special use permit those uses that
3 are not currently in effect today.

4 So if they wanted to put in a health museum,
5 a retirement or health conditioning center, a lodge or
6 to expand the number of cabins, at the very least
7 those should be taken out of the special permit as
8 they're not being currently used; would require them
9 to then come back to the Commission, back to the
10 Planning Commission first, then back to you.

11 It's just, you know, I think it would allow
12 them to expand their school if that's the focus. But,
13 you know, at the very least I would recommend we take
14 a step forward in trying to fix this without being
15 inequitable to the existing permit.

16 COMMISSIONER DEVENS: If I may, is there any
17 limit in your mind on the number of years, if there
18 was a time limit imposed? Could it run the length of
19 the lease? Would that be, in your mind, considered
20 unreasonable? It's 36 years or whatever the years may
21 be?

22 MR. YEE: I would say in the normal case,
23 yes. In the normal case a special use permit should
24 generally run that long. In this particular case,
25 given the fact the permit has already been issued,

1 it's been in existence for 20 years -- well, since
2 1990, I could understand why from an equitable
3 perspective you might want to consider that
4 circumstance, allow the existing uses continue for 36
5 years. That could at least give them an argument that
6 could be raised should it ever be challenged.

7 COMMISSIONER DEVENS: I appreciate that
8 explanation. Thank you, Chair Contrades.

9 PRESIDING OFFICER CONTRADES: Reuben.

10 COMMISSIONER WONG: Mr. Chair, I think the
11 issue as to whether or not a special permit should be
12 issued as distinguished from a district boundary
13 amendment, that issue should have been brought up 20
14 years ago. The permit, special permit having been
15 issued I do not believe that this Commission should
16 revisit that question as to whether or not it should
17 be this way or that way.

18 I think the question before us has to do
19 with a request to amend Conditions 1, 2 and 3. And
20 I'd like to hear the focus on that. In fact, for
21 example, if the State OP -- and I'm not sure whether
22 Bryan is appearing as a public witness or OP -- and if
23 OP wants to amend this special permit then file a
24 motion and we can talk about it.

25 But today we're here with the request to

1 consider amendment to Conditions 1, 2 and 3. I'd like
2 to hear arguments for or against and we can move on.
3 That's what I think.

4 PRESIDING OFFICER CONTRADES: Commissioners,
5 any further questions? Yes, Vlad.

6 COMMISSIONER DEVENS: Just a question for
7 Mr. Valencia or Mr. Kamm whether or not they have any
8 objections to the addition of the language in
9 Condition 3 that TOA will be subject to the approval
10 of DOT as being suggested by Mr. Yee.

11 Also if they have any objections to the
12 additional condition that staff had referenced
13 regarding the status updates.

14 MR. KAMM: We do not. And for the
15 Commission's information I'm not sure it was in the
16 complete record as forwarded to you. But we did -- we
17 already did an intersection analysis. And we
18 submitted it to DOT and they did approve it. And that
19 was the basis for their allowing us to amend the
20 condition.

21 COMMISSIONER DEVENS: I understand. I just
22 wanted know if you had any objection to the Condition
23 3 as being proposed with the additional language that
24 Mr. Yee had suggested be included.

25 MR. KAMM: We do not.

1 COMMISSIONER DEVENS: Thank you.

2 MR. KAMM: It's acceptable.

3 COMMISSIONER DEVENS: Thank you.

4 PRESIDING OFFICER CONTRADES: Any further
5 questions? Is the County going to make a
6 presentation?

7 MR. JUNG: We can answer questions. But
8 regard to Conditions 1 and 2 that was what was
9 requested of the Commission. And I think the DOT
10 requested that Condition 3 be amended. So given it's
11 a state highway connected to a private driveway we
12 have no objection to Condition 3 being amended as
13 well.

14 PRESIDING OFFICER CONTRADES: Does anyone
15 have any questions for the County? If not, Bryan,
16 Office of Planning going to make a presentation?

17 MR. YEE: I'm sorry, that was our
18 presentation, my public comments.

19 PRESIDING OFFICER CONTRADES: What about
20 Mr. McCormick?

21 MR. YEE: There's a DOT witness there.
22 He's certainly welcome to say anything he would like.
23 My understanding he was there to answer any questions
24 or any concerns.

25 MR. MCCORMICK: I'll just answer any

1 questions you have.

2 PRESIDING OFFICER CONTRADES: Does anyone
3 have any questions for Mr. McCormick?

4 COMMISSIONER PILTZ: Let me ask a question,
5 Mr. Chair.

6 PRESIDING OFFICER CONTRADES: Go ahead.

7 COMMISSIONER PILTZ: Has the roadway
8 improvements at the intersection where it joins the
9 private drive, has that been agreed upon? And where
10 are we in that particular instance?

11 MR. McCORMICK: I'm confused on that
12 question. The improvements that were originally
13 required? Is that what you're talking about?

14 COMMISSIONER PILTZ: That's correct, yes.

15 MR. DAVIDSON: Excuse me, Chair. Let's
16 swear him in.

17 RAYMOND McCORMICK,
18 being first duly sworn to tell the truth, was examined
19 and testified as follows:

20 THE WITNESS: I do.

21 PRESIDING OFFICER CONTRADES: Go ahead.

22 THE WITNESS: Let me just discuss this a
23 little bit, see if I can get to the answer to your
24 question. We, on our side we have met with the
25 Applicant's representative. And we have actually run

1 some reviews out in that area ourselves. Our primary
2 goal out there is safety and those turning movements
3 in and out of that school.

4 And we have taken their analysis from a
5 reputable consultant, which we have used that
6 consultant before for other reviews. They used the
7 same one that we use periodically. And based on what
8 they found there are certain things we don't need
9 right now. We don't need a turn lane, a left-turn
10 lane in. There was a condition in there for signal.
11 We definitely don't have a warrant for one.

12 At this point this is why we put the
13 condition in for the five year review and approval
14 because DOT -- anything that gets turned in as far as
15 Traffic Impact Analysis would require our approval.
16 That was in our letters.

17 I'm not sure how it slipped out at some
18 point but it was in there. I thank you all for
19 bringing that up. We want to watch the situation. If
20 things change over there, definitely we wouldn't be
21 waiting five years to see if there was a change,
22 waiting the five years on an analysis. But we run
23 continually accident analysis on areas. And that
24 particular area is not one of our high accident
25 locations.

1 So in answer to your question I think as far
2 as the turn lane the acceleration or decel lanes were
3 already installed. That was part of the original
4 permit.

5 COMMISSIONER PILTZ: Okay. Let me ask you,
6 then you're satisfied with saying that whatever's
7 required a five year it will happen within the next
8 five years, is that correct?

9 THE WITNESS: That's correct.

10 COMMISSIONER PILTZ: All right. Thank you.

11 THE WITNESS: No more questions for me?

12 PRESIDING OFFICER CONTRADES: Any further
13 questions? Okay. Then what is the pleasure of the
14 Commission?

15 COMMISSIONER DEVENS: Mr. Chair, I'm ready
16 to make a motion on this matter.

17 PRESIDING OFFICER CONTRADES: Go ahead,
18 Vlad.

19 COMMISSIONER DEVENS: I'd like to move to
20 amend Condition 1 to read as follows: Interior
21 roadway and waterline improvements shall be provided
22 and/or extended in order to service all further
23 development on the property.

24 Condition 2 to be amended as follows: The
25 Applicant shall manage and maintain the compacted

1 gravel surface roadways to a minimum width of 16 feet.
2 The County of Kaua'i shall be absolved of any
3 liability issues related to these unimproved access
4 roadways from Kaumuali'i Highway to and within the
5 school and cabin facilities.

6 Condition 3 to be amended as follows: The
7 Applicant shall conduct a Traffic Operational Analysis
8 as approved by the DOT at the intersection of
9 Kaumuali'i Highway and the roadway to Kahili Mountain
10 Park every five years to determine if improvements at
11 the intersection such as a left-turn lane,
12 acceleration lane, and deceleration lane, are
13 required. The Applicant shall be required to pay for
14 and construct all improvements recommended by the
15 analysis.

16 In addition to those amendments to those
17 three conditions I'd also propose that Condition No. 8
18 be amended for the typo that we have there. It
19 currently reads, "The Applicant is advised that prior
20 to an..." instead of a-n it should be and a-n-d". The
21 rest of the condition would remain the same.

22 Last, like to propose supplemental condition
23 to reads as follows: "On each anniversary date of this
24 Decision and Order, the Applicant shall file annual
25 reports to the Land Use Commission and the County of

1 Kaua'i Planning Department in connection with the
2 status of the subject project and the Applicant's
3 progress in complying with the conditions imposed
4 herein. The annual report shall be submitted in a
5 form prescribed by the Executive Officer of the
6 Commission."

7 That's all I have for the motion, Chair
8 Contrades.

9 PRESIDING OFFICER CONTRADES: Is there a
10 second?

11 COMMISSIONER WONG: Mr. Chairman, I second
12 the motion.

13 PRESIDING OFFICER CONTRADES: It's been
14 moved by Commissioner Devens, seconded by Commissioner
15 Wong to approve the amendments as read by Commissioner
16 Devens. Is there any discussion?

17 COMMISSIONER DEVENS: Mr. Chair, I'd like to
18 say I think the school has made good faith efforts,
19 and has been diligent in this matter from the
20 beginning which was brought to our attention that
21 there may be many issues. I'd like to say I believe
22 these amendments are fair and reflect their efforts in
23 this case.

24 PRESIDING OFFICER CONTRADES: Thank you.
25 Any further discussion? If not, Dan, would you please

1 take a vote for us.

2 MR. DAVIDSON: Thank you, Chair Contrades.
3 Motion to amend SP87-364 as set forth by Commissioner
4 Devens.

5 Commissioner Devens?

6 COMMISSIONER DEVENS: Yes.

7 MR. DAVIDSON: Commissioner Wong?

8 COMMISSIONER WONG: Yes.

9 MR. DAVIDSON: Commissioner Piltz?

10 COMMISSIONER PILTZ: Yes.

11 MR. DAVIDSON: Commissioner Chock?

12 COMMISSIONER CHOCK: Yes.

13 MR. DAVIDSON: Commissioner Kanuha?

14 COMMISSIONER KANUHA: Yes.

15 MR. DAVIDSON: Chair Contrades?

16 PRESIDING OFFICER CONTRADES: Yes.

17 MR. DAVIDSON: The motion passes six/zero,
18 Chair.

19 PRESIDING OFFICER CONTRADES: Thank you,
20 all. And I now return this to you, Randy. It's all
21 yours.

22 COMMISSIONER PILTZ: Okay. Since there are
23 no other items on our agenda we're adjourned. Thank
24 you very much.

25 (The proceedings were adjourned at 9:35 a.m.)

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C E R T I F I C A T E

I, HOLLY HACKETT, CSR, RPR, in and for the State of Hawai'i, do hereby certify;

That I was in Honolulu, acting as court reporter in the foregoing LUC matter on the 9th day of April 2010

That the proceedings were taken down in computerized machine shorthand by me and were thereafter reduced to print by me;

That the foregoing represents, to the best of my ability, a true and correct transcript of the video-conference proceedings had in the foregoing matter.

DATED: This _____ day of _____ 2010

HOLLY M. HACKETT, CSR #130, RPR
Certified Shorthand Reporter

