

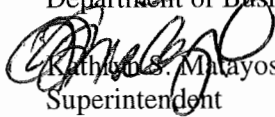


STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

July 28, 2015

TO: Daniel E. Orodener
Executive Officer, Land Use Commission
Department of Business, Economic Development and Tourism

FROM:  Kathryn S. Matayoshi
Superintendent

SUBJECT: **2015 Annual Report for LUC Docket No. A11-794**
State of Hawaii, Department of Education
Kihei, Maui, Hawaii, Maui Tax Map Key No.: 2-2-02:81

LAND USE COMMISSION
STATE OF HAWAII
2015 JUL 28 A 10:07

Pursuant to the Condition No. 22 in the Decision and Order in the above referenced docket, State of Hawaii, Department of Education (DOE) is pleased to provide this annual progress report to the Land Use Commission, the Office of Planning, and the County of Maui Planning Department concerning the current status of compliance with the conditions of approval. An electronic pdf file copy of this annual report will be transmitted by email to your department.

Project Status:

The Land Use Commission of the State of Hawaii (LUC) approved DOE's petition to reclassify approximately 77.2 acres of land at Kihei, Maui, Hawaii from the State Land Use Agricultural District to the State Land Use Urban District for the Kihei High School by order dated July 29, 2013. This letter is DOE's second annual progress report in this case. The Decision and Order sets forth twenty-five (25) conditions of approval regarding the reclassification.

The project is continuing with obtaining planning phase land entitlement approvals and predesign coordination.

Conditions and Compliance:

1. **Highway and Road Improvements.** Petitioner will work cooperatively with the Department of Transportation (DOT) to reach mutually agreeable solutions. Petitioner shall abide by, complete and/or submit the following:
 - a. The Traffic Impact Analysis Report (TIAR) shall be revised and accepted by DOT prior to Petitioner executing a contract for the design of Phase I of the Project. The TIAR shall be structured to show assumptions about, traffic impacts of, and mitigations for both Phase I of the Project only and also the full build out of the Project. Petitioner shall submit three

updated TIARs for the Project: the first one full year after opening of Phase I of the Project, the second with DOT approval prior to the issuance of any certificate of occupancy for Phase II of the Project, and the third with DOT approval one full year after full build out of Phase II of the Project. Should there be delays over three years between preparation of the updated TIAR one full year after opening of Phase I and the scheduled issuance of the certificate of occupancy for Phase II or any potential later Phasing, Petitioner shall submit an additional updated TIAR at DOT's request. All requirements and criteria for the TIAR and updated TIARs shall be agreed and approved by DOT. All project generated traffic shall be mitigated at Petitioner's expense as recommended or required in any of the TIARs approved by DOT. Petitioner shall submit copies of all TIARs and TIAR updates to the State of Hawaii DOT for review and approval, and to the County of Maui Department of Public Works for review and comment.

- b. Petitioner shall complete a pedestrian route study for Phase I of the Project which includes ingress and egress of pedestrians through defined location(s) approved by DOT and shall analyze compliance with the proposed warrants in FHWA/RD-84/082 (July 1984) to the satisfaction of DOT. The pedestrian route study and analysis shall be completed and approved prior to Petitioner executing a contract for the design of Phase I of the Project. Petitioner shall cause to be constructed, or ensure that there is an available above or below ground pedestrian crossing and implement such mitigation or improvements as may be required or recommended by the study and analysis to the satisfaction of DOT prior to opening Phase I of the Project. Petitioner shall submit three updated pedestrian route studies and analyses for the Project: the first one full year after opening of Phase I of the Project, the second with DOT approval prior to the issuance of any certificate of occupancy for Phase II of the Project, and the third with DOT approval one full year after full build out of Phase II of the Project. Should there be delays over three years between preparation of the updated pedestrian route study one full year after opening Phase I and the scheduled issuance of the certificate of occupancy for Phase II or any potential later Phasing, Petitioner shall submit an additional updated pedestrian route study at DOT's request. Petitioner shall implement such mitigation or improvements as may be required or recommended by the updated studies and analyses to the satisfaction of DOT. Petitioner shall submit copies of the studies and analyses to the State of Hawaii DOT for review and approval, and to the County of Maui Department of Public Works for review and comment.
- c. Petitioner shall make transportation improvements relating to the direct impacts at the intersection of Kulanihako Street and Piilani Highway acceptable to DOT and as set forth in the current and revised TIAR for Phase I of the Project, including full funding of improvements and dedication of land prior to the issuance of a certificate of occupancy for Phase I of the Project. The access road to the high school shall be perpendicular to Piilani Highway for a minimum distance of 200 feet. For improvements as required or recommended in an updated TIAR for any other Phase of the Project, Petitioner shall provide all required transportation improvements to support the planned enrollment of the school, and complete all associated transportation improvements prior to the issuance of a certificate of occupancy.
- d. Petitioner shall install paved shoulders along Piilani Highway fronting the high school, and provide accommodations for bicycles to the mutual agreement of Petitioner and DOT.

- e. Petitioner shall plan, design, and construct all other improvements required to mitigate project generated or related transportation impacts, in accordance with the revised TIAR for Phase I of the Project, or any of the updated TIARs, and as approved by the DOT.
- f. Petitioner shall address traffic noise levels along Piilani Highway with noise compatible sound abatement measures to comply with DOT's noise policy.

Compliance: The revised TIAR and draft Pedestrian Route Study were submitted to DOT and Maui County Department of Public Works in November 2014. DOE is coordinating with DOT and is awaiting review and approval of both documents.

- 2. **Civil Defense.** Petitioner shall permit the State of Hawaii Department of Defense, Office of Civil Defense or County of Maui Civil Defense Agency to construct and maintain a solar-powered civil defense warning siren at a mutually agreeable location on the Petition Area.

Compliance: Petitioner inquiry to State of Hawaii Department of Defense, Office of Civil Defense indicated that a siren is planned for location in the future residential development and not at the school. DOE will provide written documentation in a future report.

- 3. **Archaeological Inventory Survey and Historic Preservation Mitigation Plan.** Petitioner shall prepare, submit to, and obtain approval from the State of Hawaii Department of Land and Natural Resources, Historic Preservation Division (SHPD) of an archaeological monitoring plan to protect historic sites in the general vicinity of the Petition Area prior to commencement of any ground altering activities. The plan shall be implemented, with a report of monitoring activities submitted to the SHPD upon completion of work.

Compliance: Petitioner intends to have archaeological monitoring plan prepared for approval by the SHPD prior to construction. No plan has been prepared to date for Phase I of the Project. The DOE has prepared and submitted to SHPD an archaeological monitoring plan for the development of two non-potable water wells as part of the predesign work needed for Phase I of the Project.

- 4. **Unidentified Finds.** In the event any previously unidentified human skeletal remains or archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings, or loi walls are identified during construction activities, Petitioner shall cease work in the immediate vicinity of the find. Petitioner shall immediately notify SHPD, and comply with requirements of Chapter 6E, HRS, and applicable regulations. All construction activity in the vicinity of the find shall cease until SHPD has determined the significance of the find, and has issued an archaeological clearance that appropriate mitigation measures have been implemented in order for subsequent work to proceed.

Compliance: No construction to date. Petitioner will comply.

- 5. **Established Access Rights Protected.** Petitioner shall observe any legal access rights of native Hawaiians for legally recognized purposes.

Compliance: Petitioner will comply.

6. **Flora and Fauna.** Petitioner shall ensure that all exterior lighting fixtures are down-shielded to minimize the harmful effects of lighting on endangered avifauna.

Compliance: Petitioner will comply.

7. **Air Quality Monitoring.** Petitioner shall participate in an air quality-monitoring program if required by the State of Hawaii Department of Health.

Compliance: Petitioner will comply.

8. **Notification of Potential Nuisances.** Petitioner shall disclose to all students and parents of the school to be developed on the Petition Area that potential odor, noise and dust pollution may result from agricultural uses on adjacent lands.

Compliance: Petitioner will comply.

9. **No Restraint on Farming Operations.** Petitioner shall not take any action that would interfere with or restrain farming operations conducted in a manner consistent with generally accepted agricultural and management practices on adjacent or contiguous lands in the Agricultural District.

Compliance: Petitioner will comply.

10. **Provisions of the Hawaii Right to Farm Act.** Petitioner shall notify all students and parents of the school to be developed on the Petition Area that the Hawaii Right to Farm Act, Chapter 165, HRS, limits the circumstances under which pre-existing farm activities may be deemed a nuisance if there are any lands in the Agricultural District adjacent to the Petition Area.

Compliance: Petitioner will comply.

11. **Drainage Improvements.** Petitioner shall fund the design, construction and maintenance of storm water and drainage system improvements to prevent increased storm water runoff resulting from the development of the Petition Area from entering Waipuilani Gulch or adversely affecting State highway facilities in compliance with appropriate Federal, State, and County laws and rules, based on 24 hour of runoff from a 100 year storm event. To the extent economically and physically feasible, Petitioner shall implement Best Management Practices and incorporate low impact development practices for onsite storm water capture and reuse into site planning and landscape planning for the Petition Area to control water quality and mitigate nonpoint sources of pollution.

Compliance: Petitioner will comply.

12. **Integrated Solid Waste Management Plan.** Petitioner shall cooperate with the State of Hawaii Department of Health and County of Maui Department of Environmental Management to conform to the program goals and objectives of Chapter 342G, HRS, and the County of Maui's approved integrated solid waste management plan in accordance with a schedule and timeframe satisfactory to the State of Hawaii Department of Health. Petitioner shall, in coordination with appropriate State and County government agencies, assist in the planning and promotion of solid waste recycling facilities within the proposed development.

Compliance: Petitioner will comply.

13. **Water Resources Allocation.** Petitioner shall provide adequate potable water storage and transmission facilities and improvements to accommodate the proposed development of the Petition Area to the satisfaction of the County of Maui Department of Water Supply and other appropriate State and County government agencies.

Compliance: Petitioner will comply.

14. **Best Management Practices.** Petitioner shall implement best management practices applicable to the proposed land use in order to minimize infiltration and runoff from construction and vehicle operations to reduce or eliminate soil erosion and ground water pollution, and effect dust control measures during and after the development process in accordance with the State Department of Health guidelines.

Compliance: Petitioner will comply.

15. **Water Conservation Measures.** Petitioner, where feasible, shall implement water conservation measures and best management practices, such as use of water efficient plumbing fixtures and planting of endemic, indigenous, and drought tolerant plants and turf.

Compliance: Petitioner will comply.

16. **County Conditions.** Petitioner shall work with the County of Maui to the satisfaction of the County of Maui Planning Department during the permitting process, to implement the following improvements to the Kihei High School campus:

- a. Pedestrian and bicycle access to and from the school campus to connect to current and future pedestrian and bicycle networks in the vicinity of the campus;
- b. Bicycle friendly improvements on the school campus, and if requested by the Maui County Department of Transportation, an area for public transit access to the school campus;
- c. Overflow parking and lighting to accommodate special events to be held on the school campus;
- d. Consideration of best practices in Crime Prevention through Environmental Design (CPTED) elements in campus design; and
- e. To the extent not inconsistent with the provision of a drainage detention basin, overflow parking and CPTED design elements, a landscaped buffer on the campus fronting Piilani Highway.

Compliance: Petitioner will comply.

17. **Energy Conservation.** Petitioner shall incorporate and implement energy conservation, sustainable design, and environmental stewardship measures in the design and construction of Kihei High School pursuant to the Hawaii – Collaborative for High Performance Schools (HI-CHPS) Criteria in order to qualify for the HI-CHPS Verified designation.

Compliance: Petitioner will comply. Preliminary predesign work has been undertaken to identify means of energy conservation and power production on site.

18. **Infrastructure Deadline.** Petitioner shall complete construction of the proposed backbone infrastructure, including the primary roadways and access points, internal roadways, and water supply, sewage, electrical infrastructure and buildings for Phase I of Kihei High School within ten (10) years from the date of filing of the Commission's decision and order.

Compliance: The County of Maui approved a change to the Kihei-Makena Community Plan Land Use Map and a change in zoning for the Petition Area on June 20, 2014.

19. **Order to Show Cause.** If Petitioner fails to complete construction of the proposed backbone infrastructure as described above on the Petition Area then the Commission may, on its own motion or at the request of any party or other interested person, issue an Order to Show Cause requiring Petitioner to appear before the Commission to explain why the Petition Area should not revert to its previous Agricultural District classification or be changed to a more appropriate classification.

Compliance: The County of Maui approved a change to the Kihei-Makena Community Plan Land Use Map and a change in zoning for the Petition Area on June 20, 2014.

20. **Compliance with Representations to the Commission.** Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission. Failure to so develop the Petition Area may result in reversion of the Petition Area to its former classification, or change to a more appropriate classification.

Compliance: The County of Maui approved a change to the Kihei-Makena Community Plan Land Use Map and a change in zoning for the Petition Area on June 20, 2014.

21. **Notice of Change to Ownership Interests.** Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Area, prior to development of the Petition Area. This condition shall not require notice of mortgage financing, and shall be satisfied by the giving of notice only, and shall not require approval by the Commission.

Compliance: Notice will be given to the Commission if any transfers are proposed.

22. **Annual Reports.** Petitioner shall provide timely and without any prior notice, annual reports to the Commission, the Office of Planning and the Maui County Planning Department in connection with the status of the development proposed for the Petition Area, and Petitioner's progress in complying with the conditions imposed. The annual report shall be submitted in a form prescribed by the executive officer of the Commission. The annual report shall be due prior to or on the anniversary date of the Commission's approval of the Petition.

Compliance: This letter is the second annual report submitted in compliance with this condition.

23. **Release of Conditions Imposed by the Commission.** Petitioner shall seek from the Commission full or partial release of these conditions as to all or any portion of the Petition Area upon assurance acceptable to the Commission of satisfaction of these conditions.

Compliance: When requesting the release of a condition, DOE will file the appropriate motions upon formal acknowledgment from the proper agencies of their satisfaction.

24. **Statement of Imposition of Conditions.** Within seven (7) days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall: (a) record with the Bureau of Conveyances a statement that the Petition Area is subject to conditions imposed by the Commission in the reclassification of the Petition Area, and (b) file a copy of such recorded statement with the Commission.
25. **Compliance:** Petitioner has recorded the Statement of Impositions of Conditions by Land Use Commission dated October 2, 2013 with the Bureau of Conveyances of the State of Hawaii as Document No. A-50230674.
26. **Recording of Conditions.** Petitioner shall record the conditions imposed by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawaii Administrative Rules.
- Compliance:** Petitioner has recorded the Declaration of Conditions dated December 3, 2014 with the Bureau of Conveyances of the State of Hawaii as Document No. A-54500615. A copy was hand delivered to your office on December 4, 2014.

If you have any question, please call Gaylyn Nakatsuka of the Planning Section, Facilities Development Branch at 377-8301.

KSM:jmb

c: Leo R. Asuncion, Jr., Acting Director, Office of Planning, DBEDT
William Spence, Director, County of Maui Planning Department
Facilities Development Branch