



STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

LAND USE COMMISSION

P.O. Box 2359
Honolulu, Hawaii 96804-2359
Telephone: 808-587-3822
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May 10, 2005

Benjamin M. Matsubara, Esq.
Matsubara, Lee & Kotake
888 Mililani Street, Eighth Floor
Honolulu, Hawaii 96813

Dear Mr. Matsubara:

Subject: Kukui'ula Project, Koloa, Hawaii
Compliance with Condition No. 20 of County of Kauai Ordinance
No. PM-2004-370

I am in receipt of your letter of April 6, 2005 and request for comments with respect to implementation of Condition No. 20 of County Ordinance No. PM-2004-370 as it relates to the Land Use Commission (LUC). Please find my comments below.

1. On May 18, 1995, an order was issued by the LUC which reclassified approximately 537 acres of land at Lawai, Koloa, Island of Kauai into the State Land Use (SLU) Urban District and incrementally reclassified another approximately 285 acres of land. This reclassification was subject to 41 conditions of approval. Your recital of LUC condition of approval #9 relating to a fair share contribution for school facilities to the satisfaction of the State Department of Education (DOE) is accurate.
2. On June 22, 1998, the LUC's order was supplemented and modified. The LUC's order retained condition of approval #10 relating to the petitioner providing a fair share contribution for school facilities to the satisfaction of the DOE.

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3. On November 23, 1999, Kukui'ula Development Corporation ("KDC" or "Developer") entered into an Educational Contribution Agreement for the project, which mirrors the requirements of the LUC condition of approval.
4. On August 2004, the County of Kauai approved Ordinance No. PM-2004-370 granting County zoning designations for the project. The relevant portion of condition #20 of the ordinance did require KDC to seek the release of the new school dedication agreement.
5. On March 21 2005, the DOE did respond to a request by KDC for release from its agreement to provide a parcel along Poipu Road for an elementary school site and respectfully declined to release the 12-acre elementary school site within the Kukui'ula project.

It would appear that you have correctly recited the LUC's condition of approval and have entered into an appropriate Educational Contribution agreement with the DOE. It is also apparent that per the Kauai County ordinance granting county zoning designations for the project, you have requested a release from the DOE fair share agreement. As KDC's request for release has been declined by the DOE and the record for LUC Docket No. A93-696 is closed (except for annual reporting and LUC monitoring of KDC's compliance with its conditions of approval), there does not appear to exist any matter which requires the attention of the LUC.

Please do not hesitate to contact me at 587-3826 should you require further clarification or assistance.

Sincerely,


ANTHONY J.H. CHING
Executive Officer