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COPY

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
 )  
KAMEHAMEHA SCHOOLS BERNICE PAUHI )  
BISHOP ESTATE )  
 )  
For a Special Permit to Establish )  
and Operate an Elementary and )  
Secondary School Campus on )  
Approximately 265.25 Acres Within )  
the State land Use Agricultural )  
District in Kea`au, Puna, Hawaii; )  
Tax Map Key No.: 1-6-03:012 (por.) )  
\_\_\_\_\_ )

DOCKET NO. SP00-393  
SECOND ANNUAL  
PROGRESS REPORT OF  
KAMEHAMEHA SCHOOLS

2002 APR - 3 P 12:35

LAND USE COMMISSION  
STATE OF HAWAII

In the Matter of the Petition of )  
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OFFICE OF STATE PLANNING, )  
STATE OF HAWAII )  
 )  
To Amend the Agricultural Land Use )  
District Boundary into the Urban )  
Land Use District for Approximately )  
660 Acres of Land at Kea`au, Puna, )  
Hawaii, Hawaii, Tax Map Key No.: )  
1-6-03: por. 3, por. 7, por. 8, )  
por. 11, por. 12, por. 13, por. 14, )  
por. 15, por. 68, 76 and 84 )  
\_\_\_\_\_ )

DOCKET NO. BR93-699  
SECOND ANNUAL  
PROGRESS REPORT OF  
KAMEHAMEHA SCHOOLS

SECOND ANNUAL PROGRESS REPORT OF  
KAMEHAMEHA SCHOOLS

KAMEHAMEHA SCHOOLS ("KS") submits its second annual progress report pursuant to Condition No. 21 imposed by the Land Use Commission of the State of Hawaii (the "Commission") by orders filed in both of the above-captioned dockets on April 7,

2000.

#### I. STATUS OF THE PROJECT

KS is presently operating and constructing its East Hawaii campus (the "Campus") on the land (the "Property") that is the subject of the conditions imposed in the above-captioned petitions by the Commission. In August 2001, KS completed construction of Phase I of the Campus, the middle school. Two classroom buildings presently serve approximately 144 students in grades 6, 7 and 8.

KS is presently constructing Phase II, the elementary school. KS expects to complete construction of three classroom buildings to serve approximately 256 students in grades K-5 for occupancy in August 2002.

KS is presently completing design and planning of Phase III, the high school. KS expects to commence mass grading for the high school area in April 2002, and complete construction of six buildings and related facilities for approximately 576 students in grades 9-12 by August 2003.

KS is presently in design and planning of specialized facilities that comprise Phase IV of the Campus such as the music and art buildings, and a vocational tech building that comprises Phase V of the Campus. KS expects to start construction of Phase IV facilities in December 2002 and complete construction by August 2004, and to start construction of Phase V facilities in August 2003 and to complete construction by August 2005.

## II. PROGRESS IN SATISFYING CONDITIONS

KS submits the following report of its progress in satisfying each of the conditions imposed by the Commission.

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

KS is responsible for complying with all of the stated conditions.

2. Prior to the start of construction, Final Plan Approval for the initial Campus development and subsequent Campus expansion shall be secured from the Planning Director in accordance with the Zoning Code Section 25-2-72. Plans shall identify existing and proposed structures, fire protection measures, paved driveways and paved parking stalls (asphalt or asphalt-concrete), fencing, construction fencing and detailed landscaping associated with the proposed uses.

The Hawaii County Planning Director granted Final Plan Approval for Phase I of construction, the middle school, on March 22, 2000, and for Phase II, the elementary school, on March 20, 2001. KS submitted an application for Final Plan Approval for Phase III, the high school on February 5, 2002. Plans submitted for Final Plan Approval include the information required by the Commission. KS is completing its planning and design for the remainder of the Campus.

3. The applicant shall install a chain link fence surrounding the proposed development area, with construction barriers between the operating areas and the remaining areas to be developed prior to the issuance of a certificate of occupancy for any portion of the initial Campus development. The height of the fence shall be determined during Final Plan Approval.

KS has installed a chain link fence around Phase I of the Campus on the Property. The Planning Director did not

mandate any minimum fence height.

4. Final Subdivision Approval shall be secured from the Planning Director within five (5) years from the effective date of this permit.

The Planning Director granted final subdivision approval on May 11, 2000, for the subdivision of Lot 8992 into the Property, being Lot 8992A, area 302 acres, and Lot 8992B, the remaining area to be retained by W.H. Shipman, Limited.

5. The applicant shall submit a Traffic Signal Warrant Study for review and approval by the Department of Transportation and Department of Public Works with a copy to the Planning Director prior to the submittal of plans for Final Plan Approval.

The Department of Transportation customarily requires preparation of a Traffic Signal Warrant Study after intersection improvements are completed. KS will prepare and submit a Traffic Signal Warrant Study in 2002.

6. The applicant shall submit a Traffic Impact Analysis Report (TIAR) for review and approval by the Department of Transportation, Department of Public Works and the Planning Director prior to the submittal of plans for Final Plan Approval for any development of classroom facilities beyond the initial student population of 1,120 students.

KS will submit this TIAR when it submits its application for Final Plan Approval for the classroom facilities for the expanded student population. KS has no present plans for expanding the student population above 1,120 students.

7. The applicant shall provide the following roadway improvements at the intersection of Volcano Highway and Project Access Road/Pa'ahana Street, meeting with the approval of the Department of Transportation:

- a. Construction of a signalized intersection.
- b. Construction of an exclusive right turn lane on

Volcano-bound Volcano Highway to the Project Access Road/Pa'ahana Street.

c. Construction of an exclusive left turn lane on Hilo-bound Volcano Highway to the proposed Project Access Road/Pa'ahana Street.

d. Reconfigure the existing right turn lane on Hilo bound Volcano Highway at Pa'ahana Street to provide a shared through/right turn lane. The shared through/right turn lane on the Hilo side of the intersection should merge into the existing Hilo-bound traffic lane.

e. Construct a shared left turn lane/through lane and an exclusive right turn lane at the Project Access Road and Volcano Highway.

f. Construction of a striped six-foot wide median strip on Volcano Highway on both sides of the intersection.

g. Other roadway improvements to Volcano Highway as required by the State Department of Transportation.

KS has completed construction of all intersection improvements required by the Commission at the intersection of Volcano Highway and Project Access Road/Pa'ahana Street.

8. At any time within two years from the date of this Decision and order, the Commission may review the actual impact of the development on traffic conditions and the effectiveness of applicants mitigation measures. If requested by the Commission, the applicant shall submit a current status report on the traffic conditions to assist the Commission's review. Based on its review and on the information submitted by the applicant, the Commission may require additional traffic mitigation measures and may schedule further reviews.

KS does not believe a review of traffic conditions by the Commission is necessary at this time.

9. The applicant shall be responsible for implementing sound attenuation measures to bring noise levels from vehicular traffic on the Property down to levels acceptable to the State Department of Health and the State Department of Transportation.

KS is constructing all buildings on the Campus using

appropriate sound attenuation measures. All classroom buildings are enclosed and air conditioned.

10. The applicant shall submit a Drainage Report and all recommended improvements to the Department of Public Works in conjunction with the Final Plan Approval.

KS' applications for Final Plan Approval for Phase I of the Campus and Phase II of the Campus both included a drainage plan for these portions of the Campus. KS is completing work on a drainage master plan for the entire Property. Each application for Final Plan Approval will include a plan for the drainage improvements for the applicable portion of the Campus.

11. The applicant shall fund the design and construction of drainage improvements required as a result of the development of the property to the satisfaction of the appropriate State and County agencies.

KS has completed construction of the required drainage improvements for Phase I and is completing construction of the required drainage improvements for Phase II of the Campus. As described above, KS is constructing the required drainage improvements in phases.

12. The applicant shall submit a Solid Waste Management Plan for review and approval by the Department of Health and the Department of Public Works prior to occupancy.

KS will submit a Solid Waste Management Plan to the Department of Health and Department of Public Works in 2002.

13. The applicant shall consult with the Department of Health regarding the proposed wastewater system and if deemed necessary by the Department of Health, conduct monitoring for any potential impacts to groundwater resources.

KS has consulted with the Department of Health

regarding its disposal of wastewater using septic tanks and leaching fields. The Department of Health has not required monitoring of impacts to groundwater resources.

14. The applicant shall have an archaeological inventory survey conducted by a professional archaeologist prior to submitting an application to the County of Hawaii for rezoning or prior to applying for a building permit if county rezoning is not required. The findings of this survey shall be submitted to the State Historic Preservation Division, Department of Land and Natural Resources ("HPD-DLNR") in report format for adequacy review. The HPD-DLNR must verify that the survey report is acceptable, must approve significance evaluations, and must approve mitigation commitments for significant historic sites prior to the applicant submitting an application to the county for rezoning or prior to applying for a building permit if county rezoning is not required.

KS' consultant Scientific Consultants Services, Inc. ("SCS") performed an archaeological inventory survey of the Campus site in October 1999 and identified one historic site with seven surface archaeological features. By letter dated November 30, 1999, HPD-DLNR agreed with SCS' conclusion that the site was no longer significant. This finding was contingent on SCS revising its report to identify the site properly and include the basis for the conclusion that the archaeological rock features were sugar cane features. SCS submitted its revised report in January 2000 to HPD-DLNR. HPD-DLNR concurred with this finding of non-significance, concluding that development of the Campus would have "no effect" on any significant historic site.

15. If significant historic sites are present, then the applicant shall agree to develop and execute a detailed historic preservation mitigation plan prior to any ground altering construction in the area. The HPD-DLNR must approve this plan, and must verify in writing to the Land Use Commission that the plan has been successfully executed.

KS will comply with this requirement.

16. Should any unanticipated sites, including subsurface remains such as burial or cave shelters, be encountered on the property, work within the immediate affected area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work within the affected area shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigation measures have been taken.

KS will comply with this requirement.

17. The applicant shall conduct a flora and fauna survey and prepare and agree to execute a mitigation plan which meets the requirements of the Department of Land and Natural Resources. The Department of Land and Natural Resources must approve the plan and a copy of the approved plan must be submitted to the Land Use Commission prior to the developer and/or landowner applying for county zoning or prior to the applicant applying for county building permits if county rezoning is not required.

With respect to flora, KS' botanist Ron Terry, PhD, conducted a biological reconnaissance/review of the Property in October 1999, in addition to a larger inventory of W.H. Shipman, Limited lands performed by Grant Garish of the University of Hawaii, Hilo, in 1992. Neither Terry nor Garish detected the presence on the Property of any species classified as endangered or threatened, or proposed as a candidate for listing in either category by either U.S. Fish & Wildlife Service or the State of Hawaii Department of Land and Natural Resources ("DLNR").

With respect to fauna, KS' consulting biologist, Tim Ohashi conducted a site inspection on October 17 and 18, 1999, and prepared a survey report entitled "Wildlife Survey, East Hawaii Campus - Kea'au Mauka Site, Kea'au, Hawaii." Mr. Ohashi observed only one endangered species, the Koloa, a Hawaiian duck,



in a stock pond which was previously intermittently maintained on the site, and has since been filed. Following discussions with the DLNR, DLNR approved both the flora and fauna surveys. DLNR concluded that no mitigation measures were required for either flora or fauna. DLNR's only requirement was that if an active 'Io or Hawaiian hawk (an endangered species not observed on the Property but in surrounding areas) nest is detected, construction activity should be halted within 500 meters of the nest and the observation reported to the U.S. Fish & Wildlife Service and DLNR Division of Forestry and Wildlife. Construction activity within the vicinity of the nest should be halted until the U.S. Fish & Wildlife Service and DLNR approve appropriate mitigation measures.

18. The applicant shall establish the special permit use within 5 years of the effective date of the special permit.

KS established the special permit use of the Property for a school in August 2001 when it opened the East Hawaii Campus for students in grades 6, 7 and 8.

19. The applicant shall comply with all applicable rules, regulations and requirements of the affected agencies for the development of the subject property, including the State Department of Transportation, the Department of Health, and the Department of Land and Natural Resources.

KS will comply with this requirement

20. Upon compliance with applicable condition of approval, and prior to the issuance of a certificate of occupancy for any portion of the development, the applicant shall submit a status report, in writing, to the Planning Director and the Land Use Commission.

KS proposes that this progress report serve as the

status report for Phase I and Phase II of Campus development. KS will comply with this requirement for future phases of Campus development.

21. The applicant shall timely provide, without any prior notice, annual reports to the County of Hawaii Planning Commission and the Land Use Commission in connection with the status of the subject property and the applicant's progress in complying with the conditions enclosed herein. The annual report shall be due prior to or on the anniversary date of the issuance of the State Land Use Commission's decision and order. The annual report shall be submitted in a form prescribed by the executive officer of the Land Use Commission.

KS will comply with this requirement.

22. An extension of time for the performance of conditions of the permit may be granted by the Planning Director subject to the approval by the Commission 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).

KS will comply with this requirement.

23. The applicant, its successors or assigns shall indemnify and hold the County of Hawaii and State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors or assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit.

KS will comply with this requirement.


24. The applicant shall develop the area in substantial compliance with the representations made to the Commission.

KS will comply with this requirement.

25. The Land Use Commission may fully or partially release these conditions as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by the applicant.

KS is not seeking the release or modification of any condition at this time.

Honolulu, Hawaii: April 3 2002.

  
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WILLIAM W. L. YUEN, Attorney at  
Law, A Law Corporation

Attorney for Kamehameha Schools

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por. 11, por. 12, por. 13, por. 14, )  
por. 15, por. 68, 76 and 84 )  
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CERTIFICATE OF SERVICE RE SECOND ANNUAL  
PROGRESS REPORT OF KAMEHAMEHA SCHOOLS

I hereby certify that a copy of the SECOND ANNUAL  
PROGRESS REPORT OF KAMEHAMEHA SCHOOLS will be duly served on the  
following parties at their last known addresses by depositing the


same in the U.S. Mail, postage prepaid, on April 3, 2002:

OFFICE OF PLANNING  
State of Hawaii  
State Office Tower  
235 S. Beretania, 6th Floor  
Honolulu, Hawaii 96804

PLANNING DEPARTMENT  
County of Hawaii  
25 Aupuni Street, room 109  
Hilo, Hawaii 96720

W.H. SHIPMAN, LIMITED  
P.O. Box 950  
Kea'au, Hawaii 96749

DATED: Honolulu, Hawaii, April 3, 2002.



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WILLIAM W. L. YUEN, Attorney at  
Law, A Law Corporation

Attorney for Kamehameha Schools