





2. Signature of Each Petitioner. This petition is signed by Petitioner's attorney who is Petitioner's duly authorized agent.


3. Rules in Question. HAR §15-15-50(c)(19) and HAR §15-15-78(a)(1).

4. Statement of Petitioner's Interest. On December 20, 2011, Petitioner filed a Petition to Amend the Land Use District Boundaries to reclassify approximately 77.2 acres of land at Kihei, Maui, Hawaii, identified as Maui Tax Map Key Nos. 2-2-002:081 and 083 (the "Petition Area") from the State Land Use Agricultural District to the State Land Use Urban District for the development and construction of Kihei High School, a public high school (the "Project"). Petitioner intends to file an Amended Petition for the Project.

5. Statement of Petitioner's Position. Petitioner has applied to redistrict the entire Petition Area as set forth in HAR §15-15-78(a)(1). Petitioner seeks a waiver of the requirement contained in HAR §15-15-50(c)(19) that Petitioner submit a schedule and a map for development of the project in increments. Petitioner will initially develop campus facilities sufficient to support approximately 800 students on the Petition Area, and Petitioner intends to develop subsequent facilities on the Petition Area as the population of the surrounding community grows and public funds become available.

6. Memorandum in Support Containing the Reasons and Legal Authorities In Support of the Petition. Petitioner's Memorandum in Support of the Petition is attached.

DATED: Honolulu, Hawaii November 21, 2012.



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DEPARTMENT OF EDUCATION



Statement (the "FEIS"). Petitioner intends to file an Amended Petition (collectively the "Petition") for the Project that includes the FEIS.

Petitioner intends to develop and construct the Project in two phases. Phase I consists of development of the Kihei High School campus on the entire Petition Area, and includes construction of all essential classrooms and other buildings to serve a population of approximately 800 students. Phase II will involve campus expansion on an in-fill basis within the existing campus footprint. A proposed Conceptual Phasing Plan for the Project is shown as Figure 2-2 in the DEIS.

Phase I involves construction of on-site and off-site infrastructure improvements for the entire Petition Area, including campus driveways, fire lanes, parking and walkways, and Piilani Highway improvements including traffic signalization, grading, drainage and utilities. The major features are two classroom houses, an administrative and student center, library, cafeteria, selected elective buildings and selected athletics facilities. Current plans contemplate developing Phase I utilizing a design-build contract that combines design and construction of the entire campus under a single contract. Although the design-build contract will specify the development program for the campus, the exact location of buildings and improvements within the Petition Area will be determined during the design phase.

Petitioner intends to commence design and construction of Phase I as soon as all discretionary permits have been obtained. Assuming approval of necessary entitlements and appropriation of sufficient funds, design and construction is anticipated to take approximately two years to complete, prior to school opening projected for 2016. In any event Petitioner expects to complete Phase I within ten years of reclassification.

Phase II would consist of the construction of additional classroom houses and other facilities to be constructed when projected enrollment increases justify the improvements.

Completion of Phase II would increase the school's capacity to a maximum student population of approximately 1,650 students. Phase II facilities, which could include construction of two additional classroom houses, additional electives buildings, an auditorium and a swimming pool and remaining athletics facilities, will be integrated in the campus master plan. Phase II facilities and future improvements will not be located in a single contiguous area within the Petition Area.

The design and construction schedule for Phase II is not predetermined, but will also be based on the rate of population growth in South Maui and the availability of State funding. Individual elements of Phase II could be constructed separately, with projected completion of Phase II construction scheduled to be approximately ten years after the completion of Phase I. A complete discussion of these factors and the proposed schedule is included in the DEIS.

Backbone infrastructure and facilities for the entire Project will be developed over the entire Petition Area during Phase I. Therefore, the entire Petition Area should be reclassified to the Urban District at one time rather than in increments. Petitioner requests that the Petition be exempted from the requirements for a time schedule and a map of development in increments set forth in HAR §15-15-50(c)(19) due to Petitioner's inability to forecast the community population growth and the availability of public funds at the present time. Petitioner is requesting that the entire Petition Area be classified to the Urban District pursuant to HAR §15-15-78(a)(1).

C. DISCUSSION

HAR §15-15-50(c)(19) requires that a petition for reclassification to the Urban District include a plan for incremental development if the project cannot be substantially completed within ten years from Commission approval, and each increment cannot be longer than a ten-year period. Petitioner proposes to develop complete campus facilities for a school

population of approximately 800 students within ten (10) years. Petitioner cannot conclusively determine at this time when the South Maui student population will increase sufficiently to justify construction of the additional classrooms and facilities or when funding will be obtained to build the additional Phase II improvements. Insofar as Petitioner intends to develop infrastructure and conduct rough grading and site work on the entire Petition Area in a single phase, it is impractical for Petitioner to provide an incremental site plan or time schedule for the Project.

HAR §15-15-34(b) provides that "[f]or good cause shown the commission may waive or suspend any rule. No rule relating to jurisdictional matters shall be waived or suspended by the commission." The time schedule requirement for HAR§15-15-50(c)(19) is not jurisdictional. Therefore, the Commission is authorized to waive the time schedule requirement if good cause is shown. Petitioner believes that good cause is present here given that Petitioner will be providing a much needed high school to serve South Maui. Due to Petitioner's plans to develop the entire Petition Area, the difficulty of predicting population growth creating the demand for additional classrooms and other school facilities, and the uncertain availability of public funding, it is impossible for Petitioner to provide a definitive time schedule or a map sufficient to develop the Petition Area in increments.

Petitioner's request is consistent with HAR §15-15-50(c)(8) which requires that petitions for district boundary amendments include financial statements and a description of project funding, but expressly waives the financial reporting requirement for State and County agencies in recognition of the unique nature and limitations associated with the funding of government projects.


HAR §15-15-78(a)(1) permits the Commission to reclassify the entire Petition Area if it appears to the Commission that full development of the Petition Area cannot

substantially completed within ten years after the date of the Commission's approval and that the incremental development plan can be substantially completed, and if the Commission is satisfied that all other pertinent criteria for redistricting the premises are present. In this case, not only can the plan be substantially completed, but Petitioner intends to develop the entire Petition Area into a functioning high school with a capacity to serve 800 students within the initial ten years planned for Phase I. Phase II of the Project simply expands the capacity of the school on an infill basis to accommodate the growing South Maui population. It would therefore be appropriate to reclassify the entire Petition Area to the Urban District in a single phase. All other pertinent criteria for redistricting are addressed in the DEIS and the Petition.

D. CONCLUSION.

Petitioner respectfully requests that the Land Use Commission issue an order waiving the time schedule and map requirements of HAR §15-15-50(c)(19) due to Petitioner's inability to forecast the rate of community population growth and availability of public funds at the present time.

DATED: Honolulu, Hawaii, November 21, 2012.

  
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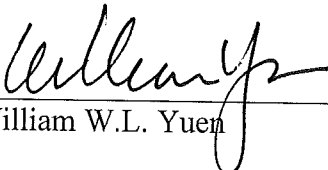
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DATED: Honolulu, Hawaii, November 21, 2012.

  
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