

ORIGINAL

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

LAND USE COMMISSION
STATE OF HAWAII
2012 DEC 14 A 11:17

In The Matter Of The Petition Of)	DOCKET NO. DR12-47
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STATE OF HAWAII, DEPARTMENT)	DECLARATORY ORDER
OF EDUCATION)	
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For Declaratory Order)	
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_____)	

DECLARATORY ORDER

On November 21, 2012, William W.L. Yuen, Esq., on behalf of the State of Hawai'i, Department of Education ("Petitioner") filed a Petition for Declaratory Order ("Petition"), pursuant to Section 15-15-99, Hawai'i Administrative Rules ("HAR"), to waive the requirement contained in Section 15-15-50(c)(19), HAR, that Petitioner submit a schedule and a map for development of the Project¹ in increments in order that Petitioner may request the Commission to reclassify the entire property as set forth in Section 15-15-78(a)(1), HAR.

¹ Details of the Project are discussed in the Findings of Fact below.

The Commission considered the Petition at its meeting on December 6, 2012. Neither Petitioner, nor the County of Maui Planning Department (“County”), or the State Office of Planning (“OP”) felt that further hearings were necessary.

The Commission, having heard and examined the evidence, argument of counsel, and the positions of the County and OP, along with the pleadings filed herein, hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On November 21, 2012, Petitioner filed the Petition and Memorandum in Support of Petition for Declaratory Order.
2. On November 28, 2012, the Commission mailed its meeting agenda for its December 6, 2012 meeting on Maui, to Petitioner, the County, OP, and the Statewide and Maui mailing lists.
3. On December 3, 2012, the County filed its Statement in Support of Petitioner State of Hawai‘i, Department of Education’s Petition for Declaratory Order.
4. On December 6, 2012, the Commission considered the Petition at its meeting in Kahului, Maui, pursuant to section 15-15-100, HAR. William W.L. Yuen, Esq., appeared on behalf of Petitioner. Also present were Bryan Yee, Esq., and Scott Forsyth on behalf of OP; and James Giroux, Esq., on behalf of the County.
5. There was no public testimony on the matter.
6. At the December 6, 2012 meeting, the Chair asked whether any of the parties had any additional pleadings they wished to file or present. Mr. Yuen

responded that he did not. Mr. Yee responded that OP would rest on its oral statement of support. Mr. Giroux responded that the County supports the Petition as stated in their written submittal.

DESCRIPTION OF REQUEST

7. On December 20, 2011, the Petitioner filed a Petition to Amend the Land Use District Boundaries to reclassify approximately 77.2 acres of land at Kīhei, Maui, Hawai'i, identified as Tax Map Key Numbers 2-2-002:081 and 083, from the State Land Use Agricultural District to the State Urban District for the development and construction of Kīhei High School, a public high school (the "Project").
8. Petitioner intends to develop and construct the Project in two phases. A proposed Conceptual Phasing Plan for the Project was included in the Petitioner's Draft Environmental Impact Statement ("DEIS"). The Petitioner expects to complete Phase I within ten years of reclassification. Phase I will result in complete campus facilities for a school population of approximately 800 students within ten years. Backbone infrastructure and facilities for the entire Project will be developed over the entire Petition during Phase I.
9. Phase II design and construction will be based on the rate of population growth in South Maui and the availability of State funding. Phase II facilities and future improvements will not be located in a single contiguous area within the Petition Area. Projected completion of Phase II construction is scheduled to be approximately ten years after completion of Phase I.

10. 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 would expand the capacity of the school on an infill basis to accommodate the growing South Maui population.
11. Petitioner intends to request that the entire Petition Area be reclassified to the State Urban District pursuant to 15-15-78(a)(1), HAR.
12. The initial phase of the Project will be constructed in a ten year period following reclassification; changes in population over the next ten years and the availability of funds will dictate whether or not the Kīhei High School will be expanded in its Phase II and to what extent.
13. Phase II will not be discrete from and contiguous to Phase I; rather, Phase II will infill across the entire Petition Area. The development plan for Phase II cannot be submitted before Phase I is completed.
14. Petitioner's request is consistent with Section 15-15-50(c)(8), HAR, which requires petitions for district boundary amendments to include financial statements and a description of project funding, but waives the financial reporting requirements for State and county agencies in recognition of the unique nature and limitations associated with the funding of government projects.
15. The Petitioner is a State agency such that the requirements of Section 15-15-50(c)(8), HAR, may be waived.

16. Current population growth cannot be conclusively determined such that requirements for the Kīhei High School beyond ten years from the date of this petition are uncertain.
17. The Commission finds that good cause exists to waive the requirements of Section 15-15-50(c)(19), HAR, in this instance.
18. At the Commission's meeting on the Petition on December 6, 2012, in Kahului, Maui, a motion was made and seconded to grant the Petition to waive the Commission's requirements for a schedule and map pursuant to Section 15-15-50(c)(19), HAR. Following discussion by the Commissioners, a vote was taken on the motion. There being a vote tally of 7 ayes, 0 nays, and 2 excused, the motion carried.

RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusions of law herein improperly designated as a finding of fact should be deemed and construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction to issue this declaratory order. Section 91-8, Hawai'i Revised Statutes ("HRS"), as implemented by subchapter 14 of the

Commission's rules, and sections 15-15-98 through 15-15-104, HAR, authorize the Commission to issue declaratory rulings "as to the applicability of any statutory provision or of any rule or order of the agency."


2. The Commission has asserted its jurisdiction under similar questions in the past.
3. Section 15-15-50(c)(19), HAR, 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.
4. Section 15-15-34(b), HAR, 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 in Section 15-15-50(c)(19), HAR, is not jurisdictional. Therefore, the Commission is authorized to waive the time schedule and map requirement if good cause is shown.
5. Section 15-15-78(a)(1), HAR, permits the Commission to reclassify an entire Petition Area if it appears to the Commission that full development of the Petition Area cannot be 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 are present.

DECLARATORY ORDER

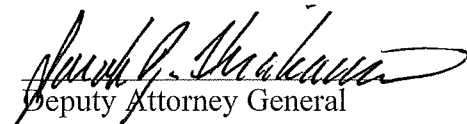
The Commission, having duly considered the Petition for Declaratory Order to waive the requirement that Petitioner submit a schedule and a map for development of a project in increments, under Section 15-15-50(c)(19), HAR, and the arguments of the parties in this proceeding, and a motion having been made at a meeting on December 6, 2012, in Kahului, Maui, and the motion having received the affirmative votes required by Section 15-15-13, HAR, and there being good cause shown for the motion,

HEREBY ORDERS, that the Petition for Declaratory Order filed by the State of Hawai'i, Department of Education be GRANTED.

DATED: Honolulu, Hawai'i, December 14, 2012 per motion in Kahului,
Hawai'i, on December 6, 2012.

By: 
for KYLE CHOCK
Chairperson and Commissioner

APPROVED AS TO FORM:

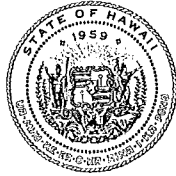

Deputy Attorney General

Filed and effective on:

December 14, _____, 2012

Certified by:


DAN ORODENKER
Executive Officer



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Declaratory Order DR12-47 was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
Jesse Souki, DIRECTOR Office of Planning 235 S. Beretania Street Rm. 600 Honolulu, Hawai'i 96813	X		

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
BRYAN YEE, ESQ. Deputy Attorney General Hale Auhau, Third Floor 425 Queen Street Honolulu, Hawai'i 96813		X	
William Yuen, Esq. Alston, Hunt, Floyd and Ing 1001 Bishop St. Suite#1800 Honolulu, HI 96813			X
WILLIAM SPENCE, Director County of Maui Planning Department 250 South High Street Wailuku, HI 96793-7109		X	
Maui County Department of the Corporation Counsel 200 S. High Street Kalana o Maui Building, 3rd Floor Wailuku, HI 96793		X	
Kaonoulu Ranch LLLP P.O. Box 390 Kula, HI 96790		X	
Haleakala Ranch Company 529 Kealahoa Ave. Makawao, HI 96768		X	

Honolulu, Hawai'i, December 14, 2012


 DANIEL ORODENKER
 Executive Officer