



UNIVERSITY
of HAWAII®
WEST O'AHU

Office of the Chancellor

November 26, 2013

Mr. Daniel E. Orodener, Executive Officer
State Land Use Commission
P.O. Box 2359
Honolulu, Hawai'i 96804

Dear Mr. Orodener:

SUBJECT: ANNUAL REPORT FOR LAND USE COMMISSION DOCKET NO. A99-728(a) UNIVERSITY OF HAWAII

2013 DEC - 3 A 7:14
LAND USE COMMISSION
STATE OF HAWAII

In compliance with Condition No. 23 of the Findings of Fact, Conclusions of Law, and Decision and Order, dated August 13, 2007, in Docket No. A99-728(a), the University of Hawai'i - West O'ahu (UHWO) on behalf of the University of Hawai'i (UH) is pleased to provide this sixth annual report concerning the current status of compliance with the conditions of approval to the Land Use Commission, the Office of Planning, and the City and County of Honolulu.

I. Project Background and Progress

On March 9, 2007, the UH filed a Motion to Amend the Findings of Fact, Conclusion of Law and Decision and Order dated September 8, 1999, requesting that the State of Hawai'i, Land Use Commission (SLUC): 1) recognize the University as the successor-in-interest to an approximately 500-acre property which was originally part of a 1,300-acre parcel that was urbanized by the Housing and Community Development Corporation, State of Hawai'i (HCDCH), 2) redesignate a new docket for the 500-acre property, and 3) to release or modify certain conditions from the 1999 Decision and Order. On May 17, 2007, the SLUC held a hearing on the Motion to Amend the Decision and Order. Based on evidence presented at the hearing, the SLUC issued an order recognizing the UH as the Successor-in-Interest to Petitioner HCDCH and assigning the UH's property with a new docket number (Docket No. A99-728(a)). Following the hearing, the SLUC issued their Findings of Fact, Conclusion of Law and Decision and Order for the 500-acre property. The 2007 Decision and Order for Docket No. A99-728(a) sets forth twenty-six (26) conditions of approval. On August 11, 2008, the UHWO, on behalf of the UH, submitted its first annual progress report for the property under this new docket number. This letter is our sixth annual progress report for the property under this new docket number.

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Since the completion of the first annual progress report, the UHWO had received approvals on two of the discretionary governmental approvals that were required for development of the property. In November 2008, the UHWO successfully completed a zone change for the property from AG-1 Restricted Agricultural District to BMX-3 Community Business Mixed Use District, A-2 Medium Density Apartment District, R-3.5 Residential District, R-5 Residential District, and P-2 General Preservation District under Ordinance 08-30. The UHWO also received approval for a Plan Review Use (PRU) permit for the development of the new campus in November 2008, under Resolution 08-140, CD1, FD1.

In previous reports, we noted that the UHWO issued a notice to proceed on construction of the campus to its contractor on August 16, 2010. In this report, we are pleased to note that construction of the five new campus buildings was completed and the campus opened its doors for its first class of students in August 2012. The UHWO continues to seek State funding and other sources of financing through the sale or lease of its lands to complete the first phase of the UHWO campus.

II. Status of Compliance with the Conditions

Listed below are each of the twenty-six (26) conditions imposed by the SLUC in the August 2007 Decision and Order and the status of activities pertaining to compliance with each of the conditions.

Condition 1: *Petitioner, its successors, and assigns shall provide affordable housing opportunities for residents of the State of Hawai'i in accordance with applicable affordable housing requirements of the City and County. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between Petitioner, its successors, and assigns, and the City and County.*

Compliance: The UHWO has coordinated with the City and County of Honolulu, Department of Planning and Permitting in establishing affordable housing requirements for the project. On June 20, 2012, the UHWO and the City and County of Honolulu, through DPP, executed an Affordable Housing Agreement.

Condition 2: *Petitioner, its successors, and assigns shall coordinate and/or participate in the funding and construction of adequate water source, storage, and transmission facilities and improvements to accommodate the Project. Water transmission facilities and improvements shall be coordinated and approved by appropriate State and City and County agencies.*

Compliance: The UHWO lands are serviced by 2 water zones. The lower zone is serviced by a 215' water system and UHWO participated with the Department of Hawaiian Home Lands and the State Department of Transportation to develop a 4MG water reservoir and related transmission lines. This 215' water system has been turned over to the Board of Water Supply. The higher service zone (the UHWO campus is located in this higher zone) will be serviced by the 440' water system. This 440' water system consists of a 2.5MG reservoir, 5,200 feet of transmission lines and a water booster pump station. Plans and developments for both water systems were approved by the appropriate State and County agencies. As of this date, the 440' water system has been completed, is in operation, and is in the process of being turned over to the Board of Water Supply. As such, we believe this condition has been satisfied.

***Condition 3:** Petitioner, its successors, and assigns shall contribute to the development, funding, and/or construction of public schools as mutually agreed with the DOE¹. Petitioner and the DOE shall enter into written agreement on this matter prior to Petitioner obtaining approval for City and County zoning.*

Compliance: On September 12, 2008, the UHWO and the State of Hawai'i, Department of Education finalized and entered into an Educational Contribution Agreement for the University of Hawai'i West Oahu Development. Under the agreement, the DOE would acquire a 12-acre school site and the UHWO would provide a professional development school on the UHWO lands. As such, we believe this condition has been satisfied.

***Condition 4:** Petitioner, its successors, and assigns shall coordinate and/or fund and construct adequate wastewater transmission and disposal facilities, as determined by the City and County and the DOH², to include the planning design, construction, and scheduling of the proposed Kapolei Interceptor Sewer.*

Compliance: The UH has entered into agreements for the East Kapolei Trunk Sewer and the Kapolei Interceptor sewers. In compliance with this condition, the UH along with DHHL, DR Horton Schuler Division, the Estate of James Campbell and the State of Hawai'i, Hawai'i Housing Finance and Development Corporation (HHFDC) have contributed to the design and construction of these improvements. The planning, design and construction of the proposed sewer facilities has been coordinated with the appropriate State, City agencies,

¹ State of Hawai'i, Department of Education (DOE)

² State of Hawai'i, Department of Health (DOH)

including the DOH. The Kapolei Interceptor sewer have been completed and the East Kapolei Trunk Sewer System has been completed. As such, we believe this condition has been satisfied.

Condition 5: *If applicable, Petitioner, its successors, and assigns shall grant to the State of Hawai'i an avigation (right of flight) and noise easement in a form prescribed by the DOT³ on any portion of the Property subject to noise levels exceeding 55 Ldn.*

Compliance: According to the environmental noise assessment report for the property, dated June 2006, which was prepared by D.L. Adams Associates Ltd. in conjunction with the EIS for the property and which relied upon the Kalaeloa Airport Master Plan and the 2020 Noise Contour Alternatives in that plan, the property is located outside the 55 Ldn contour for the Kalaeloa and Honolulu Airports.

Condition 6: *If applicable, Petitioner, its successors, and assigns shall not construct residential components within areas exposed to noise levels of 60 Ldn or greater without appropriate noise mitigation measures.*

Compliance: Consistent with the response to Condition 5, according to the environmental noise assessment report for the property, the property is located outside the 60 Ldn contour for the Kalaeloa and Honolulu Airports.

Condition 7: *Petitioner, its successors, and assigns shall be responsible for implementing sound attenuation measures to bring noise levels from sporting events, vehicular and air traffic in and within the Property down to levels acceptable to the DOH.*

Compliance: The UHWO's current academic program does not include an athletic program or large sports complex that would generate noise associated with large sporting events. In the future, should athletic events become a part of UHWO's program and noise levels sporting events and vehicular traffic in the property exceed acceptable State Department of Health levels, the UHWO, its successors and assigns, will be responsible for implementing appropriate mitigation measures to reduce noise levels to appropriate standards to comply with this condition.

³ State of Hawai'i, Department of Transportation (DOT)

Condition 8: *Petitioner, its successors, and assigns shall participate in the pro-rata funding and construction of local and regional transportation improvements and programs necessitated by the Project in designs and schedules accepted and determined by the DOT and the City and County. Petitioner and/or the DOT shall submit the construction plans as they relate to drainage issues for the North-South Road to the City and County for review and approval.*

Compliance: The UHWO has coordinated with the State DOT in the planning, design and construction of Kualaka'i Parkway (formerly North-South Road). UHWO continues to coordinate with the State DOT and City and County of Honolulu in addressing issues related to access, easements within the property, coordination on infrastructure construction within the road right-of-way and drainage for the roadway, in compliance with this condition.

Condition 9: *Petitioner, its successors, and assigns of the affected properties shall fund and construct adequate civil defense measures as determined by the City and County and State Civil Defense agencies.*

Compliance: The UHWO has been coordinating with both the City and County of Honolulu, Department of Emergency Management (DEM) and the State of Hawai'i Civil Defense (SCD) on the appropriate civil defense sirens that will be required for the development of the project. Plans for the installation of the sirens have been completed and the UHWO is awaiting construction of the sirens. The UHWO will continue to coordinate with both the DEM and SCD in compliance with this condition.

Condition 10: *Should any previously unidentified burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, or stone platforms, pavings or walls be found, Petitioner, its successors, and assigns of the affected properties shall stop work in the immediate vicinity and the SHPD⁴ shall be notified immediately. Subsequent work shall proceed upon an archaeological clearance from the SHPD when it finds that mitigative measures have been implemented to their satisfaction.*

⁴ State of Hawai'i, Department of Land and Natural Resources, State Historic Preservation Division (SHPD)

Compliance: The UHWO and its successors and assigns will comply with this condition.

Condition 11: *Petitioner, its successors, and assigns shall coordinate the design and construction of drainage improvements on the Property required as a result of the development of the Property to the satisfaction of Federal, State, and City and County agencies with the goal of executing an agreement on the interim and ultimate regional drainage plan as soon as possible. Petitioner, its successors, and assigns shall participate in the planning and coordination of off site improvements with all landowners and developers in the Kalo'i drainage basin, the intervener, and other Federal, State, and City and County agencies.*

Compliance: The UHWO has coordinated with Federal, State and City agencies, as well as with adjacent landowners within the watershed (including the intervenor-Haseko Hawaii, Inc.) on regional drainage improvements for the Kalo'i drainage basin. On August 6, 2012, a Drainage Master Plan for the UHWO was approved by DPP. This plan addresses the interim drainage improvements and also addresses runoff from lands mauka of the project. Through our coordination efforts, and with the approval of the Drainage Master Plan for UHWO, we believe that this condition is satisfied. As needed, the UHWO will continue to coordinate with applicable agencies and landowners on regional and project drainage issues.

Condition 12: *Petitioner, its successors, and assigns, agree to work with the City and County to implement interim and long-term regional drainage solutions as follows:*

- a. Petitioner shall submit an updated drainage master plan if required by the City and County for the Property to the City and County for its review and approval prior to any subdivision approvals other than for minor matters, such as easements.*
- b. Drainage solutions for the Property shall be compatible with the drainage designs for other developments in the Kalo'i Gulch drainage basin and shall conform to applicable Federal, State, and City and County laws, rules, regulations, and standards.*
- c. Drainage improvements for the Property shall be consistent with the policies and principles in the Ewa DP.*
- d. Petitioner shall be responsible for implementing interim drainage improvements which limit channelized runoff to 2,500 cfs⁵ at the Property's southern boundary for events up to a 100-year storm. Petitioner shall also take reasonable measures to minimize non-channelized flows from the Property by construction of berms,*

⁵ Cubic feet per second (cfs)

detention basins, or other appropriate methods. These requirements shall remain in force until long-range regional drainage improvements are in place in accordance with the approved drainage master plan for the Project.

Compliance: The UHWO has worked with State and City agencies to implement interim and long-term regional drainage solutions as required under this condition. On August 6, 2012, a Drainage Master Plan for the UHWO was approved by DPP. The plan addresses the interim drainage improvements and also addresses runoff from lands mauka of the project. Through our coordination efforts with Federal, State, City and landowners within the drainage basin (including the intervenor), and with the approval of the Drainage Master Plan for UHWO, we believe that this condition is satisfied. As needed, the UHWO will continue to coordinate with applicable agencies and landowners on regional and project drainage issues.

Condition 13: *Petitioner shall apply for City and County zoning approval after the Commission reclassifies the Property from Agricultural to the Urban District. Said zone change application shall be accompanied by a conceptual master plan with land use information sufficient to satisfy county zoning and development plan requirements.*

Compliance: The UHWO submitted a zone change application (for the 500-acre property) and a PRU application (for the campus lands) to DPP in October 2007 and November 2007, respectively, and has received approval for rezoning of the property under Ordinance 08-30 and for a PRU under Resolution 08-140, CD1, FD1 on November 2008. A conceptual master plan, with land use information sufficient to satisfy county zoning and development plan requirements, was submitted to DPP as part of the zone change application, so this condition has been satisfied.

Condition 14: *Petitioner shall comply with City and County zoning requirements. This condition is not intended to delay the construction of public uses or infrastructure to service the Property.*

Compliance: In November 2008, the property was rezoned from AG-1 Restricted Agricultural District to BMX-3 Community Business Mixed Use District, A-2 Medium Density Apartment District, R-3.5 Residential District, R-5 Residential District, and P-2 General Preservation District under Ordinance 08-30. The UHWO also received approval for a Plan Review Use (PRU) permit for the development of the new campus in November 2008, under Resolution 08-140, CD1, FD1. The UHWO continues to coordinate with the required City and

State agencies on compliance with City zoning requirements and this condition, now that the zoning and PRU permit has been secured.

Condition 15: *Prior to construction of any residential, commercial, or university uses within the Petition Area, Petitioner, or its successors and assigns, shall submit a Park, Open space and Pedestrian/Bikeway Master Plan to the City and County for its review and approval.*

Compliance: The UHWO has prepared and submitted to the DPP, as part of the zone change application, an Open Space/Amenities/Bike Paths Plan for the 500-acre property and a Conceptual Regional Public Facilities and Bikeway Master Plan. With the approval of the zoning, the UHWO believes that this condition has been satisfied. As part of the Unilateral Agreement for the zone change (Ordinance 08-30), a master plan for park development is required by the City. The UHWO has had numerous meetings with the representatives from the City and County of Honolulu Department of Parks and Recreation, Department of Design and Construction and Department of Planning and Permitting related to the master plan for park development. On September 24, 2010, UHWO sent a letter requesting acknowledgement and confirmation that the master plan for park development is approved. On October 15, 2010, UHWO received an executed copy of the September 24th letter acknowledging and confirming approval that the master plan for park development was approved.

Condition 16: *Prior to construction of any residential or commercial uses within the Petition Area, Petitioner, or its successors and assigns, shall submit a conceptual Urban Design Plan to the City and County for its review and approval. The Urban Design Plan shall depict the overall design theme and architectural character of streetscapes, residential neighborhoods and town centers. The Plan shall also include a conceptual landscape plan showing treatment of Project entries, major roadways, and common areas.*

Compliance: As part of the Unilateral Agreement for Ordinance 08-30, the UHWO worked with the DPP on an Urban Design Plan for the property not subject to the PRU. In December 2011, the UHWO received approval from DPP on the Urban Design Plan. As such, we believe this condition has been satisfied.

Condition 17: *Petitioner, its successors, and assigns, where feasible, shall use indigenous and water conserving plants and turf and incorporate the same into common area landscape planting.*

Compliance: The UHWO has incorporated the use of indigenous and water conserving plants and turf, where feasible, in the Landscape Master Plan for the campus. The Landscape Master Plan was included in the PRU application for the campus. As part of the PRU requirements for the building approval process, the UHWO has submitted building plans for the campus to the DPP for review and approval. The submittals have included landscape plans for the new campus. These plans were approved by DPP for the first phase of campus development. The UHWO anticipates further discussion with the DPP in compliance with this condition as the project progresses. As applicable, the UHWO will work with others to incorporate the use of indigenous and water conserving plants and turf into their plans for the lands they may acquire.

***Condition 18:** Petitioner, its successors, and assigns shall facilitate an air quality monitoring program as specified by the DOH. Petitioner, its successors, and assigns shall notify all prospective buyers of property, and buyers of individual lots or homes of the potential odor, noise and dust pollution resulting from surrounding agricultural and other uses, said notification to include a reference to potential odors emanating from the HWWTP⁶.*

Compliance: As development of the project progresses, the UHWO anticipates compliance with this condition. As part of the Unilateral Agreement for Ordinance 08-30, the UHWO has been working with State and Federal agencies in developing a disclosure statement that is acceptable to these agencies for use in notifying prospective occupants, buyers, lessees and developers of property within the UHWO lands. After consultation with these agencies on the acceptable disclosure language, the UHWO submitted their proposed disclosure language to the City Department of Planning and Permitting for review. On December 20, 2012 the DPP responded that the proposed disclosure language was acceptable.

***Condition 19:** Petitioner shall fund an approved HCP⁷ to facilitate the propagation of the *Abutilon menziesii* in accordance with the DLNR⁸ and U.S. Fish and Wildlife requirements.*

Compliance: As mentioned in the 2008 Annual Report to the Land Use Commission, the UHWO has fulfilled the requirements of this condition. To implement the Habitat Conservation Plan (HCP) for the endangered *abutilon menziesii*, in accordance with Department of Land and Natural Resources (DLNR) and U.S. Fish and Wildlife requirements, a trust fund has been

⁶ Honouliuli Wastewater Treatment Plant (HWWTP)

⁷ Habitat Conservation Plan (HCP)

⁸ State of Hawai'i, Department of Land and Natural Resources (DLNR)

established pursuant to Hawai'i Revised Statutes, Chapter 195D-31. The DOT has committed to providing the initial 5-year funding and funding for a subsequent period of 15 years, in conjunction with an agreement through DLNR. To implement the HCP, the DOT was issued an Incidental Take License to remove the plants in the area in accordance with the HCP on March 18, 2005. The DOT has developed a process for third party developers ("cooperators") to utilize the Incidental Take License through a Certificate of Inclusion. The cooperators would pay into a contingency fund, established by the DOT, for the following purposes: 1) to finance unanticipated costs incurred by DLNR in the implementation of the HCP; and 2) to fund the management and monitoring of three wild populations beyond the 20 year period. The UH was issued a Certificate of Inclusion to be included as a cooperator or joint permittee under the DOT's Incidental Take License. As part of their agreement with the DOT, the University has transferred to the DLNR \$50,000 as part of the contingency fund for the HCP.

Condition 20: *Vertical residential, commercial, and university components of the Project will not be developed and site work for those areas shall not be undertaken until master drainage and infrastructure improvements for those components are completed.*

Compliance: Infrastructure to serve the first phase of the campus is completed. Offsite improvements, such as the Kaloi Gulch realignment and DHHL detention basin have been completed. Compliance with this condition will continue as the project is further developed.

Condition 21: *Petitioner or landowners shall develop the Petition Area in substantial compliance with the representations made to the Commission. Failure to do so may result in reversion of the Petition Area to its former classification, or a change to a more appropriate classification.*

Compliance: The UHWO has been working to refine the master plan based on detailed engineering studies, responses to market conditions and input received from various governmental agencies. As a result, there have been refinements made to the land use plan that affect the acreage and unit counts of the various land uses. However, the overall master plan concept remains substantially the same. The UHWO anticipates substantial compliance with its representations.

Condition 22: *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 the development of the Petition Area.*

Compliance: The University of Hawaii previously notified the Commission of its intent to sell approximately 6 acres of land to Tokai University Educational. In July of 2013, the transaction was completed. Previously the University conveyed a 1 acre site to Hawaiian Electric Company for use as a substation. The University anticipates conveying land to the State of Hawaii Department of Transportation for public roadway purposes. The University is currently in discussions with the City and Honolulu Authority for Rapid Transit concerning the potential temporary and long term use of portions of the Petition Area.

Condition 23: *Petitioner shall timely provide without any prior notice, annual reports to the Commission, the OP⁹ and the DPP¹⁰ in connection with the status of the subject Project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.*

Compliance: This letter represents the sixth annual report submitted in compliance with this condition. The first annual report was submitted to the State Land Use Commission on August 11, 2008.

Condition 24: *The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.*

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

Condition 25: *Within 7 days of the issuance of the Commission's Amended Decision and Order and any subsequent amendments for the subject classification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Petition Area is subject to conditions imposed herein by the Commission in the reclassification of the Petition Area; and (b) file a copy of such recorded statement with the Commission.*

Compliance: As mentioned in the 2008 Annual Report to the Land Use Commission, the UHWO filed a Declaration of Imposition of Conditions by Land Use Commission on August 23, 2007 with the Bureau of Conveyances as document 3645953, in satisfaction of this condition.

⁹ State of Hawai'i, Office of Planning

¹⁰ City and County of Honolulu, Department of Planning and Permitting

Condition 26: *Petitioner or landowners shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to section 15-15-92, HAR¹¹.*

Compliance: As mentioned in the 2008 Annual Report to the Land Use Commission, the UHWO filed the Declaration of Conditions with the Bureau of Conveyances on October 11, 2007 as document 3667545, in satisfaction of this condition.

Please do not hesitate to contact Ms. Donna Kiyosaki of our office at 689-2511 if there are any questions, or if the SLUC requires any further information regarding this report. We appreciate your assistance and look forward to your acceptance of this annual report.

Sincerely,



Rockne Freitas
Chancellor

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¹¹ Hawai'i Administrative Rules (HAR)