

2013 SEP 25 P 2:03

OFFICE OF PLANNING

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BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A10-787
)	
MAUI R&T PARTNERS, LLC)	OFFICE OF PLANNING’S COMMENTS
)	AND OBJECTIONS TO PETITIONER’S
To Amend the Land Use District Boundary)	PROPOSED FINDINGS OF FACT,
of certain lands situated at Kihei, Island of)	CONCLUSIONS OF LAW, AND
Maui, State of Hawaii, consisting of 253.05)	DECISION AND ORDER;
acres from the Agricultural District to the)	CERTIFICATE OF SERVICE
Urban District, Tax Map Key Nos. (2) 2-2-)	
024:016 and 017, and (2) 2-2-002:084 (por.))	
)	
)	

**OFFICE OF PLANNING’S COMMENTS AND OBJECTIONS TO
PETITIONER’S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER**

On September 3, 2013, Petitioner Maui R&T Partners, LLC (“Petitioner”) filed *Petitioner’s Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment* (“Petitioner’s Proposed Decision and Order”).

Except as set forth below, the Office of Planning (“OP”) has no comments or objections to the Petitioner’s Proposed Decision and Order.

I. FINDINGS OF FACT

1. Finding of Fact (“FOF”) 86A, Impact Upon Resources of the Area. OP recommends the addition of a general finding before the specific categories in Section II.G.

FOF 86A. Petitioner represented that this Project will be implementing either the mitigation proposals recommended by Petitioner’s consultants or equivalent or better mitigation. [S. Perkins, 7/25/13, 52: 2-6]

2. FOF 138A, Noise. OP recommends adding a new FOF to reflect Petitioner’s representation that Federal and State noise standards will not be exceeded at the proposed development.

138A. Petitioner’s acoustic consultant concluded that the Project’s proposed developments of noise sensitive uses such as residences and schools will have sufficient setback from Piilani Highway such that Federal and State noise standards would not be exceeded. [Y. Ebisu, 7/25/13, 132: 8-14, 136: 11-19]

3. FOF 166, Highway and Roadway Facilities. Delete the finding as it is misleading. The Mauka Collector Road is not in the State Transportation Improvement Program (“STIP”) which includes near term committed projects, but planning the roadway alignment needs to begin soon in light of the major developments proposed in the region.

~~166. The Mauka Collector Road is not included in the current STIP as it is not anticipated to be necessary for many years. [Pet. Ex. 40]~~

4. FOF 175. Revise this finding to reflect the State Department of Transportation’s (“DOT”) recommendations and requirements:

175. Petitioner will be required to submit revised TIAR’s and updates to the TIAR to DOT and DPW in the future. DOT acceptance of the revised TIAR should be obtained prior to County zone change approval since this usually precedes the subdivision stage and will affect the layout of roads and access points for the subdivision. ~~and the~~ The execution of a Memorandum of Agreement outlining the agreement between DOT and MRTP should occur prior to tentative no sooner than final subdivision approval when the subdivision layout will be determined. [OP Ex. 5; C. Shibuya, 7/26/13, 153:19 - 155:21] ~~of lots intended for above ground construction, excluding roads, utilities and~~

infrastructure. This will allow the Project to mature to the point of having the requisite details and specifications needed to provide DOT with an acceptable revised TIAR. [Pet. Ex. 40]

5. FOF 177. Delete this finding as it does not reflect the State DOT's recommendations and requirements:

~~177. The timing of the future revised TIAR's should be based upon DOT's need for updated traffic information and analysis. An arbitrary deadline of updating TIAR's every 5 years or some other set interval would be inefficient and potentially detrimental if a revised TIAR is needed prior to an arbitrary fixed deadline. [Pet. Ex. 40]~~

6. FOF 177A to 177J. Insert the following findings which reflect the State DOT's concerns and recommendations:

177A. DOT has concerns about the transportation impacts the proposed development will have on the State's Piilani Highway. [OP Ex. 5]

177B. The internal capture rates and reductions applied to the trip generation appear high and should be further justified. The estimated trip generation volumes for the future committed developments in the Kihei area should be indicated in the traffic forecast analysis and acceptable to DOT. [OP Ex. 5]

177C. The DOT recommends that Petitioner provide transportation mitigation improvements (a) to the existing access from Lipoa Parkway at its intersection with Piilani Highway for Phase 1, (b) for a second access to MRTP from a new right-turn-in and right-turn-out (RIRO) access at the proposed Hookena Street/Piilani Highway intersection, across the existing East Waipuilani Road RIRO intersection for Phase 1, and (c) at the Old Welakahao Road/Piilani Highway intersection to accommodate the third access to MRTP from Old Welakahao Road for Phase 2, all as recommended in the TIAR, dated February 2012, revised February 2013, and subject to additional recommendations in the Revised TIAR. [OP Ex. 5]

177D. The with project (Build) scenario with the recommended transportation mitigation improvements, should maintain the without project scenario operating level of service (LOS) and delay levels for the horizon years in the Revised TIAR, In addition,

where the LOS for the without the project scenario is worse than the DOT guideline threshold of LOS “D”, Petitioner should provide mitigation improvements to improve the through movements on and turning movements from Piilani Highway to a desirable LOS “D” or better for the with the project scenario. [OP Ex. 5]

177E. The projected operating LOS for many of the traffic movements in Phase 1 and Phase 2 under Scenario 3 with the recommended local and direct transportation mitigation improvements for MRTP, but without the planned regional roadway improvements, are not acceptable to DOT, as the LOS are lower than for the No Build Scenario. Furthermore, many of the through and turning movements from Piilani Highway at the intersections within the study area are projected to operate at an unacceptable LOS “E” and “F”. [OP Ex. 5]

177F. With regard to Phase 1 (year 2024) under Scenario 4 with the recommended local and direct transportation mitigation improvements for MRTP and with the planned regional roadway improvements, DOT is concerned that the planned regional Liloa Drive Extension may not be completed prior to Phase 1, as it is not in the Statewide Transportation Improvement Program (STIP) or the Maui Island Plan. Piilani Highway and South Kihei Road (2-lane collector road) are the only existing north-south roads that traverses through the Kihei area. The planned regional Liloa Drive Extension will basically provide the additional required roadway capacity in the Kihei area to support Phase 1 of MRTP. DOT recommends that the Liloa Drive Extension be completed and operational prior to Final Subdivision Approval being granted for Phase 1. Under Scenario 4, DOT is also concerned that at the intersection with Kaonoulu Street, the Piilani Highway northbound (NB) through traffic, NB left-turn and southbound (SB) left-turn movements are projected to operate at LOS “F” during the PM peak hour, and several turning movements from Piilani Highway at other intersections within the study area are projected to operate at LOS “E” and “F”. [OP Ex. 5]

177G. With regard to Phase 2 (year 2034) under Scenario 4 with the recommended local and direct transportation mitigation improvements for MRTP and with the planned regional roadway improvements, DOT is concerned that the regional Liloa Drive Extension, the regional Mauka Collector (2 lanes) from south of MRTP to

Mokulele Highway may not be completed prior to Phase 2, as they are not in the STIP or the Maui Island Plan. DOT recommends that the Liloa Drive Extension, the Mauka Collector with direct access to Mokulele Highway, and the Kihei Upcountry Highway be completed and operational prior to Final Subdivision Approval being granted for Phase 2. DOT is also concerned that at the intersection with Kaonoulu Street, the Piilani Highway NB left-turn and SB left-turn movements are projected to operate at LOS "F" and several turning movements from Piilani Highway at other intersections within the study area are projected to operate at LOS "E". [OP Ex. 5]

177H. DOT used federal money to obtain the access rights to Piilani Highway, and the federal government expects DOT to recoup the fair market value of those access rights when access is given to third parties. Testimony of C. Shibuya, Tr. 7/26/13, 152:14 to 153:15.

177I. There is sufficient information at zone change for the acceptance of a TIAR, and the information in the TIAR can then be used as a basis for planning during subdivision approval. Testimony of C. Shibuya, Tr. 7/26/13, 153:16 to 154:4.

177J. There is sufficient information at preliminary subdivision approval for the execution of a Memorandum of Agreement ("MOA") between Petitioner and DOT regarding the improvements to be made, and the traffic improvements in the MOA can then provide a basis for subdivision approval. Testimony of C. Shibuya, Tr. 7/26/13, 154:24 to 155:21.

V. Decision and Order

7. Condition 4. Highway and Roadway Improvements. Revise the condition to replace most of Petitioner's proposed condition with language reflecting the State DOT recommendations and requirements in OP's Testimony (but excluding the traffic noise condition).

4. **Highway and Roadway Improvements.** That the Petitioner shall fund, construct, and implement roadway improvements to accommodate the development of the petition area in accordance with the requirements of the County of Maui's Department of Public Works.

The Petitioner shall abide by, complete and/or submit the following:

- A. The TIAR shall be revised and resubmitted to the DOT for review and acceptance prior to zone change approval.
- B. Petitioner shall fund and provide for the planning, design and construction of all recommended transportation improvements required to mitigate local and direct project generated and/or related transportation impacts, in accordance with the Revised TIAR and required updates to the TIAR, as accepted by DOT, at no cost to the State. Petitioner shall also dedicate land to accommodate auxiliary lanes on Piilani Highway, as required.
- C. Petitioner shall provide its fair share contribution toward the cost of regional transportation improvements to State highways, as determined by Petitioner and DOT. Regional improvements may also include the reservation and contribution of land for such improvements.
- D. Petitioner shall pay to DOT the fair market value for access rights to Piilani Highway at the proposed Hookena Street/Piilani Highway intersection, in addition to the recommended and required transportation mitigation measures for project-related traffic impacts on State facilities.
- E. A Memorandum of Agreement (MOA) between Petitioner and DOT shall be prepared based on the concerns and conditions in the Petition and shall include the recommendations contained in a Revised TIAR accepted by DOT. The MOA shall be executed prior to any tentative subdivision approval being granted. The executed MOA shall contain language that ensures that identified transportation improvements will be constructed concurrently with the development of the residential, commercial and other multi-uses, as acceptable to DOT. [OP Ex. 2]

~~That the Petitioner shall fund, construct, and implement all transportation improvements and measures required to mitigate impacts to state roadway facilities caused by the Project as set forth in a Memorandum of Agreement (“MOA”) agreed to and executed by the DOT and the Petitioner. Petitioners shall submit to the DOT an~~

~~updated TIAR, and Petitioner shall obtain acceptance of the Project's TIAR from the DOT and shall execute the MOA prior to final subdivision approval of lots intended for above ground construction for the Petition Area in Docket A10-787, and excluding construction of roads, utilities, and other infrastructure by Petitioner. The MOA shall include, but not be limited to, the following terms and conditions: (i) the accepted TIAR shall be incorporated in the MOA by reference; (ii) Petitioner's responsibilities for funding, construction, and implementation of improvements and mitigation; (iii) a schedule of agreed to improvements and a schedule for future TIAR updates or revisions to be accepted by DOT; (iv) development of the Project shall be consistent with the executed MOA and TIAR; and (v) any fees or in-kind contribution that is roughly proportional to any indirect or secondary impacts caused by the Project.~~

~~That the Petitioner shall construct the portion of the Mauka Collector within the MRTP boundary either during construction of Phase 2 or prior to Year 2034 concurrent with the development of the Kihei Mauka planned growth area as outlined in the Maui Island Plan and shall coordinate these efforts with the Department of Transportation.~~

DATED: Honolulu, Hawaii, this 25th day of September, 2013.

OFFICE OF PLANNING
STATE OF HAWAII



JESSE K. SOUKI
Director

Docket No. A10-787

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by regular mail.

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DATED: Honolulu, Hawaii, this 25th day of September, 2013.



JESSE K. SOUKI
Director
Office of Planning