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Attorneys for Petitioner  
DEPARTMENT OF PLANNING, COUNTY OF MAUI

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of

DEPARTMENT OF PLANNING,  
COUNTY OF MAUI,

To issue a declaratory order that Condition 1(b) of the State of Hawai'i Land Use Commission's Decision and Order filed July 29, 2013, in Docket A11-794, granting the Land Use District Boundary Amendment for 77.182 acres identified for real property tax purposes as tax map key (2) 2-2-002:081, Kihei, Maui, Hawaii, requires an available above or below ground pedestrian crossing.

DOCKET NO. A11-794

PETITIONER DEPARTMENT OF  
PLANNING, COUNTY OF MAUI'S  
PETITION FOR DECLARATORY  
ORDER; DECLARATION OF  
MICHELE MCLEAN; EXHIBITS "1"-  
"8"; CERTIFICATE OF SERVICE

PETITIONER DEPARTMENT OF PLANNING, COUNTY OF MAUI'S  
PETITION FOR DECLARATORY ORDER

Petitioner DEPARTMENT OF PLANNING, COUNTY OF MAUI (hereinafter  
"Department" or "County"), interested person, files this Petition for a

Declaratory Order from the State of Hawai'i Land Use Commission, pursuant to Hawaii Revised Statutes ("HRS") Section 91-8 and Hawaii Administrative Rules ("HAR") Section 15-15-98, et seq., of the Land Use Commission Rules of the State of Hawaii. The County seeks a Declaratory Order reiterating and reaffirming that condition 1(b) to the Commission's July 29, 2013 *Findings of Fact, Conclusions of Law, Decision and Order* (Exhibit "1") requires an above- or below-ground pedestrian crossing to allow pedestrians to safely cross the Piilani Highway, prior to the opening of Phase I.

**I. NAME, ADDRESS, AND TELEPHONE NUMBER OF PETITIONER**

Petitioner is the Department of Planning for the County of Maui. The Department's contact information is as follows:

Department of Planning  
2200 Main Street  
One Main Plaza, Suite 315  
Wailuku, HI 96793  
Telephone: (808) 270-7735

**II. STATEMENT OF PETITIONER'S INTEREST, INCLUDING REASONS FOR SUBMISSION OF THE PETITION**

Petitioner, through its Director, is mandated by the Maui County Charter to serve as the "chief planning officer of the county and as the technical advisor to the mayor, council and planning commissions on all planning related matters." Charter, Section 8-8.3.2. Pursuant to HRS § 205-4(e)(1), the Department is an automatic party to this action and is responsible for enforcement of "the use classification districts adopted by the land use commission and the restriction on use and the condition relating to agricultural districts under section 205-4.5." HRS § 205-12.

Further, The *Decision and Order* for Docket A11-794 which granted a Land Use District Boundary Amendment for 77.182 acres identified for real property tax purposes as tax map key: (2) 2-2-002:081, Kihei, Maui, Hawaii, changed the state District Boundary Classification from agricultural district to urban. The change was made to allow the construction of a high school in Kihei, Maui. As such, the Department has a direct interest in confirming the terms and conditions for the project as well as the legal responsibility to enforce them.

During the process of passing the corresponding change to County zoning and a Community Plan Amendment (Maui County Ordinances 4135 and (2014) (Exhibit “2”)), representations were made to the Council’s Land Use Committee by the State Department of Education (“DOE”), reassuring the Council that an overpass or underpass would be provided pursuant to the conditions included in the Land Use Commission’s *Decision and Order*. Despite these assurances, by letter dated July 18, 2017, the Director of the State Department of Transportation (“DOT”) notified Duane Y. Kashiwai, Public Works Administrator, Facilities Development Branch, Department of Education and the parties to the Docket that:

The GSPC [Grade-Separated Pedestrian Crossing] study was supplemented by a review by Fehr & Peers (F&P) with respect to whether the GSPC, pedestrian traffic, and road conditions would meet various applicable warrants for a GSPC. The result of the F&P review was that a GSPC would not meet applicable warrants during Phase I of the KHS [Kihei High School] though the F&P review suggested that a GSPC may meet applicable warrants during Phase II of the KHS. ***No pedestrian crossing measures for Phase I were proposed by F&P; the HDOT [Hawaii Department of Transportation] assumes F&P recommends the***

***traffic signal will accommodate an at-grade crossing and that a median pedestrian refuge will be installed for Phase I.***

Exhibit “3” (emphasis added). Despite what appears to be a clear mandate for an “above or below ground pedestrian crossing,” HDOT is recommending an “at grade” crossing instead. Thus, a controversy exists as to the legal significance of condition 1(b).

Seeking clarification, on February 1, 2019, the County Council passed Resolution No. 19-20 “REQUESTING THE STATE LAND USE COMMISSION TO ISSUE A DECLARATORY RULING REITERATING AND AFFIRMING THE REQUIREMENT FOR A PEDESTRIAN OVERPASS OR UNDERPASS TO ALLOW SAFE ACCESS TO KIHEI HIGH SCHOOL” (Exhibit “4”; Declaration of McLean, ¶12). This Petition follows.

**III. DESIGNATION OF THE SPECIFIC PROVISION, RULE, OR ORDER IN QUESTION.**

In Docket A11-794, the LUC’s July 29, 2013 *Decision and Order* contains the following condition:

Condition 1(b) Petitioner shall complete a pedestrian route study for Phase I of the Project which includes ingress and egress of pedestrians through defined location(s) approved by DOT and shall analyze compliance with the proposed warrants in FHWA/RD-84/082 (July 1984) to the satisfaction of DOT. The pedestrian route study and analysis shall be completed and approved prior to Petitioner executing a contract for the design of Phase I of the Project. ***Petitioner shall cause to be constructed, or ensure that there is an available above or below ground pedestrian crossing and implement such mitigation or improvements as may be required or recommended by the study and analysis to the satisfaction of DOT prior to opening Phase I of the Project.*** Petitioner shall submit three updated pedestrian route studies and analyses for the Project: the first one full year after opening of Phase I of the Project, the second with DOT approval prior to the issuance of any certificate of occupancy for Phase II of

the Project, and the third with DOT approval one full year after full build out of Phase II of the Project. Should there be delays over three years between preparation of the updated pedestrian route study one full year after opening Phase I and the scheduled issuance of the certificate of occupancy for Phase II or any potential later Phasing, Petitioner shall submit an additional updated pedestrian route study at DOT's request. Petitioner shall implement such mitigation or improvements as may be required or recommended by the updated studies and analyses to the satisfaction of DOT. Petitioner shall submit copies of the studies and analyses to the State of Hawai'i DOT for review and approval and to the County of Maui Department of Public Works for review and comment.

Exhibit "1". (Emphasis added.) Petitioner simply seeks a Declaratory Order clarifying that condition 1(b) means an under/overpass is **required**.

#### **IV. PETITIONER'S POSITION ON CONDITION 1(b).**

##### **A. Condition 1(b)'s plain language should be construed as mandatory.**

Hawaii case law is clear that, absent an ambiguity, a statute should be ascribed its plain meaning. Hawaii courts have applied court rules of statutory interpretation to agency decisions. (see Lanai Co. v. Land Use Comm'n, 105 Hawaii 296, 314, 97 P.3d 372 (2004)). Statutory construction is guided by established rules:

First, the fundamental starting point for statutory interpretation is the language of the statute itself. Second, where the statutory language is plain and unambiguous, our sole duty is to give effect to its plain and obvious meaning. Third, implicit in the task of statutory construction is our foremost obligation to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. Fourth, when there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists.

*Peterson v. Hawaii Elec. Light Co., Inc.*, 85 Hawai'i 322, 327–28, 944 P.2d 1265, 1270–71 (1997), *superseded on other grounds by*

HRS § 269–15.5 (Supp.1999) (block quotation format, brackets, citations, and quotation marks omitted).

When there is ambiguity in a statute, “the meaning of the ambiguous words may be sought by examining the context, with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning.” *Id.* (quoting HRS § 1–15(1) (1993)). Moreover, the courts may resort to extrinsic aids in determining legislative intent, such as legislative history, or the reason and spirit of the law. *See* HRS § 1–15(2) (1993).

Citizens Against Reckless Dev. v. Zoning Bd. of Appeals of City & Cty. of Honolulu, 114 Hawaii 184, 193–94, 159 P.3d 143, 152–53 (2007).

In Lanai Co. v. Land Use Comm'n, 105 Hawaii 296, 314, 97 P.3d 372 (2004), the Hawaii Supreme Court examined a permit condition imposed on water usage on Lanai. Lanai Company Inc. (“LCI”) sought and received, land use entitlements to build a golf course at the Manele resort. In granting the entitlements, the LUC imposed a condition (Condition No. 10) as follows:

10. *[LCI] shall not utilize the potable water from the high-level groundwater aquifer for golf course irrigation use, and shall instead develop and utilize only alternative non-potable sources of water (e.g., brackish water, reclaimed sewage effluent) for golf course irrigation requirements.*

In addition, [LCI] shall comply with the requirements imposed upon [LCI] by the State [of Hawai‘i] Commission on Water Resource Management [ (the Water Commission) ] as outlined in the [Water Commission's] Resubmittal–Petition for Designating the Island of Lanai as a Water Management Area, dated March 29, 1990.

Id. at 300, 376. (Emphasis in original). After good faith attempts to find alternative non-potable sources of water, LCI began to use non-potable water from the high-level groundwater aquifer. Id. 301, 377. Eventually, the LUC issued an Order to Show Cause regarding what it perceived as a violation of Condition No. 10. Id. at 302, 378. After an evidentiary hearing, the LUC found LCI to be in violation and issued a cease and desist order. Id. at 305, 381. LCI

appealed the LUC's order to Circuit Court, which reversed the LUC's decision and order, on the basis that "[t]he LUC's conclusion that [LCI] violated Condition No. 10 was arbitrary, capricious, and clearly erroneous." Id. at 306, 382. The Circuit Court's decision was then appealed to the Hawaii Supreme Court.

The Hawaii Supreme Court first looked at the plain meaning of the condition:

The plain language of Condition No. 10 does not prohibit LCI from using *all* water from the high level aquifer. As mentioned previously, Condition No. 10 of the 1991 Order reads, in pertinent part, as follows:

*[LCI] shall not utilize the potable water from the high-level groundwater aquifer for golf course irrigation use, and shall instead develop and utilize only alternative non-potable sources of water (e.g., brackish water, reclaimed sewage effluent) for golf course irrigation requirements.*

Id. at 310, 386 (Emphasis in original). Affirming the Circuit Court's reversal, the Court found that Condition No. 10 failed to adequately establish permitted and prohibited conduct and explained:

[p]arties subject to an administrative decision must have fair warning of the conduct the government prohibits or requires, to ensure that the parties are entitled to fair notice in dealing with the government and its agencies. *See e.g., Gates & Fox v. Occupational Safety & Health Review Comm'n*, 790 F.2d 154, 156 (D.C.Cir.1986) (reasoning that an "employer is entitled to fair notice in dealing with his government," and thus the agency's regulations "must give an employer fair warning of the conduct it prohibits or requires"). In this light, the 1991 Order cannot be construed to mean what the LUC may have intended but did not express. *Cf. id.* (explaining that "a regulation cannot be construed to mean what an agency intended but did not adequately express"). An administrative agency, such as the LUC, has the responsibility of stating with ascertainable certainty what is meant by the conditions it has

imposed. *Cf. id.* (reasoning that the “enforcer of the act has the responsibility to state with ascertainable certainty what is meant by the standards he has promulgated”). The plain language of Condition No. 10 did not give fair notice, or adequately express any intent on the LUC's part that LCI be precluded from using *all* water from the high level aquifer.

Id. at 314, 390. (Emphasis in original).

By stark contrast, the plain language of condition 1(b) as it relates to a pedestrian crossing is plain on its face:

Petitioner shall cause to be constructed, or ensure that there is an available above or below ground pedestrian crossing and implement such mitigation or improvements as may be required or recommended by the study and analysis to the satisfaction of DOT prior to opening Phase I of the Project.

The plain reading of this provision unambiguously requires two things; (1) an above or below ground pedestrian crossing; **and** (2) such other mitigation or improvements the study and analysis recommends. While Petitioner DOE gets to determine which of the two crossings is most feasible, one or the other must be “constructed” or “available” prior to opening Phase I of the Project. Thus, “where the statutory language is plain and unambiguous,” this Commission must give effect to its plain and obvious meaning. Citizens Against Reckless Dev. v. Zoning Bd. of Appeals of City & Cty. of Honolulu, 114 Hawaii 184, 193–94, 159 P.3d 143, 152–53 (2007). The plain and unambiguous language of the provision requires an underpass or overpass. This Commission should declare so.



**B. The Land Use Commission expressly modified Condition 1(b) to require an under/overpass.**

Assuming arguendo that this Commission finds that the meaning of condition 1(b) is not sufficiently plain and unambiguous, it may look to the intent of the drafters; in this case, the Land Use Commission's adoption of the July 29, 2013 *Decision and Order*. HRS §1-15.

On June 27, 2013, this Commission took up Docket No. A11-974. Prior to hearing, the Commission had received *Petitioner's Findings of Fact, Conclusions of Law and Decision and Order*. (Exhibit "6" at p.7; Exhibit 7;)<sup>1</sup> It also received *Petitioner's Stipulated Findings of Fact, Conclusions of Law and Decision and Order* and statements of no objection from the State and County Departments of Planning. (Exhibit "5"; Exhibit 6, p.7).

Prior to voting to approve the *Findings of Fact, Conclusions of Law and Decision and Order* as submitted, Commissioner Biga moved to add a condition requiring an under/overpass:

COMMISSIONER BIGA: Mr. Chair, I move to grant A11-794 State of Hawai'i, DOE-Kihei High School Maui the Petition with the conditions and in the general format of the agreed-to Decision and Order submitted by Petitioner ***with the added condition that an above- or below-ground pedestrian crossing be constructed prior to opening of Phase I.***

And that Petitioner's proposed Decision and Order be further modified by staff to be consistent with the motion and with the procedural findings reflecting all filings in this docket.

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<sup>1</sup> Attached are the portions of the proposed Decision and Order that are relevant to the issue before the Commission. Petitioner otherwise incorporates by reference the entire Docket A11-794, but can supply complete copies of any documents referenced at the Commission's request.

Exhibit 6, p.23. (Emphasis added). Commissioner Heller voiced agreement that safety was an important issue but believed the DOT/DOE should make the call:

COMMISSIONER HELLER: I generally agree with Commissioner Biga in that I'm very concerned about the issue of pedestrian access. And I personally think a pedestrian overpass probably is a good answer. However, I'm not a traffic engineer or an expert on pedestrian safety.

As I understand the parties' proposal they are proposing to work out the final decision on an overpass or underpass between the Department of Education and the Department of Transportation. And the parties will ultimately reach some agreement as to what is necessary.

Given that I'm not a traffic engineer and given that the TIAR has not been finished at this point, I don't think it's appropriate for us to make that decision today. I think it's more appropriate to say that the experts will work it out and that the experts have to ultimately agree on what the proper answer is. So therefore would, while I share Commissioner Biga's concern, I would oppose the amendment regarding this specific requirement.

Exhibit 6, pp. 24-25. Notwithstanding Commissioner Heller's concerns, approval of the proposed *Decision and Order* was put to a vote with the inclusion of the language requiring an overpass or underpass. Commissioner Biga again explained the amendment:

COMMISSIONER BIGA: And thank you, Chair. I just want to reiterate on my motion. Living on Maui, traveling on that highway on numerous occasions, I've seen the speed that goes through that highway. Again, my concern is for the safety of the pedestrians and the children that will be going to that school.

Throughout this hearing I brought up my concerns of that nature. That's why I believe this motion, I brought this motion up. So that's my concern, the safety of the public, the safety of the children that're going to that school.

Immediately before the vote, Daniel Orodener clarified what the

Commissioners were voting on:

MR. ORODENKER: Thank you, Mr. Chair. The motion is to grant the Petition with the added condition of requiring the construction of a pedestrian overpass or underpass prior to the opening of Phase I.

The Commission then voted 6-1 in favor of the *Decision and Order* including Commissioner Biga's amendment. Exhibit "7". The adopted *Decision and Order* was modified as follows:

**Before:**

Condition 1(b) Petitioner shall complete a pedestrian route study for Phase I of the Project which includes ingress and egress of pedestrians through defined location(s) approved by DOT and shall analyze compliance with the proposed warrants in FHWA/RD-84/082 (July 1984) to the satisfaction of DOT. The pedestrian route study and analysis shall be completed and approved prior to Petitioner executing a contract for the design of Phase I of the Project. ***Petitioner shall implement such mitigation or improvements as may be required or recommended by the study and analysis to the satisfaction of DOT prior to opening Phase I of the Project.***

**After:**

Condition 1(b) Petitioner shall complete a pedestrian route study for Phase I of the Project which includes ingress and egress of pedestrians through defined location(s) approved by DOT and shall analyze compliance with the proposed warrants in FHWA/RD-84/082 (July 1984) to the satisfaction of DOT. The pedestrian route study and analysis shall be completed and approved prior to Petitioner executing a contract for the design of Phase I of the Project. ***Petitioner shall cause to be constructed, or ensure that there is an available above or below ground pedestrian crossing and implement such mitigation or improvements as may be required or recommended by the study and analysis to the satisfaction of DOT prior to opening Phase I of the Project.***

Exhibits "5" and "1". It is evident that the Commission intended to include a requirement of an over/underpass in its *Decision and Order*.

Finally, it should be noted that at the June 27, 2013 hearing, William Yuen, Esq. and Robert Purdie were present as representatives for the

Department of Education. Also present were Jesse Souki and Rodney Funakoshi, representing the State Office of Planning, and James Giroux, Esq. and William Spence, representing the County of Maui Department of Planning. Exhibit “7”. It can come as no surprise to any of the parties to the Docket what was meant when the *Decision and Order* approving the Land Use District Boundary Amendment was adopted. The “intent” of the Land Use Commission was apparent to the parties.

**C. The County Council relied on assurances that the project included an under/overpass.**

As a final issue, the Maui County Council approved the proposed Change in Zoning and Community Plan Amendment for the project via Ordinances 4134 and 4135. Exhibit “2”. They did so in reliance on representations from the Departments of Education and Transportation. Exhibit “4”. On October 30, 2013, the Maui County Council’s Land Use Committee received a presentation on the Kihei High School project from Christine Ruotola, a planner with Group 70 International, Inc., consultant for DOE. Ms. Ruotola stated:

The State Land Use District Boundary Amendment, the Land Use Commission found that the site did warrant the criteria to become classified as Urban. There were 26 conditions placed on the approval. So these are some of the key conditions and as was mentioned before, ***there was a requirement that the . . . that there be provided a pedestrian overpass or underpass prior to opening of Phase I.***

See Exhibit "8", p. 9. (Minutes of the October 30, 2013 Land Use Committee meeting). Councilmember Guzman confirmed with State DOT Engineer Charlene Shibuya that either an underpass or an overpass would be required:

VICE-CHAIR GUZMAN: So is it my understanding it's either a overpass or an underpass?

MS. SHIBUYA: Yeah, that's basically how the condition states that they do a pedestrian route study and then they look at, at grade, you know, pedestrian which is either over or under.

Ex. "8", p. 16. The County planner assigned to the project explained that the various concerns raised by the County were addressed in the July 29, 2013

LUC *Decision and Order*:

MR. DACK: I won't repeat the request, the acreages, TMKs and all that. I'm sure you have all that, but I did want to point out that after the Department of Education completed the Environmental Impact Statement, as you heard the State Land Use Commission changed the property from an Agriculture... State Agricultural Land Use Designation to Urban District and that was actually formally done July 16<sup>th</sup>. Up to that time, the Planning Department had various comments to the DOE about the project which you might find as part of your record, but I wanted to point out that through the process of leading up to the Land Use Commission's decisions, those concerns pretty much all got addressed. ***So in your record you might find some concerns, but again, bottom line is those got negotiated, addressed to the point where we concurred with the Department of Education as well as the Office of Planning on the, the Findings of Fact, Conclusions of Law, Decision and Order, including all the conditions by the, the Land Use Commission.*** As mentioned, the hearing was held by the Planning Commission on the 23rd of July, and there weren't any letters of support or opposition received by the Department since the Planning Commission's action, and you have all previous correspondence we had received, and at that meeting three individuals testified before the Planning Commission, two were in support, one was neutral, and there was no opposition. That completes the Department's comments at this point. Thank you.

Ex. 8, at p. 11 (emphasis added). Ordinances 4134 and 4135 passed based in part on the assurances given by the DOE's consultant and the DOT's engineer. This Commission should declare that the over/underpass condition is required.

**V. STATEMENT OF RELATED LUC DOCKETS / POTENTIAL PARTIES.**

This Petition relates to the LUC's *Decision and Order* in Docket No. A11-794. The State of Hawai'i Department of Education was the Petitioner in Docket A11-794, and the State of Hawai'i Department of Transportation has an interest in the safety of Piilani Highway, fronting the Kihei High School.

DATED: Wailuku, Maui, Hawaii, February 19, 2019.

PATRICK K. WONG  
Acting Corporation Counsel  
Attorneys for Petitioner  
DEPARTMENT OF PLANNING, COUNTY OF MAUI

By \_\_\_\_\_  
THOMAS KOLBE

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of

MICHELE CHOUTEAU MCLEAN,  
DIRECTOR OF THE DEPARTMENT  
OF PLANNING, COUNTY OF MAUI,

To issue a declaratory order that Condition 1(b) of the State of Hawai'i Land Use Commission's Decision and Order filed July 29, 2013, in Docket A11-794, granting the Land Use District Boundary Amendment for 77.182 acres identified for real property tax purposes as tax map key (2) 2-2-002:081, Kihei, Maui, Hawaii, requires an available above or below ground pedestrian crossing.

DOCKET NO. A11-794

DECLARATION OF MICHELE  
CHOUTEAU MCLEAN

DECLARATION OF MICHELE CHOUTEAU MCLEAN

I, MICHELE CHOUTEAU MCLEAN, do hereby declare:

1. I am the Acting Director of the County of Maui Department of Planning. I make this declaration upon personal knowledge and am competent to testify to the matters stated herein.

2. On February 1, 2019, the Maui County Council adopted Resolution 19-20, directing the Department of Planning to seek a declaratory ruling from the Land Use Commission in LUC Docket A11-794 "reiterating and affirming the requirement for a pedestrian overpass or underpass to allow safe access to Kihei High School." Attached as Exhibit "4" is a true and correct copy of Resolution No. 19-20.

3. Exhibit "1" is a true and correct copy of relevant excerpts of the Land Use Commission's *Findings of Fact, Conclusions of Law, Decision and Order*, adopted July 29, 2013.

4. Exhibit "2" are true and correct copies of Maui County Ordinances 4134 and 4135 (2014), adopted June 20, 2014.

5. Exhibit "3" is a true and correct copy of a letter dated July 18, 2017, from the Director of the State Department of Transportation to Duane Y. Kashiwai, Public Works Administrator, Facilities Development Branch, Department of Education.

6. Exhibit "5" is a true and correct copy of relevant excerpts of Petitioner Department of Education's *Stipulated Findings of Fact, Conclusions of Law and Decision and Order* dated June 25, 2013.

7. Exhibit "6" is a true and correct copy of the Transcript of Proceedings for Docket A11-794 at the June 27, 2013 Land Use Commission meeting.

8. Exhibit "7" is a true and correct copy of the Land Use Commission Meeting Minutes for June 27, 2013.

9. Exhibit "8" is a true and correct copy of the Minutes from the Maui County Council Land Use Committee's October 30, 2013 meeting.

I declare under penalty of law that the foregoing is true and correct.

DATED: Wailuku, Maui, Hawaii, February 19, 2019.

  
MICHELE CHOUTEAU MCLEAN



EXHIBIT " 1 "

In the Matter of the Petition of:

To Amend the Agricultural Land Use District Boundaries into the Urban Land Use District for Approximately 77.2 acres of land at Kihei, Maui, Hawai'i, Maui Tax Map Key Nos. 2-2-02: 81 and 83.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
DECISION AND ORDER; AND  
CERTIFICATE OF SERVICE**

This is to certify that this is a true and correct  
Copy of the document on file in the office of the  
State Land Use Commission, Honolulu Hawaii.

by

Executive Officer

EXHIBIT " 1 "

5. Article XI, Section 3, of the Hawai'i Constitution requires the State to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands.

6. Article XI, Section 7, of the Hawai'i Constitution states that the State has an obligation to protect the use of Hawai'i's water resources for the benefit of its people. Kihei High School will not adversely affect the Kama'ole Aquifer System.

### DECISION AND ORDER

IT IS HEREBY ORDERED that the Petition Area, consisting of approximately 77.2 acres of land situated at Kihei, Island of Maui, State of Hawai'i, identified as Maui Tax Map Key Nos: 2-2-02: 81 and 83 and shown approximately on Exhibit "A," attached hereto and incorporated by reference herein, shall be and is hereby reclassified to the State Land Use Urban District, and the State Land Use District boundaries shall be amended accordingly.

Based upon the findings of fact and conclusions of law stated herein, it is hereby determined that the reclassification of the Petition Area will not significantly affect or impair the preservation or maintenance of natural systems and habitats or the valued cultural, historical, agricultural, and natural resources of the area.

IT IS FURTHER ORDERED that the reclassification of the Petition Area from the State Land Use Agricultural District to the State Land Use Urban District shall be subject to the following conditions:

1. **Highway and Road Improvements.** Petitioner will work cooperatively with DOT to reach mutually agreeable solutions. Petitioner shall abide by, complete and/or submit the following:

- a. The TIAR shall be revised and accepted by DOT prior to Petitioner executing a contract for the design of Phase I of the Project. The TIAR shall be structured to show assumptions about, traffic impacts of, and mitigations for both Phase I of the Project only and also the full build out of the Project. Petitioner shall submit three updated TIARs for the Project: the first one full year after opening of Phase I of the Project, the second with DOT approval prior to the issuance of any certificate of occupancy for Phase II of the Project, and the third with DOT approval one full year after full build out of Phase II of the Project. Should there be delays over three years between preparation of the updated TIAR one full year after opening of Phase I and the scheduled issuance of the certificate of occupancy for Phase II or any potential later Phasing, Petitioner shall submit an additional updated TIAR at DOT's request. All requirements and criteria for the TIAR and updated TIARs shall be agreed and approved by DOT. All project generated traffic shall be mitigated at Petitioner's expense as recommended or required in any of the TIARs approved by DOT. Petitioner shall submit copies of all TIARs and TIAR updates to the State of Hawai'i DOT for review and approval, and to the County of Maui Department of Public Works for review and comment.
- b. Petitioner shall complete a pedestrian route study for Phase I of the Project which includes ingress and egress of pedestrians through defined location(s) approved by DOT and shall analyze compliance with the proposed warrants in FHWA/RD-84/082 (July 1984) to the satisfaction of DOT. The pedestrian route study and analysis shall be completed and approved prior to Petitioner executing a contract for the design of Phase I of the Project. Petitioner shall cause to be constructed, or ensure that there is an available above or below ground pedestrian crossing and

implement such mitigation or improvements as may be required or recommended by the study and analysis to the satisfaction of DOT prior to opening Phase I of the Project. Petitioner shall submit three updated pedestrian route studies and analyses for the Project: the first one full year after opening of Phase I of the Project, the second with DOT approval prior to the issuance of any certificate of occupancy for Phase II of the Project, and the third with DOT approval one full year after full build out of Phase II of the Project. Should there be delays over three years between preparation of the updated pedestrian route study one full year after opening Phase I and the scheduled issuance of the certificate of occupancy for Phase II or any potential later Phasing, Petitioner shall submit an additional updated pedestrian route study at DOT's request. Petitioner shall implement such mitigation or improvements as may be required or recommended by the updated studies and analyses to the satisfaction of DOT. Petitioner shall submit copies of the studies and analyses to the State of Hawai'i DOT for review and approval, and to the County of Maui Department of Public Works for review and comment.

- c. Petitioner shall make transportation improvements relating to the direct impacts at the intersection of Kūlanihāko'i Street and Pi'ilani Highway acceptable to DOT and as set forth in the current and revised TIAR for Phase I of the Project, including full funding of improvements and dedication of land prior to the issuance of a certificate of occupancy for Phase I of the Project. The access road to the high school shall be perpendicular to Pi'ilani Highway for a minimum distance of 200 feet. For improvements as required or recommended in an updated TIARs for any other Phase of the Project, Petitioner shall provide all required transportation improvements to support the planned enrollment of the school, and complete all

EXHIBIT "2"

ORDINANCE NO. 4134

BILL NO. 38 (2014)

A BILL FOR AN ORDINANCE TO AMEND THE KIHEI-MAKENA  
COMMUNITY PLAN AND LAND USE MAP FROM AGRICULTURE TO  
PUBLIC/QUASI-PUBLIC FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII,  
TAX MAP KEY NUMBER (2) 2-2-002:081 (POR.),  
FOR THE PROPOSED KIHEI HIGH SCHOOL

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Pursuant to Chapter 2.80B, Maui County Code, the Kihei-Makena Community Plan and Land Use Map is hereby amended from Agriculture to Public/Quasi-Public for property situated at Kihei, Maui, Hawaii, and identified for real property tax purposes by Tax Map Key Number (2) 2-2-002:081 (por.), comprising approximately 29.175 acres, and more particularly described in Exhibit "A", attached hereto and made a part hereof, and in Community Plan Map No. CP-538, which is on file in the Office of the County Clerk of the County of Maui, and by reference made a part hereof.

SECTION 2. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM  
AND LEGALITY:



JAMES A. GIROUX  
Deputy Corporation Counsel  
County of Maui

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EXHIBIT "2"

## DESCRIPTION

### KAONOULU RANCH-WATER TANK SUBDIVISION LOT 1-A-1

Being portions of Royal Patent 7447, Land Commission Award 3237, Part 2 to H. Hewahewa, Certificate of Boundaries No. 56 and Royal Patent 4388, Land Commission Award 8452, Apana 19 to A. Keohokalole situated at Kaonoulu, Koheo 1 & 2, Kihei, Island and County of Maui, State of Hawaii.

Beginning at a 1/2-inch pipe on the Southwest corner of this lot on the Easterly side of Piilani Highway [Federal Aid Project No. F-RF-031-1(5)], the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KALI" being:

11,695.40 feet North

21,731.05 feet West

and running by azimuths measured clockwise from True South:

1. Thence along the Easterly side of Piilani Highway [Federal Aid Project No. F-RF-031-1(5)] on a curve to the right with a radius of 6,935.19 feet, the radial azimuth from the radius point to the beginning of the curve being:  $75^{\circ} 21' 36.2''$ ; the chord azimuth and distance being:  $166^{\circ} 04' 48.1''$  174.29 feet to a 1/2-inch pipe;
2.  $166^{\circ} 48'$  151.65 feet along same to a 1/2-inch pipe;
3.  $256^{\circ} 48'$  615.00 feet along the remainder of Royal Patent 7447, Land Commission Award 3237, Part 2 to H. Hewahewa, Certificate of Boundaries No. 56 to a 1/2-inch pipe ;
4. Thence along same on a curve to the right with a radius of 1,000.00 feet, the chord azimuth and distance being:  $265^{\circ} 18'$  295.62 feet to a PK nail;
5.  $273^{\circ} 48'$  1,330.50 feet along same to a 1/2-inch pipe;
6.  $0^{\circ} 00'$  737.29 feet along remainders of Royal Patent 7447, Land Commission Award 3237, Part 2 to H. Hewahewa, Certificate of Boundaries No. 56 and Royal Patent 4388, Land Commission Award 8452, Apana 19 to A. Keohokalole;
7.  $100^{\circ} 28'$  1,517.10 feet along Grant 9325, Apana 1 to Haleakala Ranch Co.;



8. 95° 59'

656.11 feet along same to the point of beginning and containing an area of 29.175 Acres.

Access will not be permitted into and from Piilani Highway [Federal Aid Project No. F-RF-031-1(5)] over and across Courses 1 and 2 of the above described Lot 1-A-1.

This work was prepared by me  
or under my supervision.



RONALD M. FUKUMOTO ENGINEERING, INC.

A handwritten signature in black ink, appearing to read "M. Silva", written over a horizontal line.

Michael E. Silva  
Licensed Professional Land Surveyor  
Certificate Number 12960

1721 Wili Pa Loop, Suite 203  
Wailuku, Hawaii 96793  
January 20, 2011

KR01

WE HEREBY CERTIFY that the foregoing BILL NO. 38 (2014)

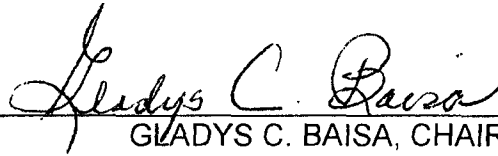
1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 20th day of June, 2014, by the following vote:

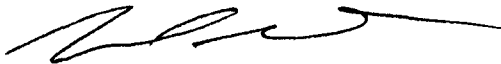
Gladys C BAISA Chair	Robert CARROLL Vice-Chair	Eleanora COCHRAN	Donald G. COUCH, JR	S Stacy CRIVELLO	Donald S GUZMAN	G Riki HOKAMA	Michael P. VICTORINO	Michael B WHITE
Aye	Aye	Aye	Aye	Excused	Aye	Aye	Excused	Aye

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 20th day of June, 2014.

DATED AT WAILUKU, MAUI, HAWAII, this 20th day of June, 2014.

RECEIVED  
2014 JUN 20 PM 4:14  
OFFICE OF THE MAYOR

  
GLADYS C. BAISA, CHAIR  
Council of the County of Maui




JOSIAH K. NISHITA, DEPUTY COUNTY CLERK  
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 27 DAY OF June, 2014.



ALAN M. ARAKAWA, MAYOR  
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 4134 of the County of Maui, State of Hawaii.



DENNIS A. MATEO, COUNTY CLERK  
County of Maui

Passed First Reading on May 27, 2014.  
Effective date of Ordinance June 27, 2014

RECEIVED  
2014 JUN 27 AM 9:47  
OFFICE OF THE  
COUNTY CLERK

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 4134, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

\_\_\_\_\_  
County Clerk, County of Maui

ORDINANCE NO. 4135

BILL NO. 39 (2014)

A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM  
AGRICULTURAL DISTRICT TO P-1 PUBLIC/QUASI-PUBLIC DISTRICT  
(CONDITIONAL ZONING) FOR PROPERTY SITUATED AT KIHEI, MAUI,  
HAWAII, TAX MAP KEY NUMBER (2) 2-2-002:081,  
FOR THE PROPOSED KIHEI HIGH SCHOOL

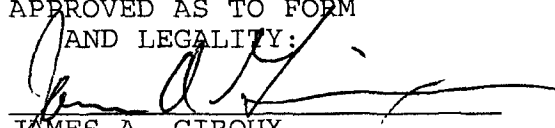
BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Pursuant to Chapters 19.31 and 19.510, Maui County Code, a change in zoning from Agricultural District to P-1 Public/Quasi-Public District (Conditional Zoning) is hereby granted for that certain parcel of land situated at Kihei, Maui, Hawaii, and identified for real property tax purposes by Tax Map Key Number (2) 2-2-002:081, comprising approximately 77.182 acres, and more particularly described in Exhibit "A", attached hereto and made a part hereof, and in Land Zoning Map No. L-5119, which is on file in the Office of the County Clerk of the County of Maui, and by reference made a part hereof; and

SECTION 2. Pursuant to Section 19.510.050, Maui County Code, the zoning granted by this ordinance is subject to the conditions set forth in Exhibit "B", attached hereto and made a part hereof, and the Unilateral Agreement and Declaration for Conditional Zoning, attached hereto and made a part hereof as Exhibit "C".

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM  
AND LEGALITY:

  
\_\_\_\_\_  
JAMES A. GIROUX  
Deputy Corporation Counsel  
County of Maui

S:\CLERICAL\LJN\ORD\CIZ\22002081.ciz with cond Kihei High School.doc

## DESCRIPTION

### KIHEI HIGH SCHOOL CONSOLIDATION LOT 1

Being portions of Royal Patent 7447, Land Commission Award 3237, Part 2 to H. Hewahewa (Certificate of Boundaries No. 56), Royal Patent 4388, Land Commission Award 8452, Apana 19 to A. Keohokalole, and Grant 9325, Apana 1 to Haleakala Ranch Company situated at Kaonoulu, Koheo 1 & 2, Waiohuli, Makawao, Kihei, Island and County of Maui, State of Hawaii.

Beginning at a 1/2-inch pipe at the Northwest corner of this lot and the Easterly side of Piilani Highway [Federal Aid Project No. RF-031-1(5)], the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KALI" being:

12,012.21 feet North

21,807.61 feet West

and running by azimuths measured clockwise from True South:

1. 256° 48' 615.00 feet along Lot 1-A-2 of the Kaonoulu Ranch-Water Tank Subdivision (Subdivision File No. 2.3124), being also the remainder of Royal Patent 7447, Land Commission Award 3237, Part 2 to H. Hewahewa, (Certificate of Boundaries No. 56) to a 1/2-inch pipe;
2. Thence along same on a curve to the right with a radius of 1,000.00 feet, the chord azimuth and distance being:  
265° 18' 295.62 feet to a PK nail;
3. 273° 48' 1330.50 feet along same to a 1/2-inch pipe;
4. 0° 00' 1712.42 feet along Lot 1-A-2 of the Kaonoulu Ranch-Water Tank Subdivision (Subdivision File No. 2.3124), and Lot 2-B of the Anawio Subdivision (Subdivision File No. 2.3129), being also the remainders of Royal Patent 7447, Land Commission Award 3237, Part 2 to H. Hewahewa (Certificate of Boundaries No. 56), Royal Patent 4388, Land Commission Award 8452, Apana 19 to A. Keohokalole and Grant 9325, Apana 1 to Haleakala Ranch Company to a PK nail;
5. 102° 30' 804.53 feet along Lot 2-B of the Anawio Subdivision (Subdivision File No. 2.3129), being also the remainder of Grant 9325, Apana 1 to Haleakala Ranch Company to a 1/2-inch pipe;
6. 86° 30' 200.00 feet along same to a 1/2-inch pipe;

7. 70° 42' 02" 739.62 feet along same to a 1/2-inch pipe;
8. 160° 42' 02" 791.42 feet along the Easterly side of Piilani Highway  
[Federal Aid Project No. RF-031-1(5)] to a 1/2-inch  
pipe;
9. 250° 42' 02" 20.00 feet along same to a 1/2-inch pipe;
10. 160° 42' 02" 120.53 feet along same to a 1/2-inch pipe;
11. Thence along same on a curve to the right with a radius of 6,920.19 feet, the chord  
azimuth and distance being:  
161° 23' 31.5" 167.04 feet to a 1/2-inch pipe;
12. Thence along same on a curve to the right with a radius of 6,920.19 feet, the chord  
azimuth and distance being:  
162° 24' 54" 80.05 feet to a 1/2-inch pipe;
13. Thence along same on a curve to the right with a radius of 6,920.19 feet, the chord  
azimuth and distance being:  
162° 47' 07.5" 9.43 feet to a 1/2-inch pipe;
14. 72° 49' 28" 15.00 feet along same to a 1/2-inch pipe;
15. Thence along same on a curve to the right with a radius of 6,935.19 feet, the chord  
azimuth and distance being:  
164° 48' 44" 481.11 feet to a 1/2-inch pipe;
16. 166° 48' 151.65 feet along same to the point of beginning and  
containing an area of 77.182 Acres.

Vehicle access will not be permitted into and from Piilani Highway, Federal Aid Project No. [RF-031-1(5)] over and across courses 8, 9, 10, 11, 13, 14, 15 and 16 of the above described Lot 1.

Vehicle access will be permitted into and from Piilani Highway, Federal Aid Project No. [RF-031-1(5)] over and across 12 of the above described Lot 1.

This work was prepared by me  
or under my supervision.



RONALD M. FUKUMOTO ENGINEERING, INC.

A handwritten signature in black ink, appearing to read "M. Silva", written over a horizontal line.

Michael E. Silva  
Licensed Professional Land Surveyor  
Certificate Number 12960  
License Expires 4/30/2014

1721 Wili Pa Loop, Suite 203  
Wailuku, Hawaii 96793  
July 5, 2013

GR7002

## EXHIBIT "B"

### CONDITIONS OF ZONING

1. That the State Department of Education (DOE) shall submit to the Department of Public Works for review and comment any Traffic Impact Analysis Reports, pedestrian route studies and/or any related reports or studies at the same time they are submitted to the State Department of Transportation.
2. That, within six months of the DOE's initiation of the design process for Phase 1 of the Kihei High School or the State's execution of a contract with a designer-builder for the school, whichever occurs earlier, the DOE and/or its designer-builder, as appropriate, shall begin to work with the County of Maui Department of Planning on the design of the following improvements to the Kihei High School campus, which shall subsequently be implemented to the satisfaction of the Department of Planning during the permitting process in accordance with Condition Number 16 of the Decision and Order by the State Land Use Commission granting the DOE's Petition for a Land Use District Boundary Amendment (Land Use Commission Docket No. A11-794):
  - a. Pedestrian and bicycle access to and from the school campus to connect to current and future pedestrian and bicycle networks in the vicinity of the campus;
  - b. Bicycle-friendly improvements on the school campus and, if requested by the County of Maui Department of Transportation, an area for public transit access to the school campus;
  - c. Overflow parking and lighting to accommodate special events to be held on the school campus;
  - d. Consideration of best practices in Crime Prevention through Environmental Design (CPTED) elements in campus design; and
  - e. To the extent not inconsistent with the provision of a drainage detention basin, overflow parking and CPTED design elements, a landscaped buffer on the campus fronting Pi'ilani Highway.
3. That the DOE shall provide annual compliance reports to the Department of Planning and the Maui County Council on the status of the project and progress in complying with the conditions of zoning and the State Land Use Commission conditions, commencing within one year of the effective date of the ordinance. This reporting requirement shall cease upon the completion of construction of Phases 1 and 2 of the project.

4. That all of the conditions imposed by the State Land Use Commission in its Decision and Order filed July 29, 2013, granting the Land Use District Boundary Amendment for the property (Land Use Commission Docket All-794), except for Conditions 16, 19, 20, 23, 24, and 25, shall be incorporated by reference herein and made a part hereof as conditions of zoning.



RECORDED  
STATE OF HAWAII  
Doc A-52730454  
DATE - TIME June 09, 2014 8:02 AM

LAND COURT SYSTEM

REGULAR SYSTEM

Return By Mail ( X ) Pickup ( ) : To:  
Office of the County Clerk  
County of Maui  
200 South High Street  
Wailuku, Hawai'i 96793

Total Number of Pages: 9

Affects Tax Map Key (Maui) (2)2-2-002:081

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE, made this 14 day of May 2014, by the State of Hawaii, through the Board of Land and Natural Resources, whose principal place of business is located in Honolulu, Oahu, Hawaii, and whose mailing address is 1151 Punchbowl Street, Honolulu, Hawaii, 96813, hereinafter referred to as "DECLARANT", and who is the owner of that certain parcel located at Kihei, Maui, Hawai'i, comprised of approximately 77.182 acres and identified for real property tax purposes by Tax Map Key No. (2) 2-2-002:081, hereinafter referred to as "PARCEL" (or "PROPERTY").

WITNESSETH:

WHEREAS, the Council of the County of Maui, State of Hawai'i, hereinafter referred to as "Council", is considering the establishment of zoning for the Parcel, comprised of approximately 77.182 acres, which is more particularly described in Exhibit "1", which is attached hereto and made a part hereof, and which is more particularly identified in Land Zoning Map No. L-5119, which is on file in the Office of the County Clerk of the County of Maui; and

1  
**EXHIBIT "C"**

WHEREAS, the Council recommends through its Land Use Committee, Committee Report No. 14-61, that said establishment of zoning be approved for passage on first reading subject to certain conditions, pursuant to Section 19.510.050, Maui County Code; and

WHEREAS, the Declarant has agreed to execute this instrument pursuant to the conditional zoning provisions of Section 19.510.050, Maui County Code;

NOW, THEREFORE, the Declarant makes the following Declaration:

1. That this Declaration is made pursuant to the provisions of Section 19.510.050, Maui County Code, relating to conditional zoning;

2. That until written release by the County of Maui, the Parcel, and all parts thereof, is and shall be held subject to the covenants, conditions and restrictions which shall be effective as to and shall run with the land as to the Parcel, from and after the recording of this Declaration with the Bureau of Conveyances or the Land Court of the State of Hawai'i, without the execution, delivery or recordation of any further deed, instrument, document, agreement, declaration, covenant or the like with respect thereto by the Declarant, the County of Maui, or any heir, devisee, executor, administrator, personal representative, successor, and assign; that the acquisition of any right, title or interest in or with respect to the Parcel by any person or persons, entity or entities, whomsoever, shall be deemed to constitute the acceptance of all of the covenants, conditions and restrictions of this Declaration by such person or persons, entity or entities; and that upon any transfer of any right, title or interest in or with respect to the Parcel the same shall be subject to, and the transferee shall assume and be bound and obligated to observe and perform all of the covenants, conditions and restrictions of this Declaration;

3. That this Declaration and all of the covenants, conditions and restrictions contained herein shall continue to be effective as to and run with the land in perpetuity, or until the Declarant notifies the appropriate County Department that any of said covenants, conditions and restrictions are satisfied by the Declarant, and the appropriate County Department verifies the satisfaction and provides a written release of the covenant, condition or restriction;

4. That the term "Declarant" and any pronoun in reference thereto, wherever used herein, shall be construed to mean the singular or the plural, the masculine or the feminine, or the neuter, and vice versa, and shall include any corporation, and shall be held to mean and include the "Declarant", the Declarant's heirs, devisees, executors, administrators, personal representatives, successors, and assigns;

5. That the Declaration shall become fully effective on the effective date of the zoning ordinance approving the establishment of P-1 Public/Quasi-Public District zoning and this Declaration shall be recorded in the Bureau of Conveyances or Land Court of the State of Hawai'i;

6. That the Declarant agrees to develop said Parcel in conformance with the conditions set forth in Exhibit "2", which is attached hereto and made a part hereof and which shall be made a part of the zoning ordinance;

7. That the conditions imposed are reasonable and rationally relate to the objective of preserving the public health, safety and general welfare and such conditions fulfill the need for the public service demands created by the proposed use;

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that until released in writing by the County, the conditions imposed in this Declaration shall run with the land identified hereinabove and shall bind and constitute notice to all subsequent lessees, grantees, assignees, mortgagees, lienors and any other persons who claim an interest in said land, and the County of Maui shall have the right to enforce this Declaration by appropriate action at law or suit in equity against all such persons, provided that the Declarant or its successors and assigns may at any time file a petition for the removal of the conditions and terminate this Unilateral Agreement, such petition to be processed in the same manner as petitions for change in zoning.

(Balance of this page is intentionally left blank - signature page follows:)

IN WITNESS WHEREOF, the undersigned has executed this UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING effective as of the day and year first above written.

DECLARANT:

Board OF LAND AND NATURAL RESOURCES

By \_\_\_\_\_

William J. Aila, Jr.  
Its Chairperson

APPROVED AS TO FORM:

\_\_\_\_\_

Linda L.W. Chow  
Land/Transportation Division  
Deputy Attorney General

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_

**MICHAEL J. HOPPER**

Deputy Corporation Counsel  
County of Maui

## DESCRIPTION

### KIHEI HIGH SCHOOL CONSOLIDATION LOT 1

Being portions of Royal Patent 7447, Land Commission Award 3237, Part 2 to H. Hewahewa (Certificate of Boundaries No. 56), Royal Patent 4388, Land Commission Award 8452, Apana 19 to A. Keohokalole, and Grant 9325, Apana 1 to Haleakala Ranch Company situated at Kaonoulu, Koheo 1 & 2, Waiholuli, Makawao, Kihei, Island and County of Maui, State of Hawaii.

Beginning at a 1/2-inch pipe at the Northwest corner of this lot and the Easterly side of Pillani Highway [Federal Aid Project No. RF-031-1(5)], the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KALI" being:

12,012.21 feet North

21,807.61 feet West

and running by azimuths measured clockwise from True South:

1. 256° 48' 615.00 feet along Lot 1-A-2 of the Kaonoulu Ranch-Water Tank Subdivision (Subdivision File No. 2,3124), being also the remainder of Royal Patent 7447, Land Commission Award 3237, Part 2 to H. Hewahewa, (Certificate of Boundaries No. 56) to a 1/2-inch pipe;
2. Thence along same on a curve to the right with a radius of 1,000.00 feet, the chord azimuth and distance being:  
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3. 273° 48' 1330.50 feet along same to a 1/2-inch pipe;
4. 0° 00' 1712.42 feet along Lot 1-A-2 of the Kaonoulu Ranch-Water Tank Subdivision (Subdivision File No. 2,3124), and Lot 2-B of the Anawio Subdivision (Subdivision File No. 2,3129), being also the remainders of Royal Patent 7447, Land Commission Award 3237, Part 2 to H. Hewahewa (Certificate of Boundaries No. 56), Royal Patent 4388, Land Commission Award 8452, Apana 19 to A. Keohokalole and Grant 9325, Apana 1 to Haleakala Ranch Company to a PK nail;
5. 102° 30' 804.53 feet along Lot 2-B of the Anawio Subdivision (Subdivision File No. 2,3129), being also the remainder of Grant 9325, Apana 1 to Haleakala Ranch Company to a 1/2-inch pipe;
6. 86° 30' 200.00 feet along same to a 1/2-inch pipe;

7. 70° 42' 02" 739.62 feet along same to a 1/2-inch pipe;
8. 160° 42' 02" 791.42 feet along the Easterly side of Pillani Highway  
[Federal Aid Project No. RF-031-1(5)] to a 1/2-inch  
pipe;
9. 250° 42' 02" 20.00 feet along same to a 1/2-inch pipe;
10. 160° 42' 02" 120.53 feet along same to a 1/2-inch pipe;
11. Thence along same on a curve to the right with a radius of 6,920.19 feet, the chord  
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12. Thence along same on a curve to the right with a radius of 6,920.19 feet, the chord  
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13. Thence along same on a curve to the right with a radius of 6,920.19 feet, the chord  
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14. 72° 49' 28" 15.00 feet along same to a 1/2-inch pipe;
15. Thence along same on a curve to the right with a radius of 6,935.19 feet, the chord  
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16. 166° 48' 151.65 feet along same to the point of beginning and  
containing an area of 77.182 Acres.

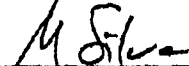
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Vehicle access will be permitted into and from Pillani Highway, Federal Aid Project No. [RF-031-1(5)] over and across 12 of the above described Lot 1.

This work was prepared by me  
or under my supervision.



RONALD M. FUKUMOTO ENGINEERING, INC.

  
Michael E. Silva  
Licensed Professional Land Surveyor  
Certificate Number 12960  
License Expires 4/30/2014

1721 Wili Pa Loop, Suite 203  
Wailuku, Hawaii 96793  
July 5, 2013

GR7002

## CONDITIONS OF ZONING

1. That the State Department of Education (DOE) shall submit to the Department of Public Works for review and comment any Traffic Impact Analysis Reports, pedestrian route studies and/or any related reports or studies at the same time they are submitted to the State Department of Transportation.
2. That, within six months of the DOE's initiation of the design process for Phase 1 of the Kihei High School or the State's execution of a contract with a designer-builder for the school, whichever occurs earlier, the DOE and/or its designer-builder, as appropriate, shall begin to work with the County of Maui Department of Planning on the design of the following improvements to the Kihei High School campus, which shall subsequently be implemented to the satisfaction of the Department of Planning during the permitting process in accordance with Condition Number 16 of the Decision and Order by the State Land Use Commission granting the DOE's Petition for a Land Use District Boundary Amendment (Land Use Commission Docket No. A11-794):
  - a. Pedestrian and bicycle access to and from the school campus to connect to current and future pedestrian and bicycle networks in the vicinity of the campus;
  - b. Bicycle-friendly improvements on the school campus and, if requested by the County of Maui Department of Transportation, an area for public transit access to the school campus;
  - c. Overflow parking and lighting to accommodate special events to be held on the school campus;
  - d. Consideration of best practices in Crime Prevention through Environmental Design (CPTED) elements in campus design; and
  - e. To the extent not inconsistent with the provision of a drainage detention basin, overflow parking and CPTED design elements, a landscaped buffer on the campus fronting Pi'ilani Highway.
3. That the DOE shall provide annual compliance reports to the Department of Planning and the Maui County Council on the status of the project and progress in complying with the conditions of zoning and the State Land Use Commission conditions, commencing within one year of the effective date of the ordinance. This reporting requirement shall cease upon the completion of construction of Phases 1 and 2 of the project.

## EXHIBIT "2"



4. That all of the conditions imposed by the State Land Use Commission in its Decision and Order filed July 29, 2013, granting the Land Use District Boundary Amendment for the property (Land Use Commission Docket All-794), except for Conditions 16, 19, 20, 23, 24, and 25, shall be incorporated by reference herein and made a part hereof as conditions of zoning.

WE HEREBY CERTIFY that the foregoing BILL NO. 39 (2014)

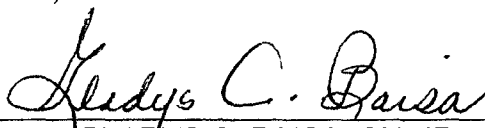
1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 20th day of June, 2014, by the following vote:

Gladys C BAISA Chair	Robert CARROLL Vice-Chair	Eleanora COCHRAN	Donald G COUCH, JR.	S Stacy CRIVELLO	Donald S GUZMAN	G Riki HOKAMA	Michael P VICTORINO	Michael B WHITE
Aye	Aye	Aye	Aye	Excused	Aye	Aye	Excused	Aye

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 20th day of June, 2014.

DATED AT WAILUKU, MAUI, HAWAII, this 20th day of June, 2014.

RECEIVED  
2014 JUN 20 PM 4:14  
OFFICE OF THE MAYOR



GLADYS C. BAISA, CHAIR  
Council of the County of Maui



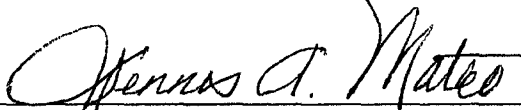
JOSIAH K. NISHITA, DEPUTY COUNTY CLERK  
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 27 DAY OF June, 2014.



ALAN M. ARAKAWA, MAYOR  
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 4135 of the County of Maui, State of Hawaii.



DENNIS A. MATEO, COUNTY CLERK  
County of Maui

Passed First Reading on May 27, 2014.  
Effective date of Ordinance June 27, 2014

RECEIVED  
2014 JUN 27 AM 9:47  
OFFICE OF THE  
COUNTY CLERK

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 4135, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

\_\_\_\_\_  
County Clerk, County of Maui

EXHIBIT "3"

DAVID Y. IGE  
GOVERNOR

RECEIVED  
CORPORATION COUNSEL



2019 JAN 22 PM 12:56

17 JUL 18 P3:49

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

FORD N. FUCHIGAMI  
DIRECTOR

Deputy Directors  
JADE T. BUTAY  
ROSS M. HIGASHI  
EDWIN H. SNIFFEN  
DARRELL T. YOUNG

IN REPLY REFER TO

HWY-PS 2.5214

July 18, 2017

Planning Section Rec'd

JUL 18 2017

Fac. Dev. Branch

TO: DUANE Y. KASHIWAI  
PUBLIC WORKS ADMINISTRATOR  
FACILITIES DEVELOPMENT BRANCH  
DEPARTMENT OF EDUCATION

FROM: FORD N. FUCHIGAMI  
DIRECTOR OF TRANSPORTATION

SUBJECT: KIHAI HIGH SCHOOL  
TRAFFIC AND PEDESTRIAN STUDIES AND IMPROVEMENTS  
KIHAI, MAUI  
TMK: (2) 2-2-002:081

The Hawaii Department of Transportation (HDOT) reviewed the Traffic Impact Analysis Report (TIAR) (by Wilson Okamoto, Updated October 2014), and the Pedestrian Route Study/Grade-Separated Pedestrian Crossing (GSPC) Study for the Kihei High School (KHS) to be constructed in Kihei, Maui, mauka of Piilani Highway, State Route 31, at Kulanihakoi Street.

The review was conducted to satisfy Decision and Order, Docket A11-794, July 29, 2013, condition 1(a): "*The TIAR shall be revised and accepted by DOT prior to Petitioner executing a contract for the design of Phase I of the Project*" and 1(b): "*The pedestrian route study and analysis shall be completed and approved prior to Petitioner executing a contract for the design of Phase I of the Project*".

The HDOT has been coordinating with the Hawaii Department of Education (HDOE) and is satisfied that the stated portions of condition 1(a) and 1(b) have been adequately addressed. The HDOE has assured the HDOT that HDOE will continue to cooperate to address traffic impacts and other subparts of Condition 1, as applicable.

The HDOT expects that the above agreement will be consistent with the following understandings:

The GSPC study was supplemented by a review by Fehr & Peers (F&P) with respect to whether the GSPC, pedestrian traffic, and road conditions would meet various applicable warrants for a GSPC. The result of the F&P review was that a GSPC would not meet applicable warrants during Phase I of the KHS though the F&P review suggested that a GSPC may meet applicable warrants during Phase II of the KHS. No pedestrian crossing measures for Phase I were proposed by F&P; the HDOT assumes F&P recommends the traffic signal will accommodate an at-grade crossing and that a median pedestrian refuge will be installed for Phase I.

EXHIBIT " 3 "

Prior to Phase II, the GSPC warrants should be re-evaluated and if met then a GSPC should be funded and provided by the HDOE.

The TIAR included a traffic signal warrant study that was not acceptable to the HDOT due to including Signal Warrant 3, Peak Hour, which was not considered applicable in this situation. However, the study indicated that a signal was warranted under Signal Warrant 2, 4-Hour Vehicular Volume.

Per the TIAR, KHS shall implement the recommendations for improvements as described and listed in the TIAR (Wilson Okamoto, September 2011, Revised April 2012, Updated October 2014) which would include but not be limited to:

1. Provide a left-turn and shared through/right-turn on the west-bound approach to the Piilani Highway and Kulanihakoi Street intersection.
2. Provide a channelized north-bound deceleration and acceleration lane for Kulanihakoi Street on Piilani Highway at the intersection.
3. Provide a south-bound channelized left-turn lane on Piilani Highway.
4. Provide two east-bound lanes on Kulanihakoi Street departure from Piilani Highway.
5. Provide a left-turn and a shared through/right-turn lane on the east-bound approach to Piilani Highway.
6. Provide a traffic signal system at the intersection of Piilani Highway and Kulanihakoi Street.

Note that all improvements shall be consistent, applicable highway design standards, and approved by the HDOT.

If there are any questions, please contact Ken Tatsuguchi, Engineering Program Manager, Highways Division, Planning Branch, at (808) 587-1830. Please reference file review number PS 2014-252.

EXHIBIT " 4 "

# Resolution

No. 19-20

REQUESTING THE STATE LAND USE  
COMMISSION TO ISSUE A DECLARATORY  
RULING REITERATING AND AFFIRMING THE  
REQUIREMENT FOR A PEDESTRIAN  
OVERPASS OR UNDERPASS TO ALLOW SAFE  
ACCESS TO KIHEI HIGH SCHOOL

WHEREAS, in obtaining land use entitlements for the development of the proposed Kihei High School, the State Department of Education promised the State Land Use Commission and the Maui County Council that an overpass or underpass would be constructed to provide students with safe pedestrian access across Piilani Highway; and

WHEREAS, the Land Use Commission approved the corresponding District Boundary Amendment on July 29, 2013, in Docket A11-794, with 25 conditions, including Condition 1(b), which reads in part:

Petitioner shall cause to be constructed, or ensure that there is an available above or below ground pedestrian crossing and implement such mitigation or improvements as may be required or recommended by the study and analysis to the satisfaction of DOT ("Department of Transportation") prior to opening Phase I of the Project.; and

WHEREAS, the Council approved the corresponding Change in Zoning by the enactment of Ordinance 4135 (2014), which included the Land Use Commission's Condition 1(b) as a County zoning condition; and

WHEREAS, during a public meeting on the proposed Change in Zoning bill that became Ordinance 4135, on October 30, 2013, the Council's Land Use Committee received assurances from representatives of the State that an overpass or underpass would be provided pursuant to the Land Use Commission's conditions; and

WHEREAS, according to the official minutes of the Land Use Committee meeting on October 30, 2013, a planning consultant representing the State, stated the following:

EXHIBIT " 4 "

**Resolution No. 19-20**

The State Land Use District Boundary Amendment, the Land Use Commission found that the site did warrant the criteria to become classified as Urban. There were 26 [sic] conditions placed on the approval. So these are some of the key conditions and as was mentioned before, there was a requirement that the . . . that there be provided a pedestrian overpass or underpass prior to opening of Phase I; and

WHEREAS, Land Use Committee Report 14-61, which recommended passage of the Change in Zoning bill, included the following passage:

The State Land Use Commission ("LUC") incorporated 25 conditions on the State Land Use District Boundary Amendment from Agriculture to Urban. One of the conditions required construction of an above- or below-ground pedestrian crossing prior to the opening of Phase I, to allow pedestrians to cross Piilani Highway to access the school.; and

WHEREAS, the Land Use Commission is tentatively planning to have a public meeting on February 20, 2019, to receive a status update on the project, including the State's compliance with Condition 1(b); and

WHEREAS, to ensure compliance with both Condition 1(b) and the conditions of Ordinance 4135, it would be beneficial for the Land Use Commission to issue a Declaratory Ruling to reiterate and affirm the requirement of a pedestrian overpass or underpass for Kihei High School; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it requests the State Land Use Commission to issue a Declaratory Ruling reiterating and affirming the requirement for a pedestrian overpass or underpass to allow safe access to Kihei High School;
2. That it requests that the Department of Planning, with the representation of the Department of the Corporation Counsel, submit as soon as possible to the Land Use

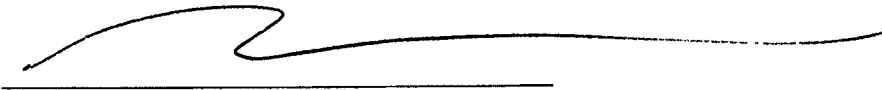


**Resolution No. 19-20**

Commission a Petition for a Declaratory Ruling reiterating and affirming the requirement for a pedestrian overpass or underpass to allow safe access to Kihei High School; and;

3. That certified copies of this resolution be transmitted to Mayor Michael P. Victorino, Acting Corporation Counsel Patrick K. Wong, Acting Planning Director Michele McLean, State Senator Rosalyn Baker, State Representative Tina Wildberger, and the State Land Use Commission.

APPROVED AS TO FORM AND LEGALITY

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a solid horizontal line.

Deputy Corporation Counsel  
County of Maui

paf:dmr:19-007d

# COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

## CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that RESOLUTION NO. 19-20 was adopted by the Council of the County of Maui, State of Hawaii, on the 1st day of February, 2019, by the following vote:

MEMBERS	Kelly T. KING Chair	Keani N. W. RAWLINS- FERNANDEZ Vice-Chair	G. Riki HOKAMA	Natalie A. KAMA	Alice L. LEE	Michael J. MOLINA	Tamara A. M. PALTIN	Shane M. SINENCI	Yuki Lei K. SUGIMURA
ROLL CALL	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye



COUNTY CLERK

EXHIBIT " 5 "



5. Article XI, Section 7, of the Hawai'i Constitution states that the State has an obligation to protect the use of Hawaii's water resources for the benefit of its people. Kihei High School will not adversely affect the Kama'ole Aquifer System.

6. As set forth in the Findings of Fact, the Project is fully consistent with Article XII, Section 7, Article XI, Section 1, and Article XI, Section 7 of the Hawai'i State Constitution.

#### PROPOSED DECISION AND ORDER

IT IS HEREBY FURTHER ORDERED that the Petition Area being the subject of Docket A11-794 filed by Petitioner, consisting of approximately 77.2 acres of land in the State Land Use Agricultural District located at Kihei, Maui, Hawai'i, identified as Maui Tax Map Key Nos: 2-2-02: 81 and 83 and approximately shown on Exhibit A attached and incorporated by reference shall be and hereby is reclassified to the Urban District and the State Land Use District Boundaries shall be amended accordingly.

#### Conditions

IT IS FURTHER ORDERED that reclassification of the Petition Area from the State Land Use Agricultural District to the State Land Use Urban District shall be subject to the following conditions:

1. **Highway and Road Improvements.** Petitioner will work cooperatively with DOT to reach mutually agreeable solutions. Petitioner shall abide by, complete and/or submit the following:

a. The TIAR shall be revised and accepted by DOT prior to Petitioner executing a contract for the design of Phase I of the Project. The TIAR shall be structured to show assumptions about, traffic impacts of, and mitigations for both Phase I of the Project only and also the full build out of the Project. Petitioner shall submit three updated TIARs for the

Project: the first one full year after opening of Phase I of the Project, the second with DOT approval prior to the issuance of any certificate of occupancy for Phase II of the Project, and the third with DOT approval one full year after full build out of Phase II of the Project. Should there be delays over three years between preparation of the updated TIAR one full year after opening of Phase I and the scheduled issuance of the certificate of occupancy for Phase II or any potential later Phasing, Petitioner shall submit an additional updated TIAR at DOT's request. All requirements and criteria for the TIAR and updated TIARs shall be agreed and approved by DOT. All project generated traffic shall be mitigated at Petitioner's expense as recommended or required in any of the TIARs approved by DOT. Petitioner shall submit copies of all TIARs and TIAR updates to the State of Hawai'i DOT for review and approval, and to the County of Maui Department of Public Works for review and comment.

b. Petitioner shall complete a pedestrian route study for Phase I of the Project which includes ingress and egress of pedestrians through defined location(s) approved by DOT and shall analyze compliance with the proposed warrants in FHWA/RD-84/082 (July 1984) to the satisfaction of DOT. The pedestrian route study and analysis shall be completed and approved prior to Petitioner executing a contract for the design of Phase I of the Project. Petitioner shall implement such mitigation or improvements as may be required or recommended by the study and analysis to the satisfaction of DOT prior to opening Phase I of the Project. Petitioner shall submit three updated pedestrian route studies and analyses for the Project: the first one full year after opening of Phase I of the Project, the second with DOT approval prior to the issuance of any certificate of occupancy for Phase II of the Project, and the third with DOT approval one full year after full build out of Phase II of the Project. Should there be delays over three years between preparation of the updated pedestrian route study one full year after opening Phase I and the scheduled issuance of the certificate of occupancy for Phase II or any potential

later Phasing, Petitioner shall submit an additional updated pedestrian route study at DOT's request. Petitioner shall implement such mitigation or improvements as may be required or recommended by the updated studies and analyses to the satisfaction of DOT. Petitioner shall submit copies of the studies and analyses to the State of Hawai'i DOT for review and approval, and to the County of Maui Department of Public Works for review and comment.

c. Petitioner shall make transportation improvements relating to the direct impacts at the intersection of Kulanihako'i Street and Pi'ilani Highway acceptable to DOT and as set forth in the current and revised TIAR for Phase I of the Project, including full funding of improvements and dedication of land prior to the issuance of a certificate of occupancy for Phase I of the Project. The access road to the high school shall be perpendicular to Pi'ilani Highway for a minimum distance of 200 feet. For improvements as required or recommended in an updated TIARs for any other Phase of the Project, Petitioner shall provide all required transportation improvements to support the planned enrollment of the school, and complete all associated transportation improvements prior to the issuance of a certificate of occupancy.

d. Petitioner shall install paved shoulders along Pi'ilani Highway fronting the high school, and provide accommodations for bicycles to the mutual agreement of Petitioner and DOT.

e. Petitioner shall plan, design, and construct all other improvements required to mitigate project generated or related transportation impacts, in accordance with the revised TIAR for Phase I of the Project, or any of the updated TIARs, and as approved by the DOT.

f. Petitioner shall address traffic noise levels along Pi'ilani Highway with noise compatible sound abatement measures to comply with DOT's noise policy.

EXHIBIT " 6 "



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LAND USE COMMISSION

STATE OF HAWAI'I

CONTINUED HEARING AND ACTION	)	PAGE
A11-794 STATE OF HAWAI'I	)	1
DEPARTMENT OF EDUCATION-KIHEI HIGH SCHOOL	)	
(Maui)	)	
ACTION	)	
A94-706 KA'ONO'ULU RANCH (Maui)	)	29

TRANSCRIPT OF PROCEEDINGS

The above-entitled matters came on for a Public Hearing at Maui Arts & Cultural Center, Alexa Higashi Meeting Room, One Cannon Way, Kahului, Maui, Hawai'i commencing at 9:40 a.m. on June 27, 2013, pursuant to Notice.

REPORTED BY: HOLLY M. HACKETT, CSR #130, RPR  
Certified Shorthand Reporter

## A P P E A R A N C E S

## COMMISSIONERS:

KYLE J.K. CHOCK, CHAIRPERSON

RONALD HELLER, VICE CHAIR

CHAD McDONALD, VICE CHAIR

SHELDON R. BIGA

THOMAS CONTRADES

LANCE M. INOUE

ERNEST MATSUMURA

EXECUTIVE OFFICER: DAN ORODENKER

CHIEF CLERK: RILEY HAKODA

STAFF PLANNER: SCOTT DERRICKSON

DEPUTY ATTORNEY GENERAL: SARAH HIRAKAMI, ESQ.

AUDIO TECHNICIAN: WALTER MENCHING

Docket No. All-794 State of Hawaii-DOE, Kihei HS-

Decision Making

For the Petitioner:

WILLIAM YUEN, ESQ.

ROBERT PURDIE - DOE

For the County:

JAMES GIROUX, ESQ.

Deputy Corporation Counsel

WILLIAM SPENCE, Director

For the State:

JESSE SOUKI

Director Office of Planning

RODNEY FUNAKOSHI, OP

## A P P E A R A N C E S (cont'd)

Docket No. A94-706 Ka'ono'ulu Ranch

Motion to Stay

For the Petitioner: JONATHAN STEINER, ESQ.

For the County  
Dept. of Planning  
MICHAEL HOPPER  
Deputy Corporation Counsel  
WILLIAM SPENCE, Director

For the State: JESSE SOUKI, Director  
Office of Planning  
RODNEY FUNAKOSHI, OP

For the Intervenor  
Maui Tomorrow: TOM PIERCE, ES1.  
IRENE BOWIE  
DANIEL KANAHELE

For the Intervenor  
South Maui Citizens  
For Responsible Growth: MARK HYDE

## I N D E X

Docket No. A11-794 State of Hawai'i-DOE

PUBLIC TESTIMONY

PAGE

Lucienne De'Naie

9

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Docket No A94-706 Ka'ono'ulu Ranch

PUBLIC TESTIMONY

Clayton Nishikawa

34

Joan Martin

35

1           CHAIRMAN CHOCK: (gavel) I'd like to call  
2 the meeting to order. This is a meeting of the State  
3 Land Use Commission. Our first item of business is  
4 the adoption of the minutes. Is there a motion to  
5 adopt?

6           COMMISSIONER CONTRADES: So moved.

7           COMMISSIONER McDONALD: Second.

8           CHAIRMAN CHOCK: Moved and seconded. Any  
9 discussion? Any objections to the minutes? If not  
10 the minutes have been approved. I'd like to ask our  
11 executive officer to briefly cover our tentative  
12 meeting schedule.

13           MR. ORODENKER: Thank you, Mr. Chair.  
14 July 11th and 12th our next scheduled meeting remains  
15 open. We have nothing on the agenda for those 2 days.

16           July 25th and 26th we are back here on Maui  
17 for Maui R&T at the Makena Beach and Golf Resort for a  
18 site visit and commencement of hearing.

19           On August 8th and 9th continued hearing for  
20 Maui R&T. On August 22nd and 23rd Halekua Development  
21 Corporation on O'ahu mostly to bifurcate and amend.

22           September 5th and 6th CMBY Investment, LLC  
23 on Maui until 2:00 p.m. Then at 2:00 p.m. we will be  
24 having our first public hearing on the Governor's  
25 recently-approved Administrative Rules. We also have

1 Maui R&T continued hearing oral argument on the  
2 following day.

3 September 19th and 20th is actually the  
4 HCPO conference on the Big Island. Sheraton Bay Kona.  
5 We will also be having a meeting in regard to our  
6 public rules at that time.

7 CHAIRMAN CHOCK: Thank you very much, Dan.  
8 This is a continued hearing and action on A11-794 oral  
9 argument and deliberation State Department of  
10 Education, Kihei High School, to amend the  
11 Agricultural Land Use District Boundary into the Urban  
12 Land Use District for approximately 77.2 acres of  
13 land. Will the parties please identify themselves for  
14 the record.

15 MR. YUEN: Good morning, Mr. Chair.  
16 William Yuen on behalf of the State of Hawai'i  
17 Department of Education. With me is Robert Purdie of  
18 the Department of Education.

19 CHAIRMAN CHOCK: Good morning.

20 MR. GIROUX: Good morning. James Giroux,  
21 deputy corporation counsel with the Department of  
22 Planning. And with me is William Spence, Director.

23 CHAIRMAN CHOCK: Good morning.

24 MR. SOUKI: Good morning, Chair and  
25 Commissioners. Jesse Souki for the Office of

1 Planning, state of Hawai'i. And with me is Rodney  
2 Funakoshi.

3 CHAIRMAN CHOCK: Good morning, Jesse.  
4 Congratulations on recently becoming a dad. Why do  
5 you look so well-rested? (laughter)

6 MR. SOUKI: Ask my wife.

7 CHAIRMAN CHOCK: I'm not. I'm not well  
8 rested. Anyway, let me briefly update the record in  
9 this docket. On June 13, 2013 the Commission began  
10 the hearings. June 14 the Commission concluded the  
11 evidentiary portion of the proceedings.

12 On June 19 the Commission received  
13 Petitioner's Proposed Findings of Fact, Conclusions of  
14 Law and Decision and Order after it had met with OP  
15 and County and mailed the agenda for the June 27-28  
16 meeting to the parties and the statewide and Maui  
17 mailing lists.

18 On June 25th and 26th the Commission  
19 received Petitioner's Stipulated Findings of Fact,  
20 Conclusions of Law and Decision and Order and OP and  
21 County Statements of No Objection to the Stipulated  
22 Findings of Fact, Conclusions of Law and Decision and  
23 Order.

24 Let me briefly describe our procedure for  
25 today. First I will call for those individuals

1 desiring to provide public testimony on this matter to  
2 identify themselves. All such individuals will be  
3 called in turn to our witness box where they will be  
4 sworn in. A 3-minute time limit on testimony will be  
5 enforced.

6           After completion of the public testimony,  
7 oral argument presentations will begin starting with  
8 the Petitioner. Chair will allow each party no more  
9 than 15 minutes to present oral argument in support of  
10 its Proposed Decision and Order and/or its exceptions  
11 to those proposed by other parties. Petitioner may  
12 reserve a portion of this time for rebuttal.

13           At the conclusion of oral argument and  
14 after questions from the Commissioners and the answers  
15 that follow, the Commission will conduct formal  
16 deliberation on this matter. Chair will also note for  
17 the parties and the public that from time to time I'll  
18 be calling for short breaks. Are there any  
19 individuals wishing to provide public testimony at  
20 this time? Please come forward.

21           Good morning, Ma'am. Would you please  
22 state your name and address for the record, please?

23           THE WITNESS: Yes. My name is Lucienne de  
24 Naie. I reside at 320 Door of Faith Road in Haiku,  
25 Maui.



1 LUCIENNE De NAIE

2 being first duly sworn to tell the truth, was examined  
3 and testified as follows:

4 THE WITNESS: I do.

5 CHAIRMAN CHOCK: Proceed. Three minutes.

6 THE WITNESS: Thank you. I come today as  
7 an individual. We all support the Kihei High School  
8 being built. Just like to bring to your attention 2  
9 matters that may or may not have been brought up  
10 before.

11 One is that since this is a high school  
12 it's very important that it have connectivity to other  
13 areas where the high school students potentially would  
14 be coming from. One of those areas you will be  
15 hearing in July, that is the reconfigured RD, research  
16 a development parcel immediately to the south of the  
17 high school.

18 Right now there's no means to connect  
19 students with that except to go on Pi'ilani Highway.  
20 This just really doesn't seem smart planning, good  
21 planing, safe planning in any way.

22 So just, you know, as this body makes its  
23 final deliberations that fact should be known.

24 The matter is that the Archaeological  
25 Inventory Survey for this property, once again, was

1 done in a manner where it was not very careful.  
2 Walking the land recently with several members of the  
3 Kihei Community Association and even some public  
4 officials, a site was identified that has not been  
5 recorded at all that is very, very likely to be a  
6 cultural site. I'll turn in a picture of it just for  
7 the record. It has an alignment of rocks. There were  
8 fragments of coral found there.

9           This is a half mile from the ocean. Coral  
10 had to be transported there for cultural purpose. It  
11 has an outstanding view. It's a low-rise. It's a  
12 typical type of place that would have been modified  
13 for cultural use. It's not recorded at all. It's  
14 likely that it could be avoided. There's plenty of  
15 room to build this high school here.

16           It's just because it was poor work done on  
17 the Archaeological Inventory Survey that an opportunity  
18 here could be lost for future generations to  
19 understand who came before on this land.

20           So I would just ask that the Commission  
21 recommend that, you know, in the next phase that there  
22 be a supplementary Archaeological Survey done. Several  
23 lineal descendants participated in this site visit.  
24 Members of the Naole family that held the royal patent  
25 back at the time of the Mahele, they'd be happy to be

1 consultants. It's just we should do the process a  
2 little more properly. Thank you.

3 CHAIRMAN CHOCK: Thank you, very much.  
4 Parties, any questions?

5 MR. YUEN: No questions.

6 CHAIRMAN CHOCK: County?

7 MR. GIROUX: No questions.

8 CHAIRMAN CHOCK: State?

9 MR. SOUKI: No questions.

10 CHAIRMAN CHOCK: Commissioners, any  
11 questions? Thank you for your testimony?

12 THE WITNESS: May I leave this (photo) with  
13 the staff?

14 CHAIRMAN CHOCK: Yes. Anyone else in the  
15 public wishing to provide public testimony on this  
16 matter, please come forward. Okay. Seeing none,  
17 parties, I understand there's been some discussion  
18 regarding Proposed Findings of Fact, Conclusions of  
19 Law and Decision and Order? Can you give the  
20 Commission an update in terms of what's been agreed  
21 to and what have been stipulated to, Petitioner?

22 MR. YUEN: Yes, Mr. Chairman. On June 25th  
23 we submitted a Stipulated Findings of Fact,  
24 Conclusions of Law and Decision and Order containing  
25 the findings as well as 25 conditions.

1           The County yesterday submitted to you the  
2 signature of the deputy corporation counsel indicating  
3 its approval. On June 25th the Office of Planning  
4 submitted a Statement of No Objection which  
5 procedurally indicates its approval of the  
6 stipulation.

7           CHAIRMAN CHOCK: Thank you. County.

8           MR. GIROUX: Yes, that is our position.  
9 And I believe we also filed a Statement of  
10 Non-opposition to what was filed on July 25th also, to  
11 have some redundancy so it was clear that we had no  
12 objections to everything that we had talked about and  
13 put into that document.

14          CHAIRMAN CHOCK: Okay. State, any  
15 comments?

16          MR. SOUKI: Just a few comments. We did  
17 file a Statement of No Opposition. But if there's any  
18 one overarching issue before the Commission in these  
19 proceedings for the district boundary amendment to  
20 allow the Kihei High School was the welfare of  
21 Hawai'i's current and future keiki.

22           And I think that through discussions among  
23 the parties and relying on input by the DOE and its  
24 technical expertise, we're able to address the issue  
25 of student safety and the mission of DOE to provide

1 education facilities for them.

2 In summary, a couple of facts that helped  
3 us arrive at this decision and amicable agreement was  
4 Finding of Fact 66 which recognizes that Pi'ilani  
5 Highway is a 4-lane, 2-way limited access roadway that  
6 separates the residential and proposed residential on  
7 the makai side from the proposed high school.

8 Finding of fact 70 recommends that  
9 Petitioner submit a revised TIAR for DOT acceptance  
10 including revised traffic signal warrant studies and  
11 pedestrian route study.

12 Finding of fact 70 which recognizes that  
13 Wilson Okamoto, the consultant for the Petitioner,  
14 used the 1 percent growth rate, but the DOT would  
15 require a 2 percent growth rate.

16 This is important because the finding of  
17 fact 114 it recognizes that in 2000 the population in  
18 the Kihei Community Plan area was 22,870. And the  
19 forecast in 2030 is 46,896. It's 105 percent increase  
20 in growth, about 3 percent per annum. So 2 percent  
21 analysis of the TIRA seems fair.

22 Also finding of fact 76, what DOT is  
23 concerned about the conflicts between vehicles and  
24 pedestrians and the overall safety of pedestrians  
25 crossing the highway. And most importantly DOE has

1 agreed to evaluate pedestrian issues using Federal  
2 Highway Administration guidance on grade-separated  
3 crossings.

4 In conclusion, the condition that ties this  
5 all together is Condition 1. And in particular  
6 subsection B which, among other things, has DOE  
7 evaluating compliance with the FHWA guidance relating  
8 to grade-separated crossings. And also that  
9 Petitioner will submit 3 updated pedestrian route  
10 studies and analyses for the Project.

11 So given these facts and conditions and our  
12 review and agreement on all the other conditions and  
13 findings and conclusions, we are in agreement with the  
14 parties and have no opposition to the proposed D&O.

15 CHAIRMAN CHOCK: Thank you very much,  
16 Jesse. Petitioner, are you ready to proceed with  
17 closing argument?

18 MR. YUEN: Yes, Mr. Chairman.

19 CHAIRMAN CHOCK: 15 minutes.

20 MR. YUEN: Thank you. I will try to keep  
21 my remarks brief. Basically in reviewing the  
22 Commission's decision-making criteria contained in  
23 Hawaii Revised Statutes Section 205-17 and the Land  
24 Use Commission's Rules 15-15-77, first the  
25 reclassification of the Petition Area conforms to

1 goals and objectives and policies of the Hawai'i State  
2 Plan and priority guidelines, particularly with  
3 respect to the Educational Functional Plan and the  
4 Population, Economy and Employment Functional Plan.

5           The reclassification will allow the  
6 Department of Education to build a new high school to  
7 serve the Kihei-to-Makena region. It will provide the  
8 up to 1,650 residents of the Kihei area easier access  
9 to quality education, remove the necessity to commute  
10 to Central Maui, and enhance employment and higher  
11 education opportunities for these students.

12           The Kihei High School will be designed also  
13 to provide appropriate educational opportunities and  
14 facilities to special needs students.

15           With respect to the Population and  
16 Employment Functional Plan, construction of Kihei High  
17 School will both further the State's goals to develop  
18 land resources to meet the level of growth predicted  
19 for the Kihei region.

20           It will facilitate creation of  
21 construction-related jobs during the building of the  
22 school as well as open long-term educational  
23 employment opportunities in the Kihei region.

24           The reclassification conforms to the Urban  
25 District standards that I'll review later. There are

1 no endangered or threatened species of flora or fauna  
2 or any critical habitat on the Petition Area. The  
3 Petition Area does not contain important cultural,  
4 natural or agricultural resources. And development of  
5 the Petition Area will not adversely affect any such  
6 resources.

7           The Petition Area is basically low quality  
8 cattle ranchland. It does not qualify for Important  
9 Agricultural Land development classification. And  
10 development of the Petition Area will not impair  
11 either agricultural production or cattle ranching.

12           The 2013 Legislature appropriated  
13 \$113 million for construction of Kihei High School  
14 which evidences the State's commitment of significant  
15 resources and funding to build this new school.

16           The reclassification is consistent with the  
17 County of Maui General Plan and its various components  
18 including the Countywide Policy Plan, the Maui Island  
19 Plan and the Kihei-Makena Community Plan.

20           And the Kihei High School is a designated  
21 public facility in the Maui Island Plan's Public  
22 Facilities Infrastructure map.

23           Turning to the Urban District standards,  
24 this land is characterized by a city-like  
25 concentration of people, structures, streets and urban



1 level of services immediately adjacent to Pi'ilani  
2 Highway on the makai side.

3           The Petition Area is in proximity to  
4 centers of trading and employment. In addition to  
5 being adjacent to Pi'ilani Highway it's contiguous to  
6 land in the Urban District and in close proximity to  
7 commercial and resort areas in Kihei and Wailea.

8           Basic services such as commercial  
9 facilities, parks, wastewater systems, drainage,  
10 potable water, transportation systems, public  
11 utilities and police and fire protection are available  
12 to the Petition Area.

13           Reclassification of the Petition Area will  
14 lead to creation of a significant reserved area for  
15 foreseeable urban growth. The Kihei High School is  
16 planned for development in phases. The initial phase  
17 will accommodate approximately 800 students with plans  
18 to develop additional classrooms as well as support  
19 facilities as the population continues to grow and  
20 subsequent state funds are available.

21           The Petition Area has satisfactory  
22 topography, drainage and site conditions. It's  
23 reasonably free from the danger of flood, tsunami,  
24 unstable soil or other adverse environmental effects.

25           With respect to the State and County Plans,

1 I've already discussed conformance with the State  
2 Plan. In terms of the County of Maui Plans it  
3 conforms to both the County-wide Policy Plan. The  
4 recently adopted Maui Island Plan designates the  
5 Petition Area within the Kihei-Makena Urban Growth  
6 Boundary. And it's also designated on the Maui Island  
7 Plan's public facility infrastructure map as the site  
8 for a public school.

9 Approximately 2/3 of the Petition Area is  
10 designated for public facilities in the Kihei-Makena  
11 Community Plan. The remaining acreage is the subject  
12 of a proposed amendment to the Kihei-Makena Plan that  
13 the County Planning Commission will be entertaining in  
14 July, and will subsequently be considered by the  
15 county council later this summer or in early fall.

16 As Jesse Souki has described to the  
17 Commission, the Department of Education, the County  
18 and the Office of Planning have reached agreement on  
19 25 conditions of reclassification.

20 The Department of Education has agreed to  
21 revise the Traffic Impact Analysis Report including  
22 the Traffic Signal Warrant Study and to prepare a  
23 Pedestrian Route Study for both Phase I of the Project  
24 as well as for the entire Project incorporating Phases  
25 1 and 2.

1           The Department of Education has agreed to  
2 update the Traffic Impact Analysis Report as indicated  
3 by Mr. Souki, and more important, to make the traffic  
4 improvements recommended by the studies. If necessary  
5 the Department of Education will go back to the  
6 Legislature to seek additional funds for these  
7 improvements. I'll reserve the rest of my time for  
8 rebuttal. Thank you.

9           CHAIRMAN CHOCK: Thank you, Petitioner.  
10 County?

11           MR. GIROUX: Thank you, Chair. But just  
12 for the record, I did my closing at the last meeting.  
13 I knew Mr. Yuen would steal my thunder so I took an  
14 early shot. We just want to reiterate that Maui  
15 County is in full support of the District Boundary  
16 Amendment. And we appreciate the time and effort that  
17 everybody has put into it, the amount of cooperation.  
18 And we just want to see this move forward.

19           We will be seeing this at the Planning  
20 Commission very soon. And it will be forwarded to the  
21 county council for the ordinance for the change in  
22 zoning. So we appreciate everybody's help on this.

23           CHAIRMAN CHOCK: Thank you, Mr. Giroux.  
24 State, any closing statement?

25           MR. SOUKI: I think I'll let what I stated

1 earlier stand as my closing. But I think it's  
2 important to note, given the public testimony, that  
3 the hearings are closed so the Commission is not  
4 taking additional facts.

5 And regarding archaeological studies it  
6 does say on the finding of fact 54: The consultant  
7 conducted an archaeological survey of the Petition  
8 Area, a hundred percent pedestrian survey. And a  
9 subsurface testing of 77 acres that SHPD concurred  
10 with its findings.

11 And then Conditions 3 and 4 regarding  
12 Archaeological Inventory Survey mitigation plans and  
13 monitoring, and Condition 4 regarding unidentified  
14 finds adequately and sufficiently address the issues  
15 of archaeological resources.

16 CHAIRMAN CHOCK: Okay. Thank you,  
17 Mr. Souki. Petitioner, do you still want the time?

18 MR. YUEN: I don't need to say anything  
19 further, thank you.

20 CHAIRMAN CHOCK: Thank you very much,  
21 parties. The Commission will now conduct formal  
22 deliberations concerning whether to grant the Petition  
23 whether in whole or in part or to deny.

24 If the Commission decides to grant the  
25 Petition, it needs to determine what conditions of

1 approval to impose. I'd like to note for the parties  
2 and the public that during the Commission's  
3 deliberations we'll not entertain additional input  
4 from the parties or the public unless those  
5 individuals or entities are specifically requested to  
6 do so by the Chair. If called upon I would like to  
7 ask that comments be limited to the question at hand.

8           The Commission held hearings on the merits  
9 of this Petition on June 13-14 and oral argument  
10 concluded today. Commissioners, let me confirm that  
11 each of you have reviewed the record, read the  
12 transcripts for any meeting that you may have missed  
13 and are prepared to deliberate on this docket.

14           After I call your name please signify with  
15 either a yes or no that you are prepared to deliberate  
16 on this matter. Commissioner Biga?

17           COMMISSIONER BIGA: Yes.

18           CHAIRMAN CHOCK: Contrades?

19           COMMISSIONER CONTRADES: Yes.

20           CHAIRMAN CHOCK: Heller?

21           COMMISSIONER HELLER: Yes. Mr. Chair, I  
22 have a disclosure that I've put on the record in other  
23 dockets but not yet in this docket. So I'd just like  
24 to note for the record that I represent taxpayers in  
25 real property tax cases including some cases on the

1 Island of Maui which means that my clients would be  
2 adverse to Maui County in those cases. I don't think  
3 that will affect my ability to be impartial in this  
4 case but I wanted to note that for the record.

5 CHAIRMAN CHOCK: Thank you for the  
6 disclosure, Commissioner Heller. Parties, any  
7 concerns or objections?

8 MR. YUEN: No objection.

9 MR. GIROUX: County has no objection.

10 MR. SOUKI: No objections from the State.

11 CHAIRMAN CHOCK: Okay. Thank you,  
12 Commissioner Heller. Commissioner Inouye?

13 COMMISSIONER INOUE: Yes.

14 CHAIRMAN CHOCK: Commissioner Matsumura?

15 COMMISSIONER MATSUMURA: Yes.

16 CHAIRMAN CHOCK: Commissioner McDonald?

17 COMMISSIONER McDONALD: Yes.

18 CHAIRMAN CHOCK: Commissioner Teves is  
19 excused. Chair is also prepared to deliberate on this  
20 matter. The goal today is to determine by way of  
21 motion the Commission's decision on whether to grant  
22 in whole or in part Petitioner's request to reclassify  
23 the subject property or to deny the Petition.

24 If a decision is reached today, and based  
25 on the Commission's guidance, the staff will be

1 directed to draft appropriate Findings of Fact,  
2 Conclusions of Law and Decision and Order reflecting  
3 the Commission's decision. Commissioners, what is  
4 your pleasure on this matter? Commissioner Biga.

5 COMMISSIONER BIGA: Mr. Chair, I move to  
6 grant All-794 State of Hawai'i, DOE-Kihei High School  
7 Maui the Petition with the conditions and in the  
8 general format of the agreed-to Decision and Order  
9 submitted by Petitioner with the added condition that  
10 an above- or below-ground pedestrian crossing be  
11 constructed prior to opening of Phase I.

12 And that Petitioner's proposed Decision and  
13 Order be further modified by staff to be consistent  
14 with the motion and with the procedural findings  
15 reflecting all filings in this docket.

16 CHAIRMAN CHOCK: Maybe before we get into  
17 the conditions, just to keep matters clean I'd like to  
18 just maybe suggest a friendly amendment that I believe  
19 you're making a motion to approve, Commissioner Biga?

20 COMMISSIONER BIGA: Yes.

21 CHAIRMAN CHOCK: Okay. Chair will second  
22 that motion. Then maybe now for the discussion if you  
23 want to restate that condition.

24 COMMISSIONER BIGA: Restating the  
25 condition. In the general format of the agreed-to

1 Decision and Order submitted by the Petitioner with  
2 the added condition an above- or below-ground  
3 pedestrian crossing be constructed prior to opening of  
4 the Phase I and that the Petitioner's proposed  
5 Decision and Order, further modified by staff, to be  
6 consistent with this motion and with these procedural  
7 findings reflecting all filings in this docket.

8 CHAIRMAN CHOCK: Thank you. Discussion?  
9 Commissioner Heller.

10 COMMISSIONER HELLER: I generally agree  
11 with Commissioner Biga in that I'm very concerned  
12 about the issue of pedestrian access. And I  
13 personally think a pedestrian overpass probably is a  
14 good answer. However, I'm not a traffic engineer or  
15 an expert on pedestrian safety.

16 As I understand the parties' proposal they  
17 are proposing to work out the final decision on an  
18 overpass or underpass between the Department of  
19 Education and the Department of Transportation. And  
20 the parties will ultimately reach some agreement as to  
21 what is necessary.

22 Given that I'm not a traffic engineer and  
23 given that the TIAR has not been finished at this  
24 point, I don't think it's appropriate for us to make  
25 that decision today. I think it's more appropriate to



1 say that the experts will work it out and that the  
2 experts have to ultimately agree on what the proper  
3 answer is.

4 So therefore would, while I share  
5 Commissioner Biga's concern, I would oppose the  
6 amendment regarding this specific requirement.

7 CHAIRMAN CHOCK: Thank you, Commissioner  
8 Heller. Any other discussion, Commissioners,  
9 comments, concerns, questions for any of the parties?  
10 Commissioner Inouye.

11 COMMISSIONER INOUE: Thank you, Chair. I  
12 think the No. 1 issue -- not issue, but the No. 1  
13 concern that we as Commissioners have is public safety  
14 and safety of the children as well as the residents of  
15 Maui and whoever does frequent the place.

16 So I want to echo what Commissioner Heller  
17 says. I am concerned as Commissioners imposing  
18 something that the parties have not yet come to  
19 fruition because there's a TIAR yet to be done and  
20 some engineering to ensure that the right thing is  
21 being done.

22 However, I'm prepared -- I have that  
23 discomfort but I'm prepared to approve the amendment  
24 with reservations, if that's allowed. Thank you.

25 CHAIRMAN CHOCK: Thank you, Commissioner

1 Inouye. (pause in proceedings) Commissioners, any  
2 other comments? (pause) Commissioners, any other  
3 questions on the proposed condition to require the  
4 overpass/underpass? Just so we're clear I believe  
5 Commissioner Biga's Motion's to Approve this condition  
6 based on the overpass/underpass?

7 Is that the correct understanding that  
8 there was some concerns raised by Commissioners Heller  
9 and Inouye?

10 COMMISSIONER BIGA: And thank you, Chair.  
11 I just want to reiterate on my motion. Living on  
12 Maui, traveling on that highway on numerous occasions,  
13 I've seen the speed that goes through that highway.  
14 Again, my concern is for the safety of the pedestrians  
15 and the children that will be going to that school.

16 Throughout this hearing I brought up my  
17 concerns of that nature. That's why I believe this  
18 motion, I brought this motion up. So that's my  
19 concern, the safety of the public, the safety of the  
20 children that're going to that school.

21 CHAIRMAN CHOCK: Any other comments,  
22 Commissioners? If not I'm going to have the executive  
23 officer poll the Commission. Dan.

24 COMMISSIONER HELLER: Mr. Chair, just for  
25 clarification, we're voting now on -- yes or no on

1 granting the Petition with the condition of an  
2 overpass or an underpass, is that right?

3 CHAIRMAN CHOCK: That's my understanding,  
4 correct.

5 MR. ORODENKER: Thank you, Mr. Chair. The  
6 motion is to grant the Petition with the added  
7 condition of requiring the construction of a  
8 pedestrian overpass or underpass prior to the opening  
9 of Phase I. Commissioner Biga?

10 COMMISSIONER BIGA: Yes.

11 MR. ORODENKER: Chair Chock?

12 CHAIRMAN CHOCK: Yes.

13 MR. ORODENKER: Commissioner Matsumura?

14 COMMISSIONER MATSUMURA: Yes.

15 MR. ORODENKER: Commissioner McDonald?

16 COMMISSIONER McDONALD: Yes.

17 MR. ORODENKER: Commissioner Contrades?

18 COMMISSIONER CONTRADES: Yes.

19 MR. ORODENKER: Commissioner Heller?

20 COMMISSIONER HELLER: No.

21 MR. ORODENKER: Commissioner Inouye?

22 COMMISSIONER INOUE: Yes, with  
23 reservations.

24 MR. ORODENKER: Thank you, Commissioners.  
25 The motion passes 6 votes in support and 1 vote in

1 opposition.

2 CHAIRMAN CHOCK: Thank you very much.

3 Parties, any questions? Petitioner?

4 MR. YUEN: No questions.

5 MR. GIROUX: No questions from the County.

6 CHAIRMAN CHOCK: State?

7 MR. SOUKI: No questions from the State.

8 CHAIRMAN CHOCK: Thank you very much. Why  
9 don't we take a brief recess in place to set up for  
10 the next item on our agenda. (Pau 10:11.)

11 --00--

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## C E R T I F I C A T E

I, HOLLY HACKETT, CSR, RPR, in and for the State of Hawai'i, do hereby certify;

That I was acting as court reporter in the foregoing LUC matters on the 27th day of June 2013;

That the proceedings were taken down in computerized machine shorthand by me and were thereafter reduced to print by me;

That the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matters.

DATED: This \_\_\_\_\_ day of \_\_\_\_\_ 2013

HOLLY M. HACKETT, HI CSR #130, RPR  
Certified Shorthand Reporter

EXHIBIT " 7 "

LAND USE COMMISSION  
MEETING MINUTES

June 27, 2013

9:30 a.m.

**Maui Arts & Cultural Center, Haynes Meeting Room**

(Between Castle Theater & MACC Administrative Offices)

**One Cameron Way, Kahului, Maui, Hawai'i 96732**

COMMISSIONERS PRESENT: Kyle Chock  
Ronald Heller  
Ernest Matsumura  
Lance Inouye  
Sheldon Biga  
Thomas Contrades  
Chad McDonald

COMMISSIONERS EXCUSED: Jaye Napua Nakasone  
Nicholas Teves, Jr.

STAFF PRESENT: Daniel Orodener, Executive Officer  
Bert Saruwatari, Staff Planner  
Scott Derrickson, Staff Planner  
Sarah Hirakami, Deputy Attorney General  
Riley Hakoda, Staff Planner/Chief Clerk

**CALL TO ORDER**

Chair Chock called the meeting to order at 9:35 a.m. and asked if there were any corrections or additions to the June 13-14, 2013 minutes. There were none. Commissioner Biga moved to approve the minutes. Commissioner McDonald seconded the motion. The minutes were unanimously approved by a voice vote (7-0).

**TENTATIVE MEETING SCHEDULE**

Executive Officer Orodener provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners.
- July 11-12, 2013 remains open with no agenda items.
- The A10-787 Maui R&T hearings are planned to begin on July 25-26, 2013, beginning with a site visit and the preliminary hearing at the Malcolm

EXHIBIT " 7 "

Center in Kīhei; with subsequent hearings planned for August 8-9, 2013 in Kahului.

- August 22-23, 2013 is scheduled to hear a motion from A92-683 Halekua Development to Bifurcate and Amend on Oahu.
- The A13-797 docket will begin on September 5-6, 2013, with its initial hearing, and a continuation of A10-787 Maui R&T proceedings if necessary
- HCPO is scheduled for September 18-20, 2013 with a public hearing on proposed amendments to LUC Administrative Rules and LUC meeting planned on the 18th.
- Any questions or conflicts, please contact LUC staff.

There were no questions or comments regarding the tentative meeting schedule.

### **ORAL ARGUMENT AND DELIBERATION**

#### **A11-794 State of Hawaii-Dept. of Education- Kīhei High School (Maui)**

Chair Chock announced that this was oral argument and deliberation on Docket No. A11-794 State of Hawaii, Dept. of Education- Kīhei High School (Maui) to Amend the Agricultural Land Use District Boundaries into the Urban Land Use District for Approximately 77.2 acres of land at Kīhei, Maui, Hawaii, Maui Tax Map key No. 2-2-02:81 and 83.

### **APPEARANCES**

William Yuen, Esq., represented Petitioner, State of Hawaii, Dept. of Education  
Robert Purdie, DOE representative  
James Giroux, Deputy Corporation Counsel, represented County of Maui  
Planning Department ("County")  
William Spence, Director, County  
Jesse Souki, Director, State Office of Planning ("OP")  
Rodney Funakoshi, OP

Chair Chock updated the record and described the procedures for the hearing. There were no questions, objections or comments on the procedures.

### **PUBLIC WITNESSES**

#### **1. Lucienne de Naie**

Ms. de Naie stated that she was testifying as an individual and shared her concerns regarding the connectivity of the Petition Area with other areas of the community and about a possible cultural discovery that

*(Please refer to LUC Transcript for more details on this matter)*

June 27, 2013 meeting minutes



she thought might have been made that would require further cultural assessment and study. Ms. de Naie submitted a photograph of the suspected cultural site to the Commission.

There were no questions for Ms. de Naie.

There were no other public witnesses.

Chair Chock stated that he was aware that the Parties had discussions with regard to the final Proposed Findings of Fact, Conclusions of Law, and Decision and Order, and asked that the Commission be advised on what had been agreed to and formally stipulated on.

Mr. Yuen described the progress that Petitioner had made regarding the proposed Findings of Fact, Conclusions of Law, and Decision and Order. Mr. Yuen stated that his proposed document had been submitted to the Commission on June 25, 2013 and summarized how his submittal contained the various findings and conditions that had been discussed and agreed upon.

Mr. Giroux stated that County had submitted a statement of no opposition to the proposed Findings of Fact, Conclusions of Law and Decision and Order.

Mr. Souki stated that OP had filed a statement of no opposition and described the concerns that OP had considered regarding the future welfare and safety of Hawaii's children during its review of the proposed project; and how OP had assessed and evaluated DOE and DOT concerns in making its conclusions; and described the specific Findings of Fact and Conclusions of Law that had been included to address them.

## PRESENTATIONS

### Petitioner

Mr. Yuen summarized Petitioner's case and argued why the Petition should be granted. Mr. Yuen described how the proposed project conformed to various State and County plans and objectives, how the soils were not highly rated and not worthy of IAL designation; how the Petition Area did not have any cultural or archaeological concerns or threats to any environmental issues; and what the expected benefits of having the Petition Area developed in the region would have for the community in the future.

Mr. Yuen also described how the various concerns about traffic would continue to be monitored during development of the Petition Area and how any

existing or new concerns would be handled; and reserved his remaining time for rebuttal.

#### County

Mr. Giroux stated that County supported the Petition and had already closed its case at the last meeting; and thanked the Parties and Commission for their efforts and help.

#### OP

Mr. Souki stated that he would rest on his earlier statements for his closing and described how, although the evidentiary portion of the hearing had been concluded, conditions were contained within the proposed Findings of Fact, Conclusions of Law and Decision and Order that addressed archaeological concerns to mitigate and handle any archaeological/cultural discoveries in the Petition Area.

#### Rebuttal

Chair Chock inquired if Mr. Yuen needed any time for rebuttal. Mr. Yuen responded that he did not and concluded his presentation.

#### Deliberation and Decision Making

Chair Chock announced that the Commission would conduct formal deliberations and confirmed with the Commissioners present that they were familiar with the record and were ready to deliberate.

All Commissioners present and the Chair stated that they were prepared for deliberation and decision-making.

Commissioner Heller disclosed that he represented tax payers in the County on real property tax matters adverse to the County; but that he did not feel that his representation of tax payers would affect his ability to be impartial in decision-making on this docket. Chair Chock asked if there were any objections from the Parties to Commissioner Heller's continued participation in deliberating and deciding on the docket. There were no objections or comments.

Commissioner Biga made a motion to grant the petition in the general format of the agreed to decision and order submitted by Petitioner with the added condition that an above or below ground pedestrian crossing be constructed prior to the opening of phase 1; and that Petitioner's proposed decision and the order be further modified by staff to be consistent with this motion and with procedural findings reflecting all filings in this docket. Chair Chock commented that he believed that Commissioner Biga was making a motion to approve the Petition with an added condition. Chair Chock asked for

*(Please refer to LUC Transcript for more details on this matter)*

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clarification that the Motion was to grant the Petition and suggested that discussion ensue on the proposed added condition. He then asked Commissioner Biga to repeat the condition. Chair Chock seconded the motion. Commissioner Biga stated that he agreed with Chair Chock's comment and agreed to the suggestion to discuss the condition separately.

Chair Chock opened the floor to discussion on the motion to grant the petition and asked Commissioner Biga to restate his proposed condition.

Commissioner Biga stated that his condition was that an above or below ground pedestrian crossing be constructed prior to the opening of phase 1 and that Petitioner's proposed decision and the order be further modified by staff to be consistent with this motion and with procedural findings reflecting all filings in this docket

There was discussion regarding the proposed added condition made by Commissioner Biga.

Commissioner Heller shared how he generally agreed with Commissioner Biga's concerns about safety and pedestrian access, and his understanding of how DOT/DOE would be working on resolving those concerns; and why he thought it was more appropriate to allow DOT/DOE authorities to make the determination to require the over/underpass rather than the LUC; and why he would oppose the amendment.

Commissioner Inouye stated that he felt that public welfare was a major concern for the Commission and echoed Commissioner Heller's comments on the matter; and stated that he was prepared to vote to approve the amendment with reservations.

There were no further comments or discussion.

Chair Chock clarified what the Commission was voting on and Commissioner Biga described other additional concerns and reasons why he felt provisions for pedestrian safety needed to be made. Commissioner Heller requested clarification on whether the vote was to grant the Petition including the condition that Commissioner Biga had made. Chair Chock acknowledged that it did.

The Commission voted as follows:

Ayes: Commissioner Biga, Chair Chock, Commissioners Matsumura, McDonald, and Contrades

Ayes with reservations: Commissioner Inouye,

Nays: Commissioner Heller

The Motion passed (6-1) to grant the Petition.

There were no questions or comments by the Parties.

Chair Chock thanked the Parties for their efforts in presenting their cases and declared a brief recess to prepare for the next agenda item.

The Commission went into recess at 10:08 a.m. and reconvened at 10:14 a.m.

## **ACTION**

### **A94-706 Ka'ono'ulu Ranch (Maui)**

Chair Chock announced that this was a hearing and action meeting to consider the following motions regarding Docket No. A94-706:

- Petitioner Pi'ilani Promenade South LLC and Pi'ilani North LLC 's (Honua'ula Partners filed joinder) Motion to Stay Phase II of the Order to Show Cause Proceedings (hereafter referred to as Petitioner's Motion to Stay) filed April 8, 2013
- Intervenors Maui Tomorrow Foundation, Inc., South Maui Citizen for Responsible Growth and Daniel Kanahele's Motion to Conclude Contested Case at the Earliest Practicable Time, (hereafter referred to as Intervenors' Motion to Conclude) filed on April 16, 2013
- Petitioner Pi'ilani Promenade South LLC and Pi'ilani North LLC's Motion to Strike and Objection to INTERVENORS' SUPPLEMENTAL MEMORANDUM IN SUPPORT OF (1) INTERVENORS' MOTION TO CONCLUDE CONTESTED CASE AT THE EARLIEST PRACTICABLE TIME, FILED APRIL 16, 2013, AND (2) INTERVENORS' MEMORANDUM IN OPPOSITION TO PIILANI PROMENADE SOUTH, LLC'S MOTION TO STAY PHASE II OF THE ORDER TO SHOW CAUSE PROCEEDING. (hereafter referred to as Petitioner's Motion to Strike)

## **APPEARANCES**

Jonathan Steiner, Esq., represented Pi'ilani Promenade North LLC, and Pi'ilani Promenade South LLC, ("PP") and Honua'ula Partners ("HP")

Charlie Jencks, representative for Petitioners

Michael Hopper, Deputy Corporation Counsel, Maui County Planning Department ("County")

William Spence, Director, County

Jesse Souki, Director, State Office of Planning ("OP")

Rodney Funakoshi (OP)

Tom Pierce, Esq., represented Maui Tomorrow Foundation, South Maui Citizens for Responsible Growth and Daniel Kanahele ("Intervenor")

*(Please refer to LUC Transcript for more details on this matter)*

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Mark Hyde, South Maui Citizens for Responsible Growth  
Irene Bowie, Maui Tomorrow Foundation  
Daniel Kanahele

Chair Chock updated the record; and asked if Petitioner agreed with the LUC policy on reimbursement for LUC expenses. Mr. Steiner requested clarification on what reimbursements were expected of the Petitioner. Executive Officer Orodener described the expenses Petitioner would be responsible for. Mr. Steiner stated that Petitioner would comply with LUC's policy.

Chair Chock explained the procedures to be followed for the proceedings. There were no questions, comments or objections to the procedures.

#### PUBLIC WITNESSES

1. Clayton Nishikawa-

Mr. Nishikawa stated that he supported the Motion to Stay and efforts to amend the existing petition.

There were no questions for Mr. Nishikawa.

2. Joan Martin-

Ms. Martin stated that she was a Kihei resident and described why she felt that the Commission should grant Petitioner's Motion to Stay and allow the initial petition to be amended.

There were no questions for Ms. Martin.

There were no other Public Witnesses.

#### PRESENTATIONS

##### PETITIONER

Mr. Steiner summarized his case and argued why Petitioners Pi'ilani Promenade South LLC and Pi'ilani Promenade North LLC's and Honua'ula Partners ("HP") Motion to Stay for Phase II should be granted and why Intervenor's Motion to Conclude the Case as early as possible should be struck. Mr. Steiner stated that Petitioner was committed to filing a Motion to Amend the initial Decision and Order no later than December 31, 2013; and that until the Motion was filed, Petitioner was committed to not commencing any development or work on the Petition Area and would retain the status quo. Mr. Steiner also argued why the Motion to Stay could not be considered a dismissal of the case and how Petitioner would conduct itself in the coming months; and stated that he rested on his pleadings; and added comments on why Intervenor's motion to conclude the case should be denied.

## COUNTY

Mr. Hopper stated the reasons why County supported Petitioners position and joined in opposing Intervenor's Motion to Conclude; and described the considerations and decisions involved in arriving at its position; and argued why Intervenor's Motion to Conclude be denied. Mr. Hopper stated that he rested on his pleadings and replies to the Intervenor's supplemental memorandums.

## OP

Mr. Souki stated how, after a review of facts and evidence in this case, OP decided on its position to support Petitioner's motion.

## INTERVENOR

Mr. Pierce thanked the Commission for its efforts and argued why Intervenor's Motion to Conclude should be granted and described various points that he had made during his case presentation before the Commission regarding the history on the docket and stated why he felt they were relevant and substantial enough for the Commission to deny Petitioner's Motion to Stay.

Mr. Pierce also added the considerations and reasoning that factored into Intervenor's motion and additional filings.

## COMMISSIONER QUESTIONS

Commissioner Heller moved for an Executive Session to consult with the Deputy Attorney General on the powers and duties of the Commission. Commissioner McDonald seconded the motion.

The Commission went into Executive Session at 10:46 a.m. and reconvened at 10:58.

There were no questions from the Commissioners

## DECISION MAKING

Commissioner Heller suggested that the Commission vote on the Motions one at a time to keep the record clear. Chair Chock acknowledged and agreed with Commissioner Heller's suggestion.

## Motion to Stay

Commissioner Heller made a motion to grant the Motion to Stay with the express condition that Petitioners PP and HP not take any development action till the Motion to Amend was filed; and that the Motion to Stay would be lifted if the condition was violated. Commissioner Biga seconded the motion.

There was no discussion.

The Commission voted as follows:

*(Please refer to LUC Transcript for more details on this matter)*

June 27, 2013 meeting minutes

Ayes: Commissioner Heller, Biga, Matsumura, McDonald, Contrades, Inouye, and Chair Chock

Nays: None

The Motion to Stay with Commissioner Heller's suggested condition added passed (7-0).

#### Motion to Conclude

Commissioner Heller stated that in view of the outcome of the vote on the Motion to Stay, he moved to formally deny the Motion to Conclude for the record. Commissioner Biga seconded the Motion.

There was no discussion.

The Commission voted as follows:

Ayes: Commissioner Heller, Biga, Matsumura, McDonald, Contrades, Inouye, and Chair Chock

Nays: None

The Motion to deny Intervenor's Motion to Conclude passed (7-0).

#### Motion to Strike

Commissioner Heller commented that although the filings were untimely, given the decision that the Commission had made on the Motion to Stay and to keep the record complete, he moved to deny the Motion to Strike. Commissioner Biga seconded the Motion.

The Commission voted as follows:

Ayes: Commissioner Heller, Biga, Matsumura, McDonald, Contrades, Inouye, and Chair Chock

Nays: None

The Motion to deny Petitioner's Motion to Strike passed (7-0).

There being no further business, Chair Chock announced that the meeting would continue at 9:30 a.m., Friday, June 28, 2013 in Honolulu.

The meeting was adjourned at 11:03 a.m.

EXHIBIT " 8 "



# **LAND USE COMMITTEE**

**Council of the County of Maui**

## **MINUTES**

**October 30, 2013**

**Council Chamber**

**CONVENE:** 9:01 a.m.

**PRESENT:** Councilmember Robert Carroll, Chair  
Councilmember Don S. Guzman, Vice-Chair  
Councilmember Stacy Crivello  
Councilmember Elle Cochran (in 9:16 a.m.; out 10:00 a.m.)  
Councilmember Gladys C. Baisa (out 10:40 a.m.)  
Councilmember Donald G. Couch, Jr.  
Councilmember G. Riki Hokama  
Councilmember Mike White

**EXCUSED:** Councilmember Michael P. Victorino

**STAFF:** Carla Nakata, Legislative Attorney  
Clarita Balala, Committee Secretary

Ella Alcon, Council Aide, Molokai Council Office (via telephone conference bridge)  
Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference bridge)  
Dawn Lono, Council Aide, Hana Council Office (via telephone conference bridge)

**ADMIN.:** Clayton Yoshida, Planning Program Administrator, Department of Planning  
Jeffrey Dack, Planner, Department of Planning  
Paul Haake, Fire Captain, Department of Fire and Public Safety  
Rowena Dagdag-Andaya, Deputy Director, Department of Public Works  
Emily Kibby, Police Officer, Department of Police  
Paul Meyer, Deputy Director, Department of Water Supply  
James Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel

**OTHERS:** Mike Moran, President, Kihei Community Association

Andrew Beerer

Charlene Shibuya, Assistant District Engineer/Construction Engineer, Highways Division, Maui District Office, Department of Transportation

EXHIBIT " 8 "

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Christine Ruotola, Group 70 International, Inc.  
Nick Nichols, DOE Facilities Development Branch  
Karlynn Fukuda, Executive Vice President, Munekiyo & Hiraga, Inc.  
Gavin Masaki, Gray, Hong, Nojima & Associates  
Cathy Leong, Wilson Okamoto Corporation

**PRESS:**   *Akaku: Maui Community Television, Inc.*

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**ITEM NO. 10:   COMMUNITY PLAN AMENDMENT AND CHANGE IN ZONING  
FOR THE PROPOSED KIHEI HIGH SCHOOL (CC 13-87)**

CHAIR CARROLL: . . .*(gavel)*. . . The Land Use Committee meeting of October 30, 2013 will come to order. I'm Councilman...Member Bob Carroll, Chair of the Land Use Committee. May I please request first of all that anybody that has cell phones put them on the silent mode or anything that makes noise, please turn it off. We have the Committee members with us today, Vice-Chair, Mr. Guzman--

VICE-CHAIR GUZMAN: Good morning, Chair.

CHAIR CARROLL: Good morning. And we have with us, Stacy Crivello--

COUNCILMEMBER CRIVELLO: Good morning, Chair.

CHAIR CARROLL: Don Couch--

COUNCILMEMBER COUCH: Good morning, Chair.

CHAIR CARROLL: And Riki Hokama--

COUNCILMEMBER HOKAMA: Chairman.

CHAIR CARROLL: Excused today is Michael Victorino, Mr. White, Ms. Cochran, and Ms. Baisa will join us shortly. James Giroux, Deputy Corporation Counsel--

MR. GIROUX: Good morning, Chair.

CHAIR CARROLL: And we have Clayton Yoshida, Planning Program Administrator--

MR. YOSHIDA: Good morning, Chair.

CHAIR CARROLL: --Planner Jeffrey Dack. Fire Chief representative, Director of Public Works will be here shortly, Director of Environmental Public Management is on-call, Director of Parks and Recreation representative is on-call, Chief of Police is on-call, and Director of Transportation or

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representative is on-call along with the Director of Water Supply is on-call today. Charlene Shibuya of the Maui District Office, State Department of Transportation, and we have the applicant's representatives, Karlynn Fukuda, Vice...Executive Vice President of Munekiyo & Hiraga, Incorporated, Christine Ruotola, Group 70 International, Nick Nichols, State Department of Education, Facilities Development Branch, Gavin Masaki, Gray Hong Nojima, Civil Engineers, Cathy Leong, Wilson Okamoto Corporation, traffic engineer and she needs to leave lunchtime. Committee Staff, Clarita Balala, Committee Secretary, and Carla Nakata, our Legislative Attorney. Today we have a single item on our agenda for consideration, LU-10, Community Plan Amendment and Change In Zoning for the Proposed Kihei High School. We will now accept public testimony. For individuals who will be testifying in the Chamber, please sign up at the desk. If you are in one of the remote sites, please go see the Staff over there. Testimony will be limited to items on the agenda today. Each testifier will be allowed three minutes with one minute to conclude if necessary. For our first testifier in the Chamber, Ms. Nakata?

MS. NAKATA: Mr. Chair, the first testifier is Mike Moran. He'll be followed Andrew Beerer.

**...BEGIN PUBLIC TESTIMONY...**

MR. MORAN: Aloha and good morning, Chair Carroll and Committee members. Mike Moran for the Kihei Community Association testifying on LU-10, Community Plan Amendment and Change in Zoning for the proposed Kihei High School. The Kihei Community Association is strongly in favor of this Change in Zoning to continue the recent progress of finally moving forward with the Board of Education Kihei High School. However, we feel a condition should be added and attached requiring a pedestrian/bicycle underpass of the Piilani Highway along the upper edge of a nearby gulch with reasonable landscaping and solar powered lighting. If you wanna see a professional design for such a crossing, see the neighbor, R&T Park plans for this very thing. The State Land Use Commission approved the Boundary Amendment for the high school conditioned upon development of either an overpass or an underpass. The highly respected Dan Burden who has addressed this Council more than once does not favor overpasses as they are too expensive and not used. He favors an underpass. KCA asks that the same condition be attached to the Community Plan Amendment. As an observation of a similar situation with our existing high school, the Kihei Charter School, just north of this site, also mauka of the same highway, I offer the following example, resourceful if daring students pass under the highway to access their high school in the industrial park through a large drainage pipe in the area of the Shell gas station, those students of a different mindset race across the four lanes of traffic with no center median in this same area. Let's avoid a recurrence with a much greater number of students through proper planning. Councilmember Guzman's evening meeting last week which is featured in today's *Maui News* concerning the Central Maui Pedestrian and Bicycle Master Plan offers numerous advantages to walkable, bikeable communities. Now is the time to walk the walk. Mahalo.

CHAIR CARROLL: Thank you. Any questions for the testifier? Hearing none, thank you.

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MR. MORAN: Mahalo.

CHAIR CARROLL: And Council Chair Baisa is with us now.

COUNCILMEMBER BAISA: Thank you, Chair.

CHAIR CARROLL: And Mr. White.

COUNCILMEMBER WHITE: Good morning, Chair.

CHAIR CARROLL: Alright, Hana, you have anybody waiting to give testimony? Please identify yourself.

MS. LONO: Good morning, Chair. This is Dawn Lono at the Hana Office, and I have no one waiting to testify.

CHAIR CARROLL: Thank you. Molokai, please identify yourself and do you have anybody waiting to give testimony?

MS. ALCON: Good morning Chair. This is Ella Alcon on Molokai, and there is no one here waiting to testify.

CHAIR CARROLL: Thank you. Lanai, please identify yourself and do you have anybody waiting to give testimony?

MS. FERNANDEZ: Good morning, Chair. This is Denise Fernandez from Lanai and there is no one waiting to testify.

CHAIR CARROLL: Thank you. Ms. Nakata?

MS. NAKATA: The next testifier is Andrew Beerer.

MR. BEERER: Good morning, Chair Carroll and Council. Thank you for hearing us this morning. My name is Andrew Beerer. I am the Chair of the Kihei High School Action Team. We are community advocates that have been pushing for this school in South Maui very actively for the past four or five years. About four or five years ago I started working closely with Nick Nichols and Bob Purdie from the Department of Education as well as our Board of Education Reps and our Legislators at that time, and this is just such an exciting time for us. We've submitted testimony, written testimony...sorry, got ahead of myself there with my excitement. We absolutely endorse the Community Plan Amendment and Change in Zoning, and this has been a long time coming. And a \$130 million project as you know doesn't come easy, and it doesn't come lightly, and it doesn't come without a huge amount of cooperation and kokua from the community, your Legislators, your Representatives, and everyone involved, primarily the Governor as well. So to get that \$130 million in funding is the...really the piece that's gonna

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move this forward, but I started working on this four or five years ago as I mentioned, and we got this timeline from the Department of Education with your key milestones and project tasks, and this particular meeting today is one of those. And it's one of only a few and one of the few that we are crossing off the list so far. So we started with land acquisition. We checked that off the list. We moved onto subdivision and parcel reconsolidation. We've checked that. EIS preparation and approval. Checked that. State Land Use District Boundary Amendment. Checked that. And today, we're here for County Community Plan Amendment and Change in Zoning. So we hope that you are just another piece in this process to keep this project moving along. This is gonna be such a wonderful high school and project for our community. It's going to alleviate overcrowding at the Central Maui high schools. It's going to galvanize a community. It is gonna provide a community center and community pride, and I don't know what else needs to be said, but thank you very much for your cooperation and getting us to this point and hopefully moving this along. And a big mahalos to our Board of Education Rep, Wesley Lo, the Department of Education, Facilities Manager, Ray L'Heureux and the DOE Reps that are here today. Without them, we wouldn't be here. Mahalo.

CHAIR CARROLL: Thank you. Any questions for the testifier? Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair, and thank you, Mr. Beerer for being here. I don't know if you've seen the Final Environmental Impact Statement about the pedestrian underpass, et cetera. In it, it appears that their recommendation is for safe crossing at, at grade, but you heard the prior testimony saying that there should be a condition to be put that the underground or under the highway crossing should be a part of the conditions. Would your organization be in support of that as a condition?

MR. BEERER: I would like to put that decision on others. Basically, you know, we absolutely support the safe transportation and access of students to the school. My only trepidation is to have too many conditions placed on this project in the 13<sup>th</sup> hour by folks who maybe don't understand the absolute need of this school, maybe they don't have children in schools in this area as myself and my members do. There sometimes agendas will come from other people and they're all very well-meaning, but maybe they haven't been as well thought out or versed, and I think that the Department of Education has done an excellent job with that. I do also believe that an underpass is a very safe route and I do agree that it is probably the safest route. My only concern is tacking on that expense, we don't want that to slow down the progress of building this school. So not being an expert on the cost of that condition and the other ramifications, I would leave that to my elected officials. Mahalo.

COUNCILMEMBER COUCH: Thank you, Andrew. Thank you, Chair.

CHAIR CARROLL: Any further questions for the testifier? Seeing none, thank you.

MR. BEERER: Thank you.

CHAIR CARROLL: Ms. Nakata?

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MS. NAKATA: Mr. Chair, no one else has signed up to testify.

CHAIR CARROLL: Molokai, do you have anyone waiting to give testimony?

MS. ALCON: There's no one here on Molokai waiting to testify.

CHAIR CARROLL: Lanai, do you have anybody waiting to give testimony?

MS. FERNANDEZ: There is no one waiting to testify on Lanai.

CHAIR CARROLL: Hana, do you have anybody waiting to give testimony?

MS. LONO: There's no one waiting to testify in Hana.

CHAIR CARROLL: Is there anyone in the audience wishes to give testimony, please come forward?  
Seeing none, if there's no objection we will close public testimony.

COUNCIL MEMBERS: No objections.

CHAIR CARROLL: Public testimony is now closed.

**...END OF PUBLIC TESTIMONY...**

CHAIR CARROLL: The Committee is in receipt of the following: County Communication 13-87, from Councilmember Don G. Couch, Jr., transmitting a proposed resolution to refer to the Maui Planning Commission proposed bills to amend the Kihei-Makena Community Plan and Land Use Map from Agriculture to Public/Quasi-Public for approximately 29.175 acres situated in Kihei, Maui, Hawaii, and to change the zoning for approximately 77.182 acres situated at Kihei, Maui, Hawaii, to facilitate the development of a new high school on State-owned property fronting Piilani Highway; correspondence dated October 1, 2013, from Planning Director transmitting proposed bills to grant referenced Community Plan Amendment and Change in Zoning. Members, we will first receive a PowerPoint presentation on the project. The Committee will stand in recess for two minutes while the screen is lowered. Stand in recess.  
...(gavel)...

**RECESS: 9:16 a.m.**

**RECONVENE: 9:18 a.m.**

CHAIR CARROLL: ...(gavel)... Land Use Committee meeting is now back in session, and we have Ms. Cochran with us now.

COUNCILMEMBER COCHRAN: Thank you, Chair. Aloha.

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CHAIR CARROLL: And would the presenter please proceed?

MS. RUOTOLA: . . .(*PowerPoint Presentation*). . . Thank you for having us this morning. My name's Christine Ruotola. I'm a planner with Group 70, and with me here for the presentation is Nick Nichols from the Department of Education. Actually Mr. Beerer did a excellent job of part of our presentation. What we're here to do is to give you a project overview and status and to request your support and recommendation from the Committee to the Council for approval of the Change in Zoning for the parcel from Agricultural to P-1, Public/Quasi-Public and for a Community Plan Amendment for a portion of the site from Agricultural to Public/Quasi-Public. A portion of the site is already appropriately indicated. As we know, we've got the location of the Charter School here, the high school site here. Currently most of the students are going to Maui High School over capacity, Baldwin's about at capacity. So site selection, the process was gone through and completed in January of 2008. At that time, the State went forward with purchasing the property. That purchase was completed in early 2012. There were...there was a subdivision process that needed to be happen, two parcels were then subdivided out and have since been reconsolidated. So that consolidation process has occurred. We now have one TMK parcel for the site. Throughout this time as the land process was going on, the EIS was being prepared and completed. The conceptual design was occurring and Nick will speak to that and the land use permitting was occurring. I'd like to point out just to orient us, this is Piilani Highway, this is Kulanihako'i Gulch, so a little bit offset from the school site, and this is Waipuilani Gulch, Research and Tech Park land here. Nick will speak to the design process and this concept design.

MR. NICHOLS: Thank you. I'd like to thank you for the opportunity for us to be here. So basically this is a conceptual plan and I'll go over it, but realize that right now we're doing...gonna do the project per a Design-Build process, and so with that, we will ultimately go through an RFQ process and then we'll narrow it down to three teams, and those three teams would then submit proposals through the RFP. So the winning design may look very different from this, but we did this conceptual plan. Initially it was gonna be a Design-Build ...Build...Design-Bid -Build project. But anyway this plan has helped us put together the criteria and documents for the Design-Build process, because there are many, for example, relationships that we worked out that we would want to be honored in whatever design that does materialize. Right now, if you look at the concept and probably a lot of these basic things that I'm gonna talk about will probably be honored in the winning design. Right now we have most of the athletic and the P.E. components on the lower portion of the campus. You can see the oval of the soccer and football field. To the left you see the gym. And it's, you know, locker, shower components, and trainer room components. And then as we go up, above that you see behind the bleachers on the upper side would be some elective buildings, the band and the choral, P.E. rooms, ROTC, and then on the upper portion of the campus would be more...most of academics. And right now that concept shows four, what they call, houses or neighborhoods, and those would house maybe about right around 400 students each. The overall design enrollment for the school would be 1,650. And so we anticipate opening this school in the Phase I with two of those houses which would accommodate 800 students. And then the third and the fourth house as the enrollment

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justified would be brought on with that. And also as that slowly happened, there would be some additional elective course, additional buildings and classrooms that would be brought on. As you probably are well-aware of, the site is terraced or it's sloping so in this particular concept it was terraced on about three major levels. And again, the winning design may have some slightly different configuration, but probably it will be some kind of terraced approach to it also. We thought that by having the athletic and the P.E. components on the lower portion, if there is the noise of the highway, you know, they would be receiving that and again, that would not interfere with the...that would not interfere with the more the learning environment at the upper portion. They would be certainly quieter. We anticipate, yes, that the most of the classrooms and the admin and the support facilities, most of those will be air-conditioned so again, we don't think that noise will be a factor. One of the, also components by having more the football field and the athletics on the lower portion, you know, for the community and the parents to come and attend games again, they'll...it be fairly close, they wouldn't have to penetrate a far end to the campus. You can see on the left, right now the proposed parking for both students and visitors and staff, and then up above you can see on the very top portion, probably that would be more parking for the staff because that would be closer for them once they check in to be near their instructional classrooms and such. On the lower left-hand corner you see a marked overflow parking, and also I think per our civil that would be also a retention basin to help control the drainage for our site. So anyway, that's basically I think enough on that. We'll go to the next slide. So we've gone through, you know, a master plan. You've seen the site layout, we've talked a little bit about the academic facilities and it will include the athletic and the supporting facilities. Also, we'll do all the necessary infrastructure in terms of the roadways and the circulation. In terms of the potable water, you know, potable water commitment subject to Building Permit approval. We will be stressing the use of water efficient fixtures. And then for the non-potable, right now we'll have two wells on campus of brackish water for irrigation, and we'll be using, you know, drought-tolerant and salt-tolerant plant species. DOE and the County will continue discussing the use of R-1 water from the Kihei Wastewater Reclamation Facility. That's gonna be a continued discussion and if, if it does get really available, we will certainly, you know, probably try to utilize that. Drainage, onsite drainage directed to onsite detention basin and that will be further defined as that develops. So like I said, the Phase I, the target school opening will be 2018 pending the release of the funding. And we'll be doing it by a Design-Build procurement process which includes these teams that they do an initial design, and then it would...we would make the selection based on their conceptual design, and then they'll take that design, further it, and take it into the construction, because it's a unified team of the architect and the contractor and all the necessary subs. The capacity of initially Phase I would be 800 and we estimate it would have about 120 staff. There would be two classroom houses. Like I said, they would probably hold 400 each. There'll be the administrative and probably some type of student center, the library, a media center, a cafeteria, elective buildings and selected athletic facilities. There'll be on-site and off-site infrastructure improvements including the Piilani Highway improvements, intersection signalization, grading, drainage, and utilities. In Phase II developed with the increase in enrollment, ultimately we'll get up to the capacity of 1,650 students and by then we would estimate we'd probably have about 180 staff. That would consist of the remaining two classroom buildings, additional elective buildings, and athletic facilities. So the proposed developmental schedule for Phase I. This past session the Legislature did approve as



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Andrew had mentioned earlier, 130 million in the Fiscal Year '14-'15. So in the second year of this, we'll be getting the 130 million. That's...we anticipate that that money would be subject to release, you know, in 2014, and then the DOE would be requesting its release. In 2013, the EIS and the Land Use Permits were completed. 2013-14, DOE preps for the Design-Build Draft which would consist of an RFQ/RFP. July 2014, the funding will be available, DOE will request it, release from the Legislature. And then in August of 2014 to August of 2015, DOE will issue the RFQ, shortlists the Design-Build teams, ultimately issue the RFP, and select the Design-Build team to construct the school. And then the construction would run basically from August of 2015 through 2018, Design-Build, they'll do the necessary permitting, the construction of the school, and we would be able to open in fall of 2018 if all goes well.

MS. RUOTOLA: Thank you, and to reiterate, that RFQ package is being prepared now. So to go through the steps as was mentioned before, the EIS was completed and accepted by the Governor in 2012. And as part of that process, Maui County agencies and the Planning Commission, their input was sought and received. We have gone through the State Land Use District Boundary Amendment. That body approved the reclassification of the parcel from Agricultural to Urban and that was approved with a number of conditions in June, and we'll go through some of the real key conditions. So we're here requesting the Change in Zone and the Community Plan Amendment. The State Land Use District Boundary Amendment, the Land Use Commission found that the site did warrant the criteria to become classified as Urban. There were 26 conditions placed on the approval. So these are some of the key conditions and as was mentioned before, there was a requirement that the... that there be provided a pedestrian overpass or underpass prior to opening of Phase I. And with respect to highway and road improvements, we will be revising the TIAR and including revising a Traffic Signal Warrant Study and making the improvements that are agreed between the DOT, DOE in those studies. One of the studies also required is a pedestrian route study. Mr. Moran mentioned Dan Burden, we are contracting with Dan Burden and his team to complete that work. So he will be out here working with, with us, with the County, community members to complete that study. In terms of drainage improvements, there was a condition that there be no increased storm water runoff into the gulch. So there will be some design engineering that needs to occur based on that condition, best management practices for runoff containment and that sort of thing. And then there's a number of conditions that are a little more perfunctory. I mean, it's certainly doable, space for civil defense siren, down-shielded exterior lights, there will be intermittent archaeological monitoring and that sort of thing, some of the more standard conditions. There was also a condition as part of the Land Use Commission's approval that is a condition brought forward by Maui County and so there it's called here, Maui...the County conditions and that be for to work with the Planning Department for pedestrian and bicycle access to and from the school to connect with current and future systems in the vicinity, bike friendly improvements on the campus, and these are...actually this is wording...this is exact wording, previously it was sort of my generalization, so bike friendly improvements at the campus and some access for public transit, overflow parking and lighting to accommodate special events, consideration of best practices in Crime Prevention through Environmental Design, that tends to speak to having open areas and not places for concealment or kinda personal safety concerns. And then to the extent not inconsistent with the provision of a basin, overflow parking, and these, those design

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elements, a landscaped buffer on the campus. So it speaks to sort of a balance of trying to achieve, you know, have some landscaping, achieve our drainage needs, meet some of these crime prevention elements. So those are conditions that are already in place. They're familiar to you 'cause they also have come through as the...as part of the recommendation from the Planning Commission. So check and check and now we're at Change in Zone and the Community Plan Amendment. I just wanna go through the sort of our basis of requesting those designations. First, as you all well know far more than I, a high school has been a long-standing community goal in Kihei, and as such, it's reflected in your long-range planning. The Change in Zoning and Plan Amendment are consistent with...are now consistent with the State Land Use designation for the parcel. It's consistent with the plans, the Policy Plan which speaks to having services by populations, the Island Plan that you recently, might not so recently now adopted, and the existing Kihei-Makena Community Plan and we'll touch those two. The designation changes have been supported by the Planning Department and really as you know, the school project has been widely supported, you know, throughout the County Administration. And the Change in Zoning and Community Plan Amendment Approval was recommended with conditions by the Maui Planning Commission at its July meeting of this year. This is the Maui Island Plan and the Directed Growth Map. The high school site is the starred location, so well within the Urban Growth Boundary so appropriately located with an existing urban area and an area of planned growth. In the Public Facility Map of the Maui Island Plan, the high school is specifically designated, called for that area. In the Kihei-Makena Community Plan, a little bit older document, there's the objective to build a high school when the region has a population for it to be served and which it certainly does now. The implementing action, to plan and locate a site for a high school, and that of course, has been done. So that's been achieved. Currently this is the Community Plan Map, our site outlined here. A portion of the site is Public/Quasi-Public and a portion is Ag, and it's this portion that is before you to change this to Public/Quasi-Public which is the appropriate designation for a school. The Maui Planning Commission in recommending the Zone Change and Plan Amendment Approval provided these conditions, and I've generalized the language here, but basically those TIAR, Traffic Signal Warrant Study, pedestrian route study that are required out of the Land Use Commission, they're required to go to the State DOT. This Commission also...this condition also requires that it come to Maui County, Department of Public Works for review and comment, and that's of course, perfectly acceptable to us. The second condition takes those County conditions I mentioned, and I think they're on your slide 11, and puts a timeframe to 'em. So it asks that those, that the design...the Department of Education and the Design-Build team start to work with the Department of Planning on those County conditions within six months of design start or award of contract with the Design-Builder. So same conditions, but it puts a timeframe to it, and those are both more than acceptable to the department. And so again, we are specifically asking for your recommendation to approve the Change in Zoning and the Community Plan Amendment today. We got...questions and answers, I did wanna show, Karlynn was kind enough to go out and take some video of the site. I know there wasn't a site visit per se, but if we could just run a couple of videos to give you a sense of the location and specifically its relationship to Piilani Highway. This is a little dark, but it's...what we're seeing here is, is from the school site looking makai, Kulanihakoi intersection is on our right there. This was late afternoon, right Karlynn? Late afternoon. Also from the site...so this is looking up at the site and then panning over to the

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freeway or to the highway. We're facing north, and the intersection comes into the site there. This is a pan of the site. It's gonna look a lot better. And finally this is from the makai side of Piilani, we're looking north now and panning. This was early afternoon I believe. And for reference, that bridge there, that's where the Waipuiani Gulch is. So that concludes our presentation.

CHAIR CARROLL: Thank you. We'll stand in recess for two minutes to put up the screen. Stand in recess. . . .(gavel). . .

**RECESS: 9:40 a.m.**

**RECONVENE: 9:42 a.m.**

CHAIR CARROLL: . . .(gavel). . .Land Use Committee meeting will come back to order. First of all, Planning Department do you have any comments at this time?

MR. YOSHIDA: Thank you, Mr. Chair. Clayton Yoshida with the Planning Department. Planning Supervisor, Jeffrey Dack, can provide the Committee with additional comments regarding the Maui Planning Commission's review of the Council resolution.

MR. DACK: Yes, and the Department's Review. Jeff Dack. I won't repeat the request, the acreages, TMKs and all that. I'm sure you have all that, but I did want to point out that after the Department of Education completed the Environmental Impact Statement, as you heard the State Land Use Commission changed the property from an Agriculture...State Agricultural Land Use Designation to Urban District and that was actually formally done July 16<sup>th</sup>. Up to that time, the Planning Department had various comments to the DOE about the project which you might find as part of your record, but I wanted to point out that through the process of leading up to the Land Use Commission's decisions, those concerns pretty much all got addressed. So in your record you might find some concerns, but again, bottom line is those got negotiated, addressed to the point where we concurred with the Department of Education as well as the Office of Planning on the, the Findings of Fact, Conclusions of Law, Decision and Order, including all the conditions by the, the Land Use Commission. As mentioned, the hearing was held by the Planning Commission on the 23<sup>rd</sup> of July, and there weren't any letters of support or opposition received by the Department since the Planning Commission's action, and you have all previous correspondence we had received, and at that meeting three individuals testified before the Planning Commission, two were in support, one was neutral, and there was no opposition. That completes the Department's comments at this point. Thank you.

CHAIR CARROLL: Thank you. Members, before I open up, the Planning Department is gonna be here for the entire presentation today. We have Charlene Shibuya with the State Department of Transportation with us, and I'd like to start with questions for that Department first. And thank Ms. Shibuya for making herself available on such short notice, if she could come forward? Ms. Shibuya, could you please share your Department's comments on the project?

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MS. SHIBUYA: Thank you, Chair. Anyway, my name is Charlene Shibuya, I'm the Assistant District Engineer/Construction Engineer for the Maui District Office. Basically State DOT's position is to recommend that the conditions that came out of the State Land Use Commission's Decision and Order, you know, becomes conditions for this Change in Zoning request. And instead of, you know, reading everything, I think everybody has the document in hand.

CHAIR CARROLL: Any questions for Ms. Shibuya? Mr. White?

COUNCILMEMBER WHITE: Thank you, Chair. Ms. Shibuya, do you have or does your Department have a preference as to whether the pedestrian and bike access across Piilani Highway is accomplished by either an overpass or an underpass?

MS. SHIBUYA: You know, at this time it will be dependent on the consultant's study, further study of this pedestrian route. We don't really have a preference, but we do have, you know, pros and cons obviously on like say for example, an overpass, you know, you typically have concerns with high costs, you know, then you have incidences where people throw things off the overpass and you know, not very often, but once in a while, you know, you might have, you know, people trying to jump off or. And then on the underpasses, they typically...you know we typically have concerns, well, not only us, everybody else has concerns on security, you know, like in the evening, you know, if it's gonna be lighted, if it's gonna be open and clear, if it's gonna invite homeless people, you know, that presents some, you know, uncomfortable security issues for people that use it. So you know, without having a full understanding of a complete study, it's hard for us to, you know, make a call 'cause there's a lot of variables that, you know, we look at.

COUNCILMEMBER WHITE: Okay, thank you. Thank you, Chair.

CHAIR CARROLL: Any further questions for the Department...State Department of Transportation? Mr. Hokama?

COUNCILMEMBER HOKAMA: In my conversations with our Public Works Department on projects in general, for me there's a concern about the completion, timely completion of roadway and drainage improvements. So do you see a problem of people like us considering that you complete all your roadway improvements prior to the opening of the school campus?

MS. SHIBUYA: Based on the timeline presented it looks reasonable, you know, as long as all these things, I guess...basically it's a Design-Build contract so a lot of things happen concurrently versus a traditional Design-Bid-Build contract, so based on the timeline I don't see a problem as long as, you know, a lot of these studies occur concurrently, yeah, while the design is occurring.

COUNCILMEMBER HOKAMA: And one of the reasons why, you know, I expressed to Mr. Couch, my reasons for this is, you know, was pretty nice what you guys showed us, but that was a nice asterisk on the bottom, yeah. Nothing that was shown to us could actually happen so, you know, I would be more comfortable if the State can agree to those kinda things, because I don't...you know, for me I hate to see a school campus open, and you and I know that area, nobody is

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driving under 60 miles an hour on that highway in that area. And my concern is if we don't do the traffic roadway improvements prior to the school opening, we're looking at problems that I don't want to deal with down the road.

MS. SHIBUYA: Yes, I think that's why DOT is, you know, taking the same conditions in the D&O for the State Land Use Commission which requires all these improvements prior to Phase I opening.

COUNCILMEMBER HOKAMA: Okay.

MS. SHIBUYA: So, you know, we're kind of on the same sheet of music as, you know, what you're talking about.

COUNCILMEMBER HOKAMA: The only reason why I brought it up, yeah, Ms. Shibuya, is that under the State's Condition 18, it gives 'em 10 years from the Commission's D&O signoff. For me, that's not good enough, yeah, 10 years.

MS. SHIBUYA: Ten years for?

COUNCILMEMBER HOKAMA: For the completion of infrastructure...completed construction of the proposed backbone infrastructure including primary roadways, access points, internal roadways, water supply, sewage, electrical infrastructure and buildings.

MS. SHIBUYA: Yeah, but if you read the other condition or recommended conditions or conditions that came out of the State Land Use Commission, it basically ties in, you know, doing all these updated traffic studies, the pedestrian study, and it all occurs, you know, concurrently while this Design-Build is gonna go on. So by the time the plans come out for the Phase I improvements, you know, and then it gets physically built, all these improvements should be, you know, all the improvements you're concerned about should be put in...well, whatever is warranted, yeah, at that point.

COUNCILMEMBER HOKAMA: So that wouldn't be one problem as a condition then?

MS. SHIBUYA: Yeah.

COUNCILMEMBER HOKAMA: Since...(inaudible)...it's supposed to happen.

MS. SHIBUYA: Yeah, it's supposed to, it's supposed to happen whatever is warranted, you know, under the studies to occur with anything that becomes occupied for Phase I.

COUNCILMEMBER HOKAMA: Okay. And the Design-Build is dependent upon this existing 130 million, right? It's not dependent on more money from the Legislature. You got your chunk of...pot of money that I guess this approach is supposed to take care of the construction of both Phase I and Phase II?

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MS. SHIBUYA: Yeah, actually, I'm not privy to the way, you know, the DOE structured their funding, so I wouldn't be able to, you know, answer your questions unless I, you know, went into further research of how they developed their estimates.

COUNCILMEMBER HOKAMA: Okay. But again, just so that we're clear. The concept shows that everything that I brought up as a concern should be addressed and completed before the school opens?

MS. SHIBUYA: Yeah, at least the first phase. You know, whatever is showing that's you know, warranted or necessary for that phase, yeah, for the first 800 students.

COUNCILMEMBER HOKAMA: That wouldn't be the same for Phase II regarding your Department's--

MS. SHIBUYA: Well, if you look at the--

COUNCILMEMBER HOKAMA: --input.

MS. SHIBUYA: --structure of the condition, it talks about, you know, updated traffic studies, you know, one year after Phase I, 'cause you know, like a lot of phased projects we don't know specifically when it's gonna occur, so these updates typically give us a, you know, a better snapshot if you wanna say at that point and what improvements will be necessary, 'cause it depends on outside factors too, like the regional traffic whether it happens, you know, like three years after Phase I or you know, 10 years after Phase I. So I think we have checks and balances within the D&O Conditions that will give us enough information, if you wanna call it, to make those appropriate decisions to know what improvements will be needed, yeah, at that point prior to like, you know, Phase II opening.

COUNCILMEMBER HOKAMA: Yeah, yeah. Again, you know, I'm sure it will be appropriate. My main concern is the timeliness of those decisions. But I appreciate your responses. Thank you very much for your presence.

CHAIR CARROLL: Any further questions for the State? Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair. Thank you, Ms. Shibuya, for being here. On the pedestrian safety issue, it appears through the Final EIS and a few other things, it looks like that for the most part everybody's kinda leaning towards an underpass which is what I'm kinda leaning towards too as long as it's safe. But we also, we all know, that no matter whether they have an underpass or an overpass, there are gonna be people who wanna cross at street level. Are you going to provide pedestrian safe things such as medians and refuge lane, refuse areas for pedestrian crossing at Kulanihakoi?

MS. SHIBUYA: Well, obviously the project is gonna be a Design-Build and the concepts as the planner mentioned that it might change, and I think those are the kinds of things might be considered.

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You know, it's not like we're gonna...it's not like we're doing it, is DOE doing it for what we feel is...will address, yeah, all the concerns. And I understand what you're saying 'cause like as an example, the Honoapiilani Highway widening project in Lahaina, what we did do was in front of that regional park and the aquatics center, we did add in a median and enhance the signalized crossing much better, so people could...you know, actually it's more for the drivers, yeah, to be aware that people are crossing, we also added variable message speed limit sign boards and then of course, landscaping which kinda calm the area if wanna call it that. So I would imagine through the Design-Build process that kind of considerations will come onto the table.

COUNCILMEMBER COUCH: Okay. In that, in that intersection is that gonna be the DOE's responsibility or your responsibility or a joint responsibility?

MS. SHIBUYA: Well, basically through the Design-Build process, the consultants will, you know, weigh in all the studies and the factors and the warrants and they would propose to us, and it would be sort of like a joint effort to come to a consensus as to, you know, what would adequately address all the concerns. But of course, you know, we have some cost constraints, and you know, we have to consider all those factors. So it's hard for me to, you know, say definitively what's gonna occur at this point without all the facts on hand.

COUNCILMEMBER COUCH: Okay, thank you, Chair.

CHAIR CARROLL: Any more questions for...Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. And Chair, pardon my tardiness, but also I'm gonna be leaving in a few minutes so I wanted to get my question. I'm not really sure it's for DOT in particular but I can lead off of Mr. Couch's questioning in regards to the underpass for the safe pedestrian crossing. In this area I know drainage is a big issue and flooding and things of that nature, storm water. I see in the description that on site will be contained there, but I'm just curious if there's any issues that you folks know from existing, you know, storm water runoff from mauka of the area currently, 'cause I know it occurs in that area quite a bit after high, high rain season. And then how would that play into an underpass, you know, safety factor versus an overpass if that was looked into?

MS. SHIBUYA: As far as DOT, we haven't, we haven't had particular problems 'cause if you look at the so-called opening beneath those bridges, the freeboard, it's a lot of space and it's pretty wide open and it hasn't gotten blocked, you know, like some other bridges where you might have a center pier, it's pretty much open, so we haven't had problems. And in looking at the say for example, Waipuilani Gulch, if you look at the cross section and some of the conceptals that the R&T Park's EIS represented, it would be possible to, you know, you could consider some kind of a pedestrian way beneath it, you know, like say up on the...up towards the banks to be clear of the high water marks and whatnot. So I think it's something that can be looked at, but you know, as I said, you gotta weigh out all the factors and until that's all weighed out, it's hard for us to really tell you what our preference is, but obviously, typically it's cheaper, yeah, I mean, less expensive than a overpass.

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COUNCILMEMBER COCHRAN: Oh, okay. Alright, thank you. Thank you, Chair, and thank you, Ms. Shibuya for being here.

CHAIR CARROLL: Thank you. Mr. Guzman?

VICE-CHAIR GUZMAN: Thank you. Thank you, Charlene Shibu, Shibuya. I keep on forgetting your...

MS. SHIBUYA: Yeah, my name is a little difficult.

VICE-CHAIR GUZMAN: I know. I always...she works with the IMPACT on the Central Maui Pedestrian Plan as well. But thank you for being here. My question is on the pedestrian route study and also the Kihei High School project pedestrian and bicycle analysis. Will the community as a whole be asked to have some type of input in terms of the underpass versus overpass, and if so, I know money is always a factor and if it is determined that an underpass is probably recommended by Mr. Burden, Dan Burden to be the more feasible, but yet the State doesn't have the money, and opts to an overpass or some other, other venue of crossing, will they end up just going with the cheaper route instead of looking at the community's opinion of, of what they want?

MS. SHIBUYA: Well, in my experience with doing Design-Build projects being heavily involved in the Lahaina Bypass project, it would be prudent for DOE in the process to keep the community involved that a lot, you know, throughout the project. And similar to, you know, the Central Maui Ped and Bicycle Master Plan, you know, I think you need to bring the community in, 'cause what's gonna happen is when you start breaking ground, you're gonna get opposition and you're not gonna be able to defend yourself, you know, if that's the first time they're seeing these decisions being put on the ground, so you know, I know the condition is just general, it says that they shall do this, but you know, I think in the process it would be prudent for them to keep the community involved.

VICE-CHAIR GUZMAN: So is it my understanding it's either a overpass or an underpass?

MS. SHIBUYA: Yeah, that's basically how the condition states that they do a pedestrian route study and then they look at, at grade, you know, pedestrian which is either over or under.

VICE-CHAIR GUZMAN: And then based off of that do they now consider how much money they can appropriate for either one? And sometimes...well, my fear is one way is recommended and because of lack of funding the other route is done. And that's my biggest fear and then we end up having a, you know, unintended consequences, you know, that are just devastating for our infrastructure.

MS. SHIBUYA: Well, you know, I would like to think that the process would allow, you know, some input from the community to almost, you know, like demand, yeah, demand something. And I



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would think if everybody can sort of think creatively like for example, the underpass, the land itself, you know, the gulch itself is not owned by the school or the R&T Park. It's actually owned by the ranch. And usually, you know, long-term maintenance becomes an issue and so I think it's gonna be like a meeting of all the minds, you know, to come up with the most economical solution that will address, you know, the security issues, the safety issues.

VICE-CHAIR GUZMAN: What would you recommend in terms of the County's involvement in making sure that we get the appropriate, you know, I guess avenue or crosswalk or underpass or overpass?

MS. SHIBUYA: I think it would be a coordinated effort 'cause it's not only the County, it would be the State because what happens is when you do a pedestrian study or a bicycle study it encompasses an area, right?

VICE-CHAIR GUZMAN: Right.

MS. SHIBUYA: So, you know, in this case, you know, State DOT owns the highway, you know, and then the school owns this property, the ranch owns this, you know, and then you got surrounding subdivisions with County roads, and then you have the drainageway which is privately owned. So I think it's gotta be really creative and as I said, it has to be coordinated almost like a partnership, and for a project like this which is, you know, everybody sees that it's a school, it's not some, you know, other kind of use that I think everybody can creatively work together.

VICE-CHAIR GUZMAN: So the...one more question, Chair? The pedestrian route study will that encompass the entire, I guess, community area so that you can look at connectivity to the school or are you just focusing just in the perimeter of the school area?

MS. SHIBUYA: Well, typically for schools when they start to look at pedestrian route studies, they're looking at areas that are not serviced by the school buses.

VICE-CHAIR GUZMAN: Right.

MS. SHIBUYA: So, I forget what it is now, it was maybe half-mile before, now I think it's one mile, the one-mile radius now. So they'll probably look at one-mile radiuses and then what would probably be good too is if, you know, similar to that Central Maui Pedestrian Bike Plan, they start to look...not that it's required, but you know, if some consideration or mindfulness can be made of a larger area which would be bicycles 'cause typically people can, you know, bicycle longer distances than walk, yeah.

VICE-CHAIR GUZMAN: Okay, thank you, Chair.

CHAIR CARROLL: Any more questions for the Department of Transportation? Mr. Couch?

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COUNCILMEMBER COUCH: Thank you, Mr. Chair. And thank you, Ms. Shibuya for pointing out the whole ownership of the two crossings of the gulches. I'm assuming that Waipuilani Gulch would be kind of where you'd think the underpass would be 'cause that's already built and it's closest to the corner of the school, but I don't know what your thoughts are on that.

MS. SHIBUYA: Yeah, actually, you know, that's just concepts because if you look at, you know, if you look at the bridge underneath, it's pretty clear and so it's almost like a...if you were to consider or find that the underpass would be the best alternative, it's kinda gonna be almost a natural that it falls on the high side so the gulch itself.

COUNCILMEMBER COUCH: Yeah, and I also see that Kulanihakoi and I know this that it certainly doesn't have a bridge over it so putting the overpass there would be cost prohibitive I would think. Or the plus on putting the underpass in that general vicinity would be that there's no drainage through there so we wouldn't have...it's not a natural gulch that we would have to worry about.

MS. SHIBUYA: Oh, you mean if you were to construct a separate underpass?

COUNCILMEMBER COUCH: Separate underpass at Kulanihakoi.

MS. SHIBUYA: Yes, yes.

COUNCILMEMBER COUCH: Yeah, it might be more difficult but it also might be safer.

MS. SHIBUYA: Yes, so...and that's why, you know, you need to kinda look at all the possibilities.

COUNCILMEMBER COUCH: Okay.

MS. SHIBUYA: Yeah, and you know, essentially weigh it out. And typically if you do like those separate underpasses, it tends to be a little bit more enclosed--

COUNCILMEMBER COUCH: Yes.

MS. SHIBUYA: --and then, you know, the...to me the security issues get greater, you know, versus a wide open space.

COUNCILMEMBER COUCH: Yep. Okay, thank you.

CHAIR CARROLL: Any more questions for the Department of Transportation? Seeing none, thank you.

MS. SHIBUYA: Thank you.

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CHAIR CARROLL: Members, we have on the following Departments' representatives on-call. Let the Chair know if you'd like any of them to the Chamber; otherwise, the Chair will excuse them. And if you do want them, I'll have them come down while we're going through Parks and the other ones. The first one is the Director of Environmental Management or a representative? Anybody requesting that position? Next Department of Parks and Recreation or representative? Seeing none, Chief of Police or representative?

UNIDENTIFIED SPEAKER: Yeah.

CHAIR CARROLL: Mr. Hokama, okay. Director of County Department of Transportation or representative? Director of Water Supply or representative? Ms. Nakata, if you can let the Police and the Water Supply representative please be notified? Thank you. Now, I'd like to hear...excuse me, we'd like to hear from our Fire Department. Could you please come forward?

COUNCILMEMBER COUCH: Mr. Chair?

CHAIR CARROLL: Yes?

COUNCILMEMBER COUCH: I didn't hear you say Public Works. Are you ask...gonna have them come up?

CHAIR CARROLL: Public Works is here.

COUNCILMEMBER COUCH: Okay, great.

CHAIR CARROLL: Those are the only ones on-call.

COUNCILMEMBER COUCH: Ah, gotcha. Okay, thank you.

CHAIR CARROLL: Yeah, I didn't think they'd be necessary and I didn't want them sitting over here all the time. After Fire, we're gonna hear from Public Works.

COUNCILMEMBER COUCH: Okay.

CHAIR CARROLL: Please identify yourself at the microphone.

MR. HAAKE: Thank you, Chair. Captain Paul Haake from the Fire Prevention Bureau.

CHAIR CARROLL: Do you have any comments before I open the floor for questions?

MR. HAAKE: No, sir.

CHAIR CARROLL: The floor is now open for our Fire. If there are no questions, I'll release him for the day. Mr. Hokama?

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COUNCILMEMBER HOKAMA: I was happy to hear in the earlier comments about I guess new design efforts to create safer campuses regarding the open spaces, the concepts of you reduce I guess the amount of areas of concealment is the term that was used in the presentation. Hearing that, how does that assist you in what you need to do from a design standpoint for fire prevention and fire operations? Makes no difference from your Department's standpoint, Captain?

MR. HAAKE: I think it would be more of an advantage for us because we'd be...more space for us to operate if there was any type of emergency situation.

COUNCILMEMBER HOKAMA: And I...you know, we're gonna find out with the Water Director here, but is there any issues that you're aware of in the area regarding pressure or the type of new, I guess, alarm systems we need to make sure regarding the school environment and our young people?

MR. HAAKE: I know we...I know there's a required fire flow that needs to be provided and it's not in yet, but they have plans to put it in. As far as fire alarm system requirements, we would look at that during the Building Permit phase and address it then.

COUNCILMEMBER HOKAMA: Okay. Because you know as we saw in the presentation under potable water, it's interesting we're going back to the old language. They'll be making a decision upon Building Permit approval I guess is the phrase. Upon Building Permit approval and so that tells me at this point we cannot say we have water for the requirements. Is that how you folks looking at this situation?

MR. HAAKE: Well, for every project you're gonna need water for fire protection. And you know, if you don't have enough then there's always alternatives you can go to such as installing fire sprinkler systems for the buildings which could reduce your required fire flows.

COUNCILMEMBER HOKAMA: Yeah. They have a plan for using brackish wells for irrigation. Is that a acceptable fire liquid for fire fighting, fire prevention work?

MR. HAAKE: That would be acceptable if there's enough volume and enough pressure.

COUNCILMEMBER HOKAMA: Okay, okay, we'll find out from the Education Department later. Thank you very much, Captain.

CHAIR CARROLL: Thank you, Mr. Hokama. Any further questions for the Fire Department? Hearing none, thank you. Thank you for coming today.

MR. HAAKE: Thank you, Chair.

CHAIR CARROLL: We'd now like to hear from Public Works, and then we will hear from the Police, and Water is coming. They should be here shortly. Please identify yourself at the microphone.

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MS. DAGDAG-ANDAYA: Good morning, Chair, and good morning, Members. My name is Rowena Dagdag-Andaya, and I'm the Deputy Director of Public Works.

CHAIR CARROLL: You have any statement before I open the floor for questions?

MS. DAGDAG-ANDAYA: Yes I do, Chair. I just wanted to note that during the Draft EIS phase we did note some concerns regarding drainage as it relates to any additional storm water runoff from entering into the Waipuilani Gulch. It was noted I believe in their draft drainage report of a negligible amount of offsite runoff being...needing to be discharged. And we cited this concern again during the Land Use Commission's proceedings in our testimony. So we were pretty pleased to see that in the Decision and Order one of the conditions stating that no additional runoff be discharged into Waipuilani Gulch. So with that condition already in place that satisfies our concerns regarding additional storm water runoff. I mean, as you know, Waipuilani Gulch does come into a very narrow section as it comes into South Kihei Road, so any additional storm water runoff from entering into the gulch is a big concern to us. During the testimony this morning we heard a lot of discussion regarding the pedestrian underpass, and I understand that might be a concern to the Council members as it relates to anything that we do at Public Works. We would most certainly be open to the idea of that pedestrian underpass, and we currently don't have any requirements or wouldn't require the applicant or the DOE to install that, but we would like to work with them and also with the other landowners and also with the State DOT on any kind of design requirements, any kind of challenges. We'd be most concerned with number one, drainage how it would impact any drainage into the gulch being affected. The other thing that we'd be concerned about would be I guess safety would be a concern. I think that's an overall concern among all departments. We'd also be concerned with how the underpass and the path would connect up to the North-South Collector Road or any other bike paths, walking paths in South Maui. One of the things that we would most likely look at with the State DOT is how it would match up or align with the Statewide Bike and Pedestrian Plan. And again, I just wanted to reiterate how it would tie in with the North-South Collector Road and the proposed bike-pedestrian path that it would go through in that area. But other than that, if you have any questions, I can help to answer them.

CHAIR CARROLL: Thank you. Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair. And I'll ask this of the DOT so give them a heads up as well. Have you discussed with them low impact design on the drainage, you know, the rain gardens and whatnot?

MS. DAGDAG-ANDAYA: I don't think we've done that yet. However, the project would be subject to our storm water quality rules that we have in place. So in that, best management practices would be...will need to be addressed. Any kind of low impact development, that would also be part of the review of the rules as well.

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COUNCILMEMBER COUCH: That's good. Lucky for them that they're not actually in a gulch or have a gulch right up against them other than the Waipuilani Gulch appears to be a bit aways. So as part of the mitigation is to not allow for any drainage to go into either of those gulches, is that what the issue?

MS. DAGDAG-ANDAYA: In our concerns during the Draft EIS and in the Land Use Commission proceedings. we did cite that as concerns.

COUNCILMEMBER COUCH: Okay, because that's one of my biggest concerns too is the...like you said, the storm water quality and hopefully retention of more than what, what comes down, but that's usually an engineering thing where they add about a 10 percent increase. So yeah, it is very fortunate for them that they don't really have to deal with the gulches because otherwise it would be a huge project. So thank you.

CHAIR CARROLL: Thank you, Mr. Couch. Any further questions for Public Works? Mr. Hokama?

COUNCILMEMBER HOKAMA: Chairman, thank you. I had asked Ms. Shibuya from State Highways about a potential condition which, you know, in discussing with your Director of his concern of timeliness of completion of improvements. And so we're talking about the highways and our understanding from Ms. Shibuya is that with the concept of Design-Build, it's gonna be addressed and implemented prior to the school opening so it really shouldn't be a problem. Is there anything similar in the drainage area your Department would like us to consider regarding completion of the drainage components prior to a certain phase or the school opening or prior to the first campus building being completed or something that makes sense for the County?

MS. DAGDAG-ANDAYA: Councilmember Hokama, I don't have...I think during the review of the project as it moves forward, they will be subject to requirements of our drainage rules. So I believe at that time it would be addressed. Any additional improvements...I don't know of any additional improvements that would need to be made after, but I think that would have to be addressed prior to the opening of the school.

COUNCILMEMBER HOKAMA: Okay. Well, if you folks do think of something then please communicate it prior to our final decision, please? Thank you very much for your presence. Thank you.

CHAIR CARROLL: Thank you, Mr. Hokama. Any further questions for Public Works? Mr. Guzman?

VICE-CHAIR GUZMAN: Thank you, Chair. I just also would like to follow up with Mr. Hokama's line of questioning. Same is true, in terms of the bicycle or pedestrian routes or issues if there's any additional requirements or conditions that your Department can think of that is, you know, not placed, set forth in the Land Use Commission's orders or the Environmental Impact Statement, please let us know, because we do...just like Charlene was talking about, we should have, you know, an effort, a coordinated effort, and like to have a little bit more teeth in terms of the Maui's County's, I guess, obligations or desires or requirements. Thank you.

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CHAIR CARROLL: Any further questions for Public Works? If not, thank you so much.

MS. DAGDAG-ANDAYA: Thank you, Chair, and thank you, Members.

CHAIR CARROLL: We'd now like to call down the Police Department. We have Officer Kibby from the Kihei Patrol, then after that we will be hearing Water. Please identify yourself at the microphone, and do you have any opening statement?

MS. KIBBY: Good morning, Chair. Good morning, Members. I'm Officer Emily Kibby representing Chief Gary Yabuta on behalf of the Maui Police Department.

CHAIR CARROLL: Questions? Mr. Hokama?

COUNCILMEMBER HOKAMA: Thank you, Chairman. Again, I don't know if you heard what I shared with the Fire Department with their new...with the ability of this new design concept. Is there things the Police Department will like to see regarding...I mean, we've heard enough of what happens on our mainland schools with shootings and whatnot. Is there things that you would recommend to us this morning regarding how to approach this new design of a new school regarding safety from an enforcement viewpoint?

MS. KIBBY: Without having looked at the final concept, it's hard to make any suggestions in that regard. Without having looked at the final design, it's hard to make suggestions in that regard, but I was happy to see that they're talking about the crime prevention through environmental design so I think going with those guidelines would be something that, you know, we would appreciate.

COUNCILMEMBER HOKAMA: I know you cannot speak for the Chief on all things, but is this school being envisioned to have a...what is that CPO?

UNIDENTIFIED SPEAKER: SRO.

COUNCILMEMBER HOKAMA: SRO. Thank you. A School Resource Officer projected?

MS. KIBBY: I would, I would anticipate that. I know right now they're working on getting an SRO for Lokelani Middle School.

COUNCILMEMBER HOKAMA: Okay, I mean, you know, your proximity to this new school is a good football throw, you know, down the road so, you know, well for Mr. Couch's arm it's a little more than one football throw, but is there things that, you know, we should consider either as an advantage and make use of that advantage proximity of the Kihei Station to this school whether it be...I don't know, and that's what we look at you, you know, if there's things that you would recommend, say as well, if you know we have to do a shutdown, proximity helps and we would hope that the school would be in this kind of configuration 'cause it assists us in response.

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The shutdown is more efficient, we can get the parents informed sooner and have safe pick-up or drop-off points, those kinds of components, is there things you could share this morning with us?

MS. KIBBY: Those would be things I think addressed when we see the final, you know, Design-Bid plan, and I know the Police Department comments on, you know, the Environmental Impact Statements and the permitting process. Currently, we are developing, you know, active shooter type training and scenarios, so those I anticipate would be, you know, something that we would do with the new high school also.

COUNCILMEMBER HOKAMA: Okay, okay. I know it's hard to respond and you can imagine it's hard for us to ask the question because again, we're not sure what's gonna be built either, you know. We have a concept that may not be what it is, so again, it's kind of hard for some of us on this Committee, but I appreciate your presence and I appreciate your trying to answer my questions. Thank you.

MS. KIBBY: Thank you.

CHAIR CARROLL: Any further...no, one moment. Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair, and thank you, Officer Kibby, for being here and thank you for your good work as a Community Officer in Kihei. For the Members, she's out there at every Kihei Fourth Friday and is around and is well-known, so it's good to have her there. Gotta ask about the underpass, if there were an underpass which it kinda is leaning that way, do you guys have...have you studied other locations that have these kind of pedestrian underpasses to see what security features you would like to see, or are you anticipating or having...or can you have your Chief take a look at? I mean, it's being done on the mainland all over the place, so it's not anything new. But through the experience of other cities and counties maybe you can come up with suggestions you would like to see in this underpass?

MS. KIBBY: I have not studied it. Although from this morning's discussion I anticipate that's something that we'll start looking into, you know, the pros and cons for each so that I'll be able to comment when, when this comes through again.

COUNCILMEMBER COUCH: Okay, yeah, 'cause that...I mean, it looks like the way to go. Everybody's looking at an underpass. It's probably the cheaper way. And the other issue is going to be the access to that underpass at this point, because right now it's...either location is kind of out in the middle of nowhere. So we would certainly appreciate your input, your Department's input in the design of that. So if you can pass that onto your Chief we'd appreciate it. Thank you. Thank you, Chair.

CHAIR CARROLL: Any further questions for the Police Department? If not, thank you so much for coming.

MS. KIBBY: Thank you, Members. Thank you, Chair.



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CHAIR CARROLL: We'd now like to hear from the Water Department. I should lend you my wheelchair. Please identify yourself at the microphone, and do you have any opening statement?

MR. MEYER: Good morning, Mr. Chair. Good morning, Councilmen. I'm Paul Meyer. I'm the Deputy for the Water Department here to provide what insights I can into the water supply for the Kihei High School. We've delivered a number of written comments and testimony on this project in the past and what I have to say basically is not gonna vary from that. We have the reliable capacity to supply the potable water needs to this project on a reliable basis. At the same time, we're very pleased with the design elements of the project that include nonpotable supply of water for irrigation and nonpotable uses and the best practices in terms of low-flow fixtures. That being said, we have no objection to this project proceeding in the Water Department.

CHAIR CARROLL: Thank you. Questions for the Water Department? Mr. Hokama?

COUNCILMEMBER HOKAMA: Mr. Meyer, thank you for being here.

MR. MEYER: Pleasure.

COUNCILMEMBER HOKAMA: I hope that's not gout you're dealing with.

MR. MEYER: No, I had a knee replacement a week ago, and I'm glad they determined that it was worth saving.

COUNCILMEMBER HOKAMA: Gosh, you look great after one week of medical treatment, but thank you for being here. And thank you for your opening comments. And so when you said that the potable water that there's sufficient supply, as your Department's understanding, that is for both the drinking and irrigation requirements also, or is that just the potable component, the drinking component and irrigation is gonna be addressed in a different manner?

MR. MEYER: Thank you. The analysis we saw incorporated both components, but perhaps obviously we focus on the potable water delivery because we're only in the potable water business, and again, we were comfortable with the level of consumption and our ability to deliver that reliably.

COUNCILMEMBER HOKAMA: Okay. so at this time would you know if it will be used for irrigation also the potable water?

MR. MEYER: My understanding is that there are a couple alternatives there. One is a nonpotable well which is being put into place. My understanding is there's a couple of similar wells in the location right now, one of which is not in use, and there's a possibility also for use of recycled water from the Kihei plant. So that's a backup or secondary possibility.

COUNCILMEMBER HOKAMA: Okay. I know there's some small lenses out there 'cause I think there's one of those churches that has a well on the site at the beginning of Kihei. So this

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brackish wells is, it's just part of taking what's worthwhile in the thin South Maui lens? Is that, the brackish wells that they were talking about for irrigation?

MR. MEYER: Councilman, we have not reviewed the hydrological reports on those wells, and it's beyond my expertise to opine on their sustainability. I did review the plans and they seemed acceptable, and I do know, I was part of the team that developed the Research Park and that Park had I believe two irrigation wells and those have been in use for, oh gosh, variously for 30 years I think.

COUNCILMEMBER HOKAMA: Okay.

MR. MEYER: So, beyond that it's sort of beyond our scope to look into that.

COUNCILMEMBER HOKAMA: Okay, Director, did you notice, and again, you're able to see some, I guess, preliminary plans that we didn't see, but did you see dual line for the water component as part of their conceptual planning, one for irrigation, one for drinking?

MR. MEYER: The...having a dual system where \_\_\_\_ use potable water for potable purposes, irrigation water...nonpotable water for irrigation purposes implies there is two different systems of pumping, storage, and distribution. Yes, so I would presume the detailed plans would include separate piping for each of those. We do not allow as a matter of ordinance and practice interconnection of potable and nonpotable systems for public safety reasons.

COUNCILMEMBER HOKAMA: But ...(inaudible)...be parallel systems though?

MR. MEYER: Correct.

COUNCILMEMBER HOKAMA: Thank you for that, Director. I'm done with Water Department. Thank you, Chairman.

CHAIR CARROLL: Thank you, Mr. Hokama. Any further questions for the Department of Water Supply? If not, thank you very much for coming down.

MR. MEYER: Thank you for the opportunity.

CHAIR CARROLL: Members, after this I'd like to go through the conditions with the Planning Department, but it's 10:30, I'd like to take a five-minute break and give people a chance to take care of personal matters. We shall stand in recess for five minutes. ...*(gavel)*...

**RECESS: 10:30 a.m.**

**RECONVENE: 10:40 a.m.**

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CHAIR CARROLL: ...*(gavel)*... Land Use Committee meeting is now back in session. Mr. Yoshida, we would like to go through...if you could go through the conditions one by one, then we can discuss them if necessary?

MR. YOSHIDA: Thank you, Mr. Chair. The Maui Planning Commission recommended approval of the Community Plan Amendment for portion of the property from Ag to Public/Quasi-Public, and they also recommended approval of the Zoning Change for the property to P-1, Public/Quasi-Public subject to two conditions. Condition No. 1. That the State Department of Education shall submit to the Department of Public Works for review and comment any Traffic Impact Analysis Reports, pedestrian route studies, and/or any related reports or studies at the same time they are submitted to the State Department of Transportation. And Condition No. 2 which is a lengthy one. That within six months of the Department of Education's initiation of the design process for Phase I of the Kihei High School or the State's execution or contract with the Designer-Builder for the school whichever occurs earlier, the DOE and/or its Designer-Builder as appropriate shall begin to work with the County of Maui, Department of Planning on the design of the following improvements to the Kihei High School campus which shall subsequently be implemented to the satisfaction of the Department of Planning during the permitting process in accordance with Condition No. 16 of the Decision and Order of the...by the State Land Use Commission, granting the DOE's petition for a Land Use District Boundary Amendment, Docket No. A11-794: a) Pedestrian and bicycle access to and from the school campus to connect to current and future pedestrian and bicycle networks in the vicinity of the campus; b) Bicycle friendly improvements on the school campus and if requested by the County of Maui, Department of Transportation, an area for public transit access to the school campus; c) Overflow parking and lighting to accommodate special events to be held on the school campus; d) Consideration of best practices in crime prevention through environmental design elements and campus design; and e) To the extent not inconsistent with the provision of a drainage detention basis, overflow parking and Crime Prevention Through Environmental Design, design elements, landscaped buffer on the campus fronting Piilani Highway. Those are the two conditions.

CHAIR CARROLL: Thank you. Members, the Chair would also...we have all been concerned about compliance. That has come up at almost every meeting. I would like to read a proposal by the Chair for another condition.

COUNCILMEMBER COUCH: Mr. Chair, which version of the bill are we working on? I'm looking at the October 4, 2013 submittal from the Mayor I believe, is that the one we're looking at?

CHAIR CARROLL: Yes, 2013.

COUNCILMEMBER COUCH: Okay. October 4, 2013 is that the one that we're gonna work off of?

CHAIR CARROLL: I'm sorry?

COUNCILMEMBER COUCH: The October 4, 2013?

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CHAIR CARROLL: Yes, October, right.

COUNCILMEMBER COUCH: Okay, thank you.

CHAIR CARROLL: Alright Members, Chair tried to address our concerns, the Committee concerns. This condition would read like this. "That the DOE shall provide annual compliance reports to the Department of Planning and the Maui County Council on the status of the project and progress in complying with the conditions imposed commencing within one-year of the effective date of the ordinance. This reporting requirements shall cease upon completion of construction Phases I and II of the project". Discussion?

COUNCILMEMBER COUCH: We haven't had a chance...I'm sorry, Mr. Chair?

CHAIR CARROLL: I'm not asking for a motion, I'm asking for discussion, if the Members, what the Members would think of putting a motion like that? Mr. Couch followed by Mr. Hokama?

COUNCILMEMBER COUCH: Yeah, I agree with that, Mr. Chair, thank you. But we haven't had really a chance to talk to DOE. Are we gonna ask them how they...I'm sure there's no issue with this condition, but if we do more conditions are we gonna get a chance to discuss with them this project and the conditions?

CHAIR CARROLL: If there's no objection to calling the DOE representative to the podium?

COUNCIL MEMBERS: No objections.

CHAIR CARROLL: Could the DOE representative please come to the podium? Please identify yourself at the microphone.

MS. RUOTOLA: Christine Ruotola, Planner with Group 70.

MR. NICHOLS: Nick Nichols with DOE, Facilities Branch.

CHAIR CARROLL: Mr. Couch?

COUNCILMEMBER COUCH: Thank you. On that condition, you heard the condition, are you fine with the annual report as to your progress and compliance with...

MR. NICHOLS: Yes, probably so because I think we have to make other annual reports.

COUNCILMEMBER COUCH: Yeah, it's in conjunction with the Land Use Commission's annual report.

MR. NICHOLS: Right.

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COUNCILMEMBER COUCH: Mr. Chair, any chance...when are we gonna be able to talk with them, ask them questions about the project itself?

CHAIR CARROLL: Oh, yes.

COUNCILMEMBER COUCH: Can we do that now or...

CHAIR CARROLL: I was going to go through the conditions first, but since we have 'em up here--

COUNCILMEMBER COUCH: Okay.

CHAIR CARROLL: --if there's no objection, if you have any questions for them at this time? Do you have any questions for them at this time?

COUNCILMEMBER COUCH: Oh, yeah. Plenty.

CHAIR CARROLL: Since we have them standing over there.

COUNCILMEMBER COUCH: Sure. Mr. Nichols I'm guessing is the one that may answer this, but I don't know if you heard my question to Ms. Dagdag about the low impact design drainage. I know that's kind of a, I think it's a requirement these days from the Department of Public Works. Are you planning in your Design-Build to incorporate those kind of drainage of concepts?

MR. NICHOLS: I think...I don't know the detail of that. I think I would have to defer that to our architectural team.

COUNCILMEMBER COUCH: Okay.

MR. NICHOLS: Yeah, but you know, any type of requirement obviously we are gonna meet. You know, we need to comply to get it built, so.

COUNCILMEMBER COUCH: Sure, and...

MR. NICHOLS: And I can't speak to the detail of the low impact, I'm really not, yeah.

COUNCILMEMBER COUCH: And I know I have this question down and I think Mr. Hokama was reading my notes, the 130 million is that for Phase I and II or is that just Phase I?

MR. NICHOLS: I can address that. That's only for Phase I. And that's only for the actual building of the school. For example, the underpass/overpass, we would have to seek additional funding for that. We've had some talks with like Senator Baker and she's says that she would work with her Legislators to try to get...once, once there's a cost and a determination of all that that she would

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try to provide that additional funding. I think the estimated per our consultant for Phase II would be another 30 million, so ultimately it would be, you know, in that range of 160 million. But again, until we really get into the process, I think that's one of the things that we were hoping that the Design-Build would benefit us that hopefully we'll get a lot of bang for the existing dollars that we have, so.

COUNCILMEMBER COUCH: Okay. I have plenty more, but I'll let...I'll yield the floor.

CHAIR CARROLL: Mr. Hokama? Do you have anything for them up here first?

COUNCILMEMBER HOKAMA: Yeah, yeah, I will address the questions for the two representatives.

CHAIR CARROLL: Proceed.

COUNCILMEMBER HOKAMA: Thank you, Chairman. Can you tell us what your projections are for your potable and irrigation requirements? Can you tell us what's your projections like 1 million gallons a day for irrigation, you know?

MR. NICHOLS: I don't have that kind of exact information, no. I think I could...we could meet with our team and get back to you on that, but no, I don't know. I think that's been calculated. It's just that my involvement in this is typically not in that kind of detail. I'm more from the educational side.

COUNCILMEMBER HOKAMA: Okay, I appreciate that comment. Have you folks ever discussed about housing for your 120 staff, personnel requirements? You know, where they're gonna be housed and where they're gonna be living at? Is this all...are we looking at Maui labor force to fill your labor requirements for teachers, counselors, trainers?

MR. NICHOLS: You know, certainly, we, you know, we're the Department of Education for Hawaii so, you know, we plan on obviously our staff being local residents. We do not plan on bringing in outside people to do that. Statewide, you know, all of our teachers and counselors typically are local people and the principal and stuff will probably be an administrator that's currently at another school, and many of the staff, you know, they take that opportunity to transfer to a situation.

COUNCILMEMBER HOKAMA: So housing is being left up to the individual employee?

MR. NICHOLS: ...(inaudible)...you know, building housing based on this particular project, no, we're not stretching that and, or addressing that. We do, I mean, as a resident here I realize housing is a concern, that's why my wife and I and probably many of you, you work extra jobs, you do all of kinds of things to meet the need.

COUNCILMEMBER HOKAMA: Well you know, any other development that would come up with this kind of numbers would be complying to our Workforce, Affordable Workforce Housing

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Policy. And I'm just, you know, curious on how you're gonna take care of your requirements for your future employee requirements, you know, where they're gonna live, where you're gonna recruit them from? I'm hoping it's our people first. 'Cause that might satisfy your housing issues, but you know, just on paper, to me we're gonna need a 120 more houses minimum. And I don't know where we're gonna get it from. So I don't know how good your timetable is on your construction. I'm done, Chairman.

MR. NICHOLS: Excuse me, are you suggesting that we also build houses in conjunction to our school?

COUNCILMEMBER HOKAMA: I'm suggesting that you guys at least think about how you're gonna address the needs of your employees.

MR. NICHOLS: Okay, duly noted. Thank you.

CHAIR CARROLL: Thank you, Mr. Hokama. Any further questions for the applicant? Mr. Couch?

COUNCILMEMBER COUCH: Thank you. Just, you know, in your presentation talking about the timeline, you had a year from the beginning of the RFQ to the RFP awarding. Does it typically take that long and, if so, why?

MR. NICHOLS: Yes, it does. Right now perhaps you're not aware but...or maybe you are aware, we're doing a Design-Build for Kapolei II which is an elementary school. So to put together and in this case we did criterion documents which are the same kind of documents that we would do for Kihei High School. Those documents are the ones that actually describe all the relationships that we would like to see in the school in terms of arrangement of spaces. We actually go through like in Kihei there's about 95 different types of instructional spaces and rooms that will need to be described in terms of, you know, the electrical, the media needs, the size, the furnishings and all of that so, and that takes time to put together. Also, then the RFQ process takes time, you know, to put together those documents and then solicit it and then obviously we would hope that we would get a lot of teams and then we review that, we narrow down the teams, we ultimately, like in Kapolei II we brought it down to five, we interviewed those top five and we narrowed that to three. And then you give those time...once you issue the RFP, then those teams develop their concepts. And as you go through that process, that probably takes I think we took about three months, three or four months just for that going through for an elementary school. And we would like to give a little bit more time because obviously the high school is gonna be more complex. You know, it's gonna be more than double in size and it has all these specialty rooms and stuff. And then once you, finally you make your selection, and then so there's a lot of different steps, and so I think the year is, is not --

COUNCILMEMBER COUCH: Unreasonable.

MR. NICHOLS: --being unreasonable.

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COUNCILMEMBER COUCH: Okay. And you mentioned, I thought you mentioned in the presentation, but I just wanna double check. I noticed in there you had potential for two portable classrooms buildings or two portable buildings, any reason why portable building? If you know you're gonna need 'em, why not build them?

MR. NICHOLS: Okay. Yeah, all of our master plans we show...we design to the full design enrollment like in this case 1,650 students. So those would all be permanent. We know that typically most communities initially when a community opens like let's say at Kapolei initially they're, they're under and then as that area becomes more popular often, you know, they begin to exceed their, what their enrollments would be. And then as the community ages, you know, often many of the children have matured, you know, they become adults and no longer the school age population is great. To address that peak enrollment time, we would like not to build, overbuild in terms of the permanence and so we designate space for portables. Now at the same time, we're also always looking at how to improve the portable situation. So for example, maybe that ultimately if we really needed that, those could become something like modulars or something like that which would be say more appealing visually or whatever. But the concept of the portable is to make that peak, that let's say at some point maybe it would go over the 1,650 as Kihei, you know, in the long-term really develops but then at some point probably, you know, it would go below that. So we show it just so that for example we would ask the Design-Builder to make sure that utilities stub-outs are located and stubbed off there so that we don't have to come back and say, retrench and whatever.

COUNCILMEMBER COUCH: Yeah, I'm trying to anticipate and possibly avoid the situation you've got now at Maui Waena where they taking out the portables and making, making permanent.

MR. NICHOLS: Right.

COUNCILMEMBER COUCH: So...and I don't know are your numbers based on the projections that we've done in our Maui Island Plan that you've showed us a picture from our Maui Island Plan where it shows Urban Growth Boundaries. You realize that it's about what, three or four thousand homes gonna be in there. Is that taken into account with your 1,650 maximum or with taking into all that into account do you think maybe another building might be instead of two portables might be worth it in maybe a Phase 3 when you do the...it looks like you have.

MR. NICHOLS: But no, well per that conceptual plan we were looking at a total of four permanent houses each of about 400 to do the 1,650. If we really thought that, you know, ultimately it might go above that, you know, we could ask them in the, in their design process to show the site of say a fifth house.

COUNCILMEMBER COUCH: Okay.

MR. NICHOLS: We've done that recently...like on Kapolei II we ask 'em to show an additional eight-classroom footprint, and so we could probably do that.



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COUNCILMEMBER COUCH: Okay. I just wanted to make sure that that was going to be taken into...

MR. NICHOLS: Let me also say the DOE, the Board of Education, has developed a range that ideally they would like to keep within for size of schools, and so I think the 16 or so is right at that upper limit. And so overall the DOE would like if it was really going to get way over that, they would like to probably see a second school or something, but that's, you know, in the future.

COUNCILMEMBER COUCH: Gotcha. That's kinda nice 'cause my graduating class was 1,259, so. And lastly, and I'm sure you're gonna do this but I just wanna get it on record that you're gonna...when you deal with the...especially the baseball fields, you're gonna deal with the afternoon sun and whatnot, 'cause the way it looked like in the picture is the afternoon sun is gonna be right in the batter's eyes so I'm assuming your designers will take that into consideration?

MR. NICHOLS: Yes, we would definitely. Once we get to that detail we would try to work with the appropriate like ADs and nearby coaches and stuff to make sure that from their perspective it looks like a very workable solution.

COUNCILMEMBER COUCH: Okay, thank you.

CHAIR CARROLL: Any further questions for the applicant? Mr. Hokama?

COUNCILMEMBER HOKAMA: One of the things I forgot to ask earlier, is the design taking in account disaster evacuation and holding areas as part of a South Maui component? You know, this is gonna be one of the facilities above Piilani Highway and so already the youth is gonna be pretty much away from the tsunami zones, but for hurricane and other issues, the general public may look at the school as a sanctuary or another alternative evacuation site. Is there design components being considered that the school can be a site for a public evacuation purposes for disaster preparedness?

MR. NICHOLS: Yes, we...with all of our designs we work closely with State Civil Defense, and typically the components that they typically harden are the cafeteria, I think lately I've been...they're doing a number of hardening projects on existing schools. In addition to the cafeterias, many times we've designated certain classrooms, sometimes we designate the use of the library. However, the DOE has some concerns on, you know, its use as a shelter. But anyway, gyms typically are not because structurally sometimes to make them...they probably wouldn't be the best safe haven; however, that's not to say that maybe they couldn't, you know, with additional designing of it. So yes, we do always look at that and we do work hand-in-hand with the State Civil Defense as the design gets developed, because for sure...okay, the other thing in a high school that are almost is always used because typically they have no windows are the band and choral rooms, and so they also make very good safe havens and they typically have, you know, the restrooms are already there. Our cafeterias we make sure that the restrooms are accessed from both internal and external, but internal during say the hurricane event, yeah.

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COUNCILMEMBER HOKAMA: Okay, thank you very much. Thank you, Chairman.

CHAIR CARROLL: Thank you. Any further questions for the applicant? Seeing none, thank you. Members, back to our conditions, yes? First of all, I think everybody agreed that they would like to see a condition for compliance and the applicant has agreed it is not...it is acceptable to them. Yes, Mr. Hokama?

COUNCILMEMBER HOKAMA: Chairman, I would say that the expiration should be upon compliance of all conditions.

CHAIR CARROLL: Let me read it one more time then, okay. You know, I'm gonna read it as a motion and then we can discuss it.

COUNCILMEMBER HOKAMA: Okay.

CHAIR CARROLL: The Chair would consider entertaining a motion to amend Conditions of Zoning attached as Exhibit "B" to the Change of Zoning bill by adding a new condition that reads as follows: That the DOE shall provide annual compliance reports to the Department of Planning and the Maui County Council on the status of the project and progress in complying with these conditions imposed, commencing within one year of the effective date of the ordinance. This reporting requirement shall cease upon completion of construction of Phases I and II of the project.

VICE-CHAIR GUZMAN: So moved.

COUNCILMEMBER COUCH: Second.

CHAIR CARROLL: It's been moved and seconded. Discussion? Mr. Hokama?

COUNCILMEMBER HOKAMA: You know, I understand the wording, Chairman, and for me, construction, you know, finishing construction doesn't mean you complied with all the requirements of approval. So I would prefer that this compliance requirement terminates at the end of fulfillment of all conditions instead of at construction. That's just me, Chairman. Thank you.

CHAIR CARROLL: The conditions I'm referring to, of course, are the Planning Department's conditions 'cause we do not really have any authority over the other conditions. They're not our conditions.

COUNCILMEMBER HOKAMA: And thank you for that point, Chairman. I would prefer we incorporate as part of the County's conditions, all the State Land Use Commission conditions also 'cause I would like that report on those conditions as well, and I would...I have no problem

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since we've done it in the past, we can duplicate the Land Use Commission's as the Council's Conditions of Zoning also. Thank you, Chairman.

COUNCILMEMBER COUCH: Mr. Chair, if that's a motion, I second that.

CHAIR CARROLL: I'm sorry?

COUNCILMEMBER COUCH: If that is a motion, I second that.

COUNCILMEMBER HOKAMA: We get one motion on the floor already.

CHAIR CARROLL: Okay, we have a, we have a motion on the floor, but we can amend the motion on the floor easily because most of the motion I believe is acceptable. Could you propose the amended wording, Mr. Hokama?

COUNCILMEMBER HOKAMA: Chairman, I move to amend your motion by including that all these State Land Use Commission Conditions be incorporated as part of the Council's Conditions for Zoning and Community Plan Amendment.

COUNCILMEMBER COUCH: Second.

CHAIR CARROLL: We have a motion and a second to amend.

MS. NAKATA: Excuse me, Mr. Chair?

CHAIR CARROLL: Discussion?

COUNCILMEMBER COUCH: Yeah, um...first.

COUNCILMEMBER HOKAMA: I think Ms. Nakata has something to interject. Chairman, Ms. Nakata.

CHAIR CARROLL: Yes.

MS. NAKATA: Just for clarification, the Council doesn't have the ability to condition the Community Plan Amendment. You do have the ability to place conditions on the Zoning bill. So was that--

COUNCILMEMBER HOKAMA: So I'll revise the motion just for the Conditions of Zoning.

CHAIR CARROLL: Mr. Couch?

COUNCILMEMBER COUCH: Thank you. I just wanna clarify that motion in my mind. Is this to add the conditions to the report or add the conditions as a condition of Zoning.

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CHAIR CARROLL: This is a condition to report.

COUNCILMEMBER HOKAMA: Of Zoning.

COUNCILMEMBER COUCH: Okay, but we were, we were on your condition. So we're not really amending.

CHAIR CARROLL: But he was amending the condition. That's an amendment to the Conditions of...

COUNCILMEMBER COUCH: But your condition was to report, have an annual compliance report.

COUNCILMEMBER HOKAMA: Yeah, yeah, that's right.

COUNCILMEMBER COUCH: So I'm confused now. 'Cause if his amendment is to add those conditions to the compliance report, I'm supportive of that. If his amendment is to add those conditions as a Condition of Zoning, that's a different matter and that should be in a different motion. So that's where I'm confused and I'm not sure where we are.

CHAIR CARROLL: It's my understanding that Mr. Hokama's amendment was to amend the motion on the floor.

COUNCILMEMBER HOKAMA: Unless he rules it out of order. He makes the call.

COUNCILMEMBER COUCH: Okay, what's...and what's the wording? Can we have the wording?

CHAIR CARROLL: Were you following that, Ms. Nakata?

MS. NAKATA: Mr. Hokama's amendment was to include the State Land Use Commission conditions as part of the County Conditions of Zoning. Staff isn't clear whether that's an amendment to include that the annual compliance report that's provided to the State Land Use Commission also be provided to the County Council or if the amendment is to add all of the 26 State Land Use Commission conditions as Conditions of Zoning.

COUNCILMEMBER HOKAMA: It's the later. Chairman, you know what to make it simple, why don't I just withdraw my motion to amend and we just go with your first proposal and then I can consider making another motion after we take action on your recommendation.

CHAIR CARROLL: Alright. Any objection to withdrawing the motion to amend the main motion?

COUNCILMEMBER COUCH: No objections.

CHAIR CARROLL: Okay, we're back to the main motion now. Mr. Couch?

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**ACTION: APPROVED AMENDMENT.**

CHAIR CARROLL: Back to the main motion, as amended. Further discussion?

VICE-CHAIR GUZMAN: Chair, can we have that re-read to us in the full language...the full amendment?

CHAIR CARROLL: Ms. Nakata, could you read the full amendment? The whole motion as amended.

VICE-CHAIR GUZMAN: As amended, sorry.

MS. NAKATA: That the Department of Education shall provide annual compliance reports to the Department of Planning and the Maui County Council on the status of the project and progress in complying with the Conditions of Zoning and the State Land Use Commission conditions commencing within one year of the effective date of the ordinance. This reporting requirement shall cease upon the completion of construction of Phases I and II of the project.

CHAIR CARROLL: Any further discussion? Hearing none, all in favor of the motion as amended on the floor, signify by saying, "aye".

COUNCIL MEMBERS: Aye.

CHAIR CARROLL: Opposed? Motion carried, six ayes, no noes, three excused.

**VOTE: AYES: Chair Carroll, Vice-Chair Guzman, and Councilmembers Couch, Crivello, Hokama, and White.**

**NOES: None.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: Councilmembers Baisa, Cochran, and Victorino.**

**MOTION CARRIED.**

**ACTION: APPROVED MAIN MOTION, AS AMENDED.**

CHAIR CARROLL: Any further discussion before the Chair gives his recommendation?

VICE-CHAIR GUZMAN: I just wanted... Chair, I'm sorry.

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CHAIR CARROLL: Oh, I'm sorry. Mr. Guzman?

VICE-CHAIR GUZMAN: Chair, I wanted to follow up with Mr. Hokama's, I guess, questioning in terms of the completion dates of the conformity.

CHAIR CARROLL: I'm sorry?

VICE-CHAIR GUZMAN: Mr. Hokama mentioned that it may not be...I guess it could be an issue as to the completion date as being the end of the conditions that need to be met.

CHAIR CARROLL: I could think of nothing more than say, in Phases I and II, the completion of the project.

VICE-CHAIR GUZMAN: Yeah.

CHAIR CARROLL: Of course, if they don't have completion of their project then it would go on forever. So I would assume that they would...there's some point where they have to come before and post that the project is completed and at that point...I'm sure Planning Department can expand on that, but I know if you build anything there comes to a point where you have to go over there and file a Notice of Completion.

VICE-CHAIR GUZMAN: I guess, you know Chair, I guess my point would be what is the definition of completion? Because at some point, are substantial completion, completion? It may not necessarily mean the bicycle routes or, and the underpass and the overpasses are completed, but the building itself is completed, and so therefore it leaves a void as to how do we monitor the DOE or the developer in completing the rest of the conditions if the completion is not defined? Maybe Corp. Counsel can...

CHAIR CARROLL: I would ask the Planning Department if they would have anything...how they would define the completion of the project. Mr. Yoshida?

COUNCILMEMBER COUCH: Mr. Chair, while he's looking that up, just for the Members on Condition No. 23 of the State Land Use Commission, they basically say, it's, it's indefinite until they come and ask to have it released. So maybe that's something we may consider too.

CHAIR CARROLL: That is, that would probably answer your concerns.

VICE-CHAIR GUZMAN: At the time of release.

CHAIR CARROLL: Is that satisfactory, Mr. Guzman?

VICE-CHAIR GUZMAN: Can we put language in there? Chair, could we add in language that would conform to apparently to what Mr. Couch has quoted?

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CHAIR CARROLL: If you would like to propose that language?

VICE-CHAIR GUZMAN: Yes, I do would like to do so at this time. I'd like to move to amend the amended motion.

CHAIR CARROLL: You would move to amend the last condition.

VICE-CHAIR GUZMAN: Yes.

CHAIR CARROLL: Yes, the last condition which would be numbered...what would be the number of that condition, the new condition?

UNIDENTIFIED SPEAKER: Three.

CHAIR CARROLL: I'm sorry?

UNIDENTIFIED SPEAKER: Number 3.

CHAIR CARROLL: Okay, it would be move to amend that, that condition?

VICE-CHAIR GUZMAN: Yes.

CHAIR CARROLL: Okay.

COUNCILMEMBER COUCH: I'll second.

CHAIR CARROLL: Okay, it's been moved and seconded. Discussion? Mr. Couch?

COUNCILMEMBER COUCH: Just for clarification, the motion is to incorporate the language in State Land Use Committee Condition No. 23, into the condition as far as expiration date is that right?

VICE-CHAIR GUZMAN: Correct.

COUNCILMEMBER COUCH: Okay. Can we get that kinda read in proper word format?

CHAIR CARROLL: Ms. Nakata, can you make...repeat that one more time?

COUNCILMEMBER COUCH: Basically the expiration of the compliance report is based on Condition No. 23 of the State Land Use Commission which says, Petitioner shall seek from the Commission full or partial release of these conditions as to all or any portion of the petition area upon assurance acceptable to the Commission of satisfaction of these conditions. So that's when our condition would expire, as soon as they get released from their condition of annual reporting. I don't know how you want to put that in wording.



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CHAIR CARROLL: Okay, let's give the Staff a moment. We're not trying to torture them.

COUNCILMEMBER COUCH: Yeah. Would it be appropriate to have a recess and we have a little discussion or is she...

CHAIR CARROLL: No, you can...yes, you like to have discussion. Proceed.

COUNCILMEMBER COUCH: Well, no, with Ms. Nakata to see how she wants to word?

CHAIR CARROLL: Well, we're waiting till she can put it together.

COUNCILMEMBER COUCH: Yeah.

CHAIR CARROLL: But if you have anything else to say in between you can.

COUNCILMEMBER COUCH: No, I'm fine.

CHAIR CARROLL: Members, I appreciate your diligence. It was really hard. The Chair tried to draft something that he hoped would be satisfactory, and I appreciate the concern of the Committee members to make it more compatible. It has been a problem for...since memory about compliance, and this was the Chair's attempt to address that at this Committee, and each one is obviously gonna have to be different. The Chair tried to look at some boilerplate language. It's not possible. Ms. Nakata? Oh...

MS. NAKATA: Mr. Chair, could Staff request a short recess?

COUNCILMEMBER COUCH: Yeah.

CHAIR CARROLL: I'm sorry?

COUNCILMEMBER COUCH: She would like a short recess.

CHAIR CARROLL: Short recess. Eh, really short, please stay seated. Recess. . . (*gavel*) . . .

**RECESS:            11:16 a.m.**

**RECONVENE: 11:17 a.m.**

CHAIR CARROLL: . . .(*gavel*). . . Land Use Committee meeting is now reconvened. Ms. Nakata, could you please read that out?

MS. NAKATA: Yes, Mr. Chair. So Staff's understanding is that there's a motion on the floor to replace the current second sentence in Condition No. 3 which reads, This reporting requirement shall cease upon the completion of construction of Phases I and II of the project, with the

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following, This reporting requirement shall cease upon release of the annual reporting requirement by the State Land Use Commission.

CHAIR CARROLL: Alright, that is the motion on the floor to amend and it would be like that. Mr. Couch?

COUNCILMEMBER COUCH: Thank you. and thank you. Ms. Nakata. That's exactly what I was looking for at least and it's my understanding in the motion. I know Mr. Guzman made the initial motion. Essentially they're gonna have to go to the State Land Use Commission to be released from their annual reporting requirement. So at that same time, as soon as the State Land Use Commission releases them, I think that's the appropriate time to release us.

CHAIR CARROLL: I think that's about the best we can do. Alright...

COUNCILMEMBER COUCH: Because that's what it says, that's how long...that's what they have to do, upon assurance that acceptable to the Commission of satisfaction of these conditions. So the State Land Use Commission won't release them unless they're satisfied that all their conditions are met. So I'm satisfied with that if that's what the intent of the maker of the motion was.

CHAIR CARROLL: We have the motion on the floor to amend the last condition. Any further discussion? Hearing none...oh, Mr. Hokama?

COUNCILMEMBER HOKAMA: I guess half a pie is better than no pie sometimes, Chairman. You know for me and my years sitting here, Chairman, you know, Conditions of Zoning is usually what the Council imposes. It's a County condition. You know, for us to have a condition saying that we going wait for the Land Use to make a decision regarding one of our zoning conditions, it just rubs me slightly the wrong way. You know, my intent was if we made this County conditions, the 26 Land Use Commission's then the release would be by the Council, because it's our conditions or again, language similar to what you had proposed earlier, Chairman. You know, so for me I'm at a point where like I said, half the pie is better, but you know, normally the Conditions of Zoning is what we impose not what other people impose. We can choose to duplicate those same conditions. We've done it in the past. And to me, that makes more sense because as Condition of Zoning is only a County tool. It's not a State tool. It's not nobody's tool. It's just our tool as we approach mitigation of unforeseen issues regarding a entitlement change, and so thank you for letting me say my piece, Chairman.

CHAIR CARROLL: Any further discussion to the motion on the floor?

VICE-CHAIR GUZMAN: Chair, I also agree with Mr. Hokama in terms of if we could narrow it for the release to come from the County in conjunction with the State. So it's...I know they have to go to the State, but can they also go to the County as well for our specific conditions to be released upon completion, that the definition.

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CHAIR CARROLL: If you wish to make and further amend and...or make a new motion, you can do so.

VICE-CHAIR GUZMAN: I do, but I need some time to formulate the language to make it more narrow or more specific to the County.

CHAIR CARROLL: Right now, if we're gonna, if we're gonna tweak this some more, I would ask to withdraw the motion and redo it if you're gonna do...if you're gonna start going like this, it's gonna get da kine so if, if there's any further changes I would ask that the motion be withdrawn and then resubmitted.

VICE-CHAIR GUZMAN: Okay, Chair, I'm gonna withdraw the motion right now and request a recess.

COUNCILMEMBER COUCH: No objection.

CHAIR CARROLL: Any objection to withdrawing the motion on the floor?

COUNCIL MEMBERS: No objections.

CHAIR CARROLL: Alright, there is no motion on the floor at this time. Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair. I do understand Mr. Hokama's concerns and Mr. Guzman's concerns as well. I'm a little I would say, miffed at the State imposing County conditions but those are County conditions that we asked to be put in there so I can understand that. But a lot of these conditions, you know, their job, you know, I testified to that...to them on that. Their job is to say is urban use okay in this section...this piece of land. Our job is to put most of these conditions on there. So while it's nice that they put these conditions on there, these are mainly like Mr. Hokama says, conditions that we would normally put on. So the fact that they're there...I would be hesitant to have double conditions because we have 'em and then the State has them, so in order to be a little less red tape-ish that's why I'm a little bit hesitant of having these conditions imposed as our Conditions of Zoning although this is what we would normally do. So that's my concern is I'm hesitant of adding an extra layer of red tape, but I would like to see their annual report that they submit to the State to make sure that they're complying with the conditions that we would normally add. So that's where, that's where Mr. Hokama sees the half the pie and I understand that, but I also don't wanna, you know, get 'em just overrun with red tape. Thank you.

CHAIR CARROLL: We all want to make the conditions reasonable and being able to comply with and we want to come up with something that's not overbearing. It is enough to make sure that the Council and the Planning Department are informed of the progress. Right now, we have no motion on the floor. The floor is open.

COUNCILMEMBER HOKAMA: Chairman?

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CHAIR CARROLL: Oh, Mr. Hokama?

COUNCILMEMBER HOKAMA: I'm going to make a motion and we'll see how it goes and maybe we'll finish by noon, Chairman. So I move that the 26 conditions from the State Land Use Commission be imposed as Council Conditions on Change of Zoning for the Kihei High School.

COUNCILMEMBER WHITE: Second.

CHAIR CARROLL: It's been moved and seconded. Discussion? Mr. Hokama?

COUNCILMEMBER HOKAMA: Thank you, Chairman. Again, Mr. Couch brought up a very good point about increasing workload or bureaucracy. I don't see it that way. They're already gonna need to perform for the 26 State Land Use Commission so for us to put it on our list, makes no difference. Whoever is the consultant, the representative on behalf of Department of Ed is going to need to perform regardless. They're gonna be required to make a report back to the Land Use Commission. They'll make a second copy, one to the County of Maui. So I don't see it as additional work, I just see it as that the County then now has a chance to see how this project is moving forward, the level of compliance to the conditions of approval and whether or not down the road things may need to be adjusted whether it be for Phase II or so happens Phase III comes down the road in the future. At least we'll have a record within the County on how this project has performed and whether or not we made good decisions regarding this during its approval process. Thank you, Chairman.

CHAIR CARROLL: Any further discussion to the motion on the floor? Mr. Couch?

COUNCILMEMBER COUCH: Thank you, and I'm fine with that in that you're right, they do have to do this anyway. My concern would be Condition 19, 20, 23, and 24, and 25. Those are kinda State Land Use Commission-centric Conditions.

COUNCILMEMBER HOKAMA: Amend for delete those.

COUNCILMEMBER COUCH: And so I would like to amend the motion to delete Conditions 19, 20, 23, 24, and 25.

COUNCILMEMBER WHITE: Second.

COUNCILMEMBER HOKAMA: Second.

CHAIR CARROLL: It's been moved and seconded to amend the motion on the floor. Any further discussion?

COUNCILMEMBER COUCH: And I would like to ask Corp. Counsel if there are any other ones that he may feel might be not...

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CHAIR CARROLL: Corporation Counsel, you heard the question?

MR. GIROUX: Chair, can we repeat the question?

COUNCILMEMBER COUCH: Are there any other conditions that you may feel are not something that we can impose I guess? Yeah, you know, Numbers 19, 20, and then 23, 24, 25 are essentially order to show cause and a few other things that are State Land Use Commission-centric and not really things that we would do at the County level. So are there anything else in here that you feel uncomfortable imposing State level stuff at a County level?

MR. GIROUX: Well, I mean...Chair, the whole idea of, you know, restating the conditions in the first place is a little redundant, you know, because State law requires the County to be then, you know, enforce those conditions anyway. But you know, redundancy is not...you know, safety, safety first, right? But your, you know, if you incorporate all of the conditions and some of them aren't really part of the County process it's just gonna be looked at as, you know, extraneous. You know, you're not gonna, you know, you're not gonna have the...you're not gonna have the Planning Department or Planning Commission doing an order to show cause based on--

COUNCILMEMBER COUCH: Right.

MR. GIROUX: --your Land Use Commission Rules. You're just not gonna do that. So it's just gonna be beyond the law. For us to go there, go through right now on the spot and try to hack out all of that, probably, you know, would be a waste of your time. One of the concerns, you know, in this discussion listening to this discussion is that as far as your Conditions of Zoning, you know, 19.510.050, it states that the conditions to be imposed must have been performed prior to Council action on the rezoning amendment or be enforceable by the County so as to ensure performance after County action. The conditions shall be fulfilled within the time limitations set by the Council or if no time limitation is set, within a maximum of five years from the date of the ordinance is in effect. And that also has to be read in conjunction with Section F which says, you know, failure to fulfill any conditions on a zone change with the specific time limitations may be grounds for the enactment of ordinances to restore the zoning to the previous zoning district or initiate a claim on the bond. And we haven't discussed anything about bonds. One of the, one of the things that does concern me as far as, you know, I just wanna raise the flag for discussion is in Section H, it says that, I mean G, it says, changes or alterations of conditions shall be processed in the same manner as petitions for zone changes. And there was a discussion of whether or not you wanted them to petition the Council in order to have their conditions terminated, and that concerns me because then that adds a whole nother, I mean, the process of a zone change is very extensive. So I just hope the Council takes that into account when if they are looking at a condition like that, but other than that, if you're gonna incorporate it into your Change in Zoning, that's fine. And as far as, you know, if it's not really a process of the County to do then it's just gonna be seen as extraneous.

COUNCILMEMBER COUCH: Okay.

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CHAIR CARROLL: Any further discussion to the motion to amend the motion on the floor?

COUNCILMEMBER COUCH: I wanted to do a friendly amendment to add No. 16 as well, 'cause we already have that as our County conditions. I missed that one.

CHAIR CARROLL: Okay, no objections. Any further discussion--

MS. NAKATA: Mr. Chair?

CHAIR CARROLL: --to amend the motion on the floor.

MS. NAKATA: Mr. Chair, Staff would also just want to point out that if there is a process whereby the State Land Use Commission conditions are amended at some point in time, we would still have our fixed Conditions of Zoning incorporating Land Use Commission conditions as of today. So short of DOE coming back for a Change in Zoning, we wouldn't be in position to amend the County Condition.

CHAIR CARROLL: Satisfactory? Mr. Hokama?

COUNCILMEMBER HOKAMA: Chairman, I understand what Ms. Nakata shared with the Committee and I understand her comments, but that's part of the problem with this project. We really don't know what's gonna be built. We have a concept plan, but we're not sure this is how it's gonna look.

CHAIR CARROLL: But that is the way with all zoning changes that we have.

UNIDENTIFIED SPEAKER: Right.

CHAIR CARROLL: Once it's changed...

COUNCILMEMBER HOKAMA: But part of the zoning language the way it is as, what is that catchall phrase, that standard boilerplate?

COUNCILMEMBER COUCH: Substantially.

COUNCILMEMBER HOKAMA: Substantially as presented to the Council for approval. So you know, if they're gonna make big changes where the Land Use Commission has to make revisions to their things, then is that really what is presented to Council for approval? Because if it's not, then how valid is the zoning process we're gonna go through now then?

CHAIR CARROLL: Mr. Hokama, anyone that comes before this Land Use Commission for Change in Zoning, they make a proposal that's what they intend to do, but the Council does not say you cannot change what you intend to do, that would not be practical because things happen, and you don't --

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COUNCILMEMBER HOKAMA: True, Chairman. I agree with you--

CHAIR CARROLL: --have to come back--

COUNCILMEMBER HOKAMA: --100 percent, Chairman.

CHAIR CARROLL: --to make a change, to make a bigger wing or something else and that's why we don't do that.

COUNCILMEMBER HOKAMA: I agree with you, Chairman. And that's why for those that wish to change their project has to come back to Council.

CHAIR CARROLL: If the project changes, yes.

COUNCILMEMBER HOKAMA: That's correct, Chairman, if the project changes.

CHAIR CARROLL: Yes.

COUNCILMEMBER HOKAMA: So I'm in agreement with how you're looking at it.

CHAIR CARROLL: But just the general scope we approve, a school...school buildings, an athletic field, but as far as changes within there, we don't do that.

COUNCILMEMBER HOKAMA: You know, maybe that's why this should have been one like a project district proposal instead of this format of entitlement, Chairman, you know. At least with the project district, you know, we get the conceptual, we understand the blobs, we get some densities, we get some, you know, additional factual information to make a pretty good decision, you know, but to me is the comment from Ms. Nakata, if it changes enough where the Commission has to make a change and we rereviewing a change because it's a different project then my thing is why wouldn't they come back?

CHAIR CARROLL: I would only say that we need to be very, very careful if we're going to approach that line of thinking.

COUNCILMEMBER HOKAMA: I agree. I agree, Chairman. I'm 100 percent with you on that. Thank you.

CHAIR CARROLL: That would, that might be something for Policy Committee to consider.

COUNCILMEMBER HOKAMA: Thank you for that, Chairman.

CHAIR CARROLL: Yes, Mr. Couch?

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**COUNCILMEMBER COUCH:** Thank you, and I understand Mr. Hokama's concerns and I have similar concerns, but the flip side to that is we incorporate these conditions as our conditions and they do make changes on the other side, say remove some of the other conditions, we still have 'em there and they still have to follow. So there's two sides, you know. So I'm fine with what Ms. Nakata said. Just leaving it as we have here and, you know, they're gonna build a high school. I don't have any doubt that they're gonna build a high school, and probably a pretty good high school nowadays that's gonna be, you know, something that Kihei can, and the County of Maui can hang their hat on saying, look this is a good project. I don't see where...I mean, 'cause it's Public/Quasi-Public so there's only a limited number of things they can do. Maybe they could do a convention center...who knows what they can change it to. So it's one of those things that I, you know, we gotta kind of trust the State on this one. I know that's a stretch as Mr. Hokama would say, but I'm fine with what we have so far as the motion is set, but I do understand the concerns.

**CHAIR CARROLL:** Alright, we have a motion to amend the motion on the floor. Any further discussion on that? Seeing none, all in favor, signify by saying, "aye".

**COUNCIL MEMBERS:** Aye.

**CHAIR CARROLL:** Opposed? Motion carried, six ayes, three excused.

**VOTE:**       **AYES:**   **Chair Carroll, Vice-Chair Guzman, and Councilmembers Couch, Crivello, Hokama, and White.**

**NOES:**       **None.**

**ABSTAIN:**   **None.**

**ABSENT:**    **None.**

**EXC.:**       **Councilmember Baisa, Cochran, and Victorino.**

**MOTION CARRIED.**

**ACTION:**     **APPROVED AMENDMENT.**

**CHAIR CARROLL:** Back to the main motion on the floor. Further discussion? Hearing none, all in favor, please signify by saying, "aye".

**COUNCIL MEMBERS:** Aye.

**CHAIR CARROLL:** No? Motion carried, six ayes, no noes, three excused.



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**VOTE:       AYES:   Chair Carroll, Vice-Chair Guzman, and Councilmembers Couch, Crivello, Hokama, and White.**

**NOES:       None.**

**ABSTAIN:   None.**

**ABSENT:     None.**

**EXC.:       Councilmember Baisa, Cochran, and Victorino.**

**MOTION CARRIED.**

**ACTION:     APPROVED MAIN MOTION, AS AMENDED.**

CHAIR CARROLL: Alright, Members, any further discussion before the Chair gives his recommendation?

COUNCILMEMBER HOKAMA: Recommendation.

CHAIR CARROLL: Mr. Couch.

COUNCILMEMBER COUCH: Just to confirm that we removed 19, 20, 23, 24, 25, and 16? You got the 16? Okay, great. Thank you.

CHAIR CARROLL: Thank you. Any objection to the Chair giving his recommendation?

COUNCIL MEMBERS: No objections.

CHAIR CARROLL: The Chair will entertain a motion to recommend passage on first reading of the proposed bill entitled, A BILL FOR AN ORDINANCE TO AMEND THE KIHEI-MAKENA COMMUNITY PLAN AND LAND USE MAP FROM AGRICULTURAL TO PUBLIC/QUASI-PUBLIC FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII, TAX MAP KEY NUMBER (2) 2-2-002:081 (POR.), FOR THE PROPOSED KIHEI HIGH SCHOOL, incorporating any nonsubstantive revisions.

COUNCILMEMBER COUCH: So moved.

VICE-CHAIR GUZMAN: Second.

CHAIR CARROLL: It's been moved by Mr. Couch, seconded by Mr. Guzman. Discussion? Seeing none, all in favor signify by saying, "aye".

COUNCIL MEMBERS: Aye.

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CHAIR CARROLL: Opposed? Motion carried, six ayes, no noes, three excused.

**VOTE:**      **AYES:**    Chair Carroll, Vice-Chair Guzman, and Councilmembers  
Couch, Crivello, Hokama, and White.

**NOES:**      None.

**ABSTAIN:**   None.

**ABSENT:**    None.

**EXC.:**      Councilmember Baisa, Cochran, and Victorino.

**MOTION CARRIED.**

**ACTION:**    Recommending **FIRST READING** of Community Plan  
Amendment bill.

CHAIR CARROLL: The Chair will next entertain a motion for passage on first reading the proposed bill entitled, A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO P-1 PUBLIC/QUASI-PUBLIC DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII, TAX MAP KEY NUMBER (2) 2-2-002:081, FOR THE PROPOSED KIHEI HIGH SCHOOL, incorporating amendments made at today's meeting if any and any nonsubstantial revisions and to file County Communication 13-87.

COUNCILMEMBER COUCH: So moved, Mr. Chair.

VICE-CHAIR GUZMAN: Second.

CHAIR CARROLL: Thank you. Discussion? Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair, and I wanna thank the Members for going through this process. This is something that the Kihei community has been looking forward to for a long large number of years. As a matter of fact I have some god kids that are, that are now going to Kihei Charter School, High School, which is a very good high school as well. But at the time this was conceived, they could have been the graduating seniors at Kihei High School. So it's been going, and I applaud the tenacity of Mr. Beerer who's been coming through to all these meetings all over the place to get this done. So I appreciate the efforts of KHAT and the KCA and the Kihei community to get this done. Thank you.

CHAIR CARROLL: Any further discussion? Hearing none, all in favor of the motion, signify by saying, "aye".

**LAND USE COMMITTEE MINUTES**  
Council of the County of Maui

October 30, 2013

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COUNCIL MEMBERS: Aye.

CHAIR CARROLL: Opposed? Motion carried, six ayes, no noes, three excused.

**VOTE:       AYES:   Chair Carroll, Vice-Chair Guzman, and Councilmembers  
                          Couch, Crivello, Hokama, and White.**

**NOES:       None.**

**ABSTAIN:   None.**

**ABSENT:    None.**

**EXC.:       Councilmember Baisa, Cochran, and Victorino.**

**MOTION CARRIED.**

**ACTION:     Recommending FIRST READING of revised Change in  
                          Zoning bill and FILING of communication.**

CHAIR CARROLL: Members, I thank you. I thank you for your diligence and I thank you especially for addressing that last condition. I knew that was going to be difficult and I appreciate the Members participation because that has been a serious concern that we have all had these years. And I realize that perhaps we can make it better but it is something that is very, very difficult to do and still not be overbearing and literally cripple projects. So we need to be very careful how we proceed. Thank you again. Thank you to the applicant. We appreciate your attendance today, and to the Staff and all those out there in television land. This Land Use Committee meeting of October 30, 2013 stands adjourned. . . .(gavel). . .

**ADJOURN:    11:40 a.m.**

APPROVED:

  
\_\_\_\_\_  
ROBERT CARROLL, CHAIR  
Land Use Committee

lu:min:131030 cb:etc

Transcribed by: Carolyn Takayama-Corden

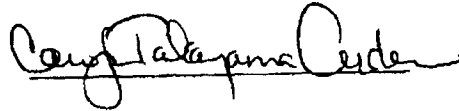
**LAND USE COMMITTEE MINUTES**  
Council of the County of Maui

**October 30, 2013**

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I, Carolyn Takayama-Corden, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 18<sup>th</sup> day of November, 2013, in Makawao, Hawaii

A handwritten signature in cursive script, reading "Carolyn Takayama-Corden", written over a horizontal line.

Carolyn Takayama-Corden

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of

DOCKET NO. A11-794

DEPARTMENT OF PLANNING,  
COUNTY OF MAUI,

To issue a declaratory order that Condition 1(b) of the State of Hawai'i Land Use Commission's Decision and Order filed July 29, 2013, in Docket A11-794, granting the Land Use District Boundary Amendment for 77.182 acres identified for real property tax purposes as tax map key (2) 2-2-002:081, Kihei, Maui, Hawaii, requires an available above or below ground pedestrian crossing.

CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was duly served upon the following persons as follows:

DANIEL E. ORODENKER  
Executive Director  
State of Hawaii Land Use Commission  
P.O. Box 2359  
Honolulu, Hawaii 96804-2359

**Digital Copy to State Land Use Commission, [luc@dbedt.hawaii.gov](mailto:luc@dbedt.hawaii.gov)**

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Attorney for Department of Education

Electronic Mail/U.S. Mail

Dated: Wailuku, Maui, Hawaii, February 19, 2019.

PATRICK K. WONG  
Acting Corporation Counsel  
Attorneys for Intervenor  
County of Maui,  
Department of Planning

By



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THOMAS KOLBE