



UNIVERSITY of HAWAI'I WEST O'AHU

August 13, 2009

Mr. Dan Davidson, Executive Officer
State Land Use Commission
P.O. Box 2359
Honolulu, Hawai'i 96804

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LAND USE COMMISSION
STATE OF HAWAII

Dear Mr. Davidson:

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

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

I. Project Background and Progress

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

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under this new docket number. This letter is our second annual progress report for the property under this new docket number.

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

Due to limited State resources, UH anticipates selling and/or leasing portions of their lands, the proceeds of which would be used to fund construction of most of the first phase of the UHWO campus. As such, the UH is currently in the process of pursuing a land sale for a 55-acre parcel of their lands.

II. Status of Compliance with the Conditions

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

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

Compliance: Through the zoning application process, the UHWO is coordinating with the DPP and the City and County of Honolulu, Department of Community Services (DCS), through DPP, in establishing affordable housing requirements for the project. The UHWO anticipates further discussion with DPP and DCS in compliance with this condition.

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

Compliance: To address potable water needs, the UHWO is working with the State of Hawai`i, Department of Hawaiian Home Lands (DHHL), in coordinating the cost and construction of improvements to the Board of Water Supply's water storage and transmission systems to accommodate ultimate development of their respective lands. In compliance with this condition, the UHWO and DHHL have been and will continue to coordinate, their efforts with appropriate State and County agencies and will continue to work with these agencies to develop, fund and construct adequate water source, storage and transmission facilities.

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

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

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

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

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

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currently awaiting approval by the DOE Attorney General in order to finalize the agreement.

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

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

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

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

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

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

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

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

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events and vehicular traffic in the property exceed acceptable State Department of Health levels, the UHWO, its successors and assigns will be responsible for implementing appropriate mitigation measures to reduce noise levels to appropriate standards to comply with this condition.

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

Compliance: The UHWO is working in coordination with the State DOT in the planning and design of the North-South Road and in addressing issues related to access, easements within the property, coordination on infrastructure construction within the road right-of-way and drainage for the roadway.

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

Compliance: Through the zoning application process, the UHWO is coordinating with the DPP and the City and County of Honolulu, Department of Emergency Management Services on the appropriate civil defense sirens that will be required for the development of the project. The UHWO anticipates further discussion with the City in compliance with this condition as the project progresses.

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

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

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that mitigative measures have been implemented to their satisfaction.

Compliance: As development of the project progresses, the UHWO and its successors and assigns will need to comply with this condition.

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

Compliance: The UHWO is coordinating with City and State agencies on issues related to the regional drainage system for the Kalo'i drainage basin. Through the entitlement, subdivision, and construction permitting processes, the project has received and will continue to receive feedback from the State and City agencies on drainage related issues.

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

- a. Petitioner shall submit an updated drainage master plan if required by the City and County for the Property to the City and County for its review and approval prior to any subdivision approvals other than for minor matters, such as easements.*
- b. Drainage solutions for the Property shall be compatible with the drainage designs for other developments in the Kalo'i Gulch drainage basin and shall conform to applicable Federal, State, and City and County laws, rules, regulations, and standards.*
- c. Drainage improvements for the Property shall be consistent with the policies and principles in the Ewa DP.*
- d. Petitioner shall be responsible for implementing interim drainage improvements which limit channelized*

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runoff to 2,500 cfs⁵ at the Property's southern boundary for events up to a 100-year storm. Petitioner shall also take reasonable measures to minimize non-channelized flows from the Property by construction of berms, detention basins, or other appropriate methods. These requirements shall remain in force until long-range regional drainage improvements are in place in accordance with the approved drainage master plan for the Project.

Compliance: The UHWO is working with State and City agencies to implement interim and long-term regional drainage solutions as required under this condition. Through the entitlement, subdivision, and construction permitting processes, the project has received and will continue to receive feedback from the State and City agencies on drainage related issues.

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

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

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

Compliance: In November 2008, the property was rezoned from AG-1 Restricted Agricultural District to BMX-3 Community Business Mixed Use District, A-2 Medium Density Apartment District, R-3.5 Residential District, R-5 Residential District, and P-2 General

⁵ Cubic feet per second (cfs)

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Preservation District under Ordinance 08-30. The UHWO also received approval for a Plan Review Use (PRU) permit for the development of the new campus in November 2008, under Resolution 08-140, CD1, FD1. The UHWO will coordinate with the City and County of Honolulu and their respective agencies on compliance with City zoning requirements and this condition, now that the zoning and PRU permit has been secured.

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

Compliance: The UHWO has prepared and submitted to the DPP, as part of the zone change application, an Open Space/Amenities/Bike Paths Plan for the 500-acre property and a Conceptual Regional Public Facilities and Bikeway Master Plan. With the approval of the zoning, the UHWO believes that this condition has been satisfied. As part of the Unilateral Agreement for the zone change (Ordinance 08-30), a master plan for park development is required by the City. The UHWO anticipates further work with the City in preparing the master plan for park development.

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

Compliance: As part of the Unilateral Agreement for Ordinance 08-30, the UHWO will work with the DPP on preparing an Urban Design Plan for the property not subject to the PRU. The UHWO anticipates further discussion with the DPP in compliance with this condition as the project progresses.

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

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Compliance: The UHWO has incorporated the use of indigenous and water conserving plants and turf, where feasible, in the Landscape Master Plan for the campus. The Landscape Master Plan was included in the PRU application for the campus. The UHWO anticipates further discussion with the DPP in compliance with this condition as the project progresses. As applicable, the UHWO will work with others to incorporate the use of indigenous and water conserving plants and turf into their plans for the lands they may acquire.

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

Compliance: As development of the project progresses, the UHWO anticipates compliance with this condition.

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

Compliance: As mentioned in the 2008 Annual Report to the Land Use Commission, the UHWO has fulfilled the requirements of this condition. To implement the Habitat Conservation Plan (HCP) for the endangered *abutilon menziesii*, in accordance with Department of Land and Natural Resources (DLNR) and U.S. Fish and Wildlife requirements, a trust fund has been established pursuant to Hawai'i Revised Statutes, Chapter 195D-31. The DOT has committed to providing the initial 5-year funding and funding for a subsequent period of 15 years, in conjunction with an agreement through DLNR. To implement the HCP, the DOT was issued an Incidental Take License to remove the plants in the area in accordance with the HCP on March 18, 2005. The DOT has developed a process for third party developers ("cooperators")

⁶ Honouliuli Wastewater Treatment Plant (HWWTP)

⁷ Habitat Conservation Plan (HCP)

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

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to utilize the Incidental Take License through a Certificate of Inclusion. The cooperators would pay into a contingency fund, established by the DOT, for the following purposes: 1) to finance unanticipated costs incurred by DLNR in the implementation of the HCP; and 2) to fund the management and monitoring of three wild populations beyond the 20 year period. The UH was issued a Certificate of Inclusion to be included as a cooperator or joint permittee under the DOT's Incidental Take License. As part of their agreement with the DOT, the University has transferred to the DLNR \$50,000 as part of the contingency fund for the HCP.

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

Compliance: As development of the project progresses, the UHWO anticipates compliance with this condition.

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

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

Condition 22: Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Area, prior to the development of the Petition Area.

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Compliance: The UHWO anticipates selling and/or leasing portions of the Petition Area. As was mentioned above, the UHWO intends to sell or lease a 55-acre parcel of land, the sale of which will be used to fund the construction of the campus.

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

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

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

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

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

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

⁹ State of Hawai'i, Office of Planning

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

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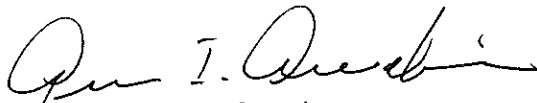
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Condition 26: Petitioner or landowners shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to section 15-15-92, HAR¹¹.

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

Please do not hesitate to contact me if there are any questions, or if the SLUC requires any further information regarding this report. We appreciate your assistance and look forward to your acceptance of this annual report.

Sincerely,


Gene I. Awakuni
Chancellor

cc: Mr. Abbey Mayer, Director
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¹¹ Hawai'i Administrative Rules (HAR)