

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of ) DOCKET NO. SP00-393  
)  
KAMEHAMEHA SCHOOLS BERNICE ) PROGRESS REPORT OF  
PAUAHI BISHOP ESTATE ) KAMEHAMEHA SCHOOLS FOR THE  
) PERIOD APRIL 2002 TO APRIL 2005  
)  
For a Special Permit to Establish and )  
Operate an Elementary and Secondary )  
School Campus on Approximately 265.25 )  
Acres Within the State Land Use )  
Agricultural District in Kea'au, Puna, )  
Hawaii; Tax Map Key No.: 1-6-03:013 )  
(por.) )  
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In the Matter of the Petition of ) DOCKET NO. BR93-699  
)  
OFFICE OF STATE PLANNING, STATE ) PROGRESS REPORT OF  
OF HAWAII ) KAMEHAMEHA SCHOOLS FOR THE  
) PERIOD APRIL 2002 TO APRIL 2005  
)  
To Amend the Agricultural Land Use )  
District Boundary into the Urban Land )  
Use District for Approximately 660 Acres )  
of Land at Kea'au, Puna, Hawaii, Tax )  
Map Key No.: 1-6-03: por. 3, por. 7, por. )  
8, por. 11, por. 12, por. 13, por. 14, por. )  
15, por. 68, 76 and 84 )  
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LAND USE COMMISSION  
STATE OF HAWAII  
2005 NOV 22 P 3:36

SHARED\KAMEHAMEHA\HAWAII CAMPUS\PROGRESS REPORT (11-22-05)(FINAL)

**PROGRESS REPORT OF KAMEHAMEHA  
SCHOOLS FOR THE PERIOD APRIL 2002 TO APRIL 2005**

KAMEHAMEHA SCHOOLS BERNICE PAUAHI BISHOP ESTATE ("KS") submits  
this progress report pursuant to Condition Nos. 18<sup>1</sup> and 21<sup>2</sup> imposed by the Land Use

<sup>1</sup> Condition 18 from the Order Partially Approving Motion to Release Conditions Imposed in Decision and Order on Reclassification Made as Part of the Commission's Findings of Fact, Conclusions of Law, and Decision and Order dated July 18, 1994, entered on April 7, 2000 in Docket No. BR 93-669.

<sup>2</sup> Condition 21 from the Decision and Order entered on April 7, 2000 in Docket No. SP00-393.

Commission of the State of Hawaii (the "Commission") by orders filed in both of the above-captioned dockets on April 7, 2000 ("LUC Order"). This progress report is for the period April 2002 to April 2005.

## **I. STATUS OF THE PROJECT**

KS is presently operating and constructing its East Hawaii Campus (the "Campus") on the land (the "Property") that is the subject of the conditions imposed in the above-captioned petitions by the Commission. In August 2001, KS completed construction of Phase I of the Campus, the middle school. Two classroom buildings presently serve approximately 144 students in grades 6, 7 and 8 and approximately 35 staff members. In August 2002, KS completed construction of Phase II, the elementary school. Three classroom buildings were completed to serve approximately 256 students in grades K-5 and approximately 50 staff members.

KS completed Phase III, the high school, in August 2003. Five buildings and related facilities serve approximately 576 students in grades 9-10 and approximately 70 staff members.

KS started construction of Phase IV facilities in August 2003 and completed construction in August 15, 2004 with an additional 144 students and approximately 50 staff members. Phase V facilities (Integrated Facility and Cultural Area) are currently being designed and construction is scheduled to start in December of 2005.

## **II. PROGRESS IN SATISFYING CONDITIONS**

KS submits the following report of its progress in satisfying each of the conditions imposed by the Commission.

**A. Docket No. SP00-393:**

1. The applicant, successors or assigns shall be responsible for complying with all of the stated conditions of approval.

KS is responsible for complying with all of the stated conditions.

2. Prior to the start of construction, Final Plan Approval for the initial campus development and subsequent campus expansion shall be secured from the Planning Director in accordance with the Zoning Code Section 25-2-72. Plans shall identify existing and proposed structures, fire protection measures, paved driveways and paved parking stalls (asphalt or asphalt-concrete), fencing, construction fencing and detailed landscaping associated with the proposed uses.

KS has satisfied this condition of the LUC Order for Phases I, II, III, IV & V of its Hawaii Campus. The Hawaii County Planning Director granted Final Plan Approval for the initial phase of construction on March 22, 2000, and for Phase II, the elementary school on March 20, 2001. Phase III Final Plan approval for the high school was granted on February 4, 2002. Phase IV Final Plan Approval was granted on March 18, 2003. Phase V Final Plan Approval was granted on June 24, 2005.

3. The applicant shall install a chain link fence surrounding the proposed development area, with construction barriers between the operating areas and the remaining areas to be developed prior to the issuance of a certificate of occupancy for any portion of the initial campus development. The height of the fence shall be determined during Final Plan Approval.

KS has satisfied this condition of the LUC Order and it was released by LUC Order dated May 17, 2005<sup>3</sup>.

KS has installed a chain link fence and construction barrier around Phases I, II and Phase III of the campus on the Property in accordance with approved plans. The Planning Director did not mandate any minimum fence height.

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<sup>3</sup> The Motion to Release Conditions 3, 4, 5, 7a-f, 14, 17 & 18 was granted at the LUC's October 7, 2004 meeting.

4. Final Subdivision Approval shall be secured from the Planning Director within five (5) years from the effective date of this permit.

KS has satisfied this condition of the LUC Order and it was released by LUC Order dated May 17, 2005. The Planning Director granted final subdivision approval on May 11, 2000, for the subdivision of Lot 8992 into the Property, being Lot 8992A, area 302 acres, and Lot 8992B, the remaining area to be retained by W.H. Shipman, Limited.

5. The applicant shall submit a Traffic Signal Warrant Study for review and approval by the Department of Transportation and Department of Public Works with a copy to the Planning Director prior to the submittal of plans for Final Plan Approval.

KS has satisfied this condition of the LUC Order and it was released by LUC Order dated May 17, 2005.

KS prepared and submitted a Traffic Signal Warrant Study ("TSWS") in October 1999 to the Department of Transportation, State of Hawaii and the Department of Public Works, County of Hawaii. Although DOT and County Public Works procedures do not provide for a formal approval of the TSWS, KS collaborated with both agencies and did incorporate their comments as required by the Planning Director prior to the final plan approval.

6. The applicant shall submit a Traffic Impact Analysis Report ("TIAR") for review and approval by the Department of Transportation, Department of Public Works and the Planning Director prior to the submittal of plans for Final Plan Approval for any development of classroom facilities beyond the initial student population of 1,120 students.

KS has no present plans for any development of classroom facilities beyond the initial student population of 1,120 students. In the event that KS develops additional classroom facilities beyond the initial population of 1,120 students, KS will submit the

appropriate TIAR for review and approval by DOT, County of Hawaii Department of Public Works and the Planning Director.

7. The applicant shall provide the following roadway improvements at the intersection of Volcano Highway and Project Access Road/Pa'ahana Street, meeting with the approval of the Department of Transportation:
  - a. Construction of a signalized intersection.
  - b. Construction of an exclusive right turn lane on Volcano-bound Volcano Highway to the Project Access Road/Pa'ahana Street.
  - c. Construction of an exclusive left turn lane on Hilo-bound Volcano Highway to the proposed Project Access Road/Pa'ahana Street.
  - d. Reconfigure the existing right turn lane on Hilo bound Volcano Highway at Pa'ahana Street to provide a shared through/right turn lane. The shared through/right turn lane on the Hilo side of the intersection should merge into the existing Hilo-bound traffic lane.
  - e. Construct a shared left turn lane/through lane and an exclusive right turn lane at the Project Access Road and Volcano Highway.
  - f. Construction of a striped six-foot wide median strip on Volcano Highway on both sides of the intersection.
  - g. Other roadway improvements to Volcano Highway as required by the State Department of Transportation.

KS has satisfied this conditions 7a-f in the LUC Order. Conditions 7a-f were released by LUC Order dated May 17, 2005. KS has expended over 2.1 million dollars in intersection and highway improvements. KS completed construction of all intersection improvements required by the Commission at the intersection of Volcano Highway and Project Access Road/Pa`ahana Street (items 7a. to f.).

Condition 7g was amended by LUC Order dated June 14, 2005 to read:

7. The applicant shall provide its fair-share of the following roadway improvements at the intersection of Volcano Highway and Project

Access Road/Pa'ahana Street, meeting with the approval of the Department of Transportation:

(g) Its fair-share of other roadway improvements to Volcano Highway as required by the State Department of Transportation.

8. At any time within two years from the date of this Decision and Order, the Commission may review the actual impact of the development on traffic conditions and the effectiveness of applicant's mitigation measures. If requested by the Commission, the applicant shall submit a current status report on the traffic conditions to assist the Commission's review. Based on its review and on the information submitted by the applicant, the Commission may require additional traffic mitigation measures and may schedule further reviews.

KS gave an update on the implementation of the traffic conditions at an April 2004 briefing to the LUC. KS also submitted an updated TIAR to the State Department of Transportation and LUC in October 2004.

9. The applicant shall be responsible for implementing sound attenuation measures to bring noise levels from vehicular traffic on the Property down to levels acceptable to the State Department of Health and the State Department of Transportation.

KS is constructing all buildings on the campus using appropriate sound attenuation measures. All classroom buildings are enclosed and air-conditioned. All noise levels are in conformance with the State Department of Health Noise Standards.

10. The applicant shall submit a Drainage Report and all recommended improvements to the Department of Public Works in conjunction with the Final Plan Approval.

KS has satisfied this condition for Phase I, Phase II, Phase III, Phase IV, and Phase V of the Campus that included a drainage plan for these portions of the Campus. The drainage plan for Phases I-V obtained final plan approval from the Department of Public Works in April 2002.

11. The applicant shall fund the design and construction of drainage improvements required as a result of the development of the property to the satisfaction of the appropriate State and County agencies.

KS has funded and completed the planning and construction of the required drainage improvements for Phase I, Phase II, Phase III and Phase IV of the Campus and obtained the required approvals. Future planning and construction of the required drainage improvements will comply with this condition.

12. The applicant shall submit a Solid Waste Management Plan for review and approval by the Department of Health and the Department of Public Works prior to occupancy.

KS submitted a revised Solid Waste Management Plan for the campus development to the Department of Health and Department of Public Works on October 28, 2003.

13. The applicant shall consult with the Department of Health regarding the proposed wastewater system and if deemed necessary by the Department of Health, conduct monitoring for any potential impacts to groundwater resources.

KS has consulted with the Department of Health regarding its disposal of wastewater using septic tanks and leaching fields. The Department of Health has not required monitoring of impacts to groundwater resources.

14. The applicant shall have an archaeological inventory survey conducted by a professional archaeologist prior to submitting an application to the County of Hawaii for rezoning or prior to applying for a building permit if County rezoning is not required. The findings of this survey shall be submitted to the State Historic Preservation Division, Department of Land and Natural Resources ("HPD-DLNR") in report format for adequacy review. The HPD-DLNR must verify that the survey report is acceptable, must approve significance evaluations, and must approve mitigation commitments for significant historic sites prior to the applicant submitting an application to the County for rezoning or prior to applying for a building permit if County rezoning is not required.

KS has satisfied this condition of the LUC Order. Condition 14 was released by LUC Order dated May 17, 2005.

KS' consultant Scientific Consultants Services, Inc. ("SCS") performed an archaeological inventory survey of the Campus site in October 1999 and identified one historic site with seven surface archaeological features. By letter dated November 30, 1999, HPD-DLNR agreed with SCS' conclusion that the site was no longer significant. This finding was contingent on SCS revising its report to identify the site properly and include the basis for the conclusion that the archaeological rock features were sugar cane features. SCS submitted its revised report in January 2000 to HPD-DLNR. HPD-DLNR concurred with this finding of non-significance, concluding that development of the Campus would have "no effect" on any significant historic site.

15. If significant historic sites are present, then the applicant shall agree to develop and execute a detailed historic preservation mitigation plan prior to any ground altering construction in the area. The HPD-DLNR must approve this plan, and must verify in writing to the Land Use Commission that the plan has been successfully executed.

HPD-DLNR has concurred with KS's consultant that the development of the Campus would have "no effect" on any significant historic site. However, if unanticipated significant historic sites are discovered, KS will comply with this condition.

16. Should any unanticipated sites, including subsurface remains such as burial or cave shelters, be encountered on the property, work within the immediate affected area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work within the affected area shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigation measures have been taken.

KS has complied and will continue to comply with this condition, as stated herein.



17. The applicant shall conduct a flora and fauna survey and prepare and agree to execute a mitigation plan which meets the requirements of the Department of Land and Natural Resources. The Department of Land and Natural Resources must approve the plan and a copy of the approved plan must be submitted to the Land Use Commission prior to the developer and/or landowner applying for County zoning or prior to the applicant applying for County building permits if County rezoning is not required.

KS has satisfied this condition of the LUC Order. Condition 17 was released by LUC Order dated May 17, 2005. With respect to flora, KS' botanist Ron Terry, PHD conducted a biological reconnaissance/review of the Property in October 1999, in addition to a larger inventory of W.H. Shipman, Limited lands performed by Grant Garish of the University of Hawaii, Hilo, in 1992. Neither Terry nor Garish detected the presence on the Property of any species classified as endangered or threatened, or proposed as a candidate for listing in either category by either U.S. Fish & Wildlife Service or the State of Hawaii Department of Land and Natural Resources ("DLNR").

With respect to fauna, KS' consulting biologist, Tim Ohashi conducted a site inspection on October 17 and 18, 1999 and prepared a survey report entitled "Wildlife Survey, East Hawaii Campus - Kea'au Mauka Site, Kea'au, Hawaii." Mr. Ohashi observed only one endangered species the Koloa, a Hawaiian duck, in a stock pond which was intermittently maintained on the site, and has since been filled. Following discussions with the DLNR, DLNR approved both the flora and fauna surveys. DLNR concluded that no mitigation measures were required for either flora or fauna. DLNR's only requirement was that if an active l'ō or Hawaiian hawk (an endangered species not observed on the Property but in surrounding areas) nest is detected, construction activity should be halted within 500 meters of the nest and the observation reported to

the U.S. Fish & Wildlife Service and DLNR Division of Forestry and Wildlife.

Construction activity within the vicinity of the nest should be halted until the U.S. Fish & Wildlife Service and DLNR approve appropriate mitigation measures. To date, KS has not detected any active I'o nests.

18. The applicant shall establish the special permit use within 5 years of the effective date of the special permit.

KS has satisfied this condition of the LUC Order. Condition 18 was released by LUC Order dated May 17, 2005. KS obtained its special use permit in April 2000 and in August 2001, KS established the special permit use of the Property for a school when it opened the Campus for students in grades 6, 7 and 8.

19. The applicant shall comply with all applicable rules, regulations and requirements of the affected agencies for the development of the subject property, including the State Department of Transportation, the Department of Health, and the Department of Land and Natural Resources.

KS has complied and will continue to comply with this requirement as stated herein.

20. Upon compliance with applicable condition of approval, and prior to the issuance of a certificate of occupancy for any portion of the development, the applicant shall submit a status report, in writing, to the Planning Director and the Land Use Commission.

This progress report serves as the status report for Phase I-IV of the Campus development. KS will comply with this condition for future phases of Campus development. Phase V facilities (Integrated Facility and cultural area) are currently being designed and construction is scheduled to start in December of 2005.

21. The applicant shall timely provide, without any prior notice, annual reports to the County of Hawaii Planning Commission and the Land Use Commission in connection with the status of the subject property and the

applicant's progress in complying with the conditions enclosed herein. The annual report shall be due prior to or on the anniversary date of the issuance of the State Land Use Commission's Decision and Order. The annual report shall be submitted in a form prescribed by the executive officer of the Land Use Commission.

This progress report is being filed in compliance with this condition.

22. An extension of time for the performance of conditions of the permit may be granted by the Planning Director subject to the approval by the Commission upon the following circumstances:
- a. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
  - b. Granting of the time extension would not be contrary to the General Plan or the Zoning Code.
  - c. Granting of the extension would not be contrary to the original reasons for the granting of the permit.
  - d. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

KS has complied and will continue to comply with this condition as stated herein.

23. The applicant, its successors or assigns shall indemnify and hold the County of Hawaii and State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors or assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit.

KS has complied and will continue to comply with this condition as stated herein.

24. The applicant shall develop the area in substantial compliance with the representations made to the Commission.

KS has complied and will continue to comply with this condition as stated herein.

25. The Land Use Commission may fully or partially release these conditions as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by the applicant.

On September 24, 2004, KS filed a motion to release conditions 3, 4, 5, 7, 12, 13, 14, 17, and 18 from the LUC Order dated April 7, 2000, in Docket No. SP00-393; and Conditions 2, 4, 7, 8, 11 and 15, in the Order Partially Approving Motion, dated on April 7, 2000, in Docket No. BR93-699. At the October 7, 2004 hearing, KS withdrew its Motion to Release for conditions 12 and 13 of LUC Docket No. SP00-393 and conditions 2 and 11 of LUC Docket No. 93-699.

The LUC in two orders dated May 17, 2005 and June 14, 2005 granted in part and denied in part KS's motion. The LUC granted the motion for release for conditions 3, 4, 5, 7a-f, 14, 17 and 18 of LUC Docket No. SP00-393 and conditions 4 and 15 of LUC Docket No. BR93-699. The LUC denied the motion to release for conditions 7g and 8 of LUC Docket No. SP00-393 and conditions 7 and 8 of LUC Docket No. BR93-699. The LUC approved amending of conditions 7g of LUC Docket No. SP00-393 and 7 of LUC Docket No. BR93-699. All other conditions in the two LUC Dockets remain in full force and effect.

**B. Docket No. BR93-699:**

1. The developer and/or landowner of the Motion Area shall fund and construct adequate civil defense measures as determined by the County and State Civil Defense agencies.

KS has complied and will continue to comply with this condition as stated herein.

2. The developer and/or landowner of the Motion Area shall consult with the Department of Health regarding the proposed wastewater system and if deemed necessary by the Department of Health, conduct monitoring for any potential impacts to groundwater resources.

KS has consulted with the Department of Health regarding its disposal of wastewater using septic tanks and leaching fields. The Department of Health has not required monitoring of impacts to groundwater resources.

3. The developer and/or landowner of the Motion Area shall participate in the funding and construction of adequate wastewater transmission and disposal facilities, on a pro-rata basis, as determined by the State Department of Health and the County Department of Public Works.

See report on No. 13 in SP00-393. KS will comply with this condition.

4. The developer and/or landowner of the Motion Area shall have an archaeological inventory survey conducted by a professional archaeologist prior to submitting an application to the County of Hawaii for rezoning or prior to applying for a building permit if county rezoning is not required. The findings of this survey shall be submitted to the State Historic Preservation Division, Department of Land and Natural Resources ("HPD-DLNR") in report format for adequacy review. The HPD-DLNR must verify that the survey report is acceptable, must approve significance evaluations, and must approve mitigation commitments for significant historic sites prior to the landowner and/or developer submitting an application to the county for rezoning or prior to applying for a building permit if county rezoning is not required.

KS has satisfied this condition of the LUC Order, and the condition was released by LUC Order dated May 17, 2005. KS' consultant, Scientific Consultants Services, Inc. ("SCS"), performed an archaeological inventory survey of the Campus site in October 1999 and identified one historic site with seven surface archaeological features. By letter dated November 30, 1999, HPD-DLNR agreed with SCS' conclusion that the site was no longer significant. This finding was contingent on SCS revising its report to identify the site properly and include the basis for the conclusion that the archaeological rock features were sugar cane features. SCS submitted its revised report in January 2000 to HPD-DLNR. HPD-DLNR concurred with this finding of non-significance,

concluding that development of the Campus would have "no effect" on any significant historic site.

5. If significant historic sites are present, then the developer and/or landowner of the Motion Area shall agree to develop and execute a detailed historic preservation mitigation plan prior to any ground altering construction in the area. The HPD-DLNR must approve this plan, and must verify in writing to the Land Use Commission that the plan has been successfully executed.

HPD-DLNR has concurred with KS's consultant that the development of the Campus would have "no effect" on any significant historic site. However, if unanticipated significant historic sites are discovered, KS will comply with this condition.

6. Should any human burials or any historic sites such as artifacts, charcoal deposits, or stone platforms, pavings or walls be found, the developer and/or landowner of the Motion Area shall stop work in the immediate vicinity and contact the HPD-DLNR. The significance of these finds shall then be determined and approved by the HPD-DLNR, and an acceptable mitigation plan shall be approved by the HPD-DLNR (if needed). The HPD-DLNR must verify that the fieldwork portion of the mitigation plans has been successfully executed prior to work proceeding in the immediate vicinity of the find. Burials must be treated under the specific provisions of Chapter 6E, HRS.

KS has complied and will continue to comply with this condition as stated herein.

7. The developer and/or landowner of the Motion Area shall prepare a Traffic Impact Analysis Report prior to applying for County zoning or prior to the developer and/or landowner applying for County building permits if county rezoning is not required. The landowner and/or developer shall also participate in the funding and construction of local and regional transportation improvements and programs including dedication of rights-of-way as determined by the State Department of Transportation and the County Department of Public Works. Agreement by the State Department of Transportation on the level of funding and participation shall be obtained prior to the developer and/or landowner applying for County zoning or prior to the developer and/or landowner applying for County building permits if County rezoning is not required.

KS has expended over 2.1 million dollars in intersection and highway improvements. KS completed construction of all intersection improvements required by the Commission at the intersection of Volcano Highway and Project Access Road/Pa`ahana Street. See April 7, 2000 Order in SP00-393, items 7a. to f.

Condition 7 was amended by LUC Order dated June 14, 2005 to read:

7. The developer and/or landowner of the Motion Area shall prepare a Traffic Impact Analysis Report prior to applying for County zoning or prior to the developer and/or landowner applying for County building permits if county rezoning is not required. The landowner and/or developer shall also participate in its fair-share of the funding and construction of local and regional transportation improvements and programs including dedication of rights-of-way as determined by the State Department of Transportation and Department of Public Works. Agreement by the State Department of Transportation on the level of funding and participation shall be obtained prior to the developer and/or landowner applying for County zoning or prior to the developer and/or landowner applying for County building permits if County rezoning is not required.
8. The developer and/or landowner of the Motion Area shall monitor the traffic attributable to the proposed project at on-site and off-site locations and shall undertake subsequent mitigative measures that may be reasonably required. These activities shall be coordinated with and approved by the State Department of Transportation.

KS did an updated TIAR for this project in October 2004. KS has complied and will continue to comply with this condition as stated herein.

9. The developer and/or landowner of the Motion Area shall fund the design and construction of drainage improvements required as a result of the development of the Motion Area to the satisfaction of the appropriate State and County agencies.

KS has funded and completed the planning and construction of the required drainage improvements for Phase I, Phase II, Phase III and Phase IV of the Campus and obtained the required approvals. Future planning and construction of the required drainage improvements will comply with this condition.

10. The developer and/or landowner of the Motion Area shall coordinate with the Department of Health and the County Department of Water Supply on State and County programs to protect the groundwater quality of potable water sources.

The Hawaii Campus is on the County's Department of Water Supply system for its potable drinking water. KS has complied and will continue to comply with this condition as stated herein.

11. The developer and/or landowner of the Motion Area shall submit and obtain a Solid Waste Management Plan for review and approval by the Department of Health and the County Department of Public Works prior to occupancy.

KS submitted a revised Solid Waste Management Plan for the campus development to the Department of Health and Department of Public Works on October 28, 2003.

12. The developer and/or landowner of the Motion Area shall be responsible for implementing sound attenuation measures to bring noise levels from vehicular traffic on the Motion Area down to levels acceptable to the State Department of Health and the State Department of Transportation.

KS is constructing all buildings on the campus using appropriate sound attenuation measures. All classroom buildings are enclosed and air-conditioned. All noise levels are in conformance with the State Department of Health Noise Standards.

13. The developer and/or landowner of the Motion Area shall notify all prospective users of the Motion Area of the potential odor, noise, and dust pollution resulting from surrounding Agricultural District land.



Notification was provided during the planning of the Campus and was an agenda item included in informational meetings that were held in 1999.

14. The developer and/or landowner of the Motion Area shall notify all prospective users of the Motion Area that the Hawaii Right-to-Farm Act, Chapter 165, Hawaii Revised Statutes, limits the circumstances under which preexisting farming activities may be deemed a nuisance.

Notification was provided during the planning of the Campus and was an agenda item included in informational meetings that were held in 1999.

15. The developer and/or landowner of the Motion Area shall install a chain link fence surrounding the proposed development area, with construction barriers between the operating areas and the remaining areas to be developed prior to the issuance of a certificate of occupancy for any portion of the initial campus development. The height of the fence shall be determined during Final Plan Approval.

KS has satisfied this condition of the LUC Order. This condition was released by LUC Order dated May 17, 2005.

The Planning Director granted final subdivision approval on May 11, 2000, for the subdivision of Lot 8992 into the Property, being Lot 8992A, area 302 acres, and Lot 8992B, the remaining area to be retained by W.H. Shipman, Limited.

16. The developer and/or landowner, of the Motion Area its successors or assigns shall indemnify and hold the County of Hawaii and State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the developer and/or landowner, its successors or assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this motion.

KS has complied and will continue to comply with this condition as stated herein.

17. The developer and/or landowner of the Motion Area shall develop the Motion Area in substantial compliance with the representations made to the Land Use Commission. Failure to so develop the Motion Area may result in reclassification of the Motion Area to its former land use classification, or change to a more appropriate classification.

KS has complied and will continue to comply with this condition as stated herein.

18. The developer and/or landowner of the Motion Area shall promptly provide without any prior notice, annual reports to the Land Use Commission, the Office of State Planning, and the County of Hawaii Planning Department in connection with the status of the subject project and the developer's and/or landowner's progress in complying with the conditions imposed.

This progress report is being filed in compliance with this condition.

19. The developer and/or landowner of the Motion Area 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 Motion Area, prior to the completion of the development of the Motion Area.

KS has complied and will continue to comply with this condition as stated herein.

20. The Land Use Commission may fully or partially release these conditions as to all or any portion of the Motion Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by the developer and/or landowner of the Motion Area.

On September 24, 2004, KS filed a motion to release conditions 3, 4, 5, 7, 12, 13, 14, 17, and 18 from the LUC Order dated April 7, 2000, in Docket No. SP00-393; and Conditions 2, 4, 7, 8, 11 and 15, in the Order Partially Approving Motion, dated on April 7, 2000, in Docket No. BR93-699. At the October 7, 2004 hearing, KS withdrew its Motion to Release for conditions 12 and 13 of LUC Docket No. SP00-393 and conditions 2 and 11 of LUC Docket No. 93-699.

The LUC in two orders dated May 17, 2005 and June 14, 2005 granted in part and denied in part KS motion. The LUC granted the motion for release for conditions 3, 4, 5, 7a-f, 14, 17 and 18 of LUC Docket No. SP00-393 and conditions 4 and 15 of LUC Docket No. BR93-699. The LUC denied the motion to release for conditions 7g and 8 of LUC Docket No. SP00-393 and conditions 7 and 8 of LUC Docket No. BR93-699. The

LUC approved amending of conditions 7g of LUC Docket No. SP00-393 and 7 of LUC Docket No. BR93-699. All other conditions in the two LUC Dockets remain in full force and effect.

21. Within 7 days of the issuance of the Land Use Commission's Decision and Order for the subject reclassification, the developer and/or landowner of the Motion Area shall (a) record with the Bureau of Conveyances a Statement to the effect that the Motion Area is subject to conditions imposed by the Land Use Commission in the reclassification of the Motion Area, and (b) shall file a copy of such recorded statement with the Commission.

This condition has been satisfied.

22. The developer and/or landowner of the Motion Area shall record the conditions imposed by the Land Use Commission with the Bureau of Conveyances pursuant to section 15-15-92, HAR.

This condition has been satisfied.

Dated: Honolulu, Hawaii, November 22, 2005.



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LINNEL T. NISHIOKA

Attorney for Kamehameha Schools

BEFORE THE LAND USE COMMISSION  
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of Land at Kea'au, Puna, Hawaii, Tax )  
Map Key No.: 1-6-03: por. 3, por. 7, por. )  
8, por. 11, por. 12, por. 13, por. 14, por. )  
15, por. 68, 76 and 84 )

SHARED\KAMEHAMEHA\HAWAII CAMPUS\PROGRESS REPORT (11-22-05)(FINAL)

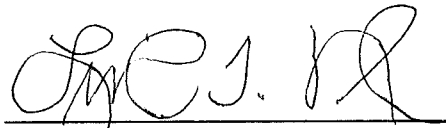
**CERTIFICATE OF SERVICE RE PROGRESS REPORT OF  
KAMEHAMEHA SCHOOLS FOR THE PERIOD APRIL 2002 TO APRIL 2005**

I hereby certify that a copy of the "*Progress Report of Kamehameha Schools for the Period April 2002 to April 2005*" was duly served on the following, in the manner

indicated below, either by depositing the same in the United States Mail, postage prepaid, first class mail, or by hand delivery of same on November 22, 2005.

	<u>U.S. Mail</u>	<u>Hand Delivery</u>
OFFICE OF PLANNING State of Hawaii State Office Tower 235 S. Beretania, 6th Floor Honolulu, Hawaii 96804	( )	(✓)
PLANNING DEPARTMENT County of Hawaii 25 Aupuni Street, room 109 Hilo, Hawaii 96720	(✓)	( )
W.H. SHIPMAN, LIMITED P.O. Box 950 Kea'au, Hawaii 96749	(✓)	( )

Dated: Honolulu, Hawaii, November 22, 2005.



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LINNEL T. NISHIOKA

Attorney for Kamehameha Schools