

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

LAND USE COMMISSION  
STATE OF HAWAII

2018 JUL 19 P 12: 27

In the Matter of the Petition of	)	DOCKET NO. A05-755
	)	
HALE MUA PROPERTIES, LLC	)	STATEMENT OF POSITION OF THE
	)	OFFICE OF PLANNING ON THE LAND
To amend the Land Use District Boundary	)	USE COMMISSION'S ORDER TO
of Certain Lands Situated at Waiehu, Island	)	SHOW CAUSE; CERTIFICATE OF
of Maui, State of Hawaii, Consisting of	)	SERVICE
240.087 Acres the Agricultural and Rural	)	
Districts to the Urban District, Tax Map Key	)	
No. 3-3-002:031 (portion)	)	

**STATEMENT OF POSITION OF THE OFFICE OF PLANNING  
ON THE LAND USE COMMISSION'S ORDER TO SHOW CAUSE**

In response to the Land Use Commission's ("LUC") Order to Show Cause, dated June 4, 2018, the Office of Planning ("OP") provides this Statement of Position.

Based on information provided to OP by various State agencies regarding the Original Petitioner's and Successor Petitioner's (collectively "Petitioner") performance according to conditions imposed, or the representations or commitments made by the Petitioner in the Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment ("Order"), dated February 12, 2007 ("D&O"), as amended, OP finds that conditions remain unfulfilled by the Petitioner. OP therefore has no objection to the LUC's reversion of the Reclassified Area of 116.177 acres to its former Agricultural District land use classification.

**A. Condition 3 – Public School Facilities.**

Condition 3 states: *Petitioner shall contribute to the development, funding, and/or construction of school facilities on a fair-share basis, as determined by and to the satisfaction of the DOE; provided, however that the affordable units shall not be included in the fair-share contribution calculation. Terms of the contribution shall be agreed upon in writing by the Petitioner and the DOE prior to obtaining any building permits for the Reclassified Area.*

The State Department of Education (“DOE”) advised OP via email, dated June 21, 2018 (Exhibit A), that while there were discussions and a meeting regarding the contents of an educational contribution agreement with the Petitioner, including potential payment by Petitioner of a 12-acre school site, Petitioner has not executed an educational contribution agreement with DOE. OP therefore finds that Condition 3 remains unfulfilled.

**B. Condition 5 – Transportation Improvements.**

Condition 5 states: *Petitioner shall submit a revised TIAR to address the Project’s impacts to the intersection of Waiehu Beach Road and Kahekili Highway and the intersection of Market Street and Main Street. The revised TIAR shall utilize actual turn counts collected at the intersection of Waiehu Beach Road and Kahekili Highway.*

*The revised TIAR shall analyze the potential impact of locating an elementary school or a middle school within the Petition Area.*

*The revised TIAR shall include a conceptual design of the proposed mitigation measures for the intersection of Waiehu Beach Road and Kahekili Highway.*

*Petitioner shall implement traffic mitigation measures and roadway and intersection improvements, including signalization, as recommended or required by the revised TIAR.*

*Petitioner shall submit the revised TIAR to the DOT for its review and approval, within six (6) months of the issuance date of this Decision and Order.*

The State Department of Transportation advised OP via email dated July 10, 2018 (Exhibit B), that a revised TIAR was submitted to DOT in 2007. Petitioner provided conceptual design for Waiehu Beach Road and Kahekili Highway, however, Petitioner has not implemented traffic mitigation measures. DOT further states that a revised TIAR should be submitted to evaluate current and buildout traffic conditions since the last revised TIAR is over 10 years old, during which time traffic conditions have likely changed.

OP finds that Condition 5 remains unfulfilled as Petitioner has failed to implement traffic mitigation measures.

**C. Condition 6 – Civil Defense.**

Condition 6 states: *Petitioner shall provide its fair share of the cost of adequate civil defense measures serving the Reclassified Area as determined by the State of Hawaii Department of Defense, Office of Civil Defense, and County of Maui Civil Defense Agency.*

The State Department of Defense (“DOD”) advised OP via email, dated June 22, 2018 (Exhibit C), that it has no record of Petitioner contacting DOD regarding Condition 6, and that Petitioner has not fulfilled Condition 6.

OP finds that absent record or evidence that Petitioner shall provide its fair share of the cost of adequate defense measures serving the Reclassified Area, Condition 6 remains unfulfilled.

**D. Condition 7 – Archaeological Monitoring.**

Condition 7 states: *Petitioner shall employ the services of the appropriate number of archeological monitors to ensure that all ground disturbances associated with the mass grading of the Reclassified Area and trenching and excavation related to the installation of utilities do not impact any subsurface cultural remains within the Petition Area in a 100-meter wide strip along the Kahekili Highway.*

*The Petitioner shall consult with the State of Hawaii Office of Hawaiian Affairs and coordinate with SHPD to determine where any additional full-time monitoring may be warranted.*

The Office of Hawaiian Affairs (“OHA”) reported to OP via letter dated June 28, 2018 (Exhibit D), that it has no record of consultation regarding archaeological monitoring with the Petitioner. OHA further stated that based on its research, “It appears as if there have been no ground disturbing activities on this parcel, thus no archaeological monitoring for the original petitioner or successor petitioner to consult on.”

OP finds that without Petitioner’s consultation with OHA regarding archaeological monitoring, Condition 7 remains unfulfilled.

**E. Condition 19 – Annual Reports.**

Condition 19 states: *Petitioner shall timely provide without any prior notice, annual reports to the LUC, the Office of Planning, and the County of Maui Department of Planning in connection with the status of the Reclassified Area and Petitioner’s progress in complying with the conditions imposed herein. The annual reports shall be due on the anniversary date of the issuance of this Decision and Order. The annual reports shall be submitted in a form prescribed by the Executive Officer of the LUC.*



OP is in receipt of only the first annual report for 2008 by the Petitioner. OP therefore finds that Condition 19 remains unfulfilled.

**F. Condition 23 – Compliance with Representations to the LUC.**

Condition 23 states: *Petitioner shall develop the Reclassified Area in substantial compliance with the representations made to the LUC. Failure to so develop the Reclassified Area may result in reversion of the Reclassified Area to its former classification, or change to a more appropriate classification.*

Petitioner's non-fulfillment of Conditions 3, 5, 6, 7, 11 and 19 of the D&O, as of July 13, 2018, demonstrates Petitioner's failure to develop the Reclassified Area in substantial compliance with Petitioner's representations made to the LUC. Accordingly, OP does not oppose the LUC's reversion of the Reclassified Area to its former Agricultural District classification.

DATED: Honolulu, Hawaii, July 19, 2018

OFFICE OF PLANNING  
STATE OF HAWAII

  
\_\_\_\_\_  
LEO R. ASUNCION  
Director

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OF THE STATE OF HAWAII

A05-755

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document will be duly served upon the following by mailing said copy, postage prepaid, first class, in a United States post office ("MAIL") on July 19, 2018:

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DATED: Honolulu, Hawaii July 19, 2018.

OFFICE OF PLANNING  
STATE OF HAWAII

  
\_\_\_\_\_  
LEO R. ASUNCION  
Director