

OFFICE OF PLANNING
Leiopapa a Kamehameha, Room 600
235 South Beretania Street
Honolulu, Hawaii 96813
Telephone: (808) 587-2846
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BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

LAND USE COMMISSION
STATE OF HAWAII
2018 OCT 12 P 12:05

In the Matter of the Petition of)	DOCKET NO. A06-767
)	
WAIKOLOA MAUKA, LLC)	STATEMENT OF POSITION OF THE
)	OFFICE OF PLANNING ON THE LAND
To amend the Agricultural Land Use District)	USE COMMISSION'S ORDER TO
Boundary Into the Rural Land Use District)	SHOW CAUSE; CERTIFICATE OF
for Approximately 731.581 in South Kohala)	SERVICE
District, Island of Hawaii, Tax Map Key No.)	
(3) 6-8-002:016 (por.))	
)	
)	
)	

**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 ("Commission") Order to Show Cause, dated July 3, 2018 ("OSC"), the Office of Planning ("OP") provides this Statement of Position.

Hawaii Revised Statutes ("HRS") § 205-4 authorizes the Commission to impose conditions necessary to "assure substantial compliance with representations made by the petitioner in seeking a boundary change" and "absent substantial commencement of use of the land in accordance with such representations, the [C]ommission shall issue and serve upon the party bound by the condition an order to show cause why the property should not revert to its former land use classification or be changed to a more appropriate classification."

Based on the information provided by Petitioner Waikoloa Highlands, Inc. ("Petitioner"/"WHI") thus far, and information provided to OP by various State agencies, OP

finds that Petitioner has failed to comply with and/or has not fulfilled certain conditions of the “Findings of Fact, Conclusions of Law, and Decision and Order For A State Land Use District Boundary Amendment,” dated June 10, 2008 (“D&O”), has not substantially commenced use of the land in accordance with representations made by Petitioner in seeking the boundary amendment, and has not demonstrated good cause to not revert. As the burden is on the Petitioner “to show cause”, unless Petitioner is able to provide additional information demonstrating compliance with D&O conditions, substantial commencement of use of the land, and/or good cause to not revert the land, OP would not object to the Commission’s reversion of the Petition Area to its original classification.

I. Petitioner Has Failed to Comply With and/or Has Not Fulfilled Conditions of the D&O.

OP finds that Petitioner has failed to comply with or has not fulfilled the following conditions of the D&O or developed the land in compliance with representations made in seeking the district boundary amendment.

Condition No. 2 –Completion of Project.

Condition No. 2 states: *Petitioner shall develop the Petition Area and complete buildout of the Project no later than ten (10) years from the date of the Commission’s decision and order. For purposes of the Commission’s decision and order, “buildout” means completion of the backbone infrastructure to allow for the sale of individual lots.*

With a D&O adoption date of June 10, 2008, buildout or the backbone infrastructure should have been completed by June 10, 2018. Petitioner’s Annual Report dated February 29, 2016, states that, “nothing physical has occurred on the ground to date...” In its subsequent combined 2017 and 2018 Annual Report, Petitioner does not indicate buildout of the backbone infrastructure. OP therefore finds that Petitioner has failed to comply with Condition No. 2.

Moreover, Petitioner admits its “failure to complete the Project by June 10, 2018.” WHI’s Statement of Position On Order to Show Cause (“WHI’s Position”) at 2.

Condition No. 6 – Transportation.

Condition No. 6 states: *Petitioner shall reach an agreement with the State DOT for the construction of the following improvements related to the Project:*

- a. For the intersection, Waikoloa Road and Queen Kaahumanu Highway, the State DOT has requested that the Petitioner include improvements to make the makai bound approach from Waikoloa Road have one left-turn lane, one through/left-turn lane, and a right turn lane with the appropriate signalization. In addition, an acceleration lane would be added to Queen Kaahumanu Highway to accommodate the additional left-turn lane;*
- b. Petitioner will provide a left-turn shelter lane on Mamalahoa Highway from Waikoloa Road, and two advance warning lights, one located on mauka-bound Waikoloa Road, and the other on southbound Mamalahoa Highway. Prior to final subdivision approval, Petitioner will enter into a Memorandum of Understanding with the State DOT outlining the proposed improvements. Petitioner will provide the Commission with a copy of the fully executed agreement within 30 days from the date the agreement is fully executed. Petitioner will also comply with Condition C of Ordinance No. 07-127, as may be amended from time to time, which fulfills the Petitioner’s transportation obligations to the County in relation to the Project.*

The State Department of Transportation (“DOT”) advised OP via letter dated September 11, 2018 (Exhibit 1), that Petitioner has not fully complied with Condition No. 6. DOT disagrees that the improvements made by the Hilton Grand Vacation’s connection of Waikoloa Beach Resort Drive to Queen Kaahumanu Highway and Waikoloa Road rendered Petitioner’s stipulated agreement as moot and the required improvements unnecessary for Petitioner to construct. DOT indicated that Condition No. 6(b) is ongoing because a budget estimate was submitted to the DOT on September 27, 2007. Petitioner should update their construction estimates, development of construction plans and implementation schedules, subject to DOT review and approval.

OP finds that Condition No. 6 remains unfulfilled.

Condition No. 9 – Affordable Housing.

Condition No. 9 states: *Petitioner shall provide affordable housing opportunities for residents in the State of Hawaii in accordance with applicable affordable housing requirements of the 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 and the County. Petitioner shall provide the Commission with a fully executed copy of the affordable housing agreement within 30-days of the execution of the agreement.*

Additionally, D&O at FOF 47 states that “The Planning Director for the County testified that the affordable housing requirement for the County is 20 percent. This requirement represents the number of housing credits that the Petitioner must meet.”

The State Hawaii Housing Finance and Development Corporation (“HHFDC”), advised OP via letter dated September 14, 2018 (Exhibit 2), that Petitioner has made progress with satisfying Condition No. 9, as provided by the following chronology:

1. December 1, 2016, the County executed an agreement for an 11.7-acre parcel for affordable housing.
2. June 1, 2017, Waikoloa Highlands executed a Warranty Deed transferring the 11.7-acre parcel to Plumeria at Waikoloa, LLC.
3. On June 20, 2017, the County executed a Release of Affordable Housing Agreement.
4. July 2018, the County received a draft 201-H application from Pua Melia to provide 32 affordable housing rental units and a True Value Hardware store on Phase I of the 11.7-acre parcel.
5. August 2018, the County received the 201-H application and preliminary drawings.

OP finds that Petitioner is making progress in satisfying Condition No. 9.

Condition No. 11 – Archaeological Site 22.

Condition No. 11 states: *Petitioner shall consult and comply with all SHPD recommendations in regards to the treatment of Site 22.*

Petitioner’s Annual Report dated February 29, 2016, indicates that the Petitioner will perform additional work on the site and will consult with the State Historic Preservation Office on their findings. OP finds that without Petitioner’s consultation with SHPD regarding archaeological Site 22, Condition No. 11 remains unfulfilled.

Condition No. 15 – Civil Defense.

Condition No. 15 states: *Petitioner shall, on a fair-share basis, fund and construct adequate solar-powered civil defense measures serving the Petition Area as determined by the State of Hawaii Department of Defense, Office of Civil Defense, and County of Hawaii Civil Defense Agency.*

The State Department of Defense (“DOD”) advised OP via email dated June 26, 2018 (Exhibit 3), that it has no record of Petitioner contacting DOD regarding Condition No. 15, and that Petitioner has not fulfilled Condition No. 15.

OP finds that absent record or evidence that Petitioner has provided its fair share of the cost of adequate defense measures serving the Petition Area, Condition No. 15 remains unfulfilled.

Condition No. 20 – Notice of Change of Ownership.

Condition No. 20 states: *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 development of the Petition Area.*

Exhibit B of Petitioner’s Motion to Continue Hearing on Order To Show Cause, is a Quitclaim, Release and Assumption Agreement indicating that on October 15, 2014, Waikoloa Mauka, LLC, transferred ownership of parcels (3) 6-8-16 and (3) 6-8-2: 17 to WHI.

By transferring the Petition Area to Successor Petitioner WHI without notice of intent to transfer to the Commission, Petitioner has not complied with Condition No. 20.

Condition No. 21 – Annual Reports.

Condition No. 21 states: *Petitioner shall timely provide without any prior notice, annual reports to the LUC, the OP, and County in connection with the Petition Area 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 LUC.*

OP is in receipt of Petitioner's 2014, 2014-2016, and 2017-2018 Annual Reports. OP has not received annual reports for years 2009 through 2013. OP therefore finds that Condition No. 21 is unfulfilled.

No Condition for Public School Facilities.

The Commission did not impose a condition relating to school facilities. However, we note for the Commission that the State Department of Education ("DOE") advised OP via email dated July 27, 2018 (Exhibit 4), that there is an agreement between Petitioner and DOE, dated September 4, 2007. Notably, the DOE agreement was executed prior to the D&O.

Petitioner's failure to comply with or non-fulfillment of Condition Nos. 2, 3, 6, 9, 11, 15, 20, and 21 of the D&O, demonstrates Petitioner's failure to develop the Reclassified Area in substantial compliance with Petitioner's representations made to the Commission.

II. Petitioner Has Not Substantially Commenced Use of the Land In Accordance with Its Representations to the Commission.

Petitioner has not substantially commenced use of the land in accordance with representations made by Petitioner to the Commission in seeking the boundary amendment.

Petitioner argues that "WHI is not required to demonstrate to the Commission that the Project is substantially *complete*." However, by the plain language of the statute, Petitioner is required to demonstrate that the commencement of the Project is "*substantial*". HRS § 205-4(g). In *Aina Le 'a*, the Hawaii Supreme Court recognized that with regard to substantial commencement, "substantial" is "considerable in amount or value; large in volume or number." *Id.* at 213, 339 P.3d at 712. Therefore, Petitioner must demonstrate, not simply that it has commenced the Project, but that Petitioner's commencement of the Project was considerable in amount or value and large in volume or number.

Petitioner is also required, by the plain language of the statute, to demonstrate that the substantial commencement is of the “*use of the land*”. HRS § 205-4(g). The statute and case law are not explicit on how to interpret “use of the land”, but it is reasonable to believe that “use of the land” means physical land activities such as construction or grading. Through HRS § 205-4(g), the Legislature intended to address the undesirable consequences of land left untouched or “vacant”, even with appropriate county land use designation. The Senate Committee on Energy and Natural Resources specifically noted that “[v]acant land with the appropriate state and county land use designation is often subject to undesirable private land speculation and uncertain development schedules.” *Aina Le ‘a* at 211; 339 P.3d 709, quoting S. Stand. Comm. Rep. No. 2116, in 1990 S. Journal, at 915.

For the following reasons, OP believes Petitioner has not demonstrated substantial commencement of use of the land.

While Petitioner admittedly is in noncompliance with D&O Condition No. 2 by failing to complete the buildout or backbone infrastructure of the Project by June 10, 2018, Petitioner has made no indication that it has commenced the backbone infrastructure development for the Project, or that there has been any physical development of the land.

Petitioner states that “as determined by the County, WHI has attained full satisfaction of the affordable housing requirements for the Project under D&O Condition No. 9.” Petitioner states that it has satisfied the affordable housing requirement by subdividing and conveying an approximately 11.8 acre lot from the Petition Area to Plumeria at Waikoloa LLC. D&O Condition No. 9. Notably, 11.8 acres of the total 731.58 acres amounts to merely 1.6 percent of the total Petition Area.

With regard to Condition No. 9 – Water Resource Allocation, Petitioner states that it has renewed its negotiations with West Hawaii Water Company to reach an agreement on a Contribution in Aid of Construction fee. *WHI's Position* at pg. 18. However, Condition No. 9 requires Petitioner to “provide drinking and irrigation water source, storage, and transmission facilities and improvements to accommodate development of the Petition Area.” *D&O* Cond. No. 9. Petitioner does not provide any evidence of construction of water source, storage, and transmission facilities and improvements.

Under D&O Condition No. 6, DOT disagrees with Petitioner that the required improvements to the intersection of Waikoloa Road and Queen Ka’ahumanu Highway are moot and therefore satisfied. DOT states that Petitioner needs to show justification and obtain agreement from DOT on these improvements. Petitioner also states that budget estimates have been submitted for the required improvements to Mamalahoa Highway and Waikoloa road intersection. Petitioner offers no evidence that construction of traffic improvements has commenced.

“As further evidence of WHI’s commitment to develop the Petition Area,” Petitioner states that it paid all outstanding real property taxes in the amount of \$52,039.85. Payment of real property taxes is a requirement of State and county laws as a property owner that is unrelated to any representations or conditions of the D&O.

The Educational Contribution Agreement with the Hawaii Department of Education (“DOE”) was completed and executed on August 8, 2007, several months prior to the adoption of the D&O on June 10, 2008. Similarly, the Preliminary Drainage Report for Waikoloa Subdivision Increment 1 and 2 was submitted on June 22, 2007. These actions were not prospective from the D&O.

For Condition No. 11 – Archaeological Site 22, No. 13 - Wastewater, and No. 14 – Solid Waste, Petitioner states it is having “preliminary discussions” or in the “process of” with the appropriate agencies. *WHI’s Position* at 20-21. However, Petitioner does not provide any evidence that construction has begun on a drainage system or wastewater treatment, transmission and disposal facilities.

Finally, Hawaii State Civil Defense commented that Condition No. 15 – Civil Defense, remains unfulfilled, and Petitioner has not provided any evidence of progress toward providing on a fair-share basis, funding and/or construction of adequate solar-powered civil defense measures serving the Petition Area.

In sum, over the past ten (10) years, Petitioner’s commencement of the Project can be characterized as minimal rather than substantial. In the overall scheme of the Project, the only progress made by Petitioner is the conveyance of 1.6 percent of the total Petition Area to Plumeria at Waikoloa, LLC, and some discussions or negotiations for potential future actions. Petitioner has not provided evidence of commencement of use of the land in a large or considerable amount.

For context, in *Aina Le’a*, the Hawaii Supreme Court determined that the developer substantially commenced use of the land as a result of: constructing sixteen townhouses with completed exteriors and interiors, cabinets and appliances installed and electrical and plumbing ready to hook up; twenty-four townhouses constructed up to the roof; thirty-two townhouses constructed in various stages of completion; mass grading for the affordable housing sites, foundation slabs for eight buildings; and immediate access and internal roadways graded. *Aina Le’a* at 214; 339 P.3d at 712. The developer had invested more than \$20,000,000 for plans and construction work on the project. *Id.* While the Court acknowledged that “a determination of

whether a party has substantially commenced use of the land will turn on the circumstances of each case,” it is evident that the extensive list of construction, moving of land, and financial investment in *Aina Le’a*, that amounted to “substantial commencement of use of the land”, is in stark contrast to the lack of progress made by Petitioner in the Project. *Id.* at Footnote 16. Petitioner has not commenced construction on the Petition Area, and provides no evidence of financial investment or comparable effort amounting to substantial commencement. Therefore, OP finds that Petitioner has not substantially commenced use of the land.

III. Petitioner Has Failed to Show Good Cause Why the Petition Area Should Not Revert to Its Former Classification or Be Changed to a More Appropriate Classification.

Petitioner has failed to show good cause why the Petition Area should not revert to its former classification or be changed to a more appropriate classification.

Petitioner attributes the delay in the Project to the gross mismanagement and fraudulent acts committed by Stepan Martirosian. *WHI's Position* at 22. However, there is a lack of evidence to substantiate Martirosian’s misdeeds and how those misdeeds directly affected the Project’s progress. It is also not clear that the current “new management” of the Project did not have a role during the time Martirosian was in control to clearly confine the responsibility for delay to Martirosian. Moreover, if Martirosian no longer had control of the Project by May 5, 2016, there is no explanation for the lack of progress in the Project in the last two years and five months.

Petitioner has also failed to demonstrate its ability to move forward with the Project if given the opportunity. Petitioner has not made a motion to amend conditions and/or extend the time to complete the Project, Petitioner has not presented its development plan or financial

ability to move forward, and generally, has not demonstrated to the Commission that the Project will be completed in a timely manner.

Petitioner argues that because the land was not used for speculative land-banking, reversion of the Petition Area would not be consistent with the legislative intent behind HRS § 205-4.5(g), “to deter speculators who obtained favorable land-use rulings and then sat on the land for speculative purposes.” *WHI’s Position* at 22. However, in proper context, the legislature noted that the intent behind HRS § 205-4.5(g) was not only to deter speculators, but also to deter, more fundamentally, untimely development:

Vacant land with the appropriate state and county land use designations is often subjected to undesirable private land speculation and uncertain development schedules. Such speculation and untimely development inflates the value of land, increases development costs, and frustrates federal, state, county, and private coordination of planning efforts, adequate funding, public services, and facilities.

S. Stand. Comm. Rep. No. 2116, in 1990 S. Journal, at 915. (Emphases added.) Therefore, the Commission need not find that Petitioner idled the land for speculative purposes. It is sufficient and consistent with HRS § 205-4.5(g), that the Commission find that Petitioner was untimely in developing the Project. A ten-year delay of the Project constitutes untimely development that is clearly subject to HRS § 205-4.5(g).


IV. Conclusion.

Based on the foregoing, Petitioner has failed to comply with or has not fulfilled D&O Conditions and representations, and failed to provide sufficient evidence of substantial commencement of use of the land. Petitioner has also failed to show good cause why the Petition Area should not be reverted to its prior classification or other appropriate classification. Unless Petitioner is able to put forth additional evidence to demonstrate compliance with

conditions and representations, substantial commencement, and/or good cause not to revert, OP would not object to the Commission's reversion of the Petition Area to its former classification.

DATED: Honolulu, Hawaii, October 11 2018.

OFFICE OF PLANNING
STATE OF HAWAII



LEO ASUNCION
Director

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A06-767
)	
WAIKOLOA MAUKA, LLC)	CERTIFICATE OF SERVICE
)	
To Amend The Agricultural Land Use)	
District Boundary Into The Rural Land Use)	
District For Approximately 731.581 Acres)	
Of Land At South Kohala, Island Of Hawaii,)	
State of Hawaii, Tax Map No: (3) 6-8-02: 16)	
(por.))	

CERTIFICATE OF SERVICE

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

STEVEN S.C. LIM, Esq.
DEREK B. SIMON, Esq.
ASB Tower, Suite 2100
1001 Bishop Street
Honolulu, Hawaii 96813

JOSEPH K. KAMELAMELA, Esq.
Corporation Counsel
Department of the Corporation Counsel
County of Hawaii
Hilo Lagoon Centre
101 Aupuni Street, Unit 325
Hilo, Hawaii 96720

MICHAEL YEE, DIRECTOR
County of Hawaii
Department of Planning
Aupuni Center
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

DATED: Honolulu, Hawaii, October 11, 2018.

OFFICE OF PLANNING
STATE OF HAWAII

A handwritten signature in black ink, appearing to read 'Leo R. Asuncion', is written over a horizontal line.

LEO R. ASUNCION
Director

DAVID Y. IGE
GOVERNOR



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

JADE T. BUTAY
DIRECTOR

Deputy Directors
ROY CATALANI
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:
DIR 0978
STP 8.2513

September 11, 2018

TO: THE HONORABLE LEO R. ASUNCION, JR., AICP
DIRECTOR, OFFICE OF PLANNING

FROM: JADE T. BUTAY *Jade T. Butay*
DIRECTOR OF TRANSPORTATION

SUBJECT: STATE LAND USE COMMISSION, ORDER TO SHOW CAUSE
DOCKET NO. A06-767, WAIKOLOA HIGHLANDS
WAIKOLOA, SOUTH KOHALA, HAWAII
TMK: (3) 6-8-002: 016 (POR.)

The Department of Transportation (DOT) offers the following on the subject action. The Decision and Order of A06-767, dated June 10, 2008 had one Condition (No. 6) with two sub-parts (a & b) relevant to the interest of DOT:

Condition No. 6. Transportation. Petitioner shall reach an agreement with the State DOT for the construction of the following improvements related to the Project:

- (a) "For the intersection, Waikoloa Road and Queen Kaahumanu Highway, the State DOT has requested that the Petitioner include improvements to make the makai bound approach from Waikoloa Road have one left-turn only lane, one through/left-turn lane, and a right lane with the appropriate signalization. In addition, an acceleration lane would be added to Queen Kaahumanu Highway to accommodate the additional left turn lane."
- (b) "Petitioner will provide a left-turn shelter lane on Mamalahoa Highway from Waikoloa Road, and two advanced warning lights, one located on mauka-bound Waikoloa Road, and the other on southbound Mamalahoa Highway..."

In the August 15, 2018 combined 2017 and 2018 Annual Report, the Petitioner reported:

Condition No. 6(a) as satisfied, due to improvements made to the Waikoloa Beach Resort Drive, Waikoloa Road and Queen Kaahumanu Highway intersection by Hilton Grand Vacations based on the assumption that those improvements rendered the Petitioner's improvements and need to reach an agreement with DOT as being moot.

The Highways Division (HWY) has the following comments:

Condition No. 6(b) is ongoing due to a submission by R.M. Towill on September 27, 2007 of a budget estimate for improvements at Waikoloa Road and Mamalahoa Highway.

1. Condition No. 6(a) stipulated a combined left turn/through lane on the Waikoloa Road approach as well as a necessary southbound lane on Queen Kaahumanu Highway which is needed to receive the vehicles from this lane. This improvement has not been provided. HWY does not agree that the improvements required of Hilton Grand Vacation's connection of Waikoloa Beach Resort Drive to Queen Kaahumanu Highway and Waikoloa Road renders the stipulated improvement as completely unnecessary. The Petitioner needs to show justification and obtain agreement from HWY on this matter.
2. The Petitioner has not pursued providing the improvements, however since the Petitioner indicates that improvements required in Condition 6b are ongoing, HWY is amenable to the Petitioner updating their construction estimates, development of construction plans, and implementation, subject to HWY review and approval, on a schedule acceptable to HWY.

Therefore, HWY feels that the Petitioner has not fully complied, to date, with Condition No. 6; however, HWY is willing to work with the Petitioner as needed.

If there are any questions, please contact Mr. Blayne Nikaido of the DOT Statewide Transportation Planning Office at telephone number (808) 831-7979 or by email at blayne.h.nikaido@hawaii.gov.

DAVID Y. IGE
GOVERNOR



CRAIG K. HIRAI
EXECUTIVE DIRECTOR

STATE OF HAWAII

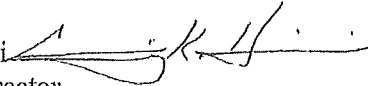
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
677 QUEEN STREET, SUITE 300
Honolulu, Hawaii 96813
FAX: (808) 587-0600

IN REPLY REFER TO:

18:PEO/78

September 14, 2018

TO: Leo R. Asuncion, Director
Office of Planning

FROM: Craig K. Hirai 
Executive Director

SUBJECT: Order to Show Cause for Land Use Commission Docket No. A06-767, Waikoloa
Mauka, LLC

In response to your memorandum dated August 16, 2018, we provide the following responses:

1. Has the Petitioner fulfilled or made any progress on the condition relating to your department?

Yes, it appears that Petitioner has made progress in satisfying Condition No. 9 which provides that the Petitioner meet the requirements set by the County of Hawaii in satisfying the affordable housing condition.

"Petitioner shall provide affordable housing opportunities for residents in the State of Hawai'i in accordance with applicable affordable housing requirements of the 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 and the County. Petitioner shall provide the Commission with a fully executed copy of the affordable housing agreement within 30 days of the execution of the agreement."

The County of Hawai'i, Office of Housing and Community Development (OHCD) provided the following chronology of events:

- On December 1, 2016, the County executed an affordable housing agreement for a newly subdivided 11.7-acre parcel just east of a 10.837-acre parcel that was originally identified for affordable housing.
- On June 1, 2017, Waikoloa Highlands executed a Warranty Deed transferring the 11.7-acre parcel to Plumeria at Waikoloa, LLC.
- On June 20, 2017, the County of Hawai'i executed a Release of Affordable Housing Agreement.

Mr. Leo R. Asuncion
September 14, 2018
Page 2

- In July 2018, the OHCD received a draft 201H application from Pua Melia to provide 32 affordable rental units and a True Value Hardware Store on phase 1 of the 11.7-acre parcel.
- In August 2018, the OHCD received the 201H application and preliminary drawings.

2. Has the Petitioner contacted your department regarding the condition?

No. The Petitioner is required to work with the County of Hawai'i in satisfying the housing condition.

3. Do you have any comments on Petitioner's Statement of Position?

No. HHFDC defers to the County of Hawai'i.

c: Neil Gyotoku, OHCD

Maki, Lorene K

From: Ishii, Wade T
Sent: Thursday, July 26, 2018 11:18 AM
To: Maki, Lorene K
Cc: Travis, Thomas L; Lee, Shaoyu L; Burnett, George F; Kennard, David N; Hiraе, Ryan J; Chong, Albert W; Okamura, Havinne L
Subject: FW: A06-767 Waikoloa Highlands question regarding Condition 15 relating to the Civil Defense condition
Attachments: A06-767_AR_20160229.pdf; A06-767 Waikoloa Mauka D&O 6-10-08.pdf

Hi Lorene,

The Petitioner has not fulfilled condition 15.

There is no record of the Petitioner contacting HI-EMA (formerly State Civil Defense) DOD regarding this condition.

Thanks,
Wade

Wade T. Ishii, P.E. | Acting Assistant Chief Engineering Officer | Engineering Office (HIENG) | Department of Defense | State of Hawaii
3949 Diamond Head Road | Room 228 | Honolulu, Hawaii, 96816-4495 | 808-733-8441 (w) | 808-733-4235 (f)

From: Maki, Lorene K
Sent: Wednesday, July 18, 2018 9:07 AM
To: Ishii, Wade T <wade.t.ishii@hawaii.gov>
Cc: Apuna, Dawn T <dawn.t.apuna@hawaii.gov>
Subject: A06-767 Waikoloa Highlands question regarding Condition 15 relating to the Civil Defense condition

Aloha Wade,

The Land Use Commission (LUC) approved this Petition, dated June 10, 2008, to reclassify approximately 731.581 acres from the Agricultural Land Use Districts into the Rural District in order to construct the Waikoloa Highlands Project with 398 rural residential lots with a minimum lot size of 1 acre.

I have attached the original Decision and Order and 2016 Annual report for your use.

On May 23, 2018, the LUC conducted a status report on this docket, and voted on an Order to Show Cause (OSC) why the Petition area should not revert to its former land use classification or be changed to a more appropriate classification. The LUC has called for a hearing on August 22, 2018 to consider this issue.

Accordingly, OP is contacting relevant State Departments for information regarding the status of the conditions that relate to the matters of State concern.

~~We note that Condition 6 of the 2008 Findings of Fact, Conclusions of Law and Decision and Order relates to Transportation and highways.~~

Specific questions:

Has the Petitioner fulfilled Condition 15?

Has the Petitioner contacted the DOD regarding this condition? If yes, please include information on the date and substance of the meeting/agreements, etc.

We would greatly appreciate a response by August 3rd in order to prepare OP's response to the LUC or let us know if any delays in responding by then.

Thank you.

Lorene

808 587-2888

Maki, Lorene K

From: Maki, Lorene K
Sent: Friday, July 27, 2018 10:30 AM
To: 'Heidi_Meeker/FacilDev/HIDOE@notes.k12.hi.us'
Subject: RE: A06-767 Waikoloa Mauka Order to Show Cause

Yes, thank you Heidi. That is very helpful. Lorene

From: Heidi_Meeker/FacilDev/HIDOE@notes.k12.hi.us [mailto:Heidi_Meeker/FacilDev/HIDOE@notes.k12.hi.us]
Sent: Friday, July 27, 2018 10:15 AM
To: Maki, Lorene K <lorene.k.maki@hawaii.gov>
Subject: Re: A06-767 Waikoloa Mauka Order to Show Cause

Hi Lorene, I think this is what you want.

Heidi Meeker - heidi_meeker@notes.k12.hi.us
Phone: 808-784-5095
Facilities Development Branch
3633 Waiialae Avenue, Room C209
HNL, 96816

From: "Maki, Lorene K" <lorene.k.maki@hawaii.gov>
To: Heidi_Meeker/FacilDev/HIDOE <Heidi_Meeker/FacilDev/HIDOE@notes.k12.hi.us>, Heidi_Meeker/FacilDev/HIDOE <Heidi_Meeker/FacilDev/HIDOE@notes.k12.hi.us>,
Date: 07/26/2018 10:31 AM
Subject: A06-767 Waikoloa Mauka Order to Show Cause

Hi Heidi, the LUC is planning to go through an Order to Show Cause for this Petition. As you can see in the Decision and Order, there is no education condition. However, could you tell us whether there is a DOE district for fair share contribution that covers this Petition area?

Thank you.
Lorene

This email was scanned by the Cisco IronPort Email Security System contracted by the Hawaii Dept of Education. If you receive suspicious/phish email, forward a copy to spamreport@notes.k12.hi.us. This helps us monitor suspicious/phish email getting thru. You will not receive a response, but rest assured the information received will help to build additional protection.

*****[attachment
"A06-767 signed Order to show cause Exh A.pdf" deleted by Heidi Meeker/FacilDev/HIDOE] [attachment "A06-767 Waikoloa Mauka D&O 6-10-08.pdf" deleted by Heidi Meeker/FacilDev/HIDOE]

LINDA LINGLE
GOVERNOR



*Waikoloa
Mauka*

PATRICIA HAMAMOTO
SUPERINTENDENT

STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

OFFICE OF BUSINESS SERVICES

September 4, 2007

Mr. Charles Santos
Waikoloa Mauka, LLC
c/o Ms. Naomi Kuwaye
Imanaka, Kudo & Fujimoto
Fort Street Tower
745 Fort Street; 17th Floor
Honolulu, Hawaii 96813

Dear Ms. Kuwaye:

This letter serves to confirm that we have completed our Educational Contribution Agreement for the Waikoloa Highlands project. You should now have a copy of the final agreement which was signed by Kevin C. Kellow, Manager of Waikoloa Mauka, LLC, and Patricia Hamamoto, Superintendent of the Department of Education. The agreement covers the entire 731.581-acre project on TMK: 6-8-002:016 (por.).

If you have any questions, please call Heidi Meeker of the Facilities Development Branch at 733-4862.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Duane Kashiwai".

Duane Y. Kashiwai
Public Works Manager

DYK:jmb

Educational Contribution Agreement for
Waikoloa Highlands

THIS INDENTURE, made this 8th day of August, 2007, by and between WAIKOLOA MAUKA, LLC, hereinafter referred to as "Waikoloa Mauka", whose principal place of business and mailing address is 431 N. Brand Boulevard, Suite 201, Glendale, California 91203, and the State of Hawai'i DEPARTMENT OF EDUCATION, hereinafter referred to as "DOE", whose mailing address is Department of Education, Facilities Development Branch, 809 8th Avenue, Honolulu, Hawai'i 96816.

WHEREAS Waikoloa Mauka is the developer and recorded owner of that certain parcel of land comprised of approximately 731.581 acres and identified as Tax Map Key parcels (3) 6-8-002:016 (por.), also known as "Waikoloa Highlands";

WHEREAS Waikoloa Highlands is anticipated to contain a total of three hundred ninety-eight (398) units in the entire project ("Project");

WHEREAS the first forty-nine (49) units within the Project are exempt from the payment of a school fair-share contribution; so the number of net residential units equals the total number of units less the first forty-nine (49) units;

WHEREAS Waikoloa Mauka and DOE have mutually agreed that the educational contribution set forth in this Agreement will satisfy all DOE fair-share requirements for Waikoloa Highlands, based on a maximum of three hundred forty-nine (349) net residential units;

NOW THEREFORE, Waikoloa Mauka and DOE agree as follows:

1. Waikoloa Mauka's Cash Contribution

Waikoloa Mauka shall pay a mutually agreed-upon fee to the DOE. The fee shall comprise of Waikoloa Mauka's fee in-lieu-of-land contribution ("In-Lieu Fee") and its fair share

of the construction cost fee ("Construction Fee") (hereinafter, the In-Lieu Fee and the Construction Fee shall collectively be referred to as "Cash Contribution").

- a. A proportionate share of the Cash Contribution shall be paid out of Escrow upon the sale of each unit in the Waikoloa Highlands Project and made payable to the "State of Hawai'i, Department of Education". For purposes of this Agreement, "sale" shall be defined as the closing and recordation of each single-family unit within the Waikoloa Highlands Project. The amount paid out of Escrow shall be determined by taking the Cash Contribution amount and dividing it by the total number of net units. For example, if the Cash Contribution is determined to be ONE MILLION THREE HUNDRED NINETY-SIX THOUSAND AND NO/100 DOLLARS (\$1,396,000.00), then THREE THOUSAND FIVE HUNDRED SEVEN AND 54/100 DOLLARS (\$3,507.54) (the Cash Contribution amount divided by three hundred ninety-eight (398) units) shall be paid out of Escrow upon the sale of each unit in the Waikoloa Highlands Project.
- b. An escalation factor shall be applied to the balance of the Cash Contribution that remains to be paid every thirty-six (36) months after the date of this signed Agreement. The escalation factor shall be based on the Over-the-Year Percent Change in the Annual Average Honolulu Area Consumer Price Index for All Items for All Urban Consumers (CPI-U) issued by the Bureau of Labor Statistics of the United States Department of Labor. The Annual Average CPI-U for the year prior to the year the Agreement is signed is used as the base year. Cash Contributions will be adjusted by the amount the most recent Annual Average CPI-U has increased or decreased over the base year.
- c. Notwithstanding the foregoing, the DOE must use the Cash Contribution paid by Waikoloa Mauka, its successors and/or assigns, for the development of new schools or the expansion of existing schools designated by the DOE to serve the Project, which are presently in the Kealakehe and Honokaa Complexes, within six (6) years of the receipt of payment for the final unit in the Project (the

“Expiration Deadline”). If the DOE fails to apply the Cash Contribution as provided for in this paragraph by the Expiration Deadline, the Cash Contribution shall be returned to Waikoloa Mauka or its successors and/or assigns.

2. Waikoloa Mauka’s In-Lieu Fee Contribution

Waikoloa Mauka agrees to pay a mutually agreed to In-Lieu Fee to the DOE.

The DOE and Waikoloa Mauka must agree on the amount for the In-Lieu Fee on or before the sale of the first unit within the Waikoloa Highlands Project. The formula to calculate the amount of the In-Lieu Fee shall be determined by using the following formula:

0.00899 acres per single family unit X net number of units X average cost per acre of land as determined by an appraiser selected by Waikoloa Mauka within ninety (90) days of sale of the first unit within the Waikoloa Highlands Project.

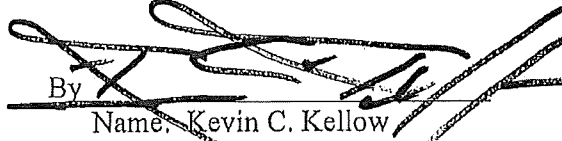
3. Waikoloa Mauka’s Construction Fee

Waikoloa Mauka shall pay its fair share of the DOE’s Construction Fee to the DOE to pay for Waikoloa Mauka’s share of the DOE’s construction costs toward a new school. The DOE has calculated Waikoloa Mauka’s Construction Fee for the Waikoloa Highlands Project to be a total of ONE MILLION ONE HUNDRED SIXTY-TWO THOUSAND EIGHT HUNDRED SIXTY-EIGHT AND NO/100 DOLLARS (\$1,162,868.00).

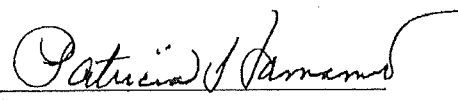
4. This Agreement shall be binding upon Waikoloa Mauka, or its successor in interest.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement the day and year first above written.

WAIKOLOA MAUKA, LLC

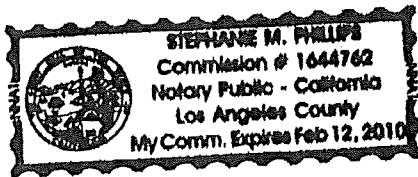
By  Date: Aug 8, 2007
Name: Kevin C. Kellow
Its Manager


DEPARTMENT OF EDUCATION

By  Date: 8.20.07
Name: _____
Its Superintendent

STATE OF CALIFORNIA)
)
COUNTY OF Los Angeles) ss.

On this 8th day of August, 2007, before me appeared Kevin C. Kellow, Manager of WAIKOLOA MAUKA, LLC, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.




Notary Public, State of California

Printed Name: Stephanie M. Phillips
My commission expires: February 12, 2010

STATE OF HAWAII)

CITY AND COUNTY OF HONOLULU)

ss.

On this 20th day of August, 2007, before me personally appeared Patricia Hamamoto, Superintendent of the State of Hawai'i DEPARTMENT OF EDUCATION, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

Sharon K. M. Tong

Notary Public, State of Hawaii

LS

Printed Name: Sharon K. M. Tong
My commission expires: November 27, 2010