

OFFICE OF PLANNING
Leiopapa a Kamehameha, Room 600
235 South Beretania Street
Honolulu, Hawaii 96813
Telephone: (808) 587-2846
Facsimile: (808) 587-2824

LAND USE COMMISSION
STATE OF HAWAII
2018 NOV 28 P 1:15

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A06-763
)	
KAPOLEI PROPERTY DEVELOPMENT, LLC)	REVISED STATEMENT OF POSITION OF THE OFFICE OF PLANNING ON PETITIONER'S MOTION FOR
To amend the Agricultural Land Use District)	EXTENSION OF TIME TO COMPLETE
Boundary Into the Urban Land Use District)	PROJECT AND TO CHANGE
for Approximately 344.519 Acres of Land)	PETITIONER'S NAME AND AMEND
At Ewa, Oahu, Hawaii, Tax Map Keys 9-1-)	CAPTION; OP EXHIBIT 1 AND OP
14: Por. 33, 34, And 35 And 9-1-15: Por. 20)	EXHIBIT A; CERTIFICATE OF
)	SERVICE
)	
)	

**REVISED STATEMENT OF POSITION OF THE OFFICE OF PLANNING
ON PETITIONER'S MOTION FOR EXTENSION OF TIME TO COMPLETE
PROJECT AND TO CHANGE PETITIONER'S NAME AND AMEND CAPTION**

In response to Petitioner's Motion for Extension of Time to Complete Project and to Change Petitioner's Name and Amend Caption ("Motion"), the Office of Planning ("OP") provides this Statement of Position which revises and replaces OP's original Statement of Position filed with the Land Use Commission ("LUC") on October 22, 2018.

I. Petitioner's Request for Revision of Condition No. 17

Petitioner's Proposed amendment of Condition No. 17:

Petitioner shall complete the buildout of the Project, including completion of the backbone infrastructure consisting of the State Harbor Access Road, Hanua Street improvements, drainage improvements, and sewer improvements by December 31, 2035 2018.

OP does not support Petitioner's request to revise Condition No. 17 as proposed by the Petitioner, but is willing to support a modified timeframe for Condition No. 17 which extends the time for the completion of backbone infrastructure by an additional ten (10) years.

a. Substituting "Hanua Street" with "State Harbor Access Road"

OP met with the Department of Transportation ("DOT") on November 19, 2018. In that meeting DOT agreed that the appropriate street name is "Harbor Access Road." The DOT currently has Memorandum of Agreements with the Petitioner and other relevant parties referencing this street as Harbor Access Road.

b. Time Extension

Petitioner indicates that Petitioner's Market Assessment provides some basis for allowing an extension of 17 additional years in order to complete the backbone infrastructure, including Hanua Street improvements, drainage improvements, and sewer improvements by December 31, 2035. In Petitioner's Exhibit J, pages 23-24, four demand models were examined, with Phase 4, the last phase of the Petition Area, being delivered between 2032 and 2041.

The intent of a market assessment is to provide Petitioner with a guideline for selling or absorption of the lots within the Petition Area. OP acknowledges that it could be many years before all the lots within the development are sold. However, Condition No. 17 does not require that all the lots be sold or delivered, but rather, that the backbone infrastructure, i.e. Hanua Street improvements, drainage and sewer improvements, be completed by the December 31, 2018 deadline. As the original Decision and Order is dated November 20, 2007, this should have been sufficient time for the Petitioner to have completed the backbone infrastructure.

Given the recession and other factors presented by the Petitioner, including the construction of the agreed upon interim detention basin improvements, Petitioner has

demonstrated a good faith effort in complying with the D&O conditions. However, an extension of an additional 17 years is not justified given that it has already been 11 years since the area's reclassification in 2007. We note that the market assessment also indicates that the first industrial lots in the project could be available in 2021. The market study demand models range in predicting that in the year 2028, Phases 1A (36.5 acres) to Phases 1A through 3A (total of 144.2 acres) could be delivered. Full buildout, Phases 1A through Phase 4 (total of 250.8 acres) may occur between 2032 to 2041. OP would support a more reasonable time frame of ten (10) years or 2028.

Based on the foregoing, OP recommends the following amendments to Condition No. 17:

Condition No. 17. Petitioner shall complete the buildout of the
Project, including completion of the backbone infrastructure
consisting of the Harbor Access Road Hanua Street improvements,
drainage improvements, and sewer improvements by December
31, 2028 2018. Petitioner shall coordinate with DOT on the
location, alignment, and features of all such improvements.

II. Petitioner's Request for Change of Name and Amendment of Caption

OP has no objection to Petitioner's request to formally recognize Kapolei Properties LLC as the Petitioner, and to amend the caption to reflect the name change. However, as recommended by the Department of Transportation, the Petitioner should also revise and amend all the current agreements that have been made with DOT, such as the Master Kapolei Highway Agreement dated June 1, 2010. See OP Exhibit 1.

III. Amendment to Condition 8.

As significant time has elapsed from the original action taken by the LUC in 2007, and Petitioner represented that it will coordinate with the DOT Airports Division as the Project progresses to examine appropriate height considerations as it relates to aviation and airport operations at Kalaeloa Airport, the following amendments to Condition No. 8 as recommended by DOT are proposed: *See* OP Exhibit A.

Condition No. 8. Notification of Potential Airports Nuisances. Petitioner shall notify and disclose to all prospective buyers and/or lessees of the Project, in accordance with State law, of the potential adverse impacts of aircraft and airport activity from the adjacent airfields at Kalaeloa and Daniel K. Inouye Honolulu International Airports, such as but not limited to noise, right of flight, emissions, vibrations and other incidences of aircraft operations.

Petitioner shall implement procedures and provide covenants in any grant or transfer of interest in the Petition Area, or portion thereof, to buyers and lessees and to other future owners, lessees or occupants, to release claims against the State of nuisance relating to aircraft and airport operations.

Petitioner shall enter into an avigation easement, with the State of Hawaii, Department of Transportation, Airports Division with respect to avigation and wildlife management requirements to address safety concerns for flight

operations at Kalaeloa and Daniel K. Inouye International Airports. The
avigation easement shall run with the land and shall be recorded with the Bureau
of Conveyances of the State of Hawaii, and if appropriate, the Office of the
Assistant Registrar of the Land Court of the State of Hawaii.

DATED: Honolulu, Hawaii, November 28, 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. A06-763
)	
KAPOLEI PROPERTY DEVELOPMENT,)	CERTIFICATE OF SERVICE
LLC)	
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To amend the Agricultural Land Use District)	
Boundary Into the Urban Land Use District)	
for Approximately 344.519 Acres of Land)	
At Ewa, Oahu, Hawaii, Tax Map Keys 9-1-)	
14: Por. 33, 34, And 35 And 9-1-15: Por. 20)	
)	
)	
)	

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.

JENNIFER A. LIM, Esq.
DEREK B. SIMON, Esq.
ASB Tower, Suite 2100
1001 Bishop Street
Honolulu, Hawaii 96813

DONNA Y.L. LEONG
Department of the Corporation Counsel
City and County of Honolulu
530 South King Street, Room 110
Honolulu, Hawaii 96813

KATHY K. SOKUGAWA, ACTING DIRECTOR
Department of Planning and Permitting
City and County of Honolulu
650 South King Street, 7th Floor
Honolulu, Hawaii 96813

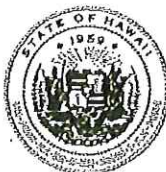
DATED: Honolulu, Hawaii, November 28, 2018.

OFFICE OF PLANNING
STATE OF HAWAII



LEO R. ASUNCION
Director

DAVID Y. IGE
GOVERNOR



JADE T. BUTAY
DIRECTOR


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

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

IN REPLY REFER TO:
DIR 0977
STP 8.2527

September 26, 2018

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

FROM: JADE T. BUTAY 
DIRECTOR OF TRANSPORTATION

SUBJECT: STATE LAND USE COMMISSION, MOTION FOR EXTENSION OF TIME
TO COMPLETE PROJECT AND TO CHANGE PETITIONER'S NAME
LAND USE COMMISSION (LUC) DOCKET NO. A06-763, KAPOLEI
PROPERTY DEVELOPMENT, LLC (PETITIONER)
KAPOLEI, OAHU, HAWAII
TMK: (1) 9-1-014: 033 (POR.), 034, 035; 9-1-015: 020 (POR.)

The Department of Transportation (DOT) has reviewed the subject Motion for the Decision and Order (D&O) dated November 20, 2007 for Land Use Commission Docket No. A06-763. DOT understands the Petitioner is requesting three actions as a part of this Motion: 1) Amend D&O Condition No. 17 to extend the time to complete backbone infrastructure from December 31, 2018 to December 31, 2035; 2) As a housekeeping measure, amend D&O Condition No. 17 to replace "Hanua Street Improvement" with "State Harbor Access Road;" and 3) Amend the name of the Petitioner from Kapolei Property Development LLC to Kapolei Properties LLC.

DOT has the following comments for LUC's consideration:

Airports Division (DOT-A)

The Petitioner has not made progress nor has contacted DOT-A regarding D&O Condition No. 8, Notification of Potential Airports Nuisances.

Significant time has elapsed since the original action was taken by the LUC in 2007; therefore, DOT-A respectfully offers the following comments:

1. The proposed project is located approximately 1.21 miles from the end of Runway 11 of the Kalaeloa Airport (JRF). The applicant needs to be aware of the duties of state and county agencies to implement the State of Hawaii Office of Planning Technical Assistance Memorandum related to this project and all projects within 5 miles of an airport:
http://files.hawaii.gov/dbedt/op/docs/TAM-FAA-DOT-Airports_08-01-2016.pdf.

2. Due to the project's proximity to JRF, there is generalized risk of exposure for the development to aircraft-generated fumes, smoke, propagated sound wave vibrations, odors, etc., resulting from aircraft flight operations over existing use developments and proposed (future) developments.
3. The applicant must file a Federal Aviation Administration (FAA) Form 7460-1, Notice of Proposed Construction or Alteration, in accordance with Code of Federal Regulations, Title 14, Part 77.9. Planned building heights and the height of any construction cranes must be included in the FAA Form 7460-1. The form and submittal criteria can be found at the following website: <https://oeaaa.faa.gov/oeaaa/external/portal.jsp>.
4. If the project includes the installation of a photovoltaic (PV) system, a glint and glare analysis must be submitted for FAA review. This analysis must be submitted with any Form 7460-1 Notice including PV panels. PV systems located in or near the approach path of an aircraft into JRF can create a hazardous condition for a pilot due to possible glint and glare reflected from the PC array. The following website may assist you with preparation of glint and glare analysis: www.sandia.gov/glare.

If glint and glare from the PV array creates a hazardous condition for pilots, the owner of the photovoltaic system must be prepared to immediately mitigate the hazard upon notification by the DOT-A or the FAA.

PV system installations have also been known to emit radio frequency interference (RFI) to aviation-dedicated radio signals, disrupting the reliability of air-to-ground communications. The responsible PV system owner shall mitigate any RFI that affects aviation operations.

5. Features of the proposed property development (open swales, storm drains, retention and detention basins, wastewater treatment facilities or associated settling ponds) have the potential to attract hazardous wildlife. The FAA discourages projects that attract wildlife near airports.

In order to mitigate potential wildlife hazards, the applicant shall prepare a plan to control the presence of any hazardous wildlife at the project area. FAA Advisory Circular 150/5200-33B, Hazardous Wildlife Attractants, provides guidance regarding wildlife management on or near airports.

The DOT-A, recommends no standing water in the open swales, storm drains, or detention/retention basins within 48 hours after storm event. Furthermore, all efforts should be taken to discourage wildlife from taking up habitat or refuge on the proposed project site.

Highways Division (HWY)

1. HWY has no objection to a time extension primarily due to the fact that completion of improvements is not going to occur by the December 2018 deadline. However, HWY not objecting to the proposed time extension should not be construed as HWY agreeing implicitly to any shifts in timing that might otherwise have been previously agreed upon. Modifications to such timing would have to be presented to HWY/DOT and negotiated as to necessity with agreement from HWY/DOT.
2. HWY has no objection to the change of the Petitioner's name; however, the agreements with DOT, such as the Master Kapolei Highway Agreement of June 1, 2010, should be appropriately amended to reflect the change in responsible parties.
3. As it pertains to the proposed change in the text of D&O Condition No. 17 to replace the words "Hanua Street improvements" with "State Harbor Access Road," HWY OBJECTS to this proposed revision as the Hanua Street improvements are part of the backbone infrastructure for the Petitioner's development. The proposed revision would make it appear or imply that the backbone infrastructure referred to in this condition was primarily intended for DOT purposes. The Petitioner remains principally responsible for his infrastructure, not the DOT.

HWY refrains from responding to the Office of Planning's question about the progress of D&O Condition No. 2 relating to Transportation. Progress has been problematic due to economic conditions; however, HWY has no particular reason to otherwise object to the Motion except as noted above.

Harbors Division (HAR)

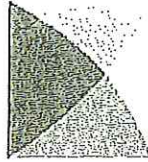
HAR wishes to provide comments on the status of the conditions which pertain to their division.

1. As it pertains to D&O Condition No. 1, with continued dialogue and coordination with the Petitioner, HAR is hopeful that such wastewater facilities will support continued development and expansion of the Kalaeloa-Barbers Point Harbor (KBPH). While discussions have been held regarding overall development opportunities, no discussions specific to wastewater service have been held. HAR is desirous of directing flow of wastewater generated by KBPH into this system and would like to coordinate with the Petitioner on potential wastewater connections for KBPH.
2. Regarding D&O Condition No. 2, HAR is concerned that with the proposed extension of time, the rate of development of large scale improvements at KBPH that will rely on the Hanua Street improvements will be limited. With the extension of the completion date to 2035, the Petitioner should be required to periodically provide updates on the construction of Hanua Street. The Petitioner should also be required to continue coordination with HAR/DOT regarding the alignment, design and construction of Hanua Street and its connection to KBPH.

3. D&O Condition No. 3 pertains to security zones between the Petition Area and KBPH. As KBPH is a secured maritime facility, specific security requirements will need to be finalized with the Petitioner. The Petitioner has not made any progress on this condition as they have not contacted HAR to discuss such matters.
4. D&O Condition Nos. 9 and 10 pertains to drainage. The Petitioner has agreed to construct an interim detention basin upstream of Grace Pacific LLC's leased area at KBPH by December 7, 2018 (Copy of a May 25, 2017 letter from the Petitioner is attached). This detention basin is intended to intercept and divert stormwater runoff away from KBPH. HAR does not object to the proposed extension of time; however, this should not be construed as HAR implicitly agreeing to any shift in timing of improvements as previously agreed upon. This includes the requirement to complete the interim detention basin by December 7, 2018.
5. D&O Condition No. 17 identifies the deadline for the completion of backbone infrastructure which is largely the focus of the LUC Motion. To reiterate, the Petitioner has made progress with conditions relating to HAR, and coordination efforts have been made on several occasions to address requirements such as drainage improvements. However, as mentioned previously, the deadline to complete the backbone infrastructure is proposed to be extended by 17 years to December 31, 2035, such an extension will have a direct effect on the ability of HAR to plan and implement improvements to KBPH that will rely on infrastructure improvements being made by the Petitioner. Henceforth, the Petitioner should coordinate with and inform HAR of phasing plans and potential schedules for completion of Hanua Street and other necessary infrastructure affecting KBPH.

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.

Attachment



KAPOLEI

May 25, 2017

17,0634
SECTION'S OFFICE
PT. OF
HARBOUR, O'H

MAY 30 2:25

HARBOUR, O'H

MAY 31 8:24

Mr. Ford Fuchigami
Director
State of Hawaii
Department of Transportation
869 Punchbowl Street
Honolulu, HI 96813-5097

Dear Mr. Fuchigami:

Response to Letter Dated April 13, 2017 (HAR-EP 8517.17)
Regarding Improvements to Divert Stormwater from Kalaeloa Barbers Point Harbor, O'ahu

This letter is written in response to your letter dated April 13, 2017 that sought to confirm our discussions with the Department of Transportation, Harbors Division (DOT-H) at our December 7, 2016 meeting regarding stormwater conveyance improvements in the Kalaeloa Barbers Point Harbor (KBPH) area. Please also refer to our November 22, 2016 letter addressing related regional drainage matters along with previous DOT-H correspondence (HAR-EP 6762.16 and HAR-EP 7928.17).

We confirm that we will install improvements upstream of Grace Pacific LLC's (GP) leased area to intercept and divert stormwater runoff away from KBPH consistent with regional drainage plans by your requested date of December 7, 2018. We will coordinate these improvements with DOT-H to ensure timely and effective implementation consistent with DOT-H's KBPH development and leasing plans.

Please also understand that we are analyzing related long term regional drainage improvement alternatives at the current time. We plan to seek the further input of agencies involved in the permitting of those improvements in the near future. We trust that DOT-H will support our permitting efforts to implement regional drainage improvements affecting the KBPH and surrounding areas.

Please contact me at (808) 674-3289 or stevek@kapolei.com at your team's earliest convenience to meet or discuss these issues further.

Sincerely,

Stephen H. Kelly
Vice President, Development

040013001K10520

cc: Darrell Young
Carter Luke
Dean Watase

Maki, Lorene K

From: Tuiolosega, Herman
Sent: Tuesday, November 20, 2018 12:28 PM
To: Funakoshi, Rodney Y; Sniffen, Edwin H; Nikaido, Blayne H
Cc: Maki, Lorene K; Kawaoka, Lynette; Apuna, Dawn T; Yogi, Davis K; Young, Darrell T; Thirugnanam, Jeyan; Miyasaki, Robert
Subject: RE: Airport Avigation and Wildlife Condition Language
Attachments: DOTA edits to A06-763_LUC-KPD-2007 condition 8.docx

Hi Rodney,

Please see the draft language added to condition #8. Feel free to edit and let me know if you have questions.

Thanks,
Herman

From: Funakoshi, Rodney Y
Sent: Monday, November 19, 2018 3:03 PM
To: Sniffen, Edwin H <edwin.h.sniffen@hawaii.gov>; Nikaido, Blayne H <blayne.h.nikaido@hawaii.gov>
Cc: Maki, Lorene K <lorene.k.maki@hawaii.gov>; Tuiolosega, Herman <herman.tuiolosega@hawaii.gov>; Kawaoka, Lynette <lynette.kawaoka@hawaii.gov>; Apuna, Dawn T <dawn.t.apuna@hawaii.gov>; Yogi, Davis K <davis.k.yogi@hawaii.gov>; Young, Darrell T <darrell.t.young@hawaii.gov>; Thirugnanam, Jeyan <jeyan.thirugnanam@hawaii.gov>; Miyasaki, Robert <robert.miyasaki@hawaii.gov>
Subject: RE: Airport Avigation and Wildlife Condition Language

Thanks Blayne. Herman – I presume your Division was involved in crafting this condition. Would similar language be acceptable to DOT-A?

Thanks.
Rodney

Rodney Y. Funakoshi
Planning Program Administrator
Land Use Division
State of Hawaii Office of Planning
Dept. of Business, Economic Development & Tourism
235 S. Beretania Street, 6th Floor
Honolulu, Hawaii 96813
Telephone: (808) 587-2885

From: Sniffen, Edwin H
Sent: Monday, November 19, 2018 1:08 PM
To: Nikaido, Blayne H <Blayne.H.Nikaido@hawaii.gov>
Cc: Funakoshi, Rodney Y <rodney.y.funakoshi@hawaii.gov>; Maki, Lorene K <lorene.k.maki@hawaii.gov>; Tuiolosega, Herman <herman.tuiolosega@hawaii.gov>; Kawaoka, Lynette <lynette.kawaoka@hawaii.gov>; Apuna, Dawn T <dawn.t.apuna@hawaii.gov>; Yogi, Davis K <davis.k.yogi@hawaii.gov>; Young, Darrell T <darrell.t.young@hawaii.gov>;

Thirugnanam, Jeyan <jeyan.thirugnanam@hawaii.gov>; Miyasaki, Robert <robert.miyasaki@hawaii.gov>
Subject: Re: Airport Avigation and Wildlife Condition Language

Thanks Blayne,

The language looks great.

Aloha,

Ed

Sent from my iPhone

On Nov 19, 2018, at 12:30 PM, Nikaido, Blayne H <blayne.h.nikaido@hawaii.gov> wrote:

Hello Everyone,

As a follow-up to this morning's meeting, I looked up the conditions for the Honouliuli Wastewater project and found the attached Decision and Order for the special use permit as provided to the LUC by the CCH Planning Commission. Please take a look at Condition No. 10 as it pertains to a requirement for an agreement regarding avigation and wildlife management. I assume this is the type of language we will be using to tighten up KPD's Condition No. 8.

Thanks,
Blayne

Blayne Nikaido
Planner
Department of Transportation
Statewide Transportation Planning Office

<SP17-409_CC_Exhibit-26.pdf>

8. **Notification of Potential Airports Nuisances.** Petitioner shall notify and disclose to all prospective buyers and/or lessees of the Project, in accordance with State law, of the potential adverse impacts of aircraft and airport activity from the adjacent airfields at Kalaeloa and Honolulu International Airport, such as but not limited to noise, right of flight, emissions, vibrations and other incidences of aircraft operations.

Petitioner shall implement procedures and provide covenants in any grant or transfer of interest in the Petition Area, or portion thereof, to buyers and lessees and to other future owners, lessees or occupants, to release claims against the State of nuisance relating to aircraft and airport operations.

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