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LAND USE COMMISSION
STATE OF HAWAII

2019 MAR 20 P 4:11

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Attorneys for Intervenor
DEPARTMENT OF EDUCATION,
STATE OF HAWAII

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of

DEPARTMENT OF PLANNING,
COUNTY OF MAUI,

To issue a declaratory order that Condition 1(b) of the State of Hawaii Land Use Commission's Decision and Order filed July 29, 2013, in Docket A11-794, granting the Land Use District Boundary Amendment for 77.182 acres identified for real property tax purposes as tax map key (2) 2-2-002:081, Kihei, Maui, Hawaii, requires an available above or below ground pedestrian crossing.

DOCKET NO. DR19-65

DEPARTMENT OF EDUCATION,
STATE OF HAWAII'S MOTION TO
CONTINUE HEARING AND DEFERAL
OF RULING ON PETITIONER
DEPARTMENT OF PLANNING,
COUNTY OF MAUI'S PETITION TO
ISSUE A DECLARATORY ORDER
FILED FEBRUARY 22, 2019;
MEMORANDUM IN SUPPORT;
DECLARATION OR RYAN W.
ROYLO; EXHIBIT "A"; CERTIFICATE
OF SERVICE

DEPARTMENT OF EDUCATION, STATE OF HAWAII'S MOTION TO
CONTINUE HEARING AND DEFERAL OF RULING ON PETITIONER
DEPARTMENT OF PLANNING, COUNTY OF MAUI'S PETITION TO
ISSUE A DECLARATORY ORDER FILED FEBRUARY 22, 2019

I. RELIEF SOUGHT

DEPARTMENT OF EDUCATION, STATE OF HAWAI'I (HIDOE), by and through its attorneys, Clare E. Connors, Attorney General, and Holly T. Shikada, Stuart N. Fujioka, Melissa J. Kolonie, and Ryan W. Roylo, Deputy Attorneys General, hereby submits its motion to continue hearing (Motion) and respectfully requests that the STATE OF HAWAI'I LAND USE COMMISSION (LUC) issue an order to allow for the continuance of the hearing on the Department of Planning, County of Maui's Petition to Issue a Declaratory Order filed February 22, 2019, Docket No. DR19-65 (Petition) presently scheduled for April 3, 2019, for not less than sixty (60) days in order to allow HIDOE sufficient time to prepare and submit a Motion to Amend/Modify the LUC's Findings of Fact, Conclusions of Law, Decision and Order adopted July 29, 2013 (2013 Order).

II. GROUNDS FOR MOTION

This Motion is made pursuant to chapter 205, Hawai'i Revised Statutes (HRS) and title 15, subtitle 3, chapter 15 of the Hawaii Administrative Rules (HAR) sections 15-15-42, 15-15-70, and 15-15-94, the other authorities and arguments stated in the attached memorandum in support of the Motion, and the pleadings filed herein.

HIDOE hereby requests that this Motion be decided without a hearing pursuant to section 15-15-70(c).

DATED: Honolulu, Hawai'i, March 20, 2019.



HOLLY T. SHIKADA
RYAN W. ROYLO
STUART N. FUJIOKA
MELISSA J. KOLONIE
Deputy Attorneys General

Attorney for Intervenor
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MEMORANDUM IN SUPPORT

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I. INTRODUCTION

On December 20, 2011, HIDOE commenced Docket No. A11-794 to obtain a Land Use District Boundary Amendment (Boundary Amendment) which would allow for the construction of a high school on land zoned for agriculture. See Petition for Land Use District Boundary Amendment filed December 20, 2011.

On or about July 29, 2013 in granting HIDOE's Boundary Amendment, the LUC issued its Findings of Fact, Conclusions of Law and Order (2013 Order). Paragraph 1(b) of the 2013 Order states, in pertinent part:

The pedestrian route study and analysis shall be completed and approved prior to Petitioner executing a contract for the design of Phase I of the Project. Petitioner shall cause to be constructed, or ensure that there is an available above or below ground pedestrian crossing and implement such mitigation or improvements as may be required or recommended by the

study and analysis to the satisfaction of [Department of Transportation, State of Hawaii] DOT prior to opening Phase I of the Project.

Subsequent to July 29, 2013, HIDOE proceeded with the understanding that the grade separate pedestrian crossing (GSPC) was contingent upon recommendations, if any, in the completed studies as well as that of the Department of Transportation, State of Hawaii (DOT).

On or about February 20, 2019, following a status meeting in front of the LUC, it became apparent that HIDOE's understanding was not consistent with the LUC's intent behind the 2013 Order.

On February 22, 2019, Petitioner filed its Petition, presumably due to a discerned conflict or a discrepancy between the language of the 2013 Order and HIDOE's interpretation of the subject condition contained in the subject order, and has requested that the LUC reiterate and reaffirm that it required HIDOE to complete an above or below ground pedestrian crossing prior to the opening of Phase I.

On March 15, 2019, counsel for HIDOE filed their Notice of Appearance with the LUC.

On March 20, 2019, counsel for HIDOE held a telephone conference with counsel for the County of Maui during which it was represented that HIDOE accepted that the LUC's intent behind the GSPC condition contained in the 2013 Order was that the GSPC was required to be completed before Phase I could be opened. With the understanding that HIDOE was willing to proceed with efforts to construct a GSPC and intended on filing a motion to amend and/or modify the 2013 Order so as to address time to complete construction of the GSPC and other logistical issues, counsel for the County of Maui did

not object to the continuance of the April 3, 2019 hearing. (See Exhibit A, 3/20/19 letter to T. Kolbe)

III. DISCUSSION

A. Good cause exists to grant the requested continuance of the hearing on the Petition.

In general, “good cause” means a substantial reason or legal excuse. *State v. Estencion*, 63 Haw. 264, 267, 625 P.2d 1040, 1042 (1981). In this case, “good cause” exists.

First, it is apparent that the Petition merely seeks the LUC to reiterate and reaffirm its intent behind condition 1(b) on the 2013 Order. Presumably the Petition was the result of the status meeting held on February 20, 2019, in which there appeared to be a disagreement as to the meaning of condition 1(b). As stated in the introduction, HIDOE has accepted that the LUC’s intent of the subject condition contained in the 2013 Order was that the GSPC be completed before the opening of Phase I. As such, any controversy over the LUC’s intent behind condition 1(b) no longer exists.


Second, section 15-15-94(a), HAR, provides for the right to file a petition to modify an LUC order in accordance with section 15-15-70. In light of the fact that HIDOE intends to file such a motion to modify the 2013 Order with respect to the completion of the GSPC, deferring a LUC ruling on the Petition to allow for consideration of HIDOE’s motion to amend and/or modify makes practical sense. This is especially true if the 2013 Order is modified with respect to time deadlines and other details. If the LUC does not hold off on ruling on the Petition and the accompanying hearing, it may result in the issuance of an unnecessary order. HIDOE anticipates submitting its motion to amend and/or modify the 2013 Order within the next 2-3 weeks.

Lastly, HIDEOE consulted with counsel for the County of Maui who does not have any objections to HIDEOE's request to continue the subject hearing considering HIDEOE's position on the LUC's intent behind condition 1(b) of the 2013 Order.

IV. CONCLUSION

Based upon the preceding, HIDEOE respectfully requests that the LUC find that good cause exists and grant its request to continue the hearing on the Petition for a period not less than 60 days.

DATED: Honolulu, Hawai'i, March 20, 2019.



HOLLY T. SHIKADA
RYAN W. ROYLO
STUART N. FUJIOKA
MELISSA J. KOLONIE
Deputy Attorneys General

Attorney for Intervenor
DEPARTMENT OF EDUCATION,
STATE OF HAWAI'I

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition of

DEPARTMENT OF PLANNING,
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DOCKET NO. DR19-65

DECLARATION OF RYAN W. ROYLO

DECLARATION OF RYAN W. ROYLO

This Declaration is made under the penalty of perjury.

1. I am counsel for DEPARTMENT OF EDUCATION, STATE OF HAWAI'I (hereinafter referred to "HIDOE") in the above-entitled matter.
2. This Declaration is based upon my personal knowledge and I am competent to make such declaration.
3. On or about March 20, 2019, I participated in a telephone conference with Thomas Kolbe, Esq., attorney for the County of Maui.
4. During this telephone conference, I represented that it was my understanding that HIDOE understood and accepted that the State of Hawaii Land Use Commission (LUC) intended, as condition 1(b) of the 2013 Order, that a grade separate pedestrian crossing (GSPC) be completed prior to the opening of Phase I. I informed Mr.

Kolbe that HIDOE was intending to file a motion to amend and/or modify the need for time to complete the construction of the GSPC and other logistic issues. I further represented to Mr. Kolbe the HIDOE's intent to file this motion within the next 2-3 weeks. Based upon this representation, I inquired whether the County of Maui would object to our request for a continuance of the hearing in this matter presently scheduled for April 3, 2019.

5. In response to my inquiry regarding a continuance of the subject hearing, Mr. Kolbe stated that the County of Maui had no objections to such a request.

6. Attached as Exhibit "A" is a true and correct copy of the March 20, 2019 letter sent to Mr. Kolbe memorializing our telephone discussion.

7. I declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, March 20, 2019.



RYAN W. ROYLO

DAVID Y. IGE
GOVERNOR



CLARE E. CONNORS
ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
EDUCATION DIVISION
235 S. BERETANIA STREET, ROOM 304
HONOLULU, HAWAII 96813
(808) 586-1255

DANA O. VIOLA
FIRST DEPUTY ATTORNEY GENERAL

March 20, 2019

VIA U.S. MAIL & FACSIMILE (808-270-7152)

THOMAS KOLBE, ESQ.

Department of Corporation Counsel, County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

Re: In the Matter of the Petition of the Dept. of Planning, County of Maui;
Docket No. A11-794

Dear Mr. Kolbe:

This letter is in regard to the above-referenced matter and to confirm our telephone discussion.

Based upon our discussion and my representation that my client, the Department of Education, State of Hawaii (HIDOE), accepts that the State of Hawai'i Land Use Commission's (LUC) Findings of Fact, Conclusions of Law, Decision and Order adopted on July 29, 2013 (2013 Order) required that the construction of an overpass or underpass be completed prior to the opening of Phase I of Kihei High School, it is my understanding that the County of Maui has no objection to HIDOE's proposed continuance of the April 3, 2019 hearing in this matter.

If any of the preceding does not comport with your understanding, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ryan W. Roylo".

Ryan W. Roylo
Deputy Attorney General

cc: Dann Carlson, Assistant Superintendent (via email only)
Office of School Facilities and Support Services (via email only)
John Chung, Public Works Administrator (via email only)
Facilities Development Branch

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DOCKET NO. A11-794

CERTIFICATE OF SERVICE RE:
DEPARTMENT OF EDUCATION,
STATE OF HAWAI'I'S MOTION TO
CONTINUE HEARING AND DEFERAL
OF RULING ON PETITIONER
DEPARTMENT OF PLANNING,
COUNTY OF MAUI'S PETITION TO
ISSUE A DECLARATORY ORDER
FILED FEBRUARY 22, 2019

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a copy of DEPARTMENT OF EDUCATION,
STATE OF HAWAI'I'S MOTION TO CONTINUE HEARING AND DEFERAL OF
RULING ON PETITIONER DEPARTMENT OF PLANNING, COUNTY OF MAUI'S
PETITION TO ISSUE A DECLARATORY ORDER FILED FEBRUARY 22, 2019 was
duly served via U.S. mail the following at:

Patrick W. Wong, Esq., Acting Corporation Counsel
Thomas Kolbe, Esq.
Michael K. Hopper, Esq.
Deputies Corporation Counsel
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

Attorneys for Petitioner
DEPARTMENT OF PLANNING,
COUNTY OF MAUI

DATED: Honolulu, Hawai'i, March 20, 2019.

A handwritten signature in black ink, appearing to read "Holly T. Shikada", is written over a horizontal line. The signature is somewhat stylized and loops back to the left.

HOLLY T. SHIKADA
RYAN W. ROYLO
STUART N. EUJIOKA
MELISSA J. KOLONIE
Deputy Attorneys General
Attorney for Respondent
DEPARTMENT OF EDUCATION,
STATE OF HAWAI'I