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LAND USE COMMISSION
STATE OF HAWAII

2019 MAR 20 P 4:11

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Attorneys for Intervenor
State of Hawaii Department of Education

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

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

STATE OF HAWAI'I, DEPARTMENT OF
EDUCATION'S PETITION TO
INTERVENE; MEMORANDUM IN
SUPPORT OF PETITION;
DECLARATION OF RYAN W. ROYLO;
EXHIBIT A; CERTIFICATE OF SERVICE

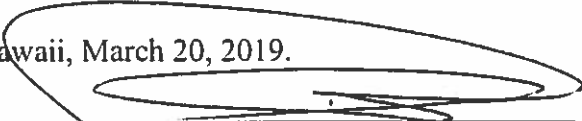
STATE OF HAWAI'I, DEPARTMENT OF EDUCATION'S
PETITION TO INTERVENE

In accordance with sections 15-15-92 and 15-15-93 of the Hawaii Administrative Rules (HAR), the State of Hawaii, Department of Education (HIDOE), by and through their counsel, hereby petitions to intervene in the above-captioned proceedings.

Petitioner Department of Planning, County of Maui (Petitioner) seeks a declaration clarifying or amending the border amendment obtained by HIDOE in Docket number A11-794 (Petition). Because HIDOE has an interest in the land subject to Petitioner's Petition, it is a necessary and proper party to this action and hereby requests that the State of Hawai'i, Land Use Commission (LUC) grant HIDOE's Petition to Intervene.

Under section 15-15-52(k), HAR, the denial of a petition to intervene must be appealed to the circuit court for the State of Hawaii under section 91-14, Hawaii Revised Statutes (HRS) which sets forth rights for judicial review of contested cases. A contested case is a proceeding in which legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing. H.R.S. §91-1(5).

DATED: Honolulu, Hawaii, March 20, 2019.



HOLLY T. SHIKADA
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DEPARTMENT OF PLANNING,
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MEMORANDUM IN SUPPORT OF PETITION TO INTERVENE

I. BACKGROUND

On December 20, 2011, HIDEOE 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 HIDEOE'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 DOT prior to opening Phase I of the Project.

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.

II. STANDARD FOR INTERVENTION

Section 15-15-52(c), HAR, states:

- (c) Persons who may intervene upon timely application include:
 - (1) All departments and agencies of the State and of the county in which the land is situated; and
 - (2) All persons who have a property interest in the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public.

Petitions for intervention must establish: 1) the nature of the petitioner's statutory or other right; 2) the nature and extent of the petitioner's interest in the matter; and, 3) effect of any decision in the proceeding on the petitioner's interest. See HAR §15-15-52(f).

III. FILING REQUIREMENTS FOR INTERVENTION

A. This Petition to Intervene is Timely

Section 15-15-53, HAR, which governs intervention in other than district boundary amendment proceedings, requires the filing of petitions to intervene and become a party at least 15 days from the date of the publication of the hearing notice.

Although HIDOE did not receive any the initial notices of hearing and does not know the date of publication, it is HIDOE's understanding that within the past 15 days, the hearing for this matter was scheduled for April 3, 2019. In addition, in a letter dated March 4, 2019, the Executive Officer of the LUC requested that HIDOE and others, present any filings of comments or other documents by March 20, 2019. *See* Exhibit A.

As such, by filing it's Petition to Intervene on or before March 20, 2019, HIDOE's petition must be considered timely.

B. HIDOE's Petition to Intervene is Appropriate

1. Nature of HIDOE's Right to Intervene

As previously mentioned, HIDOE has a right to intervene both under the applicable LUC Rules as well as by statute. See HAR §15-15-52(f); HRS §205-4(e)(3). Pursuant to Section 205-4(c)(3), HIDOE clearly has property interest in the land and there is no question it will be immediately and directly affected in this proceeding. Additionally, under Section 205-4(c)(4), "[l]eave to intervene shall be freely granted[.]" HIDOE submits it has standing to intervene.

2. Nature of HIDOE's Interest and Extent in the Matter

Since the Petition seeks reiteration and reaffirmation of the condition related to HIDOE's construction of a new school, HIDOE clearly has an interest in the land which is the subject of the Petition as well as in any decision affecting such land. Any decision by the LUC on the subject Petition will directly and immediately affect HIDOE and its accompanying obligations under the 2013 Order. As such, HIDOE is a proper intervenor and its request should be granted.

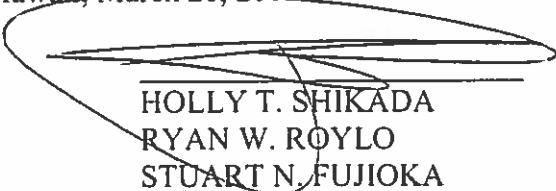
3. Effect of an LUC Decision on HIDEOE's Interest

HIDEOE would clearly be affected by any grant or denial of the Petition. As such, allowing HIDEOE to intervene will allow the LUC to receive meaningful input in the proceedings and aid the LUC in making its determination. This is especially true since the LUC is statutorily encouraged to freely allow intervention. See HRS § 205-4(c)(4). The granting of HIDEOE's petition to intervene is necessary to ensure that HIDEOE can participate in this proceeding.

IV. CONCLUSION

Based upon the preceding, because HIDEOE has an interest in the matter and LUC's decision will have a direct impact and effect on HIDEOE, HIDEOE respectfully requests that the LUC grant its Petition to Intervene.

DATE: Honolulu, Hawaii, March 20, 2019



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

Attorneys for Intervenor
State of Hawai'i, Department of Education

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DOCKET NO. DR19-65

DECLARATION OF RYAN W. ROYLO

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This Declaration is made under the penalty of perjury.

1. I am counsel for Proposed Intervenor DEPARTMENT OF EDUCATION, STATE OF HAWAI'I (HIDOE) in the above-entitled matter.
2. This Declaration is based upon my personal knowledge and I am competent to make such declaration.
3. Attached as Exhibit "A" is a true and correct copy of a letter from Daniel Orodenker, Executive Officer of the Land Use Commission dated March 4, 2019.
4. 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

JOSH B. GREEN
Lieutenant Governor

MICHAEL MCCARTNEY
Director



LAND USE COMMISSION
Department of Business, Economic Development & Tourism
State of Hawai'i

DANIEL ORODENKER
Executive Officer

BERT K. SARUWATARI
Planner

SCOTT A.K. DERRICKSON
Planner

RILEY K. HAKODA
Planner-Chief Clerk

FRED A. TALON
Drafting Technician

March 4, 2019

THOMAS KOLBE, ESQ.
Deputy Corporation Counsel- County of Maui
Department of the Corporation Counsel
200 S High St
Kalana O Maui Bldg
Wailuku, HI, 96793-2155

Dear Mr. Kolbe,

This follows up on a request by Maui County on any filing and response deadlines for DR19-65. Under the administrative rules governing our declaratory ruling process (HAR 15-15-98 and -99) the only automatic party is the petitioner for the declaratory ruling. Although the County identified DOE and DOT as potential interested parties; they are not automatic parties to the proceeding. Any other interested parties would need to officially notify the Commission and request party status.

The County served both OP (and their attorney) and the attorney for DOE at the time of the Petition (Mr. William Yuen). The LUC has since transmitted an electronic copy to the DOE upon learning that Mr. Yuen no longer represents DOE in this matter.

At this point, the only filing deadlines we are putting forward are to Maui County in the event that they determine any additional documents are necessary to supplement their current filing. That date would be Wednesday March 27, 2019.

To representatives at OP and DOE, we would appreciate any filings of comments or other documents to the Commission by Wednesday March 20, 2019. With copies served to Maui County.

Should you have any questions on the following please contact Riley Hakoda- Chief Clerk/Planner.

Sincerely,

Daniel Orodener
Executive Officer

CC: State Office of Planning- Dawn Takeuchi-Apuna
State Department of Education- Gaylyn Nakatsuka, Planner

EXHIBIT **A**

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DOCKET NO. DR19-65

CERTIFICATE OF SERVICE RE:
STATE OF HAWAI'I, DEPARTMENT
OF EDUCATION'S PETITION TO
INTERVENE


CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a copy of Respondent's Petition to Intervene 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.



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