

CLARE E. CONNORS 7936
Attorney General
State of Hawai'i

STUART N. FUJIOKA 4223
RYAN W. ROYLO 6329
HOLLY T. SHIKADA 4017
Deputy Attorneys General
235 S. Beretania Street, Room 304
Honolulu, Hawai'i 96813
Telephone: (808) 586-1255
Facsimile: (808) 586-1488

Email: Stuart.N.Fujioka@hawaii.gov
Ryan.W.Roylo@hawaii.gov
Melissa.J.Kolonie@hawaii.gov
Holly.T.Shikada@hawaii.gov

Attorneys for Petitioner
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 EDUCATION,
STATE OF HAWAI'I,

To Amend the Agricultural Land Use
District Boundaries into the Urban Land
Use District for Approximately 77.2 acres
of land at Kihei, Maui, Hawai'i, Maui Tax
Map Key Nos. 2-2-02: 81 and 83.

DOCKET NO. A11-794

PETITIONER DEPARTMENT OF
EDUCATION, STATE OF HAWAI'I'S
UPDATE REGARDING ITS MOTION TO
AMEND THE LAND USE COMMISSION'S
FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION AND ORDER FILED
JULY 29, 2013; EXHIBITS 10-18;
CERTIFICATE OF SERVICE

**PETITIONER DEPARTMENT OF EDUCATION, STATE OF HAWAII'S
UPDATE REGARDING ITS MOTION TO AMEND THE LAND USE
COMMISSION'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND
DECISION AND ORDER FILED JULY 29, 2013**

This report will serve to update the Land Use Commission (Commission) on the the Department of Education, State of Hawaii's (HIDOE) efforts to further address and resolve the issues raised in HIDOE's Motion to Amend the Land Use Commission's Findings of Fact, Conclusions of Law and Decision (FOF/COL) and Order Filed July 29, 2013 (Motion). As recommended by the Commission, HIDOE conducted a Webex conference with the Kihei Community Association (KCA) on October 27, 2020, to provide information regarding the construction (Project) of Kihei High School (School) and the proposed roundabout as well as to address KCA's concerns.

1. Updated Information

Prior to the meeting, HIDOE transmitted to representatives of KCA, the material attached hereto as Exhibits 10, 11 and 12. Representatives of KCA had questions about design and construction of the proposed School, which are outside the scope of the Motion. Representatives of HIDOE and representatives of KCA discussed the Motion, and unanimously agree that a roundabout is a viable, and perhaps the best and preferable available traffic safety and hazard mitigation measure. However, some representatives of KCA maintain that a Grade-Separated Pedestrian Crossing (GSPC) is also necessary to fully assure the safety of pedestrians who cross the highway for access to the School. It is HIDOE's hope that KCA is satisfied with a roundabout, at-grade raised crosswalks, HAWK traffic control system, and ongoing assessment of pedestrian safety measures to allow for the opening of the School upon the completion of Phase I of the Project;

however, KCA’s spokesperson stated that he wished to further discuss the matter with the entire membership of KCA.

To update the record, Peititioners submit the following exhibits in corroboration of testimony presented by its witnesses at the hearing on September 10, 2020.

- Exhibit 13 DOT’s “Pedestrian Underpass Analysis Process”
- Exhibit 14 As-built drawing of Kulanihakoi Bridge
- Exhibit 15 FEMA flood map for Kulanihakoi Gulch
- Exhibit 16 As-built drawing of Waipulani Bridge
- Exhibit 17 Roundabout drawing
- Exhibit 18 Speed survival rate chart

Petitioner also reports that it is not aware of any progress towards the establishment or funding of the recently-approved School Facilities Agency.

2. Clarification of Petitioner’s Position

HIDOE has emphasized that in accordance with current Commission and Maui County requirements, pedestrian safety measures must be in place *before* the School can be opened. As the FOF/COL is currently written, a GSPC is required to allow crossing of Piilani Highway for access to the School campus. Since HIDOE, in consultation with the Department of Transportation (DOT), has found that an overpass or underpass would be underused and cost-prohibitive, that the recommended underpass locations present safety and topographical barriers, and that KCA has long been in support of a roundabout in the area, HIDOE is proposing to install a roundabout with at-grade raised crosswalks and HAWK traffic control system in the area of the School prior to its opening. As set forth in the Motion, HIDOE proposes that thereafter, at its expense, it shall conduct an assessment and reevaluation of the necessity, appropriateness, and utility of a GSPC prior to the start of the construction of Phase II of the Project.

There is no timetable for the start of Phase II, since it can be built only after a substantial increase in the School's anticipated student enrollment. However, to ensure that pedestrian safety is regularly and timely assessed, HIDOE is not seeking any amendment to the part of the FOF/COL which requires updates of the original Traffic Impact Analysis Report (TIAR).

1. Highway and Road Improvements. Petitioner will work cooperatively with DOT to reach mutually agreeable solutions. Petitioner shall abide by, complete and/or submit the following:

a. ...Petitioner shall submit three updated TIARs for the Project: the first one full year after opening of Phase I of the Project, the second with DOT approval prior to the issuance of any certificate of occupancy for Phase II of the Project, and the third with DOT approval one full year after full build out of Phase II of the Project. Should there be delays over three years between preparation of the updated TIAR one full year after opening of Phase I and the scheduled issuance of the certificate of occupancy for Phase II or any potential later Phasing, Petitioner shall submit an additional updated TIAR at DOT's request. All requirements and criteria for the TIAR and updated TIARs shall be agreed and approved by DOT. All project generated traffic shall be mitigated at Petitioner's expense as recommended or required in any of the TIARs approved by DOT. Petitioner shall submit copies of all TIARs and TIAR updates to the State of Hawai'i DOT for review and approval, and to the County of Maui Department of Public Works for review and comment.

FOF/COL at p. 53.

As a result, if the School is opened with a roundabout, at-grade raised crosswalks, and HAWK traffic control system in place, the first update to the TIAR must be submitted within one year of said opening. This portion of the FOF/COL further requires that "all project generated traffic shall be mitigated at HIDOE's expense as recommended or required in any of the TIARs approved by DOT."

Then, prior to construction of Phase II, the necessity and feasibility of a GSPC must again be evaluated in accordance with HIDOE's current proposal, if its Motion is

granted. Under the language of the FOF/COL which remains in place, the TIAR must be updated again when Phase II is certified for occupancy. Yet another update to the TIAR is also required one year after build out of said Phase II.

Furthermore, under this condition, if more than three years should elapse between the first update (to be done one year after the school is opened), the DOT can request another update to the TIAR notwithstanding any construction, occupancy or planning as to Phase II.

3. Proposed Resolution

At the close of the October 27, 2020 Webex conference meeting with KCA, its representatives stated that they would discuss possible resolution of the pedestrian crossing issue with the rest of the KCA membership.

A summary of HIDOE's position is as follows.

- a. Before the opening of the School, a roundabout with raised at-grade crosswalks and HAWK traffic control system, is to be built on Piilani Highway in front of the location of the School. Although the School will initially open without an underpass or overpass, the need for and feasibility of a GSPC will be revisited at least four times, two of which must occur within three years of the School's opening.
- b. Per the FOF/COL, one year after the School opens, the TIAR will be updated.
- c. The FOF/COL will be amended to require that prior to the start of construction of Phase II, HIDOE must conduct an assessment and reevaluation of the necessity, appropriateness, and utility of a GSPC.

d. As required under the FOF/COL, prior to a certificate of occupancy for Phase II or three years after the completion of Phase I and opening of the School, whichever is earlier, the TIAR will again be updated.

e. If a certificate of occupancy for Phase II is issued after an update to the TIAR which was required due to the lapse of three years, another update to the TIAR will be conducted in accordance with the FOF/COL as currently written.

f. The TIAR will again be updated one full year after the full build out of Phase II.

g. In accordance with the FOF/COL, all Project generated traffic shall be mitigated at HIDOE's expense as recommended or required in any of the TIARs approved by DOT.

4. Current Status

HIDOE respectfully requests that the Commission grant its motion.

Dated: Honolulu, Hawai'i, November 2, 2020.

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

Attorneys for Petitioner
DEPARTMENT OF EDUCATION,
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DOCKET NO. A11-794

CERTIFICATE OF SERVICE

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I HEREBY CERTIFY THAT a copy of PETITIONER DEPARTMENT OF
EDUCATION, STATE OF HAWAII'S UPDATE REGARDING ITS MOTION TO
AMEND THE LAND USE COMMISSION'S FINDINGS OF FACT, CONCLUSIONS
OF LAW AND DECISION AND ORDER FILED JULY 29, 2013 was duly served via
Electronic Mail upon the following at:

MOANA LUTEY (Moana.Lutey@co.maui.hi.us)
Corporation Counsel
THOMAS KOLBE (Thomas.Kolbe@co.maui.hi.us)
MICHAEL K. HOPPER (Michael.Hopper@co.maui.hi.us)
Deputies Corporation Counsel
County of Maui
200 South High Street
Kalana O Maui Building, 3rd Floor
Wailuku, Maui, Hawai'i 96793

Attorneys for Respondent
DEPARTMENT OF PLANNING,
COUNTY OF MAUI

DAWN TAKEUCHI APUNA (Dawn.T.Apuna@hawaii.gov)
Deputy Attorney General
425 Queen Street
Honolulu, Hawai'i 96813

Attorney for Office of Planning

DATED: Honolulu, Hawai'i, November 2, 2020.

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

Attorneys for Petitioner
DEPARTMENT OF EDUCATION,
STATE OF HAWAI'I

Docket No. A11-794; In the Matter of the Petition of Department of Education, State of Hawai'i, before the Land Use Commission of the State of Hawai'i; PETITIONER DEPARTMENT OF EDUCATION, STATE OF HAWAII'S UPDATE REGARDING ITS MOTION TO AMEND THE LAND USE COMMISSION'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION AND ORDER FILED JULY 29, 2013; EXHIBITS 10-18; CERTIFICATE OF SERVICE