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BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A11-794
)	
STATE OF HAWAII, DEPARTMENT OF EDUCATION)	OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT'S RESPONSE TO PETITIONER'S REQUEST FOR THE ISSUANCE OF WRITTEN FINDINGS AS TO ITS AUGUST 20, 2020 MOTION TO AMEND THE LAND USE COMMISSION'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION AND ORDER FILED JULY 29, 2013; CERTIFICATE OF SERVICE
To Amend the Land Use District Boundary of Approximately 77.2 Acres of Land from the Agricultural District into the Urban District at Kihei, Maui, Hawaii, Tax Map Key (2) 2-2-002: 081 and 083.)	
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**OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT'S RESPONSE TO
PETITIONER'S REQUEST FOR THE ISSUANCE OF WRITTEN FINDINGS AS TO
ITS AUGUST 20, 2020 MOTION TO AMEND THE LAND USE COMMISSION'S
FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION AND ORDER FILED
JULY 29, 2013**

The Office of Planning and Sustainable Development ("OPSD") supports and recommends approval of the State of Hawaii, Department of Education's ("Petitioner") August 20, 2020 Motion to Amend the Findings of Fact, Conclusions of Law and Decision and Order filed July 29, 2013 ("Motion" and "D&O"). The Motion requests that the Land Use Commission ("Commission") amend Condition No. 1 (b) of the D&O¹ to allow, as recommended by the State of Hawaii Department of Transportation ("DOT"), the construction of a roundabout and ground-level crosswalks in place of a grade-separated pedestrian crossing ("GSPC").

¹ Condition 1(b): pedestrian route study and an above or below ground pedestrian crossing

Status of Petitioner's Motion

The Commission held hearings on Petitioner's Motion on September 27, 2020 and on November 4, 2020. Due to concerns raised by the Kihei community, the Commission requested that Petitioner engage the community and the County of Maui ("County") in discussions over the pedestrian crossing. To provide additional information and responses to questions posed by the Commission, Petitioner filed an Update Regarding Its Motion to Amend the Land Use Commission's Findings of Fact, Conclusions of Law and Decisions and Order Filed July 29, 2013 ("Update") on November 2, 2020 and a Response to Land Use Commission's Letter Dated November 10, 2020, With Respect to Petitioner's Motion to Amend the Land Use Commission's Findings of Fact, Conclusions of Law and Decision and Order Filed July 29, 2013 ("Response") on February 1, 2021.

On July 29, 2021, Petitioner filed a Request for the Issuance of Written Findings as to Its August 20, 2020 Motion to Amend the Land Use Commission's Findings of Fact, Conclusions of Law and Decision and Order Filed July 29, 2013 ("Request"). In Petitioner's Request, Petitioner provided an update on its discussions with the Kihei Community Association ("KCA") and the County. Petitioner stated that despite meetings and communications with DOT and KCA, an agreement could not be reached on the need for and feasibility of a GSPC. KCA and the County's position is that in addition to the proposed roundabout, a GSPC, specifically an underpass at Waipuilani Gulch ("Gulch"), should be constructed. DOT's position remains unchanged that it will not support construction of a GSPC for the reasons stated in its memorandum of August 5, 2020. Petitioner restated its position that Condition No. 1(b) – Highway and Road Improvements should be amended as follows:

b. Petitioner shall complete a pedestrian route study for Phase I of the Project which includes ingress and egress of pedestrians through defined location(s) approved by DOT and shall analyze compliance with the proposed warrants in FHWA/RD84/082 (July 1984) to the satisfaction of DOT. 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~~ Petitioner shall cause to be constructed a roundabout with at-grade pedestrian crossings and raised sidewalks as appropriate at the intersection of Piilani Highway and Kulanihako'i Street, 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. Petitioner shall conduct an assessment and reevaluation of the necessity, appropriateness, and utility of a grade-separated pedestrian crossing prior to the start of the construction of Phase II of the Project. Petitioner shall submit three updated pedestrian route studies and analyses 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 pedestrian route study one full year after opening 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 pedestrian route study at DOT's request. Petitioner shall implement such mitigation or improvements as may be required or recommended by the updated studies and analyses to the satisfaction of DOT. Petitioner shall submit copies of the studies and analyses 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.

OPSD's Assessment

As discussed in OPSD's Response filed on September 1, 2020, OPSD believes the DOT has provided compelling arguments for the installation of a roundabout in lieu of a GPSD. OPSD further believes that DOT has provided compelling arguments as to why KCA and the County's preference for construction of an underpass at the Gulch is not feasible.

In its memorandum of August 5, 2020, DOT notes the following:

1. Using the Gulch as an underpass is not recommended because the purpose of the gulch is to pass hydraulic flows, and not as a pedestrian crossing.
2. During heavy rains, the Gulch will be passing water, which will create a hazardous and unsafe condition for pedestrians using the Gulch as an underpass crossing.
3. Pedestrians will not use the underpass if the travel time using the underpass crossing takes 50% longer than the time to cross at-grade. The Gulch is 1,200 feet from the proposed Kihei High School entrance, while the at-grade pedestrian roundabout crossing is 130 feet from the entrance.

Further, DOT's Pedestrian Underpass Analysis Process attached as Exhibit 13 to Petitioner's Update notes the following:

1. The minimum elevation of an underpass crossing should be higher than the "water surface elevation" for a 100-year storm, which requires a Hydrologic Study and a Hydraulic Study to be completed to determine.
2. Constructing an underpass will decrease the waterway opening for the water flow to pass through, which may cause possible negative hydraulic impacts, such as flooding caused by the decreased waterway opening.
3. The clearance between the stream bed and bridge soffit for the Gulch is insufficient for the required bicycle and pedestrian vertical clearance and to pass a 100-year storm.

In a letter from Petitioner to the County dated February 23, 2021, attached to the Request as Exhibit 32, to which DOT concurred, the following comments from DOT are included:

1. The Gulch must provide hydraulic flow freeboard between the maximum water level in the event of a 100-year flood and the bottom of Pi'ilani Highway ("Highway"). The current space between the maximum water level and the bottom of the Highway is 2.5 to 3 feet. In order to construct an underpass with sufficient clearance, either the Highway would need to be raised or the Gulch would need to be widened to allow for sufficient hydraulic flow freeboard.
2. Underpasses pose a safety risk.
3. Underpasses can present problems with debris associated with flooding.

OPSD fully concurs with the DOT's assessment and justification. In light of DOT's determination that use of the Gulch as a GSPC is unsafe, unwarranted by traffic and pedestrian studies, and cost-prohibitive, construction of an underpass at the Gulch should not be required.

For these reasons, OPSD supports and recommends approval of Petitioner's Motion to amend Condition No. 1(b) to allow the construction of a roundabout with at-grade raised crosswalks in place of a GSPC.

DATED: Honolulu, Hawaii, August 16, 2021

Mary Alice Evans

MARY ALICE EVANS
Director
Office of Planning and Sustainable Development
State of Hawaii

Docket No. A11-794

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.

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DATED: Honolulu, Hawaii, August 16, 2021.

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