

DEPARTMENT OF PLANNING
 COUNTY OF MAUI
 One Main Plaza
 2200 Main Street, Suite 315
 Wailuku, Hawaii 96793
 Telephone: (808) 270-7735



**BEFORE THE LAND USE COMMISSION
 OF THE STATE OF HAWAII**

In the Matter of the Petition of:	)	Docket No. A11-794
)	
DEPARTMENT OF EDUCATION (DOE),	)	DEPARTMENT OF PLANNING, COUNTY
STATE OF HAWAII	)	OF MAUI'S SUPPLEMENT NO. 2 TO ITS
	)	POSITION STATEMENT ON
To Amend the Agricultural Land Use	)	DOE'S REQUEST FOR THE ISSUANCE OF
District Boundaries into the Urban Land Use	)	WRITTEN FINDINGS AS TO ITS AUGUST
District for Approximately 77.2 acres of land	)	20, 2020 MOTION TO AMEND THE LAND
at Kihei, Maui, Hawaii, Maui Tax Map Key	)	USE COMMISSION'S (LUC) FINDINGS OF
Nos. 2-2-002:081 and 083.	)	FACT, CONCLUSIONS OF LAW AND
_____	)	DECISION AND ORDER FILED JULY 29,
	)	2013

THE DEPARTMENT OF PLANNING, COUNTY OF MAUI'S SUPPLEMENT NO. 2 TO ITS POSITION STATEMENT ON DOE'S REQUEST FOR THE ISSUANCE OF WRITTEN FINDINGS AS TO ITS AUGUST 20, 2020 MOTION TO AMEND THE LUC'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION AND ORDER FILED JULY 29, 2013

To again further support the Position Statement of the Maui County Planning Department (Department) in support of the DOE's request for the issuance of written findings as to its Motion to Amend the State Land Use Commission's Finding of Fact, Conclusions of Law and Decision and Order filed July 29, 2013 (D&O), the Department is submitting more additional information to aid the Land Use Commission (LUC) in its consideration of the Petitioner's Request and Motion.

The LUC should be aware that, after it granted the D&O in 2013 to place the subject property in the State Urban District, the DOE obtained its County-level entitlements, namely a community plan amendment to Public/Quasi-Public and a change in zoning to the P-1 Public/Quasi-Public District. The change in zoning was granted by Ordinance No. 4135, which took effect on June 27, 2014 and established conditional zoning for the subject property (**Exhibit 1**). The conditions, which

were recorded against the property, include condition no. 3, which states:

That all of the conditions imposed by the State Land Use Commission in its Decision and Order filed July 29, 2013, granting the Land Use District Boundary Amendment for the property (Land Use Commission Docket A11-794), except for Conditions 16, 19, 20, 23, 24 and 25, shall be incorporated by reference herein and made a part hereof as conditions of zoning.

It is important to note that this condition does not refer to the D&O conditions “as they may be amended” – they refer to the conditions as they were originally adopted. Therefore, even if the LUC were to approve DOE’s Motion, the DOE would also need to seek an amendment to zoning condition no. 3 to relieve itself of the requirement to “cause to be constructed, or ensure that there is an available above or below ground pedestrian crossing...” per D&O condition no. 2b. To date, no such application to amend any zoning condition has been submitted.

The Department cannot support the removal of D&O condition no. 2b requiring a grade-separated pedestrian crossing (GSPC) as stated in prior Position Statements. The South Maui community has been clear and consistent in its position that a GSPC (an overpass or underpass) is needed before the school opens, regardless of what warrant studies may show. In defiance of the community’s position and the D&O and zoning conditions, DOE has proceeded with building the school with no plans to build a GSPC. DOE applied for building permits for Phase I in October 2018. At that time, the Department would not sign its approval to these building permits due to DOE’s failure to show compliance with zoning condition no. 3 and D&O condition no. 2b. After some dialog, the Department agreed to sign the building permits if DOE would commit, in writing, to building the GSPC; this compromise would allow construction of the school to proceed while the GSPC was also planned and built. By letter dated March 23, 2020, DOE stated the design of an overpass had started and provided a revised timeline that included the overpass being built by June 2023 (**Exhibit 2**). In response, the Department stated by letter dated April 3, 2020 that the overpass (or underpass) needed to be constructed by the time the school opens, which was targeted for

August 2022, and that the Department would withhold the issuance of Certificates of Occupancy (COs) until the GSPC is built (**Exhibit 3**). In response, DOE stated that it “is committed to the design and construction of the pedestrian overpass and will insure that it is ready for use when the high school opens for students” in a letter dated April 14, 2020 (**Exhibit 4**). In response, the Department signed five building permits for Buildings A, B, C, D and H (**Exhibit 5**). The Department reiterated its position to DOE about withholding COs in an email exchange with DOE on April 21, 2020 (**Exhibit 6**).

The Department is taking a firm position on this matter because it can foresee being placed in a no-win situation in the near future: DOE will complete constructing Phase I of the school and be ready to open to students in August 2022, except that the Department will not sign-off on the COs due to non-compliance with zoning condition no. 3 and D&O condition no. 2b (unless condition no. 2b is amended). The Department will be pressured to sign-off on the COs by DOE and families who want their kids to be able to attend the new Kihei High School, thus allowing the land use conditions to be violated; the Department will also be pressured to withhold sign-off by those in the community who want DOE to hold to its commitment and build a GSPC, which is also consistent with the Department’s duty to enforce land use conditions.

Foreseeing this likely scenario, in late 2020 and early 2021, the Department contacted DOE and the State Department of Transportation (DOT) to propose alternative language for D&O condition no. 2b, which would require DOE, DOT, the Department and the Kihei Community Association (KCA) to work together to determine the feasibility of an underpass at Waipuilani Gulch. The intent was for DOE and DOT to demonstrate to the Department and KCA that such an underpass was not feasible, or for the Department and KCA to demonstrate to DOE and DOT that such an underpass was feasible (**Exhibit 7**). After some initial feedback, DOE and DOT stopped responding.

The desire for the GSPC is based on concerns for the safety of future student pedestrians crossing Piilani Highway, a four-lane roadway that has been sufficiently established on the record to

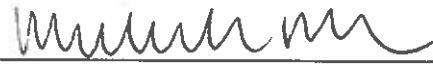
be prone to speeding with a record of traffic crashes resulting in fatalities. The Department notes that the majority of development in Kihei has occurred makai of Piilani Highway. The opening of Kihei High School will result in a significant change in the volume and ages of pedestrians attempting to cross the highway.

In the context of the concerns expressed by the community, DOE has not shown good faith or diligence in bringing a resolution to the GSPC issue, and should not be relieved of the requirement to construct one against the wishes of the members of the Kihei community who have repeatedly provided written and oral testimony to the LUC on this issue. The Department is of the opinion that the LUC should not be supportive of the requested amendments when the Petitioner has not established a record of diligence and good faith effort in pursuing compliance, and has not established the support, nor even the passive consent, of the community surrounding the Petition area.

There is a viable option, which would have come to light if the dialog documented in Exhibit 7 had borne fruit. Waipuilani Gulch, utilizing County and State property, is a practical and feasible option for an underpass. DOE should request rights-of-entry and easement agreements from the County for the use of its land containing portions of Waipuilani Gulch makai of Piilani Highway and from DOT for the use of its right-of-way beneath Piilani Highway. Maui County Mayor Michael P. Victorino is willing to grant such a right-of-entry and easement, or even a transfer of title, to DOE for it to design and build an underpass(es) that provides safe access for users from both sides of the gulch, separate from the narrow roadway, so that the gulch does not have to be crossed. DOE needs to make the request to Mayor Victorino, request DOT's cooperation, and ask for funding.

As mentioned in our previous Position Statements, the Department cannot support the removal of the D&O condition requiring a GSPC. However, the Department can support the DOE's Request for an Issuance of Written Findings by the LUC, and a resolution of the matter as soon as possible.

DATED: Wailuku, Hawaii, October 13, 2021.



MICHELE MCLEAN, AICP
Planning Director
Department of Planning

K:\WP_DOCS\Planning\A\2011\11-794_KiheihighSchool\Supplement2ToPositionStatement-Motion
to Amend.doc