

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

STUART N. FUJIOKA 4223  
RYAN W. ROYLO 6329  
MELISSA J. KOLONIE 10209  
CARTER K. SIU 7313  
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  
Carter.K.Siu@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  
RESPONSE TO 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 LAND USE COMMISSION'S  
(LUC) FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND DECISION  
AND ORDER FILED JULY 29, 2013;  
CERTIFICATE OF SERVICE



**PETITIONER DEPARTMENT OF EDUCATION, STATE OF HAWAII'S RESPONSE  
TO 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 LAND  
USE COMMISSION'S (LUC) FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DECISION AND ORDER FILED JULY 29, 2013**

Petitioner, through its attorneys above-named, hereby submits this response to the Department of Planning, County of Maui's (County) 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 Land Use Commission's (LUC) Findings of Fact, Conclusions of Law and Decision and Order Filed July 29, 2013 (County filing).

**PETITIONER RESPECTS COUNTY REQUIREMENTS**

Petitioner understands that even if the LUC grants the pending request to amend the LUC's Findings of Fact, Conclusions of Law and Decision and Order Filed July 29, 2013 (Order), it must either comply with, or seek amendment of the zoning conditions described in the County's filing. If successful before the LUC, Petitioner will seek the necessary approvals from the County.

As pointed out by the County, residents of South Maui have been clear and consistent in their position that a grade separated pedestrian crossing (GSPC), more specifically an underpass, is needed before the school opens, *regardless of what warrant studies may show*. The Order requires the construction of a GSPC, with approval by the Hawaii Department of Transportation (HDOT), prior to the opening of Kihei High School (School). Petitioner is seeking to build and open the School without a GSPC because a GSPC is currently not warranted by any of the studies obtained to date. In addition, since it is anticipated that when the School opens, it will only be serving approximately 167 students, the construction of a GSPC, intended to address high pedestrian traffic, is not feasible or warranted for the initial opening of Kihei High School.

## **TIMING OF THE ROUNDABOUT RECOMMENDATION**

In early 2020, as Petitioner was seeking to obtain permits from the County, Petitioner had the intention to construct an overpass. As set forth in Exhibit 2 to the County's filing, design work on the overpass had actually begun. This correspondence is almost contemporaneous with the proceedings which led to the LUC's April 25, 2019 Declaratory Order (DO) which confirmed that a GSPC was required to be constructed before Kihei High School could open (GSPC requirement).

While the County did sign off on the Building Permits attached as Exhibit 5 to its filing in exchange for Petitioner's written commitment to construct an overpass, there was no intent on the part of Petitioner to place the County into the "no-win" situation described on page 3 of the County filing. Subsequent to its letters and the permits, the Petitioner learned of HDOT's recommendation for the construction of a roundabout to address all traffic and pedestrian safety concerns in the area of the School. HDOT's recommendation in favor of the roundabout and against the GSPC led to the filing of the August 20, 2020 Motion to Amend the Order.

Petitioner was aware of the last correspondence in the email thread. (County filing, Exhibit 7). However, Petitioner and HDOT were not able to agree with the County's proposed resolution and, on February 23, 2021, responded to the County in writing. (See Petitioner's Request for Written Findings, Exhibit 32). Petitioner does not agree with the County's suggestion that Petitioner failed to show good faith or diligence in bringing a resolution to the GSPC issue. As set forth in previous filings, in addition to ongoing communication with the County, the Petitioner and HDOT have met with the Kihei Community Association and other members of the Community on October 27, 2020; January 12, 2021; and August 17, 2021. The Petitioner has also set-up a website with current updates on the construction of the School.

Ongoing monthly meetings are also being planned by the newly-appointed Principal. However, as pointed out by the County and borne out by the record, “The South Maui community has been clear and consistent in its position that a GSPC is needed before the school opens, regardless of what warrant studies may show.”

### **PETITIONER SEEKS RESOLUTION**

Petitioner has reservations about the feasibility of the GSPC option suggested at page 4 of the County’s filing. The suggestion requires the involvement of HDOT, which steadfastly opposes construction of a GSPC in the flood zone of Waipuilani Gulch. The County’s proposal does not address the grounds for HDOT’s disapproval of an underpass through the waterway, and Petitioner remains concerned that it cannot be implemented.

It should be noted that, even if the School were allowed to open for the 2022-2023 school year without the GSPC requirement, it would be for a projected 167 students which is far below the initial projection of 800. It must be further noted that the Petitioner would remain obligated to conduct traffic and pedestrian studies one year after opening of Phase I of the project, another before the issuance of a certificate of occupancy of Phase II, and a third one full year after full buildout of Phase II. In the event of delays longer than three years between the first and second studies, yet another one must be conducted. The current conditions already require that Petitioner “implement such mitigation or improvements as may be required or recommended by the updated studies and analyses to the satisfaction of DOT.”

### **CONCLUSION**

Petitioner respectfully requests that the LUC consider the foregoing in deciding the

Motion to Amend the Order and the Request for Written Findings.

DATED: Honolulu, Hawai'i, October 26, 2021.

/s/ Stuart N. Fujioka  
STUART N. FUJIOKA  
RYAN W. ROYLO  
MELISSA J. KOLONIE  
CARTER K. SIU  
Deputy Attorneys General

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

CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY THAT a copy of Petitioner Department of Education, State of Hawaii's Response to 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 Land Use Commission's (LUC) 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, 3<sup>rd</sup> Floor  
Wailuku, Maui, Hawai'i 96793

Attorneys for Respondent  
DEPARTMENT OF PLANNING, COUNTY OF MAUI

Bryan Yee (Bryan.C.Yee@hawaii.gov)  
Alison Kato (Alison.S.Kato@hawaii.gov)  
Deputy Attorney General  
425 Queen Street  
Honolulu, Hawai'i 96813

Attorneys for State Office of Planning and Sustainable Development

DATED: Honolulu, Hawai'i, October 26, 2021.

/s/ Stuart N. Fujioka  
STUART N. FUJIOKA  
RYAN W. ROYLO  
MELISSA J. KOLONIE  
CARTER K. SIU  
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 RESPONSE TO 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 LAND USE COMMISSION'S (LUC) FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION AND ORDER FILED JULY 29, 2013; CERTIFICATE OF SERVICE