



LAND USE COMMISSION

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
OFFICE OF PLANNING & SUSTAINABLE DEVELOPMENT

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September 28, 2022

To: Franz Kraintz, Acting Branch Chief
Community Planning Branch
Department of Planning and Permitting

From: Daniel Orodener
Executive Officer, State Land Use Commission

Subject: Waiawa Correctional Facility for State Special Use Permit (SUP)
Project Number: 2022/SUP-3

Aloha,

Land Use Commission ("LUC") staff has reviewed the Waiawa Correctional Facility ("WCF") Special Use Permit ("SUP") Application, and has the following comments:

On pages 60-63 of the Final Technical Report ("FTR") the Petitioner refers to Hawai'i Administrative Rule ("HAR") 15-15-95(c) and states that the WCF meets the LUC's guidelines. The Land Use Commission requests that during the Planning Commissions proceedings on this matter findings be made substantiating compliance with the guidelines stated in HAR 15-15-95(c) which read:

- (c) Certain "unusual and reasonable" uses within agricultural and rural districts other than those for which the district is classified may be permitted. The following guidelines are established in determining an "unusual and reasonable use":
- (1) The use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the commission;
 - (2) The proposed use would not adversely affect surrounding property;
 - (3) The proposed use would not unreasonably burden public agencies to provide roads and streets, sewers, water drainage and school improvements, and police and fire protection;
 - (4) Unusual conditions, trends, and needs have arisen since the district boundaries and rules were established; and
 - (5) The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

The FTR mentions the Architectural Reconnaissance Level Survey (“RLS”) that was submitted to the State Historic Preservation Division (“SHPD”) for review under Hawai‘i Revised Statutes (“HRS”) Chapter 6E-08. The Land Use Commission requests that during the Planning Commissions proceedings on this matter findings be made substantiating the compliance and representations made by the Petitioner pertaining to Chapter 6E.

According to *Ka Pa‘akai O Ka‘Aina v. Land Use Com'n, State of Hawai‘i*, the State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians to the extent feasible. Per *Kaua‘i Springs, Inc. v. Planning Com’n of the County of Kaua‘i* this includes County agencies. The Commission requests a discussion on why a *Ka Pa‘akai Analysis* is not included in the Petition, and requests that findings be provided to meet this obligation.

Throughout the FTR, the Petitioner addresses agricultural uses and productivity. The Commission requests that during the Planning Commissions proceedings on this matter findings be made substantiating the Petitioner’s statements regarding agricultural uses and productivity, including discussion of those areas identified as being in agricultural use.

There is no proposed time limit in the Final Technical Report. According to HAR 15-15-95(f) special permits are intended to operate under a time limit and be a temporary use. The Land Use Commission requests findings on why a Special Use Permit Petition was suggested and chosen over a District Boundary Amendment.

The Waiāhole Ditch System passes through the site and provides the WCF with raw water. The future availability of water from this system should be discussed and appropriate findings be made.

The Land Use Commission requests that during the Planning Commissions proceedings on this matter, findings be made ensuring that all acreage being used is included in the Petition, this includes access roads.

Sincerely,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Dan Orodener
Executive Officer
Land Use Commission