

September 15, 2016

To: Mr. Don Guzman, Chair EAR Committee

From: Hugh Starr

Re: EAR 63 CC 16-102  
**Right of Entry Issue**

Aloha Chair Guzman and EAR Committee Members:

I respectfully ask that your Committee defer any further action on EAR 63 until our North Shore communities have had meaningful opportunities to understand the many potential implications of this significant proposed TEACH Development at our historic Old Maui High Campus.

I've attached to this testimony **Attachment #19 of County Communication 16-102**. This August 5, 2016 correspondence from Maui County Corporation Counsel to Chair Guzman confirms that the State of Hawaii has authorized the County to permit TEACH to enter the Campus before the proposed Lease for the property is approved by the State Board of Land and Natural Resources.

This means that Maui County is able to provide TEACH access to the Campus immediately to commence it's due diligence. Therefore, there is NO requirement for the County to first execute the proposed Lease.

This is good news! TEACH may start it's inspections of the property immediately while our North Shore communities work to wrap their collective arms around the likely costs and benefits of this large private commercial real estate venture at Hamakuapoko.

I have also attached for your **reference Page 49 of Committee Report 16-137 (re-committed)**. This List indicates the extensive environmental, structural, and planning studies paid for by the County that are already available to TEACH for review...at no expense.

Thank you for your consideration of these comments.

Aloha,

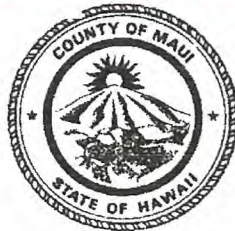
*Hugh Starr*

Hugh Starr  
Makawao

Attachment: County Communication 16-102, Attachment #19

RECEIVED AT EAR MEETING ON 11/15/16

ALAN M. ARAKAWA  
Mayor



PATRICK K. WONG  
Corporation Counsel

DEAN S. KUSHI  
Deputy

LYDIA A. TODA  
Risk Management Officer  
Tel No (808) 270-7535  
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Testifier Remarks:

This Memo confirms  
TEACH's right-of-entry  
to begin its due  
diligence inspections at  
the  
Old Maui High Site  
**BEFORE**  
the proposed Lease is  
signed

DEPARTMENT OF THE CORPORATION COUNSEL  
COUNTY OF MAUI  
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August 5, 2016

MEMORANDUM

TO: Don S. Guzman, Chair  
Economic Development, Energy, Agriculture, and Recreation Committee

FROM: Jerrie L. Sheppard, Deputy Corporation Counsel *JLSheppard*

SUBJECT: **AUTHORIZING GRANT OF A LEASE OF REAL PROPERTY TO TEACH DEVELOPMENT LLC (OLD MAUI HIGH SCHOOL CAMPUS) (EAR-63) (LF2014-3080)**

We respond to your request dated August 3, 2016, asking if the terms of the Executive Orders for the property being considered for a grant of a lease to TEACH Development LLC authorize a right-of-entry for due diligence purposes. Specifically, you asked:

1. **Does the Executive order authorize the County to grant a right-of-entry to TEACH Development LLC prior to the approval of the lease by the Board of Land and Natural Resources? If not, is there an expedited process for securing such a right-of-entry to give TEACH Development access to the property to conduct their initial 180-day inspection period?**
2. **Please determine whether the State agrees to provide the County with an administrative right-of-entry for due diligence purposes.**

Short answers:

1. Yes, the applicable Executive Orders and Section 171-11, Hawaii Revised Statutes, (HRS) authorize the County to grant a right-of-entry to TEACH Development LLC prior to the approval of a lease by the Board of Land and Natural Resources (BLNR). No additional process is necessary.
2. The State has indicated by telephone and email that they agree the County is authorized by the Executive Orders and Section 171-11, HRS, to issue a right-of-entry to TEACH Development LLC for due diligence purposes prior to approval of the lease by BLNR.

Discussion:

Executive Orders 4117 and 4343 set aside to the County the State's public lands situated at TMK (2) 2-5-004:014, consisting of approximately 22.158 acres, for social services, education, agriculture, and related support purposes. This property is the subject of one of the two leases being requested by TEACH Development LLC. (The other property requested for lease belongs to the County.)

Section 171-11, HRS, provides that lands set aside pursuant to such Executive Orders may be managed by the County to the same extent vested in the BLNR, including the issuance of leases, easements, licenses, revocable permits, concessions, or rights-of-entry covering such lands for use consistent with the purposes for which the lands were set aside.

By telephone and email, the Land Division, Department of Land and Natural Resources, confirmed that the County may issue a right-of-entry to TEACH Development, LLC, pursuant to Section 171-11, HRS, in order for TEACH to conduct due diligence inspections of the property while the requested lease is pending approval by BLNR.

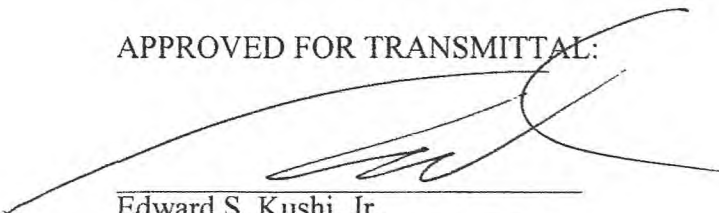
It is noted that the property here has Executive Orders in place, and is not equivalent to the Central Maui Regional Sports Complex, which required the State to authorize the County's entry by right-of-entry preceding a longer-term Memorandum of Agreement approved by BLNR.

Conclusion:

The County may issue a right-of-entry to TEACH Development, LLC, to perform due diligence in advance of approval by BLNR of a lease for the property set aside to the County by Executive Orders 4117 and 4343. It is recommended that such right-of-entry specifically authorize inspection of the premises and fixtures, including taking superficial soil samples, but expressly preclude any drilling, boring, trenching, or other disturbance of the sub-surface until a lease is approved by BLNR.

Please let me know if I can be of further assistance.

APPROVED FOR TRANSMITTAL:



Edward S. Kushi, Jr.  
First Deputy Corporation Counsel  
EAR-63 2016-08-05 Memo to Chair from CC

Copy to:  
Director, Office of Economic Development  
Mayor Alan M. Arakawa



**List of Studies Concerning the Old Maui High School Campus**Testifier Remarks:

These are Pre-existing Studies  
of the Environmental Conditions  
& Buildings at Old Maui High

<u>Title</u>	<u>Consultant</u>	<u>Date</u>
Phase I Environmental Site Assessment (prepared for University of Hawaii -- Manoa)	Clayton Group Services	10/28/02
Site Investigation Work Plan (prepared for FOMHS)	Bureau Veritas N.A.	02/13/07
External Draft -- Phase II Environmental Investigation (prepared for FOMHS)	Bureau Veritas N.A.	05/18/07
Phase II Environmental Investigation Report (prepared for FOMHS)	Bureau Veritas N.A.	06/05/07
Stabilization Plan for Old MHS Administration Bldg. (prepared for FOMHS)	Mason Architects Inc.	06/01/07
Underground Storage Tank Closure & Site Assessment Report (prepared for FOMHS)	Bureau Veritas N.A.	07/17/07
Old Maui High School Master Plan (prepared for FOMHS)	Chris Hart & Partners	12/17/07 09/08/08 (rev.)
Old Maui High School Infrastructure Short-Term Implementation Plan (prepared for FOMHS)	Chris Hart & Partners	10/24/08
Draft Environmental Assessment for Proposed Revitalization & Reuse of Old Maui High School	Chris Hart & Partners	08/01/09