LU Committee

From:	Tom Schnell <tschnell@pbrhawaii.com>
Sent:	Sunday, May 14, 2017 5:14 AM
To:	LU Committee
Cc:	'jeffrey.ueoka@co.maui.hi.us'; 'carol.reimann@co.maui.hi.us'; 'buddy.almeida@co.maui.hi.us'; Gary Saldana; Carla Nakata; 'gregbrown@bdmaui.com'; Thomas Welch
Subject:	Makila Kai follow up items
Attachments:	State DOT comments & PBR response emails 1-24-17.pdf; DOT email regarding ByPass Construction 4-24-17.pdf; Makila Kai ECA final & executed.pdf

Councilmember Carrol and All,

In follow up to our meeting on Wednesday, May 10, attached are:

- State DOT emails regarding Makilai Kai:
  - In an email dated Jan 24, 2017, Russell Iwasa from DOT stated: "I think our concern about Lahaina By-Pass and this development seem to be addressed."
  - Emails dated April 24, 2017 folks from State DOT and Federal Highway Administration regarding the By-Pass: "Physical on-site construction began mid-February 2017 and current completion is scheduled on January 1, 2018"
- State DOE Education Contribution Agreement: executed agreement between DOE and Makila Kai LLC agreeing that Makila Kai LLC will pay a school impact fee of $5,778.00 per unit. This includes both market and workforce homes. The total contribution will be $283,122.00

Selana Pang, from PBR Hawaii will be sending a pdf of out PowerPoint presentation to all on this list on Monday morning.

Please let me know if you have any additional questions or would like any additional information.

Tom Schnell, AICP
Principal

PBR HAWAII
Land Planning | Landscape Architecture
Environmental Planning | Land Use Entitlements
1001 Bishop Street Suite 650
Honolulu, HI 96813
Phone: 808-521-5631
Fax: 808-523-1402
www.pbrhawaii.com

From: Iwasa, Russell <russell.iwasa@hawaii.gov>
Sent: Tuesday, January 24, 2017 10:54 AM
To: Tom Schnell
Cc: Greg Brown; Thomas Welch; Tatsuguchi, Ken
Subject: 2016-233 Makila Kai Development, 201H Application RE: Lahaina Bypass & Makila Kai

Tom,

Thank you for the email below. It helps explain and reassure that the Makila Kai development will be compatible or made compatible with the By-Pass needs and plans.

The only thing I would add at this point is that there will likely have to be an adjustment in plans for a pedestrian walkway along Punakea Street where it approaches and crosses under the By-Pass. The mauka-makai trail path, along the southern boundary, might have to be modified since HDOT would rather not have pedestrians casually able to enter its ROW along an arterial roadway, but that can be discussed and worked out.

I think our concern about Lahaina By-Pass and this development seem to be addressed.

Thanks,
Russell Iwasa

From: Tom Schnell [mailto:tschnell@pbrhawaii.com]
Sent: Monday, January 23, 2017 6:58 PM
To: Iwasa, Russell <russell.iwasa@hawaii.gov>
Cc: Greg Brown <gregbrown@bdmaui.com>; Thomas Welch <twelch@mrwlaw.com>
Subject: Lahaina Bypass & Makila Kai

Russell,

Thank you for taking time to talk this afternoon about the Makila Kai 201H application and concerns that DOT may have about acquiring the right-of-way for the bypass. I mentioned the concerns you expressed to landowner Greg Brown (copied on this email) and his attorney Tom Welch (also copied).

Tom Welch has been working with DOT regarding the ROW acquisition and let me know:

- Greg (i.e. Makila Kai LLC) and other landowners in the area have deeded all of their bypass parcels to Makila Ranches Inc., (their separation from larger parcels having been accomplished merely by deeding, following DOT finalizing its "layout".... since under state law governing highway dedication the deeding of officially laid-out highway corridors is exempt from County subdivision rules);
- Makila Ranches Inc. has, with DOT agreement, recorded its unconditional obligation to dedicate all bypass corridors gratis. Therefore:
    - Greg (i.e. Makila Kai LLC) doesn't own any bypass parcels today,
    - Makila Ranches Inc. is legally obligated to convey the parcels to DOT when DOT is ready to accept title.
    - At this point Tom Welch and the other landowners he represents agreed with the AG on the form of deed and are removing encumbrances to satisfy the AG. DOT has signed Hawaiian Dredging to a construction contract and Maikila Ranches Inc. has given DOT a right of entry to start construction.

Tom Welch has been working closely with Marjorie Lau at the A.G.'s office, and Tom says that Marjorie is satisfied with everything. Tom does not think that the Makila Kai project should posse any issues for DOT, and suggests that DOT call Marjorie if there are any concerns. You can also contact me and Tom Welch and we will get back to you ASAP.

Regarding any concerns that DOT may have about any existing and proposed drainage retention basins, Greg (i.e. Makila Kai LLC) is willing to work with DOT to address any concerns, including adjusting locations of basins or working together so that the new basins can accept drainage from both the bypass and the Makila Kai project.

Regarding Makila Kai application, it does mention the DOT acquisition. See page 5 of the application where it states:

"The Makila Kai Property is located in the Launiupoko area of West Maui, mauka of Honoapi'ilani Highway and the proposed Lahaina Bypass Highway (Figure 1 and Figure 2). The Property totals approximately 79.5 acres identified Tax Map Key (TMK) parcels: (2) 4-7-013:003, 004, and 005 (Figure 3). The State of Hawaii Department of Transportation (DOT) has proposed acquiring approximately 3.6 acres of the Property as part the right-of-way area for the Lahaina Bypass Highway; however as of October 2016, DOT has not acquired this area." (the last sentence is in a footnote on page 5 of the application).

In the final application we can add update this and provide additional language to make the DOT acquisition more clear and prevalent.

Also note that Figure 9 of the application (which is the Conceptual Master Plan) does note the Lahaina Bypass Higway ROW boundary. If DOT thinks it necessary we can better feature this on the Conceptual Master Plan.

As I stated when we talked, Greg (i.e. Makila Kai LLC) does not intend to do anything that would slow down or jeopardize the Bypass. The bypass will be an asset to the project. I'm sure that we can address DOT's concerns.

Please let me know if you have any questions and I can get back to you ASAP.

Tom Schnell, AICP
Principal

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Tom Schnell

From: Cheryl Soon <csoon@ssfm.com>
Sent: Monday, April 24, 2017 12:55 PM
To: Tom Schnell
Subject: FW: Lahaina Bypass 1B-2 status

Here is the latest official response.

Cheryl

From: Cheryl Soon
Sent: Monday, April 24, 2017 12:55 PM
To: 'Chris Offe' <Offe@rocksol.com>; Smith, Donald L <donald.l.smith@hawaii.gov>; Tam, Timothy (FHWA) <timothy.tam@dot.gov>
Cc: Tom, Patrick <patrick.tom@hawaii.gov>; Juanita Wolfgramm <jwolfgramm@ssfm.com>
Subject: RE: Lahaina Bypass 1B-2 status

Thank you very very much for this quick response.

Cheryl

From: Chris Offe [mailto:Offe@rocksol.com]
Sent: Monday, April 24, 2017 12:00 PM
To: Smith, Donald L <donald.l.smith@hawaii.gov>; Tam, Timothy (FHWA) <timothy.tam@dot.gov>
Cc: Tom, Patrick <patrick.tom@hawaii.gov>; Juanita Wolfgramm <jwolfgramm@ssfm.com>; Cheryl Soon <csoon@ssfm.com>
Subject: RE: Lahaina Bypass 1B-2 status

Cheryl,

The project has started and is being delivered by a Design-Build procurement method. The NTP was issued on 6/29/2016 which the D-B team initiated design process. Physical on-site construction began mid-February 2017 and current completion is scheduled on January 1, 2018.

You can view updates and project progress on the Contractor's project web site at:

http://www.lahainabypass1b-2.com/

If there any further questions or if I can be of assistance, feel free to reach out to me.

Thanks,

Chris A. Offe, Assoc. DBIA
Senior Construction Manager
Contracting Officer's Technical Advisor
HI STP SR 30(1) Lahaina Bypass 1B-2 Design-Build Project
Federal Highway Administration
Central Federal Lands Highway Division

30 Kai Ani Lane
#13-102
Kihei, HI 96753

Cell 702.241.6109
Email offe@rocksol.com

From: Smith, Donald L [mailto:donald.l.smith@hawaii.gov]
Sent: Monday, April 24, 2017 11:53 AM
To: Chris Offe <Offe@rocksol.com>; Tam, Timothy (FHWA) <timothy.tam@dot.gov>
Cc: Tom, Patrick <patrick.tom@hawaii.gov>; Juanita Wolfgramm <jwolfgramm@ssfm.com>; Cheryl Soon <csoon@ssfm.com>
Subject: RE: Lahaina Bypass 1B-2 status

Good Morning Chris / Tim,
Can you please help with the request below.
Thanks

Donald L. Smith, P.E.
Acting District Engineer
HDOT, Highways Division, Maui District
650 Palapala Drive
Kahului, HI 96732
Phone (808)873-3535

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From: Cheryl Soon [mailto:csoon@ssfm.com]
Sent: Monday, April 24, 2017 11:48 AM
To: Smith, Donald L <donald.l.smith@hawaii.gov>
Cc: Tom, Patrick <patrick.tom@hawaii.gov>; Juanita Wolfgramm <jwolfgramm@ssfm.com>
Subject: RE: Lahaina Bypass 1B-2 status

Aloha Donald,

We are requesting the latest information about the anticipated start and completion of Phase 1B-2 for Lahaina Bypass. It is our understanding that the contract was awarded to Hawaiian Dredging Construction Company as a design-build contract.
We are using this information on behalf of a client who is proposing a nearby 201H affordable housing project called Makila Kai.

Mahalo for your assistance,

Cheryl D. Soon

Cheryl D. Soon, Ph.D. , FAICP | Transportation Practice Leader

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EDUCATIONAL CONTRIBUTION AGREEMENT FOR
MAKILA KAI

THIS INDENTURE, made this 30th day of March, 2017, by and between MAKILA KAI LLC, whose mailing address is P. O. Box 1060, Lahaina, Hawaii 96761, and the State of Hawai`i DEPARTMENT OF EDUCATION (hereinafter referred to as "DOE") whose mailing address is Department of Education, Facilities Development Branch, 3633 Waialae Avenue, Honolulu, Hawai`i 96816.

WHEREAS, MAKILA KAI LLC is the developer and recorded fee simple owner of that certain parcel of land comprised of 79.5 acres and identified as Tax Map Key parcels (2) 4-7-013:003, 004 and 005, also known as "Makila Kai";

WHEREAS, Makila Kai is anticipated to contain a total of forty nine (49) residential units in the entire project;

WHEREAS, pursuant to Hawai`i Revised Statutes ("HRS") Chapter 302A-1601 to 1612, DOE is authorized to collect impact fees from all new residential developments in designated areas and to enter into education contribution agreements to satisfy its requirements;

WHEREAS, pursuant to HRS Chapter 302A-1601, said impact fee obligation is comprised of two components, land and construction cost;

WHEREAS, for the land component, pursuant to HRS Chapter 302A-1606 (c), DOE has exclusive authority to determine whether the obligation shall be satisfied by actual acreage or fees in lieu thereof;

WHEREAS, the amount for the construction cost component shall be determined pursuant to HRS Chapter 302A-1607;

WHEREAS, MAKILA KAI LLC and DOE have mutually agreed that the educational contribution set forth in this Agreement will satisfy all DOE requirements for Makila Kai, based on a maximum of forty nine (49) net residential units, less any units that prohibit school age children;

NOW THEREFORE, MAKILA KAI LLC and DOE agree as follows:

1. MAKILA KAI LLC's Land and Construction Cost Contribution.

   MAKILA KAI LLC shall contribute $5,778.00 per unit, for a total of Two Hundred Eighty Three Thousand One Hundred and Twenty Two Dollars ($ 283,122.00.) to DOE.

a. The Cash Contribution shall be made payable to "State of Hawai`i, Department of Education" in accordance with the following:

As each of the forty nine (49) units are sold and closed, the escrow agent administering the sale of said unit shall remit $5,778.00 directly to DOE by check sent to its address set forth above or by wire transfer or other payment method that DOE may instruct.

b. The amount of the fee shall be adjusted from the effective date of this Agreement to the date it is paid, so that it is always equal to the West Maui District Impact Fee that is in effect at the time of payment.

2. This Agreement shall be binding upon MAKILA KAI LLC, or its successor in interest.

3. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.

4. This Agreement may be executed in counterparts. Each counterpart shall be executed by one or more of the parties to this instrument and the several counterparts shall constitute one instrument to the same effect as though the signature of all the parties were upon the same instrument. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one instrument.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement the day and year first above written.

DEPARTMENT OF EDUCATION

By _____ Date: APR 17 2017
Kathryn S. Matayoshi, Superintendent

MAKILA KAI LLC

By _____ Date: 3-30-17
Greg Brown
Its Sole Member

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

The attached document:
Educational Contribution Agreement for Makila Kai,
dated March 30, 2017, which consist of 4 page(s), was subscribed and sworn to me by Kathryn S. Matayoshi on this 17th day of April, 2017, in the First Circuit of the State of Hawaii by Iris C. Nakamatsu.

Iris C. Nakamatsu
[Notary Signature]

Printed Name: Iris C. Nakamatsu

My commission expires: 11-15-2019

IRIS C. NAKAMATSU NOTARY PUBLIC 15-401 STATE OF HAWAII

Doc. Date: 3-30-17 # Pages: 4
Name: Iris C. Nakamatsu 1st Circuit
Doc. Description: Educational Contribution Agreement for Makila Kai
Iris C. Nakamatsu 4-17-17
Notary Signature Date
NOTARY CERTIFICATION

IRIS C. NAKAMATSU NOTARY PUBLIC 15-401 STATE OF HAWAII

STATE OF HAWAII)
) ss.
COUNTY OF MAUI)

The attached document:
Educational Contribution Agreement For Makila Kai,
dated 3/30/17, which consist of 3 page(s), was subscribed and sworn to me by Greg Brown on this 30th day of March, 2017, in the Second Circuit of the State of Hawaii by Kosei Nagata.

[Notary Signature]

Printed Name: Kosei Nagata

My commission expires: 12/6/19

KOSEI NAGATA NOTARY PUBLIC Comm. No. 15-419 STATE OF HAWAII

ACKNOWLEDGMENT

STATE OF Hawai'i

COUNTY OF Maui

On 3/30/17 (DATE) before me, Kosei Nagata (Name of Notary Public), A Notary Public, Personally Appeared

Greg Brown

NAME(S) OF SIGNERS

____ personally known to me -or- X proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

KOSEI NAGATA
NOTARY PUBLIC
Comm. No. 15-419
STATE OF HAWAII

NOTARY SEAL

WITNESS my hand and official seal.

SIGNATURE OF NOTARY

MY COMMISSION EXPIRES ON: 12/6/19

NOTARY CERTIFICATION

Date of Document 3/30/17 # pages 3

Name: Kosei Nagata 2nd Circuit

Doc Description: Educational Contribution Agreement for Makila Kai

Notary Signature

(stamp or seal)

KOSEI NAGATA
NOTARY PUBLIC
Comm. No. 15-419
STATE OF HAWAII