

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET, 3RD FLOOR
WAILUKU, MAUI, HAWAII 96793
EMAIL: CORPCOUN@MAUICOUNTY.GOV
TELEPHONE: (808) 270-7740
FACSIMILE: (808) 270-7152

August 5, 2016

MEMORANDUM

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

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

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.

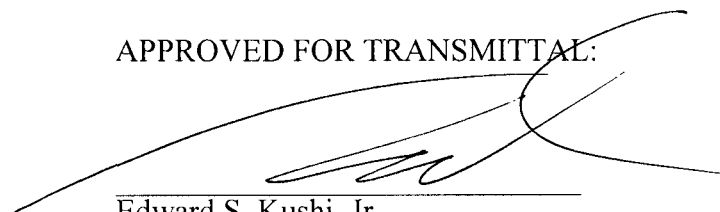
It is noted that the property here has Executive Orders in place, and is not equivalent to the Central Maui Regional Sports Complex, which required the State to authorize the County's entry by right-of-entry preceding a longer-term Memorandum of Agreement approved by BLNR.

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