



DAVID Y. IGE
Governor

DANIEL E. ORODENKER
Executive Officer

MIKE MCCARTNEY
Director

LAND USE COMMISSION
Department of Business, Economic Development & Tourism
State of Hawai'i

December 2, 2019

Benjamin M. Matsubara, Esq.
Curtis T. Tabata, Esq.
Matsubara, Kotake & Tabata
888 Mililani Street, Suite 308
Honolulu, Hawai'i 96813

Brad T. Saito, Esq.
Molly A. Stebbins, Esq.
Office of the Corporation Counsel
City and County of Honolulu
530 South King Street, Room 110
Honolulu, Hawai'i 96813

Ms. Lori Kahikina, P.E., Director
Department of Environmental Services
City and County of Honolulu
1000 Uluohia Street, Suite 308
Kapolei, Hawai'i 96707

Dear Messrs. Matsubara, Tabata, and Saito and Meses. Stebbins and Kahikina:

Subject: Docket No. A19-808/City and County of Honolulu, Department of
Environmental Services
Docket No. A88-627/Gentry Development Company

This is to acknowledge receipt of the following documents from the City and County
of Honolulu, Department of Environmental Services ("Petitioner"), filed on
November 6, 2019:

- 1) Petition for Land Use District Boundary Amendment ("Petition") and
Volume 2 of 2 of the Petition;
- 2) Verification;
- 3) Exhibits "1" through "7";
- 4) Affidavit of Service of Petition for Land Use District Boundary
Amendment ("Affidavit of Service");
- 5) Affidavit of Sending of Notification of Petition Filing ("Affidavit of
Sending of Notification");
- 6) Certificate of Service;

Benjamin M. Matsubara, Esq.
Curtis T. Tabata, Esq.
Brad T. Saito, Esq.
Molly A. Stebbins, Esq.
Ms. Lori Kahikina, P.E., Director
December 2, 2019
Page 2

- 7) Petitioner's Motion for Order Amending the Findings of Fact, Conclusions of Law, and Decision and Order Filed May 8, 1989 ("Motion for Order Amending D&O"); and
- 8) Certificate of Service.

We further acknowledge receipt of the Notices of Appearance of Counsel (Brad T. Saito and Molly A. Stebbins) and Certificates of Service for Docket Nos. A19-808 and A88-627 filed on November 18, 2019.

We have reviewed the above documents and have the following comments:

- 1) In accordance with Hawai'i Administrative Rules ("HAR") § 15-15-48, the Petitioner shall serve copies of the Petition to all persons with a property interest in the subject property (i.e., Petition Area) as recorded in the county's real property tax records at the time the Petition is filed. According to the parcel history sheets, Hawaiian Telcom, Inc., was granted a non-exclusive perpetual easement over, across, and through Tax Map Key (1) 9-1-069: 003. Hawaiian Electric Company, Inc., also appears to have been granted a perpetual right and easement necessary for the transmission and distribution of electricity over, under, upon, across, and through the parcel. Additionally, we note that the Petition identifies IES Downstream, LLC, as holding an easement on the Petition Area.

None of these entities, however, are listed on the Certificate of Service as having been served with a copy of the Petition. These easement holders as well as any other persons having a property interest in the Petition Area should be served with a copy of the Petition and the Certificate of Service should be amended accordingly. The Affidavit of Service should be similarly amended and refiled.

- 2) In accordance with HAR § 15-15-50(c)(3), if the Petition Area is a portion of one or more lots, a metes and bounds map and description prepared by a registered professional land survey is required. We acknowledge the Petition includes a metes and bounds map and

Benjamin M. Matsubara, Esq.
Curtis T. Tabata, Esq.
Brad T. Saito, Esq.
Molly A. Stebbins, Esq.
Ms. Lori Kahikina, P.E., Director
December 2, 2019
Page 3

description of the Petition Area. We request that a full-size metes and bounds map be provided. A full-size copy of the tax map with the Petition Area delineated should also be provided. Relatedly, to the extent that Petitioner's Motion for Order Amending D&O seeks to bifurcate the urbanized 23.3-acre portion of the Honouliuli Wastewater Treatment Plant ("HWWTP") site from Docket No. A88-627, we also request that a full-size metes and bounds map of said area prepared by a registered professional land surveyor be provided.

- 3) In accordance with HAR § 15-15-50(c)(4), an assessment of conformity of the boundary amendment to the standards for determining the requested district boundary amendment is required. While the Petition includes a description of the project to meet this requirement (p. 8, paragraph 10), it does not include a detailed assessment to each of the eight standards for determining the urban district boundaries identified in HAR § 15-15-18.
- 4) In accordance with HAR § 15-15-50(c)(10), a description of the subject property including the use of the property over the past two years is required. We confirm that the Land Use Commission ("LUC") approved a special use permit on the Petition Area for the expansion of the HWWTP by Findings of Fact, Conclusions of Law, and Decision and Order filed December 8, 2017, subject to 11 conditions. We request that an assessment of compliance with these 11 conditions be provided in the appropriate section of the Petition.
- 5) In accordance with HAR § 15-15-50(c)(11), an assessment of the impacts of the proposed use upon the environment, agriculture, recreational, cultural, historic, scenic, flora and fauna, groundwater, or other resources of the area is required. While we acknowledge that the Final Environmental Impact Statement ("FEIS") addressed these impacts, the project area of the FEIS included both the then existing HWWTP site and the newly acquired land adjacent to the HWWTP to the north and east. To the extent that the Petition Area constitutes only a portion of the current HWWTP site, please ensure that the

Benjamin M. Matsubara, Esq.
Curtis T. Tabata, Esq.
Brad T. Saito, Esq.
Molly A. Stebbins, Esq.
Ms. Lori Kahikina, P.E., Director
December 2, 2019
Page 4

assessment of these impacts is specific to the uses solely on the Petition Area.

- 6) In accordance with HAR § 15-15-50(c)(12), an assessment of the availability or adequacy of public services and facilities such as schools, parks, wastewater systems, solid waste disposal, drainage, water, transportation systems, public utilities, civil defense, emergency medical services, and medical facilities and to what extent any public agency would be impacted by the proposed use is required. As noted in paragraph 5 above, the assessment should be specific to the uses solely on the Petition Area.
- 7) In accordance with HAR § 15-15-50(c)(14), the economic impacts of the proposed use should be provided. As noted in paragraphs 5 and 6 above, please ensure that the assessment of these impacts is specific to the uses solely on the Petition Area.
- 8) In accordance with HAR §§ 15-15-50(c)(24) and (25), a statement and analysis pursuant to Hawai'i Revised Statutes ("HRS") § 226-109, addressing climate change related threats to the proposed development and proposed mitigation measures and the proposed development's adherence to sustainability principles and priority guidelines and climate change issues as contained in HRS §226-108, the Hawai'i State Plan, and smart growth principles, respectively, is required. We acknowledge that such a statement and analysis has been prepared as Exhibit "7" and is "...based on the Land Use Commission's draft amended rules, §15-15-50(24) and (25)." Please be advised that the aforementioned rules were since signed by the Governor and became effective on October 18, 2019.
- 9) In accordance with HAR § 15-15-50(d), the required notification of petition filing shall include, among other things, a location map depicting the Petition Area. We note that the map included on the notification of petition filing appears to include the entire property encompassing the HWWTP site. As just a portion of the property is

Benjamin M. Matsubara, Esq.
Curtis T. Tabata, Esq.
Brad T. Saito, Esq.
Molly A. Stebbins, Esq.
Ms. Lori Kahikina, P.E., Director
December 2, 2019
Page 5

proposed to be reclassified, the map should be revised to delineate the Petition Area only and resent to the persons included on the mailing lists to avoid confusion. With this change, the Affidavit of Sending of Notification should be amended accordingly and refiled.

Finally, please be advised that in the event a notice of intent to intervene is filed with the LUC pursuant to HAR § 15-15-52(b), the Petition should be served upon the potential intervenor and an affidavit of Petitioner or its agent attesting to its compliance with HAR § 15-15-48(b) should be filed.

Until such time that the above matters are addressed, the Petition is not deemed a proper filing and is not accepted for processing, pursuant to HAR § 15-15-50(f).

We have no further comments to offer at this time. Your attention to these matters is requested.

Please feel free to contact Bert Saruwatari of our office at 587-3822 should you require clarification or any further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Daniel E. Orodanker', with a long horizontal line extending to the right.

DANIEL E. ORODENKER
Executive Officer

c: Office of Planning
City and County of Honolulu Department of Planning and Permitting