



STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
LAND USE COMMISSION

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Telephone: 808-587-3822
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December 19, 2001

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Pacific Tower, 18th Floor
1001 Bishop Street
Honolulu, Hawaii 96813

Dear Ms. Asai-Sato and Messrs. Noborikawa and Lee:

Subject: LUC Docket No. A01-735/Gensiro Kawamoto

We have reviewed the Petition For District Boundary Amendment (Petition) submitted on November 29, 2001, and find that your submittal does not meet the requirements described in Hawaii Administrative Rules (HAR) §15-15-50(f) for a properly filed petition. Therefore, your petition is deemed defective and processing by the State Land Use Commission will not begin. Your petition may be deemed as a proper filing upon review of any additional information, which you submit, and my determination. Eighteen (18) specific reasons for my determination are included herein for your information and consideration. These reasons include:

- 1) Pursuant to §15-15-39, HAR, the Petition should be verified by at least one of the persons or officers of the party filing the same. The attorney for a party may sign and verify the Petition if the party is absent, or for some cause unable to sign and verify the Petition.
- 2) Pursuant to §15-15-48, HAR, all persons with a property interest in the subject property as recorded in the County of Maui real property tax records at the time the Petition is filed must be served with a copy of the Petition. We note

Carol Y. Asai-Sato, Esq.
Bruce S. Noborikawa, Esq.
Herman W.H. Lee, Esq.
December 19, 2001
Page 2

that the tax map (Exhibit 3) and Exhibit "A" to the Deed reference certain easements relative to the subject property. If these easement grantees have a property interest in the subject property, they should be served with a copy of the Petition. A revised affidavit of the petitioner or his agent attesting to compliance with §15-15-48, HAR, should be prepared and included with the Petition.

- 3) Pursuant to 15-15-49, HAR, the Petition should be accompanied by an application fee by cashier's check for \$500 made payable to the State of Hawaii. We are returning your firm's \$500 check submitted with the Petition as it does not meet this requirement.
- 4) Pursuant to §15-15-50(c)(3), HAR, a current tax map that identifies the subject property should be provided. We note that Exhibit 3 is a reduced version of the relevant tax map. A full size copy of this map should be provided. Based on the representation of the subject property on Exhibit 3 and as confirmed by Mr. Herman Lee, it appears that the intent of the Petition is to include all of TMK No: 2-2-02:2, and not just a portion of said parcel. According to the County of Maui Real Property Tax Assessment Division, TMK No: 2-2-02:2 consists of 146.274 acres, and not 147.561 acres as stated in the Petition. It is our understanding that 1.287 acres formerly within said parcel were dropped into a road lot in April 1999, resulting in the parcel's current size of 146.274 acres (147.561-1.287).

Please note that per §15-15-50(c)(3) if a portion of a parcel were involved, a metes and bounds map and description of the subject property prepared by a registered professional land surveyor would be required.

- 5) Pursuant to §15-15-50(c)(5)(A), HAR, a true copy of the deed or other document conveying to the petitioner a property interest in the subject property should be provided. If there is a deed or other document reflecting the current acreage of the subject property as noted in paragraph 4 above, it should be provided.

Carol Y. Asai-Sato, Esq.
Bruce S. Noborikawa, Esq.
Herman W.H. Lee, Esq.
December 19, 2001
Page 3

- 6) Pursuant to §15-15-50(c)(6), HAR, the type of use being proposed should be described. Page 6 of the Petition states that 5.5 acres of land that appear to be located outside of the subject property are intended for a park and open spaces. However, on page 7, ten (10) acres for park/open space uses are proposed within the subject property. This discrepancy should be addressed.
- 7) Pursuant to §15-15-50(c)(7), HAR, the projected number of lots and lot size of the residential units should be provided. As further elaborated in paragraph 12 below, the selling prices and intended market should also be provided.
- 8) Pursuant to §15-15-50(c)(8), HAR, a statement describing the financial condition together with a current balance sheet and income statement of the petitioner should be provided. We understand that the petitioner intends to self-finance the project. As such, evidence of this ability in the form of an escrow account for the sole purpose of financing the entire cost of the project along with representation to that effect should be provided.
- 9) Pursuant to §15-15-50(c)(10), HAR, an assessment of the impacts of the proposed use upon the environment and resources of the area should be provided. The "Amended" Environmental Assessment should be updated concurrently with the update of the infrastructure reports (see paragraph 10 below). The separate archaeological reconnaissance survey should be reviewed and updated as necessary. In the event the information contained in said survey has not changed, verification from the consultant and the State Historic Preservation Division attesting to the survey's accuracy and validity should be provided. We note that the survey did not specifically address: i) the identity and scope of valued cultural, historical, or natural resources in the subject property, including the extent to which traditional and customary native Hawaiian rights are exercised in the subject property; ii) the extent to which those resources will be affected or impaired by the project; and iii) the feasible action, if any, to be taken to reasonably protect native Hawaiian rights if they are found to exist. These matters should be addressed in a cultural assessment to ensure that all rights, customarily and traditionally exercised for subsistence,

Carol Y. Asai-Sato, Esq.
Bruce S. Noborikawa, Esq.
Herman W.H. Lee, Esq.
December 19, 2001
Page 4

cultural, and religious purposes by native Hawaiians, are protected as mandated under Article XII, section 7, of the Hawaii State Constitution.

- 10) Pursuant to §15-15-50(c)(11), HAR, 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, and police and fire protection, and to what extent any public agency would be impacted by the proposed use should be provided. We note that the Petition includes traffic and engineering studies; however, these studies appear to be over 12 years old and therefore would need to be updated to reflect the current status of public services and facilities in the area.
- 11) Pursuant to §15-15-50(c)(13), HAR, an assessment of the economic impacts of the proposed use, including without limitation, the provision of any impact on employment opportunities, and the potential impact to agricultural production in the vicinity of the subject property, and in the county and State should be provided. The information provided in the Petition is insufficient to make a comprehensive assessment of the specific economic and agricultural impacts of the proposed use.
- 12) Pursuant to §15-15-50(c)(14), HAR, a description of the manner in which the petitioner addresses the housing needs of low income, low-moderate income, and gap groups should be provided. We note the Petition states that 50.6 percent of the homes would be priced to be affordable to persons earning between 80 to 140 percent of the County median income. Clarification should be provided as to the housing prices considered to be affordable for persons within this income range. Similarly, with respect to the remaining 49.4 percent of the homes, clarification should be provided as to their intended market and projected selling prices.
- 13) Pursuant to §15-15-50(c)(15), HAR, an assessment of the need for the reclassification based upon the relationship between the proposed use and other projects existing or proposed for the area and consideration of other

Carol Y. Asai-Sato, Esq.
Bruce S. Noborikawa, Esq.
Herman W.H. Lee, Esq.
December 19, 2001
Page 5

similarly designated land in the area should be provided. We note that while the Petition includes a market study, this study appears to be over 13 years old, and therefore would need to be updated to reflect current market conditions.

- 14) Pursuant to §15-15-50(c)(16), HAR, an assessment of conformity of the reclassification to the Hawaii State Plan and appropriate functional plan priorities and policies should be provided.
- 15) Pursuant to §15-15-50(c)(17), HAR, an assessment of the conformity of the reclassification to the specific objectives and policies of the coastal zone management program, Chapter 205A, Hawaii Revised Statutes, should be provided. We would like to point out that in accordance with §205A-1, the coastal zone management area is defined to include “**all lands of the State** and the area extending seaward from the shoreline to the limit of the State’s police power and management authority...” (emphasis added).
- 16) Pursuant to §15-15-50(c)(18), HAR, an assessment of conformity of the reclassification to the general plan, community plan, and zoning designations should be provided. We note that since 1985, the Kihei-Makena Community Plan has been updated. The Petition should refer to this updated plan in its discussion of conformity with the county’s plans and make any changes as appropriate. We also note that the General Plan was updated since United Realty, Inc., first petitioned to reclassify the subject property in 1988.
- 17) Pursuant to §15-15-50(c)(22), HAR, a copy of the notification of petition filing together with the mailing list should be included in the Petition. As required by §15-15-50(d), HAR, this notification is supposed to be sent to all persons on the mailing list on the same day that the Petition was submitted to the Commission. We understand that the petitioner has since addressed this requirement by sending said notification on December 12, 2001. A revised affidavit that the petitioner has sent the notification of petition filing should be prepared and included with the Petition.

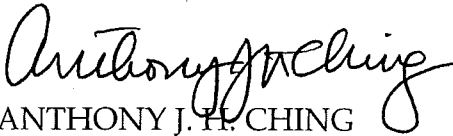
Carol Y. Asai-Sato, Esq.
Bruce S. Noborikawa, Esq.
Herman W.H. Lee, Esq.
December 19, 2001
Page 6

- 18) We note that the subject property was previously reclassified from the Agricultural District to the Urban District under LUC Docket No. A88-626/United Realty, Inc., and subsequently reverted to the Agricultural District pursuant to the Commission's Order Granting Motion for Order Rescinding Decision and Order Dated February 28, 1989, entered on June 28, 1996. The Petition should provide a discussion of these events, including clarification regarding the changes in ownership of the subject property since its sale from the petitioner to Mr. Ryusuke Kumagaya in 1995.

We have no further comments to offer at this time. Please be advised that in the event a notice of intent to intervene is filed with the Commission pursuant to §15-15-52(b), HAR, the Petition may be deemed defective until a copy of the Petition is served upon the potential intervener and an affidavit of petitioner or his agent attesting to his compliance with §15-15-48(b), HAR, is filed.

Your attention to the matters that we have identified is requested. Please feel free to contact Bert Saruwatari of my office at 587-3822 should you require clarification or any further assistance.

Sincerely,


ANTHONY J. H. CHING
Executive Officer

Enclosure

c: Office of Planning (w/o enclosure)
County of Maui Planning Department (w/o enclosure)