



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

July 5, 2019

Calvert G. Chipchase, Esq.
Cades Schutte LLP
1000 Bishop Street, Suite 1200
Honolulu, Hawai'i 96813

Dear Mr. Chipchase:

Subject: Docket No. A19-807/Trustees of the Estate of Bernice Pauahi Bishop
dba Kamehameha Schools

This is to acknowledge receipt of the following documents from the Trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools ("Petitioner") filed on June 21, 2019:

- 1) Petition for Land Use District Boundary Amendment ("Petition");
- 2) Exhibits 1 through 18;
- 3) Verification of Petitioner;
- 4) Verification of Licensee;
- 5) Affidavit Attesting to Service of Petition;
- 6) Affidavit Attesting to Mailing of the Notification of Filing;
- 7) Certificate of Service;
- 8) Petitioner's Motion Requesting The Land Use Commission (1) To Be The Accepting Authority For An Environmental Impact Statement; (2) Determine That The Proposed Action Warrants The Preparation Of An Environmental Impact Statement, To Be Initiated With The Preparation Of An Environmental Impact Statement Preparation Notice ("Motion");
- 9) Memorandum In Support Of Motion;
- 10) Exhibit "A"; and
- 11) Certificate of Service.

We further acknowledge receipt of the following documents from Petitioner filed on July 3, 2019:

- 1) Full and complete copy of Exhibit 13; and
- 2) Certificate of Service.

Calvert G. Chipchase, Esq.

July 5, 2019

Page 2

We understand that Petitioner proposes the reclassification of lands from the State Land Use Conservation District to the State Land Use Agricultural District. We further understand that the Motion has been filed to request that the Land Use Commission ("LUC") (1) be the accepting authority for the environmental impact statement ("EIS") under Hawai'i Revised Statutes ("HRS") chapter 343; and (2) determine that an EIS is likely to be required for the proposed action.

With this understanding, the Petition is not deemed a proper filing and will not be accepted for processing until the LUC approves the Final EIS and the other petition content requirements are met pursuant to Hawai'i Administrative Rules ("HAR") §§15-15-48 and 15-15-50.

Accordingly, our review of the Petition is limited to the information presented in the document at this time relative to the requirements identified in the above HAR sections:

- 1) In accordance with HAR §15-15-48, 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. As indicated on the applicable tax map, Kauaea Ranch Inc. ("Kauaea") is identified as a lessee. We acknowledge that Petitioner intends to review its records and address whether Kauaea or any known successors or assigns have a current property interest in the Petition Area. If Kauaea is found to have such an interest, Kauaea should be served with a copy of the Petition and an amended/supplemental Certificate of Service and Affidavit Attesting to Service of Petition should be filed.

For your information, our review of the Tax Maps Branch history sheets for the Petition Area identifies two lessees before and after Kauaea: John S. Ramos and Larry E. Mehau. In reviewing its records, Petitioner should also address whether these individuals or their successors may still retain a property interest in the Petition Area. If appropriate, the above documents should be similarly amended/ supplemented to reflect such an interest.

- 2) In accordance with HAR §15-15-50(a)(2), the appropriate reference to the statutory provision or other authority under which LUC authorization or relief is sought should be cited. We note that the Petition references "Subtitle 3" with respect to HAR Title 15, Chapter 15. Please be advised that with the 2013 amendments to HAR Chapter 15-15, reference to Subtitle 3 was deleted.
- 3) In accordance with HAR §15-15-50(c)(3), a description of the subject property, including its acreage, should be provided. We note there is a slight

discrepancy in the acreage of the Petition Area between the Petition/Notification of Petition Filing and the metes and bounds survey and map. Both the Petition and Notification of Petition Filing reference the Petition Area as 94.107 acres, while the metes and bounds map and description identify the Petition Area as 94.108 acres. The acreage of the Petition Area stated in the Petition and in all exhibits should be consistent.

We further note that both the metes and bounds map and tax map have been submitted at a reduced size. We request that the full-size copies of said maps be provided.

- 4) In accordance with HAR §15-15-50(c)(4), the present use of the Petition Area should be provided. We acknowledge that a portion of the Petition Area is being used as a quarry by Sanford's Service Center, Inc. ("Sanford"). We further acknowledge that in the event the Commission approves the Petition, Petitioner may allow Sanford to apply for a special permit to expand the current quarry activities within its 73.075-acre license area. We understand that Sanford's license is provided by that certain Cinder Purchase Agreement and License, as amended. We request that this document be provided as it would identify the terms and conditions under which the existing quarry use may operate. Additionally, data on the actual day-to-day operations of the quarry, including the use of heavy equipment onsite, the rate at which material is excavated, and the days and hours of operation should be included. The specific market for which the material is provided and any plans for land restoration should also be described.

An assessment of conformity of the boundary amendment to the Agricultural District standards should also be provided. The current assessment in the Petition addresses only one of the four standards.

- 5) In accordance with HAR §15-15-50(c)(7), the type of use or development being proposed should be described. We acknowledge that the boundary amendment is being sought to enable Sanford to expand the existing quarry it is currently operating. The information on the existing quarry requested in the preceding paragraph should also be provided for the expansion of the quarry. With this said, we note that there are no assurances that Petitioner will allow Sanford to apply for a special permit to expand the quarry. The Petition clearly suggests that such permission is strictly discretionary on the part of Petitioner. As such, alternative uses for the Petition Area should be discussed in the event Petitioner does not allow Sanford to apply for a special permit as proposed.

- 6) In accordance with HAR §15-15-50(c)(8), a development timetable should be provided. While we acknowledge that it is the intention of Sanford to begin its expanded quarrying activity once all applicable permits have been obtained, we request that a more detailed schedule with events/milestones and projected dates be provided.
- 7) In accordance with HAR §15-15-50(c)(9), a statement describing the financial condition together with a current certified balance sheet and income statement as of the end of the last calendar year, or if the Petitioner is on a fiscal year basis, as of the end of the Petitioner's last fiscal year, and a clear description of the manner in which the Petitioner proposes to finance the proposed use or development. We acknowledge that Petitioner intends to amend the Petition with the financial information of Sanford, the licensee, upon the completion of the HRS chapter 343 environmental review process. When submitted, this information should comply with the above requirements.
- 8) In accordance with HAR §15-15-50(c)(11), an assessment of the impacts of the proposed use or development upon cultural and historical resources of the area should be provided. We acknowledge that a Cultural Impact Assessment ("CIA") was filed as an exhibit to the Petition. Clarification should be provided as to whether the Aha Moku Advisory Committee ("AMAC") was consulted during the preparation of the CIA. For your information, the AMAC can recommend practitioners in the vicinity of the Petition Area who have special knowledge concerning traditional practices in that area. If AMAC has not been consulted, we urge that they be so as soon as possible to ensure that the CIA adequately addresses Native Hawaiian customary and traditional rights under Article XII, section 7, of the Hawai'i State Constitution as required by HAR §15-15-50(c)(21).

We note that the Petition references the incorrect date on which the Final Archaeological Inventory Survey ("AIS") was submitted to the State Historic Preservation Division ("SHPD"). Page 9 of the Petition states that the Final AIS was submitted on October 1, 2013, which is after the September 23, 2013, date on which the SHPD accepted the document. For your information, the SHPD's acceptance letter notes that the document was received on August 22, 2013.

Please be advised that we will be requesting confirmation from the SHPD that the Petition Area has been reasonably addressed in the Final AIS, and that the requirements of HRS chapter 6E have been met.

An assessment of the impacts of the proposed use or development upon groundwater resources should also be provided. This assessment should include a description of the existing groundwater resources in the area.

- 9) In accordance with HAR §15-15-50(c)(12), an assessment of the availability or adequacy of public services and facilities and to what extent any public agency would be impacted by the quarry expansion should be provided. We find that the discussion on transportation systems is inadequate. The basis for the conclusion that the quarry expansion will not increase the need or demand for transportation systems is unclear as there is no traffic impact analysis report. For example, the impact to the main highway is not addressed. Similarly, the conclusions reached with respect to police, fire, and emergency medical services as well as civil defense and drainage improvements are without foundation.
- 10) In accordance with HAR §15-15-50(c)(16), an assessment of the need for the boundary amendment based upon the relationship between the use or development proposed and other projects existing or proposed for the area and consideration of other similarly designated land in the area should be provided. We understand that the boundary amendment and expansion of the quarry is needed because mining and quarry operations are no longer permitted in the Limited subzone of the Conservation District and the cinder mined at the Petition Area is necessary to support the agricultural industry. We request that this discussion be expanded to more comprehensively describe (i) the unique properties of the cinder that make it so valuable to the tropical flower and nursery industry specifically; (ii) the anticipated market demand within the industry that supports the boundary amendment, including an analysis of the size of the market, the competition, and the economic environment; and (iii) the projected amount of material that remains on the Petition Area to meet this demand.
- 11) In accordance with HAR §15-15-50(c)(17), an assessment of conformity of the boundary amendment to the applicable priority guidelines and functional plan policies should be provided. We acknowledge that this assessment will be addressed in the EIS.
- 12) In accordance with HAR §15-15-50(c)(18), an assessment of the conformity of the boundary amendment to objectives and policies of the coastal zone management program HRS chapter 205A should be provided. We acknowledge that this assessment will be provided in the EIS.

Calvert G. Chipchase, Esq.

July 5, 2019

Page 6

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 his agent attesting to his compliance with HAR §15-15-48(b) should be filed.

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 'D. Orodenger', with a long horizontal line extending to the right.

DANIEL E. ORODENKER

Executive Officer

c: Office of Planning
County of Hawai`i Planning Department
Lori Tanigawa, Esq.