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To: [DLNR.BLNR.Testimony](#); [Cheung, Barry W](#); hartboard@honolulu.gov; [Robert Stellmacher](#); [Fujimoto, Stanley S](#)
Subject: [EXTERNAL] HART Application for Non-Exclusive Easement RE Easement "U"
Date: Tuesday, January 21, 2025 11:34:23 AM
Attachments: [250120 DLNR Testimony.pdf](#)

TO ALL:

We represent the Association of Unit Owners of Senior Residence at Iwilei, which has a non-exclusive easement over, across and under Easement "U"/TMK (1) 1-5-007:001 for access and utility purposes.

Attached is the written position statement of the Association of Unit Owners of Senior Residence at Iwilei RE the City/HART's application for a non-exclusive easement for Easement "U" which is scheduled to be considered at the following BLNR meeting:

Date: Friday, January 24, 2025
Time: 9:00 a.m.
Item: Item D.6

Since the meeting is scheduled 3 days from today, the Position Statement is being sent by e-mail only.

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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division

Application of the City and County of Honolulu (“City”) on behalf of the Honolulu Authority Transportation (“HART”) for Grant of Perpetual, Non-Exclusive Easement to the City and County of Honolulu on behalf of the Honolulu Authority for Rapid Transportation for Elevated Guideway and Utilities Purposes; Issuance of Immediate Construction, including Boring Tests, and Management Right-of-Entry Permit; Iwilei, Honolulu, Oahu, TMK: (1) 1-5-007: portion of 001)	PSF No.: 19OD-014
)	Position Statement of the Association of Unit Owners of Senior Residence at Iwilei
)	Meeting Date: January 24, 2025
)	Time: 9:00 a.m.
)	Agenda Item No. D.6
)	
)	
)	

POSITION STATEMENT OF THE
ASSOCIATION OF UNIT OWNERS OF
SENIOR RESIDENCE AT IWILEI

The of Unit Owners of Senior Residence at Iwilei (“Association”), an unincorporated association of unit owners of the Senior Residence at Iwilei, a condominium property regime, by its attorney Dickson C.H. Lee of Takushi Wong Lee and Yee – A Law Corporation, submits this position statement with respect to the above referenced City/HART application for a grant of a perpetual non-exclusive easement over Easement “U” (“Application”).

1. Association's Standing and Interest. Where it has a non-exclusive easement in Easement "U", the Association has standing and an interest in the outcome of the above-referenced matter:

A. The State of Hawaii, by its Board of Land and Natural Resources ("Board"), is the fee simple owner of the following adjoining parcels of land:

(1) (1) 1-5-007:001 ("Lot 1") over which there is designated Easement "U", which is the subject of the Application.

(2) (1) 1-5-007:002 ("Lot 2"). Lot 2 has the street address of 888 Iwilei Road, Honolulu, Hawaii 96817

B. By Executive Order No. 4130 dated October 24, 2005, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2007-071971 and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3591387 and noted on Certificate of Title No. 85,214, the Board set aside and transferred control over Lot 2 to the Hawaii Housing Finance and Development Corporation ("HHFDC"), public body and a body corporate and politic of the State of Hawaii. (It is the Association's understanding that by Executive Order, the Board also set aside and transferred control over Lot 1 to HHFDC.)

C. The Senior Residence at Iwilei ("Housing Project") is a condominium property regime which was established pursuant to that certain Declaration of Condominium Property Regime for "Senior Residence at Iwilei" Condominium Project filed as Land Court Document No. T-9641194, recorded as Document No. A-59890341 and as shown on Map 2320 filed in the Office of the Assistant

Registrar of the Land Court, and 5537 recorded in the Bureau of Conveyances and which is comprised of the following two units:

- (1) “Residential Unit” which HHFDC, as lessor, conveyed to Senior Residence at Iwilei Limited Partnership (“SRILP”), a Hawaii limited partnership, as Unit Owner, pursuant to that certain Senior Residence at Iwilei Condominium Conveyance Document, recorded as Land Court Document No. T-94-12091 and noted on Certificate of Title No. 85214 and also recorded as Document No. A-60600252, together with a right-of-way over Easement “U” for access and utility purposes by Grant of Non-Exclusive Easement recorded as Document No. A-48340637.
- (2) “Commercial Unit” which HHFDC, as lessor, conveyed to Pacific Housing Assistance Corporation (“PHAC”), a Hawaii nonprofit corporation, as Unit Owner, pursuant to that certain Senior Residence at Iwilei Condominium Conveyance Document, recorded as Land Court Document No. T-94-12091 and noted on Certificate of Title No. 85214 and also recorded as Document No. A-60600252, together with a right-of-way over Easement “U” for access and utility purposes by Grant of Non-Exclusive Easement recorded as Document No. A-48340637.

Based on the foregoing, SRILP and PHAC, as their respective interests appear, have easement interests over, under and across Easement “U” and standing to participate in the above reference proceeding.

- D. The Housing Project includes a 15-story high-rise building and a 4-story parking structure. HHFDC entered into the foregoing condominium conveyance

documents in furtherance of the public purpose of providing affordable rental housing opportunities. The rents and use of the Housing Project are regulated.

- (1) The Residential Unit, of which SRILP is the leasehold owner, includes 160 dwellings which provide affordable rental housing opportunities for the elderly whose income does not exceed 60% of the area median income. Several of the elderly residents have physical, mobility issues.
- (2) The Commercial Unit, of which PHAC is the leasehold owner, includes administrative offices for PHAC, which develops and/or sponsors the development of affordable housing opportunities, and Steadfast Housing Development Corporation, a Hawaii nonprofit corporation, which provides affordable housing opportunities and services for persons with disabilities. The Commercial Unit also includes space for an adult day care facility. The adult day care facility provides day care services for adults. Many of the clients at the facility are elderly and have mobility and cognitive disabilities.

2. Easement “U”

- A. Easement “U” is 20-feet wide and is designated for access and utility purposes over Lot 1. The development of the Housing Project included using Easement “U” to provide access for emergency vehicles. The Housing Project paved Easement “U” in order to facilitate emergency vehicles to use it.
- B. Easement “U” is the primary access for emergency vehicles, including large fire trucks, to access the Housing Project, being Lot 1, which is comprised of the Residential Unit and the Commercial Unit, in the event of an emergency. The

Housing Project also has easement rights over, under and across Easement “U” for utility purposes.

- C. The City, on HART’s behalf, is requesting the State of Hawaii, by its Department of Land and Natural Resources, to grant HART a non-exclusive easement for HART’s elevated guideway (“Rail”) and utility purposes.

3. Association’s Position Statement

If the Board shall decide to grant HART’s Application for a non-exclusive easement over Easement “U” for HART’s Rail and utility purposes, it is the Association’s position as follows:

- A. **Significant Condition for Granting a Non-Exclusive Easement.** Easement “U” is only 20-feet wide. The construction of the Rail is a massive project, which will be a substantial footprint over, under and across Easement “U”. First and foremost, based on the following:

- The Housing Project is a 15-story high-rise building.
- Residents of the Residential Unit are elderly; some of the residents have physical/mobility issues; and
- Clients of the adult day care facility are elderly or adults with physical/mobility and cognitive limitations and disabilities

and before granting a non-exclusive easement. the Board shall require the City/HART to provide a written, detailed plan describing how emergency vehicles, including fire trucks and ambulances, will access the Housing Project through Easement ”U” (or alternative route) in the event of an emergency at all times, including during site investigations and construction

and thereafter, completion of the Rail, which the Honolulu Fire Department and operators of emergency vehicles, such as ambulances, have approved.

(emphasis supplied.)

The City/HART represents that it meets with the Honolulu Fire Department regularly. However, for whatever reason it has refused to provide such a written, approved plan to the Association.

In the event of an emergency, including but not limited to a high-rise fire or other emergency – especially with respect to the people the Housing Project serves - time will be of the essence that emergency vehicles respond immediately. The consequences will be disastrous, if emergency vehicles cannot first access the Housing Project through Easement “U” because of the City/HART’s use of Easement “U” impedes emergency vehicles – fire trucks and ambulances as examples - and must “circle” around to look for other access(es) to the Housing Project.

- B. It is the City/HART’s Responsibility to Determine the Location(s) of Existing Utility(ies) Within Easement “U”; Housing Project Existing Utility(ies) from Damage; and Immediately Repair any Damage to Utility(ies) Within Easement “U” Which Serve the Housing Project. Where the City/HART is asking the Association to show it where there are existing utility(ies) over, under or across Easement “U”, such is an indication that the City/HART have not conducted a search for utilities within Easement “U”. Given the City/HART’s “track” record of not searching for/finding utilities in other areas of the Rail line, such oversights

are not surprising and not excusable. It should be the City/HART’s sole responsibility to search/find utilities within Easement “U”.

C. Other Conditions. The Association’s position to matters set forth in the Board’s January 24, 2025 For Action Agenda are as follows:

Board Agenda	Association’s Position
HART’s and its contractors’ insurance, performance and payment bonds would be adequate and available for any potential claims by SRILP	Before any visible improvements, including tests, shall be conducted within Easement ”U”, the City/HART shall provide performance and payment bonds and all insurance, which the State and/or HHFDC require and which name the State, HHFDC, and Association, including SRILP and PHAC, as additional obligees, and insureds.
No disruption to utility services including storm drains	City/HART shall have in place a written action plan to ensure immediate repair and restoration of any damage to utility services, including storm drains.
Have health & safety practices and procedures in place	City/HART must include procedures for mitigating noise, dust and cleaning the Housing Project of dust generated from construction activities due to sensitivities of elderly and adults with physical/mobility and cognitive disabilities at the Housing Project
City/HART work will not generate excessive noise or vibrations	The Housing Project serves the elderly and adults with physical/mobility and cognitive disabilities at the Housing Project, who may be sensitive to noise and dust generated by construction of the Rail.

Board Agenda	Association's Position
<p>City/HART will repair all damage to the Housing Project, including improvements, and Easement U or replace damaged elements</p>	<p>City/HART should be responsible to keep Easement "U" in good repair and maintenance and free and clear of any barriers at all times so that emergency vehicles will not be impeded</p> <p>Further, City/HART should pay for additional maintenance costs, arising out of City/HART construction of the Rail, which the Housing Project incurs.</p>
<p>City/HART and its contractors would not be allowed to use any portion of the Housing Project</p>	<p>City/HART should not use the Housing Project for parking or access to Easement "U"</p> <p>City/HART must provide security so that unauthorized persons do not enter Easement "U".</p>
<p>No expansion of Easement U into the Housing Project.</p>	<p>City/HART must immediately repair and restore any damage to the Housing Project's fence/gate along the border between the Housing Project and Easement "U" and landscaping.</p>
<p>City/HART would pay Association's attorneys' fees and costs incurred in connection with Association's consent to grant of non-exclusive easement and enforcement of the above.</p>	<p>City/HART should be responsible for the Housing Project's attorney's fees and costs where the Rail project has a substantial impact on the Housing Project's rights and is in effect a "taking" of such rights.</p>

Board Agenda	Association's Position
	(new) City/HART agree to indemnify, defend with attorneys acceptable attorneys and hold harmless the State, HHFDC and Association, including SRILP and PHAC, and their respective officials, directors, officers, partners, members, employee, agents, etc. arising out of the development and construction and thereafter operation of the Rail arising out of and in connection with the City/HART's use of Easement "U".

The Association respectfully requests the Board to impose the above as conditions for granting a non-exclusive easement to Easement "U".

DATED: Honolulu, Hawaii, January 21, 2025

TAKUSH WONG LEE & YEE
A Law Corporation

/s/ Dickson C.H. Lee
Attorney for the Association of Unit Owners
of Senior Residence at Iwilei

CERTIFICATE OF SERVICE

I certify that a true and correct copy of foregoing Position Statement of Association of Unit Owners of Senior Residence at Iwilei was served upon the following persons or business organizations by e-mail:

Board of Land and Natural Resources
<blnr.testimony@hawaii.gov>

Hawaii Housing Finance and Development Corporation
Attention: Mr. Stanley Fujimoto
Stanley.S.Fujimoto@hawaii.gov

Department of Land and Natural Resources
Attention: Mr. Barry Cheung,
District Land Agent
<barry.w.cheung@hawaii.gov>

HART
Mr. Robert Stellmacher
Senior Transit Property Acquisition and Relocation Agent
<rstellmacher@wdschockco.com>
<hartboard@honolulu.gov>

DATED: Honolulu, Hawaii, January 21, 2025

TAKUSH WONG LEE & YEE
A Law Corporation

By: /s/ Dickson C.H. Lee
Attorney for the Association of Unit Owners
of Senior Residence at Iwilei