



BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

LAND USE COMMISSION
STATE OF HAWAII
2009 SEP 30 P 12:11

In the Matter of the Petition of

D.R. HORTON – SCHULER HOMES,
LLC, a Delaware limited liability
company, d.b.a. D.R. HORTON-
SCHULER DIVISION

To Amend the Agricultural Land Use
District Boundaries into the Urban Land
Use District for Approximately 1,553.844
Acres in Ewa District, Island of Oahu, Tax
Map Key Nos. (1) 9-1-017:004(por.), 059
and 072; (1)9-1-018:001 and 004.

DOCKET NO. A06-771

ORDER GRANTING IN PART AND
DENYING IN PART INTERVENOR
FRIENDS OF MAKAKILO'S MOTION
TO DENY THE PETITION; OR IN
THE ALTERNATIVE TO DECLARE
THE PETITION DEFICIENT,
ALLOWING THE PETITIONER TO
CURE THE DEFECTS, INCLUDING
AMENDING THE EIS, WITH WITH
[SIC] THE DATE OF FILING
CHANGED TO THE DATE THE
COMMISSION DETERMINES THAT
THE DEFECTS ARE CURED;
CERTIFICATE OF SERVICE

**ORDER GRANTING IN PART AND DENYING IN PART INTERVENOR
FRIENDS OF MAKAKILO'S MOTION TO DENY THE PETITION; OR IN THE
ALTERNATIVE TO DECLARE THE PETITION DEFICIENT, ALLOWING
THE PETITIONER TO CURE THE DEFECTS, INCLUDING AMENDING THE
EIS, WITH WITH [SIC] THE DATE OF FILING CHANGED TO THE DATE
THE COMMISSION DETERMINES THAT THE DEFECTS ARE CURED**

THIS IS TO CERTIFY THAT THIS IS A TRUE AND CORRECT
COPY OF THE DOCUMENT ON FILE IN THE OFFICE OF THE
STATE LAND USE COMMISSION, HONOLULU, HAWAII.

9/30/09

DATE

by

EXECUTIVE DIRECTOR



BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition	)	DOCKET NO. A06-771
)	
of	)	ORDER GRANTING IN PART AND
	)	DENYING IN PART INTERVENOR
D.R. HORTON – SCHULER HOMES, LLC,	)	FRIENDS OF MAKAKILO'S
a Delaware limited liability company d.b.a.	)	MOTION TO DENY THE
D.R. HORTON-SCHULER Division	)	PETITION; OR IN THE
	)	ALTERNATIVE TO DECLARE THE
To Amend the Agricultural Land Use	)	PETITION DEFICIENT,
District Boundaries into the Urban Land	)	ALLOWING THE PETITIONER TO
Use District for Approximately 1,533.844	)	CURE THE DEFECTS, INCLUDING
Acres in Honouliuli, Ewa District, Island of	)	AMENDING THE EIS, WITH WITH
Oahu, Tax Map Key Nos. (1)9-1-	)	[SIC]THE DATE OF FILING
017:004(por.), 059 and 072; (1)9-1-018:001	)	CHANGED TO THE DATE THE
and 004	)	COMMISSION DETERMINES
	)	THAT THE DEFECTS ARE CURED
)	
)	

ORDER GRANTING IN PART AND DENYING IN PART INTERVENOR FRIENDS OF MAKAKILO'S MOTION TO DENY THE PETITION; OR IN THE ALTERNATIVE TO DECLARE THE PETITION DEFICIENT, ALLOWING THE PETITIONER TO CURE THE DEFECTS, INCLUDING AMENDING THE EIS, WITH WITH [SIC]THE DATE OF FILING CHANGED TO THE DATE THE COMMISSION DETERMINES THAT THE DEFECTS ARE CURED

On August 5, 2009, Intervenor Friends of Makakilo ("Intervenor") filed a Motion to Deny the Petition; or in the Alternative to Declare the Petition Deficient, Allowing the Petitioner to Cure the Defects, Including Amending the EIS, with with [sic] the Date of

Filing Changed to the Date the Commission Determines that the Defects Are Cured; Memorandum in Support of Motion; Declaration of Dr. Kioni Dudley; and Exhibits "A" – "M" ("Motion"), pursuant to sections 15-15-41 and 15-15-70, Hawai'i Administrative Rules ("HAR").

Said Motion requests that the Land Use Commission ("Commission") deny the Petition filed by D.R. HORTON-SCHULER DIVISION ("Petitioner") to amend the agricultural land use district boundary into the urban land use district for 1,553.844 acres of land at Honouliuli, Ewa District, Island of Oahu, or, in the alternative, to declare the Petition deficient, allowing the Petitioner to cure the defects.

On August 10, 2009, Petitioner filed a Memorandum in Opposition to Intervenor's Motion.

On August 24, 2009, the State Office of Planning ("OP") filed its Partial Joinder and Response to the Motion. The City and County of Honolulu, Department of Planning and Permitting ("DPP") and Intervenor Haseko (Ewa), Inc. ("Haseko") did not file any pleadings relating to the Motion.

The Motion came on for hearing before this Commission on August 28, 2009, in Honolulu, Hawai'i, with all of the parties in this proceeding present. DPP and Haseko took no position at the hearing with respect to the Motion.¹

¹ David Tanoue, DPP director, also stated that lack of an incremental plan would have no effect on DPP's position with respect to the Petition.

Intervenor's Motion argued that the Petition should be denied or in the alternative that the Petition is defective or deficient because the Petition either (1) does not represent that development of the Petition Area described in the Petition will be accomplished before ten years after the date of Commission approval or (2) even though full urban development cannot substantially be completed within such ten-year period, the petition does not include a schedule for development of the total of the project in increments together with a map identifying the location of each increment, with each increment to be completed within no more than a ten-year period. OP's Partial Joinder argued that the Petition should not be denied, but, rather, that the Petition should be declared defective.

Petitioner argued, among other things, that the Commission could waive the requirement in the rules and deem the petition amended to conform to the evidence. Petitioner also argued that completion of what Petitioner defined as backbone infrastructure could be completed within ten years.²

This Commission, having reviewed the Intervenor's Motion, OP's Joinder, Petitioner's Memorandum in Opposition, and the record in this proceeding, and having heard arguments of representative of Intervenor and counsel for OP and Petitioner, and the Commission not having found good cause for waiving the requirements of its rules

² The Commission's rules do not define "full urban development" to mean completion of backbone infrastructure, nor do its rules define "backbone infrastructure."

in this instance, and a motion having been duly made and seconded, and there being a vote tally of 5 ayes, 3 nays, and 1 absent,

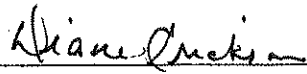
IT IS HEREBY ORDERED that this Commission determines that the Petition is defective or deficient in that it fails to either (1) represent that development of the Petition Area will be accomplished before ten years after the date of Commission approval or (2) even though full urban development cannot substantially be completed within such ten-year period, the Petition does not include a schedule for development of the total of the project in increments together with a map identifying the location of each increment, each such increment to be completed within no more than a ten-year period, and GRANTS Intervenor's Motion to declare the Petition deficient. The date of filing of the Petition shall be as of the date the Commission determines that the defects are cured. The Intervenor's Motion to deny the Petition is DENIED.

This Order may be executed in any number of counterparts, each of which shall constitute an original, but all of which together shall constitute but one and the same document.

DATED: Honolulu, Hawai'i, this 30th day of September, 2009, per motion on August 28, 2009.

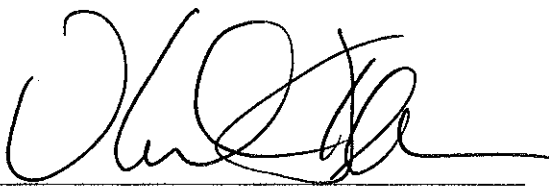
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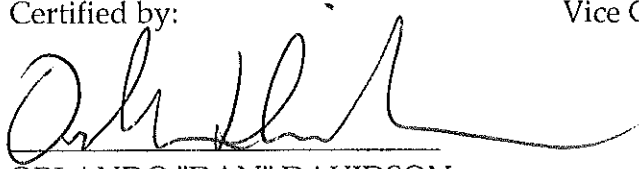
LAND USE COMMISSION
STATE OF HAWAII


Deputy Attorney General

(Nay)
RANSOM PILTZ
Chairperson and Commissioner

Filed and effective on
9/30/09


VLADIMIR PAUL DEVENS
Vice Chairperson and Commissioner

Certified by:

ORLANDO "DAN" DAVIDSON
Executive Officer

REUBEN S. F. WONG
Vice Chairperson and Commissioner

(Nay)
KYLE CHOCK
Commissioner

(Nay)
NICHOLAS TEVES, JR.
Commissioner

APPROVED AS TO FORM

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STATE OF HAWAII

Deputy Attorney General


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REUBEN S. F. WONG
Vice Chairperson and Commissioner

(Nay)
KYLE CHOCK
Commissioner


(Nay)
NICHOLAS TEVES, JR.
Commissioner

DUANE KANTUHA
Commissioner

NORMAND R. LEZY
Commissioner

LISA M. JUDGE
Commissioner

(Excused)
THOMAS CONTRADES
Commissioner



DUANE KANUHA
Commissioner

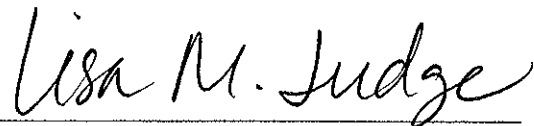
NORMAND R. LEZY
Commissioner

LISA M. JUDGE
Commissioner

(Excused)
THOMAS CONTRADES
Commissioner

DUANE KANUHA
Commissioner

NORMAND R. LEZY
Commissioner



LISA M. JUDGE
Commissioner

(Excused)

THOMAS CONTRADES
Commissioner



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CERTIFICATE OF SERVICE

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I hereby certify that a certified copy of the ORDER GRANTING IN PART AND DENYING IN PART INTERVENOR FRIENDS OF MAKAKILO'S MOTION TO DENY THE PETITION; OR IN THE ALTERNATIVE TO DECLARE THE PETITION DEFICIENT, ALLOWING THE PETITIONER TO CURE THE DEFECTS, INCLUDING AMENDING THE EIS, WITH WITH [SIC] THE DATE OF FILING CHANGED TO THE DATE THE COMMISSION DETERMINES THAT THE DEFECTS ARE CURED was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

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Dated: Honolulu, Hawai'i, 9/30/09



ORLANDO DAVIDSON
Executive Officer