BEFORE THE LAND USE COMMISSION

STATE OF HAWAI'I

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(port.), 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 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 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

EXECUTIVE DIRECTOR
BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI‘I

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 1,533.844 Acres in Honolulu, 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 [sic] THE DATE OF FILING CHANGED TO THE DATE THE COMMISSION DETERMINES THAT THE DEFECTS ARE CURED

On August 5, 2009, Intervenor Friends of Makalilo ("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 Page 1

Order Granting in Part and Denying in Part Intervenor Friends of Makalilo's Motion to Deny the Petition; or in the Alternative to Declare the Petition Deficient, Docket No. A06-771
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, Hawaiʻi 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, Hawaiʻi, 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.

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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, Docket No. A06-771
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

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

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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.
APPROVED AS TO FORM

LAND USE COMMISSION
STATE OF HAWAIʻI

(Nay)
RANSOM PILTZ
Chairperson and Commissioner

Filed and effective on
9/30/09

(Nay)
VLADIMIR PAUL DEVENS
Vice Chairperson and Commissioner

Certified by:

(Nay)
ORLANDO "DAN" DAVIDSON
Executive Officer

REUBEN S. F. WONG
Vice Chairperson and Commissioner

(Nay)
KYLE CHOCK
Commissioner

(Nay)
NICHOLAS TEVES, JR.
Commissioner

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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, Docket No. A06-771
APPROVED AS TO FORM

Deputy Attorney General

Filed and effective on

Certified by:

ORLANDO "DAN" DAVIDSON
Executive Officer

LAND USE COMMISSION
STATE OF HAWAII

(Nay)

RANSOM PILTZ
Chairperson and Commissioner

(Nay)

VLADIMIR PAUL DEVENS
Vice Chairperson and Commissioner

(Nay)

REUBEN S. F. WONG
Vice Chairperson and Commissioner

(Nay)

KYLE CHOCK
Commissioner

(Nay)

NICHOLAS TEVES, JR.
Commissioner

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DOCKET NO. A06-771

CERTIFICATE OF SERVICE

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:

DEL. ABBEY SETH MAYER, Director
State Office of Planning
P. O. Box 2359
Honolulu, Hawai‘i 96804-2359

REGULAR BRYAN C. YEE, Esq.
MAIL: Deputy Attorney General
425 Queen Street
Honolulu, Hawai‘i 96813
CERTIFIED MAIL: DAVID TANOUE, Director City and County of Honolulu Department of Planning and Permitting 650 South King Street Honolulu, Hawai‘i 96813

CERTIFIED MAIL: CARRIE OKINAGA, Esq. Corporation Counsel DAWN TAKEUCHI-APUNA, Esq. Department of the Corporation Counsel City and County of Honolulu P.O. Box 4109 Honolulu, Hawai‘i 96720 Attorneys for City and County of Honolulu

CERTIFIED MAIL: Dr. KIONI DUDLEY 92-1365 Hauone Street Kapolei, Hawai‘i 96707 Representative of Intervenor THE FRIENDS OF MAKAKILO

CERTIFIED MAIL: YVONNE Y. IZU, Esq. Morihara Lau & Fong, LLP Davies Pacific Center, Suite 400 841 Bishop Street Honolulu, Hawai‘i 96813 Attorney for Intervenor HASEKO (EWA), INC.

CERTIFIED MAIL: BENJAMIN A. KUDO, Esq. Imanaka Kudo & Fujimoto 745 Fort Street, 17th Floor Honolulu, Hawai‘i 96813 Attorney for Petitioner D.R. Horton – Schuler Homes, LLC d.b.a. D.R. Horton-Schuler Division

Dated: Honolulu, Hawai‘i, 9/30/09

ORLANDO DAVIDSON Executive Officer

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Docket No. A06-771; In re D.R. HORTON – SCHULER HOMES, LLC, d.b.a D.R. HORTON-SCHULER DIVISION

Order Denying Petitioner’s Motion to Strike Certain Witnesses and Exhibits from Friends of Makakilo’s Final Witness List and List of Exhibits and Copies of Exhibits