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Of Counsel:

IMANAKA KUDO & FUJIMOTO

A Limited Liability Law Company

BENJAMIN A. KUDO 2262-0

NAOMI U. KUWAYE 6648-0

YUKO FUNAKI 9005-0

745 Fort Street, 17th Floor

Honolulu, Hawaii 96813

Telephone: (808) 521-9500

Attorneys for PETITIONER

D.R. HORTON – SCHULER HOMES, LLC,

a Delaware limited liability company,

d.b.a. D.R. HORTON-SCHULER DIVISION

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

LAND USE COMMISSION
STATE OF HAWAII
2011 MAY 18 A 11:02

In the Matter of the Petition of

DOCKET NO. A06-771

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

**D.R. HORTON – SCHULER HOMES, LLC’S
MOTION FOR DETERMINATION THAT ITS SECOND
AMENDED PETITION CURES THE DEFICIENCY OF
ITS FIRST AMENDED PETITION AND IS READY FOR PROCESSING**

MEMORANDUM IN SUPPORT OF MOTION

AND

CERTIFICATE OF SERVICE

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of

D.R. HORTON – SCHULER HOMES, LLC,
a Delaware limited liability company, d.b.a.
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COMES NOW, D.R. HORTON – SCHULER HOMES, LLC, a Delaware limited liability company, d.b.a. D.R. HORTON-SCHULER DIVISION, whose principal place of business is 650 Iwilei Road, Suite 209, Honolulu, Hawaii 96817 (“**Petitioner**”), by and through its attorneys, the law firm of IMANAKA KUDO & FUJIMOTO, a limited liability law company, and hereby moves the State of Hawaii Land Use Commission (“**Commission**”) for determination that the deficiency of its petition to reclassify approximately 1,553.844 acres of land in the Ewa District, Island of Oahu, from the Agricultural District to the Urban District in Commission Docket No. A06-771, filed on January 24, 2007, and its Amended Petition for Land Use District Boundary Amendment, filed on September 19, 2008 (collectively referred to as “**First Amended Petition**”), is cured by its amended pleading filed on May 18, 2011 (“**Second Amended Petition**”), and that the petition is ready for processing.

This motion is made pursuant to Hawaii Administrative Rules §§ 15-15-41, 15-15-50(c)(19) and 15-15-70.

The Petitioner requests a hearing for this motion.

DATED: Honolulu, Hawaii, May 18, 2011.

Of Counsel:
IMANAKA KUDO & FUJIMOTO
A Limited Liability Law Company



BENJAMIN A. KUDO
NAOMI U. KUWAYE
YUKO FUNAKI

Attorneys for Petitioner

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

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MEMORANDUM IN SUPPORT OF
MOTION

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

Petitioner respectfully moves the State Land Use Commission (“**Commission**”), under Hawaii Administrative Rules (“**HAR**”) §§ 15-15-41, 15-15-50(c)(19), and 15-15-70 for determination that the deficiency of its petition filed on January 24, 2007, as amended on September 19, 2008, is cured by the amended pleading filed on May 18, 2011, and that the petition is ready for processing.

II. RELEVANT FACTS

On January 24, 2007, Petitioner filed with the Commission its petition to reclassify approximately 1,553.844 acres of land in the Ewa District, Island of Oahu, from the Agricultural District to the Urban District in Commission Docket No. A06-771, and filed its Amended Petition for Land Use District Boundary Amendment on September 19, 2008 (collectively referred to as “**First Amended Petition**”). Petitioner seeks the reclassification of the land to develop a mixed-use, transit-ready community (“**Ho‘opili**” or the “**Project**”).

On August 26, 2008, the Commission accepted Petitioner's Final Environmental Impact Statement as generally satisfying the criteria and procedures under HAR § 11-200-23.

On September 19, 2008, the Commission deemed the First Amended Petition as a proper filing and accepted it for processing. *See* Letter from Orlando Davidson, Executive Officer, State of Hawaii Land Use Commission, to Naomi U. Kuwaye, attorney for Petitioner (September 26, 2008).

On February 13, 2009, the Commission granted Friends of Makakilo's ("**FoM**") Petition to Intervene with its participation limited to traffic, education, open space, agricultural lands, and sociological issues. The Commission also granted Haseko (Ewa), Inc.'s Petition for Intervention the same day with its participation limited to regional drainage issues.

On March 19, 2009, the Commission commenced its evidentiary hearing for this docket.

On August 5, 2009, FoM filed its 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 ("**FoM's MOTION**").

On August 28, 2009, FoM's MOTION came on for hearing before the Commission prior to the Petitioner's completion of its case, and on September 30, 2009, the Commission issued its 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 ("**COMMISSION ORDER**").

The COMMISSION ORDER determined as follows:

. . . the [First Amended] 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 [First Amended] 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.

COMMISSION ORDER at 4 (emphasis added).

On May 18, 2011, Petitioner filed an amended pleading consisting of Petition Exhibits "16A", "17A", "18A", "19A", "20" - "24" ("**Second Amended Petition**"), which included Ho'opili's "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."

III. DISCUSSION

The deficiency of the First Amended Petition is cured by the exhibits filed with Petitioner's Second Amended Petition, and the petition is ready for processing, as hereinafter discussed.

- A. PETITIONER IS REQUIRED TO SUBMIT "A SCHEDULE FOR DEVELOPMENT OF THE TOTAL OF THE PROJECT IN INCREMENTS" AND "A MAP IDENTIFYING THE LOCATION OF EACH INCREMENT" FOR THE DEFICIENCY OF ITS FIRST AMENDED PETITION TO BE DEEMED "CURED."**

Under the COMMISSION ORDER, "[t]he date of filing of the Petition shall be as of the date the Commission determines that the defects are cured." COMMISSION ORDER at 4, *see also* HAR § 15-15-41. As such, the proceeding for this docket cannot restart unless the Commission

determines that the deficiency of Petitioner's First Amended Petition is "cured," and the petition is ready for processing.

In order for the deficiency of the First Amended Petition to be deemed cured, Petitioner is required to submit "a schedule for development of the total of the project in increments" and "a map identifying the location of each increment, each such increment to be completed within no more than a ten-year period[.]" *Id.*

B. PETITIONER'S SECOND AMENDED PETITION CURES THE DEFICIENCY OF ITS FIRST AMENDED PETITION, BECAUSE IT INCLUDED HO'OPILI'S "SCHEDULE FOR DEVELOPMENT OF THE TOTAL OF THE PROJECT IN INCREMENTS" AND "A MAP IDENTIFYING THE LOCATION OF EACH INCREMENT," AS REQUIRED UNDER THE COMMISSION ORDER AND HAR § 15-15-50(C)(19).

The Second Amended Petition, *inter alia*, includes the following exhibits: Petition Exhibit "20", entitled "Phased Development Plan for Ho'opili" which is a "schedule for development of the total of the Project" in two increments: Phase 1 (2013-2020) and Phase 2 (2020-2030); Petition Exhibit "21", entitled "Development Phasing Map, Ho'opili", which is a "map identifying the location" and approximate acreages of the Project's Phase 1 and Phase 2.

In addition, Petitioner submitted the following exhibits prepared by a registered professional surveyor, pursuant to HAR § 15-15-50(c)(3): Petition Exhibit "22", entitled "Survey Map Showing Proposed Ho'opili Urban District Boundary Amendment for Lot C-1 and Lot C-2", which is a survey map depicting the Project's Phase 1 and Phase 2 properties, respectively; Petition Exhibit "23", the metes and bounds description of Lot C-1 (the Project's Phase 1 property); and Petition Exhibit "24", the metes and bounds description of Lot C-2 (the Project's Phase 2 property).

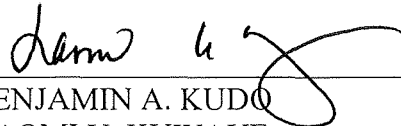
As such, the deficiency of the First Amended Petition is cured by the exhibits filed with the Second Amended Petition.

IV. CONCLUSION

Based upon the foregoing, Petitioner respectfully requests that the Commission determine that Petitioner's Second Amended Petition cures the deficiency of its First Amended Petition, and that the petition for this docket is ready for processing.

DATED: Honolulu, Hawaii, May 18, 2011.

Of Counsel:
IMANAKA KUDO & FUJIMOTO
A Limited Liability Law Company



BENJAMIN A. KUDO
NAOMI U. KUWAYE
YUKO FUNAKI

Attorneys for Petitioner

D.R. HORTON – SCHULER HOMES, LLC,
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CERTIFICATE OF SERVICE

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I hereby certify that the foregoing D.R. HORTON – SCHULER HOMES, LLC'S
MOTION FOR DETERMINATION THAT ITS SECOND AMENDED PETITION CURES
THE DEFICIENCY OF ITS FIRST AMENDED PETITION AND IS READY FOR
PROCESSING; MEMORANDUM IN SUPPORT OF MOTION; and CERTIFICATE OF
SERVICE was duly served by certified mail or personally served to each of the following
persons on the 18th day of May, 2011, addressed as follows:

State of Hawaii
Department of Business,
Economic Development and Tourism
OFFICE OF PLANNING
Attn: Jesse K. Souki, Esq.
State Office Tower
235 South Beretania Street, 6th Floor
Honolulu, Hawaii 96813

HAND DELIVERY

State of Hawaii
Department of Business, Economic
Development and Tourism
OFFICE OF PLANNING
Land Use Division
Attn: Ms. Mary Lou Kobayashi
State Office Tower
235 South Beretania Street, 6th Floor
Honolulu, Hawaii 96813

HAND DELIVERY

State of Hawaii
DEPARTMENT OF THE ATTORNEY GENERAL
Attn: David M. Louie, Esq.
Bryan C. Yee, Esq.
Hale Auhau
425 Queen Street
Honolulu, Hawaii 96813

CERTIFIED MAIL

City and County of Honolulu
DEPARTMENT OF PLANNING AND PERMITTING
Attn: Mr. David Tanoue, Director
650 South King Street, 7th Floor
Honolulu, Hawaii 96813

CERTIFIED MAIL

City and County of Honolulu
DEPARTMENT OF THE CORPORATION COUNSEL
Attn: Carrie K. S. Okinaga, Esq.
530 South King Street, Room 110
Honolulu, Hawaii 96813

CERTIFIED MAIL

D.R. HORTON – SCHULER HOMES, LLC,
d.b.a. D.R. Horton-Schuler Division
Attn: Mr. Michael T. Jones, Division President
Mr. Robert Q. Bruhl, Vice President
Mr. Cameron Nekota, Vice President
650 Iwilei Road, Box 209
Honolulu, Hawaii 96817

CERTIFIED MAIL

FRIENDS OF MAKAKILO
Attn: Mr. Kioni Dudley, President
92-1365 Hauone Street
Kapolei, Hawaii 96707

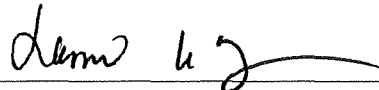
CERTIFIED MAIL

MORIHARA LAU & FONG, LLP
Attn: Yvonne Y. Izu, Esq.
Attorney for HASEKO (EWA), INC.
Davies Pacific Center
841 Bishop Street, Suite 400
Honolulu, Hawaii 96813

CERTIFIED MAIL

DATED: Honolulu, Hawaii, May 18, 2011.

Of Counsel:
IMANAKA KUDO & FUJIMOTO
A Limited Liability Law Company



BENJAMIN A. KUDO
NAOMI U. KUWAYE
YUKO FUNAKI

Attorneys for Petitioner

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