



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

2013 OCT -7 P 12:27  
LAND USE COMMISSION  
STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A92-68
	)	
HALEKUA DEVELOPMENT CORPORATION,	)	FIRST AMENDMENT TO THE
a Hawai`i corporation	)	AMENDED FINDINGS OF
	)	FACT, CONCLUSIONS OF
To Amend the Agricultural Land Use	)	LAW, AND DECISION AND
District Boundary into the Urban	)	ORDER FILED ON OCTOBER
Land Use District for Approximately	)	1, 1996; AND CERTIFICATE OF
503.886 Acres of land at Waikele	)	SERVICE
And Hō`ae`ae, `Ewa, O`ahu, City and	)	
County of Honolulu, State of Hawai`i, Tax	)	
Map Key No. 9-4-02: 1, portion of	)	
52, 70, and 71	)	

FIRST AMENDMENT TO THE AMENDED FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND DECISION AND ORDER FILED ON OCTOBER 1, 1996  
AND  
CERTIFICATE OF SERVICE

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, Hawai`i.

October 7, 2013 by

  
Executive Officer



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**FIRST AMENDMENT TO THE AMENDED  
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
DECISION AND ORDER FILED ON OCTOBER 1, 1996**

On July 15, 2013, Petitioner CANPARTNERS IV ROYAL KUNIA PROPERTY LLC (“Petitioner”), filed a Motion for Order Amending the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed on October 1, 1996 (“Motion”), pursuant to § 15-15-70 and § 15-15-94 of the *Hawai'i Administrative Rules* (“HAR”) for an order: 1) recognizing Canpartners IV Royal Kunia Property LLC’s standing to seek and obtain the relief requested herein; and 2) amending the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed October 1, 1996 (“1996 Decision and Order”) to modify Condition 2 to clarify Petitioner’s responsibilities for implementing transportation improvements.

The Land Use Commission (“Commission”), having heard and examined the testimony, evidence, and argument of counsel presented during the hearings, along with the pleadings filed herein, hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order.

**I. PROCEDURAL MATTERS**

1. On October 1, 1996, the Commission filed its Amended Findings of Fact, Conclusions of Law, and Decision and Order (“Amended Decision and Order”) to reclassify approximately 503.886 acres of land (“Petition Area”) in Kunia, O`ahu from the State Land Use Agricultural District to the State Land Use Urban District for the development of the Royal Kunia Phase II project (“Project”). The Project includes 2,000 units of single-family and multi-family residential units, 123 acres of light industrial uses, an elementary school, and public park.
2. On July 15, 2013, Petitioner filed a Motion for Order Amending the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed October 1, 1996.
3. On July 18, 2013, Petitioner filed its First Supplement to Motion for Order Amending the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed October 1, 1996 and Exhibit “8”.
4. On July 19, 2013, the Commission received correspondence from Senator Michelle Kidani.
5. On July 22, 2013, the Commission mailed a response letter to Senator Michelle Kidani.
6. On July 23, 2013, the Department of Planning and Permitting, City and County of Honolulu sent a No Objection Response to Petitioner’s Motion.

7. On July 29, 2013, the Commission received and granted the State Office of Planning's ("OP") request for an extension to file a response to Petitioner's.

8. On August 13, 2013, Petitioner filed its Second Supplement to Motion for Order Amending the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed October 1, 1996 and Exhibit "9" ("Second Supplement") which contained Petitioner's revised proposed modifications to Condition 2 of the 1996 Decision and Order.

9. On August 14, 2013, the Commission mailed notice and agenda for its August 22-23, 2013, meetings to the Parties, and the Statewide and O'ahu mailing lists.

10. On August 15, 2013, Petitioner filed its Errata to its Second Supplement to clarify its intent that the proposed modification to Condition 2 in the Second Supplement is the only proposal being requested.

11. On August 20, 2013, OP filed its Response to Petitioner's Motion for Order Amending the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed October 1, 1996.

12. On August 22, 2013, the Commission held its hearing on the Motion in Honolulu, Hawai'i. The Commission heard argument from each of the parties. Thereafter a motion was made and seconded to grant the Petitioner's Motion, subject to OP's proposed additions to the findings of fact, and Petitioner's proposed amendment to Condition 2 contained in the Second Supplement. The motion received eight aye votes, no nays, with one excused, and therefore passed.

## **II. FINDINGS OF FACT**

### **A. Description of the Subject Area**

13. The Petition Area is comprised of the approximately 503.886 acres under the 1996 Amended Decision and Order that was reclassified land from the Agricultural District to the Urban District in Kunia, O`ahu for the development of the Royal Kunia Phase II project (“Project”). The Project includes 2,000 units of single-family and multi-family residential units, 123 acres of light industrial uses, an elementary school, and public park.

14. The Petition Area is identified as Tax Map Key Nos. (1) 9-4-02: 1, portion of 52, 70, and 71.

15. On March 12, 2007, Petitioner acquired Parcel 71(TMK 9-4-002: 071) of the Petition Area.

16. Based upon the City and County of Honolulu’s real property tax records, the present ownership of the Petition Area is as follows: Canpartners IV Royal Kunia Property LLC (TMK 9-4-002: 071); HRT, Ltd. (TMK 9-4-002: 0001 por., 9-4-002: 070, 9-4-002: 078); 300 Corporation (TMK 9-4-002: 001 por.); Honolulu Limited (TMK 9-4-002: 001 por.); Robinson Kunia Land LLC (TMK 9-4-002: 052); and RKES LLC (TMK 9-4-002: 079).

17. The location of the Royal Kunia Phase II Project and the Kunia Interchange is approximately north of the `Ewa plains of O`ahu and shown on the location map that is attached as Exhibit “A” to the 1996 Decision and Order. The location map is Petitioner’s Exhibit “4”.

18. The area in question, the land affected by Condition 2 and the subject of the Motion, includes Kunia Road running both north and south directions mauka of the Kunia Interchange up to the Cane Haul Road Intersection. Petitioner’s Exhibits “5” and “9”.

19. Based upon the Traffic Impact Study for Royal Kunia Phase II, dated April 15, 2013, the northbound approach of Kunia Road at the Kunia Interchange is expected at year 2025 to operate at Levels of Service “F” during both AM and PM peak hours of traffic *without* the

Royal Kunia Phase II Project as a result of projected ambient traffic growth in the region. This means that improvements to the Kunia Interchange area up to Cane Haul Road would be needed to support the increase in regional traffic demands in Year 2025 even without the development of the Royal Kunia Phase II Project.

20. Given the character of the Kunia Interchange area up to Cane Haul Road being a regional improvement, it is reasonable to revise Condition 2 of the 1996 Amended Decision and Order to clarify that the Kunia Interchange area up to Cane Haul Road should not be considered an improvement directly attributable to the Project, and instead make clear that it is a regional improvement which would be funded through the “fair share” pro-rata basis as described in the remaining language of Condition 2.

**B. Description of the Proposed Amendment**

21. Petitioner sought an amendment to the 1996 Amended Decision and Order to clarify that the Kunia Interchange area up to Cane Haul Road is a regional improvement so that Petitioner may finalize plans to break ground for the Project in 2014.

22. Based on the comments by the DOT, OP proposed an additional Finding of Fact 160A and a revised Finding of Fact 161(A) to support the amendment to Condition No. 2 (new text is underlined, deletions in brackets and struck through):

“FOF 160A. The State Department of Transportation (“DOT”) has clarified Petitioner’s responsibilities for local and regional transportation improvements and further analysis of the transportation systems in the area as follows:

A. All improvements required to mitigate the impacts of the proposed development north of the Cane Haul Road intersection with Kunia Road to the northernmost boundary of Royal Kunia Phase II, i.e., at the northern boundary of the State Agricultural Park, would be considered as local or direct transportation mitigation improvements to be provided by Petitioner at no cost to the State. All improvements including but not limited to the Interstate H-1 Kunia Interchange and Kunia Road, south of the intersection with the Cane Haul Road would be considered regional transportation mitigation improvements for which Petitioner would provide its pro rata share contribution.

B. Petitioner has proposed a temporary third northbound lane as an interim measure to allow the Petitioner to proceed with the project. Petitioner has agreed to provide an analysis of traffic projections for each lane and turning movement on Kunia Road at its intersections with South Kupuna Loop and North Kupuna Loop based on existing 2013 traffic counts to validate that an interim third northbound shared through/right turn lane on Kunia Road at South Kupuna Loop will be operationally acceptable to DOT up to a specified trip generation threshold of the project based on the number of dwelling units and/or applicable units developed for light industrial or business use. If the analysis is acceptable to DOT, Petitioner agrees to fund, design and construct the interim third northbound lane on Kunia Road between the Cane Haul Road intersection

and North Kupuna Loop intersection, prior to the issuance of any building permit for Royal Kunia Phase II.

C. DOT requires Petitioner to provide a permanent third northbound through lane with a dedicated right-turn lane into South Kupuna Loop and North Kupuna Loop when the Royal Kunia Phase II development reaches the specified threshold for the interim third northbound lane. The interim and permanent third northbound lanes should both be consistent with the revised Traffic Impact Study (“TIS”) that includes the Kunia Interchange Alternatives Report and that is acceptable to DOT. Petitioner will be required to identify constraints and show that the proposed mitigative improvements are constructible and feasible.

D. Petitioner will complete the analysis of the entire transportation system in the area, including the Interstate H-1 Kunia Interchange and Kunia Road north of the Kunia Interchange to the northernmost boundary of Royal Kunia Phase II, in order for DOT and Petitioner to identify and determine the regional and local transportation impacts and required mitigation improvements.

E. Petitioner will complete the Kunia Interchange Alternatives Report, as part of the revised TIS, to analyze the impacts of the proposed

Phase II project's traffic on the Kunia Interchange and evaluate alternatives that will mitigate the impacts.

FOF 161. The [State Department of Transportation (“DOT”)]  
DOT comments that Petitioner should be required to provide the  
following:

A. All of the other improvements needed (which will not be provided by the Village Park and Royal Kunia, Phase I projects) to make Kunia Road a 4-lane highway with auxiliary lanes for both left and right turning movements (between [Kunia Interechange] Cane Haul Road Intersection and the northernmost boundary of Royal Kunia, Phase II) and a third northbound lane between [Kunia Interechange] Cane Haul Road Intersection and the north Kupuna Loop Intersection.”

23. Petitioner proposed the following modifications to Condition 2 of the 1996 Amended Decision and Order as follows where the ~~strikeout~~ portion shows the deletion and the underlined portion shows the addition:

“2. Petitioner shall fund, design, and construct the local ~~and regional~~ transportation improvements necessitated by the proposed development, ~~on a pro rata basis, and~~ north of the Cane Haul Road intersection with Kunia Road, as determined and approved by the State Department of Transportation (DOT) and the City and County of Honolulu, Department of Transportation Services,

including without limitation the dedication of any rights-of-way to the State or County. Petitioner shall provide its fair share contribution toward regional transportation mitigation improvements, including but not limited to the Interstate H-1 Kunia Interchange and Kunia Road, south of the intersection with the Cane Haul Road, as determined and approved by DOT. Petitioner shall also be required to provide the following:

- A. All of the other improvements needed (which will not be provided by the Village Park and Royal Kunia, Phase I projects) to make Kunia Road a 4-lane highway with auxiliary lanes for both left and right turning movements (between Kunia Interchange Cane Haul Road Intersection and the northernmost boundary of Royal Kunia, Phase II) and a third northbound lane between Kunia Interchange Cane Haul Road Intersection and the north Kupuna Loop intersection-, provided that interim measures prior to full build out may be allowed with the approval of DOT.
  
- B. A report that analyzes the impact of the proposed Phase II project's traffic on the Kunia Interchange and evaluate alternatives that will mitigate the impacts.

- C. Petitioner shall submit a revised Traffic Impact Study, including the Kunia Interchange Alternatives Report, and obtain DOT's acceptance prior to preliminary subdivision application.
- D. Plans for Construction work within the State highway right-of-way must be submitted to DOT, Highways Division for review and approval.

Agreement by the State Department of Transportation on the level of funding and participation shall be obtained prior to the Petitioner applying for county zoning.”

**III. RULINGS ON PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Any of the findings of fact submitted by Petitioner or any other party not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

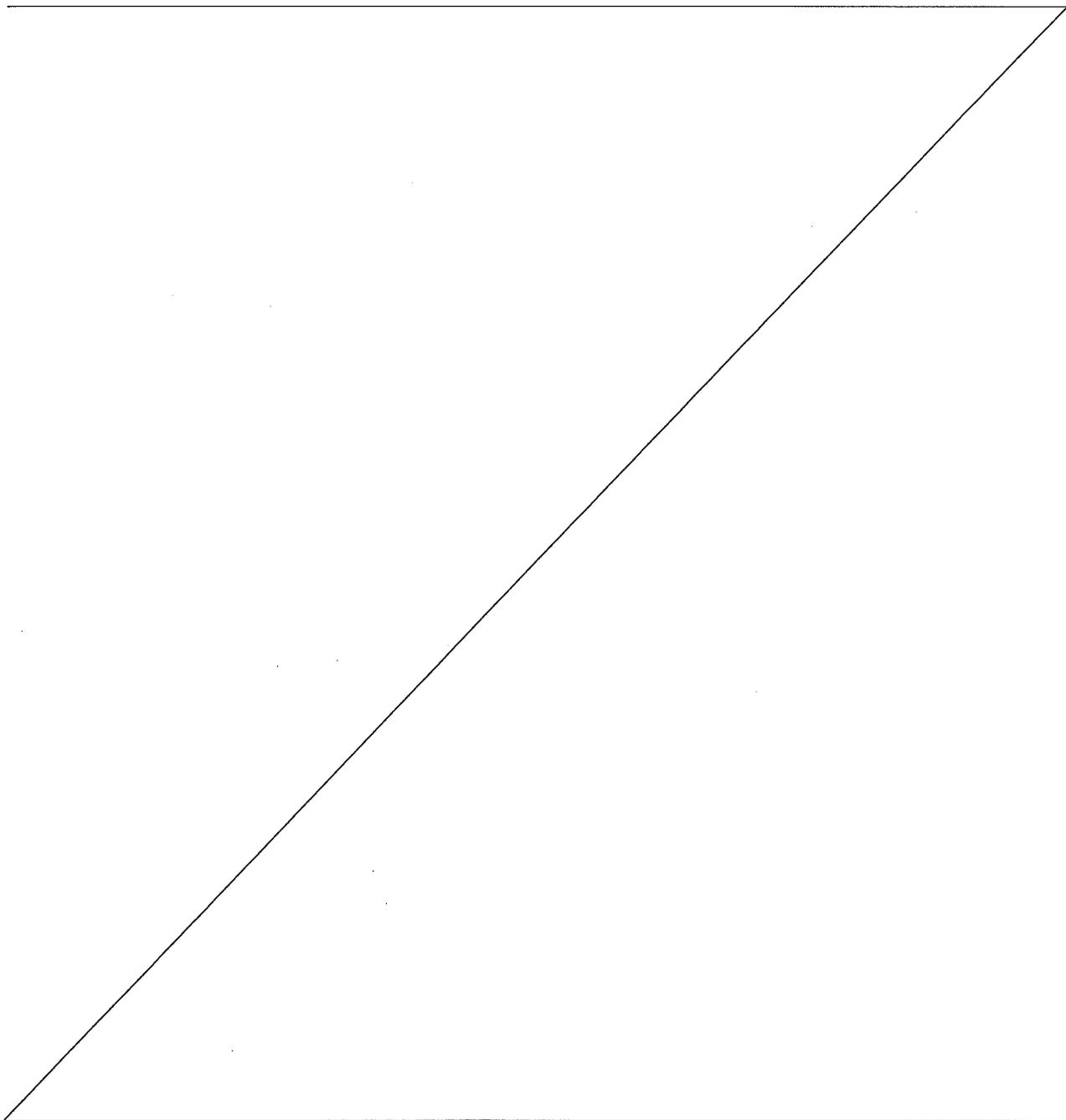
**IV. CONCLUSIONS OF LAW**

Pursuant to Chapter 205, HRS and the Commission Rules under Chapter 15-15, HAR, and upon consideration of the Commission decision-making criteria under Section 205-17, HRS, the Commission finds upon a clear preponderance of the evidence that the motion for an order: 1) recognizing Canpartners IV Royal Kunia Property LLC's standing to seek and obtain the relief requested herein; and 2) amending the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed October 1, 1996 to add OP's proposed additional FOF 160A and revised FOF 161A and to modify Condition 2 found in Petitioner's Second Supplement to clarify that the Kunia Interchange area up to Cane Haul Road is a regional improvement, is reasonable, conforms to the standards for establishing urban district boundaries, is not violative of Section 205-2, HRS, and is consistent with the policies and criteria established pursuant to Sections 205-16, 205-17 and 205A-2, HRS, Article XII, Section 7 and other relevant sections of the State Constitution.

**V. DECISION AND ORDER**

IT IS HEREBY ORDERED that the Amended Findings of Fact, Conclusions of Law, and Decision and Order dated and entered herein on October 1, 1996, be and hereby are amended as set forth in paragraph 22 and 23 above: (1) to recognize Canpartners IV Royal Kunia Property LLC's standing to seek and obtain the relief requested herein; and (2) amending the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed October 1, 1996 to add OP's proposed additional FOF 160A and revised FOF 161(A) and to modify Condition 2 as set forth in Petitioner's Second Supplement to clarify that the Kunia Interchange area up to Cane Haul Road is a regional improvement.

IT IS FURTHER ORDERED that Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission. Failure to so develop the Petition Area may result in reversion of the Petition Area to its former classification, or change to a more appropriate classification.



ADOPTION OF ORDER

The undersigned Commissioner, being familiar with the record and proceedings, hereby adopts and approves the foregoing ORDER this 7th day of October, 2013. This ORDER may be executed in counterparts. This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this 7th, day of October, 2013, per motion on August 22, 2013.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAII



Deputy Attorney General

By

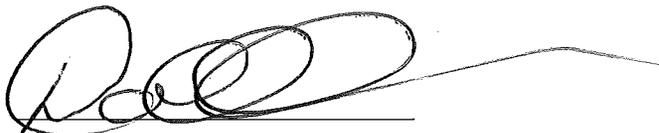


RONALD I. HELLER

Chairperson and Commissioner

FILED AND EFFECTIVE ON: October 7, 2013.

Certified by:



DANIEL ORODENKER

Executive Officer

State Land Use Commission



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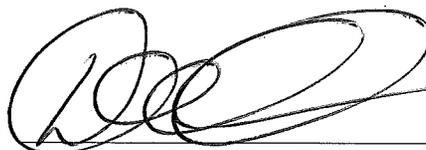
CERTIFICATE OF SERVICE

I hereby certify that a Findings of Fact, Conclusions of Law, and Decision and Order 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:

	<b>HAND DELIVERED</b>	<b>REGULAR MAIL</b>	<b>CERTIFIED MAIL</b>
JESSE SOUKI, DIRECTOR Office of Planning 235 S. Beretania Street Rm. 600 Honolulu, Hawai`i 96813	<b>X</b>		
BRYAN YEE, ESQ. Deputy Attorney General Hale Auhau, Third Floor 425 Queen Street Honolulu, Hawai`i 96813		<b>X</b>	
George I. Atta, Director Department of Planning and Permitting City and County of Honolulu 650 South King Street, 7 <sup>th</sup> Floor Honolulu, Hawai`i 96813		<b>X</b>	

	<b>HAND DELIVERED</b>	<b>REGULAR MAIL</b>	<b>CERTIFIED MAIL</b>
Dawn Takeuchi-Apuna, Esq. Deputy Corporation Counsel Department of the Corporation Counsel 530 South King Street Room 110, Honolulu Hale Honolulu, Hawai'i 96813		<b>X</b>	
Benjamin M. Matsubara, Esq. Curtis T. Tabata, Esq. Wyeth M. Matsubara, Esq. Matsubara-Kotake 888 Mililani Street, 8 <sup>th</sup> Floor Honolulu, Hawai'i 96813			<b>X</b>
HRT, Ltd. 3660 Waiialae Avenue, Suite 400 Honolulu, Hawai'i 96816		<b>X</b>	
Robinson Kunia Land LLC 1100 Alakea Street, Suite 600 Honolulu, Hawai'i 96813		<b>X</b>	
Honolulu, Limited 3660 Waiialae Avenue, Suite 400 Honolulu, Hawai'i 96816		<b>X</b>	
300 Corporation 3660 Waiialae Avenue, Suite 400 Honolulu, Hawai'i 96816		<b>X</b>	
RKES LLC 1288 Ala Moana Blvd, Suite 201 Honolulu, Hawai'i 96814		<b>X</b>	

Dated: Honolulu, Hawai'i, October 7, 2013.



DANIEL ORODENKER

Executive Officer