

ORIGINAL

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of)	DOCKET NO. A92-683
)	
HALEKUA DEVELOPMENT)	ORDER GRANTING
CORPORATION, A Hawai`i)	HALEKUA DEVELOPMENT
Corporation)	CORPORATION'S ORAL
)	MOTION TO DISMISS ORDER
To Amend The Agricultural Land)	TO SHOW CAUSE
Use District Boundary Into The)	PROCEEDING
Urban Land Use District For)	
Approximately 503.886 Acres Of Land)	
At Waikele And Hō`ae`ae, `Ewa, O`ahu,)	
City And County Of Honolulu,)	
Hawai`i, Tax Map Key: 9-4-02: 1,)	
Portion Of 52, 70, And 71)	
_____)	

ORDER GRANTING HALEKUA DEVELOPMENT CORPORATION'S ORAL MOTION
TO DISMISS ORDER TO SHOW CAUSE PROCEEDING

and Abe Mitsuda on behalf of the State Office of Planning; and Mike Watkins on behalf of the City and County of Honolulu Department of Planning and Permitting ("DPP").³ At the meeting, the Commission heard testimony from Jerrold K. Guben, Esq., counsel to James B. Nicholson, the successor Chapter 7 Trustee appointed over Petitioner and Petitioner's estate in Petitioner's bankruptcy proceedings. Thereafter, Petitioner orally moved to dismiss the Commission's Order To Show Cause proceeding ("Oral Motion To Dismiss") pursuant to section 15-15-70, Hawai'i Administrative Rules ("HAR").

In support of its Oral Motion To Dismiss, Petitioner offered Gregory Smith, senior loan officer at CMR Mortgage Fund, LLC, a California limited liability company ("CMR"), as a witness who testified that, among other things, CMR issued a \$100 million loan commitment to Petitioner to allow the development to move forward.⁴ Mr. Smith further testified that the closing date for the loan mandated by the U.S. Bankruptcy Court for the District of Hawai'i is February 28, 2007, a date which neither Petitioner nor CMR could extend. Mr. Smith noted that the loan proceeds would be used to pay off the secured and unsecured creditors that currently encumber the Project

² On February 22, 2007, HRT Realty, LLC, filed a Memorandum In Opposition To The Reclassification Of The Petition Area.

³ On February 22, 2007, the DPP filed a letter opposing any action to rescind the land use classification as contemplated by the Order To Show Cause.

⁴ The Amended And Restated Commitment Letter - \$92,100,000/\$100,000,000 Real Property Secured Term Loan ("Amended And Restated Commitment Letter") dated February 15, 2007, added Canyon Capital Realty Advisors, LLC, a Delaware limited liability company ("Canyon"), as a lender party subject to Canyon determining to proceed as such upon completion of its due diligence. According to Mr. Smith, Canyon subsequently issued its commitment to the loan.

and Property⁵ as well as immediately satisfy several of the conditions of approval imposed by this Commission. Mr. Smith further noted that as a lender, CMR requires that Petitioner bring in an experienced local, third-party project manager to handle the pre-development stage of the Project and who will be required to develop a detailed budget and timeline such that it will advance the Project to the point where an application for subdivision maps can be filed. Mr. Smith disclosed that Petitioner and Stanford Carr Development have entered into a tentative term sheet, which will allow them to move toward a project management agreement. Mr. Smith pointed out that CMR has set aside a reserve of \$3.6 million within the \$100 million loan to fully fund the operations of the project manager over the first year of the Project. Mr. Smith added that the loan contemplates additional funding beyond that one year to cover development expenses to move the Project to the next stage of construction financing. Mr. Smith affirmed that Petitioner has obtained approval from the U.S. Bankruptcy

⁵ As used herein, the term "Project" means the residential development proposed by Petitioner on land to which it retains title and the accompanying property rights (i.e. the "Property"). As used herein, the term "Property" is identified as TMK: 9-4-02: 71 and consists of approximately 161.360 acres of land. Pursuant to Order Granting The Office Of Planning's Amended Motion To Exempt HRT, Ltd.'s Property From The Order To Show Cause Granted On February 26, 2003, Pursuant To The Stipulation Filed On December 30, 2003 dated February 23, 2004, the lands owned by HRT, Ltd. (now known as HRT Realty, LLC), and its sister companies, 300 Corporation and Honolulu Limited, identified as TMK: 9-4-02: 1, 70, and 78 (parcel 78 was created from the subdivision of parcel 71), consisting of approximately 173.676 acres of land, were conditionally exempt from the Order To Show Cause. The Order To Show Cause also includes TMK: 9-4-02: 52. As the recorded fee owners of parcel 52, the Robinson Estate and other owners related to the Robinson Estate were served with the Order To Show Cause through counsel but elected not to intervene in the proceeding. At the time the Order To Show Cause was initiated, parcel 52 consisted of approximately 307.919 acres of land, including approximately 150 acres that were not subject to the Order To Show Cause. The 150 acres were subsequently subdivided out from parcel 52 to create parcel 80, which is referred to herein as the 150-acre agricultural park site.

Court to enter into the loan with CMR. Finally, Mr. Smith noted that because one of the chief underwriting concerns in evaluating the Project was the potential of the Property to be reclassified to its former designation, CMR thought it prudent that this issue be resolved prior to closing.

Upon questioning by the Commission, Petitioner stated that it will provide the Commission with fully executed copies of the Amended And Restated Commitment Letter. Upon further questioning by the Commission, Mr. Smith asserted that the conditions of closing have been previously satisfied, are administrative in nature, or may be fully waived at the lenders' discretion, and therefore the lenders are fully prepared to close the transaction on or before February 28, 2007.

Petitioner then presented its next witness in support of its Oral Motion To Dismiss, Randolph Y. Teruya, the Agricultural Asset Manager of the State Department of Agriculture ("DOA"). Mr. Teruya confirmed that the 150-acre agricultural park site has been transferred to the State Department of Land and Natural Resources for the benefit of the DOA. Mr. Teruya also testified that the DOA has come to an agreement in principle with Petitioner as to Condition Number 19 of the Amended Findings Of Fact, Conclusions Of Law, And Decision And Order ("Amended Decision And Order") dated October 1, 1996, regarding the infrastructure development to the site that includes (i) an acknowledgement of the conveyance of the site to the State of Hawai'i by and through its State Board of Land and Natural Resources for the benefit of the DOA and

the acceptance thereof by the DOA in partial satisfaction of the agreements in the original Memorandum Of Understanding ("MOU") notwithstanding the delay in the actual conveyance of the site; (ii) modification of the agreements between Petitioner and the DOA with respect to the timing for design and construction of the offsite infrastructure to the site; (iii) deletion of the provisions within the original MOU providing for the DOA to initiate and complete its development and commence active use of the site within a period of time measured from the date of initial conveyance of the site to the DOA; and (iv) deletion of the right of reverter if the site is not developed and utilized for those agricultural purposes within 10 years from the date of the initial conveyance of the site to the DOA, and replacing it with a restrictive use covenant requiring agricultural use and reversion if the use covenant is breached. Finally, Mr. Teruya noted that there is a proposed amended MOU between Petitioner and the DOA that is currently being reviewed by the DOA.

Petitioner then presented its final witness, Heidi A. Meeker, a planner with the State Department of Education ("DOE"), Facilities Development Branch. Ms. Meeker testified that although the DOE is still in the process of completing a written agreement pursuant to Condition Number 6 of the Amended Decision And Order, the DOE has correspondence starting in 1996 in which there is an agreement as to what the

contribution would be.⁶ Ms. Meeker added that the agreement is being reviewed by the DOE's deputy attorney general, and that a signed copy of the agreement is expected back within a week.

The other parties present in this proceeding had no objections to Petitioner's Oral Motion To Dismiss.

Following discussion, a motion was made and seconded to grant Petitioner's Oral Motion To Dismiss. There being a vote tally of 6 ayes, 2 absent, and 1 abstention⁷, the motion carried.

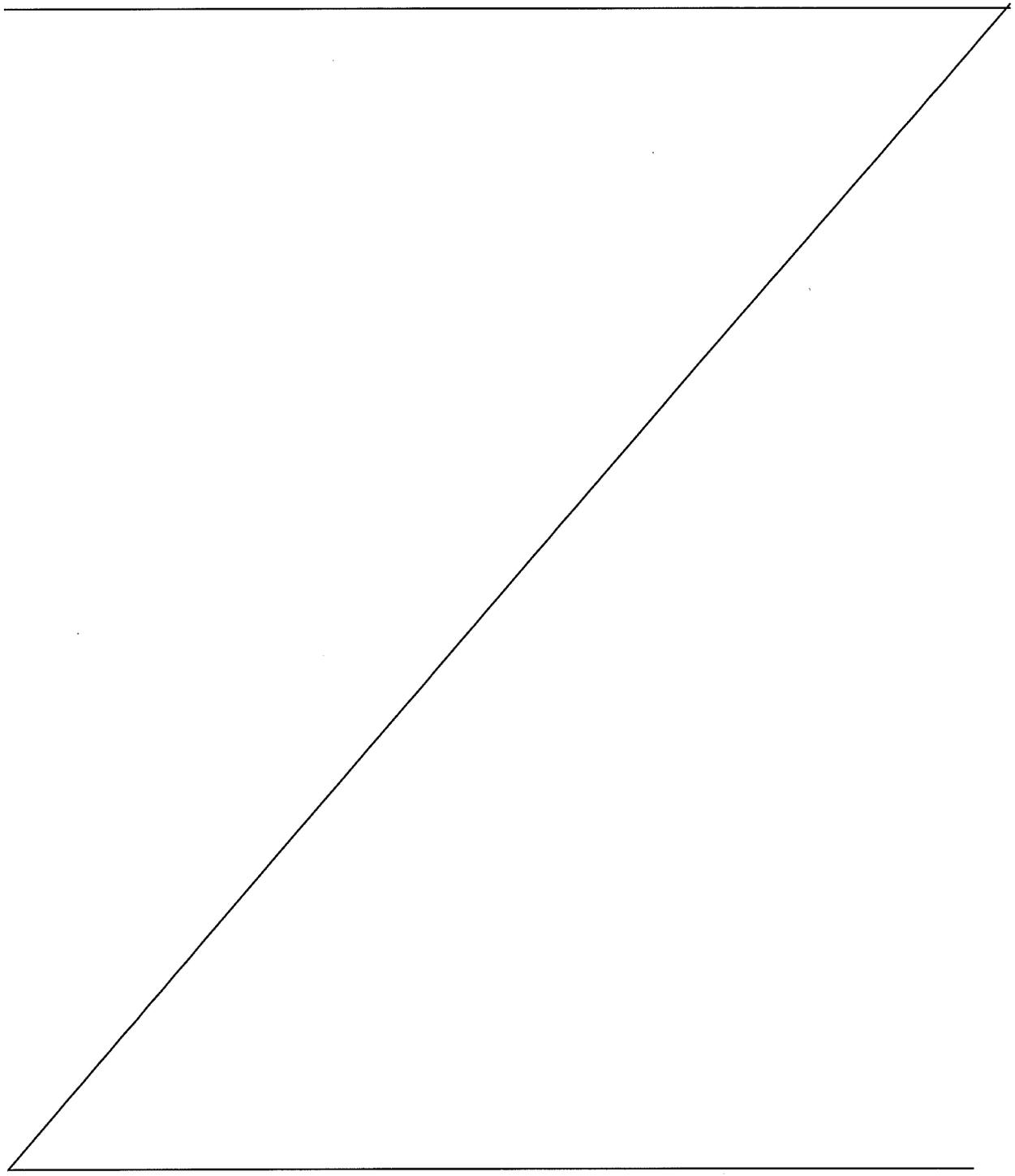
ORDER

This Commission, having duly considered Petitioner's Oral Motion To Dismiss, the arguments of the parties present in the proceeding, and a motion having been made at a meeting on February 23, 2007, in Honolulu, Hawai'i, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion,

⁶ The fair-share contribution agreement is generally reflected in the proposed School Site Agreement attached as Exhibit A to Petitioner's 2007 Interim Status Report Of Halekua Development Corporation On Conditions To Decision And Order Of Land Use Commission filed on February 20, 2007. The agreement requires, in part, that RKES, LLC, a Hawai'i limited liability company, design, develop, and construct an elementary school and related facilities on a 12-acre parcel, identified as TMK: 9-4-02: 79, with dedication and conveyance of the parcel and all related facilities, improvements, and equipment situated thereon to the DOE upon completion of construction. Parcel 79 was created from the subdivision of TMK: 9-4-02: 71.

⁷ Commissioner Reuben S. F. Wong previously represented the Intervenors before this Commission prior to his appointment to the Commission. Consequently, Mr. Wong recused himself from this proceeding and, in fact, was not present at the meeting.

HEREBY ORDERS that Petitioner's Oral Motion To Dismiss be
GRANTED.



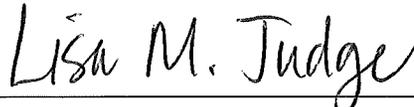
Done at Honolulu, Hawai'i, this 16th day of
March, 2007, per motion on February 23,, 2007.

APPROVED AS TO FORM



Deputy Attorney General

LAND USE COMMISSION
STATE OF HAWAII

By 

LISA M. JUDGE
Chairperson

Filed and effective on
MAR 16 2007

Certified by:



ANTHONY J. H. CHING

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of)	DOCKET NO. A92-683
)	
HALEKUA DEVELOPMENT)	CERTIFICATE OF SERVICE
CORPORATION, A Hawai'i)	
Corporation)	
)	
To Amend The Agricultural Land)	
Use District Boundary Into The)	
Urban Land Use District For)	
Approximately 503.886 Acres Of Land)	
At Waikele And Hō`ae`ae, `Ewa, O`ahu,)	
City And County Of Honolulu,)	
Hawai'i, Tax Map Key: 9-4-02: 1,)	
Portion Of 52, 70, And 71)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Granting Halekua Development Corporation's Oral Motion To Dismiss Order To Show Cause Proceeding 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. LAURA H. THIELEN, Director
 Office of Planning
 P. O. Box 2359
 Honolulu, Hawaii 96804-2359

BRYAN YEE, Esq.
Deputy Attorney General
Hale Auhau, Third Floor
425 Queen Street
Honolulu, Hawaii 96813

HENRY ENG, Director
Department of Planning and Permitting
650 South King Street
Honolulu, Hawaii 96813

CARRIE OKINAGA, Esq.
Corporation Counsel
City and County of Honolulu
530 South King Street
Honolulu, Hawaii 96813

CERT. JONATHAN S. DURRETT, Esq.
841 Bishop Street, Suite 702
Honolu, Hawaii 96813

CERT. REUBEN S. F. WONG, Esq.
DELWYN H. W. WONG, Esq.
1164 Bishop Street, Suite 1006
Honolulu, Hawaii 96813

MAR 16 2007

Dated: Honolulu, Hawaii, _____.



ANTHONY L.H. CHING
Executive Officer