

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

|   |   |                          |
|---|---|--------------------------|
| In the Matter of the Petition of          | ) | DOCKET NO. A92-683       |
|   | ) |                          |
| HALEKUA DEVELOPMENT CORPORATION,          | ) | MOTION FOR ORDER AMEND-  |
| a Hawai'i corporation                     | ) | ING THE AMENDED FIND-    |
|   | ) | INGS OF FACT, AND        |
| To Amend the Agricultural Land Use        | ) | CONCLUSIONS OF LAW, AND  |
| District Boundary into the Urban          | ) | DECISION AND ORDER FILED |
| Land Use District for Approximately       | ) | OCTOBER 1, 1996          |
| 503.886 Acres of land at Waikele          | ) |                          |
| And Ho`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                            | ) |                          |
| _____                                     | ) |                          |

MOTION FOR ORDER AMENDING THE AMENDED  
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
DECISION AND ORDER FILED OCTOBER 1, 1996  
VERIFICATION  
AFFIDAVIT OF WYETH M. MATSUBARA  
EXHIBIT "1" - "7"  
AND  
CERTIFICATE OF SERVICE

LAND USE COMMISSION  
 STATE OF HAWAII  
 2013 JUL 15 P 2:29

BENJAMIN M. MATSUBARA, #993-0  
 CURTIS T. TABATA, #5607-0  
 WYETH M. MATSUBARA, #6935-0  
 Matsubara - Kotake  
 888 Mililani Street, 8<sup>th</sup> Floor  
 Honolulu, Hawai'i 96813  
  
 Attorneys for Petitioner  
 CANPARTNERS IV ROYAL KUNIA  
 PROPERTY LLC

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of ) DOCKET NO. A92-683  
)  
HALEKUA DEVELOPMENT 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 Ho'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 )  
\_\_\_\_\_)

**MOTION FOR ORDER AMENDING THE AMENDED  
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
DECISION AND ORDER FILED OCTOBER 1, 1996**

TO THE HONORABLE LAND USE COMMISSION OF THE STATE OF HAWAII:

CANPARTNERS IV ROYAL KUNIA PROPERTY LLC, ("Petitioner") by and through its attorneys, MATSUBARA - KOTAKE, respectfully moves the Land Use Commission of the State of Hawai'i ("Commission") pursuant to § 15-15-70 and § 15-15-94 of the Commission's Rules 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 that

the construction of a third northbound lane between Kunia Interchange and the north Kupuna Loop intersection is a regional improvement.

In support of this Motion for Order Amending the Findings of Fact, Conclusions of Law, and Decision and Order filed October 1, 1996 ("Motion"), Petitioner alleges as follows:

**I. INTRODUCTION**

On October 1, 1996, the Land Use Commission, State of Hawai'i ("Commission") filed its 1996 Decision and Order to reclassify approximately 503.886 acres of land ("Petition Area") in Kunia, Oahu 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, light industrial, an elementary school, and public park.

At the time of the reclassification, the entire 503.886 acres were intended to be developed by Halekua Development Corporation ("HDC"), however, HDC only retained title and the accompanying property rights to approximately 161 acres identified as TMK 9-4-002: 071 ("Parcel 71"). Part of the remaining Petition Area was conveyed to HRT, Ltd. and related entities. See page 2 of the 2007 Status Report of Halekua-Kunia LLC On Conditions To Decision And Order Of Land Use Commission, filed April 27, 2007 ("2007 Status Report"); and finding of fact 14 of the 1996 Decision

and Order. The 2007 Status Report is attached hereto as Exhibit "1" and the 1996 Decision and Order is attached hereto as Exhibit "2".

In early 2003 HDC filed a bankruptcy petition with the U.S. Bankruptcy Court of the District of Hawaii. During the bankruptcy proceeding, HDC redeemed (reacquired) Parcel 71 and later conveyed it to Halekua-Kunia LLC ("HK"). The HDC redemption of Parcel 71 was financed by Canpartners Realty Holding Company IV LLC and CMR Mortgage Fund LLC ("Lending Group"). See page 2 of the 2007 Status Report.

HK subsequently failed to make its payments to the Lending Group, and Canpartners Realty Holding Company IV LLC instituted foreclosure proceeding which resulted in Parcel 71 being conveyed to Canpartners Realty Holding Company IV LLC's designated nominee, Canpartners IV Royal Kunia Property LLC, the Petitioner and movant herein. See Canpartners IV Royal Kunia Property LLC's letter to Orlando (Dan) Davidson dated August 11, 2009. The August 11, 2009 letter is attached hereto as Exhibit "3".

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).

Pursuant to §15-15-94(a) of the Hawai'i Administrative Rules ("HAR"), this motion is being served on HRT, Ltd., 300 Corporation, Honolulu Limited, Robinson Kunia Land LLC, and RKES LLC, in addition to the parties to A92-683. Landowner's letters are attached hereto as Exhibit "7".

On July 23, 2009, the Department of Planning and Permitting, City and County of Honolulu ("DPP") approved the Planned Development-Housing ("PDH") Permit for Royal Kunia Phase II. The PDH Permit allows the project to move around the zoning parcels to allow the developer to "sprinkle" A-1 Multifamily housing throughout the Project to create a mixed income, product type of neighborhood.

After receiving PDH Permit approval, while proceeding with engineering, Petitioner evaluated the highway improvements required by Condition 2 in the 1996 Decision and Order and concluded that the requirement for "a third northbound lane between Kunia Interchange and the north Kupuna Loop intersection" is a regional highway improvement and should not be considered needed solely due to the Royal Kunia Phase II Project.

Petitioner now seeks an amendment to the 1996 Decision and Order to clarify that the third northbound lane is a regional improvement so that Petitioner may finalize plans to break ground for the Project in 2014.

## II. DISCUSSION

Petitioner proposes the following modifications to Condition 2 of the 1996 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 as determined and approved by the State Department of Transportation 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 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 and the northernmost boundary of Royal Kunia, Phase II) ~~and a third northbound lane between Kunia Interchange and the north Kupuna Loop intersection.~~
- 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. Plans for Construction work within the State highway right-of-way must be submitted to DOT, Highways Division for review and approval.

A third northbound lane between Kunia Interchange and the north Kupuna Loop intersection will be required in the future as a regional improvement.

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."

The location of the Royal Kunia Phase II Project and the proposed third northbound lane between Kunia Interchange and the north Kupuna Loop intersection is approximately north of the Ewa plains of Oahu and shown on the location map that is attached as Exhibit "A" to the 1996 Decision and Order. The location map is attached hereto as Exhibit "4".

The area in question includes Kunia Road running mauka of the Kunia Interchange. The first three intersections on Kunia Road running mauka of the Kunia Interchange are, from South to North: South Kupuna Loop, North Kupuna Loop and Anonui Street. The overhead photo showing the interchange, South Kupuna Loop, North Kupuna Loop and Anonui Street is attached hereto as Exhibit "5".

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 an additional third northbound lane on Kunia 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. See Pete Pascua's letter dated July 5, 2013 explaining the analysis of Kunia Road between the Kunia Interchange and Anonui Street and the Traffic Impact Study for Royal Kunia Phase II, dated April 15, 2013, both of which are attached hereto as Exhibit "6".

Given the character of the third northbound lane as a regional improvement, it is reasonable to revise Condition 2 of the 1996 Decision and Order to clarify that the third northbound lane 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.

**III. CONCLUSION**

Based upon the foregoing, Petitioner respectfully requests that the Commission grant this motion after a hearing which Petitioner hereby requests pursuant to HAR §15-15-70(i).

DATED: Honolulu, Hawai'i, July 15, 2013.

Of Counsel:  
MATSUBARA - KOTAKE  
A Law Corporation



BENJAMIN M. MATSUBARA  
CURTIS T. TABATA  
WYETH M. MATSUBARA  
Attorneys for Petitioner  
CANPARTNERS IV ROYAL KUNIA  
PROPERTY LLC

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of ) DOCKET NO. A92-683  
)  
HALEKUA DEVELOPMENT CORPORATION, ) VERIFICATION  
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 Ho'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 )  
\_\_\_\_\_ )

VERIFICATION

STATE OF HAWAII )  
) ss.:  
CITY AND COUNTY OF HONOLULU )

Stanford S. Carr, being first duly sworn, on oath, deposes and says that:

1. I am the President of Stanford Carr Development, LLC, the Development Manager of the Royal Kunia Phase II Project, and in this capacity I am familiar with matters relating to the land which is the subject of Docket No. A92-683 and knowledgeable to testify on behalf of the Petitioner.

2. I have personal knowledge of the matters set forth in the foregoing Petition in Docket No. A92-683 and am qualified and competent to make this verification.