

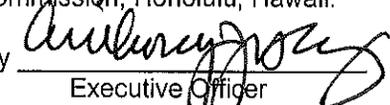
BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of	)	DOCKET NO. A94-703
)	
THE LIHUE PLANTATION COMPANY,	)	ORDER GRANTING
LIMITED, A Hawai'i Corporation	)	APPROVAL OF
	)	STIPULATED ORDER
To Amend The Agricultural Land Use	)	GRANTING AMENDED
District Boundary For Approximately	)	AND RESTATED MOTION
541.769 Acres And The Conservation Land	)	TO AMEND CONDITIONS
Use District Boundary For Approximately	)	1, 2 AND 7 MADE A PART
12.873 Acres Into The Urban Land Use District	)	OF ORDER ADOPTING
At Hanamā'ulu And Kalapakī, Island Of	)	HEARING OFFICER'S
Kaua'i, State Of Hawai'i, Tax Map Key Nos.	)	FINDINGS OF FACT,
3-6-02: Por. 1, Por. 4 & Por. 20; 3-6-02: 17;	)	CONCLUSIONS OF LAW,
3-7-01: Por. 1; 3-7-02: Por. 1 & Por. 12; And	)	AND DECISION AND
3-7-03: Por. 20	)	ORDER DATED AND
_____	)	ENTERED ON JANUARY 4,
	)	1996, AS AMENDED BY
	)	ORDER GRANTING
	)	MOTION TO AMEND
	)	CONDITION NOS. 2 AND 7,
	)	DATED APRIL 12, 1996

ORDER GRANTING APPROVAL OF STIPULATED ORDER GRANTING AMENDED AND RESTATED MOTION TO AMEND CONDITIONS 1, 2 AND 7 MADE A PART OF ORDER ADOPTING HEARING OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER DATED AND ENTERED ON JANUARY 4, 1996, AS AMENDED BY ORDER GRANTING MOTION TO AMEND CONDITION NOS. 2 AND 7, DATED APRIL 12, 1996

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.

DEC 18 2006 by 
 Date Executive Officer

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of	)	DOCKET NO. A94-703
)	
THE LIHUE PLANTATION COMPANY,	)	ORDER GRANTING
LIMITED, A Hawai'i Corporation	)	APPROVAL OF
	)	STIPULATED ORDER
To Amend The Agricultural Land Use	)	GRANTING AMENDED
District Boundary For Approximately	)	AND RESTATED MOTION
541.769 Acres And The Conservation Land	)	TO AMEND CONDITIONS
Use District Boundary For Approximately	)	1, 2 AND 7 MADE A PART
12.873 Acres Into The Urban Land Use District	)	OF ORDER ADOPTING
At Hanamā'ulu And Kalapakī, Island Of	)	HEARING OFFICER'S
Kaua'i, State Of Hawai'i, Tax Map Key Nos.	)	FINDINGS OF FACT,
3-6-02: Por. 1, Por. 4 & Por. 20; 3-6-02: 17;	)	CONCLUSIONS OF LAW,
3-7-01: Por. 1; 3-7-02: Por. 1 & Por. 12; And	)	AND DECISION AND
3-7-03: Por. 20	)	ORDER DATED AND
_____	)	ENTERED ON JANUARY 4,
		1996, AS AMENDED BY
		ORDER GRANTING
		MOTION TO AMEND
		CONDITION NOS. 2 AND 7,
		DATED APRIL 12, 1996

ORDER GRANTING APPROVAL OF STIPULATED ORDER GRANTING AMENDED
AND RESTATED MOTION TO AMEND CONDITIONS 1, 2 AND 7 MADE A PART
OF ORDER ADOPTING HEARING OFFICER'S FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DECISION AND ORDER DATED AND ENTERED ON JANUARY 4,
1996, AS AMENDED BY ORDER GRANTING MOTION TO AMEND CONDITION
NOS. 2 AND 7, DATED APRIL 12, 1996

The Amended And Restated Motion To Amend Conditions 1, 2 And 7
Made A Part Of Order Adopting Hearing Officer's Findings Of Fact, Conclusions Of
Law, And Decision And Order Dated And Entered January 4, 1996, As Amended By
Order Granting Motion To Amend Condition Nos. 2 And 7, Dated April 12, 1996

("Amended and Restated Motion")¹, filed by Haili Moe, Inc., a Hawai'i corporation; Visionary LLC, a Virginia limited liability company; and D.R. Horton-Schuler Homes, LLC, a Delaware limited liability company (collectively "Movants")², on August 24, 2006, having come on for hearing before the Land Use Commission ("Commission") at its meeting held via videoconference in Lihue, Kaua'i, and Honolulu, O'ahu, on November 6, 2006³, with appearances by Malia Lee, Esq.; Tracy Nagata (D.R. Horton-Schuler Homes, LLC); and David Hinazumi (Haili Moe, Inc., and Visionary LLC) on behalf of Movants; James K. Tagupa, Esq., and Barbara Pendragon on behalf of the County of Kaua'i Planning Department ("Planning Department"); and Bryan C. Yee, Esq., and Abe Mitsuda on behalf of the State Office of Planning ("OP"), and Movants having filed a Stipulated Order Granting Amended And Restated Motion To Amend Conditions 1, 2 And 7 Made A Part Of Order Adopting Hearing Officer's Findings Of Fact, Conclusions Of Law, And Decision And Order Dated And Entered On January 4, 1996, As Amended By Order Granting Motion To Amend Condition Nos. 2 And 7, Dated April 12, 1996 ("Stipulated Order")⁴ on October 3, 2006, that was signed by the Movants, OP, and the Planning Department, as reflected in Exhibit "A" attached hereto

¹ The Amended and Restated Motion superseded the original pleading filed in this matter on June 6, 2006.

² Movants are the successors-in-interest to The Lihue Plantation Company, Limited, a Hawai'i corporation.

³ On Lihue, Kaua'i, Cheryl Lovell-Obatake provided public testimony.

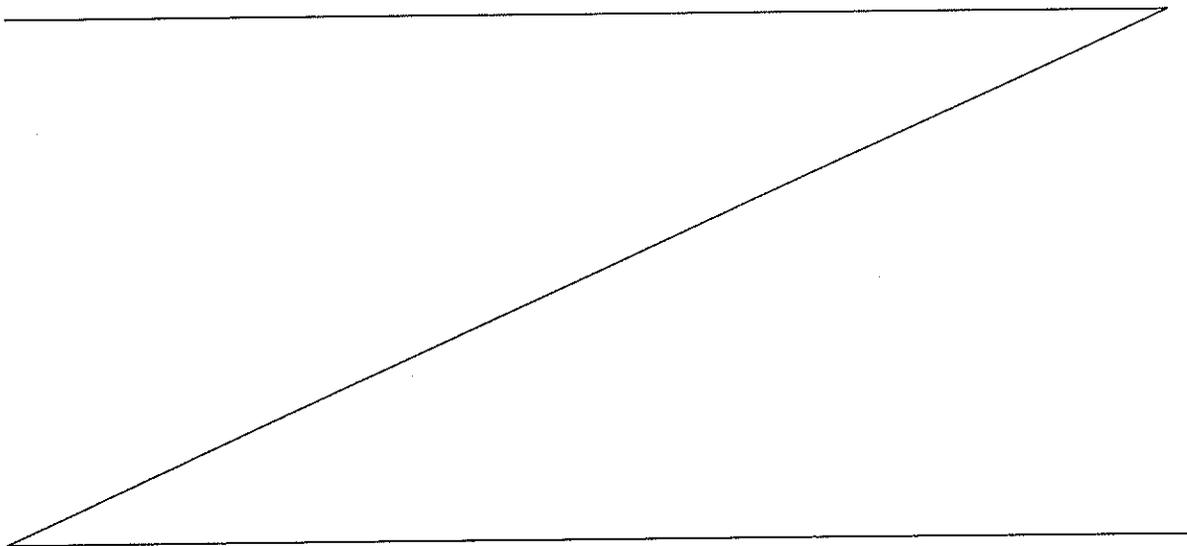
⁴ The Stipulated Order contains the language amending Condition Numbers 1, 2, and 7 of the Order Adopting Hearing Officers' Proposed Findings Of Fact, Conclusions Of Law, And Decision And Order, As Amended, and Order Granting Motion To Amend Condition Nos. 2 And 7 Of The Hearing Officers' Proposed Findings Of Fact, Conclusions Of Law, And Decision And Order Dated November 22, 1995.

and incorporated herein by reference, and good reason appearing therefor, the Commission voted, by a vote of 7 ayes and 2 absent, to approve the Stipulated Order attached as Exhibit "A."

ORDER

This Commission, having duly considered Movants' Amended and Restated Motion and the Stipulated Order signed by the parties in this proceeding, and a motion having been made at its meeting held via videoconference in Lihue, Kauai, and Honolulu, Oahu, on November 6, 2006, and the motion having received the affirmative votes required by section 15-15-13, Hawaii Administrative Rules, and there being good cause for the motion,

HEREBY ORDERS that the Stipulated Order, which contains the requested amendments to Condition Numbers 1, 2, and 7, be and is hereby APPROVED.



ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 8th day of December, 2006. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

Done at Kona, Hawai'i, this 8th day of December, 2006,
per motion on November 6, 2006.

APPROVED AS TO FORM

LAND USE COMMISSION
STATE OF HAWAII

Maione Jackson
Deputy Attorney General

By *Lisa Judge*
LISA JUDGE
Chairperson and Commissioner

By *Michael Formby*
MICHAEL FORMBY
Vice-Chairperson and Commissioner

By *Steven Lee Montgomery*
STEVEN LEE MONTGOMERY
Vice-Chairperson and Commissioner

By Thomas Contrades
THOMAS CONTRADES
Commissioner

By _____ (absent)
KYONG-SU IM
Commissioner

By Duane Kanuha
DUANE KANUHA
Commissioner

By _____ (absent)
RANSOM PILTZ
Commissioner

By Nicholas Teves
NICHOLAS TEVES
Commissioner

Filed and effective on
DEC 18 2008

By Reuben Wong
REUBEN WONG
Commissioner

Certified by:

Anthony J. H. Ching
ANTHONY J. H. CHING

Of Counsel:
CASE LOMBARDI & PETTIT
Attorneys At Law
A Law Corporation

LAND USE COMMISSION
STATE OF HAWAII
2006 OCT -3 12 3:54

DENNIS M. LOMBARDI 3071
STACEY W. E. FOY 5027
737 Bishop Street, 26th Floor
Honolulu, Hawaii 96813
Telephone: (808) 547-5400

Attorneys for Haili Moe, Inc., a
Hawaii corporation, VISIONARY LLC,
a Virginia limited liability company
and D.R. HORTON - SCHULER
HOMES, LLC, a Delaware limited
liability company (Petitioners)

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition	)	Docket No. A94-703
)	
of	)	STIPULATED ORDER GRANTING
	)	AMENDED AND RESTATED
THE LIHUE PLANTATION COMPANY,	)	MOTION TO AMEND CONDITIONS
LIMITED, a Hawaii corporation	)	1, 2 AND 7 MADE A PART OF ORDER
	)	ADOPTING HEARING OFFICER'S
	)	FINDINGS OF FACT, CONCLUSIONS
To Amend the Agricultural and	)	OF LAW, AND DECISION AND ORDER
Conservation Land Use District	)	DATED AND ENTERED ON JANUARY 4,
Boundaries into the Urban Land Use	)	1996, AS AMENDED BY ORDER
District for Approximately 554.642	)	GRANTING MOTION TO AMEND
Acres at Hanamaulu and Kalapaki,	)	CONDITION NOS. 2 AND 7, DATED
Island of Kauai, Tax Map Key Nos.	)	APRIL 12, 1996
3-6-2:01, 4 & 20 (pars.), 3-6-2:17,)	
3-7-1:01 (por.), 3-7-2:01 & 12	)	(Amended and Restated Motion dated
(pars.) and 3-7-3:20 (por.)	)	August 24, 2006)
)	

STIPULATED ORDER GRANTING AMENDED AND
RESTATED MOTION TO AMEND CONDITIONS 1, 2 AND 7
MADE A PART OF ORDER ADOPTING HEARING OFFICER'S FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER, DATED AND
ENTERED ON JANUARY 4, 1996, AS AMENDED BY ORDER GRANTING MOTION
TO AMEND CONDITION NOS. 2 AND 7, DATED APRIL 12, 1996

It is hereby agreed by and between Petitioners, the Office of Planning, State of Hawaii, and the Planning Department of the County of Kauai as follows:

1. On June 6, 2006, a Motion to Amend Conditions 1, 2 and 7 Made a Part of Order Adopting Hearing Officer's Findings of Fact, Conclusions of Law, and Decision and Order, Dated and Entered on January 4, 1996, as Amended By Order Granting Motion to Amend Conditions Nos. 2 and 7, Dated April 12, 1996, was filed by Haili Moe, Inc.

2. On August 24, 2006, an Amended and Restated Motion to Amend Conditions 1, 2 and 7 Made a Part of Order Adopting Hearing Officer's Findings of Fact, Conclusions of Law, and Decision and Order, Dated and Entered on January 4, 1996, as Amended By Order Granting Motion to Amend Conditions Nos. 2 and 7, Dated April 12, 1996, (hereinafter "Motion") was filed by Haili Moe, Inc., Visionary LLC, and D.R. Horton-Schuler Homes, LLC, seeking to amend Conditions 1, 2 and 7 in the manner reflected in this Stipulated Order.

3. Condition No. 1 is hereby amended as follows:

Condition No. 1: Petitioner shall provide affordable housing opportunities for low, low-moderate, and gap group income residents of the State of

Hawai'i to the satisfaction of the County of Kaua'i Housing Agency within the entire Petition Area. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between the Petitioner and the County of Kaua'i. An Affordable Housing Agreement between Petitioner and the County of Kaua'i shall be obtained prior to the Petitioner applying for county zoning permit or receiving final approval of any subdivision, whichever comes first, for any portion of the Petition Area other than the 30.106 acre portion of the Petition Area located within the Hanamaulu Triangle.

5. Condition No. 2 is hereby amended as follows:

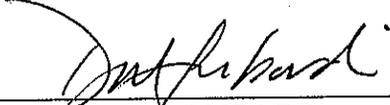
Condition No. 2: Petitioner shall provide its fair share contribution for school facilities necessitated by the proposed Lihue-Hanamaulu Project, and for the benefit of the State Department of Education ("DOE"). Terms of the donation shall be agreed upon in writing by Petitioner and the DOE prior to Petitioner receiving final subdivision approval, or applying for a building permit, whichever comes first, for any portion of the Petition Area.

6. Condition No. 7 is hereby amended as follows:

Condition No. 7: Petitioner shall participate in the pro rata funding and construction of local and regional transportation improvements and programs including dedication of rights-of-way as determined by the State Department of Transportation ("DOT") and the County of Kaua'i. Agreement between Petitioner and the DOT as to the level of funding and participation shall be obtained prior to the Petitioner applying for county zoning permit or receiving final approval of any subdivision, whichever comes first, for any portion of the Petition Area other than the 30.106 acre portion of the Petition Area located within the Hanamaulu Triangle. Agreement between the Petitioner and the DOT as to the level of funding and participation required for the 30.106 acre portion of the Petition Area located within the Hanamaulu Triangle shall be obtained prior to the Petitioner applying for a county building permit or receiving final approval of any subdivision, whichever comes first, for the 30.106 acre portion of the Petition Area located within the Hanamaulu Triangle.

7. This stipulated order disposes of Petitioner's Motion and there are no remaining issues as to Petitioner's Motion.

DATED: Honolulu, Hawaii, _____, 2006.



DENNIS M. LOMBARDI
STACEY W. E. FOY
Attorneys for Petitioners,
HAILI MOE, INC., VISIONARY LLC and
D.R. HORTON - SCHULER HOMES, LLC



BRYAN C. YEE
DEBORAH DAY ANDERSON
Attorneys for OFFICE OF PLANNING,
STATE OF HAWAII



LAN D.H. NAKAZAWA
JAMES K. TAGUPA
Attorneys for the PLANNING DEPARTMENT
OF THE COUNTY OF KAUAI

APPROVED AND SO ORDERED:

LAND USE COMMISSION
STATE OF HAWAII

By _____
LISA M. JUDGE
Vice-Chair

By _____
STEVEN LEE MONTGOMERY
Vice-Chair

By _____
DUANE KANUHA
Commissioner

By _____
THOMAS CONTRADES
Commissioner

By _____
REUBEN S.F. WONG
Commissioner

By _____
MICHAEL D. FORMBY
Commissioner

By _____
KYONG-SU IM
Commissioner

By _____
RANSOM A.K. PILTZ
Commissioner

Filed and effective on
_____, 2006

Certified by:

Executive Officer

By _____
NICHOLAS W. TEVES, JR.
Commissioner

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of) DOCKET NO. A94-703
)
THE LIHUE PLANTATION COMPANY,) CERTIFICATE OF SERVICE
LIMITED, A Hawai'i Corporation)
)
To Amend The Agricultural Land Use)
District Boundary For Approximately)
541.769 Acres And The Conservation Land)
Use District Boundary For Approximately)
12.873 Acres Into The Urban Land Use District)
At Hanamā'ulu And Kalapakī, Island Of)
Kaua'i, State Of Hawai'i, Tax Map Key Nos.)
3-6-02: Por. 1, Por. 4 & Por. 20; 3-6-02: 17;)
3-7-01: Por. 1; 3-7-02: Por. 1 & Por. 12; And)
3-7-03: Por. 20)
_____)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Granting Approval Of Stipulated Order Granting Amended And Restated Motion To Amend Conditions 1, 2 And 7 Made A Part Of Order Adopting Hearing Officer's Findings Of Fact, Conclusions Of Law, And Decision And Order Dated And Entered On January 4, 1996, As Amended By Order Granting Motion To Amend Condition Nos. 2 And 7, Dated April 12, 1996 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 THIELEN, Director
Office of Planning
P. O. Box 2359
Honolulu, Hawaii 96804-2359

BRYAN YEE, Esq.
Deputy Attorney General
425 Queen Street
Honolulu, Hawaii 96813

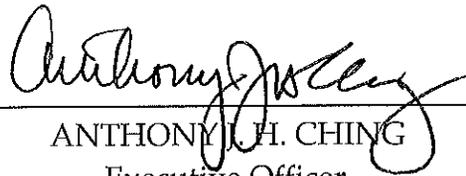
LANI NAKAZAWA, Esq.
Corporation Counsel
County of Kauai
4444 Rice Street, Suite 220
Lihue, Hawaii 96766

IAN COSTA, Director
Department of Planning
County of Kauai
4444 Rice Street, Suite A473
Lihue, Hawaii 96766

DEL. DENNIS M. LOMBARDI, Esq.
Case Lombardi & Pettit
737 Bishop Street, 28th Floor
Honolulu, Hawaii 96813

DEC 18 2006

Dated: Honolulu, Hawaii, _____.



ANTHONY H. CHING
Executive Officer