

allegations regarding the conduct of the City. These allegations regarding the City are untrue, unsubstantiated and/or irrelevant. Therefore, the Motion should be denied as it relates to the City's conduct.

I. ACCEPTANCE OF THE UPDATED TRAFFIC IMPACT ANALYSIS REPORT

On June 21, 2012, the Land Use Commission of the State of Hawaii (the "Commission") issued its Findings of Fact, Conclusions of Law, and Decision and Order ("Order") in the above-captioned matter.

Condition 10(b) of the Order provides:

10. Transportation

. . . .

b. Petitioner shall submit an updated Traffic Impact Analysis Report ("TIAR") for review and acceptance by the [S]DOT, the City and County of Honolulu Department of Planning and Permitting ("DPP"), and the City and County of Honolulu Department of Transportation Services ("DTS"). . . . Petitioner shall obtain acceptance of the updated TIAR from the [S]DOT, the DPP, and the DTS, prior to submittal of a change in zoning application with the City and County of Honolulu.

The Motion alleges that Condition 10(b) of the Order has not been complied with because the Petitioner had not obtained the acceptance of an updated TIAR from the City DTS prior to an application for a zone change. However, the record clearly establishes that the updated TIAR was indeed accepted by DTS prior to the zone change application. See FOM's Exhibits "3"- "5", and "40" at p. 9:16-10:20. FOM's Exhibit 4 is a letter dated February 4, 2014 from DTS that establishes that DTS had reviewed the revised TIAR and had "no further comments," thereby indicating DTS' "acceptance" of the revised TIAR. FOM's Exhibit "40", which is an excerpt from the transcript of the December 3, 2014 public hearing before City and County of Honolulu Planning Commission, confirms the acceptance of the revised TIAR by DTS. FOM's Exhibit

“40” at p. 9:16-10:20. Mike Formby, the Director of DTS, testified before the City Planning Commission that DTS had in fact accepted the updated TIAR and communicated that acceptance to DPP, which has a Traffic Review Branch. In accordance with City policy, DPP communicated the acceptance on behalf of the City to the Petitioner D.R. HORTON-SCHULER HOMES, LLC d.b.a. D.R. HORTON-SCHULER DIVISION (“D.R. Horton”). See FOM’s Exhibit “3”, which is a letter, dated April 2, 2014, from DPP to D.R. Horton that refers to the statement of “no further comments” from DTS, and that indicates that the draft TIAR was acceptable for processing and inclusion in the zone change application. Thus, contrary to FOM’s allegation, the evidence in the record shows that DTS did in fact accept the revised TIAR prior to the zone change application, and that Condition 10(b) was satisfied.

Subsequently, in July 2014, D.R. Horton submitted its application for a zone change. DPP reviewed and processed the rezoning application, and issued its report and recommendation of approval to the City and County of Honolulu’s Planning Commission for review. On December 3, 2014, the Planning Commission held a public hearing on D.R. Horton’s rezoning application. After the December 3, 2014 public hearing, the Planning Commission submitted the zone change application and its recommendation for approval to the City Council for review and approval.

The zone change application came before the City Council as Bill 3 (2015), entitled A Bill For An Ordinance To Rezone Land Situated At Honouliuli, Oahu, Hawaii. Bill 3 went through three public hearings before the full Council in addition to three public hearings before the Committee on Zoning and Planning Committee, before finally passed on third reading on May 6, 2015. The Bill was transmitted to the Mayor for approval on May 8, 2015, and the

Mayor approved the Bill on May 20, 2015, enacting Ordinance 15-13, rezoning the Petition Area. See Exhibit A, attached hereto.

II. ALLEGATIONS OF ETHICAL IMPROPRIETIES BY CITY OFFICIALS.

In its "Second Reason" for filing its Motion, FOM alleges a number of ethical improprieties by City officials. FOM basically alleges that the Mayor and the members of the City Council are beholden to developers and unions because of financial contributions. These allegations are not only unfounded and libelous, they are completely irrelevant to the Commission's Order and the proceedings giving rise to the Order. These wild and unsubstantiated accusations of unethical behavior of both the executive and legislative branches of City government are based purely on conjecture, speculation and innuendo. These allegations should not be dignified by any response whatsoever. If FOM wishes to complain about unethical behavior by public officials, the proper forum for such complaints is the City Ethics Commission, or in proceedings for the recall and impeachment of elected officials. City officials and employees are guided by the Standards of Conduct in the City Charter. Article XI, 1973 Revised Charter of Honolulu (2000 Edition). If FOM seeks to allege any violation of such standards of conduct, FOM may seek redress in the appropriate forum.

The City's zone change process is considered a major permit that involves pre-application meetings, neighborhood board presentations, public notifications, review and analysis by the DPP, government agency reviews and comments, review and public hearings before the City Planning Commission, and review and public hearings before the City Council. In fact, the City Council and its Committee on Planning and Zoning conducted no less than six public hearings on the Hoopili Project, including public hearings in the council district. See Exhibit A.

FOM's allegations of ethical improprieties cut at the very core of the democratic institutions of City government. Therefore, such important issues should be addressed and resolved in the appropriate forum where all parties are afforded due process and a chance to defend their reputations. Such allegations are completely irrelevant to the proceedings before the State Land Use Commission.

III. CONCLUSION

For the foregoing reasons, the Motion should be denied as to any allegations regarding the City's conduct in this matter.

DATED: Honolulu, Hawaii, August 24, 2015.



DON S. KITAOKA
Deputy Corporation Counsel
Attorney for Department of
Planning and Permitting,
City and County of Honolulu

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A06-771
)	
D.R. HORTON - SCHULER HOMES, LLC, a)	DECLARATION OF DON S. KITAOKA;
Delaware limited liability company, d.b.a.)	EXHIBIT A
D.R. HORTON-SCHULER DIVISION)	
)	
To Amend the Agricultural Land Use District)	
Boundaries into the Urban Land Use District)	
for Approximately 1,533.844 Acres in Ewa)	
District, Oahu, Hawaii, Tax Map Key Nos.)	
(1) 9-1-017:004 (por.), 059 and 072; (1) 9-1-)	
018:001 and 004)	
)	

DECLARATION OF DON S. KITAOKA

I, DON S. KITAOKA, hereby declare under penalty of law, that the following facts are true:

1. I am a Deputy Corporation Counsel with the City and County of Honolulu assigned to the above-captioned case.
2. Attached hereto as Exhibit A is a true and correct copy of Ordinance No. 15-13 (Bill 3 (2015)), excluding Exhibit B to the ordinance.

I declare under penalty of perjury that the foregoing facts are true and correct to the best of my knowledge and belief.

DATED: Honolulu, Hawaii, August 24, 2015.



 DON S. KITAOKA



A BILL FOR AN ORDINANCE

TO REZONE LAND SITUATED AT HONOULIULI, OAHU, HAWAII.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Zoning Map No. 12, Ordinance 86-114, and Zoning Map No. 13, Ordinance 86-115, are hereby amended as follows: Land situated at Ewa, Oahu, Hawaii hereinafter described, is hereby rezoned from the AG-1 Restricted Agricultural District to the R-3.5 Residential District, A-2 Medium-Density Apartment District (with 40- and 65-foot height limits), AMX-2 Medium-Density Mixed Use Apartment District (with 40- and 65-foot height limits), B-1 Neighborhood Business District, B-2 Community Business District (with a 60-foot height limit), BMX-3 Community Business Mixed Use District (with a 90-foot height limit), IMX-1 Industrial-Commercial Mixed Use District (with a 60-foot height limit), and P-2 General Preservation District. The boundaries of said Districts shall be described as shown on the map attached hereto, marked "Exhibit A" and made a part hereof, and further identified as Tax Map Keys 9-1-017:004 (por.), 059 (por.), and 072 (por.); 9-1-018:001 (por.) and 004 (por.).

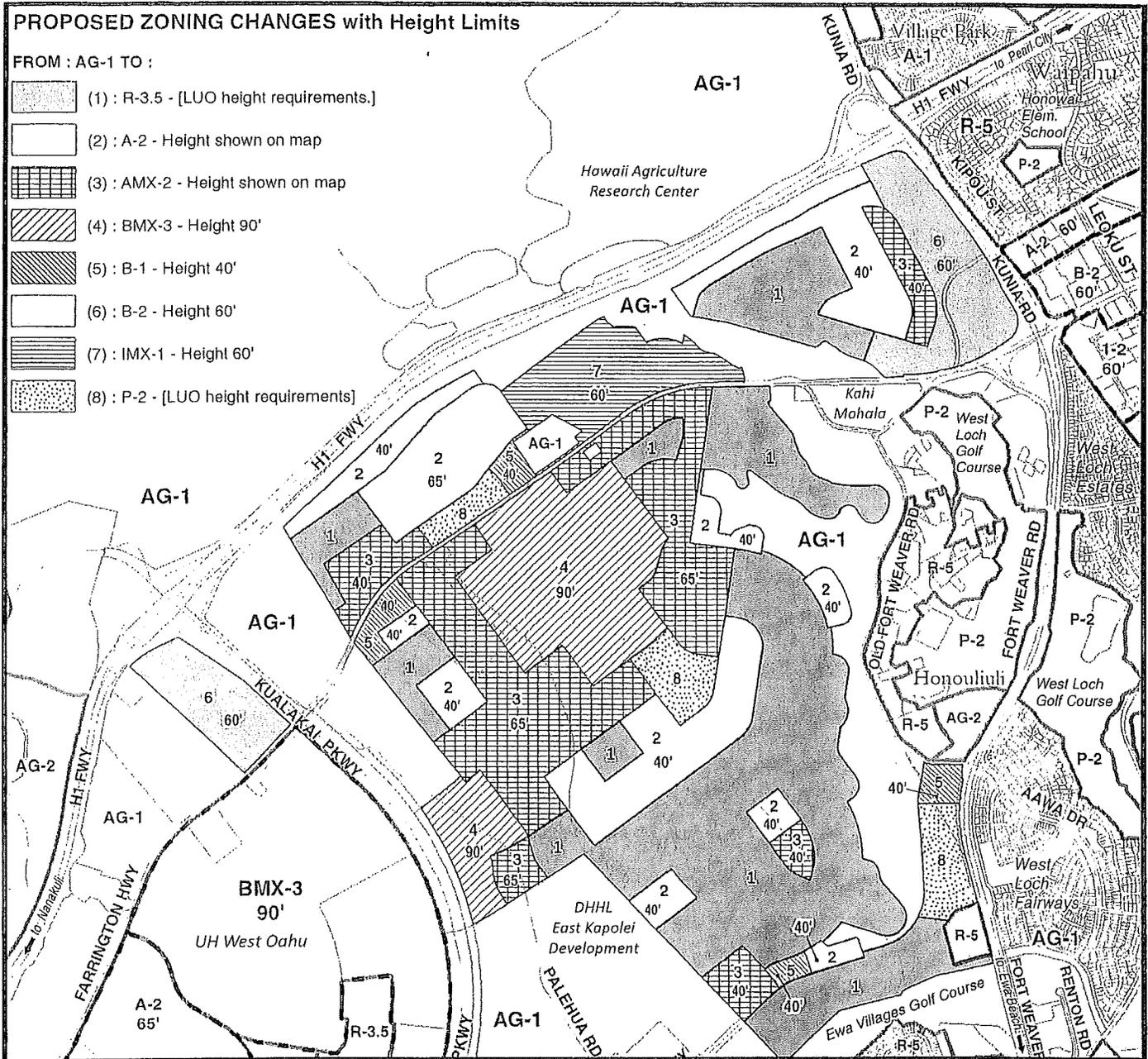
SECTION 2. A Unilateral Agreement marked "Exhibit B" is by reference incorporated herein and made a part hereof.

DPP14Z-5.B14

PROPOSED ZONING CHANGES with Height Limits

FROM : AG-1 TO :

-  (1) : R-3.5 - [LUO height requirements.]
-  (2) : A-2 - Height shown on map
-  (3) : AMX-2 - Height shown on map
-  (4) : BMX-3 - Height 90'
-  (5) : B-1 - Height 40'
-  (6) : B-2 - Height 60'
-  (7) : IMX-1 - Height 60'
-  (8) : P-2 - [LUO height requirements]



**PORTION OF
EXISTING ZONING MAP # 12
(EWA BEACH - IROQUOIS POINT) &
ZONING MAP # 13 - (MAKAKILO)**

Land situated South of the H-1 Freeway adjacent to Kualakai Parkway, between Kunia Road and the Old Fort Weaver Road and ending North of the Ewa Villages Golf Course.

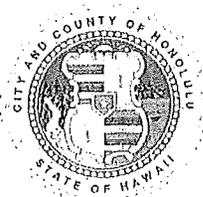
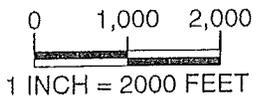
APPLICANT: D. R. HORTON - SCHULER HOMES, LLC
TAX MAP KEY(S): 9-1-017: 004 (por.), 059 (por.), and 072 (por.)
 9-1-018: 001 (por.), and 004 (por.)

FOLDER NO.: 2014/Z-5

LAND AREA: 1,289 Acres (Approx.)

PREPARED BY: DEPARTMENT OF PLANNING AND PERMITTING
 CITY AND COUNTY OF HONOLULU

PUBLIC HEARING: PLANNING COMMISSION CITY COUNCIL
 DEC 03 2014 MAR 11 2015 2014/Z-5



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

ORDINANCE 15 - 13

BILL 3 (2015)

Introduced: 02/02/15

By: ERNEST MARTIN (BR)

Committee: ZONING AND PLANNING

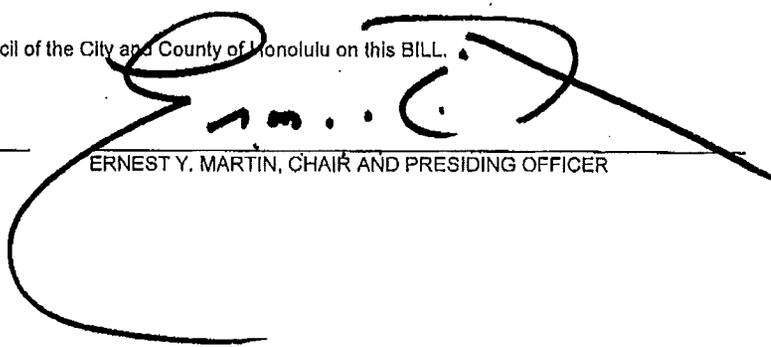
Title: A BILL FOR AN ORDINANCE TO REZONE LAND SITUATED AT HONOULIULI, OAHU, HAWAII.

Voting Legend: * = Aye w/Reservations

02/18/15	COUNCIL	BILL PASSED FIRST READING AND REFERRED TO COMMITTEE ON ZONING AND PLANNING. 8 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA. 1 ABSENT: PINE.
02/28/15	PUBLISH	PUBLIC HEARING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.
03/02/15	SPECIAL ZONING AND PLANNING	CR-86 - BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON SECOND READING AND SCHEDULING OF A PUBLIC HEARING.
03/11/15	COUNCIL/PUBLIC HEARING	CR-86 ADOPTED. BILL PASSED SECOND READING, PUBLIC HEARING CLOSED AND REFERRED TO COMMITTEE ON ZONING AND PLANNING. 8 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA. 1 ABSENT: PINE
03/18/15	PUBLISH	SECOND READING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.
04/02/15	ZONING AND PLANNING	BILL DEFERRED IN COMMITTEE.
04/30/15	ZONING AND PLANNING	CR-165 - BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON THIRD READING.
05/06/15	COUNCIL	CR-165 ADOPTED AND BILL 3 (2015) PASSED THIRD READING. 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI*, MANAHAN, MARTIN, MENOR*, OZAWA, PINE.

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this BILL.


GLEN TAKAHASHI, ACTING CITY CLERK


ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. A06-771
)
D.R. HORTON - SCHULER HOMES, LLC, a) CERTIFICATE OF SERVICE
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 1,533.844 Acres in Ewa)
District, Oahu, Hawaii, Tax Map Key Nos.)
(1) 9-1-017:004 (por.), 059 and 072; (1))
9-1-018:001 and 004)
_____)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof was served upon each of the following by either mailing the same, postage prepaid, or hand delivering the same, on August 24, 2015:

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Office of Planning

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Pro Se

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Attorney for Intervener
Clayton Hee

DATED: Honolulu, Hawaii, August 24, 2015.



DON S. KITAOKA
Deputy Corporation Counsel
Attorney for Department of
Planning and Permitting,
City and County of Honolulu

DOCKET NO. A06-771, IN THE MATTER OF THE PETITION OF D.R. HORTON-SCHULER HOMES, LLC., A DELAWARE LIMITED LIABILITY COMPANY, DBA D.R. HORTON SCHULER DIVISION - DEPARTMENT OF PLANNING AND PERMITTING, CITY AND COUNTY OF HONOLULU'S MEMORANDUM IN OPPOSITION TO INTERVENOR FRIENDS OF MAKAKILO'S MOTION FOR AN ORDER TO SHOW CAUSE WHY THE PROPERTY SHOULD NOT REVERT TO ITS FORMER LAND USE CLASSIFICATION, FILED JULY 23, 2015; DECLARATION OF DON S. KITAOKA; EXHIBIT A; CERTIFICATE OF SERVICE

07-00565/432060