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BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

LAND USE COMMISSION
STATE OF HAWAII
2015 AUG 24 P 12:48

In the Matter of the Petition of

D.R. HORTON-SCHULER HOMES, LLC,
a 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 1,525.516 Acres in `Ewa District,
Island of O`ahu, Tax Map Key Nos. (1) 9-1-
017:004 (por.), 059 and 072; (1) 9-1-018:001 and
004.

DOCKET NO. A06-771

**D.R. HORTON-SCHULER HOMES,
LLC'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;
AFFIDAVIT OF CAMERON NEKOTA;
EXHIBITS "A" - "B"; AFFIDAVIT OF
MATT NAKAMOTO; EXHIBITS "C"-
"D"; CERTIFICATE OF SERVICE**

D.R. HORTON-SCHULER HOMES, LLC'S MEMORANDUM IN OPPOSITION

D.R. HORTON-SCHULER HOMES, LLC d.b.a. D.R. HORTON-SCHULER DIVISION
("D.R. Horton") hereby respectfully submits its memorandum in opposition to Intervenor
Friends of Makakilo's ("FOM") Motion for an Order to Show Cause Why the Property Should
Not Revert to its Former Land Use Classification (the "Motion"), filed July 23, 2015 in the Land
Use Commission of the State of Hawaii (the "Commission").

FOM fails to meet its burden of demonstrating a failure to perform any conditions, representations, or commitments made by D.R. Horton. FOM instead presents a series of unsubstantiated conspiracy theories, alleged ethical improprieties, and pure conjecture on its part—all of which D.R. Horton denies. FOM’s Motion is nothing more than a last-ditch effort to convince the Commission to give it a second “bite of the apple” at arguing why the Petition Area should not be reclassified. A motion for an order to show cause, however, is not intended to give the movant multiple opportunities to re-argue issues and change facts that have already been decided by the Commission. FOM is essentially using a motion for an order to show cause to appeal the entire case because it failed to properly appeal the decision of the Commission, which was confirmed by the Circuit Court and affirmed by the Hawaii Supreme Court.

For the reasons discussed below, D.R. Horton respectfully requests that the Commission deny FOM’s Motion.

I. RELEVANT FACTS

A. The Proposed Project

The Petition Area consists of approximately 1,525.516 acres of land located in the `Ewa District, Island of O`ahu, identified by Tax Map Key Numbers or a portion thereof (1) 9-1-017:004 (por.), 059 and 072; and (1) 9-1-018:001 and 004. (“Petition Area”). Findings of Fact, Conclusions of Law, and Decision and Order, filed June 21, 2012 in Docket No. A06-771 (hereinafter the “Order”) at 60, ¶ 321. The Petition Area is owned in fee simple by D.R. Horton. Order at 61, ¶ 326. The majority of the lands that surround the Petition Area are within the State Urban Land Use District. Order at 61, ¶ 327. On June 21, 2012, the Commission entered the Order reclassifying the Petition Area from Agricultural to Urban subject to certain conditions.

D.R. Horton's Petition proposed the development of a mixed-use, transit-ready community, including residential, business, and commercial areas; and transit stations, schools, parks, farms, open space, and roads (the "Project"). Order at 63, ¶ 332.

1. Agricultural Initiative

As part of its Project, D.R. Horton proposed the permanent inclusion of continued agricultural opportunities into its residents' everyday lives through the Hoopili Urban Agriculture Initiative. Order at 67, ¶ 350-51. The Hoopili Urban Agriculture Initiative proposes to provide the opportunity to farm over 15% of the developable acreage at full build-out in the following three components:

(1) Civic Farms: Approximately 159 acres of low-slope land will be held in perpetuity for agricultural uses for commercial agricultural production. Petitioner will provide the utility infrastructure, such as water and electrical conduit to the Civic Farm areas. The DOA will inspect the parcels to ensure that the lands can be practicably used for an economically successful commercial farming operation. If the land does not meet the DOA's approval, Petitioner will provide alternate suitable land within the Project to ensure that there are 159 total acres of civic farming.

(2) Community Farms (also referred to as Community Gardens): A total of approximately 8 acres of land will be provided throughout the Project as Community Farms, on which residents can practice sustainable farming methods and reap the benefits of homegrown fruits and vegetables. Each Community Farm will be approximately 0.5 to 1 acre in size and will be located within walking distance from residential neighborhoods throughout the Project.

(3) Steward Farms: An additional 84 acres will be available for residential agriculture cultivation, mainly in the single-family and duplex homes, lower-density areas of the Project. Steward lots are private farming areas within single-family lots that could be aided and supported by professionally managed farm services, at the option of the owner. The irrigation systems for single-family homes in the Project will be built and designed to accommodate steward farming if the owner chooses, and all single-family homeowners will have the opportunity to choose to implement such use.

Order at 67-68, ¶ 351.

The proposed Project is planned as a sustainable community where residents will be able to produce their own energy, grow their own food, walk or bike anywhere—to work, to school, or to shop, and utilize the Honolulu Rail Transit. Order at 68, ¶ 353.

In addition to its agricultural initiative within Hoopili, D.R. Horton has also committed one million dollars (\$1,000,000.00) to the Trust for Public Lands (“TPL”) and Agribusiness Development Corporation (“ADC”) so that TPL could use \$500,000 for the acquisition and ADC could use \$500,000 to assist with soil and water system improvements at the Galbraith Estate.¹ Although D.R. Horton is not responsible for actually preparing the Galbraith Estate or issuing licenses to farmers, D.R. Horton has been advised that ADC has been working diligently on installing the necessary infrastructure to provide water for farming operations, and is also working with local farmers, including legacy Hoopili tenants on licenses to utilize the land for their farming operations.

2. Traffic Mitigation

The Project has also been designed to reduce future residents’ reliance on private motorized vehicles. Order at 97, ¶ 472. The TIAR for the Project examined the following four scenarios:

- (1) **Existing Conditions (“Scenario 1”)**, which includes the analysis of existing traffic volumes obtained from traffic counts in 2006;
- (2) **2030 Baseline Conditions (“Scenario 2”)**, which includes future transportation improvements including freeway, intersection, transit, and bicycle/pedestrian improvements that will be in place without the Project by the year 2030. Year 2030 has been selected as the future year analysis, as it represents the full buildout year of the Project. The future traffic volumes

¹ The Galbraith Estate in Central Oahu is comprised of more than 1,700 acres of land, which was purchased by a partnership of public agencies and private non-profit organizations. More than 1,200 acres went to the Agribusiness Development Corporation, to be used exclusively for agricultural purposes.

have been obtained from the Year 2030 Oahu Metropolitan Planning Organization (“OMPO”) Transportation Model;

(3) 2030 Baseline Plus Project Conditions With the Honolulu Rail Transit (Scenario 3), which includes Project conditions volumes plus traffic associated with the proposed Project under the assumption that the Honolulu Rail Transit would pass through the Petition Area; and

(4) 2030 Baseline Plus Project Conditions Without the Honolulu Rail Transit (Scenario 4), which includes Project condition volumes plus traffic associated with the proposed Project under the assumption that the Honolulu Rail Transit would not pass through the Petition Area.

Order at 97, ¶ 473. D.R. Horton and its traffic consultants worked closely with the State of Hawaii Department of Transportation (“SDOT”) in discussing the Project’s impact on traffic.

Order at 101, ¶ 479; Affidavit of Matt Nakamoto (“Affidavit of M. Nakamoto”), ¶ 3. During the process of preparing the updated/revised TIAR, SDOT expanded the scope of the study.

Affidavit of M. Nakamoto, ¶ 3. At the request of SDOT, D.R. Horton prepared the 2020 TIAR utilizing traffic counts taken in 2006 and an H-1 Freeway Project Assessment Report to give SDOT an idea of what would happen after the first ten years. Order at 101, ¶ 480. Upon review of the 2020 TIAR, the SDOT requested that D.R. Horton prepare a revised/updated TIAR that studies the Project at full buildout that will: (1) evaluate and analyze traffic impacts utilizing more updated data reflecting present traffic conditions; and (2) set forth traffic mitigation measures in accordance with the Hoopili Phased Development Plan. Order at 101, ¶ 481. D.R. Horton submitted an updated/revised TIAR reflecting the SDOT’s instructions. Affidavit of M. Nakamoto, ¶ 4; see also FOM Exhibit “2”.

Project development has begun and will continue in accordance with the necessary land use entitlements, reclassification, rezoning, subdivision, and permits, with an anticipated project build-out in or around 2030. Order at 64, ¶ 341. The development is anticipated to take more than ten years, and will be developed gradually in two phases. Order at 64, ¶ 342.

B. Relevant Procedural History

On January 24, 2007, D.R. Horton filed its Petition for Land Use District Boundary Amendment; Verification; Petition Exhibits “1” to “19”; and Certificate of Service. Order at 2, ¶

1. On July 11, 2008, the Commission received D.R. Horton’s Final Environmental Impact Statement (“EIS”) for the Hoopili Project, which analyzed the projects impact, with the project timeline of 2009-2030. Order at 3, ¶ 4. On August 7, 2008, the Commission held a hearing on D.R. Horton’s Final EIS and received written testimony from Dr. Kioni Dudley and Maeda Timson. Order at 3, ¶ 8. The Commission accepted D.R. Horton’s Final EIS, with noted corrections, and issued an Order to such effect dated August 26, 2008. Order at 3, ¶ 8.

On September 19, 2008, D.R. Horton filed its Amended Petition for Land Use District Boundary Amendment; Verification; Petition Exhibits “1A”, “2C”, “3A”, “5A”, “12A”, “13A”, “14A”, and “15A”; Certificate of Service. Order at 3, ¶ 9. On December 8, 2008 the FOM filed its Petition to Intervene; Certificate of Service. Order at 4, ¶ 15. By written Order dated February 13, 2009, the Commission granted FOM’s Petition to Intervene with its participation specifically limited to traffic, education, open space, agricultural lands, and sociological issues. Order at 5-6, ¶ 25.

On March 19 and 20, 2009, the Commission commenced the evidentiary hearing for this docket. Order at 10, ¶ 58. The Commission received written testimony and heard oral testimony from the parties and their experts, and from the general public. See Order at 10-60.

C. **The Commission's Findings of Fact, Conclusions of Law and Decision and Order**

The Commission heard and examined the testimony, evidence, and argument of the parties, together with their pleadings, and thereafter issued its Findings of Fact, Conclusions of Law, and Decision and Order on June 21, 2012. Order at 2.

The Commission ordered the reclassification of the Petition Area from the State Land Use Agricultural District to the State Land Use Urban District subject to the following conditions relevant to FOM's present Motion:

1. Agriculture and Phasing of Development. Petitioner shall hold or cause the phasing of development of the petitioned lands in a manner that will allow farmers unimpeded access to and use of agricultural lands not yet needed for development and continue the supply of sufficient irrigation water to meet crop production requirements. Petitioner shall inform the affected farmers that the phasing of development and the subsequent incremental termination of farming activities may be accelerated or decelerated, depending on market demand. Petitioner's annual report shall include an updated development timetable with maps of the phasing plan as relevant to the incremental termination of farming activities, copies of any notification sent to farmers regarding the phasing of development, and information on acreage farmed and the names of farms.

2. Hoopili Urban Agriculture Initiative. Petitioner shall cause the full and complete development of no less than 251 acres of Urban Agriculture and establish the management entity responsible for compliance with the Hoopili Sustainability Plan for the areas identified as Urban Agriculture prior to Hoopili's full build-out. The distribution of acreage for the Urban Agriculture component shall not be less than 159 acres of Civic (commercial) Farms, 8 acres of Community Gardens, and 84 acres of Steward Farms (home gardens). The uses and activities of the Civic Farms shall be restricted to agricultural production and uses and activities directly accessory to agricultural production. This restriction shall run with the land. With respect to the 84 acres of Steward Farms, the Petitioner shall offer homeowners a professionally designed edible landscape plan to be installed in their respective lots upon the purchase of their home from the Petitioner that includes adequate irrigation. In addition, the Petitioner shall include explicit reference to the purpose and intent of Steward Farms in all promotional and sales material. Petitioner shall obtain the approval from the State Department of Agriculture ("DOA") for the location of the Civic Farms prior to the

submittal of a subdivision application. Petitioner’s annual report shall include a status of the progress in establishing the Civic Farms; a copy of the DOA approved map of the location of the Civic Farms; a copy of the paperwork establishing the management entity for the Civic Farms; and a copy of the draft edible landscaping package for the Steward Farms (home gardens).

a. Civic Farms. Petitioner will ensure that 159 acres of Civic Farms will meet the DOA’s standard that it “can be practicably used for an economically successful commercial farming operation.” If it is determined that the certain areas identified are not feasible, the Petitioner shall locate other lands to replace those lands determined to not meet the DOA’s criteria set forth above and ensure that no less than 159 acres are set aside for Civic Farms.

b. Steward Farms. Petitioner shall establish the Steward Lot program, design the gardens, and set up agriculture friendly covenants; but consistent with current practice, the individual homeowners shall be responsible for the cost of installation and ongoing care.

* * *

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.

11. Stormwater. Petitioner shall construct stormwater and drainage system improvements as designed in compliance with applicable federal, State and County laws and rules.

a. Prior to any subdivision approval, for lands that may drain onto adjacent Navy lands, the Petitioner shall provide a master drainage plan for review by the State Department of Health (“DOH”), the State Office of Planning (“OP”), and DPP, that either includes a letter of consent from the

Navy allowing drainage onto its properties or a specific explanation of strategies to be employed so that drainage onto Navy lands is not necessary.²

b. To the extent feasible, Petitioner shall mitigate non-point source pollution by incorporating low impact development practices for onsite stormwater capture and reuse into the Petition Area's site design and landscaping, provided that such low impact development practices do not prevent dedication of drainage facilities to the counties, to prevent runoff onto affected State highway facilities, downstream properties and receiving gulches, streams, and estuaries that connect with coastal waters.

* * *

14. Established Access Rights Protected. Pursuant to Article XI, Section 7 of the Hawaii State Constitution, Petitioner shall preserve any established access rights of native Hawaiians who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, and religious practices or for access to other areas.

* * *

21. Compliance with Representations to the Commission. Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission. Failure to so develop the reclassified area may result in reversion of the reclassified area to its former classification, or change to a more appropriate classification.

22. Notice of Change of Ownership. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Area, any time prior to completion of the development of the Petition Area.

Order at 167-177.

On July 20, 2012, The Sierra Club and Senator Clayton Hee, appealed the Commission's Decision and Order to the Circuit Court. On August 2, 2012, FOM filed its untimely notice of cross appeal in an attempt to appeal the Commission's decision after the deadline for appeal

² The reason for this particular condition can be found from a reading of Finding of Fact ¶¶ 512 and 513 of the Decision and Order. At the time of the petition, one of the potential drainage options was a drainage outfall into Pearl Harbor that crossed Navy lands. Affidavit of C. Nekota ¶ 21.

expired.³ On November 9, 2012, the Circuit Court entered its Order dismissing FOM's cross appeal. FOM appealed to the Intermediate Court of Appeals, which also dismissed FOM's appeal.

Shortly thereafter, the Circuit Court entered its judgment in Sierra Club's appeal, affirming the Commission's Decision and Order on June 27, 2013.⁴ The Sierra Club appealed the Circuit Court's judgment on July 23, 2013 to the Intermediate Court of Appeals, and subsequently applied for a transfer of the appeal to the Supreme Court of the State of Hawaii. The Hawaii Supreme Court granted in part The Sierra Club's application for transfer, and the case was transferred to the Hawaii Supreme Court for review.⁵

D. SDOT, DPP and DTS Review and Accept the Updated TIAR

Meanwhile, pursuant to Condition 10(b) of the Commission's Decision and Order, D.R. Horton submitted an updated TIAR for review and acceptance by the SDOT, DPP, and DTS. The updated TIAR included the most current updated traffic data, and provided and validated all recommended mitigation measures for potential project-related traffic impacts on State and City facilities to the satisfaction of the SDOT, DPP and DTS. Affidavit of Matt Nakamoto, ¶ 5. The updated TIAR included the construction status and timeline for the City's rail transit project, and

³ Haw. Rev. Stat. § 91-14(b) requires that an appeal of a final decision and order of an agency shall be instituted within thirty days after the service of a certified copy of the decision and order. Here, the Commission entered and served its decision and order upon all parties on June 21, 2012. The deadline for any party to appeal to the Circuit Court was Friday, July 20, 2012.

⁴ FOM also filed a belated appeal of the Commission's Decision and Order, which the Circuit Court rejected as untimely. The Hawaii Supreme Court affirmed the dismissal of the appeal. Friends of Makakilo v. D.R. Horton-Schuler Homes, LLC, 134 Hawaii 135, 338 P.3d 516 (2014).

⁵ The issue on appeal before the appellate court is whether the Commission erred in reclassifying the Petition Area from Agricultural to Urban before Important Agricultural Lands have been designated. The Hawaii Supreme Court held an oral argument on The Sierra Club's appeal on June 25, 2015. A decision is currently pending before the Hawaii Supreme Court.

specifically addressed the potential effects on traffic if the rail project does not proceed as anticipated. See Exhibit “C”; Affidavit of M. Nakamoto, ¶ 6.

In accordance with Condition 10(b), D.R. Horton obtained the SDOT, DPP, and DTS’ acceptance of the updated TIAR. See FOM’s Exhibits “2”-“4”, and “40” at pg. 9:16-10:20.

E. D.R. Horton Submits Its Application for Change in Zoning and obtained Ordinance 15-13 Rezoning its Property

After receiving SDOT, DPP and DTS’ acceptance of the updated TIAR and pursuant to Condition 10(b), D.R. Horton provided written notification to the Commission, Office of Planning and DPP of its belief that the condition was satisfied. Subsequent to notifying the Commission, Office of Planning and DPP, D.R. Horton submitted its application for change in zoning for the Petition Area in July 2014 (the “rezoning application”). Affidavit of Cameron Nekota (“Affidavit of C. Nekota”), ¶ 6. D.R. Horton sought a rezoning of the Petition Area from AG-1 Restricted Agricultural District to the R-3.5 Residential District, A-2 Medium-Density Apartment District, AMX-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.

Following DPP’s statutorily mandated process of reviewing a rezoning application, it issued its report and recommendation of approval, which was then transmitted to the City and County of Honolulu’s Planning Commission for review. Affidavit of C. Nekota, ¶ 7. On December 3, 2014, the Planning Commission held a public hearing on D.R. Horton’s rezoning

application. Affidavit of C. Nekota, ¶ 8. During the public hearing, Mike Formby, the Director of DTS acknowledged that there had been a question raised as to whether DTS had accepted the TIAR. FOM's Exhibit "40" at pg. 9:18-25. Director Formby testified before the Planning Commission, stating unequivocally that DTS had in fact accepted the updated TIAR. Exhibit "40" at 9:18-10:20.

I basically wanted the opportunity to come this morning to offer the Planning Commission my comments, which I hope will clarify a question of fact which has been raised and has been in the paper recently and, I believe, in Civil Beat as well. The question of fact that was posed to Department of Transportation Services was whether or not we had complied with condition 10.b of the Land Use Commission Decision and Order. And, I'm here to tell you today, unequivocally, that the Department of Transportation Services received the TIAR, revised TIAR and an updated My planners my engineers reviewed, commented upon eventually reached a position where they were in agreement with Department of Planning and Permitting, which also has the Traffic Review Branch within it. And, the position was that we had accepted the TIAR, revised TIAR and the updated TIAR. And, we communicated that to DPP and DPP as a matter of City policy communicates the acceptance on behalf of DPP and DTS. And, the reason for that policy is that DPP is accepting authority for the City. So, we don't have two different departments be accepting authority for one document. So, DPP is the acknowledged, accepting authority. They communicate acceptance on behalf of both departments. But at no time, and I've spoken to every planner and engineer in my department, at no time has Department of Transportation Services rejected any of the TIARs. They have accepted them and we look forward to working with the developer on this development.

FOM's Exhibit "40" at page 9:18-10:20 (emphasis added).

After the December 3, 2014 public hearing, the Planning Commission passed the rezoning application on to the City Council for review and approval. The rezoning application came before the City Council as Bill 3 (2015) (a bill for an ordinance to rezone land situated at Honouliuli, Oahu, Hawaii). Bill 3 passed first and second reading unanimously, and a public hearing was held by the Council on March 11, 2015. Bill 3 eventually passed third reading unanimously and was adopted by the City Council. 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.⁶

D.R. Horton has applied for subdivision approval for the contiguous parcels of the Petition Area, but has not yet received large-lot subdivision approval. Affidavit of C. Nekota, ¶ 20. D.R. Horton has also submitted a master drainage plan for Hoopili to the DPP for review and approval. Affidavit of C. Nekota, ¶ 21. Storm water from D.R. Horton's property is not currently planned to traverse adjacent Navy lands and drain through a concrete lined outfall into Pearl Harbor. Affidavit of C. Nekota, ¶ 24.

F. D.R. Horton Agrees to Give Land to the Hawaiian Humane Society, the Waianae Coast Comprehensive Health Center, and Negotiates the Sale of Land to MacNaughton Group and its Partners.

Prior to receiving rezoning approval from the City and County of Honolulu, D.R. Horton agreed to donate five (5) acres of land from the Petition Area to the Hawaiian Humane Society for a much needed new campus in West Oahu. Affidavit of C. Nekota, ¶ 13. D.R. Horton also agreed to donate one acre to the Waianae Coast Comprehensive Health Center for a new clinic, which will provide needed health care for adjacent communities and the East Kapolei region. Affidavit of C. Nekota, ¶ 14.

D.R. Horton also began negotiations with the MacNaughton Group and Kobayashi Groups, respectively, for the potential sale of approximately thirty-eight (38) acres of land within the Petition Area. Affidavit of C. Nekota, ¶ 15. As of the date of this memo, none of the aforementioned transactions are close to completion with both the thirty eight (38) acre piece and the Hawaiian Humane Society transactions in their respective feasibility periods. Affidavit of C.

⁶ FOM has not challenged the City's acceptance of the TIAR, passage of Ordinance, or any other actions by the City with respect to its enforcement of the Commission's Decision and Order.

Nekota, ¶ 16. The one acre donation to the Waianae Coast Comprehensive Health Center is not under contract yet. Affidavit of C. Nekota, ¶ 16.

On August 20, 2015, D.R. Horton delivered a letter to the Commission for purposes of reassuring the Commission that it intends to comply with Condition 22 if and when there is any change in ownership of its Property to third parties prior to completion of development of the Petition Area. Attached hereto as Exhibit “A” is a copy of the letter to the Commission. Due to the tentative nature of these transactions, providing notice to the Commission would be premature.

The record before the Commission does not support a finding that D.R. Horton has failed to perform any conditions, representations or commitments made to the Commission. As discussed further below, without evidence or proof of its allegations, FOM’s motion for an order to show cause must be denied. Furthermore, because D.R. Horton has substantially commenced use of the land, the remedy sought by FOM is not available to it.

II. ARGUMENT

The burden is upon FOM, as the movant on a motion for an order to show cause, to prove that D.R. Horton has failed to perform a condition, representation, or commitment made to the Commission. See Kaniakapupu v. Land Use Com’n, 111 Hawaii 124, 128, 139 P.3d 712, 716 (2006) (where the Commission denied movant’s motion for an order to show cause on the basis that the movant had not met its burden of demonstrating that the landowner failed to satisfy conditions imposed by the Commission). Further, “the power to enforce the [Commission’s] conditions and orders generally lies with the various counties. DW Aina Lea Development, LLC v. Bridge Aina Lea, LLC, 134 Hawaii 187, 213, 339 P.3d 685, 711 (2014); Lanai Co., Inc. v. Land Use Com’n, 105 Hawaii 296, 318, 97 P.3d 372, 394 (2004); Haw. Rev. Stat. § 205-12.

A. **D.R. Horton Obtained DTS' Acceptance of the Updated TIAR Prior to Its Submittal of a Change in Zoning Application.**

FOM argues that D.R. Horton has not satisfied Condition 10(b) because it failed to obtain DTS' acceptance of the updated TIAR prior to submitting its application for a change in zoning. Motion at 65-66 at ¶ 169.1. Condition 10(b) provides in relevant part:

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.

Decision and Order at 172-173. FOM appears to argue that because the February 4, 2014 letter from DTS regarding the revised draft TIAR for Hoopili did not specifically state that DTS has "accepted" the updated TIAR, D.R. Horton failed to satisfy Condition 10(b) before it submitted its application for a change in zoning. FOM's argument ignores the county enforcement authority under Haw. Rev. Stat. § 205-12 and its interpretation of Condition 10(b) is clearly erroneous.

It is well-settled that the counties are charged with enforcement of the Commission's conditions. DW Aina Lea Development, LLC, 134 Hawaii at 213, 339 P.3d at 711; Lanai Co., Inc., 105 Hawaii at 318, 97 P.3d at 394; Haw. Rev. Stat. § 205-12. Here, both the DPP and DTS confirmed that the updated TIAR was accepted before the application for change of zoning was submitted. Exercising its statutory authority, the City has confirmed that Condition 10(b) has been satisfied and FOM cannot challenge that decision here.

Furthermore, under Hawaii law, even if the Commission, rather than the City, enforces the conditions, the Commission must look at the plain language of Condition 10(b) when

determining whether D.R. Horton has complied with the condition. See Lanai Co., Inc. v. Land Use Com'n, 105 Hawaii 296, 310, 97 P.3d 372, 386 (2004) (holding the developer did not violate the plain language of the Commission's condition). In Lanai Co., the developer appealed an order of the Commission finding that the developer had violated a condition of the Commission's order amending the land use district boundary. The condition at issue in the Lanai Co. case prohibited the developer from utilizing "potable water from the high-level groundwater aquifer" (hereinafter referred to as "condition 10"). Lanai Co., at 304, 97 P.3d at 380. The Commission interpreted condition 10 as prohibiting use of *all* water from the high level aquifer and found that the developer had failed to perform according to condition 10 when it irrigated its property with brackish water supplied from wells within the high level aquifer. See Lanai Co. at 302-06, 97 P.3d at 378-82.

On appeal, the Circuit Court reversed the Commission, and ultimately concluded that the Commission's determination that the developer violated condition 10 was arbitrary, capricious, and clearly erroneous. Lanai Co., 105 Hawaii at 306, 97 P.3d at 382. Upon review, the Hawaii Supreme Court looked at the plain language of condition 10 and noted that "on its face" the plain language of the condition does not prohibit the developer from using non-potable water from the high level aquifer. Lanai Co., at 310, 97 P.3d at 386. On this basis, the Hawaii Supreme Court affirmed the Circuit Court and held that the Commission's determination that the developer had violated condition 10 was clearly erroneous. Lanai Co., 105 Hawaii at 306, 97 P.3d at 382.

Likewise, here, the plain language of Condition 10(b) states that "Petitioner shall obtain acceptance of the updated TIAR from the SDOT, the DPP, and the DTS, prior to submittal of a change in zoning application with the City and County of Honolulu." On its face, there is no

requirement that the acceptance from these departments be secured in writing separately from each department.

FOM's own Exhibit "40" indicates that the Director of DTS testified that DTS had in fact accepted the updated TIAR and communicated that acceptance in accordance with the City and County's policy. FOM's Exhibit "40" at pg. 9:16-10:20. FOM's Exhibit "40" is an excerpt from the transcript of the December 3, 2014 public hearing before City and County of Honolulu Planning Commission. During this public hearing, Mike Formby, the Director of DTS, states unequivocally that DTS reviewed and accepted the TIAR, the revised TIAR and updated TIAR. FOM's Exhibit "40" at pg. 9:16-10:20. Director Formby explained that as a matter of City policy, DTS communicated its acceptance to DPP, and DPP communicated the acceptance on behalf of both departments. FOM Exhibit "40" at pg. 10:7-15. The purpose for the policy is so "we don't have two different departments be accepting authority for one document." FOM's Exhibit "40" at pg. 10:12-14. Director Formby re-iterated that "at no time has [DTS] rejected any of the TIARS." FOM's Exhibit "40" at pg. 10:17-18. Thus, contrary to FOM's suggestion, the evidence in the record shows that D.R. Horton did in fact obtain DTS' acceptance of the updated TIAR in conformity to County practice and procedure prior to submittal of its change in zoning application.⁷ There is no evidence contradicting Director Formby's testimony.

In light of the testimony by Director Formby, and a reading of the plain language of Condition 10(b), the evidence shows that D.R. Horton has satisfied Condition 10(b). FOM has not met its burden of showing that D.R. Horton failed to comply with Condition 10(b). Accordingly, the Commission must deny FOM's Motion as it relates to Condition 10(b).

⁷ FOM's Exhibit "1" confirms that the City was informed on July 15, 2014, that D.R. Horton understood that Condition 10(b) was satisfied. The City did not dispute this understanding because it too understood that Condition 10(b) was satisfied.

B. The Information in D.R. Horton's TIAR is Not "Bogus".

While we believe FOM's discussion of the merits and quality of the TIAR is irrelevant based on the arguments above, we will nevertheless address its assertions. FOM alleges that D.R. Horton's TIAR is bogus and demands that D.R. Horton establish that its traffic projections are valid. Motion at 66, ¶ 2.

First, FOM improperly attempts to shift the burden of proof to D.R. Horton to prove the validity of the TIAR. As discussed above, the burden of proof is upon FOM as the movant to prove D.R. Horton has failed to satisfy a condition, representation or commitment. Kaniakapupu, 111 Hawaii at 128, 139 P.3d at 716. In other words, the burden is upon FOM to prove that D.R. Horton failed to update the TIAR.

Second, D.R. Horton's TIAR has been vetted and scrutinized by the SDOT, DPP and DTS, and their many qualified personnel. See FOM's Exhibits "2"- "4" and "40" at pg. 9:16-10:20. All three departments have the experience and expertise necessary to review and analyze a TIAR. The Commission tasked these departments to review and accept the updated TIAR if the departments deemed it appropriate for acceptance. See Decision and Order at 172-174, ¶10. All three departments accepted the TIAR. See FOM's Exhibits "2"- "4", and "40" at pg. 9:16-10:20. FOM's argument that D.R. Horton received an acceptance of its TIAR based upon "bogus" information is an argument that underestimates the experience and ability of the SDOT, the DPP, and the DTS staff to do an accurate job at reviewing TIARs. FOM seems to suggest that its consultant from California would know better than the traffic engineers located in Hawaii, and that the Commission should accept one California consultant's opinions over those of several experienced local traffic engineers.

Finally, FOM's allegations are simply incorrect.

FOM argues that the TIAR does not include all of the known development within Oahu and is inconsistent with the Oahu Regional Transportation Plan (“ORTP”). Contrary to FOM’s suggestion, the ORTP projections used in the TIAR include the entirety of island-wide growth slated to occur between 2007 and 2035 as shown in Exhibit “D” attached hereto. Affidavit of M. Nakamoto, ¶ 8. Table 4.1 was provided solely as a means of identifying the specific housing and employment growth that will occur in Ewa Beach and Kapolei for the purposes of comparative clarity. Affidavit of M. Nakamoto, ¶ 10. While the boundaries used in the TIAR to delineate Ewa Beach and Kapolei were more specific and differed slightly from what was provided in the ORTP summary, the projections within the TIAR are consistent with the ORTP and included the entire island-wide 95,000 new households and 136,400 new jobs by 2035. Affidavit of M. Nakamoto, ¶ 11.

FOM alleges that the data provided in Appendix F does not correlate with the ORTP. The data provided in “Appendix F” of the TIAR was obtained from the Oahu Metropolitan Planning Organization’s Model that formed the basis of the ORTP, as is industry standard for the production of TIARs. Affidavit of M. Nakamoto, ¶ 12. The data was used for consistency with one exception: Hoopili’s traffic was removed from the model, and then re-inserted using standard trip generation methodology to more accurately reflect the exact project characteristics and land uses, which were not known at the time that the OMPO Model was created. Affidavit of M. Nakamoto, ¶ 12. We are unaware of the source of FOM’s Exhibit 61 as they do not appear in either the ORTP’s adopted plan or technical report.

Further, a Travel Demand Forecasting Report was not required by the State or County, and is generally not required as standard practice in Hawaii. Affidavit of M. Nakamoto, ¶ 13. The traffic projections were discussed at length with SDOT, and all requested information was

provided. Affidavit of M. Nakamoto, ¶ 14. SDOT, DPP and DTS have reviewed and accepted the TIAR without requesting a Travel Forecasting Report. Affidavit of M. Nakamoto, ¶ 13.

FOM's consultant claims the traffic projections appear low, and the traffic growth along the Freeway appears low. Again FOM's claims are unsubstantiated. The traffic growth projected in the TIAR is based upon the traffic projections in the ORTP 2035. Affidavit of M. Nakamoto, ¶ 15. As discussed in Table 4.1 of the TIAR, employment growth is anticipated to occur in West Oahu, and to a lesser degree in Honolulu. Affidavit of M. Nakamoto, ¶ 16. It is anticipated that traffic will shift with the increase in employment in the region therefore redistributing traffic. Affidavit of M. Nakamoto, ¶ 16. The 7% increase in traffic along the Freeway is not a uniform growth but an average. Affidavit of M. Nakamoto, ¶ 16. Therefore, some locations would experience greater growth than others.

The updated TIAR projects that H-1 Freeway operations will improve from Level of Service ("LOS") F to LOS E with the recommended freeway widening. Affidavit of M. Nakamoto, ¶ 18. FOM questions this projection without considering all of the factors that would have an impact upon traffic on the H-1 Freeway. For example,

1. The ORTP projects a 247% job growth increase in the Ewa-Kapolei Region between 2007 and 2035. This will allow existing and future Central/West Oahu residents to work within West Oahu without travelling to the Primary Urban Core ("PUC"), thus relieving some of the pressure to commute between the PUC and West/Central Oahu.
2. Hoopili is a Transit-Oriented Development that will offer 90-foot height limits and mixed use development. This greater density concentrated around the rail line will encourage rail usage, and reduce Hoopili's overall traffic impact.
3. The maximum rail capacity as stated by FOM is 7,800 persons/hour. This is significant given that the H-1 Freeway currently carries roughly 10,000 vehicles per hour in the eastbound direction east of the Waimalu Interchange

to service approximately 108,000 dwelling units during the AM peak hour of traffic.

Affidavit of M. Nakamoto, ¶ 19.

The analysis within the TIAR was based upon the projections obtained from the ORTP. Affidavit of M. Nakamoto, ¶ 20. FOM's consultant fails to review the report within the context of the ORTP or Hoopili's planning principles—most notably not recognizing: 1) employment growth and development of UH West Oahu, which will likely keep residents on the west side of the island, 2) the impact of rail transit, and 3) Transit Oriented Development planned for Hoopili.

Hoopili will be different from any other previously built West Oahu community. It should also be noted that FOM's consultant has not identified when field observations were taken. Travel patterns and capacity along the H-1 Freeway, Farrington Highway, and Kamehameha Highway have recently been significantly impacted by numerous ongoing lane closures related to concurrent construction of the H-1 Freeway PM Contra-flow project and the Rail. Data collected during the preparation of the TIAR occurred when traffic conditions were more "typical".

As to FOM's consultant's argument that the area of influence or study scope is inadequate, the TIAR's study area was determined and agreed upon based upon consultation with the SDOT prior to the preparation of the TIAR. Affidavit of M. Nakamoto, ¶ 17.

Ultimately, the improvements on the H-1 freeway provided by D.R. Horton will service traffic from Hoopili as well as from other surrounding developments. Affidavit of M. Nakamoto, ¶ 17.

Finally, contrary to FOM's opinion, additional eastbound lanes on the H-1 Freeway are plausible. The additional eastbound lane between the Waiawa Interchange and the Halawa Interchange recommended as project 61 within the ORTP implies such improvements are

plausible. As previously discussed, the ORTP projects an employment shift, which means commuters will have the opportunity to work within West Oahu without driving to the Primary Urban Center.

In conclusion, FOM's questions and allegations are not proof that D.R. Horton has violated Condition 10(b). Condition 10(b) required D.R. Horton to submit updated traffic data and to obtain the SDOT, DPP and DTS' acceptance of the TIAR. D.R. Horton submitted an updated TIAR with updated traffic data (see Exhibit "C"), and obtained the SDOT, DPP and DTS' acceptance of the TIAR. See FOM's Exhibits "2"- "4" and "40" at 9:16-10:20. There is no evidence to support a finding that D.R. Horton has failed to comply with Condition 10(b) as an updated TIAR was submitted and accepted. Accordingly, the Commission must deny FOM's Motion as it relates to Condition 10(b).

C. D.R. Horton's Proposed Drainage System Will Not Drain Onto Navy Lands And D.R. Horton Has Not Received Large-Lot Subdivision Approval; Thus, The Requirements of Condition 11 Have Not Been Triggered.

FOM's third reason for filing the Motion concerns Condition 11.⁸ See Motion at 14, ¶32.

Condition 11 states in relevant part that:

- a. Prior to any subdivision approval, for lands that may drain onto adjacent Navy lands, the Petitioner shall provide a master drainage plan for review by the State Department of Health ("DOH"), the State Office of Planning ("OP"), and DPP, that either includes a letter of consent from the Navy allowing drainage onto its properties or a specific explanation of strategies to be employed so that drainage onto Navy lands is not necessary.

Decision and Order at 174 (emphasis added).

⁸ Although FOM generally references Condition 11, FOM only specifically quotes Condition 11(a) of the Decision and Order and offers no argument related to the remainder of Condition 11. D.R. Horton intends to fully comply with the requirements imposed under Condition 11.

D.R. Horton's master drainage plan is currently under review by the DPP as part of the subdivision approval process. D.R. Horton's master drainage plan is anticipated to consist of a number of detention/retention basins located on D.R. Horton's property, which will avoid drainage onto adjacent Navy lands. Affidavit of C. Nekota, ¶ 23. If DPP requires D.R. Horton to revise its master drainage plan in a way that results in storm water draining onto Navy lands, D.R. Horton will provide a copy of the master drainage plan to DOH and OP for review prior to subdivision approval in accordance with Condition 11(a). Affidavit of C. Nekota, ¶ 24.

D.R. Horton also has not yet received subdivision approval for the contiguous portion of the Petition Area. Affidavit of C. Nekota, ¶ 20. FOM recognizes this fact in paragraph 34 of its motion. See Motion at 15, ¶ 34 ("We are in the period now where the next step for D.R. Horton should be applying for subdivision approval[.]").

Because D.R. Horton is not draining any storm water from its property onto Navy land and because DPP has not yet granted D.R. Horton large-lot subdivision approval, there is no factual basis to find that D.R. Horton has failed to comply with Condition 11. FOM fails to meet its burden of demonstrating that D.R. Horton is in violation of Condition 11. Accordingly, the Commission must deny FOM's Motion as it relates to Condition 11.

D. FOM Has Not Shown That D.R. Horton Has Failed to Preserve Native Hawaiian Access Rights in Violation of Condition 14.

FOM cites Condition 14 as one of the conditions that D.R. Horton has failed to comply with. See Motion at 69, ¶ 170. Condition 14 provides:

14. Established Access Rights Protected. Pursuant to Article XI, Section 7 of the Hawaii State Constitution, Petitioner shall preserve any established access rights of native Hawaiians who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, and religious practices or for access to other areas.

Decision and Order at 175 (emphasis added).

FOM does not appear to make any arguments or provide any evidence demonstrating that D.R. Horton has failed to protect native Hawaiian *access rights*. FOM's only apparent argument for why D.R. Horton has failed to comply with Condition 14 is that a native Hawaiian member of FOM who practices traditional cultural practices "*could be* negatively impacted by [D.R.] Horton's redirection of water, should this added stormwater cause the lowest of the connected basins to overflow into the ocean, bringing pesticides and other poisons in the run-off water that *might* kill the fragile *limu* living in the area." Motion at 14-15, ¶ 33 (emphasis added). The Commission made no finding of this violation in its Order.

FOM offers no proof in support of its allegations. Further, the Commission has already reviewed the matter and found:

414. Drainage from the Project will not alter the marine environment along `Ewa's south shore, including One`ula Beach. With regard to surface water, the stormwater retention/detention mandate imposed by the City for all projects draining into Kalo'i Gulch makes it impossible for runoff from the Petition Area to reach the `Ewa shoreline. . . . As a practical consequence, runoff from the Petition Area will simply never reach `Ewa's south shoreline, and therefore, development of the Petition Area will not alter the `Ewa south shoreline, including One`ula Park, in any way.

Decision and Order at 81, ¶ 414. The Commission has also concluded that:

10. The Petition Area lies back from the coast on the extensive `Ewa limestone plain. Historical documentation and archaeological studies indicate that this area was probably never permanently inhabited during traditional Hawaiian times. There is no evidence to suggest that any native Hawaiian traditional and customary rights are being exercised within the Petition Area.

11. Due to the hydrology of the Petition Area and the City's strict detention/retention requirements for development projects affecting the Kalo'i Basin, the Project will not cause any disturbance in the underground or surface water flow conditions or negatively impact the near-shore waters at

One`ula Beach. As such, limu practice at One`ula Beach would not be affected by the Project.

Decision and Order at 161, ¶¶ 10 and 11.

The Commission has already found and concluded that *limu* practice will not be affected by the Project. FOM's argument is simply another attempt to re-argue an issue that the Commission has already reviewed and determined. There is no evidence in the record that D.R. Horton has violated Condition 14. Accordingly, the Commission must deny FOM's Motion as it relates to Condition 14.

E. D.R. Horton Will Notify the Commission of any Change in Ownership of D.R. Horton's Property Prior to Completion of Development of the Petition Area.

FOM argues that D.R. Horton violated Condition 22 by failing to notify the Commission of its intent to sell a noncontiguous piece of property to the MacNaughton Group and its partners. See Motion at 15-16, ¶ 35. FOM also argues that D.R. Horton violated Condition 22 by failing to notify the Commission of its intent to give five (5) acres of property to the Hawaiian Humane Society and one (1) acre to the Waianae Coast Comprehensive Health Center. See Motion at 15-16, ¶ 35.

Condition 22 provides:

22. Notice of Change of Ownership. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Area, any time prior to completion of the development of the Petition Area.

D.R. Horton is in negotiations to sell approximately thirty-eight (38) acres of its 1,525 acres property to the MacNaughton Group and Kobayashi Groups, respectively. D.R. Horton also intends to give approximately five (5) acres of land to the Hawaiian Humane Society and one (1) acre to the Waianae Coast Comprehensive Health Center. In total, these lands equal less

than 3% of the Petition Area. Affidavit of C. Nekota, ¶ 17. As of the date of this motion, none of these transactions are close to completion with both the thirty-eight (38) acre piece and the Hawaiian Humane Society transactions in their respective feasibility periods. Affidavit of C. Nekota, ¶ 16.

On August 20, 2015, D.R. Horton delivered a letter to the Commission for purposes of reassuring the Commission that it intends to comply with Condition 22. See Exhibit “A”. To revert the land use district classification for 1,525.516 acres back into the Agricultural district because D.R. Horton has not provided notice of transactions that are still in the process of being finalized, is undoubtedly unreasonable. Here, Condition 22 does not specify when D.R. Horton must provide notice to the Commission; thus, there is not a clear violation of a condition. Lanai Co., 105 Hawaii 296, 97 P.3d 372 (Commission must interpret condition according to its plain language). Further, there has been no injury caused by D.R. Horton not providing notice of transactions that have not yet closed.

Accordingly, the Commission must deny FOM’s Motion as it relates to Condition 22.

F. D.R. Horton Has Not Violated Condition 18.

FOM argues that “[D.R. Horton] must show why its neglect to inform the Commission of this impending sale is not a violation of Condition 18.” See Motion at 69, ¶ 169(5). This appears to be an incorrect citing reference by FOM; however, out of an abundance of caution, D.R. Horton responds that it has not violated Condition 18.

Condition 18 provides:

18. Infrastructure Deadline—Within 10 Years. Petitioner shall complete construction of (a) offsite backbone sewer and water infrastructure; and (b) all onsite backbone roadway infrastructure, such as the North-South Spine Road (“Spine Road”) and the University of Hawaii West Oahu Connector

Road (“Campus Drive”), and major utility infrastructure within said roads within ten (10) years from the date of the decision and order.

The Decision and Order was issued by the Commission on June 21, 2012. Therefore the deadline for D.R. Horton to comply with Condition 18 is June 21, 2022. Because the deadline for compliance has not yet passed, D.R. Horton cannot be found to have failed to perform this condition. Accordingly, the Commission must deny FOM’s Motion as it relates to Condition 18.

G. D.R. Horton Has and Fully Intends to Comply With Its Representations and the Conditions Imposed by the Commission Relating to the Hoopili Urban Agriculture Initiative and Farmlands Impacted by the Commission’s Order.

FOM appears to raise concerns regarding the loss of farmland. Motion at 68, ¶ 4. This is an issue that FOM previously raised before the Commission in opposition to the Petition for District Boundary Amendment. See FOM’s Statement of Position dated February 17, 2009.

Based upon its findings, the Commission ordered the reclassification of the Petition Area subject to the following conditions:

1. Agriculture and Phasing of Development. Petitioner shall hold or cause the phasing of development of the petitioned lands in a manner that will allow farmers unimpeded access to and use of agricultural lands not yet needed for development and continue the supply of sufficient irrigation water to meet crop production requirements. Petitioner shall inform the affected farmers that the phasing of development and the subsequent incremental termination of farming activities may be accelerated or decelerated, depending on market demand. Petitioner’s annual report shall include an updated development timetable with maps of the phasing plan as relevant to the incremental termination of farming activities, copies of any notification sent to farmers regarding the phasing of development, and information on acreage farmed and the names of farms.

2. Hoopili Urban Agriculture Initiative. Petitioner shall cause the full and complete development of no less than 251 acres of Urban Agriculture and establish the management entity responsible for compliance with the Hoopili Sustainability Plan for the areas identified as Urban Agriculture prior to Hoopili’s full build-out. The distribution of acreage for the Urban Agriculture component shall not be less than 159 acres of Civic (commercial) Farms, 8 acres of Community Gardens, and 84 acres of Steward Farms (home

gardens). The uses and activities of the Civic Farms shall be restricted to agricultural production and uses and activities directly accessory to agricultural production. This restriction shall run with the land. With respect to the 84 acres of Steward Farms, the Petitioner shall offer homeowners a professionally designed edible landscape plan to be installed in their respective lots upon the purchase of their home from the Petitioner that includes adequate irrigation. In addition, the Petitioner shall include explicit reference to the purpose and intent of Steward Farms in all promotional and sales material. Petitioner shall obtain the approval from the State Department of Agriculture (“DOA”) for the location of the Civic Farms prior to the submittal of a subdivision application. Petitioner’s annual report shall include a status of the progress in establishing the Civic Farms; a copy of the DOA approved map of the location of the Civic Farms; a copy of the paperwork establishing the management entity for the Civic Farms; and a copy of the draft edible landscaping package for the Steward Farms (home gardens).

a. Civic Farms. Petitioner will ensure that 159 acres of Civic Farms will meet the DOA’s standard that it “can be practicably used for an economically successful commercial farming operation.” If it is determined that the certain areas identified are not feasible, the Petitioner shall locate other lands to replace those lands determined to not meet the DOA’s criteria set forth above and ensure that no less than 159 acres are set aside for Civic Farms.

b. Steward Farms. Petitioner shall establish the Steward Lot program, design the gardens, and set up agriculture friendly covenants; but consistent with current practice, the individual homeowners shall be responsible for the cost of installation and ongoing care.

Decision and Order at 168-169, ¶¶ 1-2.

The concern raised by FOM relating to the loss of farmland was an issue that the Commission has previously reviewed and addressed by imposing the above mentioned conditions. These conditions address any concerns the Commission had regarding the loss of farmland, farming operations, and the farmers that may be affected by the development.

In a letter dated May 23, 2013 from the State of Hawaii Department of Agriculture (“DOA”), the DOA notified the Commission that it has approved the location, size and configuration of approximately 200 acres designated for the Civic Farms, and that such lands

will be restricted through recorded covenants for agricultural production and uses and activities directly accessory to agricultural production. See Exhibit “B”. According to the DOA, the Civic Farms meet the DOA standard for lands that “can be practicably used for an economically successful commercial farming operation”. Exhibit “B”. The DOA also confirmed that D.R. Horton has agreed to not take action that would interfere with or restrain farming operations that are being carried out in a manner consistent with “generally accepted agricultural and management practices” as applied to the Civic Farms. See Exhibit “B”.

Further, D.R. Horton has committed one million dollars (\$1,000,000.00) to the TPL and ADC so that TPL could use \$500,000 for the acquisition and ADC could use \$500,000 to assist with soil and water system improvements at the Galbraith Estate. This significant monetary commitment will assist the ADC in its effort to preserve agricultural lands for farming on Oahu.

Finally, Condition 1 imposed by the Commission provides for the phasing of development and permits the affected farmers “access to and use of agricultural lands not yet needed for development.” As of this date, these farmers remain on Hoopili land and continue to have access to and use of the lands for agricultural purposes. Affidavit of C. Nekota, ¶ 27.


D.R. Horton has and is committed to continue its compliance with these conditions. FOM has not presented any evidence to show D.R. Horton has not complied with any of the conditions, or any of the representations or commitments made by D.R. Horton. FOM only raises questions, which is insufficient to meet its burden of proof for this motion. FOM’s attempt to argue issues that the Commission has already determined are inappropriate at this time. Accordingly, the Commission must deny FOM’s motion as it relates to D.R. Horton’s representations and the conditions imposed by the Commission relating to farmlands.

III. CONCLUSION

D.R. Horton has and will continue to comply with all conditions imposed by the Commission, and will develop the Hoopili project in accordance with its representations and commitments. Affidavit of C. Nekota, ¶ 28.

For the foregoing reasons, D.R. Horton respectfully requests that the Commission deny FOM's Motion on the basis that FOM has failed to meet its burden of showing that D.R. Horton failed to perform a condition, representation, or commitment on its part.

Dated: Honolulu, Hawaii, August 24, 2015.



BENJAMIN A. KUDO
CONNIE C. CHOW
Attorneys for
D.R. HORTON-SCHULER HOMES LLC

4. Condition 10(b) of the Decision and Order required D.R. Horton to obtain acceptance of the updated TIAR from the State of Hawaii Department of Transportation (“SDOT”), the City and County of Honolulu Department of Planning and Permitting (“DPP”), and the City and County of Honolulu Department of Transportation Services (“DTS”), prior to submittal of a change in zoning application.
5. In accordance with Condition 10(b), D.R. Horton obtained the SDOT, DPP, and DTS’ acceptance of the updated TIAR.
6. After receiving SDOT, DPP and DTS’ acceptance of the updated TIAR, D.R. Horton submitted its application for change in zoning for the Petition Area in July 2014 (the “rezoning application”).
7. Following DPP’s statutorily mandated process of reviewing a rezoning application, it issued its report and recommendation of approval, which was then transmitted to the City and County of Honolulu’s Planning Commission for review.
8. On December 3, 2014, the Planning Commission held a public hearing on D.R. Horton’s rezoning application.
9. After the December 3, 2014 public hearing, the Planning Commission passed the rezoning application on to the City Council for review and approval.
10. The rezoning application came before the City Council as Bill 3 (2015) (a bill for an ordinance to rezone land situated at Honouliuli, Oahu, Hawaii).
11. Bill 3 passed first and second reading unanimously, and a public hearing was held by the City Council on March 11, 2015. Bill 3 eventually passed third reading unanimously and was adopted by the City Council.

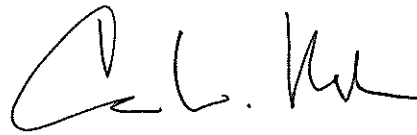
12. Bill 3 was transmitted to the Mayor for approval on May 8, 2015, and the Mayor approved the bill on May 20, 2015, enacting Ordinance 15-13, which rezoned the Petition Area.
13. Prior to receiving rezoning approval from the City and County of Honolulu, D.R. Horton agreed to donate five (5) acres of land from the Petition Area to the Hawaiian Humane Society for a much needed new campus on the Leeward side of the island.
14. D.R. Horton also agreed to donate one (1) acre to the Waianae Coast Comprehensive Health Center for a new clinic, which will provide needed health care for adjacent communities and the East Kapolei region.
15. D.R. Horton also began negotiations with the MacNaughton Group and Kobayashi Groups, respectively, for the potential sale of approximately thirty-eight (38) acres of land within the Petition Area.
16. As of the date of this motion, none of the aforementioned transactions are close to completion with both the thirty-eight (38) acre piece and the Hawaiian Humane Society transactions in their respective feasibility periods. The one acre donation to the Waianae Coast Comprehensive Health Center is not under contract yet.
17. The lands that D.R. Horton is donating and selling total less than 3% of the Petition Area.
18. On August 20, 2015, D.R. Horton delivered a letter to the Commission for purposes of reassuring the Commission that it intends to comply with Condition 22 if and when there is any change in ownership of its Property to third parties prior to completion of development of the Petition Area.
19. Attached hereto as Exhibit "A" is a true and correct copy of the letter dated August 20, 2015 from me to the Commission.

20. D.R. Horton has applied for subdivision approval for the contiguous parcels of the Petition Area, but has not yet received large-lot subdivision approval.
21. D.R. Horton has submitted a master drainage plan for Hoopili to the DPP for review and approval. At the time of the petition, one of the potential drainage options was a drainage outfall into Pearl Harbor that crossed Navy lands.
22. D.R. Horton's master drainage plan is currently under review by the DPP as part of the subdivision approval process.
23. D.R. Horton's master drainage plan is anticipated to consist of a number of detention/retention basins located on D.R. Horton's property, which will avoid drainage onto adjacent Navy lands.
24. Storm water from D.R. Horton's property is not currently planned to traverse adjacent Navy lands and drain through a concrete lined outfall into Pearl Harbor. If DPP requires D.R. Horton to revise its master drainage plan in a way that results in storm water draining onto Navy lands, D.R. Horton will provide a copy of the master drainage plan to the State of Hawaii Department of Health and the State of Hawaii Office of Planning for review prior to subdivision approval.
25. D.R. Horton is actively proceeding, to the extent permitted, with development of the Petition Area in accordance with its representations to the Commission.
26. Attached hereto as Exhibit "B" is a letter dated May 23, 2013 from the State of Hawaii Department of Agriculture to the Commission approving of the location, size and configuration of approximately 200 acres to be used for Civic Farms in accordance with the Commission's order.

27. As of this date, the farmers on Hoopili lands remain on the property and continue to have access to and use of the lands for agricultural purposes.

28. D.R. Horton has and will continue to comply with all conditions imposed by the Commission in its Decision and Order, and will develop the Hoopili project in accordance with its representations and commitments.

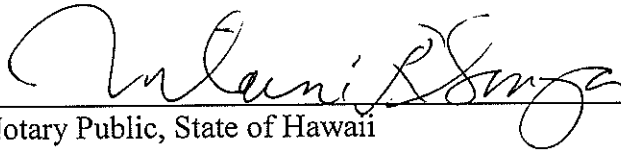
FURTHER AFFIANT SAITH NAUGHT

A handwritten signature in black ink, appearing to read 'C. Nekota', written over a horizontal line.

CAMERON NEKOTA

STATE OF HAWAII)
)
CITY AND COUNTY OF HONOLULU) SS.

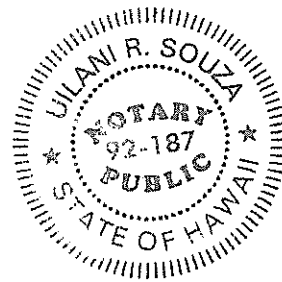
On AUGUST 24th, 2015, before me personally appeared CAMERON NEKOTA, to me personally known, who, being by me duly sworn (or affirmed), did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity. The foregoing instrument is identified as "AFFIDAVIT OF CAMERON NEKOTA," is dated AUGUST 24th, 2015, consists of 11 PAGES, and was executed in the FIRST CIRCUIT OF THE STATE OF HAWAII.



Notary Public, State of Hawaii

Print Name: Uilani R. Souza

My Commission Expires: March 24, 2016



D·R·HORTON® DHI
Listed
NYSE
America's Builder
SCHULER DIVISION

August 20, 2015

Via Hand Delivery

Mr. Daniel Orondenker, Executive Officer
State of Hawaii Land Use Commission
235 South Beretania Street, #406
Honolulu, Hawaii 96813

LAND USE COMMISSION
STATE OF HAWAII
2015 AUG 20 P 1:51

Re: Docket No. A06-771 D.R. Horton-Schuler Homes LLC
Notice of Intent to Sell or Donate Property Within the Petition Area

Dear Mr. Orodnenker:

Petitioner D.R. Horton Schuler Homes LLC (“D.R. Horton”) respectfully submits this letter to the Land Use Commission of the State of Hawaii (the “Commission”) advising the Commission of the status of pending transactions involving portions of its Property that is the subject of the above captioned docket.

In its recently filed Motion for Order to Show Cause, the Friends of Makakilo (“FOM”) argues that D.R. Horton has violated Condition 22 of the Decision and Order, which states:

22. Notice of Change of Ownership. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Area, any time prior to completion of the development of the Petition Area.

D.R. Horton reassures the Commission that it intends to comply with Condition 22. However, at this time, the contingent nature of each of the referenced transactions make providing notice premature. Nevertheless, because FOM raised the issue, D.R. Horton assures the Commission that it will provide notice in accordance with Condition 22 of the Decision and

Order if and when there is any change in ownership of its Property to third parties prior to completion of development of the Petition Area.

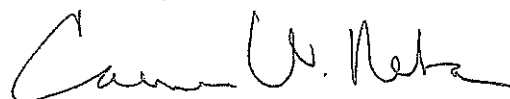
D.R. Horton hereby provides the Commission with the status of the pending transactions identified in FOM's motion:

1. D.R. Horton is donating approximately five (5) acres of land within the Petition Area to the Hawaiian Humane Society ("HHS") for the development of a new west Oahu campus for the organization. The location of the five (5) acres is contemplated to comprise a portion of Lot 98-B, area 7.258 acres, more or less, as shown on Map 442, Land Court application No. 1069, covered by Tax Map Key No. (1) 9-1-017-059 (por.). However, the exact lot configuration cannot be determined until roadway right of way widths surrounding the parcel are defined and approved by the City and County of Honolulu ("City"). In addition, the HHS is currently undertaking their due diligence of the parcel, after which D.R. Horton will need to obtain subdivision approval from the City prior to any conveyance.
2. D.R. Horton hopes to donate approximately one (1) acre of land to the Waianae Coast Comprehensive Health Center for the development of a new clinic. The one (1) acre is contemplated to comprise a portion of Lot 10078, area 182.768 acres, more or less, as shown on Map 785, Land Court Application No. 1069, covered by Tax Map Key No. (1) 9-1-017-072. As of this date, this transaction has not been reduced to a legally binding agreement.
3. D.R. Horton hopes to sell approximately thirty-eight (38) acres of land to the MacNaughton Group and Kobayashi Groups, respectively. The property is identified as Lot 11993-A, area 38.082 acres, more or less, as shown on Map 1621, Land Court Application No. 1069, covered by Tax Map Key No. (1) 9-1-018-004 (por.). This land is comprised of a non-contiguous parcel set apart from the remainder of the Petition Area. The thirty-eight (38) acres is less than 3% of the total acreage for the Petition Area. The details of this sale were recently finalized in a purchase and sale agreement dated July 16, 2015. As of the date of this letter, the acquiring entity is conducting its due diligence.

We respectfully ask that the Commission accept this letter as reassurance that Condition 22 is being complied with and notice of the change in ownership of D.R. Horton's property will be provided at the appropriate time.

If you have any questions or concerns, please contact me at 528-9074.

Sincerely,



Cameron W. Nekota
Vice President



State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

May 23, 2013

Mr. Daniel Orodener, Executive Officer
Land Use Commission
235 South Beretania Street, Suite 406
Honolulu, Hawaii 96813

Dear Mr. Orodener:

Subject: Land Use Commission Docket No. A06-771
D. R. Horton – Schuler Homes, LLC

This letter acknowledges that pursuant to Condition 2 of the Findings of Fact, Conclusions of Law, and Decision and Order dated June 21, 2012 ("Decision and Order") in the above-referenced case, the State Department of Agriculture ("DOA") has approved the location of the Civic Farms as set forth in a map attached hereto as Exhibit 1.

Condition 2 of the LUC's Decision and Order states in relevant part as follows:

Petitioner shall obtain the approval from the State Department of Agriculture ("DOA") for the location of the Civic Farms prior to the submittal of a subdivision application. Petitioner's annual report shall include a status of the progress in establishing the Civic Farms; a copy of the DOA approved map of the location of the Civic Farms; a copy of the paperwork establishing the management entity for the Civic Farms; and a copy of the draft edible landscaping package for the Steward Farms (home gardens).

(a) Civic Farms. Petitioner will ensure that 159 acres of Civic Farms will meet the DOA's standard that it "can be practicably used for an economically successful commercial farming operation." If it is determined that the certain lands identified are not feasible, the Petitioner shall locate other lands to replace those lands determined to not meet the DOA's criteria set forth above and ensure that no less than 159 acres are set aside for Civic Farms. [emphasis added]

On January 9, 2013, the DOA inspected portions of the Petition area identified by the Petitioner for Civic Farms. The Petitioner represented that these lands designated for Civic Farms will be provided sufficient irrigation water and vehicular access. Furthermore, land designated for Civic Farms pursuant to Condition 2 will be restricted through covenants



recorded against such parcels to agricultural production and uses and activities directly accessory to agricultural production.

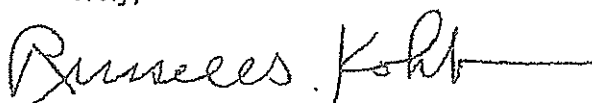
We understand that Condition 3 of the Decision and Order may not apply to the Civic Farms areas which are classified as Urban and are not adjacent or contiguous to the boundary of the Petition area. Nevertheless, the purpose and intent of Condition 3 is to protect agricultural uses, such as those which will occur within the Civic Farms.

After discussing this situation with the Petitioner, the Petitioner has agreed to carry out the intent of Condition 3a (Petitioner not take action that would interfere with or restrain farming operations that are being carried out in a manner consistent with "generally accepted agricultural and management practices") and 3b (notification to those occupying land adjacent to agricultural activities of potential nuisances) as they apply to the Civic Farms.

Based on the foregoing inspection, the representations of the Petitioner, and a criteria-based review of the proposed sites, the DOA hereby approves the location, size, and configuration of approximately 200 acres designated in Exhibit 1 specifically for Civic Farms as meeting the DOA standard that these lands "can be practicably used for an economically successful commercial farming operation" in satisfaction of Condition 2a.

Should you have any questions regarding this matter, please contact Earl Yamamoto at 973-9466 or email him at earl.j.yamamoto@hawaii.gov.

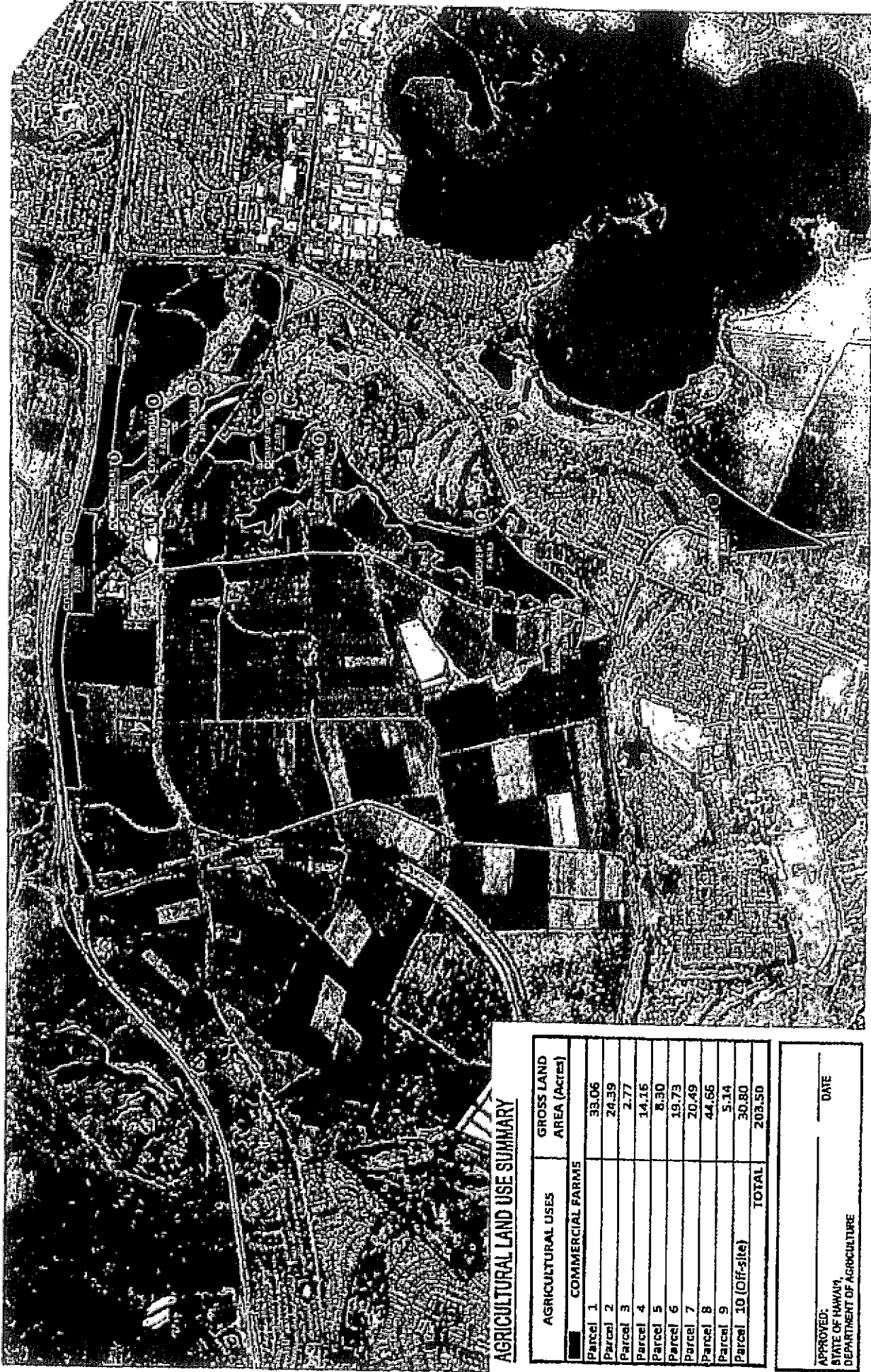
Sincerely,



Russell S. Kokubun
Chairperson, Board of Agriculture

Attachment (Exhibit 1)

- c: Mr. Cameron Nekota, Vice President
D. R. Horton – Schuler Homes, LLC
- Mr. Jesse Souki, Director
Office of Planning
- Mr. George Atta, Director Designate
City Department of Planning and Permitting
- Ms. Dawn Takeuchi-Apuna
City Department of the Corporation Counsel
- Mr. Bryan Yee, Deputy Attorney General
Ms. Myra Kaichi, Deputy Attorney General
Department of the Attorney General



AGRICULTURAL LAND USE SUMMARY

AGRICULTURAL USES	GROSS LAND AREA (Acres)
COMMERCIAL FARMS	
Parcel 1	33.06
Parcel 2	24.39
Parcel 3	2.77
Parcel 4	14.16
Parcel 5	8.30
Parcel 6	19.73
Parcel 7	20.49
Parcel 8	44.66
Parcel 9	5.14
Parcel 10 (Off-site)	30.80
TOTAL	203.50

APPROVED: _____ DATE _____
 STATE OF HAWAII,
 DEPARTMENT OF AGRICULTURE

DAVIDSON HO'OPILI
Accountants & Advisors

EXHIBIT 1 - COMMERCIAL FARMS

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of

D.R. HORTON-SCHULER HOMES, LLC,
a 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 1,525.516 Acres in `Ewa District,
Island of O`ahu, Tax Map Key Nos. (1) 9-1-
017:004 (por.), 059 and 072; (1) 9-1-018:001 and
004.

DOCKET NO. A06-771

AFFIDAVIT OF MATT NAKAMOTO;
EXHIBITS "C" - "D"

AFFIDAVIT OF MATT NAKAMOTO

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

MATT NAKAMOTO, being first duly sworn on oath, deposes and says:

1. Unless otherwise stated, I make this affidavit upon my own personal knowledge.
2. I am employed by Austin Tsutsumi & Associates, Inc. ("ATA"), the traffic consultants hired by D.R. Horton-Schuler Division ("D.R. Horton") to work with the State of Hawaii Department of Transportation ("SDOT"), the City and County of Honolulu Department of Planning and Permitting ("DPP") and the City and County of Honolulu Department of Transportation Services ("DTS") in preparing the updated Traffic Impact Analysis Report ("TIAR") for the Hoopili Project that is the subject of Docket No. A06-771 before the Land Use Commission of the State of Hawaii (the "Commission").

3. ATA and D.R. Horton worked closely with the SDOT, DPP and DTS in discussing the Project's impact on traffic. During the process of preparing the updated/revised TIAR, SDOT delineated the scope of the study.
4. ATA, on behalf of D.R. Horton submitted an updated/revised TIAR reflecting the SDOT's instructions.
5. The updated TIAR included the most current updated traffic data, and provided and validated all recommended mitigation measures for potential project-related traffic impacts on State and City facilities to the satisfaction of the SDOT, DPP and DTS.
6. The updated TIAR included the construction status and timeline for the City's rail transit project, and specifically addressed the potential effects on traffic if the rail project does not proceed as anticipated.
7. Attached hereto as Exhibit "C" is a true and correct copy of the updated TIAR approved by DOT, DPP and DTS. Due to the volume of the updated TIAR appendices, it will be provided in electronic form on a compact disk.
8. Contrary to FOM's suggestion, the ORTP projections used in the TIAR include the entirety of island-wide growth slated to occur between 2007 and 2035.
9. Attached hereto as Exhibit "D" is a true and correct copy of an excerpt from the Oahu Regional Transportation Plan 2035 Technical Report.
10. Table 4.1 in the TIAR was provided solely as a means of identifying the specific housing and employment growth that will occur in Ewa Beach and Kapolei for the purposes of comparative clarity.
11. While the boundaries used in the TIAR to delineate Ewa Beach and Kapolei were more specific and differed slightly from what was provided in the ORTP summary, the

projections within the TIAR are consistent with the ORTP in its inclusion of the entire island-wide 95,000 new households and 136,400 new jobs by 2035.

12. The data provided in “Appendix F” of the TIAR was obtained from the Oahu Metropolitan Planning Organization’s (“OMPO”) Model that formed the basis of the ORTP as is industry standard for the production of TIARs. The data was used for consistency with one exception: Hoopili’s traffic was removed from the model, and then re-inserted using standard trip generation methodology to more accurately reflect the exact project characteristics and land uses, which were not known at the time that the OMPO Model was created.
13. A Travel Demand Forecasting Report was not required by the State or County, and is generally not required as standard practice in Hawaii. SDOT, DPP and DTS have reviewed and accepted the TIAR without requesting a Travel Forecasting Report.
14. The traffic projections were discussed at length with SDOT, and all requested information was provided.
15. The traffic growth projected in the TIAR is based upon the traffic projections in the ORTP 2035.
16. As discussed in Table 4.1 of the TIAR, employment growth is anticipated to occur in West Oahu, and to a lesser degree in Honolulu. It is anticipated that traffic will shift with the increase in employment in the region therefore redistributing traffic. The 7% increase in traffic along the freeway is not a uniform growth but an average. Therefore, some locations would experience greater growth than others.
17. The TIAR’s study area was determined and agreed upon based upon consultation with the SDOT prior to the preparation of the TIAR. The improvements on the H-1 Freeway

provided by D.R. Horton will service traffic from Hoopili as well as from other surrounding developments.

18. The updated TIAR projects that H-1 Freeway operations will improve from Level of Service (“LOS”) F to LOS E with the recommended freeway widening.

19. FOM does not appear to take into consideration the following:

- a. The ORTP projects a 247% job growth increase in the Ewa-Kapolei Region between 2007 and 2035. This will allow existing and future Central/West Oahu residents to work within West Oahu without travelling to the Primary Urban Core (“PUC”), thus relieving some of the pressure to commute between the PUC and West/Central Oahu.
- b. Hoopili is a Transit-Oriented Development that will offer 90-foot height limits and mixed use development. This greater density concentrated around the rail line will encourage rail usage, and reduce Hoopili’s overall traffic impact.
- c. The maximum rail capacity as stated by FOM is 7,800 persons/hour. This is significant given that the H-1 Freeway currently carries roughly 10,000 vehicles per hour in the eastbound direction east of the Waimalu Interchange to service approximately 108,000 dwelling units during the AM peak hour of traffic.

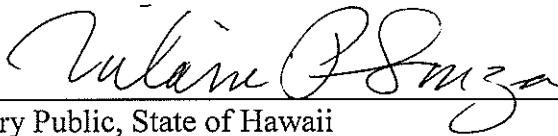
20. The analysis within the TIAR was based upon the projections obtained from the ORTP.

FURTHER AFFIANT SAITH NAUGHT


MATT NAKAMOTO

STATE OF HAWAII)
)
CITY AND COUNTY OF HONOLULU) SS.

On AUGUST 24th, 2015, before me personally appeared MATT NAKAMOTO, to me personally known, who, being by me duly sworn (or affirmed), did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity. The foregoing instrument is identified as "AFFIDAVIT OF MATT NAKAMOTO," is dated AUGUST 24th, 2015, consists of 10 PAGES, and was executed in the FIRST CIRCUIT OF THE STATE OF HAWAII.



Notary Public, State of Hawaii

Print Name: Uilani R. Souza

My Commission Expires: March 24, 2016

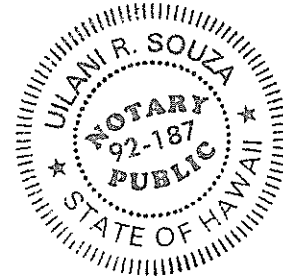


Table 3-5: Population by TAA for Oahu (2007 and 2035)

TAA	Population		Population Change (Year 2007 to Year 2035)	
	Year 2007	Year 2035	Difference	Percent Difference
1. Ward-Chinatown	10,600	19,400	8,800	83%
2. Kakaako	10,400	37,300	26,900	260%
3. Punchbowl-Sheridan-Date	72,800	84,700	11,800	16%
4. Waikiki	19,500	21,800	2,300	12%
5. Kahala-Tantalus	73,300	76,100	2,800	4%
6. Pauoa-Kalihi	77,200	84,200	7,000	9%
7. Iwilei-Mapunapuna-Airport	16,300	19,800	3,500	21%
8. Hickam-Pearl Harbor	18,500	18,600	100	1%
9. Moanalua-Halawa	54,000	54,400	400	1%
10. Aiea-Pearl City	67,300	68,000	700	1%
11. Honolulu-Ewa Beach	53,600	102,200	48,600	91%
12. Kapolei-Ko Olina-Kalaeloa	18,300	51,300	33,000	180%
13. Makakilo-Makaiwa	15,600	29,900	14,300	91%
14. Waipahu-Waikele-Kunia	56,100	60,900	4,800	9%
15. Waiawa-Koa Ridge	11,900	46,700	34,800	291%
16. Mililani-Melemanu-Kipapa	53,400	52,600	-800	-1%
17. Wahiawa-Whitmore-Schofield	35,700	34,500	-1,100	-3%
18. East Honolulu	48,800	49,300	600	1%
19. Kaneohe-Kahaluu-Kualoa	53,600	52,300	-1,200	-2%
20. Kailua-Mokapu-Waimanalo	62,500	61,800	-700	-1%
21. Koolauloa	14,400	16,200	1,800	12%
22. North Shore	18,000	20,400	2,400	13%
23. Waianae Coast	43,700	51,100	7,400	17%
Total	905,500	1,113,500	208,200	23%

Note: TAA numbers may not precisely correspond to DPP 2009 values due to rounding.
Data source: DPP, 2009.

Table 3-6: Households by TAA for Oahu (2007 and 2035)

TAA	Households		Households Change (Year 2007 to Year 2035)	
	Year 2007	Year 2035	Difference	Percent Difference
1. Ward-Chinatown	5,500	10,600	5,100	93%
2. Kakaako	5,700	21,900	16,200	284%
3. Punchbowl-Sheridan-Date	38,300	46,100	7,800	20%
4. Waikiki	11,500	13,100	1,600	14%
5. Kahala-Tantalus	26,800	28,700	1,900	7%
6. Pauoa-Kalihi	23,500	26,900	3,400	14%
7. Iwilei-Mapunapuna-Airport	4,800	5,900	1,100	23%
8. Hickam-Pearl Harbor	5,500	5,700	200	4%
9. Moanalua-Halawa	17,600	18,300	700	4%

TAA	Households		Households Change (Year 2007 to Year 2035)	
	Year 2007	Year 2035	Difference	Percent Difference
10. Aiea-Pearl City	22,100	23,300	1,200	5%
11. Honouliuli-Ewa Beach	15,600	31,600	16,000	103%
12. Kapolei-Ko Olina-Kalaeloa	5,400	16,100	10,700	198%
13. Makakilo-Makaiwa	4,800	9,400	4,600	96%
14. Waipahu-Waikele-Kunia	15,200	17,900	2,700	18%
15. Waiawa-Koa Ridge	4,000	15,900	11,900	298%
16. Mililani-Melemanu-Kipapa	18,200	19,300	1,100	6%
17. Wahiawa-Whitmore-Schofield	10,500	10,800	300	3%
18. East Honolulu	17,500	18,900	1,400	8%
19. Kaneohe-Kahaluu-Kualoa	17,300	18,100	800	5%
20. Kailua-Mokapu-Waimanalo	18,700	19,700	1,000	5%
21. Koolauloa	3,700	4,400	700	19%
22. North Shore	6,200	7,600	1,400	23%
23. Waianae Coast	12,400	15,600	3,200	26%
Total	310,800	405,800	95,000	31%

Note: TAA numbers may not precisely correspond to DPP 2009 values due to rounding.
Data source: DPP, 2009.

The Kakaako TAA's population and households are expected to triple by the year 2035, consistent with the *Primary Urban Center Development Plan*, which shows that this area already has the infrastructure and regulations in place to build higher-density, residential and mixed-use development. The Kapolei-Ko Olina-Kalaeloa and Waiawa-Koa Ridge TAAs are expected to more than double in population and households between 2007 and 2035, consistent with the policy set forth in the *General Plan* to encourage development within the secondary urban center of Kapolei and the Ewa and Central Oahu urban-fringe areas.

3.2.2 Employment

In 2007, 71 percent of the island's jobs were located in the PUC, comprised of TAAs 1 through 10. In 2035, almost all TAAs are expected to experience an increase in jobs, though the PUC is still expected to have the majority of all jobs on the island, at 64 percent. From 2007 to 2035, the number of jobs in the PUC is anticipated to rise by 52,100, which could result in increased work-related trips on Oahu's most congested roadways to and within the PUC. The number of jobs in Honouliuli-Ewa Beach, Kapolei-Ko Olina-Kalaeloa, Makakilo-Makaiwa, and Waiawa-Koa Ridge are forecast to more than double to 71,100, but these areas would only consist of 17 percent of all jobs in 2035. This growth in jobs in these areas may take a large number of work trips away from the PUC (and Oahu's most congested roadways) and/or may re-orient travel patterns somewhat between the PUC and these outlying areas. Increases in the number of jobs in these areas will place higher demand on Interstate H-1, the southern portion of Interstate H-2 and other major roadways such as Farrington Highway and Kamehameha Highway. Table 3-7 lists the employment

by TAA for 2007 and 2035, and Table 3-8 lists the employment by category for Oahu for 2007 and 2035.

Table 3-7: Employment by TAA for Oahu (2007 and 2035)

TAA	Employment		Employment Change (Year 2007 to Year 2035)	
	Year 2007	Year 2035	Difference	Percent Difference
1. Ward-Chinatown	57,300	64,200	6,900	12%
2. Kakaako	33,300	43,100	9,800	29%
3. Punchbowl-Sheridan-Date	52,600	61,600	9,000	17%
4. Waikiki	46,100	48,100	2,000	4%
5. Kahala-Tantalus	38,500	43,500	5,000	13%
6. Pauoa-Kalihi	22,500	29,200	6,700	30%
7. Iwilei-Mapunapuna-Airport	76,900	81,700	4,800	6%
8. Hickam-Pearl Harbor	26,800	27,700	900	3%
9. Moanalua-Halawa	16,500	17,700	1,200	7%
10. Aiea-Pearl City	24,300	30,100	5,800	24%
11. Honouliuli-Ewa Beach	14,000	40,300	26,200	187%
12. Kapolei-Ko Olina-Kalaeloa	22,500	55,200	32,600	145%
13. Makakilo-Makaiwa	2,100	5,700	3,600	171%
14. Waipahu-Waikale-Kunia	17,500	23,000	5,500	31%
15. Waiawa-Koa Ridge	6,200	14,900	8,700	141%
16. Mililani-Melemanu-Kipapa	19,300	22,700	3,400	18%
17. Wahiawa-Whitmore-Schofield	19,500	21,800	2,300	12%
18. East Honolulu	7,000	6,600	-400	-6%
19. Kaneohe-Kahaluu-Kualoa	12,600	12,700	100	1%
20. Kailua-Mokapu-Waimanalo	25,000	25,800	800	3%
21. Koolauloa	5,800	7,100	1,300	22%
22. North Shore	4,000	3,900	-100	-2%
23. Waianae Coast	6,500	6,800	300	4%
Total	556,800	693,400	136,400	24%

Note: TAA numbers may not precisely correspond to DPP 2009 values due to rounding.

Data source: DPP, 2009.

Table 3-8: Employment by Category for Oahu (2007 and 2035)

Employment Category	Year 2007	Year 2035	Difference	Percent Difference
Military	44,300	46,700	2,400	5%
Government	37,400	42,500	5,100	14%
Hotel	16,500	18,800	2,300	14%
Agriculture	2,500	2,800	200	9%
Transportation/Communications/Utilities	42,500	49,800	7,300	17%
Industrial	30,400	34,600	4,200	14%

Employment Category	Year 2007	Year 2035	Difference	Percent Difference
Finance/Insurance/Real Estate	28,900	35,900	6,900	24%
Service	224,100	306,100	82,100	37%
Retail	99,500	120,500	21,000	21%
Construction	30,900	35,700	4,900	16%
Total Employment	557,000	693,400	136,400	24%

Note: TAA numbers may not precisely correspond to DPP 2009 values due to rounding.
Data source: DPP, 2009.

3.2.3 Visitor Industry

The total visitor units are anticipated to increase to 39,600 by 2035, with Waikiki comprising only 70 percent of the share at that time. The City's policy, as stated in the *General Plan*, is not to intensify development in Waikiki and instead direct growth to resort areas such as Ko Olina and Turtle Bay. Table 3-9 presents visitor unit estimates and forecasts.

Table 3-9: Visitor Units for Oahu by TAA (2007, 2035)

TAA	Year 2007	Year 2035	Difference	Percent Difference
1.Ward-Chinatown	100	100	0	0%
2.Kakaako	0	300	300	0%
3.Punchbowl-Sheridan-Date	1,400	1,400	0	0%
4.Waikiki	28,800	27,800	-1,000	-3%
5.Kahala-Tantalus	300	200	-100	-33%
6.Pauoa-Kalihi	0	0	0	0%
7.Iwilei-Mapunapuna-Airport	700	1,000	300	43%
8.Hickam-Pearl Harbor	0	0	0	0%
9.Moanalua-Halawa	0	0	0	0%
10.Aiea-Pearl City	100	100	0	0%
11. Honouliuli-Ewa Beach	0	1,000	1,000	0%
12.Kapolei-Ko Olina-Kalaeloa	800	5,500	4,700	588%
13.Makakilo-Makaiwa	0	0	0	0%
14.Waipahu-Waikele-Kunia	0	0	0	0%
15.Waiawa-Koa Ridge	0	0	0	0%
16.Mililani-Melemanu-Kipapa	0	0	0	0%
17.Wahiawa-Whitmore-Schofield	200	200	0	0%
18.East Honolulu	400	400	0	0%
19.Kaneohe-Kahaluu-Kualoa	0	0	0	0%
20.Kailua-Mokapu-Waimanalo	100	0	-100	-100%
21.Koolauloa	600	1,400	800	133%
22 North Shore	0	0	0	0%
23.Waianae Coast	200	200	0	0%
Total	33,700	39,600	5,900	18%

Note: TAA numbers may not precisely correspond to DPP 2009 values due to rounding.
Data source: DPP, 2009.

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of

D.R. HORTON-SCHULER HOMES, LLC,
a 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 1,525.516 Acres in `Ewa District,
Island of O`ahu, Tax Map Key Nos. (1) 9-1-
017:004 (por.), 059 and 072; (1) 9-1-018:001 and
004.

DOCKET NO. A06-771

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that on this date a true and correct copy of **D.R. HORTON-SCHULER HOMES, LLC'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; AFFIDAVIT OF CAMERON NEKOTA; EXHIBITS "A" – "B"; AFFIDAVIT OF MATT NAKAMOTO; EXHIBITS "C"- "D"; CERTIFICATE OF SERVICE**, was duly served on the following parties at their last known address by depositing the same with the U.S. mail, postage prepaid, on August 24, 2015, addressed to:

Friends of Makakilo
Attn: Mr. Kioni Dudley, President
92-1365 Hauone Street
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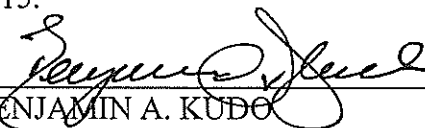
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