



BEFORE THE LAND USE COMMISSION

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 1,553.844
Acres in Ewa District, Island of Oahu, Tax
Map Key Nos. (1) 9-1-017:004(por.), 059
and 072; (1)9-1-018:001 and 004.

DOCKET NO. A06-771

ORDER DENYING FRIENDS OF
MAKAKILO'S MOTION FOR ORDER
TO SHOW CAUSE WHY THE
PROPERTY SHOULD NOT REVERT
TO ITS FORMER LAND USE
CLASSIFICATION; AND
CERTIFICATE OF SERVICE

2015 DEC - 8 P 2:35
LAND USE COMMISSION
STATE OF HAWAII

ORDER DENYING FRIENDS OF MAKAKILO'S MOTION FOR ORDER TO SHOW
CAUSE WHY THE PROPERTY SHOULD NOT REVERT TO ITS FORMER LAND
USE CLASSIFICATION

AND

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT THIS IS A TRUE AND CORRECT
COPY OF THE DOCUMENT ON FILE IN THE OFFICE OF THE
STATE LAND USE COMMISSION, HONOLULU, HAWAII.

12/ 8 /15
DATE

by 
EXECUTIVE DIRECTOR



BEFORE THE LAND USE COMMISSION

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LAND USE COMMISSION
STATE OF HAWAII
2015 DEC - 8 P 2: 35

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A06-771
)	
D.R. HORTON-SCHULER HOMES, LLC, a)	ORDER DENYING FRIENDS OF
Delaware limited liability company, d.b.a.)	MAKAKILO'S MOTION FOR ORDER TO
D.R. HORTON-SCHULER DIVISION)	SHOW CAUSE WHY THE PROPERTY
)	SHOULD NOT REVERT TO ITS FORMER
To Amend the Agricultural Land Use District)	LAND USE CLASSIFICATION
Boundary into the Urban Land Use District)	
for Approximately 1,525.516 Acres of Land)	
'Ewa District, Island of O`ahu, State of)	
Hawai`i, Tax Map Key Nos.: (1) 9-1-)	
017:004 (por.), 059 and 072; (1) 9-1-018:001)	
and 004.)	
)	

ORDER DENYING FRIENDS OF MAKAKILO'S MOTION FOR ORDER TO SHOW
CAUSE WHY THE PROPERTY SHOULD NOT REVERT TO ITS FORMER LAND USE
CLASSIFICATION

On July 24, 2015, Intervener Friends of Makakilo ("FOM") filed a Motion for an Order to Show Cause Why the Property Should Not Revert to its Former Land Use Classification ("Motion"); Affidavit by Dr. Kioni Dudley; Exhibits 1 to 61; and Certificate of Service.

On July 28, 2015, FOM filed an Amendment to the Motion Adding Page 67 and additional parties to the Certificate of Service ("Amended Motion"). The Motion, as amended, is

referred to herein as "Motion" or "Motion for an Order to Show Cause Why the Property Should Not Revert to its Former Land Use Classification".

On July 29, 2015, the State Office of Planning ("OP") filed a Request for an Extension to File Response to FOM's Motion until August 24, 2015.

On August 17, 2015, the State Department of Transportation ("DOT") filed a copy of a comment letter to OP.

On August 18, 2015, Intervener Clayton Hee filed a Substantive Joinder to Intervener FOM's Motion.

On August 20, 2015, Michele Lincoln provided public comments.

On August 20, 2015, D.R. Horton-Schuler Homes ("Petitioner") filed a Notice of Intent to Sell or Donate Property within the Petition Area.

On August 24, 2015, Petitioner filed its Memorandum in Opposition to Intervener 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 to B; Affidavit of Matt Nakamoto; Exhibits C to D; Certificate of Service.

On August 24, 2015, OP filed its Opposition to Intervener Friends of Makakilo's Motion for an Order to Show Cause Why the Property Should Not Revert to the Agricultural District; Exhibits 1 & 2; Certificate of Service.

On August 27, 2015, Intervener Sierra Club filed its Substantive Joinder to Intervener FOM's Motion.

On September 29, 2015, Neighborhood Board No. 34 filed a comment letter.

On October 13, 2015, the Land Use Commission ("LUC") mailed the Meeting Agenda and Notice for the October 22-23, 2015 meeting to the parties, the Statewide and O`ahu mailing lists.

On October 20, 2015, FOM filed an Amended Exhibit List and Exhibits 63 to 72, and Certificate of Service.

On October 21, 2015, the LUC received, via e-mail, public comments from the following individuals: Pequeno Waltraud Zorro; Sherry Pollack; and Melvin McAulton.

On October 23, 2015, the Commission received, at its hearing, written public comments from the following individuals: John Bond; Michael Lee; Rodney Boucher; Stuart Scott; and Shannon Alevado (General Contractors Association of Hawai`i).

On October 23, 2015, Intervener FOM filed at the hearing, presentation materials that reproduced one of its exhibits regarding the Traffic Impact Analysis Report (TIAR).

On October 23, 2015, the Commission held a public meeting in Honolulu, island of O`ahu, Hawai`i, to consider Intervenor FOM's Motion. The Commission heard public testimony from 30 individuals.

Dr. Kioni Dudley appeared on behalf of FOM. Eric Seitz, Esq. and Sarah Devine, Esq., appeared on behalf of Intervener Sierra Club and Intervener Clayton Hee. Benjamin Kudo, Esq., and Greg Kugle, Esq., appeared on behalf of Petitioner. Richard Lewallen, Esq. appeared on behalf of the City and County of Honolulu ("County"). Bryan Yee, Esq. and Rodney Funakoshi appeared on behalf of OP. Intervener Haseko notified the Commission prior to the hearing that it would not appear.

Mr. Seitz argued that the Commission should grant Intervener FOM's Motion but not move forward with any evidentiary hearings if Petitioner agrees that it will not start any

construction until the State Supreme Court rules on the appeal before it concerning this development. The two issues raised by Mr. Seitz were the lack of an amended TIAR acceptable by the traffic experts in the State and City, and lack of a revised proposal to address drainage over Navy lands.

Mr. Dudley argued why the Commission should make a determination that it has reason to believe that there has been a failure to perform conditions imposed on or the representations or commitments made by the Petitioner. Mr. Dudley argued the following issues: the lack of a current, updated, and accepted TIAR (Condition 10); Petitioner misrepresented the impact to farm lands and farmers at project site; need for a revised stormwater drainage plan that does not utilize Navy property (Condition 11); and Petitioner's failure to provide the Commission notice of intent to sell, lease, or alter ownership or interest in the Petition Area (Condition 22).

Mr. Yee argued that the Motion for Order to Show Cause should be denied. Mr. Yee argued that it is the Movant's burden to show there has been a violation and produce evidence of non-compliance. The Department of Transportation provided a letter indicating there was a revised TIAR (OP Exhibit 1). A stormwater drainage plan is not due or required until just prior to subdivision approval (Condition 11). Mr. Yee argued that the representation regarding the ability of crops of Ho`opili to be grown elsewhere comes down to a simple disagreement about a factual assertion, and is not a basis for an Order to Show Cause. Further, he argued that Condition 22 (Notice of Change of Ownership) does not require notice when an action is being contemplated or negotiated; there is nothing in the record to conclude a violation has occurred.

Mr. Lewallen stated that the City and County concurred with OP and that the Motion should not be granted. Mr. Lewallen addressed allegations raised in the Motion regarding the

conduct of City officials, indicating that they were unsupported, and should be addressed by the City's Ethics Commission.

Mr. Kudo argued that the Commission should deny Intervener FOM's Motion because it had not met its burden of demonstrating by evidence that the Petitioner has failed to perform conditions of approval or lived up to representations made. Mr. Kudo stated that the TIAR had been accepted by the State Department of Transportation, the City and County's Department of Planning and Permitting and City and County's Department of Transportation Services as evidenced in FOM's filing (Intervener FOM's Exhibits 1 to 4). With regard to stormwater issues: Petitioner does not intend to drain water onto Navy land; instead it will build on-site detention and retention basins; Petitioner's drainage plans are still being worked on with various agencies; and no subdivision approvals are anticipated in the immediate future. Petitioner argued that Condition 22 (Notice of Change of Ownership) has not been violated because Petitioner has only been considering donating land to the Hawai'i Humane Society and the Wai'anae Coast Comprehensive Health Center; no conveyances or title changes have occurred; and, potential sales of planned commercial and industrial areas within the Project were disclosed during the hearings. Petitioner refuted that any Native Hawaiian rights, or traditional and customary practices are impacted as the Commission had previously found in its 2012 Decision and Order that there would be no disturbances to underground or surface water flows that would negatively affect nearshore waters at One'ula Beach, that no traditional and customary rights are being exercised within the Petition Area, and that no drainage is being generated from the undeveloped Project to affect One'ula Beach. As to any violation due to Petitioner's representations, Mr. Kudo argued that three of the four farming tenants have relocated some of their farming to different areas of O'ahu; the last farm continues to cultivate on the Petition Area under a short-

term lease; that Petitioner has contributed funds to the State to improve Galbraith lands in Central O`ahu; and that Petitioner has no responsibility and made no commitments to finding land for or relocating current tenant farmers.

After the parties had an opportunity to present oral argument, and following discussion, a motion was made and seconded to deny Intervener Friends of Makakilo's Motion for Order to Show Cause Why the Property Should Not Revert to its Former Land Use Classification because the Commission does not have reason to believe that there has been a failure to perform according to the conditions imposed or representations made. There being a vote tally of 8 ayes and 0 nays¹, the motion carried.

ORDER

This Commission, having duly considered the pleadings, oral and written statements and testimony, oral arguments of the parties, and public testimony, and a motion having been duly made and seconded at a hearing on October 23, 2015, in Honolulu, O`ahu, Hawai`i, and the motion having received the affirmative votes required by HAR §15-15-13, and there being good cause for the motion,

HEREBY ORDERS:

Intervener Friends of Makakilo's Motion for Order to Show Cause why the Property should not revert to its former land use classification, be and is HEREBY DENIED.

¹ The Commission currently has one vacancy awaiting appointment.

ADOPTION OF ORDER

This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this 3th day of December, 2015, per motion on October 23, 2015.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAII



Deputy Attorney General

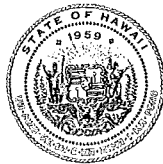
By 
EDMUND ACZON
Chairperson and Commissioner

Filed and effective on:

12/ 8 /15

Certified by:


DANIEL ORODENKER
Executive Officer



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059 and 072; (1)9-1-018:001 and 004.

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CERTIFICATE OF SERVICE

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I hereby certify that a certified copy of the ORDER DENYING FRIENDS OF MAKAKILO'S MOTION FOR ORDER TO SHOW CAUSE WHY THE PROPERTY SHOULD NOT REVERT TO ITS FORMER LAND USE CLASSIFICATION was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

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REGULAR MAIL: DONNA Y,L, LEONG, Esq.
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Attorneys for City and County of Honolulu

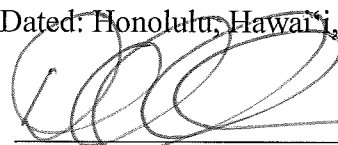
CERTIFIED MAIL: Dr. KIONI DUDLEY
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Representative of Intervenor
THE FRIENDS OF MAKAKILO

CERTIFIED MAIL: YVONNE Y. IZU, Esq.
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Dated: Honolulu, Hawai'i, 12/ 8 /15



DANIEL ORODENKER
Executive Officer