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LAND USE COMMISSION
STATE OF HAWAII

2010 JUL 18 P 4: 11

Attorneys for Successor Petitioner
SOUTHWEST 7, LLC

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of)	Docket No. A05-755
)	
HALE MUA PROPERTIES, LLC)	SUCCESSOR PETITIONER
)	SOUTHWEST 7, LLC'S POSITION
To Amend the Land Use District Boundary)	STATEMENT ON ORDER TO SHOW
of Certain Lands Situated at Waiehu, Island)	CAUSE; CERTIFICATE OF SERVICE
of Maui, State of Hawai'i, Consisting of)	
240.087 Acres from the Agriculture and)	
Rural Districts to the Urban District, Tax)	
Map Key No. 3-3-002:001 (portion))	
_____)	

**SUCCESSOR PETITIONER SOUTHWEST 7, LLC'S
POSITION STATEMENT ON ORDER TO SHOW CAUSE**

Pursuant to Hawai'i Administrative Rules ("HAR") § 15-15-55, Southwest 7, LLC, as Successor Petitioner to Hale Mua Properties, LLC, submits this Statement of Position in support of the reclassification of the Reclassified Area, as defined hereinbelow. This Statement of Position summarizes the background explaining how Successor Petitioner acquired the Reclassified Area and Successor Petitioner's position of support.

I. BACKGROUND

A. Amendment of Land Use District Boundary

Hale Mua Properties, LLC (“Original Petitioner”) filed a Petition for District Boundary Amendment on January 5, 2005, to amend the land use district boundary of certain lands situated at Waiehu, Maui, Hawai‘i, consisting of 240.087 acres¹ (the “Petition Area”), from the State Land Use Agricultural and Rural Districts to the State Land Use Urban District. On February 12, 2007, the Land Use Commission of the State of Hawai‘i (the “Commission”) issued its Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment (“Order”). Pursuant to the Order, the Commission denied reclassification of 120.888 acres of the Petition Area and ordered reclassification of 117.293 acres of the Petition Area (the “Reclassified Area”) from the State Land Use Agricultural District to the State Land Use Urban District. The Commission subsequently amended the Order to note that the Reclassified Area consists of 116.177 acres.

B. Successor Petitioner’s Acquisition of the Reclassified Property

On July 3, 2008, Original Petitioner executed that certain Promissory Note in the principal sum of \$10,612,980.00 in favor of Successor Petitioner. The Promissory Note was secured by that certain Mortgage recorded in the Bureau of Conveyances of the State of Hawai‘i (the “Bureau”) as Document No. 2008-107894, and by that certain Collateral Assignment of Contracts, Permits and Development Rights, executed July 3, 2008, in favor of Successor Petitioner. Pursuant to the Mortgage, Original Petitioner mortgaged its interests in that certain parcel of land identified as TMK No. (2) 3-3-002-031, of which the Reclassified Area is a part. Original Petitioner and

¹ Finding of Fact No. 30 notes that the petition area is more accurately described as totaling 238.181 acres.

Sterling Kim guaranteed Original Petitioner's repayment of the Promissory Note, by virtue of that certain Guaranty Agreement dated July 3, 2008.

On April 21, 2011, the Circuit Court of the Second Circuit (the "Court") found that Original Petitioner defaulted in the observance and performance of the terms, covenants and conditions set forth in the Promissory Note and the Guaranty Agreement. The Findings of Fact, Conclusions of Law, and Order Granting Plaintiff Southwest 7, LLC's Motion for Entry of Default Judgment or Alternatively, Motion for Summary Judgment and Interlocutory Decree of Foreclosure ("Order Granting Entry of Default Judgment") was recorded in the Bureau as Document No. 2011-171298, on October 19, 2011.

In accordance with the Order Granting Entry of Default Judgment, Gerald T. Johnson was appointed as Commissioner. By that certain Commissioner's Deed, recorded in the Bureau as Document No. A-44580933 on March 16, 2012, Johnson conveyed to Successor Petitioner the rights to the mortgaged property, which included the Reclassified Area.

On August 27, 2013, the Court issued Deficiency Judgment Against Defendants Hale Mua Properties, LLC and Sterling Kim ("Deficiency Judgment"). The Deficiency Judgment was recorded in the Bureau as Document No. A-67570434, on July 2, 2018.

C. Successor Petitioner's Use of the Reclassified Area

As discussed hereinabove, Successor Petitioner acquired the Reclassified Area by foreclosure. Successor Petitioner had no intention of acquiring the property for the purpose of development. Successor Petitioner is not interested in developing the Reclassified Area and has not commenced development of the Reclassified Area in accordance with the Order.

To date, Successor Petitioner has not substantially commenced use of the Reclassified Area. Successor Petitioner has not incurred, or paid, soft or hard costs in furtherance of

development of the Reclassified Area in accordance with the Order. Successor Petitioner is not aware that Original Petitioner substantially commenced use of the Reclassified Area or made substantial progress in developing the Reclassified Area in accordance with the Order or with the representations made to the Commission.

II. COMPLIANCE WITH CONDITIONS

Original Petitioner met certain conditions of the Order, and made initial steps towards addressing additional conditions. In accordance with Condition 24 of the Order, the Notice of Imposition of Conditions (the “Notice”) was recorded with the Bureau on February 20, 2007, as Document No. 2007-031188. The Notice was superseded by that certain Declaration of Conditions Applicable to an Amendment of District Boundary from Agricultural to Urban (the “Declaration”). The Declaration was recorded with the Bureau on December 3, 2008, as Document No. 2008-182476, in accordance with Condition 25.

On February 13, 2008, Original Petitioner filed its First Annual Report (the “Report”) in accordance with Condition 19. At the time the Report was filed, Original Petitioner had received preliminary subdivision approval from the County Department of Public Works, submitted a draft Affordable Housing Agreement to the County Department of Housing and Human Concerns (“DHHC”), and submitted a revised Traffic Impact Analysis Report (“TIAR”) to the State Department of Transportation (“DOT”) and to the County Department of Public Works. Original Petitioner’s submission of the draft Affordable Housing Agreement and revised TIAR indicated progress in meeting Conditions 1 and 5. However, Original Petitioner and Successor Petitioner did not actually enter into an affordable housing agreement with the DHHC, and DOT did not approve the revised TIAR.

According to the Report, Original Petitioner planned to break ground in June 2008 and begin initial construction. Original Petitioner and Successor Petitioner did not, however, meet Condition 1, which required construction of at least seventy-seven affordable units within five years of the issuance of the Order.

Successor Petitioner has not complied with or met the remaining conditions of the Order and is not aware that Original Petitioner complied with or met the remaining conditions. Thus, Successor Petitioner has not developed the Reclassified Area in accordance with Condition 23, namely, in accordance with substantial compliance with the representations made to the Commission.

III. CONCLUSION

Successor Petitioner understands and acknowledges that, pursuant to Condition 23, failure to develop the Reclassified Area in substantial compliance with the representations made to the Commission may result in reversion of the Reclassified Area. Successor Petitioner does not oppose an appropriate motion by the Commission to incorporate the order to show cause by including the reversion of the Reclassified Area to its former land use classification or to a more appropriate classification in accordance with Section 15-15-93(e), HAR.

DATED: Honolulu, Hawai'i, JUL 18 2018.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document will be duly served upon the following persons by electronic mail ("EM"), and by mailing said copy, postage prepaid, first class, in a United States post office ("MAIL") or by hand delivery ("HD") in the manner indicated, addressed as set forth below:

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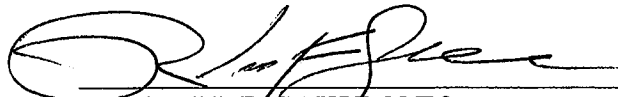
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DATED: Honolulu, Hawai'i JUL 18 2018.



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