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SOUTHWEST 7, LLC

LAND USE COMMISSION
STATE OF HAWAII

2018 JUL 19 P 1:47

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)	STIPULATION OF THE PARTIES
)	
To Amend the Land Use District Boundary)	
of Certain Lands Situated at Waiehu, Island)	
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))	
_____)	

STIPULATION OF THE PARTIES

With respect to the Order to Show Cause issued by the Land Use Commission of the State of Hawaii (the "Commission"), the undersigned parties, by and through their counsel, hereby enter into this Stipulation pursuant to Section 15-15-93(c), Hawai'i Administrative Rules ("HAR"). The undersigned parties stipulate to the following:

1. That the undersigned are not aware of compliance by the original petitioner, Hale Mua Properties, LLC ("Original Petitioner"), and Successor Petitioner has not complied with certain conditions of the Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment ("Order"), dated February 12, 2007, and as amended, including, but not limited to, the following:

- a. Condition 1, Affordable Housing: The First Annual Report, submitted by Original Petitioner in 2008, notes that Original Petitioner submitted a draft Affordable Housing Agreement on March 14, 2007. However, Successor Petitioner has no record evidencing that Original Petitioner actually entered into an affordable housing agreement with the Maui Department of Housing and Human Concerns (“DHHC”) within six months of the Order. DHHC has informed the Maui Department of Planning (“County”) that it has no record of a completed agreement. Neither Original Petitioner nor Successor Petitioner constructed at least seventy-seven (77) affordable units within five (5) years of the issuance date of the Order.
- b. Condition 3, Public School Facilities: The State Department of Education advised the State Office of Planning (“OP”) that neither Original Petitioner nor Successor Petitioner has executed an educational contribution agreement in fulfillment of Condition 3.
- c. Condition 5, Transportation Improvements: The First Annual Report notes that Original Petitioner submitted a revised Traffic Impact Analysis Report (“TIAR”) to the State Department of Transportation (“DOT”) on November 13, 2007. However, Successor Petitioner has no record evidencing that Original Petitioner received approval of the TIAR from DOT. DOT has advised OP that neither Original Petitioner nor Successor Petitioner has implemented traffic mitigation measures in fulfillment of Condition 5.
- d. Condition 6, Civil Defense: The State Department of Defense has advised OP that neither Original Petitioner nor Successor Petitioner has fulfilled Condition 6.
- e. Condition 7, Archaeological Monitoring: Successor Petitioner has not consulted with the Office of Hawaiian Affairs (“OHA”) or the State Historic Preservation Division (“SHPD”), and has no knowledge of whether Original Petitioner consulted with OHA or SHPD. OHA has advised OP that it has no record of consultation regarding archaeological monitoring with Original Petitioner or Successor Petitioner.
- f. Condition 19, Annual Reports: In 2008, Original Petitioner submitted its First Annual Report to the Commission, which was received by OP and the County. Successor Petitioner has submitted no annual report to the Commission since becoming the fee simple owner of the Reclassified Area, as defined in the Order.
- g. Condition 21, Evidence Clear Title: Successor Petitioner has not provided, and Successor Petitioner has no record evidencing that Original Petitioner provided, a title report establishing clear title to the Reclassified Area to the Commission, OP, or the County. OP and the County have not received such a title report.
- h. Condition 23, Compliance with Representations to the Commission: Based on the foregoing, Successor Petitioner has not developed the Reclassified Area in substantial compliance with the representations made to the Commission.

2. There has been no substantial commencement by Original Petitioner or Successor Petitioner of use of the Reclassified Area or substantial progress in developing the Reclassified Area in accordance with the representations and commitments made to the Commission;
3. That certain Notice of Imposition of Conditions (“Notice”) was recorded with the Bureau of Conveyances of the State of Hawai‘i (“Bureau”) on February 20, 2007, as Document No. 2007-031188, and that the Notice was superseded by that certain Declaration of Conditions Applicable to an Amendment of District Boundary from Agricultural to Urban (“Declaration”), which was recorded with the Bureau on December 3, 2008, as Document No. 2008-182476;
4. That the land use district boundary classification for the Reclassified Area, the subject 116.177 acres identified as Tax Map Key No. 3-3-002:001 (portion), shall revert from its current “Urban” classification to its former “Agriculture” classification upon appropriate motion by the Commission;
5. That the parties hereto shall not oppose a 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;
6. That the parties hereto hereby waive the procedural requirements as set forth in Chapters 91 and 205, Hawai‘i Revised Statutes, and Chapter 15-15, HAR, pertaining to notices, hearings and proceedings, and agree that the Land Use Commission may proceed with the disposition of the requests herein made; and

7. That this Stipulation may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

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



RANDALL F. SAKUMOTO
KELSEY S. YAMAGUCHI
Attorneys for Successor Petitioner
SOUTHWEST 7, LLC

DATED: Honolulu, Hawai'i, _____, 2018

DAWN T. APUNA
Attorney for STATE OF HAWAI'I
OFFICE OF PLANNING

DATED: Wailuku, Hawai'i, _____, 2018

PATRICK K. WONG
MICHAEL HOPPER
KRISTIN TARNSTROM
Attorneys for COUNTY OF MAUI
DEPARTMENT OF PLANNING

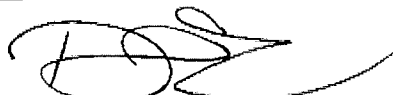
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DATED: Honolulu, Hawai'i, _____, 2018.

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Attorneys for Successor Petitioner
SOUTHWEST 7, LLC

DATED: Honolulu, Hawai'i, July 19, 2018



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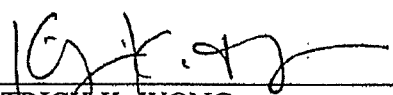
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DATED: Wailuku, Hawai'i, July 18, 2018



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