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LAND USE COMMISSION
STATE OF HAWAII

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Attorneys for Successor Petitioner
SOUTHWEST 7, LLC

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition of)	Docket No. A05-755
)	
HALE MUA PROPERTIES, LLC)	SUCCESSOR PETITIONER
)	SOUTHWEST 7, LLC'S
To Amend the Land Use District Boundary)	SUPPLEMENTAL POSITION
of Certain Lands Situated at Waiehu, Island)	STATEMENT ON ORDER TO SHOW
of Maui, State of Hawai'i, Consisting of)	CAUSE; EXHIBIT 1; CERTIFICATE OF
240.087 Acres from the Agriculture and)	SERVICE
Rural Districts to the Urban District, Tax)	
Map Key No. 3-3-002:001 (portion))	
_____)	

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

Pursuant to Hawai'i Administrative Rules ("**HAR**") § 15-15-37, Southwest 7, LLC ("**SW7**"), as Successor Petitioner to Hale Mua Properties, LLC ("**HMP**"), submits this Supplemental Position Statement. This Supplemental Position Statement is intended to provide the Land Use Commission ("**Commission**") with updated information on title issues relating to certain kuleana parcels included within Tax Map Key No. (2) 3-3-002-031 (the "**Property**").

I. BACKGROUND

A. Acquisition of the Property by Hale Mua Properties, LLC

On May 12, 2004, HMP acquired the Property from Wailuku Agribusiness Co., Inc. via that certain Quitclaim Deed recorded in the Bureau of Conveyances of the State of Hawai‘i (the “*Bureau*”) as Document No. 2004-102439 (the “*Deed*”). The description attached to the Deed as Exhibit “A” did not contain any exclusions.

B. Filing of Quiet Title Action

On May 9, 2005, HMP filed its Complaint to quiet title for certain kuleana parcels (the “*Quiet Title Action*”) located within the Property. With regard to one of the parcels, LCA 3327:1/RP 5444, HMP also filed a Motion for Partition on March 2, 2006 (the “*Partition Action*”).

On March 8, 2006, the Circuit Court of the Second Circuit (the “*Circuit Court*”) entered its Findings of Fact and Conclusions of Law, and concluded that HMP “proved that it has a good and complete chain of title” to the following kuleana parcels:

- LCA 2426 / RP 6362
- LCA 2447:1 / RP 6164
- LCA 2572:2 / RP 8051
- LCA 3275-T / RP 5178
- LCA 3275-U / RP 6126
- LCA 3374 / RP 6756
- LCA 3432:1 & 2 / RP 5171
- LCA 3436 / RP 6094
- LCA 3437:1 & 2 / RP 6091
- LCA 3441:1 & 2 / RP 6092
- LCA 3444:1 & 2 / RP 6757

The Circuit Court also concluded that HMP had good and complete chain of title to an undivided 6/7th interest in LCA 3327:1/RP 5444, and Katherine Piho (“*Piho*”) had a good and complete chain of title to an undivided 1/7th interest. Also, on March 8, 2006, the Circuit Court

issued its Final Rule 54(b) Judgment and Decree¹ entering final judgment as to the claims on the legal fee simple title ownership of the above-mentioned kuleana parcels, excepting LCA 3327:1/RP 5444.

On March 31, 2006, the Circuit Court granted HMP's Motion for Partition such that the 1/7th interest of Piho in LCA 3327:1/RP 5444 would be partitioned to HMP subject to the payment of \$10,000.00 to Piho. HMP filed a declaration affirming that Piho was paid via certified check. Accordingly, on March 31, 2006, the court entered its Final Judgment and Decree on the Motion for Partition and on Other Issues partitioning the 1/7th interest of Piho to HMP and stated that HMP "is now the owner in fee simple absolute of all of" LCA 3327:1/RP 5444.

C. Reclassified Area Included Portions of Excluded Parcels

On February 12, 2007, the Commission issued its Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment (the "**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. The Reclassified Area is shown in yellow with red cross-hatching on **Exhibit 1**.

D. SW7 Mortgage Did Not Encumber Excluded Parcels

On July 3, 2008, HMP, as mortgagor, entered into that certain mortgage with SW7, as mortgagee, recorded in the Bureau as Document No. 2008-107894 (the "**Mortgage**"). Pursuant to

¹ The Final Rule 54(b) Judgment and Decree was recorded on August 11, 2006 in the Bureau as Document No. 2006-148503. The judgment was appealed, and the Intermediate Court of Appeals of Hawai'i subsequently affirmed the judgment of the Circuit Court. Hale Mua Properties, LLC v. Liu, 2009 WL 1507312 (App. May 29, 2009).

the Mortgage, HMP granted SW7 a mortgage encumbering all of the property described in Exhibit “A” thereto (the “*Mortgaged Property*”), in order to secure the repayment of the principal amount of \$10,612,980.00 loaned by SW7. Although the Quiet Title Action and Partition Action had already been finalized, the property description set forth in Exhibit “A” of the Mortgage specifically excluded the kuleana parcels in which HMP had established clear title through the Quiet Title Action and the Partition Action, plus two additional kuleana parcels identified as Items C and F below. The property description excluded the sources of title noted below and as shown in **Exhibit 1**:

- A. LCA 2426 / RP 6362
- B. LCA 2447:1 / RP 6164
- C. LCA 2572:2 & 3 / RP8051
- D. LCA 3275-T / RP5178
- E. LCA 3275-U / RP 6126
- F. LCA 3275-X / RP 6327
- G. LCA 3327:1 / RP 5444
- H. LCA 3374 / RP 6756
- I. LCA 3432:1 & 2 / RP 5171
- J. LCA 3436 / RP 6094
- K. LCA 3437:1 & 2 / RP 6091
- L. LCA 3441:1 / RP 6092
- M. LCA 3444:2 / RP 6757

(collectively, the “*Excluded Parcels*”). In other words, although HMP held fee simple title ownership to the majority of the Excluded Parcels² pursuant to the judgments in the Quiet Title Action described above, for reasons unknown, the Excluded Parcels were excluded from the Mortgaged Property.

² LCA 2572:3/RP8051 and LCA 3275-X/RP 6327 were not addressed in the quiet title action.

E. Foreclosure Action Did Not Convey Excluded Parcels

On May 4, 2010, SW7 commenced a foreclosure action against HMP as a result of its default under the Mortgage. The Notice of Pendency of Action was recorded at the Bureau on May 7, 2010 as Document No. 2010-063038. On April 21, 2011, the Circuit Court granted SW7's Motion for Entry of Default Judgment or Alternatively, Motion for Summary Judgment and Interlocutory Decree of Foreclosure, and entered Default Judgment and Interlocutory Decree of Foreclosure in favor of SW7. On October 19, 2011, the Findings of Fact, Conclusions of Law, and Order were recorded at the Bureau, as Document No. 2011-171298. As stated in the Findings of Fact, Conclusions of Law, and Order, the entire amount of the obligation was \$14,286,352.00 (principal balance of \$9,337,302.00 and interest and fees of \$4,949,050.00) plus a per diem interest accrual for a total of \$14,971,087.00.

The Mortgaged Property was then submitted to a public foreclosure auction, and SW7 was the successful bidder at a credit bid in the amount of \$8,000,000.00. Pursuant to that certain commissioner's deed recorded at the Bureau on March 16, 2012 as Document No. A-44580933 (the "*Commissioner's Deed*"), the property described in Exhibit "A" thereto, which property description matches the description of the Mortgaged Property as set forth in Exhibit "A" to the Mortgage, was conveyed to SW7. The Excluded Parcels are thus excluded from the property description attached to the Commissioner's Deed, and thus were not conveyed to SW7 by the Commissioner's Deed.

On August 27, 2013, the Circuit Court entered a Deficiency Judgment against HMP and Sterling Kim in favor of SW7. SW7 was awarded the outstanding principal balance on the note, plus interest and attorneys' fees and costs, in the aggregate amount totaling \$8,309,397.65, as of August 27, 2013.

The Deficiency Judgment was recorded at the Bureau on July 2, 2018 as Document No. A-67570434. Such recordation creates a judgment lien against all real property interests held by HMP, which include the Excluded Parcels, if and to the extent HMP still holds title to such Excluded Parcels. HRS § 636-3. The lienholder, SW7, may seek to execute upon its Deficiency Judgment and foreclose upon the Excluded Parcels in partial satisfaction of the amounts owing under the Deficiency Judgment.


F. Impact Upon Reclassified Area

As shown in Exhibit 1, the Reclassified Area includes portions of several Excluded Parcels, including, but not limited to, portions of L.C. Aw. 3275-T and L.C. Aw. 3275-U. To the extent the Excluded Parcels were not conveyed to SW7, HMP may still hold title to the Excluded Parcels and therefore may hold title to portions of the Reclassified Area.

II. CONCLUSION

Because the Commissioner’s Deed did not convey title to the Excluded Parcels to SW7, title to the Excluded Parcels may still be held by HMP. If and to the extent that HMP still holds title to any of the Excluded Parcels, and the Excluded Parcels are included in the Reclassified Area, the Commission should provide notice of these Order to Show Cause proceedings to HMP.


DATED: Honolulu, Hawai‘i, AUG 30 2018.



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SOUTHWEST 7, LLC

SEC. 2 PLAT 13

SEC. 2 PLAT 16

-  Reclassified Property
-  Property owned by Southwest 7, LLC
-  Property owned by Hale Mua Properties, LLC
-  Reclassified Property owned by Hale Mua Properties, LLC

SEC. 2 PLAT 17



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Map Key No. 3-3-002:001 (portion))
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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 (“*M*”) or by hand delivery (“*HD*”) in the manner indicated, addressed as set forth below:

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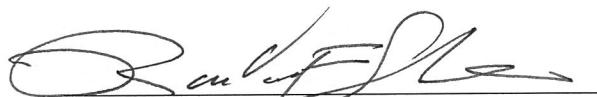
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