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DOCKET NO. A92-683  
***HALEKUA DEVELOPMENT  
CORPORATION***  
(HO'OHANA SOLAR 1, LLC)

**MOTION FOR ORDER AMENDING THE AMENDED  
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
DECISION AND ORDER DATED OCTOBER 1, 1996**

**PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
DECISION AND ORDER**

**January 23, 2015 Hearing to Adopt the Form of the Order  
on Motion to Amend**



**Daniel Orodener, Executive Officer**

**Submitted: January 21, 2015**

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### Attachments

- A. Final Form of the Order
- B. Ramseyer Version of Staff Findings of Fact  
Conclusions of Law, and Decision and Order
- C. Ho`ohana's Proposed Findings of Fact, Conclusions  
of Law, and Decision and Order

## **1. BACKGROUND**

On August 11, 2014, Petitioner filed a Motion for Order Amending the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed on October 1, 1996; Memorandum in Support of the Motion; Verification of Jon Wallenstrom; Affidavit of Steven S.C. Lim; and Exhibits 1-16.

On September 19, 2014, Petitioner filed a Stipulation of the Parties Setting Forth Filing Schedule.

On October 6, 2014, the City and County of Honolulu, Department of Planning and Permitting (“County”) filed a Response to Petitioner’s Motion for Order Amending the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed on October 1, 1996.

On October 8, 2014:

The Office of Planning (“OP”) filed OP’s Response to Petitioner’s Motion for Order Amending the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed on October 1, 1996; and Exhibits 1-8.

Petitioner filed its First List of Exhibits, First List of Witnesses, and Exhibits 17-22.

On October 15, 2014, State Senator Michelle Kidani submitted public testimony.

On October 22, 2014:

Petitioner filed Successor Petitioner’s (to Parcel 52) Second Stipulation of the Parties Setting Forth Filing Schedule; Exhibit 4 (Errata); Second List of Witnesses; First List of Rebuttal Witnesses; Exhibits 13D, and 23-33.

Petitioner filed Successor Petitioner’s (to Parcel 52) Motion to Bifurcate the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed on October 1, 1996; and Verification of Steven S.C. Lim.

On November 3, 2014, the Commission mailed a meeting agenda for its November 11-12 meeting in Honolulu to all parties, the Statewide and O`ahu mailing lists.

On November 5, 2014:

OP filed its Opposition to Successor Petitioner’s (to Parcel 52) Motion to Bifurcate the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed on October 1, 1996; and Exhibits 9-10.

The County filed its Response to New Motion by Ho`ohana Solar 1, LLC to Bifurcate the Decision and Order Regarding Docket No. 92-683 Halekua Development Corporation.

On November 10, 2014:

The Commission mailed a meeting agenda for its November 21, 2014 meeting on O`ahu to all parties; the Statewide, Hawai`i, Maui, and O`ahu mailing lists.

Canpartners IV Royal Kunia Property LLC filed its Memorandum in Response to Successor Petitioner's (of Parcel 52) (1) Motion for Order Bifurcating the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed on October 1, 1996 in Docket No. A92-683 filed on October 22, 2014; and (2) Motion for Order Amending the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed on October 1, 1996, filed on August 11, 2014.

On November 12, 2014 OP filed its First Amended List of Exhibits, and Exhibit 11.

On November 14, 2014, the Commission mailed its Order Approving Successor Petitioner (to Parcel 52) Ho`ohana Solar 1, LLC's Request to Continue Proceedings until November 21, 2014, and Set Dates for Filing of any Further Documents by All Parties Prior to November 21, 2014 Hearing Date.

On November 17, 2014, OP filed its Second Amended List of Exhibits; and Exhibits 12-13.

On November 18, 2014:

HRT Realty, 300 Corporation, and Honolulu Limited ("HRT, et.al.") filed its Statement of Position in Response to Successor Petitioner (of Parcel 52) Ho`ohana Solar 1, LLC's Motion for Order Amending the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed on October 1, 1996, filed on August 11, 2014; and Exhibit A.

Petitioner filed its Third List of Exhibits; Third List of Witnesses; Exhibits 34A-34I; Stipulation to Qualifications of Expert Witnesses; and Stipulation to Admissibility of Exhibits Filed by the Parties, with Exhibits A and B.

On November 21, 2014:

OP filed its Exhibit 14 Stipulation to Proposed Conditions of Approval for Ho`ohana Solar 1, LLC's Motion for Order Amending the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed on October 1, 1996.

HRT, et.al., filed its Stipulation Exhibits A to D (Exhibit 10) and copy of Order Granting the Office of Planning's Amended Motion to Exempt HRT, Ltd.'s

Property from the Order to Show Cause Granted on February 26, 2003, Pursuant to the Stipulation filed on December 30, 2003.

The Land Use Commission (“Commission”) was notified that the Petitioner’s Motion for Order Bifurcating the Amended Findings of Fact, Conclusions of Law, and Decision and Order dated October 1, 1996 was going to be withdrawn.

The Commission approved the Motion for Order Amending the Amended Findings of Fact, Conclusions of Law, and Decision and Order dated October 1, 1996 (“Motion”). The Commission instructed staff to prepare a proposed Findings of Fact, Conclusions of Law, and Decision and Order consistent with its decision for consideration, deliberation, and possible adoption at its meeting on January 21, 2015.

On November 12, 2014, the Commission met in Honolulu, O`ahu, to consider Statement of Position in Response to Successor Petitioner (To Parcel 52) Ho`ohana Solar 1 LLC’s Motion for Order Amending the Amended FOF, COL D&O filed on October 1, 1996 (“Motion”)<sup>1</sup> and Successor Petitioner’s (to Parcel 52) Motion to Bifurcate the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed on October 1, 1996 (“Motion to Bifurcate”), filed by Ho`ohana Solar 1, LLC.<sup>2</sup> At the hearing, Ho`ohana’s representative, requested the Commission to defer the hearing until November 13 to allow their client to continue meeting with the State Department of Agriculture to resolve outstanding issues. The Commission voted to grant the request to defer the hearing until November 13, 2014.

On November 13, 2014, the Commission met in Honolulu, O`ahu and continued the meeting on Ho`ohana’s Motions. Ho`ohana requested the Commission to consolidate their two motions. Both the OP and the County had no objections. However, Mr. Delwynn Wong representing HRT, et.al., objected to proceeding further until his clients had sufficient time to prepare; the initial Motion was not of concern but the Motion to Bifurcate was. Commissioners expressed concern for both further delay in the

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<sup>1</sup> The Motion requested that the Commission: (1) recognize Ho`ohana Solar 1, LLC (“Ho`ohana), as the successor petitioner, as lessee for parcel 52, with the legal authority to bring this motion; (2) amend the October 1, 1996 Decision and Order to allow Ho`ohana to operate a solar farm as an interim use for approximately 30 years; and (3) to either delete Condition 21 or approve the lease of parcel 52 between Robinson Kunia Land LLC and Ho`ohana.

<sup>2</sup> The Motion to Bifurcate requested that the Commission: (1) recognize Ho`ohana Solar 1, LLC (“Ho`ohana), as the successor petitioner, as lessee for parcel 52, with the legal authority to bring this motion; (2) to bifurcate parcel 52 from the other parcels in the October 1, 1996 Decision and Order; (3) issue a new docket or sub-docket number for parcel 52; (4) include within the new docket/sub-docket the entire record from all previous hearings and filings, to include all filings by Ho`ohana and other parties filed in conjunction with the Motion; (5) to issue a new Decision and Order that applies to parcel 52 but suspends the application or enforcement of conditions from the October 1, 1996 Decision and Order during the interim use period of the solar farm; and (6) to determine new and appropriate findings of fact, conclusions of law, and conditions that would apply to Ho`ohana’s solar farm on parcel 52.

proceedings and for due process concerns for some of the parties. Chair determined that the proceedings should be deferred until November 21, 2014.

On November 21, 2014, the Commission met in Honolulu, O`ahu and continued the meeting to consider Ho`ohana's Motions. Ho`ohana requested to withdraw its Motion to Bifurcate; which was allowed by the Chair. The Commission then heard presentations by the various parties. Upon completion of the evidentiary portion of the hearing, a motion was made and seconded to grant the Motion that included the stipulated conditions of OP's Exhibit 14 and a requirement that upon decommissioning further development must satisfy any Chapter 343 issues. The Motion received 7 affirmative votes. Thereafter, Chair McDonald requested that the parties work with LUC staff to determine an appropriate filing schedule for proposed findings of fact, conclusions of law, and decision and order, including any responses or stipulations.

Petitioner's Stipulated Proposed Order filed on December 23, 2014 provided the basis for the Proposed Findings of Fact, Conclusions of Law, and Decision and Order drawn up by staff and attached herein. The stipulation was solely between Ho`ohana and OP.

None of the other parties filed a Proposed Findings of Fact, Conclusions of Law, and Decision and Order nor did they stipulate to Ho`ohana's Stipulated Proposed Order filed on December 23, 2014.

Ho`ohana filed an explanatory letter with the Commission on January 13, 2015, representing that all landowners had opportunities to review and comment on Ho`ohana's Proposed Findings of Fact, Conclusions of Law, and Decision and Order. Ho`ohana further represents that: the County does not object to the proposed use or the filing of the Stipulated Proposed Decision and Order; Canpartners, and HRT, et.al., do not object to the filing of the Proposed Decision and Order or the conditions in the Stipulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order. Landowner RKES, LLC to date has not responded to Ho`ohana or filed any comments with the Commission. Robinson Kunia Land, LLC ("RKL") posed limited objections to language in the Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

In preparing the document, staff added, deleted, and reorganized findings with citations to the record where appropriate. In particular, findings of fact were added by the staff to the Introductory and Procedural sections of the document to reflect the Commission's standard practice. Throughout the document, changes also were made to reflect standard formatting and style of the Commission, use of Hawaiian language diacriticals, and to improve readability.

As part of this preparation, staff reviewed the following documents filed by the parties:

Petitioner

1. Petitioner's Proposed Order Granting Successor Petitioner (to Parcel 52)  
Ho`ohana Solar 1, LLC's Motion for Order Amending the Amended Findings of

- Fact, Conclusions of Law, and Decision and Order filed on October 1, 1996; filed on December 9, 2014 (“Proposed Order”)
2. Stipulation to Proposed Findings of Fact, Conclusions of Law, and Decision and Order; and Exhibits A through B filed on December 23, 2014.
    - a. Exhibit A: Petitioner’s Proposed Order Granting Successor Petitioner (to Parcel 52) Ho`ohana Solar 1, LLC’s Motion for Order Amending the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed on October 1, 1996 (“Stipulated Proposed Order”)
    - b. Exhibit B: Ramseyer version of Exhibit A reflecting changes made to Petitioner’s Proposed Order filed on December 9, 2014.
  3. Successor Petitioner Ho`ohana Solar 1, LLC correspondence to LUC filed January 13, 2015; that provides additional explanation and documentation from other parties not signatories to the stipulated agreement for the Stipulated Proposed Order.
  4. Petitioner’s Compliance with Conditions of Amended Findings of Fact, Conclusions of Law, and Decision and Order filed on October 1, 1996.

Office of Planning

1. OP Exhibit 14 Stipulation to Proposed Conditions of Approval for Ho`ohana Solar 1, LLC’s Motion for Order Amending the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed on October 1, 1996; filed November 21, 2014.

HRT, Ltd., 300 Corporation, and Honolulu Limited (“HRT, et.al.”)

1. Statement of Position in Response to Successor Petitioner (To Parcel 52) Ho`ohana Solar 1 LLC’s Motion for Order Amending the Amended FOF, COL D&O filed on October 1, 1996, filed August 11, 2014; and Exhibit A.
2. HRT, et.al. Stipulation Exhibits A to D (Exhibit 10) and copy of Order Granting the Office of Planning’s Amended Motion to Exempt HRT, Ltd.’s Property from the Order to Show Cause Granted on February 26, 2003, Pursuant to the Stipulation filed on December 30, 2003; filed November 21, 2014.

## 2. SUMMARY OF STAFF'S CHANGES TO FINDINGS OF FACT

### Title Page

Title changed to more accurately reflect the LUC standard format.

### Introduction

Introduction changed to more accurately reflect the language of Ho`ohana's Motion to Amend.

#### A. Procedural Matters (FOF 1 through 10)

STIP FOF 6 was amended to clarify language.

#### B. Procedural Matters Related to Parcel 52 (FOF 11 through 66)

STIP FOF 11 was amended to more accurately reflect the language in Ho`ohana's Motion to Amend. LUC FOF 20, 26, 43, 61, 63, and 66 were added to reflect the chronological record of filings and Commission actions. STIP FOF 26 and 39-41 were deleted as they were deemed unnecessary and/or redundant with other findings elsewhere in the document. STIP 28 was amended for clarity and grammar. STIP 42 was amended for grammar and to accurately reflect Commission action. STIP 61 was amended to provide clarity in its reference to one of the stipulated documents filed by Ho`ohana. STIP 62 was amended to accurately reflect the hearing date. STIP 63 was amended to more accurately reflect the decision-making to occur at Commission's January 23, 2015 hearing.

#### C. Description of the Petition Area (FOF 67 through 77)

STIP FOF 68 was amended to add recognition of Ho`ohana as having a property interest in the Petition Area and explanation of what entities comprise Ho`ohana.

#### D. Halekua's Original Proposal for Reclassification of the Petition Area for the Royal Kunia Phase II Project (FOF 78 through 100)

STIP FOF 100 was amended for grammar.

#### E. Description of Parcel 52 (FOF 101 through 104)

No substantive changes made to this section.

#### F. Current Proposal for Parcel 52 AKA Royal Kunia Phase II, Increment 3 (FOF 105 through 117)

STIP FOF 108 was amended for grammar. STIP 116 was amended for clarity of reference.

G. Successor Petitioner's Financial Capability to Undertake the Proposed Development (FOF 118 through 123)

No substantive changes made to this section.

H. State and County Plans and Programs; Conformance to Urban District Standards (FOF 124 through 131)

No substantive changes made to this section.

I. Need for the Proposed Development (FOF 132 through 135)

STIP FOF 129 was amended to more accurately reflect clarifying language from transcripts and Petitioner's Exhibit 34C.

J. Social and Economic Impacts (FOF 136 through 146)

STIP FOF 134 was amended to correct for grammar. STIP 137 was amended for clarity. STIP 141 was amended for clarity.

K. Impacts Upon Resources of the Area (FOF 147 through 190)

STIP FOF 146 was amended to delete the reference to a contractual obligation between Ho`ohana and RKL. STIP 147 was amended for grammar. STIP FOF 166 was amended to more accurately reflect language cited from 1996 Order. STIP 168 was amended for grammar. STIP 169 was amended to remove reference to expected acceptance of Ho`ohana's Archaeological Inventory Survey (AIS) by SHPD; this expectation is not based on any actual representations by OP, SHPD, or in the record. STIP 176 and STIP 181 were amended to remove language citing Commissioner Scheuer as a reference. STIP 183 was amended for grammar. STIP 185 was amended for clarity in referencing.

L. Environmental Quality (FOF 191 through 198)

No substantive changes were made to this section.

M. Adequacy of Public Services and Facilities (FOF 199 through 220)

STIP FOF 196 was amended for grammar. STIP 201 was amended for grammar. STIP 216 was amended to delete language regarding automatic

shutdown measures as they were not found within Petitioner's Exhibit 34B or transcript citation provided.

N. Schools; Parks; Health Care; Civil Defense; Utility Services (FOF 221 through 224)

No substantive changes made to this section.

O. Commitment of State Funds and Resources (FOF 225 through 226)

No substantive changes made to this section.

P. Conformance with the Goals, Objectives, and Policies of the Hawai'i State Plan; Relationship with Applicable Priority Guidelines and Functional Plans (FOF 227 through 232)

STIP FOF 227 was amended to remove confusing or inaccurate language. STIP 229 was amended to remove language deemed unnecessary. STIP 230 and 231 were deleted as unnecessary.

Q. Conformance with Coastal Zone Management Objectives and Policies (FOF 233 through 237)

STIP FOF 235 was amended for grammar.

R. Commission Criteria for a Motion to Amend (FOF 238 through 254)

STIP FOF 244 was amended to delete the reference to a Commission standard condition. STIP 249 was amended for grammar. STIP 250 was amended to delete second sentence as unnecessary and/or redundant to other findings elsewhere in the document. STIP 251 was amended for clarity. STIPs 252 through 256 were deleted as unnecessary and/or redundant to other findings or conditions elsewhere in the document. STIP 257 was amended for clarity. STIP 258 was amended for clarity and to delete reference to a Commission standard condition. STIP 259 was deleted as unnecessary and/or redundant to other findings elsewhere in the document.

S. Rulings on Proposed Findings of Fact

No substantive changes were made to this section.

### 3. SUMMARY OF STAFF'S CONCLUSIONS OF LAW

STIP COL7 was amended to affirm that the Petition Area and Parcel 52 were not identified as IAL prior to reclassification.

### 4. SUMMARY OF STAFF'S DECISION AND ORDER

This staff report should serve as a guide to navigating changes proposed by staff to the Stipulated Proposed Decision and Order by Ho`ohana and OP. There are three documents you should refer to in reviewing these changes: (1) Ho`ohana's Proposed Order (Exhibit A filed as part of Ho`ohana's Stipulation on December 23, 2014); (2) Staff's Ramseyer version of Ho`ohana's Exhibit A showing changes made to the document that are referenced in this staff report; and (3) the final clean copy (all Ramseyer changes accepted) of the staff recommended form of the Decision and Order to be adopted.

Language was amended to more clearly indicate that the new conditions A.1 through A.4 shall apply to the entire Petition Area, including Parcel 52.

Condition B.6 was amended for clarity of reference. The one substantive change in the stipulated conditions, specifically Condition B.7, was made to more accurately follow the condition language used by the Commission when it approved the recent Docket No. A87-610 Kamehameha School request for interim solar farm use on property in Waiawa, O`ahu.

In addition, staff amended language in the last section to reaffirm that all conditions imposed under prior Commission Orders remain in effect and pertain to the entire Petition Area including Parcel 52. Also, recognition of the agreement between OP and HRT Entities was acknowledged by a footnote attached to the final sentence rather than its own sentence in the main body of the document.

#### Staff Recommended Motion to Approve the Form of the Order

*“Move to adopt the form of the Order, and grant Ho`ohana’s Motion to authorize the interim use of Parcel 52 as a solar farm, including all related utility and other infrastructure, for an operational period, excluding decommissioning, not to exceed 35 years from the date of this Findings of Fact, Conclusions of Law, and Decision and Order, and subject to the conditions imposed herein.”*