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OUR REFERENCE NO.:
066869-00001

July 31, 2014

VIA HAND DELIVERY

Mr. Daniel Orodanker
Executive Officer
Land Use Commission, State of Hawai'i
235 South Beretania Street, Room 406
Honolulu, Hawai'i 96813

2014 JUL 31 P 3:47
U.S. DEPARTMENT OF JUSTICE
STATE OF HAWAII

Re: Halekua Development Corporation, Land Use Commission Docket No. A92-683
Request for Determination by Executive Officer

Dear Mr. Orodanker:

We serve as the attorneys for Ho'ohana Solar 1, LLC, a Hawai'i limited liability corporation ("Ho'ohana"). We write this letter seeking a determination by the Executive Officer that Condition No. 21 of the Land Use Commission's (the "Commission") Docket No. A92-683, *In re Halekua Development Corporation*, which requires prior approval from the Commission to alter the ownership interest of the Petition Area, has been satisfied and no longer applies to the Petition Area.

1. Docket No. A92-683 Condition No. 21.

Among the 25 conditions contained in the 1996 Order is Condition No. 21 which provides:

In reliance upon Petitioner's representation that it will develop the Project *on his own and in its entirety, the Petitioner shall obtain the prior approval* from the Land Use Commission before it can sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest in the Property or Project covered by the Petition.

Petitioner shall request the prior approval from the Land Use Commission to alter the ownership interest and supporting affidavits that will provide relevant information, including (1) the name(s) and address(es) of the prospective owner(s) or real party(ies) in interest; (2) the reason for the alteration or of ownership interest; (3) any information related to any proposed change in the representations made by Petitioner to the Commission and in its Petition filed pursuant to section 15-15-50, Hawai'i Administrative Rules, including without limitation any information pertaining to the financial capabilities of the prospective owner(s) to proceed with the Project as set forth in section 15-15-50(8); and, (4) a written acknowledgement and affirmation of the prospective owner(s) that the prospective owner(s) shall comply with all of the conditions in this Order.

Findings of Fact, Conclusions of Law, and Decision and Order dated October 1, 1996, Docket No. A92-683 (the "1996 Order") ¶ 21, at 69.

For the reasons explained below, it is clear that Condition No. 21 has been satisfied and that the fee owners of the properties in the Petition Area therefore need not comply with the requirement to obtain prior approval from the Commission to alter the ownership interest of the lands in the Petition Area.

2. Background and Ho'ohana's Interest in the Petition Area.

By Findings of Fact, Conclusions of Law, and Decision and Order dated December 9, 1993, the Commission reclassified 504.865 acres of land at Waikele and Ho'ae'ae, 'Ewa on the island of O'ahu from the State Land Use ("SLU") Agricultural District to the Urban District for the development of 2,000 single-family and multi-family residential units, a light industrial area, an elementary school and public park, known as the Royal Kunia Phase II Project. The Docket was amended in 1996 by Findings of Fact, Conclusions of Law, and Decision and Order dated October 1, 1996 (the "1996 Order") and again by Findings of Fact, Conclusions of Law, and Decision and Order dated October 7, 2013 (the "2013 Order"). The Petition Area is currently identified by Tax Map Key ("TMK") Nos. 9-4-002: 001, 052, 070, 071, 078, and 079.

The original Petitioner in this Docket was Halekua Development Corporation ("Halekua") led by Herbert Horita. In 1993, the property comprising the Petition Area was originally owned in fee simple by Caroline J. Robinson Limited Partnership, a Hawai'i limited partnership; Bishop Trust Company, Limited, a Hawai'i corporation, Trustee; Chinn Ho, Herman G.P. Lemke and Mildred Teresa Centeio, Trustees; Waikele Lands, Ltd., a Hawai'i corporation; and American Trust Co. of Hawai'i, Inc., a Hawai'i corporation, Trustee (collectively, "Robinson Estate"). Subsequently, by way of limited warranty deeds, the Robinson Estate conveyed 347.036 acres of the Petition Area to Halekua. Various legal proceedings in the 2000's resulted in Halekua losing control of the Petition Area, such that the present ownership of the Petition Area (as noted in the 2013 Order) is as follows:

Robinson Kunia Land LLC, TMK No. 9-4-002: 052 (161.023 acres) ("Parcel 52";¹

Canpartners IV Royal Kunia Property LLC, TMK Nos. 9-4-002: 071 (161.335 acres) and 079 (por.) (0.025 acres);

HRT Realty, LLC, TMK Nos. 9-4-002: 001 (por.) (as to an undivided 48.78% of 123.712 acres as Tenants in Common), 070 (13.304 acres), and 078 (36.660 acres);

300 Corporation, TMK No. 9-4-002: 001 (por.) (as to an undivided 25.63% of 123.712 acres as Tenants in Common);

Honolulu Limited, TMK No. 9-4-002: 001 (por.) (as to an undivided 25.59% of 123.712 acres as Tenants in Common); and

RKES, LLC, TMK Nos. 9-4-002: 071 (por.) (0.025 acres) and 079 (12.0 acres).

Therefore, Canpartners IV Royal Kunia Property LLC, HRT Realty, LLC, 300 Corporation, Honolulu Limited, RKES, LLC, and Robinson Kunia Land LLC are the successors-in-interest to their respective TMK parcels under Docket No. A92-683. The Petition Area remains subject to the terms and conditions of the 1996 Order, as amended, by recorded Declaration of Conditions Imposed by the Land Use Commission, dated April 8, 1994, and Declaration of First Amendment to the Amended Findings of Fact, Conclusions of Law, and Decision and Order Filed on October 1, 1996, dated June 20, 2014 (the "Declarations").

On August 2, 2012, Robinson Kunia Land LLC and Forest City Sustainable Resources, LLC ("Forest City") entered into a two-year Option Agreement, which grants Forest City an exclusive and irrevocable option to develop, construct and operate a solar power generating Project on Parcel 52. Forest City and Hanwha Q CELLS USA ("Q CELLS") joined together to create Ho'ohana Solar 1, LLC ("Ho'ohana"), the entity responsible for the development of the proposed solar farm on Parcel 52 (the "Project") under the Option Agreement.

3. Support for Satisfaction of Condition No. 21.

Ho'ohana believes that Condition 21 has been satisfied by the prior Commission actions in this Docket which recognized the current owners of the Petition Area, who are no longer required to obtain the Commission's approval prior to changing the ownership interests in the Petition Area for the following reasons:

a. Condition No. 21 specifically applied to Mr. Horita personally, and to Halekua Development Corporation. Condition No. 21 appears to have been required by the Commission to ensure that the original developer, Halekua, would complete development of the Royal Kunia Phase II Project. *See* 1996 Order, Condition No. 21 ("In reliance upon Petitioner's representation that *it will develop the Project on his own and in its entirety*, the Petitioner shall obtain the prior

¹ By way of limited warranty deeds, the Robinson Estate conveyed TMK No. 9-4-002: 052 consisting of 161.023 acres to Robinson Kunia Land LLC ("RKL").

approval from the Land Use Commission before it can sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest in the Property or Project covered by the Petition."); June 25, 1993 Transcript, at 40-41 (providing that Condition No. 24 [now Condition No. 21] was meant to relate to "the change in identity of the *petitioner*") (emphasis added).

The transcripts of the Halekua proceedings evidence the Commission's concern both with Halekua as a developer and whether or not Mr. Horita personally would be able to proceed with developing the Project as represented to the Commission. *See* Mar. 13, 2007 Transcript,² at 67 (the Commission asking Mr. Horita if it is his "intent to retain and develop the remainder of the Royal Kunia Phase II project that is not being sold to HRT"); Feb. 3, 2004 Transcript, at 74 ("This Horita-Halekua thing is a big nightmare."); September 20, 1993 Transcript, at 106 (asking Mr. Horita if he intends to stay with this project and to develop Royal Kunia Phase II on his own); *id.* at 108 (asking Mr. Horita if he plans to stay in the development business since it has been hit hard lately). It is abundantly clear that the particular facts and circumstances of the financial markets and Mr. Horita's ability to develop the Petition Area was the reason why the Commission imposed Condition No. 21 in Docket No. A92-683.

b. Condition No. 21 is not a standard condition normally found in other dockets and is therefore a special condition uniquely applicable only to the original petitioner, Halekua. The purpose of Condition No. 21 at the time that it was imposed was to allow the Commission to continue to exercise police power over projects which it had approved. *See* June 25, 1993 Transcript, at 39-40 ("Conditions number 23 [substantial compliance], 24 [now Condition No. 21], and 25 [annual reports] were amended to address OSP's concerns regarding the State's ability to police projects in the future subsequent to approval from the Commission and also to be *informed* of potential changes in ownership subsequent to approval from the Commission. In particular, Condition 24 [now Condition No. 21] was amended. I believe the first paragraph in that condition is the Commission's standard language requiring notification to the Commission in the event the petitioner intends to change ownership in the property. The second paragraph was added and it requires that 'Within 30 days from the date ownership is substantially altered the name and address of the owners be submitted to the Commission, an explanation for the alteration of the ownership interest be disclosed; any information that amends the LUC's requirement with respect to petitioner's financial capabilities be submitted to the Commission. And finally that a written acknowledgement accepting and acknowledging compliance with the conditions set forth by the Commission be submitted by the new owners.'") (emphasis added); *id.* at 41 (acknowledging that these revisions affect the *standard conditions* that the Commission typically attaches to its Decisions and Orders).

c. The Commission on its own has already recognized that Condition No. 21 has been satisfied. Since the imposition of Condition No. 21 in the 1993 and 1996 Orders, the Commission has approved and acknowledged that the lands comprising the Petition Area have been conveyed from Halekua/Mr. Horita to the current owners and that Halekua/Mr. Horita no longer holds an interest in the Petition Area. Halekua complied with Condition 21 when it filed motions to transfer ownership interest in 1995 and 2007. The status report filed on January 15,

² All transcripts referred to herein are those from the various proceedings in Docket No. A92-683.

2014 by Group 70 International, Inc. on behalf Halekua-Kunia, LLC provides that "[Halekua-Kunia] has obtained the LUC's approval of recent changes in ownership interest of the HDC-owned portion of Royal Kunia Phase II, and will continue to comply with all requirements of this condition." Therefore, because Condition 21 was intended to apply to Petitioner Halekua, and because Halekua has transferred all of its interest in the Petition to the current property owners, the reasoning for Condition No. 21's prior approval requirement is no longer applicable.

d. The 2013 amendment to the Docket further satisfied Condition No. 21. In 2013, Canpartners IV Royal Kunia Property LLC ("Canpartners") filed a Motion for Order Amending the Findings of Fact, Conclusions of Law, and Decision and Order on October 1, 1996 to modify Condition 2 of the 1996 Order to recognize Canpartners' standing and to clarify Canpartners' responsibility for implementing certain local and regional transportation improvements related to the Royal Kunia Phase II Project. The Commission granted Canpartners' motion by the First Amendment to the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed on October 1, 1996, dated October 7, 2013 ("2013 Order"). In said motion, Canpartners confirmed the present ownership of the Petition Area, and in doing so, the Commission acknowledged the present ownership of the Petition Area by the current parties.

4. Conclusion.

We trust that the above discussion is sufficient for you to make an administrative determination that Condition No. 21 has been satisfied and acknowledged as such by the actions of the Commission. Ho'ohana therefore requests that the Executive Officer confirm that prior approval by the Commission is no longer required to transfer any ownership interest in the Petition Area.

Ho'ohana recognizes that the Commission normally imposes a standard condition requiring the Petitioner to *inform* the Commission of changes in ownership, but not to require the Commission's approval for such changes. If Condition No. 21 is found to be satisfied, then as part of the Commission's action on our Motion to Amend, Ho'ohana would not oppose addition of the standard language requiring notification of changes in ownership, as an acceptable replacement for the current Condition No. 21. This standard language will continue to allow the Commission to monitor the progress of projects which it has approved.

Mr. Dan Orodener
July 31, 2014
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Respectfully submitted,

Sincerely,



Steven S.C. Lim
CARLSMITH BALL LLP
Attorneys for HO'OHANA SOLAR 1, LLC

SSL/PPT

cc: Canpartners IV Royal Kunia Property LLC, c/o Wyeth M. Matsubara, Esq., Matsubara –
Kotake
HRT Realty, LLC, 300 Corporation, Honolulu Limited, c/o Delwyn H.W. Wong, Esq.,
Law Offices of Reuben S. F. Wong
RKES, LLC, c/o Patrick K. Kobayashi, Kobayashi Group
Robinson Kunia Land LLC, c/o Stephen Mau, Rush Moore LLP
Ann Bouslog, Forest City Sustainable Resources, LLC

4812-4773-0204.1.066869-00001

**BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I**

**In the Matter of the Petition of
HALEKUA DEVELOPMENT
CORPORATION, a Hawai'i corporation**

DOCKET NO. A92-683

To Amend the Agricultural Land Use District Boundary into the Urban Land Use District for Approximately 503.886 Acres at Waikele and Ho'ae'ae, 'Ewa, O'ahu, City and County of Honolulu, State of Hawai'i, Tax Map Key No. 9-4-02: 1, portion of 52, 70 and 71

CERTIFICATE OF SERVICE

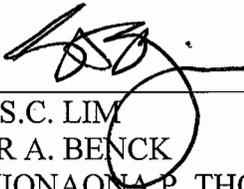
CERTIFICATE OF SERVICE

I hereby certify that due service of a copy of the within document was made by depositing the same with the U. S. Mail via certified mail-return receipt, postage prepaid, or by hand delivery, on August 11, 2014, addressed to:

HAND DELIVERY	LEO R. ASUNCION, JR., Interim Director Office of Planning State Office Tower, 6th Floor 235 South Beretania Street Honolulu, HI 96813
HAND DELIVERY	DAVID M. LOUIE, ESQ., Attorney General DIANE ERICKSON, ESQ., Deputy Attorney General Commerce and Economic Development Department of the Attorney General 425 Queen Street Honolulu, HI 96813
HAND DELIVERY	GEORGE I. ATTA, Director Department of Planning and Permitting City & County of Honolulu 650 South King Street, 7th Floor Honolulu, HI 96813

HAND DELIVERY	DONNA Y.L. LEONG, ESQ. Corporation Counsel Department of the Corporation Counsel Honolulu Hale 530 South King Street, Room 110 Honolulu, HI 96813
CERTIFIED MAIL, RETURN RECEIPT REQUESTED	City and County of Honolulu Department of Budget and Fiscal Services Real Property Assessment Division 530 South King Street, Honolulu, HI 96813
CERTIFIED MAIL, RETURN RECEIPT REQUESTED	STATE OF HAWAI'I DEPARTMENT OF TRANSPORTATION Aliiimoku Building 869 Punchbowl Street Honolulu, HI 96813
CERTIFIED MAIL, RETURN RECEIPT REQUESTED	ROBINSON KUNIA LAND LLC c/o RUSH MOORE LLP ATTN: MR. STEPHEN K.C. MAU, ESQ. Pacific Guardian Center, Mauka Tower 737 Bishop Street, Suite 2400 Honolulu, HI 96813
CERTIFIED MAIL, RETURN RECEIPT REQUESTED	FOREST CITY SUSTAINABLE RESOURCES, LLC ATTN: THE CORPORATION COMPANY, INC. 1136 Union Mall, Suite 301 Honolulu, HI 96813
CERTIFIED MAIL, RETURN RECEIPT REQUESTED	HANWHA HAWAII LLC ATTN: THE CORPORATION COMPANY, INC. 1136 Union Mall, Suite 301 Honolulu, HI 96813
CERTIFIED MAIL, RETURN RECEIPT REQUESTED	HALEKUA DEVELOPMENT CORPORATION ATTN: THE HORITA GROUP, INC. MR. JOSHUA HORITA 98-150 Kaonohi Street B128 Aiea, HI 96701
CERTIFIED MAIL, RETURN RECEIPT REQUESTED	CANPARTNERS IV ROYAL KUNIA PROPERTY LLC c/o MATSUBARA – KOTAKE ATTN: MR. WYETH M. MATSUBARA, ESQ. 888 Mililani Street, 8th Floor Honolulu, HI 96813

CERTIFIED MAIL, RETURN RECEIPT REQUESTED	HRT REALTY, LLC c/o LAW OFFICES OF REUBEN WONG ATTN: MR. DELWYN H.W. WONG 1164 Bishop Street, Suite 1006 Honolulu, HI 96813
CERTIFIED MAIL, RETURN RECEIPT REQUESTED	300 CORPORATION c/o LAW OFFICES OF REUBEN WONG ATTN: MR. DELWYN H.W. WONG 1164 Bishop Street, Suite 1006 Honolulu, HI 96813
CERTIFIED MAIL, RETURN RECEIPT REQUESTED	HONOLULU LIMITED c/o LAW OFFICES OF REUBEN WONG ATTN: MR. DELWYN H.W. WONG 1164 Bishop Street, Suite 1006 Honolulu, HI 96813
CERTIFIED MAIL, RETURN RECEIPT REQUESTED	RKES, LLC ATTN: PATRICK K. KOBAYASHI 1288 Ala Moana Boulevard, Suite 201 Honolulu, HI 96814
CERTIFIED MAIL, RETURN RECEIPT REQUESTED	HAWAIIAN ELECTRIC COMPANY, INC. Attn: SUSAN A. LI 900 Richards Street, Room 404 Honolulu, HI 96813



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Attorneys for Successor Petitioner to Parcel 52
HO'OHANA SOLAR 1, LLC

Dated: Honolulu, Hawai'i, August 11, 2014