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HO'OHANA SOLAR 1, LLC

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STATE OF HAWAII
LAND USE COMMISSION

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

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

DOCKET NO. A92-683

STIPULATION TO PROPOSED
CONDITIONS OF APPROVAL FOR
HO'OHANA SOLAR 1, LLC'S MOTION
FOR ORDER AMENDING THE
FINDINGS OF FACT, CONCLUSIONS
OF LAW, DECISION AND ORDER
DATED OCTOBER 1, 1996;
CERTIFICATE OF SERVICE

**STIPULATION OF SUCCESSOR PETITIONER, STATE OFFICE OF PLANNING,
AND DEPARTMENT OF PLANNING AND PERMITTING TO PROPOSED
CONDITIONS OF APPROVAL FOR HO'OHANA SOLAR 1, LLC'S MOTION FOR
ORDER AMENDING THE FINDINGS OF FACT,
CONCLUSIONS OF LAW, DECISION AND ORDER DATED OCTOBER 1, 1996**

On October 1, 1996, the State of Hawai'i Land Use Commission (the "Commission")
issued its *Amended Findings of Fact, Conclusions of Law, and Decision and Order* ("1996
Order") reclassifying approximately 503.886 acres in Waikele and Ho'ae'ae, 'Ewa, O'ahu from
the State Land Use ("SLU") Agricultural District to the SLU Urban District.

On October 7, 2013, the Commission issued its *First Amendment to the Amended Findings of Fact, Conclusions of Law, and Decision and Order Filed on October 1, 1996* ("**2013 Order**"). Under the 2013 Order, the Commission amended certain Findings of Fact and Condition No. 2 of the 1996 Order to recognize Canpartners IV Royal Kunia Property LLC's standing to seek and obtain the relief requested, added Findings of Fact 160A and 161A, as recommend by the State Office of Planning's ("**OP**"), and modified Condition No. 2 to clarify that the area from the Kunia Interchange up to Cane Haul Road is a regional traffic improvement. The 1996 Order and the 2013 Order are collectively referred to herein as the "**Halekua Orders**".

On August 11, 2014 Successor Petitioner to the portion of the Petition Area identified by TMK No. 9-4-002: 052 ("**Parcel 52**") HO'OHANA SOLAR 1, LLC (hereinafter "**Ho'ohana**" or "**Successor Petitioner**") filed with the Commission a Motion to Amend the Findings of Fact, Conclusions of Law, and Decision and Order in Docket No. A92-683, and Successor Petitioner's Exhibits 1 through and including 16 (now Exhibits 1 through and including 34I) (hereinafter the "**Motion to Amend**"), requesting the Commission: (a) recognize Ho'ohana as the Successor Petitioner to Parcel 52 in this Docket; (b) issue an order modifying the Halekua Orders to expressly authorize the use of portions of Parcel 52 for solar farm development for an interim period of time; (c) delete Condition No. 21, which requires the Commission's prior approval to change the ownership interest in the Petition Area, or in the alternative, revise Condition No. 21 to require only notice to the Commission of a change in ownership interest; and (d) approve the proposed lease of Parcel 52 pursuant to the terms of Condition No. 21 (should the Commission decide not to approve the request or delete or amend Condition No. 21).

On October 22, 2014, Ho'ohana filed with the Commission *Successor Petitioner's*

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 ("**Motion to Bifurcate**"), requesting that the Commission issue an order bifurcating the Halekua Orders in Docket No. A92-683 as applied to Parcel 52, and issue a new docket number or sub-docket number for Parcel 52 (retaining the original Docket number for the remainder of the Petition Area).

At the Commission hearing of November 13, 2014, Ho‘ohana made an oral Motion to Consolidate for hearing the Motion to Amend and the Motion to Bifurcate (collectively, the "**Motions**"). Ho‘ohana, OP, and the City and County of Honolulu by its Department of Planning and Permitting ("**DPP**") stipulated to consolidate for hearing the Motions. The Commission deferred decision on the Motion to Consolidate and continued the hearing until November 21, 2014.

All pleadings filed with the Commission related to Ho‘ohana's Motion to Amend and Motion to Bifurcate were served on the fee simple landowners within the Petition Area.¹

To facilitate the Commission's consideration of the Motion to Amend proceedings, pursuant to Hawai‘i Administrative Rules ("**HAR**") §§ 15-15-56 and 15-15-70, Successor Petitioner Ho‘ohana, by its attorney Steven S.C. Lim; OP, by its attorney Deputy Attorney General Bryan C. Yee; and DPP, by its attorney Richard Lewallen, hereby stipulate that the

¹ The ownership of the Petition Area is as follows:

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

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).

following proposed conditions of approval, subject to approval of the Motion to Amend by the Commission, are acceptable to Ho‘ohana, OP and DPP.

A. **New Conditions Applicable to the Petition Area.** With the understanding that the original conditions in Docket No. A92-683 remain "as is", the parties request that the Commission approve the Motion to Amend, subject to the following additional conditions, which shall be applicable to development of the Petition Area:

1. **Royal Kunia Agricultural Park Offsite Infrastructure.** Within six (6) months of the date of the Commission's Order, the landowners within the Petition Area shall finalize and comply with an amendment to the Memorandum of Understanding dated 1993 and subsequent amendments in 2007, 2009 and 2012 with the Department of Agriculture to provide off-site infrastructure to the State of Hawai‘i's Kunia Agricultural Park no later than December 31, 2016.
2. **Revised Master Plan.** Within twelve (12) months of the date of the Commission's Order, the landowners within the Petition Area shall submit a revised master plan and a schedule for the development of their respective Increments 1, 2, and 3, comprising the Royal Kunia Phase II project.
3. **Status Report.** By March 31, 2015, all landowners within the Petition Area shall submit to the Commission a status report on the development of their respective parcels of land.

B. **New Conditions Applicable Solely to the Solar Farm on Parcel 52.** The parties also recommend approval of the proposed interim solar farm use, provided that the solar farm is approved by the Commission subject to the following additional conditions, which shall be applicable only upon development of the solar farm use on Parcel 52:

1. **Royal Kunia Agricultural Park Non-Potable Water Connection.** By December 31, 2016, Ho‘ohana shall, at no cost to the State and concurrent with construction of the solar farm, design and provide an offsite, non-potable waterline from Reservoir 225 to the boundary of the Royal Kunia Agricultural Park (the "**non-potable waterline**"), to specifications mutually acceptable to Ho‘ohana and the Department of Agriculture. Prior to providing the non-potable waterline, Ho‘ohana shall at its sole cost and expense, cause Robinson Kunia Land LLC to grant any required non-exclusive, perpetual utility easement(s) to the State of Hawai‘i for the alignment of the non-potable waterline and Ho‘ohana shall provide contracted Operations and Maintenance on the installed waterline for the duration of the operation of the solar farm at no cost to the State. The Department of Agriculture shall be solely responsible for obtaining the non-potable water allocation to

service the Royal Kunia Agricultural Park. If Ho‘ohana is required to perform an environmental impact statement pursuant to Chapter 343, Hawai‘i Revised Statutes, then the time period set forth in this condition shall be extended by the number of days that Ho‘ohana is delayed as a result.

2. Fish and Wildlife Protection. Ho‘ohana shall consult with the US Fish and Wildlife Service to coordinate staff training programs and measures to mitigate adverse impacts on endangered and migratory avian species.
3. Archaeological and Historic Resources. No ground altering activities shall occur prior to obtaining approval of the Archaeological Inventory Survey from the State Historic Preservation Division.
4. Aircraft and Traffic Hazard. If the photovoltaic array creates a hazardous condition for pilots or motorists, the facility operator shall immediately initiate steps to mitigate the hazard upon notification by the Department of Transportation.
5. Development Schedule. The proposed solar farm shall be substantially completed within two (2) years from the approval date of this Decision and Order.
6. Compliance with Representations. Ho‘ohana shall develop the solar farm in substantial compliance with its representations reflected in the amended Decision and Order. Failure to develop Parcel 52 as a solar farm as represented will constitute good cause for the Commission to issue an Order to Show Cause to Ho‘ohana pursuant to Section 15-15-93 of the Commission Rules.

The parties hereto agree 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 instrument, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original of 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.

SO STIPULATED:

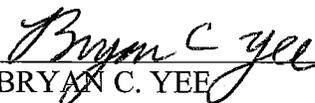
HO'OHANA SOLAR 1, LLC, Successor
Petitioner to Parcel 52

BY: 
STEVEN S.C. LIM
CARLSMITH BALL LLP

ITS: Attorney

DATED: Honolulu, Hawai'i November 21,
2014

STATE OF HAWAI'I OFFICE OF
PLANNING

BY: 
BRYAN C. YEE

ITS: Deputy Attorney General

DATED: Honolulu, Hawai'i November 21,
2014

DEPARTMENT OF PLANNING AND
PERMITTING, CITY AND COUNTY OF
HONOLULU

BY: _____
RICHARD LEWALLEN

ITS: Deputy Corporation Counsel

DATED: Honolulu, Hawai'i November ____,
2014

BEFORE THE LAND USE COMMISSION
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To Amend the Agricultural In the Matter of the
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CERTIFICATE OF SERVICE

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I hereby certify that due service of a copy of the foregoing was served upon the following
by hand delivery or by U.S. Mail, postage prepaid, on November ____, 2014, addressed to:

HAND DELIVERY	LEO R. ASUNCION, JR., Acting Director Office of Planning State Office Tower, 6th Floor 235 South Beretania Street Honolulu, Hawai'i 96813
HAND DELIVERY	DAVID M. LOUIE, Esq. BRYAN C. YEE, Esq. Deputy Attorney General Commerce and Economic Development Department of the Attorney General 425 Queen Street Honolulu, Hawai'i 96813
HAND DELIVERY	GEORGE I. ATTA, Director Department of Planning and Permitting City and County of Honolulu 650 South King Street, 7th Floor Honolulu, Hawai'i 96813

HAND DELIVERY	DONNA Y.L. LEONG, Esq. DON S. KITAOKA, Esq. RICHARD LEWALLEN, Esq. Deputy Corporation Counsel Department of the Corporation Counsel Honolulu Hale 530 South King Street, Room 110 Honolulu, Hawai'i 96813
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U.S. MAIL	HALEKUA DEVELOPMENT CORPORATION ATTN: THE HORITA GROUP, INC. MR. JOSHUA HORITA 98-150 Kaonohi Street B128 Aiea, HI 96701
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HO'OHANA SOLAR 1, LLC

Dated: Honolulu, Hawai'i, November ____,
 2014