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LAND USE COMMISSION
STATE OF HAWAII

2014 OCT 22 P 4:02

Attorneys for Successor Petitioner (To Parcel 52)
HO'OHANA SOLAR 1, LLC

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

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

SUCCESSOR PETITIONER (TO PARCEL
52), HO'OHANA SOLAR 1, LLC'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; VERIFICATION OF STEVEN S.C.
LIM; CERTIFICATE OF SERVICE

SUCCESSOR PETITIONER'S MOTION TO BIFURCATE

I. RELIEF AND ORDER SOUGHT

Successor Petitioner to the portion of the Petition Area identified as Tax Map Key No. (1) 9-4-02: 052 ("**Parcel 52**"), HO'OHANA SOLAR 1, LLC ("**Ho'ohana**" or "**Successor Petitioner**"), by and through its legal counsel, CARLSMITH BALL LLP, hereby respectfully submits to the State of Hawai'i Land Use Commission (the "**Commission**") *Successor Petitioner (To Parcel 52), Ho'ohana Solar 1, LLC'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.

By this motion, Ho‘ohana requests the Commission to:

(1) recognize Ho‘ohana as the Successor Petitioner to Parcel 52 with standing to seek and obtain the relief requested herein;

(2) issue an order bifurcating the Commission's *Amended Findings of Fact, Conclusions of Law, and Decision and Order* dated October 1, 1996 ("**1996 Order**") in Docket No. A92-683 as applied to Parcel 52, which is a portion of the Petition Area reclassified from the State Land Use ("**SLU**") Agricultural District to the SLU Urban District by the 1996 Order;

(3) issue a new docket number or sub-docket number for that portion of the Petition Area identified as Parcel 52;

(4) incorporate by reference all other pleadings, papers, legal memoranda, exhibits, and filings in Docket No. A92-683 into this matter including all filings made pursuant to Ho‘ohana's *Motion for Order Amending the Findings of Fact, Conclusions of Law, Decision and Order dated October 1, 1996* (the "**Motion to Amend**"), filed with the Commission by Successor Petitioner to Parcel 52 on August 11, 2014;

(5) issue an order preserving the conditions imposed by the 1996 Order as they apply to Parcel 52 and holding those conditions in abeyance only during the period that Parcel 52 is being developed and operated as a solar farm; and

(6) issue new findings of fact and conditions of approval that are specifically applicable to Ho‘ohana's proposed interim development of Parcel 52 as a solar farm as part of new Findings of Fact, Conclusions of Law, and Decision and Order applicable solely to Parcel 52.

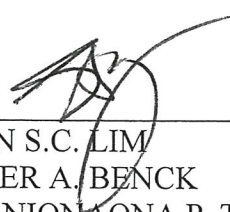
Ho‘ohana is not moving to amend any conditions that are currently applicable to the other Petition Area properties and owners, and is not proposing to bifurcate the Docket for each property. The intended result of this Motion to Bifurcate is that the other five Petition Area properties will continue to be treated together as they currently are under the original Docket and subject to the original conditions of approval in the 1996 Order (as amended by the 2013 Order).

II. GROUNDS FOR MOTION

This motion is made pursuant to Chapter 205, Hawai‘i Revised Statutes ("**HRS**"), and §§ 15-15-70 and 15-15-94 of Title 15, of the Hawai‘i Administrative Rules ("**HAR**"), the other authorities and arguments stated in the attached Memorandum in Support of Motion, and the pleadings and files in Docket No. A92-683. The *Motion for Order Amending the Findings of Fact, Conclusions of Law, Decision and Order dated October 1, 1996* (the "**Motion to Amend**") in Docket No. A92-683 filed with the Commission by Successor Petitioner to Parcel 52 on August 11, 2014, as well as all other pleadings and legal memoranda filed by the parties, are hereby incorporated by reference.

Pursuant to HAR § 15-15-70(c), Ho‘ohana Solar 1, LLC requests a hearing on this motion. Furthermore, Ho‘ohana requests that the hearing on this Motion to Bifurcate be heard and decided prior to the Commission taking action on the Motion to Amend.

DATED: Honolulu, Hawai‘i, October 22, 2014.



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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

MEMORANDUM IN SUPPORT OF
MOTION

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

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

On August 11, 2014, Successor Petitioner (to Parcel 52) HO'OHANA SOLAR 1, LLC ("Ho'ohana" or "Successor Petitioner"), filed with the State of Hawai'i Land Use Commission (the "Commission") a *Motion for Order Amending the Findings of Fact, Conclusions of Law, Decision and Order dated October 1, 1996* (the "**Motion to Amend**") in Docket No. A92-683, requesting the Commission to: (1) recognize Ho'ohana as the Successor Petitioner to that portion of the Petition Area identified as Tax Map Key ("TMK") No. (1) 9-4-002: 052 ("**Parcel 52**")

with standing to seek and obtain the relief requested therein; (2) issue an order modifying the Commission's *Amended Findings of Fact, Conclusions of Law, and Decision and Order* dated October 1, 1996 ("**1996 Order**"), as amended by the Commission's October 7, 2013 *First Amendment to the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed on October 1, 1996* ("**2013 Order**"), to expressly authorize the proposed interim 30-year operational use of Parcel 52 for solar farm development (the "**Project**"); and (3) to delete Condition No. 21 of the 1996 Order, as amended by the 2013 Order, requiring the Commission's prior approval to change any ownership interest in the Petition Area, and instead require only notice of a change in ownership interest to the Commission, or, in the alternative, pursuant to the requirements of Condition No. 21, approve the proposed lease of Parcel 52 by the landowner ROBINSON KUNIA LAND LLC ("**RKL**") to Ho'ohana to allow the solar farm development.

By this Motion to Bifurcate, Ho'ohana requests the Commission issue an order (1) recognizing Ho'ohana as the Successor Petitioner to Parcel 52 with standing to seek and obtain the relief requested herein; (2) bifurcating the Commission's 1996 Order; (3) providing a new docket number, or sub-docket number for that portion of the Petition Area identified as Parcel 52; (4) preserving the conditions imposed by the 1996 Order as they apply to Parcel 52 and holding those conditions in abeyance only during the period that Parcel 52 is being developed and operated as a solar farm; and (5) containing new findings of fact and conditions of approval that are specifically applicable to Ho'ohana's proposed interim development of Parcel 52 as a solar farm.

II. BACKGROUND

A. HISTORY OF ROYAL KUNIA PHASE II

In 1992, Halekua Development Corporation ("**Halekua**") filed a Petition for District Boundary Amendment to request the reclassification of approximately 504.865 acres of land

located in Waikele and Ho‘ae‘ae, in the district of ‘Ewa on the Island of O‘ahu (the "**Petition Area**") from the SLU Agricultural District to the SLU Urban District.¹ The original Petition Area for the Royal Kunia Phase II project was 504.865 acres and was identified by TMK Nos. 9-4-02: 1, 52 (por.), 70 and 71. *See* Findings of Fact, Conclusions of Law, and Decision and Order dated December 9, 1993 ("**1993 Order**"). Under the 1993 Order, the Commission approved the requested reclassification to allow for the development of the Royal Kunia Phase II Project. The 1993 Order also recognized a 150-acre area that was proposed for an agricultural park, to be developed as part of the Royal Kunia Phase II Project (and which land area was not proposed for reclassification into the SLU Urban District). A total of 2,000 single-family and multi-family residential units were proposed for the Royal Kunia Phase II Project, along with 123 acres of light industrial uses, an 18-hole golf course, a public park and a school site. The Royal Kunia Phase II Project was intended to be developed in three increments.

In 1996, Halekua filed a Motion to Amend the 1993 Order to amend the development program for Royal Kunia Phase II. That Motion was granted by the Commission in the 1996 Order. The golf course was eliminated under the revised development program, and the while the total number of residential units was retained at 2,000, the number of single family units was increased to 1,250 and the number of low density apartment units was decreased to 750, resulting in a decrease of the overall density from 10.1 units per acre to approximately 6.1 units per acre. *See* 1996 Order, FOF 11, 25, 29, at 4-5, 10. Of the 2,000 residential units planned for Royal

¹ The tax map key parcel numbers at that time were TMK Nos. (1) 9-4-002: 001, 052 (por), 070 and 071. In 1995, in response to Petitioner Halekua's oral request, the Commission issued an Order Granting Motion to Correct Metes and Bounds Description of the Petition Area. Thereafter the Petition Area was comprised of 503.886 acres. *See* FOF 11 set forth in the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed by the Commission on October 1, 1996.

By Order dated September 6, 1995, the Commission corrected the metes and bounds description of the Petition Area, which thereafter comprised 503.886 acres. By Order dated September 19, 1995, the Commission authorized a change of ownership in a portion of the Petition Area (a portion of the property was conveyed from Halekua to HRT, Ltd.).

Kunia Phase II, approximately 580 single family units are proposed to be developed on Parcel 52 as Increment 3. *See* Successor Petitioner's Exhibit 4 (Errata), at 12 (Excerpts from the 1996 Development Plan and Final Environmental Assessment for Royal Kunia, Phase II, Increment 3, hereinafter "1996 Development Plan & FEA"). Increment 3 (i.e., Parcel 52) is also planned to include a 10-acre park and a detention basin. Increment 1 is planned for the school site, industrial area and the originally approved park area, along with 849 residential units. Increment 2 is planned for 570 residential units. *See* 1996 Order, FOF 37, 38, at 11-12.

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**").² Under the Commission's amended Condition No. 2, Canpartners is no longer required to construct the improvements to the Kunia Road south of Cane Haul Road because those improvements are deemed regional, for which Canpartners will pay its pro-rata share. However, Canpartners remains responsible for the "local" improvements to Kunia Road north of Cane Haul Road up to the northernmost boundary of Royal Kunia Phase II. *See* 2013 Order (adopting the State Office of Planning's FOF 160A and 161(A) and Canpartners' proposed amendments to Condition No. 2). The traffic improvements required of Canpartners will be determined by the State DOT, and the City and County of Honolulu, Department of Transportation Services, which agencies may require Canpartners to dedicate certain rights of way.

² Pursuant to HAR § 15-15-63(j) and (k), a copy of the 1993 Order and 2013 Order were not filed with this Motion.

Status of Development of Royal Kunia Phase II. On information and belief, construction of Royal Kunia Phase II, Increments 1 and 2 have not yet commenced but the properties are fully entitled to proceed with construction. The TMK parcels for Increments 1 and 2 have been conditionally rezoned under the Unilateral Agreement and Declaration of Conditional Zoning.³ Increments 1 and 2 have also received Planned Development Housing Permit No. 2009/PDH-1, approved by the City and County of Honolulu, Department of Planning and Permitting on July 23, 2009.

B. OWNERSHIP OF THE PETITION AREA

Halekua was the original Petitioner in this Docket. 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 2000s resulted in Halekua losing control of the Petition Area, such that the present ownership of the Petition Area is as follows:

RKL, TMK No. 9-4-002: 052 (161.023 acres) (herein "**Parcel 52**");

Canpartners, 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);

³ Recorded March 6, 1995 as Regular System Doc. No. 95-030454, and recorded April 14, 1997 as Regular System Doc. No. 9-047601, respectively.

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, RKL, Canpartners, HRT Realty, LLC, 300 Corporation, Honolulu Limited, RKES, LLC (collectively, the "**Landowners**") are the successors in interest to their respective TMK parcels under Docket No. A92-683. On information and belief, the HRT Realty, LLC, 300 Corporation, and Honolulu Limited entities are related entities so within the Petition Area, there are effectively four (4) separate owner entities.

Although there are separate landowners, the entire Petition Area remains subject to the terms and conditions of the 1996 Order, as amended.⁴ *See* 1996 Order, at 64-71.

C. OWNERSHIP OF PARCEL 52

By way of limited warranty deeds,⁵ in 2005 the Robinson Estate conveyed Parcel 52 to RKL. On August 2, 2012, RKL 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. As discussed in the Motion to Amend, Forest City and Hanwha Q CELLS USA ("**Q CELLS**") joined together to create Ho'ohana Solar 1, LLC, the entity responsible for the development of the proposed solar farm on Parcel 52 (the "**Project**"). If the Commission grants Ho'ohana's Motion to Amend, Parcel 52 will be used to develop and operate a 20 megawatt ("**MW**") solar farm for an interim time not to exceed an operational period of 30 years. *See* Successor

⁴ Declarations of Conditions Imposed by the Land Use Commission, dated April 8, 1994 and recorded at the Bureau of Conveyances as Regular System Document Nos. 94-065022, 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 and recorded at the Bureau as Document No. A-52840766. In accordance with HAR §15-15-63(j) and (k), copies of the Declarations were not filed with this Motion.

⁵ Said deeds are recorded in the State of Hawai'i Bureau of Conveyances as Document Nos. 2005-130516 thru 2005-130519 and 2005-155094 thru 2005-155100. Pursuant to HAR § 15-15-63(j) and (k), a copy of the warranty deeds were not filed with this Motion.

Petitioner's Motion to Amend, at 11-20 (describing the particulars of the Project).

III. JUSTIFICATION FOR BIFURCATION

A. ROYAL KUNIA PHASE II DEVELOPMENT PLAN

The Royal Kunia Phase II project has always been planned to be developed in three increments: Increment 1 consists of TMK Nos. 9-4-002: 001, 070, 071 (por.), 078, and 079 and is planned for development of light industrial, low-density apartments, single-family dwellings, a park and a school; Increment 2 will be built on a portion of TMK No. 9-4-002: 071 and is planned for single-family dwellings and low-density apartments; Increment 3 (Parcel 52) is planned for development of single family dwellings and a park area. *See* **Successor Petitioner's Exhibit 32** (Drainage Master Plan detailing locations of Increments 1, 2, and 3).

Increment 3 cannot feasibly be developed until Increments 1 and 2 are constructed. Increment 3 has always been planned to connect to the infrastructure (access, water, sewer, electric, etc.) that would be extended from Royal Kunia Phase I and constructed as a part of Royal Kunia Phase II, Increments 1 and 2. *See* **Successor Petitioner's Exhibits 4 (Errata)**, at 53 (Excerpts from the 1996 Development Plan & FEA); **Successor Petitioner's Exhibit 35** (1996 Development Plan Appendix G, Engineering Study); 1993 Order, FOF 40, at 12-13. For example, the Engineering Report for the 1996 Development Plan & FEA notes that access to the Royal Kunia Phase II project will be provided through construction of a new intersection as part of the development of Increment 1. *See* **Successor Petitioner's Exhibit 35**, at 10.

B. THE NEED FOR BIFURCATION

Bifurcation will allow Ho'ohana's renewable energy project to go forward without impossible barriers to success. In response to Ho'ohana's Motion to Amend, the State Office of Planning ("OP") filed with the Commission its *Response to Ho'ohana Solar 1, LLC's Motion for Order Amending the Findings of Fact, Conclusions of Law, and Decision and Order Dated*

October 1, 1996; Exhibits 1-8; and Certificate of Service. In the Response, OP stated that it had no objections to recognizing Ho‘ohana as a successor Petitioner, and noted that all of the landowners within the Petition Area are "bound by the conditions of the LUC's Decision and Order" and that "the failure to comply with those conditions by any landowner may constitute a basis by which the LUC could issue an Order to Show Cause against all of the landowners." OP Response, at 4. The specter of an Order to Show Cause creates an unreasonable and untenable risk for the proposed solar farm project. Furthermore, the conditions of approval imposed by the Commission under the 1996 Order were imposed to address the impacts of the development of the Royal Kunia Phase II Project. The use of Parcel 52 (aka Increment 3) as a solar farm generates none of the impacts that the Commission sought to address by the 1996 conditions of approval.

Bifurcation will allow the Commission to assess the proposed solar farm and impose appropriate conditions of approval on the proposed solar farm that are consistent with the Hawai‘i State Plan. At the same time, bifurcation will allow the Commission to more accurately monitor the status of compliance within the Petition Area. Recognizing that appropriate conditions of approval to be imposed by the Commission in a decision and order approving the Motion to Amend should be specific and uniquely tied to the solar farm to be developed on Parcel 52, and the potential procedural difficulties in imposing and monitoring such conditions that should rightly apply only to one portion of the Petition Area, Ho‘ohana moves to bifurcate the 1996 Order and the conditions of approval therein as they apply to Parcel 52.

1. Department of Agriculture.

Based on concerns expressed by the State of Hawai‘i Department of Agriculture ("DOA"), OP proposed that the Commission approve Ho‘ohana's Motion to Amend subject to the following condition:

OP Condition No. 5 - A preliminary infrastructure site plan acceptable to the State Department of Agriculture shall be completed within six (6) months from the approval date of the amended Decision and Order. Construction of the required infrastructure shall be commenced prior to the start of construction of the solar farm. Construction of the required infrastructure shall be completed to the satisfaction of the Department of Agriculture prior to the commencement of full operation of the solar farm.

OP Condition No. 5 creates an impossible barrier to the development of the solar farm.

With bifurcation, the DOA concerns can be properly analyzed and assessed against the appropriate parties. Without bifurcation, a condition of approval such as that suggested by OP Condition No. 5, holds Parcel 52 "hostage" due to an alleged failure of others to comply with the LUC's original condition related to the DOA.

Ho'ohana must have the solar farm operational by June 2016. Ho'ohana anticipates that obtaining the necessary permits for the construction of the solar farm, and actual construction will take approximately 9 to 12 months. Vital time was lost due to the Commission losing quorum for several months. All of this means that every day between now and the June 2016 HECO deadline counts. However, all of Ho'ohana's efforts to pursue the 20 MW solar farm will have been wasted if the Project is forbidden from operating until all of the infrastructure originally promised by Halekua is completed.

Ho'ohana respectfully submits that the obligation to satisfy DOA was never put on RKL, as the owner of Parcel 52, and therefore should not be used now to cripple the proposed solar farm. Bifurcation will prevent this problem. The LUC's condition (Condition No. 19 of the 1996 Order) required "Petitioner" to convey an agricultural park to the State, and to "provide off-site infrastructure to the agricultural park, pursuant to the terms of the Memorandum of Understanding dated March 30, 1993 entered into by Petitioner and the Department of

Agriculture ["MOU"]."⁶ RKL was never a party to the MOU between Halekua and DOA. Nor was RKL a party to any of the amendments to that MOU. The MOU was amended three times: (1) by that certain Amendment and Restatement of MOU dated March 2, 2007, between Halekua and the DOA; (2) by that certain First Amendment to Amendment and Restatement of MOU dated February 19, 2009, between Halekua-Kunia, LLC (as successor in interest to Halekua) and DOA; and (3) by that certain Second Amendment to Amendment and Restatement of MOU dated September 20, 2012, between Canpartners and DOA. RKL was never a party to the MOA.

RKL took title to Parcel 52 in 2005 from the Robinson Estate. The original MOU referred to in LUC Condition 19 was executed in 1993, and the Robinson Estate was not a party to that MOU. The various amendments to the MOU were executed after RKL took title to Parcel 52. However, RKL was not a party to those amendments. Neither RKL nor Ho'ohana has the ability to force an unrelated entity to satisfy outstanding obligations owed to the DOA. Bifurcation will clarify the attribution of obligations under Condition No. 19, and allow this renewable energy project to proceed without uncontrollable risks due to third party actions (or inactions).

2. Appropriate Land Use Planning.

In addition to avoiding issues regarding fairness and due process, bifurcation also makes sense from a practical, land use planning perspective. Residential development on Parcel 52 is premature, and the solar farm offers an extremely low impact use of land that can be pursued while Increments 1 and 2 are developed. Royal Kunia Phase II was planned to be developed in three increments. Increment 3 (Parcel 52) was always intended to be developed after Increments 1 and 2. Moreover, Increment 3 will connect to the infrastructure built as part of Increments 1

⁶ The conveyance of the agricultural park to the DOA took place in 2004, and that portion of LUC Condition No. 19 has been satisfied.

and 2. General planning and development standards support this sequencing as infrastructure is generally built from one end to another (i.e., existing facilities to non-existing facilities). It would be an inefficient use of resources and infeasible to do otherwise. Therefore, while RKL waits for Increments 1 and 2 to be completed, RKL and Ho‘ohana have proposed the interim use of Parcel 52 as a utility-scale solar farm in order to make a beneficial, low-impact and environmentally friendly use of Parcel 52. As such, the existing conditions of approval under the 1996 Order do not address the State's interest with respect to the solar farm. Bifurcation allows the Commission to craft conditions that address concerns directly attributable to the solar farm, and avoids the problem of the Commission's new conditions being imposed on Increments 1 and 2.

The appropriateness of bifurcation is further evident by OP's proposed condition 1, which requests that the Petitioner, i.e., all of the Landowners within the Petition Area, "submit a revised master plan and a schedule for the development of the Petition Area [i.e., all 503.886 acres] within one (1) year" from the date that the Commission approves Ho‘ohana's Motion to Amend. OP explains that "an updated master plan and schedule may spur development of Increments 1 and 2 on a timely basis and integrate such development with Increment 3." Ho‘ohana takes no position on OP's rationale, but Ho‘ohana recognizes that without bifurcation its solar farm will be at grave risk if unrelated parties fail to submit the plans recommended by OP.

Additionally, Ho‘ohana respectfully submits that there is no utility or value in providing a master plan for Increment 3 within one year, or even ten years, of the Commission's approval of Ho‘ohana's Motion to Amend. The solar farm will be in operation for 30 years (which timeframe does not include the time necessary for construction and decommissioning). Any master plan prepared for Increment 3 now will be outdated and meaningless by the time that the

solar farm is decommissioned. Bifurcation will allow the Commission to impose a sensible timeframe for the submission of a master plan for Increment 3, without interfering with any requirements that the Commission has imposed on the remaining portions of the Petition Area. For example, the Commission could require RKL to submit a revised master plan and schedule for development for Parcel 52/Increment 3 upon the earlier of: (1) issuance of a building permit for the 1,000th residential unit at Royal Kunia Phase II; or (2) six months prior to the decommissioning of the solar farm.

Ho‘ohana and RKL are making a good faith effort to comply with the conditions of approval in the 1996 Order. Some conditions (e.g., affordable housing requirements), however, were not intended to apply to a development like the proposed solar farm. Therefore, allowing bifurcation of the Docket and holding the conditions of approval in the 1996 Order in abeyance while Parcel 52 is used as a solar farm will allow Ho‘ohana and RKL to proceed with the solar farm use and ensure that the conditions of approval in the 1996 Order are not violated by reason of the proposed use. Allowing bifurcation will also allow the other Landowners to proceed with development of Increments 1 and 2 without being subject to conditions of approval that are unique to and apply only to the proposed solar farm use on Parcel 52.

Without the requested bifurcation of Parcel 52 from the remainder of the Petition Area, all conditions of approval imposed by the Commission under the 1996 Order will bind the entire Petition Area regardless of whether or not the conditions actually apply to a specific parcel. Thus, bifurcation will promote fairness to each Landowner, and enable the prompt and efficient monitoring of Docket No. A92-683 by the Commission.

C. PROPOSED BIFURCATION

By this Motion to Bifurcate, Ho‘ohana requests the Commission to:

1. Maintain, but hold, the conditions of approval imposed on the Petition Area in the 1996 Order in abeyance as they apply to Parcel 52 during the term of the use of Parcel 52 as a solar farm;
2. Issue a new or sub-docket applying only to Parcel 52; and
3. Issue Findings of Fact, Conclusions of Law, and Decision and Order for Parcel 52 that are specifically applicable to Ho‘ohana's proposed use of Parcel 52 as a solar farm for the interim period.

In filing this Motion to Bifurcate, Parcel 52 will be treated as its own separate docket or sub-docket under the 1996 Order (as amended by the 2013 Order), which will preserve the intent of the findings and the conditions imposed by the Commission in connection with the 1996 Order.

The original conditions imposed on Parcel 52 by the 1996 Order will be maintained but held in abeyance (i.e., temporarily suspended) while Parcel 52 is used as a solar farm. When Parcel 52 is no longer used as a solar farm, the interim conditions relating to the solar farm will be released, and the Commission's original conditions of approval (with the exception of any Conditions satisfied and released in the interim) imposed in the 1996 Order for the proposed residential development on Parcel 52 will again become applicable.

Meanwhile, the other five Petition Area properties will continue to be treated together and as one under the original Docket and subject to the original conditions of approval in the 1996 Order, as amended. Ho‘ohana is not moving to amend any conditions that are currently applicable to the other Petition Area properties and owners, and is not proposing to bifurcate the Docket for each property.

D. PROPOSED CONDITIONS OF APPROVAL

Should the Commission grant this Motion to Bifurcate, and then grant Ho‘ohana's Motion to Amend, the following are the conditions of approval Ho‘ohana proposes to be imposed upon Parcel 52 which will be specifically applicable only to the development and operation of the

proposed solar farm:

1. Original Conditions in 1996 Order. The original conditions imposed in the 1996 Order remain applicable as to Parcel 52, but shall be held in abeyance for the interim term of the solar farm development.
2. Revised Master Plan. Robinson Kunia Land LLC ("RKL") shall submit to the Commission a revised master plan and a schedule for the development of Parcel 52 as Royal Kunia Phase II, Increment 3 upon the earlier of: (1) issuance of building permit for the 1,000th residential unit in Royal Kunia Phase II; or (2) six (6) months prior to decommissioning of the solar farm.
3. Fish and Wildlife Protection. Successor Petitioner to Parcel 52 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.
4. Archaeological and Historic Resources. No ground altering activities for the solar farm on Parcel 52 shall occur prior to obtaining approval of the Archaeological Inventory Survey, or a letter allowing the project to proceed, from the State Historic Preservation Division.
5. 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.
6. Development Schedule. The proposed solar farm shall be substantially completed within two (2) years from the approval date of this Decision and Order.
7. Compliance with Representations. Successor Petitioner to Parcel 52 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 Successor Petitioner and RKL pursuant to Section 15-15-93 of the Commission Rules.
8. Notice of Change of Ownership. Successor Petitioner to Parcel 52 shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in Parcel 52, at any time prior to completion of development of Parcel 52.
9. Annual Reports. While Parcel 52 is used as solar farm, Successor Petitioner to Parcel 52 shall timely provide without any prior notice, annual reports to the Commission, OP, and the City, and their respective successors, in connection with the status of the development of Parcel 52 and Successor Petitioner's progress in complying with the conditions

imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission. The annual report shall be due on or before the anniversary date of this Decision and Order.

10. Release of Conditions. The Commission may fully or partially release the conditions provided herein as to all or any portion of Parcel 52 upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Successor Petitioner to Parcel 52 or its successors and assigns.
11. Recordation of Conditions. Successor Petitioner to Parcel 52 shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to HAR section 15-15-92.

IV. CONCLUSION

For the foregoing reasons, Successor Petitioner to Parcel 52 HO‘OHANA SOLAR 1, LLC, respectfully requests that the Commission grant this Motion to Bifurcate and:

(1) recognize Ho‘ohana as the Successor Petitioner to Parcel 52 with standing to seek and obtain the relief requested herein;

(2) issue an order bifurcating the 1996 Order;

(3) issue a new, or sub-docket number for that portion of the Petition Area identified as Parcel 52;

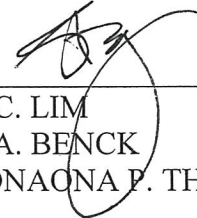
(4) incorporate by reference all other pleadings, papers, legal memoranda, exhibits, and filings in Docket No. A92-683 into this matter, including all filings made pursuant to Ho'ohana's *Motion for Order Amending the Findings of Fact, Conclusions of Law, Decision and Order dated October 1, 1996* filed with the Commission by Successor Petitioner to Parcel 52 on August 11, 2014;

(5) issue an order preserving the conditions imposed by the 1996 Order as they apply to Parcel 52, and holding those conditions in abeyance only during the period that Parcel 52 is being developed and operated as a solar farm; and

(6) issue new findings fact and conditions of approval that are specifically applicable to

Ho'ohana's proposed interim development of Parcel 52 as a solar farm as part of a new Findings of Fact, Conclusions of Law, and Decision and Order for Parcel 52.

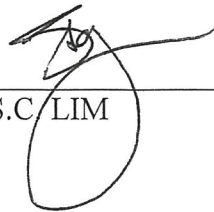
DATED: Honolulu, Hawai'i, October 22, 2014.



STEVEN S.C. LIM
JENNIFER A. BENCK
PUANANIONAONA P. THOENE

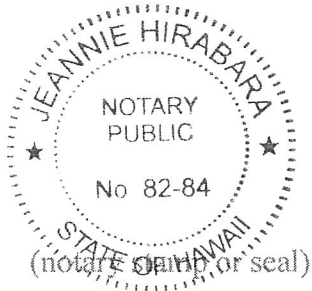
Attorneys for Successor Petitioner to Parcel 52
HO'OHANA SOLAR 1, LLC

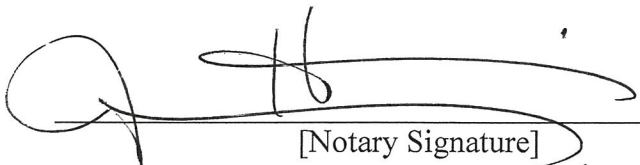
DATED: October 22, 2014



STEVEN S.C. LIM

The attached document: Verification of Steven S.C. Lim which consists of two (2) pages (including this page), was executed by Steven S.C. Lim who was subscribed and sworn to before me this 22nd day of October, 2014, in the First Judicial Circuit of the State of Hawai'i.





[Notary Signature]

Printed Name: Jeannie Hirabara
State of Hawaii, 1st Judicial Circuit

My commission expires: 2/7/18

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

To Amend the Agricultural In the Matter of the
Petition of

DOCKET NO. A92-683

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

CERTIFICATE OF SERVICE

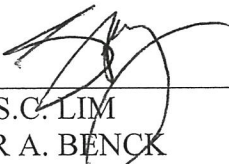
CERTIFICATE OF SERVICE

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 October 22, 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	FOREST CITY SUSTAINABLE RESOURCES, LLC ATTN: ANN BOUSLOG 5173 Nimitz Road Honolulu, HI 96818
U.S. MAIL	HANWHA Q CELLS USA CORP. ATTN: LAURENCE GREEN 8001 Irvine Center Drive, Suite 1250 Irvine, CA 92618
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 PUANANIONAONA P. THOENE

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

Dated: Honolulu, Hawai'i, October 22, 2014