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LAND USE COMMISSION
STATE OF HAWAII

2015 JAN 13 P 2:47

OUR REFERENCE NO.:
066869-00001

January 13, 2015

VIA HAND DELIVERY

Daniel E. Orodener
Executive Officer, State of Hawai'i Land Use Commission
State Office Tower
Leiopapa A Kamehameha Building
235 South Beretania Street, Room 406
Honolulu, Hawai'i 96813

Re: Ho'ohana Solar 1, LLC - LUC Docket A92-683 (Halekua)

Dear Mr. Orodener:

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

On December 23, 2014, pursuant to the Commission's oral approval of Ho'ohana's Motion to Amend at the Commission hearing on November 21, 2014, Ho'ohana filed with the Commission a (1) Stipulation to Proposed Findings of Fact, Conclusions of Law, and Decision and Order ("**Stipulation**"); and (2) Proposed Order Granting Successor Petitioner (To Parcel 52) Ho'ohana Solar 1, LLC's Motion for Order Amending the Findings of Facts, Conclusions of Law, and Decision and Order filed on October 1, 1996 (the "**Proposed Decision and Order**").

In an effort to file the Stipulation and Proposed Decision and Order in a timely manner, only Ho'ohana and the State of Hawai'i, through its Office of Planning ("**OP**"), were parties to the Stipulation. However, the City and County of Honolulu, through its Department of Planning and Permitting ("**DPP**"), and each of the landowners of the Petition Area had opportunities to review and comment on the Proposed Decision and Order. The landowners of the Petition Area are Robinson Kunia Land LLC ("**RKL**"); Canpartners IV Royal Kunia Property LLC ("**Canpartners**"); HRT Realty, LLC, Honolulu Limited, and 300 Corporation (collectively, the "**HRT Entities**"); and RKES, LLC ("**RKES**"). Ho'ohana received comments to the Proposed Decision and Order from DPP, RKL, Canpartners, and the HRT Entities. RKES did not respond to Ho'ohana's requests for comments.

Canpartners and the HRT Entities do not object to the filing of the Proposed Decision and Order. DPP does not object to the proposed solar farm project or to the filing of the Stipulation and the Proposed Decision and Order. However, DPP declined signing the Stipulation because DPP believes that the excessive detail in the Proposed Decision and Order is not warranted.

At the hearing on November 21, 2014, OP filed a Stipulation to Proposed Conditions of Approval for Ho'ohana Solar 1, LLC's Motion to Amend as OP Exhibit 14. OP Exhibit 14 set forth nine (9) proposed conditions of approval ("**Stipulated Conditions**"). OP and Ho'ohana were parties to the Stipulated Conditions. RKL, Canpartners, and the HRT Entities represented that they had no objections to the Stipulated Conditions. The Proposed Decision and Order presents ten (10) proposed conditions of approval, with Proposed Condition No. B7 being a new condition that was not included in the Stipulated Conditions.

With respect to Stipulated Condition No. A1, at the Commission hearing on November 21, 2014, the Commission had questions regarding what deadlines apply to which actions and asked for clarification. To clarify the deadlines and obligations under Stipulated Condition No. A1, OP and Ho'ohana revised Stipulated Condition No. A1 to read [deletions indicated by ~~strikethrough~~; insertions indicated by *italics*]:

1. Royal Kunia Agricultural Park Offsite Infrastructure. Within six (6) months of the date of the Commission's Order, the landowner(s) 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, and comply with this amended Memorandum of Understanding. This Memorandum shall require that off-site infrastructure to the State of Hawai'i's Kunia Agricultural Park be completed~~ no later than December 31, 2016.

OP's and Ho'ohana's intentions in revising Stipulated Condition No. A1 are simply to clarify the timing of the obligations under Stipulated Condition No. A1. These revisions were meant to be stylistic and no effort was made to change or impose additional obligations beyond what the landowners of the Petition Area previously agreed to in OP Exhibit 14.

Proposed Condition No. B7 provides that the solar farm must be decommissioned following its operational timeframe and requires any future development of Parcel 52, after the solar farm has been decommissioned, to comply with Hawai'i Revised Statutes Chapter 343, should such compliance be triggered. This condition was inserted into the Proposed Decision and Order in response to the Commission's oral approval of the Motion to Amend on November 21, 2014.

RKL has posed a limited objection to the Proposed Decision and Order to the extent that the language of the Proposed Decision and Order can be interpreted as being inconsistent with

Daniel E. Orodenker

January 13, 2015

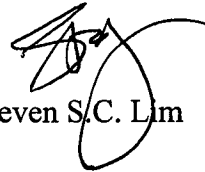
Page 3

the Stipulated Conditions. In particular, RKL objects to the revisions as it feels additional burdens are being placed on RKL beyond what RKL agreed to in the Stipulated Conditions.

Ho'ohana invited DPP and the landowners of the Petition Area to file formal statements regarding their respective positions on the Proposed Decision and Order. To date, DPP and the landowners of the Petition Area have not expressed a desire to file formal position statements. In an effort to provide the Commission with the positions of the Parties and landowners within the Petition Area, Ho'ohana hereby submits the attached emails stating DPP's and the landowners' positions to the Stipulation and the Proposed Decision and Order. Ho'ohana hopes that the Commission finds this letter and supporting documentation helpful in finalizing its Decision and Order on Ho'ohana's Motion to Amend in Docket A92-683.

If you have any questions, please feel free to contact me at the phone number or e-mail address above.

Sincerely,



Steven S.C. Lim

SSL/PPT

Cc:

State of Hawai'i, Office of Planning c/o Bryan C. Yee, Esq.

Department of Planning and Permitting c/o Richard Lewallen, Esq.

Robinson Kunia Land LLC c/o Stephen K.C. Mau, Esq.

Canpartners IV Royal Kunia Property LLC c/o Wyeth M. Matsubara, Esq.

HRT Realty, LLC; 300 Corporation; Honolulu Limited c/o Delwyn H.W. Wong, Esq.

RKES, LLC c/o Patrick K. Kobayashi

Onaona P. Thoene

From: Wyeth Matsubara <wmatsubara@m-klawyers.com>
Sent: Thursday, December 18, 2014 1:52 PM
To: Del Wong
Cc: Onaona P. Thoene; <ctabata@m-klawyers.com>; <reubenwong@yahoo.com>; Stephen Mau; <pkobayashi@kobayashi-group.com>; <lramiscal@kobayashi-group.com>; Steven S.C. Lim
Subject: Re: Ho'ohana - LUC Docket A92-683 (Halekua) - Proposed Draft D&O

Canpartner's are fine with the draft as well. No further comments.

Thank you.

-wyeth

Wyeth M. Matsubara, Esq.
Matsubara - Kotake
A Law Corporation
Ph. 808-526-9566
Fax: 808-538-3840
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On Dec 17, 2014, at 1:09 PM, Del Wong <del@rdiwong.com> wrote:

Hi Onaona,

Thanks for your email. The HRT Entities have no further changes to the 12/17 version of the D&O.

Thanks,
Del

Law Offices of Reuben Wong
1164 Bishop Street, Suite 1006
Honolulu, Hawaii 96813
Ph: (808) 531-3526
Fax: (808) 531-3522

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From: Onaona P. Thoene [<mailto:pthoene@carlsmith.com>]
Sent: Wednesday, December 17, 2014 11:20 AM
To: wmatsubara@m-klawyers.com; ctabata@m-klawyers.com; 'Del Wong'; reubenwong@yahoo.com; Stephen Mau; pkobayashi@kobayashi-group.com; lramiscal@kobayashi-group.com
Cc: Steven S.C. Lim
Subject: Ho'ohana - LUC Docket A92-683 (Halekua) - Proposed Draft D&O

All,

Attached for your review is Ho'ohana final draft of the proposed D&O. This document includes OP's revisions to the D&O, which Bryan Yee sent to us all by email yesterday (attached for your reference), as well as Wyeth's revised FOF 57. Also attached is a redline comparing the version of the proposed D&O that we submitted to Bryan Yee on 12/5 and the LUC on 12/9, with today's final version.

We just got off the phone with Bryan Yee – Ho'ohana and OP are in agreement as to this final version. Ho'ohana and OP will be signing a stipulation to the proposed D&O, **which we plan to file on Friday, 12/19/14**. Please review the D&O and **get back to me as soon as you can as to whether or not you and your clients are ok with OP's proposed changes**. There are no major changes from the last version we all agreed to – mostly just typos. OP added a few additional FOF to support the conditions of approval. With respect to condition A1, the "and comply with" language was moved to later in the condition to address the Commissioner's confusion with what obligations needed to be met what which deadlines. The new language makes it clearer that the amended MOU must be executed within 6 months of the D&O and that the compliance with the MOU is subject to the December 31, 2016 deadline.

If you have any questions please let us know.

Thank you,

Onaona P. Thoene
Associate | Carlsmith Ball LLP

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Onaona P. Thoene

From: Stephen Mau <smau@rmhawaii.com>
Sent: Saturday, December 20, 2014 4:03 PM
To: Onaona P. Thoene
Cc: Steven S.C. Lim; 'Zawtock, Allan'; Roger MacArthur; 'wwalter@whshipman.com'; Taber, Rhett; 'Kwall@tpm-Hawaii.com'; Taber, Rhett; Susan Gall
Subject: RE: Ho'ohana - Proposed D&O

As you know, our client testified that they accepted the Proposed Conditions set forth in the Stipulation to Proposed Conditions of Approval for Ho'Ohana's Motion. To the extent the Proposed Decision and Order is inconsistent with what our client has accepted and approved, we don't have our clients approval to agree to any different conditions. I probably will not be able to reach some of the client representatives and/or obtain any approval or clarification of the Proposed Conditions so please do not assume that Robinson Kunia will accept the order or conditions to the extent the order is inconsistent with the Stipulation.

Thanks

Stephen K.C. Mau, Esq.
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A Limited Liability Law Partnership
Pacific Guardian Center, Mauka Tower
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-----Original Message-----

From: Onaona P. Thoene [<mailto:pthoene@carlsmith.com>]
Sent: Saturday, December 20, 2014 3:35 PM
To: Stephen Mau
Cc: Steven S.C. Lim
Subject: Ho'ohana - Proposed D&O

Hi Steve,

Attached is the Proposed Decision and Order, the Stipulation between OP and Ho'ohana to the Proposed D&O, and a redline comparing the draft proposed D&O we filed with the Commission on 12/9/14 and the final version. We will be filing this with the Commission this week. We must file by 12/24 (a.m.) at the latest, but plan to file as early as Monday

12/22 and really don't want to file later than 12/23 (in case LUC staff takes off early on 12/24). Canpartners, the HRT Entities, OP and Ho'ohana have all agreed to the final D&O attached here. I'm just waiting on the OK from you and the Robinsons.

Please review and let me know if you have any questions as soon as you can. I appreciate it.

Thank you,

Onaona P. Thoene

Associate | Carlsmith Ball LLP

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Onaona P. Thoene

From: Lewallen, Richard <rlewallen@honolulu.gov>
Sent: Monday, January 12, 2015 9:55 AM
To: Onaona P. Thoene
Subject: RE: Ho'ohana - LUC Docket A92-683 (Halekua)

Onaona, you may share the email with the LUC.

Thank you,
richard

-----Original Message-----

From: Onaona P. Thoene [<mailto:ptheoene@carlsmith.com>]
Sent: Monday, January 12, 2015 9:43 AM
To: Lewallen, Richard
Cc: Steven S.C. Lim
Subject: RE: Ho'ohana - LUC Docket A92-683 (Halekua)

Hi Richard,

Thank you very much for your response. Please confirm that we have your permission to submit this email to the Land Use Commission for its reference.

Thank you,

Onaona P. Thoene
Associate | Carlsmith Ball LLP
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-----Original Message-----

From: Lewallen, Richard [<mailto:rlewallen@honolulu.gov>]
Sent: Monday, January 12, 2015 9:22 AM
To: Onaona P. Thoene
Subject: RE: Ho'ohana - LUC Docket A92-683 (Halekua)

Hello Onaona,

As I mentioned during our telephone discussion, my client has reviewed the draft of the Proposed Findings of Facts, Conclusions of Law and Decision & Order. My client noted only one error where it states that the final SLUC hearing date was on January 7, 2015, which never happened. As you noted, that date was a tentative insertion and will likely be changed to the actual date January 21, 2015. My client has no other comment.

As my client previously has indicated, DPP has no objections to the project as proposed and finds the project to be compatible with the land's designated use. However, my client continues to believe that the excessive project detail in

the Proposed FOF, COL, and D&O is not warranted. As such, my client does not object to the project itself but will not sign off on the document as a stipulation to those conditions.

Thank you for your consideration of this matter.

Richard D. Lewallen, Esq.
Deputy Corporation Counsel
City and County of Honolulu
530 S. King Street, Room 110
Honolulu, Hawaii 96813
Tel: (808) 768-5245
Fax: (808) 768-5105
rlwallen@honolulu.gov

-----Original Message-----

From: Onaona P. Thoene
Sent: Friday, January 09, 2015 1:48 PM
To: Richard Lewallen (rlwallen@honolulu.gov)
Cc: Steven S.C. Lim; Jennifer A. (Benck) Lim
Subject: Ho'ohana - LUC Docket A92-683 (Halekua)

Aloha all,

Just wanted to give you an update on where we are with the Ho'ohana matter. We anticipate that the LUC hearing to approve the final form of the Proposed Findings of Fact, Conclusions of Law, and Decision & Order that we filed on December 23, 2014 will be on January 21, 2015. Therefore, on Monday or Tuesday of next week we would like to send a letter to the LUC enclosing copies of the attached emails from the Landowners of the Petition Area so that the LUC staff and the Commission can see that all landowners and the County have been informed of the Stipulated D&O signed by Office of Planning and Ho'ohana, and have no objections to that filing. While this is implicit by the fact that all landowners were served copies of the Stipulated D&O on December 23, 2014, and no objections or exceptions were filed by any landowner, we nevertheless believe that making this explicit will be conducive to concluding this matter.

We spoke by phone last month and you informed me that the County did not object to Ho'ohana filing the Stipulation to the Proposed D&O or the Proposed D&O. Kindly confirm the County's position by email. Alternatively, if the County would prefer to formally file a Statement of No Opposition (or Statement of No Position) with the LUC, please let us know. No doubt that a more formal approach would be welcome by the LUC, and it would be greatly appreciated by Ho'ohana. However, our intention in submitting copies of an email stating the same is to avoid asking you to take the time to prepare a formal filing.

I have attached the emails from the HRT Entities, Robinson Kunia Land LLC, and Canpartners with their stated positions, as well as the December 23, 2014 filing for your reference. Please let me know if you have any questions.

Thank you,