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LAND USE COMMISSION
 STATE OF HAWAII
 2016 MAR 24 A 8:23

Attorneys for Intervenors
 Director of Department of Planning and Permitting
 City and County of Honolulu

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition)	DOCKET NO. DR16-55
)	
To Issue a Declaratory Order That a)	DEPARTMENT OF PLANNING AND
Photovoltaic System is Not an Agricultural)	PERMITTING, CITY AND COUNTY OF
Energy Facility.)	HONOLULU'S MOTION TO INTERVENE;
)	CERTIFICATE OF SERVICE
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DEPARTMENT OF PLANNING AND PERMITTING, CITY AND
 COUNTY OF HONOLULU'S MOTION TO INTERVENE

Pursuant to Hawai'i Administrative Rules, Rules 15-15-92 and 15-15-93, the Director of the Department of Planning and Permitting of the City and County of Honolulu hereby moves to intervene in the Office of Planning of the State of Hawai'i ("OP") and Department of Agriculture's ("DOA") Petition for Declaratory Order.

I. INTERVENOR'S NAME, MAILING ADDRESS AND TELEPHONE NUMBER

The Intervenors is the Director of the Department of Planning and Permitting of the City and County of Honolulu ("the Director"). The Director's mailing address is 650 South King Street, 7th Floor, Honolulu, Hawaii 96813 and his telephone number is (808) 768-8000.

II. INTERVENOR'S INTEREST IN THE SUBJECT PETITION FOR DECLARATORY ORDER AND UNDERLYING MATTER

The Petition for Declaratory Order asks the Land Use Commission to make a determination of statutory interpretation. In particular, OP and DOA request the Land Use Commission to declare whether a solar energy facility is permissible pursuant to Hawaii Revised Statutes ("HRS") Section 205-4.5(a)(17).

Part and parcel with the OP and DOA's petition is their assertion that the Director erred in granting a Conditional Use Permit for a solar energy facility on A and B lands in the Agricultural District in the matter underlying this Petition. Thus, the Director's underlying actions and rationale in his deciding this matter are directly relevant to the Land Use Commission's decision on the Petition for Declaratory Order. Moreover, the OP and DOA listed the Department of Planning and Permitting, City and County of Honolulu as a potential party to this action in their Petition. Consequently, the Director's Motion to Intervene should be granted.

III. STATUTORY PROVISIONS IN QUESTION

HRS Section 205-4.5 **Permissible uses within the agricultural districts** provides, in part, as follows:

(a) Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B and for solar energy facilities, class B or C, shall be restricted to the following permitted uses:

....

- (17) Agricultural-energy facilities, including appurtenances necessary for an agricultural-energy enterprise; provided that the primary activity of the agricultural-energy enterprise is agricultural activity. To be considered the primary activity of an agricultural-energy enterprise, the total acreage devoted to agricultural activity shall be not less than ninety per cent of the total acreage of the agricultural-energy enterprise. The agricultural-energy facility shall be limited

to lands owned, leased, licensed, or operated by the entity conducting the agricultural activity.

As used in this paragraph:

‘Agricultural activity’ means any activity described in paragraphs (1) to (3) of this subsection.

‘Agricultural-energy enterprise’ means an enterprise that integrally incorporates an agricultural activity with an agricultural-energy facility.

‘Agricultural-energy facility’ means a facility that generates, stores, or distributes renewable energy as defined in section 269-91 or renewable fuel including electrical or thermal energy or liquid or gaseous fuels from products of agricultural activities from agricultural lands located in the State.

‘Appurtenances’ means operational infrastructure of the appropriate type and scale for the economic commercial generation, storage, distribution, and other similar handling of energy, including equipment, feedstock, fuels, and other products of agricultural-energy facilities. . . . (Emphasis added).

HRS Section 269-91 [Definitions] provides, as follows:

For the purposes of this [part]:

‘Biofuels’ means liquid or gaseous fuels produced from organic sources such as biomass crops, agricultural residues and oil crops, such as palm oil, canola oil, soybean oil, waste cooking oil, grease, and food wastes, animal residues and wastes, and sewage and landfill wastes.

‘Cost-effective’ means the ability to produce or purchase electric energy or firm capacity, or both, from renewable energy resources at or below avoided costs or as the commission otherwise determines to be just and reasonable consistent with the methodology set by the public utilities commission in accordance with section 269-27.2.

‘Electric utility company’ means a public utility as defined under section 269-1, for the production, conveyance, transmission, delivery, or furnishing of power.

‘Renewable electrical energy’ means:

- (1) Electrical energy generated using renewable energy as the source, and beginning January 1, 2015, includes customer-sited, grid-connected renewable energy generation; and

- (2) Electrical energy savings brought about by:
 - (A) The use of renewable displacement or off-set technologies, including solar water heating, sea-water air-conditioning district cooling systems, solar air-conditioning, and customer-sited, grid-connected renewable energy systems; provided that, beginning January 1, 2015, electrical energy savings shall not include customer-sited, grid-connected renewable-energy systems; or
 - (B) The use of energy efficiency technologies, including heat pump water heating, ice storage, ratepayer-funded energy efficiency programs, and use of rejected heat from co-generation and combined heat and power systems, excluding fossil-fueled qualifying facilities that sell electricity to electric utility companies and central station power projects.

'Renewable energy' means energy generated or produced using the following sources:

- (1) *Wind;*
- (2) *The sun;*
- (3) *Falling water;*
- (4) *Biogas, including landfill and sewage-based digester gas;*
- (5) *Geothermal;*
- (6) *Ocean water, currents, and waves, including ocean thermal energy conversion;*
- (7) *Biomass, including biomass crops, agricultural and animal residues and wastes, and municipal solid waste and other solid waste;*
- (8) *Biofuels; and*
- (9) *Hydrogen produced from renewable energy sources.*

'Renewable portfolio standard' means the percentage of electrical energy sales that is represented by renewable electrical energy. (Emphasis added).

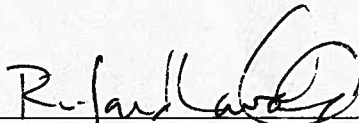
The Director interpreted "Agricultural-energy facility" under HRS Section 205-4.5 and HRS Section 269-91 by the plain language of these two statutes. It is from the Director's plain reading of these statutes which OP and DOA seek their relief herein. As such, the Director's participation in this matter is required.

IV. CONCLUSION

For the above-listed reasons, the Director respectfully requests that his Motion to Intervene in the matter of the Petition for Declaratory Order. Consequently, the Director's Motion to intervene into the matter of Office of Planning of the State of Hawai'i ("OP") and Department of Agriculture's ("DOA") Petition for Declaratory Order be granted.

DATED: Honolulu, Hawaii, March 24, 2016.

DONNA Y. L. LEONG
Corporation Counsel

By: 
RICHARD D. LEWALLEN
Deputy Corporation Counsel
Attorneys for Intervenors
Director of Department of Planning and
Permitting, City and County of Honolulu

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition) DOCKET NO. DR16-55
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Photovoltaic System is Not an Agricultural)
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof was served upon the following by means of hand delivery or mailing the same, postage prepaid, on March 24, 2016:

DOUGLAS S. CHIN (Hand Delivery)
Attorney General of Hawaii
BRYAN C. YEE
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Department of the Attorney General
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And Department of Agriculture

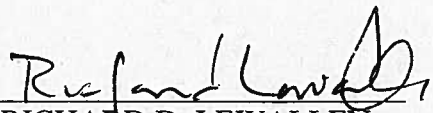
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650 South King Street, 7th Floor
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, March 24, 2016.

DONNA Y. L. LEONG
Corporation Counsel

By: 
RICHARD D. LEWALLEN
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Director of Department of Planning and
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15-00891/484456