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BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of)	
	)	DOCKET NO. A92-683
HALEKUA DEVELOPMENT)	
CORPORATION, a Hawai'i corporation	)	PETITIONER HASEKO ROYAL KUNIA,
	)	LLC'S MOTION IN OPPOSITION TO
To Amend the Agricultural Land Use District	)	SUCCESSOR PETITIONER (AS TO
Boundary into the Urban Land Use District	)	PARCEL 52) HO'OHANA SOLAR 1, LLC'S
for Approximately 503.886 Acres at Waikele	)	MOTION FOR MODIFICATION AND
and Ho'ae'ae, 'Ewa, O'ahu, City and County	)	TIME EXTENSION; MEMORANDUM IN
of Honolulu, State of Hawai'i, Tax Map Key	)	SUPPORT OF MOTION; JOINDER OF HRT
No. 9-4-02: 1, portion 52, 70 and 71	)	REALTY, LLC AND JUPITER INVESTORS
	)	II LLC; CERTIFICATE OF SERVICE

PETITIONER HASEKO ROYAL KUNIA, LLC'S MOTION IN OPPOSITION TO SUCCESSOR PETITIONER (AS TO PARCEL 52) HO'OHANA SOLAR 1, LLC'S MOTION FOR MODIFICATION AND TIME EXTENSION

Petitioner HASEKO ROYAL KUNIA, LLC, a Hawai'i limited liability company ("Haseko"), as successor landowner to that certain portion of the 503.886-acre Petition Area identified as Tax Map Key Nos. 9-4-002: 070, 071 and 078, whose address is 91-1001 Kaimalie

Street, Suite 205, Ewa Beach, Hawai'i 96706, by and through its attorneys, Morihara Lau & Fong LLP, hereby submits this Motion in Opposition¹ to Successor Petitioner (As to Parcel 52) Ho'ohana Solar 1, LLC's ("Ho'ohana") Motion for Modification and Time Extension, in the above-captioned matter.²

This motion is made pursuant to § 15-15-70(e) of Title 15, Subtitle 3, Chapter 15 of the Hawai'i Administrative Rules ("HAR") and the discussion set forth in the attached Memorandum in Support of Motion.

DATED: Honolulu, Hawai'i, August 25, 2020.



ANGELA FONG
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Attorneys for Petitioner
HASEKO ROYAL KUNIA, LLC

¹ This Motion is timely filed pursuant to HAR § 15-15-70. Under HAR § 15-15-70(e), "[t]he opposing party or parties shall serve on all other parties and file counter affidavits and memorandums in opposition to the motion and of the authorities relied upon not later than seven days after being served with any written motion[.]" Id. (emphasis added). Ho'ohana's Certificate of Service filed August 17, 2020 indicates that it served its Motion for Modification and Time Extension on Haseko by U.S. Mail, Postage Prepaid on August 17, 2020. As of August 24, 2020, physical receipt of the parcel has not yet been confirmed. However, counsel for Ho'ohana e-mailed a link to the Motion for Modification to representatives of Haseko on August 18, 2020. Therefore, seven (7) days after August 18, 2020 is August 25, 2020.

² Haseko has standing as a party to this proceeding because of its ownership of the three parcels within the Petition Area.

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of)
) DOCKET NO. A92-683
)
HALEKUA DEVELOPMENT)
CORPORATION, a Hawai'i corporation) 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 52, 70 and 71)

MEMORANDUM IN SUPPORT OF MOTION

I. BACKGROUND

Ho'ohana Solar 1, LLC ("Ho'ohana"), as Successor Petitioner to that certain portion of the 503.886-acre Petition Area identified as Tax Map Key No. 9-4-002:052 ("Parcel 52"), filed its Motion for Modification and Time Extension on August 17, 2020 ("Motion for Modification") pursuant to HRS Chapter 205 and HAR §§ 15-15-70 and 15-15-94, requesting that the State Land Use Commission ("Commission") modify the Commission's January 28, 2015 *Order Granting Successor Petitioner (To Parcel 52), Ho'ohana Solar 1, LLC's Motion for Order Amending the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed on October 1, 1996* ("2015 Order"), to allow for modification to the solar farm authorized thereunder and the related timeframe for development of the modified solar farm.

Parcel 52, consisting of approximately 161.023-acres, is within the 503.886-acre Petition Area that was reclassified from the State Land Use ("SLU") Agricultural District to the SLU Urban District by the Commission as documented in that certain *Findings of Fact, Conclusions*

of Law, and Decision and Order, filed December 9, 1993 (“Original D&O”).³ Pursuant to that certain January 28, 2015 *Order Granting Successor Petitioner (To Parcel 52), Ho‘ohana Solar 1, LLC’s Motion for Order Amending the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed on October 1, 1996* (“2015 Order”), the Commission authorized the use of Parcel 52 for the development and operation of a utility-scale solar energy project (“2015 Solar Project”), to be developed by Successor Petitioner, Ho‘ohana.⁴

Following the issuance of the 2015 Order, the Hawai‘i Public Utilities Commission (“PUC”) denied Hawaiian Electric Company, Inc.’s (“HECO”) request to approve its power purchase agreement (“PPA”) with Ho‘ohana and as a result, the 2015 Solar Project did not get built.⁵

Ho‘ohana filed its Motion for Modification to amend the 2015 Order to allow for the development of a new utility-scale solar farm (“2020 Solar Project”) that will generate substantially more renewable energy than the 2015 Solar Project. Ho‘ohana maintains that the 2020 Solar Project will generate 52 megawatts (“MW”) versus the 20 MW planned under the 2015 Solar Project and will also include a 208-megawatt hour (“MWh”) battery energy storage system.⁶ Robinson Kunia Land LLC is the fee owner of Parcel 52 and Ho‘ohana holds a long-term ground lease for Parcel 52 for the purpose of developing a utility-scale solar farm.

Parcel 52, the site of the proposed 2020 Solar Project, is bounded on the southwest by that certain parcel with Tax Map Key (“TMK”) No. 9-4-002-071 (“Parcel 71”), consisting of approximately 161.36 acres, which is owned by Haseko Royal Kunia, LLC (“Haseko”), as the

³ Motion for Modification at 1-2.

⁴ Id. at 2.

⁵ Id.

⁶ Id.

successor landowner to RP 2 Ventures, LLC, a Hawai'i limited liability company ("RP 2"). This parcel was recently acquired from RP2 on August 12, 2020. In addition, Haseko also acquired two other nearby parcels (e.g., TMK Nos. 9-4-002-070 and 9-4-002-078) from HRT Realty, LLC. on August 12, 2020. Haseko plans to develop approximately 1,850 residential units on these parcels, which will include both affordable and work force housing.

As noted in the Motion for Modification, the 2020 Solar Project is significantly larger than the 2015 Solar Project. The 2015 Solar Project was to use approximately 125 acres within Parcel 52 and was designed to generate 20 MW of electricity through a photovoltaic ("PV") system that would have been sold to HECO and transmitted from Parcel 52 via a 46 kilovolt (kV) transmission line.⁷ In comparison, the 2020 Solar Project will use approximately 157 acres within Parcel 52 and will be designed to generate 52 MW of electricity through a PV system to be paired with a 208 MWh battery energy storage system with a 4-hour duration at full capacity and will be connected to the HECO grid through a 138 kV transmission line.⁸ The 2020 Solar Project is also anticipated to use approximately 210,000 PV modules mounted on a fixed-tilt racking system and the top of the PV panels will be between 5.5 feet to 6 feet from the ground (depending on the existing slope on site). These modules are described as being dark blue in color and designed to absorb as much solar energy as possible, and therefore expected to create minimal glare.⁹ Ho'ohana's commercial operation for the 2020 Solar Project is anticipated to be in the second half of 2022.¹⁰

⁷ Id. at 6-7.

⁸ Id.

⁹ Id. at 8.

¹⁰ Id. at 7.

II. DISCUSSION

Haseko opposes the Motion for Modification at this time inasmuch as it lacks sufficient information about the potential impact of the 2020 Solar Project on Haseko's planned residential development. Two issues in particular come to mind—(a) the location of a planned 138 kV transmission line and (b) the proximity of the solar panel field in relation to Parcel 71.

Additionally, Haseko also seeks clarification on Ho'ohana's position on whether it is obligated to satisfy conditions A.1 and B.1. of the 2015 Order, which, among other things, required Ho'ohana to design and provide an offsite, non-potable waterline from Reservoir 225 to the boundary of the Royal Kunia Agricultural Park, at no cost to the State and concurrent with the construction of the solar farm, to specifications mutually acceptable to Ho'ohana and the Department of Agriculture ("DOA").

A. 138 kV Transmission Line.

Haseko was unable to ascertain information from the Motion for Modification as to where the 138 kV transmission line for the 2020 Solar Project will be located and how close in proximity it will be to Haseko's parcels. The Motion for Modification also does not indicate whether the 138 kV transmission line will be installed overhead or underground.

The location of the 138 kV transmission line is of particular concern to Haseko as the closer in proximity the line is to Haseko's parcels, the more likely it is to have potential adverse impacts including, but not limited to, potential health and safety concerns¹¹, visual and sound impacts, and the potential to decrease the value and marketability of Haseko's planned residential development. Depending on the planned location of the 138 kV transmission line, some of the concerns would be mitigated if the transmission line were installed underground.

¹¹ Studies have found that living close to high voltage power lines result in an increase in the risk of leukemia and other cancers.

B. Location of the Solar Panels.

Haseko also has additional concerns with respect to the proximity of the PV panels to Haseko's planned residential development. Parcel 52 is adjacent to Parcel 71. With the 2020 Solar Project now encompassing approximately 157 acres out of a total of 161.023 acres, it is likely that the PV panels could be sited in very close proximity to Haseko's planned residential development. The site plan attached to the Motion for Modification (Exhibit 5) does not provide sufficient detail on the physical placement of the solar panels near the Parcel 71 boundary. Moreover, Haseko has not had the ability to review any environmental report that may have been prepared for the 2020 Solar Project as to whether, for example, these PV panels will result in creating more heat to the surrounding area or other impacts from the associated power stations located within the solar array area.

As mentioned earlier, Haseko only recently acquired Parcel 71 from RP 2 as of August 12, 2020, and is still in the early stages of its project development. However, Haseko believes that additional information on the location of the 138 kV transmission line and of the solar panels should be provided sooner rather than later as both will have a significant impact on Haseko's development plans. This is especially critical given that Ho'ohana has represented that the commercial operation of the 2020 Solar Farm is anticipated to be in the second half of 2022.

C. Clarification on Condition A.1 of the 2015 Order.

Under the 2015 Order, Conditions A.1 through and including A.3 were adopted to replace Condition No. 19 from the Amended Findings of Fact, Conclusions of Law, and Decision and Order issued by the Commission on October 1, 1996. Condition A.1 provides as follows:

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 an amendment to the Memorandum of Understanding (dated 1993 and subsequent amendments in 2007, 2009, and 2012) with the Department of

Agriculture, 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.

In the Motion for Modification, Ho‘ohana suggests that consistent with Condition A.1, because the 2015 Solar Project was not permitted to move forward, the obligation to satisfy the Agricultural Park offsite infrastructure is required to be addressed by one of the Petition Area landowners. Haseko seeks clarification to Ho‘ohana’s statement to confirm that the condition to enter into an amendment to the Memorandum of Understanding to provide off-site infrastructure to the Kunia Agricultural Park applies to all landowners within the Petition Area (inclusive of Ho‘ohana and/or its lessor, Robinson Kunia Lands, LLC).¹² The fact that RP 2 entered into a Fourth Amendment to Amendment and Restatement of Memorandum of Understanding with DOA (“DOA MOU”) does not relieve the remaining landowners (or lessee) from this condition until such time that such condition is completely fulfilled and the condition is released by the Commission.¹³

D. Clarification of Condition B.1 of the 2015 Order.

In the Motion for Modification, Ho‘ohana states that the Commission approved the 2015 Solar Project subject to seven conditions of approval (i.e., Conditions B.1 through B.7.) under the 2015 Order.¹⁴ Ho‘ohana also states that the 2015 Order is clear that Conditions B.1 through B.7 “shall be applicable only to the solar farm on Parcel 52, and shall be applicable only upon

¹² Motion for Modification at 10-11.

¹³ As noted in Condition A.1, there have been four versions of the Memorandum of Understanding and amendments (dated 1993, 2007, 2009, and 2012) indicating that prior efforts to develop the Petition Area have not been successful. In addition, pursuant to an Assignment and Assumption of Amendment and Restatement of Memorandum of Understanding, the DOA MOU was assigned to Haseko.

¹⁴ See 2015 Order at 54-55.

development of the solar farm use on Parcel 52.¹⁵ Ho‘ohana states that because the 2015 Solar Project was not permitted to move forward, Ho‘ohana was not obligated to satisfy the conditions.¹⁶

However, as part of its efforts for the 2020 Solar Project, Ho‘ohana suggests that it has or will comply with all of the conditions set forth in the 2015 Order, except for Condition B.1., which is set forth below as follows:

B.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 the 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 [DOA]. 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. Ho‘ohana shall provide contracted Maintenance on the installed non-potable waterline and maintain the non-potable waterline in an operable condition for the duration of the operation of the solar farm at no cost to the State. The [DOA] 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.

Condition B.1 essentially requires Ho‘ohana to do three things: (1) provide a non-potable waterline from Reservoir 225 to the boundary of the Agricultural Park; (2) cause Robinson Kunia Land LLC to grant any required utility easements to the State for the non-potable waterline; and (3) provide contracted maintenance on the installed non-potable waterline for the duration of the solar farm operations. As noted earlier, Ho‘ohana states that because the 2015 Solar Project was not permitted to move forward, the obligation to satisfy the Agricultural

¹⁵ Motion for Modification at 10, citing to 2015 Order at 54.

¹⁶ Id.

Park offsite infrastructure is required to be addressed by one of the Petition Area landowners.¹⁷ It then relies upon RP 2 entering into the DOA MOU, which committed RP 2 to complete the DOA irrigation infrastructure, including the waterline referred to in the 2015 Order, by certain deadlines.¹⁸

Clarification of Ho‘ohana’s preceding statements is required. Because Condition B.1 was intended to be a separate obligation of Ho‘ohana, RP 2’s contractual agreement to provide off-site infrastructure improvements for the State Agricultural Park should not be construed to mean that Ho‘ohana is released from its obligation under Condition B.1 or that all requirements of Condition B.1, including obtaining the necessary easements or the continued maintenance of the non-potable waterline, will be fulfilled by Haseko under the DOA MOU. Given that Ho‘ohana’s 2020 Solar Project is now moving forward, perhaps some of the work required under the DOA MOU and Condition B.1 can be coordinated between Ho‘ohana and Haseko.

Similar to the request for clarification of Condition A.1 discussed earlier, Haseko requests that the Commission clarify that Ho‘ohana is not released from Condition B.1. of the 2015 Order notwithstanding that Haseko, as assignee of the DOA MOU, will undertake the contractual obligations to provide the off-site infrastructure improvements called for under the DOA MOU. Given that Ho‘ohana has stated in the Motion for Modification that it has or intends to comply with all of the other conditions in the 2015 Order, it is not appropriate to release Ho‘ohana from Condition B.1 at this point in time.

III. CONCLUSION

Haseko fully supports the development of renewable energy projects which advance the State of Hawaii’s renewable energy goals. However, it is critical that Haseko be able to

¹⁷ Id. at 11.

¹⁸ Id. at 11.

obtain information and resolve the issues set forth above so that both Ho‘ohana’s 2020 Solar Project and Haseko’s planned residential development can be responsibly developed and co-exist. For that reason, Haseko presently opposes the Motion for Modification pending receipt of information concerning the location of the 138kV line and the solar panels and requests that the Commission clarify that (a) Condition A.1 still applies to all landowners of the Petition Area (including Ho‘ohana as lessee) and (b) Condition B.1 of the 2015 Order still applies to Ho‘ohana notwithstanding Haseko’s assumption of the DOA MOU.

DATED: Honolulu, Hawai‘i, August 25, 2020.



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Attorneys for Petitioner
HASEKO ROYAL KUNIA, LLC

BEFORE THE LAND USE COMMISSION
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In the Matter of the Petition of)	
)	DOCKET NO. A92-683
HALEKUA DEVELOPMENT)	
CORPORATION, a Hawai'i corporation)	JOINDER OF HRT REALTY, LLC AND
	)	JUPITER INVESTORS II LLC
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 52, 70 and 71)	
_____)	


JOINDER OF HRT REALTY, LLC AND JUPITER INVESTORS II LLC

HRT Realty, LLC ("HRT") is the current owner of certain land located within the Petition Area, bearing TMK No. (1) 9-4-002-001 ("Lot 1"). HRT is under contract with Jupiter Investors II LLC ("Jupiter") to sell Lot 1 to Jupiter. HRT and Jupiter support the 2020 Solar Project in concept, but join in Haseko Royal Kunia LLC's Motion in Opposition to Successor Petitioner (as to Parcel 52) Ho'ohana Solar 1, LLC's Motion for Modification and Time Extension, insofar as: (i) requesting more information from Ho'ohana Solar 1, LLC about the location of the 138 kV transmission line and the solar panels; and (ii) requesting clarification as to Ho'ohana's obligations under the 2015 Order.


Notwithstanding anything to the contrary, HRT and Jupiter hereby reserve any and all rights as the owner and prospective owner, respectively, of Lot 1.

DATED: Honolulu, Hawai'i, August 25, 2020.

HRT REALTY, LLC

By 
Its VICE PRESIDENT

JUPITER INVESTORS II LLC

By 
Its MANAGING MEMBER

BEFORE THE LAND USE COMMISSION
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CERTIFICATE OF SERVICE

I hereby certify that a filed copy of the foregoing document was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service, postage prepaid, as noted:

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