CARLSMITH BALL LLP

JENNIFER A. LIM 8357
JOHN P. MANAUT 3989
DEREK B. SIMON 10612
ASB TOWER
1001 Bishop Street, Suite 2100
Honolulu, Hawai'i 96813
Tel No. 808.523.2500
Fax No. 808.523.0842
Jlim@carlsmith.com
JPM@carlsmith.com
Dsimon@carlsmith.com

Attorney for Successor Petitioner Ho'ohana Solar 1, LLC

LAND USE COMMISSION
STATE OF HAWAII

2020 SEP 25 P 2:07

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition of HALEKUA DEVELOPMENT CORPORATION, a Hawaii 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 (AS TO PARCEL 52) HO'OHANA SOLAR 1, LLC'S REPLY TO OFFICE OF PLANNING'S RESPONSE TO SUCCESSOR PETITIONER (AS TO PARCEL 52) HO'OHANA SOLAR 1, LLC'S MOTION FOR MODIFICATION AND TIME EXTENSION; CERTIFICATE OF SERVICE

SUCCESSOR PETITIONER (AS TO PARCEL 52) HO'OHANA SOLAR 1, LLC'S REPLY TO OFFICE OF PLANNING'S RESPONSE TO SUCCESSOR PETITIONER (AS TO PARCEL 52) HO'OHANA SOLAR 1, LLC'S <u>MOTION FOR MODIFICATION AND TIME EXTENSION</u>

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. BACKGROUND 7

A. The Commission's 2015 Order 7

B. The Ag Park Infrastructure Improvements are a Longstanding Contractual Obligation of the Landowner of Parcel 71 9

III. DISCUSSION 14

A. Ho'ohana's Infrastructure Obligations under 2015 Order 14

1. Ho'ohana Cannot be in Violation of Condition A.1 Because Condition A.1 Does Not Apply to Ho'ohana 14

2. The Current DOA MOU Complies with Condition A.1 and Does Not Need to be Amended 18

3. Ho'ohana's Position on the Non-Potable Waterline 21

IV. CONCLUSION 24

TABLE OF AUTHORITIES

Page(s)

Cases

Dolan v. City of Tigard,
512 U.S. 374, 114 S.Ct. 2309 (1994) 17, 19, 23

Fagaragan v. State,
132 Hawai'i 224, 320 P.3d 889 (2014) 17

Lana'ians for Sensible Growth v. Land Use Comm'n,
146 Hawai'i 496, 463 P.3d 1153 (2020) 15, 17

Robert D. Ferris Tr. v. Planning Comm'n of County of Kauai,
138 Hawai'i 307, 378 P.3d 1023 (Ct. App. 2016) 17

Statutes

Haw. R. Stat. Ch. 343 .... 9, 22

Other Authorities

Landowner, Black's Law Dictionary (11th ed. 2019) 15

SUCCESSOR PETITIONER (AS TO PARCEL 52) HO'OHANA SOLAR 1, LLC'S REPLY TO OFFICE OF PLANNING'S RESPONSE TO SUCCESSOR PETITIONER (AS TO PARCEL 52) HO'OHANA SOLAR 1, LLC'S MOTION FOR MODIFICATION AND TIME EXTENSION

Successor Petitioner Ho'ohana Solar 1, LLC, a Hawai'i Limited Liability Company ("**Ho'ohana**"), by and through its legal counsel, CARLSMITH BALL LLP, hereby respectfully submits to the Land Use Commission ("**Commission**") of the State of Hawai'i its *Reply to Office of Planning's Response to Successor Petitioner (as to Parcel 52) Ho'ohana Solar 1, LLC's Motion for Modification and Time Extension* ("**Response**"), filed September 18, 2020.

I. INTRODUCTION

Ho'ohana filed its *Motion for Modification and Time Extension* (the "**Motion**") with the Commission on August 17, 2020. The Motion requests modifications to a utility-scale solar farm (the "**2015 Solar Project**") that the Commission approved under its 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**"). *See* Petitioner's Exhibit ("**Pet. Ex.**") 16.[1] The requested modifications are to allow for the production of more renewable energy (52 megawatts ("**MW**") instead of 20 MW under the 2015 Solar Project), and to update the project start and completion dates. Ho'ohana's improved solar project (the "**2020 Solar Project**") will remain entirely within State Land Use ("**SLU**") Urban District lands at Tax Map Key ("**TMK**") No.: (1) 9-4-002:052 ("**Parcel 52**") (*see* Pet. Ex. 1), which is owned by Robinson Kunia Land, LLC ("**Robinson**").

The Office of Planning ("**OP**") recommends that the Motion be approved, and Ho'ohana is appreciative of that support. However, OP also recommends that the Commission subject the 2020 Solar Project to conditions that are far in excess of what the Commission imposed on the

[1] Petitioner's Exhibits 1 - 14 were filed with Ho'ohana's Motion. Petitioner's Exhibits 15 - 53 referenced herein are filed concurrently as a separate pleading and are referred to in this Reply.

2015 Solar Project, and which conditions appear arbitrary and intended to interfere with the contractual obligations of other parties. Certain of the OP-recommended conditions are consistent with the 2015 Order, and certain of the OP-recommended conditions are unnecessary, as evident by the nature of the conditions imposed by the Commission on the 2015 Solar Project, and Ho'ohana does not object to those conditions. But alarmingly, certain of the OP-recommended conditions are so arbitrary and destructive to the feasibility of the 2020 Solar Project that Ho'ohana must strenuously object to the imposition of those conditions, notwithstanding OP's statement of support.

Attached as exhibits and incorporated into OP's Response are comments on the Motion from the following State agencies: (a) the State of Hawai'i Department of Agriculture ("**DOA**"); (b) the State of Hawai'i Department of Land and Natural Resources, Division of Forestry and Wildlife; (c) the State of Hawai'i Department of Transportation, Highways and Airports Divisions; and (d) the Hawai'i State Energy Office. Based on those agency comments, but in excess of what was recommended as to DOA, OP has proposed various amendments to the conditions under the 2015 Order. *See* OP. Resp., Exhibit 1. For the OP-proposed conditions that are intended to be applicable to Ho'ohana as the developer of the 2020 Solar Project, Ho'ohana does not object to OP's proposed extensive revisions to Condition B.2, or OP's less extensive but significant revisions to Condition B.4. Ho'ohana does not object to OP's apparent recommendation to eliminate Conditions B.5 and B.7 (Condition B.3 has been fully satisfied), but as stated in the Motion, Ho'ohana is more than willing to comply with the language in those conditions if imposed in the Commission's approval for the 2020 Solar Project. *See* Mot. at 13-14. Ho'ohana strongly objects to OP's proposed modifications to Condition B.1, as those

modifications are in excess of what the Commission imposed under the 2015 Order, without any rational justification.

Regarding OP's proposed amendments to Conditions A.1 through A.4, because those conditions cannot and do not apply to Ho'ohana's development of the 2020 Solar Project, Ho'ohana does not have to take a position on then.[2] However, Ho'ohana strenuously disagrees with OP's interpretation, which is not at all evident in OP's Ex. 1, but is argued in the Response, that Conditions A.1 through A.5 should apply to Ho'ohana. Ho'ohana also notes, as a matter of simplicity, there is no reason for the Commission to impose OP's proposed Condition A.5, as the terms and conditions of the Commission's Amended Findings of Fact, Conclusions of Law, and Decision and Order filed on October 1, 1996 ("**1996 Order**") already requires the development of "the Property in substantial compliance with the representations made to the Commission. . . . failure to so develop the Property may result in reversion of the Property to its former classification . . . ." *See* 1996 Order at 69 (Condition 20).

Under the 2015 Order, the Commission very deliberately imposed two different sets of conditions related to the infrastructure improvements for the DOA's Kunia Agricultural Park ("**Ag Park**"). *See* Pet. Ex. 16 at 53-55. Condition A.1 restated the long-standing obligation for the Petition Area **landowners** to provide all of the off-site infrastructure for the Ag Park. That obligation has encumbered the entire Petition Area since before it was first reclassified to the SLU Urban District in 1993, and that obligation is now solely the responsibility of Haseko Royal Kunia, LLC ("**Haseko**"), the owner of Petition Area parcel TMK No. (1) 9-4-002:071 ("**Parcel**

---

[2] Ho'ohana notes that OP may be proposing an amendment to Condition A.4, but it was not marked as such in OP Ex. 1. It seems more likely that the change is merely a typo. In OP. Ex. 1, as to Condition A.4, OP referred to "sales or 53 leases of the individual lots" Ho'ohana assumes that the addition of the number 53 was a typographical error.

71"), pursuant to an agreement between the DOA and Haseko's predecessor-in-interest in Parcel 71, which Haseko confirms has been assigned to Haseko.

In contrast, through Condition B.1 (and the other "B" Conditions), the Commission imposed separate and very limited obligations on Ho'ohana, as a future interim-use **lessee** of Parcel 52. With respect to the Ag Park, Condition B.1 required Ho'ohana to design and provide a non-potable waterline only if the 2015 Solar Project was developed, and the waterline was required to be designed and constructed "to specifications mutually acceptable to Ho'ohana and the Department of Agriculture." *See* Pet. Ex. 16 at 54.

Notwithstanding the Commission's clear delineation of separate infrastructure obligations for the Petition Area landowners (*i.e.*, Conditions A.1 - A.4, plus all conditions under the 1996 Order, as amended) and Ho'ohana (*i.e.*, Conditions B.1 - B.7), and OP's long-standing acquiescence of the Parcel 71-owner's failure to fulfill the contractual obligations owed to the DOA, OP nevertheless makes the following three arguments: (a) Ho'ohana is subject to and in violation of Condition A.1 of the 2015 Order because it has failed to construct infrastructure improvements for the Ag Park; (b) the DOA's current infrastructure agreement executed with RP2 Ventures, LLC ("**RP2**"), and assigned to Haseko, does not comply with Condition A.1 because it was not signed by Ho'ohana or the remaining Petition Area landowners; and (c) Ho'ohana should be required to construct the non-potable irrigation line to specifications negotiated by RP2 and the DOA prior to obtaining building permits for the 2020 Solar Farm. OP's inconsistent arguments are not supported by law or fact.

First, OP's argument that Ho'ohana is subject to and in violation of Condition A.1 is completely unsupported by the express language of the 2015 Order. The 2015 Order imposed two very distinct sets of conditions: One set of conditions was expressly applicable to the

Petition Area "landowners," while the other set was applicable only to Ho'ohana as a future interim-use lessee and only in the event that the 2015 Solar Project was developed. Condition A.1 falls in the first set, applying only to "landowners." It is indisputable that Ho'ohana was never a landowner within the Petition Area. Moreover, at the time of the 2015 Order, Ho'ohana was not even a lessee. *See* 2015 Order, FOF 70 ("RKL [Robinson] and Ho'ohana are in the process of finalizing a land lease and solar easement for the solar farm development."). Condition A.1 never applied to Ho'ohana as a proposed solar farm developer.

While the conditions imposed under the 2015 Order are recorded against the entire Petition Area, which includes Parcel 52, both sets of conditions must be read together. Condition A.1 cannot be read to require Ho'ohana to provide the non-potable waterline because that obligation was separated out and imposed under Condition B.1. Condition B.1 would be rendered superfluous and meaningless if Ho'ohana was required to construct the waterline regardless of whether the 2015 Solar Project was developed. Nor can Condition A.1 be read after-the-fact to now impose on Ho'ohana, as an interim-use lessee, the same infrastructure obligations as the Petition Area **landowners** because such a condition would be unconstitutionally out of proportion with the impacts, if any, of Ho'ohana's solar project. The obligations to the DOA pre-date the Commission's decision to reclassify the Petition Area.

Second, OP's argument that the DOA's current infrastructure agreement does not comply with Condition A.1 because it was only executed by RP2 (and assumed by Haseko) ignores the long history behind that agreement. At least since 2007, the off-site infrastructure improvements for the Ag Park have been the sole contractual obligation of the owner of Parcel 71, and prior to then it was the obligation of the original Petitioner, Halekua Development Corporation ("**Halekua**").

In 2018, RP2 (as owner of Parcel 71) represented to the Commission in no uncertain terms that it -- and it alone -- would be responsible for completing **all** of the infrastructure improvements for the Ag Park. Both the DOA and OP appeared with RP2 before the Commission and made clear their collective understanding that RP2 was **solely** responsible for the infrastructure improvements required under Condition A.1. RP2 and the DOA subsequently memorialized that understanding through the infrastructure agreement that OP is now claiming to be defective.

Since then, the only thing that has changed is RP2's sale of Parcel 71 to Haseko without constructing **any** infrastructure for the Ag Park, including the non-potable waterline. Haseko freely admits that it assumed RP2's obligations for **all** of the infrastructure obligations when it purchased Parcel 71. Haseko's attempts to now use Ho'ohana's Motion as a leveraging opportunity to avoid or negotiate away the obligations it knowingly assumed when purchasing Parcel 71 should be rejected outright, even if supported by OP. The current infrastructure agreement fully complies with Condition A.1, and neither needs to be amended.

Third, OP's proposed amendment to Condition B.1 places a substantially greater obligation on Ho'ohana than what was required under the 2015 Order. Ho'ohana remains committed to supporting the DOA and the Ag Park at a level commensurate with its obligations under the 2015 Order. This includes providing a non-potable waterline at "specifications mutually agreeable to Ho'ohana and the [DOA]" concurrently with the development of the 2020 Solar Project. *See* Pet. Ex. 16 at 54. However, Ho'ohana cannot and will not agree to fulfill the significantly greater and more expansive obligations that RP2 (and its predecessors) owes to the DOA, and that Haseko assumed with its purchase of Parcel 71. Ho'ohana also cannot agree to fulfill such obligations before even breaking ground on the 2020 Solar Project. If the DOA is

wedded to the waterline promised by RP2, Ho'ohana is willing to contribute financially to that waterline in an amount commensurate with the costs that Ho'ohana was prepared to expend in 2015.

Ho'ohana agrees that the DOA has been waiting in vain for too long. It is inexplicable why neither OP nor the DOA are pursuing Haseko to file the motion with the Commission that Ho'ohana understands Haseko committed to filing on September 4, 2020. Haseko's motion proposed, *inter alia*, to have the Commission:

> expressly authorize, adopt and order the proposed design and construction of certain off-site infrastructure to the State Agricultural Park and deadlines for such design and construction, all as detailed in the Fourth Amendment to Amendment and Restatement of Memorandum of Understanding dated March 16, 2020 agreed by Haseko's predecessor, RP2 Ventures, LLC.

See Pet. Ex. 34 (email from David Tanoue dated August 26, 2020, forwarding said Haseko motion and related documents, and email from Janice Fujimoto of the DOA, wherein she noted that "the Office of Planning and HDOA will be reviewing these documents simultaneously with [David Tanoue] and Haseko. An advance copy will also go to LUC staff later.").

Based on that email and the attached documents, it appears that government resources, including work product produced by the Deputy Attorney General for the DOA, were used to draft motions and statements of support for private parties, such as Haseko and RP2. *See id.* None of the parties have explained why that motion was not filed. Nor have they explained why their respective positions suddenly shifted away from requiring Haseko to comply with its clear contractual obligations under the DOA infrastructure agreement.

II. BACKGROUND

A. THE COMMISSION'S 2015 ORDER.

The 2015 Solar Project was approved under the 2015 Order (*see* Pet. Ex. 16), which included 11 conditions of approval that were recorded as encumbrances against the entire

Petition Area. Four of those conditions applied only to landowners, and the remaining seven conditions applied to Ho'ohana. The 2015 recorded Declaration of Conditions clearly identifies the following as "Landowners of the Petition Area": "Robinson Kunia Land LLC . . . ; Canpartners IV Royal Kunia Property LLC . . . ; HRT Realty, LLC . . . ; 300 Corporation . . . ; Honolulu Limited . . . ; RKES, LLC[.]" *See* Pet. Ex. 15 at 2. Ho'ohana is identified separately as "Successor Petitioner" and "Ho'ohana." *Id.* at 1.

Conditions A.1 through A.3 of the 2015 Order require the **landowners** to perform the following:

> 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.
>
> 2. Revised Master Plan. Within twelve (12) months of the date of the Commission's Order, **the landowners within the Petition Area** shall submit revised master plan(s) and schedule(s) 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.

See Pet. Ex. 16 at 53 (emphases added). Conditions A.1 through A.3 replaced the Commission's prior Condition No. 19. Condition A.4, requiring notice to the Commission in the event of any sale of Petition Area property, replaced the Commission's prior Condition No. 21, which had required Commission approval prior to any sale.

The remaining conditions, Conditions B.1 through B.7, were imposed only on the 2015 Solar Project and Ho'ohana as the future ground lessee of Parcel 52, and were conditionally

applicable "only upon development of the solar farm use on Parcel 52." *Id.* at 53-54. Relevant here, Condition B.1 provides as follows:

> 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. 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 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.

Id. at 54.

B. THE AG PARK INFRASTRUCTURE IMPROVEMENTS ARE A LONGSTANDING CONTRACTUAL OBLIGATION OF THE LANDOWNER OF PARCEL 71.

Ag Park infrastructure has always been a condition of the development of the Petition Area as the Royal Kunia Phase II subdivision. In fact, that obligation was established even before the Commission reclassified the Petition Area from the SLU Agricultural District to the SLU Urban District in December 1993.[3] Based on that agreement, as documented in a Memorandum of Understanding, dated March 30, 1993 ("**DOA MOU**"), by and between the DOA and Halekua, the DOA agreed to "assist and support" Halekua in its efforts to obtain the necessary land use entitlements for the Petition Area. *See* Pet. Ex. 19a at 5.

Condition 22 (later renumbered to 19) of the Original D&O required Halekua to "convey

[3] Pursuant to that certain *Findings of Fact, Conclusions of Law, and Decision and Order* dated December 9, 1993 ("**Original D&O**").

the agricultural park to the State of Hawaii, and provide off-site infrastructure to the agricultural park, pursuant to the terms of the [DOA MOU]." The DOA MOU required Halekua to incorporate the Ag Park into its plan for Royal Kunia Phase II (*i.e.*, the Petition Area), convey fee title of the Ag Park to the State, and design and construct off-site infrastructure improvements for the Ag Park. *See* Pet. Ex. 19a at 3-4. The required off-site infrastructure improvements included "roadway, potable and irrigation water lines (exclusive of water commitment), and sewer lines and utility connections, up to the property boundary of the agricultural park at no cost to the DOA." *Id.*

The required land conveyance took place by Warranty Deed With Reservation, recorded February 23, 2004, whereby Halekua conveyed 150 acres of land to the State of Hawai'i Department of Land and Natural Resources for the development of the Ag Park.[4]

Halekua and the DOA later amended and restated the DOA MOU by way of that certain Amendment and Restatement of Memorandum of Understanding, dated March 2, 2007, to extend the deadlines for the DOA infrastructure. *See* Pet. Ex. 19b. A few days later, by way of Limited Warranty Deed recorded March 12, 2007, Halekua conveyed Parcel 71 to Halekua-Kunia, LLC ("**Halekua-Kunia**"). Parcel 71 is the only parcel within the Petition Area ever owned by Halekua-Kunia.

Halekua-Kunia and the DOA subsequently amended the DOA MOU by way of that certain First Amendment to Amendment and Restatement of Memorandum of Understanding, dated February 19, 2009, to further extend the deadlines. *See* Pet. Ex. 19c. Halekua-Kunia was the only Petition Area landowner who was a party to the agreement with DOA.

---

[4] Recorded in the State of Hawai'i Bureau of Conveyances as Regular System Document No. 2004-040601. The "reservation" that encumbers the Warranty Deed is in favor of the "Robinson Owners," as described therein; in the event that the State stops using the property as an agricultural park, the property ownership shall revert back to the "Robinson Owners."

On June 10, 2009, Canpartners IV Royal Kunia Property LLC ("**Canpartners**") became the fee owner of Parcel 71. Parcel 71 is the only parcel within the Petition Area that Canpartners acquired. Canpartners and the DOA further amended the DOA MOU by way of that certain Second Amendment to Amendment and Restatement of Memorandum of Understanding, dated September 20, 2012. *See* Pet. Ex. 19d. Canpartners and the DOA again amended the DOA MOU by way of that certain Third Amendment to Amendment and Restatement of Memorandum of Understanding, dated July 28, 2015. *See* Pet. Ex. 19e. These amendments further extended the deadlines for the Ag Park infrastructure. Canpartners was the only Petition Area landowner who was a party to the agreement with DOA.

RP2 acquired Parcel 71 from Canpartners in October 2017. At the request of the DOA and OP, the Commission held a status hearing on May 24, 2018. A copy of the transcript from the status hearing is filed as Pet. Ex. 20. The DOA and OP requested the status hearing in hopes that the Commission would compel RP2 to complete the infrastructure improvements required under the DOA MOU. *See id.* at 90:18-91:11.

David Tanoue appeared on behalf of RP2 and explained that RP2 had purchased Parcel 71 at the request of a client of its affiliate, R.M. Towill Corporation ("**RMTC**"), which client would later purchase Parcel 71 from RP2. *See id.* at 79:12-14, 80:20-25, 82:24-25. Mr. Tanoue presented the arrangement as a beneficial business deal for RP2 and RMTC (who would get contractually-guaranteed engineering, planning, and consulting work in the future for the development of the Petition Area), and one that would finally result in satisfaction of the obligations to DOA. *See id.* 117:17-23, 119:3-120:7, 129:20-130:5.

Mr. Tanoue estimated that RP2's design plans for the non-potable waterline, which had been prepared by RMTC, would be approved by the end of 2018. *Id.* at 114:13-20, 116:15-

117:2. Mr. Tanoue also represented that RP2 was hopeful that construction of the non-potable waterline would at least break ground by 2019. *Id.*

At one point, then-Commission Chair Arnold Wong sought clarification as to whether any parties other than RP2 were involved in getting the infrastructure designed and built for the DOA. *Id.* at 123:4-20. Mr. Tanoue responded that RP2 was "working with Robinson Trust because [RP2 needs] an easement going through their property," but did not identify any other party involved in the design or construction of the infrastructure. *Id.*

Chair Wong asked OP whether it was requesting an amendment to Condition A.1 to reflect an updated agreement between the DOA and RP2, and whether the other Petition Area landowners would need to be involved in that process. *See id.* at 123:21-124:3. OP's Deputy Attorney General responded: "**No**, I don't think so actually. **I think is** [sic] **strictly between RP2 and -- because the condition 19 is based on the MOU with -- and the parties to the MOU are RP2 or the successor to Halekua and Canpartners and DOA**." *Id.* at 124:4-8 (emphases added).

Near the end of the status hearing, Commissioner Dawn Chang and Mr. Tanoue had the following exchange:

> Commissioner Chang: **Is there any circumstances upon which RP2 would walk away from this if there is any -- any additional -- I don't want to call them burdens because they are already Conditions**. But is there anything upon which RP2 -- 'cause I think OP had a hesitancy about doing an order to show cause 'cause there's -- you guys are all kind of working together. **So is there any circumstances upon which RP2 would step out and say we're not going to do this?**
> . . .
> There is a lot of things that won't happen. **But is there anything, David, that RP2 would walk away from this?**
>
> Mr. Tanoue: **Not that I can see.**
> . . .

> 'Cause we put in -- you know, **we put in our money. It's our money upfront. It wasn't the potential developer's money. It was our money. So we -- we took the responsibility.**

Id. at 128:23-129:14 (emphases added).

The Commission concluded the status hearing by directing RP2 and the DOA to reach an agreement for new deadlines for the design and construction of the infrastructure for the Ag Park, including the non-potable waterline. *Id.* at 131:10-14.

Based on that directive and RP2's representations to the Commission, nearly two years later RP2 and the DOA amended the DOA MOU by executing a Fourth Amendment to Amendment and Restatement of Memorandum of Understanding, dated March 16, 2020. *See* Pet. Ex. 19f. In its letter transmitting an executed copy of the DOA MOU to RP2, Haseko, OP, and the Commission,[5] the DOA confirmed that the DOA MOU was intended to satisfy Condition A.1 of the 2015 Order. *See id.* at 1. The DOA's letter further notes its understanding that RP2 was in the process of selling Parcel 71 to Haseko and that Haseko was expected to comply with the terms of the DOA MOU. *See id.* Like all of the amendments since 2007, the current DOA MOU is a two-party agreement between DOA and the owner of Parcel 71. No other Petition Area landowners are parties to that agreement.

The DOA MOU now provides that:

> RP2 shall design and construct **off-site infrastructure improvements** for the State Agricultural Park **including roadway, potable and irrigation lines (exclusive of water commitment), and sewer lines and utility connections**, up to the property boundary of the State Agricultural Park at no cost to the DOA.

Id. at 5 (emphases added). The DOA MOU states that RP2 prepared preliminary design plans for the infrastructure, and that upon the DOA's approval of the plans,

> RP2 shall, at its sole cost and expense, (i) **obtain all necessary governmental permits and approvals** for construction of such off-site infrastructure, (ii)

[5] The DOA's letter was addressed to RP2 and Haseko, with the Commission and OP copied.

arrange for and **complete the construction and installation of the <u>irrigation infrastructure</u> no later than <u>February 28, 2021</u>**, and (iii) arrange for and complete the **construction and installation of the <u>remainder of the off-site infrastructure</u> to service the State Agricultural Park no later than** ~~June 30, 2020~~, **<u>June 30, 2021</u>**, unless approved by DOA.

Id. at 3 (emphases added; strikethrough in original).

Haseko has admitted that it was assigned RP2's obligations under the DOA MOU when it purchased Parcel 71. *See Petitioner Haseko Royal Kunia, LLC's Motion [or more accurately Memorandum] in Opposition to Successor Petitioner (as to Parcel 52) Ho'ohana Solar 1, LLC's Motion for Modification and Time Extension* at 6 n.13 ("[P]ursuant to Assignment and Assumption of Amendment and Restatement of Memorandum of Understanding, the DOA MOU was assigned to Haseko."). Haseko also admits that the non-potable waterline required for the Ag Park under the 2015 Order is one of the infrastructure improvements covered by the DOA MOU. *Id.* at 8.

III. <u>DISCUSSION</u>

A. <u>HO'OHANA'S INFRASTRUCTURE OBLIGATIONS UNDER 2015 ORDER.</u>

1. <u>Ho'ohana Cannot be in Violation of Condition A.1 Because Condition A.1 Does Not Apply to Ho'ohana.</u>

Ho'ohana disagrees with OP that it has obligations under or is in violation of Condition A.1. According to OP, because Condition A.1 "runs with the land, all current landowners/**lessees** of the Petition Area, including . . . **Hoohana**, . . . are in violation of Condition No. A.1 for failure to complete the offsite infrastructure by December 31, 2016." OP Resp. at 12 (emphases added). OP is mistaken.

First, the 2015 Order clearly establishes two distinct sets of conditions. The first set (Conditions A.1 through A.4) was imposed on the entire Petition Area and its "landowners," and was expressly intended to replace Conditions 19 and 21 of the 1996 D&O. *See* Pet. Ex. 16 at 53.

Those two conditions existed long before Ho'ohana ever became an interim-use lessee of Parcel 52.[6]

The second set of conditions (Conditions B.1 through B.7) was imposed only on Ho'ohana, as the proposed developer of the 2015 Solar Project, and was triggered if and when Ho'ohana actually developed the 2015 Solar Project. *See Id.* at 54. The 2015 Order acknowledges the DOA's understanding at the time that "if the solar farm is not developed, Hoohana will not construct the non-potable waterline." *Id.* at 32, FOF ¶158. The Commission's intent to distinguish between the conditions imposed on the Petition Area "landowners" and the conditions imposed only on Ho'ohana could not be more clear.

Second, Ho'ohana is not a "landowner" under the express language of Condition A.1. Black's Law Dictionary defines a "landowner" as "[s]omeone who **owns** land." LANDOWNER, Black's Law Dictionary (11th ed. 2019) (emphasis added). The Hawai'i Supreme Court has rejected past attempts to interpret the terms used in the Commission's conditions as "carry[ing] a 'special interpretation' other than [their] common sense meaning." *Lana'ians for Sensible Growth v. Land Use Comm'n*, 146 Hawai'i 496, 503, 463 P.3d 1153, 1160 (2020). Ho'ohana does not "own" any land in the Petition Area. *See* Pet. Ex. 2 (Fee Owner's Authorization). Ho'ohana is clearly not a "landowner."[7]

Condition A.2 confirms that Ho'ohana is not a "landowner" under the 2015 Order. Condition A.2 provides that "[w]ithin twelve (12) months of the date of the Commission's Order, the landowners within the Petition Area shall submit revised master plan(s) and schedule(s) for

---

[6] In fact, as noted *supra*, Ho'ohana did not even hold a lease for Parcel 52 at the time of the 2015 Order.
[7] OP tacitly concedes that Ho'ohana is not a landowner. For example, OP argues that because the DOA MOU is only between the DOA and RP2 (and now Haseko), "to the exclusion of all other current **landowners/<u>lessees</u>**, i.e., Ho'ohana and RKES, [it] therefore does not comply with Condition A.1." OP Resp. at 12 (emphases added). OP further argues that "[a]ll **landowners/<u>lessees</u>** should be parties to the MOU and be responsible for the completion of the off-site infrastructure." *Id.* (emphases added). Condition A.1 does not say "**landowners/<u>lessees</u>**" must enter into an agreement with DOA; it only says "landowner(s)."

the development of their respective Increments 1, 2 and 3, comprising the Royal Kunia Phase II project." *Id.* (emphases added). "Landowners" clearly refers only to those parties owning land within the Petition Area. Moreover, the Commission ordered that those landowner parties must provide revised master plans for and develop Increments 1, 2 and 3 of Royal Kunia Phase II. Ho'ohana was never going to develop an increment of Royal Kunia Phase II; the 2015 Solar Project was only an interim use of Parcel 52. "Landowner" cannot mean one thing for Condition A.1 and another for Condition A.2.

Moreover, the 2015 Declaration of Conditions, which encumbered the Petition Area with Condition A.1, identifies the following as the "**Landowners** of the Petition Area:" Robinson Kunia Land LLC . . . ; Canpartners IV Royal Kunia Property LLC . . . ; HRT Realty, LLC . . . ; 300 Corporation . . . ; Honolulu Limited . . . ; RKES, LLC[.]" Pet. Ex. 15 at 2 (emphasis added). Ho'ohana is **not** identified as a landowner. Ho'ohana is identified separately as "Successor Petitioner" and "Ho'ohana." *Id.* at 1.

Third, OP's interpretation of the 2015 Order is not permissible. The thrust of OP's argument appears to be that because Condition A.1 is recorded as an encumbrance against Parcel 52, it also falls to Ho'ohana as a lessee, and Ho'ohana's failure to construct any infrastructure for the Ag Park is a violation of Condition A.1. *See* OP Resp. at 12. However, it is unclear whether OP is arguing that Ho'ohana is in violation of Condition A.1 because it has not constructed the non-potable waterline, or because all of the other Ag Park infrastructure has not been completed. Both interpretations of the 2015 Order must be rejected.

If OP is arguing that Ho'ohana's failure to construct the non-potable waterline somehow violates Condition A.1, that interpretation impermissibly renders Condition B.1 superfluous and meaningless because Condition B.1 did not require Ho'ohana to construct the waterline unless

the 2015 Solar Project was developed. *See Lana'ians for Sensible Growth*, 146 Hawai'i at 502-03, 463 P.3d at 1159-60 ("In interpreting the text of [the Commission's] Condition 10, the general principles of statutory construction apply."); *Fagaragan v. State*, 132 Hawai'i 224, 241, 320 P.3d 889, 906 (2014) ("[C]ourts are 'bound to give effect to all parts of a statute, and . . . no clause, sentence, or word shall be construed as superfluous, void, or insignificant [.]"). OP acknowledges that because Ho'ohana did not develop the 2015 Solar Project, it was not obligated to construct the waterline under Condition B.1. *See* OP Resp. at 14. If Condition A.1 required Ho'ohana to construct the waterline regardless of whether the 2015 Solar Project was developed, there would have been no reason for the Commission to separately impose Condition B.1. Clearly that was not the Commission's intent.

Even if OP is arguing that Ho'ohana is in violation of Condition A.1 because the other infrastructure improvements required under Condition A.1 and the DOA MOU were not constructed, its interpretation of Condition A.1 still is not permissible. Condition A.1 must be interpreted "to avoid violating constitutional provisions." *See Robert D. Ferris Tr. v. Planning Comm'n of County of Kauai*, 138 Hawai'i 307, 313, 378 P.3d 1023, 1029 (Ct. App. 2016); *Lana'ians for Sensible Growth*, 146 Hawai'i at 502-03, 463 P.3d at 1159-60. In order to be constitutional, conditions imposed by the Commission must have a "rough proportionality" to the development proposed, meaning they must be "related both in **nature** and **extent** to the **impact of the proposed development**." *Dolan v. City of Tigard*, 512 U.S. 374, 391, 114 S.Ct. 2309, 2319-20 (1994) (emphases added). The need for the Ag Park infrastructure existed long before the Commission approved the 2015 Solar Project. Imposing that same obligation on Ho'ohana, as an interim-use lessee, lacks "rough proportionality" on its face, and must be avoided.

The Commission's intent under the 2015 Order is clear. Ho'ohana's infrastructure

obligations were contained entirely within Condition B.1, which was not triggered because the 2015 Solar Project was not developed. The separate "landowner" infrastructure obligations under Condition A.1 existed long before the Commission approved the 2015 Solar Project and continued after the 2015 Solar Project was not developed. The DOA's comments on the Motion acknowledge that Ho'ohana was never expected to be subject to Condition A.1: "DOA is again willing to allow [the 2020 Solar Project] to move forward if Hoohana is willing to comply with **the same requirements agreed to and ordered in 2015, specifically condition B-1**[.]" Op. Resp., Ex. 5 at 2 (emphases added). Any argument that Ho'ohana is subject to and in violation of Condition A.1 is just plain wrong.

2. The Current DOA MOU Complies with Condition A.1 and Does Not Need to be Amended.

The current DOA MOU fully complies with Condition A.1 and does not need to be amended to include Ho'ohana or the other Petition Area landowners. According to OP, the DOA MOU "is made and signed between DOA and RP2 Ventures, LLC, to the exclusion of all other current landowners/**lessees**, i.e., **Hoohana** and RKES, and therefore **does not comply with Condition No. A.1.**" OP Resp. at 12 (emphases added). OP argues that "[a]ll landowners/**lessees** should be parties to the MOU and be responsible for the completion of the off-site infrastructure." *Id.* (emphasis added). OP requests that Condition A.1 be amended in order "to firmly hold all landowners/**lessees** responsible for the timely construction of the off-site infrastructure[.]" *Id.* at 13 (emphasis added).

Whether blindly or intentionally, OP is essentially in concert with Haseko, asking the Commission to completely disregard Haseko's existing contractual obligations. There is simply no reasonable basis to interfere with or rewrite Haseko's clear obligation to provide all of the infrastructure improvements under the DOA MOU. The Commission does not have power or

authority to rewrite, interfere with, or invalidate Haseko's fully-negotiated obligations to the DOA.

First, the DOA MOU is not defective just because it is not signed by Ho'ohana. For the reasons discussed *supra*, Ho'ohana is not subject to Condition A.1 and therefore is not required to be a party to the DOA MOU. Additionally, conditioning approval of the 2020 Solar Project on Ho'ohana picking up all, or even some (OP is not clear on this point), of the massive infrastructure improvements for the Ag Park (*see e.g.*, Pet. Ex. 19f at 3) would violate the constitutional mandate that all conditions imposed have a "rough proportionality" to the impacts of the development being proposed. *See Dolan*, 512 U.S. at 391, 114 S.Ct. at 2319-20. There is no rough proportionality between the impacts, if any, of the interim-use 2020 Solar Project and the requirement to construct all of the off-site infrastructure improvements for the Ag Park. That obligation was already imposed as a condition of developing the **entire** Petition Area as the Royal Kunia Phase II subdivision.

Second, OP's argument that the DOA MOU is defective because it was not executed by any other landowner ignores the long history behind the DOA MOU, RP2's very recent and firm representations to the Commission, and OP's long-standing and continued failure to protect the interests of the DOA by ignoring the extensive Ag Park obligations required under the DOA MOU. The Ag Park obligations have always been limited to a single landowner within the Petition Area. Recent history confirms this.

At the May 24, 2018 status hearing, RP2, the DOA, and OP appeared before the Commission and made clear their collective understanding that RP2 -- as the then-owner of Parcel 71 -- was solely obligated to complete the infrastructure under the DOA MOU and Condition A.1. RP2 represented to the Commission in no uncertain terms that it -- and it alone --

would be responsible for completing all of the infrastructure improvements for the Ag Park, including the non-potable waterline. *See* Pet. Ex. 20 (2018 status hearing trans.). Mr. Tanoue represented that RP2 "put in [its] money . . . up front" and "took the responsibility" for the infrastructure improvements as part of its larger role in facilitating the development of Royal Kunia Phase II. *Id.* at 128:23-129:14. Mr. Tanoue assured the Commission that he could not see any situation in which "RP2 would step out and say we're not going to do this[.]" *Id.* When asked whether any other Petition Area landowner was involved in designing and constructing the infrastructure, Mr. Tanoue responded only by noting that RP2 would need to obtain an easement from Robinson. *Id.* at 123:4-20. RP2's representations, as documented in the DOA MOU, bind Haseko today.

Contrary to its current position, OP did not insist previously that the DOA MOU would be defective or in violation of Condition A.1 if it were to be signed only by RP2 and the DOA. The status hearing was held at OP's request for the Commission to compel RP2 to complete the infrastructure improvements. *See id.* at 90:18-91:11. When asked by the Commission whether it was requesting an amendment to Condition A.1 to reflect a new agreement on deadlines between the DOA and RP2, and whether other Petition Area landowners would need to be involved in that process, OP was clear: the DOA MOU "**is strictly between . . . RP2 or the successor to Halekua and Canpartners and DOA**." *Id.* at 124:4-8 (emphasis added). OP's position at the 2018 status hearing is in direct conflict with its position today.

At no point during the status hearing did the DOA express an expectation or belief that anyone other than RP2 was responsible for the infrastructure under the DOA MOU or Condition A.1. To the contrary, the DOA's representatives reported that they were in very close communication with RP2 about the design of and construction deadlines for the non-potable

waterline. *Id.* at 114:13-20, 116:15-117:2. And when the Commission directed the DOA and RP2 to finalize their agreement on the extended infrastructure deadlines, neither party, nor OP, insisted that any other landowner be involved.

Nearly two years later, the DOA and RP2 finally executed the current DOA MOU. *See* Pet. Ex. 19f. Neither OP nor the DOA explain why it took almost two years for the DOA and RP2 to strike a deal that both represented to the Commission was close to final. To Ho'ohana's knowledge, the DOA and RP2 did not call on any other Petition Area landowner to be involved in those protracted negotiations, much less be contractually bound to complete the infrastructure under the resulting DOA MOU. Nor did the DOA or RP2 insist that any other Petition Area landowner, or Ho'ohana as the interim-use solar farm developer, get involved in negotiating the design of the non-potable waterline, or submitting that design to the Honolulu Department of Planning and Permitting ("**DPP**") for approval.

Prior to Haseko's purchase of Parcel 71 (and other parcels in the Petition Area), every relevant party unquestionably understood that RP2 was solely responsible for all of the Ag Park off-site infrastructure, including the non-potable waterline, as was the case under RP2's predecessor-in-interest to Parcel 71. Haseko has freely admitted to assuming RP2's obligations under the DOA MOU. There is no basis in law or fact to require further amendment to Condition A.1 or the DOA MOU in order to shift Haseko's contractual obligations to Ho'ohana or the other Petition Area landowners. The current DOA MOU fully complies with Condition A.1 as intended by the Commission and understood by the parties, and the negotiated rights and duties thereunder should not be disturbed.

3. Ho'ohana's Position on the Non-Potable Waterline.

Notwithstanding Haseko's total and complete obligation for the Ag Park infrastructure, Ho'ohana remains committed to supporting the DOA and the Ag Park at a level commensurate

with its obligations under Condition B.1 of the 2015 Order. However, that is not what OP has proposed in its amendments to Condition B.1.

Under Condition B.1, if the 2015 Solar Project was developed, Ho'ohana was required to construct the non-potable waterline "to specifications mutually acceptable to Ho'ohana and the [DOA]" concurrently with its development of the 2015 Solar Project. *See* Pet. Ex. 16 at 54. This condition allowed Ho'ohana to both have a say in the design of the waterline (and thus the scope of the commitment), and ensured that construction of the waterline would not delay the 2015 Solar Project or interfere with Ho'ohana's contractual obligations to Hawaiian Electric Company, Inc. ("**HECO**"). Condition B.1 also rightly recognized that if Ho'ohana's construction required compliance with Chapter 343, Hawai'i Revised Statutes, and thereby delayed Ho'ohana's ability to start construction of the waterline, the deadline under Condition B.1 would be extended by the number of days delayed due to the required environmental review. *See id.* This is a sensible caveat that OP inexplicably wants eliminated. *See* OP Resp., Ex. 1.

What OP has styled as an amendment to "Condition B.1 to **restate** the obligations of Ho'ohana to construct and maintain the waterline," is actually something far different. *See id.* at 13-15 (emphasis added). OP's proposed amendments would require Ho'ohana to provide the non-potable waterline at the specifications **negotiated between the DOA and RP2**, and to complete construction **before** Ho'ohana obtains its building permit for the 2020 Solar Project. Ho'ohana cannot agree to OP's proposed amendments to Condition B.1 for two reasons.

First, Ho'ohana cannot and will not agree to fulfill the significantly greater and more expansive commitments that RP2 (and its predecessors) made to the DOA and that Haseko assumed with its purchase of Parcel 71. Following issuance of the 2015 Order, Ho'ohana commissioned an engineering study that identified two options for satisfying Condition B.1: (a)

retrofitting an existing 24" waterline that crosses land owned by Robinson at a cost of approximately $16,000; or (b) installing a new 12" waterline along Kunia Road at a cost of approximately $300,000. *See* Pet. Ex. 21a (graphic depicting options); Pet. Ex. 21b (email from ITC Water Management providing estimate of $275,000 to $300,000). Ho'ohana presented these two options to the DOA, who expressed its preference for the second option. *See* Pet. Ex. 22 (7/18/15 email from Ho'ohana's consultant, Nonie Toledo, to the then-Chair of the Board of Agriculture, Scott Enright). However, that construction never went forward because shortly thereafter, in August 2015, the Hawai'i Public Utilities Commission rejected the power purchase agreement between HECO and Ho'ohana for the 2015 Solar Project. Thus, Ho'ohana's non-potable water line obligations were never triggered.

Since then, RP2 (apparently with Haseko waiting in the wings based on the 2018 status hearing transcript) and the DOA reached a separate, negotiated agreement on a much more expensive non-potable waterline for the Ag Park, the plans for which have already been submitted to DPP for approval. However, because RP2, Haseko and the DOA failed to inform Ho'ohana of their submitted plans, Ho'ohana only very recently learned of their existence and obtained a copy from a third party. As a result, as of the time of this filing, Ho'ohana has still not received an estimate back from its contractor who was immediately provided the plans. Based upon Ho'ohana's preliminary review of the plans, Ho'ohana believes the waterline will cost at least cost $1,000,000 or more to construct.[8] *See* Pet. Ex. 44 at 9 (Written Direct Testimony of Jon Wallenstrom). According to Robinson, the engineering estimate is $2,200,000. *See id.* Arbitrarily imposing a condition on Ho'ohana with three-to-seven times the financial burden of the condition previously imposed for a substantially similar project is a clear violation of the

---

[8] A waterline of the nature designed by RP2 cost between $300 and $500 per linear foot. This large range is largely a function of the regulatory requirements. *See* Pet. Ex. 44 at 9.

constitutional mandate that land use entitlement conditions have a "rough proportionality" to the impacts of the development being proposed. *Dolan*, 512 U.S. at 391, 114 S.Ct. at 2319-20 (1994).

In 2018, RP2 represented to the Commission that it would be solely responsible for constructing the waterline and that it was hopeful that construction would at least break ground by 2019. RP2 failed to deliver on that representation, and its successor and assignee, Haseko, is simply disclaiming its obligations, apparently with OP's support. If the DOA is wedded to the waterline promised by RP2, Ho'ohana is more than willing to make a financial contribution consistent with what it promised to the DOA in 2015, notwithstanding the locus of responsibility being entirely with Haseko.

Second, Ho'ohana cannot agree to complete construction of the waterline before obtaining building permits for the 2020 Solar Project. Ho'ohana understands the DOA's desire to have the waterline constructed without further delay, but it is **not** Ho'ohana's fault that the Parcel 71 owner has failed to live up to its obligations. Allowing concurrent construction is necessary for the 2020 Solar Project to remain on schedule and compliant with Ho'ohana's contractual obligations with HECO. In addition, allowing for concurrent construction will permit Ho'ohana to take advantage of already having its constructions crews in the area.

IV. CONCLUSION

The 2020 Solar Project is a tremendous opportunity for the State to take a leap towards reaching its goal of 100% renewable energy by 2045. OP's apparent support of Haseko's efforts to use Ho'ohana's Motion as leverage to shed its contractual obligations onto Ho'ohana is baffling and threatens this opportunity. Ho'ohana remains committed to supporting the DOA and fulfilling its commitments from 2015, but can do no more. Ho'ohana respectfully requests that its Motion be granted.

DATED: Honolulu, Hawaii, September 25, 2020.

JENNIFER A. LIM
JOHN P. MANAUT
DEREK B. SIMON

Attorneys for
HO'OHANA SOLAR 1, LLC

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition of HALEKUA DEVELOPMENT CORPORATION, a Hawaii 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 CERTIFICATE OF SERVICE

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:

Mary Alice Evans, Director State of Hawai'i Office of Planning Leiopapa A Kamehameha Building 235 South Beretania Street, 6th Floor Honolulu, HI 96813	HAND DELIVERED
Clare E. Connors, Esq. Attorney General Dawn T. Apuna, Esq. Deputy Attorney General Hale Auhau, Third Floor 425 Queen Street Honolulu, Hawaii 96813 Attorneys for State of Hawai'i Office of Planning	HAND DELIVERED

Kathy K. Sokugawa, Acting Director Department of Planning and Permitting City and County of Honolulu Frank F. Fasi Municipal Building 650 South King Street Honolulu, HI 96813	HAND-DELIVERED
Paul S. Aoki, Esq. Acting Corporation Counsel Duane Pang, Esq. Deputy Corporation Counsel Department of the Corporation Counsel 530 South King Street, Room 110 Honolulu, HI 96813 Attorneys for Department of Planning and Permitting, City and County of Honolulu	HAND-DELIVERED
Rush Moore LLP Stephen K.C. Mau 1100 Alakea Street, Suite 600 Honolulu, HI 96813 Attorneys for Robinson Kunia Land LLC	U.S. MAIL, POSTAGE PREPAID
HRT Realty, LLC Giorgio Caldarone 3660 Waialae Avenue, Suite 400 Honolulu, HI 96816	U.S. MAIL, POSTAGE PREPAID
Jupiter Investors II LLC Norman Tatch 24 Corporate Plaza Suite 100 Newport Beach, CA 92660	U.S. MAIL, POSTAGE PREPAID
Morihara Lau & Fong LLP Michael H. Lau 400 Davies Pacific Center 841 Bishop Street Honolulu, HI 96813 Attorneys for Haseko Royal Kunia, LLC	U.S. MAIL, POSTAGE PREPAID

RKES, LLC Patrick K. Kobayashi 1288 Ala Moana Blvd., Suite 201 Honolulu, HI 96814	U.S. MAIL, POSTAGE PREPAID
Kunia Residential Partners Troy T. Fukuhara 680 Iwilei Road, Suite 510 Honolulu, HI 96817	U.S. MAIL, POSTAGE PREPAID
Hawaiian Electric Company, Inc. Susan A. Li 1001 Bishop Street, Suite 2500 Honolulu, HI 96813	U.S. MAIL, POSTAGE PREPAID

DATED: Honolulu, Hawaii, September 25, 2020.

JENNIFER A. LIM
JOHN P. MANAUT
DEREK B. SIMON

Attorneys for
HO'OHANA SOLAR 1, LLC