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December 19, 2023



Hawaii State Land Use Commission
c/o Mr. Daniel E. Orodener
Executive Director
LAND USE COMMISSION
P. O. Box 2359
Honolulu, Hawai'i 96804-2359

RE: Status In Docket No. A92-683 Halekua Development Corporation

Dear Chair Giovanni and Members of the Land Use Commission,

The State of Hawaii, Department of Agriculture ("HDOA") and State of Hawaii, Office of Planning and Sustainable Development ("OPSD") jointly submit this letter regarding the status of Docket No. A92-683 Halekua Development Corporation, currently set for a status conference on January 24, 2024 before the Land Use Commission ("LUC"). HDOA, OPSD, and successor petitioner Haseko Royal Kunia, LLC ("Haseko") have reached a tentative, informal agreement with respect to Haseko's obligations related to the Royal Kunia Agricultural Park and HDOA and OPSD anticipate that Haseko will soon file a motion with the LUC for extension of its deadline to comply such obligations. HDOA and OPSD request that the January 24, 2024 status conference be consolidated into the hearing on the anticipated motion.

I. Relevant Background

On August 12, 1992, Halekua Development Corporation ("Halekua") filed a Petition for Land Use District Boundary Amendment ("Petition") with the LUC to reclassify approximately 505 acres of agricultural lands ("Petition Area") into the urban district to develop a project consisting of housing, a light industrial business park, a golf course, a public park, and a school site. In connection with the Petition, Halekua and HDOA entered a Memorandum of Understanding on March 30, 1993 ("1993 MOU"), in which Halekua agreed to convey 150 acres to HDOA for use as a State agricultural park and to design and construct off-site infrastructure for the agricultural park, including, but not limited to potable and non-potable water lines, sewer lines, and utility connections. ("Off-Site Infrastructure").

On December 9, 1993, the LUC issued Findings of Fact, Conclusions of Law,

and Decision and Order (“1993 D&O”) approving the Petition and including as Condition No. 22 that Halekua convey the agricultural park to HDOA and provide the Off-Site Infrastructure pursuant to the terms of the 1993 MOU. The 150 acres were conveyed to HDOA on February 27, 2004, by Warranty Deed recorded with the State of Hawaii, Bureau of Conveyances as Document No. 2004-040601. The Off-Site Infrastructure, however, has yet to be constructed nearly thirty years after the 1993 Order.

The LUC’s condition regarding the Off-Site Infrastructure has been amended over time and was most recently restated in the LUC’s Amended Order Granting Successor Petitioner (As To Parcel 52), Ho`ohana Solar 1, LLC’s Motion for Modification and Time Extension dated November 1, 2021 (“Amended Order”). Pursuant to the Amended Order, the LUC issued the following condition regarding the Off-Site Infrastructure:

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 execute an amendment to the Memorandum of Understanding (dated 1993 and subsequent amendments in 2007, 2009, 2012, 2015, and 2020) 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 Hawaii’s Kunia Agricultural Park be completed no later than **June 30, 2023**. “Offsite-infrastructure” includes, but is not limited to, all utilities and appurtenant works, roadways, potable water lines, electrical utilities, sewer lines, utility connections, and the non-potable waterline appurtenances in place, complete.

See Exhibit A (emphasis added).

The LUC also imposed a specific condition regarding the non-potable waterline in relation to Parcel 52:

Royal Kunia Agricultural Park Non-Potable Water Connection. Prior to the connection of the Solar Project to the grid, Ho`ohana, at no cost to the State and concurrent with construction of the solar farm, design and provide an off-site, **non-potable waterline** from Reservoir 225 to the boundary of the Royal Kunia Agricultural Park (the “non-potable waterline”), using the design and specifications acceptable to the Department of Agriculture that were submitted to the Department of Planning and Permitting by RP2 Ventures, LLC.

Id.

Since the 1993 MOU, HDOA has agreed to five amendments to the 1993 MOU in

2007, 2009, 2012, 2015, and 2020, each extending the completion deadline of the Off-Site Infrastructure. Despite the rotating door of successor petitioners, HDOA has cooperated with each extension to allow the various developers time to complete the infrastructure. The continued delay has resulted in HDOA's inability to develop the agricultural park on the 150 acres since they were transferred to HDOA in 2004.

II. Current Status

The Off-Site Infrastructure, including the non-potable waterline, remains incomplete beyond the June 30, 2023 deadline, leaving the successor petitioners in violation of the Amended Order. HDOA and OPSD understand that construction on the non-potable waterline has commenced, and that the majority of the pipeline has been installed, with an expected completion date in the first half of 2024. HDOA and OPSD were also previously informed that Haseko intends to begin construction of the remainder of the Off-Site Infrastructure in the third-quarter of 2026. Haseko provided HDOA with a proposed fifth amended memorandum of understanding ("5th Amended MOU"), which, among other things, extended the completion for the Off-Site Infrastructure, excluding the non-potable waterline, by more than five years to September 30, 2028. HDOA disagreed with the proposed amendments, as stated in letters sent to Haseko on March 20, 2023 and July 5, 2023.

Following various meetings and discussions in November and December of 2023, HDOA, OPSD, and Haseko have agreed on a proposed path forward to address the Off-Site Infrastructure.

1. Haseko will design, construct, and maintain temporary potable water lines and electrical lines to service the Royal Kunia Agricultural Park to allow HDOA to begin development of agricultural lots sooner than the completion of the permanent utilities in 2028. Haseko will need to submit additional plans to the City and County of Honolulu Department of Planning and Permitting ("DPP") due to alignment differences between the permanent and temporary utilities.
2. The new deadlines proposed by Haseko and agreed to by HDOA are as follows:
 - Non-potable irrigation line will be completed and functional by 08/31/2024,
 - Potable water lines and electrical lines will be installed and functional by the end of 2025, and
 - Permanent utility infrastructure (sewer, water, electrical, communication) will be installed and functional by 09/30/2028.
3. As additional assurance, Haseko will issue a performance bond in favor of HDOA for interim utility plans that Haseko previously submitted to DPP, which

provides for a straight-line connection of utilities to the Royal Kunia Agricultural Park. The placement of the interim utilities is different from both the permanent and temporary utilities and the interim utilities are not intended to be built if the temporary utilities and permanent utilities are built as provided in the 5th Amended MOU.

4. Haseko acknowledged and agreed that they are responsible for ensuring that all utilities are functional and providing adequate service to the agricultural park boundary via temporary and permanent utility lines, unless such responsibility is conveyed to another entity in the future.

Haseko and HDOA are currently working together to prepare and execute a 5th Amended Memorandum of Understanding based on the above agreement. Additionally, HDOA and OPSD understand that Haseko is preparing to file a motion to extend the June 30, 2023 deadline for the Off-Site Infrastructure contained in the Amended Order.

Based on the foregoing, HDOA and OPSD respectfully request that the LUC consolidate the status conference scheduled for January 24, 2024, with the hearing on the anticipated motion to avoid a premature meeting before Haseko and HDOA have finalized the alternative plans and the 5th Amended Memorandum of Understanding.

Sincerely,



Sharon Hurd, Chairperson
Board of Agriculture



Mary-Alice Evans, Interim Director
Office of Planning and Sustainable
Development