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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)	OFFICE OF PLANNING AND
CORPORATION, a Hawaii corporation)	SUSTAINABLE DEVELOPMENT'S
)	TESTIMONY IN SUPPORT OF
)	PETITIONER'S MOTION FOR ORDER
)	AMENDING THE MEMORANDUM OF
To Amend the Agricultural Land Use)	UNDERSTANDING'S OFFSITE
District Boundary into the Urban Land Use)	INFRASTRUCTURE DATE IN
District for Approximately 503.886 acres at)	CONDITION A.1; EXHIBIT 1;
Waikele and Hoaeae, Ewa, Oahu, City and)	CERTIFICATE OF SERVICE
County of Honolulu, State of Hawaii, Tax)	
Map Key Nos. 9-4-02: 01, portion of 52, 70)	
and 71)	

**OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT'S TESTIMONY IN
SUPPORT OF PETITIONER'S MOTION FOR ORDER AMENDING THE
MEMORANDUM OF UNDERSTANDING'S OFFSITE INFRASTRUCTURE DATE IN
CONDITION A.1**

On February 15, 2024, Haseko Royal Kunia, LLC ("Petitioner") filed a motion for an order: 1) recognizing Haseko Royal Kunia, LLC's standing to seek and obtain the relief requested in the motion; and 2) amending the Land Use Commission's ("LUC") Amended Order Granting Successor Petitioner (as to Parcel 52) Hoohana Solar 1, LLC's Motion for Modification and Time Extension filed November 1, 2021 ("2021 D&O") to amend the Memorandum of Understanding's Offsite Infrastructure Date in Condition A.1 to be consistent with the Fifth Amendment to Amendment and Restatement of Memorandum of Understanding dated January

10, 2024, between Petitioner and the State of Hawaii Department of Agriculture (“HDOA”), and to delete the requirement that the Memorandum of Understanding be executed within six months of the 2021 D&O (“Motion”).

The Office of Planning and Sustainable Development (“OPSD”) supports Petitioner’s requested amendments, which reflect the agreement reached between Petitioner and HDOA on the subject of Condition A.1. OPSD’s testimony in support of the requested amendments is based on a review of the representations of Petitioner and documents filed in these proceedings, and previous communications between Petitioner, HDOA, and OPSD. This testimony supplements OPSD’s notification of its position to the LUC and Petitioner submitted on February 21, 2024 pursuant to Hawaii Administrative Rules § 15-15-70(f).

I. Procedural Background

On December 9, 1993, the LUC filed Findings of Fact, Conclusions of Law and Decision and Order reclassifying approximately 503.866 acres of land (“Petition Area”) from the State Agricultural District to the Urban District (“1993 D&O”) to develop the Royal Kunia II housing project (“Project”). Condition No. 22 of the 1993 D&O required then-Petitioner Halekua Development Corporation (“Halekua”) to convey an agricultural park to the State of Hawaii and provide off-site infrastructure to the park, pursuant to the terms of a Memorandum of Understanding dated March 30, 1993 (“MOU”), between the Petitioner and HDOA. On February 23, 2004, Halekua transferred a 150-acre parcel in the State Agricultural District adjacent to the Petition Area for the agricultural park (“Kunia Ag Park”) to HDOA. The deadline for completion of the off-site infrastructure contained in the MOU was extended by successive amendments to the MOU in 2007, 2009, 2012, 2015, 2020, and 2024.

On January 23, 2015¹, the LUC restated the requirement to provide off-site infrastructure to the Kunia Ag Park pursuant to the MOU as Condition A.1², which set a deadline to enter into an amended MOU within six months that requires completion of the off-site infrastructure by December 31, 2016. On October 7, 2020³, the LUC extended the deadline in Condition A.1 to reflect the 4th Amended MOU between Petitioner and HDOA, which requires completion of the

¹ By Order Granting Successor Petitioner (to Parcel 52) Hoohana 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.

² An amendment to the 1993 D&O filed on October 1, 1996 renumbered Condition 22 to Condition 19. The 2015 D&O further replaced Condition 19 with Conditions A.1 through A.3.

³ By Order Granting Successor Petitioner (as to Parcel 52), Hoohana Solar 1, LLC’s Motion for Modification and Time Extension.

off-site infrastructure for the Kunia Ag Park by June 30, 2023. Since that time, Petitioner and HDOA entered into a 5th Amended MOU (“5th Amended MOU”) dated January 10, 2024 that extends the deadline for completion of the permanent infrastructure to September 30, 2028 and specifies interim deadlines to provide the irrigation and temporary infrastructure. Petitioner now seeks to extend the deadline in Condition A.1 to reflect the 5th Amended MOU. The Motion also requests to delete the requirement that the MOU be executed within six months of the D&O because Petitioner and HDOA have already executed an amended MOU with the extended date.

There have been several changes in ownership of Petition Area lands since the 1993 D&O. On August 12, 2020, Petitioner acquired approximately 211 acres of the Petition Area, including TMK nos. (1) 9-4-002: 070, 078, and 071 (parcel 071 was subdivided into parcels 084, 085, and 086 in 2022), on which the Project is to be developed (“Project Area”). Other portions of the Petition Area are currently owned by RK II Partners LLC, Robinson Kunia Land LLC (Hoohana Solar 1, LLC as lessee), and RKES, LLC. *See* Petitioner’s Ex. 1.

II. Petitioner’s Royal Kunia II Housing Project

Petitioner’s Project is expected to provide a mixture of single-family and multi-family dwelling units totaling 1,850 units. The Project is planned to be built in five phases, with construction beginning in 2026 and completed by approximately 2039. *See* Petitioner Ex. 6. Royal Kunia II Master Plan Phasing. Phase 1A (Parcel D) contains 324 units, 260 single-family and 64 multi-family dwelling units. Construction of Phase 1A is scheduled to start in 2026 and continue through 2031.

Since acquiring the Project Area in August 2020, Petitioner has worked to complete its land development plan, the sequencing of various subdivisions necessary to develop the area near the Kunia Ag Park, and obtain the necessary approvals, permits, and other authorizations. As represented by Petitioner, these activities include:

- Consulted with adjoining landowners;
- Received approval for updated drainage master plans from the County’s Department of Planning and Permitting (“DPP”) (August 2021);
- Submitted a Traffic Impact Analysis Report to the DPP and the Hawaii Department of Transportation (August 2021);
- Submitted a revised master plan and schedules to the LUC (January 2022);

- Received a Cluster Housing Permit from the DPP approving development of Phase 1A, Parcel D (August 2022);
- Submitted a proposed affordable housing agreement (December 2022) and a revised affordable housing agreement (September 2023) to the DPP;
- Prepared a Draft Reconnaissance Level Survey for Royal Kunia II (August 2023) at the request of the State Historic Properties Preservation Division ("SHPD");
- Prepared a Draft Archaeological Inventory Survey Testing Strategy (December 2023) for SHPD; and
- Updated the Royal Kunia II Master Plan Phasing (February 2024).

III. 5th Amended MOU

On April 17, 2023, before the deadline to complete the Kunia Ag Park off-site infrastructure on June 30, 2023, Petitioner began discussing the needed off-site infrastructure for the Kunia Ag Park with HDOA. After various meetings and communications, some including OPSD, Petitioner and HDOA reached an agreement, which is reflected in the 5th Amended MOU. The 5th Amended MOU sets three deadlines for different pieces of the off-site infrastructure to the boundary of the Kunia Ag Park:

1. Construction of the irrigation infrastructure (non-potable water and pump station) must be completed by August 31, 2024;
2. Construction of the temporary infrastructure (functional electrical power and potable water for agricultural use only) must be completed by December 31, 2025; and
3. Construction of the permanent infrastructure (roadway access, potable water, electrical power, communications, and gravity sewer) must be completed by September 30, 2028.

Petitioner agreed to provide the temporary infrastructure necessary to support the Kunia Ag Park in advance of the permanent infrastructure so that HDOA can move forward with those plans as soon as possible. In addition, the 5th Amended MOU requires Petitioner to provide HDOA with a bond for the cost of the temporary infrastructure and a second bond for the cost of the permanent infrastructure.

Development of the Kunia Ag Park cannot move forward without the necessary infrastructure that Petitioner is required to provide. The Kunia Ag Park is intended to benefit

small, diversified agricultural farmers and production and will support the State's goal to increase agricultural self-sufficiency. In addition, HDOA has the option to develop and construct up to a maximum of 50 related agricultural farm dwellings or farm employee housing within the Kunia Ag Park. This creates the potential to address State interests in both housing availability and agricultural efficiency and safety. Consequently, HDOA, the agency directly impacted by Condition A.1, supports Petitioner's Motion. *See* OPSD Ex. 1.

IV. Archaeological Review

Petitioner commissioned a literature review and field survey ("LRFS") covering the Project Area. When potential historic features related to plantation agriculture were discovered, Petitioner consulted with the State Historic Preservation Division ("SHPD"). SHPD asked for a Reconnaissance Level Survey ("RLS") to verify and validate the features, an Archaeological Inventory Survey ("AIS"), and an Archaeological Inventory Survey Testing Strategy ("Testing Strategy") as a precursor to the AIS. The Petitioner has completed both the RLS and the Testing Strategy.

The RLS found that the natural vegetation and topography within the Project Area had been heavily altered by at least 100 years of intensive sugar cane agriculture and that no significant historic properties were found. *See* Petitioner Ex. 4. The RLS confirmed the location of seven previously identified historic properties within the Project Area associated with its sugar plantation use by the Oahu Sugar Company: a plantation road/railway alignment (SHIP No. 50-80-08-7671, Feature 3), a dam (SHIP No. 50-80-08-7671, Feature 4), another road (SHIP No. 50-80-08-7758, Feature 6), irrigation ditch segments (SHIP No. 50-09-2268, Features RK-1 and RK-2), a reservoir (SWCA-65875-006), and an artifact scatter from a former plantation camp (SWCA-65875-007). No other historic properties were found. The RLS evaluated these properties pursuant to Hawaii Administrative Rules §13-284-2 and §13-284-6(b) and concluded: "As these features are over fifty years in age, they qualify as 'historic properties' as defined under HAR §13-284-2. They do not, however, qualify as 'significant historic properties' under HAR §13-284-2, as they were not evaluated as significant under any of the HAR §13-284-6(b) criteria. For this reason, no further architectural work is recommended for the project." Petitioner Ex. 4, pg. 37.

SHPD requested that the AIS be conducted for the entire Project Area with a focus on the area of the plantation camp and the dry gulch, both of which are located in the southwestern

corner of the Petition Area (TMK's nos. (1) 9-4-002: 078 and 070, Phase 4 of the Royal Kunia II Master Plan). *See* Petitioner Exs, 1, 6, and 5, Figure 9. SHPD specified that:

The AIS will need to involve limited subsurface testing across the entire project area, to record baseline soils. General subsurface testing to record soils will extend into Parcel E [at the southwestern end of the Petition Area], while a more focused testing strategy needs to be developed here to determine the presence, boundaries, integrity, and significance of the former plantation camp (SWCA-65875-007). The dry gulch in this parcel also needs to be subject to a 100% pedestrian survey with limited testing . . .

Petitioner Ex. 5, Appendix A. The subject of the present Motion is the off-site infrastructure to the Kunia Ag Park, which does not appear to be in close proximity to the former plantation camp and dry gulch located in Phase 4 of the Project Area. Specifically, the irrigation infrastructure is adjacent to the northwestern border of the Petition Area and the temporary and permanent infrastructure are generally located in Phase 1 of the Project Area. *See* Petitioner Exs. 1 and 6.

Additionally, SHPD subsequently clarified in an email to Petitioner's consultant that the AIS subsurface testing would be limited to trenching with no requirement for shovel testing or stratigraphic excavation needed unless and until it becomes necessary as mitigation in Parcel E (i.e., Phase 4 of the Project Area). This is so that the development of Parcel D (i.e., Phase 1 of the Project Area) "can go ahead, barring the discovery of anything significant during trenching there, without having to wait for any slow archaeological excavations in the camp area, should such additional documentation be requested there based on the findings of the AIS." Petitioner Ex. 5, pg. 5.

OPSD has not received information on the status of the AIS from Petitioner, but this is not required before the LUC's consideration of the present Motion. While a completed AIS accepted by SHPD is necessary prior to any groundbreaking in the Project Area for purposes of compliance with the requirements of Hawaii Revised Statutes ("HRS") Chapter 6E, it is not necessary for this Motion, which is limited to extension of the deadline to complete off-site infrastructure the Kunia Ag Park.

V. Ka Paakai Analysis

Petitioner asserts that the information available is sufficient for the LUC to meet its constitutional obligation under Article XII, Section 7 of the Hawaii Constitution to preserve and protect customary and traditional rights of Native Hawaiians in deciding this Motion. OPSD

agrees. This Motion is solely a request to conform Condition A.1 to the 5th Amended MOU by extending the deadline to complete the existing obligation of Petitioner to provide off-site infrastructure to the Kunia Ag Park. The LUC made the same amendment in 2020 to conform Condition A.1 to the 4th Amended MOU. OPSD has reviewed the information and studies provided by Petitioner and finds that the work completed so far is sufficient for the LUC to determine that this deadline extension will not negatively impact customary and traditional rights of Native Hawaiians.

Petitioner further asserts that the findings of the Cultural Impact Assessment (“CIA”) prepared for the Hoohana Solar Energy Facility on parcel 52, which is adjacent to the Project, is applicable to the Petitioner’s property. The CIA encompassed the Waikele and Hoaeae Ahupuaa and stated that “regardless of the specific acreage or overall size of the proposed solar project, CIA work involves documenting and interpreting cultural connections and associations that go far beyond the immediate, physical . . . boundaries.” Petitioner Ex. 10, pg. 1 and Figures 1 and 8. Given that the scope of the CIA encompasses the two Ahupuaa, including Hoaeae where the Project Area is situated, and the Project Area’s proximity to the solar farm property, OPSD agrees with Petitioner’s conclusion that the CIA’s findings are relevant to the Project Area.

The CIA concluded that, “consistent with the decision of the Hawaii Supreme Court in *Ka Paakai O Kaaina v. Land Use Commission*, 94 Haw. 31, 74, 7 P.3d 1068, 1084 (2000), there are no valued cultural, historical, or natural resources in the project area and therefore no such resources – including traditional and customary native Hawaiian rights – will be affected or impaired by the proposed solar farm.” Petitioner Ex. 10, pg. 78. The CIA included an inventory of Native Hawaiian cultural and natural resources in the two Ahupuaa, and provided a detailed account of cultural and historical significance of the Waikele and Hoaeae Ahupuaa. *See* Petitioner Ex. 10, Table 2. There was community outreach to approximately 24 different individuals and organizations, but relatively little substantive feedback was received. *See* Petitioner Ex. 10, Table 1 and pg. 73. The CIA found that:

there are no specific extant (current or contemporary) cultural or historical resources of significance in the CIA project area; nor are there any ongoing traditional and customary practices in the CIA project area. The main reasons for this are:

1. The Hawaiian sense of place was essentially erased from the project area more than a century ago when it was transformed, and literally plowed under repeatedly,

by the introduction of mechanized sugarcane agriculture by the Oahu Sugar Company (this began in 1897, and shut down for good around 1995).

2. The plantation-era “feel” or sense of place has also been essentially erased from the landscape following the circa 1995 closure of sugar cane operations. . . .”

Petitioner Ex. 10, pg. 77. The CIA also found that the “traditional Hawaiian sense of land use or history...is overwhelmingly focused on the makai areas about two miles to the south, at, or very close to, the shoreline of Puuloa (Pearl Harbor) and the mouths of Kapakahi (the name for the lower reaches of Waikele Stream) and Hoaeae streams, where the prime loi kalo (irrigated taro) gardens, fishponds, major heiau, and village settlements once were concentrated.” Petitioner Ex. 10, pg. 78.

Based on the conclusions in this section and section IV above, OPSD believes that the information available is sufficient for purposes of granting Petitioner’s requested amendment, which is consistent with the Ka Paakai decision.

VI. Chapter 343 Review

Pursuant to HRS Chapter 343, an Environmental Impact Statement was prepared for Royal Kunia Phase II in 1989 that encompassed the entirety of the Petition Area and a subsequent Environmental Assessment was prepared for Royal Kunia Phase II, Increment 3 in 1996 to reflect modified components. Both documents were accepted by the respective approving authorities. Subsequently in 2021, DPP evaluated whether the previous environmental review for the Project would require supplementation. DPP issued a written determination dated September 24, 2021 (Petitioner Ex. 12) that additional environmental review under HRS Chapter 343 was not required because the proposed mixed-use project is similar to the previously reviewed project, the scope of the proposed action has not increased, and the intensity of environmental impacts has not increased. DPP’s written determination was published in The Environmental Notice on October 8, 2021.

VII. Recommendation

Petitioner’s request to amend Condition A.1 of the 2021 D&O to be consistent with the 5th Amended MOU and to delete the requirement that the MOU be executed within six months of the D&O will facilitate the construction of off-site infrastructure improvements needed by the Kunia Ag Park. The Kunia Ag Park contains prime agricultural land and can play a significant role in promoting food sustainability and providing farmworker housing. The Petitioner has

made a good faith effort in moving the Project ahead in compliance with applicable laws and in coordination with appropriate agencies since purchasing the property. OPSD recommends that the LUC approve the Motion.

DATED: Honolulu, Hawaii, March 22, 2024.

OFFICE OF PLANNING AND
SUSTAINABLE DEVELOPMENT
STATE OF HAWAII

Mary Alice Evans

MARY ALICE EVANS
INTERIM DIRECTOR

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Petition of)	DOCKET NO. A92-683
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HALEKUA DEVELOPMENT)	CERTIFICATE OF SERVICE
CORPORATION, a Hawai'i corporation)	
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County of Honolulu, Hawai'i,)	
Tax Map Key No: (1) 9-4-02:01, potion of)	
52, 70 and 71)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following by either hand delivery, depositing the same in the U.S. Postal Service by regular mail, or by electronic mail.

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DATED: Honolulu, Hawai'i, March 22, 2024.

OFFICE OF PLANNING AND
SUSTAINABLE DEVELOPMENT
STATE OF HAWAI'I

Mary Alice Evans

MARY ALICE EVANS
INTERIM DIRECTOR

JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



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March 18, 2024

State Office of Planning and Sustainable Development
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Attn: Mr. Aaron Setogawa

Dear Office of Planning and Sustainable Development,

The State of Hawaii, Department of Agriculture ("HDOA") stands in support of Petitioner's Motion. HDOA does not provide any comments on the legal arguments provided in the Motion.

I. HDOA Needs the Infrastructure to Manage an Operational Agricultural Park.

HDOA submits that the Fifth Amended Memorandum of Understanding supports HDOA's goal of protecting and promoting the utilization of Hawaii's agricultural resources in support of increasing agricultural self-sufficiency. Under Hawaii Revised Statutes, chapter 166, HDOA has jurisdiction and management control over public lands that are designated as agricultural parks. Currently, there are nine (9) Agricultural Parks across the state, including the Royal Kunia Agricultural Park. The Royal Kunia Agricultural Park is one of the land parcels at issue in this Motion. At the HDOA's agricultural parks, farmers lease individual lots at agricultural parks from HDOA. Last year, the legislature allowed farmers currently leasing land to request HDOA to extend their leases for up to an additional thirty-years. See Act 213, 2023. The impact of this new law allows current farmers and tenants to continue working on the land diligently, without fear of investing money into their farms and losing their leases due to a maximum tenancy. While this legislative revision assists existing farmers/tenants continue to utilize the land and provide to the local agricultural economy, this revision also hinders new farmers from leasing public lands through HDOA.

On Oahu, virtually all the lots at the 4 sub-divided Agricultural Parks, Waimanalo, Kahuku, Kalaeloa, and Waianae, are presently leased out to farmers. In fact, when leases of those lots go out to the public for bid, there are always many applicants who apply for the lot. For context, in the negotiation

bid process, applicants are required to blind bid how much that applicant is willing to pay in lease rent. The applicant who submitted the highest bid will be given the initial opportunity to accept the lease. It is important to note that HDOA completes a surface level review of the applicant's financials to ensure that the applicant is solvent. However, HDOA does not complete a full analysis of whether that applicant will be able to sustain the annual lease rent amount for the full lease tenure.

The only other way for new tenants to get an individual lot is to buy out the current tenant and be assigned the remainder of the lease term. This option often precludes new farmers, who may not be established financially, from leasing public lands. Therefore, the addition of the new individual lots at Royal Kunia Agricultural Park would greatly benefit HDOA and the new farmer community.

A well-known fact about farming is that farmers need water; crops and other products cannot grow without water. Similarly, farmers also need infrastructure, including but not limited to, electricity to keep their water pumps, timers, and other machinery and operations running. An agricultural park without infrastructure to provide these utilities is simply a large parcel of land, not an agricultural park. To promote agriculture, HDOA should provide a fully functioning agricultural park for the farmers, which includes basic utilities.

Haseko has promised HDOA it will construct the infrastructure to provide the agricultural park with the necessary utilities and HDOA intends to hold Haseko to their promise.

II. Haseko's Agreements with HDOA.

Initially, Haseko provided HDOA with a proposed fifth amended memorandum of understanding in April 2022, 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. This would mean that the promised infrastructure would be completed 30 years later than when the infrastructure was anticipated. While HDOA understood that there were certain and numerous hoops for the various developers to jump through, there was little construction, and only more requests for extensions of time. Accordingly, HDOA declined to sign the Memorandum because the completion date of 2028 was unacceptable.

There is no question that the Off-Site infrastructure, including the non-potable waterline was not completed by the June 30, 2023 deadline, as stated in the LUC Order. Currently, HDOA understands that construction on the

non-potable waterline is nearing completion. Specifically, the irrigation pumps are on the island and are scheduled to be installed this summer. HDOA was also informed that Haseko intends to begin construction of the remainder of the Off-Site Infrastructure in the third quarter of 2026.

HDOA submits that basic operational infrastructure to start the agricultural park sooner, is better than no operational infrastructure at all. HDOA wishes to subdivide and prepare Royal Kunia Agricultural Park for individual tenants as soon as possible but is hindered due to the lack of infrastructure hook-ups. Although this sentiment was repeatedly provided to Haseko, HDOA also re-explained this at the meetings and discussions in November and December of 2023.

After those meetings, Haseko and HDOA came to an agreement to address the Off-Site Infrastructure. The fully executed Fifth Amended Memorandum of Understanding fully documents HDOA's and Haseko's intentions and obligations. HDOA did review and provide revisions to the Fifth Amended Memorandum of Understanding prior to execution.

Pursuant to the Fifth Amended Memorandum of Understanding, Haseko will provide temporary operational utilities and infrastructure to the Agricultural Park. The operational utility hookups for water and electricity will allow HDOA to start subdividing and leasing land out to new tenants. The temporary infrastructure will also provide prospective tenants with the basic necessary utilities for their farms, allowing the agricultural park to be fully operational. In turn, this greatly benefits the agricultural community and assists the State in having locally grown products.

It is also important to note that Haseko agreed to bond the infrastructure project. The issuance of a performance bond will protect HDOA's interests in completing the Agricultural Park by a specific time. HDOA is pleased that the project is finally starting to move forward; and anticipates that this is the last extension necessary to finally get the agricultural park up and running.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brian Kau", is written over a light blue horizontal line.

BRIAN KAU, P.E.

Administrator and Chief Engineer

Agricultural Resource Management Division