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HASEKO ROYAL KUNIA, LLC

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

In the Matter of the Petition of	)	DOCKET NO. A92-683
)	
HALEKUA DEVELOPMENT	)	STIPULATED PROPOSED FINDINGS
CORPORATION, a Hawai'i corporation)	)	OF FACT, CONCLUSIONS OF LAW,
	)	AND DECISION AND ORDER
To Amend the Agricultural Land Use	)	GRANTING THE 2024 MOTION FOR
District Boundary into the Urban	)	ORDER AMENDING THE
Land Use District For Approximately	)	MEMORANDUM OF
503.886 acres at Waikele and Hō'ae'ae,	)	UNDERSTANDING'S OFFSITE
'Ewa, O'ahu, City and County of	)	INFRASTRUCTURE DATE IN
Honolulu, State of Hawai'i, Tax Map	)	CONDITION A.1.; CERTIFICATE OF
Key No. 9-4-02: 01, portion of 52, 70 and	)	SERVICE
71)	
_____)	

STIPULATED PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER GRANTING
THE 2024 MOTION FOR ORDER AMENDING THE MEMORANDUM OF
UNDERSTANDING'S OFFSITE INFRASTRUCTURE DATE IN CONDITION A.1.

The undersigned parties hereby agree and stipulate to the following proposed findings of fact, conclusions of law, and decision and order:

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER GRANTING THE 2024 MOTION
FOR ORDER AMENDING THE MEMORANDUM OF
UNDERSTANDING'S OFFSITE INFRASTRUCTURE DATE IN CONDITION A.1.

Successor Petitioner Haseko Royal Kunia, LLC, a Hawaii limited liability company ("Haseko" or "Petitioner") filed Haseko Royal Kunia, LLC's Motion for Order Amending the Memorandum of Understanding's Offsite Infrastructure Date in Condition A.1., seeking to further amend the Land Use Commission's ("LUC" or "Commission") Decision and Order issued on November 1, 2021, on February 15, 2024 ("Motion for Order Amending the Memorandum of Understanding's Offsite Infrastructure Date in Condition A.1." or "Motion"), requesting an order: 1) recognizing Haseko Royal Kunia, LLC's standing to seek and obtain the relief requested herein; and 2) amending the Commission's Amended Order Granting Successor Petitioner (as to Parcel 52) Ho'Ohana 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 ("5th Am MOU") and to delete the requirement that the Memorandum of Understanding be executed within six months of the 2021 D&O.

The Commission, having heard and examined the testimony, evidence, and argument of counsel for the Petitioner and other Parties presented during the hearing, along with the pleadings filed herein, and testimony received, makes the following

Findings of Fact, Conclusions of Law and Decision and Order Granting the Motion for Order Amending the Memorandum of Understanding's Offsite Infrastructure Date in Condition A.1. To the extent these Findings of Fact contain Conclusions of Law, they shall be so considered and construed.

FINDINGS OF FACT

PROCEDURAL MATTERS

1. 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 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 the Hawaii Department of Agriculture ("DOA"). 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 DOA. 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.

2. On January 28, 2015, the LUC entered its Order Granting Successor Petitioner (To Parcel 52) Ho`Ohana Solar LLC's Motion to Amend which restated the requirement to provide off-site infrastructure to the Kunia Ag Park pursuant to the MOU as Condition A.1., which set a deadline for the Petition Area landowners to enter into an amended MOU within six months that requires completion of the off-site infrastructure by December 31, 2016. On November 1, 2021, the LUC entered its Amended Order Granting Ho`Ohana's Motion For Modification and Time Extension, and extended the deadline in Condition A.1. to June 30, 2023.

3. On February 15, 2024, Haseko filed its Motion for Order Amending the Memorandum of Understanding's Offsite Infrastructure Date in Condition A.1., Memorandum In Support of Motion, Exhibits "1" - "12", Declaration of Peter D. Kwan, Declaration of Curtis T. Tabata, and Certificate of Service.

4. On February 22, 2024, the Office of Planning and Sustainable Development, State of Hawaii ("OPSD") filed its Notification of Position on Petitioner's Motion for Order Amending the Memorandum of Understanding's Offsite Infrastructure Date in Condition A.1., and Certificate of Service.

5. On February 26, 2024, Successor Petitioner Ho`Ohana Solar 1, LLC ("Ho`Ohana") filed its Statement of No Opposition to Haseko's Motion for Order Amending the Memorandum of Understanding's Offsite Infrastructure Date in Condition A.1., and Certificate of Service.

6. On March 1, 2024, RK II Partners LLC (“RK II Partners”) filed its Statement of No Objection to Haseko’s Motion for Order Amending the Memorandum of Understanding’s Offsite Infrastructure Date in Condition A.1., and Certificate of Service.

7. On March 7, 2024, the Department of Planning and Permitting, City and County of Honolulu, State of Hawaii (“DPP”), filed its letter stating no objection to Haseko’s Motion for Order Amending the Memorandum of Understanding’s Offsite Infrastructure Date in Condition A.1.

8. On March 25, 2024, the Commission distributed the notice of its scheduled April 4, 2024 meeting and agenda to the Statewide and Oahu mailing and email lists.

9. On March 27, 2024, OPSD filed its Testimony in Support of Petitioner’s Motion for Order Amending the Memorandum of Understanding’s Offsite Infrastructure Date in Condition A.1., Exhibit 1, and Certificate of Service.

10. On April 4, 2024, the Commission held its in-person meeting at the Homer A. Maxey Center Conference Room (Foreign-Trade Zone No. 9), 521 Ala Moana Boulevard, Honolulu, Hawaii 96813 to consider Haseko’s Motion for Order Amending the Memorandum of Understanding’s Offsite Infrastructure Date in Condition A.1. Curtis Tabata, Esq. and Benjamin Matsubara, Esq. appeared on behalf of Haseko; Jennifer Lim, Esq. appeared on behalf of Ho`Ohana; Terrence Lee, Esq., Derek Kobayashi, Esq., Eric Elkind, Esq. and Ernie Martin, Esq. appeared on behalf of RK II

Partners; Pono Arias, Esq. and Brad Saito, Esq. appeared on behalf of DPP; Alison Kato, Esq. appeared on behalf of the OPSD; Kelcie Nagata, Esq. appeared on behalf of the DOA; and Stephen Mau, Esq. appeared on behalf of Robinson Kunia Land, LLC.

11. The Commission provided two opportunities for public testimony, and no one appeared to provide public testimony and there was no request to provide public testimony.

12. The parties presented their positions on Haseko's Motion and there was no opposition, however, RK II Partners stated that they have a dispute with Haseko concerning the timing of certain infrastructure and that they are not waiving any rights or claims.

13. Following the presentations of the parties, the Commissioners entered into deliberations and Commissioner Ohigashi moved to approve Haseko's Motion and Commissioner Yamane seconded the motion to approve.

14. There being a vote tally of 9 ayes and 0 nays, the motion carried.

DESCRIPTION OF THE PETITION AREA

15. The Petition Area is located at Waikele and Ho'ae'ae, Ewa, Oahu, and is identified as TMK Nos. (1) 9-4-002: 001, 0052, 070, 078, 079, 084, 085 and 086; is comprised of approximately 503.866 acres; and was reclassified from the Agricultural Land Use District to the Urban Land Use District by the Commission by that certain Findings of Fact, Conclusions of Law and Decision and Order, filed December 9, 1993.

16. The current ownership of the Petition Area is as follows: 1) **Haseko**: TMK Nos. (1) 9-4-002: 070, 078, 084, 085 and 086; 2) **RK II Partners**: TMK No. (1) 9-4-002: 001; 3) **Robinson Kunia Land LLC**: (1) 9-4-002: 052; and 4) **RKES, LLC**: (1) 9-4-002: 079.

[Petitioner Exhibit "1"]

17. Ho`Ohana is not a Petition Area landowner. It is a lessee of TMK (1) 9-4-002: 052, where it has substantially completed the development of the solar farm pursuant to the 2021 D&O. [Ho`ohana Statement of No Opposition]

HASEKO'S MASTER PLAN

18. By letter dated January 3, 2022, Haseko submitted to the LUC its revised master plan and schedules dated December 30, 2021 in compliance with Condition 2 in the 2021 D&O. [Petitioner Exhibit "3"]

19. An updated Royal Kunia II Master Plan Phasing was prepared by Haseko on February 7, 2024. Haseko's updated master plan describes the development of 1850 residential units and required infrastructure in five phases with construction commencing in approximately 2026 and completion by approximately 2039. [Petitioner Exhibit "6"]

KUNIA AGRICULTURAL PARK

20. On April 17, 2023, Haseko met with the DOA to discuss the Irrigation Line Plans and Utility Services Plans. [Declaration of Peter D. Kwan]

21. On April 27, 2023, Haseko transmitted the proposed Fifth Amendment to Amendment and Restatement of Memorandum of Understanding (“5th Am MOU”). Within the proposed 5th Am MOU was a proposed extension of the Kunia Ag Park’s Permanent Infrastructure completion date, not including the Irrigation Infrastructure, to September 30, 2028. [Declaration of Peter D. Kwan]

22. On May 19, 2023, Haseko reached out to the DOA to see if it had any questions regarding the draft 5th Am MOU, and to inform the DOA that Haseko Royal Kunia, LLC and Ho‘Ohana Solar 1, LLC had jointly let out a bid for the “Irrigation Line for the Royal Kunia Agricultural Park project”, with a bid due date of June 9, 2023. [Declaration of Peter D. Kwan]

23. On June 30, 2023, the completion date deadline for the Kunia Ag Park offsite infrastructure expired per condition A.1. [Petitioner Ex. “7”]

24. On July 5, 2023, the DOA responded to Haseko regarding the draft 5th Am MOU and informed Haseko that the proposed extension to September 30, 2028 was not acceptable, and that if Haseko had a better alternative, please submit soon. [Petitioner Ex. “8”].

25. On July 24, 2023, Haseko informed the DOA that the selected contractor, Paradigm Construction, LLC, mobilized and started installing the 12” section of the Irrigation Line for the Kunia Ag Park. [Declaration of Peter D. Kwan]

26. In September of 2023, Ho`Ohana's obligation under Condition B.1. to construct the irrigation non-potable water line was completed. Ho`Ohana also has an obligation to maintain the water line pursuant to Condition B.1. The grant of easement required under Condition B.1. has been given to the DOA, and the water line is ready for operation once Haseko installs the pump. [Tr. 4/4/24 55:5-55:21]

27. Ho`Ohana has no obligations under Condition A.1. or any of the other "A" conditions under the 2021 D&O. [Ho`Ohana Statement of No Opposition]

28. On November 6, 2023, Haseko provided the DOA with an update of the Project, including the agreement with Robinson Kunia Land, LLC regarding onsite and offsite agreements and easements; agreements with Ho`Ohana; the ongoing construction of the offsite Irrigation Line for the Kunia Ag Park; the status of the TIAR's; discussions with Jupiter regarding infrastructure; coordinating system upgrade planning with BWS; negotiating a MOU with DOT; obtaining an approved Jurisdictional Determination letter from the Army Corps of Engineers, the filing of reports with the State Historical Preservation Division, and the planning of major onsite roadways. [Declaration of Peter D. Kwan]

29. On November 27, 2023, the OPSD coordinated a Zoom meeting between the OPSD, the DOA and Haseko to discuss the Project status and a time extension for the Agricultural Park Offsite Infrastructure. The DOA informed Haseko at this meeting that it needed temporary infrastructure consisting of functional electrical power and

potable water for agricultural use only at the Kunia Ag Park by the end of 2025.

[Declaration of Peter D. Kwan]

30. After the November 27, 2023 Zoom meeting, Haseko worked on identifying an alignment and determining the feasibility of providing electrical power and potable water for agricultural use (“Temporary Infrastructure”) by the end of 2025 to meet the DOA’s immediate needs for the Kunia Ag Park. [Declaration of Peter D. Kwan]

31. On November 30, 2023, Haseko requested the potable water volume and electrical power load required for the Temporary Infrastructure, and on December 1, 2023, the DOA provided the gallons per day of potable water and electrical power load needed by the Kunia Ag Park for both the initial agricultural use, and also for the long-term full build out inclusive of its residential component. [Declaration of Peter Kwan]

32. On December 12, 2023, the DOA and Haseko held a Zoom meeting to discuss multiple deadlines for the different portions comprising the offsite infrastructure for the Kunia Ag Park. Haseko proposed completing the offsite irrigation line and pump station by the end of August 2024 (“Irrigation Infrastructure”); the Temporary Infrastructure by the end of 2025; and roadway access and permanent utilities infrastructure by September 30, 2028 (“Permanent Infrastructure”). The DOA indicated its acceptance of the deadlines subject to negotiating and executing the 5th Am MOU. [Declaration of Peter D. Kwan]

33. On December 19, 2023, Haseko sent a revised draft 5th Am MOU to reflect the deadlines that were agreed to in the December 12, 2023 Zoom meeting with the DOA. [Declaration of Peter Kwan]

34. On December 28, 2023, the DOA sent to Haseko the draft 5th Am MOU with the DOA's revisions. [Declaration of Peter Kwan]

35. On January 5, 2024, Haseko accepted all of the DOA's revisions and transmitted the final version of the 5th Am MOU, signed by Haseko, to the DOA. [Declaration of Peter Kwan]

36. On January 10, 2024, the DOA returned the fully executed 5th Am MOU to Haseko. [Declaration of Peter Kwan and Petitioner Ex. "9"]

37. The 5th Am MOU, dated January 10, 2024, contains three separate categories and deadlines for the Kunia Ag Park offsite infrastructure: 1) Irrigation Infrastructure, 2) Temporary Infrastructure, and 3) Permanent Infrastructure. The Irrigation Infrastructure for non-potable irrigation water is comprised of the water line and pump station and shall be completed by August 31, 2024. The Temporary Infrastructure is comprised of functional electrical power and potable water and shall be completed by December 31, 2025. The Permanent Infrastructure is comprised of a roadway, potable water, electrical and communications, and gravity sewer and shall be completed by September 30, 2028. [Petitioner Ex. "9"]

38. The DOA supports Haseko's Motion. [Tr. 4/4/24 60:4-60:6]

39. The DOA needs the Kunia Ag Park and its offsite infrastructure to achieve the DOA's goal of increasing agricultural self-sufficiency. [Tr. 4/4/24 60:7-60:15]

40. The plans to develop the Kunia Ag Park are shovel ready, and the 5th Am MOU strengthens the DOA's position in seeking funding for the park. [Tr. 4/4/24 60:16-60:22]

ARCHAEOLOGICAL REVIEW

41. 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. Petitioner has completed both the RLS and the Testing Strategy. [OPSD Testimony, pg. 5]

42. 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. [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 ("HAR") §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; OPSD Testimony, pg. 5]

43. 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). [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; OPSD Testimony, pg. 5-6]

44. The subject of Haseko’s 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. [Petitioner Exs. “1” and “6”; OPSD Testimony, pg. 6]

45. 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 finding of the AIS.” [Petitioner Ex. “5”, pg. 5; OPSD Testimony, pg. 6]

46. OPSD has not received information on the status of the AIS from Petitioner, but this is not required before the LUC’s consideration of Haseko’s 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 for the Kunia Ag Park.

[OPSD Testimony, pg. 6]

KA PA`AKAI ANALYSIS AND HRS CHAPTER 343

47. Haseko's Motion seeks to extend the date for the completion of the offsite infrastructure for the Kunia Ag Park to achieve consistency between condition A.1. and the MOU, and it is procedural and does not affect the rights or liabilities of any other party. [Tr. 4/4/24, 78:3-78:16]

48. Haseko's Motion does not require a HRS Chapter 343 statement or further analysis under the *Ka Pa`akai* case. [Tr. 4/4/24, 78:3-78:16]

49. The Commission's decision on Haseko's Motion is also not an "act" or "action" that will affect Native Hawaiian customary and traditional rights under the *Ka Pa`akai* case, and the action being requested for the purposes of HRS Chapter 343 is simply an extension of time that will not result in any changed environmental impacts, and therefore analysis under the *Ka Pa`akai* case and a supplemental environmental impact statement are not required at this time. [Tr. 4/4/24 83:6-84:4]

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

1. HRS §205-1(c) authorizes the Commission to “adopt rules guiding its conduct[.]”
2. As defined in HAR §15-15-03,
“Proceeding” means any matter brought before the commission over which the commission has jurisdiction and shall include, but not be limited to:
 - (1) Petitions for district boundary amendment;
 - (2) Petitions for special permit;
 - (3) Proceedings for the adoption, amendment, or repeal of rules under sections 91-3 and 205-7, HRS;
 - (4) Petitions for declaratory orders under section 91-8, HRS;
 - (5) An investigation or review instituted or requested to be initiated by the commission; and
 - (6) All other matters in the administration of chapter 205, HRS.
3. Pursuant to HAR §15-15-70(a), any party may make a motion before, during, or after the close of hearing.
4. Pursuant to HAR §15-15-94(a), if a petitioner desires to have a modification or deletion of a condition that was imposed by the Commission, or modification of the Commission’s order, the petitioner shall file a motion in accordance with HAR §15-15-70 and serve a copy on all parties to the boundary amendment proceeding in which the condition was imposed or in which the order was

issued, and to any person that may have a property interest in the subject property as recorded in the county's real property tax records at the time the motion is filed.

5. HRS §91-10(5) provides "Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence."
6. HAR §15-15-59(a), provides that "...Unless otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence and the burden of persuasion."
7. Pursuant to HAR §15-15-94(b), for good cause shown, the Commission may act to modify or delete any of the conditions imposed or modify the Commission's order.
8. The courts have recognized that an agency, acting as factfinder, has the discretion to determine the credibility of a witness and weigh the evidence before it.¹
9. HAR §11-200.1-11(d) provides "Agencies shall not, without careful examination and comparison, use past determinations and previous EIS's to apply to the

¹ *State v. Pioneer Mill Co., Ltd.*, 64 Haw. 168, 179, 637 P. 2d 57, 65 (1996) (citing *Territory v. Adelmeyer*, 45 Haw. 144, 163, 363 P.2d 979, 989 (1961)); *State v. Eastman*, 81 Hawai'i 131, 139, 913 P.2d 57, 65 (1996); *Sierra Club v. D.R. Horton-Schuler Homes, LLC*, 136 Hawai'i 505, 52, 364 P.3d 213, 230 (2015); *In re Gray Line Hawaii, Ltd.*, 93 Hawai'i 45, 52-53, 995 P.2d 776, 783-784 (2000); and *Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015)).

action at hand. The action for which a determination is sought shall be thoroughly reviewed prior to the use of previous determinations and previously accepted EIS's. Further, when previous determinations and previous EIS's are considered or incorporated by reference, they shall be substantially relevant to the action being considered."

10. Article XI, Section 1, of the Hawai'i State Constitution requires the State to conserve and protect Hawai'i's natural beauty and all natural resources, including land, water, air, minerals and energy sources and to promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.
11. Article XI, Section 1, of the Hawai'i State Constitution states that all public natural resources are held in trust by the State for the public benefit, and the State should make appropriate assessments and require reasonable measures to protect public natural resources, while applying a higher level of scrutiny where public natural resources are used for economic gain. *Kaua'i Springs, Inc. v. Planning Comm'n of Cnty. of Kaua'i*, 133 Hawai'i 141, 324 P.3d 951 (2014).
12. Article XI, Section 3, of the Hawai'i State Constitution requires the State to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands.

13. Article XI, Section 7, of the Hawai'i State Constitution states that the State has an obligation to protect, control and regulate the use of Hawai'i's water resources for the benefit of its people.

14. The Hawai'i Supreme Court has required a comprehensive Chapter 343 analysis for an entire project where there is a use of State or county lands, and where utility or infrastructure connections are made with State or county facilities.

Umberger v. Department of Land and Natural Resources, 140 Hawai'i 500, 403 P.3d 277 (2017)(use of State land includes permitting program for aquarium fish collection in State marine conservation district); *Sierra Club v. Office of Planning, State of Hawai'i*, 109 Hawai'i 411, 126 P.3d 1098 (2006)(Chapter 343 analysis for entire project required at reclassification stage and the development proposed a use of State land because it involved tunnelling under State land); *Protection of North Kohala Coastline v. County of Hawai'i*, 91 Hawai'i 94, 103, 979 P.2d 1120, 1129 (1999)(Chapter 343 analysis required where development involved construction of two underpasses under a State highway); *Kahana Sunset Owners Association v. County of Maui*, 86 Hawai'i 66, 74, 947 P.2d 378, 386 (1997)(Chapter 343 analysis required for entire project where proposed drainage system would run under State land).

15. Based on the facts of this case, a Chapter 343 analysis for Haseko's Motion is not required because the subject of the motion is procedural and the action is simply an extension of time that will not result in any changed environmental impacts.
16. Article XII, Section 7, of the Hawai'i State Constitution requires the Commission to protect Native Hawaiian traditional and customary rights. The State of Hawai'i and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised Native Hawaiian rights to the extent feasible. *See Pub. Access Shoreline Hawai'i v. Hawai'i Cnty. Planning Comm'n*, 79 Hawai'i 425, 450 n.43, 903 P.2d 1246, 1271 n.43 (1995).
17. The Hawai'i Supreme Court has recognized an affirmative duty on State agencies to preserve and protect traditional and customary native Hawaiian rights, and the State and its agencies have "the power to protect these rights and to prevent any interference with the exercise of these rights". In addition, "state agencies such as the LUC may not act without independently considering the effect of their actions on Hawaiian traditions and practices". *Ka Pa'akai O Ka'Aina v. Land Use Commission*, State of Hawai'i, 94 Hawai'i 31, 7 P.3d 1068 (2000)("... state agencies such as the LUC may not act without independently considering the effect of their actions on Hawaiian traditions and practices").
18. In order for the LUC to fulfill its constitutional duty to protect Native Hawaiian traditional and customary practices, the LUC has the duty to determine:

- a. The identity and scope of valued cultural, historical, or natural resources in the petition area, including the extent to which traditional and customary Native Hawaiian rights are exercised in the Petition area;
- b. The extent to which those resources – including traditional and customary Native Hawaiian rights - will be affected or impaired by the proposed action; and
- c. The feasible action, if any, to be taken by the LUC to reasonably protect Native Hawaiian rights if they are found to exist.

Ka Pa'akai, 94 Hawai'i at 47, P.3d at 1084.

19. Based on the facts of this case, further analysis under the *Ka Pa'akai* case is not required for Haseko's Motion, the subject of which is procedural, because the Commission's decision on the Motion is not an "act" or "action" that will affect Native Hawaiian customary and traditional rights under the *Ka Pa'akai* case.
20. The LUC concludes that its decision and findings to grant Haseko's Motion is consistent with its duties arising under Article XI, Section 1, Article XI, Section 3, Article XI, Section 7 and Article XII, Section 7 of the Hawai'i State Constitution, based on the records and files in this matter and the factual findings above.
21. Based upon the record and files herein and the findings set forth above, the Commission concludes that Petitioner has met its burden and there is a

preponderance of evidence in the record and good cause to support Haseko's Motion.

DECISION AND ORDER

The LUC, having duly considered the written and oral arguments presented by the Applicant, City and County of Honolulu, the Office of Planning and Sustainable Development, the Department of Agriculture, Ho`Ohana Solar 1, LLC, Robinson Kunia Land, LLC and RKII Partners LLC, and a motion having been made and seconded at the meeting on April 4, 2024 held at the Homer A. Maxey Center Conference Room (Foreign-Trade Zone No. 9), 521 Ala Moana Boulevard, Honolulu, HI 96813, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion,

HEREBY ORDERS that the Haseko's Motion is GRANTED and that pursuant to HRS Chapter 205 and the Commission Rules under HAR Chapter 15-15, upon consideration of the Commission decision-making criteria under HRS §205-17 and based upon the preponderance of the evidence, the Commission determined and concludes that Haseko's Motion is reasonable, not violative of HRS §205-2 and Part III of HRS Chapter 205, and is consistent with the policies and criteria established pursuant to HRS §§205-16, 205-17 and 205A-2.

IT IS FURTHER ORDERED that Condition A.1. in the 2021 D&O is amended and the following Condition A.1. shall replace Condition A.1. in the 2021 D&O.

Condition A.1.: Royal Kunia Agricultural Park. Haseko Royal Kunia, LLC and the Department of Agriculture have executed the Fifth Amendment to the Memorandum of Understanding dated January 10, 2024 (“5th Am MOU”). The original Memorandum of Understanding was dated 1993 and subsequently amended in 2007, 2009, 2012, 2015, and 2020. The 5th Am MOU separates the offsite infrastructure for the Royal Kunia Agricultural Park in three categories: 1) Irrigation Infrastructure, 2) Temporary Infrastructure, and 3) Permanent Infrastructure. The Irrigation Infrastructure for non-potable irrigation water is comprised of the water line and pump station and shall be completed by August 31, 2024. The Temporary Infrastructure is comprised of functional electrical power and potable water and shall be completed by December 31, 2025. The Permanent Infrastructure is comprised of a roadway, potable water, electrical and communications, and gravity sewer and shall be completed by September 30, 2028.

DATED: Honolulu, Hawai`i, May 31, 2024.

HASEKO ROYAL KUNIA, LLC

By /s/ Curtis T. Tabata

Benjamin M. Matsubara

Curtis T. Tabata

Its Attorneys

STATE OF HAWAII,
OFFICE OF PLANNING AND SUSTAINABLE
DEVELOPMENT

By /s/ Alison S. Kato

Alison S. Kato, Esq.
Deputy Attorney General
Its Attorney

STATE OF HAWAII,
DEPARTMENT OF AGRICULTURE

By /s/ Kelcie K. Nagata

Kelcie K. Nagata, Esq.
Deputy Attorney General
Its Attorney

CITY AND COUNTY OF HONOLULU,
DEPARTMENT OF PLANNING AND PERMITTING

By /s/ Pono I. Arias

Brad T. Saito, Esq.
Pono I. Arias, Esq.
Deputies Corporation Counsel
Its Attorneys

HO`OHANA SOLAR 1, LLC

By /s/ Jennifer A. Lim

Jennifer A. Lim, Esq.
Its Attorney

ROBINSON KUNIA LAND, LLC.

By /s/ Stephen K.C. Mau _____

Stephen K.C. Mau, Esq.
Its Attorney

RK II PARTNERS LLC

By /s/ Terrence M. Lee _____

Terrence M. Lee, Esq.
Derek Kobayashi, Esq.
Eric Elkind, Esq.
Ernie Martin, Esq.
Its Attorneys

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition of	)	DOCKET NO. A92-683
)	
HALEKUA DEVELOPMENT	)	CERTIFICATE OF SERVICE
CORPORATION, a Hawai'i corporation))	
)	
To Amend the Agricultural Land Use)	
District Boundary into the Urban)	
Land Use District For Approximately)	
503.886 acres at Waikele and Hō`ae`ae,)	
`Ewa, O`ahu, City and County of)	
Honolulu, State of Hawai'i, Tax Map)	
Key No. 9-4-02: 01, portion of 52, 70 and)	
71)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that an e-timestamped of the foregoing document was duly served upon the following **AS INDICATED BELOW** on May 31, 2024.

MARY ALICE EVANS, DIRECTOR	HAND-DELIVERY
KATIA BALASSIANO	
Office of Planning and Sustainable Development, State of Hawai'i	
235 South Beretania Street, Room 600	
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ALISON S. KATO, ESQ.	HAND-DELIVERY
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HAND-DELIVERY

BRIAN KAU
JANICE FUJIMOTO
Department of Agriculture, State of Hawai'i
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U.S. CERTIFIED MAIL
RETURN RECEIPT
REQUESTED

KELCIE K. NAGATA, ESQ.
Deputy Attorney General
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HAND-DELIVERY

RK II PARTNERS LLC
c/o SCHLACK ITO
ATTN: DEREK R. KOBAYASHI, ESQ.
745 Fort Street, Suite 1500
Honolulu, HI 96813, and

HAND-DELIVERY

c/o Lee & Martin, LLLP
ATTN: TERRENCE M. LEE, ESQ.
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JUPITER HOLDINGS LLC
ATTN: MR. NORMAN I. TATCH
24 Corporate Plaza, Suite 100
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HAND-DELIVERY

U.S. CERTIFIED MAIL
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REQUESTED

HOOHANA SOLAR 1, LLC
ATTN: JENNIFER A. LIM, ESQ.
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Honolulu, HI 96822

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REQUESTED

RKES, LLC
ATTN: PATRICK K. KOBAYASHI
1288 Ala Moana Boulevard, Suite 201
Honolulu, HI 96814

U.S. CERTIFIED MAIL
RETURN RECEIPT
REQUESTED

DATED: Honolulu, Hawai'i, May 31, 2024.

Of Counsel:
MATSUBARA, KOTAKE & TABATA
A Law Corporation

/s/ Curtis T. Tabata
BENJAMIN M. MATSUBARA
CURTIS T. TABATA
Attorneys for
HASEKO ROYAL KUNIA, LLC