BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAIʻI

In the Matter of the Petition of HALEKUA DEVELOPMENT CORPORATION, a Hawaiʻi corporation To Amend the Agricultural Land Use District Boundary into the Urban Land Use District for Approximately 503.886 Acres at Waikele and Hoʻaeʻae, ʻEwa, Oʻahu, City and County of Honolulu, State of Hawaiʻi, Tax Map Key No. 9-4-02: 1, portion of 52, 70 and 71	DOCKET NO. A92-683 PROPOSED ORDER GRANTING SUCCESSOR PETITIONER (TO PARCEL 52), HOʻOHANA 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; CERTIFICATE OF SERVICE

PROPOSED ORDER GRANTING SUCCESSOR PETITIONER (TO PARCEL 52)
HOʻOHANA 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

AND

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12/19/14

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAIʻI

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PROPOSED ORDER GRANTING SUCCESSOR PETITIONER (TO PARCEL 52)
HOʻOHANA 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

On August 11, 2014 Hoʻohana Solar 1, LLC (hereinafter "**Hoʻohana**" or "**Successor Petitioner**"), as Successor Petitioner to a portion of the original 504.865 acre Petition Area identified as Tax Map Key ("**TMK**") No. 9-4-002: 052 ("**Parcel 52**") filed with the Land Use Commission of the State of Hawaiʻi ("**Commission**") a *Motion for Order Amending the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed on October 1, 1996* in Docket No. A92-683 (hereinafter the "**Motion to Amend**"), requesting the Commission to: (1) recognize Hoʻohana as the Successor Petitioner to Parcel 52 in this Docket; (2) issue an order modifying the Commission's *Findings of Fact, Conclusions of Law, and Decision and Order dated October 1, 1996*, as amended, to expressly authorize the use of Parcel 52 for solar farm development for an interim period of time; and (3) delete Condition No. 21, or in the alternative, approve the proposed lease of Parcel 52 to Hoʻohana pursuant to the requirements of Condition No. 21.

The Commission, having examined the testimony, evidence and arguments of counsel presented during the hearings, along with the pleadings filed by all parties herein, hereby makes the following findings of fact, conclusions of law, and decision and order:

I. FINDINGS OF FACT

A. PROCEDURAL MATTERS

1. On August 14, 1992, original Petitioner Halekua Development Corporation ("**Halekua**") filed with the Commission a Petition for Land Use District Boundary Amendment to reclassify approximately 504.865 acres of land located in Waikele and Hoʻaeʻae, in the district of ʻEwa on the Island of Oʻahu (the "**Petition Area**") from the State Land Use Agricultural District to the State Land Use Urban District (the "**Petition for DBA**"). [1996 Order, FOF 1, at 2]

2. Halekua filed an Addendum to its Petition for DBA on November 10, 1992, clarifying Petitioner's interest in the Petition Area. [1996 Order, FOF 2, at 2]

3. The Commission held hearings on the Petition for DBA on December 3 and 4, 1992, and March 31, 1993, pursuant to a public notice published on October 22, 1992. By Findings of Fact, Conclusions of Law, and Decision and Order dated December 9, 1993, the Commission granted Halekua's Petition for DBA ("**1993 Order**"). [1996 Order, FOF 4, at 3]

4. On August 1, 1995, Halekua filed a Motion to Change Ownership Interest in the Petition Area to convey two parcels of approximately 60 acres and 63 acres zoned I-1 (Limited Industrial) and a parcel of approximately 9 acres zoned A-1 (Low-Density Apartment) to HRT, Ltd. (now HRT Realty, LLC), which the Commission granted by Order Granting Motion to Change Ownership Interest in the Petition Area filed on September 19, 1995.

5. On September 6, 1995, in response to Halekua's oral request to correct the metes and bounds description of the Petition Area, the Commission issued its Order Granting Motion to Correct Metes and Bounds Description of the Petition Area. The Petition Area was thereafter comprised of approximately 503.886 acres (rather than the original 504.865 acres). [1996 Order, FOF 11, at 4-5]

6. On June 25, 1996, Halekua filed a Motion to Amend the Docket A92-683 ("**Halekua 1996 Motion to Amend**") to remove the originally proposed 160 acre golf course from the development plan for the Royal Kunia Phase II project, thereby decreasing the overall density of the Royal Kunia Phase II project, and increasing the size of the school site and public park. On October 1, 1996, the Commission issued its Amended Findings of Fact, Conclusions of Law, and Decision and Order as to the 503.886 acre Petition Area ("**1996 Order**") granting Halekua's 1996 Motion to Amend for the development of the Royal Kunia Phase II project.

7. On July 15, 2013, Canpartners IV Royal Kunia Property LLC ("**Canpartners**"), as the fee owner of the portions of the Petition Area identified by TMK Nos. 9-4-002: 071 and 079 (por.), filed a Motion for Order Amending the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed on October 1, 1996 to modify Condition No. 2 to clarify Petitioner's responsibilities for implementing transportation improvements. Specifically, to clarify that the area from the Kunia Interchange up to Cane Haul Road is a regional traffic improvement, rather than a local traffic improvement.

8. On October 7, 2013 the Commission issued its Findings of Fact, Conclusions of Law, and Decision and Order, amending certain findings of fact in the 1996 Order, and modifying Condition No. 2 of the 1996 Order ("**2013 Order**"). The 1993 Order, 1996 Order, and 2013 Order are collectively referred to as the "**Halekua Orders**".

9. Specifically, finding of fact 160A was added and finding of fact 161 was revised under the 2013 Order to read as follows:

> FOF 160A. The State Department of Transportation ("**DOT**") has clarified Petitioner's responsibilities for local and regional transportation improvements and further analysis of the transportation systems in the area as follows:
>
> A. All improvements required to mitigate the impacts of the proposed development north of the Cane Haul Road intersection with Kunia Road to the northernmost boundary of Royal Kunia Phase II, i.e., at the northern boundary of the State Agricultural Park, would be considered as local or direct transportation mitigation improvements to be provided by Petitioner at no cost to the State. All improvements including but not limited to the Interstate H-1 Kunia Interchange and Kunia Road, south of the intersection with the Cane Haul Road would be considered regional transportation mitigation improvements for which Petitioner would provide its pro rata share contribution.
>
> B. Petitioner has proposed a temporary third northbound lane as an interim measure to allow the Petitioner to proceed with the project. Petitioner has agreed to provide an analysis of traffic projections for each lane turning movement on Kunia Road at its intersection with South Kupuna Loop and North Kupuna Loop based on existing 2013 traffic counts to validate that an interim third northbound shared through/right turn lane on Kunia road at South Kupuna Loop will be operationally acceptable to DOT up to a specified trip generation threshold of the project based on the number of dwelling units and/or applicable units developed for light industrial or business use. If the analysis is acceptable to DOT, Petitioner agrees to fund, design and construct the interim third northbound lane on Kunia Road between the Cane Haul Road intersection and North Kupuna Loop intersection, prior to the issuance of any building permit for Royal Kunia Phase II.
>
> C. DOT requires Petitioner to provide a permanent third northbound through lane with a dedicated right-turn lane into South Kupuna Loop and North Kupuna Loop when the Royal Kunia Phase II development reaches the specified threshold for the interim third northbound lane. The interim and permanent third northbound lanes should both be consistent with the revised Traffic Impact Study ("**TIS**") that includes the Kunia Interchange Alternatives Report and that is acceptable to DOT. Petitioner will be required to identify constraints and show that the proposed mitigative improvements are constructible and feasible.

D. Petitioner will complete the analysis of the entire transportation system in the area, including the Interstate H-1 Kunia Interchange and Kunia Road north of the Kunia Interchange to the northernmost boundary of Royal Kunia Phase II, in order for DOT and Petitioner to identify and determine the regional and local transportation impacts and required mitigation improvements.

E. Petitioner will complete the Kunia Interchange Alternatives Report, as part of the revised TIS, to analyze the impacts of the proposed Phase II project's traffic on the Kunia Interchange and evaluate alternatives that will mitigate the impacts.

FOF 161. The DOT comments that Petitioner should be required to provide the following:

A. All of the other improvements needed (which will not be provided by the Village Park and Royal Kunia, Phase I projects) to make Kunia Road a 4-lane highway with auxiliary lanes for both left and right turning movements (between Cane Haul Road Intersection and the northernmost boundary of Royal Kunia, Phase II) and a third northbound lane between Cane Haul Road Intersection and the north Kupuna Loop Intersection.

[2013 Order, FOF 22, at 7]

10. Under the 2013 Order, the Commission amended Condition No. 2 of the 1996 Order to provide as follows:

2. Petitioner shall fund, design, and construct the local transportation improvements necessitated by the proposed development, north of the Cane Haul Road intersection with Kunia Road, as determined and approved by the State Department of Transportation (DOT) and the City and County of Honolulu, Department of Transportation Services, including without limitation the dedication of any rights-of-way to the State or County. Petitioner shall provide its fair share contribution toward regional transportation mitigation improvements, including but not limited to the Interstate H-1 Kunia Interchange and Kunia Road, south of the intersection with the Cane Haul Road, as determined and approved by DOT. Petitioner shall also be required to provide the following:

A. All of the other improvements needed (which will not be provided by the Village Park and Royal Kunia, Phase I projects) to make Kunia Road a 4-lane highway with auxiliary lanes for both left and right turning movements (between Cane Haul Road Intersection and the northernmost boundary of Royal Kunia, Phase II) and a third northbound lane between Cane Haul Road Intersection and the north Kupuna Loop intersection, provided that

interim measures prior to full build out may be allowed with the approval of DOT.

B. A report that analyzes the impact of the proposed Phase II project's traffic on the Kunia Interchange and evaluate alternatives that will mitigate the impacts.

C. Petitioner shall submit a revised Traffic Impact Study, including the Kunia Interchange Alternatives Report, and obtain DOT's acceptance prior to preliminary subdivision application.

D. Plans for Construction work within the State highway right-of-way must be submitted to DOT, Highways Division for review and approval.

Agreement by the State Department of Transportation on the level of funding and participation shall be obtained prior to the Petitioner applying for county zoning.

B. PROCEDURAL MATTERS RELATED TO PARCEL 52

11. On August 11, 2014, Successor Petitioner filed its Motion to Amend; Memorandum in Support of Motion; Verification of Jon Wallenstrom; Affidavit of Steven S.C. Lim; Exhibits 1-16; and Certificate of Service, requesting the Commission to (1) recognize Hoʻohana as the Successor Petitioner to Parcel 52 with standing to seek and obtain the relief requested in the Motion to Amend; (2) issue an order modifying the 1996 Order to expressly authorize the use of portions of Parcel 52 for solar farm development with an operational use period of approximately 35 years (not including decommissioning); and (3) delete Condition No. 21, requiring the Commission's prior approval to change the ownership interest in the Petition Area, or in the alternative, to approve the proposed lease of Parcel 52 to Hoʻohana pursuant to the requirements of Condition No. 21. [Motion to Amend]

12. Robinson Kunia Land LLC ("**RKL**"), the fee owner of Parcel 52, acknowledged and consented to Hoʻohana filing the Motion to Amend. [Successor Petitioner's Exhibit 7]

13. Hoʻohana, the City and County of Honolulu by its Department of Planning and Permitting ("**DPP**"), and the State of Hawaiʻi by its Office of Planning ("**OP**), as parties to the

Motion to Amend, stipulated and agreed to the filing schedule set forth in the *First Stipulation of the Parties Setting Forth Filing Schedule*, filed with the Commission on September 19, 2014.

14. On October 6, 2014, DPP filed with the Commission *The Department of Planning and Permitting's Response to the Motion by Ho'[o]hana Solar 1, LLC to Amend the Decision and Order Regarding Docket No. A92-683, Halekua Development Corporation* ("**DPP's Response**").

15. On October 8, 2014, OP filed with the Commission *Office of Planning's Response to Ho'ohana Solar 1, LLC's Motion for Order Amending the Findings of Fact, Conclusions of Law, and Decision and Order Dated October 1, 1996; Exhibits 1-8; and Certificate of Service* ("**OP's Response**").

16. On October 8, 2014, Ho'ohana filed with the Commission *Successor Petitioner's First List of Exhibits; Successor Petitioner's Exhibits 17-22; and Successor Petitioner's First List of Witnesses.*

17. On October 22, 2014, Ho'ohana, DPP, and OP, filed a further filing schedule, as set forth in the *Second Stipulation of the Parties Setting Forth Filing Schedule*.

18. On October 22, 2014, Ho'ohana filed with the Commission *Successor Petitioner (To Parcel 52) Ho'ohana Solar 1, LLC's Exhibit 4 (Errata); Successor Petitioner's Second List of Exhibits; Successor Petitioner's Second List of Witnesses; Successor Petitioner's First List of Rebuttal Witnesses; Successor Petitioner's Exhibits 13D, 23-33; and Certificate of Service*.

19. On October 22, 2014, Ho'ohana filed with the Commission a *Motion for Order Bifurcating the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed on October 1, 1996* (the "**Motion to Bifurcate**").

20. On November 5, 2014, OP filed *Office of Planning, State of Hawai'i's Opposition to Successor Petitioner (To Parcel 52), Ho'ohana Solar I, LLC's Motion for Order Bifurcating the Amended Findings of Fact, Conclusions of Law, and Decision and Order Filed on October 1, 1996 in Docket No. A92-683; Exhibits 9-10; and Certificate of Service*. OP opposed the Motion to Bifurcate.

21. On November 5, 2014, DPP filed *The Department of Planning and Permitting's Response to the New Motion by Ho'[o]hana Solar 1, LLC to Bifurcate the Decision and Order Regarding Docket A92-683, Halekua Development Corporation*. DPP had no objections to the Motion to Bifurcate.

22. On November 10, 2014, Canpartners filed its *Memorandum in Response to Successor Petitioner (To Parcel 52) HO'OHANA SOLAR 1, LLC'S ("Ho'ohana"): (1) Motion for Order Bifurcating the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed October 1, 1996 in Docket No. A92-683, filed October 22, 2014 ("Motion to Bifurcate"); and (2) Motion for Order Amending the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed on October 1, 1996, filed August 11, 2014*. Canpartners supported the Motion to Bifurcate and did not oppose the Motion to Amend so long as the Motion to Bifurcate was granted so that the conditions applicable solely to the solar farm use on Parcel 52 would not be deemed obligations imposed on Canpartners.

23. On November 12, 2014, OP filed *Office of Planning First Amended List of Exhibits; Exhibit 11; and Certificate of Service*.

24. The Commission received no formal requests to intervene in the Motion to Bifurcate or Motion to Amend proceedings.

25. The Commission considered the Motion to Bifurcate at its meeting on November 13, 2014 in Honolulu, Hawaiʻi. Bryan C. Yee, Esq. appeared on behalf of OP; Richard D. Lewallen, Esq. appeared on behalf of DPP; and Steven S.C. Lim, Esq. appeared on behalf of Hoʻohana. [Tr. 11/13/14, 19:8 – 9:17]

26. Commissioners McDonald, Song, Mahi, Scheuer, Aczon, Wong, Hiranaga, and Ahakuelo were present.

27. Commissioner Scheuer disclosed that his wife is employed by Group 70 International, which is the firm that employs Jeffrey Overton, one of Hoʻohana's expert witnesses. Commission Scheuer stated that his wife had no involvement in the matter before the Commission. [Tr. 11/13/14, 20:6 – 20:14]

28. Hoʻohana, DPP, and OP acknowledged this disclosure and each stated that there were no objections by the parties to Commissioner Scheuer's participation in the matter under consideration. [Tr. 11/13/14, 20:17 – 20:19]

29. The Commission provided an opportunity for public testimony, and there were no public witnesses. [Tr. 11/13/14, 6:11 -6:14]

30. At the hearing on the Motion to Bifurcate, Delwyn H.W. Wong, Esq. appeared on behalf of HRT Realty, LLC, 300 Corporation, and Honolulu Limited (collectively referred to herein as the "**HRT Entities**"), the fee owners of the portions of the Petition Area identified by TMK Nos. 9-4-002: 001, 070, and 078. [Tr. 11/13/14, 48:3 – 48:7, 27:10 – 27:15]

31. The Commission admitted the HRT Entities as a party to the proceedings. [Tr. 11/13/14, 32:21 – 33:3]

32. Upon its own motion, the Commission deferred consideration of the Motion to Bifurcate and the Motion to Amend until November 21, 2014. [Tr. 11/13/14, 54:10 – 54:14]

33. The Commission ordered any additional legal memoranda, exhibits, or other filings in this matter to be filed with the Commission by November 18, 2014. [Tr. 11/13/14, 52:1 – 52:6]

34. On November 14, 2014, the Commission issued its Order Approving Successor Petitioner (To Parcel 52) Hoʻohana Solar 1, LLC's Request to Continue Proceedings Until November 21, 2014 and Set Date for Filing of Any Further Documents by All Parties Prior to the November 21, 2014 Hearing Date.

35. On November 17, 2014, OP filed *Office of Planning's Second Amended List of Exhibits; Exhibits 12 and 13; Certificate of Service*.

36. On November 18, 2014, Hoʻohana filed *Successor Petitioner (To Parcel 52), Hoʻohana Solar 1, LLC's Third List of Exhibits; Successor Petitioner's Third List of Witnesses; Successor Petitioner's Exhibits 34A-34I; and Certificate of Service*.

37. On November 18, 2014, the HRT Entities filed their *Statement of Position in Response to Successor Petitioner (To Parcel 52) Hoʻohana 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, filed on August 11, 2014; Exhibit "A"; and Certificate of Service*. The HRT Entities opposed the Motion to Amend to the extent that the requirements contained in OP's Response would be deemed obligations imposed on the HRT Entities.

38. On November 21, 2014, the Commission opened the evidentiary hearing on the Motion to Bifurcate and the Motion to Amend at the State Office Tower, Leiopapa A Kamehameha Building, in Honolulu, Hawaiʻi and continued its consideration of the Motion to Bifurcate and the Motion to Amend. Bryan C. Yee, Esq. appeared on behalf of OP; Richard D. Lewallen, Esq. appeared on behalf of DPP; Steven S.C. Lim, Esq. and Puananionaona P. Thoene

appeared on behalf of Ho‘ohana; and Delwyn H.W. Wong and Irwyn H.G. Wong, Esq. appeared on behalf of the HRT Entities. [Tr. 11/21/14, 12:4]

39. Commissioners McDonald, Mahi, Scheuer, Aczon, Wong, Hiranaga, and Ahakuelo were present. Commissioner Song was excused. [Tr. 11/21/14, 11:7 – 11:8]

40. The Commission provided an opportunity for public testimony. [Tr. 11/21/14, 8:5 – 8:6]

41. There was one public witness as to Commission procedures generally but there were no public witnesses on the Motion to Bifurcate or the Motion to Amend. [Tr. 11/21/14, 8:8 – 9:3]

42. Successor Petitioner verbally withdrew its Motion to Bifurcate. [Tr. 11/21/14, 20:8 – 20:11]

43. OP offered into evidence Exhibit 14, the *Stipulation of Successor Petitioner, State Office of Planning, and Department of Planning and Permitting to Proposed Conditions of Approval for Ho‘ohana Solar 1, LLC's Motion for Order Amending the Findings of Fact, Conclusions of Law, Decision and Order dated October 1, 1996*, executed by OP and Successor Petitioner (the "**Stipulated Conditions**"). [OP Exhibit 14; Tr. 11/21/14,]

44. Pursuant to the stipulation of Successor Petitioner, DPP and OP, the Commission admitted into the Record (a) Successor Petitioner's Exhibits 1, 2A, through 2D, 3, Successor Petitioner's Exhibit 4 (Errata), Successor Petitioner's Exhibits 5 through 12, 13A through 13D, 14 through 19, 20A through 20D, 21 through 33, and 34A through 34I; and (b) OP's Exhibits 1 through 14. [Tr. 11/21/14, 20:12 – 20:24, 21:18 – 22:6]

45. DPP and the HRT Entities presented no exhibits. [Tr. 11/21/14, 22:7 – 22:10]

46. Pursuant to the *Stipulation to Qualification of Expert Witnesses* filed by Hoʻohana, OP and DPP with the Commission on November 18, 2014, the Commission accepted the qualifications of Successor Petitioner's seven (7) expert witnesses, Jeffrey H. Overton, Clifford Smith, Laurence Greene, Jon Wallenstrom, Robert L. Spear, Sohrab Rashid, and Eric B. Guinther, and deemed said witnesses qualified to testify as expert witnesses in their designated fields in Docket No. A92-683. OP, DPP and the HRT Entities did not seek to qualify any of their witnesses as expert witnesses. [Tr. 11/21/14, 20:25 – 21:17]

47. Hoʻohana provided the oral testimonies of the following witnesses: Jeffrey H. Overton, Clifford Smith, Laurence Greene, Jon Wallenstrom, Robert L. Spear, Eric B. Guinther, and Joanne (Nonie) Toledo Hamm.

48. DPP provided the oral testimony of Mike Watkins, Planner for DPP. [Tr. 11/21/14, 133:7]

49. OP provided the oral testimony of Rodney Funakoshi, Planning Program Administrator for OP, and Randy Teruya, Asset Manager, Department of Agriculture ("**DOA**"). [Tr. 11/21/14, 111:10; Tr. 11/21/14, 164:13]

50. OP stipulated that nothing in the present proceeding on Hoʻohana's Motion to Amend shall amend, negate or impair the following: (1) the agreement between OP and the HRT Entities as expressed in the December 29, 2003 Stipulation by and between OP and the HRT Entities, which was filed with the Commission on December 30, 2003, and (2) the rights of the HRT Entities as expressed in the Commission's February 23, 2004 *Order Granting the Office of Planning's Amended Motion to Exempt HRT, Ltd.'s Property from the Order to Show Cause Granted on February 26, 2003, Pursuant to the Stipulation filed on December 30, 2003*. [OP Exhibit 10; B. Yee, Tr. 11/21/14, 17:8 – 18:5]

51. DPP represented that it objected to the form of the Stipulation Conditions, but that DPP had no objections to the solar farm proposed on Parcel 52. [Tr. 11/21/14, 130:21 – 131:15]

52. RKL stated that it had no objection to the Stipulated Conditions. [A. Zawtocki, Tr. 11/21/14, 184:24 – 185:7]

53. RKES, LLC was served with a copy of the Motion to Amend and subsequent filings. Successor Petitioner represented that it had made numerous attempts to contact Petition Area landowner RKES, LLC, both before and after filing the Motion to Amend, and had not received a response. Successor Petitioner concluded that RKES, LLC waived its right to participate in and is taking no position on the Motion to Amend proceedings. [S. Lim, Tr. 11/21/14, 13:17 – 14:7]

54. The HRT Entities stated that they had no objection to the Stipulated Conditions or to the proposed solar farm. [I. Wong, Tr. 11/21/14, 130:12 – 130:19, 183:3 – 183:11]

55. Attorney for Successor Petitioner read into the record the contents of a November 20, 2014 email from Wyeth Matsubara, Esq., attorney for Canpartners, to Delwyn Wong, Esq., attorney for the HRT Entities, which stated: "Del, Nice speaking with you today. Yes, your understanding is correct and we are confirming your understanding that Canpartners will undertake the obligations set forth in the proposed Stipulation [the Stipulated Conditions], Section A. 'New Conditions Applicable to the Petition Area', 1, 2, and 3 as they relate to Increments 1 and 2. We are also fine with your proposed language below and the changes you made within the Stipulation. Thanks—wyeth." [S. Lim, Tr. 11/21/14, 185:12 – 186:1]

56. On November 21, 2014, following completion of the parties' respective cases-in-chief, the Commission closed the evidentiary portion of the proceedings. The parties waived formal final arguments, and the Commission started its deliberations on the Motion to Amend.

[S. Lim, Tr. 11/21/14, 189:2; R. Lewallen, Tr. 11/21/14, 189:5 – 189:7; I. Wong, Tr. 11/21/14, 189:9 – 189:11; B. Yee, Tr. 11/21/14, 189:15 – 189:17]

57. Commissioner Wong moved to approve Hoʻohana's Motion to Amend to develop Parcel 52 as a solar farm, with another condition, that after decommissioning of the solar farm, the developer of the future residential development on Parcel 52 shall analyze the potential impacts and mitigation measures, and comply with the applicable requirements of Chapter 343, Hawaiʻi Revised Statutes, should such review be triggered. Commissioner Ahakuelo seconded the motion to approve. [A. Wong, Tr. 11/21/14, 190:14 – 190:18; B. Ahakuelo, Tr. 11/21/14, 189:20]

58. There being a vote tally of seven (7) ayes and zero (0) nays, the motion to approve carried. [Tr. 11/21/14, 193:1 – 193:21]

59. The Commission ordered the parties to work with the Commission staff to file proposed findings of fact, conclusions of law, and decision and order on the Motion to Amend with the Commission. [Tr. 11/21/14, 195:2 – 195:8]

60. On November 24, 2014, Hoʻohana followed its November 21, 2014 verbal request to withdraw its Motion to Bifurcate by filing *Successor Petitioner (To Parcel 52) Hoʻohana Solar 1, LLC's Request to Withdraw Hoʻohana's Motion for Order Bifurcating the Amended Findings of Fact, Conclusions of Law, and Decision and Order dated October 1, 1996*.

61. On December ___, 2014, Hoʻohana and OP filed a Stipulated Proposed Findings of Facts, Conclusions of Law, and Decision and Order. DPP did not stipulate to the Proposed Decision and Order but had no objections to it. [Tr. 01/07/15,]

62. At the hearing on January 7, 2015, DPP stated that it did not stipulate to the Proposed Decision and Order because it objected to the form of the Proposed Decision and Order, but stated that DPP had no objections to approving the Motion to Amend.

63. On January 7, 2015, the Commission met at the State Office Tower, Leiopapa A Kamehameha meeting room to adopt the Findings of Fact, Conclusions of Law, and Decision and Order. [Tr. 01/07/15,]

C. DESCRIPTION OF THE PETITION AREA

64. The Petition Area is located at Waikele and Hoʻaeʻae, ʻEwa, Oʻahu, and was identified as Tax Map Key ("**TMK**") Nos. 9-4-02: 1 (por.) and 52 (por.) at the time of the 1993 Petition for DBA. The current TMK designations of the Petition Area are (1) 9-4-002: 001, 052, 070, 071, 078, and 079. The Petition Area is located approximately 1.2 miles north of the Kunia Interchange of Interstate Route H-1. The Petition Area is bounded on the south by the Royal Kunia Phase I residential subdivision; on the west by Kunia Road; on the east by Waikele Stream; and on the north by overhead electrical transmission lines. At the northwest corner of the Petition Area is an approximately 150-acre State agricultural park. [1996 Order, FOF 12, at 5]

65. The Petition Area and state agricultural park area had been owned in fee simple by Caroline J. Robinson Limited Partnership, a Hawaiʻi limited partnership; Bishop Trust Company, Limited, a Hawaiʻi corporation, Trustee; Chinn Ho, Herman G.P. Lemke and Mildred Teresa Centeio, Trustees; Waikele Lands, Ltd., a Hawaiʻi corporation, and American Trust Co. of Hawaii, Inc., a Hawaiʻi corporation, Trustee (collectively referred to herein as "**Robinson Estate**"). [1996 Order, FOF 13, at 5]

66. By way of Limited Warranty Deeds recorded with the Bureau of Conveyances on September 12, 1995, 347.036 acres of the Petition Area were conveyed from the Robinson Estate

to Halekua. By way of Warranty Deeds recorded with the Bureau of Conveyances on April 16, 1996, 137.016 acres of the Petition Area land were conveyed from Petitioner to HRT, Ltd., and related entities[1] in fee simple. The Robinson Estate retained ownership of the rest of the Petition Area, including Parcel 52. [1996 Order, FOF 14, at 5-6]

67. Various conveyances and legal proceedings in the 2000s resulted in the present ownership of the Petition Area being as follows:

Robinson Kunia Land LLC, TMK No. 9-4-002: 052 (161.023 acres);[2]

Canpartners IV Royal Kunia Property LLC, TMK Nos. 9-4-002: 071 (161.335 acres) and 079 (por.) (0.025 acres);

HRT Realty, LLC, TMK Nos. 9-4-002: 001 (por.) (as to an undivided 48.78% of 123.712 acres as Tenants in Common), 070 (13.304 acres), and 078 (36.660 acres);

300 Corporation, TMK No. 9-4-002: 001 (por.) (as to an undivided 25.63% of 123.712 acres as Tenants in Common);

Honolulu Limited, TMK No. 9-4-002: 001 (por.) (as to an undivided 25.59% of 123.712 acres as Tenants in Common); and

RKES, LLC, TMK Nos. 9-4-002: 071 (por.) (0.025 acres) and 079 (12.0 acres).

[Successor Petitioner's Exhibit 34A, at 3-4; J. Overton, Tr. 11/21/14, 25:19 – 26:22]

68. RKL and Forest City Sustainable Resources ("**Forest City**") executed an Option Agreement dated August 2, 2012, giving Forest City an exclusive and irrevocable option to lease Parcel 52 for the development, construction and operation of a solar power electricity generating project. RKL and Hoʻohana are in the process of finalizing a land lease and solar easement for the solar farm development. [Motion to Amend, at 4; J. Wallenstrom, Tr. 11/21/14, 60:5 – 60:9]

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[1] HRT, Ltd. is now HRT Realty, LLC. 300 Corporation and Honolulu Limited are related entities of HRT Realty, LLC.

[2] By way of limited warranty deeds, the Robinson Estate conveyed TMK No. 9-4-002: 052 consisting of 161.023 acres to RKL.

69. The Petition Area slopes downwards from the northwest to the southeast at a gradient of 2 to 6 percent. The ground elevations range from approximately 450 feet to 575 feet mean sea level. Two drainageways traverse the middle section of the Petition Area. [1996 Order, FOF 16, at 6]

70. The annual median rainfall is approximately 34 inches (State gage no. 740.1). The months of May to September are usually drier than October to April. Temperatures are approximately 1 degree Fahrenheit higher than Wahiawa (based on a general observation that temperatures in Hawai‘i decrease approximately 3.2 degrees Fahrenheit per 1,000 feet in elevation). The average annual maximum temperature is approximately 79 degrees Fahrenheit and the average annual minimum temperature is approximately 64 degrees Fahrenheit. Predominant wind direction and the higher wind speeds are from the northeast to east direction. The average wind speed is 11.5 miles per hour. [1996 Order, FOF 17, at 6]

71. The U.S. Department of Agriculture, Soil Conservation Service ("**SCS**"), classifies the soils as Lahaina silty clay (LaA, LaB) and Moloka‘i silty clay loam (MuD, MuB). The predominant soil types, LaA and LaB, comprise approximately 84 percent of the Petition Area. The Lahaina and Moloka‘i soils have similar characteristics – they are moderately permeable, have slight to moderate erosion hazards, and are underlain by bedrock at depths greater than five feet. [1996 Order, FOF 19, at7]

72. The soils on the Petition Area, as indicated by the Agriculture Lands of Importance to the State of Hawaii ("**ALISH**"), Land Study Bureau ("**LSB**"), and SCS classification systems, consist of:

ALISH: Prime (95 percent of the Petition Area)

LSB: Overall productivity ratings of "A" (94 percent of the Petition Area) and "B" (remainder of the Petition Area); and

SCS: I or II (90 percent of the Petition Area); III or IV (10 percent of the Petition Area)

[1996 Order, FOF 20, at7; R. Funakoshi, Tr. 11/21/14, 116:12 – 116:14]

73. The Federal Emergency Management Agency's Flood Insurance Rate Map, Panel 15003C0220F, dated September 30, 2004, indicates that the Petition Area is located in Zone D (areas in which flood hazards are undetermined). [1996 Order, FOF 21; OP Exhibit 6]

74. The seismic risk classification for the Petition Area and the entire island of O‘ahu is Zone 1 (Uniform Building Code). Zone 1 indicates that the island is subject to minor earthquake damage. [1996 Order, FOF 22, at 7]

D. HALEKUA'S ORIGINAL PROPOSAL FOR RECLASSIFICATION OF THE PETITION AREA FOR THE ROYAL KUNIA PHASE II PROJECT

75. Halekua proposed to develop the Petition Area as a project called Royal Kunia Phase II. Royal Kunia Phase II was envisioned as a planned community to complement the existing Royal Kunia Phase I and Village Park residential subdivisions located south of the Petition Area. The Royal Kunia Phase II development was planned to include approximately 2,000 single-family and multi-family residences, 123.7 acres of light industrial uses, a public park of approximately 11.1 acres, and a school site of approximately 8 acres ("**Royal Kunia Phase II**"). [1996 Order, FOF 23, at 8]

76. The Village Park, Royal Kunia Phase I, and Royal Kunia Phase II subdivisions were considered together by Halekua as an integrated community for purposes of planning and the provision of amenities, such as the proposed recreation center for use by the entire community consisting of all three subdivisions. [1996 Order, FOF 26, at 9]

77. Under the plan put forth by Halekua in 1996, Royal Kunia Phase II will consist of single-family units on varying lot sizes but with a minimum lot size of 5,000 square feet. The

low-density apartment areas will include approximately 600 units being designated for affordable housing. At least 200 of these units will be provided for households earning 80 percent or less of median income. [1996 Order, FOF 29, at 10]

78. All of the affordable units for the Royal Kunia Phase II project will be developed within the Petition Area, and will consist of affordable rental units as well as for-sale units. [1996 Order, FOF 32, at 11]

79. The affordable units will be developed concurrently with the market units. [1996 Order, FOF 33, at 11]

80. A total of 123 acres is proposed to be developed as a "business park." The industrial area is expected to serve the needs of a wide range of "light industries" and businesses. [1996 Order, FOF 34, at 11]

81. An 11.1-acre public park is proposed for the Royal Kunia Phase II project. The park site will be dedicated to the City and County of Honolulu, Department of Parks and Recreation, to meet the requirements of the Park Dedication Ordinance. [1996 Order, FOF 35, at 11]

82. The 8 acre school site, along with the existing Kaleilopu‘u Elementary School and playground in the Village Park subdivision, and a proposed school site in Royal Kunia Phase I, is intended to serve the projected elementary student enrollment expected in the future. [1996 Order, FOF 36, at 11]

83. Adjacent to the Petition Area, an approximately 150 acre area was set aside for use as an agricultural park to be developed by the State. The 150-acre state agricultural park ("**Kunia Agricultural Park**") was not proposed for reclassification and remains in the SLU Agricultural District. [1996 Order, FOF 23, at 8]

84. Halekua had agreed with the DOA that in the event that Halekua's Petition for DBA was granted, Halekua would convey free and clear title to the 150 acres for the agricultural park to be subdivided into a number of agricultural lots to be farmed by individual farmers, upon the earlier of six months after receiving the necessary land use approvals from the State of Hawai‘i and the City and County of Honolulu, or by December 31, 1997, whichever was soonest. [1996 Order, FOF 37, 40, at 11, 12-13]

85. The conveyance of the Kunia Agricultural Park land was pursuant to a Memorandum of Understanding ("**MOU**"), dated March 30, 1993, by and between Halekua and the Department of Agriculture of the State of Hawai‘i ("**DOA**"), whereby Halekua agreed to convey 150 acres of land to the State of Hawai‘i for the purpose of establishing the Kunia Agricultural Park. [1996 Order, FOF 38, at 12]

86. Pursuant to the MOU, Halekua also agreed to design and construct off-site infrastructure improvements for the agricultural park including off-site roadways, potable and irrigation water lines, and sewer lines and other utility connections, up to the property boundary of the agricultural park at no cost to the DOA no later than June 30, 2001. [1996 Order, FOF 41, at 13; OP Exhibit 9]

87. Condition No. 19 of the 1996 Order required Petitioner to convey the agricultural park to the State of Hawai‘i and provide off-site infrastructure to the agricultural park, pursuant to the terms of the MOU.

88. In 2004, the HRT Entities conveyed 150 acres identified by TMK No. 9-4-002: 080 to the State of Hawai‘i for use as the Kunia Agricultural Park. [D. Wong, Tr. 11/21/14, 19:17 – 19:20]

89. The connection points for the infrastructure for the Royal Kunia Phase II project, including off-site water, sewer, and drainage system was developed in the Royal Kunia Phase I infrastructure, the majority of which was designed to accommodate future development in the Royal Kunia Phase II project. [1996 Order, FOF 45, at 14]

90. At full build out, the Royal Kunia Phase II project is expected to generate approximately 430 construction jobs and 1,450 industrial park jobs. Additional employment opportunities will be generated by the school and agricultural park. [1993 Order, FOF 74-75, at 20; 1996 Order FOF 86-87, at 24-25]

91. Under the revised plan, it was anticipated that the Royal Kunia Phase II project would be developed over a 12-year period. The affordable multi-family units were to be developed proportionately along with the market single-family units. [1996 Order, FOF 43, at 13]

92. The Commission did not impose a specific condition under the Halekua Orders setting forth a timeframe for development, or a development deadline for the Royal Kunia Phase II project. Halekua's estimated timeframe for development of Royal Kunia Phase II has passed. [Successor Petitioner's Exhibit 34A; J. Overton, Tr. 11/21/14, 34:10 – 34:12; R. Funakoshi, Tr. 11/21/14, 114:2 – 114:8]

93. Various legal proceedings, including a bankruptcy proceeding in the 2000s, resulted in Halekua losing control of the Petition Area and caused a delay in development of the Royal Kunia Phase II project. [Motion to Amend, at 3; Successor Petitioner's Exhibit 34A, at 3]

94. Three increments are planned for Royal Kunia Phase II. Increments 1 and 2 are proposed to be developed on TMK Nos. 9-4-002: 001, 070, 071, 078 and 079, which are currently owned by Canpartners, the HRT Entities, and RKES, LLC. Increments 1 and 2 are

proposed for development of an approximately 123 acre industrial park, school, and both single-family and multi-family residential units. Increment 3 is proposed to be developed on Parcel 52 with residential units. [Successor Petitioner's Exhibit 4 (Errata)]

95. Construction of Royal Kunia Phase II, Increments 1 and 2 has not yet commenced. However, the lands within Increments 1 and 2 were rezoned to allow for the proposed development by the City Council in 1995 and 1997. [Successor Petitioner's Exhibit 2B; Motion to Amend, at 7 & n.6]

96. Increment 3 has not been rezoned by the City Council. Increment 3 was always planned to be developed after Increments 1 and 2. The development of Increment 3 is intended to utilize the infrastructure built as a part of the completion of Increments 1 and 2. [Successor Petitioner's Exhibit 4 (Errata)]

97. Noting that the original Petitioner represented that the Royal Kunia Phase II project was anticipated to be completed in twelve years, the Office of Planning recommended that the current landowners submit a revised master plan with a schedule of development. [R. Funakoshi, Tr. 11/21/14, 114:2 – 11] OP expressed its belief that the submittal of a master plan and development schedule would spur development of Increments 1 and 2 on a timely basis and integrate such development with Increment 3. [OP's Response, at 6]

E. DESCRIPTION OF PARCEL 52

98. Parcel 52 is currently zoned by the City and County of Honolulu as Restricted Agricultural AG-1 and is currently being actively farmed. [Successor Petitioner's Exhibit 2B; Successor Petitioner's Exhibit 34A, at 9]

99. The slope of Parcel 52 varies from 2% to 15%. [Successor Petitioner's Exhibit 34B, at 4; C. Smith, Tr. 11/21/14, 102:18 – 102:20]

100. Parcel 52 will be located approximately two (2) miles off the H-1 Interstate Freeway, just north of the Royal Kunia Country Club, and east of Kunia Road. The character of the surrounding properties include active and fallow agricultural uses. The State's Kunia Agricultural Park is located to the west, vacant military and federal zoned land to the east, and the proposed Royal Kuna Phase II, Increments 1 and 2 development located to the southwest. [J. Overton, Tr. 11/21/14, 24:19 – 25:9]

101. Access to the proposed solar farm on Parcel 52 is along Plantation Road, an existing, partially paved and privately owned roadway. [Motion to Amend, at 19-20; J. Overton, Tr. 11/21/14, 25:2 – 25:4]

F. CURRENT PROPOSAL FOR PARCEL 52 AKA ROYAL KUNIA PHASE II, INCREMENT 3

102. Hoʻohana proposes to develop 124 acres within Parcel 52 as a utility-scale solar farm for an operational period, excluding decommissioning, not to exceed 35 years (the "**Project**"). The total operating period will ultimately be determined by the power purchase agreement ("**PPA**") that Hoʻohana executes with Hawaiian Electric Company ("**HECO**"). [Successor Petitioner's Exhibit 34B, at 2; Successor Petitioner's Exhibit 34C, at 5-6; L. Greene, Tr. 11/21/14, 76:4 – 76:10]

103. Construction of Royal Kunia Phase II, Increments 1 and 2 has yet to commence. Due to the delay in development of the Royal Kunia Phase II project and because Increment 2 is estimated to take some 15 or more years to complete, Hoʻohana believes that the proposed interim use of Parcel 52 is the best use of the Property until such a time that Increments 1 and 2 are fully developed. Therefore, through its Motion to Amend, Hoʻohana requested that the Commission approve the use of Parcel 52 as a solar farm for the interim period before the land is developed for residential use as Royal Kunia Phase II, Increment 3. [Motion to Amend, at 27-28]

104. The Project will generate approximately 20 megawatts ("**MW**") and the electricity generated by the Project will be sold to HECO pursuant to the terms of the PPA between Ho‘ohana and HECO. [Successor Petitioner's Exhibit 34C, at 5-6; L. Greene, Tr. 11/21/14, 71:13 – 71:18]

105. The Project will connect to the HECO grid through a 46 kilovolt ("**kV**") transmission line. [Successor Petitioner's Exhibit 34B, at 3; C. Smith, Tr. 11/21/14, 86:21 – 86:25]

106. Residential and commercial photovoltaic ("**PV**") systems connect to HECO's grid at a distributional level of 12 kV. HECO determines the ability to accept additional residential systems based on the existing amount of renewable energy on the 12 kV utility line, while the 46 kV line is not taken into consideration. Therefore, the Project will not prevent or impair connections for residential or commercial rooftop solar. [Successor Petitioner's Exhibit 34B, at 10; Successor Petitioner's Exhibit 8; C. Smith, Tr. 11/21/14, 90:20 – 91:8]

107. The Project will consist of approximately 80,000 PV modules that will be mounted on a single axis tracking system that will be ground-mounted. The PV modules are designed to absorb as much solar energy as possible, and therefore create minimum to no glare. [Successor Petitioner's Exhibit 34B, at 2, 6; C. Smith, Tr. 11/21/14, 86:8 – 86:15, 89:2 – 89:8]

108. The Project will utilize concrete pads throughout the site. Three small buildings are proposed with the Project: a Control Building, an Operations and Maintenance Building, and a Security Building. The Project will also include a septic system and potable water storage tanks at or near the Security Building. [Successor Petitioner's Exhibit 34B, at 2-3; C. Smith, Tr. 11/21/14, 87:15 – 87:3, 99:7 – 99:11]

109. Power Stations will be located within the Solar Array Field. All Power Stations will be interconnected by an underground medium voltage line that feeds into the Substation. The Substation will be located on the northwestern portion of Parcel 52. [Successor Petitioner's Exhibit 34B, at 3; C. Smith, Tr. 11/21/14, 87:4 – 87:10]

110. The estimated total building area or lot coverage of the buildings and facilities, not including the solar array, will be approximately 39.25 acres. Any grading of the site will be done according to the procedures set forth by the City and County of Honolulu Codes. [Successor Petitioner's Exhibit 34B, at 3-4; C. Smith, Tr. 11/21/14, 86:16 -86:20, 103:7 – 103:12]

111. A chain link fence, approximately eight (8) feet high, will surround the solar array. [Successor Petitioner's Exhibit 34B, at 3; C. Smith, Tr. 11/21/14, 86:5 – 86:6]

112. No utility scale batteries will be used in the Project. There will be a small battery system, roughly the size of two (2) or three (3) car batteries, within the Control Building to serve as back-up power for data collection. Hoʻohana committed to comply with all applicable best management practices ("**BMPs**") for containment leakage from the batteries. [Successor Petitioner's Exhibit 34B, at 5; C. Smith, Tr. 11/21/14, 88:6 – 88:12, 92:22 – 93:15]

113. Construction of the Project is expected to take between nine (9) to twelve (12) months. Hoʻohana's contractor will implement mitigation measures and BMPs during construction of the Project to address dust and other impacts. [Successor Petitioner's Exhibit 34B, at 3; J. Overton, Tr. 11/21/14, 30:14 – 30:17; C. Smith, Tr. 11/21/14, 88:14 – 88:15]

114. Parcel 52 is a viable solar farm site as it is very close to good points of interconnection with the HECO grid. [Successor Petitioner's Exhibit 34D, at 4; C.Smith, Tr. 11/21/14, 86:21 – 86:25]

H. SUCCESSOR PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

115. Hoʻohana is a joint venture between Forest City and Hanwha Q CELLS USA ("**Hanwha**"), two of the largest solar developers in the State of Hawaiʻi. [Successor Petitioner's Exhibit 34D, at 3-4; J. Wallenstrom, Tr. 11/21/14, 52:20 – 53:3, 53:7 – 54:4]

116. Forest City is an experienced developer of many prestigious real estate projects across the U.S., including Hawaiʻi. Forest City has had a presence in Hawaiʻi for the last ten (10) years. In that time, Forest City has redeveloped approximately 6,500 homes for the Navy and Marines and is the developer of the 271-acre Kamakana Villages project in Kona, a workforce housing development, as well as the Kapolei Lofts, a 499-unit market rental development. [Successor Petitioner's Exhibit 34D, at 3-4; J. Wallenstrom, Tr. 11/21/14, 51:20 – 52:19]

117. In addition to its real estate projects, Forest City has developed almost 5 MW worth of utility-scale solar energy projects on the island of Oʻahu. [Successor Petitioner's Exhibit 34D, at 3; J. Wallenstrom, Tr. 11/21/14, 52:20 – 53:3]

118. Hanwha is a multi-million dollar company and experienced utility-scale solar developer. Hanwha has installed more than 100 MW of solar energy throughout the U.S., including the 6.17 MW Kalaeloa Renewable Energy Park in Kapolei, Hawaiʻi, currently the largest utility-scale solar farm on Oʻahu. [Successor Petitioner's Exhibit 34C, at 2; L. Greene, Tr. 11/21/14, 70:10 – 70:17, 70:25 – 71:8]

119. The members of the Hoʻohana development team include Laurence Greene, who has been involved in developing approximately 698 MW of utility-scale solar and wind energy projects both domestically and internationally, Jon Wallenstrom, President of Forest City

Hawaii, and Ann Bouslog, Development Manager for Forest City Enterprises. [Successor Petitioner's Exhibit 34C, at 2; Successor Petitioner's Exhibits 24, 26-27]

120. Hoʻohana has the development capital and access to financing funds needed to develop the solar farm Project, as well as the necessary economic ability to carry out its representations and commitments relating to the solar farm. [J. Wallenstrom, Tr. 11/21/14, 51:20 – 51:23, 63:4 – 63:13; L. Greene, Tr. 11/21/14, 76:11 – 76:22]

I. STATE AND COUNTY PLANS AND PROGRAMS; CONFORMANCE TO URBAN DISTRICT STANDARDS

121. The Petition Area is located within the SLU Urban District. [1996 Order]

122. The Petition Area is not located within the City and County's Special Management Area and "complies with and supports the objectives of the Hawaiʻi Coastal Zone Management Program." [1996 Order, FOF 239, at 62]

123. Parcel 52 is designated in the SLU Urban District and is zoned as AG-1 (Restricted Agricultural) by the City and County of Honolulu. [1996 Order; Successor Petitioner's Exhibits 2A-2B; J. Overton, Tr. 11/21/14, 39:11 – 39:14]

124. In the 1996 Order, the Commission made specific findings that Urban designation of the Petition Area, including Parcel 52, is consistent with the Hawaiʻi State Plan. Parcel 52 is within the Urban Community Boundary established under the 2002 Central Oʻahu Sustainable Communities Plan. [1996 Order, FOF, 220, 223-24, 230, at 57-59]

125. The Petition Area is suitable for urban development because its topography is relatively flat and non-stony. The Petition Area is not prone to flooding or other natural hazards, and soils are stable. [1996 Order, FOF 217, at 57]

126. The solar farm use is consistent with the Urban designation. [R. Funakoshi, Tr. 11/21/14, Tr. 11/21/14, 112:21 – 112:25]

127. The Project is a Type B utility installation, permissible by Conditional Use Permit-minor in all zoning districts under the City and County's Land Use Ordinances. [Successor Petitioner's Exhibits 2D, 34A, at 9; OP's Response, at 6; J. Overton, Tr. 11/21/14, ; R. Funakoshi, Tr. 11/21/14, 113:1 – 113:4]

128. The solar farm project could not be developed as proposed if Parcel 52 was designated in the SLU Agricultural District. [R. Funakoshi, Tr. 11/21/14, 113:1 – 113:4]

J. NEED FOR THE PROPOSED DEVELOPMENT

129. Hawai‘i spends roughly $6 billion a year to import oil. On average, Hawai‘i residents pay an average of 37 cents per kilowatt hour, which is almost triple the national average. This Project will help to stabilize these costs. [Successor Petitioner's Exhibit 34C, at 3; L. Greene, Tr. 11/21/14, 72:6 – 72:15]

130. The Project is consistent with the Hawai‘i Clean Energy Initiative, which aims to achieve 70 percent clean energy by the year 2030, 40 percent of which is meant to come from locally generated renewable sources. Current estimates place renewable energy sources as comprising approximately 17 percent of the electricity generated in Hawai‘i. [Successor Petitioner's Exhibit 34C, at 3]

131. The Project is also in conformance with the Hawai‘i State Plan, HRS § 226-18, and the Department of Business, Economic Development and Tourism's ("**DBEDT**") renewable energy goals. [Successor Petitioner's Exhibit 34A, at 10; OP's Response, at 5-6]

132. Parcel 52 cannot feasibly be developed as Royal Kunia Phase II, Increment 3 until the infrastructure for Royal Kunia Phase II, Increments 1 and 2 is developed. [Motion to Amend, at 7, 27; DPP's Response; J. Overton, Tr. 11/21/14, 36:18 – 36:22]

K. SOCIAL AND ECONOMIC IMPACTS

133. Hoʻohana began community outreach for this Project in March 2014 and held over twenty-two (22) meetings with organizations that represent approximately 40,000 residents, taxpayers and electricity ratepayers. Hoʻohana made presentations to and solicited questions and feedback about the Project from members of the Royal Kunia Association, Village Park Association, Waipahu Neighborhood Board, Hawaiʻi Agricultural Research Center, and the Royal Kunia Country Club. Hoʻohana also spoke to local farmers in the area and made contact with the owners of Increments 1 and 2 of Royal Kunia Phase II. [Successor Petitioner's Exhibit 34H, at 2; N. Toledo, Tr. 11/21/14, 144:19 – 146:2, 148:10 – 148:16]

134. Hoʻohana also solicited feedback from members of the State and City Executive offices, Senate Senators, including the Chair of the Senate Energy and Environment Committee, House Representatives, including the Chair of House Energy and Environmental Protection Committee, members of the Honolulu City and County Council, the State Energy Office, DOA, and DPP. [Successor Petitioner's Exhibit 34H, at 2; N. Toledo, Tr. 11/21/14, 146:3 – 146:12]

135. Letters in support of the Hoʻohana solar farm project were filed with the Commission by Senator Mike Gabbard, Senator Michelle Kidani, the Blue Planet Foundation, and the Royal Kunia Country Club as Successor Petitioner's Exhibits 13A-13D. [Successor Petitioner's Exhibits 13A-13D, 34H, at 3; N. Toledo, Tr. 11/21/14, 148:5 – 148:9]

136. The Project will provide energy to HECO below 16.25 cents per kilowatt hour, thereby reducing HECO's cost of providing electricity to Oʻahu and helping to stabilize electricity prices for consumers. [Successor Petitioner's Exhibit 34A, at 16; Successor Petitioner's Exhibit 34C, at 3; L. Greene, Tr. 11/21/14, 72:6 – 72:15]

137. There is urgency to have the Project operational by December 31, 2016, when the 30% Federal Investment Tax Credits expire. In order for Hoʻohana to provide electricity to HECO at a price below 16.25 per kilowatt hour and for the ratepayers of Hawaiʻi to take advantage of this benefit, the Project must be in operation by December 31, 2016. [Successor Petitioner's Exhibit 34C, at 3; L. Greene, Tr. 11/21/14, 72:22 – 73:11]

138. Over the operational life of the Project, roughly 4.7 million gallons of imported oil and 46,000 tons of carbon dioxide annually will be replaced by approximately 46,000 megawatt hours of clean, renewable energy generated by the Project. [Successor Petitioner's Exhibit 34A, at 16]

139. The carbon reduction of the Project is equivalent to removing approximately 8,100 cars per year, or 243,000 cars over a 30-year period, from Oʻahu's roadways. The electricity generated by the Project will be enough to support approximately 7,000 homes. [Successor Petitioner's Exhibit 34A, at 16]

140. The Project will generate approximately fifty (50) jobs during construction of the Project, three (3) full-time permanent employees, and seven (7) to ten (10) temporary positions to support the Project. Approximately 95% of the jobs are anticipated to be filled by local labor. [Successor Petitioner's Exhibit 34C, at 7; L. Greene, Tr. 11/21/14, 78:2 – 78:16]

141. Implementing the interim solar farm use on Parcel 52 will allow RKL and Hoʻohana to make use of the land that is low-impact and environmentally friendly, while Parcel 52 awaits development as Royal Kunia Phase II, Increment 3. The socio-economic benefits of developing the residential uses of Increment 3 will not be lost; only delayed during the interim solar farm use. Therefore, the Project will provide the interim benefits of the solar farm use, as well as preserve the socio-economic benefits of future development of parcel 52 for the

residential units proposed as Royal Kunia Phase II, Increment 3. [Successor Petitioner's Exhibit 34A, at 17; J. Overton, Tr. 11/21/14, 36:11 – 36:17]

142. Hoʻohana plans to partner with the Maui Economic Development Board, a non-profit entity which developed a State-wide diverse renewable energy curriculum for grades K-12. This curriculum incorporates science, technology, engineering and mathematics and can be integrated into any course curriculum. The curriculum is both place-based and culturally vetted and translated into both English and Hawaiian. Hoʻohana will provide funds to sponsor a training cohort of ten (10) teachers from the Waipahu Complex, including one year of mentorship and course materials on alternative energy. The Waipahu Complex teachers have a reach of over 1,000 students per year. [Successor Petitioner's Exhibit 34H, at 5; N. Toledo, Tr. 11/21/14, 150:8 – 151:15]

143. Local farmers in the area support the Project because it will help to bring more security to the area. [Successor Petitioner's Exhibit 34H, at 3; N. Toledo, Tr. 11/21/14, 148:10 – 148:16]

L. <u>IMPACTS UPON RESOURCES OF THE AREA</u>

144. On September 23, 1989, the City and County of Honolulu Department of General Planning (now DPP) accepted the Final Environmental Impact Statement ("**FEIS**") for the Royal Kunia Phase II project. On May 28, 1996, the Final Environmental Assessment ("**FEA**") for Royal Kunia Phase II, Increment 3 was accepted. [Successor Petitioner's Exhibit 4 (Errata)]

145. The solar farm will have no greater environmental impacts than the originally proposed development of the Royal Kunia Phase II project. [Motion to Amend, at 23-24; Successor Petitioner's Exhibits 12, 18, 19, 34A, 34E, 34F, and 34G]

146. Ho‘ohana has a contractual obligation to its landlord, RKL, to properly decommission the Project. Ho‘ohana represented that it will set aside funds in its operation budget to cover the costs of decommissioning the Project. [Successor Petitioner's Exhibit 34C, at 6; L. Greene, Tr. 11/21/14, 76:14 – 76:22]

147. Upon decommissioning of the Project, Ho‘ohana represented that it would recycle or salvage as much of the solar farm components as commercially feasible. [Successor Petitioner's Exhibit 34B, at 9; C. Smith, Tr. 11/21/14, 91:11 -91:23; J. Wallenstrom, Tr. 11/21/14 154:25 – 156:25]

148. Ho‘ohana committed to comply with all governmental laws, ordinances, rules and regulations applicable to the development, operation, and decommissioning of the solar farm on Parcel 52. [J. Wallenstrom, Tr. 11/21/14, 160:14 – 160:17]

149. Ho‘ohana committed to comply with the final recommendations of its Project consultants as expressed in the summary and/or recommended mitigation sections of Successor Petitioner's Exhibit 12 (Archaeological Inventory Survey for Parcel 52 and Plantation Road), Exhibit 18 (Natural Resources Survey for the Ho‘ohana Solar Farm site in Kunia, O‘ahu), Exhibit 19 (Construction Traffic Assessment for the Proposed Ho‘ohana Solar Farm) and Exhibits 34A through and including 34I (the Written Direct Testimony (respectively) of Jeffery H. Overton, Clifford Smith, Laurence Greene, Jon Wallenstrom, Robert L. Spear, Eric B. Guinther, Sohrab Rashid, Joanne (Nonie) Toledo Hamm, and Ann Bouslog. [J. Wallenstrom, Tr. 11/21/14, 158:22 -159:13]

1. AGRICULTURAL RESOURCES

150. Prior to reclassification by the Commission in 1993, the Petition Area, including Parcel 52, was used for sugarcane cultivation for over 100 years. [Successor Petitioner's Exhibit 34A, at 14]

151. Parcel 52 is currently being actively farmed. Lands to the north and west of Parcel 52 are also being actively farmed. [Motion to Amend, at 13]

152. Development of the solar farm will not substantially impair agricultural resources or activities in the area. The proposed solar farm is a low-impact, environmentally friendly use. [Successor Petitioner's Exhibit 34A, at 10, 12-13, 15; Successor Petitioner's Exhibit 34H, at 4]

153. As a result of discussions with farmers in the area, the Project will not incorporate cover crops for pollinators. Neighboring farmers were concerned that planting additional cover crops for pollinators could attracts bugs, introduce alien species to the area, and/or distract existing pollinators away from their current crops. [Successor Petitioner's Exhibit 34H, at 4; N. Toledo, Tr. 11/21/14, 148:21 – 149:22]

154. Neighboring farmers also opposed the idea of introducing livestock into the Project due to concerns of animal waste contaminating crops. The Department of Health prohibits the sale of produce for public consumption that may be contaminated by livestock waste. Furthermore, the MOU for the Kunia Agricultural Park also prohibits commercial livestock and aquaculture due to its close proximity to residential uses. [Successor Petitioner's Exhibit 34H, at 4; N. Toledo, Tr. 11/21/14, 148:21 – 149:22]

155. The DOA supported reclassification of the Petition Area for the Royal Kunia Phase II project because it provided the state a unique opportunity to acquire and have developed at a minimal cost a usable-sized tract of prime agricultural land for diversified crop production. [1996 Order, FOF 112, at 31]

156. DOA supports the solar farm Project because Hoʻohana agreed that it would provide DOA with a non-potable irrigation waterline to service the Kunia Agricultural Park. The non-potable waterline will be developed concurrent with development of the solar farm, providing DOA access to this infrastructure sooner than buildout of the Royal Kunia Phase II residential development. DOA understands that if the solar farm is not developed, Hoʻohana will not construct the non-potable waterline. [R. Teruya, Tr. 11/21/14, 165:5 – 165:6, 172:14 – 172:19]

2. FLORA AND FAUNA

157. The Commission previously determined that there is little of botanical significance in the Petition Area and that no endemic birds or mammals were found in the Petition Area. [1996 Order, FOF 116, 118, at 31-32]

158. On May 20 and August 18, 2014, Hoʻohana's consultant, Eric Guinther of AECOS, Inc., conducted a Natural Resources Survey of Parcel 52 and Plantation Road. The Natural Resources Survey found that no botanical resources of interest or concern were located on Parcel 52 and that vegetation over most of Parcel 52 was controlled by past and present land uses. Two common (2) native plants were identified, the ʻuhaloa and ʻaʻaliʻi plants, neither of which is rare or endangered. [Successor Petitioner's Exhibit 34F, at 3]

159. The U.S. Fish and Wildlife Service noted that the Hawaiian hoary bat may forage or roost on Parcel 52. Hoʻohana committed to avoid disturbance to woodsy plants 15 feet or greater in height during the hoary bat pup rearing season from June 1 through September 15 of each year, and to consult with the U.S. Fish and Wildlife Service on employee training programs to mitigate adverse impacts on endangered and migratory avian species. [OP Exhibit 5]

160. A total of 722 birds representing 24 species were observed on Parcel 52. All 24 species are non-native to Hawai‘i. Four mammalian species were detected on Parcel 52: dog, mongoose, cat, and pig. The endangered hoary bat was not detected during the survey. [Successor Petitioner's Exhibit 34F, at 4; E. Guinther, Tr. 11/21/14, 108:21 -109:1]

161. No wetlands or streams are located on Parcel 52. No threatened or endangered species, nor any federally-declared critical habitat were identified on Parcel 52. [Successor Petitioner's Exhibit 34F, at 3-4; E. Guinther, Tr. 11/21/14, 109:2 – 109:7]

162. The PV panels used for the Project are similar to those used on rooftops and are not anticipated to generate any significant hazards to fauna, and birds in particular. [C. Smith, Tr. 11/21/14, 89:12 – 89:21; E. Guinther, Tr. 11/21/14, 109:16 – 110:2]

163. Ho‘ohana's experts testified that they were not aware of any reports of birds in Hawai‘i mistaking PV panels for water. [Successor Petitioner's Exhibit 34B, at 7; C. Smith, Tr. 11/21/14, 95:8 – 96:2, 96:12 – 96:16; E. Guinther, Tr. 11/21/14, 109:16 – 110:2]

164. The PV panels used in this Project are designed to absorb as much solar energy as possible and will therefore create minimum to no glare, and will not generate heat that could cause harm to birds. [Successor Petitioner's Exhibit 34A, at 11-12; C. Smith, Tr. 11/21/14, 95:8 – 95:20]

3. ARCHAEOLOGICAL, HISTORICAL, AND CULTURAL RESOURCES

165. An archaeological reconnaissance survey of the Petition Area was conducted in November 1988 by Joseph Kennedy of Archaeological Consultants of Hawai‘i. At the time of the survey, the entire Petition Area was covered with sugarcane and no above-ground archaeological features were discovered. [1996 Order, FOF 122-23, at 32-33]

166. The Commission found that, due to past land use and because there have been no archaeological or historical sites had been recorded in the Petition Area, the Royal Kunia Phase II project would not cause any adverse impacts to archaeological or historical resources. [1996 Order, FOF 123-24, at 32-33]

167. In June 2014, Hoʻohana's consultant, Dr. Robert Spear of Scientific Consultant Services, Inc. ("**SCS**"), conducted an archaeological inventory survey ("**AIS**") of Parcel 52 and Plantation Road. [Successor Petitioner's Exhibit 12; Successor Petitioner's Exhibit 34E, at 3]

168. Two (2) new archaeological sites were identified. The first site, consisting of artifact scatter, was determined by the State Historic Preservation Division ("**SHPD**") to lack sufficient site integrity to be assigned a State Site number. The second site is designated by SHPD as State Site 50-80-08-7671. This site is a historic road complex consisting of three features: Feature 1 – alignment; Feature 2 – wall; and Feature 3 – paved segments of a road and railroad alignment. Both sites were evaluated under Criteria "d" as having yielded, or being likely to yield, information important for research on prehistory or history. Both sites are attributable to historic land usage. [Successor Petitioner's Exhibit 12; Successor Petitioner's Exhibit 34E, at 4-5; R. Spear, Tr. 11/21/14, 104:14 – 105:5]

169. The AIS was submitted to SHPD on July 30, 2014 and received by SHPD on August 1, 2014. In early October 2014, SHPD requested additional historic background on military uses of Parcel 52. SCS submitted this information to SHPD in the form of a supplemental report on November 5, 2014. SHPD is currently reviewing the AIS and acceptance of the AIS is expected soon. [Successor Petitioner's Exhibit 34E, at 3; R. Spear, Tr. 11/21/14, 105:23 – 105:2]

170. No burials or cultural resources were identified within Parcel 52. As such, SCS did not recommend that any data recovery, preservation, or burial treatment plans be prepared for Parcel 52. [Successor Petitioner's Exhibit 12; Successor Petitioner's Exhibit 34E, at 6; J. Overton, Tr. 11/21/14, 35:21 – 35:23; R. Spear, Tr. 11/21/14, 105:13 – 105:15]

171. The AIS recommended that no further archaeological work be done. Dr. Spear found that the Project will not have an adverse impact on cultural, historical, archaeological, or natural resources. [Successor Petitioner's Exhibit 34E, at 5-6; R. Spear, Tr. 11/21/14, 104:14 – 105:5]

172. SHPD recommended that no ground altering permits be issued until after SHPD has completed its review. [OP Exhibit 2]

173. If any significant archaeological or cultural resources are discovered during construction of the proposed solar farm, Hoʻohana will take steps to mitigate such effects and work with the appropriate state and county agencies. [Successor Petitioner's Exhibit 34A, at 15]

174. No formal cultural impact analysis was prepared for the Project. Nevertheless, Dr. Spear determined that no traditional and customary practices are, or were, being practiced within Parcel 52. This determination was based on the century of sugar cane farming of Parcel 52, the absence of finding any cultural practices, and his contact with kupuna Shad Kane, a native Hawaiian cultural expert familiar with the area. [Successor Petitioner's Exhibit 34E, at 6; R. Spear, Tr. 11/21/14, 106:7 – 106:23]

175. RKL's representative also testified that Parcel 52 has been owned by the RKL families since just after the Great Mahele. Since that time the land has been used for cattle grazing and sugar farming. To RKL's knowledge, no native Hawaiian traditional and customary gathering or cultural practices have been conducted on Parcel 52, nor have there been any

requests by cultural practitioners to exercise such rights. [A. Zawtocki, Tr. 11/21/14, 184:8 – 184:23]

176. Based on Hoʻohana's consultation with Shad Kane and representations form RKL that no traditional or customary native Hawaiian practices are being conducted on Parcel 52, the *PASH and Ka Paʻakai* analyses have been satisfied. [J. Scheuer, Tr. 11/21/14, 191:14 – 191:19; N. Toledo, Tr. 11/21/14, 146:13 – 146:21]

4. GROUNDWATER AND SURFACE WATER RESOURCES

177. The Commission previously found that the recharge of groundwater on the Petition Area is minimal due to the relatively low rainfall in the area. In addition, the organic matter in the soils on the Petition Area tends to retard movement of most chemicals. [1996 Order, FOF 128, at 34]

178. There will be no significant use of groundwater or surface water resources by the solar farm Project, and thus no impairment to the public trust related to water resources. The Project does not require approval by the Water Commission nor does it require a water allocation. Water used to clean the PV panels, for landscaping, and for the septic system will be trucked onto Parcel 52 and stored in three (3) 4,000 gallon water tanks. [Successor Petitioner's Exhibit 34A, at 5, 14; J. Overton, Tr. 11/21/14, 28:17 – 28:20]

179. No chemicals or cleansers will be used to clean the PV panels, only water. Liquid mineral oil (a non-hazardous material) is a common coolant for the transformers. If weeds become a problem, herbicides approved by the State of Hawaiʻi will be applied using BMPs. [Successor Petitioner's Exhibit 34B, at 8; C. Smith, Tr. 11/21/14, 97: 7 – 97:11]

180. Although OP solicited comments from the State Commission on Water Resource Management ("**CWRM**") on Hoʻohana's Motion to Amend, CWRM did not submit any comments or objections to the proposed solar farm. [OP's Response, at 2]

181. Should there be any existing use of water from the Waiahole Ditch System at Parcel 52 that will be reduced during the operational period of the solar farm, the reduction in reasonable-beneficial use shall be reported to the State Commission on Water Resource Management. [J. Scheuer, Tr. 11/21/14, 45:2 – 45:9]

5. RECREATIONAL AND SCENIC RESOURCES

182. The Commission previously found that the Royal Kunia Phase II project would not impact scenic resources in the area because there are no significant public views or visual features. [1996 Order, FOF 129, at 34]

183. Hoʻohana conducted view studies from various neighborhoods and locations surrounding Parcel 52: (1) the H-1 Freeway ʻEwa bound, looking across of Waikele Gulch toward Parcel 52; (2) Kunia Road looking East at Parcel 52; (3) the intersection of Anoiki Street and Anonui Street looking north toward Parcel 52; (4) Royal Kunia Country Club; (5) Central Oʻahu Regional Park Tennis Courts; (6) Pakela Street in Waikele; (7) Waipahu Elementary School; (8) Halekapio Street in Waipahu; and (9) Nui Street in Mililani. [Successor Petitioner's Exhibit 14; Successor Petitioner's Exhibit 34B, at 6-7; N.Toledo, Tr. 11/21/14, 147:8 – 147:14]

184. Due to the topography and tall grasses surrounding Parcel 52 and the distance from communities and roadways, the solar farm should not be visible from neighborhoods or from streets from these viewpoints, except for potentially a community northeast of the Project, at Nui Street in Mililani. The distance from this area to the Project site is over 5,000 feet and it was difficult for Hoʻohana to determine if the Project's northern fence line could be visible. If

the Project is visible from that viewpoint, Hoʻohana will plant selective vegetation along portions of the northeast fence line to screen and mitigate the view. [Successor Petitioner's Exhibit 34B, at 6-7; J. Overton, Tr. 11/21/14, 29:21 – 29:22; N. Toledo, Tr. 11/21/14, 147:8 – 147:18]

185. Hoʻohana also conducted a Solar Glare Hazard Analysis Report to determine whether the Project would generate glare that would affect air traffic. The report identified two potential runway approaches with a low potential for temporary after-image caused from glare, and in the final analysis, the Federal Aviation Administration issued Determinations of No Hazard to Air Navigation for the Project. Due to the topography and tall grasses surrounding Parcel 52, any glare generated by the Project would not generate glare that will affect motor vehicle traffic or neighboring views in the area. [Successor Petitioner's Exhibits 20A – 20D; Successor Petitioner's Exhibit 34B, at 10-11; C. Smith, Tr. 11/21/14, 89:2 – 89:8]

186. If any glare is found to be generated by the Project once it is constructed, Hoʻohana will implement mitigation measures to ensure that glare is reduced as much as possible. Mitigation measures include additional fencing and/or planting additional vegetation with landscaping appropriate for the area. [Successor Petitioner's Exhibit 34B, at 7; R. Funakoshi, Tr. 11/21/14, 118:12 – 118:16; J. Wallenstrom, Tr. 11/21/14, 154:16 – 154:19]

187. Although not anticipated, if any glint or glare causes a hazardous condition for pilots or motorists, the State Department of Transportation recommended that Petitioner should immediately mitigate the hazard upon notification by the State Department of Transportation. [OP Exhibit 3]

M. ENVIRONMENTAL QUALITY

1. NOISE

188. The Commission previously found that there was a potential for noise generated by the increased traffic, industrial areas and public park planned as a part of the Royal Kunia Phase II project. [1996 Order, FOF 132, 133, 135, at 35-36]

189. Noise will be generated during construction of the solar farm Project. Ho‘ohana will implement mitigation measures to minimize the impacts of any noise generated. [Successor Petitioner's Exhibit 34A, at 6; Successor Petitioner's Exhibit 34B, at 4; L. Greene, Tr. 11/21/14, 77:12 – 77:17; C. Smith, Tr. 11/21/14, 103:3 103:12]

190. Once the Project is constructed and operational, noise from the Project will be minimal.

2. AIR QUALITY; DUST AND EROSION

191. The Commission previously found that the air quality of the Petition Area was relatively good and has improved since sugarcane cultivation terminated in the area. Construction of the Royal Kunia Phase II project has the potential for short-term air quality impacts resulting from the emission of fugitive dust during construction. Increased vehicle trips would add to increased exhaust emissions. [1996 Order, FOF 137-39, at 36-37]

192. During construction of the solar farm, there will be short-term impacts to air quality resulting from construction vehicle emissions and fugitive dust. [Successor Petitioner's Exhibit 34A, at 6; J. Overton, Tr. 11/21/14, 30:12 – 31:2]

193. To the extent applicable, Ho‘ohana will use BMPs to control dust and erosion during construction of the solar farm. Erosion and dust will be minimal after construction of the solar farm is completed. Dust generation and erosion will be controlled according to the terms of

Ho‘ohana's building and grading permits. [Successor Petitioner's Exhibit 34A, at 6; Successor Petitioner's Exhibit 34B, at 5]

194. There will be no emissions from the proposed solar farm and operation of the solar farm will produce only minimal vehicle trips. [Successor Petitioner's Exhibit 34A, at 6]

195. The Project will produce enough renewable energy to prevent nearly 46,000 tons of carbon emissions annually. [Successor Petitioner's Exhibit 34A, at 16]

N. <u>ADEQUACY OF PUBLIC SERVICES AND FACILITIES</u>

1. HIGHWAYS AND ROADWAY FACILITIES

196. Access to Parcel 52 will be along Plantation Road, an existing, partially paved, privately-owned Road, from Kunia Road. There will be a 20-feet wide access road surrounding the Solar Array to accommodate maintenance vehicles. [Motion to Amend, at 19-20; J. Overton, Tr. 11/21/14, 25:2 – 25:4; C. Smith, Tr. 11/21/14, 90:9 – 90:11]

197. Sohrab Rashid of Fehr & Peers conducted the Construction Traffic Assessment for the Project. [Successor Petitioner's Exhibit 19]

198. The Traffic Assessment conducted for the Project determined that the access via Plantation Road to Parcel 52 is sufficient as-is. [Successor Petitioner's Exhibit 19, at 2, 8]

199. The Traffic Assessment conservatively assumed that approximately 100 construction workers would be on site every day during construction of the Project and that each of the 100 construction workers would drive his or her own vehicle during typical morning and evening commute peak hours. However, Ho‘ohana estimates that only approximately fifty (50) construction workers will be on site at any given time. [Successor Petitioner's Exhibit 19, at 4; Successor Petitioner's Exhibit 34G, at 3; S. Lim, Tr. 11/21/14, 48:18 – 50:5]

200. The closest bus stop to the Project site is 2.5 miles south of Plantation Road. Given the undeveloped nature of the Project site and the low density development in the immediately surrounding area, the potential conflict between site-generated traffic and non-automobile modes of transportation is low. [Successor Petitioner's Exhibit 19, at 3]

201. The Traffic Assessment determined that additional traffic generated by construction of the Project may have a temporary impact on the Plantation Road/Kunia Road intersection. However, any impacts will not be significantly adverse to either local or regional traffic near the Parcel 52. Once construction of the Project is completed and fully operational, the Project will generate a negligible increase in the amount of vehicle traffic in the area. [Successor Petitioner's Exhibit 19, at 7; Successor Petitioner's Exhibit 34G, at 3; S. Lim, Tr. 11/21/14, 50:3 – 50:5]

202. Construction management measures recommend by Fehr & Peers include: (a) installing temporary construction signage on Kunia Road, mauka-bound, between Anonui Street and Plantation Road that indicates the presence of construction vehicles entering and exiting the roadway; (b) installing temporary standard construction signage on Kunia Road, makai-bound, between Hawaii Country Club and Plantation Road that indicates the presence of construction vehicles entering and exiting the roadway; (c) field verify available sight distance and maintain adequate sight distance for drivers existing Plantation Road onto Kunia Road, pruning vegetation that may block drivers' field of vision at the intersection; and (d) extending the painted solid line delineating the "no passing zone" for Kunia Road mauka-bound vehicles at least an additional 500 feet in the makai direction. [Successor Petitioner's Exhibit 19, at 7; Successor Petitioner's Exhibit 34G, at 3; S. Lim, Tr. 11/21/14, 49:2 – 50:5]

2. WATER SERVICE; WASTEWATER DISPOSAL; DRAINAGE AND STORMWATER; SOLID WASTE DISPOSAL

203. The Commission previously found that development of the Royal Kunia Phase II project will require an average flow of 1.56 million gallons per day. The Royal Kunia Phase II development will require certain improvements, including a well and booster pump to be located at the Kunia Wells II site, a permanent concrete reservoir, and two (2) Granular Activated Carbon contractor units. The Kunia Agricultural Park irrigation will require an average flow of 700,000 gallons per day. [1996 Order, FOF, 177, 179-180, at 47-48]

204. Wastewater from the Royal Kunia Phase II project is anticipated to be collected by a network of pipes that will flow through the Royal Kunia Phase I subdivision. Stormwater runoff from the Petition Area will be detained and diverted into detention basins, or discharged into the Waikele Stream, or be carried through various drainage facilities running through the Royal Kunia Phase I and Village Park subdivisions. [1996 Order, FOF 182, 184, at 49-50]

205. The Commission identified the Waiahole Ditch as an alternate source of non-potable water for the Kunia Agricultural Park. [1996 Order, FOF 181, at 48]

206. Ho‘ohana has agreed to provide a non-potable irrigation waterline from Reservoir 225, located on TMK No. 9-4-003: 001 to the border of the Kunia Agricultural Park. [OP's Exhibit 14, at 4-5]

207. The solar farm on Parcel 52 will use significantly less water than the proposed residential development for Increment 3 of the Royal Kunia Phase II project. The solar panels will be cleaned bi-annually (depending upon rainfall) with water that will be trucked onto the Project site and stored in three (3) 4,000 gallon water tanks. The water will also be used for the septic system in the Security Building. [Motion to Amend, at 18; Successor Petitioner's Exhibit 34B, at 3, 6; C. Smith, Tr. 11/21/14, 99:6 – 99:11]

208. Parcel 52 is relatively flat but some clearing and grading will be required to prepare the site for the solar farm. Stormwater runoff from the solar farm will be collected in the drainage basin on the southern portion of Parcel 52 and will be managed according to Hoʻohana's National Pollutant Discharge Elimination System Permit ("**NPDES**"). [Successor Petitioner's Exhibit 34B, at 4; C. Smith, Tr. 11/21/14, 102:18 – 103:12]

209. The solar farm will create minimal additional impervious area. The estimated building area or lot coverage of the buildings and facilities (not including the solar array) is approximately 39.25 acres. Hydroseed with low maintenance grasses will be planted in and around the solar array. [Successor Petitioner's Exhibit 34B, at 4; C. Smith, Tr. 11/21/14, 86:16 - 86:20, 96:20 – 96:22]

210. Once the solar farm is constructed and operational, wastewater and solid waste generation will be minimal. The Security Building will be equipped with a septic system. [Successor Petitioner's Exhibit 34B, at 3; C. Smith, Tr. 11/21/14, 99:6 – 99:11]

211. Appropriate BMPs for wastewater, stormwater and erosion controls will be determined as a part of Hoʻohana's Conditional Use Permit, NPDES permit, building permits, and grading permits. [Successor Petitioner's Exhibit 34B, at 4; C. Smith, Tr. 11/21/14, 103:3 103:12]

3. FIRE PROTECTION

212. The Waipahu and Pearl City fire stations will respond to emergencies at the Petition Area, including Parcel 52. [1996 Order, FOF 199, 205, at 53, 54]

213. The Project will not utilize utility scale batteries. There will be a small battery, roughly the size of two or three car batteries, in the Control Building to serve as back-up power for data collection. The final design of the Control Building will isolate the battery from other

high-voltage equipment and combustible materials. Ho‘ohana committed to comply with all applicable BMPs for containment of leakage from the batteries. [Successor Petitioner's Exhibit 34B, at 5; C. Smith, Tr. 11/21/14, 92:22 – 94:5]

214. The solar arrays are out in the open and there are no sprinkler systems or chemical sprays that are required for fire control at PV farms. The primary area where high-voltage equipment will be located will be in the Substation, not the solar array. [Successor Petitioner's Exhibit 34B, at 8; C. Smith, Tr. 11/21/14, 89:24 – 90:17]

215. The fenced-in Substation area will be completely covered with a gravel bed of approximately 12,000 square feet to minimize grasses and other combustible material in the range of high-voltage equipment that may spark. This is a typical design for fire suppression at substations, which is consistent with industry standards. [Successor Petitioner's Exhibit 34B, at 4; C. Smith, Tr. 11/21/14, 89:24 – 90:8]

216. In addition, a perimeter road surrounding the Project will provide a buffer which allows for a firebreak in the event that a wildfire threatens Parcel 52. Automatic shutdown measures will also be integrated into the final design [check if actually said]. [Successor Petitioner's Exhibit 34B, at 4; C. Smith, Tr. 11/21/14, 90:9 – 90:13]

217. During the permitting process for the solar farm, the Fire Department will have an opportunity to review and comment on the Project's Conditional Use Permit ("**CUP**") and building permit applications. [Successor Petitioner's Exhibit 34B, at 4; C. Smith, Tr. 11/21/14, 90:13 – 90: 17]

O. SCHOOLS; PARKS; HEALTH CARE; CIVIL DEFENSE; UTILITY SERVICES

218. In the 1996 Order, the Commission made specific findings related to the need for school, public parks, civil defense measures, and utility services connected with the development

of the residential units and other uses proposed for the Royal Kunia Phase II project. The existing health care facilities in the area were determined by the Commission to be adequate to serve the residents of the Royal Kunia Phase II project. [1996 Order, FOF 189-200, 206-10, at 51-56]

219. The State and City and County requirements for additional schools, public parks, and civil defense measures, are not applicable to the proposed solar farm use. Because the solar farm use will not generate a greater need for health care facilities beyond the need determined for the Royal Kunia Phase II project, the existing health care facilities are adequate for the solar farm use. [Successor Petitioner's Exhibit 34A, at 4-8]

220. The Commission determined that a new HECO substation with a new 12 kV distribution feeder system and an extension of two 46 kV circuits would be needed to accommodate the Royal Kunia Phase II project. [1996 Order, FOF 207, at 55]

221. A new Substation will be built as a part of the Project and located generally on the northwestern portion of Parcel 52. The Project will connect to HECO's grid via a 46 kV line which will connect with this Substation. [Successor Petitioner's Exhibit 34B, at 3; Successor Petitioner's Exhibit 34D, at 4; C. Smith, Tr. 11/21/14, 86:21 – 86:25]

P. COMMITMENT OF STATE FUNDS AND RESOURCES

222. The City and County of Honolulu and the State of Hawai‘i will receive revenue from this Project through taxes. [Successor Petitioner's Exhibit 34A, at 17]

223. The Project is expecting to access state and federal investment tax credits. The Federal Investment Tax Credit accounts for thirty percent (30%) of the total value of the Project. [Successor Petitioner's Exhibit 34C, at 3; L. Greene, Tr. 11/21/14, 72:22 – 73:7]

Q. CONFORMANCE WITH THE GOALS, OBJECTIVES, AND POLICIES OF THE HAWAI'I STATE PLAN; RELATIONSHIP WITH APPLICABLE PRIORITY GUIDELINES AND FUNCTIONAL PLANS

224. HRS Section 205-16 provides that "[n]o amendment to any land use district boundary nor any other action by the land use commission shall be adopted unless such amendment or other action conforms to the Hawai'i state plan."

225. The Commission previously determined that Urban designation of the Petition Area and development of the Petition Area as the Royal Kunia Phase II project is in conformance with the Hawai'i State Plan, HRS Chapter 226, and the overall theme, goals, objectives, and priority guidelines for the future long-range development of the State. [1996 Order, FOF 219-20, at 57-58]

226. Development of Parcel 52 as a solar farm is consistent with applicable goals, objectives and policies of the Hawai'i State Plan. [Successor Petitioner's Exhibit 34A, at 10, 17; R. Funakoshi, Tr. 11/21/14, 112:21 – 112:25; OP's Response, at 5-6]

227. <u>HRS § 226-18: Objectives and Policies for Facility Systems – Energy</u>. HRS Section 226-18 describes a number of objectives and policies with regards to energy facility systems.[3] The Ho'ohana solar farm proposed for Parcel 52 will satisfy a number of these

[3] HRS section 226-18 provides: (a) Planning for the State's facility systems with regard to energy shall be directed toward the achievement of the following objectives, giving due consideration to all:
(a)(1) Dependable, efficient, and economical statewide energy systems capable of supporting the needs of the people;
(a)(2) Increased energy self-sufficiency where the ratio of indigenous to imported energy use is increased;
(a)(3) Greater energy security and diversification in the face of threats to Hawaii's energy supplies and systems; and
(a)(4) Reduction, avoidance, or sequestration of greenhouse gas emissions from energy supply and use.
(b) To achieve the energy objectives, it shall be the policy of this State to ensure the short- and long-term provision of adequate, reasonably priced, and dependable energy services to accommodate demand.
(c) To further achieve the energy objectives, it shall be the policy of this State to:
(c)(1) Support research and development as well as promote the use of renewable energy sources;
(c)(2) Ensure that the combination of energy supplies and energy-saving systems is sufficient to support the demands of growth;
(c) (3) Base decisions of least-cost supply-side and demand-side energy resource options on a comparison of their total costs and benefits when a least-cost is determined by a reasonably comprehensive, quantitative, and qualitative

objectives and policies, some of which include: (1) helping the state to obtain greater energy security and self-sufficiency by providing an independent and renewable source of energy; (2) reducing greenhouse gas emissions; (3) promoting the use of renewable energy sources; (4) ensuring that the combination of energy are sufficient to support the demands of growth; and (5) promoting a cost-effective method of energy. [Motion to Amend, at 32-33]

228. HRS § 226-103(a) - Economic Priority Guidelines. The priority guideline set forth in HRS Section 226-103(a) is to stimulate economic growth and encourage business expansion and development to provide jobs and to achieve a stable and diversified economy. Although the solar farm Project will not be a significant job creator, it clearly supports the State's priority guidelines with respect to encouraging the development of clean industries.

> HRS § 226-103(a)(8). Provide public incentives and encourage private initiative to develop and attract industries which promise long-term growth potentials and which have the following characteristics:
>
> (A) An industry that can take advantage of Hawaii's unique location and available physical and human resources.
>
> (B) A clean industry that would have minimal adverse effects on Hawaii's environment.

[Motion to Amend, at 33]

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accounting of their long-term, direct and indirect economic, environmental, social, cultural, and public health costs and benefits;
(c)(4) Promote all cost-effective conservation of power and fuel supplies through measures, including:
(A) Development of cost-effective demand-side management programs;
(B) Education; and
(C) Adoption of energy-efficient practices and technologies;
(c)(5) Ensure, to the extent that new supply-side resources are needed, that the development or expansion of energy systems uses the least-cost energy supply option and maximizes efficient technologies;
(c)(8) Support actions that reduce, avoid, or sequester greenhouse gases in utility, transportation, and industrial sector applications;
(c)(10) Provide priority handling and processing for all state and county permits required for renewable energy projects.

229. HRS § 226-103(f) – Energy Use and Development Guidelines. The proposed 20 MW solar farm on Parcel 52, which will provide enough renewable energy to power approximately 7,000 homes, the equivalent of removing approximately 8,100 cars from Hawai‘i's roads every year, and is also consistent with the State's priority guideline to encourage the development and commercialization of renewable energy sources.

> HRS § 226-103(f). Priority guidelines for energy use and development:
>
> (1) Encourage the development, demonstration, and commercialization of renewable energy sources.
>
> (2) Initiate, maintain, and improve energy conservation programs aimed at reducing energy waste and increasing public awareness of the need to conserve energy.
>
> (3) Provide incentives to encourage the use of energy conserving technology in residential, industrial, and other buildings.
>
> (4) Encourage the development and use of energy conserving and cost-efficient transportation systems.

[Motion to Amend, at 33-34]

230. DBEDT's Energy Policy's goal is to maximize the development of cost effective investments in clean energy production to ensure the State's energy future. DBEDT's specific objectives are to (1) diversify the State’s energy portfolio; (2) connect the islands through integrated, modernized grids; (3) balance technical, economic, environmental, and cultural considerations; (4) use Hawai‘i's unique attributes to launch innovative renewable energy technology; and (5) allow the market to drive demand. [Motion to Amend, at 34]

231. The solar farm contributes to all five of DBEDT's objectives. First, the Project provides the State with another alternative to energy production that uses 100% clean, natural, and renewable energy and does not use fossil fuels or emit greenhouse gases. Second, the Project will help to stabilize electricity rates for O‘ahu ratepayers. Third, the Project allows the

State, and ultimately the public as a whole, to benefit from the private resources that will be invested in finding a cost-effective and long-term solution to Hawaiʻi's energy needs. Fourth, the Project provides yet another opportunity for the State to be a leader in renewable energy technology. Lastly, the Project contributes to the State's goals by providing the necessary private funding for such projects that are costly on the front end but that will ultimately save the State and the people of Hawaiʻi money in the long-run, help to preserve our natural resources, and give the State the foundation to become energy self-sufficient. [Motion to Amend, at 34]

R. CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

232. The Commission previously determined that the Royal Kunia Phase II project complies with and supports the objectives of the Hawaiʻi Coastal Zone Management Program. [1996 Order, FOF 239-245, at 62-63]

233. In compliance with historic resources objectives, no burials, or significant archaeological or historical resources have been identified on Parcel 52 or Plantation Road. [Successor Petitioner's Exhibit 34E, at 6-7; R. Spear, Tr. 11/21/14, 105:6 – 105:15]

234. In compliance with scenic and open space resources objectives, development of the solar farm will not substantially impact views from Kunia Road or neighborhoods surrounding Parcel 52. Due to the topography surrounding Parcel 52, the solar farm should not be visible from most communities or streets near the Project. Selective vegetation will be planted to mitigate impacts to views. The setbacks, heights and locations of the buildings and equipment for the solar farm will be governed by the conditions of Hoʻohana's CUP-Minor. [Successor Petitioner's Exhibit 14; Successor Petitioner's Exhibit 34B, at 3-4; N. Toledo, Tr. 11/21/14, 147:8 – 147:14]

235. In compliance with economic uses objectives, the solar farm Project will stimulate the state economies through taxes and Hoʻohana's multimillion dollar investment in the State. [Successor Petitioner's Exhibit 34A, at 17; Successor Petitioner's Exhibit 34C, at 4; L. Greene, Tr. 11/21/14, 74:5 – 74:9]

236. In compliance with coastal hazards objectives, the solar farm Project is not located in a tsunami inundation zone. [OP Exhibit 6; Successor Petitioner's Exhibit 34B, at 2].

S. COMMISSION CRITERIA FOR A MOTION TO AMEND

237. Authority to Amend. Hawaiʻi Administrative Rules ("**HAR**") § 15-15-94 provides in part as follows:

> (a) If a petitioner, pursuant to this section, desires to have a . . . modification of the commission's order, the petitioner shall file a motion in accordance with section 15-15-70 and serve a copy on all parties to the boundary amendment proceeding . . . 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 that the motion is filed.
>
> (b) For good cause shown, the commission may act to modify or delete any of the conditions imposed or modify the commission's order.
>
> (c) Any modification or deletion of conditions or modifications to the commission's order shall follow the procedures set forth in subchapter 11.

238. Service of Motion. Under HAR Section 15-15-94, a petitioner filing a motion to amend or delete conditions under HAR Section 15-15-70 must serve a copy of the motion on all parties to the original boundary amendment proceeding in which the condition was imposed or the order was issued, and to any person who may have a property interest in the subject property as recorded in the County's real property tax records at the time that the motion is filed.

239. Pursuant to HAR Section 15-15-48, a copy of Hoʻohana's Motion to Amend was served on OP and DPP. As determined by a review of the title reports for the Petition Area, all persons with a recorded interest in the Petition Area were served with a copy of the Motion to Amend. [Successor Petitioner's Amended COS]

240. Hoʻohana served copies of the Motion to Amend and subsequent pleadings upon each of the landowners of the Petition Area: RKL; Canpartners; HRT Entities; and RKES, LLC. [Successor Petitioner's Amended COS]

241. At the Commission's hearing on November 13, 2014, the Commission admitted the HRT Entities as parties to the proceedings. [Tr. 11/13/14, 32:21 – 33:3]

242. Canpartners did not make an appearance at the proceedings. RKES, LLC did not respond to Hoʻohana's multiple requests for comments on the Motion to Amend. [S. Lim, Tr. 11/21/14, 13:17 – 14:7]

243. HECO holds a utility easement over portions of Parcel 52 and the Petition Area. General counsel for HECO inquired as to the reason HECO was served with a copy of the Motion to Amend and subsequent pleadings but did not seek any involvement in the proceedings. [Successor Petitioner's Amended COS]

244. <u>Good Cause Shown to Amend the Halekua Orders</u>. Under HAR § 15-15-94(B), Hoʻohana has presented the Commission with good cause to amend the Halekua Orders to (a) recognize Hoʻohana Solar 1, LLC as Successor Petitioner to Parcel 52, (b) authorize the proposed interim use of Parcel 52 for solar farm development for an operational period, excluding decommissioning, not to exceed 35-year operational use, and (c) delete Condition 21 of the Halekua Orders and replace it with the Commission's standard condition requiring the Petitioner to provide notice to the Commission of any intent to sell, lease, assign, place in trust,

or otherwise voluntarily alter the ownership interest in the subject property prior to or during development of the subject property, excluding, however, individual lot sales or lease in a residential or industrial development. [HAR § 15-15-90(e)(2); OP's Response, at 2]

245. The solar farm Project is consistent with the State Land Use Urban District classification and the Commission rules for State Land Use Urban District standards and permissible uses. HAR §§ 15-15-18 & 15-15-24. The solar farm Project is fully permissible in the Urban District, unlike other proposals for utility-scale solar energy facilities on lands designated in the State Land Use Agricultural District. [OP's Response, at 5; R. Funakoshi, Tr. 11/21/14, Tr. 11/21/14, 112:21 – 112:25]

246. The solar farm Project is a "utility installation", as defined in Chapter 21-10.1 of the Revised Ordinances of Honolulu, and is permitted within any zoning designation of the City and County with a Conditional Use Permit-Minor Type A or Type B. [Successor Petitioner's Exhibits 2D, 34A, at 9; OP's Response, at 6; J. Overton, Tr. 11/21/14, ; R. Funakoshi, Tr. 11/21/14, 113:1 – 113:4]

247. Solar energy production is a clean renewable energy resource strongly supported by the State to promote energy self-sufficiency and reduce the State's reliance on imported fossil fuels. [OP's Response, at 6]

248. The Project will help the state to achieve its renewable energy goals. [Successor Petitioner's Exhibit 34A, at 10; Successor Petitioner's Exhibit 34C, at 3; OP's Response, at 5-6]

249. Hoʻohana's community outreach for the Project indicated that the community is generally in support of the solar Project because it will help to stabilize ratepayer's electricity prices and will bring added security to the area. [Successor Petitioner's Exhibit 34A, at 16; Successor Petitioner's Exhibit 34C, at 3; L. Greene, Tr. 11/21/14, 72:6 – 72:15]

250. Original Conditions of Approval; Applicability to Solar Farm Use. The Halekua Orders imposed 25 conditions of approval on the Petition Area. These conditions were created in anticipation of a residential development. Because the proposed solar Project is a change in use, many of these conditions are not applicable. [J. Overton, Tr. 11/21/14, 38:18 – 25]

251. To the extent that the following conditions are applicable, Petitioner will ensure that the proposed solar project is in compliance.

252. Condition Nos. 9 and 10 require Petitioner to erect a chain link fence along the eastern boundary of the Petition Area and to maintain the land within 20 feet of the eastern boundary free of vegetation taller than eight inches high. Conditions 9 and 10 were imposed in the original 1993 Order as a safety measure and buffer for the proposed residential units at Royal Kunia Phase II from the former Waikele Branch of Naval Magazine, Lualualei. Subsequently, a Department of the Navy communication dated 1/24/96 stated that "all explosives have been removed from all Waikele Branch facilities and no need exists for any future storage of explosives, this location is disestablished as an ordnance storage location." In any event, for security reasons, Hoʻohana will erect an 8 feet tall fence around the 124 acre perimeter of the proposed solar farm. Vegetative buffers will be planted where needed, as required by the CUP. [Successor Petitioner's Exhibit 34A, at 5; J. Overton, Tr. 11/21/14, 29:1 – 29:22]

253. Condition No. 11 requires Petitioner to coordinate with the DOH and the City and County to establish a system to prevent and contain spills of chemicals. Any use of hazardous chemicals in conjunction with the proposed solar farm shall be coordinated with and approved by the Department of Health and relevant City and County agencies. [Successor Petitioner's Exhibit 34A, at 6; J. Overton, Tr. 11/21/14, 29:23 – 30:3; J. Wallenstrom 157:10 – 158:1]

254. Condition No. 13 requires Petition to implement effective soil erosion and dust control measures both during and after construction. To the extent applicable, Hoʻohana will use best management practices to control dust and erosion during construction of the proposed solar farm. Once construction of the solar farm is completed, there will be minimal erosion and dust during operation of the solar farm. [Successor Petitioner's Exhibit 34A, at 6; J. Overton, Tr. 11/21/14, 30:12 – 30:20]

255. Condition No. 16 requires Petitioner to provide drainage improvements. The Project is located outside of any floodplain or drainage areas. Hoʻohana will comply with all applicable drainage requirements of the City. [Successor Petitioner's Exhibit 34A, at 6; J. Overton, Tr. 11/21/14, 31:10 – 31:14]

256. Condition No. 17 requires Petitioner to cease construction if any archaeological resources are discovered on the property. Parcel 52 has been farmed for over 100 years. Hoʻohana performed an updated Archaeological Inventory Survey as part of its Project studies, and will comply with this Condition, and coordinate with SHPD should any archaeological resources be found during construction of the proposed solar farm. [Successor Petitioner's Exhibit 34A, at 7; J. Overton, Tr. 11/21/14, 31:15 – 31:23]

257. Condition No. 19 requires Petitioner to convey lands to the State of Hawaiʻi and to provide certain off-site infrastructure to the State's Kunia Agricultural Park pursuant to the terms of the Memorandum of Understanding dated March 30, 1993. In 2004, title to 150 acres of land now identified by TMK No. 9-4-002-080 was transferred to the State of Hawaiʻi for use as the Kunia Agricultural Park. Therefore, this condition has been partially satisfied. None of the parties have objected to replacing Condition No. 19 with a requirement to provide certain off-site infrastructure to the State's Kunia Agricultural Park pursuant to an amended Memorandum of

Understanding. [Successor Petitioner's Exhibit 34A, at 7; J. Overton and R. Teruya, Tr. 11/21/14, 32:6 – 32:22]

258. Condition No. 21 requires the Commission's prior approval before the Petitioner can change the ownership interest in the Petition Area. Original Condition No. 21 was based on the representations of the original Petitioner in the 1993 Order and 1996 Order that he would personally develop the entire Petition Area, which representations are no longer applicable. None of the parties to Ho‘ohana's Motion to Amend objected to a modification of Condition No. 21 to require only notice to the Commission of the Petition Area landowners' intent to change the ownership interest in their respective parcels of land, and such language is consistent with the standard condition imposed by the Commission. [Successor Petitioner's Exhibit 34A, at 7-8; J. Overton, Tr. 11/21/14, 33:6 – 33:16]

259. Condition Nos. 24 and 25 require Petitioner to record the conditions imposed by the Commission with the Bureau of Conveyances. To date, these conditions have been fully met and will continue to be met should any additional conditions of approval imposed by the Commission. [Successor Petitioner's Exhibit 34A, at 8; J. Overton, Tr. 11/21/14, 33:24 – 34:4]

II. RULINGS ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by Successor Petitioner and the other parties not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

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

III. CONCLUSIONS OF LAW

1. Pursuant to HRS Chapter 205, and the Commission Rules under HAR Chapter 15-15, and upon consideration of the Commission decision-making criteria under HRS Section 205-17, this Commission finds upon a clear preponderance of the evidence that the use of Parcel 52, consisting of approximately 161.023 acres of land situate at Waikele and Hoʻaeʻae, ʻEwa, Oʻahu, Hawaiʻi, as a solar farm, including all related utility and other infrastructure, for an operational period, excluding decommissioning, not to exceed 35 years from the date of this Order, is reasonable, not violative HRS Section 205-2, is consistent with the policies and criteria established pursuant to HRS Sections 205-16, 205-17, and 205A-2, is consistent with the Hawaiʻi State Plan as set forth in HRS Chapter 226, and is consistent with the prior Conditions of approval imposed under the Halekua Orders.

2. Article XII, section 7 of the Hawaiʻi State Constitution requires the Commission to protect native Hawaiian traditional and customary rights. The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupuaʻa tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. The State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised native Hawaiian rights to the extent feasible. *Public Access Shoreline Hawaiʻi v. Hawaiʻi County Planning Comm'n*, 79 Hawaiʻi 425, 450 n.43, 903 P.2d 1246, 1271 n.43 (2000), *cert. denied,* 517 U.S. 1163 (1996).

3. The Commission is empowered to preserve and protect customary and traditional rights of native Hawaiians. *Ka Paʻakai O Ka ʻĀina v. Land Use Comm'n*, 94 Hawaiʻi 31, 7 P.3d 1068 (2000).

4. 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.

5. 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. Governmental bodies are precluded from authorizing a proposed use that will impact the public trust in the absence of an affirmative showing that the use does not conflict with public trust principles and purposes. *Kauai Springs v. Planning Comm'n of the County of Kauai*, 133 Hawai‘i 141, 324 P.3d 951 (2014).

6. 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.

7. Parcel 52 and the Petition Area are not classified as Important Agricultural Lands under Part III of HRS Chapter 205.

8. 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.

9. The Commission concludes that it has observed and complied 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.

IV. DECISION AND ORDER

IT IS HEREBY ORDERED that Parcel 52, consisting of approximately 161.023 acres of

land situate at Waikele and Hoʻaeʻae, ʻEwa, Oʻahu, Hawaiʻi, identified as TMK No. 9-4-002: 052 ("**Parcel 52**"), and shown approximately on Exhibit "A", attached hereto and incorporated herein by reference, may be used as a solar farm, including all related utility and other infrastructure, for an operational period, excluding decommissioning, not to exceed 35 years from the date of this Order.

Based upon the findings of fact and conclusions of law stated herein, it is hereby determined that the use of Parcel 52 for a solar farm will not significantly affect or impair the preservation or maintenance of natural systems and habitats or the valued cultural, historical, agricultural, and natural resources of the area.

IT IS FURTHER ORDERED that the use of Parcel 52 as a solar farm shall be subject to the following conditions:

A. **New Conditions Imposed on the Petition Area**. The following Conditions A1 through and including A3 shall replace Condition No. 19 of the Halekua Orders. Condition A4 shall replace Condition No. 21 of the Halekua Orders: [OP Exhibit 14]

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 Hawaiʻi'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.

4. Notice to Commission. Condition No. 21 of the Halekua Orders is hereby deleted and replaced with new Condition No. 21: Petitioner shall provide notice to the Commission

of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the subject property prior to or during development of the subject property, excluding, however, sales or leases of the individual lots or condominium units in a residential development, or leases in an industrial development. [HAR § 15-15-90(e)(2)]

B. **New Conditions Imposed Solely on the Solar Farm to be Developed on Parcel 52**. The following conditions B1 through and including B7 shall be applicable only to the solar farm on Parcel 52, and shall be applicable only upon development of the solar farm use on Parcel 52: [OP Exhibit 14]

1. Royal Kunia Agricultural Park Non-Potable Water Connection. By December 31, 2016, Hoʻohana 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 Hoʻohana and the Department of Agriculture. Prior to providing the non-potable waterline, Hoʻohana 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 Hawaiʻi for the alignment of the non-potable waterline. Hoʻohana 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 Hoʻohana is required to perform an environmental impact statement pursuant to Chapter 343, Hawaiʻi Revised Statutes, then the time period set forth in this condition shall be extended by the number of days that Hoʻohana is delayed as a result.

2. Fish and Wildlife Protection. Hoʻohana shall consult with the US Fish and Wildlife Service to coordinate staff training programs and measures to mitigate adverse impacts on endangered and migratory avian species.

3. Archaeological and Historic Resources. No ground altering activities shall occur prior to obtaining approval of the Archaeological Inventory Survey from the State Historic Preservation Division.

4. Aircraft and Traffic Hazard. If the photovoltaic array creates a hazardous condition for pilots or motorists, the facility operator shall immediately initiate steps to mitigate the hazard upon notification by the Department of Transportation.

5. Development Schedule. The proposed solar farm shall be substantially completed within two (2) years from the approval date of this Decision and Order.

6. Compliance with Representations. Hoʻohana shall develop the solar farm in substantial compliance with its representations reflected in the amended Decision and Order. Failure to develop Parcel 52 as a solar farm as represented will constitute good cause for the Commission to issue an Order to Show Cause to Hoʻohana pursuant to Section 15-15-93 of the Commission Rules.

7. Decommissioning of the Solar Farm. The solar farm shall be decommissioned following its operational timeframe. The decommissioning activities shall include, but not be limited to, the removal of the foundational piers as is commercially feasible, and the complete removal of all modules and associated components. All metal components shall be recycled to the extent commercially feasible, and Hoʻohana shall minimize disposal of any solar farm components in any landfill in the State of Hawaiʻi. Any future use of Parcel 52 following the decommissioning of the solar farm shall be subject to the environmental review process promulgated under HRS Chapter 343, if applicable.

IT IS FURTHER ORDERED that, except as expressly noted above with respect to the amendment of Condition Nos. 19 and 21, the above New Conditions Imposed on the Petition Area shall be in addition to the Conditions imposed under the Halekua Orders. The Conditions imposed under the Halekua Orders are hereby reaffirmed and shall continue in full force and effect. Nothing contained herein shall be construed in any way to amend, rescind, or otherwise disturb the following: (1) the agreement between OP and the HRT Entities as expressed in the December 29, 2003 Stipulation by and between OP and the HRT Entities, which was filed with the Commission on December 30, 2003; and (2) the rights of the HRT Entities as expressed in the Commission's February 23, 2004 *Order Granting the Office of Planning's Amended Motion to Exempt HRT, Ltd.'s Property from the Order to Show Cause Granted on February 26, 2003, Pursuant to the Stipulation filed on December 30, 2003*. [OP Exhibit 10; B. Yee, Tr. 11/21/14, 17:8 – 18:5]

V. ADOPTION OF ORDER

This ORDER shall take effect upon the date this ORDER is certified and filed by this Commission.

Done at Honolulu, Hawai‘i, this ___ day of _____, 2015, per motion on _____, 2015.

APPROVED AS TO FORM

_____
Deputy Attorney General

LAND USE COMMISSION, STATE OF HAWAI‘I

By _____
CHAD MCDONALD
Chairperson and Commissioner

Filed and effective on

_____, 2015
Certified by:

_____
DANIEL E. ORODENKER
Executive Officer

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI‘I

To Amend the Agricultural In the Matter of the Petition of HALEKUA DEVELOPMENT 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 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 due service of a copy of the PROPOSED ORDER GRANTING SUCCESSOR PETITIONER 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 was served upon the following by hand delivery or by U.S. Mail, postage prepaid, on _____, 2014, addressed to:

HAND DELIVERY	LEO R. ASUNCION, JR., Acting Director Office of Planning State Office Tower, 6th Floor 235 South Beretania Street Honolulu, Hawai‘i 96813
HAND DELIVERY	DAVID M. LOUIE, ESQ. BRYAN C. YEE, ESQ. Deputy Attorney General Commerce and Economic Development Department of the Attorney General 425 Queen Street Honolulu, Hawai‘i 96813

HAND DELIVERY	GEORGE I. ATTA, Director Department of Planning and Permitting City and County of Honolulu 650 South King Street, 7th Floor Honolulu, Hawai‘i 96813
HAND DELIVERY	DON S. KITAOKA, ESQ. RICHARD LEWALLEN, ESQ. Deputy Corporation Counsel Department of the Corporation Counsel Honolulu Hale 530 South King Street, Room 110 Honolulu, Hawai‘i 96813
U.S. MAIL	ROBINSON KUNIA LAND LLC c/o RUSH MOORE LLP ATTN: STEPHEN K.C. MAU, ESQ. Pacific Guardian Center, Mauka Tower 737 Bishop Street, Suite 2400 Honolulu, HI 96813
U.S. MAIL	FOREST CITY SUSTAINABLE RESOURCES, LLC ATTN: ANN BOUSLOG 5173 Nimitz Road Honolulu, HI 96818
U.S. MAIL	HANWHA Q CELLS USA CORP. ATTN: LAURENCE GREENE 8001 Irvine Center Drive, Suite 1250 Irvine, CA 92618
U.S. MAIL	HALEKUA DEVELOPMENT CORPORATION ATTN: THE HORITA GROUP, INC. MR. JOSHUA HORITA 98-150 Kaonohi Street B128 Aiea, HI 96701
U.S. MAIL	CANPARTNERS IV ROYAL KUNIA PROPERTY LLC c/o MATSUBARA – KOTAKE ATTN: WYETH M. MATSUBARA, ESQ. 888 Mililani Street, 8th Floor Honolulu, HI 96813
U.S. MAIL	HRT REALTY, LLC c/o LAW OFFICES OF REUBEN WONG ATTN: DELWYN H.W. WONG, ESQ. 1164 Bishop Street, Suite 1006 Honolulu, HI 96813

U.S. MAIL	300 CORPORATION c/o LAW OFFICES OF REUBEN WONG ATTN: DELWYN H.W. WONG, ESQ. 1164 Bishop Street, Suite 1006 Honolulu, HI 96813
U.S. MAIL	HONOLULU LIMITED c/o LAW OFFICES OF REUBEN WONG ATTN: DELWYN H.W. WONG, ESQ. 1164 Bishop Street, Suite 1006 Honolulu, HI 96813
U.S. MAIL	RKES, LLC ATTN: PATRICK K. KOBAYASHI 1288 Ala Moana Boulevard, Suite 201 Honolulu, HI 96814

_____

STEVEN S.C. LIM
JENNIFER A. LIM
PUANANIONAONA P. THOENE

Attorneys for Successor Petitioner to Parcel 52
HO‘OHANA SOLAR 1, LLC

Dated: Honolulu, Hawai‘i, _____, 2014