



**STATE OF HAWAII**  
**OFFICE OF HAWAIIAN AFFAIRS**  
560 N. NIMITZ HWY., SUITE 200  
HONOLULU, HAWAII 96817

January 26, 2016

Mr. Daniel Orodener, Executive Director  
State of Hawai'i Land Use Commission  
Department of Business, Economic Development & Tourism  
State Office Tower  
Leiopapa A Kamehameha Building  
235 South Beretania Street, Room 406  
Honolulu, HI 96813

Re: Special Permit Application No. SP15-407  
SolarCity Corporation  
Hanamā'ulu Ahupua'a, Puna Moku, Kaua'i  
TMK: (4) 3-8-002:002 por.

Aloha Director Orodener and Commission Members:

The Office of Hawaiian Affairs (OHA) has reviewed the application for a State Special Use Permit by SolarCity Corporation and *Applicant's Proposed Findings of Fact, Conclusions of Law, and Decision and Order Approving the Recommendations of the County of Kauai Planning Commission to Approve the State Special Use Permit Application with Modification* (hereinafter "SolarCity Proposed FOF/COL/D&O"). Based on the information gaps identified below, OHA urges the LUC to request additional information from the County of Kaua'i Planning Department to clarify whether the State Historic Preservation Division (SHPD) was properly afforded an opportunity to review and comment on the proposed project, pursuant to Hawai'i Revised Statutes (HRS) §6E-42, Hawai'i Administrative Rules (HAR) §13-284-3, and HAR §13-284-5; and whether the Archaeology Inventory Survey (AIS) for the proposed project is adequate, pursuant to HAR §13-276-2 and HAR §13-276-5.

OHA is the constitutionally established body charged with the betterment of conditions for native Hawaiians, which includes expressly assessing the policies and practices of other

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agencies impacting on native Hawaiians and Hawaiians, and conducting advocacy efforts for native Hawaiians and Hawaiians.<sup>1</sup> Our concerns and comments require your agency to seriously consider the issues raised in this letter, as “[i]t shall be the duty and responsibility of all state departments and instrumentalities of state government, providing services and programs which affect native Hawaiians and Hawaiians, to actively work toward the goals of [HRS, chapter 10] and to cooperate with and assist wherever possible the office of Hawaiian affairs.”<sup>2</sup>

The public noticing of the SolarCity application represents the first opportunity for OHA to comment on this project, as we were not consulted for the October 2015 agency comments.<sup>3</sup>

It appears that the County of Kaua‘i Planning Department did not solicit input on this project from SHPD. According to the SolarCity Proposed FOF/COL/D&O, “[t]he County of Kaua‘i Planning Department has reviewed the AIS and concurred that no historic properties will be affected by the project and therefore determined that the State Historic Properties Division [sic] does not need to be advised of the Project.”<sup>4</sup>

The County of Kaua‘i Planning Department should have known to route the application and the AIS for the SolarCity project to the SHPD for various reasons. The AIS report was prepared to support the proposed project’s historic preservation review under HRS §6E-42 and HAR §13-284 and referenced these laws and regulations throughout the report.<sup>5</sup> The AIS was also supposedly designed in consultation with the SHPD, in order to fulfill the State requirement for an AIS provided by HAR §13-276. Throughout the document, the AIS report recommends that consultation with SHPD occur regarding the need for subsurface testing.<sup>6</sup>

Based on a cursory review of the AIS and records for the subject parcel, the AIS fails to include two historic properties identified by the Bishop Museum in 1981 during the Wailua River Hydropower Project<sup>7</sup>, State Inventory of Historic Properties (SIHP) 50-30-08-00211 and -00210. These two sites were identified by searching the TMK parcel number in OHA’s Kipuka Database.<sup>8</sup> Neither of the two sites were discussed in the previous archaeology section of the AIS or any other pertinent portions of the AIS; therefore, the AIS does not appear to meet the threshold of requirements to review relevant prior studies, according to HAR §13-276-5.

Given that these historic sites are included in the Hawai‘i SIHP Database, the permit application should have been sent to the SHPD for review and comment. It is our understanding that a “trigger” for routing permits to the SHPD is the presence of historic sites within or directly adjacent to a project parcel. As these sites were identified by the Bishop Museum in 1981, they

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<sup>1</sup>Haw. Rev. Stat. § 10-3(1), (4).

<sup>2</sup>Haw. Rev. Stat. § 10-1(b).

<sup>3</sup> Solar City Proposed FOF/COL/D&O, Exhibit C.

<sup>4</sup> Solar City Proposed FOF/COL/D&O, p.14, ¶43.

<sup>5</sup> *E.g.*, Solar City Proposed FOF/COL/D&O, Exhibit A, Exhibit 29, pp. i, 6,7.

<sup>6</sup> *E.g.*, Solar City Proposed FOF/COL/D&O, Exhibit A, Exhibit 29, pp. ii, 6,7.

<sup>7</sup> A Cultural Resources Reconnaissance for the Wailua River Hydropower Study, Wailua, Puna, Kauai Island 1981 Bishop Museum prepared by Folk, William. Ida, Gerald and Ching, Frances SHPD Report K-00067.

<sup>8</sup> See [kipukadatabase.com](http://kipukadatabase.com).

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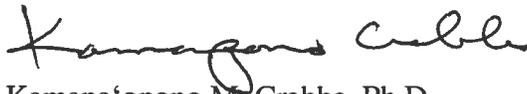
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were included in the SIHP GIS database maintained by the SHPD and shared with the county. The sites also appear on OHA's Kipuka Database, a publicly available resource that is accessible to both Kaua'i County and its contractors. Given the presence of these sites on internal and publicly available databases, as well as the language contained in the AIS, the SolarCity application and AIS should have been flagged and provided to SHPD for review.

OHA respectfully requests that the LUC ask for additional information from the County of Kaua'i Planning Department in order to discern whether all of the proper procedures have been followed related to SHPD's opportunity to review and comment on the proposed project, and whether the AIS for the proposed project is adequate.

Mahalo for the opportunity to testify on this matter. Should you have any questions, please contact Lauren Morawski, Compliance Archaeologist in our Kia'i Kānāwai division, at (808) 594-1997 or laurenm@oha.org.

'O wau iho nō me ka 'oia 'i 'o,



Kamana'opono M. Crabbe, Ph.D.  
Ka Pouhana, Chief Executive Officer

KC:lm

C: Kaliko Santos – OHA Kaua'i Community Outreach Coordinator