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BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of

**HALEKUA DEVELOPMENT
CORPORATION, a Hawaii 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

SUCCESSOR PETITIONER (AS TO PARCEL
52) HO'OHANA SOLAR 1, LLC'S MOTION
FOR MODIFICATION AND TIME
EXTENSION; MEMORANDUM IN
SUPPORT OF MOTION; VERIFICATION;
AFFIDAVIT OF DEREK B. SIMON;
EXHIBITS 1 - 14; CERTIFICATE OF
SERVICE

**HO'OHANA SOLAR 1, LLC'S
MOTION FOR MODIFICATION AND TIME EXTENSION**

I. RELIEF OR ORDER SOUGHT

Ho'ohana Solar 1, LLC ("**Ho'ohana**"), as Successor Petitioner to that certain portion of the 503.886-acre Petition Area identified as Tax Map Key No. 9-4-002:052, by and through its legal counsel, CARLSMITH BALL LLP, hereby requests that the STATE OF HAWAII LAND USE COMMISSION ("**Commission**") issue an order modifying the Commission's January 28, 2015 *Order Granting Successor Petitioner (To Parcel 52), 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, to allow for modifications to the solar farm authorized thereunder and the related timeframe for development of the modified solar farm.

II.

This Motion is made pursuant to Chapter 205, Hawai'i Revised Statutes and §§ 15-15-70 and 15-15-94 of Title 15, Subtitle 3, Chapter 15 of the Hawai'i Administrative Rules ("**HAR**"), the other authorities and arguments stated in the attached Memorandum in Support of Motion, and the pleadings and files herein.

Pursuant to HAR § 15-15-70(c), Ho'ohana requests a hearing on this Motion.



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Dated: Honolulu, Hawai'i, August 17, 2020.

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MEMORANDUM IN SUPPORT OF MOTION

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION.

Tax Map Key ("TMK") No. (1) 9-4-002:052 ("**Parcel 52**"), consisting of approximately 161.023-acres, is within the 503.886-acre¹ Petition Area that was reclassified from the State Land Use ("SLU") Agricultural District to the SLU Urban District by the Land Use Commission of the State of Hawai'i ("**Commission**") as documented in that certain *Findings of Fact*,

¹ Halekua Development Corporation ("**Halekua**") was the original Petitioner in this Docket. On September 6, 1995, in response to Halekua Development Corporation'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).

Conclusions of Law, and Decision and Order, filed December 9, 1993 ("**Original D&O**").² See **Petitioner's Exhibit 1** (Petition Area SLU & TMK Map), attached hereto.³ Pursuant to that certain January 28, 2015 *Order Granting Successor Petitioner (To Parcel 52), 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 ("2015 Order")*, the Commission authorized the use of Parcel 52 for the development and operation of a utility-scale solar energy project ("**2015 Solar Project**"), to be developed by Successor Petitioner Ho'ohana Solar 1, LLC, a Delaware limited liability company ("**Ho'ohana**").

Although the Commission timely approved the use of Parcel 52 for the 2015 Solar Project, unfortunately, following issuance of the 2015 Order, the Hawai'i Public Utilities Commission ("**PUC**") denied Hawaiian Electric Company, Inc.'s ("**HECO**") request to approve its power purchase agreement ("**PPA**") with Ho'ohana (and also rejected HECO's PPAs with two other utility-scale solar farms -- SunE Waiawa Solar, LLC, and Ka La Nui Solar, LLC). As a result, the 2015 Solar Project did not get built.

Ho'ohana now seeks an amendment to the 2015 Order to allow for the development of a new utility-scale solar farm ("**2020 Solar Project**") that will generate substantially more renewable energy than the 2015 Solar Project. A significant difference between this current Motion and the posture of the prior proceedings is that the PUC has already approved the PPA between HECO and Ho'ohana for the 2020 Solar Project. The 2020 Solar Project will generate 52 megawatts ("**MW**") versus 20 MW planned under the 2015 Solar Project and includes a 208

² Halekua proposed to develop the Petition Area as planned community called Royal Kunia Phase II, consisting of single and multi-family units, approximately 123.7 acres of light industrial uses, a public park and a school site. Royal Kunia Phase II was planned to be developed in three phases. Parcel 52 is Increment 3 of Royal Kunia Phase II.

³ The current TMK parcel numbers comprising the Petition Area are TMK Nos. (1) 9-4-002:001, 052, 070, 071, 078, 079, as reflected on Petitioner's Exhibit 1.

megawatt hours ("**MWh**") battery energy storage system. As such, the 2020 Solar Project will result in a significantly higher corresponding avoidance of imported fuel (10.6 million gallons versus 4.7 million gallons annually) and reduction in emissions (95,400 tons of carbon versus 46,000 tons annually). The 2020 Solar Project is located entirely within SLU Urban District land and wholly within Parcel 52, and represents Ho'ohana's steadfast effort to avoid using adjacent SLU Agricultural District land for the production of renewable energy. The current price of the energy to be sold to HECO is \$0.10 per kilowatt hour ("**kWh**").

The fee owner of Parcel 52 is Robinson Kunia Land LLC ("**Robinson**") and Ho'ohana holds a long-term ground lease for Parcel 52 for the purpose of developing a utility-scale solar farm. A Memorandum of Lease and Easements was recorded in the Bureau of Conveyances of the State of Hawai'i on March 23, 2020, as Regular System Document No. A73870244. Ho'ohana's term under the lease totals 37 years. There is an initial term that runs for 22 years from the operations commencement date (meaning the date that the 2020 Solar Project is operational and selling power), followed by Ho'ohana's option to extend the lease through three five-year extensions. Additionally, Ho'ohana has obtained fee owner authorization from Robinson for this Motion. See **Petitioner's Exhibit 2** (Fee Owner Authorization), attached hereto.

II. BACKGROUND.

A. Petition Area and Parcel 52.

The Petition Area is located at Waikele and Ho'ae'ae, 'Ewa, O'ahu, approximately 1.2 miles north of the Kunia Interchange of Interstate Route H-1. It 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. A 150-acre agricultural park owned by the State of Hawai'i Department of Land and Natural Resources and developed as the

Royal Kunia Agricultural Park by the State of Hawai'i Department of Agriculture ("DOA") is to the north-west of the Petition Area, at TMK No. (1) 9-4-002:080.

The site of the proposed 2020 Solar Project, Parcel 52, is located entirely within the SLU Urban District. *See* Petitioner's Exhibit 1. Parcel 52 is surrounded by lands also within the SLU Urban District to the immediate south and lands within the SLU Agricultural District to the west, north, and east. *Id.* Parcel 52 is zoned AG-1 Restricted Agricultural District by the City and County of Honolulu ("City").⁴ *See* **Petitioner's Exhibit 3** (City Zoning Map), attached hereto. Parcel 52 is largely designated Residential and Low Density Apartment on the Central Oahu Sustainable Communities Plan, with its northern-most tip designated Agricultural and Preservation Areas. *See* **Petitioner's Exhibit 4** (Central Oahu Sustainable Communities Plan Map), attached hereto. Access to Parcel 52 is provided by the private Plantation Road via Kunia Road to the west.

B. Successor Petitioner Ho'ohana.

Ho'ohana is wholly owned and controlled by FCHQC Development, LLC, which, in turn, is owned and controlled by Hanwha Energy USA Holdings Corporation d/b/a 174 Power Global. Hanwha Energy USA Holdings Corporation is part of the Hanwha Group of companies. Affiliated companies under the Hanwha Group include Hanwha Q CELLS Co. and Hanwha Q CELLS USA Corp. Hanwha Corporation, the parent corporation of the Hanwha Group, was ranked 331st, 329th, 277th, 246th and 244th on the Fortune Global 500 List in 2014, 2015, 2016, 2017, and 2018, respectively. In 2017, Hanwha Group listed revenues of approximately \$41 billion, assets of \$128 billion and equity of \$37 billion. Moreover, the Hanwha Group has

⁴ The lands within Increments 1 and 2 of Royal Kunia Phase II were rezoned in 1995 and 1997. Parcel 52 is Royal Kunia Phase II, Increment 3.

installed over 35 utility-scale projects worldwide, totaling more than 600 MW in North America and over 1 gigawatt globally.

C. Current Ownership of the Petition Area.

The TMK Nos. comprising the Petition Area are shown on Petitioner's Exhibit 1. Current fee-ownership of the entire Petition Area is split among various owners, as summarized in Table

1. All owners have been notified of this Motion.

Table 1 - Petition Area Parcels & Ownership		
TMK Parcel	Acres	Owner
9-4-002: 052 (<i>i.e.</i> , Parcel 52)	161.02	Robinson Kunia Land LLC (subject to Ho'ohana's ground lease)
9-4-002: 001	123.71	HRT Realty, LLC
9-4-002: 070	13.30	Haseko Royal Kunia, LLC
9-4-002: 071	161.36	Haseko Royal Kunia, LLC
9-4-002: 078	36.66	Haseko Royal Kunia, LLC
9-4-002: 079	12.00	RKES LLC

In addition, based upon Ho'ohana's understanding that HRT Realty, LLC is under contract to sell TMK No.: (1) 9-4-002:001 to Jupiter Investors II LLC, a copy of this Motion has been provided to Jupiter Investors II LLC.

III. THE 2015 AND 2020 SOLAR PROJECTS.

A. The 2015 Solar Project.

After determining that the development of a solar farm within Parcel 52 would not affect or impair the preservation or maintenance of natural systems and habitats or the valued cultural, historical, agricultural, and natural resources of the area, the Commission issued the 2015 Order authorizing the development of the 2015 Solar Project for an operational period not to exceed 35 years, excluding decommissioning. As such, the 2015 Solar Project was projected to be in

operation to 2052, and then decommissioned.⁵ The 2015 Solar Project was to use approximately 124 acres within Parcel 52 and was designed to generate 20 MW of electricity that would have been sold to HECO and transmitted from the Parcel 52 to a 46 kilovolt ("kV") transmission line. The Commission's authorization of the 2015 Solar Project was subject to seven conditions of approval, as discussed *infra*. As previously mentioned, after the Commission's timely approval of the 2015 Solar Project, the PUC denied HECO's request for approval of its PPA for various solar farms, including the 2015 Solar Project. As a result, the 2015 Solar Project did not get built.

B. The 2020 Solar Project and Power Purchase Agreement with HECO.

The 2020 Solar Project is larger and provides substantially more clean renewable energy than the 2015 Solar Project. The 2020 Solar Project is a 52-MW photovoltaic ("PV") system paired with a 52MW/208 megawatt hours ("MWh") battery energy storage system (with a four-hour duration at full capacity). When completed, the 2020 Solar Project will be capable of generating up to 114,481 MWh per year, equivalent to the power used by approximately 19,100 homes. The 2020 Solar Project will be entirely within an approximately 157-acre fenced area of Parcel 52 (the "**Project Site**"). See Petitioner's Exhibit 5 (Site Plan), attached hereto.

In 2017, HECO sought PUC approval to engage in a competitive procurement process to acquire new dispatchable and renewable energy resources for O'ahu, Maui, and Hawai'i Island (PUC Docket No. 2017-0352). The PUC approved the requested competitive bidding process by Order No. 35286, filed on February 20, 2018. The PUC's approval noted that the competitive bidding process would be "fair in its design and implementation so that selection is based on the merits," that the projects selected through a competitive bidding process would have to be

⁵ Under the 2015 Order, issued on January 28, 2015, the project was to be substantially completed by January 28, 2017. See 2015 Order Condition B.5.

consistent with the Hawaiian Electric Companies' Power Supply Improvement Plans, and that the process would be aligned with the public interest. On February 20, 2018, the PUC approved the HECO's Request for Proposals, which was issued on February 27, 2018.

The primary purpose of the Request for Proposals was to obtain variable renewable generation that would be dispatchable by the utility companies at a competitive, reasonable cost, with reliability, viability, and operational characteristics consistent with the utility companies' long-term planning and energy policy requirements. Ho'ohana was one of the developers selected by HECO for the development of renewable energy. The PUC approved the PPA between Ho'ohana and HECO in 2019. Ho'ohana's commercial operation date for the 2020 Solar Project is anticipated to be in the second half of 2022.

C. Differences Between the Approved 2015 Solar Project and the Proposed 2020 Solar Project.

The 2015 Solar Project was significantly smaller than the 2020 Solar Project in terms of power generation -- 20 MW versus 52 MW. As a result, while the 2015 Solar Project was anticipated to avoid the use of 4.7 million gallons of imported oil and 46,000 tons of carbon dioxide emissions annually, the 2020 Solar Project is expected to avoid the use of 10.6 million gallons of imported fuel and 95,400 tons of carbon dioxide emissions annually. The 2015 Solar Project was to connect to the HECO grid through a 46 kV transmission line, while the 2020 Solar Project will connect to the HECO grid through a 138 kV transmission system.

The 2020 Solar Project makes a more efficient use of the land. Approximately 124 acres were proposed for the 2015 Solar Project to generate 20 MW, whereas the 2020 Solar Project uses 157 acres to generate 52 MW of renewable energy. In other words, a 27% increase in acreage results in a 160% increase in renewable energy generation capacity, due to improved technology and more efficient design.

The 2020 Solar Project is anticipated to use approximately 210,000 PV modules mounted on a fixed-tilt racking system (the 2015 Solar Project contemplated a ground-mounted single axis tracking system). The top of the PV panels will be between 5.5 feet to 6 feet from the ground (depending on the existing slope on site). The racks holding the PV modules will be made of steel and aluminum. Each PV panel consists of silicon cells electrically connected inside a glass and aluminum frame to function as a single unit. The modules will be dark blue in color, being designed to absorb as much solar energy as possible, and therefore create minimal glare. The planned modules reflect back no more than 1.25 percent light. For context, typical window glass reflects approximately 1.5 percent light, and smooth water reflects approximately 1.33 percent light. Thus, the PV modules are less reflective than window glass and water.

The rack system for the 2020 Solar Project will be designed in accordance with the building permit structural requirements to withstand hurricane-type winds (as was the 2015 Solar Project). Minimal amount of grading is required to accommodate the racking system, and native vegetation will remain beneath and around the racking and will be maintained by a landscaping crew. Similar to the 2015 Solar Project, the current project includes power stations within the solar array area, connected by an underground power collection system that feeds into the substation located on the north portion of Parcel 52. Inverters, rated at 3.63 MW, will be used at the power stations to convert the direct current electricity from the PV modules to alternating current.

Like the 2015 Solar Project, the 2020 Solar Project also includes a small operations and maintenance building, which will be used to store equipment and spare modules and parts. The operations and maintenance building will be a minimal-impact structure, such as a construction trailer, and will include its own self-contained septic system. Also like the 2015 Solar Project,

the 2020 Solar Project includes two control buildings (one located inside the substation for the project, and one for HECO which will be located within the switchyard). The Project Site will be monitored through a remote security system. To provide water for initial landscaping (until plants are established) and the operations and maintenance building, Ho'ohana intends to install temporary water tanks. Water used during construction of the project will be provided from a nearby hydrant located within approximately 1,000 feet from the site. Ho'ohana plans to rely on rainwater to keep the solar modules clean.

The 2015 Solar Project included a substation located northwestern portion of Parcel 52 that was to be completely fenced in and covered with a gravel bed. The 2020 Solar Project also includes a substation in the northwestern portion of Parcel 52. *See* Petitioner's Exhibit 5 (Site Plan). Substation equipment includes a H-frame structure for the utility line transition point and two static masts for lightening protection (one within the substation and one within the HECO switchyard). The substation will accept and manage electricity generated by the 2020 Solar Project and the grid in general, including other current and potentially future renewable energy projects.

Unlike the much smaller 2015 Solar Project, the 2020 Solar Project includes an AC-coupled battery system rated at 52 MW for four hours of discharge duration. The batteries will be housed in galvanized battery storage containers that are approximately 53 feet long, located near the project substation. *See id.* Each container will be air-conditioned and have computer controlled operating and monitoring systems, and a fire suppression system.

The 2015 Order authorized the project to be in operation for 35 years, followed by an unspecified period for decommissioning. For the 2020 Solar Project, Ho'ohana proposes a 40 year operational period, preceded by approximately two years of permitting and construction and

followed by one year for decommissioning, for a total of 43 years from the date of the Commission's order granting this Motion.

Construction of the 2020 Solar Project is expected to take less than two years and, assuming timely receipt of all necessary approvals, and is anticipated to commence in the first half of 2021 and be completed on time for the ultimate required commercial operations date under the PPA between Ho'ohana and HECO. The 2020 Solar Project is anticipated to generate approximately 50 jobs during majority of the two-year construction period, but for an estimated period of seven months during peak construction activity it is anticipated that approximately 175 workers will be needed on site. Once the project is completed, it is estimated to require approximately five full-time employees.

IV. STATUS OF CONDITIONS OF APPROVAL FOR THE 2015 SOLAR PROJECT AND OTHER CONSIDERATIONS.

A. Status of Conditions of Approval for 2015 Solar Project.

The Commission approved the 2015 Solar Project subject to seven conditions of approval under the 2015 Order. *See* 2015 Order at 54-55, Conditions B.1 through B.7. The 2015 Order is clear that those conditions "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." 2015 Order at 54.

Because the 2015 Solar Project was not permitted to move forward, Ho'ohana was not obligated to satisfy the conditions. The conditions are recited below, together with a brief discussion explaining the 2020 Solar Project's compliance, or intended compliance, with the condition.

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

Discussion: Consistent with Condition A.1. of the 2015 Order,⁶ in light of the fact that the 2015 Solar Project was not permitted to move forward, the obligation to satisfy the Agricultural Park offsite infrastructure is required to be addressed by one of the Petition Area landowners. RP 2 Ventures, LLC (immediate prior owner of 161.36 acres within the Petition Area)⁷ entered into a Fourth Amendment to Amendment and Restatement of Memorandum of Understanding with the DOA ("**DOA MOU**"), committing to completing the DOA irrigation infrastructure, including the waterline referred to in the 2015 Order, by February 28, 2021, and completing the construction and installation of the remainder of the infrastructure to service DOA by June 30, 2021, unless otherwise approved by DOA. Ho'ohana understands that RP2 Venture, LLC reported this to the Commission through its annual report submitted July 9, 2020, which included a copy of the DOA MOU.

B.2 Fish and Wildlife Protection. Ho'ohana 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.

Discussion: Following the Commission's issuance of the 2015 Order, Ho'ohana contacted the

⁶ Condition A.1. provides:

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 Hawai'i's Kunia Agricultural Park be completed no later than December 31, 2016.

2015 Order at 53.

⁷ On August 12, 2020, RP 2 Ventures, LLC sold TMK No. (1) 9-4-002:071 to Haseko Royal Kunia, LLC.

United States Fish and Wildlife Service ("USFWS") to coordinate appropriate programs and measures to mitigate any potential impacts to endangered and migratory avian species from the development of a solar farm on Parcel 52. Attached hereto as **Petitioner's Exhibit 6** is an email dated March 11, 2015, from Ho'ohana's project manager to Aaron Nadig, Island Team Manager at USFWS, which summarizes Ho'ohana's consultation with USFWS.

As memorialized in the email, Ho'ohana committed to: (a) not conducting any tree clearing during the roosting season for the Hawaiian hoary bar, which occurs from June 1 through September 15; and (b) monitoring for ponding while conducting any grading work during stilt-nesting season, as there may be a stilt that could try to nest in such ponds.

B.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.

Discussion: This condition has been fully satisfied. As discussed in detail *infra*, Ho'ohana commissioned Scientific Consultant Services, Inc. ("SCS") to prepare *An Archaeological Inventory Survey Report for the Ho'ohana Solar Farm Project in Kunia, Waikele Ahupua'a, 'Ewa District, Island of O'ahu, Hawai'i [TMK: (1) 9-4-002:052]* ("AIS"), a copy of which is attached hereto as **Petitioner's Exhibit 7**. The AIS was submitted as Successor Petitioner's Exhibit 12 in 2014. Following issuance of the 2015 Order, the State of Hawai'i Department of Land and Natural Resources, State Historic Preservation Division ("SHPD") approved the AIS by letter dated February 19, 2015. See **Petitioner's Exhibit 8** (2/19/15 AIS Acceptance Letter), attached hereto.

B.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.

Discussion: Ho'ohana will comply with this condition, should the Commission approve the 2020 Solar Project. Ho'ohana conducted a Solar Glare Hazard Analysis Report using the Sandia

National Labs web-based tool for the Honolulu Airport Traffic Control Tower and Runways in 2014. Ho'ohana submitted the report to the Federal Aviation Administration ("FAA"), and the FAA issued Determinations of No Hazard to Air Navigation for the 2015 Solar Project. This material was submitted as Successor Petitioner's Exhibits 20A through 20D in the proceedings leading up to the 2015 D&O.

The FAA findings are hardly surprising. Parcel 52 is, from its closest boundary, approximately eight miles from the nearest runway at Daniel K. Inouye International Airport, and approximately seven miles (at its closet point) to the runway at Kalaeloa Airport. *See **Petitioner's Exhibit 9*** (map showing distance to State airports), attached hereto. These distances are well outside of the statutory five-mile distance required under FAA orders that seek to review proposed land uses on or near airports, as presented in the State of Hawai'i Office of Planning ("**OP**") Technical Assistance Memorandum TAM-2016-1. Therefore, solar farm development within Parcel 52 does not raise the potential for hazards to safe air navigation at State of Hawai'i airports.

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

Discussion: As discussed *supra*, because the PUC denied HECO's request to approve its PPA with Ho'ohana, the 2015 Solar Project was not built. This Motion is brought to allow for development of the 2020 Solar Project, for which Ho'ohana already has a PUC-approved PPA with HECO. Assuming timely receipt of construction-related permits, Ho'ohana will have the 2020 Solar Project substantially completed within two years of the Commission's approval of this Motion.

B.6. Compliance with Representations. Ho'ohana shall develop the solar farm in substantial compliance with its representations reflected in the 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 Ho'ohana pursuant to Section 15-15-93 of

the Commission Rules.

Discussion: This Motion is brought to amend the 2015 Order so that Ho'ohana can develop the 2020 Solar Project on Parcel 52 in substantial compliance with its representations to the Commission.

B.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 Ho'ohana shall minimize disposal of any solar farm components in any landfill in the State of Hawai'i. 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, as applicable, and shall require the filing of a motion to amend the Decision and Order with the Commission. Such motion to amend shall include a revised master development plan for Royal Kunia Phase II, Increment 3 and shall further include but not be limited to a revised Traffic Impact Analysis Report, Engineering Report, Socio-Economic Analysis Report, Environmental Report, and Archaeological Inventory Survey Report.

Discussion: For the 2020 Solar Project, Ho'ohana commits to the same decommissioning obligations embodied in Condition B.7 of the 2015 Order.

B. Other Considerations

1. Traffic.

Development and operation of the 2020 Solar Project will not adversely impact traffic. Ho'ohana engaged Fehr & Peers to prepare a *Construction Traffic Assessment for the Proposed Ho'ohana Solar Farm (Oahu, HI)*, dated June 8, 2020 ("**Traffic Assessment**"), a copy of which is attached hereto as **Petitioner's Exhibit 10**. The Traffic Assessment analyzed the potential for both the construction and operation of the 2020 Solar Project to adversely impact traffic and alternate modes of access (*e.g.*, bicycle and pedestrian travel, and public transit). The Traffic

Assessment analyzed the potential for traffic-related impacts at six regional intersections⁸ during peak hours (a.m. and p.m.) under four different scenarios: (a) Existing (2019) Conditions; (b) Construction Year (2021) Plus Project Conditions; (c) Opening Year (2023) No Project Conditions; and (d) Opening Year (2023) Plus Project Conditions.

The Traffic Assessment concluded that because the 2020 Solar Project will be operated by only approximately five employees, traffic generated by operation of the 2020 Solar Project will be negligible. *See id.* at 1, 12. The Traffic Assessment also concluded that, given the rural location of Parcel 52, the 2020 Solar Project is not likely to either result in impacts to or conflicts with alternate modes of access. *Id.* at 12-13.

For construction-related traffic, the Traffic Assessment analyzed peak construction conditions with a conservatively estimated 175 workers commuting to Parcel 52. Based on a level of service ("**LOS**") rating system,⁹ the Traffic Assessment found that, with two exceptions, all study intersections will operate at LOS D or better during peak hours. *Id.* at 10. The two exceptions are the intersections at Kunia Road/H-1 Eastbound On-Ramp, where the intersection was projected to operate at LOS E during the a.m. peak hour, and Kunia Road/Plantation Road, where the intersection was projected to operate at LOS F during both the a.m. and p.m. peak hours. *Id.* at 10, Table 5. However, given the temporary nature of any potential impacts, the Traffic Assessment concludes that roadway capacity enhancements (*e.g.*, new turn or through lanes) are not necessary.

⁸ The intersections studied were: (a) Kunia Road/H-1 Eastbound On-Ramp; (b) Kunia Road/H-1 Westbound Off-Ramp; (c) Kunia Road/Kupuna Loop (South); (d) Kunia Road/Kupuna Loop (North); (e) Kunia Road/Anonui Street; and (f) Kunia Road/Plantation Road.

⁹ The LOS rating system is presented in the Highway Capacity Manual published by the Transportation Research Board. The operation of roadway facilities are described with the term "level of service" or LOS, which is a qualitative description of traffic flow based on factors such as speed, travel time, delay, and freedom of maneuver. Six levels are defined, from "A", with the least congestion, to "F", with the most congestion. Based on studies conducted by both the City and State of Hawai'i Department of Transportation, the minimum acceptable operating standard for a signalized intersection is LOS D.

The Traffic Assessment offers the following recommendations to address the temporary impacts to traffic during construction:

- Installing temporary signage on mauka-bound Kunia Road between Anonui Street and Plantation Road indicating the presence of trucks and that they are entering /exiting the roadway near Plantation Road;
- Installing temporary signage on makai-bound Kunia Road between the Hawai'i Country Club and Plantation Road indicating the presence of trucks and that they are entering the roadway from Plantation Road;
- Field verifying available sight distance and maintain adequate sight distance for drivers exiting Plantation Road and turning onto Kunia Road. Maintenance, including pruning vegetation and not installing signage or other barriers that would block driver's field of vision at the intersection; and
- Extending the painted median solid line delineating the "Do Not Pass" zone for mauka-bound vehicles at least an additional 500 feet in the makai direction.

Ho'ohana has committed to these mitigation measures as part of a traffic management plan to be implemented during construction of the 2020 Solar Project.

2. Visual Impacts.

Ho'ohana commissioned G70 to prepare a view study, dated May 15, 2020, a copy of which is attached hereto as **Petitioner's Exhibit 11**. The study included eight photographs taken from various regional vantage points surrounding Parcel 52, with the approximate location of the 2020 Solar Project indicated in the distance for reference. The study indicates that the 2020 Solar Project will not adversely impact any views or sightlines.

3. Archaeological and Historic Resources.

Ho'ohana engaged SCS to prepare the AIS to determine whether any archaeological resources are present within the Parcel 52. *See* Petitioner's Exhibit 7. This recent AIS was one of several archaeological surveys that have been prepared for Parcel 52 and the vicinity over the years. In 2014, over the course of 10 days, SCS did a 100% surface coverage pedestrian survey, and also did excavation in the form of six shovel probes. Only one site of significance was identified and it was assessed as significant under Criterion "d" for having yielded information

about prior historic land use in association with former plantation agriculture in the area. SHPD concurred that for this site (a historic road complex comprised of an alignment, a wall associated with water diversion, and remnants of a crushed coral road) no further archaeological work was recommended. *See* Petitioner's Exhibit 8. This AIS and prior studies concluded that Parcel 52 has been extensively cultivated, that no traditional Hawaiian archaeological sites or features are present on the surface, what remains are remnant plantation features that have been adequately documented, and there is little potential to encounter intact subsurface cultural deposits.

4. Cultural Resources and Protection of Traditional and Customary Practices Under *Ka Pa'akai 'O Ka 'Āina v. Land Use Comm'n.*

The 2020 Solar Project will not adversely impact cultural resources or the exercise of traditional and customary practices because there are no specific, extant (current or contemporary) cultural or historical resources of significance in the CIA project area; nor are there any ongoing traditional and customary practices in the CIA project area, as documented in the *Cultural Impact Assessment of Ho'ohana Solar Energy Facility, Waikele and Hō'ae'ae Ahupua'a, Ewa District, O'ahu, Island of Hawai'i*, dated July 2020 ("**CIA**") prepared by TCP Hawai'i, LLC ("**TCP**"), a copy of which is attached hereto as **Petitioner's Exhibit 12**.

In *Ka Pa'akai 'O Ka 'Āina v. Land Use Comm'n.*, 94 Hawai'i 31, 47, 7 P.3d 1068, 1084 (2000) ("***Ka Pa'akai***"), the Hawai'i Supreme Court held that every State agency has a duty to preserve and protect native Hawaiian traditional and customary practices while reasonably accommodating competing private interests. Under the *Ka Pa'akai* framework, prior to an agency taking action that may impact native Hawaiian traditional and customary practices, the agency must make specific findings of fact and conclusions of law as to: (1) the identity and scope of "valued cultural, historical, or natural resources" in the affected area, including the extent to which traditional and customary native Hawaiian rights are exercised in the affected

area; (2) the extent to which those resources – including traditional and customary native Hawaiian rights – will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken by the [agency] to reasonably protect native Hawaiian rights if they are found to exist.” *Id.*, 7 P.3d at 1084. Parcel 52 does not include any valued cultural or historic resources, as determined under the CIA.

The CIA provides a detailed account of the cultural and historical significance of the Waikele and Hō'ae'ae Ahupua'a, where Parcel 52 is located. In addition to researching historical archives and reviewing cultural and archaeological studies previously completed in the region, including the AIS, TCP conducted community outreach to identify any cultural or historical resources in or around Parcel 52, including the extent to which traditional and customary rights are being exercised. While input was sought from a total of 23 individuals and organizations, TCP received relatively little substantive feedback. *See* Petitioner's Exhibit 12 at 73.

The CIA concludes that the Hawaiian sense of place was essentially erased from Parcel 52 more than a century ago when it was transformed and regularly plowed with the introduction of mechanized sugar-cane agriculture by the Oahu Sugar Company (beginning in 1897 and ending around 1995). The plantation-era "feel" or sense of place was essentially erased from the landscape following the 1995 closure of sugar cane operations. The CIA explains that Parcel 52's most tangible cultural resource and/or relevance for traditional and customary practices is not so much its traditional Hawaiian sense of land use or history, which is overwhelmingly focused on the makai areas at or near the shoreline of Pearl Harbor and the mouths of Waikele and Hō'ae'ae streams (where the prime lo'i kalo gardens, fishponds, heiau, and village settlements

were concentrated). Rather, Parcel 52's "past glories" are mostly related to its plantation days.¹⁰

In summary, the CIA concludes that the 2020 Solar Project will not result in adverse impacts on: (a) traditional and customary practices associated with Parcel 52; (b) cultural resources that support these practices; or (c) other beliefs about Parcel 52 that relate to such practices and resources. Given the findings under the first and second steps of the *Ka Pa'akai* framework, the CIA does not recommend any protective measures under the third step.

5. Biological Resources

The 2020 Solar Project will not adversely impact any biological resources. Ho'ohana retained AECOS, Inc. to complete a *Natural Resources Survey for the Ho'ohana Solar Farm Site in Kunia, O'ahu ("Biological Survey")*, a copy of which is attached hereto as **Petitioner's Exhibit 13**. The Biological Survey concluded that there are no threatened or endangered species, or federally-declared critical habitat, located on or within Parcel 52.

No botanical resources of interest or concern were located on Parcel 52. The vegetation over most of Parcel 52 has been controlled by past land use, and the majority of Parcel 52 has little vegetation. The remaining portions of Parcel 52 are covered with a weedy growth of grasses (Guinea grass), scattered trees (koa haole and silk oak), scrubs, and other herbaceous plants. Two native plants were located on the property, the 'Uhaloa and 'A'ali'i plants. No wetlands or streams are located in Parcel 52.

No animal species of interest or concern were located on Parcel 52. A total of 615 birds representing 22 species were observed on Parcel 52, none of which are native to Hawai'i. Four mammalian species were detected on Parcel 52 (dog, mongoose, cat, and pig). Accordingly, the 2020 Solar Project will not adversely impact any biological resources.

¹⁰ The CIA notes that currently there are at least two organizations and museums that exist to preserve and tell the stories of the plantation lifestyle in 'Ewa: (a) Waipahu Cultural Garden Park and Hawai'i's Plantation Village, and (b) Kapolei Heritage Center.

V. USE OF PARCEL 52 FOR THE 2020 SOLAR PROJECT IS A PERMISSIBLE USE.

The 2020 Solar Project is a permitted use within the SLU Urban District because it is allowed under the existing City zoning for Parcel 52:

Any and all uses permitted by the counties either by ordinance or rules may be allowed within this [the SLU "U" Urban] district, subject to any conditions imposed by the commission pursuant to section 205-4(g), HRS.

HAR §15-15-24.

The City zoning designation for Parcel 52 is AG-1 Restricted Agriculture. *See* Petitioner's Exhibit 3. The 2020 Solar Project is a "utility installation" as defined under the Honolulu Land Use Ordinance, Revised Ordinances of Honolulu, Chapter 21 ("LUO"). Under LUO § 21-10.1, a "utility installation" is defined as "uses or structures, including all facilities, devices, equipment, or transmission lines, used directly in the distribution of utility services, such as water, gas, electricity, telecommunications other than broadcasting antennas, and refuse collection other than facilities included under waste disposal and processing." Utility installations also include accessory uses and structures directly associated with the distribution of the utility service. *Id.*

Under the LUO, utility installations are permitted uses in all zoning districts. A Conditional Use Permit/minor ("**CUP Minor**"), granted administratively by the Director of the City and County of Honolulu Department of Planning and Permitting ("**DPP**"), is required for the 2020 Solar Project. Ho'ohana has been coordinating with DPP on this CUP Minor. Accordingly, the 2020 Solar Project is permitted under the LUO and therefore also allowed within the SLU Urban District.

VI. THE COMMISSION'S CRITERIA AND SERVICE REQUIREMENTS FOR A MOTION TO AMEND.

The Commission is authorized to amend the 2015 Order upon a showing of good cause under HAR § 15-15-94(b). "The term 'good cause' has been defined to mean 'a substantial reason amounting in law to a legal excuse for failing to perform an act required by law.'" *Miller v. Tanaka*, 80 Hawai'i 358, 363, 910 P.2d 129, 134 (Ct. App. 1995) (citation omitted). "'Good cause' also 'depends upon [the] circumstances of [the] individual case, and [a] finding of its existence lies largely in [the] discretion of [the] officer or court to which [the] decision is committed.'" *Id.* at 363-64, 910 P.2d at 134-35 (citation omitted). "As a general rule, 'good cause' means a substantial reason; one that affords a legal excuse." *State v. Estencion*, 63 Haw. 264, 267, 625 P.2d 1040, 1042 (1981) (citations omitted). As explained *infra*, good cause exists to amend the 2015 Order to allow for development of the 2020 Solar Project; the 2020 Solar Project will generate even more renewable energy for the State of Hawai'i within the same Parcel 52 boundary.

HRS § 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 Hawaii state plan." (Emphasis added). Use of Parcel 52 for the 2020 Solar Project is consistent with the Hawai'i State Plan.

Pursuant to HAR § 15-15-94, Ho'ohana must serve a copy of this Motion "on all parties to the boundary amendment proceeding in which the condition was imposed or in which the order was issued, and to any person that may have a property interest in the subject property as recorded in the county's real property tax records at the time that the motion is filed." This Motion was properly served.

A. Good Cause Shown for Amending the 2015 Order to Allow for Development of the 2020 Solar Project.

For the following reasons, the Commission has good cause to amend the 2015 Order to authorize development of the 2020 Solar Project.

1. Community Outreach.

Going back to its early efforts to develop the 2015 Solar Project, Ho'ohana has been continuously engaged in community outreach. Ho'ohana has made presentations related to the use of Parcel 52 for a utility-scale solar farm to the Royal Kunia Association, Village Park Association, Waipahu Neighborhood Board, Hawai'i Agricultural Research Center, Royal Kunia Country Club, and various business interests in the community. Ho'ohana has also contacted all landowners within the Petition Area.

Ho'ohana has solicited feedback from offices of the Mayor and Governor, members of the Hawai'i State Senate and House of Representatives, members of the City Council, the Hawai'i State Energy Office, DOA, and DPP. Ho'ohana previously obtained letters in support of the 2015 Solar Project from State Senators Michael Gabbard and Michelle Kidani, the Blue Planet Foundation, and the Royal Kunia Home Owners Association. Ho'ohana has continued its outreach with a primary focus on the community. Ho'ohana has met with the Royal Kunia Home Owners Association and Waipahu Neighborhood Board multiple times.

2. Community Benefits.

Ho'ohana is committed to increasing educational opportunities for students in grades K-12 to learn about renewable energy and career paths. As with the 2015 Solar Project, Ho'ohana plans to partner with the Maui Economic Development Board, a nonprofit entity that has developed a State-wide and internationally recognized diverse renewable energy curriculum for grades K-12. This curriculum is inquiry-based, approved by the State of Hawai'i Department of

Education curriculum standards, incorporates science, technology, engineering, and mathematics, and can be integrated into any course curriculum including science, arts, history, and writing. The curriculum is both place-based and culturally relevant, translated into both English and Hawaiian, and utilizes tools such as virtual reality to excite and motivate the students. Ho'ohana will provide funds to sponsor a training cohort of 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.

B. The 2020 Solar Project is Consistent with the Hawai'i State Plan.

The Commission already determined that development of a solar farm on Parcel 52 (*i.e.*, the 2015 Solar Project) is consistent with the Hawai'i State Plan's renewable energy goals set forth in HRS § 226-18. *See* 2015 Order at FOF ¶133. The Commission also determined that the development of a solar farm within Parcel 52 is consistent with the Hawai'i Clean Energy Initiative, which aims to achieve 70% clean energy by the year 2030, 40% of which is meant to come from locally generated renewable sources. *Id.* at FOF ¶132.

More recently, Governor David Ige has strongly supported renewable energy policies, with a focus to create programs and incentives to increase clean energy production in the State. On June 8, 2015, Governor Ige signed Act 97 into law, committing the State's utilities to generate 100% electricity from renewable energy resources by the year 2045. **Petitioner's Exhibit 14** (Act 97), attached hereto. Because the 2020 Solar Project will generate significantly more renewable energy than the 2015 Solar Project, the 2020 Solar Project will contribute that much more to achieving the State's goal of 100% renewable energy by 2045.

C. Service of this Motion.

OP and DPP, as original parties to the district boundary amendment proceeding, are parties to this proceeding, and each have been served with a copy of this Motion. In addition, the

current fee owners and other parties with recorded interests in the Petition Area have been served with a copy of this Motion, to provide notice. However, unless otherwise instructed by the Commission, Ho'ohana's subsequent filings (*e.g.*, exhibits, briefs, etc.) will only be served upon OP, DPP, and Robinson (as the fee owner of Parcel 52 and Ho'ohana's lessor).

VII. SUMMARY AND CONCLUSION.

Based on the foregoing, HAR §§ 15-15-70, 15-15-94, testimony to be provided at the hearing on this Motion, and the records and files in this Docket, Ho'ohana respectfully requests that the Commission grant the Motion and issue an order modifying the 2015 Order to allow for the development, operation, and decommissioning of the 2020 Solar Project for a period not to exceed 43 years from the date of the Commission's approval of this Motion.



JENNIFER A. LIM
DEREK B. SIMON
Attorneys for Successor Petitioner
HO'OHANA SOLAR 1, LLC

Dated: Honolulu, Hawai'i, August 17, 2020.

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of
HALEKUA DEVELOPMENT
CORPORATION, a Hawaii corporation

DOCKET NO. A92-683

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

VERIFICATION

STATE OF CALIFORNIA)
) ss.
County of San Diego

LAURENCE GREENE, being first sworn on oath, deposes and says that:

1. I am the Project Manager of Ho'ohana Solar 1, LLC.
2. I have read the Motion for Modification and Time Extension, know the contents thereof, and that the contents therein contained are true to the best of my knowledge, information and belief.
3. I have personal knowledge of the matters set forth in the foregoing Motion and am qualified and competent to make this verification.
4. I make this verification under Hawai'i Administrative Rules § 15-15-39.

Further affiant sayeth naught.

DATED: August 13, 2020



LAURENCE GREENE
Project Manager, Ho'ohana Solar 1, LLC

The attached document: Verification of Laurence
Greene which consists of two pages (including this
page), was executed by Laurence Greene
who was subscribed and sworn to before me this 13th
day of August, 2020, in
San Diego.

Nancy McCabe
[Notary Signature]

Printed Name: Nancy McCabe

My commission expires: 01/20/2021

(notary stamp or seal)

