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LAND USE COMMISSION  
STATE OF HAWAII  
2020 SEP 18 P 1:08

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petitions of:	)	DOCKET NO. A92-683
	)	
HALEKUA DEVELOPMENT	)	OFFICE OF PLANNING’S RESPONSE
CORPORATION, a Hawaii Corporation	)	TO SUCCESSOR PETITIONER (AS TO
	)	PARCEL 52) HOOHANA SOLAR 1,
To Amend the Agricultural Land Use District	)	LLC’S MOTION FOR MODIFICATION
Boundary into the Urban Land Use District for	)	AND TIME EXTENSION; OP EXHIBITS
Approximately 503.886 Acres at Waikele and	)	1, 2, 3, 4, AND 5; CERTIFICATE OF
Hoaeae, Ewa, Oahu, City and County of	)	SERVICE
Honolulu, State of Hawaii, Tax Map Key No. 9-	)	
4-02: 1, portion of 52, 70 and 71	)	
_____	)	

**OFFICE OF PLANNING’S RESPONSE TO  
SUCCESSOR PETITIONER (AS TO PARCEL 52) HOOHANA SOLAR 1, LLC’S  
MOTION FOR MODIFICATION AND TIME EXTENSION**

The Office of Planning (“OP”) recommends approval, subject to conditions, of Successor Petitioner Hoohana Solar 1, LLC’s (“Petitioner”) Motion for Modification and Time Extension, filed with the Land Use Commission (“Commission” or “LUC”) on August 17, 2020 (“Motion”).

**I. PREVIOUS AND CURRENT SOLAR FARM PROJECT PROPOSALS**

The Motion requests that the 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* (“2015 Order”), to modify the solar farm authorized thereunder and the related timeframe for development of the modified solar farm.

The LUC approved the previous request by Petitioner for a solar farm under the 2015 Order for a 20 megawatt (“MW”) solar project, over a 124-acre area on the 161.02 acres of land (“2015 Solar Project”). The operational period for the 2015 Solar Project was for a period of time not to exceed 35 years (2052), excluding the decommissioning. The electricity generated from the 2015 Solar Project would be sold to the Hawaiian Electric Company (“HECO”), and subsequently transmitted from the project to a 46 kilovolt (kV) transmission line. However, the Public Utilities Commission (“PUC”) denied HECO’s request of the 2015 Solar Project, and it therefore was not built.

Petitioner is currently proposing to construct a substantially larger project than the 2015 Solar Project. The 2020 Solar Project is a 52 MW solar farm with a 52 MW/208 MW hours of battery energy storage system. The project will cover a larger area, 157 acres of the 161.02 acres of parcel 52. The 2020 Solar Project will transmit the energy generated by the solar panels to HECO via a larger 138 kV transmission line. According to Petitioner, the new proposed system is more efficient, considering that, with a 27% percent increase in the land area, there is a 160% increase in renewable energy generation capacity. This is due to improved technology and efficient design. 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 about 53 feet long and located near the proposed substation.

The 2015 and 2020 Solar Projects are similar in that both propose a small operations and maintenance building on-site to store equipment and spare parts, with a septic system to service this building. Both Solar Projects include two control buildings with fencing and security systems installed around the perimeters. Water will be provided through temporary water tanks, and construction water will be provided from the nearest hydrant. A substation would be located within the northwestern portion of the parcel to manage the electricity generated by the Project.

## **II. BACKGROUND**

Petitioner is requesting a 40-year operational period for the 2020 Solar Project, preceded by 2 years of permitting and construction, and one year for decommissioning, for a total of 43 years from the date of an order granting this Motion. If the Order is granted this year, the timeframe for the 2020 Solar Project is until the year 2063, approximately 11 years longer than the 2015 Solar Project.

### **A. Procedural History**

On December 9, 1993, the Commission approved the current Docket No. A92-683, reclassifying the 504.8-acre Petition Area from the State Agricultural District into the Urban District for the development of Royal Kunia Phase II. On October 1, 1996, based on a revised master plan, the Commission approved an amended Decision and Order. The Phase II development proposed 2,000 residential units, along with light industrial uses, an elementary school, public park and the 150-acre Kunia Agricultural Park. It was anticipated that Phase II would be developed within a 12-year period starting from 1994 (completion date of 2006).

In 2003, OP filed a Motion for an Order to Show Cause (“OSC”) due to Petitioner Halekua Development Corporation’s failure to secure financing for the proposed project and to convey the 150-acre Agricultural Park to the State as required by Condition No. 19. The OSC was eventually dismissed based in part on testimony and a commitment letter of a \$100 million loan to Petitioner issued by a California mortgage fund, to be used to pay off the secured and unsecured creditors that encumbered the Project and Property, and confirmation by the State Department of Agriculture (“DOA”) that the 150-acre Agricultural Park site had been transferred by HRT to the State for the benefit of DOA.

In 2013, the *First Amendment to the Amended Findings of Fact Conclusions of Law, and Decision and Order Filed on October 1, 1996*, modified Condition No. 2 to clarify the Kunia Interchange area up to Cane Haul Road as a regional traffic improvement.

Upon the request of DOA for the Commission to review and evaluate the progress of RP2 in fulfilling the Kunia Agricultural Park conditions, the Commission held a status conference on May 24, 2018. The Commission did not take action at the status conference but advised the parties to work together toward a mutually agreeable timetable for the construction and completion of the Kunia Agricultural Park waterline and off-site infrastructure.

### **B. Responsible Parties/Landowners/Lessees**

At the time of the original 1993 Decision and Order, the Petition Area was owned and controlled in its entirety by Halekua Development Corporation. Since then, there have been numerous changes in ownership of the Petition Area, as well as new lessees such as Hoohana, that were or are subject to the Original 1993 D&O, as amended. Currently, the ownership or control of the Petition Area is as follows:

<i>TMK Parcel</i>	<i>Acres</i>	<i>Owner</i>	<i>Notes</i>
9-4-002: <b>052</b>	161.02	Robinson Kunia Land LLC	Subject to Hoohana ground lease.
9-4-002: 001	123.71	HRT Realty, LLC	To be sold to Jupiter Investors II,
9-4-002: 070	13.30	Haseko Royal Kunia, LLC	RP2 sold to Haseko in August 2020.
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	

### **III. KEY ISSUES OF CONCERN TO THE STATE**

OP referred the Motion to the following State agencies for review and comment on potential impacts to State facilities, programs, and policies applicable to these proceedings: Department of Transportation (“DOT”), Department of Land and Natural Resources (“DLNR”); Department of Health (“DOH”); Hawaii State Energy Office (“HSEO”); and DOA. The following summarizes the comments and concerns of the State agencies and includes recommendations for proposed condition amendments to mitigate potential impacts from the proposed Solar Project.

#### **A. Historical or Archaeological Assessment**

Petitioner’s Exhibit 7, dated February 2015, is a report titled, *An Archaeological Inventory Survey Report In The Hoohana Solar Farm Project in Kunia, Waikele Ahupuaa, Ewa District, Island of Oahu, Hawaii TMK (1) 9-4-002: 052* (“AIS”). Petitioner’s Exhibit 8, a letter from the State Historic Preservation Division (“SHPD”) dated February 19, 2015, indicates that that the AIS has been reviewed and revised as required by SHPD and that the report is acceptable as final. The letter indicates that the Petition Area contains one newly discovered site identified as a historic plantation road complex, consisting of three features—an alignment, a wall, and paved segments of a road and railroad alignment. SHPD states that no further work is needed.

#### **B. Cultural Practices and Resources**

Petitioner’s Exhibit 12 is a report titled *Cultural Impact Assessment of Hoohana Solar Energy Facility, Waikele and Hoaeae Ahupuaa, Ewa District, Oahu, Island of Hawaii, dated July 2020* (“CIA”). The CIA and Petitioner’s Motion concluded that the 2020 Solar Project will not result in adverse impacts on either traditional or customary practices or cultural resources that support practices.

### C. Transportation

DOT provided the following comments dated September 9, 2020 relating to State highways and airport facilities.

DOT reviewed and concurs with the key findings of Exhibit 10 of the Motion, which is the Construction Traffic Assessment (“TA”) for the Proposed Hoohana Solar Farm, dated June 8, 2020. The proposed access to the Solar Project is on Plantation Road (private) which intersects with Kunia Road (State Route 750). The key findings include: that the operations of the proposed Solar Project would have a negligible impact on vehicular and multimodal transportation in the region; Project construction anticipated to occur from April 2021 to December 2022 would have negligible impact on multi-modal transportation in the region; and while the temporary construction-phase impacts on traffic conditions do not warrant permanent intersection improvements to increase highway capacity, there would be potentially significant impacts to traffic safety at the Kunia Road and Plantation Drive intersection that should be addressed.

DOT notes that the 2015 Decision & Order conditions relevant to DOT continue to be applicable to the 2020 Solar Project, as follows (*See OP Exhibit 2*):

Condition 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 of the HDOT.

Condition B.7. Decommissioning. The solar farm shall be decommissioned following its operational timeframe...Any future use of Parcel 52 following the decommissioning of the solar farm...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.

DOT Airports requests that the developer resubmit a Federal Aviation Administration (“FAA”) Form 7460-1 Notice of Proposed Construction or Alteration, for the proposed increase in the number of photovoltaic (“PV”) solar panels. Note that the form requires latitude, longitude, ground elevation and the above ground elevation data for the installation site. A glint and glare analysis must be attached to the submittal of FAA Form 7460-1.

Based on DOT’s comments, OP recommends amending Condition B.4. as follows:

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 (DOT).

Ho'ohana shall resubmit a Federal Aviation Form (FAA) 7460-1 Notice of Proposed Construction or Alteration for the proposed increase in the number of photovoltaic (PV) solar panels. A glint and glare analysis shall be attached to the FAA Form 7460-1. Ho'ohana shall provide DOT a copy of the FAA determination of the FAA Form 7460-1.

#### **D. Energy**

HSEO submitted a letter dated September 11, 2020 with comments including the following. (*See OP Exhibit 3*). HSEO commends Hoohana for avoiding soils classified as C, D, or E on lands designated by the State for agriculture, re-configuring the 2020 Solar Project to be entirely within the Urban District, and having a dense land use ratio of 3 acres per MW.

Hawaii has mandated that 100% of the electrical energy sold by Hawaii's electrical utilities must come from renewable energy sources by the year 2045, with interim mandates of 30% by 2020 and 40% by 2030. To achieve these mandates, many utility-scale renewable energy projects will be needed – particularly for Oahu - in addition to widespread energy efficiency and rooftop solar photovoltaic installations. As the 2020 Solar Project is part of HECO's plans to retire the AES Hawaii Coal Plant, a timely decision on this Motion is needed for various affected stakeholders to move forward or plan accordingly.

The 2020 Solar Project's 52 MW project with four-hour energy storage and dispatch capability would be the largest solar farm built on Oahu if completed as planned by December 2021 (estimated before COVID-19). According to HECO, the 2020 Solar Project would produce 1.4% of all renewable energy generated within its service territories of Oahu, Maui Nui, and Hawaii Island. This is significant for one project and makes it the 6th most productive renewable energy project out of the 28 currently being pursued by HECO. The project's battery energy storage system would enable HECO to dispatch energy generated by the project as needed to offset night-time customer demand, assist in grid stabilization subject to discharge limits, and decrease the future dispatch of oil fueled generating units. These controls are necessary for Hawaii's utility grids to integrate massive amounts of solar power.

At the time the PUC approved the power purchase agreement ("PPA") between Hoohana and HECO in 2019, HECO estimated the 2020 Solar Project could save a typical

residential customer consuming 500 kWh per month \$1.16 per month in 2022 and \$1.81 per month in 2023. Hoohana estimates the project could annually produce enough power for 19,100 homes, displace 10.6 million gallons of imported fuel, and reduce carbon dioxide emissions by 95,400 tons. HECO estimates the project would displace up to 1,555,687 barrels of fuel, 465 tons of coal, and approximately 747,601 tons of greenhouse gas emissions over the initial 20-year project lifetime. These are all notable contributions towards Hawaii's goal to become a carbon-free economy.

HSEO understands the Kunia Agricultural Park waterline has been an unfulfilled obligation to the State for years and is a key part of the irrigation needed for the Kunia Agricultural Park. As the current Motion seeks similar approval of a solar farm on Parcel 52, HSEO asks that any approval of the 2020 Solar Project be conditioned upon the completed installation of the non-potable irrigation waterline, including obtaining the necessary easement(s), by the agreed upon due date. HSEO further asks that maintenance of the waterline in operable condition for the duration of the approval be required. HSEO does not take a position on which entity or entities -- Hoohana and/or the Petition Area landowners -- would be required to comply with these conditions.

HSEO appreciates Hoohana's community outreach for a Solar Project on Parcel 52 since 2014, much of it summarized in the PPA. To address visibility, Hoohana will plant vegetative screening and drought tolerant landscaping costing approximately \$200,000. To address State cooperation, Hoohana committed to helping the State's Kunia Agricultural Park advance by providing improvements such as the waterline discussed herein at a cost of approximately \$300,000. Hoohana committed to working with the Hawaii Department of Education to bring photovoltaic education resources to area schools by providing renewable energy education and professional development for Waipahu complex teachers.

Hoohana estimates the lifetime of the 2020 Solar Project could be 40 years. HSEO supports carryover of the Condition B.7. for the decommissioning of the Solar Farm. The PPA requires Hoohana to remove all interconnection facilities and restore the land with the interconnection facilities to its condition prior to construction upon termination or voidance of the PPA. HSEO encourages Hoohana to arrange some financing vehicle (bond, surety, letter of credit, etc.) to ensure the funds necessary to decommission the 2020 Solar Project

and restore the land to its original condition are in place well before the end of the project lifetime.

#### **E. Land and Natural Resources**

In its September 10, 2020 letter, (*See OP Exhibit 4*), the Department of Land and Natural Resources, Division of Fish and Wildlife (“DOFAW”) indicated that there are several species that may reside or occur within the Petition Area that are of concern.

The endangered Hawaiian Short-eared Owl or pueo (*Asio Flammeus sandwichensis*) has the potential to occur in the project site vicinity. DOFAW recommends twilight pre-construction surveys by a qualified biologist prior to clearing vegetation. If pueo nests are present, a buffer zone should be established in which no clearing occurs until nesting ceases, and DOFAW staff should be notified.

Studies have shown that solar power facilities on the Mainland have been linked with avian mortality of a variety of bird species including waterbirds and raptors. In addition to pre-construction surveys, Hoohana should consider implementing avian mortality avoidance measures during design and conducting surveys and monitoring during operation to assess the impacts of the project on listed species.

State listed water birds such as the Hawaiian Duck (*Anas wyvilliana*), Hawaiian Stilt (*Himantopus mexicanus knudseni*), Hawaiian Coot (*Fulica alai*), and Hawaiian Common Gallinule (*Gallinula choropus sandvicensis*) have the potential to occur in the vicinity of the proposed project site. It is against State law to harm or harass these species. If any of these species are present during construction activities, all activities within 100 feet (30 meters) should cease, and the bird should not be approached. Work may continue after the bird leaves the area of its own accord. If a nest is discovered at any point, please contact the Oahu DOFAW Office at (808) 973-9778.

The State listed Hawaii Hoary Bat (*Lasiurus Cinereus Semotus*) has the potential to occur in the vicinity of the project area and may roost in nearby trees. These bats could be at risk as the trees or shrubs suitable for bat roosting are cleared during the breeding season, June 1 through September 15. No woody plants greater than 15 feet should be voided without consulting DOFAW.

DOFAW recommends minimizing the movement of plant soil material between worksites such as in fill. Fill material may contain invasive species, fungus, vertebrate or



invertebrate pests that could harm our native species and ecosystems. DOFAW recommends that Petitioner contact the Oahu Invasive Species Committee at (808) 266-7994 to minimize the risk of spreading invasive species.

DOFAW notes that artificial lighting can adversely impact seabirds that may pass through the area at night. Any nighttime lighting should be fully shielded to minimize impacts. Also, all nighttime work that requires outdoor lighting should be avoided during the seabird fledging season from September 15 through December 15.

Based on DOFAW's comments, OP recommends the following amendments to Condition No. B.2.:

2. Fish and Wildlife Protection. Hoohana shall comply with the following:
  - a. 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.
  - b. Prior to clearing vegetation, twilight pre-construction surveys shall be conducted by qualified biologists. If pueo nests are present, DOFAW shall be notified and a buffer zone established in which no clearing occurs until nesting ceases.
  - c. If State listed water birds such as the Hawaiian Duck (*Anas wyvilliana*), Hawaiian Stilt (*Himantopus mexicanus knudseni*), Hawaiian Coot (*Fulica alai*), and Hawaiian Common Gallinule (*Gallinula choropus sandvicensis*) are present during construction activities, all activities within 100 feet (30 meters) shall cease, and the bird should not be approached. Work may continue after the bird leaves the area of its own accord. If a nest is discovered at any point, DOFAW shall be contacted.
  - d. The movement of plant soil material between worksites such as in fill shall be minimized. Petitioner shall contact the Oahu Invasive Species Committee to minimize the risk of spreading invasive species. All equipment, materials and personnel should be cleaned of excess soil and debris to minimize the risk of spreading invasive species.
  - e. Construction activity shall be restricted to daylight hours as much as practicable during the seabird breeding season (April through November) to avoid the use of nighttime lighting that could be an attraction to seabirds.
  - f. All nighttime work that requires outdoor lighting shall be avoided during the seabird fledging fallout period from September 15 through December 15.
  - g. All outdoor lighting at the Project shall be shielded to prevent upward radiation so as to reduce the potential for seabird attraction.
  - h. To avoid potential impacts to the Hawaiian hoary bat, the clearing of dense vegetation, including woody plants greater than 15 feet should not occur between June 1 to September 15 when bats may be carrying young and potentially at risk by such clearing activities. If this cannot be avoided, woody plants greater than 15 feet tall shall not be disturbed, removed, or trimmed without consulting DOFAW.

#### **F. Agricultural Resources.**

Under the Original 1993 D&O, the Kunia Agricultural Park was intended to preserve in perpetuity a 150-acre State-operated agricultural park to be subdivided into a number of agricultural lots to be farmed by individual farmers. The Agricultural Park requires the waterline and off-site infrastructure in order for it be operational. In its letter dated September 9, 2020, DOA expressed its continued concerns with the failure of Petitioner and all other landowners to timely construct the Kunia Agricultural Park waterline and off-site infrastructure. (*See OP Exhibit 5.*)

DOA stated that multiple extensions were given for the construction of the off-site infrastructure, the latest deadline expiring on December 31, 2016. Following one of the unmet deadlines and many negotiations with DOA, the parties agreed and the LUC ordered that the deadline be extended to December 31, 2016. However, since that time the landowners (with the exception of HRT) continue to be in violation of the Conditions requiring construction of the waterline and off-site. DOA states that it “has never waived and continues to assert and reserve its rights to benefit from the infrastructure requirements.”

DOA is again willing to allow this project to move forward so long as Hoohana complies with the same requirements agreed to and ordered in 2015, specifically Condition B.1. which requires easements and construction and maintenance of the waterline, and including a new deadline and incorporation of the plans already submitted for permitting. If not, DOA believes the Solar Project should be rejected, and the Commission should consider whether an Order to Show Cause hearing be held regarding the landowners’ collective failure (other than HRT) to comply with the conditions of the 1993 Decision and Order, as amended.

**IV. KUNIA AGRICULTURAL PARK WATERLINE AND OFF-SITE INFRASTRUCTURE CONDITIONS**

The original *Findings of Fact, Conclusions of Law, and Decision and Order*, filed December 9, 1993 (“Original D&O”), included Condition No. 22, which stated:

Petitioner shall convey the agricultural park to the State of Hawaii, and provide off-site infrastructure to the agricultural park, pursuant to the terms of the Memorandum of Understanding dated March 30, 1993, entered into by Petitioner and the Department of Agriculture.

In 1996, the *Amended Findings of Act, Conclusions of Law, and Decision and Order*, filed October 1, 1996, amended the conditions of the Original D&O, including renumbering Condition No. 22 as Condition No. 19 without modifying the substance of the Condition.

In 2004, the HRT entities transferred 150 acres of land, now identified as TMK No. 9-4-002-080, to the State of Hawaii for use as the Kunia Agricultural Park, and in partial fulfillment of Condition No. 19.

The LUC's *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*, filed January 28, 2015 ("2015 Ho'ohana Order"), replaced Condition No. 19 with Condition Nos. A.1. through A.4., and added Condition No. B.1. to address the DOA and landowners' responsibilities with respect to the Kunia Agricultural Park waterline and off-site infrastructure, as well as each landowner's development plans for the Petition Area.

Due to the failure of Petitioner and the other landowners to timely construct the Kunia Agricultural Park waterline and off-site infrastructure, OP recommends the inclusion and revisions to Condition Nos. A.1. and B.1.

**A. Condition No. A.1. – Landowners/Lessee's Off-site Infrastructure.**

Condition Nos. A.1. through A.4. currently state:

1. Royal Kunia Agricultural Park Off-site 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 Hawaii'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. 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 53 leases of the individual lots or condominium units in a residential development, or leases in an industrial development.

Condition No. A.1. required that within six months of the Commission's Order, or by July 28, 2015, the landowners and DOA were to finalize an amendment to the Memorandum of Understanding ("MOU") to require the completion of the off-site infrastructure by the landowners by December 31, 2016. In partial satisfaction of the MOU amendment condition, a *Third Amendment to Amendment and Restatement of Memorandum of Understanding* was executed on July 28, 2015, between DOA and Canpartners IV Royal Kunia Property LLC ("Canpartners"), successor in interest to Halekua Development Corporation. However, the off-site infrastructure has not been built. As the condition runs with the land, all current landowners/lessees of the Petition Area, including Robinson Kunia Land LLC/Hoohana, Haseko, and RKES LLC are in violation of Condition No. A.1. for failure to complete the off-site infrastructure by December 31, 2016.

Under Condition No. A.1., "the landowner(s)" refers to and requires all current landowners of the Petition Area, not just one of the landowners/lessees, to finalize the MOU and complete the off-site infrastructure pursuant to the MOU. The "(s)" in "landowner(s)" refers to when there is more than one landowner of the Petition Area, as there is today, whereas the "(s)" does not apply when there is only one landowner, which was the case early on when there was only one landowner/petitioner. OP believes this is consistent with the Commission's intent under the original Condition No. 22/No. 19, and Condition No. A.1. that the off-site infrastructure MOU execution and construction completion apply to all current landowners, not to the exclusion of any current landowners.

Notably, the most recent *Fourth Amendment to Amendment and Restatement of Memorandum of Understanding*, executed on March 16, 2020 ("2020 MOU"), is made and signed between DOA and RP2 Ventures, LLC, to the exclusion of all other current landowners/lessees, i.e., Ho'ohana and RKES, and therefore does not comply with Condition No. A.1. All landowners/lessees should be parties to the MOU and be responsible for the completion of the off-site infrastructure.

OP recommends the following amendments to Condition No. A. to firmly hold all landowners/lessees responsible for the timely construction of the off-site infrastructure:

1. Royal Kunia Agricultural Park Off-site Infrastructure. Within six (6) months of the date of the Commission's Order, ~~[the]~~ all landowner(s) within the Petition Area shall ~~[finalize]~~ execute an amendment to the Memorandum of Understanding (dated 1993 and subsequent amendments in 2007, 2009, ~~[and]~~ 2012, 2015, and 2020) with the Department of Agriculture, and comply with this amended Memorandum of Understanding. This Memorandum shall require that the off-site infrastructure to the State of Hawai'i's Kunia Agricultural Park be completed no later than ~~[December 31, 2016]~~ December 31, 2021.
2. Revised Master Plan. All ~~[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 to the Commission no later than December 31, 2021.
3. Status Report. By ~~[March 31, 2015]~~ March 15, 2021, all landowners within the Petition Area shall submit to the Commission a status report on the development of their respective parcels of land and their construction or contribution to the construction of the off-site infrastructure.
4. Notice to Commission. 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 53 leases of the individual lots or condominium units in a residential development, or leases in an industrial development.
5. Compliance with Representations. Failure of the landowners to construct the off-site infrastructure for the Kunia Agricultural Park will constitute good cause for the Commission to issue an Order to Show Cause to the landowners pursuant to Section 15-15-93 of the Commission Rules.

**B. Condition No. B.1. – Hoohana Non-Potable Waterline.**

Condition No. B.1 states:

1. Royal Kunia Agricultural Park Non-Potable Water Connection. By December 31, 2016, H'ohana shall, at no cost to the State and concurrent with construction of the solar farm, design and provide an off-site, 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 nonpotable 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 Hoohana is delayed as a result.

Essentially, Hoohana was required to do three things under Condition No. B.1.:

- (1) Design and provide the Kunia Agricultural Park waterline;
- (2) Cause Robinson Kunia Land LLC to grant any required utility easement(s) to the State for the alignment of the waterline; and
- (3) Maintain the waterline in an operable condition for the duration of the solar farm.

Hoohana has not fulfilled Condition No. B.1. as it has not provided the non-potable waterline, caused Robinson to grant the utility easements, and provided contracted maintenance for the waterline. However, the *2015 Ho'ohana Order* states that Condition Nos. B.1. through B.7 "shall be applicable *only* upon development of the solar farm use on Parcel 52." *See pg. 54 of the 2015 Ho'ohana Order (Emphasis added)*. Also, under Findings of Fact No. 158 (*pg. 32 of the 2015 Ho'ohana Order*), "DOA understands that if the solar farm is not developed, Hoohana will not construct the non-potable waterline." Hoohana was unable to develop the 2015 Solar Farm due to the PUC's disapproval of the project. However, under Findings of Fact No. 208 (*pg. 41 of the 2015 Ho'ohana Order*), "Hoohana 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." Accordingly, Hoohana should again be required to complete the waterline as a condition of approval allowing the development of the currently proposed Solar Project.

OP therefore recommends the following amendments to Condition No. B.1. to restate the obligations of Hoohana to construct and maintain the waterline and acquire the necessary easements, and the following amendments to Condition No. B.6., to provide explicit enforcement action by the Commission for failure to complete the waterline. OP recommends Condition Nos. B.1. and B.6. be amended as follows:

1. Royal Kunia Agricultural Park Non-Potable Water Connection. [By December 31, 2016;] Prior to obtaining a building permit for the construction of the solar farm,

Ho'ohana shall, at no cost to the State and concurrent with construction of the solar farm, design and provide an off-site, 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~~] using the design and specifications acceptable to the Department of Agriculture that were submitted to the Department of Planning and Permitting by RP2 Ventures, LLC. 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 nonpotable 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.~~]

\* \* \* \* \*

6. Compliance with Representations. Ho'ohana shall develop the non-potable waterline and solar farm in substantial compliance with its representations reflected in the Decision and Order. Failure to develop the non-potable waterline and/or 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.

#### V. GOOD CAUSE TO AMEND

Pursuant to § 15-15-94(b), Hawaii Administrative Rules, "For good cause shown, the [C]ommission may act to modify or delete any of the conditions imposed or modify the [C]ommission's order." "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).

There are substantial reasons that together afford the Petitioner the opportunity to move forward with the proposed 2020 Solar Project, including the PUC's denial of the 2015 Solar Project that prevented Petitioner from developing the 2015 Solar Project as approved by the LUC's 2015 Order, and that Petitioner's 2020 Solar Project would be more productive and efficient than the 2015 Solar Project and would assist the State in realizing its energy goals. Additionally, by reinstating and modifying the conditions requiring Petitioner and all other landowners to construct the waterline and offsite infrastructure, the long-awaited Kunia

Agricultural Park can finally be brought to fruition. Therefore, good cause is shown for the Commission to modify the 2015 Order to allow Petitioner to develop the 2020 Solar Project.

**VI. CONCLUSION**

Based on the foregoing information and analysis, OP recommends approval of Petitioner's Motion, subject to the amendments and conditions discussed above and compiled for the Commission's convenience in OP's Exhibit 1.

DATED: Honolulu, Hawaii, September 18, 2020.

OFFICE OF PLANNING  
STATE OF HAWAII

*Mary Alice Evans*

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MARY ALICE EVANS  
DIRECTOR



BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petitions of:	)	DOCKET NO. A92-683
	)	
HALEKUA DEVELOPMENT	)	OFFICE OF PLANNING'S RESPONSE
CORPORATION, a Hawaii Corporation	)	TO SUCCESSOR PETITIONER (AS TO
	)	PARCEL 52) HOOHANA SOLAR 1,
To Amend the Agricultural Land Use District	)	LLC'S MOTION FOR MODIFICATION
Boundary into the Urban Land Use District for	)	AND TIME EXTENSION; OP EXHIBITS
Approximately 503.886 Acres at Waikele and	)	1, 2, 3, AND 4; CERTIFICATE OF
Hoaeae, Ewa, Oahu, City and County of	)	SERVICE
Honolulu, State of Hawaii, Tax Map Key No. 9-	)	
4-02: 1, portion of 52, 70 and 71	)	
_____	)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was duly served on this date on the below-named parties by U.S. Mail, postage prepaid:

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Dated: Honolulu, Hawaii, September 18, 2020.

OFFICE OF PLANNING  
STATE OF HAWAII

*Mary Alice Evans*

---

MARY ALICE EVANS  
DIRECTOR

**EXHIBIT 1**  
**OFFICE OF PLANNING'S PROPOSED AMENDED CONDITIONS**

**Condition A.**

1. Royal Kunia Agricultural Park Off-site Infrastructure. Within six (6) months of the date of the Commission's Order, ~~[the]~~ all landowner(s) within the Petition Area shall ~~[finalize]~~ execute an amendment to the Memorandum of Understanding (dated 1993 and subsequent amendments in 2007, 2009, ~~[and]~~ 2012, 2015, and 2020) 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]~~ December 31, 2021.
2. Revised Master Plan. ~~[Within twelve (12) months of the date of the Commission's Order, the]~~ All 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 to the Commission no later than December 31, 2021.
3. Status Report. By ~~[March 31, 2015]~~ March 15, 2021, all landowners within the Petition Area shall submit to the Commission a status report on the development of their respective parcels of land and their construction or contribution to the construction of the off-site infrastructure.
4. Notice to Commission. 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 53 leases of the individual lots or condominium units in a residential development, or leases in an industrial development.
5. Compliance with Representations. Failure of the landowners to construct the off-site infrastructure for the Kunia Agricultural Park will constitute good cause for the Commission to issue an Order to Show Cause to the landowners pursuant to Section 15-15-93 of the Commission Rules.

**Condition B.**

1. Royal Kunia Agricultural Park Non-Potable Water Connection. ~~[By December 31, 2016;]~~ Prior to obtaining a building permit for the construction of the solar farm, Ho'ohana shall, at no cost to the State and concurrent with construction of the solar farm, design and provide an off-site, 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~~] using the design and specifications acceptable to the Department of Agriculture that were submitted to the Department of Planning and Permitting by RP2 Ventures, LLC. 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 nonpotable 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.~~]

2. Fish and Wildlife Protection. Ho'ohana shall comply with the following:
  - a. 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.
  - b. Prior to clearing vegetation, twilight pre-construction surveys shall be conducted by qualified biologists. If pueo nests are present, DOFAW shall be notified and a buffer zone established in which no clearing occurs until nesting ceases.
  - c. If State listed water birds such as the Hawaiian Duck (*Anas wyvilliana*), Hawaiian Stilt (*Himantopus mexicanus knudseni*), Hawaiian Coot (*Fulica alai*), and Hawaiian Common Gallinule (*Gallinula choropus sandvicensis*) are present during construction activities, all activities within 100 feet (30 meters) shall cease, and the bird should not be approached. Work may continue after the bird leaves the area of its own accord. If a nest is discovered at any point, DOFAW shall be contacted.
  - d. The movement of plant soil material between worksites such as in fill shall be minimized. Petitioner shall contact the Oahu Invasive Species Committee to minimize the risk of spreading invasive species. All equipment, materials and personnel should be cleaned of excess soil and debris to minimize the risk of spreading invasive species.
  - e. Construction activity shall be restricted to daylight hours as much as practicable during the seabird breeding season (April through November) to avoid the use of nighttime lighting that could be an attraction to seabirds.
  - f. All nighttime work that requires outdoor lighting shall be avoided during the seabird fledging fallout period from September 15 through December 15.
  - g. All outdoor lighting at the Project shall be shielded to prevent upward radiation so as to reduce the potential for seabird attraction.

- h. To avoid potential impacts to the Hawaiian hoary bat, the clearing of dense vegetation, including woody plants greater than 15 feet should not occur between June 1 to September 15 when bats may be carrying young and potentially at risk by such clearing activities. If this cannot be avoided, woody plants greater than 15 feet tall should not be disturbed, removed, or trimmed without consulting DOFAW.

\* \* \* \* \*

- 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 (DOT).

Ho'ohana shall resubmit a Federal Aviation Form (FAA) 7460-1 Notice of Proposed Construction or Alteration for the proposed increase in the number of photovoltaic (PV) solar panels. A glint and glare analysis shall be attached to the FAA Form 7460-1. Ho'ohana shall provide DOT a copy of the FAA determination of the FAA Form 7460-1.

\* \* \* \* \*

- 6. Compliance with Representations. Ho'ohana shall develop the non-potable waterline and solar farm in substantial compliance with its representations reflected in the Decision and Order. Failure to develop the non-potable waterline and/or 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.

DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

JADE T. BUTAY  
DIRECTOR

Deputy Directors  
LYNN A.S. ARAKI-REGAN  
DEREK J. CHOW  
ROSS M. HIGASHI  
EDWIN H. SNIFFEN

IN REPLY REFER TO:  
DIR0822  
STP 8.3016

September 9, 2020



TO: MS. MARY ALICE EVANS, DIRECTOR  
OFFICE OF PLANNING  
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

ATTN: LORENE MAKI, PLANNER.

FROM: JADE T. BUTAY, DIRECTOR , Iv\ , - - J  
DEPARTMENT OF TRANSPORTATION

SUBJECT: A92-683 SUCCESSOR PETITIONER HOOHANA SOLAR 1, LLC  
MOTION FOR MODIFICATION AND TIME EXTENSION (MOTION)  
EWA, OAHU, HAWAII  
TAX MAP KEY: (1) 9-4-002: 052

The State of Hawaii Department of Transportation (HDOT) has reviewed the subject Motion and understands the successor petitioner Hoohana Solar 1, LLC previously proposed a 20-megawatt (MW) utility-scale solar energy project in January 2015; however, the proposed power purchase agreement (PPA) with Hawaiian Electric Company (HECO) was subsequently denied by the Public Utilities Commission. A PPA was executed with HECO which included a modified project description increasing the power generation to 52 MW with battery storage on 157 acres of the subject parcel.

The 2015 Decision & Order conditions relevant to HDOT continue to be applicable to the 2020 Solar Project, as follows:

"Condition 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 of the HDOT."

"Condition B.7. Decommissioning. The solar farm shall be decommissioned following its operational timeframe ... Any future use of Parcel 52 following the decommissioning of the solar farm ... 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... "

HDOT has no objections to the proposed Motion; however has the following comments for consideration:

OP EXHIBIT 2

Airports Division (HOOT-A)

1. HOOT-A requests that the developer resubmit a Federal Aviation Administration (FAA) Form 7460-1 Notice of Proposed Construction or Alteration, for the proposed increase in the number of photovoltaic (PV) solar panels. Note that the form requires latitude, longitude, ground elevation and the above ground elevation data for the installation site. The form and criteria for submittal can be found at the following website:  
<https://oeaaa.faa.gov/oeaaa/external/portal.jsp>

A glint and glare analysis must be attached to your submittal of FAA Form 7460-1. The following website may assist you with preparation of a glint and glare analysis:  
[www.sandia.gov/glare](http://www.sandia.gov/glare). When you have received the FAA determination from your submittal of FAA Form 7460-1, please provide HOOT-A with a copy for our files.

Highways Division (HOOT-HWY)

Exhibit 10 of the motion is the "Construction Traffic Assessment (TA) for the Proposed Hoohana Solar Farm," dated June 8, 2020. The proposed access to the development is on Plantation Road (private), which intersects with Kunia Road (State Route 750). The Hawaii Department of Transportation (HDOT) has reviewed the 2020 TA and concurs with the following key findings:

1. Operations of the 2020 solar farm would involve a maximum of five employees on any given day for periodic maintenance and would have a negligible impact on vehicular and multimodal transportation in the region.
2. Construction is anticipated to occur between April 2021 and December 2022 with the peak occurring over six months in 2021. Construction would have negligible impact on multimodal transportation in the region. Four of the six intersections in the study area would operate at Levels of Service (LOS) D or better, during the peak construction period. The following intersections will operate at an unacceptable LOS during peak construction (2021) and during operations (2023):
  - a. Kunia Road/H-1 Eastbound On-ramp, would operate at LOSE during the a.m. peak traffic hour.
  - b. Kunia Road and Plantation Road intersection would operate at LOS F during a.m. and p.m. peak traffic hours.
3. The assumptions conservatively assume construction traffic would occur in peak traffic hours, but in reality, the 150 workers will be at the site before the a.m. peak and the truck trips would not necessarily occur during peak traffic hours.
4. The temporary construction-phase impacts on traffic conditions do not warrant permanent intersection improvements to increase highway capacity; however, there would be potentially significant impacts to traffic safety at the Kunia Road and Plantation Drive intersection that should be addressed. The mitigation measures for safety impacts, such

MS. MARY ALICE EVANS, DIRECTOR  
September 9, 2020  
Page 3

STP 8.3016

as those listed in page 12 of the June 8, 2020 TA, would be included in the 2020 Solar Project Traffic Management Plan that is subject to HDOT review and approval.

If there are any questions, please contact Mr. Blayne Nikaido of the HDOT Statewide Transportation Planning Office at (808) 831-7979 or via email at [blayne.h.nikaido@hawaii.gov](mailto:blayne.h.nikaido@hawaii.gov).





## HAWAII STATE ENERGY OFFICE STATE OF HAWAII

DAVID Y. IGE  
GOVERNOR

SCOTT J. GLENN  
CHIEF ENERGY OFFICER

235 South Beretania Street, 5th Floor, Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-3807  
Web: energy.hawaii.gov

September 11, 2020

VIA EMAIL

To: Mary Alice Evans, Director  
Office of Planning

From: Scott J. Glenn, Chief Energy Officer 9,-  
Hawaii State Energy Office

Subject: A92-683 Successor Petitioner Hoohana Solar I, LLC  
Motion for Modification and Time Extension  
2020 Solar Project  
TMK: (1) 9-4-002: 52  
Land Area: 161 .023  
Waikele and Hoaeae, Ewa, Oahu, Hawaii

The Hawaii State Energy Office (HSEO) offers the following comments on Hoohana Solar I, LLC's (Hoohana) Motion for Modification and Time Extension (Motion) seeking Land Use Commission (LUC) approval of a new proposed 52 megawatt alternating current (MWac) solar farm with battery energy storage (2020 Solar Project) on approximately 157 acres just north of Royal Kunia, Oahu.

HSEO's comments are guided by its statutory purposes, established in 2019, to promote energy efficiency, renewable energy, and clean transportation to help achieve a resilient clean economy and to provide project deployment facilitation to assist private sector project completion when aligned with state energy goals.<sup>1</sup> As an island community currently dependent on imported fossil fuels for nearly 70 percent of its electrical power, Hawaii is particularly vulnerable to fuel and energy disruptions, unpredictable cost fluctuations, unintended fuel and oil releases into marine environments, and the many impacts of climate change. HSEO believes the 2020 Solar Project has the potential to contribute to mitigating these vulnerabilities. Additionally, renewable energy developments such as this create jobs and commerce activities that will support Hawaii's near-term economic recovery from the COVID-19 crisis.

As with its energy goals, Hawaii also has ambitious goals to increase local agricultural production. HSEO commends Hoohana for not only avoiding soils classified as C, D, or E on lands designated by the State for agriculture, but also re-configuring the 2020 Solar Project to be entirely within the Urban District.<sup>2</sup> Also, the 2020 Solar Project has a dense land use ratio of 3 acres per MWac.

<sup>1</sup> Section 196-71, Hawaii Revised Statutes.

<sup>2</sup> In the Matter of the Petition of Halekua Development Corporation; Successor Petitioner (as to Parcel 52) Hoohana Solar I, LLC's Motion for Modification and Time Extension; Memorandum in Support of Motion; pgs. 1-2 (Aug. 17, 2020) (Hoohana Motion). Parcel 52 is within the State Land Use Urban District.

HSEO appreciates and encourages actions that illustrate and strengthen a positive relationship between the needs of energy and agriculture, and therefore supports a continuation of efforts to provide an irrigation water connection from Reservoir 225 to the boundary of the Kunia Agricultural Park, including the necessary easement(s) and maintenance of the water connection for the duration of the approval.<sup>3</sup>

### Renewable Energy, Greenhouse Gas Reduction, and Grid Benefits

Hawaii has mandated that 100 percent of the electrical energy sold by Hawaii's electrical utilities must come from renewable energy sources by the year 2045, with interim mandates of 30 percent by 2020 and 40 percent by 2030.<sup>4</sup> To achieve these mandates many utility-scale renewable energy projects will be needed - particularly for Oahu - in addition to widespread energy efficiency and rooftop solar photovoltaic installations. Hawaiian Electric is now pursuing several new renewable energy projects on Oahu to replace the considerable power generated by the 180 MW coal-fired AES Hawaii plant in Campbell Industrial Park planned for retirement by September 2022.<sup>5</sup> As the 2020 Solar Project is part of Hawaiian Electric's plans to retire the AES Hawaii coal plant, a timely decision on this Motion is needed in order for the various affected stakeholders to move forward or plan accordingly. In addition, Senate Bill 2629 (2019) now in front of Governor Ige would eliminate the use of coal in Hawaii for electricity production by the end of 2022.

The 52 MWac project with four-hour energy storage and dispatch capability would be the largest solar farm built on Oahu if completed as planned by December 2021 (estimated before COVID-19).<sup>6</sup> According to Hawaiian Electric, the 2020 Solar Project would produce 1.4 percent of all renewable energy generated within its service territories of Oahu, Maui Nui, and Hawaii island.<sup>7</sup> This is significant for one project and makes it the 6<sup>th</sup> most productive renewable energy project out of the 28 currently being pursued by Hawaiian Electric.<sup>8</sup> The project's battery energy storage system would enable Hawaiian Electric to dispatch energy generated by the project as needed to off-set night-time customer demand, assist in grid stabilization subject to discharge limits, and decrease the future dispatch of oil-

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<sup>3</sup> Order Granting Successor Petitioner (to Parcel 52), Hoohana Solar I, LLC's Motion for Order Amending the Amended Findings of Fact, Conclusions of Law, and Decision and Order Filed on October 1, 1996; p. 54 (Jan. 28, 2015) (2015 LUC Order). Parcel 52 remains zoned AG-I Restricted Agricultural District by the City and County of Honolulu.

<sup>4</sup> Section 269-92, Hawaii Revised Statutes. In 2019, Hawaii reached 29.8% renewable energy generation and is on target to meet its 2020 interim mandate.

<sup>5</sup> According to Hawaiian Electric, the AES Hawaii plant is the largest single generator on HECO's system, meeting 16% of the peak electricity demand on Oahu - <https://www.hawaiianelectric.com/hawaiian-electric-companies-targeting-2022-in-move-to-acquire-more-renewable-energy>. In 2016, the AES Hawaii plant emitted 1.55 million metric tons of carbon dioxide equivalent (MMT CO<sub>2</sub> Eq.) greenhouse gas emissions (GHG), or approximately 8% of total statewide GHG emissions that year. Hawaii Department of Health, Hawaii Greenhouse Gas Emissions Report for 2016, Final Report (December 2019)- [https://health.hawaii.gov/cab/files/2019/12/2016-Inventory\\_Final\\_Report\\_December2019-1.pdf](https://health.hawaii.gov/cab/files/2019/12/2016-Inventory_Final_Report_December2019-1.pdf)

<sup>6</sup> On March 30, 2020, Hoohana provided Hawaiian Electric with a force majeure notice under the power purchase agreement for the project indicating there may be delays to the project schedule due to the COVID-19 pandemic.

<sup>7</sup> Hawaiian Electric Renewable Project Status Board - <https://www.hawaiianelectric.com/clean-energy-hawaii/our-clean-energy-portfolio/renewable-project-status-board> (Status Board).

<sup>8</sup> Status Board. Includes renewable energy projects completed in 2019-2020, now under construction, approved by the Hawaii Public Utilities Commission, and currently under contract negotiations. This does not include the three standalone battery energy storage projects.

fueled generating units.<sup>9</sup> These controls are necessary for Hawaii's utility grids to integrate massive amounts of solar power.

In March 2019, the Hawaii Public Utilities Commission (PUC) approved the power purchase agreement (PPA) between Hoohana and Hawaiian Electric under which Hawaiian Electric would buy electricity from the 2020 Solar Project at a levelized price of \$0.1047 per kilowatt-hour (kWh) for an initial term of twenty (20) years.<sup>10</sup> At the time, Hawaiian Electric estimated the 2020 Solar Project could save a typical residential customer consuming 500 kWh per month \$1.16 per month in 2022 and \$1.81 per month in 2023.<sup>11</sup> Hoohana estimates the project could annually produce enough power for 19,100 homes, displace 10.6 million gallons of impoluted fuel, and reduce carbon dioxide emissions by 95,400 tons.<sup>12</sup> Hawaiian Electric estimates the project would displace up to 1,555,687 barrels of fuel, 465 tons of coal,<sup>13</sup> and approximately 747,601 tons of greenhouse gas emissions over the initial 20-year project lifetime.<sup>14</sup> These are all notable contributions towards Hawaii's goal to become a carbon-free economy.

### Local Jobs

Hoohana estimates the 2020 Solar Project would create "approximately 50 jobs during the 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.<sup>15</sup>" Hoohana also estimates the project would require approximately five full-time employees once completed.<sup>16</sup> HSEO understands Hoohana has hired, and plans to hire, a vast majority of Hawaii residents for the jobs needed for all stages of the 2020 Solar Project. HSEO appreciates this practice and Hoohana's willingness to support local workforce and public education initiatives.

Renewable energy is a sector in Hawaii with significant growth potential given the large volume of new renewable energy developments and installations needed to reach 100 percent by 2045. HSEO is actively investigating what the State can do to increase the number of Hawaii residents working on large renewable energy projects.

### Conditions Supporting Local Agriculture

Condition B.1. of the LUC's 2015 Order required Hoohana to: (i) concurrent with the 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 at specifications agreeable to Hoohana and the Department of

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<sup>9</sup> In the Matter of the Application of Hawaiian Electric Company, Inc. for Approval of Power Purchase Agreement for Renewable Dispatchable Generation with Hoohana Solar I, LLC; Docket No. 2018-0431; Hawaiian Electric Company, Inc.'s Application; p. 8 (Dec. 31, 2018) (Hawaiian Electric Application).

<sup>10</sup> In the Matter of the Application of Hawaiian Electric Company, Inc. for Approval of Power Purchase Agreement for Renewable Dispatchable Generation with Hoohana Solar I, LLC; Docket No. 2018-0431; Decision and Order No. 36236; p. 16 (March 25, 2019) (PUC Approval D&O). HSEO acknowledges the Hawaii Consumer Advocate did not recommend approval of the PPA for the 2020 Solar Project due to site control, allowed uses of the site, the utility procurement process, pricing associated with the PPA, terms and conditions of the PPA, and community outreach and benefits.

<sup>11</sup> PUC Approval D&O, p. 25.

<sup>12</sup> Hoohana Motion, pgs. 3, 6.

<sup>13</sup> Hawaiian Electric Application, p. 25.

<sup>14</sup> Hawaiian Electric Application, Exhibit 5.

<sup>15</sup> Hoohana Motion, p. 10.

<sup>16</sup> Hoohana Motion, p. 10.

Agriculture (DOA); (ii) cause landowner Robinson Kunia Land LLC to grant the required perpetual utility easement(s) to the State of Hawaii for the waterline; and, (iii) provide contracted maintenance on the waterline to keep it operable for the duration of the solar farm operation.<sup>17</sup> Per Hoohana's Motion, it appears the current landowner of Parcel 71, Haseko Royal Kunia, LLC, assumed its predecessor's (RP2 Ventures LLC) commitment to DOA to complete the non-potable irrigation waterline referred to in the LUC's 2015 Order by or before February 28, 2021, unless otherwise approved by DOA.<sup>18</sup> HSEO understands this waterline has been an unfulfilled obligation to the State for years and is a key part of the irrigation needed for the Kunia Agricultural Park.

As the current Motion seeks similar approval of a solar farm on Parcel 52 as that granted by the LUC's 2015 Order, HSEO asks that any approval of the 2020 Solar Project be conditioned upon the completed installation of the non-potable irrigation waterline, including obtaining the necessary easement(s), by the agreed upon due date. HSEO further asks that maintenance of the waterline in operable condition for the duration of the approval be required. HSEO does not take a position on which entity or entities - Hoohana and/or the Petition Area landowners - would be required to comply with these conditions.

### Community Involvement

Several Hawaii communities have been adversely impacted by large renewable energy projects located in or near their neighborhoods. If sited appropriately and developed with community involvement throughout, renewable energy projects can become an asset and source of pride to host communities. HSEO places high priority on engagement with residents of communities in which large renewable energy projects are, may, or will be located.

Hoohana has been conducting community outreach for a solar project on Parcel 52 since 2014, much of it summarized in the PPA.<sup>19</sup> For the 2020 Solar Project, Hoohana identified three areas of importance from its outreach: visibility, State of Hawaii (DOA) cooperation, and community good will. To address visibility, Hoohana will plant vegetative screening and drought tolerant landscaping costing approximately \$200,000. To address State cooperation, Hoohana committed to helping the State's Kunia Agricultural Park advance by providing improvements such as the waterline discussed herein at a cost of approximately \$300,000. Finally, Hoohana committed to working with the Hawaii Department of Education to bring photovoltaic (PV) education resources to area schools by providing renewable energy education and professional development for Waipahu complex teachers.<sup>20</sup> HSEO appreciates Hoohana's substantive investment in these benefits.

The Minutes for the November 21, 2019, Waipahu Neighborhood Board No. 22 meeting identified several questions, comments, and concerns about the 2020 Solar Project and another large solar project being proposed in Kunia by Hoohana's parent company, 174 Power Global.<sup>21</sup> To the extent practicable, HSEO encourages the regulatory agencies to take such input into consideration during their deliberations. HSEO also encourages Hoohana to continue its work so that tangible benefits, such as those identified in the PPA, can be provided to the residents of the surrounding community.

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<sup>17</sup> 2015 LUC Order, p. 54.

<sup>18</sup> Hoohana Motion, p. 11.

<sup>19</sup> Hawaiian Electric Application, Exhibit 8

<sup>20</sup> Hawaiian Electric Application, Exhibit 8

<sup>21</sup> [http://www4.honolulu.gov/docushare/dsweb/Get/Document-249106/22\\_2019\\_11Min.pdf](http://www4.honolulu.gov/docushare/dsweb/Get/Document-249106/22_2019_11Min.pdf)

Decommissioning

Hoohana estimates the lifetime of the 2020 Solar Project could be 40 years.<sup>22</sup> HSEO supports carryover of the same condition (B.7.) of the 2015 LUC Order titled, "Decommissioning of the Solar Farm."<sup>23</sup> In addition, the PPA between Hoohana and Hawaiian Electric requires Hoohana to remove all interconnection facilities and restore the land with the interconnection facilities to its condition prior to construction upon termination or voidance of the PPA.<sup>24</sup> Finally, if not in place already, HSEO encourages Hoohana to arrange some financing vehicle (bond, surety, letter of credit, etc.) to ensure the funds necessary to decommission the 2020 Solar Project and restore the land to its original condition are in place well before the end of the project lifetime.

We appreciate the opportunity to provide these comments on Hoohana's Motion. If you have any questions, please feel free to contact Cameron Black, Renewable Projects Program Manager, at [cameron.b.black@hawaii.gov](mailto:cameron.b.black@hawaii.gov).

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<sup>22</sup> Hoohana Motion, p. 9.

<sup>23</sup> 2015 LUC Order, P. 55.

<sup>24</sup> Hawaiian Electric Application, Exhibit 1, pgs. 256-257.

DAVID Y. IGE  
GOVERNOR OF HAWAII



SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

September 11, 2020

LD 882e

Mary Alice Evans, Director  
Office of Planning  
State of Hawaii  
235 South Beretania Street, Room 600  
Honolulu, HI 96813

*Via email: Lorene.K.Maki@hawaii.gov*

Dear Ms. Evans:

**SUBJECT: A92-683 Successor Petitioner Hoohana Solar 1, LLC  
Motion for Modification and Time Extension  
2020 Solar Project  
Waikele and Hoaeae, Ewa, Island of Oahu, Hawaii  
TMK: (1) 9-4-002:052**

Thank you for the opportunity to review and comment on the above subject. In addition to previous comments sent to you from the Department of Land and Natural Resources (DLNR) dated September 11, 2020, enclosed are comments from DLNR's Division of Forestry and Wildlife.

If you have any questions about the attached response, please feel free to contact Barbara Lee via email at [barbara.j.lee@hawaii.gov](mailto:barbara.j.lee@hawaii.gov). Thank you.

Sincerely,

*Russell Tsuji*

Russell Y. Tsuji  
Land Administrator

Enclosure(s)  
cc: Central Files

OP EXHIBIT 4

DAVID Y. IGE  
GOVERNOR OF HAWAII



SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

August 31, 2020

LD 882e

**MEMORANDUM**

TO: **DLNR Agencies:**  
 \_\_\_ Div. of Aquatic Resources  
 \_\_\_ Div. of Boating & Ocean Recreation  
X Engineering Division (via email: [DLNR.Engr@hawaii.gov](mailto:DLNR.Engr@hawaii.gov))  
X Div. of Forestry & Wildlife (via email: [Rubyrosa.T.Terrago@hawaii.gov](mailto:Rubyrosa.T.Terrago@hawaii.gov))  
 \_\_\_ Div. of State Parks  
X Commission on Water Resource Management (via email: [DLNR.CWRM@hawaii.gov](mailto:DLNR.CWRM@hawaii.gov))  
 \_\_\_ Office of Conservation & Coastal Lands  
X Land Division – Oahu District (via email: [DLNR.Land@hawaii.gov](mailto:DLNR.Land@hawaii.gov))  
X Historic Preservation (via email: [DLNR.Intake.SHPD@hawaii.gov](mailto:DLNR.Intake.SHPD@hawaii.gov))

FROM: Russell Y. Tsuji, Land Administrator *Russell Tsuji*

SUBJECT: **A92-683 Successor Petitioner Hoohana Solar 1, LLC  
 Motion for Modification and Time Extension, 2020 Solar Project**


LOCATION: Waikele and Hoaeae, Ewa, Island of Oahu, Hawaii  
 TMK: (1) 9-4-002:052

APPLICANT: **Office of Planning on behalf of Petitioner Hoohana Solar 1, LLC**

Transmitted for your review and comment is information on the subject project which can be accessed at the following link to the Land Use Commission website: <https://luc.hawaii.gov/8-17-2020-successor-petitioner-as-to-parcel-52-hoohana-solar-i-lles-motion-for-modification-and-time-extension-memorandum-in-support-of-motion-verification-affidavit-of-jennifer-a-lim-exhi/>.

Please submit any comments via email to the Land Division at [DLNR.Land@hawaii.gov](mailto:DLNR.Land@hawaii.gov), copied to [barbara.j.lee@hawaii.gov](mailto:barbara.j.lee@hawaii.gov), by **September 10, 2020**. If no response is received by the above date, we will assume your agency has no comments. Should you have any questions about this request, please contact Barbara Lee directly at [barbara.j.lee@hawaii.gov](mailto:barbara.j.lee@hawaii.gov). Thank you.

- We have no objections.
- We have no comments.
- Comments are attached.

Signed:   
 Print Name: DAVID G. SMITH, Administrator  
 Division: Forestry and Wildlife  
 Date: Sep 11, 2020

Attachments  
Cc: Central Files

DAVID Y. IGE  
GOVERNOR OF HAWAII



**STATE OF HAWAII**  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF FORESTRY AND WILDLIFE  
1151 PUNCHBOWL STREET, ROOM 325  
HONOLULU, HAWAII 96813

SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA  
FIRST DEPUTY

M. KALEO MANUEL  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

September 10, 2020

**MEMORANDUM**

Log no. 2791

**TO:** RUSSELL Y. TSUJI, Administrator  
Land Division

**FROM:** DAVID G. SMITH, Administrator

DES

**SUBJECT: Division of Forestry and Wildlife Comments for the A92-683 Successor Petitioner Ho'ohana Solar 1, LLC Motion for Modification and Time Extension, 2020 Solar Project**

The Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW) has received your inquiry regarding the motion for modification and time extension for the Ho'ohana Solar 1, LLC 2020 Solar Project in Ewa on O'ahu, Hawai'i, TMK: (1) 9-4-002:052. The proposed project consists of constructing a 52 megawatt solar farm over approximately 157 acres of a 161.023 acre lot.

The State endangered Hawaiian Short-eared Owl or pūeo (*Asio flammeus sandwichensis*) has the potential to occur in the project site vicinity. Pūeo are a crepuscular species, most active during dawn and dusk twilights. DOFAW recommends twilight pre-construction surveys by a qualified biologist prior to clearing vegetation. If pūeo nests are present, a buffer zone should be established in which no clearing occurs until nesting ceases, and DOFAW staff should be notified. Studies have shown that solar power facilities on the mainland have been linked with avian mortality of a variety of bird species including waterbirds and raptors. As aforementioned, the project area is on open habitat where the pūeo may transit or reside near. In addition to pre-construction surveys, you should consider implementing avian mortality avoidance measures during design, and conducting surveys and monitoring during operation to assess the impacts of the project on listed species.

State listed waterbirds such as the Hawaiian Duck (*Anas wyvilliana*), Hawaiian Stilt (*Himantopus mexicanus knudseni*), Hawaiian Coot (*Fulica alai*), and Hawaiian Common Gallinule (*Gallinula chloropus sandvicensis*) have the potential to occur in the vicinity of the proposed project site. It is against State law to harm or harass these species. If any of these species are present during construction activities, then all activities within 100 feet (30 meters) should cease, and the bird should not be approached. Work may continue after the bird leaves the area of its own accord. If a nest is discovered at any point, please contact the O'ahu DOFAW Office at (808) 973-9778.



The State listed Hawaiian Hoary Bat or 'Ōpe'ape'a (*Lasiurus cinereus semotus*) has the potential to occur in the vicinity of the project area and may roost in nearby trees. If any site clearing is required this should be timed to avoid disturbance during the bat birthing and pup rearing season (June 1 through September 15). If this cannot be avoided, woody plants greater than 15 feet (4.6 meters) tall should not be disturbed, removed, or trimmed without consulting DOFAW.

DOFAW recommends minimizing the movement of plant or soil material between worksites, such as in fill. Soil and plant material may contain invasive fungal pathogens (e.g. Rapid 'Ōhi'a Death), vertebrate and invertebrate pests (e.g. Little Fire Ants, Coconut Rhinoceros Beetles), or invasive plant parts that could harm our native species and ecosystems. We recommend consulting the O'ahu Invasive Species Committee at (808) 266-7994 in planning, design, and construction of the project to learn of any high-risk invasive species in the area and ways to mitigate spread. All equipment, materials, and personnel should be cleaned of excess soil and debris to minimize the risk of spreading invasive species.

We note that artificial lighting can adversely impact seabirds that may pass through the area at night by causing disorientation. This disorientation can result in collision with manmade artifacts or grounding of birds. For nighttime lighting that might be required, DOFAW recommends that all lights be fully shielded to minimize impacts. Nighttime work that requires outdoor lighting should be avoided during the seabird fledging season from September 15 through December 15. This is the period when young seabirds take their maiden voyage to the open sea. For illustrations and guidance related to seabird-friendly light styles that also protect the dark, starry skies of Hawai'i please visit: <https://dlnr.hawaii.gov/wildlife/files/2016/03/DOC439.pdf>.

We appreciate your efforts to work with our office for the conservation of our native species. Should the scope of the project change significantly, or should it become apparent that threatened or endangered species may be impacted, please contact our staff as soon as possible.

If you have any questions, please contact Lauren Taylor, Protected Species Habitat Conservation Planning Coordinator at (808) 587-0010 or [lauren.taylor@hawaii.gov](mailto:lauren.taylor@hawaii.gov).

DAVID Y. IGE  
Governor

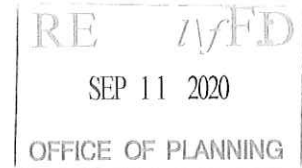
JOSH GREEN  
Lt. Governor



State of Hawaii  
DEPARTMENT OF AGRICULTURE  
1428 South King Street  
Honolulu, Hawaii 96814-2512  
Phone: (808) 973-9600 FAX: (808) 973-9613

PHYLLIS SHIMABUKURO-GEISER  
Chairperson, Board of Agriculture

MORRIS M. ATTA  
Deputy to the Chairperson



September 9, 2020

Mary Alice Evans, Director  
Office of Planning  
State of Hawaii  
PO. Box 2359  
Honolulu, Hawaii 96804-2359

RE: Successor Petitioner (as to Parcel 52) Ho'ohana Solar 1, LLC's Motion for Modification and Time Extension, filed on August 17, 2020 ("Motion for Modification")

Dear Director Evans:

Regarding the above-referenced Motion for Modification, the Department of Agriculture makes the following comments and requests it be incorporated into the State's position.

In 1993, the LUC reclassified approximately 504 acres of land from the agricultural to the urban district. In 1996, the LUC approved a modification to the Decision and Order. One of the conditions of that modification was the development of off-site infrastructure to the agricultural park pursuant to the terms of the March 30, 1993 MOU. The MOU required the off-site infrastructure to be completed within one year after the transfer of certain land to DOA for an agricultural park. Although past the deadline, the land was eventually transferred (after the filing of an Order to Show Cause) in or around 2003. Multiple extensions were given for the construction of the off-site infrastructure, the latest deadline expiring on December 31, 2016.

After one of the deadlines had expired, Ho'ohana Solar 1, LLC, in 2014, filed a motion to amend the 1996 Decision and Order. After much negotiation, the parties agreed and the LUC ordered that the deadline be extended to December 31, 2016. The 1996 Decision and Order was also amended to allow for a solar farm, provided that Ho'ohana construct and maintain certain off-site water infrastructure to DOA's Royal Kunia Agricultural Park. The problem with the lack of other infrastructure would not hold up the development of the solar farm. This latter approved modification to the 1996 decision and order was contingent on Ho'ohana constructing its planned solar project.

Ultimately, the PUC did not approve Ho'ohana's solar project. So, Ho'ohana did not construct its solar farm and was not required to construct the off-site water infrastructure. But the landowners (other than HAT) are still in violation of the 1996 Decision and Order for failing to construct all of the off-site infrastructure to the agricultural park by December 31, 2016. DOA has never waived, and continues to assert and reserve its rights to benefit from the infrastructure requirements.

OP EXHIBIT 5

Ms. Mary Alice Evans  
September 9, 2020  
Page 2 of 2

Here, Ho'ohana has returned with a motion similar to its previous one. Despite the passage of time in which no off-site infrastructure has been built, DOA is again willing to allow this project to move forward if Ho'ohana is willing to comply with the same requirements agreed to and ordered in 2015, specifically condition B-1, with the addition of a new deadline and incorporation of the plans already submitted for permitting, namely:

1. Royal Kunia Agricultural Park Non-Potable Water Connection. Prior to obtaining the building permit for construction of the solar farm, Ho'ohana shall, at no cost to the State shall 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 nonpotable 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.

If not, the new development should be rejected, and the Commission should seriously consider whether an Order to Show Cause, or at least a status hearing, should be held regarding the landowners' collective failure (other than HRT) to comply with the conditions of the 1996 Decision and Order, as amended.

If you have any questions regarding this letter, please contact Ms. Janice Fujimoto of the Agricultural Resource Management Division at 808-973-9473.

Sincerely,



Phyllis Shimabukuro-Geiser, Chairperson  
Board of Agriculture

C:  
Deputy Attorney General Valerie Kato