



LAND USE COMMISSION
STATE OF HAWAII
2021 SEP 29 P 3:07

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

In the Matter of the Petition of)	DOCKET NO. A92-683
)	
HALEKUA DEVELOPMENT)	ORDER GRANTING SUCCESSOR
CORPORATION, a Hawai'i corporation)	PETITIONER (AS TO PARCEL 52),
)	HO'OHANA SOLAR 1, LLC'S MOTION
To Amend the Agricultural Land Use District)	FOR MODIFICATION AND TIME
Boundary into the Urban Land Use District)	EXTENSION; AND CERTIFICATE OF
for Approximately 503.886 Acres at Waikele)	SERVICE
and Hō'ae'ae, 'Ewa, O'ahu, City and County)	
of Honolulu, State of Hawai'i, Tax Map Key)	
<u>No. 9-4-02: 01, portion of 52, 70 and 71</u>)	

ORDER GRANTING SUCCESSOR PETITIONER (AS TO PARCEL 52)
HO'OHANA SOLAR 1, LLC'S
MOTION FOR MODIFICATION AND TIME EXTENSION

AND

CERTIFICATE OF SERVICE

This is to certify that this is a true and correct copy of the document on file in the office of the State Land Use Commission, Honolulu, Hawai'i.

September 29, 2021 by

Executive Officer



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ORDER GRANTING SUCCESSOR PETITIONER (AS TO PARCEL 52)
HO'OHANA SOLAR 1, LLC'S
MOTION FOR MODIFICATION AND TIME EXTENSION

On August 17, 2020 Ho'ohana Solar 1, LLC (hereinafter "Ho'ohana" or "Movant"), as Successor Petitioner to a portion of the original 503.886-acre Petition Area identified as Tax Map Key ("TMK") No. 9-4-002: 052 ("Parcel 52") filed with the Land Use Commission of the State of Hawai'i ("Commission") a *Motion for Modification and Time Extension* in Docket No. A92-683 (hereinafter the "Motion"), requesting the Commission to: (1) allow modification to the solar farm previously authorized; and, (2) extend the timeframe for development of the modified solar farm.

The Commission, having examined the testimony, evidence, and arguments of counsel presented during the hearings, along with public testimony and the pleadings filed by all parties

herein, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

A. PROCEDURAL MATTERS

1. On August 17, 2020, Ho‘ohana filed its Motion for Modification and Time Extension; Memorandum in Support of Motion; and, Exhibits 1-15; and Certificate of Service, requesting the Commission to: (1) allow modification to the solar farm previously authorized; and, (2) extend the timeframe for development of the modified solar farm.

2. Robinson Kunia Land LLC ("RKL"), the fee owner of Parcel 52, acknowledged and consented to Ho‘ohana filing the Motion.

3. On August 24, 2020, the City and County of Honolulu by its Department of Planning and Permitting ("County" or "DPP"), and the State of Hawai‘i by its Office of Planning and Sustainable Development ("OP"), filed for extensions of time to respond.

4. On August 25, 2020, Petitioner Haseko Royal Kunia, LLC ("Haseko"), successor landowner (as to parcels 070 and 071) filed a Motion in Opposition¹ to Ho‘ohana’s Motion ("Haseko’s Opposition Memo"); Memorandum in Support of Motion; Joinder of HRT Realty, LLC and Jupiter Investors II, LLC.

5. On August 26, 2020, the Commission mailed approval for requests to extend the comment period to OP, the County, and other parties in the original Petition.

¹ Pursuant to HAR 15-15-70(e) allows counter affidavits and memorandums in opposition to a motion to be filed. In addition, Haseko’s filings, including the HRT/Jupiter Investors joinder, were not properly or timely filed to Movant. Haseko’s filing was treated as a memorandum in opposition rather than a separate motion.

6. On September 18, 2020, OP filed its Response to Ho‘ohana’s Motion (“OP Response”); and, Exhibits 1-5.
7. On September 18, 2020, DPP filed its Position Statement on Ho‘ohana’s Motion ("County Position").
8. On September 22, 2020, Haseko filed a letter addressed to the Commission’s Chief Clerk regarding an amended certificate of service.
9. On September 25, 2020, the Movant filed the following:
 - a. Reply to Haseko’s Motion in Opposition to Ho‘ohana’s Motion (“Reply to Haseko”);
 - b. Reply to OP’s Response (“Reply to OP”);
 - c. Reply to County Position Statement (Reply to County”);
 - d. Ho‘ohana’s First List of Witnesses; and,
 - e. Ho‘ohana’s First List of Exhibits, Declaration of Derek Simon, and Exhibits 15-53.
10. On September 29, 2020, the Commission mailed notice of its scheduled October 7-8, 2020 Zoom webinar meeting and agenda to the Statewide, O‘ahu and Maui mailing and email lists.
11. On September 30, 2020, Haseko filed a Notice of Appearance of Co-Counsel for Haseko - Steven Chung.
12. Between October 1- 8, 2020, the Commission received written testimony from the following: Kimo Spector and Rebecca Dayhuff Matsushima (Hawaiian Electric); Tyler Dos Santos-Tam and Melvin Silva (Bricklayers Union); Jill Baptist (Carpenters Union); Nathaniel Kinney (Hawai‘i Construction Alliance); Ryan Kobayashi (Hawai‘i. Laborers & Employee Cooperation and Education Trust Fund); Joy Kimura; Dean Okimoto; Richard Ha, Scott Fujii, Michelle Kidani (State Senator); Denise Yamaguchi (HI Agricultural Foundation); Chris

Delaunay (Pacific Resources Partnership); Dan Kouchi (Chamber of Commerce Hawai'i); Samantha Ruiz (Ulupono Initiative); Ty Cullen (State Representative, District 39); Nicole Lowen (State Representative, District 6); Keith Hayashi (Waipahu High School); Glen Wakai (State Senator); and, Albi Mateo and Wayne Nakamoto (Royal Kunia Community Association); and, Leslie Wilkins (Maui Economic Development Board).

13. On October 1, 2020, Haseko filed a Declaration of Sharene S. Tam; and Exhibits 1-4.

14. On October 5, 2020, Haseko filed Declaration of Michael H. Lau; and Exhibit 5

15. On October 7, 2020, OP filed OP Revised Exhibit 1 and Exhibit 6.

16. On October 7, 2020, the Commission met in Honolulu, Hawai'i using the Zoom webinar platform, to consider Ho'ohana's Motion for Modification and Time Extension.

Jennifer Lim, Esq., Derek Simon, Esq. and John Manaut, Esq. appeared on behalf of Ho'ohana; Michael Lau, Esq. and Steven Chang, Esq. appeared on behalf of Haseko and HRT; Duane Pang, Esq., Mollie Stebbins, Esq., and Eugene Takahashi appeared on behalf of the County; and Dawn Apuna, Esq. appeared on behalf of OP.

17. Commissioner Scheuer disclosed that his wife is employed by Group 70 International, which is the firm that employs Jeffrey Overton, one of Ho'ohana's expert witnesses. Commissioner Scheuer stated that his wife had no involvement in the matter before the Commission. Ho'ohana, Haseko, DPP, and OP acknowledged this disclosure and each stated that they had no objections to Commissioner Scheuer's participation in the matter under consideration.

18. Commissioner Aczon disclosed that during the course of his work with the Hawai'i Carpenters Training Program he interacts with many of those representing unions that

provided public testimony. Ho‘ohana, Haseko, DPP, and OP acknowledged this disclosure and each stated that they had no objections to Commissioner Aczon's participation in the matter under consideration.

19. Chair Scheuer recognized the submitted written testimony of: Joy Kimura Government Affairs and Compliance- Hawai‘i Laborers & Employee Cooperation and Education Trust Fund, Dean Okimoto, Richard Ha, Scot Fuji/ State Senator Michelle Kidani, Denise Yamaguchi- Executive Director, Hawai‘i Agricultural Foundation, Chris Delaunay- Pacific Resource Partnership (PRP), Dan Kouchi- Chamber of Commerce Hawai‘i, Samantha Ruiz – Ulupono Initiative- Murray Clay, State Representative Ty Cullen – District 39 , State Representative Nicole Lowen – District 6, Keith Hayashi- Waipahu High School Principal, State Senator Glenn Wakai, Albi Mateo/Wayne Nakamoto – Royal Kunia Community Association, Maui Economic Development Board- Leslie Wilkins President & CEO.

20. The Commission provided an opportunity for public testimony and received public testimony from David Tanoue and Chris Delaunay.

21. Ho‘ohana provided the oral testimonies of the following witnesses: Jeffrey H. Overton and Laurence Greene.

22. Haseko provided the oral testimony of Sharene Tam.

23. DPP provided the oral testimony of Eugene Takahashi, Deputy Director for DPP.

24. OP provided the oral testimony of Janice Fujimoto, Department of Agriculture ("DOA").

25. On October 7, 2020, following completion of the parties' respective cases-in-chief, the Commission closed the evidentiary portion of the proceedings. The parties provided their formal final arguments, and the Commission started its deliberations on the Motion to Amend.

26. Commissioner Wong moved to approve Ho'ohana's Motion with the Condition B additions proposed by OP; Commissioner Ohigashi seconded the motion to approve. Discussion ensued and Commissioner Chang offered a friendly amendment that Condition A be included in the preliminary motion.

27. Commissioners Wong and Ohigashi accepted the friendly amendment by Commissioner Chang.

28. Commissioner Giovanni offered a friendly amendment to the once amended motion to include a condition to decommission and restore the Petition Area if the proposed project was not completed as represented.

29. Commissioner Wong did not accept the friendly amendment. Discussion ensued to clarify how to handle the two competing motions. It was determined that Commissioner Giovanni could make a separate Motion which would be identical to Commissioner Wong's but would include his additional condition.

30. Commissioner Giovanni made a motion to approve Ho'ohana's Motion with the Condition A and B additions proposed by OP and to include a condition to decommission and restore the Petition Area if the proposed project was not completed as represented; Commissioner Okuda seconded the motion to approve.

31. Discussion ensued on both motions and Chair Scheuer reconfirmed with OP and Petitioner on what conditions were actively being requested for consideration by the

Commission. Ms. Apuna and Ms. Lim restated the Conditions they wished to have the Commission approve.

32. Commissioner Wong sought clarification on whether Ms. Lim had objections to OP's condition B7 being included in the Motion. Ms. Lim responded that she had no objection to the additional condition.

33. Commissioner Wong withdrew his motion after Ms. Lim confirmed that she had no objections to OP's condition B7. Commissioner Ohigashi agreed to the withdrawal of Commissioner Wong's motion.

34. On October 7, 2020, the Commission made and seconded a motion to grant the motion with the proposed Ho'ohana Solar conditions, the conditions proposed by OP in its Exhibit 1, and Commissioner Giovanni's added Condition to decommission and restore the Petition Area if Petitioner failed to obtain a PPA extension.

35. There being a vote tally of 8 ayes, 0 nays, and 1 vacant seat, the motion carried.

B. DESCRIPTION OF THE PETITION AREA

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

37. TMK No. (1) 9-4-002:052 (“Parcel 52”) consisting of approximately 161.023 acres, is within the 503.886 acre² Petition Area that was reclassified from the State Land Use (“SLU”) Agricultural District to the SLU Urban District by the State Land Use Commission (“Commission” or “LUC”) as documented in that certain *Findings of Fact, Conclusions of Law, and Decision and Order*, filed December 9, 1993 (“Original D&O”).

C. KUNIA AGRICULTURAL PARK

38. A 150-acre agricultural park owned by the State of Hawai‘i Department of Land and Natural Resources (“DLNR”) and developed as the Royal Kunia Agricultural Park by the State of Hawai‘i Department of Agriculture (“DOA”) is to the northwest of the Petition Area, at TMK No. (1) 9-4-002:080. The 150-acre state agricultural park (“Kunia Agricultural Park”) was not proposed for reclassification and remains in the SLU Agricultural District.

39. Halekua had agreed with the DOA that in the event that Halekua's Petition for District Boundary Amendment was granted, Halekua would convey free and clear title to the 150 acres for the agricultural park to be subdivided into a number of agricultural lots to be farmed by individual farmers, upon the earlier of six months after receiving the necessary land use approvals from the State of Hawai‘i and the City and County of Honolulu, or by December 31, 1997, whichever was soonest.

40. The conveyance of the Kunia Agricultural Park land was pursuant to a Memorandum of Understanding (“MOU”), dated March 30, 1993, by and between Halekua and the Department of Agriculture of the State of Hawai‘i (“DOA”), whereby Halekua agreed to

² Halekua Development Corporation (“Halekua”) was the original Petitioner in this Docket. On September 6, 1995, in response to Halekua’s oral request to correct the metes and bounds description of the Petition Area, the Commission issued its *Order Granting Motion to Correct Metes and Bounds Description of the Petition Area*. The Petition Area was thereafter comprised of approximately 503.886 acres (rather than the original 504.865 acres).

convey 150 acres of land to the State of Hawai'i for the purpose of establishing the Kunia Agricultural Park.

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

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

43. In 2004, the HRT Entities conveyed 150 acres identified by TMK No. 9-4-002: 080 to the State of Hawai'i for use as the Kunia Agricultural Park.

D. DEVELOPMENT AND PHASING FOR ROYAL KUNIA PHASE II

44. The connection points for the infrastructure for the Royal Kunia Phase II project, including off-site water, sewer, and drainage system was developed in the Royal Kunia Phase I infrastructure, the majority of which was designed to accommodate future development in the Royal Kunia Phase II project.

45. It was anticipated that the Royal Kunia Phase II project would be developed over a 12-year period. The affordable multi-family units were to be developed proportionately along with the market single-family units.

46. The Commission did not impose a specific condition under the Halekua Orders setting forth a timeframe for development, or a development deadline for the Royal Kunia Phase II project. Halekua's estimated timeframe for development of Royal Kunia Phase II has passed.

47. Various legal proceedings, including a bankruptcy proceeding in the 2000s, resulted in Halekua losing control of the Petition Area and caused a delay in development of the Royal Kunia Phase II project.

48. Three increments are planned for Royal Kunia Phase II. Increments 1 and 2 are proposed to be developed on TMK Nos. 9-4-002: 001, 070, 071, 078 and 079, which are currently owned by Canpartners, the HRT Entities, and RKES, LLC. Increments 1 and 2 are proposed for development of an approximately 123 acre industrial park, school, and both single-family and multi-family residential units. Increment 3 is proposed to be developed on Parcel 52 with residential units.

49. Construction of Royal Kunia Phase II, Increments 1 and 2 have not yet commenced. However, the lands within Increments 1 and 2 were rezoned to allow for the proposed development by the City Council in 1995 and 1997.

50. Increment 3 has not been rezoned by the City Council. Increment 3 was always planned to be developed after Increments 1 and 2. The development of Increment 3 is intended to utilize the infrastructure built as a part of the completion of Increments 1 and 2.

E. DESCRIPTION OF PARCEL 52

51. Parcel 52 is currently zoned by the City and County of Honolulu as Restricted Agricultural AG-1 and is currently being actively farmed.

52. The slope of Parcel 52 varies from 2% to 15%.

53. Parcel 52 is located approximately two (2) miles off the H-1 Interstate Freeway, just north of the Royal Kunia Country Club, and east of Kunia Road. The character of the surrounding properties include active and fallow agricultural uses. The State's Kunia Agricultural Park is located to the west, vacant military and federal zoned land to the east, and the proposed Royal Kunia Phase II, Increments 1 and 2 development located to the southwest.

54. Access to the proposed solar farm on Parcel 52 is along Plantation Road, an existing, partially paved and privately owned roadway.

F. 2015 SOLAR PROJECT PROPOSED FOR PARCEL 52 AKA ROYAL KUNIA PHASE II, INCREMENT 3

55. Pursuant to its January 28, 2015 Order Granting Successor Petitioner (to parcel 52) Ho‘ohana Solar I, LLC’s Motion for Order Amending the Amended Findings of Fact, Conclusions of Law, and Decision and Order, the Commission authorized the use of Parcel 52 for the development and operation of a utility-scale solar energy project to be developed by Ho‘ohana (“2015 Solar Project”).

56. The Commission’s 2015 Order determined that development of a utility-scale solar farm on 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.

57. The 2015 Order authorized the development of the 2015 Solar Project for an operational period not to exceed 35 years, including decommissioning. The 2015 Solar Project was projected to be in operation until 2052, and then decommissioned.³

58. The 2015 Solar Project was to use approximately 124 acres within Parcel 52 and was designed to generate 20 MW of electricity to be sold to HECO and transmitted from Parcel 52 via a 46 kilovolt (“kV”) transmission line.

59. The Commission’s authorization under the 2015 Order was subject to seven conditions of approval – Conditions B.1 to 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.”

³ Under the 2015 Order, the project was to be substantially completed by January 28, 2017 (see 2015 Order, Condition B.5)

60. The 2015 Solar Project did not move forward due to the PUC's denial, at that time, of HECO's request for approval of a PPA with Ho'ohana. Therefore, under the Commission's 2015 Order, Ho'ohana was not obligated to satisfy the conditions.

G. STATUS OF COMPLIANCE WITH CONDITIONS FOR PARCEL 52

61. Consistent with Condition A.1. of the 2015 Order, and 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 requirements is required to be addressed by one of the Petition Area landowners.

62. RP2 Ventures, LLC (immediate prior owner of 161.36 acres within the Petition Area)⁴ entered into a Fourth Amendment to Amendment and Restating of Memorandum of Understanding with the DOA ("DOA MOU"), committing to complete 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. RP2 Venture, LLC reported this to the Commission through its annual report submitted July 9, 2020, which included a copy of the latest DOA MOU.

63. Consistent with Condition B.2. of the 2015 Order, Ho'ohana consulted with the United States Fish and Wildlife Service ("USFWS") to coordinate appropriate programs and measures to mitigate any potential impacts to endangered and migratory avian species. Ho'ohana committed to: (a) not conducting any tree clearing during the roosting season for the Hawaiian hoary bat, from June 1 through September 15; and (b) monitoring for ponding while conducting any grading work during stilt-nesting season.

⁴ On August 12, 2020, RP2 Ventures, LLC sold TMK No. (1) 9-4-002:071 to Haseko Royal Kunia, LLC.

64. Consistent with Condition B.3. of the 2015 Order, Ho‘ohana had an archaeological inventory survey (“AIS”) conducted and submitted to DLNR State Historic Preservation Division (“SHPD”) for its review. The AIS concluded that Parcel 52 had been extensively cultivated, that no traditional Hawaiian archaeological sites or features were present on the surface, what remains are remnant plantation features that have been adequately documented, and that there was little potential to encounter intact subsurface cultural deposits.

65. SHPD approved the AIS by letter dated February 19, 2015.

66. Consistent with Condition B.4. of the 2015 Order, Ho‘ohana conducted a Solar Glare Hazard Analysis Report and submitted the report to the Federal Aviation Administration (“FAA”). The FAA issued a Determination of No Hazard to Air Navigation for the 2015 Solar Project.

67. Solar farm development within Parcel 52 does not raise the potential for hazards to safe air navigation at State of Hawai‘i airports.

68. Consistent with Condition B.5. of the 2015 Order, Ho‘ohana shall substantially complete the 2020 Solar Project within two years from the approval date of this Decision and Order.

69. Consistent with Condition B.6. of the 2015 Order, Ho‘ohana shall develop the 2020 Solar Project on Parcel 52 in substantial compliance with its representations to the Commission.

70. Consistent with Condition B.7. of the 2015 Order, Ho‘ohana commits to the same decommissioning obligations for the 2020 Solar Project, including the amendments proposed and contained herein by the Commission.

H. ADDITIONAL INFORMATION AND STUDIES FOR PARCEL 52

71. Ho‘ohana prepared a construction traffic assessment in June 8, 2020. The assessment concluded that the 2020 Solar Project traffic impacts will be negligible during its operational life and only temporary impacts during construction that will not require roadway capacity enhancements.

72. Ho‘ohana has committed to the following traffic measures to address the temporary impacts 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.

73. Ho‘ohana had a view study prepared, dated May 15, 2020, that concluded the 2020 Solar Project would not adversely affect any views or sightlines.

74. Ho‘ohana prepared a *Cultural Impact Assessment of Ho‘ohana Solar Energy Facility, Waikele and Ho‘ae‘ae Ahupua‘a, ‘Ewa District, Island of O‘ahu*, dated July 2020 (“CIA”).

75. The CIA provides a detailed account of the cultural and historical significance of the Waikele and Ho‘ae‘ae Ahupua‘a, where Parcel 52 is located. Community outreach was received from a total of 23 individuals and organizations. There was little substantive feedback on the extent to which traditional and customary rights were being exercised in or around Parcel 52.

76. The CIA concludes that the Hawaiian sense of place was essentially erased from Parcel 52 over more than a century of plantation agriculture; and, that traditional and customary practices are overwhelmingly focused on the makai areas at or near the shoreline of Pearl Harbor and the mouths of Waikele and Ho‘ae‘ae streams.

77. The CIA further concludes that the 2020 Solar Project will not result in adverse impacts on traditional and customary practices associated with Parcel 52; cultural resources that support such practices; or, other beliefs about Parcel 52 that relate to such practices and resources. The CIA indicates that Parcel 52 does not include any valued cultural or historic resources, and therefore, does not recommend any protective measures.

78. Ho‘ohana prepared a biological survey for Parcel 52 that found no threatened or endangered species, or federally-declared critical habitat on the parcel. The vegetation over most of Parcel 52 has been controlled by past land use. In addition, no wetlands or streams were located; only two common native plants; and, no animal species of interest or concern. The survey report concluded that the 2020 Solar Project would not adversely impact any biological resources.

79. Ho‘ohana has engaged in continued community outreach with Royal Kunia Homeowners Association, Village Park Association, Waipahu Neighborhood Board, Hawai‘i Agricultural Research Center, Royal Kunia Country Club, various business interests, and all landowners within the Petition Area. In addition, Ho‘ohana has solicited feedback from Federal, State, and County agencies.

I. 2020 SOLAR PROJECT PROPOSED FOR PARCEL 52

80. Following issuance of the Commission’s 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 two other utility-scale solar projects. As a result, the 2015 Commission-approved solar project did not get developed.

81. The PUC in 2019 approved a PPA between HECO and Ho‘ohana for a solar project that will generate 52 megawatts versus the 20 megawatts planned under the previously approved 2015 solar project and now includes a battery energy storage system.

82. Ho‘ohana has requested a modification of conditions and extension of time in the Commission’s 2015 Order to allow for development of a new utility-scale solar farm (“2020 Solar Project”) that would generate substantially more renewable energy than the 2015 Solar Project.

83. The 2020 Solar Project is located entirely within the SLU Urban District, zoned AG-1 Restricted Agricultural District by the City and County of Honolulu (“County”), and wholly within Parcel 52.

84. The 2020 Solar Project will generate approximately 52 megawatts (“MW”) with the electricity generated being sold to HECO pursuant to the terms of an existing PPA. The 2020 Solar Project will include a 208 megawatt-hour battery storage system.

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

86. The 2020 Solar Project will use approximately 210,000 photovoltaic (“PV”) modules mounted on a fixed-tilt racking system versus the 2015 Solar Project’s intended use of a ground-mounted single-axis tracking system.

87. PV 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% of the light. The modules are less reflective than window glass and water.

88. The racking system for the 2020 Solar Project will be designed in accordance with the building permit structural requirements to withstand hurricane-force winds.

89. Minimal grading is required to accommodate the racking system. Native vegetation will remain beneath and around the racking and will be maintained by a landscaping crew.

90. The 2020 Solar 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.

91. The 2020 Solar Project includes a substation in the northwestern portion of Parcel 52. The substation will accept and manage electricity generated by the 2020 Solar Project and the grid in general, including other current and potential future renewable energy projects.

92. The 2020 Solar Project will include a small operations and maintenance building. These will be minimal impact structures, such as a construction trailer and will include its own self-contained septic system.

93. The 2020 Solar Project includes two control buildings (one located inside the substation for the project, and one for HECO to be located within the switchyard).

94. The Project Site will be monitored through a remote security system.

95. Ho‘ohana will install temporary water tanks. Water used during construction of the Project will be provided from a nearby hydrant located approximately 1,000 feet from the site. Ho‘ohana plans to rely on rainwater to keep the solar modules clean.

96. The 2020 Solar Project makes more efficient use of the land resulting in a 160% increase in renewable energy generation capacity due to improved technology and more efficient design in comparison to the 2015 Solar Project.

97. The 2020 Solar Project is larger and provides substantially more clean renewable energy than the 2015 Solar Project; and, results in a significantly higher corresponding avoidance of imported fuel and reduction in emissions of carbon.

98. The 2020 Solar Project is consistent with the HRS Chapter 226, the Hawai‘i State Plan. In particular, HRS §226-18 the State’s renewable energy goals and the Hawai‘i Clean Energy Initiative that aims to achieve 70% clean energy by the year 2030.

99. The Project will connect to the HECO grid through a 138 kilovolt (“kV”) transmission line.

100. Parcel 52 is a viable solar farm site as it is very close to good points of interconnection with the HECO grid.

101. The 2020 Solar Project will be entirely within an approximately 157-acre fenced area of Parcel 52 (the “Project Site”).

102. Development and operation of the 2020 Solar Project will not adversely impact traffic.

103. The 2020 Solar Project proposed a 40-year operational period, preceded by approximately two years of permitting and construction, following by one year of decommissioning. This comprises a total of 43 years from the date of the Commission’s Decision and Order.

104. Ho‘ohana’s commercial operation date for the 2020 Solar Project is planned to be in the second half of 2022.

105. Construction of the Project is expected to take less than two years, assuming timely receipt of all necessary approvals. Ho‘ohana's contractor will implement mitigation measures and BMPs during construction of the Project to address dust and other impacts.

106. In the event the Project owner fails to secure a PUC-approved extension to its Power Purchase Agreement (PPA) or a new PUC-approved PPA before December 31, 2045, the project owners will immediately commence with Decommissioning of the Solar Farm as described in Condition B.7(a). Otherwise, complete decommissioning should occur on or before December 31, 2047.

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

107. 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.

108. 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 Systems Document No. A73870244.

109. Ho‘ohana’s term under the lease totals 37 years. An initial term that runs for 22 years from the operations commencement date (meaning the date the 2020 Solar Project is operational and selling power), followed by Ho‘ohana’s option to extend the lease through three five-year extensions.

110. Ho‘ohana has obtained and provided fee owner authorization for this Motion.

111. Ho‘ohana is wholly owned and controlled by FCHQC Development, LLC, which, in turn, is owned and controlled by Hanwha Energy USA Holdings Corporation (“Hanwha”) doing business as 174 Power Global.

112. Hanwha is part of the Hanwha Group of companies. Hanwha Corporation, the parent company of the Hanwha Group, was listed on the Fortune Global 500 list. In 2017, Hanwha Group listed revenues of approximately \$41 billion, assets of \$128 billion and equity of \$37 billion.

113. The Hanwha Group has installed over 35 utility-scale projects worldwide, totaling more than 600 MW in North America and over 1 gigawatt globally; including the 6.17 MW Kalaeloa Renewable Energy Park in Kapolei, Hawai‘i, one of the largest utility-scale solar farms on O‘ahu.

114. Ho‘ohana has the development capital and access to financing funds needed to develop the solar farm Project, as well as the necessary economic ability to carry out its representations and commitments relating to the solar farm.

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

115. The Petition Area is located within the SLU Urban District.

116. The Petition Area is not located within the City and County's Special Management Area and "complies with and supports the objectives of the Hawai'i Coastal Zone Management Program."

117. Parcel 52 is designated in the SLU Urban District and is zoned as AG-1 (Restricted Agricultural) by the City and County of Honolulu.

118. In the 1996 Order, the Commission made specific findings that Urban designation of the Petition Area, including Parcel 52, is consistent with the Hawai'i State Plan. Parcel 52 is within the Urban Community Boundary established under the 2002 Central O'ahu Sustainable Communities Plan.

119. The solar farm use is consistent with the Urban designation.

120. The Project is a Type B utility installation, permissible by Conditional Use Permit-minor in all zoning districts under the City and County's Land Use Ordinances.

L. NEED FOR THE PROPOSED DEVELOPMENT

121. The Project is consistent with the Hawai'i Clean Energy Initiative, which aims to achieve 70 percent clean energy by the year 2030, 40 percent of which is meant to come from locally generated renewable sources.

122. The Project is in conformance with the Hawai'i State Plan, HRS §226-18, and the Department of Business, Economic Development and Tourism's ("DBEDT") renewable energy goals.

123. The Project is in conformance with the Hawai'i 2050 Sustainability Plan that serves as the State's sustainability and climate strategic action plan; and guides the coordination

and implementation of Hawai‘i’s sustainability and climate adaptation goals, principles, and policies, pursuant to HRS §226-65.

124. Parcel 52 cannot feasibly be developed as Royal Kunia Phase II, Increment 3 until the infrastructure for Royal Kunia Phase II, Increments 1 and 2 is developed.

M. SOCIAL AND ECONOMIC IMPACTS

125. Over the operational life of the 2020 Solar Project, annual avoidance of roughly 10.6 million gallons of imported fuel oil and a reduction in emissions of 95,400 tons of carbon dioxide will occur from the renewable energy generated by the Project.

126. The 2020 Solar Project is anticipated to generate approximately 50 jobs during the majority of the two-year construction period; with a high of 175 workers when construction is at its peak. Once the Project is completed it is estimated to require approximately five full-time employees. Approximately 95% of the jobs are anticipated to be filled by local labor.

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

128. Ho‘ohana plans to partner with the Maui Economic Development Board, a non-profit entity which developed a State-wide diverse renewable energy curriculum for grades K-12. This curriculum incorporates science, technology, engineering and mathematics and can be integrated into any course curriculum. The curriculum is both place-based and culturally vetted

and translated into both English and Hawaiian. Ho‘ohana will provide funds to sponsor a training cohort of ten (10) teachers from the Waipahu Complex, including one year of mentorship and course materials on alternative energy. The Waipahu Complex teachers have a reach of over 1,000 students per year.

129. Local farmers in the area support the Project because it will help to bring more security to the area.

N. IMPACTS UPON RESOURCES OF THE AREA

130. On September 23, 1989, the City and County of Honolulu Department of General Planning (now DPP) accepted the Final Environmental Impact Statement (“FEIS”) for the Royal Kunia Phase II project. On May 28, 1996, the Final Environmental Assessment (“FEA”) for Royal Kunia Phase II, was accepted.

131. The solar farm will have no greater environmental impacts than the originally proposed development of the Royal Kunia Phase II, Increment 3.

132. Ho‘ohana represented that it will set aside funds in its operation budget to cover the costs of decommissioning the Project.

133. Upon decommissioning of the Project, Ho‘ohana represented that it will recycle or salvage as much of the solar farm components as commercially feasible.

134. Ho‘ohana committed to comply with all governmental laws, ordinances, rules and regulations applicable to the development, operation, and decommissioning of the solar farm on Parcel 52.

135. Ho‘ohana represented that in the event the Project owners fail to secure a PUC-approved extension to its Power Purchase Agreement (“PPA”) or a new PUC-approved PPA

before December 31, 2045, the Project owners will immediately commence with decommissioning of the solar farm.

136. Parcel 52 is currently being actively farmed. Lands to the north and west of Parcel 52 are also being actively farmed.

137. Development of the solar farm will not substantially impair agricultural resources or activities in the area.

138. The Commission previously determined that there is little of botanical significance in the Petition Area and that no endemic birds or mammals were found in the Petition Area.

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

140. No wetlands or streams are located on Parcel 52. No threatened or endangered species, nor any federally-declared critical habitat were identified on Parcel 52.

141. The PV panels used for the Project are similar to those used on rooftops and are not anticipated to generate any significant hazards to fauna, and birds in particular.

142. The PV panels used in this Project are designed to absorb as much solar energy as possible and will therefore create minimum to no glare and will not generate heat that could cause harm to birds.

143. The Commission found that the Petition Area contains no remaining above-ground archaeological features and offers little opportunity for subsurface recovery. There have

been no archaeological or historical sites recorded in the Petition Area, therefore the Royal Kunia Phase II project should not cause any adverse impacts to archaeological or historical resources.

144. In June 2014, Ho‘ohana's consultant, Dr. Robert Spear of Scientific Consultant Services, Inc. (“SCS”), conducted an archaeological inventory survey (“AIS”) of Parcel 52 and Plantation Road.

145. The AIS was submitted to SHPD on July 30, 2014 and received by SHPD on August 1, 2014. In early October 2014, SHPD requested additional historic background on military uses of Parcel 52. SCS submitted this information to SHPD in the form of a supplemental report on November 5, 2014.

146. SHPD approved the AIS by letter dated February 19, 2015.

147. If any significant archaeological or cultural resources are discovered during construction of the proposed solar farm, Ho‘ohana will take steps to mitigate such effects and work with the appropriate state and county agencies.

148. Ho‘ohana prepared a Cultural Impact Assessment of Ho‘ohana Solar Energy Facility, Waialeale and Ho‘ae‘ae Ahupua‘a, ‘Ewa District, Island of O‘ahu, dated July 2020 (“CIA”). There was little substantive feedback on the extent to which traditional and customary rights were being exercised in or around Parcel 52. The CIA indicates that Parcel 52 does not include any valued cultural or historic resources, and therefore, does not recommend any protective measures.

149. The 2020 Solar Project will not result in adverse impacts on traditional and customary practices associated with Parcel 52; cultural resources that support such practices; or, other beliefs about Parcel 52 that relate to such practices and resources.

150. The Commission previously found that the recharge of groundwater on the Petition Area is minimal due to the relatively low rainfall in the area. In addition, the organic matter in the soils on the Petition Area tends to retard movement of most chemicals.

151. There will be no significant use of groundwater or surface water resources by the solar farm Project, and thus no impairment to the public trust related to water resources. The Project does not require approval by the Water Commission, nor does it require a water allocation.

152. The Commission previously found that the Royal Kunia Phase II project would not impact scenic resources in the area because there are no significant public views or visual features.

153. Ho‘ohana had a view study prepared, dated May 15, 2020, that concluded the 2020 Solar Project would not adversely affect any views or sightlines.

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

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

156. There will be no emissions from the proposed solar farm and operation of the solar farm will produce only minimal vehicle trips.

157. Ho‘ohana prepared a construction traffic assessment in June 8, 2020. The 2020 Solar Project traffic impacts will be negligible during its operational life and only temporary impacts during construction that will not require roadway capacity enhancements. Ho‘ohana has committed to implementing traffic measures to address the temporary impacts during construction.

158. The solar farm on Parcel 52 will use significantly less water than the proposed residential development for Increment 3 of the Royal Kunia Phase II project.

159. Parcel 52 is relatively flat but some clearing and grading will be required to prepare the site for the solar farm. Stormwater runoff from the solar farm will be collected in the drainage basin on the southern portion of Parcel 52 and will be managed according to Ho‘ohana's National Pollutant Discharge Elimination System Permit (“NPDES”).

160. Appropriate BMPs for wastewater, stormwater and erosion controls will be determined as a part of Ho‘ohana's Conditional Use Permit, NPDES permit, building permits, and grading permits.

161. The State and City and County requirements for additional schools, public parks, and civil defense measures, are not applicable to the proposed solar farm use.

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

162. 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 Hawai‘i state plan."

163. The Commission previously determined that Urban designation of the Petition Area and development of the Petition Area as the Royal Kunia Phase II project is in conformance

with the Hawai'i State Plan, HRS Chapter 226, and the overall theme, goals, objectives, and priority guidelines for the future long-range development of the State.

164. Development of Parcel 52 as a solar farm is consistent with applicable goals, objectives and policies of the Hawai'i State Plan.

P. CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

165. The Commission previously determined that the Royal Kunia Phase II project complies with and supports the objectives of the Hawai'i Coastal Zone Management Program.

166. In compliance with coastal hazards objectives, the solar farm Project is not located in a tsunami inundation zone.

Q. COMMISSION CRITERIA FOR A MOTION TO AMEND

167. Authority to Amend. Hawai'i Administrative Rules ("HAR") §15-15-94 provides in part as follows:

(a) If a petitioner, pursuant to this section, desires to have a . . . modification of the commission's order, the petitioner shall file a motion in accordance with section 15-15-70 and serve a copy on all parties to the boundary amendment proceeding . . . in which the order was issued, and to any person that may have a property interest in the subject property as recorded in the county's real property tax records at the time that the motion is filed.

(b) For good cause shown, the commission may act to modify or delete any of the conditions imposed or modify the commission's order.

(c) Any modification or deletion of conditions or modifications to the commission's order shall follow the procedures set forth in subchapter 11.

168. Service of Motion. Under HAR §15-15-94, a petitioner filing a motion to amend or delete conditions under HAR §15-15-70 must serve a copy of the motion on all parties to the

original boundary amendment proceeding in which the condition was imposed or the order was issued, and to any person who may have a property interest in the subject property as recorded in the County's real property tax records at the time that the motion is filed.

169. Pursuant to HAR §15-15-48, a copy of Ho'ohana's Motion was served on OP and the County. As determined by a review of the title reports for the Petition Area, all persons with a recorded interest in the Petition Area were served with a copy of the Motion to Amend.

170. Ho'ohana served copies of the Motion and subsequent pleadings upon each of the landowners of the Petition Area.

171. Good Cause Shown to Amend the 2015 Order. Under HAR §15-15-94(B), Ho'ohana has presented the Commission with good cause to amend the 2015 Order to allow modifications to the solar farm authorized thereunder and the related timeframe for development of the modified solar farm.

172. The 2020 Solar Project is consistent with the State Land Use Urban District classification and the Commission rules for State Land Use Urban District standards and permissible uses. HAR §§15-15-18 and 15-15-24. The 2020 Solar Project is fully permissible in the Urban District, unlike other proposals for utility-scale solar energy facilities on lands designated in the State Land Use Agricultural District.

173. The 2020 Solar Project is a "utility installation", as defined in Chapter 21-10.1 of the Revised Ordinances of Honolulu, and is permitted within any zoning designation of the City and County with a Conditional Use Permit-Minor Type A or Type B.

174. Solar energy production is a clean renewable energy resource strongly supported by the State to promote energy self-sufficiency and reduce the State's reliance on imported fossil fuels.

175. The Project will help the State to achieve its renewable energy goals.

176. Ho‘ohana's community outreach for the 2020 Solar Project indicated that the community is generally in support of the Project because it will help to stabilize ratepayer's electricity prices and will bring added security to the area.

177. Original Conditions of Approval; Applicability to Solar Farm Use. The Halekua Orders imposed 25 conditions of approval on the Petition Area. These conditions were created in anticipation of a residential development.

178. To the extent that the conditions in the Halekua Orders are applicable, Petitioner will ensure that the proposed solar Project is in compliance.

RULINGS ON PROPOSED FINDINGS OF FACT

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

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

CONCLUSIONS OF LAW

1. Pursuant to HRS Chapter 205, and the Commission Rules under HAR Chapter 15-15, and upon consideration of the Commission decision-making criteria under HRS §205-17, this Commission finds upon a clear preponderance of the evidence that the use of Parcel 52,

consisting of approximately 161.023 acres of land situate at Waikele and Hō‘ae‘ae, ‘Ewa, O‘ahu, Hawai‘i, as a solar farm, including all related utility and other infrastructure, for an operational period, excluding decommissioning, not to exceed 35 years from the date of this Order, is reasonable, not violative HRS §205-2, is consistent with the policies and criteria established pursuant to HRS §§205-16, 205-17, and 205A-2, is consistent with the Hawai‘i State Plan as set forth in HRS Chapter 226, and is consistent with the prior Conditions of approval imposed under the Halekua Orders and 2015 Order.

2. Based upon the record and files herein and the findings set forth above, the Commission concludes that there is substantial evidence in the record to support the conditions imposed below.

3. Based upon the record and files herein and the findings set forth above, the Commission further concludes that the conditions imposed below are necessary or appropriate to protect public health, safety, and welfare, and are material to the Commission’s granting with modification Ho‘ohana’s Motion.

4. Based on the record and files herein and the findings set forth below, the Commission further concludes that the amended conditions imposed below are necessary or appropriate to the Commission’s granting with modification of Ho‘ohana’s Motion to allow modifications to the solar farm and related timeframe for development authorized under the Commission’s 2015 Order, including but not limited to, ensuring the adherence to representations made by Ho‘ohana.

5. Article XII, section 7 of the Hawai‘i State Constitution protects native Hawaiian traditional and customary rights. The Commission reaffirms and has taken into account all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and

possessed by ahupua‘a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. The State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised native Hawaiian rights to the extent feasible. *Public Access Shoreline Hawai‘i v. Hawai‘i County Planning Comm’n*, 79 Hawai‘i 425, 450 n.43, 903 P.2d 1246, 1271 n.43 (2000), *cert. denied*, 517 U.S. 1163 (1996).

6. The Commission has also taken into consideration common law standards intended to preserve and protect customary and traditional rights of native Hawaiians. *Ka Pa‘akai O Ka ‘Āina v. Land Use Comm’n*, 94 Hawai‘i 31, 7 P.3d 1068 (2000).

7. Article XI, section 1 of the Hawai‘i State Constitution requires the State to conserve and protect Hawai‘i's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and to promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

8. Article XI, section 1 of the Hawai‘i State Constitution states that all public natural resources are held in trust by the State for the public benefit. Governmental bodies are precluded from authorizing a proposed use that will impact the public trust in the absence of an affirmative showing that the use does not conflict with public trust principles and purposes. *Kaua‘i Springs v. Planning Comm’n of the County of Kaua‘i*, 133 Hawai‘i 141, 324 P.3d 951 (2014).

9. Article XI, section 3 of the Hawai‘i State Constitution requires the State to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and assure the availability of agriculturally suitable lands.

10. Parcel 52 and the Petition Area were not, prior to reclassification to the Urban district, designated as Important Agricultural Lands under Part III of HRS Chapter 205.

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

12. The Commission concludes that it has observed and complied with its duties arising under common law and Article XI, section 1; Article XI, section 3; Article XI, section 7; and Article XII, section 7 of the Hawai'i State Constitution.

DECISION AND ORDER

IT IS HEREBY ORDERED that Parcel 52, consisting of approximately 161.023 acres of land situate at Waikele and Hō'ae'ae, 'Ewa, O'ahu, Hawai'i, identified as TMK No. 9-4-002: 052 ("**Parcel 52**"), and shown approximately on Exhibit "A", attached hereto and incorporated herein by reference, may be used as a utility-scale solar farm, including all related utility and other infrastructure, for an operational period, excluding decommissioning, not to exceed 35 years from the date of this Order.

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

IT IS FURTHER ORDERED that the following amended conditions shall apply:

A. **Amended Conditions Imposed on the Petition Area.** The following amended

Conditions A1 through and including A3 shall replace Condition No. 19 of the Halekua Orders.

Condition A4 shall replace Condition No. 21 of the Halekua Orders:

1. Royal Kunia Agricultural Park Offsite Infrastructure. Within six (6) months of the date of the Commission's Order, the landowner(s) within the Petition Area shall execute an amendment to the Memorandum of Understanding (dated 1993 and subsequent amendments in 2007, 2009, 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 June 30, 2023. "Offsite-infrastructure" includes, but is not limited to, all utilities and appurtenant works, roadways, potable water lines, electrical utilities, sewer lines, utility connections, and the non-potable waterline appurtenances in place, complete.
2. Revised Master Plan. 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 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 leases of the 53 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 HAR §15-15-93 of the Commission's Rules.
6. Failure of Solar Project. Should Ho'ohana fail to construct and complete the Solar Project, the easement(s), construction, maintenance and cost of the non-potable waterline described under Condition B.1, shall revert to the responsibility and expense of the landowners.

B. Amended Conditions Imposed Solely on Solar Farm to be Developed on Parcel 52

The following conditions B1 through and including B7 shall be applicable only to the solar farm on Parcel 52, and shall be applicable only upon development of the solar farm use on Parcel

52:

1. Royal Kunia Agricultural Park Non-Potable Water Connection. Prior to the connection of the Solar Project to the grid, 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"), 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 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.
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, the State Department of Land and Natural Resources, Division of Forestry and Wildlife (“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. Ho‘ohana shall contact the O‘ahu 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 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 fledgling 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 tall 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.
3. Archaeological and Historic Resources. No ground altering activities shall occur prior to obtaining approval of the Archaeological Inventory Survey from the State Historic Preservation Division.
 4. Aircraft and Traffic Hazard. If the photovoltaic array creates a hazardous condition for pilots or motorists, the facility operator shall immediately initiate steps to mitigate the hazard upon notification by the Department of Transportation (“DOT”).

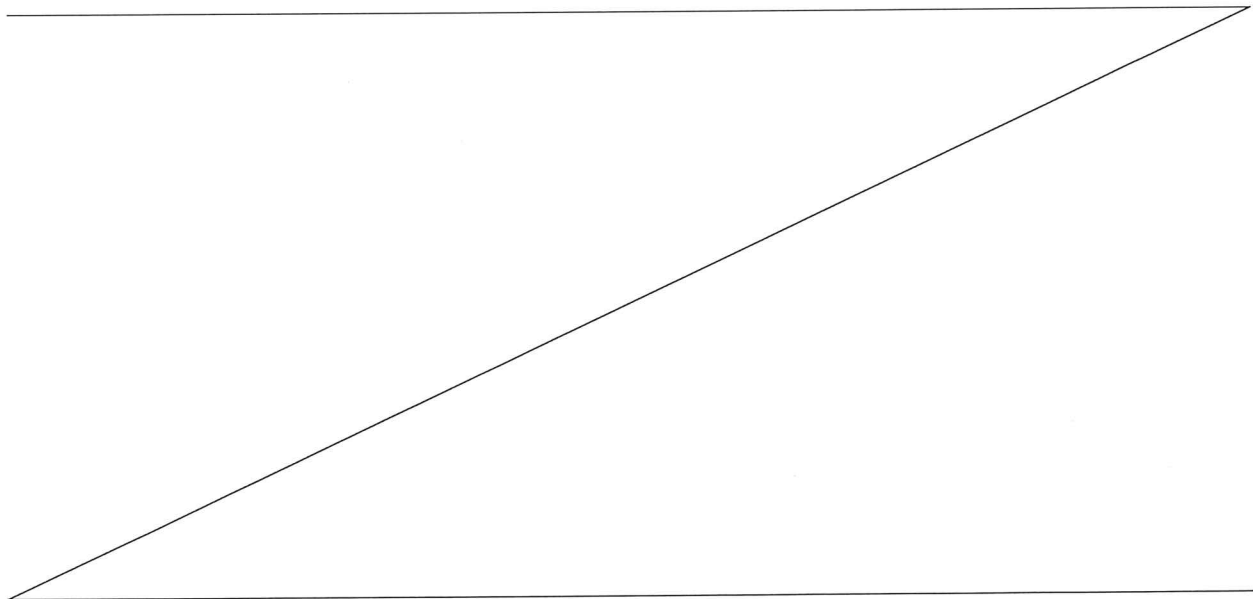
Ho‘ohana shall resubmit a Federal Aviation Form (“FAA”) 7460-1 Notice of Proposed Construction or Alteration for the proposed increase in the number of photovoltaic (PV) solar panels. A glint and glare analysis shall be attached to the FAA Form 7460-1. Ho‘ohana shall provide DOT a copy of the FAA determination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

5. Development Schedule. The proposed solar farm shall be substantially completed within two (2) years from the approval date of this Decision and Order.
6. Compliance with Representations. 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 HAR §15-15-93 of the Commission’s Rules.
7. Decommissioning of the Solar Farm. Ho‘ohana will comply with the following:
 - a. The solar farm shall be decommissioned following the termination of its Power Purchase Agreement (“PPA”) and completed within two years. The decommissioning activities shall include, but not be limited to, the removal of the physical equipment (e.g., racks, panels, inverters, conduits, control cabinets, etc.), 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.
 - b. In the event the project owner fails to secure a PUC-approved extension to its PPA or a new PUC-approved PPA before December 31, 2045, the project owners will immediately commence with decommissioning of the solar farm as described

in Condition B.7(a), and complete decommissioning on or before December 31, 2047.

- c. 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.

IT IS FURTHER ORDERED that, except as expressly noted above with respect to the amendment of Condition Nos. 19 and 21, the above Amended Conditions Imposed on the Petition Area shall be in addition to the Conditions imposed under the Halekua Orders. The Conditions imposed under the Halekua Orders are hereby reaffirmed and shall continue in full force and effect as they pertain to the Petition Area and Parcel 52.⁵



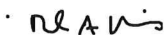
⁵ Nothing contained herein shall be construed in any way to amend, rescind, or otherwise disturb the following: (1) the agreement between OP and the HRT Entities as expressed in the December 29, 2003 Stipulation by and between OP and the HRT Entities, which was filed with the Commission on December 30, 2003; and (2) the rights of the HRT Entities as expressed in the Commission's February 23, 2004 *Order Granting the Office of Planning's Amended Motion to Exempt HRT, Ltd.'s Property from the Order to Show Cause Granted on February 26, 2003, Pursuant to the Stipulation filed on December 30, 2003.*

ADOPTION OF ORDER

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

Done at Honolulu, Hawai'i, this 29th day of September 2021, per motion on October 7, 2020.

APPROVED AS TO FORM



Deputy Attorney General

By 

JONATHAN LIKEKE SCHEUER
Chairperson and Commissioner
State Land Use Commission

Filed and effective on September 29, 2021

Certified by:



DANIEL E. ORODENKER
Executive Officer
State Land Use Commission



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

In the Matter of the Petition of)	DOCKET NO. A92-683
)	
HALEKUA DEVELOPMENT)	CERTIFICATE OF SERVICE
CORPORATION, a Hawai'i corporation)	
)	
To Amend the Agricultural Land Use District)	
Boundary into the Urban Land Use District)	
for Approximately 503.886 Acres at Waikele)	
and Hō'ae'ae, 'Ewa, O'ahu, City and County)	
of Honolulu, State of Hawai'i, Tax Map Key)	
<u>No. 9-4-02: 1, portion of 52, 70 and 71</u>)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the ORDER GRANTING SUCCESSOR PETITIONER (AS TO PARCEL 52) HO'OHANA SOLAR 1, LLC'S MOTION FOR MODIFICATION AND TIME EXTENSION was served upon the following by either hand delivery or depositing the same in the U.S. Mail, by regular or certified mail as noted:

HAND DELIVERY	MARY ALICE EVANS, Director Office of Planning State Office Tower, 6th Floor 235 South Beretania Street Honolulu, Hawai'i 96813
HAND DELIVERY	ALISON KATO, ESQ. BRYAN C. YEE, ESQ. Deputy Attorney General Commerce and Economic Development Department of the Attorney General 425 Queen Street Honolulu, Hawai'i 96813
HAND DELIVERY	DEAN UCHIDA, Director Department of Planning and Permitting City and County of Honolulu 650 South King Street, 7th Floor Honolulu, Hawai'i 96813
HAND DELIVERY	MOLLIE STEBBINS, ESQ. DANA VIOLA, ESQ. Corporation Counsel Department of the Corporation Counsel Honolulu Hale 530 South King Street, Room 110 Honolulu, Hawai'i 96813
U.S. MAIL	ROBINSON KUNIA LAND LLC c/o RUSH MOORE LLP ATTN: STEPHEN K.C. MAU, ESQ. Pacific Guardian Center, Mauka Tower 737 Bishop Street, Suite 2400 Honolulu, HI 96813
U.S. MAIL	FOREST CITY SUSTAINABLE RESOURCES, LLC ATTN: ANN BOUSLOG 5173 Nimitz Road Honolulu, HI 96818
U.S. MAIL	HANWHA Q CELLS USA CORP. ATTN: LAURENCE GREENE 8001 Irvine Center Drive, Suite 1250 Irvine, CA 92618

U.S. MAIL	HALEKUA DEVELOPMENT CORPORATION ATTN: THE HORITA GROUP, INC. MR. JOSHUA HORITA 98-150 Ka`ōnohi Street B128 Aiea, HI 96701
U.S. MAIL	CANPARTNERS IV ROYAL KUNIA PROPERTY LLC c/o MATSUBARA – KOTAKE ATTN: WYETH M. MATSUBARA, ESQ. 888 Mililani Street, 8th Floor Honolulu, HI 96813
U.S. MAIL	HRT REALTY, LLC c/o LAW OFFICES OF REUBEN WONG ATTN: DELWYN H.W. WONG, ESQ. 1164 Bishop Street, Suite 1006 Honolulu, HI 96813
U.S. MAIL	300 CORPORATION c/o LAW OFFICES OF REUBEN WONG ATTN: DELWYN H.W. WONG, ESQ. 1164 Bishop Street, Suite 1006 Honolulu, HI 96813
U.S. MAIL	HONOLULU LIMITED c/o LAW OFFICES OF REUBEN WONG ATTN: DELWYN H.W. WONG, ESQ. 1164 Bishop Street, Suite 1006 Honolulu, HI 96813
U.S. MAIL	RKES, LLC ATTN: PATRICK K. KOBAYASHI 1288 Ala Moana Boulevard, Suite 201 Honolulu, HI 96814
CERTIFIED MAIL-	JENNIFER A. LIM, Esq. JOHN P. MANAUT, Esq. DEREK B. SIMON, Esq. Carlsmith Ball LLP 1001 Bishop Street ASB Tower, Suite 2200 Honolulu, Hawai`i 96813

Honolulu, Hawai`i September 29, 2021



DANIEL ORODENKER
Executive Officer