



LAW OFFICE OF  
JENNIFER A. LIM L.L.L.C.



March 18, 2024

VIA ELECTRONIC MAIL & US MAIL:

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Daniel Orođenker, Executive Officer  
Land Use Commission, State of Hawaii  
State Office Tower  
Leiopapa A Kamehameha Building  
235 South Beretania Street, Suite 406  
Honolulu, HI 96813

Re: Status Report: Docket A92-682, Ho‘ohana Solar 1, LLC

Dear Executive Officer Orođenker:

In anticipation of the status report hearing scheduled for April 3, 2024, for the convenience of you and your staff as well as the Commissioners of the Land Use Commission of the State of Hawai‘i (the “LUC”), Ho‘ohana Solar 1, LLC (“Ho‘ohana”) submits this summary of the status of its progress on the conditions imposed upon the development of the solar farm at TMK No. (1) 9-4-002: 052 (“Parcel 52”) by the LUC’s *Amended Order Granting Successor Petitioner (As To Parcel 52), Ho‘ohana Solar 1, LLC’s Motion for Modification and Time Extension*, which was issued on November 1, 2021 (the “2021 Order”).

This solar farm, located entirely within the LUC’s Urban District, will generate 52 megawatts of energy, and includes a 208 megawatt hour battery energy storage system. This is sufficient for generating up to 114,481 MWh per year, which is equivalent to the power used by approximately 19,100 homes. The project will connect to the HECO grid through the existing 138 kV transmission system.

To date, Ho‘ohana has spent approximately \$150Million on the component parts of the solar farm and approximately \$50Million on land preparation and construction. In addition, Ho‘ohana has spent approximately \$1.25Million for the installation of a new waterline for the State of Hawaii Department of Agriculture (“DOA”), which is considerably more than the \$300,000-waterline design and construction originally proposed by Ho‘ohana and the DOA. As discussed in more detail herein, the waterline installation is complete and the solar farm is more than substantially complete as of the date of this letter.

## I. BACKGROUND

This letter provides the status of compliance with conditions B1 through B7 of the 2021 Order. It does not address the status of conditions A1 through A6 as those are not applicable to the Ho‘ohana solar farm.

The 2021 Order established two distinct sets of conditions—the “A” conditions and the “B” conditions. Only the “B” conditions are applicable to the solar farm on Parcel 52. As stated on page 37 of the 2021 Order, conditions B1 through B7 are “applicable only to the solar farm on Parcel 52, and shall be applicable only upon development of the solar farm use on Parcel 52[.]” In contrast, as stated on page 36 of the 2021 Order, the “A” conditions “apply to the Petition Area **but not to the solar farm development on Parcel 52.**” As such, Ho‘ohana does not have any obligations under the “A” conditions in the 2021 Order and those conditions are not addressed in this letter.<sup>1</sup>

## II. STATUS OF COMPLIANCE WITH LUC CONDITIONS B1 – B7

The following seven conditions shown in italics are the conditions applicable to the solar farm development on Parcel 52 set forth under the 2021 Order. Ho‘ohana’s status of compliance is provided as a response after each condition.

*B.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*

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<sup>1</sup> We acknowledge that in the event Ho‘ohana were to fail to perform its obligations under condition B.1, those obligations fall to the Petition Area landowners. Condition A.6 of the 2021 Order provides as follows: “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.”

*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.*

**RESPONSE B.1:** Ho'ohana has completed the installation of the non-potable waterline. The waterline runs underground from Reservoir 225 to Kunia Road, and from there it runs southwest along Kunia Road to the boundary of the Agricultural Park. Once the pump and other appurtenances are in place as required under condition A.1 of the 2021 Order, Ho'ohana will keep the non-potable waterline in operable condition during the operational term of the solar farm.

The grant of easement required under condition B.1 has been executed and recorded. The City and County of Honolulu granted approval of the subdivision to create the easement on or around June 30, 2023. Then, Ho'ohana's ground lessor Robinson Kunia Land LLC, the owner of Parcel 52, granted the easement to the DOA via a "Grant of Non-Exclusive Waterline Easement." The grant of easement provides the DOA with the following non-exclusive perpetual easement rights over Easement IRR-1:

Right, privilege, and authority to operate, maintain, construct, rehabilitate, renovate, and repair the underground pipeline and its related facilities to transmit water from the Waiahole Ditch to Tax Map Key No. (1) 9-4-002-080 ("State Agricultural Park"), pursuant to sections 167-5 and 167-6, Hawaii Revised Statutes [.]

The Grant of Non-Exclusive Waterline Easement was recorded in the Bureau of Conveyances on December 14, 2023. A copy is enclosed as **Exhibit H1**.

- B.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.*

**RESPONSE B.2:** Ho‘ohana retained AECOS, Inc. to complete a Natural Resources Survey for the solar farm site. That study was completed in September 2014. It confirmed that no threatened or endangered species, or federally-declared critical habitat areas, are located on or within Parcel 52. It also confirmed that no botanical resources or animal species of interest or concern were located on Parcel 52.

In April 2022, AECOS surveyed the solar farm site for evidence of pueo. No individual pueo were observed, nor were any signs of pueo (pellets, feathers, ground-nests, etc.) observed. The survey consisted of visual surveys for pueo during twilight and early morning hours, as well as walking transects over the entirety of the solar farm site. In addition, all roads were driven and walked on both days to search for potential nesting along the edges of the roadways and verges.

AECOS noted that thick vegetation (Guinea grass) on a large portion of the site precludes nesting by pueo, a ground nesting species. AECOS also noted that during its four man-days surveying the site, not one mouse or mouse skeleton was observed. This is significant because, as explained by AECOS, mice are the primary food of this owl species.

Ho‘ohana’s EPC (engineering, procurement, and construction) contract stipulated that the project construction be done consistent with the terms of condition B.2. To minimize the risk of spreading invasive species, no fill was brought onto the site (or removed from the site) during the construction of the solar farm project. Additionally, Ho‘ohana’s EPC contractor has installed a cleaning area at the site entrance that all incoming and outgoing vehicles must drive through to remove excess soil and debris. All construction was done during daylight hours.

In addition, in August of 2022, AECOS provided a 90-minute staff training session to the contractor and construction team with specific information about endangered and threatened species, and appropriate protocols consistent with condition B.2. A copy of that presentation (“Ho‘ohana Solar Farm T&E Species Awareness Training 2022”) is enclosed as **Exhibit H2**.

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

**RESPONSE B.3:** The State Historic Preservation Division accepted an Archaeological Inventory Survey Report of the Ho‘ohana Solar Farm Project in Kunia, Waialeale Ahupua‘a, Ewa District, Island of Oahu, Hawaii, TMK (1) 9-4-002:052 (Wong and Spear, February 2015) by letter dated February 19, 2015.

The State Historic Preservation Division confirmed that no further archaeological work was needed, explaining that “No further work is recommended for the project area due to prior extensive disturbance related to former cultivation, the absence of traditional Hawaiian archaeological sites or features on the surface, sufficient documentation of the surface remnant plantation features, and because little potential exists to encounter intact subsurface cultural deposits.” SHPD’s concurrence letter is enclosed as **Exhibit H3**.

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

**RESPONSE B.4:** Ho'ohana submitted to the FAA six Form 7460-1, each addressing different areas (based on latitude, longitude, and heights) within the solar farm. Those submittals were supported by a Glare Hazard Analysis completed by Stantec Consulting Services Inc. The Glare Hazard Analysis analyzed the potential for glare for 16 landing paths and three air traffic control towers at Honolulu International Airport, the Kalaeloa Airport, and the military Wheeler Army Airfield. It concluded that neither the 16 runways nor the three air traffic control towers were expected to experience any glare from the solar project. Therefore, the FAA issued a Determination of No Hazard to Air Navigation for each of the six project areas. See enclosed as **Exhibit H4**. Ho'ohana's construction traffic management plan was submitted to the State Department of Transportation in April 2022.

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

**RESPONSE B.5:** The solar farm is substantially completed. However, completing permitting, site work, and construction since the issuance of the 2021 Order on November 1, 2021, has been challenging. The COVID 19 pandemic and related labor and shipping shortages caused major disruptions in the delivery time and reliability of Ho'ohana's suppliers. Certain highly technical aspects of the solar project had to be redesigned after Ho'ohana's original BESS inverter manufacturer discontinued its product due to the unavailability of required component parts as a result of the ongoing supply chain crisis, forcing Ho'ohana to find a new supplier. However, at this point all component parts of the solar farm have been secured and are onsite.

As shown by the photos enclosed as **Exhibit H5**, all civil engineering site work and internal accessways are completed and the project area is fenced. The project's substation and the HECO switchyard are completed and fenced. The piles and racking systems are all on site and installed. The solar modules are all on site, with approximately 25% of the modules currently installed and the remaining modules scheduled to be installed in May. The battery energy storage system is on-site. The project's connection to the high voltage equipment for connection to the 138 kV grid is completed.

*B.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.*

**RESPONSE B.6:** Ho‘ohana has proceeded in substantial compliance with its representations to the LUC.

*B.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.*

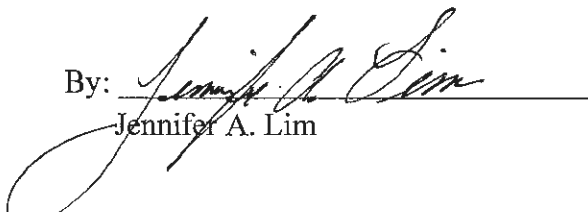
**RESPONSE B.7:** Under the 2021 Order, Parcel 52 “may be used as a utility-scale solar farm, including all related utility and other infrastructure, for a period not to exceed 43 years from the date of this Order (inclusive of development, operations, and decommissioning).” 2021 Order at p. 35. The 2021 Order is dated November 1, 2021. Thus, the maximum term of the permitted solar farm under the 2021 Order is to November 1, 2064, at which point the solar farm must be entirely decommissioned and removed from Parcel 52.

Daniel Orodener, Executive Officer  
Land Use Commission  
March 18, 2024  
Page 8

The term of the currently effective PPA between HECO and Ho‘ohana is 20 years, starting from October 31, 2024. Should the solar farm developer not secure PUC approval of a new/amended PPA by December 31, 2045, they will then immediately commence with decommissioning of the solar farm (in the manner described in condition B7(a)), and complete decommissioning on or before December 31, 2047.

Sincerely,

**LAW OFFICE OF JENNIFER A. LIM, LLC**

By:   
Jennifer A. Lim

cc: Ho‘ohana Solar 1, LLC

Enc.