

**Addendum to the Staff Report: Supplemental Bullet Points: A92-683 Halekua Status Report/ Motion.** After further discussion and review of Docket A92-683, the LUC Staff is issuing and pointing out additional information.

**1) In 2014/ 2015 the LUC issued an Order** granting amendments to 1996 Decision and Order the to allow new solar farm development on Parcel 52 and amend conditions for the overall Petition Area.

- In 2015, the LUC granted amendments to the 1996 D&O to allow a solar electric facility to operate on a portion of the Petition Area (Conditions B1 to B7). These conditions only applied to the solar farm.
  - The developer of the solar project agreed to provide the off-site non-potable water infrastructure, easements, and long-term maintenance of the waterlines by December 31, 2016.
  - Around 2017, the Public Utilities Commission (PUC) did not approve Hawaiian Electric's proposed Purchase Power Agreements for renewable projects (including Ho`ohana's project).
  - Conditions B1 to B7 in the 2015 D&O were based on and triggered only if the project was approved and developed.
    - Ho`ohana maintains that since they were denied development of the solar farm, they had no obligation to build the infrastructure, however, the remaining land owners are still required to build the infrastructure. Ho`ohana came before the Commission in 2020, to amend the 2015 Order to extend the project time (see 2020 Motion to amend)
- Additionally, amendments were made to apply to all landowners in the Petition Area (Conditions A1-A4). These set some specific actions and deadlines.
  - By July 28, 2015 successor landowners need to finalize an amendment to the MOU with DOA with regards to the agricultural park. And, by December 31, 2016 the off-site infrastructure to the boundary of the State Agricultural Park was to be completed (Condition A1).
  - Each landowner within the Petition Area was to provide the LUC with a Revised Master Plan and timeline for development by January 28, 2016 (Condition A2). To date, Haseko is the only Petitioner to do so.
  - Each landowner was to provide the LUC with a Status Report on development of their respective parcels by March 31, 2015.

**2) Relevant to the proceedings is a Memorandum of Understanding (MOU)** between the State Department of Agriculture (DOA) and Petitioner (now successor Petitioners) setting timelines regarding conveyance of lands for a State agricultural park and off-site infrastructure for said park.

- On March 30, 1993, the original MOU between DOA and Original Petitioner, per Condition 22; 1993 D&O; and Condition 19, 1996 D&O was entered.
- The requirement to satisfy the Condition through the MOU was the responsibility of the Petitioner and running with the land. As the property was sold, successor landowners became collectively responsible for all conditions, including those pertaining to the agricultural park and infrastructure.
- Amendments have been made to the original MOU in 2007, 2009, 2012, 2015, and 2020.
- Most recently the MOU was amended in January 2024.
- These amendments primarily were to extend the deadline for construction/completion of the off-site water line infrastructure, and conveyance of lands and easements.

The period between 1996 and 2014 was characterized by numerous changes in ownership interest for portions of the Petition Area, insolvency, and attempts to reorganize development efforts. However, no development of the Petition Area occurred during this period.

- This MOU is the subject of the motion to be heard on 4/4

**3) 2020 Motion to Amend** Ho’ohana came back to the LUC to amend and extend the deadline for its project (Conditions B1 to B7); the LUC also amended conditions applying to all landowners (Conditions A1 to A6).

**2021 D&O A Condition Requirements and Questions:**

- Amendments were made to apply to all landowners in the Petition Area (Conditions A1-A6). These amended and reset some specific actions and deadlines.
  - By May 1, 2022 successor landowners need to finalize an amendment to the MOU with DOA with regards to the agricultural park. And, no later than June 30, 2023 the off-site infrastructure to the boundary of the State Agricultural Park was to be completed (Condition A1).
  - Each landowner within the Petition Area was to provide the LUC with a Revised Master Plan and timeline for development by December 31, 2021 (Condition A2).
  - Each landowner was to provide the LUC with a Status Report on development of their respective parcels by March 15, 2021 (Condition A3)

- New Condition A5 put all landowners on notice that failure to construct the off-site infrastructure for the State Agricultural Park would constitute good cause for issuance of an Order to Show Cause.
- New Condition A6 also put all landowners on notice that if Ho`ohana Solar failed to complete its solar project, the easement(s), construction and maintenance of the non-potable waterline it would revert to the responsibility and expense of all the landowners.

**4) Questions that Staff suggests should be asked to ensure full understanding of the project status**

1. Was the offsite infrastructure pursuant to Condition A1 completed by June 30, 2023? Question for Haseko, Ho`ohana, and other landowners collectively responsible.
2. What landowners have complied with Condition A2 and provided Revised Master Plans and development schedules by December 31, 2021?
3. Which landowners have complied with Condition A3 and provided a Status Report on development activities by March 15, 2021?

2021 D&O B Condition Requirements and Questions:

- Conditions B1 to B7 in the amended 2021 D&O are based on and triggered only if the project was developed.
  - Condition B5 requires the solar farm to be substantially completed within 2 years of the D&O – which is November 1, 2023.
  - Condition B6 requires Ho`ohana to develop the non-potable waterline and solar farm in substantial compliance with its representations. Failure to develop the non-potable waterline and/or Parcel 52 as a solar farm will constitute good cause for the LUC to issue an Order to Show Cause.
1. Has the solar farm been “developed” such that the seven B conditions are now applicable? Question for Ho`ohana Solar representative.
  2. Has the solar farm been substantially completed pursuant to Condition B5? If not, when does Ho`ohana intend to come to the LUC with a Motion to Amend? Question for Ho`ohana Soar representative.
  3. Has DOA applied for their non-portable water allocation pursuant to Condition B1? If not, why not? Question for DOA representative.