LAW OFFICE OF
JENNIFER A. LIM LLLC

January 7, 2025

VIA ELECTRONIC MAIL
daniel.e.orodenker@hawaii.gov

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

Re: LUC Agenda January 8, 2025, Item 2 (Docket DR24-78)
RK II Partners LLC Petition for Declaratory Order

Dear Executive Officer Orodenker:

I submit this letter on behalf of my client, Hoʻohana Solar 1, LLC ("**Hoʻohana**"), the developer of the solar farm located on TMK No. (1) 9-4-002: 052 ("**Parcel 52**"). Hoʻohana leases Parcel 52 (approximately 161 acres) from the fee owner Robinson Kunia Land LLC ("**Robinson**"). Hoʻohana does not own land within the Petition Area.

The Robinson-owned Parcel 52 is one of the properties within the 503.866-acre "**Petition Area**" that the State Land Use Commission ("**LUC**") reclassified from the Agricultural to the Urban District in Docket No. A92-683. RK II Partners LLC ("**RKII**"), owns approximately 123-acres within the Petition Area; the other Petition Area landowners are Haseko Royal Kunia, LLC and RKES LLC.

RKII, in its December 6, 2024 Petition for Declaratory Order ("**Dec Petition**"), asks the LUC to issue a declaratory ruling addressing two distinct questions: (1) whether "there has been substantial use of the Petition Area [such that] any reclassification [of the Petition Area] by the LUC must be done in accordance with HRS § 205-4" and (2) whether RKII's parcel "is encumbered by the requirement to provide off-site infrastructure to the 150-acre agriculture park." Dec Petition at 6.

Hoʻohana takes no position on RKII's request to the LUC. Instead, Hoʻohana provides the following comments and clarifications to certain statements made in the Dec Petition as they relate to Hoʻohana.

Regarding RKII's question 1, we note that the legal standard for determining whether the LUC can simply void/revert a district boundary amendment without meeting the extensive procedural and evidentiary requirements for a district boundary amendment under HRS § 205-4 is not whether there has been "substantial use" of the Petition Area, it is whether there has been the substantial ***commencement of use*** of land that was reclassified by the LUC. "[W]hen the petitioner has not substantially commenced use of the land, the LUC may revert the land without following the procedures set forth in HRS § 205-4."[1] DW Aina Le'a Dev., LLC v. Bridge Aina Le'a, LLC, 134 Hawaii 187, 213 (2014).

As far as Ho'ohana is concerned, there is no question that "substantial commencement" of the use of land within the Petition Area has taken place. More accurately, Ho'ohana has ***substantially completed*** its solar farm development within the Petition Area. Enclosed are several photos illustrating this point.

The two photos marked as Exhibit A are copies of photos Ho'ohana submitted to the LUC in March of 2024, demonstrating that the solar project was substantially completed at that time.[2] The three photos marked as Exhibit B show the status of the solar farm project as of January 3, 2025. Ho'ohana's solar farm has been constructed to generate 52 megawatts of energy and includes a 208-megawatt hour battery energy storage system. It can generate up to 114,481 MWh per year, which is roughly equivalent to the amount of power needed to supply 19,100 homes. As clearly shown on Exhibit B, at this point, all on-site physical construction of the solar farm is complete.

Ho'ohana has more than "substantially commenced use of the land", which is the statutory test to determine whether reversion is legally possible (see HRS § 205-4(g)). Ho'ohana has substantially ***completed*** development of the solar farm within the Petition Area. And in the process, Ho'ohana has spent some $200Million on materials, land preparation, and construction.

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[1] The evidentiary requirements under HRS § 205-4 include determinations on "whether the boundary change violates HRS § 205-2 (setting forth general considerations in districting and classifying land), is consistent with the policies and criteria set forth in HRS § 205-16 (compliance with the Hawai'i state plan) and HRS § 205-17 (setting forth decision-making criteria for the LUC)." DW Aina Le'a Dev., LLC v. Bridge Aina Le'a, LLC, 134 Hawaii 187, 212 (2014).

[2] The LUC confirmed its factual determination that the solar farm project was substantially completed in its Findings of Fact, Conclusions of Law, and Decision and Order Granting Motion to Amend the Memorandum of Understanding's Offsite Infrastructure Date in Condition A.1, issued October 7, 2024, in Docket A92-683 (the "**2024 Order**"). See 2024 Order, Finding of Fact #17.

RKII improperly characterized the nature of the work Hoʻohana did installing a new non-potable waterline to supply the State Department of Agriculture's ("**DOA**") 150-acre agricultural park. RKII asserts that Hoʻohana's work on the non-potable waterline "clearly indicate[s] a substantial commencement of use of the Petition Area." Dec Petition at 7. This is misleading. Neither the waterline nor the DOA agricultural park is within the Petition Area.

RKII describes Hoʻohana's work as being "in accordance with Condition 19 of the [LUC's] 1993 Order." Dec Petition at 7. This is wrong. Hoʻohana's installation of the waterline was done pursuant to Condition B.1 of the LUC's November 1, 2021, Amended Order Granting Successor Petitioner (as to Parcel 52) Hoʻohana Solar 1, LLC's Motion for Modification and Time Extension, in Docket A92-683 (the "**2021 Order**"). This work was not done pursuant to condition 19 of the LUC's 1993 Order.[3]

Condition B.1. of the LUC's 2021 Order, issued November 1, 2021, provides as follows:

> Royal Kunia Agricultural Park Non-Potable Water Connection. Prior to the connection of the Solar Project to the grid, Hoʻohana 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, Hoʻohana 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 Hawaiʻi for the alignment of the non-potable waterline. Hoʻohana 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

[3] The distinction between the "A" conditions and the "B" conditions imposed by the LUC in the 2021 Order is critical. Under the 2021 Order, the LUC authorized Hoʻohana's use of Parcel 52 for development of the solar farm. It also imposed a limited and specific set of conditions (the "B" conditions) "applicable only to the solar farm on Parcel 52, and . . . applicable only upon development of the solar farm use on Parcel 52." Those are the only conditions that encumber Hoʻohana's solar farm use of Parcel 52. None of the conditions imposed under the "Halekua Orders" (which include the LUC's 1993 Order cited by RKII), or imposed as the "A" conditions under the 2021 Order, are applicable to Hoʻohana's use of Parcel 52. The Commission's Amended Staff Report reflects this distinction at page 14.

> Kunia Agricultural Park. If Hoʻohana is required to perform an environmental impact statement pursuant to Chapter 343, Hawaiʻi Revised Statutes, then the time period set forth in this condition shall be extended by the number of days that Hoʻohana is delayed as a result.

In compliance with Condition B.1, Hoʻohana also caused Robinson, the owner of Parcel 52, to issue a grant of easement in favor of the DOA. The "Grant of Non-Exclusive Waterline Easement" in favor of DOA was recorded in the Bureau of Conveyances on December 14, 2023. Moreover, pursuant to Condition B.1. of the 2021 Order, during the operational term of its solar farm, Hoʻohana will keep the non-potable waterline in operable condition.

In March and April of 2024, Hoʻohana provided evidence to the LUC regarding its satisfaction of the waterline construction and easement obligations under Condition B.1. of the 2021 Order. The LUC's 2024 Order provides the LUC's findings of fact in this regard.[4]

The Commission's Amended Staff Report for DR24-78 (dated January 7, 2025) recommends that the LUC set this matter for hearing and direct RKII and other interested parties to provide additional evidence showing whether there has been substantial commencement of the use of Petition Area land. Hoʻohana has already provided such evidence, which the LUC accepted and acted upon. As such, Hoʻohana questions the value of further process in this regard. Nevertheless, if the LUC does set this matter for hearing, Hoʻohana requests that it be timely notified so that Hoʻohana may determine at that time whether to pursue its rights to become a party in any future proceedings in this declaratory order docket.

We appreciate this opportunity to provide comments on RKII's pending Dec Petition.

Sincerely,

LAW OFFICE OF JENNIFER A. LIM, LLLC

By: Jennifer A. Lim
Jennifer A. Lim

cc: client
Enc.

[4] Finding of Fact #26 of the LUC's 2024 Order provides: "In September of 2023, Hoʻohana's obligation under Condition B.1. to construct the irrigation non-potable water line was completed. Hoʻohana also has an obligation to maintain the water line pursuant to Condition B.1. The grant of easement required under Condition B.1. has been given to the DOA, and the water line is ready for operation once Haseko installs the pump."