Before the Land Use Commission of the State of Hawai‘i

In the Matter of the Petition of

Trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools

To Amend the Conservation Land Use District Boundaries Into the Agricultural Land Use District For Approximately 94.107 Acres Of Land At Kauaea, Puna, Hawai‘i, Tax Map Key: (3) 1-3-009: Por. 005

Docket No. A19-807

Order Granting Petitioner's Motion Requesting the Land Use Commission (1) To Be the Accepting Authority for an Environmental Impact Statement; (2) Determine That the Proposed Action Warrants the Preparation of an Environmental Impact Statement, To Be Initiated With the Preparation of an Environmental Impact Statement Preparation Notice; And Certificate of Service

ORDER GRANTING PETITIONER’S MOTION REQUESTING THE LAND USE COMMISSION (1) TO BE THE ACCEPTING AUTHORITY FOR AN ENVIRONMENTAL IMPACT STATEMENT; (2) DETERMINE THAT THE PROPOSED ACTION WARRANTS THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT, TO BE INITIATED WITH THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT PREPARATION NOTICE 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

7/22/19

Executive Officer
BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI‘I

In The Matter Of The Petition Of

TRUSTEES OF THE ESTATE OF
BERNICE PAUAHI BISHOP dba
KAMEHAMEHA SCHOOLS

To Amend The Conservation Land Use
District Boundaries Into The
Agricultural Land Use District For
Approximately 94.107 Acres Of Land
At Kauaea, Puna, Hawai‘i, Tax Map
Key: (3) 1 3 009: Por. 005

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On June 21, 2019, the Trustees of the Estate of Bernice Pauahi Bishop dba
Kamehameha Schools (“Petitioner”) filed a Motion Requesting The Land Use
Commission (1) To Be The Accepting Authority For An Environmental Impact
Statement; (2) Determine That The Proposed Action Warrants The Preparation Of An

Docket No. A19-807 Trustees Of The Estate Of Bernice Pauahi Bishop dba Kamehameha Schools
Order Granting Petitioner’s Motion Requesting The Land Use Commission (1) To Be The Accepting Authority For An Environmental Impact Statement; (2) Determine That The Proposed Action Warrants The Preparation Of An Environmental Impact Statement, To Be Initiated With The Preparation Of An Environmental Impact Statement Preparation Notice
Environmental Impact Statement, To Be Initiated With The Preparation Of An Environmental Impact Statement Preparation Notice ("Motion"), pursuant to Hawai‘i Administrative Rules ("HAR") §§15-15-70, 11-200-4(b), 11-200-6(b)(1)(F), 11-200-12, and Hawai‘i Revised Statutes ("HRS") §343-5(a)(7).

In its Motion, Petitioner requested that the State Land Use Commission ("Commission") (1) determine that it will be the accepting authority for the environmental assessment under HRS chapter 343; and (2) determine, through its judgement and experience, that an Environmental Impact Statement ("EIS") is warranted and that the environmental review process should be initiated by the preparation of an Environmental Impact Statement Preparation Notice ("EISPN").

On July 21, 2019, Petitioner filed a Petition For Land Use District Boundary Amendment ("Petition"), which included an EISPN.

In its Petition, Petitioner proposes to reclassify approximately 94.107 acres of land ("Petition Area") from the State Land Use Conservation District to the State Land Use Agricultural District at Kauaea, Puna, Hawai‘i, to allow Sanford’s Service Center, Inc., a Hawai‘i corporation ("Sanford"), as licensee of a 73.075-acre portion ("License Area") of the Petition Area, to expand its existing cinder mining and quarry
operations within the License Area. Sanford currently operates mining and quarry operations on a 30-acre portion of the Petition Area.

Petitioner notes that because the Petition proposes to reclassify land classified within the State Land Use Conservation District, it is therefore subject to the environmental review process under HRS §343-5(a)(7). Petitioner also points out that the Commission is the agency that will initially receive and process the Petition.

Petitioner further notes that inasmuch as the proposed action is likely to have a significant impact on the environment, the environmental review process should be initiated by proceeding directly to the preparation of an EISP N in accordance with HRS §343-5(e).

By email dated July 2, 2019, Jeff Darrow of the County of Hawai’i Planning Department ("Planning Department") noted that the Planning Department would not be filing a formal position on Petitioner’s Motion but instead would state at the meeting that it had no objection to the matter.

On July 3, 2019, the State Office of Planning ("OP") filed a written response expressing no objection to Petitioner’s Motion.

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1 According to Petitioner, if the Petition is granted by the Commission, it may allow Sanford to file a special permit application for this expansion.

2 The reclassification of Conservation District lands is also an action that triggers the environmental review process under HAR §11-200-6(b)(1)(F).

Docket No. A19-807 Trustees Of The Estate Of Bernice Pauahi Bishop dba Kamehameha Schools Order Granting Petitioner’s Motion Requesting The Land Use Commission (1) To Be The Accepting Authority For An Environmental Impact Statement; (2) Determine That The Proposed Action Warrants The Preparation Of An Environmental Impact Statement, To Be Initiated With The Preparation Of An Environmental Impact Statement Preparation Notice
On July 10, 2019, the Commission met in Kailua-Kona, Hawai‘i, to determine (1) whether this Commission should be the accepting authority pursuant to HRS chapter 343; (2) whether the proposed action may have a significant effect upon the environment to warrant the preparation of an EIS; and (3) whether to authorize Petitioner to prepare an EISPN pursuant to HRS §343-5(e). Andrea Ushijima, Esq., appeared on behalf of Petitioner. Ron Kim, Esq., and Duane Kanuha appeared on behalf of the Planning Department. Dawn Takeuchi-Apuna, Esq., and Rodney Funakoshi were present on behalf of OP.

At the meeting, Petitioner summarized its position in support of its Motion that this Commission is the appropriate accepting authority for the EIS pursuant to HRS chapter 343, that the proposed action may have a significant effect upon the environment such that an EIS is likely to be required, and that Petitioner be allowed to proceed directly to the preparation of an EIS commencing with the preparation of an EISPN.²

Both OP and the Planning Department stated that they had no objections to Petitioner’s Motion.

Following discussion, a motion was made and seconded to have this Commission (1) agree to be the accepting authority pursuant to HRS chapter 343; (2)

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² During the meeting, Commissioner Cabral disclosed that she has had business dealings with Sanford, the licensee of a portion of the Petition Area, but that it would not affect her ability to remain fair and impartial on the matter. The parties had no objections to Commissioner Cabral’s participation in the proceeding.

Docket No. A19-807 Trustees Of The Estate Of Bernice Pauahi Bishop dba Kamehameha Schools Order Granting Petitioner’s Motion Requesting The Land Use Commission (1) To Be The Accepting Authority For An Environmental Impact Statement; (2) Determine That The Proposed Action Warrants The Preparation Of An Environmental Impact Statement, To Be Initiated With The Preparation Of An Environmental Impact Statement Preparation Notice
find that the proposed action may have a significant effect upon the environment to warrant the preparation of an EIS; (3) authorize Petitioner to prepare an EISPN pursuant to HRS §343-5(e); and (4) authorize the Commission’s Executive Officer to notify and submit a record of the Commission’s decision to Petitioner and the State Office of Environmental Quality Control (“OEQC”), and to further authorize the Commission’s Chairperson to sign the Order on this matter on behalf of the Commission. There being a vote tally of 7 ayes, 0 nays, and 2 excused, the motion carried.

ORDER

This Commission, having duly considered Petitioner’s Motion, the comments of OP and the Planning Department, and a motion having been made at its meeting on July 10, 2019, in Kailua-Kona, Hawai‘i, and the motion having received the affirmative votes required by HAR §15-15-13, and there being good cause for the motion,

HEREBY ORDERS (1) that it agrees to be the accepting authority pursuant to HRS chapter 343; (2) that the proposed action may have a significant effect upon the environment to warrant the preparation of an EIS; and (3) that Petitioner is authorized to prepare an EISPN pursuant to HRS §343-5(e).
IT IS ALSO ORDERED that Petitioner shall make the EISPEN available for a 30-day public review and comment period pursuant to HRS §343-5(e) and HAR §11-200-15(b).

IT IS FURTHER ORDERED that the Commission’s Executive Officer shall notify and submit a record of the Commission’s decision to Petitioner and the OEQC, and that the Commission’s Chairperson shall sign the Order on this matter on behalf of the Commission.
ADOPTION OF ORDER

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

Done at Honolulu, Hawai‘i, this 15th, day of July 2019, per motion on July 10, 2019.

LAND USE COMMISSION
STATE OF HAWAI‘I

APPROVED AS TO FORM

[Signature]
Deputy Attorney General

By:
JONATHAN SCHEUER
Chairperson and Commissioner

Filed and effective on:

7/15/19

Certified by:

[Signature]
DANIEL ORODENKER
Executive Officer
BEFORE THE LAND USE COMMISSION
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DOCKET NO. A19-807
CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the ORDER GRANTING PETITIONER'S MOTION REQUESTING THE LAND USE COMMISSION (1) TO BE THE ACCEPTING AUTHORITY FOR AN ENVIRONMENTAL IMPACT STATEMENT; (2) DETERMINE THAT THE PROPOSED ACTION WARRANTS THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT, TO BE INITIATED WITH THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT PREPARATION NOTICE in the above referenced-docket was duly served was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by regular or certified mail as noted.

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Honolulu, Hawai‘i, July 22, 2019

[Signature]

DANIEL ORODENKER
Executive Officer