

I hereby certify that this is
a true copy from the records
of the Bureau of Conveyances,


**Registrar of Conveyances
Assistant Registrar, Land Court
State of Hawaii**

This instrument has been filed and
accepted in the Regular System.
The Land Court land mentioned herein
has not been encumbered by this
instrument in the Land Court System.

Dated April 8, 2020

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED April 08, 2020 3:29 PM
Doc No A74030801

/s/ LESLIE T. KOBATA, Registrar
SKC 9



LAND COURT

REGULAR SYSTEM

Return By Mail ☒ Pick-Up ☐ To:

CARLSMITH BALL LLP
ASB Tower, Suite 2100
1001 Bishop Street
Honolulu, Hawai'i 96813

Attention: Jennifer A. Lim
Telephone: (808) 523-2500

TITLE OF DOCUMENT:

DECLARATION OF CONDITIONS
IMPOSED BY THE STATE LAND USE COMMISSION

PARTIES TO DOCUMENT:

DECLARANT: LANCE KEAWE WILHELM, ROBERT K.W.H. NOBRIGA, ELLIOT
K. MILLS, MICAH A. KANE, and CRYSTAL KAUILANI
ROSE, as TRUSTEES OF THE ESTATE OF BERNICE PAUAHI
BISHOP, dba KAMEHAMEHA SCHOOLS

TAX MAP KEY(S): (1) 9-4-006: 034 (por.), 35 (por.), 36, 37 (por.);
(1) 9-6-004: 024 (por.), 025, and 026;
(1) 9-6-005: 003 (por.)

TCT(S): 600,990; 600,991; 1,047,298 (This document consists of 9 pages.)

**DECLARATION OF CONDITIONS
IMPOSED BY THE STATE LAND USE COMMISSION**

THIS DECLARATION OF CONDITIONS IMPOSED BY THE STATE LAND USE COMMISSION (the "**Declaration**") is made this 7th day of April, 2020, by LANCE KEAWE WILHELM, ROBERT K.W.H. NOBRIGA, ELLIOT K. MILLS, MICAH A. KANE, and CRYSTAL KAUILANI ROSE, as TRUSTEES OF THE ESTATE OF BERNICE PAUAHI BISHOP, dba KAMEHAMEHA SCHOOLS, as Successor Petitioner ("**Petitioner**") in the State of Hawai'i Land Use Commission (the "**Commission**") Docket No. A87-610.

W I T N E S S E T H:

WHEREAS, the Commission reclassified approximately 1,395 acres of land situate at Waiawa and Waipi'o, 'Ewa, O'ahu, Hawai'i (the "**Petition Area**"), from the State Land Use ("**SLU**") Agricultural District into the SLU Urban District, subject to certain conditions enumerated in its Findings of Fact, Conclusions of Law, and Decision and Order that was certified, filed and effective on May 17, 1988, as amended on November 30, 1990 (the "**Waiawa Order**");

WHEREAS, the Petition Area is more fully described in that certain Declaration of Conditions Imposed By The State Land Use Commission, recorded on July 19, 1988, in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i (the "**Land Court**") as Land Court Document No. 1565292, and in the Bureau of Conveyances of the State of Hawai'i (the "**Bureau**") in Liber 22151 Page 250 (the "**Original Declaration**");

WHEREAS, the Petitioner filed with the Commission a Motion for Order Amending the Waiawa Order on May 13, 2014, asking the Commission to (a) recognize the Petitioner, as the fee owner of the Petition Area, as the Successor Petitioner to Tom Gentry and Gentry-Pacific, Ltd., and (b) issue an order modifying the Waiawa Order to expressly authorize the use of portions of the Petition Area for a two-phase solar farm development: Phase 1 located in the northwest portion of the Petition Area, within Tax Map Key Nos.: (1) 9-4-06: 034 (por.), 035 (por.), 036, and 037 (por.) and (1) 9-6-04: 024 (por.), 025, and 026 ("**Phase 1**") and Phase 2 located in the east portion of the Petition Area, within Tax Map Key No. (1) 9-6-004: 024 (por.) ("**Phase 2**");

WHEREAS, the Commission granted the Petitioner's Motion for Order Amending the Waiawa Order by Order Granting Motion for Order Amending Findings of Fact, Conclusions of Law and Decision and Order Dated May 17, 1988, that was certified, filed, and effective on November 26, 2014, as revised by the replacement of page 11 to said Order on December 1, 2014 (collectively, the "**2014 Order**");

WHEREAS, pursuant to the 2014 Order, the Petitioner recorded against the entire Petition Area that certain Declaration of Conditions Imposed By The State Land Use Commission, dated January 20, 2015, recorded in the Bureau on January 21, 2015 as Document No. A-54991338 (the "**2014 Declaration**"), encumbering the Petition Area, which was identified by Tax Map Key Nos.: (1) 9-4-006: 034 (por.), 35 (por.), 36, 37 (por.); (1) 9-6-004: 024 (por.), 025, and 026; and (1) 9-6-005: 001 (por.), and identifying Phase 1 and Phase 2 as aforesaid;

WHEREAS, on July 24, 2019, the Petitioner filed with the Commission a Motion for Modification and Time Extension, seeking certain amendments to the 2014 Order relating to Phase 2 of the solar farm development;

WHEREAS, Petitioner's July 24, 2019 Motion identified the correct TMK Parcels within the Petition Area as follows: TMK Nos. (1) 9-4-006: 034 (por.), 35 (por.), 36, 37 (por); (1) 9-6-004: 024 (por.), 025, and 026; (1) 9-6-005: 003 (por.), and explained that the prior identification of TMK No. (1) 9-6-005: 001 (por.) was in error, and that the correct parcel number is TMK No. (1) 9-6-005: 003 (por.), as shown on a survey map prepared by a professional land surveyor and filed with said Motion as KS Exhibit 1;

WHEREAS, the Commission, by Findings of Fact, Conclusions of Law, and Decision and Order Granting with Modification Motion for Modification and Time Extension, that was certified, filed, and effective on February 11, 2020 (the "**2020 Order**"), (a) amended certain conditions of the 2014 Order relating to Phase 2 of the previously-approved solar farm development, which, as modified under the 2020 Order shall hereinafter be referred to as the "**WSP Site**", and (b) imposed additional conditions upon the WSP Site;

WHEREAS, under Hawaii Administrative Rules § 15-15-91, conditions imposed by the Commission shall run with the land and shall be binding upon the Petitioner and each and every subsequent owner, lessee, sub-lessee, transferee, grantee, assignee, or developer;

WHEREAS, under Hawaii Administrative Rules § 15-15-92, Successor Petitioner filed a Notice of Imposition of Conditions by the Land Use Commission with the Bureau on February 18, 2020 as Document No. A-73530848;

WHEREAS, the conditions imposed by the 2020 Order shall be in addition to the conditions imposed under the (a) Waiawa Order, as recorded by the Original Declaration, and (b) 2014 Order relating to Phase 1 of the solar farm development, recorded in the Bureau by the 2014 Declaration, which are hereby reaffirmed and shall continue in full force and effect;

WHEREAS, the conditions imposed by the 2020 Order shall only be applicable on the WSP Site and shall replace and supersede all conditions of the 2014 Order relating to the previously approved Phase 2 solar farm; and

NOW THEREFORE, Declarant hereby declares that the 2020 Order amending the 2014 Order to authorize the use of the WSP Site, consisting of approximately 200 acres of land within Tax Map Key No. (1) 9-6-004: 024 (por.) of the Petition Area, as approximately shown on Exhibit A, attached hereto and incorporated herein by reference, for solar farm development, is made subject to the following 18 conditions, which are more fully set forth on pages 47 through 53 of said 2020 Order:

1. **Revised Master Plan.** Petitioner shall submit to the Commission a revised master plan and schedule for development for the approximately 1,395-acre KS Property within five (5) years from the date of the Commission's issuance of an order approving the Motion to Amend.

2. **Access to the Waiawa Correctional Facility.** Petitioner shall cause the solar farm facility operator to ensure that the construction and installation of the solar farm within the KS Property shall not prevent roadway access to the Waiawa Correctional Facility.

3. **Previously Unidentified Burials and Archaeological/Historic Sites.** A supplemental AIS for the entire 1,395-acre Petition Area shall be prepared by a qualified archaeologist to determine potential impacts and to ensure that appropriate mitigation is implemented as needed. The supplemental AIS shall be submitted to the SHPD and accepted prior to the start of construction.

In the event that historic resources, including human skeletal remains, are identified during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the SHPD, O'ahu Island Section, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, paving, and walls not previously identified in studies referred to herein, are discovered during the course of construction of the solar farm project, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigative measures have been implemented to its satisfaction.

4. **Aircraft Hazard.** If glint or glare from the PV array creates a hazardous condition for pilots, Petitioner shall cause the solar farm facility operator to be prepared to immediately mitigate the hazard upon notification by the DOT, Airports Division, or the FAA. If the PV systems emit RFI to aviation dedicated radio signals, disrupting the reliability of air-to-ground communications, Petitioner shall cause the solar farm facility operator to be prepared to immediately mitigate the hazard upon notification by the DOT, Airports Division, or the FAA.

5. **Traffic Impacts.** Petitioner shall submit a Traffic construction management plan for review and acceptance by the DOT prior to the start of construction.

6. **Development Schedule.** The solar farm shall be substantially completed within five (5) years from the date of the Commission's issuance of this Decision and Order.

7. **Interim Use of the Petition Area.** The interim use of the approximately 200-acre portion of the Petition Area as shown in Petitioner's Revised Master Plan and Schedule for Development filed on October 7, 2019, shall be limited to a utility-scale solar energy development, or solar farm. No other use shall be permitted without the prior written approval of the Commission.

8. **Timeframe of Interim Use.** The interim use of the approximately 200-acre portion of the Petition Area as shown in Petitioner's Revised Master Plan and Schedule for Development filed on October 7, 2019, for the proposed solar farm, including all permitting, construction, operation, and decommissioning activities associated with the solar farm, shall not exceed November 26, 2049. If WSP or its successor can demonstrate before November 26, 2049, that it has secured a PUC-approved PPA for extension of the operation of the solar farm and a lease extension with Petitioner, the interim use of the approximately 200-acre site for the proposed solar farm shall be extended to December 31, 2059.

9. **Waiawa Master Plan Infrastructure Deadline.** Petitioner shall complete construction of the backbone infrastructure for the proposed Waiawa Master Plan Phase A, consisting of the primary roadways and access points, internal roadways, on- and off-site water and electrical system improvements, and stormwater/drainage and other utility system improvements, by December 31, 2030.

10. **Metes and Bounds Map Description.** The proposed solar farm shall be limited to the acreage and boundaries identified in Petitioner's Revised Master Plan and Schedule for Development filed on October 7, 2019. Petitioner shall provide a metes and bounds map and description of the solar farm site to the Commission within one year from the date of this Decision and Order.

11. **Groundwater Resource Protection.** The operator of the solar farm to be developed in the central/eastern portion of the Petition Area shall implement mitigative measures to prevent the introduction of contamination to the ZOC from the solar farm's operations, consistent with the representations made and relied upon by the DOH in its letter of March 28, 2019, to Petitioner and the Navy in its letter to the solar farm operator dated September 30, 2019, in reference to the solar farm operator's representations in its letter dated July 22, 2019.

12. **Decommissioning of the Solar Farm.** The solar farm shall be decommissioned following its operational timeframe. The decommissioning activities shall include, but not be limited to, the complete removal of the foundational piers and modules and all associated components. All metal components shall be recycled to the extent possible and no solar farm components shall be disposed of in any landfill in the State of Hawaii. Any future use of the Petition Area 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 of the proposed use and shall further include, but not be limited to, a revised Traffic Impact Analysis Report, Engineering Report, Socio-Economic Analysis Report, Environmental Report, and AIS.

13. **Compliance with Representations.** Petitioner shall cause the solar farm facility operator to develop and operate the solar farm, including the implementation of measures to mitigate potential impacts of the development, in substantial compliance with the representations made to the Commission as reflected in this Decision and Order. Such mitigation measures include, but are not limited to, the use of temporary and permanent BMPs to ensure that the development and operation of the solar farm do not result in an increase in stormwater runoff that adversely impacts downstream properties. Failure to do so may result in reversion of the Petition Area to its former classification, or change to a more appropriate classification.

14. **Notice of Change of Ownership.** Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Area, prior to development of the Petition Area.

15. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP, and the DPP in connection with the status of the subject project and

Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

16. **Release of Conditions.** The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

17. **Notice of Imposition of Conditions.** Within seven (7) days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall: (a) record with the Bureau of Conveyances a statement that the Petition Area is subject to conditions imposed herein by the Commission in the granting of this Decision and Order; and (b) shall file a copy of such recorded statement with the Commission.

18. **Recordation of Conditions.** Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to HAR §15-15-92.

Upon recordation at the Bureau of Conveyances, this Declaration of Conditions Imposed by the State Land Use Commission supersedes and automatically revokes the Notice of Imposition of Conditions by the Land Use Commission that was recorded with the Bureau of Conveyances of the State of Hawai'i on February 18, 2020 as Document No. A-73530848.

This instrument has been executed by or on behalf of the Trustees of the Estate of Bernice Pauahi Bishop in their fiduciary capacities as said Trustees, and not in their individual capacities. No personal liability or obligation under this instrument shall be imposed or assessed against said Trustees in their individual capacities.

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS.

On April 7, 2020 before me

appeared JOHN T. KOMEIJI, General Counsel and Vice President and SHERYL L. NICHOLSON, Assistant General Counsel

to me personally known, who being by me duly sworn, did say that they are two of the attorneys-in-fact for LANCE KEAWE WILHELM, ROBERT K. W. H. NOBRIGA, ELLIOT K. MILLS, MICAH A. KANE, and CRYSTAL KAUILANI ROSE, as Trustees of the Estate of Bernice Pauahi Bishop, duly appointed under Limited Power of Attorney effective as of March 10, 2020, recorded in the Bureau of Conveyances of the State of Hawai'i as Document No. A-73740550, and in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Document No. T-11026199; and that the foregoing instrument was executed in the name and on behalf of LANCE KEAWE WILHELM, ROBERT K. W. H. NOBRIGA, ELLIOT K. MILLS, MICAH A. KANE, and CRYSTAL KAUILANI ROSE, as Trustees of the Estate of Bernice Pauahi Bishop, by such persons in their capacities as attorneys-in-fact; and they acknowledged the instrument to be the free act and deed of the Trustees of the Estate of Bernice Pauahi Bishop, as aforesaid.

Signature: Emily Davids
Name: Emily Davids
Notary Public, State of Hawai'i

My commission expires: 11/15/2023

(Official Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Declaration of Conditions Imposed by the State Land Use Commission

Doc. Date: 4/7/2020 or ☐ Undated at time of notarization.

No. of Pages: 9 Jurisdiction: First Circuit

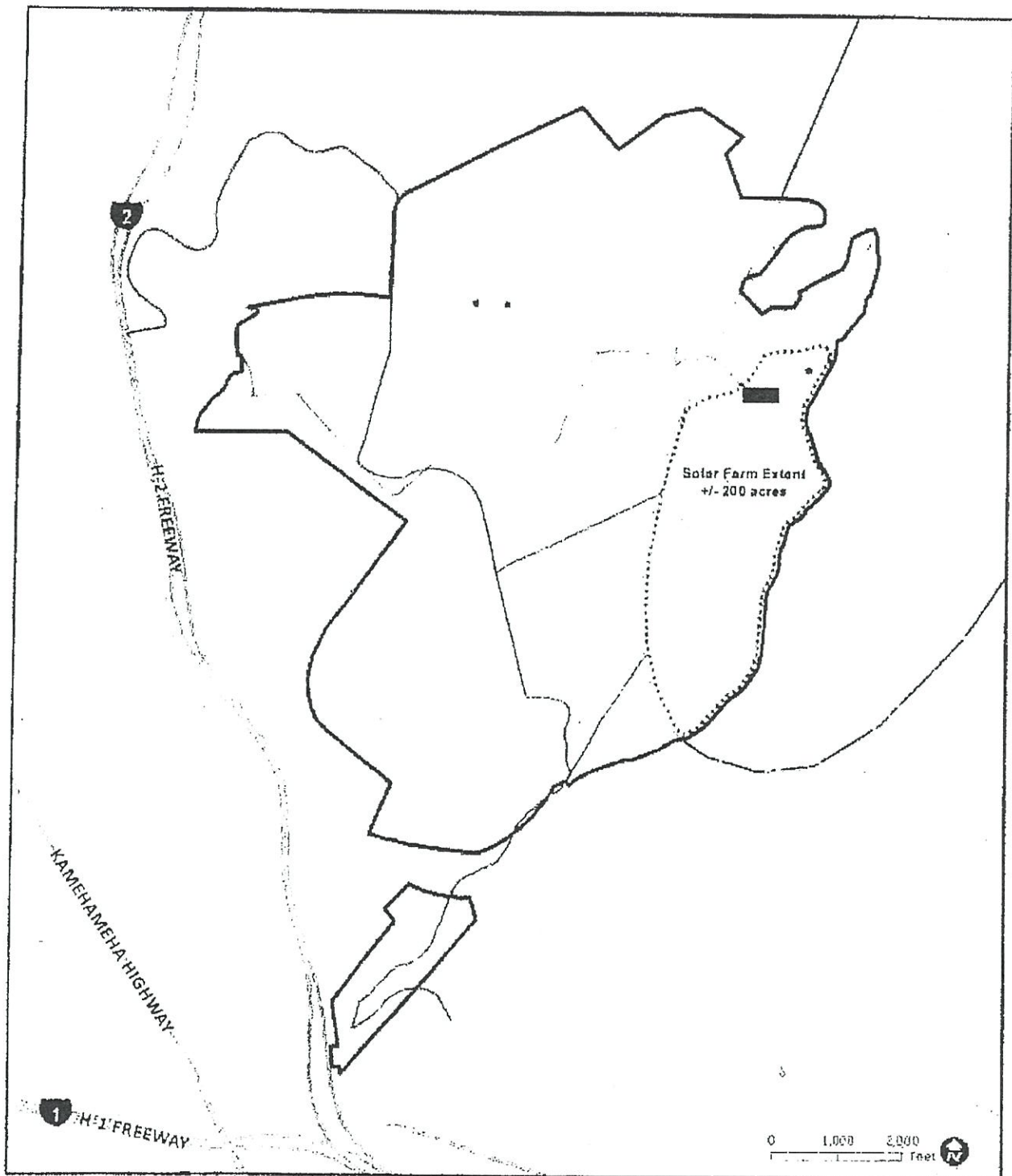
Emily Davids
Signature of Notary

4/7/2020
Date of Notarization and
Certification Statement

Emily Davids
Printed Name of Notary

(Official Stamp or Seal)

Exhibit A



WAIAWA SOLAR POWER, LLC CONCEPTUAL SITE PLAN

Legend

Solar Farm Extent, ~200 acres

Utility Improvements Area (~2.5 acres)

KS Waiawa Property (SLUD- Urban, Docket A87-610)

Hydrologic Zone of Contribution (ZoC)

Archaeological Preservation Area

Gen-Tie Alignment

Access Route

Tax Map Keys: (1) 9-4-006:034 (por.), 35 (por.), 36, 37 (por.);
 (1) 9-6-004:024 (por.), 025, and 026;
 (1) 9-6-005:003 (por.)

TCT Numbers: 600,990; 600,991; 1,047,298