



LAND USE COMMISSION
STATE OF HAWAII

2020 FEB 11 A 10:01

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of

TOM GENTRY AND GENTRY-PACIFIC,
LTD.

To Amend The Agricultural Land Use
District Boundary Into The Urban Land
Use District For Approximately 1,395
Acres At Waiawa, Ewa, O`ahu, State Of
Hawai`i, Tax Map Key Nos.: 9-4-06;
Portion Of 26; 9-6-04: Portion of 1 And
Portion Of 16; And 9-6-05: Portion Of 1,
Portion Of 7 And Portion Of 14

DOCKET NO. A87-610

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DECISION AND
ORDER GRANTING WITH
MODIFICATION MOTION FOR
MODIFICATION AND TIME
EXTENSION; EXHIBIT A AND
CERTIFICATE OF SERVICE

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GRANTING WITH MODIFICATION MOTION FOR MODIFICATION AND
TIME EXTENSION; EXHIBIT A

AND

CERTIFICATE OF SERVICE

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COMMISSION, HONOLULU, HAWAII.

February 11, 2020

DATE

by 



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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER
GRANTING WITH MODIFICATION MOTION FOR MODIFICATION AND
TIME EXTENSION

The State of Hawai`i Land Use Commission ("Commission"), having examined the Motion for Modification and Time Extension filed 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 ("KS" or "Petitioner"), on July 24, 2019, and upon consideration of the matters discussed therein, at its meetings on November 20-21, 2019, and January 9, 2020, hereby makes the following findings of fact, conclusions of law, and decision and order:

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Findings of Fact, Conclusions of Law, and Decision and Order Granting with Modification
Motion for Modification and Time Extension

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On July 24, 2019, KS filed a Motion for Modification and Time Extension, Memorandum in Support of Motion, Affidavit of Dana K.N. Sato, Affidavit of Jennifer A. Lim, Exhibits "1" - "25," and Certificate of Service), pursuant to Hawai'i Administrative Rules ("HAR") §§ 15-15-70 and 15-15-94.

2. KS requests that the Commission amend the Order Granting Motion for Order Amending Findings of Fact, Conclusions of Law, and Decision and Order Dated May 17, 1988 ("Order Granting Motion for Order Amending D&O") filed on November 26, 2014 to (1) extend the November 2049 time period for which a portion of the Petition Area (aka the "KS Property") can be used as a solar farm to December 31, 2059; and (2) make other modifications to the Order Granting Motion for Order Amending D&O involving changes to the solar farm development proposed by the current operator, Waiawa Solar Power, LLC ("WSP"), a wholly-owned indirect subsidiary of Clearway Energy Group LLC ("Clearway").¹

3. By letter dated July 24, 2019, the Executive Officer of the Commission informed KS that it should file its Revised Master Plan and Schedule for

¹ Clearway was formed in August 2018 with the sale of NRG Energy's renewables division. Clearway and its affiliate, Clearway Energy, Inc., own and operate 4.1 gigawatts ("GW") of renewable energy, consisting of 2.8 GW of wind and 1.1 GW of utility solar, and over 300 megawatts ("MW") of distributed and community solar across 28 states.

Development to the Commission and the State of Hawai'i Office of Planning ("OP") and the City and County of Honolulu Department of Planning and Permitting ("DPP") no later than October 21, 2019, in order for the Commission to consider the Motion for Modification and Time Extension and the Revised Master Plan and Schedule for Development at its meeting on November 20, 2019.

4. On August 6, 2019, OP filed a letter requesting an extension for OP and the City and County of Honolulu to file their respective responses to KS' Motion for Modification and Time Extension.

5. By letter dated August 6, 2019, the Executive Officer of the Commission informed the parties that KS would file all documents associated with its Motion for Modification and Time Extension by October 7, 2019, with responses from OP and the DPP due on October 21, 2019.

6. By letter dated August 9, 2019, KS requested clarification on the extension of time provided to OP and the DPP.

7. By letter dated August 13, 2019, to KS, the Executive Officer of the Commission affirmed the filing dates identified in his letter of August 6, 2019, and further required KS to file any supplemental materials related to its Motion for Modification and Time Extension by November 4, 2019.

8. On October 7, 2019, KS filed a First List of Witnesses and Certificate of Service. KS also filed a First List of Exhibits, Exhibits "26" - "41," Certificate of Service, and a Revised Master Plan and Schedule for Development.

9. On October 21, 2019, OP filed a Response to KS' Motion for Modification and Time Extension, OP's List of Exhibits, Exhibits "1" - "3," and Certificate of Service.

10. On November 4, 2019, KS filed a Rebuttal Memorandum in Response to OP's Response to KS' Motion for Modification and Time Extension, Exhibits "42" - "44," and Certificate of Service. KS also filed a First Amended List of Witnesses, First List of Rebuttal Exhibits, Exhibits "45" - "48," and Certificate of Service.

11. On November 14, 2019, KS filed a replacement to page 6 of KS Exhibit "46."

12. On November 19, 2019, OP filed a Response to Successor Petitioner's Rebuttal Memorandum in Response to OP's Response to KS' Motion for Modification and Time Extension and Certificate of Service.

13. On November 20, 2019, the Commission considered KS' Motion for Modification and Time Extension at its meeting at the Airport Conference Center, Room #IIT#2, in Honolulu, Hawai'i. Jennifer A. Lim, Esq., and Puananiona P. Thoene,

Esq., appeared on behalf of KS. Dawn T. Apuna, Esq., and Lorene Maki appeared on behalf of OP. Dina Wong and Ray Young appeared on behalf of the DPP.

14. At the request of KS, a motion was made and seconded to amend the Commission's November 20, 2019, agenda to allow KS to present its case-in-chief on the Motion for Modification and Time Extension before proceeding to its status report on the Revised Master Plan and Schedule for Development. There being a vote tally of 6 ayes, 0 nays, and 2 excused, the motion passed.²

15. As part of KS' presentation on its Motion for Modification and Time Extension, the Commission heard from KS' witnesses: Patrick Sullivan, Jason Jeremiah, Dana Sato, and Daniel von Allmen. The Commission thereafter continued the matter to the following day, November 21, 2019, at 8:30 a.m. at the Leiopapa A Kamehameha Building, Conference Room 204, in Honolulu, Hawai'i.

16. At the continued meeting, the Commission entered into evidence without objections by the parties KS' Exhibits "1" through "48." The Commission then heard from Ms. Wong of the DPP who stated that the DPP had no objection to KS' Motion for Modification and Time Extension. The Commission also heard from Ms. Apuna who noted that OP recommended approval of KS' Motion for Modification and Time Extension, subject to additional conditions. Upon questioning by the

² There are currently eight sitting members on the Commission. The ninth seat is currently vacant.

Commission, Ms. Apuna offered Rodney Funakoshi as a witness for OP. Thereafter, Chair Scheuer closed the evidentiary portion of KS' Motion for Modification and Time Extension.

17. During deliberations, a motion was made and seconded to continue the hearing on KS' status report on its Revised Master Plan and Schedule for Development and KS' Motion for Modification and Time Extension to January 9, 2020, at a place and time to be determined by the Commission staff, and further that at such continued hearing, the Commission shall first hear KS' status report on its Revised Master Plan and Schedule for Development and then continue with its deliberations on KS' Motion for Modification and Time Extension. There being a vote tally of 7 ayes, 0 nays, and 1 excused, the motion passed.

18. On December 6, 2019, the Commission filed its Order Continuing Hearing on Status Report and Motion for Modification and Time Extension.

19. On January 9, 2020, the Commission met at the Airport Conference Center, Room #IIT#2, in Honolulu, Hawai'i. Jennifer A. Lim, Esq., and Puananiona P. Thoene, Esq., appeared on behalf of KS. Dawn T. Apuna, Esq., Rodney Funakoshi, and Lorene Maki appeared on behalf of OP. Dina Wong appeared on behalf of the DPP.

At the meeting, Walter Thoemmes, KS' Managing Director, Commercial Real Estate Division, provided a PowerPoint presentation on KS' Revised Master Plan.³

20. Following completion of the status report on KS' Revised Master Plan, the Commission resumed deliberations on KS' Motion for Modification and Time Extension. The Commission heard public testimony from Jeffrey Overton, Daniel von Allmen,⁴ and Cameron Black.

21. Following discussion, the parties provided closing arguments on KS' Motion for Modification and Time Extension. Thereafter, a motion was made and seconded to grant with modification KS' Motion for Modification and Time Extension, subject to the amendment of existing conditions as well as to the imposition of additional conditions to the Order Granting Motion for Order Amending D&O filed on November 26, 2014. There being a vote tally of 7 ayes, 1 aye with reservations, and 0 nays, the motion passed.

BACKGROUND OF MOTION FOR MODIFICATION AND TIME EXTENSION

22. By Order Granting Motion for Order Amending D&O filed on November 26, 2014, the Commission amended the Findings of Fact, Conclusions of

³ The Commission received and entered into the record written public testimony from Pacific Resource Partnership, Patrick Sullivan, Jeffrey Overton, Paul Migliorato, Scott J. Glenn, Blue Planet Foundation, Karen Lee, Jonathon Grems, Peter Lee, Gary James, Peter Breeze, and Troy Otsuka.

⁴ During the public testimony of Mr. von Allmen, Naomi Kuwaye, Esq., counsel for Clearway and WSP, responded to questions from the Commission.

Law, and Decision and Order filed May 17, 1988, in this docket, by permitting the establishment of a solar farm to include all related utility and other infrastructure within a portion of the Petition Area, consisting of approximately 655 acres of land situated at Waiawa and Waipi`o, `Ewa, O`ahu, Hawai`i, identified as Tax Map Keys ("TMKs"): 9-4-06: 34 (por.), 35 (por.), 36, and 37 (por.) and 9-6-04: 24 (por.), 25, and 26, for a period not to exceed 35 years from the date of the Order Granting Motion for Order Amending D&O, or November 26, 2049.

23. The Order Granting Motion for Order Amending D&O contained 16 conditions and affirmed that said conditions were in addition to the conditions imposed under the Findings of Fact, Conclusions of Law, and Decision and Order filed May 17, 1988, which shall continue in full force and effect.

24. The 16 conditions are as follows:

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 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 photovoltaic 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.
5. Traffic Impacts.
 - a. Phase 1. Prior to the start of construction of Phase 1 of the solar project, Petitioner shall cause the solar farm operator to address any comments that may be made by the DOT regarding the August 1, 2014, "Construction Traffic Assessment for the Proposed Waiawa Solar Farm" that was prepared for the solar farm project, and to implement the mitigations recommended in the Fehr & Peers Traffic Assessment.

- b. Phase 2. Petitioner shall cause the solar farm operator to prepare and submit to the DOT for review and to obtain acceptance of a Traffic Assessment for Phase 2 of the solar project prior to the start of construction of Phase 2.
6. Development Schedule. Phase 1 of the solar farm shall be substantially completed within five (5) years from the date of the Commission's issuance of an order approving the Motion to Amend. Phase 2 of the solar farm shall be substantially completed within ten (10) years from the date of the Commission's issuance of an order approving the Motion to Amend.
7. Interim Use of the Petition Area. The interim use of the Petition Area 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 Petition Area for the proposed solar farm, including any and all permitting, construction, operation, and decommissioning activities associated with the solar farm, shall not exceed a period of 35 years from the date of this Decision and Order without the prior written approval of the Commission.
9. Metes and Bounds Map and Description. The proposed solar farm shall be limited to the acreage and boundaries identified in Petitioner's Phasing Plan shown in Petitioner's Exhibit 8 Errata (filed 6/20/14). Petitioner shall provide a metes and bounds map and description of both phases to the Commission within one year from the date of this Decision and Order.
10. 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 Hawai'i. 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.

11. Compliance with Representations. Petitioner shall cause the solar farm operator to develop and operate Phase 1 and Phase 2 of 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.
12. 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.
13. 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.

14. 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.
15. Notice of Imposition of Conditions. Within seven (7) days of the issuance of the Commission's Decision and Order granting the Motion to Amend, 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 the Motion to Amend; and (b) shall file a copy of such recorded statement with the Commission.
16. Recordation of Conditions. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to HAR section 15-15-92.

25. SunEdison was selected to develop the solar farm on portions of the Petition Area. It was proposed that the solar farm be contained within one or more utility easement areas. Access to the utility easement areas would be provided over existing roads. The first phase of the project would be designed to produce 50 MW of power, an amount that could power approximately 9,800 homes each year for the term of the development. The solar panels for this first phase were planned to be installed within a footprint of approximately 250 acres in a 387-acre section located in the northwest portion of the Petition Area, identified as TMKs: 9-4-06: 34 (por.), 35 (por.),

36, and 37 (por.) and 9-6-04: 24 (por.), 25, and 26 ("Phase 1 site").⁵ Under the proposal, the operational term of Phase 1 would run approximately 30 years.

26. It was envisioned that SunEdison could undertake a second phase of the solar project. If so, it was anticipated that this phase would produce up to 65 MW of power. The solar panels for this phase would be installed within an approximately 268-acre section in the southwest portion of the Petition Area ("Phase 2 site").⁶ The operational term of Phase 2 would end no later than the term of Phase 1.

27. The energy from the solar panels would be transported to a 46 kilovolt ("kV") project substation and battery storage area. This facility would be sited within the easement area in proximity to the western side of the Petition Area, approximately 1,000 feet from the H-2 Freeway. An existing 46kV transmission line located across and within the Petition Area running along the H-2 Freeway would connect the solar energy.

28. SunEdison planned to initiate the site preparation and construction for Phase 1 by June 2015. It was projected that the entire construction period for Phase 1 could take up to 12 months, consisting of three months for all grading activities and nine months for panel installation. Full operation of the site was anticipated by June

⁵ The acreage of the Phase 1 site originally encompassed 300 acres.

⁶ The acreage of the Phase 2 site originally encompassed 277 acres.

2016. The operational timeframe of the solar farm was between 2036 and 2046. The actual term of the operational phase would be determined by the Power Purchase Agreement (“PPA”) to be negotiated between SunEdison and Hawaiian Electric Company (“HECO”). Following the operational phase, decommissioning of the solar farm was anticipated to take about 12 months. All foundational piers and modules and associated components would be removed and recycled to the extent possible.

29. The guiding force behind the timeframe to commence with the development was the 30 percent Federal Investment Tax Credits. These tax credits would allow SunEdison to offer the power at the currently proposed low price. In order to take advantage of the current rate, Phase 1 had to be in commercial operations no later than June 2016. Starting in 2017, the rate at which these tax credits would be available was 10 percent.

30. Subsequent to the issuance of the Order Granting Motion for Order Amending D&O on November 26, 2014, SunEdison failed to obtain the required approvals from the Hawai`i Public Utilities Commission (“PUC”) for its PPA with HECO. Thereafter, SunEdison went bankrupt and KS cancelled its agreements with SunEdison.

31. In 2017, HECO sought out large landowners in Hawai`i that had an interest in, and lands available for, energy projects. KS responded, alerting HECO that

KS had land available on O`ahu, Maui, and Hawai`i. The former SunEdison sites were among those lands identified by KS as being suitable for a solar energy project.

32. In 2017, HECO, Maui Electric Company, Limited, and Hawai`i Electric Light Company, Inc. (collectively "Hawaiian Electric Companies"), sought PUC approval to engage in a competitive procurement process to acquire new dispatchable and renewable energy resources for O`ahu, Maui, and Hawai`i Island.

33. The PUC approved the requested competitive bidding process by Order No. 35286, filed on February 20, 2018.

34. On February 20, 2018, the PUC approved the Hawaiian Electric Companies' Request for Proposals ("RFP"), which was issued on February 27, 2018.

35. The primary purpose of the RFP was to obtain variable renewable generation that would be dispatchable by the utility companies at a competitive, reasonable cost, with reliability, viability, and operational characteristics consistent with the utility companies' long-term planning and energy policy requirements. The RFP closed on April 30, 2018.

36. In September 2018, HECO announced that WSP and its proposed solar farm on a portion of the Petition Area, was one of the awardees of HECO's RFP. The PPA entered into between HECO and WSP calls for a 36 MW/144 megawatt-hour battery energy storage system ("BESS") solar farm to be located within a portion of

SunEdison's former Phase 2 site, consisting of approximately 200 acres and identified as TMK: 9-6-04: 24 (por.) ("WSP Site").

37. As with the Motion for Modification and Time Extension, the PPA entered into between HECO and WSP does not involve SunEdison's former Phase 1 site. With the bankruptcy of SunEdison and the cancellation of its agreement with KS, SunEdison's solar farm proposal will not proceed and there is no information available at this time regarding the timing or size of any future solar farm that may be proposed in its place on the Phase 1 site. KS acknowledges that as with WSP's proposal, any future solar farm on the Phase 1 site will invariably include modifications to the representations made to the Commission by SunEdison in 2014 and will therefore require Commission approval. KS intends to seek this Commission approval for a second solar farm on the Phase 1 site possibly in 2020.

38. The PUC approved the PPA by Decision and Order No. 36231 in Docket No. 2018-0435 dated March 25, 2019.

39. HECO presented several reasons in support of its request that the PUC approve the PPA, including: (1) the WSP solar farm is the result of a competitive bidding procurement process; (2) the WSP solar farm is advantageous due to the discretion it provides HECO regarding the dispatch of energy from its photovoltaic ("PV") system and/or BESS; (3) the PPA represents a new model of a renewable

dispatchable generation PPA that has many advantageous terms to protect HECO and its customers, and represents improvements over prior PPAs; (4) the PPA's unit price is fixed for the duration of the PPA and is anticipated to result in lower effective rates for customers; (5) the WSP solar farm is expected to provide bill savings for customers over the term of the PPA; and (6) the WSP solar farm will reduce HECO's consumption of fossil fuel, resulting in a reduction of greenhouse gas emissions and progress towards the State's Renewable Portfolio Standard goals.

40. WSP's proposed solar farm development is projected to generate power to supply approximately 14,655 homes each year, replacing 1,084,388 barrels of oil and 29 tons of coal over the term of the PPA. It is expected that WSP's solar farm will be similar to SunEdison in that it will feature PV panels within an array, substation transformers, overhead generation tie-line ("Gen-Tie Alignment"), and storage. However, unlike the previous proposal, WSP intends to have the power storage and transmission improvements within that portion of the Petition Area overlying the Waiawa Shaft Zone of Contribution ("ZOC").

41. There are additional changes under WSP's proposed solar farm, including the terms of the operation. The PPA specifies a commercial operation date of

the solar farm of December 31, 2021.⁷ As proposed, there is an initial operational term of 20 years, with an opportunity for an extension to allow a total operational term of 35 years. This is similar to SunEdison's timeframe, which required the decommissioning of both Phases 1 and 2 by November 26, 2049. However, WSP's development calls for a decommissioning deadline on or before December 31, 2059, more than ten years longer than was proposed for SunEdison's project. Within this timeframe is a development and construction period of approximately 2.5 years, an operational period of approximately 35 years, and a decommissioning period of no more than one year.

42. The Commission finds that based on the evidence, an appropriate and reasonable timeframe for the permitting, construction, operation, and decommissioning activities associated with WSP's solar farm should not exceed November 26, 2049. This date is identical to the timeframe of SunEdison's solar farm approved in the Order Granting Motion for Order Amending D&O filed on November 26, 2014. 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 KS, there will be good cause to extend the operation of the solar farm for the period of the extension of the PPA and lease.

⁷ WSP is highly motivated to have its solar farm achieve its commercial operation date prior to December 31, 2023, in order to secure the full 30 percent Federal Investment Tax Credit available for renewable energy projects.

43. WSP represents that construction of the solar farm will commence in October 2020 and be substantially completed before November 2024. WSP further represents that this development schedule is consistent with the timeframe that governed SunEdison's project, which required substantial completion of its Phase 1 by November 26, 2019, and its Phase 2 by November 26, 2024.

44. WSP's decommissioning obligations to KS are similar to those of SunEdison and involve the recycling of materials such as the PV modules, racking, and battery components. WSP plans to keep all batteries onsite until their capacity is depleted. Augmentations will be done as additions to the battery system rather than as replacements that require disposal of any components during the term of the solar farm. All battery components will be recycled and disposed of at the end of the solar farm's operation in accordance with WSP's decommissioning plan.

45. Once all of the components have been removed from the WSP Site, WSP will seek and stabilize the land to KS' satisfaction.

46. The agreement between KS and WSP requires WSP to provide KS with decommissioning security in the form of a letter of credit prior to the start of the operational term of the solar farm. This will provide KS with financial security to be used toward decommissioning costs in the event KS has to take over decommissioning of the solar farm due to any default by WSP.

47. Specific components of WSP's solar farm development include a seven-foot high fence surrounding the WSP Site. Additional 12-foot high fencing is proposed to secure the substation battery area. A security system with 24/7 camera surveillance will also be installed. All ground cover will be maintained by mowers and weed trimmers; no animals will be used to control the underlying vegetation. There will be a vegetative buffer around the WSP Site to mitigate any visual impacts of the development.

48. Other components of the solar farm include a solar array that will be mounted on single-axis trackers that face south and follow the sun. By contrast, SunEdison's solar farm proposed the use of fixed-tilt tracking. Approximately 110,000 to 135,000 PV panels will be used. These panels are intended to absorb as much solar energy as possible, and therefore will be less reflective than window glass or water. The solar panels will be cleaned once or twice annually with water only that will be trucked to the site. No cleansers or other additives will be used for cleaning. The top of the PV panels will be between 4 feet and 15 feet from the ground. The trackers will have sealed bearings, so there will be no serviceable parts nor any parts that require lubrication.

49. Several temporary storage trailers to house operations and maintenance equipment are planned. These trailers will not have any septic, sewer,

water, or solid waste disposal infrastructure within them. Electrical service will be required, however, and WSP will coordinate with HECO to ensure such service is provided.

50. Pad mounted inverters are also planned. They will be interconnected by underground medium voltage lines that feed into the planned substation. The solar energy will then connect to an existing 46kV transmission line that runs directly west of the WSP Site across the gulch near the Ka Uka Boulevard exit of the H-2 Freeway to reach the point of interconnection on the existing HECO 46kV Waiiau-Mililani line (aka the Gen-Tie Alignment). The utility poles supporting the transmission lines will range in height between approximately 41 and 70 feet and will be placed approximately 250 feet apart.

51. WSP intends to have the substation and battery storage area within that portion of the Petition Area overlying the Waiawa Shaft ZOC unlike the SunEdison proposal. The substation is proposed for a one-acre site. The control building for the substation within that one acre will have a building area of under 500 square feet. The substation, which will be between 15 to 20 feet in height, will be surrounded by a 12-foot high fence with no barbed wire.

52. The following components will be housed within the substation: a switchgear cabinet, bus supports, meter supervisory control and data acquisition,

power transformer circuit breaker, current transformer, power transformers, PV controls, HECO remote terminal units, relays and meters, and a small battery system. The substation equipment will be mounted on equipment pads or concrete footers. The substation will include a step-up transformer that collects energy at the PV facility voltage and steps it up to the HECO grid voltage (46kV).

53. A BESS will be located adjacent to the substation site on 1.5 acres of land. The batteries will be housed inside fully contained modular enclosures. Modular enclosures vary in size, ranging from the size of a shipping container to a refrigerator. As such, there could be 37- 40 enclosures to approximately 820 enclosures. The number of batteries will depend on the type of enclosure used. In either case, the enclosures will be mounted on pier foundations over gravel or on concrete foundations. Full system capacity will be 154.MWh. While each container will have heating, ventilation, and air conditioning (“HVAC”) systems in place, the HVAC system will not generate exhaust and no emissions are anticipated from the battery system operation.

54. WSP intends to use lithium-ion batteries which do not contain any liquid that can spill or leak. These batteries use dry-cell technology. Compared to lead acid batteries, lithium-ion batteries are not as susceptible to fires. The design will include smaller containers with less thermal mass within each container. The container itself is fire rated under the applicable UL standards to contain the fire for the entirety

of the thermal event. The individual unit would be disconnected as soon as the thermal event was detected so that the fire could not spread into neighboring units. The thermal event would be effectively allowed to burn itself out within the confinement of the container. Upon the conclusion of the event, the appropriate emergency and response personnel would be able to remove the battery from the site, neutralize it in accordance with best practices, and then dispose of it in accordance with best practices.

55. No lubricants, coolant fluids, or other liquid chemicals will be used in the maintenance and operation of the inverters, medium voltage transformers, or battery storage area. The high-voltage transformers will use a soy-based vegetable oil coolant. The oil is not composed of any hazardous material and would not contaminate groundwater should a leak occur.

56. WSP's solar farm will generally be located on the ridgelines where the former tilled sugarcane fields were located. The WSP Site slopes mauka to makai. Elevations range from 550 feet to 240 feet above mean sea level. Optimal placement of the PV panels will be on the flatter, more gradually sloped areas on the ridgelines and away from the steep ravines that slope into the adjacent gulches.

KS' REVISED MASTER PLAN FOR WAIAWA

57. Solar energy development will be an integral component of the KS' Revised Master Plan for Waiawa. Approximately 50 to 80 MW of solar power is

anticipated to be generated under KS' concept of renewable energy for the Waiawa community.

58. KS envisions an environmentally sustainable and thriving Waiawa that utilizes a traditional Native Hawaiian land management approach and modern technology to reflect contemporary land uses and living unique to Hawai'i.

59. KS' Revised Master Plan for Waiawa involves a total acreage of approximately 2,010 acres, including the Petition Area, and encompassing five phases over 40 to 50 plus years. The Revised Master Plan envisions approximately 11,000 new homes, approximately 550,000 total square feet of commercial uses, four schools (2 elementary, 1 middle, and 1 high school), open space, parks and agricultural farm lots. It is estimated that the infrastructure costs for the development will be in excess of \$630,000,000.

60. The timeframes for the five phases are as follows:

Phase A:	2030-2040
Phase B:	2038-2048
Phase C:	2052-2060
Phase D:	2060-2066
Phase E:	2066-2076

61. Phase A is proposed to include 2,024 residential units, 324,326 square feet of commercial space, 56.7 acres of mixed uses, 20 agricultural farm lots, 14.5 acres of park, 193.8 acres of open space, and 12.3 acres of school uses.

62. Phase B is proposed to include 2,338 residential units, 56,445 square feet of commercial space, 8.6 acres of mixed uses, 8 agricultural farm lots, 12.1 acres of park, 99.5 acres of open space, and 31.2 acres of school uses.

63. Phase C is proposed to include 2,636 residential units, 83,452 square feet of commercial space, 23.1 acres of mixed uses, 22 acres of park, and 49.2 acres of school uses.

64. Phase D is proposed to include 1,436 residential units, 24,346 square feet of commercial uses, and 78.1 acres of open space.

65. Phase E is proposed to include 2,675 residential units, 70,097 square feet of commercial uses, 13 acres of mixed uses, 23 agricultural farm lots, 7.7 acres of park, 4 acres of open space, and 12.3 acres of school uses.

66. Since the reclassification of the Petition Area to the State Land Use Urban District in 1988, no development of the site has occurred. Given this history, OP is concerned with the extended and lengthy development timetable of KS' Revised Master Plan. OP's position is that at a minimum, the backbone infrastructure for Phase A, consisting of the primary roadways and access points, internal roadways, onsite and offsite water and electrical system improvements, and stormwater/drainage and other utility system improvements, should be completed within ten years from the issuance of the Commission's Order on this matter.

67. The Commission shares OP's concerns about the development timetable of KS' Revised Master Plan. Under KS' Revised Master, Plan, the timeframe identified for the development of Phase A is 2030-2040. Based on this schedule of development, the Commission finds there is good cause to require KS to complete the backbone infrastructure for Phase A by a date commensurate with this timeframe. The Commission further finds that a deadline of December 31, 2030, provides adequate time for KS to undertake development and complete construction of the backbone infrastructure for Phase A.

IMPACTS TO THE RESOURCES OF THE AREA

Archaeological/Historical and Cultural Resources

68. Christopher Monahan, Ph.D., of TCP Hawai'i, LLC, prepared an Archaeological Inventory Survey ("AIS") of the Petition Area in March 2015. The AIS recommended preservation of 25 features of Site #50-80-09-2273, which represents a system of sugar plantation irrigation infrastructure. The AIS was submitted to the State Historic Preservation Division ("SHPD"), which accepted the AIS by letter dated April 24, 2015.

69. In May 2015, an Archaeological Preservation Plan ("APP") was submitted to the SHPD, which accepted the APP by letter dated September 14, 2015. The APP identified the preservation measures for four features of Site #50-80-09-2273

either in their entirety or as a representative portion thereof: Feature 19 (a large dam-like retention structure), Feature 22 (a large water-distribution and retention basin), and Features 14 and 23 (cut basalt and mortar irrigation ditches). Feature 22 and a portion of Feature 23 are located within the WSP Site. Preservation will be in the form of “avoidance and protection” through temporary fencing during construction. Long-term preservation measures will involve permanent fencing with a suitable buffer around the features.

70. The preservation buffer fencing has been installed in compliance with the APP.

71. WSP represents that it will comply with the preservation measures identified in the APP throughout the development and operation of the solar farm.

72. In June 2003, Cultural Surveys Hawai‘i, Inc., prepared a Cultural Impact Assessment for 3,600 acres of lands owned by KS, including the Petition Area. No cultural practices or resources were identified within the Petition Area. KS represents that to its knowledge, there are no active traditional and customary practices taking place within the Petition Area and no Native Hawaiian cultural resources have been identified on the Petition Area. There have also been no kuleana claims of prior ownership of land within the Petition Area.

73. The Commission previously found that SunEdison's proposed solar farm would not significantly impair any valued cultural resources. Because no new cultural resources or practices have been identified since then, WSP's solar farm, which is proposed to be located on the land that was previously part of SunEdison's Phase 2 site, will not adversely impact any protected traditional and customary practices or resources.

Flora and Fauna

74. AECOS, Inc., conducted botanical, avian, and mammalian surveys of the WSP Site in March 2019.

75. The WSP Site does not contain waters that would be considered jurisdictional under the Clean Water Act. There are no perennial or intermittent streams present. In addition, the National Wetlands Inventory Wetlands Mapper identifies no wetlands or streams in the area, and no hydrology or vegetation indicative of wetlands were observed during the survey.

76. None of the plant species found within the WSP Site are considered important from a natural resource perspective. In addition, none of the species found are currently protected or proposed for protection, under either the Federal or the State endangered species programs. Neither the Petition Area nor the WSP Site are designated as critical habitat by the U. S. Fish and Wildlife Service.

77. Four terrestrial mammalian species were detected in the vicinity of the WSP Site; all four are alien to the Hawaiian Islands and pose a threat to native wildlife.

78. During the avian survey, a total of 23 bird species were observed. Of these 23 species, only the migratory Pacific Golden Plover is indigenous. It is not listed as an endangered or threatened species. The remaining 22 species are alien to the Hawaiian Islands. No seabirds were detected during the survey; however, it is possible that the endangered Hawaiian Petrel and the threatened Newell's Shearwater overfly the WSP Site between April and the middle of December each year in very small numbers. It is recommended that if nighttime construction activity or equipment maintenance is conducted, all associated lighting be shielded to avoid disorientation by the birds during fledging season. If large work lights are used, they should be placed on poles that are high enough to allow the lights to be pointed directly towards the ground. If exterior facility lighting is installed, it is further recommended that the lights be manual, timed, or motion sensor configured and downward shielded to reduce the potential for causing interactions between nocturnally flying seabirds and man-made structures.

79. The Hawaiian hoary bat was not detected during the survey, although it is possible that the bat overflies the WSP Site on a seasonal basis. While no

impacts are anticipated during the operation of the solar farm, the clearing and grubbing phase presents the most potential for impacts. The removal of taller vegetation may temporarily displace individual bats that use trees for roosting. It is recommended that avoidance measures consisting of limiting clearing to woody vegetation no taller than 15 feet during the bat pupping season (June 1 to September 15) be implemented.

80. WSP represents that it will comply with the consultant's recommendations to protect any endangered and threatened species that may overfly and/or roost on the WSP Site throughout the development and operation of the solar farm.

Groundwater Resources

81. The State of Hawai'i Department of Health ("DOH") reviewed the solar farm proposal and determined that it should have minimal or no impact on groundwater. However, the DOH also indicated that the Waiawa Shaft ZOC is more susceptible to contamination than traditional wells and required that Clearway install and operate the proposed solar farm within the Waiawa Shaft ZOC with sufficient mitigation measures that will prevent the introduction of contamination to the source water shaft. The DOH further required that Clearway obtain approval of the proposed

contamination mitigation measures from the owner of the Waiawa Shaft and continue consultation with the DOH, Safe Drinking Water Branch.

82. The U.S. Navy (“Navy”) has a well in the Waiawa area that is planned for future development by KS. The Navy expressed concern about the potential contamination of the well from development on the Petition Area and the use of pesticides and herbicides. The Navy is dependent on the Pearl Harbor Aquifer to provide drinking water for the Installation and requested that it be notified in regard to future improvements for the area.

83. WSP represents that it will comply with the mitigative measures to prevent the introduction of contamination to the ZOC, as approved by the DOH and the Navy, throughout the development and operation of the solar farm.

Visual Resources

84. Visual impacts from the solar farm are anticipated to be minimal. WSP will be required to obtain a Conditional Use Permit (“CUP”) - Minor from the DPP prior to constructing the development. The CUP - Minor will require that WSP submit a landscape plan to the DPP.

85. Capitol Airspace Group prepared a Glint & Glare Analysis to evaluate the solar farm’s potential to impact (1) federally funded airports (i.e., the Daniel K. Inouye International Airport and the Wheeler Army Airfield) and their air

traffic control towers within a seven mile radius of the development; (2) residents along eight routes with an estimated single-story viewing height eight feet or a second story viewing height of 16 feet within areas near the Petition Area; and (3) vehicles along eight routes near the Petition Area with an estimated viewing height of four feet and large trucks with an estimated viewing height of eight feet. Capitol Airspace Group applied the Federal Aviation Administration's ("FAA") guidelines for the aviation and non-aviation aspects of the study as there are no non-aviation guidelines for glint and glare. No glare from the solar farm is anticipated to impact the airports or air traffic control towers within the study area. In addition, no glare from the development is expected to impact residents or vehicular traffic along the eight routes studied.

86. In the event glint or glare from the PV array creates a hazardous condition for pilots, KS is required to cause the solar farm facility operator to be prepared to immediately mitigate the hazard upon notification by the State of Hawai'i Department of Transportation ("DOT"), Airports Division, or the FAA. WSP represents that it will comply and mitigate any such hazard throughout the development and operation of the solar farm.

IMPACTS TO THE ENVIRONMENT

Noise

87. The construction of the solar farm will generate short-term noise impacts. KS represents that all construction will comply with the regulations for community noise control under HAR chapter 11-46. Given the remote location of the site, any impacts are expected to be minimal. Noise permits will be obtained from the DOH if necessary. During operation of the solar farm, noise impacts are projected to be minimal. The motors used in the racking system are small and will not generate noise that exceeds acceptable noise levels specified in HAR chapter 11-46. In addition, the solar farm will not include any mechanical or motorized equipment that will generate noise. While there may be corona noise from the electrical equipment and battery energy storage system, it is expected that such noise will be within acceptable levels. Vehicular noise from maintenance staff is also expected to be minimal during the operation and maintenance of the equipment.

Air Quality

88. The construction of the solar farm is expected to generate short-term air quality impacts from the exhaust of vehicles and fugitive dust from construction activity. KS represents that construction activities will comply with the regulations for fugitive dust control in HAR section 11-60.1. Temporary Best

Management Practices (“BMPs”), such as dust fences, windbreaks, and watering of disturbed areas, will be used to mitigate impacts from fugitive dust during construction. BMPs will be identified and included on the erosion and sediment control plans that are required for both City and State grading and erosion control permit approvals.

89. The operation of the solar farm is not anticipated to generate direct air emissions. Operation and maintenance activities may result in temporary fugitive dust or tailpipe emissions from vehicles and landscape maintenance, but these impacts are expected to be minimal.

Radio Frequency Interference

90. PV systems can emit radio frequency interference (“RFI”) to aviation dedicated radio signals, disrupting the reliability of air-to-ground communications. In such an event, the solar farm operator must be prepared to immediately mitigate the hazard upon notification by the DOT, Airports Division, or the FAA. WSP represents that it will comply and mitigate any such hazard throughout the development and operation of the solar farm.

IMPACTS TO INFRASTRUCTURE

Traffic

91. Fehr & Peers prepared a Construction Traffic Assessment (“CTA”) for the solar farm. The construction of the solar farm during its estimated 12-month construction period is expected to generate approximately 300 daily vehicle trips. It is estimated that the maximum required labor force to construct the solar farm is 175 workers, with peak onsite employment occurring for the five to six months in the middle of the construction period when the foundations modules, and inverters are installed. During the majority of the construction period, it is anticipated that a maximum average of 100 workers will be present on the WSP Site. During grading, the number of workers is expected to be less. Construction workers are anticipated to be on the WSP Site between 6:00 a.m. and 5:00 p.m., Monday through Saturday. At the height of construction, approximately 20 heavy haul trucks, 30 work trucks, and 100 worker personal vehicles are forecasted to be onsite.

92. The solar farm is expected to generate a minimal amount of vehicle traffic during its operational period. A maximum of five employees onsite are anticipated at any given time during operations. There will be no permanent employees onsite.

93. As part of the CTA, four intersections near the Petition Area were evaluated: (1) Ka Uka Boulevard/H-2 Southbound Off-Ramp; (2) Ka Uka Boulevard/H-2 Southbound On-Ramp; (3) Ka Uka Boulevard/H-2 Northbound Off-Ramp; and (4) Kamehameha Highway/Waihona Street. These four intersections currently operate and Level of Service (“LOS”) D or better during the AM and PM peak hours, with the exception of the Kamehameha Highway/Waihona Street intersection, which operates at LOS F during the PM peak hours. During the construction period for the solar farm, the Ka Uka Boulevard/H-2 Northbound Off-Ramp intersection is expected to operate at LOS E during the PM peak hours. Based on these projected impacts, the consultant recommended that at least one of three measures be incorporated into WSP’s construction traffic management plan: (1) adjust work schedule shifts slightly so that worker trips are reduced during the PM peak hour; (2) encourage more carpooling among the workers; and (3) implement an employee shuttle service to bring workers to/from an offsite location.

94. The CTA also looked at potential impacts to access roads leading to the Petition Area during the construction period. These access roads include Mililani Cemetery Road and the Waiawa Prison Road. Measures to reduce potential conflict with opposing traffic that should be incorporated into the construction management plan include: (1) signage between the Ka Uka Boulevard interchange and the Petition

Area driveway on Waiawa Prison Road that trucks are traveling and entering/exiting the roadway; (2) provision of adequate sight distance for drivers on Waiawa Prison Road approaching and departing the Petition Area driveway; (3) if needed, coordination with the City to remove vegetation in the public right-of-way that might impede large construction vehicles on both access roads; (4) manual traffic control on Waiawa Prison Road to manage construction and prison traffic and to minimize conflicts; and (5) maintenance of access to the Waiawa Correctional Facility.

95. WSP represents that it will comply with the recommendations of the CTA throughout the development and operation of the solar farm.

Drainage

96. At the WSP Site, existing runoff exhibits sheet flow or shallow concentrated flow into swales that discharge to adjacent downstream areas. The proposed solar farm is not anticipated to alter existing drainage patterns. Earthwork during construction of the solar farm will be restricted to leveling for access driveways, equipment pads, substation and battery storage, and for smoothing of contours for the installation of the PV racks. Impervious areas will be distributed evenly through the site and limited to approximately three acres, with the area planned for the substation and BESS having a concentration of such surfaces. There will not be a significant pre-development to post-development increase in stormwater flows from the development

of the solar farm. Any increase of stormwater will be detained within the site.

Diversion channels, if required, will be constructed along with check dams, drop structures, or other velocity reducing controls prior to discharge back into the natural drainage features. Drainage channels with velocity reduction controls will also be constructed. Stormwater will be directed away from equipment pads and other structures to reduce erosion.

97. Temporary BMPs will be implemented during construction to minimize soil loss and erosion hazards. These BMPs may include, but are not limited to, the use of natural vegetation, minimizing areas of clearing and grubbing, temporary soil stabilization with grass and/or mulch, silt fences/fiber filtration tubes, and sediment traps.

98. Permanent erosion control BMPs will be implemented to close out the grading and erosion control permits. Such BMPs include final stabilization of exposed soils through landscaping or installation of impervious services such as pavement or buildings.

Electrical Utilities

99. WSP's solar farm is anticipated to provide approximately \$237,336,050 in total savings to ratepayers (net present value). The average cost for residential electricity on O`ahu as of 2017 is 28.22 cents per kilowatt hour ("kWh"), and

HECO's current avoided cost of power from primary fossil fuel baseload generation is 12.52 cents per kWh (as of June 2019 Schedule Q Rates published by HECO). That average cost for residential electricity is more than double the national average of 12.47 cents per kWh (as of February 28, 2019). However, the average cost of the solar power to be sold to HECO from WSP is substantially less at 9.5 cents per kWh, which will result in significance savings to O`ahu ratepayers.

100. WSP will not inhibit or restrict HECO's ability to accept PV power from individual homes and businesses that also wish to use solar energy. Residential and commercial PV systems connect to the HECO grid at a distribution level of 12kV. In contrast, utility scale solar power, connects to the grid at a sub-transmission level at 46kV. The 46kV connection is the same as what HECO uses to bring power from its existing fossil fuel power plants.

101. The proposed solar farm includes 144 MWh of battery storage, which will allow the solar farm to store energy produced during the daytime peak solar energy production across the grid and discharge that solar energy during the evening. This will further alleviate any congestion caused by having too much total solar being put onto the grid during the daytime peak production. If at some point in the future the total amount of solar energy generated from residential, commercial, and utility scale systems exceeds what can be absorbed by the HECO grid, the utility scale projects will

be temporarily curtailed. The utility scale sources will be made to stop generating power, while the residential and commercial PV systems will be allowed to continue generating power. Unlike utility scale power, which can be curtailed, there is currently no mechanism that allows HECO to curtail the amount of power produced by individual residences or businesses.

CONFORMANCE WITH THE GOALS, OBJECTIVES, AND POLICIES OF THE HAWAII STATE PLAN

102. The use of the WSP Site for solar farm development is consistent with the applicable goals, objectives policies, and priority guidelines of the Hawai'i State Plan under Hawai'i Revised Statutes ("HRS") chapter 226. Specifically, the solar farm is consistent with the following: HRS § 226-18, Objectives and Policies for Facility Systems – Energy and Hawai'i State Plan Priority Guidelines: HRS § 226-103 – Economic Priority Guidelines.

CONFORMANCE WITH THE COASTAL ZONE MANAGEMENT PROGRAM

103. The interim use of the WSP Site as a solar farm conforms with the objectives and policies of the Coastal Zone Management program under HRS chapter 205A.

CONFORMANCE WITH STATE'S RENEWABLE ENERGY POLICY

104. On June 8, 2015, Governor Ige signed HB623 HD2 SD2 CD1 into law (Act 097), committing the State's utilities to generate 100 percent electricity from

renewable energy resources by 2045. WSP's proposed solar farm will help to achieve the State's energy goals of 100 percent renewable energy by 2045.

CONFORMANCE WITH THE CITY AND COUNTY OF HONOLULU'S
ORDINANCES AND RULES

105. The City and County of Honolulu zoning designation of the WSP Site is AG-1 Restricted Agriculture. A solar farm is a "utility installation" as defined under the Honolulu Land Use Ordinance, Revised Ordinances of Honolulu, Chapter 21 ("LUO"). Under Sec. 21-10.1 of the LUO, a "utility installation" is defined as "uses or structures, including all facilities, devices, equipment, or transmission lines, used directly in the distribution of utility services, such as water, gas, electricity, telecommunications other than broadcasting antennas, and refuse collection other than facilities included under waste disposal and processing." Utility installations also include accessory uses and structures directly associated with the distribution of the utility service.

106. Type A and Type B utility installations are permitted uses in all zoning districts in Honolulu. The difference is that a CUP - Minor is required for a Type B utility installation. WSP's solar farm will be required to obtain a CUP - Minor to allow construction on lands zoned as AG-1 Restricted Agricultural. In addition, other construction site permits, including but not limited to grading, grubbing, stockpiling, and building permits will be required.

RULINGS ON PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Any proposed findings of fact not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

1. Pursuant to HAR § 15-15-70(a), any party may make a motion before, during, or after the close of a hearing.
2. Pursuant to HAR § 15-15-94(a), if a petitioner desires to have a modification or deletion of a condition that was imposed by the Commission, or modification of the Commission's order, the petitioner shall file a motion in accordance with HAR § 15-15-70 and serve a copy on all parties to the boundary amendment proceeding in which the condition was imposed or in which the order was issued, and to any person that may have a property interest in the subject property as recorded in the county's real property tax records at the time the motion is filed.

3. Pursuant to HAR § 15-15-94(b), for good cause shown, the Commission may act to modify or delete any of the conditions imposed or modify the Commission's order.

4. Pursuant to HRS chapter 205 and the Commission rules under HAR chapter 15-15, and upon consideration of the Commission decision-making criteria under HRS § 205-17, the Commission finds and concludes upon the clear preponderance of the evidence that the use of the WSP Site, consisting of approximately 200 acres of land situated at Waiawa and Waipi`o, `Ewa, O`ahu, Hawai`i, identified as TMK: 9-6-04: 24 (por.), as a solar farm to include all related utility and other infrastructure for a period not to exceed November 26, 2049, and subject to the conditions imposed herein, is reasonable, not violative of HRS § 205-2 and part III of HRS chapter 205, and is consistent with the policies and criteria established pursuant to HRS §§ 205-16, 205-17, and 205A-2.

5. Based upon the record and files herein and the findings set forth above, the Commission concludes that there is substantial evidence in the record to support the conditions imposed below.

6. Based upon the record and files herein and the findings set forth above, the Commission further concludes that the conditions imposed below are necessary or appropriate to protect public health, safety, and welfare, and are material

to the Commission's granting with modification of KS' Motion for Modification and Time Extension.

7. Based upon the record and files herein and the findings set forth below, the Commission further concludes that the conditions imposed below are necessary or appropriate to the Commission's granting with modification of KS' Motion for Modification and Time Extension, including but not limited to, ensuring the adherence to representations made by KS and WSP.

8. Article XII, section 7, of the Hawai'i State Constitution requires the Commission to protect Native Hawaiian traditional and customary rights. The State of Hawai'i reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. The State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised Native Hawaiian rights to the extent feasible. *Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission*, 79 Hawai'i 425, 903, P.2d 1246, *certiorari denied*, 517 U.S. 1163, 116 S.Ct. 1559, 134 L.Ed.2d 660 (1996).

9. The Commission is empowered to preserve and protect customary and traditional rights of Native Hawaiians. *Ka Pa`akai O Ka `Aina v. Land Use Commission*, 94 Hawai`i 31, 7 P.3d 1068 (2000).

10. Article XI, section 1, of the Hawai`i State Constitution requires the State to conserve and protect Hawai`i's natural beauty and all natural resources, including land, water, air minerals, and energy sources, and to promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

11. Article XI, section 1, of the Hawai`i State Constitution further states that all public natural resources are held in trust by the State for the public benefit. Government bodies are precluded from authorizing a proposed use that will impact the public trust in the absence of an affirmative showing that the use does not conflict with public trust principles and purposes." *Kaua`i Springs v. Planning Comm'n of the Cnty. of Kaua`i*, 2014 WL 812683 (Haw. Feb. 28, 2014).

12. Article XI, section 3, of the Hawai`i State Constitution requires the State to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and assure the availability of agriculturally suitable lands.

13. The WSP Site is not classified as Important Agricultural Land under Part III of HRS chapter 205.

14. Article XI, section 7, of the Hawai`i State Constitution states that the State has an obligation to protect, control, and regulate the use of Hawai`i's water resources for the benefit of its people.

15. The Commission concludes that it has observed and complied with its duties arising under Article XI, section 1; Article XI, section 3; Article XI, section 7; and Article XII, section 7, of the Hawai`i State Constitution.

DECISION AND ORDER

The Commission, having duly considered KS' Motion for Modification and Time Extension, the oral and written arguments of the parties in the proceeding, and a motion having been made and seconded at a meeting on January 9, 2020, in Honolulu, 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 that KS' Motion for Modification and Time Extension is GRANTED WITH MODIFICATION.

Accordingly, the Order Granting Motion for Order Amending D&O filed on November 26, 2014, is modified to permit WSP to use the WSP Site, consisting of approximately 200 acres of land situated at Waiawa and Waipi`o, `Ewa, O`ahu,

Hawai`i, identified as TMK: 9-6-04: 24 (por.), and shown approximately on Exhibit "A" Docket No. A87-610 Tom Gentry and Gentry-Pacific, Ltd.

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attached hereto and incorporated by reference herein, for a solar farm to include all related utility and other infrastructure for an interim period not to exceed November 26, 2049.

Based upon the findings of fact and conclusions of law stated herein, it is hereby determined that the use of the WSP Site for a solar farm will not significantly affect or impair the preservation or maintenance of natural systems and habitats or the valued cultural, historical, agricultural, and natural resources of the area.

IT IS ALSO ORDERED that the use of the WSP Site for a solar farm shall be subject to the following conditions which shall replace all other conditions imposed relative to SunEdison's former Phase 2 site in the Order Granting Motion for Order Amending D&O filed on November 26, 2014:

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 Hawai'i. 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, 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.

IT IS FURTHER ORDERED that SunEdison's former Phase 1 site shall continue to be subject to the conditions imposed in the Order Granting Motion for Order Amending D&O filed on November 26, 2014.

IT IS ALSO FURTHER ORDERED that the above conditions shall be in addition to the conditions imposed under the Findings of Fact, Conclusions of Law and Decision and Order filed on May 17, 1988, as amended by Order filed on November 30, 1990, which are hereby reaffirmed and shall continue in full force and effect.

ADOPTION OF ORDER


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

Done at Honolulu, Hawai'i, this 11th day of February, 2020, per motion on January 9, 2020.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAII


Deputy Attorney General

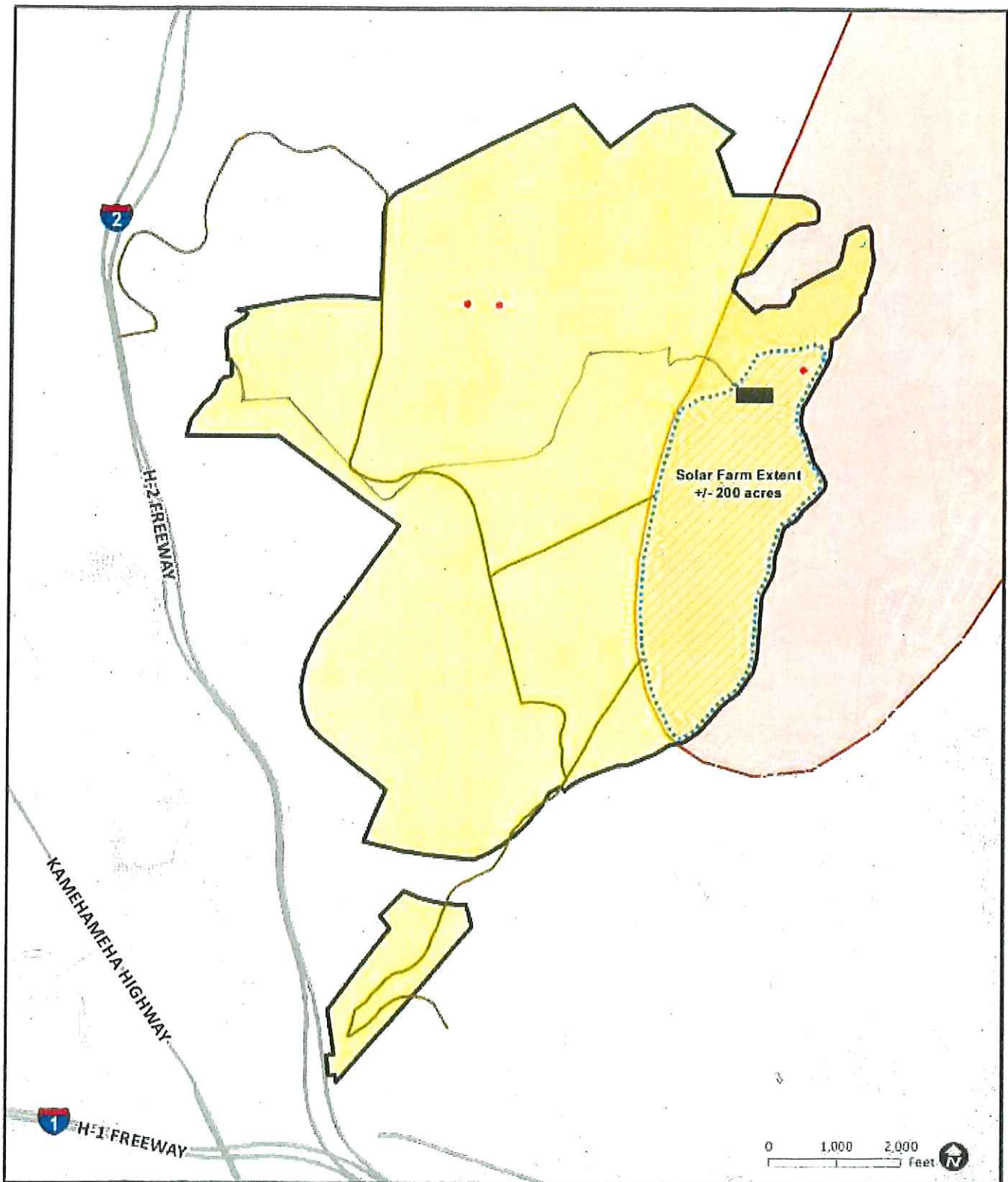
By 
JONATHAN LIKEKE SCHEUER
Chairperson and Commissioner

Filed and effective on:

2/ 11/2020








Certified by:

DANIEL ORODENKER
Executive Officer



WAIAWA SOLAR POWER, LLC CONCEPTUAL SITE PLAN

Legend

- | | |
|--|---|
|  Solar Farm Extent, ~200 acres |  Hydrologic Zone of Contribution (ZoC) |
|  Utility Improvements Area (~ 2.5 acres) |  Archaeological Preservation Area |
|  KS Waiawa Property (SLUD- Urban, Docket A87-610) |  Gen-Tie Alignment |
| |  Access Route |



BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of

TOM GENTRY AND GENTRY-PACIFIC,
LTD.

To Amend The Agricultural Land Use
District Boundary Into The Urban Land
Use District For Approximately 1,395
Acres At Waiawa, `Ewa, O`ahu, State Of
Hawaii`i, Tax Map Key Nos.: 9-4-06:
Portion Of 26; 9-6-04: Portion of 1 And
Portion Of 16; And 9-6-05: Portion Of 1,
Portion Of 7 And Portion Of 14

DOCKET NO. A87-610

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER GRANTING WITH MODIFICATION MOTION FOR MODIFICATION AND TIME EXTENSION; EXHIBIT A 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:

Regular CITY& COUNTY OF HONOLULU
DEPARTMENT OF PLANNING & PERMITTING
650 South King Street
Honolulu, Hawaii 96813
Attention: Acting Director Kathy Sokugawa

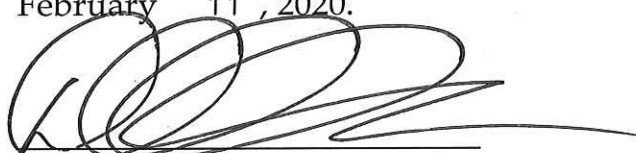
Regular STATE OF HAWAII
OFFICE OF PLANNING
P.O. Box 2359
Honolulu, Hawaii 96804-2359
Attention: Mary Alice Evans

Certified JENNIFER LIM, Esq.
Carlsmith Ball
1001 Bishop Street, Suite 2100
Honolulu, Hawaii 96813

Regular Paul S. Aoki, Esq.
Acting Corporation Counsel
City & County of Honolulu
530 South King Street
Honolulu, Hawaii 96813

Regular Deputy Attorney General- Dawn Takeuchi-Apuna
Hale Auhau
425 Queen Street
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii,
February 11, 2020.

A handwritten signature in black ink, appearing to read 'D. Rodenker', with a long horizontal flourish extending to the right.

DANIEL RODENKER

Executive Officer