

CARLSMITH BALL LLP

JENNIFER A. LIM 8357  
PUANANIONAONA THOENE 100005  
DEREK B. SIMON 10612  
ASB TOWER  
1001 Bishop Street, Suite 2100  
Honolulu, Hawai'i 96813  
Tel No. 808.523.2500  
Fax No. 808.523.0842  
Jlim@carlsmith.com  
Pthoene@carlsmith.com  
Dsimon@carlsmith.com

Attorneys for Successor Petitioner  
**KAMEHAMEHA SCHOOLS**

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

**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

MEMORANDUM IN SUPPORT OF MOTION

**MEMORANDUM IN SUPPORT OF MOTION**

**I. INTRODUCTION.**

The State of Hawai'i Land Use Commission ("Commission") reclassified approximately 1,395 acres of land situate at Waiawa, 'Ewa, O'ahu (the "**Petition Area**"), from the State Land Use ("**SLU**") Agricultural District to the Urban District, subject to ten conditions of approval under its *Findings of Fact, Conclusions of Law and Decision and Order* filed May 17, 1988 (the

“**1988 Order**”; as amended in 1990,<sup>1</sup> the “**Waiawa Order**”). The Petition Area is owned by the Estate of Bernice Pauahi Bishop, dba Kamehameha Schools (“**KS**”). The current Tax Map Key (“**TMK**”) designations for the Petition Area are: (1) 9-4-006:034, 035, 036, 037 (por.); 9-6-004:024 (por.), 025, 026; 9-6-005:003 (por.), as depicted on **KS Exhibit 1**.<sup>2</sup> KS Exhibit 1 also shows the SLU Districts for the Petition Area and surrounding lands.

In 2014, the Commission approved two specific areas within the Petition Area to be used for two utility-scale solar farm projects: (1) the Phase 1 Site, consisting of approximately 387 acres in the northwestern portion of the Petition Area; and (2) the Phase 2 Site, consisting of approximately 268 acres in the eastern portion of the Petition Area, as depicted on Exhibit A of the Commission’s *Order Granting Motion for Order Amending Findings of Fact, Conclusions of Law and Decision and Order Dated May 17, 1988*, filed November 26, 2014 (“**2014 Order**”). Under the 2014 Order, the Commission concluded “upon the clear preponderance of the evidence that the development and operation of the solar farm is consistent with the prior conditions of approval imposed under the Waiawa Order.” 2014 Order at 57, ¶2. The 2014 Order authorized the Phase 1 Site and the Phase 2 Site to be in solar farm uses for 35 years—*i.e.*, the projects had to be decommissioned no later than November 26, 2049.<sup>3</sup>

---

<sup>1</sup> By Order dated November 30, 1990, the Commission amended Condition No. 6 of the 1988 Order and reaffirmed all other conditions.

<sup>2</sup> At the time of the 1988 Order the Petition Area was designated by TMK Nos. (1) 9-4-006:026 (por.); 9-6-004:001 (por.), 016 (por.); 9-6-005:001 (por.), 007 (por.) and 014 (por.). *See* 1988 Order, Ex. A.

<sup>3</sup> Condition No. 8 of the 2014 Order provides:

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.

Unfortunately, shortly after the Commission granted its approval, the original solar farm developer for both projects was unable to obtain the necessary approvals from the Hawai‘i Public Utilities Commission (“PUC”) and subsequently went bankrupt. In 2020, pursuant to KS’ July 24, 2019 Motion for Modification and Time Extension, the Commission approved KS’ request for modifications to the project planned for the Phase 2 Site (“**2020 Phase 2 Project**”). *See Findings of Fact, Conclusions of Law, and Decision and Order Granting With Modification Motion for Modification And Time Extension*, filed February 11, 2020 (“**2020 Order**”). That project is now underway.

This Motion seeks approval for minor modifications to the solar farm previously approved for the Phase 1 Site (“**2014 Phase 1 Project**”), so that the Phase 1 Site can be developed as a 30 megawatt (“MW”) alternating current (AC)/60 MW direct current (DC) solar farm (“**2021 Phase 1 Project**”).<sup>4</sup>

---

<sup>4</sup> In its 2019 Motion and the related proceedings, KS informed the Commission that it anticipated approaching the Commission in the near term to seek any amendments required to the 2014 Order to support a modified solar farm on the Phase 1 Site. However, at that time KS did not have sufficient information about the changes to the solar farm proposed for the Phase 1 Site to make a formal request for an amendment to the 2014 Order. KS’ 2019 Motion (p. 7) provided, in relevant part, that:

KS has no immediate plans for the development of the Phase 1 portion of the solar farm approved under the 2014 Order. . . . Nevertheless, KS wishes to retain the entitlement to have a solar farm project developed within the previously approved Phase 1 area, and its master planning efforts incorporate both the previously approved Phase 1 area as well as the WSP Project under consideration in this Motion (which is largely within the previously approved Phase 2 area). KS previously determined that the area is suitable for solar development and that a utility scale solar farm for an interim period is consistent with KS’ desires for the KS Property. Moreover, HECO recently submitted its Round 2 RFP for PUC approval, indicating that additional PV development is desired. . . .

At this time, KS does not have sufficient information about the timing or size of the development of an additional solar farm pursuant to HECO’s Round 2 RFP. As such, KS anticipates that the future Commission approval may be required to refresh the entitlement to use the prior Phase 1 area for a future solar farm.

The 2021 Phase 1 Project will be substantially similar to the project the Commission approved in 2014, and it will remain within the same 387-acre footprint. The 2021 Phase 1 Project will include a battery energy storage system, which will allow for the energy produced during the day to be stored and dispatched to the grid at times of higher electricity demand. Moreover, the developer of the 2021 Phase 1 Project, Waiawa Phase 2 Solar, LLC (“**WP2S**”), already has a PUC-approved power purchase agreement (“**PPA**”) with Hawaiian Electric Company, Inc. (“**HECO**”). The 2021 Phase 1 Project will contribute significantly to the State’s goal of generating 100% of Hawai‘i’s electricity from renewable energy resources by 2045.

Due to the unavoidable delays faced by the initial solar farm developer, KS requests that the Commission grant extensions to the previously approved deadlines related to the Phase 1 Site. As depicted on **KS Exhibit 2**, the Phase 1 Site will be developed in two segments (“**Parcel A**” and “**Parcel B**”). For Parcel A, KS requests approval to have the solar farm decommissioned no later than December 31, 2044. For Parcel B, KS requests approval to have the solar farm decommissioned no later than December 31, 2054.

KS also requests that the Commission release two conditions imposed under the 2014 Order that have been fully satisfied, and modify eight conditions imposed under the 2014 Order to reflect updated information, as summarized in **Table 1**, *infra*.

## **II. BACKGROUND.**

### **A. The Petition Area and Original Waiawa Ridge Project.**

The Petition Area is located at Waiawa and Waipi‘o, ‘Ewa, O‘ahu, Hawai‘i. It is east of the H-2 Freeway/Ka Uka Boulevard interchange and west of Pearl City. Primary access to the Petition Area is from a driveway located on Waiawa Prison Road, which is along the northern edge of the Petition Area, with regional connections to the H-2 Freeway via Ka Uka Boulevard and Mililani Cemetery Road.

The Commission reclassified the Petition Area to the SLU Urban District in 1988, making all appropriate findings regarding consistency with the Hawai‘i State Plan, Chapter 226, Hawai‘i Revised Statutes (“**HRS**”). *See* 1988 Order at 32-33. At that time, Tom Gentry and Gentry-Pacific, LTD (together, “**Gentry**”) had a development agreement with KS and Gentry sought the reclassification. Gentry intended to develop the Petition Area as Waiawa Ridge, with up to 7,906 residential dwellings, half of which were to be retirement/leisure housing units for those 55 and older. *Id.* at 9, ¶¶29-30; 2014 Order at 3-4, ¶¶3-6, 9. Waiawa Ridge was also planned to include parks, open space, two golf courses, and approximately 110 acres of commercial and light industrial uses. 1988 Order at 11-12, ¶¶36-37.

The Petition Area was rezoned by the Honolulu City Council in 1998 and 2003.<sup>5</sup> A Petition Area map with an overlay of the current City & County of Honolulu (“**City**”) zoning is provided as **KS Exhibit 3**. The revised Central Oahu Sustainable Communities Plan was adopted on March 30, 2021 (Ord. 21-006). **KS Exhibit 4** depicts the most up to date Central O‘ahu Sustainable Communities Plan designations for the Petition Area (Residential and Low Density Apartment, Major Community Commercial Center, Industrial, and Agriculture and Preservation areas).

KS obtained full control of the Petition Area late in 2012, and in 2014 sought Commission approval for the two solar farm sites as an interim use of the Petition Area. 2014 Order at 6, ¶16. Renewable energy development is consistent with KS’ prudent approach to

---

<sup>5</sup> Ordinance 98-55 amended a portion of the Development Plan Land Use Map to support the Waiawa project. Ordinance No. 98-01, effective January 15, 1998 (as amended by Ordinance 98-69, effective December 17, 1998) rezoned 874 acres within the Petition Area from Restricted Agriculture (AG-1) to Neighborhood Business District (B1), Community Business District (B2), Low Density Apartment District (A1), Industrial-Commercial Mixed Use District (IMX1), Residential (RS) and General Preservation (P-2). Ordinance No. 03-01, effective February 12, 2003, rezoned 175.43 acres within the Petition Area from AG-1 to R-5, A-1, Medium Density Apartment District (A-2) and P-2.

managing its land resources in order to ensure the perpetual nature of the Trust, while at the same time furthering KS' educational mission and the education of thousands of learners every year. Collectively, KS' lands are used to generate 142.87 MW of renewable energy, or enough clean energy to power approximately 57,000-128,000 homes annually.

KS' campuses currently serve 6,857 students from Pre-K through grade 12, with 697 high school graduates for the 2020-2021 school year. Across the larger community, KS provides more than 45,000 learners with educational support, including 4,246 learners receiving scholarships (Pauahi Keiki Scholarship, Kipona Scholarship, No Ho'okama Scholarship), approximately 27,000 learners supported through community investments, and 11,492 active users on KS' digital learning platform, which offers more than 1,400 online digital courses. For fiscal year 2019-2020, KS' organizational spending was \$469.9 million, with \$30.2 million in scholarships, and \$34 million in community investment projects and programs.

B. The 2021 Phase 1 Project Developer, PPA, and Lease.

WP2S, developer of the 2021 Phase 1 Project, is a wholly-owned, indirect subsidiary of The AES Corporation ("AES"). AES is a publicly-traded (NYSE: AES) Fortune 500 global energy company accelerating the future of energy. AES' revenues in 2020 were \$9.7 billion, and AES owns and manages \$34 billion in total assets.

AES has three gigawatts of operating renewable projects across the United States, with another 2.6 gigawatts in the construction pipeline. AES has been helping Hawai'i transition towards a carbon-free energy future with a pipeline of solar projects across the islands totaling over 200 MW, as noted below.

<b><u>Project Name</u></b>	<b><u>Island</u></b>	<b><u>Size (MWac)</u></b>	<b><u>Status</u></b>
Lawai	Kaua‘i	20MW Solar + BESS	Operational
Kekaha	Kaua‘i	14MW Solar + BESS	Operational
Solar FIT	O‘ahu/Maui	8.8MW Solar	Operational
Waikoloa	Hawai‘i	30MW Solar + BESS	Construction
West O‘ahu	O‘ahu	12.5MW Solar + BESS	Contracted/Development
Kuihelani	Maui	60MW Solar + BESS	Contracted/Development
Waiawa Phase 2 Solar	O‘ahu	30MW Solar + BESS	Contracted/Development
Mountain View Solar	O‘ahu	7MW Solar + BESS	Contracted/Development
West Kaua‘i Energy Project	Kauai	35MW Solar + BESS / 24MW Hydroelectric	Contracted/Development

The PUC approved WP2S’s PPA with HECO in December 2020 (PUC Order No. 37516). The PPA has a term of 20 years, commencing on the required commercial operation date of October 30, 2023.

For the portion of the project proposed for Parcel A, KS is requesting Commission approval to have the solar farm decommissioned no later than December 31, 2044. That timeframe will provide approximately a year and a half for construction (depending upon the timing of the Commission’s action on this Motion), 20 years of operation under the PPA (commencing October 30, 2023), and approximately one year for decommissioning.

For the portion of the project proposed for Parcel B, KS is requesting Commission approval to have the solar farm decommissioned no later than December 31, 2054. To cover the entirety of that proposed term, WP2S will need an extension of its current PPA and/or a new PPA, to address the period after October 2043 (when the current PPA expires). WP2S has secured a lease from KS with a term covering the respective operational periods (including decommissioning) for both Parcel A and Parcel B.

**III. CONDITIONS UNDER THE 2014 ORDER AND THE 2020 ORDER, AND PROPOSED REVISIONS FOR THE 2021 PHASE 1 PROJECT.**

The Commission imposed 16 conditions under the 2014 Order. Under the 2020 Order, the Commission imposed 18 conditions that are limited to the 2020 Phase 2 Project and replaced “all other conditions imposed relative to SunEdison’s former Phase 2 site in the [2014 Order].” *See* 2020 Order at 47. **Table 1** below recites all of the conditions imposed under the 2014 and 2020 Orders. The column titled “2021 Proposed Revisions for the Phase 1 Site/2021 Phase 1 Project” provides KS’ requests for changes to the 2014 conditions as they apply to the 2021 Phase 1 Project.

With respect to Condition No. 1 under the 2014 Order, which was repeated in the 2020 Order, it required KS to “submit to the Commission a revised master plan and schedule for development for the approximately 1,395-acre Petition Area within five (5) years from the date of the Commission’s issuance of an order approving the Motion to Amend.” KS has fully satisfied Condition No. 1.

KS submitted its Revised Master Plan and Schedule for Development, with Appendices A (list of KS’ due diligence efforts), B (list of KS’ community outreach efforts), and C (KS’ master development schedule) to the Commission on October 7, 2019. The Commission agendized the Master Plan for a status report on January 9, 2020. Mr. Walter Thoemmes of KS presented the Master Plan and submitted a PowerPoint presentation articulating KS’ vision for Waiawa, and estimated timeframe for the development of its Master Plan. The solar farms are included in KS’ Master Plan. The 2021 Phase 1 Project is within Phases C and D of KS’ Master Plan, and the timing of those Master Plan phases is such that each phase of the 2021 Phase 1 Project (Parcel A and Parcel B) will be fully decommissioned before KS embarks on development in those respective areas.



**TABLE 1**

Conditions Under 2014 Order	Conditions Under 2020 Order (applicable only to the Phase 2 Site/2020 Phase 2 Project)	<b>2021 Proposed Revisions for the Phase 1 Site/2021 Phase 1 Project</b>	Rationale For Proposed Revisions
<p><b>1. Revised Master Plan.</b> Petitioner shall submit to the Commission a revised master plan and schedule for development for the approximately 1,395-acre Petition Area within five (5) years from the date of the Commission’s issuance of an order approving the Motion to Amend.</p>	<p><b>1. Revised Master Plan.</b> Petitioner shall submit to the Commission a revised master plan and schedule for development for the approximately 1,395-acre Petition Area within five (5) years from the date of the Commission’s issuance of an order approving the Motion to Amend.</p>	<p>Release Condition No. 1 of the 2014 Order. This condition has been fully satisfied.</p>	<p>Condition No. 1 of the 2014 Order was fully satisfied by KS’ submission of its Revised Master Plan and Schedule, Appendix A through C, on October 7, 2019.</p>
<p><b>2. Access to the Waiawa Correctional Facility.</b> Petitioner shall cause the solar farm operator to ensure that the construction and installation of the solar farm within the Petition Area shall not prevent roadway access to the Waiawa Correctional Facility.</p>	<p><b>2. Access to the Waiawa Correctional Facility.</b> Petitioner shall cause the solar farm facility operator to ensure that the construction and installation of the solar farm within the Petition Area shall not prevent roadway access to the Waiawa Correctional Facility.</p>	<p>No change.</p>	<p>It is assumed that Condition No. 2 of the 2014 Order would be imposed on the 2021 Phase 1 Project.</p>
<p><b>3. Previously Unidentified Burials and Archaeological /Historic Sites.</b> 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</p>	<p><b>3. Previously Unidentified Burials and Archaeological /Historic Sites.</b> 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</p>	<p>Modify Condition No. 3 of the 2014 Order to reflect the completion of the required supplemental AIS. Retain paragraph two as an ongoing obligation.  <del>A supplemental AIS for the entire</del></p>	<p>It is assumed that this condition, modified as proposed, would be imposed on the 2021 Phase 1 Project and would replace Condition No. 3 of the 2014 Order.  An Archaeological Inventory Survey of 1,395 Acres of</p>

**TABLE 1**

Conditions Under 2014 Order	Conditions Under 2020 Order (applicable only to the Phase 2 Site/2020 Phase 2 Project)	2021 Proposed Revisions for the Phase 1 Site/2021 Phase 1 Project	Rationale For Proposed Revisions
<p>is implemented as needed. The supplemental AIS shall be submitted to the SHPD and accepted prior to the start of construction.</p> <p>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, Oahu 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</p>	<p>is implemented as needed. The supplemental AIS shall be submitted to the SHPD and accepted prior to the start of construction.</p> <p>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, Oahu 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</p>	<p><del>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.</del></p> <p><i>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, Oahu 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,</i></p>	<p>Kamehameha Schools' Lands was prepared by TCP Hawaii LLC in 2015.</p> <p>SHPD accepted that AIS by letter dated April 24, 2015, Log Number 2014.04229 DOC NO: 1504GC15.</p>

**TABLE 1**

Conditions Under 2014 Order	Conditions Under 2020 Order (applicable only to the Phase 2 Site/2020 Phase 2 Project)	<b>2021 Proposed Revisions for the Phase 1 Site/2021 Phase 1 Project</b>	Rationale For Proposed Revisions
<p>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.</p>	<p>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.</p>	<p><i>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.</i></p>	
<p>4. <b>Aircraft Hazard.</b> 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.</p>	<p>4. <b>Aircraft Hazard.</b> 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</p>	<p>Minor modification to conform to the language in Condition No. 4 of the 2020 Order (<i>i.e.</i>, to add paragraph 2).  <i>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.</i></p>	<p>It is assumed that Condition No. 4 of the 2014 Order would be modified to include the language that was added to Condition No. 4 under the 2020 Order.</p>

**TABLE 1**

Conditions Under 2014 Order	Conditions Under 2020 Order (applicable only to the Phase 2 Site/2020 Phase 2 Project)	<b>2021 Proposed Revisions for the Phase 1 Site/2021 Phase 1 Project</b>	Rationale For Proposed Revisions
	operator to be prepared to immediately mitigate the hazard upon notification by the DOT, Airports Division, or the FAA.	<i>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.</i>	
<p><b>5. Traffic Impacts.</b> 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 &amp; Peers Traffic Assessment.</p> <p>b. Phase 2. Petitioner shall cause</p>	<p><b>5. Traffic Impacts.</b> Petitioner shall submit a Traffic construction management plan for review and acceptance by the DOT prior to the start of construction.</p>	<p>Modify Condition No. 5 of the 2014 Order and replace with Condition No. 5 from the 2020 Order.</p> <p><i><del>a. Phase 1. Prior to the start of construction, of Phase 1 of the solar project, Petitioner shall submit a Traffic construction management plan for review and acceptance by the DOT cause the solar farm operator to address any comments that may be made by the DOT regarding the August 1, 2014, “Construction Traffic</del></i></p>	<p>It is assumed that this condition, as modified under the 2020 Order, would be imposed on the 2021 Phase 1 Project.</p>

**TABLE 1**

Conditions Under 2014 Order	Conditions Under 2020 Order (applicable only to the Phase 2 Site/2020 Phase 2 Project)	2021 Proposed Revisions for the Phase 1 Site/2021 Phase 1 Project	Rationale For Proposed Revisions
<p>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.</p>		<p><i>Assessment for the Proposed Waiawa Solar Farm” that was prepared for the solar farm project, and to implement the mitigations recommended in the Fehr &amp; Peers Traffic Assessment.</i>  <i>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.</i></p>	
<p><b>6. Development Schedule.</b> 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.</p>	<p><b>6. Development Schedule.</b> The solar farm shall be substantially completed within five (5) years from the date of the Commission’s issuance of this Decision and Order.</p>	<p>Modify Condition No. 6 of the 2014 Order and replace with Condition No. 6 from the 2020 Order.</p> <p><i>Phase 1 of the solar farm shall be substantially completed within five (5) years from the date of the Commission’s issuance of this Decision and Order an order approving the Motion to Amend. Phase 2 of the solar farm shall be</i></p>	<p>It is assumed that this condition, as modified under the 2020 Order, would be imposed on the 2021 Phase 1 Project.</p>

**TABLE 1**

Conditions Under 2014 Order	Conditions Under 2020 Order (applicable only to the Phase 2 Site/2020 Phase 2 Project)	<b>2021 Proposed Revisions for the Phase 1 Site/2021 Phase 1 Project</b>	Rationale For Proposed Revisions
		<i>substantially completed within ten (10) years from the date of the Commission's issuance of an order approving the Motion to Amend.</i>	
<p><b>7. Interim Use of the Petition Area.</b> 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.</p>	<p><b>7. Interim Use of the Petition Area.</b> 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.</p>	<p>Modify Condition No. 7 of the 2014 Order to substantively conform to Condition No. 7 of the 2020 Order.</p> <p><i>The interim use of the approximately 387-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.</i></p>	<p>It is assumed that this condition, as modified under the 2020 Order, would be imposed on the 2021 Phase 1 Project.</p>
<p><b>8. Timeframe of Interim Use.</b> The interim use of the Petition Area for the proposed solar farm, including any and all permitting, construction, operation, and</p>	<p><b>8. Timeframe of Interim Use.</b> The interim use of the approximately 200-acre portion of the Petition Area as shown in Petitioner's Revised Master Plan</p>	<p>Modification to Condition No. 8 of the 2014 Order to reflect the updated timelines and the two components/sub-phases of the 2021 Phase 1 Project.</p>	<p>It is assumed that this condition, as modified under the 2020 Order and updated to reflect project-specific information, would be imposed on the 2021 Phase 1 Project.</p>

**TABLE 1**

Conditions Under 2014 Order	Conditions Under 2020 Order (applicable only to the Phase 2 Site/2020 Phase 2 Project)	<b>2021 Proposed Revisions for the Phase 1 Site/2021 Phase 1 Project</b>	Rationale For Proposed Revisions
<p>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.</p>	<p>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.</p> <p>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.</p>	<p><i><del>The interim use of the <u>Petition Area Parcel A</u> for the proposed solar farm, including any and all permitting, construction, operation, and decommissioning activities associated with the solar farm, shall not exceed <u>December 31, 2044, a period of 35 years from the date of this Decision and Order</u></del> without the prior written approval of the Commission.</i></p> <p><i><u>The interim use of Parcel B for the proposed solar farm, including any and all permitting, construction, operation, and decommissioning activities associated with the solar farm, shall not exceed December 31, 2054, without the prior written approval of the Commission; provided, however, that in the event the solar farm project owner fails to secure a PUC-approved extension to the PPA, or a new PPA, within 12 months after the</u></i></p>	

**TABLE 1**

Conditions Under 2014 Order	Conditions Under 2020 Order (applicable only to the Phase 2 Site/2020 Phase 2 Project)	<b>2021 Proposed Revisions for the Phase 1 Site/2021 Phase 1 Project</b>	Rationale For Proposed Revisions
		<i>expiration of the current PPA, the project owner will immediately commence with the decommissioning of the solar farm on Parcel B and complete decommissioning within two years after the expiration of the current PPA.</i>	
N/A	<p><b>9. Waiawa Master Plan Infrastructure Deadline.</b> 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.</p>	N/A	Condition No. 9 from the 2020 Order is not applicable to the 2021 Phase 1 Project.
<p><b>9. Metes and Bounds Map and Description.</b> The proposed solar farm shall be limited to the acreage</p>	<p><b>10. Metes and Bounds Map and Description.</b> The proposed solar farm shall be limited to the acreage</p>	Release. Condition No. 9 of the 2014 Order has been fully satisfied as to the	KS fully satisfied Condition No. 9 of the 2014 Order by submission of counsel dated October 2, 2015,



**TABLE 1**

Conditions Under 2014 Order	Conditions Under 2020 Order (applicable only to the Phase 2 Site/2020 Phase 2 Project)	<b>2021 Proposed Revisions for the Phase 1 Site/2021 Phase 1 Project</b>	Rationale For Proposed Revisions
<p>and boundaries identified in Petitioner’s Phasing Plan shown in Petitioner’s Exhibit 8 Errata (filed 6/20/14).</p> <p>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.</p>	<p>and boundaries identified in Petitioner’s Revised Master Plan and Schedule for Development filed on October 7, 2019.</p> <p>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.</p>	<p>Phase 1 location.</p>	<p>which provided a map and metes and bounds description of the Phase 1 Site and Phase 2 Site.</p> <p>The proposed 2021 Phase 1 Project is within the previously identified Phase 1 Site and therefore this condition has been satisfied.</p>
<p>N/A</p>	<p><b>11. Groundwater Resource Protection.</b> 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</p>	<p>N/A</p>	<p>Condition No. 11 of the 2020 Order is not applicable to the proposed 2021 Phase 1 Project because it is not within the identified location and does not overlay the ZOC.</p> <p>No such condition was imposed upon the Phase 1 Site under the 2014 Order.</p>

**TABLE 1**

Conditions Under 2014 Order	Conditions Under 2020 Order (applicable only to the Phase 2 Site/2020 Phase 2 Project)	2021 Proposed Revisions for the Phase 1 Site/2021 Phase 1 Project	Rationale For Proposed Revisions
	farm operator dated September 30, 2019, in reference to the solar farm operator’s representations in its letter dated July 22, 2019.		
<p><b>10. Decommissioning of the Solar Farm.</b> 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.</p> <p>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</p>	<p><b>12. Decommissioning of the Solar Farm.</b> 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.</p> <p>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</p>	<p>Revision to Condition No. 10 of the 2014 Order to require decommissioning of both portions (Parcel A and Parcel B) of the 2021 Phase 1.</p> <p><i><u>The solar farm shall be decommissioned following its Both portions of the solar farm (Parcel A and Parcel B) shall be decommissioned following their respective operational timeframes. 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.</u></i></p>	<p>It is assumed that Condition No. 10 of the 2014 Order, updated with project-specific information, would be imposed upon the 2021 Phase 1 Project.</p>

**TABLE 1**

Conditions Under 2014 Order	Conditions Under 2020 Order (applicable only to the Phase 2 Site/2020 Phase 2 Project)	<b>2021 Proposed Revisions for the Phase 1 Site/2021 Phase 1 Project</b>	Rationale For Proposed Revisions
<p>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.</p>	<p>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.</p>	<p><i>Any future use of the Petition Area, including future uses of the solar farm sites following the decommissioning of the solar farms, shall be subject to the environmental review process promulgated under HRS chapter 343, as applicable. <u>Provided that if the HRS chapter 343 environmental review process is completed for the entire Petition Area, no separate or additional environmental review shall be required under this condition following the decommissioning of the solar farms.</u></i></p> <p><i>Any future use of the Petition Area, including future uses of the solar farm sites following the decommissioning of the solar farms, <del>and</del> 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</i></p>	

**TABLE 1**

Conditions Under 2014 Order	Conditions Under 2020 Order (applicable only to the Phase 2 Site/2020 Phase 2 Project)	<b>2021 Proposed Revisions for the Phase 1 Site/2021 Phase 1 Project</b>	Rationale For Proposed Revisions
		<i>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(if required by SHPD).</i>	
<p><b>11. Compliance with Representations.</b> 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</p>	<p><b>13. Compliance with Representations.</b> 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</p>	<p>Minor revision to Condition No. 11 of the 2014 Order to reflect that the 2021 Phase 1 Project is only one phase.</p> <p><i>Petitioner shall cause the solar farm operator to develop and operate <u>the 2021 Phase 1 Project</u> <del>Phase 1 and Phase 2 of the solar farm</del>, 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</i></p>	<p>Minor revision to Condition No. 11 of the 2014 Order to limit its applicability to the 2021 Phase 1 Project (in light of the fact that the 2020 Order imposed the same condition and limited its applicability to only the 2020 Phase 2 Project/Phase 2 Site).</p>

**TABLE 1**

Conditions Under 2014 Order	Conditions Under 2020 Order (applicable only to the Phase 2 Site/2020 Phase 2 Project)	<b>2021 Proposed Revisions for the Phase 1 Site/2021 Phase 1 Project</b>	Rationale For Proposed Revisions
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.	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.	<i>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.</i>	
12. <b>Notice of Change of Ownership.</b> 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.	14. <b>Notice of Change of Ownership.</b> 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.	No change.	It is assumed that Condition No. 12 of the 2014 Order would be imposed upon the 2021 Phase 1 Project.
13. <b>Annual Reports.</b> 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	15. <b>Annual Reports.</b> 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	No change.	It is assumed that Condition No. 13 of the 2014 Order would be imposed upon the 2021 Phase 1 Project.

**TABLE 1**

Conditions Under 2014 Order	Conditions Under 2020 Order (applicable only to the Phase 2 Site/2020 Phase 2 Project)	2021 Proposed Revisions for the Phase 1 Site/2021 Phase 1 Project	Rationale For Proposed Revisions
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.	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. <b>Release of Conditions.</b> 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.	16. <b>Release of Conditions.</b> 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.	No change.	It is assumed that Condition No. 14 of the 2014 Order would be imposed upon the 2021 Phase 1 Project.
15. <b>Notice of Imposition of Conditions.</b> 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	17. <b>Notice of Imposition of Conditions.</b> 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	No change.	It is assumed that Condition No. 15 of the 2014 Order would be imposed upon the 2021 Phase 1 Project.  It is noted that Condition 15 of the 2014 Order has been satisfied. Nevertheless, it is expected that a Notice of Imposition of Conditions will be recorded to address any conditions imposed upon the 2021 Phase 1 Project.

**TABLE 1**

Conditions Under 2014 Order	Conditions Under 2020 Order (applicable only to the Phase 2 Site/2020 Phase 2 Project)	<b>2021 Proposed Revisions for the Phase 1 Site/2021 Phase 1 Project</b>	Rationale For Proposed Revisions
recorded statement with the Commission.	Commission.		
<b>16. Recordation of Conditions.</b> Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to HAR section 15-15-92.	<b>18. Recordation of Conditions.</b> Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to HAR §15-15-92.	No change.	It is assumed that Condition No. 16 of the 2014 Order would be imposed upon the 2021 Phase 1 Project.  It is noted that Condition 16 of the 2014 Order has been satisfied. Nevertheless, it is expected that the conditions imposed upon the 2021 Phase 1 Project will be recorded.

**IV. DETAILS OF THE 2021 PHASE 1 PROJECT AND DIFFERENCES WITH THE 2014 PHASE 1 PROJECT.**

The 2014 Phase 1 Project was proposed within an approximately 387-acre portion of the Petition Area. 2014 Order at 15, ¶69. As depicted on KS Exhibit 2, the 2021 Phase 1 Project is being proposed within that same 387-acre footprint previously approved by the Commission, but the Phase 1 Site has been delineated into Parcel A (approximately 151 acres) and Parcel B (approximately 236 acres).

The 2014 Phase 1 Project was planned to be in place for 35 years and be fully decommissioned by November 26, 2049. *Id.* at 62 (Condition No. 8). For the 2021 Phase 1 Project, the portion within Parcel A will be decommissioned no later than December 31, 2044, and the portion within Parcel B will be decommissioned no later than December 31, 2054. This decommissioning schedule coincides with development of the KS Master Plan.

The 2014 Phase 1 Project was planned to produce 50 MW of power. *Id.* at 15, 69. The 2021 Phase 1 Project is planned to produce 30 MW alternating current (AC)/60 MW direct current (DC) of power, coupled with a 240 MW-hour battery energy storage system. The 2014 Phase 1 Project was anticipated to generate approximately 103,929 MW hours per year. *Id.* at 27, ¶137. The 2021 Phase 1 Project is anticipated to generate approximately 107,595 MW hours per year or enough energy to power approximately 18,000 homes a year. Over the term of the PPA, the 2021 Phase 1 Project is projected to avoid 2,908,097 barrels of fossil fuel and reduce greenhouse gas emissions by 1,078,948 metric tons of carbon dioxide equivalent.

The 2014 Phase 1 Project was anticipated to connect to HECO's electrical grid via existing 46 kilovolt ("kV") transmission lines that run along the H-2 Freeway, and across and within the Petition Area, although the final connection point was to be determined by HECO. *Id.* at 18, ¶91. The 2021 Phase 1 Project's substation will be located near HECO's existing Waiau-



Mililani and Wahiawa-Waimano 46 kV sub-transmission lines (along western boundary of the Petition Area) and will interconnect with the grid via two 46 kV overhead connections between the substation and the existing sub-transmission lines. *See* KS Exhibit 2 (site plan). The final location of the interconnection will be determined by HECO.

The 2014 Phase 1 Project contemplated a fixed-tilt racking system. *See* 2014 Order at 17, ¶87. The 2021 Phase 1 Project will use a single-axis tracking rack system. As with the 2014 Phase 1 Project, the modules will be mounted on pile-driven steel piers with limited concrete pads. The highest point of the panels will be approximately 15 feet above the ground. The photovoltaic modules will consist of silicon cells electrically connected inside of a glass and aluminum frame to function as a single unit, and will be either gray/black or blue in color. As with the 2014 Phase 1 Project, the 2021 Phase 1 Project will be designed in accordance with building permit structural requirements, including the requirement to withstand hurricane-type winds. *Id.* at 18, ¶88.

The 2014 Phase 1 Project was anticipated to include substation(s), possibly battery storage system(s), and pad mounted inverters and electrical equipment. *Id.* at 16-17, ¶¶80, 82. The substation(s) were anticipated to be between 15-to-20 feet in height. *Id.* at 17, ¶85. Other related improvements included access driveways, perimeter fencing, security systems, drainage, and vegetation improvements. *Id.* at 17, ¶81.

The 2021 Phase 1 Project will include similar supporting infrastructure. Within the solar array, the 2021 Phase 1 Project will include power stations that feed the power to the substation and inverters that will convert the power from direct current to alternating current. The substation will include 46 kV steel structures to hold overhead conductors, foundations for

equipment, circuit breakers, disconnect switches, fuse switches, lighting arrestors, generator step-up transformers, and two outdoor steel or CMU control cabinets.

The 2021 Phase 1 Project will be coupled with a 240 MW-hour battery energy storage system, consisting of containerized lithium-ion battery units distributed throughout the solar arrays. There will also be an operations and maintenance shed. These improvements will be approximately 12-15' tall (including their underlying concrete pad).

Similar to the 2014 Phase 1 Project, the solar arrays for the 2021 Phase 1 Project will be enclosed within a seven-foot perimeter fence, and additional fencing may be installed around the substation and interconnection facilities. *Id.* at 48, ¶252. Gates for vehicular and pedestrian access will be installed as needed. Panels may be cleaned a couple of times per year, depending on rainfall. If additional cleaning is necessary, water will be delivered by truck, unless a closer water source is later made available. Cleaning solutions and other chemicals will not be utilized in the cleaning process.

A minimal amount of grading is required to accommodate the racking system, and vegetation will remain beneath and around the racking and will be maintained by a landscaping crew. A variety of easily controlled grasses are also anticipated to be used as a vegetated ground cover. The vegetated ground cover will be maintained through mechanical means by utilizing zero-turn mowers and weed trimmers.

Construction of the 2021 Phase 1 Project is expected to take 15-18 months. Assuming timely receipt of all necessary approvals, construction is anticipated to commence in the first half of 2022, so as to be completed on time for the ultimate required commercial operations date of October 30, 2023. The 2021 Phase 1 Project is anticipated to generate approximately 150-200

direct jobs throughout its construction phase. Once completed and operational, the 2021 Phase 1 Project is estimated to require approximately four full-time employees.

**V. OTHER CONSIDERATIONS.**

**A. Traffic Impacts**

Development and operation of the 2021 Phase 1 Project will not adversely impact traffic. WP2S engaged Fehr & Peers to prepare a *Mobility Assessment for the Proposed Waiawa Phase 2 Solar Plus Storage Project (Oahu, HI)*, dated August 11, 2021 (“**Traffic Assessment**”), a copy of which is attached as **KS Exhibit 5**. The Traffic Assessment analyzed the potential for both the construction and operation of the 2021 Phase 1 Project to adversely impact traffic and alternate modes of access (e.g., bicycle and pedestrian travel, and public transit). The Traffic Assessment analyzed the potential for traffic-related impacts at three regional intersections during peak hours (a.m. and p.m.) under four different scenarios: (a) Existing Conditions;<sup>6</sup> (b) 2023 No Project Conditions; (c) 2023 Plus Project Construction Conditions; and (d) 2023 Plus Project Typical Operating Conditions.

The Traffic Assessment concluded that because the 2021 Phase 1 Project will be operated by only approximately five<sup>7</sup> employees once complete, traffic generated by its operation will be negligible with no anticipated traffic impacts. *See id.* at 11. The Traffic Assessment also concluded that given the undeveloped nature of the Petition Area and the low-density nature of the immediate surrounding area, construction and operation of the 2021 Phase 1 Project is not expected to conflict with or increase demand on any alternate modes of access. *See id.* at 13-14.

---

<sup>6</sup> Due to the impact of the COVID- 19 pandemic on traffic patterns, new traffic count data was not collected for 2020. As a result, the analysis of existing traffic conditions was based on peak hour data collected in 2019, increased by a growth factor to estimate traffic volumes for 2021 under typical travel conditions.

<sup>7</sup> Although it is anticipated that only four employees will be required to operate the 2021 Phase 1 Project, the Traffic Assessment used five employees as a conservative approach.

For construction-related traffic, the Traffic Assessment analyzed peak construction conditions with a conservatively estimated 200 workers commuting to the Petition Area. Based on a level of service (“LOS”) rating system,<sup>8</sup> the Traffic Assessment found that all three study intersections will operate at LOS D or better during peak hours. *Id.* at 11 (Table 5). Because none of the study intersections are expected to be significantly impacted by the construction and operation of the 2021 Phase 1 Project, no traffic improvements (*e.g.*, new turn or through lanes) were recommended.

During construction, to minimize any potential conflicts and maintain adequate traffic operations, the Traffic Assessment recommends implementation of a Construction Traffic Plan that includes the following:

- Provide signage between the Ka Uka Boulevard interchange and the staging area off Waiawa Prison Road that trucks are travelling and entering/exiting the roadway.
- Ensure that adequate sight distance is provided for drivers on Waiawa Prison Road approaching and departing the staging area. Measures may include traffic control signage (*e.g.*, stop or yield signs) and removal of vegetation that impede standard approach, departure, and height sight distances.
- Coordinate with the City if needed to prune or remove vegetation in the public right of way that might impede large construction vehicles on both Mililani Cemetery Road and Waiawa Prison Road.
- Provide manual traffic control on Waiawa Prison Road to manage construction and prison traffic and to minimize conflicts. This could include the use of radios, flag persons, and/or temporary signals and lighting to assist with the control of vehicles and the provision of adequate sight distance (as needed).

---

<sup>8</sup> The LOS rating system is presented in the Highway Capacity Manual published by the Transportation Research Board. The operation of roadway facilities are described with the term “level of service” or LOS, which is a qualitative description of traffic flow based on factors such as speed, travel time, delay, and freedom of maneuver. Six levels are defined, from “A”, with the least congestion, to “F”, with the most congestion. Based on studies conducted for both the City and State of Hawai‘i Department of Transportation, the minimum acceptable operating standard for a signalized intersection is LOS D. *See id.* at 10.

- Maintain access to the Waiawa Correctional Facility.

*Id.* at 12-13. WP2S has committed to implementing these mitigation measures as part of its Construction Traffic Plan for the 2021 Phase 1 Project.

B. Visual Impacts.

The 2021 Phase 1 Project will not adversely impact regional views or sightlines. WP2S commissioned Tetra Tech, Inc. (“**Tetra Tech**”) to prepare a *View Simulations* study, dated August 2021 (“**View Study**”), a copy of which is attached as **KS Exhibit 6**. The View Study analyzes the 2021 Phase 1 Project from six regional vantage points, comparing existing conditions to simulated conditions. According to the View Study, the 2021 Phase 1 Project will be visible from only three of the six vantage points. Moreover, from those three vantage points, project improvements will have a relatively low profile, buffered by existing vegetation and topography, and will be seen in the context of other man-made modifications, including the H-1 Freeway, electrical transmission lines, and similar structures. Thus, the View Study indicates that the 2021 Phase 1 Project will not materially impact any regional views or sightlines.

C. Glare Impacts.

The 2021 Phase 1 Project will not create glare or dangerous conditions for vehicular or aviation traffic. WP2S engaged Tetra Tech to prepare a *Glare Analysis Report for the Waiawa Phase 2 Plus Storage Project*, dated August 2021 (“**Glare Study**”), a copy of which is attached as **KS Exhibit 7**. The Glare Study provides three different analyses utilizing industry-standard simulation software.

The first and second analyses modeled the point of view from an average first and second-floor structure and from a typical commuter car and commercial truck, utilizing 11 representative observation points and six segmented traffic routes from representative locations near the Petition Area. *See id.* at 7. The Glare Study concludes that the representative

observation points and segmented traffic routes would experience no glare from the 2021 Phase 1 Project. *See id.* at 10.

The third analyses evaluated the potential for impacts to aviation traffic, modeling 16 final two-mile approach paths and the views from two air traffic control towers associated with the Wheeler Army Airfield, Daniel K. Inouye International Airport, and Kalaeloa Airport. *See id.* at 7. No glare is predicted along any of the two-mile approach paths or from any of the air traffic control towers. *See id.* at 11-12. Nevertheless, due to the 2021 Phase 1 Project's proximity to the studied airports, the Glare Analysis recommends that WP2S seek a "no effect" letter from the Federal Aviation Administration Obstruction Evaluation Group. *See id.* at 13. The Federal Aviation Administration Obstruction Evaluation Group issued "Determination of No Hazard to Air Navigation" letters for the 2021 Phase 1 Project on July 7, 2021.

D. Archaeological and Historic Resources.

The 2021 Phase 1 Project will not adversely impact archaeological or historical resources. In March 2015, an Archaeological Inventory Survey ("AIS")<sup>9</sup> of the entire Petition Area was prepared by Christopher Monahan, PhD, of TCP Hawai'i, LLC ("TCP") and submitted to the State of Hawai'i Department of Land and Natural Resources, State Historic Preservation Division ("SHPD"). SHPD accepted the AIS by letter dated April 24, 2015, a copy of which is provided as **KS Exhibit 8**.<sup>10</sup>

The AIS identified and recommended the preservation of some of the 25 features of State Site #50-80-09-2273 ("**Site 2273**"), an extensive system of plantation infrastructure that was

---

<sup>9</sup> *Archaeological Inventory Survey of 1,395 Acres of Kamehameha Schools' Land in Waiawa and Waipi'o Ahupua'a, Ewa District, O'ahu Island, Hawai'i* (Monahan, Sept. 2014).

<sup>10</sup> A copy of this SHPD letter approving the AIS was previously filed with the Commission as KS Exhibit 18 in the 2019 Motion proceedings.

previously used for the irrigation of commercial sugarcane. Two of these features are located within or near to the Phase 1 Site. *See* KS Exhibit 2 (Site Plan). Feature 14 is within the Phase 1 Site and consists of a cut basalt and mortar irrigation ditch; Feature 19 is adjacent to the Phase 1 Site and consists of a large dam-like retention structure.

Subsequently, in May 2015, Dr. Monahan submitted an Archaeological Preservation Plan (“APP”)<sup>11</sup> identifying preservation measures for four of the identified features of Site 2273, including Features 14 and 19. SHPD accepted the APP by letter dated September 14, 2015, a copy of which is provided as **KS Exhibit 9**.<sup>12</sup> The APP calls for the preservation of a representative (100 foot long) section of Feature 14, and the preservation of Feature 19 in its entirety. Preservation will be in the form of “avoidance and protection,” through temporary construction fencing. Long-term preservation measures entail permanent fencing with a suitable buffer around the features. *See* APP at 23-24.

WP2S has committed to implementing the temporary and permanent preservation measures for both sites. The temporary preservation fencing was installed by TCP on October 22, 2021.

E. Cultural Resources and Protection of Traditional and Customary Practices Under *Ka Pa ‘akai ‘O Ka ‘Āina v. Land Use Commission*.

In *Ka Pa ‘akai ‘O Ka ‘Āina v. Land Use Comm’n*, the Hawai‘i Supreme Court held that every state agency has a duty to preserve and protect native Hawaiian traditional and customary practices while reasonably accommodating competing private interests. 94 Hawai‘i 31, 47, 7

---

<sup>11</sup> *Archaeological Preservation Plan State Site No. 50-80-09-2273 Features 14 (portion), 19, 22 & 23 (portion) Kamehameha Schools’ Land in Waiawa Ahupua‘a, ‘Ewa District, O‘ahu Island, Hawai‘i TMK (1) 9-6-004: 024 (portion)* (Monahan, May 2015).

<sup>12</sup> A copy of the APP and SHPD’s letter approving the APP were previously filed with the Commission as KS Exhibit 19 in the 2019 Motion proceedings.

P.3d 1068, 1084 (2000). Under the *Ka Pa‘akai* framework, prior to an agency taking action that may impact native Hawaiian traditional and customary practices, the agency must make specific findings of fact and conclusions of law as to: (1) the identity and scope of “valued cultural, historical, or natural resources” in the affected area, including the extent to which traditional and customary native Hawaiian rights are exercised in the affected area; (2) “the extent to which those resources – including traditional and customary native Hawaiian rights – will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken by the [agency] to reasonably protect native Hawaiian rights if they are found to exist.” *Id.*

In June 2003, a Cultural Impact Assessment (“CIA”) for approximately 3,600 acres of KS lands, including all 1,395 acres of the Petition Area, was prepared by Cultural Surveys Hawai‘i, Inc. *See* 2014 Order at 35, ¶184. A copy of that CIA was submitted as KS Exhibit 20 in the 2014 Motion to Amend proceedings. In 2005, Aki Sinoto Consulting prepared a Cultural Resources Preservation Plan, which SHPD approved in 2007. *See* KS Exhibits 21-22 in the 2014 Motion to Amend proceedings; 2014 Order at 36, ¶¶185-87. The Cultural Resources Preservation Plan did not identify any cultural sites or practices within the Petition Area. No cultural practices or resources were or have been identified within the Petition Area. 2014 Order at 36-37, ¶¶189-191; 2020 Order at 27-28, ¶¶72-73.

To KS’ 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. Affidavit of Kamuela Cobb-Adams at 2, ¶¶4-7; 2020 Order at 27, ¶72. There have also been no kuleana claims of prior ownership of lands within the Petition Area. Affidavit of Kamuela Cobb-Adams at 2, ¶8; 2014 Order at 37, ¶192; 2020 Order at 27, ¶72.

In 2014, and again 2020, the Commission found that the proposed solar projects within



the Petition Area would not significantly impair any valued cultural resources. 2014 Order at 36, ¶191; 2020 Order at 28, ¶73. As discussed, the 2021 Phase 1 Project is substantially similar to the 2014 Phase 1 Project, and it will remain entirely within the Phase 1 Site that the Commission approved for solar farm use in 2014. Because no new cultural resources or practices have been identified, the 2021 Phase 1 Project will not adversely impact any protected traditional and customary practices or resources.

F. Biological Resources

The 2021 Phase 1 Project is not anticipated to adversely impact significant biological resources, but avoidance and minimization are nevertheless proposed. WP2S engaged Tetra Tech to prepare a *Biological Resources Survey Report*, dated August 2021 (“**Biological Survey**”), a copy of which is attached as **KS Exhibit 10**. The 497-acre study area covered by the Biological Survey is composed of the Phase 1 Site and some adjacent lands. *See id.* at 2-3. The Biological Survey consisted of a five-day field survey, review of publicly available literature and data, and a three-evening survey for pueo or Hawaiian short-eared owl. *Id.* at 7. The Biological Survey concluded that the 2021 Phase 1 Project is not anticipated to impacted biological resources. *See id.* at 20-22.

The Biological Survey found that the study area has been heavily modified by previous agricultural activities associated with sugar cultivation, which has resulted in a degraded habitat dominated by non-native plant and wildlife species. *Id.* at 10. No federally or State listed plant or animal species were observed within or in the immediate vicinity of the study area during the surveys, and no portion of the study area is designated as critical habitat. *Id.* at 10, 12, 14.

A total of 77 plant species were documented within the study area, four of which were common native plants not considered rare anywhere in the Hawaiian Islands, with the remainder being non-native species. *Id.* at 10. A total of 21 bird species, five mammals, and ten

invertebrates were observed; of those, only the golden-plover (or kōlea) and globe skimmer (a common dragon fly) are native species. *Id.* at 12-13. No pueo were observed during the evening surveys, and based on consultation with State of Hawai‘i Department of Land and Natural Resources Division of Forestry and Wildlife (“**DOFAW**”) and researchers from The Pueo Project, the Biological Survey concluded that pueo are not likely to regularly use the study area. *Id.* at 16.

Although no federally or State listed wildlife species were observed, the Biological Survey did note that several listed wildlife species have the potential to occur in or transit through the study area. As a result, the Biological Survey recommended the following mitigation measures to avoid and minimize any potential impacts:

- Plants:
  - If landscaping is installed, utilize non-invasive and native species to the extent possible.
  - Implement invasive species minimization measures to avoid unintentional introduction of new invasive species.
  - Follow applicable Rapid ‘Ōhi‘a Death decontamination protocols recommended by DOFAW and the United States Fish and Wildlife Service (“**USFWS**”).
- Wildlife:
  - Establish a wildlife education program for all construction and operational personnel.
  - Notify USFWS and DOFAW if downed listed species are observed.
  - Implement speed limits.
- Hawaiian Hoary Bat:
  - Avoid trimming or removing woody vegetation taller than 15 feet between June 1st and September 15th when juvenile bats may be roosting and not yet capable of flying.
  - Do not use barbed-wire fencing.
- Pueo:
  - Have a qualified biologist conduct pre-construction pueo surveys in areas with suitable habitat. If a pueo is observed at any time, all activities in the immediate vicinity should be stopped, the location noted, and a qualified biologist should check the area for the presence of a nest. If a ground nest or a pueo nesting on the

ground is observed, a 100-foot buffer should be established and DOFAW should be notified.

- Seabirds:
  - Restrict construction activity to daylight hours during the seabird peak fallout period (September 15 to December 15) and avoid the use of nighttime lighting. If nighttime construction cannot be avoided, construction lighting should be shielded, directed downward, and use non-white lights if safety is not compromised, and a biological monitor should be present from a half hour before sunset to a half hour after sunset to monitor for the presence of seabirds.
  - For operational on-site lighting, use fixtures that are shielded and directed downward, triggered by a motion detector, and fitted with non-white light bulbs to the extent possible. Lighting should not shine on or reflect off of the solar panels.
- Listed waterbirds:
  - Avoid creating standing water that could attract listed waterbirds.
  - If listed waterbirds are found during construction, cease all activities within 100 feet of the birds, have a qualified biologist conduct a Hawaiian waterbird nest survey, and repeat the surveys within three days of starting work and after any three day gap in construction activity. If a nest of a listed waterbird is discovered, contact USFWS and DOFAW, and establish a 100-foot buffer around any active nest.

*See id.* at 20-22. WP2S has committed to implementing these mitigation measures.

The Biological Survey also surveyed the study area to determine the presence of any water features that might be subject to regulation under the federal Clean Water Act, in accordance with the Navigable Waters Protection Rule. *See id.* at 8-10. The only potential feature identified was Panakauahi Gulch, a tributary to Waiawa Stream, which will be crossed by the 2021 Phase 1 Project's overhead interconnection lines. *Id.* at 23. As a result, a jurisdictional waters survey was subsequently conducted by AECOS, Inc. and submitted to the United States Army Corps. of Engineers ("USACE") for a formal determination. *Id.*

USACE concurred with AECOS' determination that, although Panakauahi Gulch has intermittent flow and is generally subject to regulation by USACE under the Navigable Waters Protection Rule, no authorization or permit from USACE is required because the interconnection lines will only span across the gulch and no fill will be placed below the high-water mark.

Although not anticipated, if it is determined that any aspect of the 2021 Phase 1 Project would involve discharge of dredged or fill material in the Panakauahi Gulch, or otherwise require the issuance of permits, authorization from the USACE would be obtained prior to that construction.

**VI. USE OF THE PHASE 1 SITE FOR THE 2021 PHASE 1 PROJECT IS A PERMISSIBLE USE.**

The 2021 Phase 1 Project is a permitted use within the SLU Urban District because it is allowed under the existing City zoning for the site:

Any and all uses permitted by the counties, either by ordinances or rules may be allowed within this [the SLU “U” Urban] district, subject to any conditions imposed by the commission pursuant to section 205-4(g), HRS.

Haw. Admin. R. (“**HAR**”) §15-15-24.

The City zoning designations for the site are depicted in KS Exhibit 3. The 2021 Phase 1 Project is a “utility installation” as defined under the Honolulu Land Use Ordinance, Revised Ordinances of Honolulu, Chapter 21 (“**LUO**”). Under LUO § 21-10.1, 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. *Id.*

Under the LUO, utility installations are permitted uses in all zoning districts. A Conditional Use Permit/minor (“**CUP Minor**”), granted administratively by the Director of the City and County of Honolulu Department of Planning and Permitting (“**DPP**”), is required for the 2021 Phase 1 Project. WP2S has been coordinating with DPP to obtain the CUP Minor. Accordingly, the 2020 Phase 1 Project is permitted under the LUO and therefore also allowed within the SLU Urban District. *See* HAR § 15-15-24.

**VII. THE COMMISSION'S CRITERIA AND SERVICE REQUIREMENTS FOR A MOTION TO AMEND.**

The Commission is authorized to amend the 2014 Order upon a showing of good cause under HAR § 15-15-94(b). “The term ‘good cause’ has been defined to mean ‘a substantial reason amounting in law to a legal excuse for failing to perform an act required by law.’” *Miller v. Tanaka*, 80 Hawai‘i 358, 363, 910 P.2d 129, 134 (Ct. App. 1995) (citation omitted). “‘Good cause’ also ‘depends upon [the] circumstances of [the] individual case, and [a] finding of its existence lies largely in [the] discretion of [the] officer or court to which [the] decision is committed.’” *Id.* at 363-64, 910 P.2d at 134-35 (citation omitted). “As a general rule, ‘good cause’ means a substantial reason; one that affords a legal excuse.” *State v. Estencion*, 63 Haw. 264, 267, 625 P.2d 1040, 1042 (1981) (citations omitted). As explained *infra*, good cause exists to amend the 2014 Order to allow for development of the 2021 Phase 1 Project.

A. Good Cause Shown for Amending the 2014 Order to Allow for Development of the 2021 Phase 1 Project.

The Commission has good cause to amend the 2014 Order to authorize development of the 2021 Phase 1 Project for a number of reasons, including the significant contribution to the State’s renewable energy goals, the prudent and low impact use of this portion of the Petition Area during an interim period, which will support KS’ educational mission, and the community outreach conducted in support of the 2021 Phase 1 Project.

The 2021 Phase 1 Project will contribute significantly to the State reaching its commitment of generating 100% of its electricity from renewable energy resources by 2045. The 2021 Phase 1 Project will generate enough energy to power approximately 18,000 homes a year. Additionally, over the term of the PPA, the 2021 Phase 1 Project will result in the avoidance of 2,908,097 barrels of fossil fuel and the reduction of greenhouse gas emissions by 1,078,948 metric tons of carbon dioxide equivalent (CO<sub>2</sub>e).

Consistent with KS' educational mission, WP2S is required to cooperate with KS in establishing educational programs for Hawai'i students and teachers. These programs will be designed to foster academic achievement and practical skills by working directly with students and teachers through mentorship, engagement exploration, and curriculum, with the overall goal of supporting the stewardship of the local environment through the advancement of green jobs, sustainability, and conservation.

AES engaged in significant community outreach for the 2021 Phase 1 Project. Early outreach began in May 2020, with AES distributing a project factsheet to area elected officials, including City Council Members Brandon Elefante and Ron Menor; State Senators Michelle Kidani, Clarence Nishihara, and Breene Harimoto; and State Representatives Val Okimoto, Greg Takayama, Ryan Yamane, and Roy Takumi. An initial public meeting for the project was held virtually on July 8, 2020, and AES made efforts to ensure maximum attendance. Those efforts included distributing a media release to numerous local media outlets and a meeting flyer to area elected officials and Neighborhood Boards Nos. 21 and 25, and establishing a project website.

Following the initial public meeting, AES continued with its community outreach efforts as project details were refined and studies conducted, including engaging with various labor organizations to discuss job growth in the "green economy;" presenting the project to Neighborhood Boards Nos. 21, 22, and 35; and updating local elected officials. AES has also established a relationship with the College & Career Academies of Pearl City High School, where AES' community engagement manager serves on the advisory committee for the school's Academy of Technology and Design.

B. The 2021 Phase 1 Project is Consistent with the Hawai'i State Plan.

HRS § 205-16 provides that "[n]o amendment to any land use district boundary nor any other action by the land use commission shall be adopted unless such amendment or other action

conforms to the Hawaii state plan.” The Commission already determined that development of solar farms within the Petition Area was consistent with the Hawai‘i State Plan.

Specifically, the Commission determined that use of the Petition Area for solar farm development was consistent with HRS § 226-18, objectives and policies for facility systems – energy. *See* 2014 Order at 52-54, ¶¶272-73. The Commission also determined that the use of the Petition Area for solar farm development was consistent with the State’s economic priority guidelines under HRS § 226-103 (*id.* at 54-55, ¶274), and with the priority guidelines under HRS § 226-103 for energy use and development. *Id.* at 55, ¶275.

Since the issuance of the 2014 Order, Governor David Ige has strengthened Hawai‘i’s commitment to renewable energy policies, with a focus on creating programs and incentives to increase clean energy production in the State. On June 8, 2015, Governor Ige signed Act 97 into law, committing the State’s utilities to generate 100% electricity from renewable energy resources by the year 2045. **KS Exhibit 11** (Act 97), attached hereto. The 2021 Phase 1 Project will help to achieve the State’s energy goals of 100% renewable energy by 2045.

C. Service of this Motion.

Pursuant to HAR § 15-15-94, KS must serve a copy of this Motion “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 that the motion is filed.” This Motion was properly served.

All of the parties and entities that were served with the 2014 Motion, including the Office of Planning and Sustainable Development (“**OPSD**”) and DPP, have been served with a copy of this Motion. No new and currently effective encumbrances or other property interests have been recorded against the Petition Area since the time of the 2014 Order, with the exception of the

Memorandum of Agreement to Grant Easement and Memorandum of Grant of Easement (Solar Energy), by and between KS and Waiawa Solar Power, LLC, for the Phase 2 Site.<sup>13</sup> See Affidavit of Kamuela Cobb-Adams at 2-3, ¶¶9-10; **KS Exhibit 12** (Service of Motion/Recorded Property Interest Chart). Unless otherwise instructed by the Commission, KS' subsequent filings (e.g., exhibits, briefs, etc.) will only be served upon OPSD and DPP, as required parties to these proceedings.

### **VIII. SUMMARY AND CONCLUSION.**

Based on the foregoing, HAR §§ 15-15-70, 15-15-94, testimony to be provided at the hearing on this Motion, and the records and files in this Docket, KS respectfully requests that the Commission grant this Motion and issue an order modifying the 2014 Order: (1) to allow the interim use of Parcel A for the proposed solar farm, including any and all permitting, construction, operation, and decommissioning activities associated with the solar farm, to not exceed December 31, 2044; (2) to allow the interim use of Parcel B for the proposed solar farm, including any and all permitting, construction, operation, and decommissioning activities associated with the solar farm, to not exceed December 31, 2054; and (3) to release two conditions that have been fully satisfied and modify eight conditions to reflect updated information.

*/s/ Jennifer A. Lim*

---

JENNIFER A. LIM  
PUANANIONAONA THOENE  
DEREK B. SIMON  
Attorneys for Successor Petitioner  
**KAMEHAMEHA SCHOOLS**

Dated: Honolulu, Hawai'i, December 10, 2021.

---

<sup>13</sup> Recorded in the Bureau of Conveyances of the State of Hawai'i on July 19, 2019 as Regular System Document No. A71390768.