

CARLSMITH BALL LLP

JENNIFER A. LIM 8357
Law Office of Jennifer A. Lim LLLC
2299 B Round Top Drive
Honolulu, Hawaii 96822
Tel No. 808.542.8516
JenniferLim@jenniferlimlaw.com

PUANANIONAONA P. THOENE 10005
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
PThoene@carlsmith.com
DSimon@carlsmith.com

Attorney 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

**STIPULATED PROPOSED CONDITIONS
OF APPROVAL**

STIPULATED PROPOSED CONDITIONS OF APPROVAL

It is hereby stipulated by and between Successor Petitioner LANCE KEAWE
WILHELM, ROBERT K.W.H. NOBRIGA, ELLIOT K. MILLS, and CRYSTAL KAUILANI
ROSE, as TRUSTEES OF THE ESTATE OF BERNICE PAUAHI BISHOP, dba

KAMEHAMEHA SCHOOLS (“KS”), and the State of Hawai‘i Office of Planning and Sustainable Development, by and through their legal counsel, that should the Land Use Commission of the State of Hawai‘i grant KS’ *Motion for Modification, Time Extension, and Release and Modification of Conditions*, filed December 10, 2021, the following terms and conditions are acceptable to the parties to this Stipulation.

IT IS HEREBY AGREED AND STIPULATED TO:

That the approximately 387-acre portion of the Petition Area identified as the “Phase 1 Site”, comprised of “Parcel A” consisting of approximately 151 acres, and “Parcel B” consisting of approximately 236 acres, may be used as a solar farm, inclusive of development, operations, and decommissioning, to include all related utility and other infrastructure, until December 31, 2044 for the Parcel A site, and until December 31, 2054 for the Parcel B site, subject to the conditions set forth below, which conditions are in addition to the original conditions imposed under the Commission’s *Findings of Fact, Conclusions of Law and Decision and Order* filed May 17, 1988, as amended by Commission Order dated November 30, 1990, and which conditions shall replace the conditions imposed under 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:

1. Revised Master Plan. Petitioner shall submit to the Commission a revised master plan and schedule for development for the approximately 1,395-acre Petition Area by February 11, 2025; provided, however, that this condition may be satisfied by publication of a Draft Environmental Impact Statement that addresses the Petition Area prior to February 11, 2025.
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. Petitioner shall implement, or cause the solar farm operator to implement, the Preservation Plan

approved by SHPD by letter dated September 14, 2015 within the vicinity of the Phase 1 Site prior to operation. 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, 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 Department of Transportation Airports Division or the Federal Aviation Administration. 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. Prior to the start of construction of the Phase 1 solar farm, Petitioner shall cause the solar farm operator to submit a traffic construction management plan for review and acceptance by the State Department of Transportation.
6. Development Schedule. The Phase 1 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 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, except for "compatible agricultural activities" as that term is used in section 205-4.5(a)(21)(A), HRS.
8. Timeframe of Interim Use. 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, shall not exceed December 31, 2044, without the prior written approval of the Commission. 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 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.

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 storm water/drainage and other utility system improvements, by December 31, 2030.
10. Decommissioning of the Solar Farm. 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. The decommissioning shall be in accordance with all laws and rules in effect at the time, potentially including the Department of Health Hawaii Administrative Rules Chapter 11-273.1. 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. 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.

Any future use of the Petition Area, including future uses of the solar farm sites following the decommissioning of the solar farms, 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 (if required).

11. Wildlife Protection. The Petitioner shall cause the Phase 1 solar farm operator to implement the following measures regarding landscaping vegetation and the protection of endangered Hawaiian hoary bat, Hawaiian short-eared owl, and endangered and threatened Hawaiian water bird and shorebird species at the Phase 1 Site:
 - a. If landscaping is installed as part of the solar farm project, non-invasive plants and

native plant species shall be utilized to the maximum extent practicable.

- b. Invasive species minimization measures shall be implemented to avoid the unintentional introduction or transport of new invasive species to the area. This would include utilizing on-site gravel, rock, and soil (or purchasing from a local supplier) when practicable, utilizing certified, weed-free seed mixes; and washing construction equipment and/or visually inspecting for excessive debris, plant materials, and invasive or harmful non-native species.
- c. To minimize the spread of the fungal pathogen responsible for Rapid Ohia Death (CTAHR 2020), the most recent Rapid Ohia Death decontamination protocols recommended by United States Fish and Wildlife Service (“USFWS”) and the Department of Land and Natural Resources, Division of Forestry and Wildlife (“DOFAW”) shall be implemented.
- d. No trees or shrubs greater than 15 feet tall shall be disturbed, trimmed or removed during the Hawaiian hoary bat birthing and pupping season (June 1 through September 15).
- e. Any fences that are erected as part of the Project shall not have barbed wire to prevent entanglements of the Hawaiian hoary bat.
- f. A wildlife education and observation program (WEOP) shall be implemented for all construction and regular on-site staff. Staff shall be trained to identify listed species that may be found on-site (including Hawaiian hoary bat, pueo, Hawaiian seabirds and waterbirds) and to take appropriate steps if these species are observed. If a federally or state-listed species is observed to be impacted by the project, the USFWS and DOFAW shall be notified, and a systematic post-construction monitoring program shall be developed and implemented.
- g. Construction activities shall be restricted to daylight hours as much as possible during the seabird peak fallout period (September 15-December 15) to avoid the use of nighttime lighting that could attract seabirds.
- h. Speed limits shall be established and enforced within the Phase 1 Site and along the access road to the Phase 1 Site within the Petition Area.
- i. Should nighttime construction be required during the seabird peak fallout period, a biological monitor shall be present in the construction area from approximately 0.5-hour before sunset to 0.5-hour after sunrise to watch for the presence of seabirds. Should a seabird (or other listed species) be observed and appear to be

affected by the lighting, the monitor shall notify the construction manager to reduce or turn off construction lighting until the individual(s) move out of the area.

- j. Any on-site lighting shall be fully shielded, triggered by motion detector, and fitted with light bulbs having a correlated color temperature of four thousand Kelvin or less, to the extent possible. Lighting shall also be directed away from the solar arrays to minimize the potential for reflection and shall only be used when necessary.
 - k. Construction of overhead lines shall be minimized to reduce the collision risk for seabird species.
 - l. Prior to clearing vegetation within the Phase 1 Site, pre-construction pueo surveys shall be conducted by a qualified biologist following the Pueo Project survey protocol.
 - m. If a pueo is observed in the Phase 1 Site at any time (prior to construction, during construction, or during operation), all activities in the immediate area shall stop immediately. The location of the bird should be reported to a designated representative, and a qualified biologist should check the area for the presence of a pueo nest. If a ground nest or a pueo nesting on the ground is observed at any time (prior to construction, during construction, or during operation), an approximately 100-foot buffer shall be established around the nest and marked in the field by a qualified biologist. DOFAW should be contacted immediately. If the nest is confirmed as a pueo nest, no work should occur in the buffer area until pueo nesting is complete. No vegetation clearing shall occur until pueo nesting ceases.
 - n. No rodent baiting shall take place within the Phase 1 Site to prevent secondary poisoning from toxins in pueo prey.
12. Compliance with Representations. Petitioner shall cause the solar farm operator to develop and operate the 2021 Phase 1 Project, 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.

13. 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.
14. Annual Reports. Petitioner shall timely provide without any prior notice, annual reports to the Commission, Office of Planning and Sustainable Development, and the Department of Planning and Permitting 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.
15. 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.
16. 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.

DATED: Honolulu, Hawai'i, February 25, 2022.

/s/ Derek B. Simon

JENNIFER A. LIM
PUANANIONAONA P. THOENE
DEREK B. SIMON

Attorneys for Successor Petitioner
KAMEHAMEHA SCHOOLS

DATED: Honolulu, Hawai'i, February 25, 2022.

/s/ Bryan C. Yee

HOLLY T. SHIKADA
BRYAN C. YEE

Attorneys for STATE OF HAWAI'I OFFICE
OF PLANNING AND SUSTAINABLE
DEVELOPMENT

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

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a filed copy of the foregoing document was served upon the
following by depositing the same in the U.S. Postal Service, postage prepaid, as noted:

Mary Alice Evans, Director
State of Hawai'i Office of Planning and
Sustainable Development
Leiopapa A Kamehameha Building
235 South Beretania Street, 6th Floor
Honolulu, HI 96813

Holly T. Shikada, Esq.
Attorney General
Bryan C. Yee, Esq.
Deputy Attorney General
Hale Auhau, Third Floor
425 Queen Street
Honolulu, HI 96813

Attorneys for State of Hawai'i Office of
Planning and Sustainable Development

Dean Uchida, Director
Department of Planning and Permitting
City and County of Honolulu

Frank F. Fasi Municipal Building
650 South King Street
Honolulu, HI 96813

Dana M.O. Viola, Esq.
Corporation Counsel
Brianna L. Weaver, Esq.
Deputy Corporation Counsel
Department of the Corporation Counsel
530 South King Street, Room 110
Honolulu, HI 96813

Attorneys for Department of Planning and
Permitting, City and County of Honolulu

DATED: Honolulu, Hawai‘i, February 25, 2022.

/s/ Derek B. Simon

JENNIFER A. LIM
PUANANIONAONA P. THOENE
DEREK B. SIMON

Attorneys for Successor Petitioner
KAMEHAMEHA SCHOOLS