



LAND USE COMMISSION
STATE OF HAWAII

2022 JUN 30 A 11: 36

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of
TOM GENTRY AND GENTRY-PACIFIC,
LTD.

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

DOCKET NO. A87-610

ORDER GRANTING WITH
MODIFICATION MOTION FOR
MODIFICATION, TIME EXTENSION,
AND RELEASE AND MODIFICATION
OF CONDITIONS OF ORDER DATED
NOVEMBER 26, 2014 AND
CERTIFICATE OF SERVICE

ORDER GRANTING WITH MODIFICATION MOTION FOR MODIFICATION, TIME
EXTENSION, AND RELEASE AND MODIFICATION OF CONDITIONS OF ORDER
DATED NOVEMBER 26, 2014

AND

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF
THE DOCUMENT ON FILE IN THE OFFICE OF THE STATE LAND USE
COMMISSION, HONOLULU, HAWAII.

Jun 30, 2022

DATE

by _____
DANIEL E. ORODENKER
Executive Officer



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OF THE STATE OF HAWAII

In the Matter of the Petition of

**TOM GENTRY AND GENTRY-PACIFIC,
LTD**

To Amend the Agricultural Land Use District Boundary into the Urban Land Use District for Approximately 1,395 Acres at Waiawa, Ewa, Oahu, State of Hawaii, 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

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The State of Hawai'i Land Use Commission ("LUC") reclassified the approximately 1,395 acre Petition Area (also referred to herein as the "KS Property") situate at Waiawa, 'Ewa, O'ahu into 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"). On November 30, 1990, the LUC amended Condition No. 6 of the 1988 Order and reaffirmed all other conditions. See ORDER GRANTING MOTION TO AMEND CONDITION NO. 6 OF THE DECISION AND ORDER DATED MAY 17, 1988, filed by the LUC on November 30, 1990 (the "1990 Order"). The 1988 Order and the 1990 Order are collectively herein referred to as the "Waiawa Order."

On December 10, 2021, Successor Petitioner Lance Keawe Wilhelm, Elliot K. Mills, Robert K.W.H. Nobriga, Crystal Kaulani Rose, and Jennifer Noelani Goodyear-Ka'ōpua, as

Trustees of the Estate of Bernice Pauahi Bishop, dba KAMEHAMEHA SCHOOLS¹ (“KS” or “Petitioner”), by and through its counsel, filed a Motion for Modification, Time Extension, and Release and Modification of Conditions; Memorandum in Support of Motion; Affidavit of Kamuela Cobb-Adams; Affidavit of Derek B. Simon; Exhibits 1–12 (collectively, the “2021 Motion”), together with a \$1,000.00 filing fee, pursuant to Hawai‘i Revised Statutes (“HRS”) Chapter 205, and Hawai‘i Administrative Rules (“HAR”) §§15-15-70 and 15-15-94.

The 2021 Motion sought an order modifying the November 26, 2014 Order Granting Motion for Order Amending Findings of Fact, Conclusions of Law and Decision and Order dated May 17, 1988 (the “2014 Order”). The amendments sought under the 2021 Motion are limited to the “Phase 1 Site”, consisting of approximately 387 acres in the northwestern portion of the Petition Area.

The LUC, having examined the testimony, evidence and arguments of counsel presented during the hearings, along with the pleadings filed herein, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

A. BACKGROUND

1. The background of the Waiawa Order is set forth in the LUC’s 2014 Order, and summarized here.

2. KS owned the Petition Area at the time of the 1988 Order and continues to own the Petition Area now. At the time of the reclassification proceedings, Tom Gentry and Gentry-Pacific, LTD (together, “Gentry”) had a development agreement with KS and Gentry sought the reclassification.

¹ Trustee Jennifer Noelani Goodyear-Ka‘ōpua’s appointment was effective April 25, 2022.

3. 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.

4. Gentry's plan for Waiawa Ridge included two golf courses.

5. The LUC did not impose any conditions requiring construction by a time certain or substantial commencement of the use of the land under the Waiawa Order.

6. Gentry successfully obtained rezoning of the KS Property through the Honolulu City Council from 1998 through 2003.

7. In its 2008 Annual Report to the LUC in this Docket, Gentry indicated that Waiawa Ridge Development LLC had secured construction financing for the Waiawa Ridge Project and groundbreaking was scheduled for fall 2009.

8. Satisfaction of financing conditions proved difficult in the wake of the September 2008 worldwide financial crisis, and the process of returning the KS Property to KS's sole control began shortly thereafter. KS regained full control of the Petition Area late in 2012.

9. In 2014, KS sought LUC approval to use the Petition Area on an interim basis for two utility scale solar farms.

10. Under the 2014 Order, the LUC approved two specific areas within the KS Property to be used for two utility-scale solar projects, designated as Phase 1 and Phase 2.

11. The solar areas are depicted on Exhibit A to the 2014 Order, are comprised of: (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, located over the Waiawa Shaft Zone of Contribution.

12. The LUC imposed 16 conditions under the 2014 Order, including a time condition that allowed the Phase 1 Site and the Phase 2 Site to be used on an interim basis for solar farm purposes for 35 years—*i.e.*, the two projects had to be decommissioned no later than November 26, 2049.²

13. The Hawai‘i Public Utilities Commission (“PUC”) did not approve the power purchase agreement (“PPA”) between Sun Edison (the originally proposed solar farm developer), and Hawaiian Electric Company, Inc. (“HECO”). Sun Edison later went bankrupt.

14. As to the Phase 2 Site, due to the change in circumstances with Sun Edison, KS entered into agreements with another solar farm developer, Waiawa Solar Power, LLC, a wholly owned indirect subsidiary of Clearway Energy Group LLC. KS then sought LUC approval of modifications to the 2014 Order related to the Phase 2 Site.

15. By order issued February 11, 2020, the LUC amended the 2014 Order as to the Phase 2 Site. *See* Findings of Fact, Conclusions of Law, and Decision and Order Granting with Modification Motion for Modification and Time Extension (the “2020 Order”).

16. Under the 2020 Order, the LUC reauthorized use of the Phase 2 Site, subject to 18 conditions that replaced all other conditions applicable to the Phase 2 Site under the LUC’s 2014 Order, and, modified the 2014 Order as it applied to the Phase 2 Site so that it could be developed under an updated schedule and within a reduced footprint.³

17. In the 2021 Motion, KS sought modifications to the 2014 Order as it applies to the solar farm previously approved for the Phase 1 Site, so that the Phase 1 Site can be developed as

² Condition No. 8 of the LUC’s 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.

³ Under the 2014 Order, the Phase 2 Site was identified as approximately 268-acres within the Petition Area. Under the 2020 Order, the size of the Phase 2 Site was reduced to approximately 200 acres.

a 30 megawatt (“MW”) alternating current (AC)/60 MW direct current (DC) solar farm coupled with a 240 MW-hour battery energy storage station (“BESS”) and related infrastructure, under a revised timeframe from what was authorized by the 2014 Order (“Updated Phase 1 Project”).

18. The Updated Phase 1 Project bifurcates the Phase 1 Site into Parcel A (approximately 151 acres) and Parcel B (approximately 236 acres) to allow for different decommissioning deadlines.

B. PROCEDURAL MATTERS

19. On December 10th, 2021, The Petitioner filed its 2021 Motion for Modification and Time Extension, Release and Modification of Conditions, COS, Memorandum in Support, Affidavit of Kamuela Cobb-Adams, Affidavit of Derek B. Simon, Exhibits 1-12 and Appendices A-C, and Certificate of Service.

20. In the 2021 Motion, KS also sought the release of two conditions imposed under the 2014 Order that had been fully satisfied, and modification of eight conditions imposed under the 2014 Order to reflect updated information related to partial satisfaction of conditions.

21. KS served the 2021 Motion on the State of Hawai‘i Office of Planning and Sustainable Development (“OPSD”); the Department of Planning and Permitting of the City and County of Honolulu (“DPP”), and all persons with a recorded interest in KS Property. In total, 18 individuals/entities were served with a copy of the 2021 Motion.

22. On December 15th, 2021 The Office of Planning and Sustainable Development (“OPSD”) filed a Request for Extension of Time to Respond to allow OPSD a 53-day extension in which to file its response to KS’s 2021 Motion.

23. On December 20, 2021, Jennifer A. Lim, counsel for KS, filed a letter confirming that Petitioner had no objection to the requested time extension.

24. On December 21, 2021, LUC Executive Officer, Daniel Orodener, sent a letter to OPSD counsel, and copied to Ms. Lim, Franz Kraintz of City and County of Honolulu Department of Planning and Permitting (“DPP”), Deputy Corporation Counsel Duane Pang, and Director of OPSD Mary Alice Evans granting OPSD’s request to extend its filing deadline to February 8, 2022, and stating that the LUC would like to schedule a prehearing conference via Zoom.

25. On December 22, 2021, DPP Director Dean Uchida filed a request to allow DPP a 53-day extension in which to file its response to KS’s 2021 Motion.

26. On January 19th, 2022 The LUC received a copy of The Petitioners 2021 Annual Report for County Ordinance 98-01.

27. On January 20, 2022, Jennifer A. Lim filed a Notice of Appearance of Co-Counsel, informing the LUC and the parties that she was now representing KS through her own law firm as co-counsel with Carlsmith Ball LLP.

28. On January 20, 2022, Ms. Lim filed a letter requesting confirmation that the hearing on the 2021 Motion would be held on March 23, 2022, that KS’s proposed filing date for its reply materials of February 25, 2022 was acceptable, and that no prehearing conference was required.

29. On February 8, 2022, OPSD filed its Response to the KS 2021 Motion, with OPSD Exhibits 1–3 and Certificate of Service.

30. On February 3, 2022, DPP emailed the parties its response to the KS 2021 Motion.

31. On February 10, 2022, the LUC mailed the filing and hearing schedule to the parties.

32. On February 25, 2022, KS digitally filed Petitioner's First List of Witnesses; Petitioner's First List of Exhibits; Exhibits 13, 14 parts 1 to 4, and 15-41; Declaration of Derek Simon; and Certificate of Service.

33. On February 25, 2022, OPSD and KS filed Stipulated Proposed Conditions of Approval.

34. On February 28th, 2022, The Petitioner's hard copy filing of digital material received on February 25, 2022, and corrected digital copies of the contents of the thumb drive sent via email: (a) copy of Exhibit 40 is marked (as Exhibit "40") and file-stamped; and (b) that page of Nicholas Molinari's Written Direct Testimony (Exhibit 27) were received.

35. On March 14, 2022, the LUC mailed and emailed notice for the March 23, 2022, Zoom webinar meeting and agenda to the parties, and the Statewide and O'ahu mailing and email lists.

36. Between March 21 and March 23, 2022, the LUC received written public testimony from Pacific Resource Partnership, Moss Energy, Hawaii Operating Engineers Industry Stabilization Fund, and Hawaii Regional Council of Carpenters in support of the 2021 Motion.

37. On March 23, 2022, the LUC met in Honolulu, Hawaii using the Zoom webinar platform, to consider the KS 2021 Motion. Jennifer A. Lim, Esq., Onaona P. Thoene, Esq., and Derek B. Simon, Esq. appeared on behalf of Petitioner KS. Deputy Attorney General Bryan C. Yee, Lorene Maki and Rodney Funakoshi appeared on behalf of OPSD. Deputy Corporation Counsel Brianna L. Weaver, Franz Krintz and Dina Wong appeared on behalf of DPP.

38. At the March 23, 2022, hearing, the LUC entered into evidence without objections from the parties KS's Exhibits 1 – 41, which included written direct testimony from Dana K. N. Sato and Jason Alapaki Jeremiah of KS, Nicholas Molinari of Waiawa Phase 2 Solar, LLC ("WP2S"), Lisa Kettley of Tetra Tech, Sohrab Rashid of Fehr & Peers, and Christopher

Monahan of TCP Hawai‘i, LLC. The LUC also entered into evidence without objections from the parties OPSD Exhibits 1–3.

39. The LUC heard public testimony in support of the 2021 Motion from Nathaniel Kinney on behalf of the Hawaii Regional Council of Carpenters, Pane Meatoga III, on behalf of the Hawaii Operating Engineers Industry Stabilization Fund, Christopher Delaunay on behalf of Pacific Resource Partnership, and Cameron Black of the Hawaii State Energy Office, all in support of the 2021 Motion.

40. As part of KS’s presentation on the 2021 Motion, the LUC heard from KS witnesses Dana K.N. Sato, KS director of leasing and transactions; Nick Molinari, project development manager for the AES Corporation’s solar plus storage projects throughout the State of Hawai‘i; Lisa Kettley, senior planner and project manager at Tetra Tech; and Jason Alapaki Jeremiah, KS director for natural and cultural ecosystems.

41. Witnesses Sohrab Rashid of Fehr & Peers, Sam Ley of The AES Corporation, Tom Snetsinger of Tetra Tech, Maya LeGrande of LeGrande Biological Services, and Paul Matsuda of G70 were made available to the LUC, but no questions of those witnesses were asked.

42. The LUC qualified Lisa Kettley as an expert witness in land use permitting and environmental review.

43. As it had in the proceedings that resulted in the 2014 Order and the 2020 Order, the LUC qualified Jason Alapaki Jeremiah as an expert witness in traditional and cultural resource management.

44. At the March 23, 2022 hearing, after hearing public testimony and presentation by Petitioner, the LUC continued the matter to April 14, 2022.

45. On April 4, 2022, the LUC mailed and emailed notice of its scheduled April 14, 2022, hybrid (in person and Zoom webinar) meeting and agenda to the parties, and the Statewide and O‘ahu mailing and email lists.

46. On April 7, KS filed Petitioner's Second List of Witnesses; Petitioner’s Second List of Exhibits; Exhibits 42-47; and Certificate of Service.

47. On April 8, 2022, KS filed an Amended Certificate of Service for Second List of Exhibits.

48. On April 12, 2022, DPP filed its Notice of Appearance of Counsel Brianna Weaver.

49. On April 12, 2022, the LUC received written public testimony in support of the 2021 Motion from Stanford Carr Development, LLC, and from Castle & Cooke Hawai‘i.

50. On April 14, 2022, the LUC met in Honolulu, Hawai‘i at the Airport Conference Center to further consider the KS 2021 Motion.

51. At the April 14, 2022, hearing the LUC entered into evidence without objections from the parties KS’s Exhibits 42-47, which included copies of the KS Revised Master Plan and Schedule for Development that had originally been submitted to the LUC in October 2019, a power point presentation regarding the Revised Master Plan and Schedule for Development that had been presented and submitted to the LUC in January 2020, newspaper articles published in January of 2020 reporting on KS’ presentation to the LUC of KS’ Revised Master Plan and Schedule for Development in January 2020, an updated Gantt chart, and a power point presentation showing the synergy between existing and approved solar development within the Petition Area and the proposed KS Waiawa Master Plan.

52. At the April 14, 2022, hearing the LUC heard further testimony from Mr. Jeremiah. The LUC also heard testimony from Michelle Swartman of the Commercial Real Estate Division at KS.

53. At the April 14, 2022 hearing, the LUC continued the matter to May 25, 2022.

54. On May 2, 2022, KS filed its Supplemental Memorandum in Support of its December 10, 2021 Motion for Modification, Time Extension, and Release and Modification of Conditions (of the Commission's November 26, 2014, Order Granting Order Amending Findings of Fact, Conclusions of Law and Decision and Order Dated May 17, 1988); Table 1; Certificate of Service, related to questions about substantial commencement under HRS § 205-4(g).

55. Also on May 2, 2022, KS filed Petitioner's Third List of Exhibits; Exhibits 48–57; and Certificate of Service.

56. On May 16, 2022, DPP filed a letter proposing amendments to two of the stipulated conditions presented in the Stipulated Proposed Conditions of Approval submitted by OPSD and KS.

57. On May 16, 2022, the LUC mailed and emailed notice of its scheduled May 25, 2022, hybrid (in person and Zoom webinar) meeting and agenda to the parties, and the Statewide and O'ahu mailing and email lists.

58. On May 17, 2022, DPP filed Proposed Revisions to Condition 10 and 11.

59. On May 24, 2022, OP, DPP, and KS filed a Second Stipulated Proposed Conditions of Approval ("Tri-Party Stipulation"), which replaced in its entirety the Stipulated Proposed Conditions of Approval between OPSD and KS that KS had filed with the LUC on February 25, 2022.

60. On May 25, 2022, the LUC met in Honolulu, Hawai'i at the Airport Conference Center to further consider the KS 2021 Motion.

61. At the May 25, 2022, hearing the LUC entered into evidence without objections from the parties KS's Exhibits 48–57, which included the Waiawa Order, legislative history related to the LUC's authority under HRS §205-4, excerpts from the 2021 Central O'ahu Sustainable Communities Plan, current photos of the solar development within the Phase 2 Site, and information related to HRS Chapter 343 and environmental reviews.

62. On May 25, 2022, following the completion of the parties' respective cases-in-chief, the LUC closed the evidentiary portion of the proceedings. A motion was made and seconded to grant with modifications KS's 2021 Motion and authorize the interim use of the Phase 1 Site as a solar farm, to include all related utility and other infrastructure, until December 31, 2044 as to the area within the Phase 1 Site identified as Parcel A, and until December 31, 2054 as to the area within the Phase 1 Site identified as Parcel B, and subject to the conditions imposed herein.

63. There being a vote tally of 7 ayes, 1 nay, and 1 excused, the motion carried.

64. On June 23, 2022, the LUC met in Honolulu, Hawai'i at the Leiopapa A Kamehameha building, 4th floor conference room to adopt the order for the KS 2021 Motion.

C. DESCRIPTION OF THE SUBJECT PROPERTY

65. The KS Property is located at Waiawa and Waipi'o, 'Ewa, O'ahu, Hawai'i, and is designated by Tax Map Key Nos. (1) 9-4-006:034, 035(por.), 036(por.), 037(por.); 9-6-004:024 (por.); 025, 026; 9-6-005:003 (por.). 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.

66. Elevation of the KS Property ranges from approximately 100 feet to 600 feet above sea level.

67. Based on available topographic information, the Phase 1 Site generally slopes from mauka to makai. Elevations range from 650 feet to 370 feet above mean sea level.

68. Access within the KS Property to the Phase 1 Site is largely over existing roads.

69. In the past, the Petition Area was used for sugar cane cultivation and for cattle grazing. The land has been fallow at least since 1983.

70. There is no residential community of significant size in close proximity to the KS Property.

71. The KS Property is partially surrounded by Urban District land and Agricultural District land. No Conservation District lands are adjacent to the Petition Area. The nearest Conservation District land is approximately 0.9 miles east of the KS Property.

72. The Petition Area is designated primarily for urban type uses on the Central O'ahu Sustainable Communities Plan (City Ordinance 21-6, effective March 30, 2021) land use map, including Residential and Low-Density Apartment, Major Community Commercial Center, and Industrial, as well as Agriculture and Preservation Areas.

73. The Central O'ahu Sustainable Communities Plan also identifies the KS Property as a site for two utility scale photovoltaic projects similar to what the LUC authorized under the 2014 Order.

74. There is a mixture of City and County zoning districts within the Petition Area. These include Neighborhood Business District (B-1), Community Business District (B-2), Low Density Apartment District (A-1), Medium Density Apartment District (A-2), Industrial-

Commercial Mixed-Use District (IMX1), Residential District (R-5), General Preservation (P-2), AG-1 (Restricted Agriculture) and AG-2 (General Agriculture).

75. The zoning within the Phase 1 Site is Community Business District (B-2), Low Density Apartment District (A-1), Industrial-Commercial Mixed-Use District (IMX1), Residential District (R-5). There are some slivers of land zoned General Preservation (P-2).

76. The KS Property is not located within the City and County of Honolulu's Special Management Area.

77. The Updated 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.*

78. 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 DPP, is required for the 2021 Phase 1 Project.

79. Under the LUO, livestock grazing is not permitted within the Phase 1 Site, with the exception of the very small areas within the Phase 1 Site that are zoned P-2.

D. DESCRIPTION OF THE SOLAR FARM

80. The Updated Phase 1 Project will be within the Phase 1 Site, which is the same 387 acres in the northwestern portion of the Petition Area that the LUC approved for solar development under the 2014 Order.

81. WS2S, a wholly-owned indirect subsidiary of The AES Corporation, will develop the Updated Phase 1 Project. AES is a publicly-traded (NYSE: AES) Fortune 500 global energy company. AES's revenues in 2020 were \$9.7 billion, and AES owns and manages \$34 billion in total assets.

82. AES regularly develops renewable energy projects through wholly owned subsidiaries. Under those arrangements, AES has three gigawatts of operating renewable projects across the United States, with another 2.6 gigawatts in the construction pipeline.

83. AES and its subsidiaries have several solar projects built and under construction in the State, on Kaua'i, O'ahu, Maui, and Hawai'i Island.

84. The Updated Phase 1 Project includes a series of solar modules mounted on single-axis trackers that rotate on a fixed axis from east to west as the sun moves across the sky. The highest point of the panels will be approximately 15 feet above ground. They will be constructed in accordance with all building permit structural requirements, including the requirement to withstand hurricane-type winds. The project components will be enclosed with fencing.

85. The BESS includes a series of battery units that will be housed in containers distributed throughout the site. The battery units will be installed on concrete pads (also referred to as "power conversion stations" or "PCS pads"), along with other equipment including inverters, transformers, and communication equipment.

86. The BESS consists of containerized lithium-ion battery units distributed throughout the solar arrays. The containerized units will be set on the concrete PCS pads. Each container is a fully integrated system and incorporates multiple layers of protection to avoid failures and to contain potential hazardous substances.

87. Specific features include integrated monitoring and circuit protection, a self-contained heating ventilation air cooling system, and a fire detection and suppression system

specifically designed for lithium-ion battery energy storage systems. The fire detection and suppression system incorporates specific controls with automatic safety responses in response to conditions including high battery temperature, high air temperature, and the presence of smoke. The system also has emergency stop buttons that isolate the battery units from the solar arrays and electrical grid.

88. The batteries will be stored in completely contained, leak-proof containers. Each battery container will have temperature/smoke/fire sensors, alarms, and aerosol fire extinguishing systems, and will be controlled by remote power disconnect switches. Additionally, each battery system will undergo qualification testing prior to commercial operation.

89. The battery energy storage containers, as well as inverters, transformers, and other electrical and communications equipment, will be set on PCS pads that are distributed throughout the solar array. The primary purpose of the equipment on each PCS pad is to collect and monitor the energy produced by the solar modules and convert the energy to a higher voltage alternating-current before routing it to a substation.

90. The substation for the Updated Phase 1 Project will include 46 kV steel structures to hold overhead conductors, foundations for equipment, circuit breakers, disconnect switches, fuse switches, lightning arrestors, generator step-up transformers, two outdoor steel or CMU control cabinets, and an operations and maintenance structure. An additional fence will be installed around the substation area.

91. 46 kV overhead lines are expected to deliver power from the substation to the existing Waiiau-Mililani and Wahiawa-Waimano 46 kV sub-transmission lines, which are generally parallel to the H-2 Freeway.

92. The interconnection study for the Updated Phase 1 Project was completed in July 2021.

93. WP2S and HECO entered into a PPA for the Updated Phase 1 Project, which was approved by the PUC in December of 2020.

94. Under the agreement between KS and WP2S for the Updated Phase 1 Project, Parcel A will be decommissioned no later than December 31, 2044. This is approximately five years earlier than authorized for the Phase 1 Site under the LUC's 2014 Order.

95. Under the agreement between KS and WP2S for the Updated Phase 1 Project, Parcel B will be decommissioned by December 31, 2054, which is five years later than the time frame approved by the LUC under the 2014 Order.

96. The term of the PPA for the Updated Phase 1 Project is 20 years, and the commercial operations date is October 30, 2023. The existing PPA is expected to expire at the end of 2043.

97. At some point prior to the expiration of the existing PPA, WP2S intends to pursue a new or updated PPA with HECO that will be limited to Parcel B of the Updated Phase 1 Project.

98. Because Parcel A must be decommissioned by December 31, 2044, the substation will not be available to support Parcel B, should the PPA extension or new PPA be obtained for Parcel B.

99. A new or extended PPA for Parcel B would take into account some area for a substation and interconnection facilities, and that would be factored into the Parcel B concept at that time.

100. Construction of the 2021 Phase 1 Project is projected to take between 12 to 18 months.

101. Decommissioning activities are projected to take approximately one year. That estimate covers the decommissioning of both Parcel A and Parcel B.

102. When decommissioning, under its agreement with KS, WP2S must remove all above-ground and below-ground structures from the property such as photovoltaic panels, transformers, substation infrastructure, energy storage facilities and foundations. Any materials then known to be harmful to the environment or health must be completely removed from the property in their entirety. Decommissioning shall also include all road reclamation, re-seeding and re-planting, as applicable and appropriate at the time of decommissioning.

103. WP2S also committed to decommissioning in accordance with all laws and rules in effect at the time, including the State of Hawai‘i Department of Health HAR Chapter 11-273.1.

104. WP2S is also required to provide KS with decommissioning security in the amount of 100% of the estimated costs of the decommissioning work.

105. The operation of the Updated Phase 1 Project is consistent with the prior conditions of approval imposed under the Waiawa Order. The development and operation of the Updated Phase 1 Project does not violate any of the existing conditions of approval under the Waiawa Order.

E. KS’S MASTER PLAN FOR WAIAWA

106. KS is the sole landowner of the Petition Area.

107. KS was created under a “charitable testamentary trust established by the last direct descendent of King Kamehameha I, Princess Bernice Pauahi Bishop, who left her property in trust for a school dedicated to the education and upbringing of Native Hawaiians.” *Doe v. Kamehameha Sch./Bernice Pauahi Bishop Estate*, 470 F.3d 827, 831 (9th Cir. 2006)

108. Because KS plans in perpetuity and not based on quick financial returns or demands of shareholders, KS can take the time to properly plan and see the Petition Area developed in a way that is truly beneficial to the community.

109. Renewable energy provides KS an opportunity to generate a degree of financial return on its lands, including the Petition Area, while it pursues long-term development goals. Renewable energy also offers a low impact use of the Petition Area that has a beneficial impact to the State's renewable energy goals.

110. Renewable energy provides a secure and growing revenue source for KS so that future generations can have at least the same educational benefits as are provided to today's generation.

111. Everything KS does must ultimately come back to achieving its goals of providing education.

112. According to KS' 2021 Annual Report, KS provided 42,599 learner experiences through its campuses, preschools, community education, community investing and scholarships between July 1, 2020 and June 30, 2021, all during the height of the COVID-19 pandemic. KS invested \$438 million in education, which included \$191.9 million on K-12 learners, \$39.4 million on preschools, \$27.4 million on financial aid, and \$28.2 million on scholarships.

113. KS submitted its Revised Master Plan and Schedule for Development as required under Condition 1 of the 2014 Order, on October 7, 2019.

114. KS presented the Revised Master Plan and development schedule to the LUC at a meeting held in Honolulu on January 9, 2020.

115. KS's current vision for its Waiawa Master Plan covers approximately 2,010 acres, which includes the 1,395-acre Petition Area, and additional lands adjacent thereto.

116. KS's Waiawa Master Plan envisions development taking place in five phases, identified as Phases A through E. It is anticipated that development will start from the south of the Petition Area, at Phase A, and move north, eventually reaching Phase E. However, the exact parameters of the Waiawa Master Plan have not been finalized.

117. Before KS can develop the Master Plan, or pursue any uses other than interim utility scale solar energy development within the Petition Area, it must obtain approval from the LUC through the filing of a motion to amend the Waiawa Order.

118. KS anticipates that before it files a motion to amend the Waiawa Order to obtain LUC approval for development of the Waiawa Master Plan, analysis of the impacts of the Waiawa Master Plan will be preceded by environmental review under HRS Chapter 343; likely, an environmental impact statement or possibly a supplemental environmental impact statement to update the environmental review that was done for the original Gentry project) ("EIS").

119. KS anticipates that the EIS for the Waiawa Master Plan will inform the parameters of the proposed development, and therefore the Waiawa Master Plan and projected timeframes that were presented to the LUC may change as a result.

120. Under KS's current, pre-EIS, timeline, vertical construction of Phase A of the Waiawa Master Plan is projected to start in 2031; Phase B in 2038; Phase C in 2048; Phase D in 2060; and Phase E in 2066.

121. Parcel A within the Updated Phase 1 Project is within Phase C of the Waiawa Master Plan.

122. Under the Waiawa Master Plan, interim solar uses in that area must be gone by the end of 2044 so that Phase C of the Master Plan can go forward.

123. Parcel B within the Updated Phase 1 Project is within Phases D and E of the Waiawa Master Plan.

124. Under Waiawa Master Plan, interim solar uses may remain in that Parcel B area until the end of 2054 without impeding KS's Waiawa Master Plan efforts.

125. Infrastructure development for Phase D of the Master Plan is planned for 2060, and 2066 for Phase E.

126. Under the Tri-Party Stipulation, KS volunteered to accept a condition of approval on this Updated Phase 1 Project that requires KS to 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 offsite water and electrical system improvements, and storm water/drainage and other utility system improvements, by December 31, 2030.

127. Under the Tri-Party Stipulation, KS volunteered to accept a condition of approval on this Updated Phase 1 Project that requires KS to either provide the LUC an updated master plan and development schedule by February 11, 2025, or have a Draft Environmental Impact Statement that addresses the Petition Area published by February 11, 2025.

F. ENERGY & SOCIAL IMPACTS

128. The Updated Phase 1 Project is anticipated to generate approximately 107,595 MW hours per year. According to HECO, this is enough energy to power the equivalent of approximately 18,000 homes a year.

129. The net greenhouse gas ("GHG") emissions reduction over the project lifecycle is 1,078,948 metric tons of GHG (MT CO₂e), based on a third-party analysis commissioned by HECO. The term lifecycle refers to emissions from the start to the finish of the project, i.e., emissions that occur during the upstream stage (emissions from raw material extraction, manufacturing, project construction). Over the course of 20 years, the net reduction in GHG emissions is projected to be 1,078,948 metric tons of GHG.

130. Over the life of the PPA, the Updated Phase 1 Project is estimated to avoid fuel consumption to the tune of 2,908,097 barrels of fossil fuel, comprised of Low Sulfur Fuel Oil, Diesel Fuel, and Ultra-Low Sulfur Diesel.

131. Construction of the Updated Phase 1 Project is anticipated to require up to 200 workers during the construction phase.

132. Once construction is complete, the Updated Phase 1 Project is estimated to require approximately 4 full-time employees for operations and maintenance, including remote monitoring, preventative maintenance activities, and equipment servicing and troubleshooting.

133. WP2S estimated that the Updated Phase 1 Project overall, including development, construction, operations, and decommissioning, will generate some 565 jobs (accounting for direct, indirect, and induced jobs).

134. WP2S estimated that the Updated Phase 1 Project will generate economic output of approximately \$131 Million (including direct, indirect, and induced economic effects).

135. Allowing the interim use of portions of the KS Property for the solar project will allow KS to receive a financial return on the KS Property, which is essential for promoting KS' education mission. Between July 1, 2020 and June 30, 2021, KS invested \$438 million in education, which included \$191.9 million on K-12 learners, \$39.4 million on preschools, \$27.4 million on financial aid, and \$28.2 million on scholarships.

136. Imported oil supplies nearly all of Hawai'i's energy, making it the most oil-dependent state in the U.S. According to the Hawaii State Energy Office, Hawai'i imports its crude oil primarily from Russia, Libya, Argentina, and South Sudan. That makes Hawai'i vulnerable to disruptions in the energy markets.

137. The Updated Phase 1 Project will reduce Hawai'i's dependence on imported oil. It is estimated to avoid the need for 2,908,097 barrels of oil over the term of the PPA.

138. Act 97, passed in 2015, set a goal of Hawai'i achieving the nation's first-ever 100% renewable portfolio standards by the year 2045.

139. Act 15, passed in 2018, set a goal for Hawai'i to become carbon neutral as quickly as practicable, and no later than 2045.

140. In 2020, only 30.5% of O'ahu's electricity was generated by renewable energy.

141. Consistent with KS' educational mission, KS' agreement with WP2S requires WP2S to work with KS to establish educational programs for Hawai'i students and teachers. WP2S is obligated to provide up to \$200,000 in funding for these educational programs. 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. Actual program activities will be jointly agreed upon between KS and WP2S.

142. WP2S conducted extensive public outreach to raise awareness and gather input about the Updated Phase 1 Project. WP2S began the outreach process with preliminary engagement with local officials, community leaders, and interested stakeholder organizations.

143. WP2S's outreach did not address KS's Waiawa Master Plan.

144. Project representatives presented the project details at three of the four adjacent Neighborhood Boards (Mililani Mauka/Launani Valley Neighborhood Board #35, Pearl City Neighborhood Board #21, and Waipahu Neighborhood Board #22). All three boards adopted resolutions in support of the Updated Phase 1 Project with near unanimous votes (only one abstention, no opposition).

145. WP2S represented that it will continue to listen to communities, address feedback, and continue outreach as the Updated Phase 1 Project progresses.

G. IMPACTS UPON RESOURCES AND INFRASTRUCTURE

146. Development of the Updated Phase 1 Project does not trigger the requirements to prepare an environmental assessment under HRS Chapter 343.

147. In anticipation of the KS Waiawa Master Plan EIS, the LUC has insufficient information and cannot determine in advance whether a supplement to the previous EIS will or will not be required.

148. In the future, as the KS Waiawa Master Plan gets developed after the preparation of an initial EIS, if there is a trigger and a proposed action, the agency asked to make a decision on that proposed action will have to determine whether a supplemental EIS is required.

149. A jurisdictional waters survey was submitted to the U.S. Army Corps of Engineers for the Updated Phase 1 Project. In July 2021, the U.S. Army Corps of Engineers concurred that no Army Corps permits were needed for the Updated Phase 1 Project.

150. Overhead interconnection lines will cross Panakauahi Gulch, a tributary to Waiawa Stream. Panakauahi Gulch has intermittent flow and is generally subject to regulation by the Army Corps. However, because the interconnection lines will only span across the gulch and no fill will be placed below the high-water mark, no impacts to jurisdictional waters will occur and no permits are required for the Updated Phase 1 Project.

151. Should WP2S's construction plans change, (which is not expected), such that there would be the discharge of dredged or fill material into Panakauahi Gulch, or otherwise require the issuance of permits, authorization from the U. S. Army Corps of Engineers would be obtained prior to that construction.

1. FLORA AND FAUNA

152. The LUC previously determined that the development of the Waiawa Ridge Project would have no adverse effect on any endemic Hawaiian animal or ecosystem within the KS Property.

153. The development of the Updated Phase 1 Project is not anticipated to generate any significant hazards to fauna.

154. Tetra Tech conducted a biological survey for the Updated Phase 1 Project, which is summarized in the Biological Resources Survey Report.

155. No federally or state listed plant or animal species were observed within or in the immediate vicinity of the Phase 1 Site during recent biological surveys. The Biological Survey found that the study area has been heavily modified by previous agricultural activities associated with sugar cultivation. The land is dominated by non-native plant and wildlife species.

156. No federally or State listed plant or animal species were observed within or in the immediate vicinity of the study area during the survey, and no portion of the study area is designated as critical habitat.

157. Although not observed, it is assumed that several federally or state listed wildlife species may occasionally occur in or fly over the Phase 1 Site, including the Hawaiian hoary bat or 'ōpe'ape'a (*Lasiurus cinereus semotus*), pueo or Hawaiian short-eared owl (*Asio flammeus sandwichensis*), Hawaiian seabirds (Hawaiian petrel or 'ua'u [*Pterodroma sandwichensis*] and Newell's shearwater or a'o [*Puffinus newelli*]), and Hawaiian waterbirds (ae'ō or Hawaiian stilt [*Himantopus mexicanus knudseni*], 'alae keokea or Hawaiian coot [*Fulica alai*], and 'alae 'ula or Hawaiian common gallinule [*Gallinula galeata sandvicensis*]).

158. The Biological Survey offered avoidance and minimization measures that could be employed in connection with the development of the Updated Phase 1 Project.

159. OPSD consulted with the Department of Land and Natural Resources Division of Fish and Wildlife.

160. Based on that consultation, OPSD presented a proposed condition of approval to address landscaping vegetation and the protection of endangered the Hawaiian hoary bat, Hawaiian short-eared owl, and endangered and threatened Hawaiian water bird and shorebird species at the Phase 1 Site.

161. Under the Tri-Party Stipulation, KS agreed to the OSDP wildlife protection condition, with some minor modifications to the language for the purposes of clarity, and with additional language requested by DPP.

2. ARCHAEOLOGICAL AND HISTORICAL RESOURCES

162. As set forth in HAR §13-276-1, an “archaeological inventory survey” is “the process of identifying and documenting the archaeological historic properties and burial sites in a delineated area, gathering sufficient information to evaluate significance of the historic properties and burial sites, and compiling the information into a written report for review and acceptance by the department.”

163. As used in HAR §13-276-1, the “department” is the State Department of Land and Natural Resources (“DLNR”).

164. An archaeological inventory survey is required when the DLNR State Historic Preservation Division (“SHPD”) says one is required. An archaeological inventory survey cannot be done on a voluntary basis, just because a landowner wants to do an archaeological inventory survey. There are specific informational and process requirements that must be followed for an archaeological inventory survey and only the DLNR-SHPD can make an acceptance determination. Without SHPD’s involvement, the document is not an archaeological inventory survey.

165. Under HRS §6E-42, the formal historic review process can be started only in the context of when a State or county agency is asked to approve a project involving a permit, license, certificate, land use change, subdivision, or other entitlement for use, which may affect historic property.

166. The preparation of an environmental assessment or EIS is not a trigger under HRS Chapter 6E.

167. SHPD's reviewing authority is agency to agency. SHPD does not review archaeological inventory surveys submitted by private landowners and in the absence of a permit application. Thus, county or State agencies that receive permit applications for work that "may affect a historic property" must submit the archaeological inventory survey to SHPD.

168. An archaeological reconnaissance and inventory survey of a 3,600-acre area, which included the KS Property, was approved by SHPD July 7, 1992.

169. In April 2014, in connection with the initial solar development proposal put forth by KS, SHPD determined that an archaeological inventory survey was required for the entire Petition Area.

170. In 2014, TCP Hawai'i LLC ("TCP") completed the fieldwork for an archaeological inventory survey of the entire KS Property, as well as the two existing access roads into the KS Property and two linear transects representing utility tie-ins for the proposed solar farm.

171. TCP prepared a report titled 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, dated March 2015 (Revised) ("AIS"). The AIS covers the entire 1,395-acre KS Property. TCP consulted with KS, SHPD, and the Office of Hawaiian Affairs in preparing the AIS.

172. SHPD approved that AIS in April 2015.

173. As documented in the AIS, the entire KS Property had been completely altered by plantation-era activities and construction. The KS Property was in commercial agricultural operations for approximately 100 years. There was evidence of extensive bulldozing and road construction in all three gulches, whose drainage bottoms have also experienced major flooding damage.

174. No sites that qualified under significance criterion E were identified.

175. No Hawaiian sites or artifacts, human skeletal remains, heiau, or habitation sites were found on the KS Property. No petroglyph sites were found within the KS Property.

176. The AIS documents three historic properties, all plantation-era sites dating from the early to middle 20th century, consisting of 55 component features: (a) SIHP # 50-80-09-2270, a network of roads and railroad rights-of-way consisting of 28 features; (b) SIHP # 50-80-09-2271, the remains of workers' camps consisting of two features; and (c) SIHP # 50-80-09-2273, an irrigation system consisting of 25 features.

177. Site 2273 provides important data on the geospatial location, extent and character of the plantation irrigation infrastructure in Waiawa Uka built around or shortly after 1916 by the O'ahu Sugar Company; and, excluding the interruption of World War II, continued to be used into the 1970s.

178. SHPD determined that no further work was appropriate for sites 2270 or 2271.

179. For site 2273, the effect determination was "effect, with agreed upon mitigation commitments." Those mitigation commitments are preservation for four features of site 2273.

180. Two of the features are in proximity to the Updated Phase 1 Project. Feature 14, a very long irrigation ditch built with cut basalt and mortar, and SHPD called for preservation of a

100-foot portion of this feature), and Feature 19, a large dam-like retention structure in the west end of Gulch B.

181. TCP also prepared an Archaeological Preservation Plan, called Archaeological Preservation Plan State Site No. 50-80-09-2273 Features 14 (Portion), 19, 22 & 23 (Portion) Kamehameha Schools' Land in Waiawa and Waipi'o Ahupua'a, 'Ewa District, O'ahu Island, Hawai'i, dated May 2015 ("APP"). SHPD accepted the APP in September 2015.

182. The APP provides short-term/interim protection measures, and long-term measures.

183. The short-term measures recommended a buffer of 10 feet from the structural edge of the features. Those buffers are to be established with construction fencing or similar temporary barriers. Additionally, avoidance instructions must be added to construction plans and specifications, and the developer must conduct a pre-construction briefing of the hired construction firms to make them aware of the preservation buffer.

184. Interim (short-term) preservation buffers have been installed for both features (100-foot portion of feature 14, and all of feature 19). These buffers have also been surveyed and marked by a certified land surveyor.

185. The permanent measures call for installation of permanent fencing that is consistent in appearance with the early 20th century features it surrounds. No cultural practices are associated with these features, and no signage is needed because public access to these sites is not appropriate. The landowner or its designee is required to periodically inspect the fencing marking the permanent buffers. If any damage or impacts to the preservation features are noted, that will be reported to SHPD and, in consultation with SHPD, corrective measures may be taken.

186. WP2S represented that once the Updated Phase 1 Project is fully constructed, and prior to operations, it will install the permanent preservation fencing.

3. CULTURAL RESOURCES

187. A Cultural Impact Assessment (“CIA”) for 3,600 acres of land, which included the KS Property, was prepared by Cultural Surveys Hawai‘i, Inc. in 2003 in anticipation of the Waiawa Ridge Project.

188. The CIA included interviews with 66 individuals, including kupuna and kama‘āina of the area, and gathered information from them and assessed the potential impacts of the Waiawa Ridge Project to cultural resources, traditions, and practices within the Petition Area and the remainder of the 3,600 acres.

189. In preparing this CIA, feedback and information was gathered from various people, including people that were associated with the plantation, and people that grew up specifically in Waiawa, and also included consultation with Waiawa Hawaiian Civic Club.

190. A Cultural Resources Preservation Plan was prepared in 2005 by Aki Sinoto Consulting. The sites identified for preservation are not within the KS Property.

191. SHPD approved the Cultural Resources Preservation Plan in 2007.

192. The Cultural Resources Preservation Plan did not identify any cultural sites or practices within the Petition Area. It identified a large concentration of petroglyphs down in a gulch well outside of the Petition Area, but nothing within the Petition Area.

193. In 2010 KS initiated an ethno-historical study for KS’ lands within the region of ‘Ewa. That study included the Petition Area, but covered a much larger land area of approximately 3,600 acres.

194. KS prepared that study as a proactive measure. KS wanted to talk to community members and people knowledgeable about the KS ‘Ewa lands to determine what sort of traditional and customary resources or practices were within its lands.

195. The ethno-historical study concluded that there were no traditional or customary practices that occurred within the Petition Area.

196. There are no identified ongoing traditional cultural resources or practices being exercised at the Petition Area. The Petition Area was used for commercial agricultural operations for approximately one hundred years through 1983 and has not been used for traditional cultural purposes within recent times.

197. The Petition Area is part of the large ahupua'a that was awarded to Victoria Kamamalu. The land was subsequently passed to Ruth Ke'elikolani, who then passed the land to Princess Bernice Pauahi Bishop. The lands ultimately became a part of the Bishop Estate. There are no kuleana land claims for lands within the Petition Area.

198. In the 2014 Order, the LUC determined that development of the interim solar projects within the Phase 1 Site and the Phase 2 Site would not have any adverse effect upon Native Hawaiian traditional and customary rights because no active traditional and customary practices had been documented within the Petition Area.

199. In the 2020 Order, with respect to the Phase 2 Site, the LUC reaffirmed that finding.

200. Development and operation of the Updated Phase 1 Project will not have significant adverse effects on any significant archaeological, historical, or cultural resources or practices. Because no cultural resources or practices have been identified within the Petition Area, development of the Updated Phase 1 Project will not have any adverse effect upon Native Hawaiian traditional and customary rights or practices.

201. Looking ahead, separate from the Updated Phase 1 Project, it is anticipated that a new CIA will be prepared as part of the EIS to be done for the Waiawa Master Plan.

4. RECREATIONAL AND SCENIC RESOURCES

202. The Updated Phase 1 Project, as an almost entirely passive use of land, will not generate or increase the demand on existing recreational facilities or resources; no residences will be installed within the Phase 1 Site as part of the Updated Phase 1 Project.

203. There will be a security fence around the Updated Phase 1 Project site. There will also be a second fence around the substation.

204. The Updated Phase 1 Project will not prevent any existing recreational uses of the KS Property. There is no current recreational use of the KS Property. There are no hiking or hunting areas that require public access across the KS Property.

205. The only feasible means of accessing nearby State Land Use Conservation District lands is via the Waiawa Correctional Facility.

206. Tetra Tech prepared Visual Simulations to determine the effects of the Updated Phase 1 Project on scenic resources and view corridors. The existing views from the communities surrounding the Phase 1 Site will remain intact. The solar arrays have a low profile and will conform to the existing topography to the extent practicable. Additionally, seen in the context of existing man-made modifications, including the H-1 Freeway, electrical transmission lines, and similar structures, the visual impacts are expected to be minimal.

207. The Visual Simulations used six vantage points: (1) viewpoint 1 from H-2 South, approximately 0.75 miles northwest of the project; (2) viewpoint 2 from Ka Uka Offramp Southbound, approximately 0.4 miles northwest of the project; (3) viewpoint 3 from H-2 Onramp Southbound, approximately 2,000 feet to the west of the project; (4) viewpoint 4 from Aaniu Loop, approximately 1 mile southwest of the project; (5) viewpoint 5 from Waipio Uka Street, approximately 3,000 feet southwest of the project; and (6) viewpoint 6 from the Ka Uka Overpass, approximately 1,600 feet west of the project.

208. From the six vantage points studied, the project will be slightly visible from viewpoint 2, will be somewhat more visible from viewpoints 3 and 6, and will not be visible from viewpoints 1, 4, and 5. As shown in the simulations, existing vegetation helps to screen views of the project and will be left in place to the extent practicable.

209. A study titled Glare Analysis Report for the Waiawa Phase 2 Plus Storage Project, dated August 2021 was prepared to assess the potential for glare from the Updated Phase 1 Project.

210. The analysis was conducted using the Solar Glare Hazard Analysis Tool (SGHAT) software through an online tool (GlareGauge) developed by Sandia National Laboratories and hosted by ForgeSolar. ForgeSolar defines “glare” as a continuous source of bright light. Glare is generally associated with stationary objects, which, due to the slow relative movement of the sun, reflect sunlight for a longer duration.

211. After running three analyses, using 11 observation points, six roadway segments, 16 final approach flight paths, and two air traffic control towers, the Glare Analysis Report concluded that the Updated Phase 1 Project will not create glare.

212. WP2S obtained “Determination of No Hazard to Air Navigation” letters from the Federal Aviation Administration Obstruction Evaluation Group on July 7, 2021.

213. The State Department of Transportation (“DOT”) determined that it did not have any concerns with the Updated Phase 1 Project.

214. WP2S represented that if glint or glare from the photovoltaic array creates a hazardous condition for pilots, it will be prepared to immediately mitigate the hazard upon notification by the DOT Airports Division or the Federal Aviation Administration.

215. WP2S also represented that if the PV systems emit RFI to aviation dedicated radio signals, disrupting the reliability of air-to-ground communications, it will be prepared to

immediately mitigate the hazard upon notification by the DOT, Airports Division, or the Federal Aviation Administration.

5. NOISE

216. The Updated Phase 1 Project is a relatively passive operation. Although the racking systems are a tracking-type system, motors are small and will not generate noise that exceeds acceptable noise levels as limited in HAR Chapter 11-46. The electrical equipment does not include any mechanical or motorized equipment that will generate noise. There will be some minimal corona noise coming from the electrical equipment and battery storage equipment. Operation and maintenance activities may result in minimal vehicular noise from maintenance staff.

217. It is not anticipated that operations from the Updated Phase 1 Project will generate noise that exceeds acceptable noise levels.

218. During construction, noise levels are likely to increase. Noise generated from construction activities will comply with the regulations for community noise control in HAR Chapter 11-46. Due to the remote location of the Updated Phase 1 Project and distance from communities, it is anticipated that any impacts would be minimal.

219. If necessary, noise permits will be obtained through the DOH.

6. AIR QUALITY

220. There are no direct air emissions from the operations of a solar farm.

221. During construction of the solar farm there will be short-term impacts to air quality due to the emission of fugitive dust and an increase in exhaust emissions from construction vehicles.

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

223. Construction activities will comply with the regulations for fugitive dust control in HAR Chapter 11-60.1.

7. HIGHWAY AND ROADWAY FACILITIES

224. A report titled *Mobility Assessment for the Proposed Waiawa Phase 2 Solar Plus Storage Project (Oahu, HI)*, dated August 11, 2021, was prepared to assess the impacts of the Updated Phase 1 Project on local and regional traffic near the Petition Area (“Traffic Assessment”).

225. The Traffic Assessment analyzed the potential for both the construction and operation of the Updated Phase 1 Project to adversely impact traffic and alternate modes of access (e.g., bicycle and pedestrian travel, and public transit).

226. The Traffic Assessment analyzed the potential for traffic-related impacts at three regional intersections during peak hours (between 7–9 a.m. and 4–6 p.m.) under four different scenarios.

227. The intersections studied are: (1) Ka Uka Boulevard/H-2 Southbound Off-Ramp/Moaniani Street; (2) Ka Uka Boulevard/H-2 Southbound On-Ramp; and (3) Ka Uka Boulevard/H-2 Northbound Ramps.

228. The four traffic scenarios analyzed were: (1) Existing Conditions; (2) 2023 No Project Conditions; (3) 2023 Plus Project Construction Conditions; and (4) 2023 Plus Project Typical Operating Conditions.

229. Existing traffic volumes were based on 2019 traffic volumes, which were then increased by a growth factor of one percent per year to estimate typical volumes for 2021. The Traffic Assessment did not use 2020 or 2021 traffic volumes because the COVID 19 pandemic created shifts in travel patterns that could skew the results.

230. The construction year traffic was evaluated by taking the volumes determined above and increasing them by an average growth factor of one percent per year to represent 2023 volumes. To this, we also added anticipated traffic from the first phase of the Koa Ridge development.

231. During project construction all the studied intersections are projected to continue to operate at existing levels of service. None of the studied intersections are projected to operate at a level of service of E or F.

232. During project operations after completion of construction, traffic impacts will be entirely negligible because so few employees (up to five at the most) will be on-site at any given time.

233. The potential for conflict between project construction related traffic and non-automobile modes of transportation, such as walking and biking, is low.

234. To minimize any potential conflicts and to maintain adequate traffic operations, the Traffic Assessment recommended certain measures be employed during construction of the Updated Phase 1 Project:

(a) Signage between the Ka Uka Boulevard interchange and the staging area off Waiawa Prison Road that trucks are travelling and entering/exiting the roadway.

(b) Measures to ensure that adequate sight distance is provided for drivers on Waiawa Prison Road approaching and departing the staging area. For example, traffic control signage (*e.g.*, stop or yield signs) and removal of vegetation that impedes standard approach, departure, and height sight distances.

(c) Coordination with the City and County of Honolulu 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.

(d) Use of 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).

(e) Maintenance of access to the Waiawa Correctional Facility.

235. The Traffic Assessment determined that neither construction nor operations of the Updated Phase 1 Project will adversely impact traffic conditions in the vicinity of the Petition Area. The Traffic Assessment also determined that the Phase 1 Site has adequate access and will not require the construction of any new access roads.

236. The State Department of Transportation – Highways Division (“DOT-HWY”) concurred with the findings and recommendations of the Traffic Assessment.

237. In its 2021 Motion, KS suggested a condition that prior to the start of construction of the Updated Phase 1 Project, KS shall cause the solar farm operator to submit a traffic construction management plan for review and acceptance by the State DOT. DOT confirmed that it has no concerns with the imposition of that condition.

8. DRAINAGE AND STORMWATER

238. G70 prepared a preliminary civil engineering assessment for the Updated Phase 1 Project.

239. Clearing, grubbing and grading will be needed for placement of the solar panels, equipment, facilities, access driveways, and fence. The road improvements will occur for roads

within the solar boundary. There will be no planned improvements for haul roads outside the solar array fence line.

240. In general, the project will avoid steep areas and focus solar racking systems, roads, BESS, and substation in areas with gradual slopes.

241. The initial rough estimates of potential earthwork volumes contemplate roughly 100,000-200,000 cubic yards of balanced cut/fill. The design anticipates minimizing earthwork volumes and related construction costs by optimal placement of the PV racks following the existing grades and elevations.

242. Grading will be done in accordance with the Revised Ordinances of Honolulu (ROH) Chapter 14, Articles 13-16. Pursuant to the grading ordinance, a geotechnical engineer will provide cut and fill recommendations prior to design and testing/observation during construction.

243. Prior to grading and grubbing of the KS Property, permits and approvals will be required from the State Department of Health (“DOH”) and the City and County of Honolulu (NPDES General Permit for Construction Activities, Notice of Intent, and a City and County of Honolulu Grading, Grubbing and Stockpiling Permit).

244. Issuance of these permits requires agency review of grading, erosion, and sediment control plans, with temporary BMPs, a Storm Water Pollution Prevention Plan, and Drainage Reports that discuss permanent BMPs.

245. The Phase 1 Site is not generally subject to runoff from mauka offsite areas. Existing runoff at the Phase 1 Site currently flows overland toward adjacent downstream areas or directly into the adjacent gulches. Current drainage patterns are intended to remain for the Updated Phase 1 Project.

246. The Updated Phase 1 Project will add minimal new impervious areas. Due to the even distribution of the impervious regions throughout the Phase 1 Site, slight leveling of access road areas, and the use of gravel roads, there is no anticipated increase in runoff rates. As a result, there will not be a significant pre-development to post-development increase in stormwater flows due to the Updated Phase 1 Project.

247. Any increase in stormwater generated from the Updated Phase 1 Project will be detained therein. If required, diversion channels will be constructed with check dams, drop structures, or different velocity reducing controls before discharge back into the natural drainage features. Any crossing of a drainage way within the solar array will be designed to City & County standards.

248. BMPs will be implemented to address stormwater quality. Erosion control BMPs are required on-site and may include measures such as preservation of natural vegetation, minimizing of areas of clearing and grubbing, use of vegetated buffers, temporary soil stabilization with grass, mulch, or both, silt fences/fiber filtration tubes, gravel bag berms/check dams, stabilized construction entrances, sediment traps and basins, temporary diversion swales and ditches, and dust control through water application, dust screens, or both.

249. The permanent BMPs that may be employed include permanent soil stabilization (through landscaping or installing pervious surfaces like gravel or impervious surfaces).

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

250. HRS §205-16 provides that “No 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 interim use of portions of the KS Property as a solar farm is consistent with applicable goals, objectives and policies of the Hawai‘i State Plan, HRS Chapter 226.

251. OPSD opined that the Updated Phase 1 Project is reasonable and is consistent with the Urban District classification and LUC rules for Urban District standards and permissible uses under HAR §§15-15-18 and 15-15-24.

252. Unlike other proposals for utility-scale solar energy facilities in the Agricultural District, which has severe limitations and even prohibitions on solar energy facilities depending upon the land study bureau productivity ratings of the soils, solar energy facilities are entirely permissible in the Urban District.

253. Solar energy production is a clean renewable energy resource strongly supported by the State to promote energy self-sufficiency and reduce our reliance on imported fossil fuels.

254. The Updated Phase 1 Project is consistent with the following objectives and policies of the Hawai'i State Plan:

- HRS §226-18: Objectives and Policies for Facility Systems - Energy

(a) Planning for the State's facility systems with regard to energy shall be directed toward the achievement of the following objectives, giving due consideration to all:

(1) Dependable, efficient, and economical statewide energy systems capable of supporting the needs of the people;

(2) Increased energy security and self-sufficiency through the reduction and ultimate elimination of Hawaii's dependence on imported fuels for electrical generation and ground transportation;

(3) Greater diversification of energy generation in the face of threats to Hawaii's energy supplies and systems;

(4) Reduction, avoidance, or sequestration of greenhouse gas emissions from energy supply and use;

(b) To achieve the energy objectives, it shall be the policy of this State to ensure the short- and long-term provision of adequate, reasonably priced, and dependable energy services to accommodate demand.

(c) To further achieve the energy objectives, it shall be the policy of this State to:

(1) Support research and development as well as promote the use of renewable energy sources;

(2) Ensure that the combination of energy supplies and energy-saving systems is sufficient to support the demands of growth;

(3) Base decisions of least-cost supply-side and demand-side energy resource options on a comparison of their total costs and benefits when a least-cost is determined by a reasonably comprehensive, quantitative, and qualitative accounting of their long-term, direct and indirect economic, environmental, social, cultural, and public health costs and benefits;

(4) Promote all cost-effective conservation of power and fuel supplies through measures, including:

(A) Development of cost-effective demand-side management programs;

(B) Education;

(C) Adoption of energy-efficient practices and technologies; and

(D) Increasing energy efficiency and decreasing energy use in public infrastructure;

(5) Ensure, to the extent that new supply-side resources are needed, that the development or expansion of energy systems uses the least-cost energy supply option and maximizes efficient technologies;

(8) Support actions that reduce, avoid, or sequester greenhouse gases in utility, transportation, and industrial sector applications;

(10) Provide priority handling and processing for all state and county permits required for renewable energy projects.

255. The Updated Phase 1 Project is consistent with the following State priority guidelines under HRS §226-103 with respect to encouraging the development of clean industries.

• Hawai'i State Plan Priority Guidelines; HRS § 226-103 - Economic Priority Guidelines

HRS §226-103(f)(1): Priority guidelines for energy use and development: (1) Encourage the development, demonstration, and commercialization of renewable energy sources.

256. The Updated Phase 1 Project supports the State's goal of having 100% of Hawai'i's electricity produced from renewable energy sources by the year 2045.

257. The Updated Phase 1 Project supports the State's goal to become carbon neutral as quickly as practicable, and no later than 2045.

I. LUC CRITERIA FOR A MOTION TO AMEND

258. For the modification or deletion of conditions or orders, HAR §15-15-94 provides in part as follows:

(a) If a petitioner, pursuant to this section, desires to have a . . . modification of the commission's order, the petitioner shall file a motion in accordance with section 15-15-70 and serve a copy on all parties to the boundary amendment proceeding . . . 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.

(b) For good cause shown, the commission may act to modify or delete any of the conditions imposed or modify the commission's order.

(c) Any modification or deletion of conditions or modifications to the commission's order shall follow the procedures set forth in subchapter 11.

259. KS served copies of the 2021 Motion to Amend on all persons with a recorded interest in the KS Property. In total, KS served copies of the 2021 Motion to Amend on 14 individuals or entities, in addition to OPSD, DPP, and their respective counsels.

260. Other than DPP and OP, which are parties to this proceeding, none of the other recipients of the 2021 Motion to Amend sought to become parties to this proceeding.

261. KS has presented the LUC with good cause to modify the 2014 Order.

262. The LUC already approved the Phase 1 Site for interim solar development under the 2014 Order. Due to no fault of KS, the original solar developer, Sun Edison, which was a publicly traded company listed on the NYSE that had developed more than 1,000 MW of solar energy capacity globally as of the date of the 2014 Order, was not able to move forward with the two solar farms approved in 2014.

263. In addition to the renewable energy benefits, the Updated Phase 1 Project is consistent with the Urban District classification and the LUC's rules for Urban District standards and permissible uses.

264. Using the Petition Area for solar farm development is permitted under City and County of Honolulu law and under the State Land Use Urban District.

265. WP2S engaged in extensive community outreach to inform the community and area law makers about the Updated Phase 1 Project and the responses were positive.

266. Under its agreement with KS, WP2S is required to cooperate with KS in establishing educational programs for Hawai'i students and teachers.

267. Development of the interim solar farm will help the State of Hawai'i achieve its clean energy goals.

268. Under HECO's estimates, the Updated Phase 1 Project will provide equivalent to what is needed to power approximately 18,000 homes a year for each year that it is in operations. Over the course of just 20 years, the net reduction in GHG emissions is estimated at 1,078,948 metric tons of GHG, and the avoided fuel consumption at 2,908,097 barrels of fossil fuel.

269. The Updated Phase 1 Project is projected to generate economic output of approximately \$131 Million (including direct, indirect, and induced economic effects).

270. The interim use of the Phase 1 Site prior to development of the KS Waiawa Master Plan provides a means for KS to achieve a financial return on this property, which contributes to KS' ultimate goal of providing education to native Hawaiians and others.

271. Use of the Phase 1 Site for the Updated Phase 1 Project does not delay or impede development of KS's Waiawa Master Plan.

RULINGS ON PROPOSED FINDINGS OF FACT

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

CONCLUSIONS OF LAW

1. Pursuant to HRS Chapter 205, and the LUC rules under HAR Chapter 15-15, and upon consideration of the LUC decision-making criteria under HRS §205-16, the LUC concludes, upon the clear preponderance of the evidence, that the interim use of the Phase 1 Site as a solar farm, inclusive of development, operations, and decommissioning, to include all related utility and other infrastructure, to December 31, 2044 for the Parcel A site, and to December 31, 2054 for the Parcel B site, is reasonable, not violative of HRS §205-2 and is consistent with the policies and criteria established pursuant to HRS §§205-16, 205-17 and 205A-2.

2. Use of the Phase 1 Site as set forth herein is consistent with the Hawai'i State Plan as set forth in HRS Chapter 226.

3. Based on the record and files herein and the findings set forth above, and there being good cause shown, the LUC reaffirms its prior conclusions, based upon the clear

preponderance of the evidence, that the interim development and operation of the Updated Phase 1 Project will not violate any of the conditions imposed under the Waiawa Order.

4. Based on the record and files herein and the findings set forth above, the LUC concludes good cause has been shown to release conditions 1 and 9 of the 2014 Order, and to modify conditions 3-8, 10 and 11 of the 2014 Order, and impose certain new conditions, all as set forth below, and which conditions shall replace entirely the conditions under the 2014 Order, and that these conditions are appropriate for the LUC's granting of the 2021 Motion.

5. Article XII, section 7, of the Hawai'i State Constitution requires the LUC to protect native Hawaiian traditional and customary rights. The State of Hawai'i reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. The State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised native Hawaiian rights to the extent feasible. *Public Access Shoreline Hawai'i v. Hawai'i Cnty Planning Comm'n*, 79 Haw. 425, 450, n. 43, *certiorari denied*, 517 U.S. 1163 (1996).

6. The LUC is required to preserve and protect customary and traditional rights of native Hawaiians. *Ka Pa'akai O Ka'Aina v. Land Use Comm'n*, 94 Hawai'i 31, 7 P.3d 1068 (2000).

7. Article XI, Section 1, of the Hawai'i State Constitution requires the State to conserve and protect Hawai'i's natural beauty and all natural resources, including land, water, air minerals, and energy sources. In parallel, the State and its agencies must "promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State." *In re Maui Elec. Co.*, 150 Hawai'i 528, 536, 506 P.3d 192, 200 (2022) (citing Article XI, Section 1).

8. Article XI, Section 1 directs the State and its agencies to assess and balance protection of public natural resources and the utilization of those resources. *In re Conservation Dist. Use Application (CDUA) HA-3568*, 143 Hawai‘i 379, 400, 431 P.3d 752, 773 (2018).

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

10. The Petition Area is not classified as Important Agricultural Land under Part III of HRS Chapter 205.

11. Article XI, Section 7, of the Hawai‘i State Constitution states that the State has an obligation to protect, control, and regulate the use of Hawai‘i’s water resources for the benefit of its people.

12. The LUC concludes that its decision and finding of good cause to amend the Waiawa Order is consistent with its duties arising under Article XI, Section 1, Article XI, Section 3, Article XI, Section 7 and Article XII, Section 7 of the Hawai‘i State Constitution, based on the records and files in this matter and the factual findings above.

DECISION AND ORDER

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 an interim use for 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 shall replace the conditions imposed under the LUC’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. Protection and Preservation of Native Hawaiian Traditional and Customary Practices (Article XII, Section 7). Petitioner has conducted an archeological inventory survey, an archaeological preservation plan, a cultural impact assessment, cultural resources preservation plan, and an ethno-historic study that included the Petition Area. Although no cultural resources or practices have been identified within the Petition Area that would be adversely impacted by the proposed interim solar farm, this finding is limited to the Phase 1 Site (Parcels A and B), and the Phase 2 Site within the Petition Area.
5. 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.

6. Traffic Impacts. Prior to the start of construction of the Updated Phase 1 Project, Petitioner shall cause the solar farm operator to submit a traffic construction management plan for review and acceptance by the State Department of Transportation.
7. Development Schedule. Both portions of the Updated Phase 1 Project solar farm (Parcel A and Parcel B) shall be substantially completed within five (5) years from the date of the Commission's issuance of this Decision and Order.
8. Interim and Temporary Use of the Petition Area. The interim and temporary 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. However, this proposed Updated Phase 1 Project, and the previously approved Phase 2 solar farm, is not "substantial commencement with use of the land in accordance with subject representations" pursuant to HRS §205-4(g). 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 HRS §205-4.5(a)(21)(A).
9. 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.
10. Motion to Amend. Petitioner shall file a motion to amend the Waiawa Order by December 31, 2030.

11. 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. In addition, Petitioner shall complete construction of similar backbone infrastructure for the proposed Waiawa Master Plan Phase B by December 31, 2038.

12. Decommissioning of the Solar Farm. Both portions of the Updated Phase 1 Project 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 HAR Chapter 11-273.1.

Any other future uses 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 uses and shall further include, but not be limited to, a revised Traffic Impact Analysis Report, Engineering Report, Socio-Economic Analysis Report, and AIS (if required). As applicable, said future uses of the Petition Area shall also be subject to the environmental review process promulgated under HRS Chapter 343 and its related administrative rules.

13. Wildlife Protection. The Petitioner shall cause the operator of the Updated Phase 1 Project 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, and a landscape plan describing the non-invasive plants and native plant species to be utilized shall be submitted to the Department of Planning and Permitting for approval prior to the issuance of any grading permit.
- 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.
14. Compliance with Representations. Petitioner shall cause the solar farm operator to develop and operate the Updated 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.
15. 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.
16. 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.
17. 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.

18. 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.

IT IS FURTHER ORDERED that the above conditions shall be in addition to the conditions imposed under the Waiawa Order, which are hereby reaffirmed and shall continue in full force and effect.

ADOPTION OF ORDER

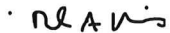
This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this 30th, day of June, 2022, per motion on June 23rd, 2022.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAI'I



Deputy Attorney General

By 

JONATHAN LIKEKE SCHEUER
Chairperson and Commissioner

Filed and effective on:

Jun 30, 2022

Certified by:



DANIEL ORODENKER
Executive Officer



LAND USE COMMISSION
STATE OF HAWAII

2022 JUN 30 A 11: 36

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of

TOM GENTRY AND GENTRY-PACIFIC,
LTD.

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

DOCKET NO. A87-610

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the ORDER GRANTING WITH MODIFICATION MOTION FOR MODIFICATION, TIME EXTENSION, AND RELEASE AND MODIFICATION OF CONDITIONS OF ORDER DATED NOVEMBER 26, 2014 was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

Regular Dean Uchida, Director
 Dawn T. Apuna, Deputy Director
 CITY & COUNTY OF HONOLULU
 DEPARTMENT OF PLANNING & PERMITTING
 650 South King Street
 Honolulu, Hawaii 96813

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

Certified DEREK B. SIMON, Esq.
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Hale Auhau
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Honolulu, Hawaii 96813

DATED: Honolulu, Hawai'i,

Jun 30, 2022



DANIEL RODENKER

Executive Officer