

LUC Docket No. SP15-405
Waiawa PV, LLC
Waiawa, O`ahu, Hawai`i

Staff Report

Hearing and Action Meeting
March 5, 2015

Submitted: March 4, 2015

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1. EXPLANATION OF PROCESS

The Special Permit process is unlike that used for district boundary amendments. The official evidentiary record is developed at the County-level before its Planning Commission. The in-depth review process is conducted by the County Planning Department and a report with a recommendation is presented to the County Planning Commission. The applicant can and usually does present a case, complete with expert witnesses, to the County Planning Commission. Where the County Planning Commission approves a Special Permit it makes a decision based on the record, sets conditions to be placed on the project, and forwards a recommendation to the LUC. A denial at the County level does not result in the Special Permit being forwarded to the LUC for consideration.

A recent Special Permit request before the LUC – SP14-404 Jas Glover, Ltd. – illustrates what can occur when information is introduced to the LUC deliberations after the evidentiary record is closed at the County-level. The State Department of Defense, a bordering landowner to the Glover property, filed information that identified a potential dispute with the property boundary and additional archaeological information. As this information had not been introduced and considered by the County Planning Commission in their decision; the LUC had to remand (send back) the Special Permit to the County for their reconsideration of the additional information.

There are several ways in which new information might be introduced during LUC proceedings. These might include: Petitioner presenting witnesses that inadvertently discuss new or different information; filing of documents by parties that dispute facts determined at the County-level; and Petitioner requesting amendments to conditions imposed by the County based on new or updated information. That's one reason why you won't see the Petitioner putting on its witnesses before the LUC since the evidentiary record has already been developed before the County.

The point being, that the LUC needs to be careful about allowing the introduction of any new information, whether inadvertently or purposely, into its deliberative process that might require a remand back to the County. Commissioners need to be careful that questions to parties do not serve to introduce new information into the record. The LUC's decision must be made based on the record developed at the County-level and any amendments to conditions or additional conditions must be based on that same record.

Section 205-6, Hawai'i Revised Statutes (HRS), and Section 15-15-96(a), Hawai'i Administrative Rules (HAR), provide the alternative actions that may be taken by the LUC in its consideration of the Special Permit application. The LUC may approve, approve with modification, or deny the Application. The LUC may impose additional restrictions as may be necessary or appropriate in granting the approval.

Guidelines for Special Permits

The guidelines for Special Permits are contained within 15-15-95, HAR, that allows certain "unusual and reasonable" uses within the Agricultural and Rural Districts. These guidelines are to be used in determining whether a proposed use is "unusual and reasonable."

1. The use shall not be contrary to the objectives sought to be accomplished by Chapters 205 and 205A, HRS, and the rules of the Commission.

2. The desired use would not adversely affect surrounding property.
3. The use would not unreasonable burden public agencies to provide streets, sewers, water, drainage, schools, fire, and police resources.
4. Unusual conditions, trends, and needs have arisen since the district boundaries and rules were established.
5. The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

In addition, recent changes to Chapter 205, HRS, in 2014, required that solar energy facilities may be permitted on land with LSB Class B or C lands for which a Special Permit is granted provided that:

- The area occupied by the solar energy facilities is also made available for compatible agricultural activities at a lease rate that is at least fifty percent below the fair market rent for comparable properties;
- Proof of financial security to decommission the facility is provided to the satisfaction of the appropriate county planning commission prior to the date of the commencement of commercial generation; and
- Solar energy facilities shall be decommissioned at the owner's expense and according to certain requirements.

2. PROCEDURAL MATTERS

On September 5, 2014, the applicant Waiawa PV, LLC (“Petitioner”) filed an application for a State Special Permit with the City and County of Honolulu (“County”) for 47 megawatt utility-scale solar farm on approximately 308.8 acres of land in the State Agricultural District in Waipi`o, Island of O`ahu, Hawaii.

On November 6, 2014, the LUC sent comments on the Special Permit application to the County Department of Planning and Permitting (“DPP”).

On December 17, 2014 and January 7, 2015, the Honolulu Planning Commission (“Planning Commission”) met to consider the application. The Planning Commission approved the application subject to conditions of approval.

On January 21, 2015, the Planning Commission issued its Findings of Fact, Conclusions of Law, and Decision and Order (“Decision and Order”) approving the State Special Permit, subject to review and approval of the State Land Use Commission (“LUC”).

On January 29, 2015, the LUC received from the County an original, one copy, and a digital copy of the Planning Commission’s Decision and Order dated January 21, 2015.

On February 13, 2015, the LUC received two documents omitted from the digital copy but part of the original and hard paper copies: Exhibit 14 State Public Utilities Commission comment letter, and Exhibit 21 Carlsmith Ball LLP notification letter to Planning Commission regarding project timeframe.

On February 19, 2015, the LUC received Petitioner’s Proposed Findings of Fact, Conclusion of Law, and Decision and Order (“Petitioner’s Proposed D&O”) Based on the Record of the Planning Commission of the City and County of Honolulu.

On February 24, 2015, the LUC mailed the agenda and meeting notice to the Parties, and the Statewide and O`ahu Island mailing lists.

On February 26, 2015, the LUC received the State Office of Planning’s (“OP”) comment letter.

On February 27, 2015, the LUC received the Petitioner’s request for the LUC to take judicial notice of a change of name and supporting documentation.

3. DESCRIPTION OF THE PROPERTY AND SURROUNDING AREAS

The area of the subject application is located at Waipi`o, `Ewa, island of O`ahu. The site consists of 308.8 acres of land identified as Tax Map Key (“TMK”) (1) 9-5-003: portion 004 (“Property”). The Property is owned by Renewable Land Holdings, LLC who has authorized Waiawa PV, LLC (“Petitioner”) as lessee to file the Special Permit application (DPP Exhibit 19).

The Property is located east of the H-2 Interstate Highway and approximately 1,000 feet north of Mililani Memorial Park. A new 768-acre, mixed-use development known as Koa Ridge Makai, is planned along the west side of H-2. Access to the site is via Pineapple Road, which connects to Ka Uka Boulevard. There is no public access to the site. First Wind has an option to purchase the Petition Area and associated access across Pineapple Road.

The Property comprises former agricultural fields that were previously cultivated with pineapple. Currently, the Petition Area is used for cattle grazing. Small farms occupy certain parcels north and south of the site. The nearest residential areas are at Mililani Mauka (approximately 0.5 mile to the north, across Kipapa Gulch) and the easternmost portion of Mililani Town (approximately 0.6 mile to the west, across the H-2 Highway).

The Property is within the State Agricultural District and has not been identified as Important Agricultural Land (IAL). The Property is designated Agricultural and Preservation under the Central O`ahu Sustainable Communities Plan; zoned in the AG-1 Restricted Agricultural District. Under the County Land Use Ordinance utility installations are allowed within the AG-1 District subject to obtaining a conditional use permit from DPP. The Property is not located within the Special Management Area (SMA) and no SMA permits are required.

The Property is located within Zone D according to the U.S. Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps, where flood hazards are undetermined (DPP Exhibit 19).

The U.S. Department of Agriculture, Soil Conservation Service, classifies the soils on the Property as Wahiawa silty clay (WaA and WaB) and Manana silty clay (MpB and MpC). Wahiawa series consists of well-drained, thick, blocky structures. Permeability is moderately rapid, runoff is slow and erosion hazard is slight. Manana series are well-drained, with moderate erosion potential; runoff is rapid in steeper sections.

The Land Study Bureau’s detailed land classification classifies the Property as overall (master) productivity rating class B. The Agricultural Lands of Importance to the State of Hawaii (ALISH) classification system classifies the Property as “Prime” (approximately 40% on the western portion) and “Unique Agricultural Lands” (approximately 60% on the eastern portion),

A flora and fauna assessment of the area was conducted by SWCA Environmental Consultants that concluded that no threatened or endangered plant or animal species or

candidate species were located within the Petition Area; and no wetlands or streams were observed within the Petition Area (DPP Exhibit 19).

An “Archaeological Assessment Survey” of 342 acres, which includes the entire Petition Area, was prepared by Robert Rechtman in 2014 as part of the application and submitted to the State Historic Preservation Division (“SHPD”) for review (DPP Exhibits 1 and 20). Several prior surveys that covered portions or all of the Petition Area found no archaeological sites. The 2014 survey concurs with previous surveys, that development of the Petition Area would not significantly impact any known historic properties. Robert Rechtman also prepared an analysis to identify whether any valued cultural, historical or natural resources were present and whether any traditional or customary native Hawaiian rights were exercised or have been exercised within the Petition Area (DPP Exhibit 19). No valued natural or cultural resources or specific cultural practices were identified within the Petition Area. The Petitioner has indicated that a “Draft Archaeological Assessment Survey”, was submitted to SHPD in August 2014 for its review (DPP Exhibit 1). However, there is no documentation provided that SHPD has reviewed and approved the survey results.

4. SUMMARY OF PROPOSED USE

The Petitioner proposes to construct a 47-megawatt photovoltaic (PV) energy generation facility (Project) on a 308-acre portion ("Petition Area") of a 525-acre parcel. The Project will consist of south-facing, ground-mounted PV panels mounted on fixed-tilt blocks. The panels are mounted about 4 1/2 feet to 9 1/2 feet above existing grade. The PV system will include other electrical equipment such as combiner boxes, below surface collector lines, inverters, transformers, weather monitoring stations, and switch gear. The Project will also include a switchyard and a substation within the Petition Area to be operated by Hawaiian Electric Company ("HECO").

The substation and switchyard may each include an enclosed and unmanned control building to house electrical equipment for controls, metering, and communication. In addition, the Petitioner proposes to construct internal gravel roadways and security fencing encompassing the Petition Area. Landscaping will be planted along certain sections of the H-2 Interstate Highway. A new water reservoir is proposed within the excluded portion in the Petition Area by Castle & Cooke Homes, Inc., which is not part of the Project.

The Petitioner intends to lease portions of the subject parcel to a local ranch to raise sheep. The lease would commence after the Project is operational and would be at a lease rate of no more than 50% of the fair market rate for similar agricultural properties.

The Petitioner has stated that upon receiving all land use and building permit approvals, that construction, operation, and decommissioning of the solar facility would be completed in 35 years.

5. SUMMARY OF SIGNIFICANT COMMENTS BY REVIEWING AGENCIES ¹

On October 2, 2014, the County Department of Planning and Permitting (“DPP”) sent out a letter to County, State, and Federal agencies requesting comments on the Special Permit application (Exhibit 8).

County Agencies (Exhibit 14)

Department of Environmental Services

The DEM believed there would be no impact to their services or facilities.

Board of Water Supply (“BWS”)

The DWS had no comments.

Police Department

The Police Department had no concerns.

Fire Department

The Fire Department requires that access roads be provided and water supply sufficient for fire flow and fire protection.

State Agencies (Exhibit 14)

Office of Planning (“OP”)

OP identified the following issues:

- i. The archaeological assessment needs to be approved by SHPD prior to commencement of construction of the solar farm.
- ii. That specific conditions address the statutory requirements in Section 205-4.5(a)(21), HRS, that requires any solar farm on “B” or “C” lands to have the site available for agricultural activities and with a lease rent at least 50% below the fair market rent for comparable properties.
- iii. Require specific conditions to address financial security for decommissioning and decommissioning requirements.

Department of Agriculture (DOA)

The DOA recommended a condition be imposed that the applicant and its successors and/or assigns shall have established a sheep pasture operation or other agricultural enterprise on the property in compliance with Act 55, SLH 2014, for the duration of the operation of the solar facility.

¹ Agency comments are based on the record provided by the County with the Special Permit application as DPP Exhibit 14.

Land Use Commission

The LUC suggested conditions be placed on any approval that recognizes changes made in 2014 to Chapter 205, HRS, requiring any solar facilities on “B” or “C” rated lands to make the site available to agricultural activities at 50% or less of fair market rent.

The LUC noted that the archaeological assessment had not been reviewed by the State Historic Preservation Division (“SHPD”) and that a determination with any necessary mitigation measures was needed prior to approval of the Special Permit in order that appropriate conditions can be determined. In addition, the LUC noted that the County should provide a condition that identifies a date by which the Project should begin, the duration of the activity and any conditions for cessation of the activity. And finally, that an annual reporting requirement be included.

Federal Agencies (Exhibit 14)

US Fish and Wildlife Service (USFWS)

The USFWS provided comments indicating that the Hawaiian Hoary bat may forage and roost in the Project area and that there is evidence elsewhere that solar photovoltaic systems can attract migratory waterfowl and shorebirds.

USFWS recommended the incorporation of conservation measures into the project:

- i. To minimize impacts on the Hawaiian hoary bat – woody plants greater than 15 feet tall should not be disturbed, removed or trimmed between June 1 and September 15; and no use of barbed wire for fencing.
- ii. Personnel at the solar site should be educated about the potential for birds to be attracted and inadvertently harmed.

6. CONFORMANCE WITH THE SPECIAL PERMIT CRITERIA

The following summarizes the DPP analysis as adopted by the Planning Commission as to how the proposed solar energy facility addresses the Special Permit guidelines for determining an “unusual and reasonable” use in the State Land Use Agricultural District.

The County has found the following (Planning Commission's Decision & Order):

- A. Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.
- The proposed solar facilities on State Agricultural District lands with a LSP rating of B are permitted if granted a Special Permit, and provided that the Project is made subject to three conditions:
 - The area occupied by the solar energy facility is also made available for compatible agricultural activities at a lease rate that is at least 50 percent below the fair market rent for comparable properties;
 - Proof of financial security to decommission the facility is provided to the satisfaction of the appropriate county Planning Commission prior to the date of commencement of commercial generation; and,
 - Solar energy facilities shall be decommissioned at the owner's expense according to the following requirements:
 - Removal of all equipment related to the solar energy facility within twelve months of the conclusion of operation or useful life; and
 - Restoration of the disturbed earth to substantially the same physical condition as existed prior to the development of the solar energy facility.
- B. The Planning Commission found that:
- The proposed Project was within the State Agricultural District and on lands rated "B" under the LSB classification. Therefore a Special Permit was required and subject to certain conditions;
 - The applicant provided information relating to provision of land area within the Project for compatible agricultural use at a lease rent of 50% below market value, and a preliminary description for decommissioning estimated at \$4 million dollars;
 - The use is not contrary to the objectives sought by the State Land Use Law and may be considered an unusual but reasonable use of agricultural lands.
 - The Planning Commission does not currently have rules to implement provisions of Act 55, SLH 2014, therefore, the Applicant needs to submit an agricultural site plan showing the area set aside for compatible agricultural use;
 - Financial security in the form of a Letter of Credit could be an acceptable method to show proof of financial security.
- C. The desired use would not adversely affect surrounding property.
- The Project site is surrounded by vacant agricultural land. The State Department of Agriculture (DOA) did not indicate any adverse impact on surrounding agricultural uses.

- Residential uses are over 0.5 miles away and adverse impacts are not anticipated on nearby homes.
 - The Waiahole Ditch could serve as a source for irrigation water, however, no impacts are anticipated on this water source as a result of the Project.
 - Noise or odors are not anticipated.
 - Best Management Practices (BMP) are standards of the City's grading ordinance.
- D. The use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and school improvements and police and fire protection.
- Access to the Project is via a private access road. No centralized parking facilities are planned. The State DOT and City's DTS did not provide any comments as to anticipated traffic impacts.
 - Normal operation of the facility would not require onsite personnel; therefore, no permanent wastewater facilities would be required.
 - The Project is not serviced by the Honolulu Board of Water Supply. Small amounts of water required for occasional irrigation would be supplied by water catchment or water truck. No hook-up to the municipal water system is planned.
 - No existing changes in the drainage pattern are anticipated. No residential use is proposed so no impacts to school or police protection are anticipated. Fire protection standards will be met through requirements at time of building permit approvals.
- E. Unusual conditions, trends and needs have arisen since the district boundaries and rules were established.
- Large-scale solar development is a recent phenomenon as federal tax incentives have contributed to growing industry.
 - Due to a reduction in panel costs and government subsidies, large scale PV has become a viable economic alternative to plantation agriculture.
 - The trend to use large areas of land for energy generation was not anticipated at the time the State Land Use law was being established.
 - The local cost for energy from fossil fuels continues to rise and is presently two to four times the cost for energy as the U.S. Mainland.
- F. The land upon which the proposed use is sought is unsuited for the uses permitted within the district.
- The parcel is rated good quality agricultural land and is suited for the uses permitted within the district.
 - Act 55, SLH 2014 allowed the granting of a Special Permit for solar energy facilities provided that certain conditions are met. One of these conditions requires that the same lands be made available for compatible agricultural uses. The statute allows for dual use of the lands, resulting in little loss of high quality agricultural land. Therefore, the Petition Area is suitable for the establishment of the Project.
 - The Applicant proposes a sheep farm and explored alternative agricultural operations should the sheep farm prove infeasible.
 - The Applicant represents that it will comply with decommissioning requirements contained within Section 205-4.5(a)(21)(C), HRS.

- The Department of Agriculture supports solar energy operations in combination with compatible local food production.
- The Planning Commission recommends a condition requiring the Applicant to establish a compatible agricultural enterprise on the site for the duration of the solar farm's operation.

Other Findings by the Planning Commission

City General Plan

- The Project would contribute toward energy self-sufficiency and reduce the amount of fossil fuels needed to provide O`ahu's energy needs.
- The Project conforms to objectives and policies of the City's General Plan.

Central O`ahu Sustainable Communities Plan (COSCP)

- The site is located outside the Urban Community Boundary (UCB) established to provide long-term protection from urbanization. The Applicant does not propose urban zoning. Therefore, the Project is consistent with the intent of the UCB.
- The site is located within areas of the COSCP designated as Agriculture and Preservation. The Applicant's plans for sheep grazing addresses both the need to retain these lands in agricultural use and meets the requirements of establishing compatible agricultural uses in the area of the solar farm, in accordance with Section 205-4.5(a)(21), HRS.
- Portions of the site are visible from the H-2 Freeway and views of the site and the background of the Ko`olau Mountains are show on the Open Space Map as protected panoramic views. The Applicant will landscape to screen views of the Project from passing motorists as a condition of approval. Therefore, with appropriate landscaping as represented by the Applicant, the Project is consistent with relevant portions of the COSCP.

Land Use Ordinance

- The Project is located within the AG-1 Restricted Agricultural District. The proposed use is considered a "utility installation, Type 2" facility and is subject to obtaining a County Conditional Use Permit.

Special Management Area (SMA)

- The Project site is located outside of the SMA and a SMA permit is not required.

Coastal Zone Management (CZM)

- All lands of the State, including area extending seaward of the shoreline to the seaward limits of the State's jurisdiction, are included in the CZM area.

- The Project is consistent with the CZM objectives and policies for scenic and open space resources. The site is located on O'ahu's central plain, far away from the shoreline. Landscaping will be used to screen the Project from views along the H-2 Freeway.
- The Applicant made presentations about its proposal to the area's neighborhood boards.
- The DPP Director found that the proposed Project is in compliance with the objectives and policies of the CZM Program.

Social Impacts

- The Project will have minimal impact on population and minimal impact if any on the area's farming community.
- Positive impacts would result from an increase in energy production by renewable sources. Also, establishment of a sheep pasturing operation would add to the supply of lamb for consumption.

Decommissioning and Restoration

- Section 205-4.5(a)(21)(C), HRS, requires the Applicant to remove all equipment related to the solar energy facility within 12 months of the conclusion of operations or useful life, and to restore the disturbed earth to substantially the same physical condition as existed prior to the development. The statute does not establish a specific timeframe for the restoration.
- Site restoration would be based on site-specific requirements and techniques commonly employed at the time of decommissioning.
- The Applicant is required to comply with Section 205-4.5(a)(21)(C), HRS, and a condition of approval is not required.

Glint and Glare

- The Applicant's consultant prepared a glint and glare study in accordance with the FAA's recommendations. The study concludes that while glare may be visible during short periods, the effects would be mitigated by the distance of the Project from publicly accessible areas, intervening structures, and landscaping. Potential effects on aircraft approaching Wheeler Army Airfield are expected to be barely perceptible.
- The State Department of Transportation indicated that glint and glare may affect aircraft within the vicinity of the Petition Area and beyond. DOT recommended that the Applicant should be prepared to immediately mitigate hazardous conditions due to glint and glare upon notification by the DOT Airports Division or the FAA.

Archaeological Resources

- The Applicant's consultant prepared a draft archaeological assessment in August 2014 which was submitted to SHPD for review. The consultant concluded that no historic properties, cultural deposits, or cultural material were identified within the

Project area and that the Project will not have a significant impact on any known historic properties.

- SHPD did not provide comments as of the date of the Decision and Order.
- The Land Use Commission recommended that an approved archaeological assessment be provided prior to approval of the Special Permit so that appropriate conditions can be determined. OP recommended that an approved archaeological assessment be provided by SHPD before commencement of construction of the Project.
- A condition of SP approval to require a SHPD approved archaeological assessment is not recommended. An approved archaeological assessment could be required during review of the Conditional Use Permit (CUP), should SHPD provide comments that are contrary to the assessment's conclusions.
- Should cultural resources be uncovered during site work, the Applicant is required to comply with Section 106 of the National Historic Preservation Act and the Section 6E, HRS.

7. PLANNING COMMISSION RECOMMENDATION

On January 21, 2015, the County's Planning Commission issued their Findings of Fact, Conclusions of Law, and Decision and Order approving the Special Permit application subject to 9 conditions and then forwarded a recommendation for approval to the LUC. (Planning Commission's Decision & Order).

1. Usable lands of the Petition Area, including areas under PV panels, shall be made available for compatible agricultural use at a lease rate that is at least 50 percent below the fair market rent for comparable properties, as long as the Project is in operation. Compatible agricultural operations shall be established, or Applicant shall be actively seeking to have such operations established, within one year of the start of commercial power generation. Extensions to this deadline may be granted by the Director of the DPP for unforeseen extenuating circumstances.
2. The Applicant shall submit for review and obtain the approval of the following from the Director of the DPP, prior to the issuance of a grading or building permit:
 - a. A survey map accompanied by a metes and bounds description of the approved Petition Area.
 - b. A site plan showing the area required under Condition 1, above, relating to the minimum land area to be made available for compatible agricultural use.
3. Within one year of the completion of construction or prior to the closing of the building permit for the solar energy facility, the Applicant shall submit to the DPP proof of financial security, such as a posted letter of credit or similar mechanism from a credit-worthy financial institution, in favor of the owner of the land subject to the SUP, in the amount of four million dollars (\$4,000,000), which security shall remain in place for the duration of the operation of the Project, with evidence of same provided to the Director of the DPP on an annual basis, to decommission and restore the Petition area to substantially the same physical condition as existed prior to the development of the SEF.

The Applicant shall decommission the SEF within twelve (12) months following the termination of operations of the SEF, with the exception of the HECO switchyard, which may remain within the Petition area after termination of the SUP. A change in Project ownership or a change in ownership of the land subject to the SUP, which warrants a new proof of financial security to decommission the Project, shall be submitted to the DPP for processing through the Planning Commission, within three months of the ownership change.

4. As needed, the Applicant shall work with the U.S. Fish & Wildlife Service regarding the protection of endangered or migratory bird activity at the Petition Area.

5. The Applicant shall establish the Project within two (2) years of the date of the State Land Use Commission's (LUC) Decision and Order approving the SUP. Requests for extension of this deadline shall be submitted to the Director of the DPP prior to the expiration of the deadline. The Commission may grant an extension to the deadline to establish the Project due to unforeseen circumstances that were beyond the control of the Applicant. This SUP shall be valid for a period of thirty-five (35) years from the date of the State Land Use Commission's Decision and Order approving the SUP, subject to further extensions upon timely request for extension filed with the Commission at least one-hundred twenty (120) days prior to the SUP's expiration.
6. On or before December 31 of each year that the SUP is in effect, the Applicant or its successor shall file an annual report to the DPP that demonstrates the Applicant's compliance with conditions of the SUP.
7. Major modifications to: (1) the Project plans, including but not limited to significant increases in the number of PV panels; (2) amendments to the conditions of approval; (3) significant expansions of the approved area; or (4) change in uses stated herein, shall be subject to the review and approval of the Commission and the State LUC. Minor modifications including minor additions to accessory uses and structures, and new incidental uses and structures in the approved area are subject to review and approval by the Director of the DPP.
8. The Applicant and/or landowner shall notify the Director of the DPP of:
 - a. Any change or transfer of licensee on the property;
 - b. Any change in uses on the property;
 - c. Termination of any uses on the property; and/or
 - d. Transfer in ownership of the property.

The Commission, in consultation with the Director of the DPP, shall determine the disposition of this SUP, and the facilities permitted herein.

9. Enforcement of the conditions of the SUP shall be pursuant to the Rules of the Planning Commission, including the issuance of an order to show cause as to the reason the SUP should not be revoked if the Commission has reason to believe that there has been a failure to perform the conditions imposed herein.

8. STAFF RECOMMENDATIONS

Section 205-6, HRS, and Section 15-15-96(a), HAR, provides the alternative actions that may be taken by the LUC in its consideration of the Special Permit application. The LUC may approve, approve with modification, or deny the Application. The LUC may impose additional restrictions as may be necessary or appropriate in granting the approval. However, any modifications or additional restrictions must be based on the record as developed by the City and County of Honolulu Planning Commission. The LUC may also remand the Application to the Planning Commission for further proceedings if they determine that consideration of new information, relevant to the application, is warranted.

Staff believes that the Petitioner has adequately demonstrated meeting the guidelines for a State Special Permit. The documented record from the County DPP, including the Planning Commission's Decision and Order, contains sufficient information and justification to approve the Special Permit with the recommended Planning Commission conditions and the proposed amendments/additions by Staff below.

The previous section identifies the language of the nine conditions that have been approved by the Planning Commission and recommended for approval by the LUC. If the LUC is inclined to approve the Application, staff recommends that the LUC consider the following amendments and additions to the conditions approved by the Planning Commission (additions underscored; deletions crossed out):

Staff Recommended Amendments to Planning Commission Conditions

6. On or before December 31 of each year that the Special ~~U~~Permit is in effect, the Applicant or its successor shall file an annual report to the Land Use Commission, the State Office of Planning, and the DPP that demonstrates the Applicant's compliance with conditions of the SUP.

Staff Recommended New Conditions

10. If the photovoltaic array creates a hazardous condition for pilots or motorists, the facility operator shall immediately mitigate the hazard upon notification by the Department of Transportation, Airports Division or the Federal Aviation Administration.
11. Petitioner shall obtain approval of the draft archaeological assessment, dated August 2014, from the State Historic Preservation Division (SHPD) prior to commencement of construction of the solar farm.
12. In the event that historic resources, including human skeletal remains, structural remains, cultural deposits, artifacts, sand deposits, or sink holes, are identified during demolition and/or construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the SHPD, and O'ahu Island Burial Council, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites are discovered during the course of

construction of the Project, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigation measures have been implemented to its satisfaction.

13. The Petitioner shall develop the property in substantial compliance with the representations made to the City and County of Honolulu Planning Commission and the State Land Use Commission in obtaining the State Special Permit. Failure to so develop the property may result in revocation of the permit.