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DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU

TRANSMITTAL LETTER

Via Hand-Delivery

To: The Planning Commission Date: 4/27/2015
Attn: Gloria C. Takara
650 South King Street, 7th Floor From: Randall F. Sakamoto, Esq.
Honolulu, Hawai'i 96813 Marguerite S. Nozaki, Esq.
Re: Kawaihoa Solar, LLC
File No. 2014/SUP-6(RY)

Copies	Date	Description
1	N/A	Proposed Findings of Fact, Conclusions of Law, and Decision and Order

TRANSMITTED FOR:

- Your information**
- Your signature and return
- Your signature and forwarding as noted below
- Per our conversation
- Your further necessary action
- Your approval
- Your review and comment
- Per your request
- See remarks below

IF YOU HAVE ANY QUESTIONS, PLEASE DO NOT HESITATE TO CALL

REMARKS:

 cc: Department of Planning and Permitting
Attn: Raymond Young

BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

IN THE MATTER OF THE APPLICATION)	FILE NO. 2014/SUP-6(ry)
)	
OF)	
)	
KAWAIILOA SOLAR, LLC)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW, AND
FOR A)	DECISION AND ORDER
)	
<u>STATE SPECIAL USE PERMIT</u>)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER**

This matter came before the Planning Commission of the City and County of Honolulu (hereinafter the "Commission"), for public hearing on April 1, 2015, and further hearing on April 15, 2015, at the Mission Memorial Conference Room in Honolulu, Hawaii. Based on the record in this matter, the Commission hereby finds as follows:

FINDINGS OF FACT

1. This matter involves Kawaiiloa Solar, LLC's ("Applicant") Special Use Permit ("SUP") application to the Department of Planning and Permitting ("DPP") for the establishment of a solar energy facility ("SEF") within the State Land Use Agricultural District on Land Study Bureau Overall Master Productivity rating Class "B", "C" and "E" lands.

2. The site of the proposed SEF ("Project") is located in the vicinity of Ashley Road, approximately 6,000 feet south of Waimea Beach Park and 4 miles northeast of Haleiwa Town, at Kawaiiloa, North Shore, Oahu, Hawaii. It consists of an approximate 382.2 acre portion of a 10,787-acre lot that has been recently designated as Important Agricultural Land ("IAL") under Part III of Chapter 205, Hawaii Revised Statutes ("HRS") ("Petition Area"), referred to as Tax Map Key 6-1-005:001 and Tax Map Key 6-1-006: Portion of 001.

3. The Petition Area is owned by Bernice Pauahi Bishop Trust Estate ("Land Owner").

4. The Applicant seeks a Special Use Permit ("SUP") to establish a 50-megawatt SEF. The proposed SEF will include accessory uses and structures consisting of horizontal single-axis tracking, ground-mounted photovoltaic ("PV") panels, two electrical substations, underground cables to transmit power to the existing Makai

and Mauka Switchyards, combiner boxes, below surface collector lines, inverters, transformers, weather monitoring stations, switch gear, and perimeter fencing.

5. The Applicant proposes to lease a portion of the Petition Area to a local ranch to raise sheep in compliance with Section 205-4.5(a)(21), HRS, recently created under Act 55, 2014 Session Laws Hawaii ("Act 55"). The sheep ranching will provide on-site vegetation control and a food source in compliance with the intent of Act 55.

6. The Petition Area is presently fallow and the site of the Kawailoa wind energy generation system built in 2012.

7. Access to the Petition Area is via Ashley Road, a private roadway which is maintained for the existing Kawailoa wind energy generation system, and connects to Kamehameha Highway.

8. The Petition Area is designated by the North Shore Sustainable Communities Plan as Agriculture. The existing zoning is AG-1 Restricted Agricultural District. Surrounding uses include mixed-agricultural uses such as pasture and crop production, and open space.

9. The Project's solar panels will be south-facing and mounted on tracking racks about 4 ½ to 9 ½ feet above existing grade. Energy generated by the western portion of the Project will be transmitted to the electrical grid via the existing Makai Switchyard which connects to the Hawaiian Electric Company ("HECO") Waialua-Kahuku 46kV sub-transmission line. Energy from the eastern portion of the Project will be transmitted to the electrical grid via an existing Mauka Switchyard located adjacent to Site 7 (as shown in attached Exhibit 1) which was constructed for the existing wind energy generation system. The Mauka Switchyard connects to the HECO Waialua-Kuilima 46 kV sub-transmission line.

10. The energy generated by the SEF will be sold to HECO.

11. The Applicant offered, and the Commission received into record, Exhibits 1 through 23.

12. The Applicant presented the Project at meetings of the North Shore Neighborhood Board ("NB").

13. The Project is not subject to environmental disclosure requirements of Chapter 343, HRS.

14. At the public hearing of April 1, 2015, the Commission heard testimony from Wren Wescoatt, the Hawaii Development Director for SunEdison, LLC (formerly First Wind Holdings, LLC) in support of the Project. The Commission also heard testimony from Crystal Kua, the Director of External Affairs – Hawaii, for SunEdison, LLC, in support of the Project.

15. The Commission received a report from the Director of DPP dated March 13, 2015, providing an analysis of the request and a recommendation for approval of the Application with conditions.

16. Due to the recent designation of the Petition Area as IAL, the Commission requested that Applicant submit an agricultural plan for the proposed sheep ranching component to the Project, and scheduled a further public hearing to April 15, 2015.

17. Applicant submitted a Preliminary Agricultural Plan on April 13, 2015, which addressed in part the Commission's inquiry and consideration of the standards and criteria in Section 205-50, HRS, pertaining to IAL designation.

18. In satisfaction of Section 205-50(b), HRS, Applicant's SUP application had been provided to the Department of Agriculture ("DOA") and Office of Planning ("OP") for review and comment. The DOA recommended approval of Applicant's SUP conditioned upon the establishment of a sheep pasture operation or other agricultural enterprise on the Petition Area in compliance with Act 55, 2014 Session Laws of Hawaii. The OP also recommended approval of the Applicant's SUP conditioned on the Applicant's satisfaction of the requirements set forth in Section 205-4.5(a)(21)(A), (B), and (C), HRS.

19. Applicant addressed Section 205-50(c), on pages 6-7 of its Preliminary Agricultural Plan. Construing subsections (2), (3), and (5) of that Section 205-50(c) to be inapplicable as those subsections pertain to proposed district boundary amendments and zone changes, Applicant addressed the remaining subsections (1) and (4) as follows:

- (1) The relative importance of the land for agriculture based on the stock of similarly suited lands in the area and the State as a whole;

See Ex. 15(L), OP comment letter dated February 17, 2015. The project site area has been and is currently fallow. Kawaioloa Solar is committed to introducing and implementing an agricultural component to the otherwise fallow land, in the form of sheep grazing.

[...]

- (4) The public benefit to be derived from the proposed action is justified by a need for additional lands for nonagricultural purposes; and

The public will benefit from installation of the 50 MW solar energy facility to provide clean, renewable power to HECO for integration into their electrical distribution system, ultimately reducing the cost for electricity to Oahu consumers. Kawaioloa Solar is also committed to implementing an agricultural component to the solar farm in the form of a sheep ranching operation, which will

provide a much-needed local source of lamb meat. The Project site is more than suitable for grazing sheep because the land is dry enough to ensure that foot rot will be at a minimum, but damp enough to sustain a large supply of forage for the sheep, and the land has a slight slope for good drainage. No barn or shed will be necessary as the PV panels provide shade.

20. At its continued public hearing of April 15, 2015, the Commission accepted Applicant's Preliminary Agricultural Plan with Attachments for the proposed sheep ranching operation and alternative beekeeping plan.

CONCLUSIONS OF LAW

The Commission hereby concludes as follows:

1. The Commission has jurisdiction to permit unusual and reasonable uses within the agricultural districts, pursuant to Section 205-6, HRS.
2. The Project is an "unusual and reasonable" use as set forth in Section 205-6, HRS, and the five guidelines established by the Commission, pursuant to Section 2-45 of the Planning Commission Rules.
3. The Project would make available portions of the site for compatible agriculture in accordance with Section 205-4.5(a)(21)(A), HRS.
4. The Project would not be contrary to the objectives sought to be accomplished by the State Land Use Law.
5. The Project meets the standards and criteria set forth in Section 205-50, pertaining to IAL.

DECISION AND ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, the Commission hereby **APPROVES** the application for a State Special Use Permit, File No. 2014/SUP-6(ry), for approximately 382.2 acres, Tax Map Key 6-1-005:001 and Tax Map Key 6-1-006: Portion of 001, for the establishment of a solar energy facility, as shown on Exhibit 1 (attached), subject to the following conditions:

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 six months of the start of commercial power generation. Extensions of this deadline may be granted by the Director of DPP for unforeseen extenuating circumstances.

2. The Applicant shall submit for review and obtain the approval of the following from the Director of 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. Prior to the closing of the building permit for the SEF, the Applicant shall submit to the DPP proof of financial security, such as a posted letter of credit or similar mechanism from a creditworthy financial institution, in favor of the owner of the land subject to the SUP, in the amount of \$4,000,000.00, which security shall remain in place for the duration of the operation of the Project, with evidence of same provided to the Director of DPP on an annual basis, to decommission the Project 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 12 months following the termination of operations of the SEF. 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 Commission, within 3 months of the ownership change.

4. The Applicant shall comply with the recommendations of 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 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 LUC may grant an extension of 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 35 years from the date of the State LUC's Decision and Order approving the SUP, subject to further extensions upon a timely request for extension filed with the Commission at least 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. If at any time during the term of the SUP no compatible agricultural operations exist on the usable lands of the Petition Area for six months, the Applicant

shall notify the Commission and the Director of the DPP in writing within 30 days of the end of the six-month period. If requested by the Commission, the Applicant shall attend a meeting of the Commission and submit a report to the Commission detailing the Applicant's actual and reasonable efforts to actively seek the establishment of compatible agricultural operations on the usable lands of the Petition Area. The Commission shall determine whether probable cause exists to reevaluate the SUP and to hold a hearing pursuant to Section 2-49 of the Planning Commission Rules. Extensions to the six-month deadline may be granted by the Commission for unforeseen, extenuating circumstances.

8. 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 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.

9. The Applicant and/or landowner shall notify the Director of the DPP of:
- a. Any change or transfer of licensee on the Petition Area;
 - b. Any change in uses on the Petition Area;
 - c. Termination of any uses on the Petition Area; and/or
 - d. Transfer in ownership of the Petition Area.

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

10. Enforcement of the conditions of the SUP shall be pursuant to the Planning Commission Rules, 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.

Dated at Honolulu, Hawaii this ___ day of _____, 2015.

PLANNING COMMISSION
CITY AND COUNTY OF HONOLULU

By _____
DEAN I. HAZAMA, Chair

Attachment