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OFFICE OF PLANNING, STATE OF HAWAII  
and DEPARTMENT OF AGRICULTURE

LAND USE COMMISSION  
STATE OF HAWAII  
2016 FEB - 8 A 11:42

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition ) DOCKET NO. DR16-55  
)  
To Issue a Declaratory Order That a ) PETITION FOR DECLARATORY ORDER;  
Photovoltaic System is Not an ) MEMORANDUM IN SUPPORT OF  
Agricultural Energy Facility. ) PETITION FOR DECLARATORY ORDER;  
) EXHIBITS 1 -5; CERTIFICATE OF  
) SERVICE  
)  
)  
\_\_\_\_\_ )

**PETITION FOR DECLARATORY ORDER**

Pursuant to Hawaii Revised Statutes (“HRS”) § 91-8 and Hawaii Administrative Rules (“HAR”) § 15-15-98 et seq., the Office of Planning, State of Hawaii (“OP”) and Department of Agriculture (“DOA”) file this Petition for Declaratory Relief (“Petition”). The Petition asks the Land Use Commission (“LUC”) to determine whether a solar energy facility qualifies as an “agricultural-energy facility” (“AEF”) pursuant to HRS § 205-4.5(a)(17) if the solar energy is not “from products of agricultural activities.”

I. The Petitioners' name, mailing address, and telephone number.

The Petitioners are OP and DOA. OP's mailing address and telephone number are P.O. Box 2539, Honolulu, Hawaii 96804, and 587-2846, respectively. DOA's mailing address and telephone number are P.O. Box 22159, Honolulu, Hawaii 96823-2159 and 693-9551, respectively.

II. A statement of the petitioners' interests in the subject matter, including the reasons for submission of the petition.

OP has an interest in maintaining the balance between solar energy facilities and agricultural activities within the agricultural district, in the protection of high quality agricultural lands for agricultural uses, and in the proper interpretation of chapter 205, HRS.

OP has overarching planning and coordination responsibilities for land use, including formulating the State's position on land use district boundary amendments, and the periodic review of State land use districts and regulatory activities therein. Pursuant to HRS chapter 225M, OP is responsible for assisting in "maintaining an overall framework to guide the development of the State through a continuous process of comprehensive, long-range, and strategic planning." See HRS § 225M-2(a)(1). OP is also responsible for facilitating coordinated and cooperative planning and policy development, including regulatory activities, between State and county agencies. See HRS § 225M-2(b)(3). Relative to land use planning, OP is responsible for developing and presenting the position of the State in all boundary change petitions and proceedings before the LUC, and for conducting periodic reviews of the classification and districting of all lands in the State as specified in HRS chapter 205. See HRS § 225M-2(b)(5). Accordingly, OP has a statutory interest and obligation in working with county and State agencies to ensure that chapter 205, HRS, is properly and consistently interpreted and implemented.

DOA is a regularly consulted party in land use proceedings involving agricultural lands and particularly Important Agricultural Lands. Even more importantly, DOA is responsible for administering a program of agricultural planning and development, including reviewing, interpreting, and making recommendations with respect to public policies and actions relating to agricultural land and water use. In so doing, DOA acts to conserve and protect agricultural lands and irrigation water systems, promote diversified agriculture, increase agricultural self-sufficiency, and ensure the availability of agriculturally suitable lands. See HRS § 141-1(8). Accordingly, DOA has an interest in seeing that A and B-rated lands throughout the State are used in compliance with chapter 205, HRS.

The Department of Planning and Permitting, City and County of Honolulu (“DPP”) has issued a conditional use permit (“CUP”) based upon the belief that an AEF as defined in HRS § 205-4.5(a)(17) may be a facility that generates renewable energy as defined in section 269-91, HRS, even if such energy is not from products of agricultural activities. As described more fully below, OP and DOA respectfully disagree, and have filed this Petition to obtain a statewide interpretation of this State statute. OP and DOA believe the LUC’s interpretation of HRS § 205-4.5(a)(17) will be helpful to all county agencies, including the Zoning Board of Appeals, which will hear an appeal of a CUP involving this issue.

III. Designation of the specific statutory provision, rule, or order in question, together with a complete statement of the relevant facts and a statement of the issues raised or controversy or uncertainty involved.

This Petition asks for the proper interpretation of HRS § 205-4.5(a)(17), giving due consideration to the other provisions of that section.

Applicant SMB II, LLC (“Applicant”) filed a request for a CUP, Minor to construct a photovoltaic (“PV”) system on A and B-rated agricultural lands. Approximately 2,020 PV

panels would be placed on concrete posts on a 5.27 acre lot. The placement of the panels on concrete posts would allow agricultural activity to occur below. However, there is no substantial and discernible purpose as to why the panels need to be on concrete posts in order to produce solar energy. Accordingly, the purpose for placing the panels on concrete posts appears to be solely for the purpose of allowing the solar energy facility to be built on A and B-rated agricultural lands.

DPP asked DOA for its opinion as to whether the proposed solar facility qualified as an AEF pursuant to HRS § 205-4.5(a)(17). On November 13, 2015, Mr. Earl Yamamoto, a Planner with DOA replied that it was DOA Planning Staff's position that the project was not an AEF.<sup>1</sup> On December 30, 2015, Mr. Rodney Funakoshi, Chief of the Land Use Division of OP, emailed the Department of Planning that OP concurred with DOA Planning Staff's position.

The Applicant disagreed.

On January 8, 2016, DPP issued its Findings of Fact, Conclusions of Law, and Decision and Order ("D&O") approving the Applicant's request for a CUP, Minor. In the D&O, DPP stated that the proposed PV system was an AEF as described in HRS § 205-4.5(a)(17).

As discussed in more detail below, and regardless of the particular facts raised in DPP's January 8, 2016 D&O, this Petition concerns the interpretation of HRS § 205-4.5(a)(17), which also requires the consideration of other portions of HRS § 205-4.5. At its most basic, the issues are (1) whether a PV system is an AEF, and (2) whether the enterprise "integrally incorporates an agricultural activity with an agricultural-energy facility."

IV. Petitioners' statement of the interpretation of the statute, rule, or order or the Petitioners' position or contention with respect thereto.

HRS § 205-4.5(a)(17) defines the term "agricultural-energy facility" as follows:

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<sup>1</sup> Because of the various approvals needed, the November 13, 2015 email also stated that it was not the official position of DOA. But DOA does agree with the contents of the email.

“Agricultural-energy facility” means a facility that generates, stores, or distributes renewable energy as defined in section 269-91 or renewable fuel including electrical or thermal energy or liquid or gaseous fuels from products of agricultural activities from agricultural lands located in the State.

Pursuant to HRS § 205-4.5(a)(17), an AEF is a facility that generates, stores, or distributes (1) renewable energy from products of agricultural activities, or (2) renewable fuel from products of agricultural activities.

HRS § 205-4.5.(a)(17) defines the term “agricultural-energy enterprise” as follows:

“Agricultural-energy enterprise” means an enterprise that integrally incorporates an agricultural activity with an agricultural-energy facility.

Pursuant to HRS § 205-4.5(a)(17), an agricultural activity is integrally incorporated with an agricultural-energy facility if the generation, storage, or distribution of renewable energy is enhanced or made possible by the integration of an agricultural activity, i.e. the renewable energy is a product of agricultural activity. These issues are discussed in more detail in the attached Memorandum in Support.

V. The names of other potential parties.

- a. SMB II, LLC
- b. Department of Planning and Permitting, City and County of Honolulu
- c. Department of Planning, County of Hawaii
- d. Department of Planning, County of Kauai
- e. Department of Planning, County of Maui


VI. Relationship to any commission docket for district boundary amendment or special permit.

Because DPP determined that the proposed PV system was a permitted agricultural use under HRS § 205-4.5(a)(17), the Applicant is able to avoid any district boundary amendment or

special permit proceeding, and this matter will not come before the LUC. So, this Petition is not related to any commission docket for district boundary amendment or special permit.

DATED: Honolulu, Hawaii, February 8, 2016.

DOUGLAS S. CHIN  
Attorney General of Hawaii

  
\_\_\_\_\_  
BRYAN C. YEE  
Deputy Attorney General

Attorney for Petitioners OFFICE OF PLANNING,  
STATE OF HAWAII and DEPARTMENT OF  
AGRICULTURE

BEFORE THE LAND USE COMMISSION

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Photovoltaic System is Not an ) PETITION FOR DECLARATORY ORDER  
Agricultural Energy Facility. )  
 )  
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**MEMORANDUM IN SUPPORT OF PETITION FOR DECLARATORY ORDER**

I. INTRODUCTION

The Hawaii State Plan in sections 226-7 and 226-18, Hawaii Revised Statutes (“HRS”), promotes both agricultural self-sufficiency and the development of renewable energy for current and future generations. In the Agricultural District, the Legislature over the years has amended HRS chapter 205 to balance these complex, often competing objectives, to preserve the best agricultural lands while allowing reasonable development of facilities such as solar energy -- the most land intensive renewable energy source of a non-agricultural nature. It is noted that allowing non-agricultural uses in the Agricultural District contributes to the impermanence syndrome, whereby agricultural use declines due to farmers’ disinvestment in their farm operations in anticipation of development.

The amount of prime agricultural lands in the State of Hawaii are limited. Based on the Land Study Bureau’s master productivity ratings and the Office of Planning’s (“OP”) Geographic Information System data, of the 1,831,000 acres of land in the State Agricultural District, only 3.1% (56,000 acres) are rated as A, and 6.1% (114,000 acres) are rated as B. Unless planned for urban growth by the county or reclassified pursuant to HRS chapter 205, OP believes that non-agricultural uses on these highly rated lands should be restricted in a manner consistent with the intent of establishing Agricultural District lands, that “the greatest possible

protection shall be given to those lands with a high capacity for intensive cultivation.” HRS § 205-29a)(3).

OP and the Department of Agriculture (“DOA”) believe the City and County of Honolulu Department of Planning and Permitting (“DPP”) erred in the granting of a Conditional Use Permit for a solar energy facility on A and B lands in the Agricultural District. DPP’s interpretation of the agricultural-energy facilities provision in HRS § 205-4.5(a)(17) as applying beyond biogas, biomass, and biofuels sets a precedence for companies to avoid the statutory restrictions imposed by HRS § 205-4.5 by artificially altering its energy operations to circumvent the district boundary amendment process and qualify as a permitted agricultural use. If this door is opened, other renewable energy producers will try to do the same, exacerbating the impermanence syndrome and disrupting the balance created by the comprehensive statutory scheme.

## II. FACTUAL SUMMARY

Applicant SMB II, LLC filed a request for a Conditional Use Permit, Minor to construct a photovoltaic (“PV”) system on A-rated agricultural lands. Approximately 2,020 PV panels would be placed on concrete posts on a 5.27 acre lot. See Exhibit 1. The placement of the panels on concrete posts would allow agricultural activity to occur below. However, there is no substantial and discernible purpose as to why the panels need to be elevated on concrete posts in order to produce solar energy. Accordingly, the purpose for placing the panels on concrete posts appears to be solely for the purpose of allowing the solar energy facility to be built on A-rated agricultural lands.

Agricultural activity is not needed for or relevant to the production of solar energy. The production of solar energy is not needed for or relevant to the agricultural activity. The



agricultural activity is only related to the production of solar energy insofar as the agricultural activity provides the excuse for the Applicant's argument that the PV system is a permitted agricultural use.

DPP asked DOA for its opinion as to whether the proposed solar facility qualified as an AEF pursuant to HRS § 205-4.5(a)(17). On November 13, 2015, Mr. Earl Yamamoto, a Planner with DOA replied that it was DOA Planning Staff's position that the project was not an AEF and was not an agricultural-energy enterprise.<sup>1</sup> See Exhibit 2. On December 30, 2015, Mr. Rodney Funakoshi, Administrator of the Land Use Division of OP, emailed the DPP that OP concurred with DOA Planning Staff's position. See Exhibit 3.

As discussed in more detail below, OP and DOA note that HRS § 205-4.5(a)(17) defines the term "agricultural-energy facility" as follows:

"Agricultural-energy facility" means a facility that generates, stores, or distributes renewable energy as defined in section 269-91 or renewable fuel including electrical or thermal energy or liquid or gaseous fuels from products of agricultural activities from agricultural lands located in the State.

Under this definition, an AEF is a facility that generates, stores, or distributes (1) renewable energy from products of agricultural activities, or (2) renewable fuel from products of agricultural activities. A PV system generates solar energy. Solar energy, however, is not from products of agricultural activity. Consequently, a PV system is not an AEF. A similar argument applies to whether a PV system is an agricultural-energy enterprise.

The Applicant disagreed. See Exhibit 4.

On January 8, 2016, DPP issued its Findings of Fact, Conclusions of Law, and Decision and Order ("D&O") approving the Applicant's request for conditional Use Permit, Minor. In the

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<sup>1</sup> Because of the various approvals needed, the November 13, 2015 email also stated that it was not the official position of DOA. But DOA does agree with the contents of the email.

D&O, DPP stated that the proposed PV system was an AEF as described in HRS § 205-4.5(a)(17). See Exhibit 1.

### III. ARGUMENT

#### A. The Purpose

HRS § 205-2 describes the four major land use classifications, and charges the commission to protect good agricultural lands. It states as follows:

The commission shall set standards for determining the boundaries of each district, provided that:

\* \* \*

(3) In the establishment of the boundaries of agricultural districts the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation . . . .

HRS § 205-4.5(a)(17) should be interpreted consistent with this goal to protect agricultural lands with a high capacity for intensive cultivation. Lands with A and B-rated soils are lands with the highest capacity for cultivation. Accordingly, restrictions on uses of A and B-rated lands should be adhered to carefully, faithfully, and strictly.

#### B. The Comprehensive Statutory Scheme

As discussed above, there is a need to balance the conflicting claims on good agricultural land. By reviewing HRS § 205-4.5(a) as a whole, one can see that the legislature resolved these conflicting goals of renewable energy and agriculture by setting forth specific paragraphs for each type of renewable energy. See HRS §§ 1-15(1) (“The meaning of the ambiguous words may be sought by examining the context, with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning”) and 1-16 (“Laws in pari material, or upon the same subject matter, shall be construed with reference to each other. What is clear in one statute may be called in aid to explain what is doubtful in another”).

Solar energy is allowed on agricultural lands as set forth in sections 205-2(d)(6), and 205-4.5(a)(20) and (21), HRS. Solar facilities are generally prohibited on A-rated lands, with a small exception under very rigorous conditions. HRS § 205-4.5(a)(20). Solar facilities on B or C-rated lands are allowed if they do not occupy more than 10% of the parcel and are less than twenty (20) acres in size, or with a special permit. HRS §§ 205-2(d)(6) and 4.5(a)(21). A special permit on B or C-rated lands is only given subject to certain restrictions. HRS § 205-4.5(a)(21). Solar facilities on D or E-rated lands are generally allowed. HRS § 205-2(d)(6).

Other provisions in HRS § 205-4.5 govern renewable energy on agricultural land for wind (HRS § 205-4.5(a)(15)), geothermal (HRS § 205-4.5(a)(22)), and hydroelectric (HRS § 205-4.5(a)(23)). Considering all of these other provisions, HRS § 205-4.5(a)(17)'s role is to cover the remaining renewable energy types as defined by HRS § 269-91 relevant to agricultural land uses: biogas, biomass, and biofuels.<sup>2</sup> Accordingly, HRS § 205-4.5(a)(17) is not intended to apply to PV systems.

The legislative history confirms that HRS § 205-4.5(a)(20) and (21) are intended to fully regulate the terms under which solar energy facilities may occur on good agricultural lands. Gray v. Administrative Director of Court, 84 Hawai'i 138, 148 (1997) (“[t]he courts may resort to extrinsic aids in determining the legislative intent. One avenue is the use of legislative history as an interpretive tool” quoting State v. Toyomura, 80 Hawai'i 8, 18-19 (1995)).

In 2014, the Legislature passed Act 52 which allowed solar facilities on A-rated lands under certain restrictive conditions. After a joint hearing, the Senate Committee on Agriculture and the Senate Committee on Energy and Environment noted the conflict between solar and

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<sup>2</sup> Ocean thermal energy conversion and wave energy are also types of renewable energy, but are not relevant when discussing the use of A and B-rated agricultural lands.

agricultural uses, and passed a bill through a compromise in which solar facilities were only allowed on A-rated agricultural lands under certain conditions. They stated as follows:

Your Committees find that using renewable energy sources to support agricultural activities is important to the State's agricultural industry, environment, and sustainability. Your Committees have concerns, however, about allowing solar energy facilities on prime class A agricultural lands, which make up only 3.1 percent of the state agricultural district. As a compromise, your Committees conclude that solar facilities should be allowed on class A lands, but only on field roads that are used for vehicular traffic. With this compromise, no prime agricultural land will be sacrificed for solar energy facilities, and the State can increase its renewable energy sustainability efforts.

(emphasis added). S.C. Rep. No. 2607, 2014 Senate Journal 1048.

The House Committee on Energy and Environmental Protection and the House Committee on Water & Land similar found that the purpose of Act 52 was “to protect agricultural lands with a productivity rating of class A and permit solar energy facilities on those lands only if” certain conditions were met, including a special use permit granted by the Land Use Commission. (emphasis added). See S.C. Rep. No. 1506-14, 2014 House Journal 1401, and S.C. Rep. No. 1107-14, 2014 House Journal 1270. The legislative history is clear, therefore, that solar facilities on A-rated lands are only allowed if they comply with the requirements of HRS § 205-4.5(a)(20). Consequently, HRS § 205-4.5(a)(17) does not apply to solar facilities.

In addition, HRS § 205-4.5(a)(21) only allow solar facilities on B and C lands if they have a special permit and the area occupied by the solar facilities are also made available for comparable agricultural activities at a lease rate at least fifty per cent below fair market rent. There are additional requirements for financial security to decommission the facility and an obligation to restore the project area to its pre-existing condition. These requirements for a

special permit, financial security, and restoration are effectively eliminated if every solar facility is an AEF. If a solar facility is presumed to integrally incorporate agricultural activities by offering a low lease rate as SMB II does, then every such solar facility qualifies as a permissible use under HRS §205-4.5(a)(17), rendering the terms of HRS § 205-4.5(a)(21) superfluous. This is an absurd result, and statutes are to be read as to avoid this result. See HRS § 1-15(3) (“Every construction which leads to an absurdity shall be rejected”), and Casmara v. Agsalud, 67 Hawaii 212, 215-16 (1984).

To interpret HRS § 205-4.5(a)(17) as applying beyond biogas, biomass, and biofuels proposes to create a method to circumvent the comprehensive statutory scheme, violate the legislative intent, disrupt the balance created by the legislature, and exacerbate the impermanence syndrome. HRS § 205-4.5(a)(17) must be read as part of a larger statutory scheme which already regulates wind, geothermal, hydroelectric, and solar. Taken together with the legislative history, it is clear that HRS § 205-4.5(a)(17) covers the remaining relevant renewable energy types, i.e. biogas, biofuels, and biomass, and does not apply to PV systems.

C. The Language of the Paragraph

With respect to the specific language of HRS § 205-4.5(a)(17), the two primary issues are (1) whether the PV system is an AEF, and (2) whether the enterprise “integrally incorporates an agricultural activity with an agricultural-energy facility.”

1. Whether the PV system is an AEF.

HRS § 205-4.5(a)(17) defines the term “agricultural-energy facility” as follows:

“Agricultural-energy facility” means a facility that generates, stores, or distributes renewable energy as defined in section 269-91 or renewable fuel including electrical or thermal energy or liquid or gaseous fuels from products of agricultural activities from agricultural lands located in the State.

The Applicant defines an AEF as a facility that generates, stores, or distributes (1) renewable energy as defined in section 269-91, HRS, or (2) renewable fuel from products of agricultural activities. OP and DOA define an AEF as a facility that generates, stores, or distributes (1) renewable energy from products of agricultural activities, or (2) renewable fuel from products of agricultural activities.

First, under the Applicant's definition, there is no agricultural nexus to the renewable energy facility. So, it defies logic and common sense to create a definition for an "agricultural-energy facility" in which the facility did not have a nexus to agriculture.

Second, Applicant's definition is not the definition of an AEF; it is the definition of a "renewable energy system." HRS § 269-1 defines a "renewable energy system" as follows:

"Renewable energy system" means any identifiable facility . . . that converts renewable energy, as defined in section 269-91, to useful thermal or electrical energy for heating, cooling, or reducing the use of other types of energy that are dependent on fossil fuel for their generation.

So, the Applicant apparently believes that any renewable energy system is an AEF. However, if this was true, the legislature could have simply referred to a renewable energy system as defined in HRS § 269-1.

Finally, as discussed above, HRS § 205-17 should be interpreted consistent with the statutory purpose of protecting good agricultural lands and consistent with the comprehensive statutory scheme which already regulates solar, wind, geothermal, and hydroelectric on A and B-rated agricultural lands. Based upon these arguments, HRS § 205-4.54(a)(17) requires that an AEF must be a facility which generates either renewable energy or renewable fuel from products of agricultural activity. A PV system does not generate power from products of agricultural activity, and is not an AEF.

2. Whether the enterprise “integrally incorporates an agricultural activity with an agricultural-energy facility.”

HRS § 205-4.5.(a)(17) defines the term “agricultural-energy enterprise” as follows:


“Agricultural-energy enterprise” means an enterprise that integrally incorporates an agricultural activity with an agricultural-energy facility.

Pursuant to HRS § 205-4.5(a)(17), an agricultural activity is integrally incorporated with an agricultural-energy facility if the generation, storage, or distribution of renewable energy is enhanced or made possible by the integration of an agricultural activity, i.e. the renewable energy is a product of agricultural activity. This is consistent with OP and DOA’s interpretation and the statutory purpose described above. Solar energy is not enhanced or made possible by the integration of an AEF. Consequently, a PV system is not an agricultural-energy enterprise.

IV. CONCLUSION

For all the aforementioned reasons, OP and DOA respectfully request the LUC to determine that an AEF must be “a facility that generates, stores, or distributes (1) renewable energy from products of agricultural activities, or (2) renewable fuel from products of agricultural activities.” An agricultural-energy enterprise is one which an agricultural activity enhances or makes possible by the AEF. A PV system is neither an AEF nor an agricultural-energy enterprise.

DATED: Honolulu, Hawaii, February 8, 2016.

  
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BRYAN C. YEE  
Deputy Attorney General

Attorney for Petitioners  
OFFICE OF PLANNING, STATE OF HAWAII  
and DEPARTMENT OF AGRICULTURE

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



GEORGE I. ATTA, FAICP  
DIRECTOR

ARTHUR D. CHALLACOMBE  
DEPUTY DIRECTOR

2015/CUP-73(WA)  
2016/W-1

January 8, 2016

Ms. Jennifer Lim  
Carlsmith Ball LLP  
1001 Bishop Street, Suite 2100  
Honolulu, Hawaii 96813

Dear Ms. Lim:

SUBJECT: Conditional Use Permit (Minor) Application No. 2015/CUP-73  
Zoning Waiver Application No. 2016/W-1  
SMB II LLC - Utility Installation, Type B  
85-485C Waianae Valley Road - Waianae  
Tax Map Key 8-5-19: 14

The Director of Department of Planning and Permitting (DPP) has **APPROVED** the above-referenced Conditional Use Permit (Minor) and Zoning Waiver, subject to certain conditions. A copy of the Director's Findings of Fact, Analysis, Conclusions of Law, and Decision and Order (including the conditions of approval), location map, and exhibits are attached.

Any party (to the case) wishing to appeal the Director's action must submit a written petition to the Zoning Board of Appeals (ZBA) within 30 calendar days from the date of mailing or personal service of the Director's written decision (Zoning Board of Appeals Rules Relating to Administrative Procedure, Rule 22-2, Mandatory Appeal Filing Deadline). Essentially, the Zoning Board of Appeals rules require that a petitioner show that the Director based his action on an erroneous finding of a material fact, and/or that the Director acted in an arbitrary or capricious manner, or manifestly abused his discretion. The ZBA can only consider the evidence previously presented to the Director of the DPP.

Failure to comply with ZBA Rule 22-2, Procedures for Appeals, may result in the dismissal of the appeal. Copies of the ZBA rules are available at the Department of Planning and Permitting. Appeals should be addressed to:

Zoning Board of Appeals  
c/o Department of Planning and Permitting  
650 South King Street, 7th Floor  
Honolulu, Hawaii 96813

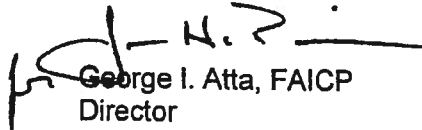
**EXHIBIT** |



2015/CUP-73 and 2016/W-1  
January 7, 2016  
Page 2

Please find attached the receipts for the Zoning Waiver application review and processing fees. Should you have any questions, please contact William Ammons of our Urban Design Branch at 768-8025.

Very truly yours,

  
George I. Atta, FAICP  
Director

Enclosures: Findings of Fact, Analysis, Conclusions of Law, and Decision and Order  
Receipt Nos. 105923 and 105924

cc:/Marc Unowitz, SMB II LLC  
/Janet and Kenneth Gaza

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DEPARTMENT OF PLANNING AND PERMITTING  
CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

IN THE MATTER OF THE APPLICATION )  
 )  
 OF )  
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 SMB II LLC )  
 )  
 FOR A )  
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 CONDITIONAL USE PERMIT (MINOR) )  
 )  
 AND )  
 )  
 ZONING WAIVER )  
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FILE NO. 2015/CUP-73(WA)  
2016/W-1

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

I. APPLICATION

A. Basic Information:

LANDOWNER:	Janet and Kenneth Gaza
APPLICANT:	SMB II LLC (Marc Unowitz)
AGENT:	Carlsmith Ball LLP (Jennifer Lim and Onaona Thoene)
LOCATION:	85-485C Waianae Valley Road (Exhibit A)
TAX MAP KEY:	8-5-19: 14
LAND AREA:	5.27 Acres
STATE LAND USE:	Agricultural District
ZONING:	AG-2 General Agricultural District (Exhibit B)
EXISTING USE:	Farm dwelling, agricultural structures, agricultural land
SURROUNDING LAND USE:	Single-family dwellings, agricultural land

B. Proposal:

Conditional Use Permit, Minor (CUPm): The Applicant proposes to construct and operate a utility installation, Type B (photovoltaic solar farm), as described in Land Use Ordinance (LUO) Section 21-5.650, and an agricultural energy facility (AEF), as described in Hawaii Revised Statutes (HRS) 205-4.5(a)(17). This utility installation will consists of a 0.59 megawatt (MW) ground mounted photovoltaic (PV) panel system. Approximately two acres or 38 percent of the

5.27-acre zoning lot will be developed for the PV solar farm. This utility installation, Type B will be located within the AG-2 General Agricultural District with approximately 2,020 PV panels. These PV panels will be mounted at an angle on steel and aluminum racking system and concrete posts approximately seven feet above grade at the lowest point and approximately 11 feet at the highest point. This angled height will allow agricultural activities beneath the PV panel system.

A 400 square-foot concrete equipment pad will be installed to support an electrical transformer, switchgear, monitoring equipment, and other miscellaneous electrical equipment. This equipment area will be enclosed with a six-foot high fence.

The Applicant does not plan to install a perimeter fence around the project site but may install security cameras. No landscaping is proposed except for some natural vegetation. The Applicant states that no vegetative buffer will be provided because it will interfere with the proposed agricultural uses within the project site.

No parking will be required or needed for the unmanned site. The facility will not generate wastewater. Access to the site is via Waianae Valley Road and Governor John Waihee Way over an approximately 800-foot access easement.

The electrical power generated by the PV farm will be transferred through lines that will be placed underground and collected at the transformer located at the southern corner of the project site. The power will be transferred from the equipment pad and transferred via an underground line to be installed by the Applicant to an existing electrical pole and 13.8 kV transmission line owned by HECO outside of the project site.

Construction of the PV solar farm will take approximately eight weeks. There will be approximately 20 workers employed to install the panels. Once completed, the site will require routine maintenance twice a year. See Exhibits A-1 through A-5.

2. Zoning Waiver: The utility installation, Type B requires a Zoning Waiver from Land Use Ordinance Sections 21-3.50-4 (b), [Table 21-3.1], to allow the utility installation, Type B to exceed the maximum permitted building area of 10 percent. See Exhibits A-1.

## II. FINDINGS OF FACT

On the basis of the evidence presented, the Director has found:

- A. Description of Site and Surrounding Uses: The rectangular shaped parcel is slightly angled along the northern and southern property lines, zoned AG-2 General Agricultural District and is in the State Agricultural District. The land is generally flat with a sloping topography of approximately two feet from the southeast toward the northwest of the site. There is a 1,400 square-foot farm dwelling, a 540 square-foot covered work shed, and a 110 square-foot storage shed located near the front property line. The remainder

of the site is vacant agriculture land that the Applicant state has not been in substantial agricultural use for at least 20 years. There is a 10-foot wide ditch along a portion the southeast property line that connects with the adjoining drainage canal. There is a 10-foot wide power easement along the western property line. The surrounding land uses include vacant agricultural lands.

- B. Other Permits and/or Approvals: The following permits and approvals were approved for these parcels:
  - 1. On April 23, 1970, a Land Subdivision Application was approved.
  - 2. On October 31, 1974, a Building Permit (BP) No. 39660 was approved for a new single-family dwelling.
- C. Environmental Review: The project is not subject to the environmental review provisions of Chapter 343, Hawaii Revised Statutes (HRS).
- D. Flood District: The Federal Emergency Management Agency Flood Insurance Rate Map Community Panel Number 0185G, revised January 19, 2011, indicates that the site is within Flood Zone D. Flood Zone D is areas in which flood hazards are undetermined.
- E. Public Notification and Comments: The Applicant presented its proposal to the Waianae Coast Neighborhood Board No. 24 on December 2, 2014. There was some concern regarding the availability of the site for agricultural uses and whether the PV farm would generate radiation. The Applicant responded that the landowner had no plans to farm the land in the future and that the PV farm would not produce radiation.
- F. Applicant's Justification: The Applicant provided justification statements which are part of the file.

### III. ANALYSIS

#### A. Conditional Use Permit (Minor):

The Director of DPP may allow a conditional use upon finding that the proposed use satisfies the following criteria:

- 1. The proposed use is permitted as a conditional use in the underlying zoning district and conforms to the requirements of the Land Use Ordinance (LUO).

Pursuant to LUO Section 21-3.50-4(a) [Table 21-3], a utility installation, Type, B, is a permitted use in the AG-2 General Agricultural District with an approved CUPm.

a. AG-2 General Agricultural District Standards:

<u>LUO Standards</u>	<u>LUO Provisions</u>	<u>Project Site</u>
Minimum Lot Area (acres)	3 for major livestock production, 2 for all other uses	5.27 acres Complies
Minimum Lot Width/Depth	150 feet	More than 150 feet Complies
Yards: Front Side/Rear	15 feet 10 feet	Complies Complies
Maximum Building Area	10 percent <sup>2</sup>	40 percent Does not comply 90 percent of 2-acre Agricultural Energy Facility Complies
Maximum Height <sup>1</sup>	15-25 feet <sup>3</sup>	Complies
Height Setbacks	per Sec. 21-3.50-4(c)	Complies

<sup>1</sup>Heights above the minima of the given range may require height setbacks or may be subject to other requirements.

<sup>2</sup>For non agricultural structures.

<sup>3</sup>Fifteen feet for nonagricultural structures and dwellings; up to 25 feet are permitted if height setbacks are provided.

The project does not comply with all applicable AG-2 General Agricultural District development standards. The proposed photovoltaic farm with the existing farm dwelling will exceed the maximum building area and is further discussed in Section B.

- b. LUO Section 21-5.650(a) Specific Use Standards for Utility Installations, Type B: All requests for utility installation, Type B shall be accompanied by a landscape plan which shall be approved by the Director. Special emphasis shall be placed on visual buffering for the installation from adjacent streets and highways. The Applicant has provided a drawing showing the proposed landscaping. See Exhibit A-5.

No landscaping is proposed for the site other than maintaining the existing of Hibiscus hedge and Areca palms.

- c. LUO Sections 21-6.20 [Table 21-6.1] and 21-6.100 Off-Street Parking and Loading Requirements: Table 21-6.1 allows the Director to determine the parking requirement for utility installations. Because the facility does not generate a need for off-site parking, due to the nature of the operation, none will be required.

Also, because there is no floor area, loading stalls are not required.

- d. Access: Primary access to the facility for periodic maintenance will be via Governor John Waihee Way. Access to the site will be over an approximately 800 foot access easement. The access road is not paved. See Exhibit A-1.
2. The site must be suitable for the proposed use considering size, location, topography, infrastructure and natural features. The size, location, topography, and terrain of the site and the infrastructure available are suitable for the proposed installation. There are no notable natural features on the property.
- a. Size, Location, Topography, and Natural Features: The subject 5.27-acre parcel is adequate for the existing and proposed uses. The AEF will occupy 90 percent of a two-acre portion within the site. The site has not been used for agricultural purposes in over 20 years and is relatively flat. The soil rating as rated by the Land Study Bureau (LSB) is "A" for this parcel. Solar energy facilities would not normally be allowed on soil with a rating class "A". However, HRS 205-4.5(a)(17) allows AEF, including appurtenances necessary for an agricultural enterprise; provided that the primary activity of the agricultural-energy enterprise is an agricultural activity. To be considered the primary activity of an AEF, the total acreage devoted to agricultural activity shall be not less than 90 percent of total acreage of the agricultural-energy enterprise. The AEF shall be limited to lands owned, leased, licensed, or operated by the entity conducting the agricultural activity.
- In Exhibit K, the Hawaii Agriculture Research Center report (dated September 2015) stated that this two-acre site is currently fallow but has a good potential for productive agricultural use. Using the agrivoltaic systems method, mounting the PV panels 7-11 feet above grade and rows spaced 7 feet apart would be sufficient for many crops because the sun moves from east to west. As a condition of approval, the Applicant should provide an approved agricultural plan for this AEF.
- b. Infrastructure:
- i. Water: The AEF will not generate a significant demand for water resources. There is no proposed landscaping.
- ii. Wastewater: The PV farm is unmanned and will not produce wastewater nor increase the demand for wastewater services.
- iii. Stormwater: An existing drainage canal runs along the rear (southeast) portion of the site. No new stormwater management engineering controls are proposed.
3. The proposed use will not alter the character of the surrounding area in a manner substantially limiting, impairing or precluding the use of surrounding properties for the principal uses permitted in the underlying zoning district. The technologies associated with PV farms will not involve any nuisance noise, dust, or odors. The utility installation will be unmanned, with no personnel assigned to the site other than for periodic maintenance. The Applicant will be constructing a fence

to surround the equipment pad to provide security. Landscaping will be via natural landscaping. The site is zoned for agricultural uses. The proposed PV farm is not in an area currently used for crop production. Therefore, the project will not alter the character of the surrounding area in a manner substantially limiting, impairing, or precluding the use of the surround properties. It is also a "clean" facility that does not generate any contamination or waste. The surrounding residential uses will be unaffected by the proposed facility.

To insure the proposed installation does not significantly impact surrounding land uses once it is constructed, the Applicant should be aware that the CUPm can be re-evaluated if it is later determined that the impacts of the installation are greater than anticipated. This requirement will be a condition of approval.

4. The use at its proposed location will provide a service or facility which will contribute to the general welfare of the community-at-large or surrounding neighborhood. The proposed PV farm will contribute to the general welfare of the community-at-large by providing clean, renewable energy as an alternative source of energy production, and help to reduce the consumption of conventional fossil fuels and its resultant production of negative air quality impacts.

B. Zoning Waiver:

The Director of the DPP may grant a zoning waiver upon a finding that the proposal shall not, under the circumstances and conditions applied in the particular case, adversely affect the health or safety of persons, and shall not be materially detrimental to the public welfare or injurious to nearby property improvements. Pursuant to LUO Section 21-2.130(a)(1), utility installations are eligible for a waiver from the strict development and/or design standards of the LUO. The maximum allowable building area is 10 percent of the zoning lot. The proposed AEF will have a building area of two acres or approximately 39 percent of the 5.27-acre zoning lot. With the existing 1,400 square-foot farm dwelling, it will result in a total building area of 40 percent.

The Applicant requests a zoning waiver from LUO Sections 21-3.50-4(b), [Table 21-3.1], to exceed the maximum building area of 10 percent. The maximum building area exceeds the 10 percent coverage by approximately 30 percent.

#### IV. CONCLUSIONS OF LAW

The Director hereby makes the following Conclusions of Law:

A. Conditional Use Permit (Minor):

1. The proposed utility installation, Type B or AEF is permitted in the AG-2 General Agricultural District with an approved CUPm.
2. With the exception of building area, the request conforms to the minimum development standards for the AG-2 General Agricultural District of the LUO. The size, location, and topography of the site are suitable for the use, and there are no natural features which preclude the use of the utility installation, Type B at the site.

3. The proposed PV farm and other components will not alter the character of the surrounding area in a manner substantially limiting, impairing, or precluding the use of the surrounding properties for the principal uses permitted in the underlying zoning district.
  4. The proposed PV farm or AEF of this utility installation, Type B provides a facility and services that are of benefit to the community-at-large.
- B. Zoning Waiver: Given the particular circumstances and conditions of this case, the request to permit the proposed utility installation, Type B to exceed the maximum building area:
1. Will not adversely impact surrounding properties;
  2. Is not anticipated to adversely affect the health or safety of persons, be materially detrimental to the public welfare, or injurious to nearby property improvements; and
  3. Is reasonable.

#### V. DECISION AND ORDER

Pursuant to the Findings of Fact and Conclusions of Law, the Director of the Department of Planning and Permitting (DPP) hereby **APPROVES** the application for a Conditional Use Permit, Minor (CUPm) to allow a utility installation, Type B or agricultural energy facility (AEF), in the AG-2 General Agricultural District; and Zoning Waiver from the Land Use Ordinance (LUO) Section 21-3.50-4 (b), [Table 21-3.1], to allow the PV solar farm and its components to exceed the maximum building area of the underlining zoning district, subject to the following conditions:

- A. Development and operation of the utility installation, Type B on the site shall be in general conformance with the approved project, as described herein and shown on Exhibits A-1 through A-5, attached hereto, which shall be deemed the approved plans for the project. Any modification of the approved project and/or plans shall be subject to the prior review of and approval by the Director of the DPP. Minor modifications shall be processed in accordance with Section 21-2.20(k) of the LUO. Major modifications shall require a new CUPm and Zoning Waiver.
- B. Prior to submitting for a building permit application, the Applicant shall submit to the Director of the DPP, for review and approval, the following items:
  1. Approved agricultural plan by the State Department of Agriculture for the proposed agricultural energy facility (AEF).
  2. Landscape plans of the equipment area showing the Huapaia vines on the chain link fence and the Naupaka shrubs on the exterior side of the chain link fence for the length of the street frontage. Provide typical planting details and plant list with quantities, species, size, and spacing.

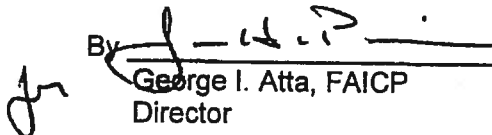


- C. Prior to the issuance of a Notice of Completion, the Applicant shall submit photographic documentation to sufficiently show the installation of the required landscaping.
- D. Support buildings (maintenance sheds and control rooms) shall not be constructed in the required yards.
- E. The proposed landscaping (as shown on Exhibit A-5) shall be maintained in good condition for the life of the project. If the landscaping is removed, the Applicant shall provide replacement landscaping that is of comparable size at maturity. Perimeter landscaping shall adequately screen the visual impacts of the PV farm.
- F. This application has only been reviewed and approved pursuant to the provisions of LUO Sections 21-5.650(a) (utility installation, Type B) and 21-2.130 Waiver of requirements and development shall comply with all other provisions of the LUO and shall comply with applicable codes and regulations.
- G. Approval of this CUPm and Zoning Waiver shall not constitute compliance with other LUO or governmental agencies' requirements, including building and/or sign permit approval. These are subject to separate review and approval. The Applicant shall be responsible for insuring that the final plans for the project approved under this permit comply with all applicable government agencies' provisions and requirements.
- H. To mitigate the visual impact of the facility, utility poles, light poles/masts, and accessory structures, they shall be of a non-reflective material and color and shall be painted to blend in with the surrounding area.
- I. **The Applicant shall obtain the required building permits and initiate construction of the approved utility installation, Type B within two years from the date of this approval, or the CUPm and Zoning Waiver shall lapse.**
- J. If, during construction, any previously unidentified archaeological sites or remains, (such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings, or wall) are encountered, the Applicant shall stop work and contact the State Historic Preservation Division (SHPD) immediately. Work in the immediate area shall be stopped until SHPD is able to assess the impact and make further recommendations for mitigative activity.
- K. The Applicant and/or landowner shall submit written notification to the DPP of any change in use, including the addition of any accessory uses and/or structure, or termination of any use on the property. In the case of any addition and/or change in use, the Director shall determine if the proposed change requires a minor or major modification of the CUPm.
- L. Upon termination of the project, the Applicant shall be required to make sure that all equipment and/or structures associated with the approved use have been completely removed from the site, and that the project site shall be restored and re-vegetated within 12 months from the end of operations.
- M. If the use of the site as a utility installation, Type B is discontinued for 12 consecutive months, the CUPm shall automatically lapse. In that case, the Applicant and /or landowner shall remove all structures which were authorized by the CUPm.

- N. The Applicant shall submit written notification to the Director within 30 days from the date the utility installation, Type B is discontinued and/or terminated.
- O. The Applicant shall submit written notification to the Director of the DPP, if there is a transfer in ownership of the approved use. In the event of a change in ownership, the Director shall notify the new owner (by copy of this "Finding of Fact, Conclusions of Law, and Decision and Order") that the site and/or facility is permitted and/or governed by the CUPm and Zoning Waiver, and that compliance with all conditions of approval is required.
- P. The Director may modify the conditions of this permit by imposing additional conditions, modifying existing conditions, or deleting conditions deemed satisfied upon a finding that circumstances related to the approved project have significantly changed so as to warrant a modification to the conditions of approval.
- Q. The Director may re-evaluate the CUPm and Zoning Waiver after construction of the facility to determine if visual, noise, or other impacts are significantly greater than anticipated (i.e., as represented by the Applicant). The Director may impose additional conditions to mitigate greater adverse impacts, or revoke the CUPm if adverse impacts cannot be mitigated.
- R. In the event of the noncompliance with any of the conditions set forth herein, the Director may terminate all uses approved under this permit or halt their operation until all conditions are met or may declare this conditional use permit null and void or seek civil enforcement.

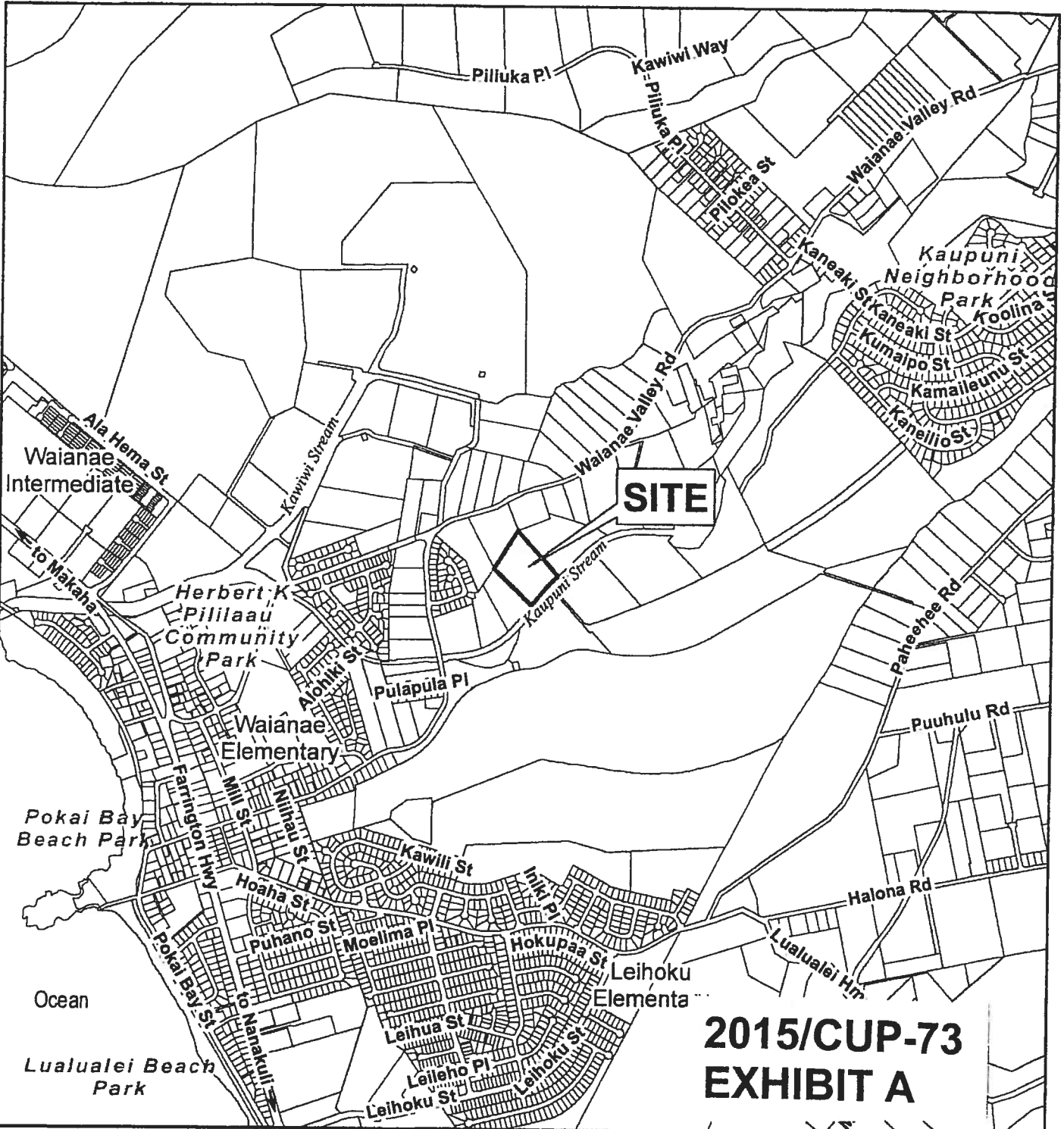
Dated at Honolulu, Hawaii, this 8th day of January, 2016.

Department of Planning and Permitting  
City and County of Honolulu  
State of Hawaii

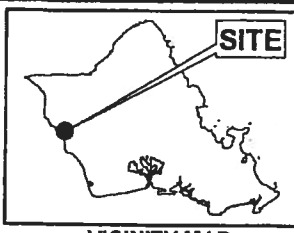
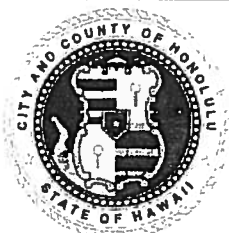
By  \_\_\_\_\_  
George I. Atta, FAICP  
Director

Attachments

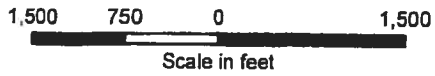
Doc 1310733



**2015/CUP-73  
EXHIBIT A**



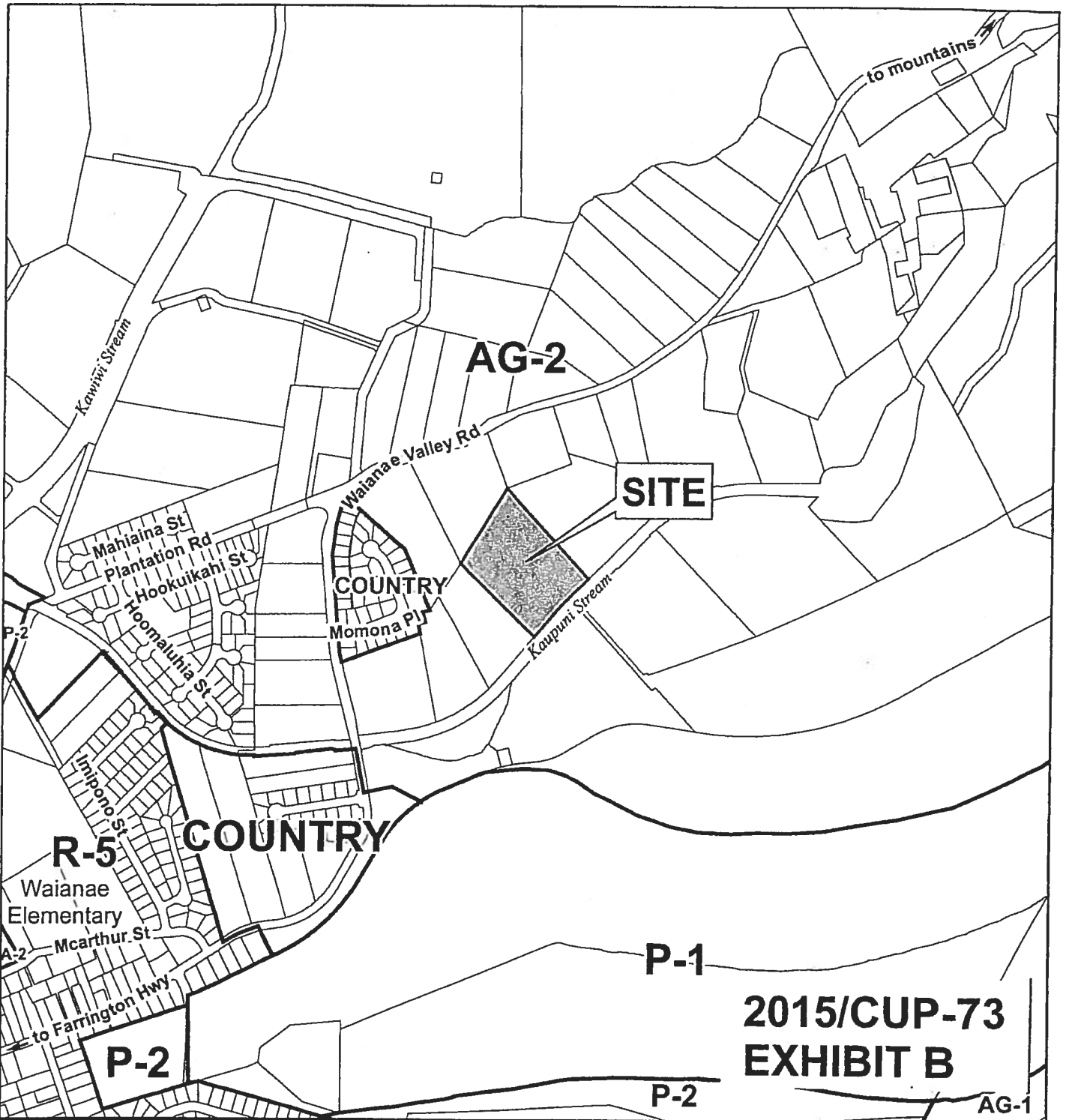
VICINITY MAP



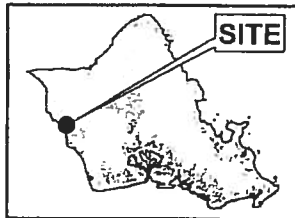
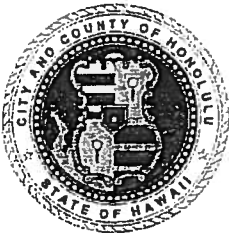
**LOCATION MAP  
WAIANAE**

TAX MAP KEY(S): 8-5-019:014

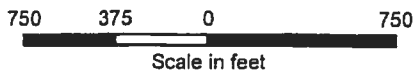
FOLDER NO.: 2015/CUP-73



**2015/CUP-73  
EXHIBIT B**



VICINITY MAP



PORTION OF  
**EXISTING ZONING MAP**  
(LUALUALEI - MAKAHA)

TAX MAP KEY(S): 8-5-019:014


FOLDER NO.: 2015/CUP-73

RECEIVED

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DEPT OF PLANNING  
AND PERMITTING  
CITY & COUNTY OF HONOLULU

SMB II LLC - Conditional Use Permit (Minor)  
Application, 85-485C Waianae Valley Road,  
Waianae, HI 96792, TMK No. (1) 8-5-019: 014



REC SOLAR, INC.  
775 PIERCE LANE, SUITE 200  
DANFORTH AVENUE, HONOLULU, HI 96813  
PH: (808) 838-8781  
FAX: (808) 838-8781  
(808) 838-8781

THIS WORK WAS PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND I AM A LICENSED PROFESSIONAL ENGINEER IN THE STATE OF HAWAII.

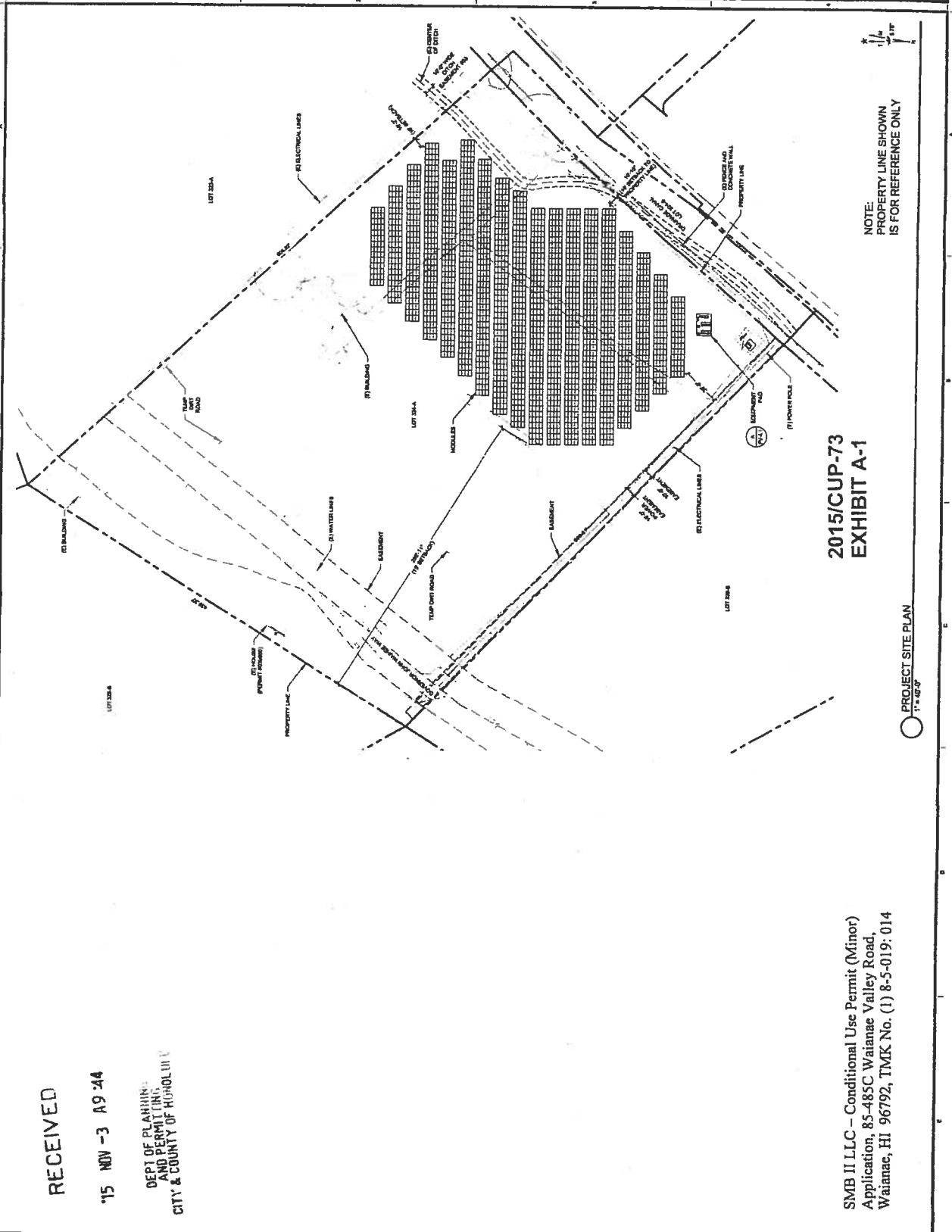
DATE: \_\_\_\_\_

PROJECT: \_\_\_\_\_

SMB II LLC  
HONOLULU, HI 96819  
(808) 845-8838

WAIANAЕ VALLEY  
ROAD #2  
85-485 C WAIANAЕ VALLEY  
WAIANAЕ, HI 96792

7	DESIGN	PROFESSIONAL ENGINEER
8	DESIGN	DESIGN COMMENTARY
9	DESIGN	DESIGN CALCULATIONS
10	DESIGN	DESIGN CHECKS
11	DESIGN	DESIGN REVIEW
12	DESIGN	DESIGN APPROVAL
13	DESIGN	DESIGN SUBMITTAL
14	DESIGN	DESIGN REVIEW
15	DESIGN	DESIGN APPROVAL
16	DESIGN	DESIGN SUBMITTAL
17	DESIGN	DESIGN REVIEW
18	DESIGN	DESIGN APPROVAL
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23	DESIGN	DESIGN REVIEW
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29	DESIGN	DESIGN REVIEW
30	DESIGN	DESIGN APPROVAL



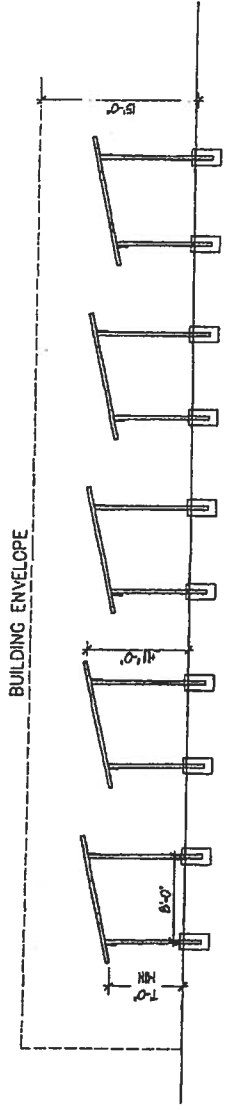
2015/CUP-73  
EXHIBIT A-1

PROJECT SITE PLAN  
1" = 40'

NOTE:  
PROPERTY LINE SHOWN  
IS FOR REFERENCE ONLY

PV-03

SMB II, LLC Photo-Voltaic Facility  
TMK: (1) 8-5-019:014  
85-485C Waianae Valley Road  
Waianae, HI 96792

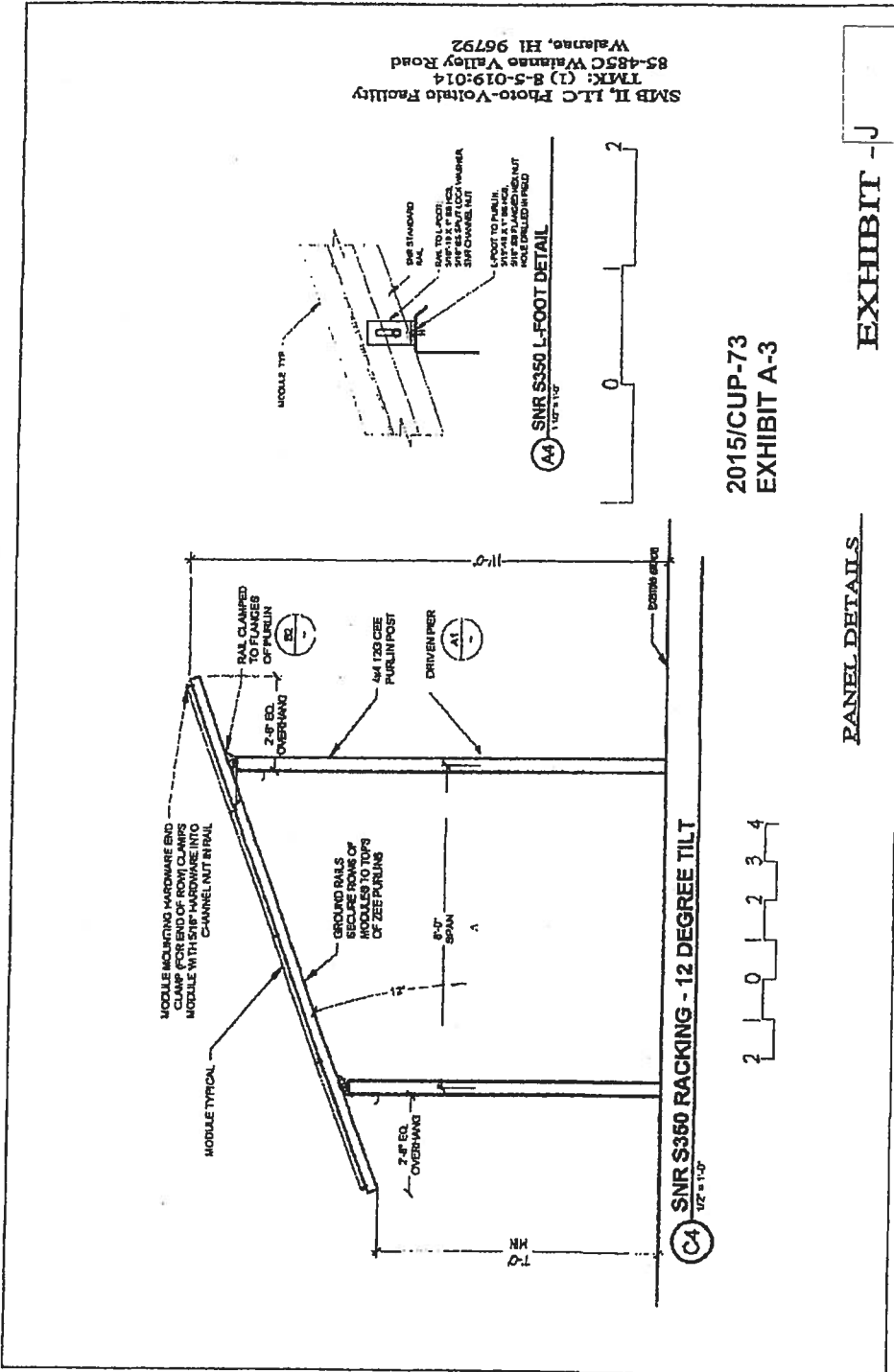


2015/CUP-73  
EXHIBIT A-2

STRUCTURE PROFILE  
85-485C-107

EXHIBIT - J

SMB II LLC - Conditional Use Permit (Minor)  
Application, 85-485C Waianae Valley Road,  
Waianae, HI 96792, TMK No. (1) 8-5-019: 014



SMB II, LLC Photo-Voltaic Facility  
 85-485C Waianae Valley Road  
 Waianae, HI 96792  
 TMK: (1) 8-5-019:014

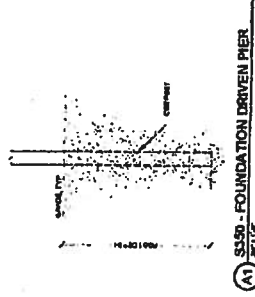
2015/CUP-73  
 EXHIBIT A-3

PANEL DETAILS

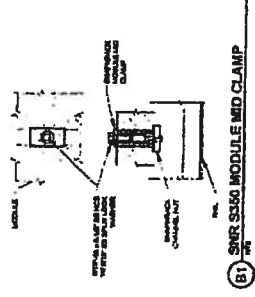
EXHIBIT - J

SMB II LLC - Conditional Use Permit (Minor)  
 Application, 85-485C Waianae Valley Road,  
 Waianae, HI 96792, TMK No. (1) 8-5-019: 014

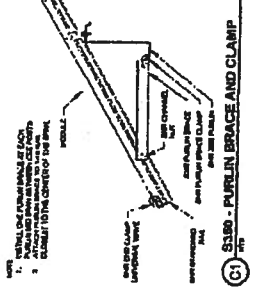
SMB II, LLC Photo-Voltaic Facility  
 TMK: (1) 8-5-019:014  
 85-485C Waianae Valley Road  
 Waianae, HI 96792



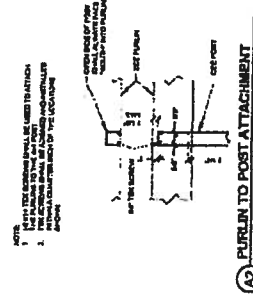
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 2011



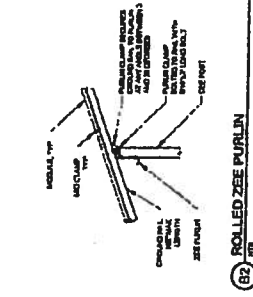
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 2011



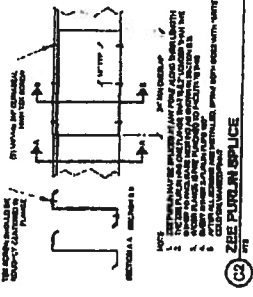
**(C1) SBR SS60 PURLIN BRACE AND CLAMP**  
 2011



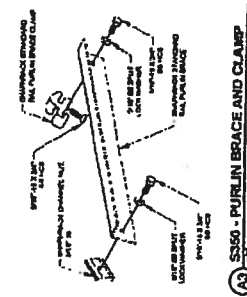
**(A2) PURLIN TO POST ATTACHMENT**  
 2011



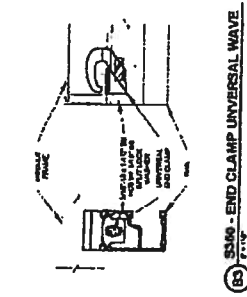
**(B2) ROLLED ZEE PURLIN**  
 2011



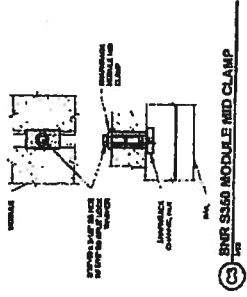
**(C2) ZEE PURLIN SPLICE**  
 2011



**(A3) SBR SS60 PURLIN BRACE AND CLAMP**  
 2011



**(B3) SBR SS60 END CLAMP UNIVERSAL WAVE**  
 2011



**(C3) SBR SS60 MODULE MID CLAMP**  
 2011

1 0 1 2 3 4 EXHIBIT - J

2015/CUP-73  
 EXHIBIT A-4

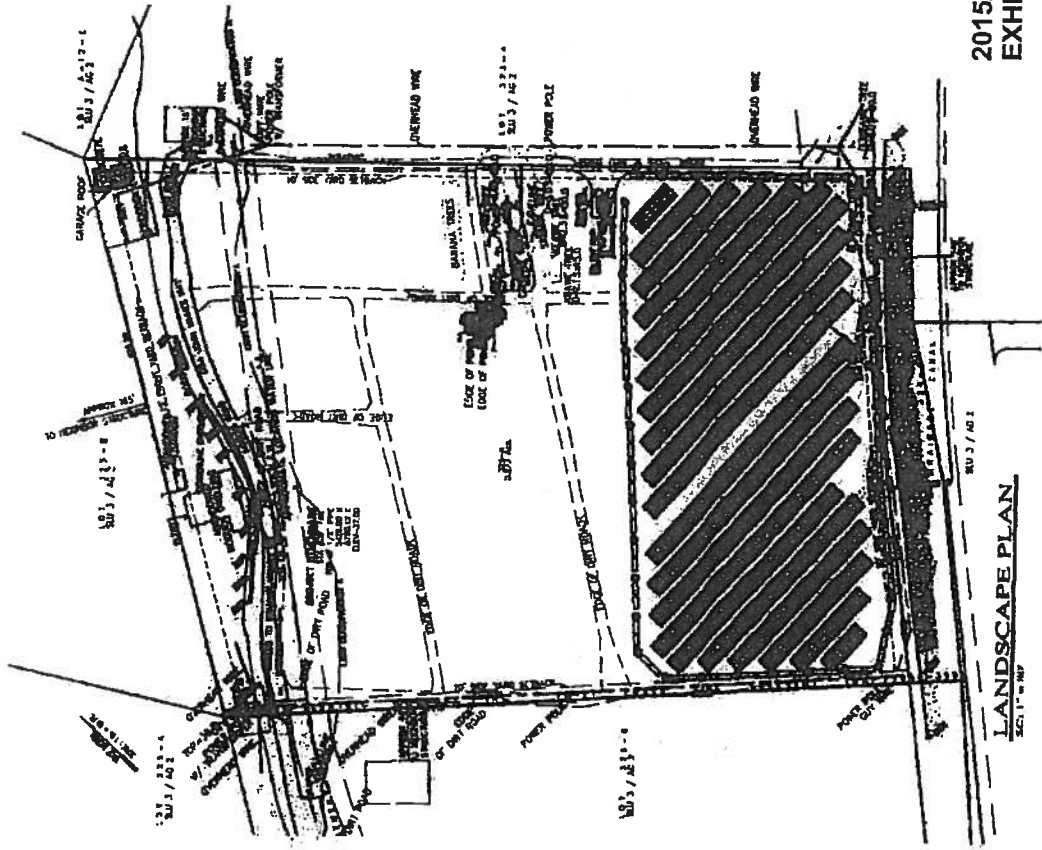
SMB II LLC - Conditional Use Permit (Minor)  
 Application, 85-485C Waianae Valley Road,  
 Waianae, HI 96792, TMK No. (1) 8-5-019: 014



SMB II, LLC Photo-Voltaic Facility  
 TMK: (1) 8-5-019:014  
 85-485C Waianae Valley Road  
 Waianae, HI 96792

2015/CUP-73  
 EXHIBIT A-5

EXHIBIT - N



**LANDSCAPE LEGEND:**



HIBISCUS-5 gal @ 5'-0" O.C.  
 MAINTAIN AT 5'-6" MAX HEIGHT



ARECA PALMS-5 gal @ 20'-0" OC  
 BETWEEN HIBISCUS BUSH  
 MAINTAIN AT 6'-0" MAX HEIGHT.

**NOTE:**

LANDSCAPING SHALL BE IRRIGATED BY INSTALLED  
 DRIP IRRIGATION.

SMB II LLC - Conditional Use Permit (Minor)  
 Application, 85-485C Waianae Valley Road,  
 Waianae, HI 96792, TMK No. (1) 8-5-019: 014

## Yee, Bryan C

---

**From:** Yamamoto, Earl J  
**Sent:** Friday, November 13, 2015 9:15 AM  
**To:** Young, Raymond  
**Cc:** Ching, Noa K  
**Subject:** PV system on A-rated ag lands  
**Attachments:** SMB II LLC.PDF

Ray:

The following represents the informal position of the DOA planning staff and not the official position of the Department of Agriculture. DOA planning staff also discussed the application with a Deputy Attorney General.

DOA planning staff (hereafter referred to as "we" or "our") reviewed the subject letter from Ms. Jennifer Lim of Carlsmith Ball LLP (dated October 6, 2015) to Mr. George Atta, Director of City Department of Planning and Permitting (hereafter referred to as "DPP letter"). We believe that photovoltaic systems (PV) are not Agricultural-Energy Facilities (AEF) under Section 205-4.5(a)(17), HRS.

First, a PV system is not an AEF because PV does not generate, store, or distribute renewable energy from products of agricultural activities from agricultural lands located in the state. An AEF means "a facility that generates, stores, or distributes renewable energy as defined in section 269-91 or renewable fuel including electrical or thermal energy or liquid or gaseous fuels from products of agricultural activities from agricultural lands located in the State." (Section 205-4.5(a)(17), HRS) From the DPP letter, the applicant, SMB II, LLC, intends to generate solar energy. Solar energy is not the product of agricultural activities. It does not matter that the applicant proposes to create an "agrivoltaic system", where, the applicant argues, their PV system will actually increase the underlying agricultural productivity (see DPP letter, page 3). Solar energy is the product of the sun. It would be factually absurd to argue that the solar energy is the product of agricultural activity. Biomass or ethanol might be candidates for AEFs, not solar energy.

Our interpretation of an "agricultural-energy facility" is in line with the original purpose and intent of Section 205-4.5(a)(17), to "permit the use of lands in agricultural land use districts for agricultural-energy facilities when the production, storage, and distribution of renewable energy are integrated with an agricultural activity...." (Section 1, Act 145, SLH 2008). We interpret "integrated" to mean the AEF's generation, storage, or distribution of renewable energy is somehow enhanced or is made possible by the integration of an agricultural activity.

Second, chapter 205 contains specific provisions for solar energy facilities on agricultural land. See HRS sections 205-4.5(a)(20) (solar energy facilities on "A"-rated lands are allowed under certain restrictive conditions) and (21) (solar energy facilities on "B"- or "C"-rated lands are allowed under certain conditions). These sections which were enacted after section 205-4.5(a)(17) specifically deal with solar energy facilities and set forth the conditions under which solar energy facilities are allowed. In interpreting the term "agricultural energy facilities" in the context of these other sections, therefore, the specific provisions on solar energy facilities should rule over the general requirements for agricultural energy facilities.

To do otherwise, would be to effectively render these other provisions superfluous, and to upset the careful balance which the legislature has drawn in weighing the different interests for agricultural land. Section 205-4.5(a)(20) prohibits solar energy facilities on "A"-rated lands, except under certain restrictive conditions which this applicant cannot meet. Section 205-4.5(a)(21) would allow a project like that proposed by the applicant on "B"- or "C"-rated lands only, subject to certain conditions. To interpret the applicant's proposal as an AEF would nullify the prohibition of solar energy facilities on "A"-rated lands under section 205-4.5(a)(20), and eliminate the various conditions imposed on solar energy facilities on "B"- and "C"-rated lands under section 205-4.5(a)(21).

It is DOA planning staff's position that the applicant's proposed "solar farm" to "install approximately 456 concrete posts, each of which will be topped by a photo-voltaic panel" (DPP letter, page 2) is obviously a solar energy facility rather than an AEF, and the proposed PV facility by the applicant should follow sections 205-4.5(a)(20) and (21). Furthermore, the more restrictive provisions in 205-4.5, HRS, take precedence over other less restrictive sections, in keeping with the primary goal of protecting good agricultural lands.

Earl Yamamoto  
Planner  
Office of the Chairperson  
Hawaii Department of Agriculture  
1428 South King Street  
Honolulu, Hawaii 96814  
(808) 973-9466

**To:** Young, Raymond  
**Cc:** Ching, Noa K  
**Subject:** PV system on A-rated ag lands

Ray:

The following represents the informal position of the DOA planning staff and not the official position of the Department of Agriculture. DOA planning staff also discussed the application with a Deputy Attorney General.

DOA planning staff (hereafter referred to as "we" or "our") reviewed the subject letter from Ms. Jennifer Lim of Carlsmith Ball LLP (dated October 6, 2015) to Mr. George Atta, Director of City Department of Planning and Permitting (hereafter referred to as "DPP letter"). We believe that photovoltaic systems (PV) are not Agricultural-Energy Facilities (AEF) under Section 205-4.5(a)(17), HRS.

First, a PV system is not an AEF because PV does not generate, store, or distribute renewable energy from products of agricultural activities from agricultural lands located in the state. An AEF means "a facility that generates, stores, or distributes renewable energy as defined in section 269-91 or renewable fuel including electrical or thermal energy or liquid or gaseous fuels from products of agricultural activities from agricultural lands located in the State." (Section 205-4.5(a)(17), HRS) From the DPP letter, the applicant, SMB II, LLC, intends to generate solar energy. Solar energy is not the product of agricultural activities. It does not matter that the applicant proposes to create an "agrivoltaic system", where, the applicant argues, their PV system will actually increase the underlying agricultural productivity (see DPP letter, page 3). Solar energy is the product of the sun. It would be factually absurd to argue that the solar energy is the product of agricultural activity. Biomass or ethanol might be candidates for AEFs, not solar energy.

Our interpretation of an "agricultural-energy facility" is in line with the original purpose and intent of Section 205-4.5(a)(17), to "permit the use of lands in agricultural land use districts for agricultural-energy facilities when the production, storage, and distribution of renewable energy are integrated with an agricultural activity...." (Section 1, Act 145, SLH 2008). We interpret "integrated" to mean the AEF's generation, storage, or distribution of renewable energy is somehow enhanced or is made possible by the integration of an agricultural activity.

Second, chapter 205 contains specific provisions for solar energy facilities on agricultural land. See HRS sections 205-4.5(a)(20) (solar energy facilities on "A"-rated lands are allowed under certain restrictive conditions) and (21) (solar energy facilities on "B"- or "C"-rated lands are allowed under certain conditions). These sections which were enacted after section 205-4.5(a)(17) specifically deal with solar energy facilities and set forth the conditions under which solar energy facilities are allowed. In interpreting the term "agricultural energy facilities" in the context of these other sections, therefore, the specific provisions on solar energy facilities should rule over the general requirements for agricultural energy facilities.

To do otherwise, would be to effectively render these other provisions superfluous, and to upset the careful balance which the legislature has drawn in weighing the different interests for agricultural land. Section 205-4.5(a)(20) prohibits solar energy facilities on "A"-rated lands, except under certain restrictive conditions which this applicant cannot meet. Section 205-4.5(a)(21) would allow a project like that proposed by the applicant on "B"- or "C"-rated lands only, subject to certain conditions. To interpret the applicant's proposal as an AEF would nullify the prohibition of solar energy facilities on "A"-rated lands under section 205-4.5(a)(20), and eliminate the various conditions imposed on solar energy facilities on "B"- and "C"-rated lands under section 205-4.5(a)(21).

It is DOA planning staff's position that the applicant's proposed "solar farm" to "install approximately 456 concrete posts, each of which will be topped by a photo-voltaic panel" (DPP letter, page 2) is obviously a solar energy facility rather than an AEF, and the proposed PV facility by the applicant should follow sections 205-4.5(a)(20) and (21). Furthermore, the more restrictive provisions in 205-4.5, HRS, take precedence over other less restrictive sections, in keeping with the primary goal of protecting good agricultural lands.

Earl Yamamoto  
Planner  
Office of the Chairperson  
Hawaii Department of Agriculture  
1428 South King Street  
Honolulu, Hawaii 96814  
(808) 973-9466

**Yee, Bryan C**

---

**From:** Funakoshi, Rodney Y  
**Sent:** Friday, January 15, 2016 12:55 PM  
**To:** Yee, Bryan C; Yamamoto, Earl J; Ching, Noa K  
**Subject:** FW: SMB, LLC's Proposal to Establish a PV System of State Ag Lands Classified "A" by the LSB

Bryan,

Thanks.  
Rodney

**From:** Young, Raymond [mailto:[rcsyoun@honolulu.gov](mailto:rcsyoun@honolulu.gov)]  
**Sent:** Wednesday, December 30, 2015 12:47 PM  
**To:** Funakoshi, Rodney Y <[rodney.y.funakoshi@hawaii.gov](mailto:rodney.y.funakoshi@hawaii.gov)>; Yamamoto, Earl J <[Earl.J.Yamamoto@hawaii.gov](mailto:Earl.J.Yamamoto@hawaii.gov)>  
**Cc:** Ching, Noa K <[Noa.K.Ching@hawaii.gov](mailto:Noa.K.Ching@hawaii.gov)>  
**Subject:** RE: SMB, LLC's Proposal to Establish a PV System of State Ag Lands Classified "A" by the LSB

Thanks, I will forward to George.

Raymond Young  
Staff Planner, Community Planning Branch  
Department of Planning and Permitting  
650 S. King St., 7th Flr.  
Honolulu, Hawaii 96813  
Ph. (808) 768-8049  
Fax (808) 768-6743  
Email [rcsyoun@honolulu.gov](mailto:rcsyoun@honolulu.gov)

**From:** Funakoshi, Rodney Y [mailto:[rodney.y.funakoshi@hawaii.gov](mailto:rodney.y.funakoshi@hawaii.gov)]  
**Sent:** Wednesday, December 30, 2015 11:17 AM  
**To:** Yamamoto, Earl J; Young, Raymond  
**Cc:** Ching, Noa K  
**Subject:** RE: SMB, LLC's Proposal to Establish a PV System of State Ag Lands Classified "A" by the LSB

Hi Ray and Earl,

Yes, OP concurs with DOA's informal position.

Thanks.  
Rodney

**Rodney Y. Funakoshi**

Planning Program Administrator  
Land Use Division  
State of Hawaii Office of Planning  
Dept. of Business, Economic Development & Tourism  
235 S. Beretania Street, 6th Floor  
Honolulu, Hawaii 96813  
Telephone: (808) 587-2885

**From:** Yamamoto, Earl J

**Sent:** Wednesday, December 30, 2015 10:51 AM

**To:** Young, Raymond <[rcsyoung@honolulu.gov](mailto:rcsyoung@honolulu.gov)>

**Cc:** Ching, Noa K <[Noa.K.Ching@hawaii.gov](mailto:Noa.K.Ching@hawaii.gov)>; Funakoshi, Rodney Y <[rodney.y.funakoshi@hawaii.gov](mailto:rodney.y.funakoshi@hawaii.gov)>

**Subject:** RE: SMB, LLC's Proposal to Establish a PV System of State Ag Lands Classified "A" by the LSB

Ray:

I stand corrected.

Rodney at OP did agree with our assessment in our informal position.

I am not aware of a response from LUC.

earl

**From:** Yamamoto, Earl J

**Sent:** Wednesday, December 30, 2015 10:45 AM

**To:** 'Young, Raymond' <[rcsyoung@honolulu.gov](mailto:rcsyoung@honolulu.gov)>

**Cc:** Ching, Noa K <[Noa.K.Ching@hawaii.gov](mailto:Noa.K.Ching@hawaii.gov)>

**Subject:** RE: SMB, LLC's Proposal to Establish a PV System of State Ag Lands Classified "A" by the LSB

Ray:

Our informal position includes the input of the Deputy Attorney General.

We have not received or asked for informal comments from OP or LUC.

earl

**From:** Young, Raymond [<mailto:rcsyoung@honolulu.gov>]

**Sent:** Wednesday, December 30, 2015 10:37 AM

**To:** Yamamoto, Earl J <[Earl.J.Yamamoto@hawaii.gov](mailto:Earl.J.Yamamoto@hawaii.gov)>

**Cc:** Ching, Noa K <[Noa.K.Ching@hawaii.gov](mailto:Noa.K.Ching@hawaii.gov)>

**Subject:** SMB, LLC's Proposal to Establish a PV System of State Ag Lands Classified "A" by the LSB

Earl:

Did you get a reply from AG's office? Also, any informal comments from OP or LUC?

Raymond Young

Staff Planner, Community Planning Branch

Department of Planning and Permitting

650 S. King St., 7th Flr.

Honolulu, Hawaii 96813

Ph. (808) 768-8049

Fax (808) 768-6743

Email [rcsyoung@honolulu.gov](mailto:rcsyoung@honolulu.gov)

**From:** Yamamoto, Earl J [<mailto:Earl.J.Yamamoto@hawaii.gov>]

**Sent:** Friday, November 13, 2015 9:15 AM

# CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

ASB TOWER, SUITE 2100  
1001 BISHOP STREET  
HONOLULU, HAWAII 96813  
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DIRECT DIAL NO.  
808.523.2557

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October 6, 2015

VIA HAND DELIVERY AND EMAIL GATTA@HONOLULU.GOV

George I. Atta  
Director  
Department of Planning and Permitting,  
City and County of Honolulu  
650 S. King Street, 7th Floor  
Honolulu, Hawaii 96813

DEPT OF PLANNING  
AND PERMITTING  
CITY & COUNTY OF HONOLULU

15 OCT -6 P 3:45

RECEIVED

Re: SMB II, LLC - Agricultural Energy Facility, TMK No. (1) 8-5-019: 014

Dear Director Atta:

Thank you for the time you, Deputy Director Challacombe, Ms. Sokugawa, Ms. Arakawa and Mr. Young gave Mr. Unowitz and me on August 6, 2015, to discuss the parameters and establishing an agricultural energy facility, as described under § 205-4.7(a)(17), Hawaii Revised Statutes ("HRS"). As we discussed, Mr. Unowitz's company, SMB II, LLC ("SMB") intends to develop an agricultural energy facility ("AEF") within the above-referenced property, which is located at 85-485C Waianae Valley Road, Waianae ("Property"). The purpose of this letter is to confirm our discussion of August 6, 2015.

An AEF is a permitted use within the State Land Use Agricultural District under HRS § 205-2(d)(7), as a bona fide agricultural service or use that supports the agricultural activities of the fee or leasehold owner of the property (copy of HRS §205-2 is enclosed as Exhibit A). Importantly, an AEF is also a permitted use within the more limited class of uses permitted within State Agricultural District lands that have soils classified by the Land Study Bureau's detailed land classification as overall (master) productivity rating class A or B. Because an AEF is an expressly permitted use, no Special Use Permit is required in order to develop an AEF. See HRS § 205-4.5(a)(17), copy enclosed as Exhibit B.

The definition of an AEF is as follows:

"Agricultural-energy facility" means a facility that generates, stores, or distributes renewable energy as defined in section 269-91

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MAUI

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LOS ANGELES

**EXHIBIT 4**



or renewable fuel including electrical or thermal energy or liquid or gaseous fuels from products of agricultural activities from agricultural lands located in the State.

"Renewable energy" as defined in HRS § 269-91 includes energy generated or produced using the sun. Therefore, solar energy facilities are a permitted use within the State Agricultural District on LSB A and B soils if the solar energy facilities qualify as an AEF.

In order to qualify as an AEF, "the primary activity of the agricultural-energy enterprise [must be] agricultural activity." "Agricultural activity" is defined as any activity described in paragraphs (1) to (3) of HRS § 205-4.5(a), as follows: "(1) Cultivation of crops, including crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber; (2) Game and fish propagation; (3) Raising of livestock, including poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use[.]"

The amount of land area utilized by agricultural activities governs whether agricultural activities qualify as the primary activity. Under HRS § 205-4.5(a)(17), to be considered the primary activity, "the total acreage devoted to agricultural activity shall be not less than ninety per cent of the total acreage of the agricultural-energy enterprise." In addition, the AEF must be limited to lands owned, leased, licensed, or operated by the entity conducting the agricultural activity.

The AEF proposed by SMB II, LLC meets all of these requirements.

## I. PROJECT DESCRIPTION

The Property consists of 5.27 acres.<sup>1</sup> A Google Earth image of the Property is enclosed as Exhibit C. SMB leases two acres of land within the Property (this area shall hereinafter be referred to as the "**Project Site**"). SMB intends a mixed use of the Project Site. The Project Site will be used both as a solar farm, producing 500 kilowatts of power (1,000 megawatts of power each year), and as an agricultural farm. This joint use concept is sometimes referred to as an Agrivoltaic System.

### A. Solar Farm.

Within the Project Site, SMB intends to install approximately 456 concrete posts, each of which will be topped by a photo-voltaic panel ("**PVP**"). Current estimates are that that solar farm will require 2,020 PVPs, but that number could go lower. SMB will also install a concrete pad to hold an electrical inverter. The PVP will be set on the posts at an angle. The bottom of the PVP will be approximately 7 feet above ground at the lowest point, and the highest point will be approximately 11 feet above the ground. The height of the PVP means that numerous agricultural activities can take place beneath the PVP. The Property, Project Site and SMB's proposed improvements are shown on Exhibit D.

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<sup>1</sup> The fee owners of the Property are Janet Gaza, Trustee of the Janet S.L. Gaza Trust, and Kenneth Gaza.

Each concrete post uses 0.7854 square feet of land area, resulting in a total of 358.1424 square feet being used by concrete posts. The ground coverage of the concrete inverter pad will be no larger than 20 feet x 20 feet, for a total of 400 square feet. No roads will be added to the Project Site. Thus, the entire land coverage within the Project Site will be well under 1,000 square feet.

The electrical power that will be generated by the PVP will be transferred through lines that will be placed underground, and will be collected at the inverter. From the inverter pad the power will be transferred via an underground line to be installed by SMB to an existing electrical pole owned by Hawaii Electric that is located within the boundaries of the Property. These underground transmission lines will not inhibit the use of the surface land area.

B. Farming Via An Agrivoltaic System.

The PVP will be an integral part of the agricultural production at the Project Site. The concept of mixing crops and solar photovoltaic production is not new, but it is not well known in Hawaii. These mixed-use systems are called "Agrivoltaic Systems" ("AVS"), which is defined as "mixed systems associating solar panels and crop at the same time on the same land area."<sup>2</sup> The PVP create intermittent shading for the crops that grow underneath the PVP. This method of farming crops has been shown to be more productive than typical crop production. The Land Equivalent Ratio ("LER") of AVS has been found to be 1.3 to 1.6. A LER of 1.1 would mean that an AVS was equally as productive as a non-AVS crop production. Therefore, a LER of 1.3 means that an AVS farm of 2 acres produces as much as a 2.6 acre traditional farm; a LER of 1.6 means that an AVS farm of 2 acres produces as much as a 3.2 acre traditional farm. The shading provided by AVS is more efficient than tree shading because the PVP do not compete with the crops for below-ground resources.

SMB intends to have betel vine grown under the PVP. However several crops have a good track record of thriving with the intermittent shading provided by PVP include salad greens, broccoli, cauliflower, peas, beets, Brussels sprouts, radishes, Swiss chard, leafy greens and beans. The curry tree can also thrive in this environment, and the leaves of the curry tree are desirable crops. The viability of these crops and AVS in general is discussed in a paper titled "Agrivoltaic System - Proposal Agricultural Use of Approximately 2 Acres of Land Beneath Photo-Voltaic Panels" copy enclosed as Exhibit E, prepared by the Hawaii Agriculture Research Center.

In addition to the biological/agricultural advantages that can be derived from the AVS, there is another practical advantage in that the Project Site will be under lease to SMB for 20 years. That is because the Feed-In-Tariff Agreement that SMB has with Hawaii Electric Company runs for 20 years from the start of electrical power generation. As a result, after

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<sup>2</sup> See Dupraz, C., Marrou, H., Talbot, G., Dufour, L., Nogier, A., Ferad, Y., (2010) *Combining solar photovoltaic panels and food crops for optimizing land use: towards new agrivoltaic schemes*, *Renew. Energy* 36 (10), 2725-2732.

construction and installation of the PVP (estimated to take approximately 3 months from the receipt of all necessary building permits), the PVP will be on the Project Site for 20 years and SMB will therefore be able to keep the Project Site used for agricultural activities during the term of the lease.

## II. ANALYSIS

The Property is designated within the State Land Use Agricultural District. Permitted uses are therefore governed by HRS § 205-2(d). The Land Study Bureau's detailed land classification as overall (master) productivity rating class of the soils within the Property is primarily A, but the northern portion of the Property has soils rated LSB E, and it appears that a smaller area, between the LSB A and LSB E areas, does not have a LSB rating. *See Exhibit F.* The Project Site under lease to SMB II is located within the area containing LSB A soils. Permitted uses are therefore governed by the more restrictive HRS § 205-4.5(d)(17).

### A. Agricultural Energy Facility.

In light of the above, in order for SMB to develop a renewable energy facility within the Project Site without being required to obtain a Special Use Permit under HRS § 205-6, the renewable energy facility must qualify as an AEF. The renewable energy facility proposed by SMB is a solar farm. Therefore, it is a facility that generates, stores and distributes energy generated or produced using the sun, and satisfies the first part of the test.

The concrete pad for the inverter qualifies as a permitted "appurtenance." Under HRS § 205-4.5(a)(17), permitted appurtenances are "operational infrastructure of the appropriate type and scale for the economic commercial generation, storage, distribution, and other similar handling of energy, including equipment, feedstock, fuels, and other products of agricultural-energy facilities." *See Exhibit B.*

### B. Agricultural Activity.

The Agrivoltaic System planned by SMB, as described above clearly falls within the definition of "agricultural activity" as described in HRS §§ 205-4.5(a)(1)-(3).

### C. Primary Activity.

The Project Site, at 2 acres, contains approximately 87,120 square feet. Therefore, in order for agriculture to qualify as the "primary activity" not less than 78,408 square feet (i.e. not less than 90%), must be devoted to agricultural activity. As discussed above, the SMB Agrivoltaic System will create less than 1,000 square feet of land coverage. This means that over 86,000 square feet within the Project Site will be used for agricultural activities. As such, the AVS proposed by SMB clearly qualifies as an agricultural energy enterprise with agricultural activity being its primarily activity. *See HRS § 205-4.5(a)(17).*

### III. CONDITIONAL USE PERMIT (MINOR) & CONCLUSION

As mentioned above, the purpose of this letter is to confirm our discussion of August 6, 2015. As discussed, the Agrivoltaic System planned by SMB within the 2-acre Project Site qualifies as an AEF. Therefore it is a permitted use within the State Land Use Agricultural District on all soil types. No Special Permit under HRS § 205-6 is required in order to develop the Agrivoltaic System described here. However, we understand that the Agrivoltaic System does constitute a "utility installation" as defined under Chapter 21, Revised Ordinances of Honolulu.<sup>3</sup> Utility installations are permitted within all zoning districts. However, Type B utility installations require the approval of a Conditional Use Permit-minor ("CUP/m"). Based on our discussion, we understand that the Department will likely consider the solar farm component of this Agrivoltaic System/Agricultural Energy Facility to be a Type B utility installation. Therefore, SMB intends to submit an application for a CUP/m after receipt of your written confirmation of the contents in this letter.

In recognition of the Department's concerns that the SMB Agrivoltaic System must qualify as an Agricultural Energy Facility in order to meet the requirements of HRS § 205-4.5(a)(17), we offer the following language as a suggestion to be included in the CUP/m:

At all times that the 2-acre Project Site is in use for electrical power generation the Applicant shall devote not less than ninety per cent of the Project Site to agricultural activity, which means any one or a combination of the following: (1) cultivation of crops, including crops for bioenergy, flowers, vegetables, foliage, fruits,

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<sup>3</sup> LUO Article 10, Sec. 21-10.1, provides as follows:

"Utility installations, Types A and B," means 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. A utility installation may be publicly or privately owned and does not include wind machines, which are defined separately. Also not included are: cesspools, individual household septic tank systems, individual household aerobic units, and individual water supplies.

Also not included are private temporary sewage treatment plants which are allowed as an accessory use in all zoning districts, provided such use is approved by the director. These uses so approved shall be permitted notwithstanding the location on a noncontiguous lot or in another zoning district of the principal use or uses served by the plant, and subdivision (1) of the definition of accessory use shall be inapplicable.

A utility installation includes accessory uses and structures directly associated with the distribution of the utility service, such as, but not limited to: accessory antennas, maintenance, repair, equipment, and machine rooms; tool sheds; generators and calibration equipment; and accessory offices. Offices permitted as accessory to a utility installation shall be directly associated with the distribution of the utility service, and not principally function as a business or executive center for the utility operation.

Type A utility installations are those with minor impact on adjacent land uses and typically include: 46 kilovolt transmission substations, vaults, water wells and tanks and distribution equipment, sewage pump stations, telecommunications antennas (except as provided in the paragraph below on Type B utility installations), and other similar uses.

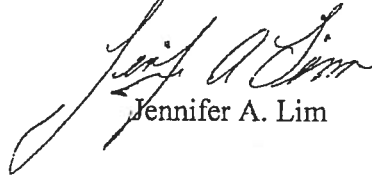
Type B utility installations are those with potential major impact, by virtue of their appearance, noise, size, traffic generation or other operational characteristics. Typical Type B uses include: 138 kilovolt transmission substations, power generating plants, base yards, and other similar major facilities. Also included as Type B uses are transmitting antennas in country, residential, A-1, or AMX-1 districts, and freestanding antenna structures.

Director George I. Atta  
October 6, 2015  
Page 6

forage, and timber; (2) game and fish propagation; (3) raising of livestock, including poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use. Activities not directly related to agricultural activities shall not utilize more than ninety percent (90%) of the 2-acre Project Site; i.e., non-agricultural activities shall not utilize more than 8,712 square feet of land area within the Project Site.

We greatly appreciate your time on this matter. Please do not hesitate to contact me if you have any questions or need any further clarification.

Sincerely,



Jennifer A. Lim

JAB/jah  
Exhibits A-F  
cc: Marc Unowitz

4830-3921-0790.1.067811-00001

§ 205-2. Districting and classification of lands, HI ST § 205-2

Key Cite Yellow Flag - Negative Treatment  
Proposed Legislation

West's Hawai'i Revised Statutes Annotated  
Division 1. Government  
Title 13. Planning and Economic Development  
Chapter 205. Land Use Commission (Refs & Annos)  
[Part I]. [Generally]

HRS § 205-2

§ 205-2. Districting and classification of lands

Currentness

(a) There shall be four major land use districts in which all lands in the State shall be placed: urban, rural, agricultural, and conservation. The land use commission shall group contiguous land areas suitable for inclusion in one of these four major districts. The commission shall set standards for determining the boundaries of each district, provided that:

- (1) In the establishment of boundaries of urban districts those lands that are now in urban use and a sufficient reserve area for foreseeable urban growth shall be included;
- (2) In the establishment of boundaries for rural districts, areas of land composed primarily of small farms mixed with very low density residential lots, which may be shown by a minimum density of not more than one house per one-half acre and a minimum lot size of not less than one-half acre shall be included, except as herein provided;
- (3) In the establishment of the boundaries of agricultural districts the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation; and
- (4) In the establishment of the boundaries of conservation districts, the "forest and water reserve zones" provided in Act 234, section 2, Session Laws of Hawaii 1957, are renamed "conservation districts" and, effective as of July 11, 1961, the boundaries of the forest and water reserve zones theretofore established pursuant to Act 234, section 2, Session Laws of Hawaii 1957, shall constitute the boundaries of the conservation districts; provided that thereafter the power to determine the boundaries of the conservation districts shall be in the commission.

In establishing the boundaries of the districts in each county, the commission shall give consideration to the master plan or general plan of the county.

(b) Urban districts shall include activities or uses as provided by ordinances or regulations of the county within which the urban district is situated.

In addition, urban districts shall include geothermal resources exploration and geothermal resources development, as defined under section 182-1, as permissible uses.

EXHIBIT A

**§ 205-2. Districting and classification of lands, HI ST § 205-2**

(c) Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c), in areas where "city-like" concentration of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with low density residential lots except that within a subdivision, as defined in section 484-1, the commission for good cause may allow one lot of less than one-half acre, but not less than eighteen thousand five hundred square feet, or an equivalent residential density, within a rural subdivision and permit the construction of one dwelling on such lot; provided that all other dwellings in the subdivision shall have a minimum lot size of one-half acre or 21,780 square feet. Such petition for variance may be processed under the special permit procedure. These districts may include contiguous areas which are not suited to low density residential lots or small farms by reason of topography, soils, and other related characteristics. Rural districts shall also include golf courses, golf driving ranges, and golf-related facilities.

In addition to the uses listed in this subsection, rural districts shall include geothermal resources exploration and geothermal resources development, as defined under section 182-1, as permissible uses.

(d) Agricultural districts shall include:

(1) Activities or uses as characterized by the cultivation of crops, crops for bioenergy, orchards, forage, and forestry;

(2) Farming activities or uses related to animal husbandry and game and fish propagation;

(3) Aquaculture, which means the production of aquatic plant and animal life within ponds and other bodies of water;

(4) Wind generated energy production for public, private, and commercial use;

(5) Biofuel production, as described in section 205-4.5(a)(16), for public, private, and commercial use;

(6) Solar energy facilities; provided that:

(A) This paragraph shall apply only to land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class B, C, D, or E; and

(B) Solar energy facilities placed within land with soil classified as overall productivity rating class B or C shall not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser, unless a special use permit is granted pursuant to section 205-6;

(7) Bona fide agricultural services and uses that support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, regardless of whether conducted on the same premises as the agricultural activities to which they are accessory, including farm dwellings as defined in section 205-4.5(a)(4), employee housing, farm buildings, mills, storage facilities, processing facilities, photovoltaic, biogas, and other small-scale renewable energy systems producing energy solely for use in the agricultural activities of the fee or leasehold owner of the property, agricultural-energy facilities as defined in section 205-4.5(a)(17), hydroelectric facilities in accordance

**§ 205-2. Districting and classification of lands, HI ST § 205-2**

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with section 205-4.5(a)(23), vehicle and equipment storage areas, and plantation community subdivisions as defined in section 205-4.5(a)(12);

(8) Wind machines and wind farms;

(9) Small-scale meteorological, air quality, noise, and other scientific and environmental data collection and monitoring facilities occupying less than one-half acre of land; provided that these facilities shall not be used as or equipped for use as living quarters or dwellings;

(10) Agricultural parks;

(11) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;

(12) Agricultural tourism activities, including overnight accommodations of twenty-one days or less, for any one stay within a county; provided that this paragraph shall apply only to a county that includes at least three islands and has adopted ordinances regulating agricultural tourism activities pursuant to section 205-5; provided further that the agricultural tourism activities coexist with a bona fide agricultural activity. For the purposes of this paragraph, "bona fide agricultural activity" means a farming operation as defined in section 165-2;

(13) Open area recreational facilities;

(14) Geothermal resources exploration and geothermal resources development, as defined under section 182-1; and

(15) Agricultural-based commercial operations, including:

(A) A roadside stand that is not an enclosed structure, owned and operated by a producer for the display and sale of agricultural products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii;

(B) Retail activities in an enclosed structure owned and operated by a producer for the display and sale of agricultural products grown in Hawaii, value-added products that were produced using agricultural products grown in Hawaii, logo items related to the producer's agricultural operations, and other food items; and

(C) A retail food establishment owned and operated by a producer and permitted under title 11, chapter 12 of the rules of the department of health that prepares and serves food at retail using products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii.



**§ 205-2. Districting and classification of lands, HI ST § 205-2**

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The owner of an agricultural-based commercial operation shall certify, upon request of an officer or agent charged with enforcement of this chapter under section 205-12, that the agricultural products displayed or sold by the operation meet the requirements of this paragraph.

Agricultural districts shall not include golf courses and golf driving ranges, except as provided in section 205-4.5(d). Agricultural districts include areas that are not used for, or that are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.

(e) Conservation districts shall include areas necessary for protecting watersheds and water sources; preserving scenic and historic areas; providing park lands, wilderness, and beach reserves; conserving indigenous or endemic plants, fish, and wildlife, including those which are threatened or endangered; preventing floods and soil erosion; forestry; open space areas whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding communities, or would maintain or enhance the conservation of natural or scenic resources; areas of value for recreational purposes; other related activities; and other permitted uses not detrimental to a multiple use conservation concept. Conservation districts shall also include areas for geothermal resources exploration and geothermal resources development, as defined under section 182-1.

**Credits**

Laws 1963, ch. 205, § 2; 1965 Supp., § 98H-2; H.R.S. § 205-2; Laws 1969, ch. 182, § 5; Laws 1975, ch. 193, § 3; Laws 1977, ch. 140, § 1; Laws 1977, ch. 163, § 1; Laws 1980, ch. 24, § 2; Laws 1985, ch. 298, § 2; Laws 1987, ch. 82, § 3; Laws 1989, ch. 5, § 2; Laws 1991, ch. 191, § 1; Laws 1991, ch. 281, § 2; Laws 1995, ch. 69, § 8; Laws 2005, ch. 205, § 2; Laws 2006, ch. 337, § 3; Laws 2006, ch. 250, § 1; Laws 2007, ch. 159, § 2, **eff. June 8, 2007**; Laws 2008, ch. 31, § 2, **eff. April 23, 2008**; Laws 2008, ch. 145, § 2, **eff. June 5, 2008**; Laws 2011, ch. 217, § 2, **eff. July 11, 2011**; Laws 2012, ch. 97, § 6, **eff. April 30, 2012**; Laws 2012, ch. 113, § 2, **eff. June 15, 2012**; Laws 2012, ch. 167, § 1, **eff. June 27, 2012**; Laws 2012, ch. 329, § 3, **eff. July 10, 2012**; Laws 2014, ch. 55, § 2, **eff. April 30, 2014**; Laws 2015, ch. 228, § 2, **eff. July 1, 2015**.

Notes of Decisions (8)

**H R S § 205-2, HI ST § 205-2**

Current through Act 243 [End] of the 2015 Regular Session, pending classification of undesignated material and text revision by the revisor of statutes. For research tips relating to newly added undesignated material, see scope.

**§ 205-4.5. Permissible uses within the agricultural districts, HI ST § 205-4.5**

KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

West's Hawai'i Revised Statutes Annotated  
Division 1. Government  
Title 13. Planning and Economic Development  
Chapter 205. Land Use Commission (Refs & Annos)  
[Part I]. [Generally]

**HRS § 205-4.5**

**§ 205-4.5. Permissible uses within the agricultural districts**

Currentness

<Repeal and reenactment of subsec. (a) on June 30, 2019 by Laws 2014, ch. 52, § 3.>

(a) Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B and for solar energy facilities, class B or C, shall be restricted to the following permitted uses:

- (1) Cultivation of crops, including crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber;
- (2) Game and fish propagation;
- (3) Raising of livestock, including poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;
- (4) Farm dwellings, employee housing, farm buildings, or activities or uses related to farming and animal husbandry. "Farm dwelling", as used in this paragraph, means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling;
- (5) Public institutions and buildings that are necessary for agricultural practices;
- (6) Public and private open area types of recreational uses, including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;
- (7) Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, treatment plants, corporation yards, or other similar structures;

**EXHIBIT B**

**§ 205-4.5. Permissible uses within the agricultural districts, HI ST § 205-4.5**

- (8) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest;
- (9) Agricultural-based commercial operations as described in section 205-2(d)(15);
- (10) Buildings and uses, including mills, storage, and processing facilities, maintenance facilities, photovoltaic, biogas, and other small-scale renewable energy systems producing energy solely for use in the agricultural activities of the fee or leasehold owner of the property, and vehicle and equipment storage areas that are normally considered directly accessory to the above-mentioned uses and are permitted under section 205-2(d);
- (11) Agricultural parks;
- (12) Plantation community subdivisions, which as used in this chapter means an established subdivision or cluster of employee housing, community buildings, and agricultural support buildings on land currently or formerly owned, leased, or operated by a sugar or pineapple plantation; provided that the existing structures may be used or rehabilitated for use, and new employee housing and agricultural support buildings may be allowed on land within the subdivision as follows:
  - (A) The employee housing is occupied by employees or former employees of the plantation who have a property interest in the land;
  - (B) The employee housing units not owned by their occupants shall be rented or leased at affordable rates for agricultural workers; or
  - (C) The agricultural support buildings shall be rented or leased to agricultural business operators or agricultural support services;
- (13) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;
- (14) Agricultural tourism activities, including overnight accommodations of twenty-one days or less, for any one stay within a county; provided that this paragraph shall apply only to a county that includes at least three islands and has adopted ordinances regulating agricultural tourism activities pursuant to section 205-5; provided further that the agricultural tourism activities coexist with a bona fide agricultural activity. For the purposes of this paragraph, "bona fide agricultural activity" means a farming operation as defined in section 165-2;
- (15) Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that the wind energy facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land;

- (16) Biofuel processing facilities, including the appurtenances associated with the production and refining of biofuels that is normally considered directly accessory and secondary to the growing of the energy feedstock; provided that biofuel processing facilities and appurtenances do not adversely impact agricultural land and other agricultural uses in the vicinity.

For the purposes of this paragraph:

“Appurtenances” means operational infrastructure of the appropriate type and scale for economic commercial storage and distribution, and other similar handling of feedstock, fuels, and other products of biofuel processing facilities.

“Biofuel processing facility” means a facility that produces liquid or gaseous fuels from organic sources such as biomass crops, agricultural residues, and oil crops, including palm, canola, soybean, and waste cooking oils; grease; food wastes; and animal residues and wastes that can be used to generate energy;

- (17) Agricultural-energy facilities, including appurtenances necessary for an agricultural-energy enterprise, provided that the primary activity of the agricultural-energy enterprise is agricultural activity. To be considered the primary activity of an agricultural-energy enterprise, the total acreage devoted to agricultural activity shall be not less than ninety per cent of the total acreage of the agricultural-energy enterprise. The agricultural-energy facility shall be limited to lands owned, leased, licensed, or operated by the entity conducting the agricultural activity.

As used in this paragraph:

“Agricultural activity” means any activity described in paragraphs (1) to (3) of this subsection.

“Agricultural-energy enterprise” means an enterprise that integrally incorporates an agricultural activity with an agricultural-energy facility.

“Agricultural-energy facility” means a facility that generates, stores, or distributes renewable energy as defined in section 269-91 or renewable fuel including electrical or thermal energy or liquid or gaseous fuels from products of agricultural activities from agricultural lands located in the State.

“Appurtenances” means operational infrastructure of the appropriate type and scale for the economic commercial generation, storage, distribution, and other similar handling of energy, including equipment, feedstock, fuels, and other products of agricultural-energy facilities;

- (18) Construction and operation of wireless communication antennas; provided that, for the purposes of this paragraph, “wireless communication antenna” means communications equipment that is either freestanding or placed upon or attached to an already existing structure and that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services; provided further that nothing in this paragraph shall be construed to permit the construction of any new structure that is not deemed a permitted use under this subsection;

- (19) Agricultural education programs conducted on a farming operation as defined in section 165-2, for the education and participation of the general public; provided that the agricultural education programs are accessory and secondary to the principal agricultural use of the parcels or lots on which the agricultural education programs are to occur and do not interfere with surrounding farm operations. For the purposes of this section, “agricultural education programs” means activities or events designed to promote knowledge and understanding of agricultural activities and practices conducted on a farming operation as defined in section 165-2;

**§ 205-4.5. Permissible uses within the agricultural districts, HI ST § 205-4.5**

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**(20) Solar energy facilities that do not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser or for which a special use permit is granted pursuant to section 205-6; provided that this use shall not be permitted on lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A unless the solar energy facilities are:**

**(A) Located on a paved or unpaved road in existence as of December 31, 2013, and the parcel of land upon which the paved or unpaved road is located has a valid county agriculture tax dedication status or a valid agricultural conservation easement;**

**(B) Placed in a manner that still allows vehicular traffic to use the road; and**

**(C) Granted a special use permit by the commission pursuant to section 205-6;**

**(21) Solar energy facilities on lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating B or C for which a special use permit is granted pursuant to section 205-6; provided that:**

**(A) 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 per cent below the fair market rent for comparable properties;**

**(B) Proof of financial security to decommission the facility is provided to the satisfaction of the appropriate county planning commission prior to date of commencement of commercial generation; and**

**(C) Solar energy facilities shall be decommissioned at the owner's expense according to the following requirements:**

**(i) Removal of all equipment related to the solar energy facility within twelve months of the conclusion of operation or useful life; and**

**(ii) Restoration of the disturbed earth to substantially the same physical condition as existed prior to the development of the solar energy facility.**

**For the purposes of this paragraph, "agricultural activities" means the activities described in paragraphs (1) to (3);**

**(22) Geothermal resources exploration and geothermal resources development, as defined under section 182-1; or**

**(23) Hydroelectric facilities, including the appurtenances associated with the production and transmission of hydroelectric energy, subject to section 205-2; provided that the hydroelectric facilities and their appurtenances:**

**(A) Have a hydroelectric generating capacity of not more than five hundred kilowatts;**

**§ 205-4.5. Permissible uses within the agricultural districts, HI ST § 205-4.5**

(B) Comply with the state water code, chapter 174C;

(C) Are accessory to agricultural activities on agricultural land for agricultural use only; and

(D) Do not adversely impact or impede the use of agricultural land or the availability of surface or ground water for all uses on all parcels that are served by the ground water sources or streams for which hydroelectric facilities are considered.”

(b) Uses not expressly permitted in subsection (a) shall be prohibited, except the uses permitted as provided in sections 205-6 and 205-8, and construction of single-family dwellings on lots existing before June 4, 1976. Any other law to the contrary notwithstanding, no subdivision of land within the agricultural district with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be approved by a county unless those A and B lands within the subdivision are made subject to the restriction on uses as prescribed in this section and to the condition that the uses shall be primarily in pursuit of an agricultural activity.

Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance covering any land within the agricultural subdivision shall expressly contain the restriction on uses and the condition, as prescribed in this section that these restrictions and conditions shall be encumbrances running with the land until such time that the land is reclassified to a land use district other than agricultural district.

If the foregoing requirement of encumbrances running with the land jeopardizes the owner or lessee in obtaining mortgage financing from any of the mortgage lending agencies set forth in the following paragraph, and the requirement is the sole reason for failure to obtain mortgage financing, then the requirement of encumbrances shall, insofar as such mortgage financing is jeopardized, be conditionally waived by the appropriate county enforcement officer; provided that the conditional waiver shall become effective only in the event that the property is subjected to foreclosure proceedings by the mortgage lender.

The mortgage lending agencies referred to in the preceding paragraph are the Federal Housing Administration, Federal National Mortgage Association, Veterans Administration, Small Business Administration, United States Department of Agriculture, Federal Land Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any other federal, state, or private mortgage lending agency qualified to do business in Hawaii, and their respective successors and assigns.

(c) Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class C, D, E, or U shall be restricted to the uses permitted for agricultural districts as set forth in section 205-5(b).

(d) Notwithstanding any other provision of this chapter to the contrary, golf courses and golf driving ranges approved by a county before July 1, 2005, for development within the agricultural district shall be permitted uses within the agricultural district.

(e) Notwithstanding any other provision of this chapter to the contrary, plantation community subdivisions as defined in this section shall be permitted uses within the agricultural district, and section 205-8 shall not apply.

[(f)] Notwithstanding any other law to the contrary, agricultural lands may be subdivided and leased for the agricultural uses or activities permitted in subsection (a); provided that:

**§ 205-4.5. Permissible uses within the agricultural districts, HI ST § 205-4.5**

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- (1) The principal use of the leased land is agriculture;
- (2) No permanent or temporary dwellings or farm dwellings, including trailers and campers, are constructed on the leased area. This restriction shall not prohibit the construction of storage sheds, equipment sheds, or other structures appropriate to the agricultural activity carried on within the lot; and
- (3) The lease term for a subdivided lot shall be for at least as long as the greater of:
  - (A) The minimum real property tax agricultural dedication period of the county in which the subdivided lot is located; or
  - (B) Five years.

Lots created and leased pursuant to this section shall be legal lots of record for mortgage lending purposes and shall be exempt from county subdivision standards.

**Credits**

Laws 1976, ch. 199, § 1; Laws 1977, ch. 136, § 1; Laws 1980, ch. 24, § 3; Laws 1982, ch. 217, § 1; Laws 1991, ch. 281, § 3; Laws 1997, ch. 258, § 11; Laws 2005, ch. 205, § 3; Laws 2006, ch. 237, § 4, **ch. 250, § 2**; Laws 2006, ch. 271, § 1; Laws 2007, ch. 159, § 3, **eff. June 8, 2007**; Laws 2007, ch. 171, § 1, **eff. July 1, 2007**; Laws 2008, ch. 145, § 3, **eff. June 5, 2008**; Laws 2009, ch. 53, § 1, **eff. May 6, 2009**; Laws 2011, ch. 217, § 3, **eff. July 11, 2011**; Laws 2012, ch. 97, § 7, **eff. April 30, 2012**; Laws 2012, ch. 113, § 3, **eff. June 15, 2012**; Laws 2012, ch. 167, § 2, **eff. June 27, 2012**; Laws 2012, ch. 329, § 4, **eff. July 10, 2012**; Laws 2014, ch. 52, § 1, **eff. April 28, 2014**; Laws 2014, ch. 55, § 3, **eff. April 30, 2014**; Laws 2015, ch. 228, § 3, **eff. July 1, 2015**.

Notes of Decisions (13)

**H R S § 205-4.5, HI ST § 205-4.5**

Current through Act 243 [End] of the 2015 Regular Session, pending classification of undesignated material and text revision by the revisor of statutes. For research tips relating to newly added undesignated material, see scope.

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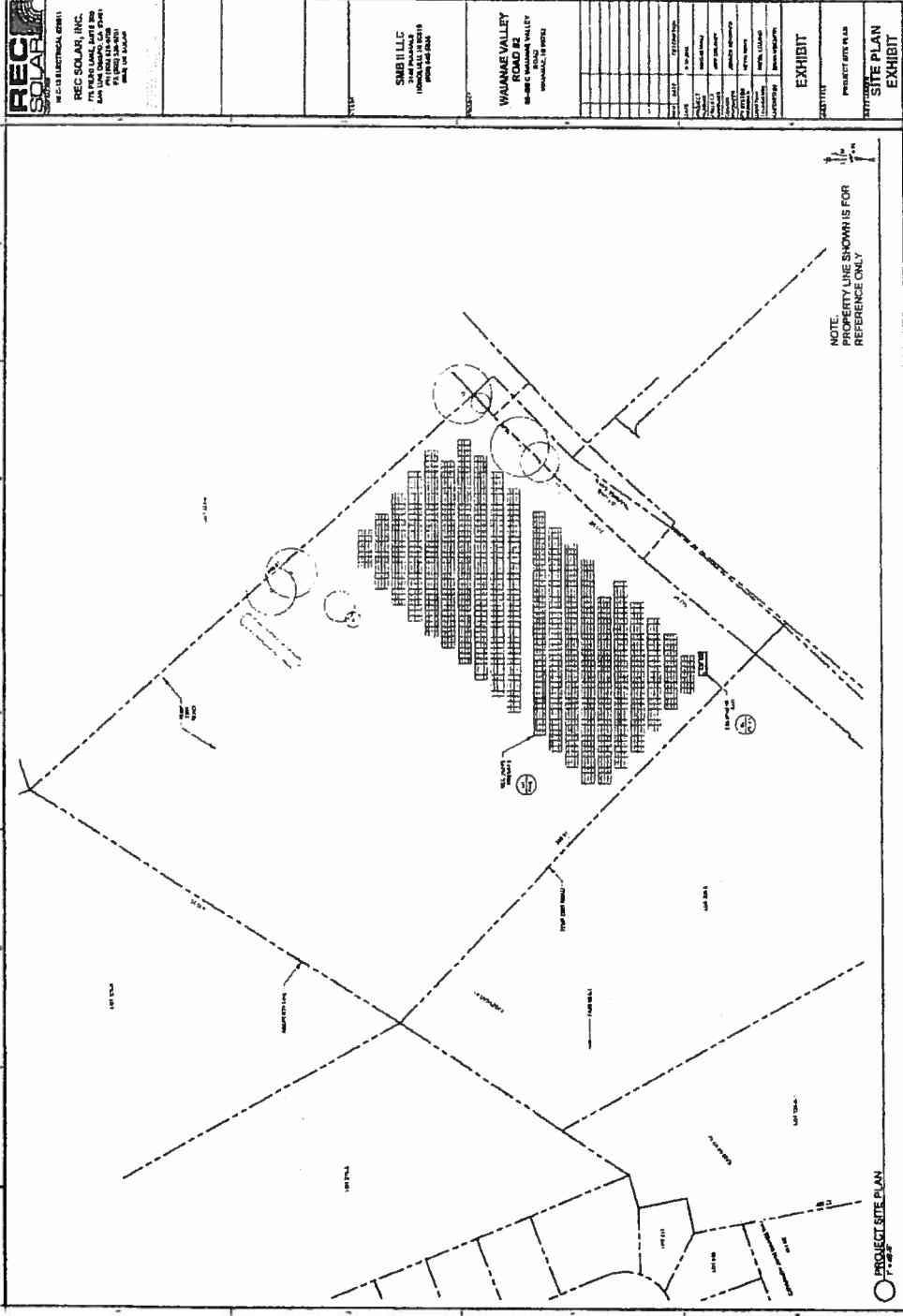
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2015 Revisor's Office



EXHIBIT C





**REC SOLAR**  
REC SOLAR, INC.  
1700 LINDEN AVENUE, SUITE 100  
SAN ANTONIO, TEXAS 78202  
TEL: (214) 556-3000  
WWW.REC-SOLAR.COM

**SMB II LLC**  
10000 W. WILLOW CREEK ROAD  
DALLAS, TEXAS 75241  
TEL: (972) 440-1000

**WAIANAE VALLEY ROAD #2**  
WAIANAE VALLEY ROAD #2  
WAIANAE, HAWAII

NO.	DATE	DESCRIPTION	BY	APP.
1	01/15/2011	ISSUED FOR PERMIT	J. SMITH	J. SMITH
2	02/10/2011	REVISIONS	J. SMITH	J. SMITH
3	03/15/2011	REVISIONS	J. SMITH	J. SMITH
4	04/15/2011	REVISIONS	J. SMITH	J. SMITH
5	05/15/2011	REVISIONS	J. SMITH	J. SMITH
6	06/15/2011	REVISIONS	J. SMITH	J. SMITH
7	07/15/2011	REVISIONS	J. SMITH	J. SMITH
8	08/15/2011	REVISIONS	J. SMITH	J. SMITH
9	09/15/2011	REVISIONS	J. SMITH	J. SMITH
10	10/15/2011	REVISIONS	J. SMITH	J. SMITH
11	11/15/2011	REVISIONS	J. SMITH	J. SMITH
12	12/15/2011	REVISIONS	J. SMITH	J. SMITH
13	01/15/2012	REVISIONS	J. SMITH	J. SMITH
14	02/15/2012	REVISIONS	J. SMITH	J. SMITH
15	03/15/2012	REVISIONS	J. SMITH	J. SMITH
16	04/15/2012	REVISIONS	J. SMITH	J. SMITH
17	05/15/2012	REVISIONS	J. SMITH	J. SMITH
18	06/15/2012	REVISIONS	J. SMITH	J. SMITH
19	07/15/2012	REVISIONS	J. SMITH	J. SMITH
20	08/15/2012	REVISIONS	J. SMITH	J. SMITH
21	09/15/2012	REVISIONS	J. SMITH	J. SMITH
22	10/15/2012	REVISIONS	J. SMITH	J. SMITH
23	11/15/2012	REVISIONS	J. SMITH	J. SMITH
24	12/15/2012	REVISIONS	J. SMITH	J. SMITH
25	01/15/2013	REVISIONS	J. SMITH	J. SMITH
26	02/15/2013	REVISIONS	J. SMITH	J. SMITH
27	03/15/2013	REVISIONS	J. SMITH	J. SMITH
28	04/15/2013	REVISIONS	J. SMITH	J. SMITH
29	05/15/2013	REVISIONS	J. SMITH	J. SMITH
30	06/15/2013	REVISIONS	J. SMITH	J. SMITH
31	07/15/2013	REVISIONS	J. SMITH	J. SMITH
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34	10/15/2013	REVISIONS	J. SMITH	J. SMITH
35	11/15/2013	REVISIONS	J. SMITH	J. SMITH
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44	08/15/2014	REVISIONS	J. SMITH	J. SMITH
45	09/15/2014	REVISIONS	J. SMITH	J. SMITH
46	10/15/2014	REVISIONS	J. SMITH	J. SMITH
47	11/15/2014	REVISIONS	J. SMITH	J. SMITH
48	12/15/2014	REVISIONS	J. SMITH	J. SMITH
49	01/15/2015	REVISIONS	J. SMITH	J. SMITH
50	02/15/2015	REVISIONS	J. SMITH	J. SMITH
51	03/15/2015	REVISIONS	J. SMITH	J. SMITH
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53	05/15/2015	REVISIONS	J. SMITH	J. SMITH
54	06/15/2015	REVISIONS	J. SMITH	J. SMITH
55	07/15/2015	REVISIONS	J. SMITH	J. SMITH
56	08/15/2015	REVISIONS	J. SMITH	J. SMITH
57	09/15/2015	REVISIONS	J. SMITH	J. SMITH
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59	11/15/2015	REVISIONS	J. SMITH	J. SMITH
60	12/15/2015	REVISIONS	J. SMITH	J. SMITH
61	01/15/2016	REVISIONS	J. SMITH	J. SMITH
62	02/15/2016	REVISIONS	J. SMITH	J. SMITH
63	03/15/2016	REVISIONS	J. SMITH	J. SMITH
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65	05/15/2016	REVISIONS	J. SMITH	J. SMITH
66	06/15/2016	REVISIONS	J. SMITH	J. SMITH
67	07/15/2016	REVISIONS	J. SMITH	J. SMITH
68	08/15/2016	REVISIONS	J. SMITH	J. SMITH
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71	11/15/2016	REVISIONS	J. SMITH	J. SMITH
72	12/15/2016	REVISIONS	J. SMITH	J. SMITH
73	01/15/2017	REVISIONS	J. SMITH	J. SMITH
74	02/15/2017	REVISIONS	J. SMITH	J. SMITH
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76	04/15/2017	REVISIONS	J. SMITH	J. SMITH
77	05/15/2017	REVISIONS	J. SMITH	J. SMITH
78	06/15/2017	REVISIONS	J. SMITH	J. SMITH
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80	08/15/2017	REVISIONS	J. SMITH	J. SMITH
81	09/15/2017	REVISIONS	J. SMITH	J. SMITH
82	10/15/2017	REVISIONS	J. SMITH	J. SMITH
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84	12/15/2017	REVISIONS	J. SMITH	J. SMITH
85	01/15/2018	REVISIONS	J. SMITH	J. SMITH
86	02/15/2018	REVISIONS	J. SMITH	J. SMITH
87	03/15/2018	REVISIONS	J. SMITH	J. SMITH
88	04/15/2018	REVISIONS	J. SMITH	J. SMITH
89	05/15/2018	REVISIONS	J. SMITH	J. SMITH
90	06/15/2018	REVISIONS	J. SMITH	J. SMITH
91	07/15/2018	REVISIONS	J. SMITH	J. SMITH
92	08/15/2018	REVISIONS	J. SMITH	J. SMITH
93	09/15/2018	REVISIONS	J. SMITH	J. SMITH
94	10/15/2018	REVISIONS	J. SMITH	J. SMITH
95	11/15/2018	REVISIONS	J. SMITH	J. SMITH
96	12/15/2018	REVISIONS	J. SMITH	J. SMITH
97	01/15/2019	REVISIONS	J. SMITH	J. SMITH
98	02/15/2019	REVISIONS	J. SMITH	J. SMITH
99	03/15/2019	REVISIONS	J. SMITH	J. SMITH
100	04/15/2019	REVISIONS	J. SMITH	J. SMITH

**EXHIBIT**  
PROJECT SITE PLAN  
**EXHIBIT**  
**EXHIBIT**

EXHIBIT D

September 2015



## Hawaii Agriculture Research Center

### AGRIVOLTAIC SYSTEM - PROPOSAL FOR AGRICULTURAL USE OF APPROXIMATELY 2 ACRES OF LAND BENEATH PHOTO-VOLTAIC PANELS

85-485 C Waianae Valley Road, Waianae, HI 96792 (TMK No. (1) 8-5-019-014)

#### Introduction

Founded in 1895, the Hawaiian Sugar Planters' Association (HSPA), dedicated to improving the sugar industry in Hawaii, has become an internationally recognized research center. Its name change in 1996 to Hawaii Agriculture Research Center (HARC) reflects its expanding scope to encompass research in forestry, coffee, forage, vegetable crops, tropical fruits, and many other diversified crops in addition to sugarcane. HARC is a non-profit 501(c)(3) organization. HARC specializes in horticultural crop research including agronomy and plant nutrition, plant physiology, breeding, genetic engineering and tissue culture, and control of diseases and pests through integrated pest management. HARC also performs pesticide registration work; training in areas such as pesticide application and environmental compliance; and technical literature searches. In addition to serving Hawaii's agricultural industries through research and immediate response teams to solve problems, HARC helps other local, national, and international organizations meet their research, on-site consulting, and training needs.

In September 2011, French scientist Dr. Christian Dupraz introduced the word Agrivoltaics as a solution to the possible food and energy conflict. "Agrivoltaic Systems" (AVS) are defined as "mixed systems associating solar panels and crop at the same time on the same land area." Photo-voltaic panels (PVP) create intermittent shading for the crops that grow underneath the PVP. See "Combining solar photovoltaic panels and food crops for optimising land use: Towards new agrivoltaic schemes" C. Dupraza, H. Marroua, G. Talbota, L. Dufoura, A. Nogierb, Y. Ferardb, *Renewable Energy* 36 (2011) 2725-2732.

Finally, the use of AVS is especially attractive by providing the means to contribute to the Hawaii Clean Energy Initiative, which has an objective of achieving 100% clean energy by the year 2045.

EXHIBIT E

### **Supporting Site Data**

The 2 acres are currently fallow, but have a good potential for productive agricultural use. The soils are Lualualei-Fill Land-Ewa Association. The Lualualei-Fill Land-Ewa Association consists of deep, nearly level to moderately sloping, well-drained soils that have fine textured or moderately fine textured subsoil or underlying material, and areas of fill land, on coastal plains. See U.S. Department of Agriculture, 1972. "Soil Survey of Islands of Kauai, Oahu, Hawaii, Molokai, and Lanai, State of Hawaii."

Solar radiation: 500+ cal/sq cm/day

Soil Series: Pulehu clay loam, 0 to 3 percent (PsA),

Rainfall: land is irrigated

Temperature: 61.0 (75.8) 91.0 °F [min. (avg) max. for 2012]

Elevation (ft): 40 to 45

pH: 6.5 to 7.5 (Soil Survey Territory of Hawaii, Series 1939, No. 25, Sept. 1955, USDA)

"This is the best soil of the Pulehu series."

Temperature data from the three nearby weather stations (in order of decreasing applicability) have been collected.

MD3665 (77)

Nanakuli HI US, Waianae, HI

Lat: N 21 ° 23 ' 33 " (21.393 °) or 4.30 miles from project site.

Lon: W 158 ° 8 ' 56 " (-158.149 °)

Elevation (ft): 49

MMKRHI (79)

MAKUA RANGE HI US, Waianae, HI

Lat: N 21 ° 31 ' 42 " (21.529 °) or 6.35 miles from project site.

Lon: W 158 ° 13 ' 33 " (-158.226 °)

Elevation (ft): 19

MWNVHI (78)

WAIANAË VALLEY HI US, Waianae, HI

Lat: N 21 ° 28 ' 50 " (21.481 °) or 2.55 miles from project site.

Lon: W 158 ° 9 ' 17 " (-158.155 °)

Elevation (ft): 865

### **Agrivoltaic Systems Method**

Mounting PVP above the ground at an appropriate height allows for productive use of the land beneath the PVP. Elevated PVP essentially creates a shade-house. For this project, the PVP will be set on the posts at an angle, with the bottom of the PVP approximately 7 feet above ground at the lowest point, and 11 feet above ground at the highest point.

If the PVP arrays were constructed such that there was no space between the PVP rows, the amount of light passing through the PVP panels would not be sufficient for many crops. However, with a 7-foot spacing between the rows of the PVP arrays, adequate light will be available not only to the completely uncovered rows of land between the PVP arrays, but also under the raised PVP structures, because as the sun moves from East to West, the sunlight will enter at an angle.

## Crops

We understand that the Feed-In-Tariff contract between SMB II, LLC and HECO is for 20 years from the start of electrical power generation. Therefore, although we understand that SMB II, LLC has identified a farmer who may cultivate betel vine on the site in order to grow and sell betel leaf, the possibility of additional crops should be explored, as it may be necessary to adapt to changing market pressures over the course of the HECO contract.

## Betel (*Piper betle*)

The betel vine produces leaves that are used as one of the ingredients in the “betel nut” chewing concoction. The leaves are also a mainstay in most traditional Indian wedding ceremonies signifying freshness and prosperity. A typical response of a plant to a reduced light situation is to grow larger leaves, its photosynthetic machinery. In this case, that dovetails nicely where the agricultural commodity is the leaf.

Nutritional composition of fresh <i>Piper betle</i>			
Constituents	Approximate composition	Constituents	Approximate composition
Water	85 - 90%	Riboflavin	1.9 - 30 µg/100g
Protein	3 - 3.5%	Tannin	0.1 - 1.3%
Fat	0.4 - 1.0%	Nitrogen	2.0 - 7.0%
Minerals	2.3 - 3.3%	Phosphorus	0.05 - 0.6%
Fiber	2.3%	Potassium	1.1 - 4.6%
Chlorophyll	0.01 - 0.25%	Calcium	0.2 - 0.5%
Carbohydrate	0.5 - 6.10%	Iron	0.005 - 0.007%
Nicotinic acid	0.63 - 0.89 mg/100g	Iodine	3.4 µg/100g
Vitamin C	0.005 - 0.01%	Essential Oil	0.08 - 0.2%
Vitamin A	1.9 - 2.9 mg/100g	Energy	44 kcal/100 g
Thiamine	10 - 70 µg/100g		

The betel plant produces harvestable leaves year round for 10 to 15 years, starting about 12 months after planting. Harvest from a single plant is from two or three times a week, but is expected to be spread out to six days per week for the whole plot. Instead of the vertically oriented farming method (see photo), a horizontal modification has proved advantageous in Hawaii.



A waist-high, lattice framework would be constructed down the length of each PVP array. Wire mesh would be secured onto the top surface of the frame. The betel plant would be planted under the lattice every four feet down the length of the frame. The vine would grow vertically up to the wire mesh then horizontally to cover the mesh. Harvesting of the leaves six days of the week ensures freshness and selection of the most suitable leaves.

The site is attractive due to proximity to the Pa'ina Gray\*Star Genesis Underwater Cobalt-60 Irradiator located in Kunia. Treatment at the Irradiator is required before the leaves can be shipped to the continental United States. Oahu also offers the added advantages of having more frequent airline flights to the mainland which translates into ensuring product freshness and adding flexibility in scheduling harvests. The greater number of mainland destinations opens up additional markets.

#### **Curry Tree (*Murraya koenigii*).**

Another crop that could be planted around the perimeter of the PVP is the curry tree (*Murraya koenigii*). Again, the leaves are the target crop. Though the trees can grow 13 to 20 feet tall, they will be periodically coppiced to facilitate the harvest of the leaves (and keep the trees from shading the PVP). The very aromatic "curry leaves" are used as a seasoning in many, especially Indian, dishes. As with many seasonings, curry leaves have a short shelf life when fresh and lose their potency upon drying. Therefore, a supply of fresh curry leaves is highly desirable.

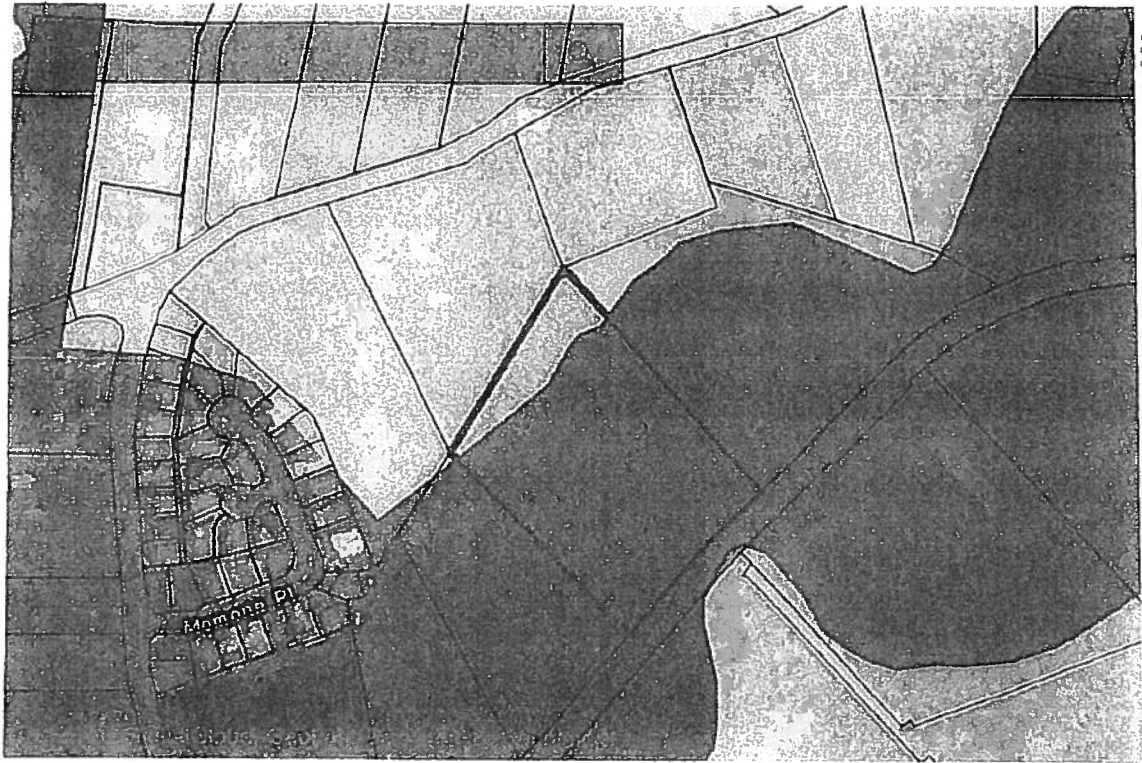
#### **Other Crops and Agricultural Uses and Markets**

As the database of the more site-specific growing parameters increases and averages out over the years, smaller test plots of other shade-tolerant plants such as ferns, mushrooms, anthuriums, orchids, coffee, asparagus, okra, potatoes, and vanilla may be established. The 4" x 4" 12G CEE purlin posts supporting the PVP afford a convenient means to separate subplots.

The following crops should produce with three to six hours of sun, or fairly constant dappled shade, per day:

Crops	
1. Salad Greens, such as leaf lettuce, arugula, endive, and cress.	6. Brussels Sprouts
2. Broccoli	7. Radishes
3. Cauliflower	8. Swiss Chard
4. Peas	9. Leafy Greens, such as collards, mustard greens, spinach, and kale
5. Beets	10. Beans

Beekeeping at the south-facing corner of the PV array is also a very attractive supplementary activity.



Legend

TMK Parcels



LSB Class

- A
- B
- C
- D
- E

EXHIBIT F

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# A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. Section 205-4.5, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) Within the agricultural district, all lands with soil  
4 classified by the land study bureau's detailed land  
5 classification as overall (master) productivity rating class A  
6 or B shall be restricted to the following permitted uses:

7 (1) Cultivation of crops, including crops for bioenergy,  
8 flowers, vegetables, foliage, fruits, forage, and  
9 timber;

10 (2) Game and fish propagation;

11 (3) Raising of livestock, including poultry, bees, fish,  
12 or other animal or aquatic life that are propagated  
13 for economic or personal use;

14 (4) Farm dwellings, employee housing, farm buildings, or  
15 activities or uses related to farming and animal  
16 husbandry. "Farm dwelling", as used in this

17 paragraph, means a single-family dwelling located on  
18 and used in connection with a farm, including clusters





- 1 of single-family farm dwellings permitted within  
2 agricultural parks developed by the State, or where  
3 agricultural activity provides income to the family  
4 occupying the dwelling;
- 5 (5) Public institutions and buildings that are necessary  
6 for agricultural practices;
- 7 (6) Public and private open area types of recreational  
8 uses, including day camps, picnic grounds, parks, and  
9 riding stables, but not including dragstrips,  
10 airports, drive-in theaters, golf courses, golf  
11 driving ranges, country clubs, and overnight camps;
- 12 (7) Public, private, and quasi-public utility lines and  
13 roadways, transformer stations, communications  
14 equipment buildings, solid waste transfer stations,  
15 major water storage tanks, and appurtenant small  
16 buildings such as booster pumping stations, but not  
17 including offices or yards for equipment, material,  
18 vehicle storage, repair or maintenance, treatment  
19 plants, corporation yards, or other similar  
20 structures;
- 21 (8) Retention, restoration, rehabilitation, or improvement  
22 of buildings or sites of historic or scenic interest;



- 1           (9)   Agricultural-based commercial operations as described
- 2                    in section [‡]205-2(d)(15)[‡];
- 3           (10)   Buildings and uses, including mills, storage, and
- 4                    processing facilities, maintenance facilities,
- 5                    photovoltaic, biogas, and other small-scale renewable
- 6                    energy systems producing energy solely for use in the
- 7                    agricultural activities of the fee or leasehold owner
- 8                    of the property, and vehicle and equipment storage
- 9                    areas that are normally considered directly accessory
- 10                   to the above-mentioned uses and are permitted under
- 11                   section 205-2(d);
- 12           (11)   Agricultural parks;
- 13           (12)   Plantation community subdivisions, which as used in
- 14                    this chapter means an established subdivision or
- 15                    cluster of employee housing, community buildings, and
- 16                    agricultural support buildings on land currently or
- 17                    formerly owned, leased, or operated by a sugar or
- 18                    pineapple plantation; provided that the existing
- 19                    structures may be used or rehabilitated for use, and
- 20                    new employee housing and agricultural support
- 21                    buildings may be allowed on land within the
- 22                    subdivision as follows:

- 1 (A) The employee housing is occupied by employees or  
2 former employees of the plantation who have a  
3 property interest in the land;
- 4 (B) The employee housing units not owned by their  
5 occupants shall be rented or leased at affordable  
6 rates for agricultural workers; or
- 7 (C) The agricultural support buildings shall be  
8 rented or leased to agricultural business  
9 operators or agricultural support services;
- 10 (13) Agricultural tourism conducted on a working farm, or a  
11 farming operation as defined in section 165-2, for the  
12 enjoyment, education, or involvement of visitors;  
13 provided that the agricultural tourism activity is  
14 accessory and secondary to the principal agricultural  
15 use and does not interfere with surrounding farm  
16 operations; and provided further that this paragraph  
17 shall apply only to a county that has adopted  
18 ordinances regulating agricultural tourism under  
19 section 205-5;
- 20 (14) Agricultural tourism activities, including overnight  
21 accommodations of twenty-one days or less, for any one  
22 stay within a county; provided that this paragraph



1 shall apply only to a county that includes at least  
2 three islands and has adopted ordinances regulating  
3 agricultural tourism activities pursuant to section  
4 205-5; provided further that the agricultural tourism  
5 activities coexist with a bona fide agricultural  
6 activity. For the purposes of this paragraph, "bona  
7 fide agricultural activity" means a farming operation  
as defined in section 165-2;

9 (15) Wind energy facilities, including the appurtenances  
10 associated with the production and transmission of  
11 wind generated energy; provided that the wind energy  
12 facilities and appurtenances are compatible with  
13 agriculture uses and cause minimal adverse impact on  
14 agricultural land;

15 (16) Biofuel processing facilities, including the  
16 appurtenances associated with the production and  
17 refining of biofuels that is normally considered  
18 directly accessory and secondary to the growing of the  
19 energy feedstock; provided that biofuel processing  
20 facilities and appurtenances do not adversely impact  
21 agricultural land and other agricultural uses in the  
22 vicinity.



1 For the purposes of this paragraph:

2 "Appurtenances" means operational infrastructure  
3 of the appropriate type and scale for economic  
4 commercial storage and distribution, and other similar  
5 handling of feedstock, fuels, and other products of  
6 biofuel processing facilities.

7 "Biofuel processing facility" means a facility  
8 that produces liquid or gaseous fuels from organic  
9 sources such as biomass crops, agricultural residues,  
10 and oil crops, including palm, canola, soybean, and  
11 waste cooking oils; grease; food wastes; and animal  
12 residues and wastes that can be used to generate  
13 energy;

14 (17) Agricultural-energy facilities, including  
15 appurtenances necessary for an agricultural-energy  
16 enterprise; provided that the primary activity of the  
17 agricultural-energy enterprise is agricultural  
18 activity. To be considered the primary activity of an  
19 agricultural-energy enterprise, the total acreage  
20 devoted to agricultural activity shall be not less  
21 than ninety per cent of the total acreage of the  
22 agricultural-energy enterprise. The agricultural-



1 energy facility shall be limited to lands owned,  
2 leased, licensed, or operated by the entity conducting  
3 the agricultural activity.

4 As used in this paragraph:

5 "Agricultural activity" means any activity  
6 described in paragraphs (1) to (3) of this subsection.

7 "Agricultural-energy enterprise" means an  
8 enterprise that integrally incorporates an  
9 agricultural activity with an agricultural-energy  
10 facility.

11 "Agricultural-energy facility" means a facility  
12 that generates, stores, or distributes renewable  
13 energy as defined in section 269-91 or renewable fuel  
14 including electrical or thermal energy or liquid or  
15 gaseous fuels from products of agricultural activities  
16 from agricultural lands located in the State.

17 "Appurtenances" means operational infrastructure  
18 of the appropriate type and scale for the economic  
19 commercial generation, storage, distribution, and  
20 other similar handling of energy, including equipment,  
21 feedstock, fuels, and other products of agricultural-  
22 energy facilities;



- 1           (18) Construction and operation of wireless communication  
2                    antennas; provided that, for the purposes of this  
3                    paragraph, "wireless communication antenna" means  
4                    communications equipment that is either freestanding  
5                    or placed upon or attached to an already existing  
6                    structure and that transmits and receives  
7                    electromagnetic radio signals used in the provision of  
8                    all types of wireless communications services;  
9                    provided further that nothing in this paragraph shall  
10                  be construed to permit the construction of any new  
11                  structure that is not deemed a permitted use under  
12                  this subsection;
- 13           (19) Agricultural education programs conducted on a farming  
14                    operation as defined in section 165-2, for the  
15                    education and participation of the general public;  
16                    provided that the agricultural education programs are  
17                    accessory and secondary to the principal agricultural  
18                    use of the parcels or lots on which the agricultural  
19                    education programs are to occur and do not interfere  
20                    with surrounding farm operations. For the purposes of  
21                    this section, "agricultural education programs" means  
22                    activities or events designed to promote knowledge and



1 understanding of agricultural activities and practices  
2 conducted on a farming operation as defined in section  
3 165-2;

4 (20) Solar energy facilities that do not occupy more than  
5 ten per cent of the acreage of the parcel, or twenty  
6 acres of land, whichever is lesser; provided that this  
7 use shall not be permitted on lands with soil  
8 classified by the land study bureau's detailed land  
9 classification as overall (master) productivity rating  
10 class A[+] unless the solar energy facilities are:

11 (A) Located on a paved or unpaved road in existence  
12 as of December 31, 2013, and the parcel of land  
13 upon which the paved or unpaved road is located  
14 has a valid county agriculture tax dedication  
15 status or a valid agricultural conservation  
16 easement;

17 (B) Placed in a manner that still allows vehicular  
18 traffic to use the road; and

19 (C) Granted a special use permit by the commission  
20 pursuant to section 205-6; or





1    [+] (21) [+] Geothermal resources exploration and geothermal  
2                   resources development, as defined under section  
3                   182-1."

4           SECTION 2. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6           SECTION 3. This Act shall take effect upon its approval;  
7 provided that:

8           (1) This Act shall be repealed on June 30, 2019, and  
9                   section 205-4.5, Hawaii Revised Statutes, shall be  
10                   reenacted in the form in which it read on the day  
11                   before the effective date of this Act; and

12           (2) Any solar energy facility permitted under this Act as  
13                   of June 30, 2019, shall continue to be permissible  
14                   under the provisions of this Act until the end of its  
15                   operable life, at which time it shall be appropriately  
16                   and properly replaced or decommissioned and removed  
17                   within twelve months.

APPROVED this 28 day of APR, 2014



GOVERNOR OF THE STATE OF HAWAII

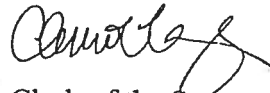
**THE SENATE OF THE STATE OF HAWAII**

Date: April 11, 2014  
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Twenty-seventh Legislature of the State of Hawaii, Regular Session of 2014.

A handwritten signature in black ink, appearing to read "Jim Owens". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

President of the Senate

A handwritten signature in black ink, appearing to read "Anna Lee". The signature is cursive and somewhat compact.

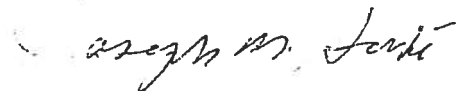
Clerk of the Senate

SB No. 2775, SD 1, HD 1

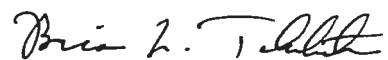
THE HOUSE OF REPRESENTATIVES OF THE  
STATE OF HAWAII

Date: April 3, 2014  
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Third Reading in the House of Representatives of the Twenty-Seventh Legislature of the State of Hawaii, Regular Session of 2014.



Joseph M. Souki  
Speaker  
House of Representatives



Brian L. Takeshita  
Chief Clerk  
House of Representatives



EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

April 28, 2014

RECEIVED  
APR 29 2014  
LEGISLATIVE DIV.

The Honorable Donna Mercado Kim,  
President  
and Members of the Senate  
Twenty-Seventh State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

The Honorable Joseph M. Souki,  
Speaker and Members of the  
House of Representatives  
Twenty-Seventh State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

This is to inform you that on April 28, 2014, the following bill was signed into law:

SB2775 SD1 HD1

RELATING TO RENEWABLE ENERGY  
**ACT 052 (14)**

Sincerely,

NEIL ABERCROMBIE  
Governor, State of Hawaii



STAND. COM. REP. NO.

2607

Honolulu, Hawaii

FEB 28 2014

RE: S.B. No. 2775  
S.D. 1

Honorable Donna Mercado Kim  
President of the Senate  
Twenty-Seventh State Legislature  
Regular Session of 2014  
State of Hawaii

Madam:

Your Committees on Agriculture and Energy and Environment, to which was referred S.B. No. 2775 entitled:

"A BILL FOR AN ACT RELATING TO RENEWABLE ENERGY,"

beg leave to report as follows:

The purpose and intent of this measure is to allow solar energy facilities on agricultural lands with soil classified as overall productivity rating class A, so long as the facilities:

- (1) Do not occupy more than five per cent of the acreage of the parcel, or five acres of land, whichever is lesser;
- (2) Do not materially interfere with farm operations; and
- (3) Cause no more than a minimal adverse impact on existing or potential agricultural uses of the land.

Your Committees received testimony in support of this measure from the Department of Land and Natural Resources; Hawaii Agriculture Research Center; Hawaii Cattlemen's Council, Inc.; Hawaii Farm Bureau Federation; and four individuals. Your Committees received comments on this measure from the Office of Planning, Land Use Commission, and Department of Agriculture.

Your Committees find that using renewable energy sources to support agricultural activities is important to the State's agricultural industry, environment, and sustainability. Your Committees have concerns, however, about allowing solar energy



facilities on prime class A agricultural lands, which make up only 3.1 percent of the state agricultural district. As a compromise, your Committees conclude that solar facilities should be allowed on class A lands, but only on field roads that are used for vehicular traffic. With this compromise, no prime agricultural land will be sacrificed for solar energy facilities, and the State can increase its renewable energy sustainability efforts.

Accordingly, your Committees have amended this measure by deleting its contents and inserting language to allow solar energy facilities on agricultural lands with soil classified as overall productivity rating class A, if the solar energy facilities are located on a paved or unpaved road that is established by December 31, 2013, and the road allows for vehicular traffic.

As this measure moves forward in the legislative process, your Committees request consideration of the Land Use Commission's testimony to subject solar energy facilities on class A, B, and C agricultural lands to the state special permit process.

As affirmed by the records of votes of the members of your Committees on Agriculture and Energy and Environment that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2775, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 2775, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on  
behalf of the members of the  
Committees on Agriculture and  
Energy and Environment,

  
MIKE GABBARD, Chair

  
CLARENCE K. NISHIHARA, Chair



Honolulu, Hawaii  
March 21, 2014

RE: S.B. No. 2775  
S.D. 1  
H.D. 1

Honorable Joseph M. Souki  
Speaker, House of Representatives  
Twenty-Seventh State Legislature  
Regular Session of 2014  
State of Hawaii

Sir:

Your Committee on Agriculture, to which was referred S.B. No. 2775, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO RENEWABLE ENERGY,"

begs leave to report as follows:

The purpose of this measure is to protect agricultural lands with a productivity rating of class A and at the same time permit a solar energy facility thereon by permitting the facility only if:

- (1) The solar energy facility is on a paved or unpaved road that has been in existence as of December 31, 2013; and
- (2) Vehicular traffic can still use the road.

The Hawaii Agriculture Research Center; Hawaii Farm Bureau Federation; Hawaii Cattlemen's Council, Inc.; and a concerned individual supported the bill. The Department of Agriculture supported the intent of this measure. The Department of Business, Economic Development, and Tourism, Land Use Commission, and Office of Planning commented on the bill.

Your Committee has amended this measure by:

- (1) Requiring the following additional conditions to permit a solar energy facility on class A agricultural lands:

SB2775 HD1 HSCR AGR HMS 2014-2731

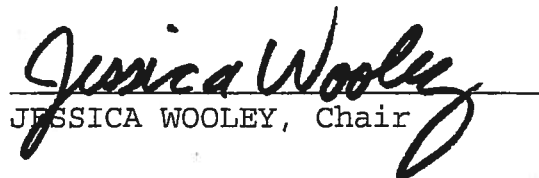




- (A) A special use permit granted by the Land Use Commission; and
  - (B) The parcel of land upon which the paved or unpaved road is located has a valid county agriculture tax dedication status or valid agricultural conservation easement;
- (2) Repealing the permissible use on June 30, 2019, and providing for the continued operation of the facility after June 30, 2019, and conditions for the facility's removal at the end of the facility's operable life; and
  - (3) Making technical, nonsubstantive amendments were also made for style, consistency, and clarity.

As affirmed by the record of votes of the members of your Committee on Agriculture that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2775, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2775, S.D. 1, H.D. 1, and be referred to the Committees on Energy & Environmental Protection and Water & Land.

Respectfully submitted on  
behalf of the members of the  
Committee on Agriculture,

  
JESSICA WOOLEY, Chair



Honolulu, Hawaii

April 3, 2014

RE: S.B. No. 2775  
S.D. 1  
H.D. 1

Honorable Joseph M. Souki  
Speaker, House of Representatives  
Twenty-Seventh State Legislature  
Regular Session of 2014  
State of Hawaii

Sir:

Your Committees on Energy & Environmental Protection and Water & Land, to which was referred S.B. No. 2775, S.D. 1, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO RENEWABLE ENERGY,"

beg leave to report as follows:

The purpose of this measure is to protect agricultural lands with a productivity rating of class A and permit solar energy facilities on those lands only if:

- (1) The solar energy facility is located on a paved or unpaved road that has been in existence as of December 31, 2013, and the parcel has a valid county agriculture tax dedication status or a valid agricultural conservation easement;
- (2) Vehicular traffic can still use the road; and
- (3) A special use permit is granted by the Land Use Commission.

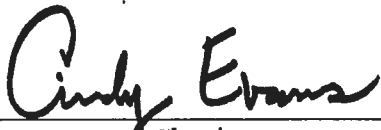
This measure also repeals the permissible use of these lands on June 30, 2019, but provides for the continued operation of an existing facility after June 30, 2019, and establishes conditions for the facility's removal at the end of its operable life.



The Department of Agriculture; Department of Planning and Permitting of the City and County of Honolulu; Hawaii Cattlemen's Council; Hawaii Agriculture Research Center; Hawaii Farm Bureau; and a concerned individual supported this measure. The Department of Business, Economic Development, and Tourism; Office of Planning; and the Land Use Commission commented on this measure.

As affirmed by the records of votes of the members of your Committees on Energy & Environmental Protection and Water & Land that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2775, S.D. 1, H.D. 1, and recommend that it pass Third Reading.

Respectfully submitted on  
behalf of the members of the  
Committees on Energy &  
Environmental Protection and  
Water & Land,

  
CINDY EVANS, Chair

  
CHRIS LEE, Chair



BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition ) DOCKET NO. DR16-55  
)  
To Issue a Declaratory Order That a ) CERTIFICATE OF SERVICE  
Photovoltaic System is Not an )  
Agricultural Energy Facility. )  
)  
\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

I hereby certify that due service of a copy of the foregoing PETITION FOR DECLARATORY ORDER was made via hand-delivery or by depositing the same with the United States mail, postage prepaid, on February 8, 2016, addressed to:


DEPARTMENT OF PLANNING AND PERMITTING  
City and County of Honolulu  
650 S. King Street, 7<sup>th</sup> Floor  
Honolulu, Hawaii 96813

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Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, February 8, 2016.

  
BRYAN C. YEE  
Deputy Attorney General

Attorney for Petitioners OFFICE OF PLANNING,  
STATE OF HAWAII and DEPARTMENT OF  
AGRICULTURE