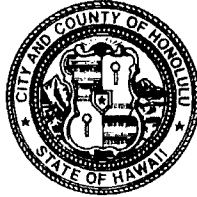


DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honoluluodpp.org • CITY WEB SITE: www.honolulu.gov

KIRK CALDWELL
MAYOR



KATHY K. SOKUGAWA
ACTING DIRECTOR

TIMOTHY F. T. HIU
DEPUTY DIRECTOR

2014/SUP-3 (RY)
1461822

June 13, 2017

MEMORANDUM

TO: Dean I. Hazama, Chair
and Members of the Planning Commission

FROM: Kathy K. Sokugawa, Acting Director *Kathy Sokugawa*
Department of Planning and Permitting

SUBJECT: Request to Withdraw Planning Commission Approval Dated February 15, 2017
and to Amend a Special Use Permit (SUP) to Establish a Solar Energy Facility
Waipio, Central Oahu
Tax Map Key: 9-5-003: Portion of 17

Transmitted for appropriate action is my report and recommendation for approval of the Petitioner's request to amend certain conditions of approval of the Land Use Commission's (LUC) Decision and Order, dated March 25, 2015 (Order). The Petitioner also requested the withdrawal of the Planning Commission's approval of its deadline extension. This was granted by the Planning Commission on February 15, 2017.

The Petitioner's requests are due to its recent acquisition of Waipio PV LLC's solar energy facility (SEF) and associated entitlements from SunEdison, Inc. in October 2016, which stopped construction as of February 2016. The Petitioner desires additional time to restart and complete establishment of the SEF and proposes other amendments to the LUC's Order as a result of design changes, and to clarify certain conditions related to the roles of the State Land Use Commission and the City Planning Commission.

Enclosure

cc: Wren Wescoatt
Jeff Overton, G70
Craig Cornelius, Waipio PV LLC
State Land Use Commission

2017 JUN 16 10:39

LAND USE COMMISSION
STATE OF HAWAII

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

STATE OF HAWAII

IN THE MATTER OF THE APPLICATION)
)
 OF)
)
 WAIPIO PV LLC)
)
 FOR AN AMENDMENT TO A)
)
 SPECIAL USE PERMIT)

FILE NO. 2014/SUP-3

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION
FOR AN AMENDMENT TO A SPECIAL USE PERMIT

I. APPLICATION

A. Basic Information.

PETITIONER : Waipio PV LLC
LANDOWNER : Waipio Land Holdings LLC
LOCATION : East of H-2 Interstate Highway and
Approximately 1,000 feet north of Mililani
Memorial Park
TAX MAP KEY : 9-5-003: Portion of 17
AREA OF SPECIAL USE PERMIT : 308.8 Acres
LAND AREA : Approximately 308.8 Acres
CENTRAL OAHU DEVELOPMENT : Agriculture/Preservation
PLAN LAND USE MAP
STATE LAND USE DISTRICT : Agricultural
EXISTING USE : Agriculture
SURROUNDING LAND USE : Agriculture, open space, cemetery, highway

- B. Proposal. Waipio PV LLC (Petitioner) proposes to modify Condition Nos. 5 and 7 of the Land Use Commission's (LUC) Decision and Order, dated March 25, 2015 (see Attachment 1). The Petitioner also proposes design changes to vary the number of photovoltaic (PV) modules within the approved area and mount modules on single-axis tracking racks for improved energy generation.¹

Condition No. 5 required the Petitioner to establish the solar energy facility (SEF) within two years after the date the LUC approved the Special Use Permit (SUP and/or SP). The Petitioner requests that the two-year deadline to establish the SEF be extended by 30 months from the date the SUP amendment is approved by the LUC. Condition No. 5 also specified a termination date of the SUP, which is 35 years from the date the LUC approves the SUP. The Petitioner requests that the SUP termination date be 35 years from the date the LUC approves the SUP amendment.

Condition No. 7 allows future major modifications to the SUP to be approved by the City and County of Honolulu's Planning Commission (PC) and, subsequently, the LUC. One type of modification which requires PC and LUC review is any increase in the number of PV panels proposed. The Petitioner proposes to modify this condition by replacing "number of" to "area covered by" PV panels. The proposed modification removes any reference to the number of panels from Condition No. 7 and adds "area covered by" PV panels as an example of a major modification.

Also, the Petitioner proposes to amend Condition No. 3 such that the amount of the required financial security to decommission the facility be an approximate amount.

In addition, the Petitioner requests modifications to specify which Commission the word "Commission" refers to. Condition Nos. 5 and 7 are subject to this modification request. Under Condition No. 5, the Petitioner proposes that the LUC is the decision-making authority on requests to extend the deadline to establish the Project and that filing of requests to extend the period of validity of the SUP is the PC.

Other Project design changes include a 6-foot high chain-link perimeter fencing in place of a 4-foot high hog wire fencing. This does not require any amendments to the LUC's conditions of approval, but is disclosed to update the Project description.

The Petitioner also requests that the PC withdraw its approval of its request to extend the time frame to establish the 47-megawatt SEF (Project), which was granted on February 15, 2017.

- C. Background. On March 25, 2015, the LUC granted the request of Waipio PV LLC's SUP application to establish the Project on approximately 308.8 acres of land in Central Oahu (Property). The SUP approval was subject to 13 conditions of approval. Condition Nos. 5 and 7 were imposed pursuant to the City and County of Honolulu's Administrative Rules, Planning Department, Part 1, Rules of the Planning Commission No. 2-46(e) and the LUC Administrative Rule No. 15-15-95(f), which establishes that the PC may attach such conditions to any SUP as it considers necessary to protect the public health, safety, and welfare.

¹ Condition No. 13 of the LUC's Decision and Order requires that the Petitioner develop the Property in substantial compliance with representations made before the PC and the LUC. Failure to do so may result in the revocation of the SUP. The Petitioner's proposed changes to the SEF design from the previously proposed, fixed-tilt racks to single-axis tracking racks for PV modules is intended to update the record. An amendment to any of the conditions of approval is not required for the proposed design change.

The construction of the SEF began in October 2015. In February 2016, construction was halted when Hawaiian Electric Company (HECO) terminated its Power Purchase Agreement (PPA) with SunEdison, Inc. In March 2016, the Petitioner's parent company, SunEdison, filed for bankruptcy. NRG Renew LLC purchased Waipio PV LLC and two other subsidiary companies that were developing SEFs on Oahu. The Property owner, Waipio Land Holdings, LLC, was also acquired in the October 2016 court-approved purchase transaction.

The Petitioner has resumed work on the development of the Project. A new PPA with HECO is before the State Public Utilities Commission (PUC) for their approval. The Petitioner's revised schedule proposes construction to resume in 2018 and completion by 2019. Therefore, the Petitioner is requesting a 30-month extension of the deadline to establish the Project.

- D. Procedural Matters. On December 28, 2016, the Petitioner filed a request with the Department of Planning and Permitting (DPP) to extend the deadline to establish the Project. On February 15, 2017, the PC held a hearing on the request and subsequently approved a two-year extension of the deadline to June 30, 2019 (Attachment 2). By letter dated March 15, 2017, the PC informed the LUC of its approval of the Petitioner's request for a time extension. On March 17, 2017, the DPP received a letter dated March 14, 2017 (Attachment 3) from the LUC stating that the PC, with the concurrence of the LUC, may extend the time limit. On April 21, 2017, pursuant to the LUC's letter, the Petitioner filed a request to amend the SUP to extend the deadline to establish the Project and other amendments described above. On May 8, 2017, the DPP accepted the Petitioner's SUP amendment application for processing.

II. FINDINGS OF FACT

On the basis of the evidence provided, the Director finds:

- A. Site Location and Characteristics. The Property is situated on the east side of the H-2 Interstate Highway (H-2), north of the Ka Uka Boulevard interchange. The irregular-shaped Property has an elevation ranging from approximately 720 feet above sea level near H-2 to approximately 940 feet at the east end of the site. The topography of the parcel is gently sloping where the proposed PV panels are to be located and transitions to steep gulches along the northern and southern edges of the property (Kipapa Gulch and Panakauahi Gulch, respectively).

The Property is comprised of former agricultural fields that were previously cultivated with pineapple. Mililani Memorial Park lies approximately one-fourth mile south of the Property across Panakauahi Gulch. The southernmost extent of the Mililani Mauka residential subdivision lies across Kipapa Gulch, approximately one-half mile to the north. A new 768-acre, mixed-use development known as Koa Ridge, is planned for construction along the west side of H-2 in 2017.

Access to the site is via Pineapple Road, which connects to Ka Uka Boulevard. Pineapple Road crosses H-2 via an overpass and leads to the Petition Area's eastern boundary. There is no public access to the site.

B. Public Agency Comments. The following public agencies were requested to evaluate the impact of the proposed amendment:

CITY AND COUNTY OF HONOLULU
Honolulu Fire Department

STATE
Department of Agriculture
Department of Business, Economic Development and Tourism, LUC
Department of Business, Economic Development and Tourism, Office of Planning
Department of Transportation

FEDERAL
Department of the Army

The following government agencies provided substantive comments on the SUP application. A summary of their comments are as follows:

Table 1 – Summary of Agency Comments

Source	Comments Summary
State Office of Planning (OP)	The OP concurs with the DPP that the proposed modification to Condition 3 to include the word “ <u>approximately</u> , four million dollars” be revised to say, “no less than four million dollars.” The OP is in support or has no objections to the proposed SUP modifications: 1) The change in ownership and property owner from SunEdison to NRG; 2) Extending the time limit by 30 months or December 2019; and 3) Increasing the number of panels to the area covered by the panels. The OP recommends that since the State Historic Preservation Division accepted the draft archeological assessment in a letter dated January 16, 2015, contained in the Petitioner’s annual report to the Commission dated February 9, 2016, that the LUC’s Condition No. 11 be deleted since this condition has been met.
State Department of Agriculture	The Petitioner should affirm that the proposed change from fixed-tilt racks to single-axis tracking racks, and the proposed change from hog wire fencing to chain-link fencing, will not restrict or impede compatible agricultural uses within the Petition Area available for compatible agricultural uses. Also, the Petitioner should provide a letter from Tin Roof Ranch stating that the proposed amendments to the SUP will not have any adverse effect on its planned ranching operation within the Project Area.

Other government agencies contacted did not object to the Project or did not provide comments.

All comments are included in Attachment 4. Written comments received by the DPP after the writing of this report will be forwarded to the PC via a separate transmittal.

- C. Community Concerns. Copies of the amendment request were transmitted to the Pearl City Neighborhood Board (NB) No. 21, the Mililani/Waipio/Melemanu NB No. 25, and the Mililani Mauka/Launani Valley NB No. 35.

To date, no comments from either of the NBs have been received. Written comments received by the DPP after the writing of this report will be forwarded to the PC via a separate transmittal.

III. ANALYSIS

- A. City and County of Honolulu Administrative Rules of the PC. Section 1-2, Subchapter 1, provides that the PC is charged with review and decision making for all SUPs within the City and County of Honolulu. Section 2-46, Subchapter 1, provides that the PC may attach conditions to any SUP to protect public health, safety, and welfare. Section 2-49, Subchapter 4, provides that a Petitioner who desires a modification or deletion of a condition imposed by the PC shall make such a request to the PC in writing. The request shall be processed in the same manner as the original application for a SUP.
- B. Analysis of Extending the Deadline to Establish the Project and its Validity Period – Condition No. 5. PC Rule No. 2-46(e) requires that a reasonable time limit to establish the proposed use be a condition of the SUP. The PC recommended and the LUC approved Condition No. 5, which requires the Project be established two years from the date of the LUC's Decision and Order approving the SUP. The deadline was March 25, 2017. As indicated by the Petitioner, the Project stopped construction due to bankruptcy of its parent company, SunEdison, Inc. Subsequently, NRG Renew LLC acquired the Project and the Property and has worked with HECO to reinstate the PPA. In order to finance, construct, and connect the Project to the HECO electrical grid, the Petitioner requires additional time to establish the Project and is requesting the deadline be extended for 30 months, from the date the LUC approves the extension request. When the Petitioner acquired the Project and Property from the prior developer, he had no control over the prior developer's bankruptcy or schedule in establishing the Project; therefore, the DPP supports granting the Petitioner's request for a reasonable amount of additional time to complete the Project. The Petitioner did not provide a detailed estimate of the timeframe necessary to complete the establishment of the Project. Nevertheless, an extension of 30 months is not an unreasonable amount of time to allow the current developer to finance, construct, and connect the completed Project to HECO's existing electrical grid.

The DPP also supports the request to base the 35-year validity period to begin on the date this amendment is granted by the LUC. This amendment applies to this instance only. Any future change to the 35-year validity period would be subject to review and approval by the PC and the LUC.

Lastly, the DPP supports amendments to clarify which appropriate Commission Condition No. 5 refers to, to carry out the relevant requirements. The DPP recommends where the LUC is cited after the first instance, that it be abbreviated to LUC and consistently applied across the remainder of the Decision and Order.

- C. Analysis of Replacing the Limits on the Number of PV Panels with Area Covered by PV Panels – Condition No. 7. Condition No. 7 states, in part, that major modifications to the Project plans, including but not limited to a significant increase in the number of PV panels, be subject to review and approval of the PC and the LUC. The Petitioner

proposes design changes to the Project, which may result in significant changes in the number of PV panels installed due to a change in the panel manufacturer selected and varying panel dimensions involved. The Petitioner anticipates utilizing PV panels that are smaller in size than originally contemplated, which would result in a large increase in the number of PV panels, but still covers the same amount of acreage as proposed by the previous developer. As the proposed amendment does not alter the amount of land approved under the SUP, DPP has no objections to this amendment.

- D. Analysis of Approximating the Amount of the Financial Security – Condition No. 3. The remaining amendment request affects Condition No. 3 where the Petitioner proposes the amount of the four million dollars (\$4,000,000.00) financial security to be an approximate amount. The DPP prefers that this be the minimum amount required to demonstrate financial security to decommission the Project, especially since the cost of decommissioning may rise over 35 years. The use of the word “approximate” leaves the amount of the security open to interpretation and could be reduced substantially, contrary to the intent of Section 205-4.5(a)(21)(B).
- E. Analysis of the State OP Comments. As noted in Paragraph D above, the DPP has previously recommended and thus supports the OP’s recommendation that the proposed modification to Condition No. 3 to include the word “approximately, four million dollars” be revised to say, “no less than four million dollars.” The DPP accepts OP’s concurrence of the other proposed SUP modifications to Conditions Nos. 5 and 7: 1) The change in ownership and property owner from SunEdison to NRG; 2) Extending the time limit by 30 months or December 2019; and 3) Increasing the number of panels to the area covered by the panels, so no further changes to these conditions are needed. The DPP supports the OP’s recommendation to delete LUC’s Condition No. 11 since the State Historic Preservation Division accepted the draft archeological assessment in a letter dated January 16, 2015, contained in the Petitioner’s annual report to the Commission dated February 9, 2016 since this condition has been met.
- F. Analysis of the State DOA Comments. The DPP has no objections to the recommendation by the DOA that the Petitioner should affirm that the proposed change from fixed-tilt racks to single-axis tracking racks, and the proposed change from hog wire fencing to chain-link fencing, will not restrict or impede compatible agricultural uses within the Petition Area available for compatible agricultural uses. Also, the Petitioner should provide a letter from Tin Roof Ranch stating that the proposed amendments to the SUP will not have any adverse effect on its planned ranching operation within the Project Area. The DPP recommends adding this as an amendment to Condition No.1.
- G. Five Tests in Determining an “Unusual and Reasonable Use”. The request for revisions to the conditions of the Decision and Order does not affect the analysis and justifications for granting of the Project pursuant to Section 2-45, “Test to be applied,” in the Rules of the PC.
- H. City and County of Honolulu, Plans and Programs. The request to modify the affected conditions do not affect the Project’s compliance with established City plans and programs.

- I. Public Services and Facilities. There were no objections from public agencies who were provided an opportunity to comment. The proposed amendments do not adversely affect any of the services or facilities provided by public infrastructure agencies or any other regulatory agencies.

IV. CONCLUSION

The proposed amendment to Condition No. 5 to allow an extension of time to establish the Project is necessary as the bankruptcy of SunEdison was unforeseen and, thus, beyond the control of the Petitioner. It will not, in any way, affect the intent of Chapter 205, Hawaii Revised Statutes (HRS), to protect surrounding agricultural lands for appropriate uses for the public welfare. In addition, the proposed amendment start date of the SUP's 35-year validity period is reasonable, provided that future amendments that affect deadlines continue to be reviewed by the PC and the LUC.

The proposed amendment to Condition No. 7 to replace the limitation on the number of panels with the area covered by panels (due to design changes) is reasonable and not contrary to the justifications supporting the granting of the SUP.

Amending Condition No. 3, as proposed by the Petitioner, would be contrary to the intent of Section 205-4.5(a)(21)(B), HRS, relating to proof of financial security to decommission the facility and is not supported by the DPP.

Deleting Condition No. 11, as proposed by the State OP, is necessary since it is no longer a required condition.

Amending Condition No. 1, as proposed by the State DOA, is reasonable and in keeping with the justification for supporting the granting of the SUP and in keeping the intent and purpose of the Agricultural District.

The granting of the Petitioner's request to withdraw the PC's February 15, 2017 approval of the initial request to extend the time frame, filed on December 28, 2016, is not violative of the Rules of the PC and is necessary in order to proceed with this amendment request.

V. RECOMMENDATION

The Director of the DPP recommends that the Petitioner's request to withdraw its request for extending the deadline to establish the Project, filed on December 28, 2016, and the subsequent approval by the Planning Commission of February 15, 2017, be APPROVED.

The Director of the DPP also recommends that Condition Nos. 1, 3, 5, and 7, of the Land Use Commission's Decision and Order, dated March 25, 2015, be AMENDED as follows (additional text is underlined, deleted text is bracketed):

- "1. Usable lands of the Petition Area, including areas under PV panels, shall be made available for compatible agricultural use at a lease rate that is at least 50 percent below the fair market rent for comparable properties, as long as the Project is in operation. Compatible agricultural operations shall be established, or Applicant shall be actively seeking to have such operations established, within one year of the start of commercial power generation. Extensions to this deadline may be granted by the Director of the

DPP for unforeseen extenuating circumstances. Prior to the start of commercial power generation, the Petitioner should affirm, through a separate study or other competent means, that the proposed change from fixed-tilt racks to single-axis tracking racks, and the proposed change from hog wire fencing to chain-link fencing, will not restrict or impede compatible agricultural uses within the Petition Area available for compatible agricultural uses. Also, the Petitioner shall provide, in writing, a letter from Tin Roof Ranch stating that the proposed amendments to the SUP will not have any adverse effect on its planned ranching operation within the Project Area.

- “3. Within one year of the completion of construction or prior to the closing of the building permit for the solar energy facility, the Applicant shall submit to the DPP proof of financial security, such as a posted letter of credit or similar mechanism from a creditworthy financial institution, in favor of the owner of the land subject to the SUP, in the amount of no less than four million dollars (\$4,000,000.00), which security shall remain in place for the duration of the operation of the Project, with evidence of same provided to the Director of the DPP on an annual basis, to decommission the Project and restore the Petition Area to substantially the same physical condition as existed prior to the development of the SEF.

The Applicant shall decommission the SEF within twelve (12) months following the termination of operation of the SEF, with the exception of the HECO switchyard, which may remain within the Petition Area after termination of the SUP.

A change in Project ownership or a change in ownership of the land subject to the SUP, which warrants a new proof of financial security to decommission the Project, shall be submitted to the DPP for processing through the Planning Commission, within three months of the ownership change.”

- “5. The Applicant shall establish the Project within thirty (30) months [two years] of the date of the State Land Use Commission's (LUC) Decision and Order approving the SUP. Requests for future extensions of this deadline shall be submitted to the Director of the DPP prior to the expiration of the deadline. The LUC [Commission] may grant [an] extensions to the deadline to establish the Project due to unforeseen circumstances that were beyond the control of the Applicant. This SUP shall be valid for a period of thirty-five (35) years [from the date of the State LUC's Decision and Order approving the SUP], subject to further extensions upon a timely request for extension filed with the Planning Commission at least one-hundred twenty (120) days prior to the SUP's expiration.

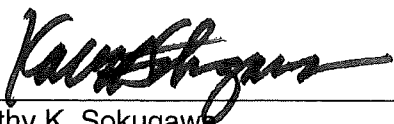
The 30-month period to establish the Project and the 35-year validity period of the SUP shall begin on the date the LUC approves of the first amendment request.”

- “7. Major modifications to: (1) the Project plans, including but not limited to significant increases in the area covered by [number of] PV panels; (2) amendments to the conditions of approval; (3) significant expansions of the approved area; or (4) changes in uses stated herein, shall be subject to the review and approval of the Planning Commission and the Land Use Commission. Minor modifications including minor additions to accessory uses and structures, and new incidental uses and structures in the approved area are subject to review and approval by the Director of the DPP.”

"11. [Petitioner shall obtain approval of the draft archaeological assessment, dated August 2014, from the State Historic Preservation Division (SHPD) prior to commencement of construction of the solar farm.]"

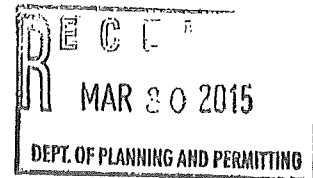
Dated at Honolulu, Hawaii this 13th day of June 2017.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU
STATE OF HAWAII

By: 
Kathy K. Sokugawa
Acting Director

Attachments

Attachment 1



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

2015 MAR 25 P 2:49
LAND USE COMMISSION
STATE OF HAWAII

In the Matter of the Application of

WAIPI'O PV, LLC

For a New Special Permit To Allow
Development of a 47-megawatt photovoltaic
(PV) Energy Generation Facility and
Accessory Uses and Structures On
Approximately 308.8 Acres of Land Within the
State Land Use Agricultural District at
Waipi'o, Ewa, O'ahu, Hawai'i Tax Map Key
No. (1) 9-5-003: Portion of Parcel 004

DOCKET NO. SP15-405

ORDER ADOPTING THE CITY AND
COUNTY OF HONOLULU PLANNING
COMMISSION'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION AND ORDER WITH
MODIFICATIONS; CERTIFICATE OF
SERVICE

ORDER ADOPTING THE CITY AND COUNTY OF HONOLULU PLANNING
COMMISSION'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND
ORDER WITH MODIFICATIONS

This is to certify that this is a true and correct
copy of the document on file in the office of the
State Land Use Commission, Honolulu, Hawai'i.

March 25, 2015 by

Executive Officer

Dan Orodenker, Executive Officer



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

LAND USE COMMISSION
STATE OF HAWAII
2015 MAR 25 P 2:44

In the Matter of the Application of

WAIPI'O PV, LLC

For a New Special Permit To Allow
Development of a 47-megawatt photovoltaic
(PV) Energy Generation Facility and
Accessory Uses and Structures On
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ORDER ADOPTING THE CITY AND
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COMMISSION'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION AND ORDER WITH
MODIFICATIONS; CERTIFICATE OF
SERVICE

ORDER ADOPTING THE CITY AND COUNTY OF HONOLULU PLANNING
COMMISSION'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND
ORDER WITH MODIFICATIONS



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of

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For a New Special Permit To Allow
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ORDER ADOPTING THE CITY AND COUNTY OF HONOLULU PLANNING
COMMISSION'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
DECISION AND ORDER WITH
MODIFICATIONS

2015 MAR 25 10 28 AM
LAND USE COMMISSION
STATE OF HAWAII

ORDER ADOPTING THE CITY AND COUNTY OF HONOLULU PLANNING
COMMISSION'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND
ORDER WITH MODIFICATIONS

On or about September 5, 2014, applicant Waiawa PV, LLC ("**Applicant**") filed an Application for a State Special Permit, Waiawa Solar Farm Project, O'ahu, Hawai'i ("**Application**"), with the Department of Planning and Permitting, City and County of Honolulu ("**DPP**"). Applicant is a wholly owned subsidiary of First Wind Holdings, LLC.¹ On December 17, 2014, the City and County of Honolulu Planning Commission ("**Planning Commission**") met at the Mission Memorial Conference Room in Honolulu, Hawai'i to consider the Application. On January 7, 2015, the Planning Commission again met at the Mission Memorial Conference Room in Honolulu, Hawai'i, to consider the Application. After due deliberation and consideration of the record in this matter, the Planning Commission recommended by unanimous vote to approve the Application, subject to conditions of approval.

¹ In January 2015, SunEdison, Inc. acquired First Wind Holdings, LLC. As of January 26, 2015, Waiawa PV, LLC changed its name to Waipi'o PV, LLC. Therefore, all future references to Applicant should be understood to mean Waipi'o PV, LLC.

The Planning Commission issued its Findings of Fact, Conclusions of Law, and Decision and Order in DPP File No. 2014/SP-3 on January 21, 2015 ("**City D&O**"), approving the State Special Permit ("**SP**"), subject to review and approval of the State of Hawai'i Land Use Commission ("**LUC**"). The City D&O and the record in this matter were transmitted to the LUC on January 26, 2015.

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

I. FINDINGS OF FACT

1. On April 30, 2014, Act 55 was signed into law ("**Act 55**"). Act 55 amended certain provisions of Hawai'i Revised Statutes ("**HRS**") Sections 205-2 and 205-4.5(a)(20), and added HRS Section 205-4.5(a)(21).
2. Pursuant to Act 55, the previous acreage limitations for solar energy facilities on land with soil classified under the Land Study Bureau's ("**LSB**") detailed land classification system with an overall productivity rating class of B or C are no longer applicable if a Special Permit is issued under HRS 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.

3. The Subject Property is an approximately 308.8 acre portion of Tax Map Key No. (1) 9-5-003:004 ("Petition Area", and is located east of the H-2 freeway and approximately 1,000 feet north of Mililani Memorial Park).
4. On September 5, 2014, the applicant filed the application, which included twelve attachments, with DPP.
5. As of October 2, 2014, DPP accepted the application for processing.
6. DPP circulated the application for comments to various City, State and Federal agencies, Hawaiian Electric Company, and various islandwide organizations.
7. By letters dated October 2, 2014, with copies of the application enclosed, DPP solicited comments on the application from various City, State, and Federal agencies and community organizations.
8. DPP mailed notice of the application to numerous individuals and agencies.
9. In October and November, 2014, DPP received comments on the application from the City and County of Honolulu Police Department ("HPD"), Department of Environmental Services ("DES"), Fire Department ("HFD") and Board of Water Supply ("BWS"); the State Public Utilities Commission ("PUC"), Department of Agriculture ("DOA"), Office of Planning ("OP"), Land Use Commission ("LUC") and Department of Transportation ("DOT"); and from the U.S. Department of the Interior, Fish and Wildlife Service ("FWS").
10. In November and December 2014, DPP also received comments on the application from Tin Roof Ranch, Blue Planet Foundation, Pacific Resource Partnership and Castle & Cooke Hawai'i.

11. On November 17, 2014, notice of the public hearing on the application was published in the Honolulu Star-Advertiser.
12. On November 21, 2014, the planning firm for the Applicant, CH2M Hill provided to DPP the Applicant's written responses to the comments received from HFD, DOA, OP, LUC, and FWS.
13. On November 25, 2014, the Pearl City Neighborhood Board No. 21 passed a resolution in support of the application. In January 2014 Applicant presented the Solar Energy Facility ("SEF") to the Mililani Mauka/Laulani Valley Neighborhood Board and also to the Mililani/Waipio/Melemanu Neighborhood Board. The Mililani/Waipio/Melemanu Neighborhood Board unanimously passed a resolution in support of the application.
14. By letter dated December 10, 2014, Applicant notified the DPP Director George Atta that the preferred term of the SP is 35 years, rather than the timeframe of approximately 27 years as described in the application.
15. By letter dated December 10, 2014, Applicant notified the Planning Commission of Applicant's intent to file additional exhibits and materials, including written direct testimony, with the Planning Commission on December 15, 2014.
16. On December 15, 2014, Applicant filed with the Planning Commission, Applicant's first list of witnesses; first list of exhibits; exhibits "1" - "23;" and, copies of the resumes of Applicant's witnesses demonstrating their respective areas of expertise.
17. On December 17, 2014, the Planning Commission held a hearing on the application. Entering appearances were Planning Director George Atta; planners Raymond Young and Kathy Sokugawa for DPP; and Jennifer A. Lim, Esq. and Puananionaona P. Thoene, Esq. for Applicant.
18. On December 17, 2014, Applicant presented written and oral testimony of the following witnesses: Wren Wescoatt, Development Director with First Wind; Jed Dailey, Vice President of Construction for First Wind; Tom Siegel, Vice President of

Transmission for First Wind; Dave Cowan, Director of Environmental Affairs for First Wind; Robert "Bob" Rechtman, Vice President of ASM Affiliates (oral testimony only); Paul Luersen, Senior Land Use and Environmental Planner for CH2M Hill; Paul Matsuda, Director of Civil Engineering at Group 70 International; and Crystal Kua, Director of External Affairs for First Wind.

19. The Planning Commission heard public testimony in support of the application from Cruz Vina, Chairperson for the Pearl City Neighborhood Board.
20. The Planning Commission continued the hearing to January 7, 2015, so that the DPP could prepare its report on the application and submit it to the Planning Commission for review prior to decision-making.
21. On December 29, 2014, Applicant filed with the Planning Commission, Applicant's list of witnesses; second list of exhibits; exhibits "24" - "26," and a copy of the transcript of the December 17, 2014, Planning Commission hearing.
22. On December 30, 2014, the Director of DPP submitted to the Planning Commission DPP's Findings of Fact, Conclusions of Law, and Recommendation ("DPP recommendation"), recommending approval of the application, subject to nine conditions.²
23. On January 6, 2015, applicant filed with the Planning Commission, Applicant's exceptions to the DPP's Findings of Fact, Conclusions of Law, and Recommendation dated December 30, 2014 ("Applicant's exceptions").³ Applicant indicated that it believed that the findings, conclusions and conditions in the DPP recommendation were overwhelmingly correct, but that clarifications were appropriate to supplement the DPP recommendation and more fully and clearly reflect the record.
24. The deadline for filing petitions to intervene before the Planning Commission was December 1, 2014, and no applications were filed.

² The DPP Recommendation was made part of the record as DPP Exhibit 22.

³ The Applicant's Exceptions were made part of the record as DPP Exhibit 25.

25. On January 7, 2015, the Planning Commission held the continued hearing on the application. Entering appearances were Planning Director George Atta and planner Raymond Young, and Jennifer A. Lim, Esq. and Puananionaona P. Thoene, Esq. for Applicant.
26. Director Atta presented DPP's position on the Applicant's exceptions, indicating that DPP did not object to most of the changes, which he characterized as additional details and clarifications, and that DPP approved Applicant's additional conclusions of law.
27. Director Atta presented DPP's position to further clarify Applicant's revisions to proposed condition No. 3, and DPP's position against Applicant's proposed condition No. 10.
28. A motion was made, seconded and passed unanimously to approve the application, subject to the DPP recommendation, as further amended by the Applicant's exceptions, as further amended by the discussion before the Planning Commission at the January 7, 2015, hearing.
29. On January 13, 2015, Applicant filed with the Planning Commission the transcript of the January 7, 2015 proceedings.
30. On January 26, 2015, DPP transmitted to the LUC the City D&O, one original, one hardcopy and one digital copy of the record, and an index of the record.
31. On February 13, 2015, the LUC received from DPP, DPP exhibits 14 and 21, which had been unintentionally omitted from the digital copy of the record previously submitted, and a revised index of the record dated February 11, 2015.
32. On February 19, 2015, the LUC received Applicant's Proposed Findings of Fact, Conclusions of Law, and Decision and Order Based on the Record of the Planning Commission of the City and County of Honolulu.

33. On February 24, 2015, the LUC mailed out an Agenda and Notice of Hearing for the March 5, 2015, LUC meeting in Honolulu to the all parties, and the Statewide and O`ahu mailing lists.
34. On February 27, 2015, the LUC received Applicant's Notice of Certified Change of Name to Waipi`o PV LLC and Certificate of Amendment with a request for the LUC to take official notice of the change of name.
35. On March 5, 2015, the LUC conducted a meeting on the Application at the State Office Tower, Leiopapa A Kamehameha Building, Honolulu, Hawai'i. Entering appearances were Jennifer A. Lim, Esq., and Puananionaona P. Thoene, Esq., of Carlsmith Ball LLP for Applicant. Richard Lewallen, Esq., was present for DPP. Rodney Funakoshi and Lorene Maki were present on behalf of OP.
36. At the March 5, 2015 hearing, Commissioners Chad McDonald, Arnold Wong, Edmund Aczon, Kent Hiranaga, Brandon Ahakuelo, Neil Clendeninn, Aaron D. Mahi, and Sandra Song were in attendance. The Commission provided an opportunity for public testimony. At the meeting the Applicant provided oral argument in support of its position on the Application and the City D&O. The LUC, upon consideration of the Planning Commission's Findings of Fact, Conclusions of Law, Decision and Order, the oral arguments of the parties, the record and filings herein, and good cause shown, by motion voted to approve the Special Permit with conditions as modified by the LUC.
37. At the March 5, 2015 hearing, the LUC heard Applicant's request for the Commission to take official notice of its change of name. The LUC without objection agreed to take official notice and approved the name change of the Project to Waipi`o PV LLC.
38. On March 11, 2015, the LUC mailed out an Agenda and Notice of Hearing for the March 25, 2015, LUC meeting in Honolulu to all parties, and the Statewide and O`ahu mailing lists.
39. On March 25, 2015, the LUC conducted a meeting to adopt the Form of the Order via simultaneous video-conferencing at the following: Kalanimoku Building (Honolulu,

O'ahu) and State Department of Transportation District Office (Kahului, Maui).
Entering appearances were Jennifer A. Lim, Esq., and Puananionaona P. Thoene, Esq.,
of Carlsmith Ball LLP for Applicant. Richard Lewallen, Esq. was present for DPP.

40. At the March 25, 2015 hearing, Commissioners Arnold Wong, Edmund Aczon, Jonathan Likeke Scheuer, Kent Hiranaga, and Brandon Ahakuelo were in attendance. The Commission provided an opportunity for public testimony. There was no public testimony.

A. **PROPOSAL FOR SPECIAL PERMIT**

41. The Applicant is wholly owned by Waiawa PV Holdings, LLC, which is in turn 100% owned by First Wind Solar Portfolio, LLC, which is owned by First Wind Holdings, LLC ("First Wind"). First Wind is an independent renewable energy company focused on the development, financing, construction, ownership and operation of utility-scale renewable energy projects in the United States. Based in Boston, First Wind is operating or building renewable energy projects in the Northeast, the West and Hawai'i, with combined capacity of nearly 1,300 MW, which is enough to power more than 375,000 homes each year. In November 2014, SunEdison announced that it would be acquiring First Wind. As a wholly-owned subsidiary of First Wind, the Applicant is part of that transaction.
42. The SP is sought so that Applicant may establish a solar energy facility ("SEF" or "Project") within the Petition Area. The SEF is planned to be a 47 megawatt ("MW") utility-scale, solar farm on approximately 308.8 acres of land in central O'ahu. The energy that will be produced by the Project will be sold to Hawaiian Electric Company ("HECO") under a power purchase agreement that was executed in December 2014. Applicant will sell clean energy to HECO for 13.75 cents per kWh. The Project will generate enough energy in a year to power the equivalent of 13,000 average O'ahu households. Each year of operation, the Project will save roughly 7 million gallons of imported oil. The approximately 95,000 MWh of clean, renewable, locally grown

energy from the Project will prevent the addition of 75 tons of carbon dioxide annually into the environment.

43. In order to qualify for the 30% Federal investment tax credits for solar energy projects, which credits make the Project financially feasible, Applicant must have the Project in commercial operations before the end of 2016.
44. The SEF will include 47 1.0 MW_{AC} fixed-tilt blocks of panels with heights of approximately four feet, six inches, to nine feet, six inches, off the ground. Energy will be transported from the panels to combiner boxes and inverters, then to a central substation through collector lines that will be buried a few inches underground. The SEF will include a substation that will be enclosed by an eight foot high, chain-link, fence. Adjacent to the substation will be a switchyard that will have 138 kilovolt ("kV") line extensions that connect the solar project to an existing HECO transmission line and the O'ahu electrical grid. The substation and switchyard are located near HECO's Kahe-Wahiawa transmission line.
45. The area for the substation and switchyard is approximately 2.3 acres. The substation will be approximately 200 feet by 220 feet. The switchyard will be approximately 205 feet by 265 feet. These components will be located adjacent to an existing overhead transmission line. The substation will be owned and operated by First Wind's operations department. The switchyard will be constructed and owned by HECO.
46. The area used for the switchyard and substation will be separately fenced, and that fenced area will be topped with barbed security wire, which is a standard security requirement for fencing that protects high-voltage substations and switchyards. Proper signage warning of the risks of entry into an electrical switchyard will be prominently placed. Once energized, entry to the substation and switchyard will be limited to employees trained in high voltage environments, or will require mandatory escorts for those who are not so trained. This fenced area will have a bed of crushed gravel in accordance with the final design documents (crushed gravel utilized for electrical step-

touch potential). The only high voltage equipment will be at the substation and switchyard. The PV array contains only medium and low voltage equipment.

47. Communication services will be needed at the substation and switchyard, which may involve overhead construction. The communication infrastructure will not extend out to the individual PV panels. There may also be local HECO distribution lines that will be needed for backup low voltage power at the yards and for the agricultural tenant(s) within the Petition Area. With respect to the adjacent HECO 138 kV transmission line, there will be a short segment that will enter and exit the HECO switchyard. However, all electrical lines that collect the energy from the PV panels and bring the power to the substation will be routed underground.
48. The Project does not include utility-scale batteries or batteries used for energy storage. As with any substation or switchyard (or server room, etc.), there is a need for a limited number of batteries to keep vital equipment running during power outages. The batteries will be contained in the substation control enclosures, and are roughly the size of twenty (20) to thirty (30) car batteries. These batteries will likely be lead acid with containment, and will have a battery charger and monitoring equipment. These batteries are identical to other substation and switchyard control enclosures that have been constructed recently.
49. A fixed-tilt solar project has few, if any, moving parts, so lubricants are not required. However, similar to residential electrical service, the Project will have pad-mounted transformers that will convert power from low to medium voltage. These pad-mounted transformers typically contain biodegradable oil. These are standard utility transformers that are very common to all renewable energy projects (and commercial shopping centers, etc.). Within the substation, there is oil-filled equipment, the largest source being the main power transformer. Per fire code (NFPA 1 Uniform Fire Code, as amended by the City and County of Honolulu), and best practice, the main power transformer is designed with 100% secondary containment. Any other materials deemed hazardous will be stored pursuant to best practice and the Project's spill prevention plan.

50. Another aspect of the SEF is that the Applicant shall make the Petition Area available for compatible agricultural activities at a lease rate that is at least fifty percent (50%) below the fair market rent for compatible properties. Applicant plans to lease the property for the pasturage of sheep. The lease would commence after the energy producing portion of the Project is operational. The current proposed lessee is Tin Roof Ranch, who has signed a Letter of Intent stating that the lease rent shall not exceed 50% of the market rent for comparable agricultural properties. Should Tin Roof Ranch not lease the property, or not lease it for the full term of the SP, Applicant is committed to finding one or more agricultural tenants to lease and use the property for agriculture.
51. The heights of the PV panels will be approximately four and one half to nine and one half feet, which provides sufficient space for sheep to graze underneath the panels. At full growth, sheep are approximately 24-30 inches in height and will have no trouble grazing under the panels.
52. Sheep grazing on solar farms has been done in Europe and parts of the United States. One example is the OCI Solar Power farm in San Antonio, Texas, which is a 4.4 MW solar farm with approximately ninety sheep grazing on the property. A sheep rancher in England has 500 ewes grazing on a pasture sited with 20,000 PV panels. On Kaua'i, a rancher grazes a herd of twenty to thirty sheep under about 3 acres of PV panels.
53. Applicant commissioned a study called Sheep and Solar Panels in Hawai'i, prepared by a Ph.D. and a Master's of Science candidate at the Department of Human Nutrition, Food and Animal Sciences, College of Tropical Agriculture and Human Resources, U.H. Manoa. The study determined that there is a viable market in Hawai'i for the sale of lamb to local stores and restaurants. O'ahu has almost no local sheep farms, while Maui, Kauai and Hawai'i Island together have nearly \$1 million in annual sheep sales. The study includes several recommendations for best practices in the ranching of sheep.
54. Should sheep farming not prove viable, other permitted compatible "agricultural activities" include (1) cultivation of crops, including crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber; (2) game and fish propagation; and (3)

raising of livestock, including poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use. Having solar panels on the property does restrict some types of agriculture, but it may be possible to integrate bees, aquaculture, poultry or other types of livestock.

B. DESCRIPTION OF THE PETITION AREA & SURROUNDING AREA

55. The Petition Area is on the east side of the H-2 Freeway, approximately 0.25 miles north of Mililani Memorial Park and Mortuary. The southernmost point of the Mililani Mauka subdivision is approximately 0.5 miles to the north.
56. Access to the site is by Plantation Road, an existing, unpaved, private access road that connects to Ka Uka Boulevard. Plantation Road later transitions to Pineapple Road, which crosses H-2 via an overpass. This is no public access to the Petition Area.
57. The 308.8 acre Petition Area is in the State Land Use Agricultural District and has not been designated as Important Agricultural Lands.
58. The soils within the Petition Area are rated as Class B soils according to the LSB overall master productivity rating system. The soils are also classified as Prime and Unique under the Agricultural Lands of Importance to the State of Hawai'i rating system.
59. The Petition Area is relatively flat, with an average slope of less than 3%. It generally slopes mauka to makai from an elevation of 940 feet above sea level on the east side of the Petition Area, to 720 feet above sea level on the west side, by the H-2 Freeway.
60. The U.S. Federal Emergency Management Agency Flood Insurance Rate Map shows the Petition Area located in Flood Zone D, where flood hazards are undetermined.

61. The Petition Area is comprised of former agricultural fields previously cultivated with pineapple and sugarcane. The Petition Area was used for commercial pineapple production since the early 1900s through the 1970s.
62. The Petition Area is currently used as a pasture. Land mauka of the Petition Area is being used as a horse farm.
63. The Petition Area is surrounded by vacant agricultural land and overgrown terrain. Small farms occupy certain parcels north and south of the site. The nearest residential areas are the southernmost portion of Mililani Mauka (approximately 0.5 mile to the north, across Kipapa Gulch) and the eastern most portion of Mililani Town (approximately 0.6 mile to the west, across the H-2 Freeway).
64. The Petition Area is owned by Renewables Land Holdings, LLC, which acquired the property from Castle & Cooke Homes Hawai'i, Inc. on December 23, 2014. Renewables Land Holdings, LLC provided a fee owner's letter of authorization dated December 23, 2014 consistent with Hawai'i Administrative Rules ("**HAR**") Section 15-15-95(a).
65. Renewables Land Holdings, LLC will lease the Petition Area to the Applicant, which is the developer of the SEF.
66. Prior to the conveyance to Renewables Land Holdings, LLC, Castle & Cooke Homes Hawai'i, Inc. provided fee owner authorization for the filing of the Application.
67. The Petition Area is designated Agricultural and Preservation under the Central O'ahu Sustainable Communities Plan.
68. The Petition Area is zoned in the AG-1 Restricted Agricultural District. The SEF is considered a utility installation, which is allowed within the AG-1 District subject to obtaining a conditional use permit from the DPP.
69. The Petition Area is located outside of the Special Management Area, and no Special Management Area permits are required for the SEF.

70. A land area of approximately 4.2 acres, within the boundaries of the Petition Area is not part of the Project. That land area is excluded from coverage under the SP as approved by the Planning Commission. The area is set aside for the possible construction of a reservoir to support the Koa Ridge project. Applicant does not propose to construct a reservoir or do any construction within the set aside area.

C. CONSISTENCY WITH OBJECTIVES UNDER CHAPTER 205, HAWAII REVISED STATUTES

71. The SEF is not contrary to the objectives sought to be accomplished under Hawai'i Revised Statutes Chapter 205 and the related regulations. The Project may be considered an unusual but reasonable use of State Land Use Agricultural District lands. Utility scale PV facilities require large amounts of relatively gentle terrain, sited in close proximity to an existing electrical grid. The Petition Area was formally used for pineapple cultivation and is currently in pasture use. The Applicant proposes to continue agricultural use within the Petition Area by making available the areas under the PV panels for sheep pasturage or other compatible agricultural activities, as defined in HRS § 205-4.5(a)(1) - (3). The Applicant submitted to DPP a Letter of Intent between the Applicant and Tin Roof Ranch to pasture sheep on the property. The sheep will be beneficial to the SEF for vegetation control and provide a food source in compliance with the intent of Act 55.
72. Act 55 sets forth requirements related to decommissioning, such as a requirement for the Applicant to provide proof to the Planning Commission before the date of commencement of commercial energy generation of financial security to decommission the SEF. Decommissioning means removal of all equipment related to the solar energy facility within twelve months of the conclusion of operation or useful life, and restoration of the disturbed earth to substantially the same physical condition as existed

prior to the development of the solar energy facility. The Application includes a Decommissioning Plan.

73. The Decommissioning Plan provides a conservative estimate that the costs of decommissioning a SEF of this proposed size and returning the land to substantially the same condition will run approximately four million dollars.
74. Applicant committed to decommission and remove all of the PV panels, racks, foundational piles and underground collector lines following the useful life of those components. Applicant also committed to return the Petition Area to substantially the same condition as it was in prior to the SEF.
75. Applicant will provide proof of the financial security in the form of a letter of credit or similar mechanism from a creditworthy financial institution, in favor of the landowner, which letter of credit will be renewable and kept in place during the term of the Project.
76. DPP determined that Applicant should provide documentation to DPP of the financial security for decommissioning prior to the close of the building permit for the Project. DPP will provide proof of the financial security to the Planning Commission upon request.

D. CONSISTENCY WITH OBJECTIVES UNDER CHAPTER 205A, HAWAII REVISED STATUTES

77. The SEF is consistent with the objectives and policies of HRS Chapter 205A, the Coastal Zone Management Act in the following ways:

HRS §§205A-2(b)(3); (c)(3) Scenic and open space resources.

(A) Identify valued scenic resources in the CZM area;

(B) Ensure that new developments are compatible with their visual

environment by designing and locating such developments to minimize the alteration of natural landforms and existing public views to and along the shoreline;

(C) Preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources; and

(D) Encourage those developments that are not coastal dependent to locate in inland areas.

The site is located on O`ahu's central plain, far away from the shoreline. Landscaping will screen the Project from views along the H-2.

HRS §§205A-2(b)(8); (c)(8) Public participation.

(A) Promote public involvement in CZM processes;

(B) Disseminate information on coastal management issues by means of educational materials, published reports, staff contact, and public workshops for persons and organizations concerned with coastal issues, developments, and government activities; and

(C) Organize workshops, policy dialogues, and site-specific mediations to respond to coastal issues and conflicts.

78. The Applicant made presentations about its proposal to the area's neighborhood boards. The Application was also made available online at the DPP webpage.
79. Applicant began community outreach on the SEF in October 2013. Representatives from First Wind/Applicant held more than 100 meetings or presentations with stakeholders in the following categories:

Government – Gov. Neil Abercrombie's staff; state Senate and House Energy, Agriculture, and Water/Land Committee chairs and members; individual members of the Hawai'i State Legislature; individual members of the Honolulu City Council, State Department of Business, Economic Development and Tourism; Land Use Commission staff; Office of State Planning, City Department of Planning and Permitting, Hawai'i County Research and Development Department.

Community and Business – North Shore Chamber of Commerce, individual members of the North Shore Neighborhood Board, chairs and members of the Mililani Mauka-Launani Valley Neighborhood Board, Mililani-Waipii Neighborhood Board, Pearl City Neighborhood Board, Sunset Beach Community Associations, Waialua High and Intermediate Foundation, Mililani Middle School community during STEM Night 2014, Pacific Resource Partnership, North Shore Economic Vitality Partnership.

Native Hawaiian Organizations – Office of Hawaiian Affairs, state Department of Hawaiian Home Lands, Waialua Hawaiian Civic Club, Waimea Valley.

Agriculture – the director and staff of the State Department of Agriculture, the Dean and individual faculty of the University of Hawai'i College of Tropical Agriculture, Hawai'i Farm Bureau, North Shore Chamber of Commerce Agriculture Committee, North Shore Land Trust (which hosts an annual food sustainability summit), North Shore Neighborhood Board Agriculture Committee, the chairs and committee members of the state Senate and House Agricultural Committees (2013 session), state Rep. Lauren Matsumoto (family owns Peterson's Upland Farm in Wahiawa), farmer Richard Ha and officers of the Hawai'i Sheep and Goat Association.

Media – Reporters and editors representing the Honolulu Star-Advertiser, Pacific Business News and Hawai'i News Now.

Environmental – Blue Planet Foundation, the Sierra Club of Hawai'i, Mālama Pūpūkea, North Shore Land Trust.

E. EFFECTS ON SURROUNDING PROPERTY

80. The Applicant had a study prepared titled Waiawa and Mililani Solar Farm Projects 138-kV Interconnection Lines and Substation/Switchyard (the "EMF Study"). The EMF Study concluded that the maximum noise that could be produced by the overhead power lines for the SEF would be fifteen (15) decibels ("dBA") in wet weather and zero (0) in dry weather. The residence closest to the proposed substation/switchyard tap

lines will experience a noise level of zero, or very close to zero dBA for both wet and dry conditions.

81. The EMF Study concluded that outside of the Petition Area, there will be no significant difference in the electric or magnetic fields between the overhead and the underground configuration for the transmission tap lines. At the distance to the nearest residence (approximately 1,800 feet from the substation and switchyard), the electric and magnetic fields will essentially be zero for both the tap lines and the substation/switchyard.
82. Short-term noise impacts may result from supplemental grass trimming by mechanical means.
83. The SEF is a passive operation. The racking systems are fixed and do not have any motors or moving parts. During site preparation and construction of the Project, noise will be generated. All construction noise must be in compliance with HAR Chapter 11-46 (regulations for community noise control).
84. Operation of the SEF will not create direct air emissions. It is not anticipated that operations at the SEF will adversely affect air quality. During construction there are expected to be short-term impacts as a result of construction activities. These impacts can be addressed through the use of temporary Best Management Practices ("BMPs") such as dust fences, windbreaks, watering and other soil management measures, and in compliance with the fugitive dust measures required under HAR § 11-60.1.
85. The rack system will be designed in accordance with the building permit structural requirements Act 82, Session Laws of Hawai'i, 2007. They are designed to withstand a wind exposure in accordance with Honolulu County Wind Maps, which at this location lists maximum winds of 120 miles per hour. All racking designs will be stamped by a licensed engineer to meet these standards for wind loading.
86. The Applicant submitted a view study with simulations that demonstrated minimal impacts on public roadways, parks and other public spaces.

87. The switchyard and substation, which is located about a mile from the H-2, will consist of vertical structures including 20- to 30-foot high electrical racks and structures, communications and electrical equipment buildings, fencing, and an 80-foot high communications tower. At this distance, the switchyard and substation would have a minimal impact on views from H-2. *Naupaka* and *Kou* plants will be planted along the western boundary of the Petition Area to screen any views.
88. With appropriate landscaping as represented by the Applicant, the Project is consistent with relevant provisions of the Central O`ahu Sustainable Communities Plan. Any unanticipated view impacts will be further reviewed by DPP under the Conditional Use Permit.
89. Applicant prepared a Reflectivity (or Glare) Study for the Project.
90. PV panels are typically designed with anti-reflective glass front surfaces to capture and retain as much of the solar spectrum as possible. In general, solar module glass has less reflectivity than water or window glass. The Reflectivity Study indicates that some adjacent areas may experience some degree of glare, but this would only occur during a portion of the year and for very short durations (e.g., 15 to 45 minutes per day). The Study concludes that while glare may be visible during these short periods, the effects would be mitigated by the distance of the Project from publically accessible areas, intervening structures, and vegetation (including the proposed landscaping that would be installed as part of the Project). Potential effects on aircraft approaching Wheeler Army Airfield are expected to be barely perceptible.
91. The DOT Airports Division indicated in its comments on the Application that glint and glare may affect other aircraft within the vicinity of the Petition Area beyond the typical flight paths used by aircraft approaching Wheeler Army Airfield. DOT stated that the Applicant should be prepared to immediately mitigate hazardous conditions due to glint and glare upon notification by the DOT Airports Division or the FAA.
92. The Project will connect to the HECO electrical grid at the 138 kV level. Residential and commercial PV systems connect to the HECO grid at a distributional level of 12

kV. HECO determines the ability to accept additional residential systems based on the existing amount of renewable energy on the 12 kV utility line, while the 138 kV line is not taken into consideration. The Project will not prevent or impair connections for residential or commercial rooftop solar.

93. Applicant had SWCA prepare a Preliminary Natural Resources Assessment for the Petition Area. SWCA Environmental Consultants were instructed to: (i) provide a description of flora and fauna communities at the Petition Area; (ii) provide a description of wetlands, streams or waterways, if any, within the Petition Area; (iii) identify the presence of any State or Federally listed candidate, threatened or endangered plant or animal species, and any species of concern, within the Petition Area; and (iv) provide recommendations to prevent "take" should any listed species be identified within the Petition Area. After conducting the assessment, SWCA concluded that no threatened or endangered plant or animal species or candidate species were located within the Petition Area, and no wetlands or streams were observed within the Petition Area.
94. In response to the Application, FWS raised concerns that the Project may adversely impact breeding Hawaiian hoary bats and endangered or migratory birds. FWS indicated that bats and their young may forage in the site and surrounding area and recommends suspending any disturbance of trees over 15 feet in height until after breeding and pup-rearing season which runs from June 1 through September 15. FWS stated that barbed wire fencing may snag avifauna and recommends avoiding barbed wire fencing.
95. Applicant met representatives of FWS and the DLNR Division of Forestry and Wildlife on November 5, 2014, to discuss the Project and potential impacts to species. FWS acknowledged that there is no proposed or designated critical habitat located within or near the Petition Area. FWS and DOFAW noted that the Hawaiian hoary bat could use the Petition Area to forage and roost, and therefore recommended that the Applicant not disturb trees or plants greater than fifteen (15) feet in height during the bat birthing and pup rearing season, which spans from June 1 through September 15. The Applicant

also agreed not to use barbed wire on the perimeter fencing that will surround the entire Petition Area. The only use of barbed wire will be as security wire on top of the fence surrounding the high-voltage substation and switchyard.

96. FWS commented that some birds on the U.S. mainland are confusing solar systems for water, resulting in injuries to the birds. However, FWS acknowledged that this has not been an issue documented in Hawai'i. Because there are a number of water birds and shorebirds in Hawai'i, FWS recommended that Applicant's personnel be educated about the potential for birds to be attracted to and injured by the solar array and to contact FWS if any such incidents occur.

F. IMPACTS ON PUBLIC AGENCIES

97. The approval of the SP and the development of the SEF does not trigger any requirements under HRS Chapter 343.
98. The SEF will not unreasonably burden public agencies to provide roads, sewers, drainage, schools, police or fire protection.
99. The PUC expressed no concerns and indicated that its role and authority in this matter is limited to the review of the power purchase agreement between HECO and Applicant.
100. OP did not have any objections to the Application. However, OP commented that statewide concerns remain with regards to seeking a balance in maintaining the availability of high quality agricultural lands while promoting renewable energy resources on lands within the State Land Use Agricultural District.
101. Access to the Petition Area is via a private agricultural road known as Plantation Road, which connects to Ka Uka Boulevard across from the Costco Waipi'o complex. Plantation Road later transitions into Pineapple Road which crosses H-2 via an overpass. Applicant may make improvements to Plantation Road, such as additional road base material, widening, constructing pull offs to allow for two-way traffic,

additional signage, and maintenance of shoulder vegetation for sight distance. Castle & Cooke Homes owns Plantation Road, and is aware of Applicant's proposed construction activities.

102. Within the Petition Area, Applicant will install a series of new interior service roads. These will be gravel roads approximately 20 to 40 feet wide. The access road will be of a sufficient size to allow an emergency vehicle to access the Petition Area if necessary.
103. Periodic maintenance and inspection of the solar facilities (including supplemental mowing, landscaping, panel cleaning, and electrical maintenance) would occur irregularly where employees would drive to various locations throughout the site on a network of internal gravel roads. No centralized parking facilities are planned.
104. The City and County Department of Transportation Services and the State DOT Highways Division did not provide any comments on the Application.
105. Applicant had prepared a Construction Traffic Assessment for the SEF. The Construction Traffic Assessment concluded that during operations of the SEF, traffic impacts will be negligible. During construction there will be temporary impacts, such as short-term increases to vehicle delays and queues during evening peak hours of 4 pm to 5 pm. If warranted, these short-term temporary impacts can be addressed via modifications to work schedules and manual traffic controls at the project site.
106. The Construction Traffic Assessment considered construction trips for the SEF, plus baseline traffic volumes and the construction trips anticipated to be generated by the proposed SunEdison Waiawa project. The peak of construction for the SEF would likely occur for a few months in 2016. SunEdison, the developer of the SunEdison Waiawa solar farm project, announced plans to acquire First Wind in November. Therefore, both construction projects will be constructed by related entities, thereby more easily allowing construction schedules and constructions trips to be coordinated to further minimize impacts.

107. Normal operation of the SEF will not require onsite personnel. Therefore, the site will not be permanently manned and no permanent wastewater facilities will be required related to the SEF. The City and County Department of Environmental Services stated that the proposed SEF would not impact its services or facilities.
108. The Petition Area appears well drained and the development of a SEF is not anticipated to change existing drainage patterns which generally sheet flow into the surrounding gullies. Existing runoff from the site follows the natural topography of the property. The Project design will not significantly alter the existing drainage patterns.
109. The Project will create minimal additional impervious area from concrete equipment pads, control structures, substation and switchyard, and micropile/pier foundations, and any impervious area created will be evenly distributed throughout the solar farm. There will not be a significant pre-development to post-development increase in stormwater flows. The PV panels will be elevated, so the existing ground will remain as is, which is highly pervious. Rainwater will hit the panel, run to the edge and fall to the ground, which will be left in a pervious state. The only increase in impervious area would be from the concrete pads under some electrical equipment, and possibly small footings for racks, if required. That is an insignificant amount of land coverage.
110. Temporary and permanent BMPs will be required through the grading and erosion control regulations and permits required by the State and City and County of Honolulu. Temporary BMPs are required during construction activities and will remain in place until permanent BMPs are established.
111. Temporary BMPs may include things like preservation of natural vegetation, minimization of areas of clearing and grubbing, vegetated buffers, temporary soil stabilization with grass and/or mulch, silt fences/fiber filtration tubes, gravel bag berms/check dams, stabilized construction entrances and exits, sediment traps and basins, temporary diversion swales and ditches, and water application and/or dust screens for control. Permanent BMPs may include things like permanent soil

stabilization with landscaping, pavement, or gravel, infiltration trenches, dry wells and sumps, grass swales and ditches, filter strips and sediment traps and basins.

112. No residential uses are proposed within the Petition Area, so there will be no additional burdens placed on schools.
113. No residential use is being proposed and the Project will be completely fenced on its perimeter. As the Petition Area is only accessible via a private and gated agricultural road, additional police protection services are not anticipated. HPD commented that it had no concerns regarding the Project.
114. HFD provided standard comments with respect to the provision of fire protection infrastructure. In a telephone conversation between the DPP and the HFD Fire Prevention Bureau, the HFD staff recognized that the SEF did not contain buildings or facilities that would normally be subject to the provision of firefighting infrastructure. Building permits for the SEF will be circulated to the HFD for review. Any firefighting infrastructure required by the HFD may be imposed at that time.
115. Sheep pasturing and other compatible agricultural areas in the Petition Area should minimize brush fire potential. The Applicant plans to establish roadways or setbacks between the PV panels and the SEF's fence line to minimize impacts from wildfires beyond the Petition Area. The Applicant's licensed civil engineer and vice president of construction both opined that the construction of the SEF will reduce the chance of naturally occurring or arson related wildfires because the Petition Area will be fenced and the vegetation that could be fuel for a wildfire will be controlled by animal grazing and/or mowing.
116. Fire control measures will be implemented into the Project design and operation. Fire extinguishers will be located close to and within the substation and switchyard areas. A fire alarm system will also be installed in the control enclosures.
117. The Petition Area is not currently serviced by the Honolulu Board of Water Supply.

118. No new water systems are proposed as part of the Project. Small amounts of water would be required for occasional irrigation of landscaping, as well as occasional cleaning of the solar panels. Water would be available either from rainwater catchment equipment or transported in via truck. No hook-up to the municipal water system is planned.

G. ARCHAEOLOGICAL AND HISTORICAL RESOURCES

119. An Archaeological Assessment Survey of 342 acres of land, which includes the entire Petition Area, was prepared and submitted as part of the Application ("AAS"). The AAS was submitted to the State Historic Preservation Division ("SHPD") in August 2014.

120. The AAS covers all of the land within the Petition Area, and an additional area of approximately 34 acres. The additional acreage consists of the following set aside areas which are not part of the Project: the reservoir site and a larger land area close to H-2 as labeled on Figure 2 of the Application as "Area Reserved for Future Interchange."

121. Several prior studies covered all or portions of the Petition Area. As described in the AAS, the entire Petition Area was included in an AIS conducted by Cultural Surveys Hawai'i in 1996 (Hammatt et al. 1996). That fieldwork consisted of a combination of pedestrian and aerial survey. No archaeological sites were recorded within the Petition Area as part of that inventory survey.

122. For the 2014 AAS, coverage was 100%, with crews walking in systematic sweeps paralleling the area spaced at intervals of no less than 40 meters, and as close as 15 meters, depending upon ground visibility. Transects were spaced as close as 10 meters in the area shown as Waipi'o Camp B on the 1928 USGS Wahiawa Quadrangle historic map.

123. The majority of the ground surface within the AAS area was covered with black plastic sheeting with black plastic water lines and white PVC pipe fragments evidencing the

most recent episode of pineapple cultivation. The location of Waipi'o Camp B showed evidence of intensive pineapple cultivation and recent grazing. No evidence of the former camp buildings or the layout of roads connecting the buildings depicted on the historic maps was observed during the fieldwork, nor was any portable cultural material (ceramics, metal, glass, etc.) present on the ground surface.

124. Given the negative findings of the prior archaeological inventory survey (Hammatt et al. 1996) and concurrence with those findings as a result of the 2014 survey, the AAS concluded that the Project would not significantly impact any known historic properties. In the unlikely event that any unanticipated archaeological resources are unearthed during development activities, in compliance with HAR Title 13, Subtitle 13, Chapter 280, work in the immediate vicinity of the finds should be halted and DLNR-SHPD contacted.

H. CULTURAL RESOURCES

125. Applicant had prepared an analysis to identify whether any valued cultural, historical or natural resources are present within the Petition Area, and to identify the extent to which any traditional and customary native Hawaiian rights are being, or have been, exercised within the Petition Area.
126. The analysis was prepared by Robert B. Rechtman, Ph.D., an archaeologist and anthropologist, and is based on historical archival information and prior cultural studies and records of cultural consultation that was done in 2001 and 2008 for Castle & Cooke when it proposed to develop property in this region, and which studies included the Petition Area.
127. In preparing the studies in 2001 and 2008 close to 50 individuals and organizations were contacted and asked to provide relevant cultural information concerning traditional places and resources, as well as former and ongoing cultural practices in the area. No valued natural or cultural resources or specific traditional cultural practices were identified within the Petition Area.

128. There was evidence of pig hunting activities in the forest areas adjacent to the Petition Area. However, pig hunting is not considered a traditional cultural practice.
129. No active traditional and customary practices have been documented within the Petition Area. Development of the Project will not have any adverse effect upon the exercise of native Hawaiian traditional and customary rights.

I. GROUNDWATER AND SURFACE WATER RESOURCES

130. The Waiahole Ditch is located to the south of the Petition Area. It is not located within the Petition Area and will not be used as part of the Project. The Kipapa Stream is located to the north of the Petition Area is also is not part of the Project.
131. Waiahole Ditch does provide water for some agricultural operations, but the current and proposed agricultural operations within the Petition Area do not utilize any water from Waiahole Ditch.
132. No portion of the Petition Area is located within the U.S. Navy's Waiawa Hydrologic Zone of Contribution.
133. The Project will not involve any significant use of ground water and will not generate any impacts to groundwater or surface water. The PV panels do not generate pollution and no cleaning solutions or chemical materials will be used to clean the PV panels.
134. No new water sources will be required for the development of the Project. Water for the existing agricultural use of the property (cattle grazing) will continue to be available for compatible agricultural uses, e.g., sheep, once the Project is constructed. To the extent necessary, water for landscaping and cleaning the solar panels will primarily be through rainfall. If needed, additional water would be available either from rainwater catchment equipment or transported in via truck.
135. It is not anticipated that the Project will have any impact on groundwater resources; it does not create a new water demand and it does not generate pollutants which could be discharged to groundwater.

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

136. HRS §205-16 provides that "No amendment to any land use district boundary *nor any other action by the land use commission* shall be adopted unless such amendment or other action conforms to the Hawai'i State Plan." (emphasis added). Issuance of the SP is consistent with applicable goals, objectives and policies of the Hawai'i State Plan, HRS Chapter 226.

137. The Project is consistent with the following objectives and policies of the Hawai'i State Plan:

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

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

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

(a)(2) Increased energy self-sufficiency where the ratio of indigenous to imported energy use is increased;

(a)(3) Greater energy security and diversification in the face of threats to Hawai'i's energy supplies and systems; and

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

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

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

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

- HRS §226-7: Objectives and Policies for the economy - agriculture

(a) Planning for the State's economy with regard to agriculture shall be directed towards achievement of the following objectives:

** * **

(2) Growth and development of diversified agriculture throughout the State.

(3) An agriculture industry that continues to constitute a dynamic and essential component of Hawai`i's strategic, economic, and social well-being.

(b) To achieve the agriculture objectives, it shall be the policy of this State to:

** * **

(2) Encourage agriculture by making best use of natural resources.

138. The Project supports the energy goals of the State Planning Act, Chapter 226, HRS by providing alternative fuel-sourced energy that is capable of contributing to the needs of the people and support energy self-sufficiency. Operation of the Project also contributes to the reduction of greenhouse gases by offering a "clean" energy alternative to fossil fuel based energy production.

139. The Project proposes to incorporate compatible agricultural uses within the same site as the PV panels by pasturing sheep around and under the panels which has the dual purpose of providing food in the form of lamb meat, and by limiting vegetation growth from pasturing sheep. The dual use of the Project site would contribute to the growth of diversified agriculture and make best use of the underlying natural resource.

RULINGS ON PROPOSED FINDINGS OF FACT

Any of the findings of fact submitted by Petitioner or other parties not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

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

CONCLUSIONS OF LAW

1. The Planning Commission and the Land Use Commission have jurisdiction to permit unusual and reasonable uses within the State Land Use Agricultural District pursuant to HRS §205-6.
2. Pursuant to HRS Section 205-6, the Planning Commission concluded that the Project is an "unusual and reasonable" use as set forth in HRS Section 205-6 and the five guidelines established by the Planning Commission under Section 2-45 of the Rules of the Planning Commission.
3. The SEF is not contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the Planning Commission and the State Land Use Commission.
4. The SEF will not adversely affect surrounding property, the solar farm operation is a low-impact, passive land use that should have no adverse effect on surrounding property.
5. The SEF will not unreasonably burden public agencies to provide roads and streets, sewers, water drainage and school improvements, and police and fire protection.
6. Unusual conditions, trends and needs have arisen since the Petition Area was put into the State Agricultural District. Hawai'i's Clean Energy policy, established in 2001, includes a

goal of using efficiency and renewable energy resources to meet 70% of Hawai'i's energy demand by 2030 (30% from efficiency measures, and 40% from locally generated renewable sources). The Project will help the State achieve this goal, which was not on the horizon in the 1960s when the Petition Area was first put into the Agricultural District.

7. The Petition Area is not unsuited for the permitted uses within the State Land Use Agricultural District. However, in compliance with Act 55, the Petition Area is suited for both agricultural activities and utility scale solar energy facilities.
8. The SEF would make available portions of the Petition Area for compatible agriculture in accordance with Section 205-4.5(a)(21)(A), HRS.
9. Article XII, section 7, of the Hawai'i State Constitution requires the State and its political subdivisions to protect native Hawaiian traditional and customary rights. The State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised native Hawaiian rights to the extent feasible. *Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission*, 79 Haw. 425, 450, n. 43, cert. denied, 517 U.S. 1163 (1996); *Ka Pa`akai O Ka `Āina v. Land Use Commission*, 94 Hawai'i 31, 7 P.3d 1068 (2000). There have been no specific valued natural and cultural resources identified within the Petition Area. No evidence has been identified to demonstrate that traditional and customary cultural practices are being exercised within the Petition Area currently, nor have any such practices been documented as taking place in the past within the Petition Area. Therefore, the Project will not affect or impair any valued cultural, historical or natural resources related to customary and traditional native Hawaiian practices.
10. Article XI, Section 7, of the Hawai'i State Constitution states that the State has an obligation to protect, control, and regulate the use of Hawai'i's water resources for the benefit of its people. The SEF is located outside of the Special Management Area, and is consistent with the objectives and policies of the Coastal Zone Management Act, HRS

Chapter 205A. The Project will not entail any significant use of, nor generate significant impacts to, groundwater resources.

11. Article XI, Section 1, of the Hawai'i State Constitution states that all public natural resources are held in trust by the State for the benefit of the people. When an agency is confronted with its duty to perform as a public trustee under the public trust doctrine, it must preserve the rights of present and future generations in the waters of the State. The agency's duty and authority is to maintain the purity and flow of our waters for future generations and to assure that the waters of our land are put to reasonable and beneficial use for the public's benefit.
12. Article XI, Section 3, of the Hawai'i State Constitution requires the State to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and assure the availability of agriculturally suitable lands. The Petition Area is not classified as Important Agricultural Land under Part III of HRS chapter 205.

DECISION AND ORDER

Having duly considered the complete record of the Honolulu Planning Commission's proceedings on the Application and the oral arguments presented by the parties in this proceeding, and good cause existing and upon motion duly passed by the LUC at a hearing conducted on March 5, 2015, in Honolulu, Hawai'i, and the motion having received the affirmative votes required by HAR §15-15-13, and there being good cause for the motion, the Land Use Commission hereby APPROVES the special permit granted by the Planning Commission to allow for the establishment of the solar energy facility as described herein on an approximately 308.8-acre portion of TMK No. (1) 9-5-003: 004, and approximately identified on Exhibit A, attached hereto and incorporated by reference herein, subject to the following conditions, all as stated in the Findings of Fact, Conclusions of Law, and Decision and Order in DPP File No. 2014/SP-3 issued by the Planning Commission on January 21, 2015 and as modified by the LUC on March 5, 2015:

1. Usable lands of the Petition Area, including areas under PV panels, shall be made available for compatible agricultural use at a lease rate that is at least 50 percent below the fair market rent for comparable properties, as long as the Project is in operation. Compatible agricultural operations shall be established, or Applicant shall be actively seeking to have such operations established, within one year of the start of commercial power generation. Extensions to this deadline may be granted by the Director of the DPP for unforeseen extenuating circumstances.
2. The Applicant shall submit for review and obtain the approval of the following from the Director of the DPP, prior to the issuance of a grading or building permit:
 - a. A survey map accompanied by a metes and bounds description of the approved Petition Area.
 - b. A site plan showing the area required under Condition 1, above, relating to the minimum land area to be made available for compatible agricultural use.
3. Within one year of the completion of construction or prior to the closing of the building permit for the solar energy facility, the Applicant shall submit to the DPP proof of financial security, such as a posted letter of credit or similar mechanism from a creditworthy financial institution, in favor of the owner of the land subject to the SP, in the amount of four million dollars (\$4,000,000.00), which security shall remain in place for the duration of the operation of the Project, with evidence of same provided to the Director of the DPP on an annual basis, to decommission the Project and restore the Petition Area to substantially the same physical condition as existed prior to the development of the SEF.

The Applicant shall decommission the SEF within twelve (12) months following the termination of operation of the SEF, with the exception of the HECO switchyard, which may remain within the Petition Area after termination of the SP.

A change in Project ownership or a change of ownership of the land subject to the SP, which warrants a new proof of financial security to decommission the Project, shall be

submitted to the DPP for processing through the Planning Commission, within three months of the ownership change.

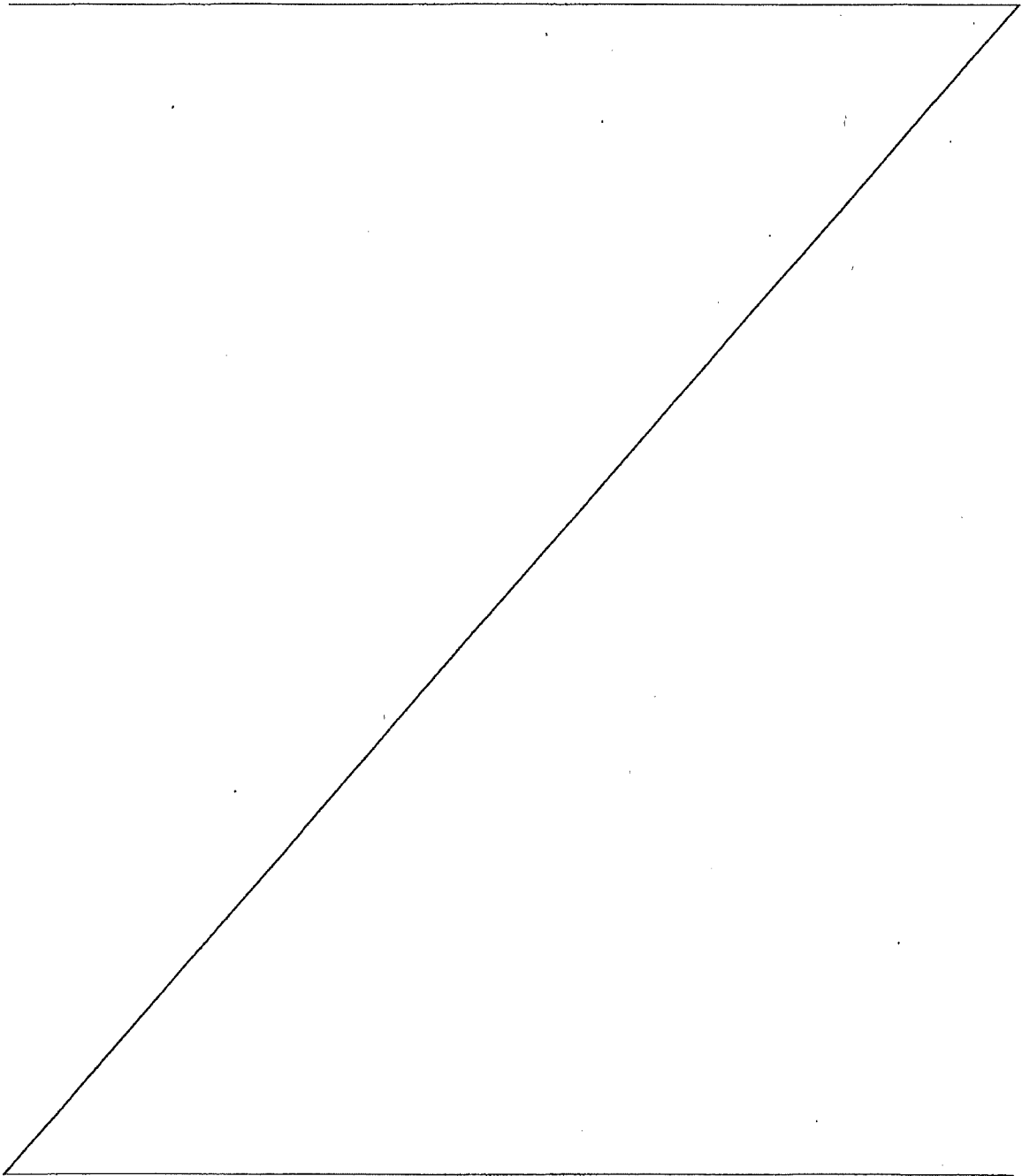
4. As needed, the Applicant shall work with the U.S. Fish & Wildlife Service regarding the protection of endangered or migratory bird activity at the Petition Area.
5. The Applicant shall establish the Project within two years of the date of the State Land Use Commission's (LUC) Decision and Order approving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

- b. Any change in uses on the property;
- c. Termination of any uses on the property; and/or
- d. Transfer in ownership of the property.

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

- 9. Enforcement of the conditions of the SP shall be pursuant to the Rules of the Planning Commission, including the issuance of an order to show cause as to the reason the SP should not be revoked if the Planning Commission has reason to believe that there has been a failure to perform the conditions imposed herein.
- 10. If the photovoltaic array creates a hazardous condition for pilots or motorists, the facility operator shall immediately mitigate the hazard upon notification by the Department of Transportation, Airports Division or the Federal Aviation Administration.
- 11. Petitioner shall obtain approval of the draft archaeological assessment, dated August 2014, from the State Historic Preservation Division (SHPD) prior to commencement of construction of the solar farm.
- 12. In the event that historic resources, including human skeletal remains, structural remains, cultural deposits, artifacts, sand deposits, or sink holes, are identified during demolition and/or construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the SHPD, and O`ahu Island Burial Council, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites are discovered during the course of construction of the Project, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigation measures have been implemented to its satisfaction.
- 13. The Petitioner shall develop the Property in substantial compliance with the representations made to the City and County of Honolulu Planning Commission and the

State Land Use Commission in obtaining the State Special Permit. Failure to so develop the Property may result in revocation of the permit.



ADOPTION OF ORDER

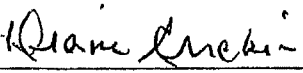
This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this 25th, day of March, 2015, per motion on March 5, 2015.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAII



Deputy Attorney General

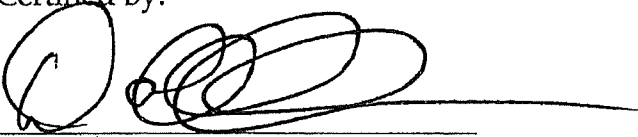
By 

ARNOLD WONG
Vice-Chairperson and Commissioner
(Chair McDonald delegated Vice-Chair Wong to sign order)

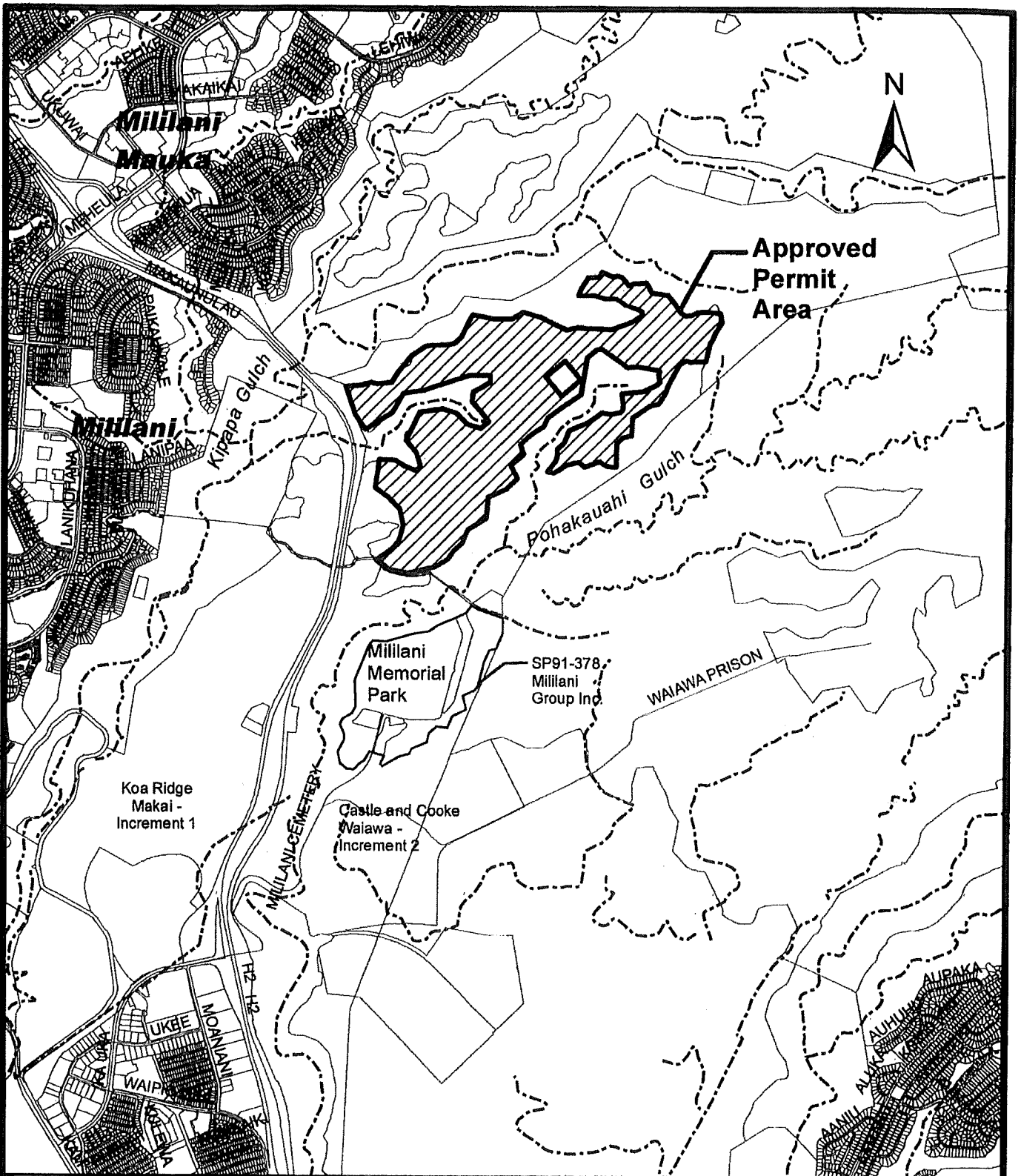
Filed and effective on:

3/25/15

Certified by:



DANIEL ORODENKER
Executive Officer



SP15-405 WAIPI'O PV LLC

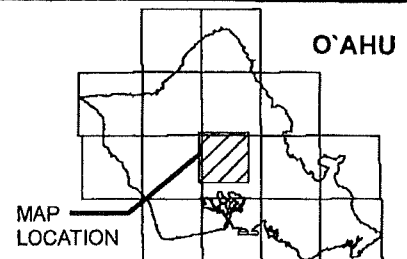
LOCATION MAP

TAX MAP KEY: 9-5-003: PORTION 004

WAIPI'O, 'EWA, O'AHU, HAWAII

SCALE: 1: 30,000

EXHIBIT "A"





BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of

WAIPI'O PV, LLC

For a New Special Permit To Allow
Development of a 47-megawatt photovoltaic
(PV) Energy Generation Facility and
Accessory Uses and Structures On
Approximately 308.8 Acres of Land Within the
State Land Use Agricultural District at
Waipi'o, 'Ewa, O'ahu, Hawai'i Tax Map Key
No. (1) 9-5-003: Portion of Parcel 004

DOCKET NO. SP15-405

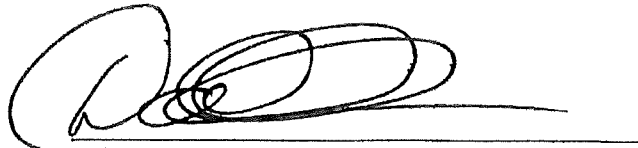
ORDER ADOPTING THE CITY AND
COUNTY OF HONOLULU PLANNING
COMMISSION'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION AND ORDER WITH
MODIFICATIONS; CERTIFICATE OF
SERVICE

CERTIFICATE OF SERVICE

I hereby certify that due service of the foregoing was served upon the following parties
by hand delivery or certified mail on March 26, 2015, addressed to:

HAND DELIVERY	LEO R. ASUNCION, JR., Acting Director Office of Planning State Office Tower, 6th Floor 235 South Beretania Street Honolulu, Hawai'i 96813
Regular Mail	BRYAN YEE, Esq. Deputy Attorney General Department of the Attorney General 425 Queen Street Honolulu, Hawai'i 96813 Attorney for OP

Regular Mail	<p>GEORGE I. ATTA, Director c/o Kathy Sokugawa Department of Planning and Permitting City & County of Honolulu 650 South King Street, 7th Floor Honolulu, Hawai'i 96813</p>
Regular Mail	<p>RAYMOND YOUNG Department of Planning and Permitting City & County of Honolulu 650 South King Street, 7th Floor Honolulu, Hawai'i 96813</p>
Regular Mail	<p>RICHARD LEWALLEN Deputy Corporation Counsel Department of the Corporation Counsel Honolulu Hale 530 South King Street, Room 110 Honolulu, Hawai'i 96813 Attorney for DPP</p>
Regular Mail	<p>PLANNING COMMISSION Department of Planning and Permitting City and County of Honolulu 650 South King Street, 7th Floor Honolulu, Hawai'i 96813</p>
Certified Mail	<p>JENNIFER A. LIM, Esq. PUANANIONAONA P. THOENE, Esq Carlsmith Ball LLP ASB Tower, Suite 2100 1001 Bishop Street Honolulu, Hawai'i 96813 Attorneys for Applicant – Waipi'o PV LLC</p>



DAN ORODENKER
Executive Officer

Dated: Honolulu, Hawai'i, March 25, 2015

Attachment 2

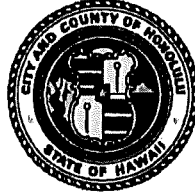
**PLANNING COMMISSION
CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813

PHONE: (808) 768-8007 • FAX: (808) 768-6743

DEPT. WEB SITE: www.honoluluclup.org • CITY WEB SITE: www.honolulu.gov

KIRK CALDWELL
MAYOR



DEAN I. HAZAMA, Chair
THERESIA C. McMURDO, Vice-Chair
CORD D. ANDERSON
ARTHUR B. TOLENTINO
KA'IULANI K. SODARO
DANIEL S. M. YOUNG
STEVEN S. C. LIM
KEN K. HAYASHIDA
WILFRED A. CHANG, JR.

March 15, 2017

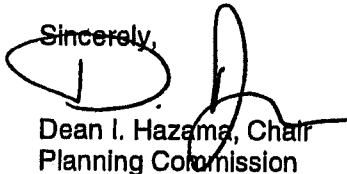
Mr. Daniel E. Orodener, Executive Officer
Land Use Commission
Department of Business, Economic Development
and Tourism
State of Hawaii
P.O. Box 2359
Honolulu, Hawaii 96804-2359

Dear Mr. Orodener:


**SUBJECT: Special Use Permit (SP15-405), Waipio PV, LLC
(formerly Waiawa PV, LLC)
Approval of Extension of Time to Establish Project to June 30, 2019**

The Planning Commission held a hearing on February 15, 2017, and voted unanimously, 6:0, to approve the request of extension of time in which to establish the Project, pursuant to Chapter 2, Subchapter 4, Section 2-46(e), rules applicable to State Special Use Permits of the rules of the Planning Commission; and Condition No. 5 of Applicant's January 21, 2015, Decision and Order of the Planning Commission.

If you have any questions, please contact Raymond Young of the Department of Planning and Permitting, at 768-8049.

Sincerely,

Dean I. Hazama, Chair
Planning Commission

FORWARDED:


Kathy K. Sokugawa, Acting Director
Department of Planning and Permitting

Attachment 2

Enclosures

cc w/o enclosures: Wren Wescoatt, Director of Development, NRG Energy LLC

Attachment 3

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lieutenant Governor

LUIS P. SALAVERIA
Director

MARY ALICE EVANS
Deputy Director



17 MAR 17 AM 10:24
LAND USE COMMISSION
Department of Business, Economic Development & Tourism
State of Hawai'i

DANIEL E. ORODENKER
Executive Officer

BERT K. SARUWATARI
Planner

SCOTT A.K. DERRICKSON, AICP
Planner

FRED A. TALON
Drafting Technician

RILEY K. HAKODA
Chief Clerk/Planner

March 14, 2017

Dear Ms. Sokugawa:

The Land Use Commission was recently contacted by a representative, Wren Westcoatt, of the company that currently owns/controls two projects that are covered by State Special Permits SP15-405 (Waipi'o PV, Ltd.) and SP15-406 (Kawailoa Solar, LLC). Mr. Westcoatt was inquiring about the process to follow in order to request and obtain an extension to the start dates for establishing the two projects.

Staff provided information regarding the two-step process for making amendments to a Decision and Order covering a State Special Permit ("SP") found in Sections 15-15-96.1 and 15-15-95, Hawai'i Administrative Rules ("HAR").

The petitioner's representative informed us that the County Planning Commission had already heard and acted upon the extension request for SP15-405 in February 2017 and the request for an extension for SP15-406 was scheduled for March 29, 2017.

Commission staff followed up with Department of Planning and Permitting (DPP) staff to coordinate receipt of the County Planning Commission's complete record and decisions for both dockets at the same time in order to process them on a single hearing date in the future. At that time DPP staff indicated that SP15-405 was not processed as a modification of a SP but as a minor change that DPP believed the County Planning Commission was empowered to grant.

DPP had determined that the language contained in Condition 5 (SP15-405) directed that requests for extension of the project start date be submitted to the DPP Director and then that the County Planning Commission was able to grant such a request. However, the County was mistaken in this regard as the petitioner's request in both cases is for a modification of a condition of the SP, which is subject to the requirements of section 15-15-96.1, HAR.

Condition 5 states:

"5. The Applicant shall establish the Project within two years of the date of the State Land Use Commission's (LUC) Decision and Order approving the SP. Requests for extension of this deadline shall be submitted to the Director of DPP prior to the expiration of the deadline. The Commission may grant an extension to the deadline to establish the Project due to unforeseen circumstances that were beyond the control of the Applicant. This SP shall be valid for a period of thirty-five (35) years from the date of the State LUC's Decision and Order approving the SP, subject to further extensions upon a

timely request for extension filed with the Commission at least one-hundred twenty (120) days prior to the SP's expiration."

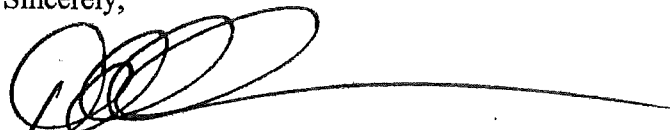
Reading the document in its entirety, the use of the term "*(T)he Commission*" is intended to refer to the State Land Use *Commission*. DPP and the County Planning Commission have mistakenly read the language of the condition to allow the County Planning Commission the authority to grant any requested extension to the deadline to establish a project. Such a request must therefore be made consistent with the process outlined in our administrative rules.

Section 15-15-96.1, HAR, indicates that requests for modification, release or deletion of a condition is first submitted to the county planning commission and then the Land Use Commission, and shall comply with Section 15-15-95, HAR. That section spells out the notice and information requirements, guidelines for determining "unusual and reasonable uses," compliance with county planning commission rules, and ability to impose protective including time limits for establishing and ending the proposed use. Specifically, Section 15-15-95(f), HAR, states "(t)he county planning commission, with the concurrence of the commission, may extend the time limit if it deems that circumstances warrant the granting of the extension."

The time for establishing the proposed use in SP15-405 must also follow the procedures outlined in the Land Use Commission's administrative rules. This would include: notice of the request to the Land Use Commission, the State Office of Planning, and the State Department of Agriculture for review and comment; a decision by the County Planning Commission of their decision along with a complete record and transcript of the proceedings. Should the Land Use Commission receive a recommendation for a time extension request that did not follow the appropriate process or was not supported by the record, then the Land Use Commission may remand the request to the County Planning Commission for further proceedings.

The Land Use Commission and its staff would like to work with the County Planning Commission and the Petitioner to determine the most efficient way to proceed forward to preserve the legal integrity of the SP process. Should you have any questions please contact me at 587-3822.

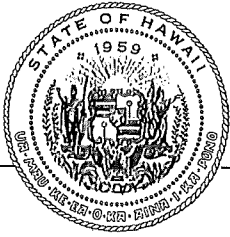
Sincerely,



Daniel E. Orodener
Executive Officer

Cc: Dean I. Hazama, Chair - City & County Planning Commission
Leo Asuncion, State Office of Planning
Scott Enright, State Department of Agriculture
Wren Westcoatt, NRG Energy LLC via e-mail <wren.wescoatt@nrg.com>

Attachment 4



OFFICE OF PLANNING STATE OF HAWAII

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

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DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU

DAVID Y. IGE
GOVERNOR

LEO R. ASUNCION
DIRECTOR
OFFICE OF PLANNING

Telephone: (808) 587-2846
Fax: (808) 587-2824
Web: <http://planning.hawaii.gov/>

Ref. No. P-15621

June 02, 2017

Ms. Kathy K. Sokugawa, Acting Director
Department of Planning and Permitting
City and County of Honolulu
650 S. King Street, 7th Floor
Honolulu, Hawaii 96813

Dear Ms. Sokugawa:

Subject: Waiawa Solar Energy Facility
Project No.: 2014/SUP-3 and SP15-405
Tax Map Keys: 9-1-003: 017 (por.)
Location: Waipio, Central Oahu, Hawaii

Thank you for the opportunity to review the subject application for a modification to the Special Use Permit. The Petitioner is requesting modifications to amend an existing Special Permit to modify the proposal and some of the conditions of the approval dated March 25, 2015.

The Office of Planning (OP) has the following comments.

1. The Special Permit Application was originally filed by Waipio PV, LTD, a subsidiary of SunEdison. SunEdison filed for bankruptcy and the project has been acquired by NRG Renew, LLC (NRG).
2. NRG has reinstated the Power Purchase Agreements with Hawaiian Electric Company. NRG will finance, construct, and connect the project to the electrical grid by 2019.
3. The Petitioner is requesting to:
 - a. Change the ownership and property owner from SunEdison to NRG;
 - b. Modify condition 5 requesting an extension of time to establish the project from the original two years from the date of the decision and order (March 25, 2017) to December 31, 2019, in line with the Power Purchase Agreements;
 - c. Some technical changes with the types of solar panels to be utilized, which will result in a change in the number of solar panels. The area to be covered by the panels would be approximately the same area, and in fact may decrease by about 11 acres. The panels would also be changed from a fixed-tilt rack to tracking racks;
 - d. The perimeter fence material would be changed from a four (4) -foot high steel mesh to a six (6) -foot high chain-link mesh, but with no barbed wire;
 - e. Modify other conditions, as explained below.
4. OP has no objection to the change in ownership and property owner from SunEdison to NRG.

Kathy K. Sokugawa
June xx, 2017
Page 2

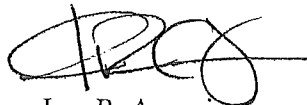
5. The following comments are based on Petitioner's Exhibit G, however, we note that there are some errors in Exhibit G, referring to the conditions as stated in the Land Use Commission's Decision and Order dated March 25, 2015.
 - a. Condition 3. Modification requested to include the word approximately, four million dollars. OP objects to inserting the word approximately into this condition, and suggests the wording be revised to say, no less than four million dollars.
 - b. Condition 3. 2. Requesting modification of the time to establish the project. OP is in support of this modification to extend the time limit by 30 months or December 2019.
6. Condition 4. Change to the major modification from significant increases in the number of panels to the area covered by the panels. OP would support this modification to this condition.
7. Exhibit F Reflectivity Report for Tracking Racks, dated April 18, 2017 indicates that there would be no glare at the nine selected observation points and the two approach paths to Wheeler Army Airfield. We also note that condition 10 would mitigate adverse impacts to pilots or motorists from the PV panels.
8. Land Use Commission condition 11. Petitioner shall obtain approval of the draft archaeological assessment dated August 2014, from the State Historic Preservation Division (SHPD) prior to commencement of construction of the solar farm.

We note that Petitioner's annual report to the Commission dated February 9, 2016 includes a letter from SHPD accepting the document, dated January 16, 2015. Thus, OP recommends that this condition be deleted.

Also, in line with SHPD recommendations for unanticipated archaeological resources found during construction activities, that condition 12 be retained.

If you have any questions, please contact Lorene Maki of our Land Use Division at (808) 587-2888.

Sincerely,



Leo R. Asuncion
Director

Attachment

c: Land Use Commission

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lt. Governor



SCOTT E. ENRIGHT
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

June 1, 2017

Ms. Kathy K. Sokugawa
Acting Director
Department of Planning and Permitting
City and County of Honolulu
650 South King Street 7th Floor
Honolulu, Hawaii 96813

Dear Ms. Sokugawa:

Subject: Petition to Amend Special Use Permit (SUP) (2014/SUP-3)
Solar Energy Facility
Waipio Solar Farm
TMK: 9-5-03: portion 17 (Waipio, Oahu)
Area: 308.8 acres

The Department of Agriculture (DOA) has reviewed the subject petition and offers the following comments and recommendations.

Background

On January 21, 2015, the City Planning Commission approved Waipio PV, LLC (Petitioner)'s application for a State SUP (2014/SUP-3) to develop and operate a solar energy facility. Subsequent to the Planning Commission's approval, the Land Use Commission (LUC) approved the petition for Special Permit (SP15-405) on March 25, 2015 for the same project. Petitioner's ultimate parent company, SunEdison, filed for bankruptcy in March, 2015. NRG Renew LLC (NRG) purchased Waipio PV from SunEdison in October 2016, and now seeks to continue the development of the solar energy facility.

The Petitioner wishes to amend SUP (2014/SUP-3) with the following changes:

1. Change of ownership of property owner of Waipio PV from SunEdison to NRG.



2. Extension of time to establish project and term of permit.

The SUP (2014/SUP-3) required that the solar energy facility be established no later than March 31, 2017. Petitioner seeks to amend this deadline to December 31, 2019, and to modify when the 35 year term of the SUP starts from the original start date of March 25, 2015, to the date of when the LUC approves this petition to amend the SUP.

3. Project technical changes.

Petitioner wishes to: modify the number of solar panels that will be used for the project from 207,228 modules to 163,000 modules or 504,000 modules (depending on the size of modules); change the solar panels from fixed-tilt racks to tracking racks; and, change the perimeter fencing material from 4-foot high hog-wire fence to a 6-foot high chain link fence.

Comments/Recommendations

We believe this large-scale project must comply fully with the LUC's Decision & Order (SP15-405, dated March 25, 2015), requiring that: "Usable lands of the Petition Area, including areas under PV panels, shall be made available for compatible agricultural use . . . as long as the Project is in operation." (Page 33).

The DOA recommends that the Petitioner affirm that the proposed change from fixed-tilt racks to tracking racks, and the proposed change from hog-wire fencing to chain link fencing, will not restrict or impede compatible agricultural uses within the Petition Area in any way, or reduce the acreage within the Petition Area available for compatible agricultural uses.

The DOA also recommends that the Petitioner provide a letter from Tin Roof Ranch stating that the proposed amendments to the SUP will not have any adverse effect on its planned ranching operation within the Project Area.

Thank you for the opportunity to provide our input. Should you have any questions, please contact Earl Yamamoto at 973-9466 or email at earl.j.yamamoto@hawaii.gov.

Sincerely,



Scott E. Enright
Chairperson, Board of Agriculture

c: Office of Planning