

BEFORE THE PLANNING COMMISSION  
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

IN THE MATTER OF THE APPLICATION	)	FILE NO. 2014/SUP-3
	)	
OF	)	
	)	
WAIAWA PV, LLC	)	FINDINGS OF FACT, CONCLUSIONS
	)	OF LAW, AND DECISION AND
FOR A	)	ORDER
	)	
<u>STATE SPECIAL USE PERMIT</u>	)	

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

This matter came before the Planning Commission of the City and County of Honolulu (hereinafter the "Commission"), for public hearing on December 17, 2014 which was continued to January 7, 2015, at the Mission Memorial Conference Room in Honolulu, Hawaii. Based on the record in this matter, the Commission hereby finds as follows:

**FINDINGS OF FACT**

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

2. The site of the proposed SEF ("Project") is located in Central Oahu, east of the H-2 Interstate Highway ("H-2") and approximately 1,000 feet north of Mililani Memorial Park. It consists of an approximate 308.8-acre portion of a 525-acre agricultural lot ("Petition Area") referred to as Tax Map Key 9-5-003: 004 ("Parcel 4").

3. The Petition Area is owned by Renewable Land Holdings, LLC ("Land Owner"). The Applicant filed Fee Owner's Letter of Authorization (Applicant's Exhibit No. 25) which shows that the Land Owner has given authorization to the Applicant to file the SUP application.

4. The Applicant seeks a SUP to establish a 47-megawatt SEF. The proposed SEF will include accessory uses and structures consisting of an electrical transformer station, an electrical switchyard, communications building, combiner boxes, below surface collector wiring, inverters, weather monitoring stations, switch gear, internal driveways, and perimeter fencing. Landscaping will be planted along certain sections of the H-2 to mitigate visual impacts.

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

6. The Petition Area is presently used as a pasture.

7. Access to the Petition Area is from Ka Uka Boulevard, west of H-2, via plantation roadways and a bridge across H-2 north of the Ka Uka/H-2 Interchange.

8. The Petition Area is designated by the Central Oahu Sustainable Communities Plan as Agriculture and Preservation. The existing zoning is AG-1 Restricted Agricultural District. Surrounding uses include agriculture, open space, highway, and cemetery uses.

9. The Petition Area is comprised of Class B soils according to the Land Study Bureau Overall Master Productivity Rating System. The Petition Area consists of Prime and Unique Agricultural Lands pursuant to the Agricultural Lands of Importance to the State of Hawaii Classification System. The Petition Area is not classified as Important Agricultural Land under Part III of Chapter 205, HRS.

10. The Project's solar panels will be south-facing and mounted on fixed-tilt blocks about 4 ½ to 9 ½ feet above existing grade. Power generated by the SEF would be connected via the switchyard and substation facilities to an existing Hawaiian Electric Company ("HECO"), overhead 138 kilovolt ("kV") transmission lines which traverse the Petition Area.

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

12. The Applicant offered, and the Commission received into record, Exhibits 1 through 26.

13. The Pearl City Neighborhood Board ("NB") No. 21 and the Mililani/Waipio/Melemanu NB No. 25 supported the Project.

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

15. At the public hearing of December 17, 2014, the Commission heard testimony from Cruz Vina, Chairperson of the Pearl City NB No. 21, in support of the Project. In addition, the Applicant provided testimony from its staff and consultants on the Project. The DPP requested an extension of the Commission's public hearing to allow completion of the DPP's Report and Recommendation which was granted by the Commission and the public hearing was continued to January 7, 2015.

16. The Commission received a report from the Director of the DPP dated December 30, 2014, providing an analysis of the request and a recommendation for approval of the Application with conditions.

17. At its continued public hearing of January 7, 2015, the Commission received Applicant's Exceptions to the DPP's Findings of Fact, Conclusions of Law, and Recommendation dated December 30, 2014; and Certificate of Service.

## CONCLUSIONS OF LAW

The Commission hereby concludes as follows:

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

## DECISION AND ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, the Commission hereby **APPROVES** the application for a State Special Use Permit, File No. 2014/SUP-3, for approximately 308.8 acres, Tax Map Key 9-5-003: Portion of 004, for the establishment of a solar energy facility, as shown on Exhibit 1, subject to the following conditions:

1. Usable lands of the Petition Area, including areas under PV panels, shall be made available for compatible agricultural use at a lease rate that is at least 50 percent below the fair market rent for comparable properties, as long as the Project is in operation. Compatible agricultural operations shall be established, or Applicant shall be actively seeking to have such operations established, within 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 SUP, 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 operations of the SEF, with the exception of the HECO switchyard, which may remain within the Petition area after termination of the SUP. A change in Project ownership or a change in ownership of the land subject to the SUP, which warrants a new proof of financial security to decommission the Project, shall be submitted to the DPP for processing through the Planning Commission, within three months of the ownership change.

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

5. The Applicant shall establish the Project within two (2) years of the date of the State Land Use Commission's (LUC) Decision and Order approving the SUP. Requests for extension of this deadline shall be submitted to the Director of the DPP prior to the expiration of the deadline. The Commission may grant an extension to the deadline to establish the Project due to unforeseen circumstances that were beyond the control of the Applicant. This SUP shall be valid for a period of thirty-five (35) years from the date of the State LUC's Decision and Order approving the SUP, subject to further extensions upon a timely request for extension filed with the Commission at least one-hundred twenty (120) days prior to the SUP's expiration.

6. On or before December 31 of each year that the SUP is in effect, the Applicant or its successor shall file an annual report to the DPP that demonstrates the Applicant's compliance with conditions of the SUP.

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

8. The Applicant and/or landowner shall notify the Director of the DPP of:

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

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

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

Dated at Honolulu, Hawaii this 21st day of January, 2015.

PLANNING COMMISSION  
CITY AND COUNTY OF HONOLULU

By  \_\_\_\_\_  
DEAN I. HAZAMA, Chair

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