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CITY AND COUNTY OF HONOLULU
PLANNING COMMISSION

IN RE:
CENTRAL OAHU-STATE SPECIAL USE PERMIT-2014/SUP-3 (RY)
WAIAWA PV, LLC

VOLUME II
CONTINUED PUBLIC HEARING

Taken in the Mission Memorial Conference Room, 550
South King Street, Honolulu, Hawaii, commencing at
1:36 p.m. on January 7, 2015.

BEFORE: SHIRLEY L. KEYS, RPR, CM, CSR 383

1 APPEARANCES:

2

3 Commissioners: DEAN I. HAZAMA, Chair

4 KEN K. HAYASHIDA

5 CORD D. ANDERSON

6 KAIULANI SODARO

7 DANIEL S.M. YOUNG

8 JAMES C. PACOPAC

9 ARTHUR TOLENTINO

10 WILFRED A. CHANG

11

12 Counsel for City and County of Honolulu

13 Planning Commission:

14 WINSTON WONG, ESQ.

15

16 For Applicant: JENNIFER A. LIM, ESQ. and

17 PUANANIONAONA P. THOENE, ESQ.

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1 COMMISSIONER HAZAMA: Good afternoon
2 and welcome to the meeting of the Planning Commission for
3 January 7, 2015. The first item on our agenda is
4 approval of our December 17, 2014 minutes, which were
5 distributed to the commissioners. Any comments,
6 corrections in the minutes?

7 COMMISSIONER TOLENTINO: Motion to
8 approve.

9 COMMISSIONER HAZAMA: Motion to
10 approve.

11 COMMISSIONER YOUNG: Second.

12 COMMISSIONER HAZAMA: Motion seconded.
13 Any objections? Any abstentions? Okay. The December 17
14 meeting minutes are approved.

15 Moving onto our continued public
16 hearing, this is Central Oahu Special -- State Special
17 Use Permit-2014/SUP-3, Waiawa PV, LLC. At this time I'd
18 like to call the department up to provide the director's
19 report.

20 MR. YOUNG: Good afternoon, Chair.
21 Good afternoon, members of the planning commission. My
22 name is Raymond Young, I'm the staff planner assigned to
23 process this project. With me is the director of the
24 department, George Atta, who will be speaking on behalf
25 of the materials that were submitted recently by the

1 applicant, but generally I'll just go over what the
2 report -- and the director's original recommendation was
3 signed back on December 30.

4 Essentially, if I can refer to the map
5 on the wall, this is the State Land Use Commission map
6 integrated with an aerial photo and the Land Study Bureau
7 map. The petition area is outlined with that cross
8 hatching, and the petition area pointed out in yellow.
9 That big, white line that travels from top to the bottom
10 of the map is H2. You can see that the red -- dark red
11 lines indicate the boundaries of the State Land Use
12 Commission districts, so right next to the petition area
13 is a big A indicating that it's all within the state
14 agricultural district. And the colors of light green,
15 brown and teal looking, those all indicate the different
16 LSB classifications, and the legend on the bottom right
17 shows that the petition area is all located within the B
18 classification.

19 Now, under Act 55 that was passed last
20 year, solar energy projects, for which this is a form of,
21 must obtain a special use permit if they exceed either
22 ten percent of the parcel size or over 20 acres, and this
23 project is -- at the time we received the application,
24 was 313 acres, but you will see that the applicant has
25 submitted some information indicating that they want to

1 quite large, I'm not sure how many panels, but we're
2 talking about thousands of panels, and along with that,
3 they're proposing to make it available to -- for
4 compatible ag uses, and in this case they're proposing to
5 have a lease to a reputable farmer, Tin Roof Ranch, to
6 establish a sheep herding operation.

7 So the statute -- I'm sorry, Act 55
8 requires that if an SUP is granted, there are several
9 conditions that must be imposed, and those we thought we
10 covered pretty well in the conditions of approval. Some
11 of it we don't think we should be responsible for, so we
12 didn't include them, but we can get into further detail
13 as George comes up to explain those.

14 Essentially, we recommend an approval
15 of the entire project subject to some conditions relating
16 to the compatible ag use, a metes and bounds map showing
17 exactly where the petition area is. Let me -- I don't
18 remember them all in detail.

19 So if you turn to page 19 of the
20 director's report -- oh, yes, number three has to do with
21 proof of financial security, so we included that since
22 the Act 55 requires that. And then with respect to
23 wildlife, which is the US Fish & Wildlife Service, had
24 comments about that and possible migratory bird issues,
25 we suggested that they consult with the US Fish &

1 Wildlife Service, and that's recommended by the agency.

2 And then there's number five, which is
3 the standard conditions that's required by rules, you
4 know, how long the commission would like to have them
5 have the project established by, so we thought two years
6 is a reasonable amount of time. And of course, if a
7 delay comes up for unforeseen circumstances, that they
8 will come back and ask for an extension.

9 And under standard conditions, the
10 annual report for a project of this magnitude and scale,
11 we ask that they submit one every year on the 31st.

12 Then the rest are pretty much standard
13 conditions with respect to changes and minor or major
14 changes for which either the director or the planning
15 commission will be responsible for making the call.
16 That's the conclusion of the report. Thank you.

17 COMMISSIONER HAZAMA: Okay. Director?

18 MR. ATTA: I guess what I wanted to do
19 is that the materials submitted by the applicant, I think
20 it was yesterday, I had a chance to look at it, and we
21 had a staff meeting this morning to go over the thing,
22 and I just wanted to present our position on that
23 material that was submitted.

24 Now, most of the changes are really
25 details, conditional details and clarifications and

1 specifications of some of the conditions and the
2 analysis, and I just wanted to point out just a few of
3 them. On page seven of the report, on the comment about
4 water for current agricultural operations does not come
5 from Waiahole Ditch, I think the intention of this
6 sentence which on the face is not correct, because
7 Waiahole Ditch actually does, you know, serve current
8 agricultural operations, but not on this parcel, so I
9 think the intention was to say for this parcel the ag
10 operations and not getting their water from the Waiahole
11 Ditch, and that's just a clarification.

12 With regard to the page on conclusions
13 that begins with page nine, we basically are okay with
14 most of the changes or additions that they've mentioned,
15 and the ones that we do have some questions about, one
16 was about the -- on number three. The part that starts
17 that prior to the start of commercial operation, this is
18 where the proof of financial feasibility is, we would
19 prefer, if we're going to put details about when this
20 proof is submitted, rather than the start of commercial
21 operations, our preference is to say that they would
22 provide that proof to DPP or the planning commission at
23 the close of the permit after construction, or one year
24 after that period.

25 That gives us a definite time as to

1 when we can expect the documentation, so we would know,
2 since our inspectors would close the permit, we would
3 know if either at that point or one year after and, you
4 know, the start of commercial operations is something
5 that the applicant will be doing and we would not know
6 when to expect, so our preference is to have a more -- a
7 date that we would be clearly aware of.

8 I think that was the main thing, and on
9 the last one, the item ten, I think this refers to what
10 Raymond was saying about I guess the LUC conditions.
11 Item ten is really a condition that would be triggered by
12 the FAA, and the reality is FAA already has this power,
13 it doesn't need the SUP condition to, you know, require
14 mitigation of an issue like this, so personally we don't
15 think -- I don't think that it's necessary since that's --
16 that authority already exists.

17 And second, because it's a condition
18 that is an FAA condition, we don't see any reason that --
19 and they have the authority, why the planning commission
20 or the city should, you know, be obligated to enforce
21 this condition. But if LUC wants to put it in, that
22 would be up to them, but we're not recommending any
23 addition like this.

24 MR. YOUNG: Also, can I add a couple
25 comments with respect to this item that George was

1 referring to? On page two under application item one
2 where it refers to Exhibit 2, I think they were trying to
3 refer to the maps showing that the area was being
4 reserved for the reservoir, but when you look at Exhibit
5 2, and correct me if I'm wrong, it actually refers to
6 Paul Luersen's curriculum vitae. I don't think that was
7 the intent there.

8 And then on page four under item seven
9 where it refers to the transcripts where we were
10 promising to transmit the record to the Land Use
11 Commission by the 31st, yes, we promised that, but with
12 respect to ensuring acceptance of the full record by the
13 LUC, I don't think we did promise that or we would be
14 able to do that.

15 MR. ATTA: We can't ensure that LUC
16 will accept or won't accept the documentation. All we
17 can promise is that we'll give -- we'll transfer our
18 complete record to them.

19 COMMISSIONER HAZAMA: Okay.
20 Commissioners, any questions for Department or Director
21 at this time? I have a question regarding I guess that
22 recommendation three. Act 55 is not clear -- it's clear
23 to the requirement of providing the proof of financial
24 security, however, as far as the enforcement mechanism
25 for that to be provided, and who it gets provided to, the

1 act is not specific in that regard, is that true?

2 MR. ATTA: That's true.

3 COMMISSIONER HAZAMA: So Director, the
4 department is basically saying that, if I heard you
5 correctly, that you would rather -- that that's okay,
6 we'll be able to provide that proof to the department
7 prior to issuance of a permit.

8 MR. ATTA: No. What I said was that,
9 you know, we would expect that at the close of the
10 building permit, which would be the close of
11 construction.

12 COMMISSIONER HAZAMA: Oh, okay, prior
13 to inspection. Okay. That the applicant would be
14 required to provide proof.

15 MR. ATTA: It's just really a timing
16 issue. Whether they provide this before or after in a
17 way really doesn't matter because if the documentation
18 shows that they have the financial wherewithal, you know,
19 it really doesn't matter. It's really a timing issue as
20 far as we're concerned.

21 COMMISSIONER HAZAMA: Okay. I don't
22 think the current record is going to come back to the
23 commission, once we're done it will go to LUC and then
24 from there it will go its own way, so I think the
25 department would probably be the correct place for that

1 to occur rather than to bring it back to the planning
2 commission.

3 MR. ATTA: Right. I don't think that's
4 the intent, and for us it's okay if we just receive the
5 documentation, we'll record it. If the planning
6 commission wants to see that documentation, it will be
7 than more welcome to.

8 COMMISSIONER HAZAMA: Other questions?

9 COMMISSIONER HAYASHIDA: Just on
10 recommendation number one, George, how do you see
11 enforcement of that recommendation?

12 MR. ATTA: Number one?

13 COMMISSIONER HAYASHIDA: Yes.

14 MR. ATTA: This is the agricultural
15 use?

16 COMMISSIONER HAYASHIDA: Who's going to
17 do it and enforce it?

18 MR. ATTA: The state law is fairly
19 general in the sense that it only says that the applicant
20 is required to make it available, the land. Now, it
21 doesn't require, you know, them to do the ag, you know.
22 So if the land is made available at 50 percent of the
23 value or less, so that's all that is really required, I
24 think, but the understanding is they're going to make a
25 good faith effort to have an agricultural operation.

1 So, you know, as long as it's available
2 and they've said that they'll make a good faith effort,
3 and you know, in the annual reports that they're going to
4 come back to us, they would, I would presume, make a
5 description of their intents, what they did that year to
6 make the ag, and that's what we would be evaluating.

7 COMMISSIONER HAZAMA: I guess the
8 question is what happens if at the subsequent annual
9 report, that hasn't occurred?

10 MR. ATTA: Well, as long as the land is
11 available, and that means -- and just say they get no
12 takers, if -- the law just says that, you know, if they
13 make it available at a reasonable cost, 50 percent or
14 less, you can't force the market into that, that all the
15 land owner can do is just make it available. And as long
16 as they make it available, even if there is no ag
17 operation, that they're in compliance at that point as
18 long as, you know, they solicit bids to farmers and said
19 okay, this land is available at this price, they're
20 meeting the obligations of the law.

21 COMMISSIONER HAZAMA: Any other
22 questions for Department or Director? Thank you. At
23 this time I'll call the applicant and their agent.

24 MS. LIM: Good afternoon, Chair,
25 Commission. This is Jennifer Lim representing the

1 applicant, Waiawa PV, LLC with my associate, Onaona
2 Thoene, and you all know Wren Wescoatt from the last
3 hearing. Thank you for having us today.

4 Well, first of all, if I could just
5 take a minute to thank you to this commission for going
6 through a long hearing last time around and scheduling
7 this so quickly, I know that we told you that we really
8 are in a rush because of the tax credit, but we really
9 sincerely appreciate the quick and thorough deliberation
10 and we especially appreciate over the holidays that the
11 department was able to come out with a comprehensive and
12 really very solid report. And then on top of that,
13 yesterday almost at the last minute, we filed something,
14 and the department was able to review it and give
15 feedback on it today, and our appreciation is vast.

16 Everything the director said and that
17 Mr. Young said, we're in concurrence completely. I mean
18 the department's report was 99 percent perfect as far as
19 we were concerned, and the exceptions that we filed
20 yesterday, which it sounds as if the department is
21 totally comfortable with those few changes that Mr. Atta
22 and Mr. Young raised, we're in complete agreement with
23 all of that. So although I'd be happy to walk you point
24 by point through these exceptions, perhaps we can just
25 open ourselves up for questions if there's any.

1 COMMISSIONER HAZAMA: Any questions of
2 Applicant at this time? Yes.

3 COMMISSIONER SODARO: I think this is
4 just a typo, but on page four, insertion paragraph number
5 eight --

6 MS. LIM: Yes.

7 COMMISSIONER SODARO: In reference to
8 the third line from the bottom, record before January --
9 it says 2014, you meant 2015?

10 MS. LIM: You're correct.

11 COMMISSIONER SODARO: So we wanted to
12 make that change.

13 MS. LIM: Thank you.

14 COMMISSIONER SODARO: Okay.

15 MS. LIM: If I may, too, with respect
16 to Mr. Young's comment on page two, the reference on our
17 Roman numeral one, item one, Exhibit 2, that was actually
18 just the reference I believe that was in the director's
19 report on that line, and the only language that we were
20 changing was the acreage. But I don't dispute what
21 Raymond said, that that Exhibit 2 -- we were referring to
22 the Exhibit 2 that was in the director's original report.

23 To be really precise, I believe it's
24 our Exhibit 26 that shows a little carve out area for the
25 reservoir. I'm sorry, it's the applicant's Exhibit 24

1 actually that we filed on December 29, I believe, that
2 shows a small carve out box for the land that may be
3 conveyed back to Castle & Cooke for development of a
4 reservoir.

5 COMMISSIONER HAZAMA: Okay. Is there
6 any other questions for Applicant at this time? Okay.
7 Seeing none, I would like to open up the opportunity for
8 public testimony. Anyone wishing to testify before the
9 commission will do so at this time. Okay. Seeing no
10 one, do we have a motion to close public testimony?

11 COMMISSIONER TOLENTINO: So moved.

12 COMMISSIONER YOUNG: Second.

13 COMMISSIONER HAZAMA: Seconded. Any
14 objections? Any abstentions? Okay. Public testimony
15 has been closed in this matter.

16 COMMISSIONER SODARO: If I may, Chair,
17 may I ask for a motion to executive session?

18 COMMISSIONER HAZAMA: So moved.

19 COMMISSIONER YOUNG: Second.

20 COMMISSIONER HAZAMA: Moved and
21 seconded. Any objections? Abstentions? Okay. At this
22 time the commission will move to executive session in
23 order to consult corporate counsel on the rights,
24 privileges and responsibilities of the planning
25 commission. I ask the room be cleared at this time.

1 (Break from 1:45 p.m. to 2:03 p.m.)

2 COMMISSIONER HAZAMA: I'd like to call
3 the commission meeting back into order. At this time a
4 motion?

5 COMMISSIONER SODARO: Yes, Chair. I'd
6 like to offer a motion to the commission to approve the
7 matter at hand, noted as Central Oahu-State Special Use
8 Permit-2014/SUP-3(RY) Waiawa PV, LLC, subject to the
9 director's conditions submitted to the commission as then
10 amended by the applicant's exception filed January 6,
11 2015, as further modified by Director Atta and Planner
12 Raymond Young's statements today, January 7, 2015, and as
13 further modified by the planning commission in the
14 findings of facts, paragraph number eight, line six, of a
15 date correction from January 31, 2014 to January 31,
16 2015. I make a motion. Thank you, Chair.

17 COMMISSIONER HAZAMA: Thank you. May I
18 have a second?

19 COMMISSIONER TOLENTINO: Second.

20 COMMISSIONER HAZAMA: It has been moved
21 and seconded. Commissioners, any discussion? Seeing no
22 discussion, we will call for a vote. Any objections to
23 approving the motion as amended? Seeing no objections --

24 MR. WONG: As stated.

25 COMMISSIONER HAZAMA: As stated. Any

1 objections? Any abstentions? Okay. The motion passed
2 unanimously at this time. Seeing no other items on the
3 agenda, do I have a motion to adjourn?

4 COMMISSIONER PACOPAC: So moved.

5 COMMISSIONER YOUNG: Second.

6 COMMISSIONER HAZAMA: Moved and
7 seconded. Any objections? Oh, I'm sorry.

8 MS. LIM: Thank you, Chair and
9 Commissioners. Oh, sorry. Thank you, Chair and
10 Commissioners. If I could, just in order to keep to that
11 January 31 -- or actually I guess it actually needs to be
12 January 30, the Friday date to get the full record to the
13 Land Use Commission, I understand the court reporter can
14 have this transcript ready within five days or so. Will
15 this commission be meeting to approve the final
16 transcript?

17 COMMISSIONER HAZAMA: That's correct.

18 MS. LIM: Before January 30?

19 COMMISSIONER HAZAMA: Yes.

20 MS. LIM: Thank you very much.

21 COMMISSIONER HAZAMA: Okay. Any
22 objections to adjournment? Any abstentions? Okay. This
23 meeting is adjourned. Thank you very much.

24 (Meeting adjourned at 2:08 p.m.)

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C E R T I F I C A T I O N

I, SHIRLEY L. KEYS, Certified Shorthand Reporter of the State of Hawaii, do hereby certify that the foregoing is a true and correct transcript of the stenographic notes of the testimony taken by me in the above-captioned matter.

SHIRLEY L. KEYS, CSR #383

Dated: January 12, 2015

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