CITY AND COUNTY OF HONOLULU

PLANNING COMMISSION

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IN RE:

CENTRAL OAHU-STATE SPECIAL USE PERMIT-2014/SUP-3(RY)

WAIWA PV, LLC

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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
APPEARANCES:

Commissioners: DEAN I. HAZAMA, Chair
               KEN K. HAYASHIDA
               CORD D. ANDERSON
               KAIULANI SODARO
               DANIEL S.M. YOUNG
               JAMES C. PACOPAC
               ARTHUR TOLENTINO
               WILFRED A. CHANG

Counsel for City and County of Honolulu
Planning Commission:
               WINSTON WONG, ESQ.

For Applicant:  JENNIFER A. LIM, ESQ. and
               PUANANIONAONA P. THOENE, ESQ.
               Carlsmith Ball LLP
               ASB Tower, Suite 2100
               1001 Bishop Street
               Honolulu, Hawaii  96813
COMMISSIONER HAZAMA: Good afternoon and welcome to the meeting of the Planning Commission for January 7, 2015. The first item on our agenda is approval of our December 17, 2014 minutes, which were distributed to the commissioners. Any comments, corrections in the minutes?

COMMISSIONER TOLENTINO: Motion to approve.

COMMISSIONER HAZAMA: Motion to approve.

COMMISSIONER YOUNG: Second.

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

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

MR. YOUNG: Good afternoon, Chair.

Good afternoon, members of the planning commission. My name is Raymond Young, I'm the staff planner assigned to process this project. With me is the director of the department, George Atta, who will be speaking on behalf of the materials that were submitted recently by the
applicant, but generally I'll just go over what the report -- and the director's original recommendation was signed back on December 30.

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

Now, under Act 55 that was passed last year, solar energy projects, for which this is a form of, must obtain a special use permit if they exceed either ten percent of the parcel size or over 20 acres, and this project is -- at the time we received the application, was 313 acres, but you will see that the applicant has submitted some information indicating that they want to
remove a square piece where the reservoir is being proposed by the former land owner, and to be excluded from petition area, so that would drop it down to about 308 acres, and we have no objections to that, that just clarifies what the real petition area is for -- for the PV is needed for.

When we sent this application out, there was a lot of information that was included by the applicant, and it was sent out to various agencies, including the neighborhood boards, and of course the various organizations we thought that would be interested in commenting on the project.

We did get back comments from folks like the Department of Transportation, Airports Division, the Department of Agriculture, the State Land Use Commission staff, of course, Office of Planning and so on. And of course, the neighborhood board -- was sent to three various neighborhood boards that are located in and around the project site, and we did get responses -- well, at least one from I think it was Neighborhood Board 21 21 and 25, which supported the project, but 35, which is Mililani Mauka, I don't think we heard anything from them. But then again, we didn't get any opposition on this.

Essentially it's a 47 megawatt project,
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 &
Wildlife Service, and that's recommended by the agency.

And then there's number five, which is

the standard conditions that's required by rules, you

know, how long the commission would like to have them

have the project established by, so we thought two years

is a reasonable amount of time. And of course, if a

delay comes up for unforeseen circumstances, that they

will come back and ask for an extension.

And under standard conditions, the

annual report for a project of this magnitude and scale,

we ask that they submit one every year on the 31st.

Then the rest are pretty much standard

conditions with respect to changes and minor or major

changes for which either the director or the planning

commission will be responsible for making the call.

That's the conclusion of the report. Thank you.

COMMISSIONER HAZAMA: Okay. Director?

MR. ATTA: I guess what I wanted to do

is that the materials submitted by the applicant, I think

it was yesterday, I had a chance to look at it, and we

had a staff meeting this morning to go over the thing,

and I just wanted to present our position on that

material that was submitted.

Now, most of the changes are really

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

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

That gives us a definite time as to
when we can expect the documentation, so we would know,
since our inspectors would close the permit, we would
know if either at that point or one year after and, you
know, the start of commercial operations is something
that the applicant will be doing and we would not know
when to expect, so our preference is to have a more -- a
date that we would be clearly aware of.

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

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

MR. YOUNG: Also, can I add a couple comments with respect to this item that George was
referring to? On page two under application item one
where it refers to Exhibit 2, I think they were trying to
to refer to the maps showing that the area was being
reserved for the reservoir, but when you look at Exhibit
2, and correct me if I'm wrong, it actually refers to
Paul Luersen's curriculum vitae. I don't think that was
the intent there.

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

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

COMMISSIONER HAZAMA: Okay.

Commissioners, any questions for Department or Director
at this time? I have a question regarding I guess that
recommendation three. Act 55 is not clear -- it's clear
to the requirement of providing the proof of financial
security, however, as far as the enforcement mechanism
for that to be provided, and who it gets provided to, the
act is not specific in that regard, is that true?

MR. ATTA: That's true.

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

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

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

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

COMMISSIONER HAZAMA: Okay. I don't
think the current record is going to come back to the
commission, once we're done it will go to LUC and then
from there it will go its own way, so I think the
department would probably be the correct place for that
1 to occur rather than to bring it back to the planning
2 commission.
3
4 MR. ATTA: Right. I don't think that's
5 the intent, and for us it's okay if we just receive the
6 documentation, we'll record it. If the planning
7 commission wants to see that documentation, it will be
8 than more welcome to.
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10 COMMISSIONER HAZAMA: Other questions?
11 COMMISSIONER HAYASHIDA: Just on
12 recommendation number one, George, how do you see
13 enforcement of that recommendation?
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15 MR. ATTA: Number one?
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17 COMMISSIONER HAYASHIDA: Yes.
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19 MR. ATTA: This is the agricultural
20 use?
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22 COMMISSIONER HAYASHIDA: Who's going to
do it and enforce it?
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24 MR. ATTA: The state law is fairly
25 general in the sense that it only says that the applicant
26 is required to make it available, the land. Now, it
27 doesn't require, you know, them to do the ag, you know.
28 So if the land is made available at 50 percent of the
29 value or less, so that's all that is really required, I
30 think, but the understanding is they're going to make a
31 good faith effort to have an agricultural operation.
So, you know, as long as it's available and they've said that they'll make a good faith effort, and you know, in the annual reports that they're going to come back to us, they would, I would presume, make a description of their intents, what they did that year to make the ag, and that's what we would be evaluating.

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

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

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

MS. LIM: Good afternoon, Chair, Commission. This is Jennifer Lim representing the
applicant, Waiawa PV, LLC with my associate, Onaona
Thoene, and you all know Wren Wescoatt from the last
hearing. Thank you for having us today.

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

Everything the director said and that
Mr. Young said, we're in concurrence completely. I mean
the department's report was 99 percent perfect as far as
we were concerned, and the exceptions that we filed
yesterday, which it sounds as if the department is
totally comfortable with those few changes that Mr. Atta
and Mr. Young raised, we're in complete agreement with
all of that. So although I'd be happy to walk you point
by point through these exceptions, perhaps we can just
open ourselves up for questions if there's any.
COMMISSIONER HAZAMA: Any questions of Applicant at this time? Yes.

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

MS. LIM: Yes.

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

MS. LIM: You're correct.

COMMISSIONER SODARO: So we wanted to make that change.

MS. LIM: Thank you.

COMMISSIONER SODARO: Okay.

MS. LIM: If I may, too, with respect to Mr. Young's comment on page two, the reference on our Roman numeral one, item one, Exhibit 2, that was actually just the reference I believe that was in the director's report on that line, and the only language that we were changing was the acreage. But I don't dispute what Raymond said, that that Exhibit 2 -- we were referring to the Exhibit 2 that was in the director's original report. To be really precise, I believe it's our Exhibit 26 that shows a little carve out area for the reservoir. I'm sorry, it's the applicant's Exhibit 24
Actually that we filed on December 29, I believe, that shows a small carve out box for the land that may be conveyed back to Castle & Cooke for development of a reservoir.

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

COMMISSIONER TOLENTINO: So moved.

COMMISSIONER YOUNG: Second.

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

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

COMMISSIONER HAZAMA: So moved.

COMMISSIONER YOUNG: Second.

COMMISSIONER HAZAMA: Moved and seconded. Any objections? Abstentions? Okay. At this time the commission will move to executive session in order to consult corporate counsel on the rights, privileges and responsibilities of the planning commission. I ask the room be cleared at this time.
(Break from 1:45 p.m. to 2:03 p.m.)

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

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

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

COMMISSIONER TOLENTINO: Second.

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

MR. WONG: As stated.

COMMISSIONER HAZAMA: As stated. Any
objections? Any abstentions? Okay. The motion passed unanimously at this time. Seeing no other items on the agenda, do I have a motion to adjourn?

COMMISSIONER PACOPAC: So moved.

COMMISSIONER YOUNG: Second.

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

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

COMMISSIONER HAZAMA: That's correct.

MS. LIM: Before January 30?

COMMISSIONER HAZAMA: Yes.

MS. LIM: Thank you very much.

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

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

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.

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SHIRLEY L. KEYS, CSR #383

Dated: January 12, 2015