

CITY AND COUNTY OF HONOLULU

PLANNING COMMISSION

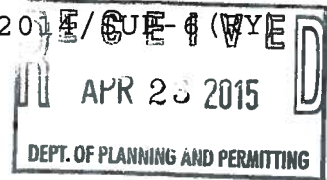
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IN RE:

NORTH SHORE-STATE SPECIAL USE PERMIT-2014/01E-01(VYE)

KAWAILOA SOLAR FARM



VOLUME II

CONTINUED PUBLIC HEARING

Taken in the Mission Memorial Conference Room, 550
South King Street, Honolulu, Hawaii, commencing at
1:33 p.m. on April 15, 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 DANIEL S.M. YOUNG

7 ARTHUR TOLENTINO

8 WILFRED A. CHANG

9

10 Counsel for City and County of Honolulu

11 Planning Commission:

12 JENNIFER WAIHEE-POLK, ESQ.

13

14 For Applicant: RANDALL F. SAKUMOTO, ESQ. and

15 MARGUERITE S. NOZAKI, ESQ.

16 McCorrison Miller Mukai

17 MacKinnon LLP

18 Five Waterfront Plaza

19 4th Floor

20 500 Ala Moana Boulevard

21 Honolulu, Hawaii 96813

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1 COMMISSIONER HAZAMA: Okay. Good
2 afternoon. I call the meeting of the planning commission
3 to order, Wednesday, April 15, 2015. First item on the
4 agenda is approval of commission minutes, regular meeting
5 minutes for December 3. Is there any corrections or
6 comments?

7 COMMISSIONER TOLENTINO: Move to
8 approve.

9 COMMISSIONER HAYASHIDA: Second.

10 COMMISSIONER HAZAMA: Move to approve,
11 seconded. Any objections? Any abstentions? Seeing
12 none, the meeting minutes for December 3 have been
13 approved. Meeting minutes for March 4, 2015, any
14 corrections or comments?

15 COMMISSIONER TOLENTINO: Move to
16 approve.

17 COMMISSIONER YOUNG: Seconded.

18 COMMISSIONER HAZAMA: Moved and
19 seconded for approval. Any objections? Any abstentions?
20 Okay. The meeting minutes for March 4 have been
21 approved. Regarding the meeting minutes for April 1, at
22 this time I'll call the department up.

23 MR. YOUNG: Thank you, Mr. Chairman.
24 My name is Raymond Young. I just want to make a minor
25 correction with the -- I guess the confirmation of Wren,

1 that's --- one of the wording that was -- looks like it's
2 out of context, so that's how I caught it. He said on
3 page 26 that so rather than create gates and gradings,
4 which is what the court reporter put down, I think he
5 meant gates and gratings, because it has to deal with
6 where animals cross.

7 MR. WESCOATT: Correct.

8 MR. YOUNG: Yeah. So it should be
9 gratings.

10 COMMISSIONER HAZAMA: Okay.

11 MR. YOUNG: And there was another page,
12 I'm not sure, and I checked with the speaker, which was
13 Bonnie at the time, on page 44, second line from the top,
14 there's a reference to an abbreviation ILSI. We don't
15 know what that is.

16 COMMISSIONER HAZAMA: ILSI. What page?

17 MR. YOUNG: 44, second line from the
18 top. If we had the tapes, we would kind of figure out
19 what it meant, what she stated. Neither Bonnie or myself
20 could figure it out.

21 COMMISSIONER HAZAMA: I think that's
22 probably IAL. Maybe that abbreviation should be IAL
23 instead of ILSI, so we'll make that addition.

24 MR. YOUNG: Okay.

25 COMMISSIONER HAZAMA: So any other

1 corrections or comments regarding the April 1 minutes?

2 Seeing none --

3 COMMISSIONER TOLENTINO: Move to
4 approve.

5 COMMISSIONER YOUNG: Seconded.

6 COMMISSIONER HAZAMA: Moved for
7 approval and -- moved and seconded. Any objections? Any
8 abstentions? Okay. The meeting minutes for April 1 have
9 been approved. Moving on to the next item on our agenda,
10 it's a continuation of public hearing. Oh, okay. Going
11 back, I'm sorry, we have to backtrack, there are
12 executive session meeting minutes for March 4 and April 1
13 as well. Motion to approve those?

14 COMMISSIONER TOLENTINO: Motion to
15 approve.

16 COMMISSIONER YOUNG: Second.

17 COMMISSIONER HAZAMA: Moved and
18 seconded. Any objections? Any abstentions? Okay, the
19 executive session minutes for March 4 and April 1 have
20 been approved. Thank you.

21 Moving on to public hearing
22 continuation, North Shore - State Special Use Permit -
23 2014/SUP-6, Kawaihoa Solar Farm, at this time I'd like to
24 call up the department. Proceed. Do you have any
25 additional comments or clarifications for the commission

1 at this time?

2 MR. YOUNG: My name is Raymond Young,
3 for the record. I'm a planner assigned the project.
4 With me is Bonnie Arakawa, my direct supervisor. We took
5 a look at the ag plan and we kind of had it quickly
6 reviewed, but we didn't have any objections. It wasn't
7 really something that our recommendation -- the
8 department's recommendation was asking for. We did have
9 it -- kind of cursory had it reviewed by staff over at
10 the Department of Ag, and we also kind of transmitted it
11 to the Office of Planning, but in general it kind of --
12 we think it kind of meets the intent of what you guys --
13 what the planning commission had recommended in extending
14 the hearing till today.

15 COMMISSIONER HAZAMA: Okay. Any other
16 clarifications or questions for the commission at this
17 time?

18 MR. YOUNG: No, we're open to comments
19 or questions if you have any.

20 COMMISSIONER HAZAMA: Okay.
21 Commissioners, any questions of the department at this
22 time? I just had one. In regards to director's
23 recommendation number one, the amount of time allowed
24 applicant between the operations of the solar company or
25 solar activity to the commencement of agricultural

1 operations is one year. Is there a specific reason why
2 it's a one year period versus any other time frame?
3 Either technology, technical kind of issues or --

4 MR. YOUNG: No, it's somewhat
5 arbitrary. The specific reference is -- says applicant
6 shall be actively seeking to have such operations
7 established within one year of start of commercial power
8 generation, but there is a provision for extension. So --
9 and it says extensions to this deadline may be granted by
10 the director of the DPP for unforeseen circumstances, so --

11 COMMISSIONER HAZAMA: Right.

12 MR. YOUNG: I mean if you feel that
13 that's too long or too short, you know, it's your, you
14 know, prerogative to make a change to that.

15 MS. ARAKAWA: I think the director of
16 Planning and Permitting felt that that was a reasonable
17 time frame.

18 COMMISSIONER HAZAMA: But it wasn't
19 because of any kind of technology or technical issue
20 regarding the operation of the solar facility.

21 MR. YOUNG: No, not at all.

22 COMMISSIONER HAZAMA: Just an arbitrary
23 statement. Okay. Commissioners, any other questions at
24 this time? Okay. Thank you.

25 MR. YOUNG: Thank you.

1 COMMISSIONER HAZAMA: At this time I
2 will call up the applicant and their agent.

3 MR. SAKUMOTO: Thank you, Mr. Chair and
4 commissioners. Randall Sakumoto and Marguerite Nozaki
5 for the petitioner, Kawaihoa Solar, and Wren Wescoatt,
6 the development director.

7 COMMISSIONER HAZAMA: Good afternoon.

8 MR. SAKUMOTO: Good afternoon. We, as
9 you noted, did submit at the commission's request an ag
10 plan for the sheep grazing operation. It was also
11 requested, I think at the end of the meeting, that we
12 submit a backup plan in the event the sheep grazing
13 doesn't work or doesn't work to the extent that we hope
14 it will. So in that regard, we submitted a plan for
15 beekeeping, which was one of the other alternative ag
16 uses that we said we think would work on this property.

17 We submitted it on Monday. It was a
18 lot of information, a lot of work went into both reports.
19 I don't know whether the commission has had time to
20 digest all of that information. If the chair pleases,
21 I'm happy to try and provide a summary, if that would
22 help, of the two plans.

23 COMMISSIONER HAZAMA: Okay. Proceed.

24 MR. SAKUMOTO: Thank you. The sheep
25 grazing plan was put together with input from

1 representatives of Kualoa Ranch, as well as other local
2 ranchers who have experience in sheep grazing, as well as
3 managing large ranching operations of this scale, and
4 with us today is Daryl Kaneshiro, who flew in from Kauai.
5 He actually is running a sheep grazing operation on
6 Kauai, which is very similar to the one which we intend
7 to implement on the north shore. He's doing it in
8 connection with the KIUC, Kauai Island Utility Co-Op on
9 Kauai, so he's here as a resource. You know, we don't
10 pretend to be experts in this area, but we brought an
11 expert with us in case the commission has specific
12 questions about the logistics of how this would work.

13 Just generally, what's in our materials
14 is that a reasonable estimate for the number of sheep to
15 pasture would likely fall within the range of 400 to 500
16 on the subject property. Initially, Kualoa Ranch
17 proposes to start with a flock of 200 sheep and then
18 expand from there as needed to an optimal level. As
19 noted in the last meeting, to insure that the grass is
20 not over grazed, the sheep rancher would utilize a
21 controlled grazing system, which involves a schedule for
22 rotating the herd from one paddock to another.

23 The total project site will be
24 separated into several pastures of varying sizes with
25 fixed or unmovable fencing of posts and hog wire or

1 similar construction. Within those pastures, the herd
2 will be contained within smaller paddocks created by
3 movable electrified fences. The total site would likely
4 be divided into 30 paddocks of approximately twelve to 15
5 acres each, and the rotation would depend upon a number
6 of factors, but generally it would take place once or
7 twice a week.

8 In terms of water, we noted there sheep
9 generally consume about a half gallon to two gallons of
10 water per day while grazing. Some of that water
11 consumption would come through eating wet forage, some of
12 it would come through the use of water troughs, and you
13 know, we noted there that water troughs are movable
14 throughout the paddocks and can help distribute the sheep
15 to different parts of the paddock. That's all we have.
16 That's a summary of the sheep grazing.

17 In terms of the beekeeping, the plan
18 was put together by Dr. Steve Montgomery, who's a
19 renowned entomologist and has about 50 years of
20 experience in beekeeping, along with Mr. Yuki Uzuhashi,
21 who's the owner of Manoa Honey Company. Mr. Uzuhashi
22 currently farms over 200 colonies on Oahu. He's been a
23 beekeeper on a commercial scale since 2004, both in the
24 United States and in Japan..

25 In terms of the proposed operation if

1 we were to use beekeeping here, it turns out that this
2 property has a number of characteristics very favorable
3 to commercial bee hives. One, there's sufficient flat
4 land to place the hives in small clusters; two, the
5 access to the hives by vehicles is -- is something that
6 could be done because of the road system, so the vehicles
7 could transport the hives up and down the road, as well
8 as the products, the honey products and honeycomb created
9 by the bee hives. These hives would be secured on this
10 site from tampering by the public, and there's sufficient
11 natural vegetation in this area to provide bees with
12 access to pollen and nectar from flowering plants.

13 Approximately 20 hives would be moved
14 to the site initially, and as the beekeepers become more
15 familiar with the site and work out some logistics, it's
16 possible that they could have as many as 50 hives on this
17 property. A certain amount of maintenance is necessary
18 for the hives to insure that the bees remain healthy, and
19 it's estimated that a beekeeper would have to go up to
20 the site about once every two to four weeks. The bees
21 need nectar, pollen and water throughout the year, and
22 according to the experts, this property provides all of
23 those resources. So that's in a nutshell our two plans
24 that we submitted.

25 COMMISSIONER HAZAMA: Okay.

1 Commissioners, any questions for applicant at this time?
2 Can I call upon Mr. Kaneshiro? He came all the way here
3 from Kauai.

4 MR. KANESHIRO: Thank you, Mr. Planning
5 Commissioner Chair, and I applaud the rest of the
6 commissioners for your volunteerism. I'm not sure if
7 most of you know, but I was -- I did serve politically
8 for over twelve years on the Kauai County Council, and
9 more recently -- and I retired in 2010, and I served as
10 the chair of the Board of Water Supply on Kauai. Now I
11 spend my full time on the ranch, and the concept has
12 worked for me.

13 Besides that, we run cattle, sheep, we
14 have the largest hog farm in the State of Hawaii. I
15 also, believe it or not, have a solar farm. It's not a
16 very large solar farm, it's one of the smallest, but we
17 were one of the first that started a solar farm in the
18 island of Kauai. And I have a 300kw that supplies all
19 the power to 192 homes. Again, it's not a very large
20 solar plant, there's other solar plants on the island,
21 only three that sign purchase power agreements with KIUC.
22 I happen to be one of them. I don't know if I had pull
23 or something or I was a former council member so they
24 allowed me to do one, but at the same time, there's one
25 on Kauai that was six megawatt, and there's another one

1 called Kapaa Solar that does own a 1.2 megawatt.

2 And the board got pretty smart, KIUC
3 board. They said you know what, I think we're going to
4 do our own, so they did. KIUC did their own solar plant,
5 it's a 12 megawatt solar plant located in Koloa. And so
6 they came out with an RPF to maintain the grounds. They
7 said, you know, we got to get somebody to maintain the
8 grounds because it's a great idea, instead of just
9 spreading it on the ground, that we can control the
10 erosion in some way, and grass is going to do that.

11 So I said -- my son, who's now a
12 council member, believe it or not, I don't know why he
13 did that, but he is, he was recently back, came up to me
14 and said dad, you know, we got to go and bid on this
15 project. And I said why? I'm retired. I'm really
16 retired. And I have around 500 head of sheep on my
17 ranch, and I have been out there on my own solar plant,
18 even though it's only a couple acres, weed eating, and
19 boy, let me tell you, at my age, it's damn hard work, and
20 we're talking really small acres. So I came up with this
21 great idea of putting sheep in there so I don't have to
22 weed eat too much anymore. I don't have to burn fossil
23 fuel too much anymore. I don't have to worry about
24 cracking the glass or the PV panels. I said throw some
25 sheep in there and see how they do. They did well,

1 believe it or not, they did really well.

2 Today we own a five year contract with
3 KIUC to maintain their 67 acre twelve megawatt solar
4 plant on the island of Kauai. There's another RFP coming
5 out very shortly for another owner, so the plant will be
6 built on Hawaiian Homes lands, and my son said maybe you
7 should try to bid on that. I said oh, man, give me a
8 break, you know, I'm really retired. But we've been
9 doing that, we've been doing it successfully on Kauai and
10 it's working. It's working real well. KIUC are very
11 pleased with what we're doing.

12 It was -- when we first got in, when we
13 were awarded the contract, as you know, KIUC just
14 basically opened SolarCity in September last year, they
15 opened a solar facility. We had gone in and it was
16 really hard work, let me tell you something, guys, I
17 hired people -- I hired guys to come out with machines, I
18 had people in there weeding eating, and you got to weed
19 eat with something special, you can't use those weed
20 eaters that go ba ba ba ba, and fly rocks all over the
21 place. You got 46,000 panels right there, so you've got
22 to go in with a special type of weed eater. It's tedious
23 work because now you start using hedge trimmers. Hedge
24 trimmers only can go certain way, you cannot go whacking
25 all over the place. So we did that. I had a lot of guys

1 quit on me. But, you know, that was a start. I had to
2 get the grounds to a point that I was satisfied and ready
3 to bring my sheep in. And now since then, I put in 250
4 head of sheep in there.

5 I did all the fences very similar to
6 what Mr. Sakumoto talked about, very similar way, I
7 rotate every week, and it's been really working for us.
8 And I have a proven record that it worked on my 300kw
9 solar plant. Even though it's a small one, we're still
10 doing it today, and I started that in 2012. So you know,
11 concept sometimes seemed pretty out of line, but in
12 reality, you know, I'm doing it. I'm doing it today, so
13 five year contract, we're hoping that maybe we can get
14 the other contract out in Anahola to also do the same
15 thing. So I'm open for questions.

16 COMMISSIONER HAZAMA: Thank you.

17 Commissioners, any questions for Mr. Kaneshiro?

18 COMMISSIONER HAYASHIDA: Mr. Kaneshiro?

19 MR. KANESHIRO: Yes, sir.

20 COMMISSIONER HAYASHIDA: How many head
21 of sheep do you slaughter yearly or monthly?

22 MR. KANESHIRO: Do I --

23 COMMISSIONER HAYASHIDA: Slaughter or
24 bring to market?

25 MR. KANESHIRO: It varies. I am very

1 particular about my market because I'm -- we do
2 specialties, so my main market is Merriman's on the
3 island of Kauai. It's a high end market, but we also
4 sell a lot of sheep to the ethnic groups, where
5 individuals who buy sheep, or people that want to do the
6 same thing like I do, use the sheep for mowing. So, you
7 know, it varies, but reasonably with the plan, they can
8 move -- they can move pretty much sheep and really
9 stimulate the island of Oahu, because I have people that
10 fly over from Oahu to really come and buy sheep where we
11 take it to our local slaughterhouse, and of course the
12 ethnic group will come, pick a sheep out and bring it
13 back with them on barges. Can you imagine that? So I
14 believe there's a great market for it, because I don't
15 think there's any -- any sheep ranch here or sheep farm
16 in Oahu.

17 So it varies. You know, I think the
18 plan points out for about 20 to 30 possibly a week or
19 something like that or even -- so, you know, based on the
20 average per head sheep, it's good money for a farmer or
21 rancher. Plus, you know, he might charge these guys and
22 get paid to run the sheep in there, so that helps him,
23 you know, to continue doing ag.

24 And just as an example, I just saw part
25 of his plan, our A land, I didn't realize that, but

1 there's some nice A land designated areas here. Those
2 areas will be perfect to also keep their sheep or even
3 work your sheep, bring out the sheep from the solar plant
4 itself. You can have year round sheep at the solar
5 plant, but you got to put them someplace to work them.
6 You got to dock them, you got to castrate them, you got
7 to take out the ones that you know are ready for the
8 market. The A land there serves the purpose. It's the
9 perfect place to do something like that in an area like
10 that. So looking at -- looking at the area itself, you
11 know, just overall, that's a pretty cool place. I may
12 want to move my operation here to Honolulu.

13 COMMISSIONER HAZAMA: Okay, thank you.
14 Commissioners, any other questions at this time? Okay,
15 thank you very much.

16 MR. KANESHIRO: Thank you.

17 COMMISSIONER HAZAMA: At this time I'll
18 call up any representatives from the Department of
19 Agriculture. Anybody from DOA?

20 MR. YAMAMOTO: We are prepared to --

21 COMMISSIONER HAZAMA: I won't ask you
22 for presentation, just reference for questions. Good
23 afternoon, Mr. Yamamoto.

24 MR. YAMAMOTO: Good afternoon. Earl
25 Yamamoto, Department of Agriculture.

1 COMMISSIONER HAZAMA: Yes. The reason
2 I called you up is the applicant's package, the
3 Department of Agriculture submitted comments regarding
4 this project, this specific project regarding the solar
5 farm, and they had raised some concerns regarding the use
6 of this IAL land specifically. So can you kind of expand
7 a little bit or explain something a little bit more to
8 the commissioners what the department's concerns were
9 regarding the IAL?

10 MR. YAMAMOTO: Yes. This project, the
11 special use permit before you is the first special use
12 permit on important agriculture lands that are designated
13 by the Land Use Commission. Thus far, about -- there's
14 about 100 -- thank you, 101,000 acres statewide. And the
15 reason why we're concerned is as expressed in our letter
16 to DPP, the Department of Planning and Permitting, is
17 that while it's -- first, we would like -- we kind of
18 want to hold it to a higher standard than what is
19 currently the case with special use permits on regular
20 agricultural land, because important agricultural lands
21 are supposed to be receiving incentives for existing
22 agricultural uses.

23 It's representative of our -- or has
24 the capacity for more -- being more productive, so -- and
25 that's just a couple of the criteria used to identify

1 important agricultural lands, so we want to hold that to
2 a higher standard. It's not a requirement in law, state
3 law. It's just -- it's just something that we wanted to
4 push forward, and I recommend in our one recommendation
5 about insuring that the agricultural use of it be in
6 existence for the duration of the operation of the solar
7 energy facility. So that's where we're coming from.

8 COMMISSIONER HAZAMA: Okay. Any
9 questions for Department of Ag? One of the issues that
10 the commission was wrestling with with regards to this
11 application was the fact that Act 55 basically controls
12 the use of renewable energy projects on ag land. Act 205
13 covers a little bit of the IALs as far as -- but there's
14 no real I guess time between the two in regards to -- as
15 far as 205 anyway, in regards to what conditions are in
16 regards to these projects on IAL land, so I mean what was
17 the intent of your department as far as Act 55 and 205?

18 MR. YAMAMOTO: You know, it was Act 55
19 we always -- we're always scratching around for things
20 that promote agricultural resources and activities,
21 because there's nobody speaking on behalf of it. One can
22 look at individual farmers, but a lot of them are too
23 busy, they don't necessarily speak English, so there's no
24 one speaking on behalf of the farming community or the
25 resources, of course, they're silent. It's agricultural

1 land and water.

2 So we -- and since we have no statutory
3 authority in agricultural land other than the lands that
4 are under our control, we need to be as -- I don't want
5 to use the word creative, but we search everywhere, so we
6 look at the purpose and intent of Act 55, which
7 emphasizes local food production as one of the
8 expectations. One of the -- the purpose of that bill
9 that allows for a special use permit for solar energy
10 facilities when they exceed the conditions expressed in
11 Chapter 205.

12 So with that in mind, then we -- and
13 that's how we develop our argument that we expect
14 something more. Again, there's no -- we checked
15 everywhere throughout 205, and a lot of the amendments in
16 205, Chapter 205 I'm speaking of, and the -- all the
17 legislation that has amended Chapter 205 with respect to
18 permissible uses on agricultural land, we looked at that.
19 We looked at the committee reports that the legislature
20 issues after every decision that they make, we're looking
21 for guidance and support for agricultural lands and
22 agricultural resources, and in this case we did just that
23 and came to the conclusion that we did in our letter to
24 the Department of Planning and Permitting.

25 With respect to your -- the question

1 about the land or maybe coincidence between important
2 agricultural land uses, permitted uses on IAL versus the
3 uses permitted on regular agricultural land, there is no --
4 there's no boundary, there's no identified uses, or yeah,
5 no specific identified uses on important agricultural
6 lands that are any different from regular agricultural
7 land. Correct me if I'm wrong back there.

8 So that's -- it can become an issue
9 like in this particular case where one wonders why --
10 like we pointed out again in our letter of why D --
11 lesser quality lands, A, B, C, D and E, on D and E lands,
12 solar energy facilities are permitted without any further
13 state review, but on B rated lands, then we have a
14 special use permit requirement, so we emphasize the use
15 of D and E lands before considering B rated lands.

16 COMMISSIONER HAZAMA: B and A.

17 MR. YAMAMOTO: Yes, and A.

18 COMMISSIONER HAZAMA: Any questions for
19 the department, Commissioners? I don't know what the
20 department's intending, but I know that Act 55 is
21 relatively new as far as enacted legislation, but if the
22 department and the State's intent is to hold the IAL
23 lands at a higher standard, then they need to go back to
24 the State's report on ag issues.

25 To be more specific, I mean as a

1 commission, we look at what we can look at as what the
2 law states, and we've been through situations where the
3 law's not specific or not clear, it's very ambiguous as
4 far as, you know, certain situations, and it doesn't
5 really help us out, especially when we are dealing with
6 projects that are kind of like the first time
7 experiencing this application. Okay. All right. Thank
8 you, sir. I appreciate it.

9 MR. YAMAMOTO: You're welcome.

10 COMMISSIONER ANDERSON: Chair, I make a
11 motion to move to executive session.

12 COMMISSIONER HAZAMA: Okay. It's been
13 moved.

14 COMMISSIONER TOLENTINO: Seconded.

15 COMMISSIONER HAZAMA: Moved and
16 seconded. Any objections? Any abstentions? Okay, at
17 this time the commission will move into executive session
18 to confer with corporation counsel on the duties, roles
19 and responsibilities of the planning commission. I ask
20 that the room be cleared at this time.

21 (Break from 2:04 p.m. to 2:15 p.m.)

22 COMMISSIONER HAZAMA: Okay. Thank you
23 for your patience. I call the meeting back into order.

24 COMMISSIONER ANDERSON: Chair, I'd like
25 to make a motion. I'd like to make a motion to approve

1 the North Shore - State Special Use Permit - 2014/SUP-6,
2 Kawaihoa Solar Farm, with the following conditions. If
3 at any time during the term of the SUP no compatible
4 agricultural operations exist on the usable lands of the
5 Petition Area for six months, the Applicant shall notify
6 the Commission and the Director of the DPP in writing
7 within 30 days of the end of the six-month period. The
8 Applicant shall attend a meeting of the Commission and
9 submit a report to the Commission detailing the
10 Applicant's actual and reasonable efforts to actively
11 seek the establishment of compatible agricultural
12 operations on the usable lands of the Petition Area. The
13 Commission shall determine whether probable cause exists
14 to reevaluate the SUP and to hold a hearing pursuant to
15 Section 2-49 of the Planning Commission Rules.
16 Extensions to the six-month deadline may be granted by
17 the Planning Commission for unforeseen extenuating
18 circumstances.

19 And I also make one additional revision
20 so they align. Usable lands of the Petition Area,
21 including areas under PV panels, shall be made available
22 for compatible agricultural use at a lease rate that is
23 at least 50 percent below the fair market rent for
24 comparable properties, as long as the Project is in
25 operation. Compatible agricultural operations shall be

1 established, or Applicant shall be actively seeking to
2 have such operations established, within six months of
3 the start of commercial power generation. Extensions to
4 this deadline may be granted by the Director of the DPP
5 for unforeseen extenuating circumstances.

6 COMMISSIONER HAZAMA: Thank you. I
7 have a motion. Do we have a second?

8 COMMISSIONER YOUNG: Seconded.

9 COMMISSIONER HAZAMA: Motion has been
10 seconded. Commissioners, we are in discussion. Any
11 discussions or comments?

12 COMMISSIONER ANDERSON: I just want to
13 make it clear that the second revision was just to make
14 them align appropriately, six months versus six to twelve
15 months.

16 COMMISSIONER TOLENTINO: I have a
17 question for the applicant.

18 COMMISSIONER HAZAMA: Applicant, come
19 up, please.

20 COMMISSIONER TOLENTINO: You've heard
21 the motion. And my question to the applicant, are you
22 okay with the two additions or recommendations with the
23 motion?

24 MR. SAKUMOTO: I think we're okay with
25 it. I'm not sure I heard all of the language, but from

1 what I recall, it sounded okay. If maybe you could
2 reread the first one, that -- that would be very helpful.
3 Thank you.

4 COMMISSIONER HAYASHIDA: I think we're
5 really looking for like a good faith effort to establish
6 agricultural uses since this is important agricultural
7 lands.

8 COMMISSIONER HAZAMA: Are you almost
9 done evaluating?

10 MR. SAKUMOTO: I'm sorry. Yeah, if
11 maybe just one minute, or five minutes with my client to
12 just converse. The question that I think we're trying to
13 be sure we can tell you comfortably we're okay with is --
14 I mentioned this like in the last time, that there are
15 periods of time where let's say one operation fails and
16 we need to bring in another one. So there's a transition
17 period to, you know, bring in a new farmer, a new
18 rancher. Whether that period is six months or longer
19 than six months, I want to be sure that I can tell you
20 it's where it is. I think obviously we would need to be
21 actively seeking another use during that time and not
22 just sitting back.

23 COMMISSIONER HAZAMA: It's also
24 extendable, too.

25 MR. SAKUMOTO: Right.

1 COMMISSIONER HAZAMA: The six month
2 period is extendable.

3 MR. SAKUMOTO: Right. So you know --

4 COMMISSIONER HAZAMA: You know, we'll
5 give you five minutes.

6 MR. SAKUMOTO: Okay. Thank you.

7 COMMISSIONER HAZAMA: Commissioners,
8 any objections to a five minute recess? Okay. We'll be
9 in recess for five minutes.

10 MR. SAKUMOTO: Thank you.

11 (Break from 2:20 p.m. to 2:25 p.m.)

12 COMMISSIONER HAZAMA: Okay, I call the
13 meeting back to order. Do you have any further comments?

14 MR. SAKUMOTO: Thank you, Mr. Chair.
15 Thank you for giving us time to confer. The only comment
16 we have here is in the second sentence, which says the
17 applicant shall attend a meeting of the commission and
18 submit a report to the commission, et cetera, I think if
19 you inserted the phrase if requested by the commission
20 the applicant shall attend a meeting, then that would
21 probably logistically make more sense. Otherwise, it
22 sounds like we'd have to send in the notice that we
23 didn't have the ag for six months and then attend the
24 meeting. I think if we sent a notice detailing the
25 explanation and if the explanation is unsatisfactory, the

1 commission is free to request us to attend, and at your
2 request, we'll attend.

3 COMMISSIONER HAZAMA: Again, after the --

4 MR. SAKUMOTO: So if before the phrase
5 the applicant shall attend, I think if you inserted the
6 phrase if requested by the commission.

7 COMMISSIONER HAZAMA: Okay. If
8 requested by the commission. Okay. Commissioners, any
9 questions for applicant? That's the only --

10 MR. SAKUMOTO: That's the only
11 requested change. Thank you.

12 COMMISSIONER HAZAMA: Department, do
13 you have any comments?

14 MR. YOUNG: Thank you very much,
15 Mr. Chair. This is Raymond Young. Yes. We discussed
16 the proposed condition with our deputy and our
17 management, and we are concerned that this will -- this
18 project will extend for some what, 35 years, and of
19 course, we cannot anticipate what might happen, you know,
20 that long out. So if in the event that there are some
21 circumstances that this condition may want to be, you
22 know, modified and no longer applicable, is there a way
23 we can have the commission just at that point in time
24 where it's no longer applicable drop it without going
25 through the entire process of going through, you know --

1 like what we do now. The rules, the way the rules read,
2 any time you want to modify a condition, you're going to
3 have to come back to the planning commission, you have to
4 have agency review, we got to send it out for comments
5 and all that. It's a long, drawn out process.

6 So if some point in the future this
7 condition is no longer applicable or it needs to be
8 modified, perhaps we could write it into the way the
9 condition is written that we can just have perhaps a
10 shorter way to do that without taking it through the
11 entire process.

12 COMMISSIONER HAZAMA: Well, I guess --
13 any questions? I had already pointed that in the
14 director's report, you state as one of your conditions
15 that if the project has any changes to it, they have to
16 come back. So I am trying to -- I'm trying to understand
17 is what situation this condition no longer applied in the
18 future.

19 MR. YOUNG: Well, it's not something we
20 can anticipate at this point. Let's say you wanted to
21 change that time frame, for example.

22 COMMISSIONER HAZAMA: Okay. Sure.

23 MR. YOUNG: It's a minor change, but
24 we'll have to go through the entire process, for example.

25 COMMISSIONER HAZAMA: Well, no, because

1 the condition states that the time frame is extendable.

2 MR. YOUNG: But if you wanted to change

3 COMMISSIONER HAZAMA: We couldn't
4 shorten it, we couldn't shorten it, that's true, we could
5 not shorten it to less than a six month period as the
6 condition is stated. We could extend it beyond six
7 months, but we couldn't shorten it to shorter than a six
8 month period. But I -- I'm assuming that that wouldn't
9 be necessarily practical for the applicant anyway.

10 MR. YOUNG: So the way the rules read,
11 any modifications to any of the conditions require it
12 come back through the whole process. So even if you
13 shorten it or extended it, the way the rules read, we'll
14 still have to go through the entire process, so it's a
15 big burden for all of us.

16 COMMISSIONER HAZAMA: So I guess I'm
17 trying to just kind -- so if the condition says that the
18 time frame is extendable by the commission, you're saying
19 that if we extend that -- we decide in the future to
20 extend that time frame, that they would have to come back
21 through the process again?

22 MR. YOUNG: Yes, because you're setting
23 it at six months.

24 COMMISSIONER TOLENTINO: What would the
25 word reasonable do instead of six months? I'm just --

1 just a question.

2 MR. YOUNG: Rather than using a
3 specific time frame?

4 COMMISSIONER TOLENTINO: Rather than
5 having a six month.

6 MR. YOUNG: I think the condition is
7 partly covered under the annual reporting. So on
8 December 31 of each year, they would have to report to
9 the planning commission via the planning department,
10 their status on complying with the requirements for
11 establishing a compatible agriculture use, so at that
12 point when it comes in and we think that, you know, it's
13 not really addressing the intent, we could raise it with
14 the applicant, and if that's not satisfactory, we can
15 raise it with the planning commission, and that happens
16 every year.

17 COMMISSIONER TOLENTINO: Is that with
18 the word reasonable?

19 COMMISSIONER HAZAMA: I guess my
20 problem with that is in regards to SUPs, the commission --
21 I guess between the commission and the land use -- the
22 LUC, those are the agencies involved in SUPs. Correct me
23 if I'm wrong, but the director doesn't have the authority
24 to then reevaluate a SUP.

25 MR. YOUNG: That's correct, but --

1 COMMISSIONER HAZAMA: And my second
2 question is your condition number one, basically we're
3 revising it to six months, which is fine, but you have
4 one year. So along your train of thoughts go, if for
5 example, and it says extendable by the director for
6 extenuating circumstances as well, so likewise then, if
7 they exceed it here before they start the ag, would they
8 have to then come back again through the commission,
9 because it is a condition that the department wanted.

10 MR. YOUNG: Let me see that. So you're
11 suggesting perhaps we allow the director to be the agency
12 to allow the extension to the six months?

13 COMMISSIONER HAZAMA: No, no. Your
14 previous statement was any time the time frame gets
15 extended or shortened, that would be considered a change
16 in condition that would have to then reappear before the
17 commission. But the director's report is condition one
18 as a twelve month time frame extendable by the director.
19 If he, for example, extends it beyond twelve months, or
20 has to for whatever reason, then does that also
21 constitute a change in the condition which would have to -

22 MR. YOUNG: No, you're right, it
23 doesn't. It just puts the onus on the planning
24 commission to go through that process.

25 COMMISSIONER HAZAMA: And I think one

1 of the reasons why we did that is because we're aware
2 that the director doesn't have purview of the SUP. So
3 hypothetical situation, I'm not talking about what --
4 let's say the applicant comes for an IAL project and he
5 has a plan and he states that he's going to do
6 agricultural activity, he stops it after the first two
7 years and he never starts anything up again. Okay. Then
8 the commission, then we would like a way, because it's
9 IAL land, to be able to reevaluate that and somehow
10 insure that agricultural activities continue on this
11 property. That's just, I guess, giving us a mechanism to
12 be able to, if something happens, to be able to insure
13 that the applicant -- the applicant and future applicants
14 understand that because of the type of land that it's on,
15 IAL land, that we must maintain some kind of agricultural
16 component to the project.

17 MR. YOUNG: Right. Perhaps if I could
18 suggest instead of the -- it will try to address this
19 issue. Under the director's condition number six, we're
20 asking for a one year annual report to be submitted to
21 the director. Perhaps that could be changed to six
22 months for the first maybe five years or something like
23 that to be submitted to both the director and the
24 planning commission, rather than have something to that
25 extent. Would that be a better compromise? Since we're

1 asking for an annual report anyway, we'll make it
2 semi-annual.

3 COMMISSIONER HAZAMA: Okay, but --

4 MR. YOUNG: Rather than have something
5 like that, because what I'm trying to do is trying to
6 avoid having the planning commission do all that work,
7 you know.

8 COMMISSIONER HAZAMA: Well, I guess the
9 only -- the only condition that the planning commission
10 would have to get involved again is if the activity stops
11 and the applicant cannot produce to the commission's
12 satisfaction a reason why that cannot be extended or a
13 reason for stopping or ceasing agricultural activities on
14 the land. That would be the only time the commission
15 would get involved at the end.

16 You know, they could come -- if you're
17 worried about the time frame, it's extendable, so they
18 could submit a report to the commission saying, you know,
19 we had a problem with a farmer, and he no longer wants
20 operations, or we're actively seeking all these other
21 farmers to fill in, and the commission is satisfied with
22 that, then that's fine. We just read the report and go
23 forward.

24 What happened -- what happens though if
25 the applicant -- an applicant doesn't, you know, doesn't

1 make a reasonable effort to maintain the agricultural
2 component, so that's kind of like the crux of it.

3 MR. YOUNG: Understood.

4 COMMISSIONER HAZAMA: Of the condition.
5 So there's no -- with the applicant's insertion of
6 language, there's nothing that automatically retriggers
7 the hearing before the commission. The commission will
8 then, like I said, evaluate either the annual report and
9 the applicant's report, and then at that point they're
10 not satisfied, then the commission has the option to
11 reconvene another hearing. And obviously, I'm not going
12 to talk with the other commissioners, we also want to
13 avoid that. But we also want to send a message regarding
14 projects on IAL lands that is of the most importance,
15 that they must maintain agricultural component in order
16 to do the project.

17 Commissioners, any questions?
18 Department have anything else?

19 MR. YOUNG: No, not at this time.

20 COMMISSIONER HAZAMA: Okay. Thank you.
21 Well, first of all -- before I hear the motion, do you
22 have any objections to the applicant's revision?

23 COMMISSIONER ANDERSON: No.

24 COMMISSIONER HAZAMA: Okay. If you can
25 just restate the first part of the motion.

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COMMISSIONER ANDERSON: Just restating the first condition, if at any time during the term of the SUP no compatible agricultural operations exist on the usable lands of the Petition Area for six months, the Applicant shall notify the Commission and the Director of the DPP in writing within 30 days of the end of the six-month period. If requested by the commission, the Applicant shall attend a meeting of the Commission and submit a report to the Commission detailing Applicant's actual and reasonable efforts to actively seek the establishment of compatible agricultural operations on the usable lands of the Petition Area.

COMMISSIONER HAZAMA: Thank you. The rest of it remains the same. Is there a second on the --

COMMISSIONER TOLENTINO: I second it.

COMMISSIONER HAZAMA: Moved and seconded with the changes. Commissioners, any additional discussion? Okay. Commissioners, all those in favor of the motion on the floor say aye.

THE COMMISSIONERS: Aye.

COMMISSIONER HAZAMA: Any objections? Any abstentions? Okay. The motion is passed. Thank you very much. At this time, Commissioners, there are no other items on the agenda. May we have a motion for adjournment?

1 COMMISSIONER TOLENTINO: Motion.

2 COMMISSIONER ANDERSON: Seconded.

3 COMMISSIONER HAZAMA: Moved and
4 seconded. Any objections? Any abstentions? This
5 meeting is adjourned. Thank you very much.

6 (Meeting adjourned at 2:39 p.m.)

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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: April 21, 2015