TRANSMITTAL LETTER

VIA HAND-DELIVERY

To: C&C of Honolulu, Dept. of Permitting and Planning
   Attn: Planning Commission/Gloria Takara
   650 S. King Street, 7th Floor
   Honolulu, HI 96813

Date: June 2, 2015

From: Randall F. Sakumoto

Re: North Shore – State Special Use Permit – 2014/SUP-6 (RY)
    Kawaiola Solar Farm

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TRANSMITTED FOR:

- [ ] Your Information
- [ ] Your Signature and Return
- [ ] Your Signature and Forwarding as Noted Below
- [ ] Per Our Conversation
- [ ] Your Further Necessary Action
- [ ] Your Approval
- [ ] Your Review and Comment
- [ ] Per Your Request
- [ ] SEE REMARKS BELOW

IF YOU HAVE ANY QUESTIONS, PLEASE DO NOT HESITATE TO CALL.

REMARKS: Attach is the transcript with the original signed certification submitted from Ralph Rosenberg’s office.
CITY AND COUNTY OF HONOLULU
PLANNING COMMISSION

IN RE:
NORTH SHORE-STATE SPECIAL USE PERMIT-2014/SUP-6(RY)
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

RALPH ROSENBERG COURT REPORTERS, INC.
Honolulu, HI (808) 524-2090
APPEARANCES:

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

Counsel for City and County of Honolulu  
Planning Commission:  
JENNIFER WAIHEE-POLK, ESQ.  

For Applicant:  RANDALL F. SAKUMOTO, ESQ. and  
MARGUERITE S. NOZAKI, ESQ.  
McCorriston Miller Mukai  
MacKinnon LLP  
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4th Floor  
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Honolulu, Hawaii 96813  

RALPH ROSENBERG COURT REPORTERS, INC.  
Honolulu, HI (808) 524-2090
COMMISSIONER HAZAMA: Okay. Good afternoon. I call the meeting of the planning commission to order, Wednesday, April 15, 2015. First item on the agenda is approval of commission minutes, regular meeting minutes for December 3. Is there any corrections or comments?

COMMISSIONER TOLENTINO: Move to approve.

COMMISSIONER HAYASHIDA: Second.

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

COMMISSIONER TOLENTINO: Move to approve.

COMMISSIONER YOUNG: Seconded.

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

MR. YOUNG: Thank you, Mr. Chairman. My name is Raymond Young. I just want to make a minor correction with the -- I guess the confirmation of Wren,
that's --- one of the wording that was -- looks like it's out of context, so that's how I caught it. He said on page 26 that so rather than create gates and gradings, which is what the court reporter put down, I think he meant gates and gradings, because it has to deal with where animals cross.

MR. WESCOATT: Correct.

MR. YOUNG: Yeah. So it should be gradings.

COMMISSIONER HAZAMA: Okay.

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

COMMISSIONER HAZAMA: ILSI. What page?

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

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

MR. YOUNG: Okay.

COMMISSIONER HAZAMA: So any other
corrections or comments regarding the April 1 minutes?

Seeing none --

COMMISSIONER TOLENTINO: Move to approve.

COMMISSIONER YOUNG: Seconded.

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

COMMISSIONER TOLENTINO: Motion to approve.

COMMISSIONER YOUNG: Second.

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

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

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

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

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

COMMISSIONER HAZAMA: Okay. Commissioners, any questions of the department at this time? I just had one. In regards to director's recommendation number one, the amount of time allowed applicant between the operations of the solar company or solar activity to the commencement of agricultural
operations is one year. Is there a specific reason why it's a one year period versus any other time frame?

Either technology, technical kind of issues or --

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

COMMISSIONER HAZAMA: Right.

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

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

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

MR. YOUNG: No, not at all.

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

MR. YOUNG: Thank you.
COMMISSIONER HAZAMA: At this time I will call up the applicant and their agent.

MR. SAKUMOTO: Thank you, Mr. Chair and commissioners. Randall Sakumoto and Marguerite Nozaki for the petitioner, Kawaiiola Solar, and Wren Wescoatt, the development director.

COMMISSIONER HAZAMA: Good afternoon.

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

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

COMMISSIONER HAZAMA: Okay. Proceed.

MR. SAKUMOTO: Thank you. The sheep grazing plan was put together with input from
representatives of Kualoa Ranch, as well as other local ranchers who have experience in sheep grazing, as well as managing large ranching operations of this scale, and with us today is Daryl Kaneshiro, who flew in from Kauai. He actually is running a sheep grazing operation on Kauai, which is very similar to the one which we intend to implement on the north shore. He's doing it in connection with the KIUC, Kauai Island Utility Co-Op on Kauai, so he's here as a resource. You know, we don't pretend to be experts in this area, but we brought an expert with us in case the commission has specific questions about the logistics of how this would work.

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

The total project site will be separated into several pastures of varying sizes with fixed or unmovable fencing of posts and hog wire or
similar construction. Within those pastures, the herd
will be contained within smaller paddocks created by
movable electrified fences. The total site would likely
be divided into 30 paddocks of approximately twelve to 15
acres each, and the rotation would depend upon a number
of factors, but generally it would take place once or
twice a week.

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

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

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

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

COMMISSIONER HAZAMA: Okay.
Commissioners, any questions for applicant at this time?
Can I call upon Mr. Kaneshiro? He came all the way here from Kauai.

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

Besides that, we run cattle, sheep, we have the largest hog farm in the State of Hawaii. I also, believe it or not, have a solar farm. It's not a very large solar farm, it's one of the smallest, but we were one of the first that started a solar farm in the island of Kauai. And I have a 300kw that supplies all the power to 192 homes. Again, it's not a very large solar plant, there's other solar plants on the island, only three that sign purchase power agreements with KIUC. I happen to be one of them. I don't know if I had pull or something or I was a former council member so they allowed me to do one, but at the same time, there's one on Kauai that was six megawatt, and there's another one
called Kapaa Solar that does own a 1.2 megawatt.

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

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

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

It was -- when we first got in, when we were awarded the contract, as you know, KIUC just basically opened SolarCity in September last year, they opened a solar facility. We had gone in and it was really hard work, let me tell you something, guys, I hired people -- I hired guys to come out with machines, I had people in there weeding eating, and you got to weed eat with something special, you can't use those weed eaters that go ba ba ba ba, and fly rocks all over the place. You got 46,000 panels right there, so you've got to go in with a special type of weed eater. It's tedious work because now you start using hedge trimmers. Hedge trimmers only can go certain way, you cannot go whacking all over the place. So we did that. I had a lot of guys
quit on me. But, you know, that was a start. I had to
get the grounds to a point that I was satisfied and ready
to bring my sheep in. And now since then, I put in 250
head of sheep in there.

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

COMMISSIONER HAZAMA: Thank you.

Commissioners, any questions for Mr. Kaneshiro?

COMMISSIONER HAYASHIDA: Mr. Kaneshiro?

MR. KANESHIRO: Yes, sir.

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

MR. KANESHIRO: Do I--

COMMISSIONER HAYASHIDA: Slaughter or
bring to market?

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

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

And just as an example, I just saw part of his plan, our A land, I didn't realize that, but
there's some nice A land designated areas here. Those areas will be perfect to also keep their sheep or even work your sheep, bring out the sheep from the solar plant itself. You can have year round sheep at the solar plant, but you got to put them someplace to work them. You got to dock them, you got to castrate them, you got to take out the ones that you know are ready for the market. The A land there serves the purpose. It's the perfect place to do something like that in an area like that. So looking at -- looking at the area itself, you know, just overall, that's a pretty cool place. I may want to move my operation here to Honolulu.

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

MR. KANESHIRO: Thank you.

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

MR. YAMAMOTO: We are prepared to --

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

MR. YAMAMOTO: Good afternoon. Earl Yamamoto, Department of Agriculture.
COMMISSIONER HAZAMA: Yes. The reason I called you up is the applicant's package, the Department of Agriculture submitted comments regarding this project, this specific project regarding the solar farm, and they had raised some concerns regarding the use of this IAL land specifically. So can you kind of expand a little bit or explain something a little bit more to the commissioners what the department's concerns were regarding the IAL?

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

It's representative of our -- or has the capacity for more -- being more productive, so -- and that's just a couple of the criteria used to identify
important agricultural lands, so we want to hold that to a higher standard. It's not a requirement in law, state law. It's just -- it's just something that we wanted to push forward, and I recommend in our one recommendation about insuring that the agricultural use of it be in existence for the duration of the operation of the solar energy facility. So that's where we're coming from.

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

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

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

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

With respect to your -- the question
about the land or maybe coincidence between important agricultural land uses, permitted uses on IAL versus the uses permitted on regular agricultural land, there is no - - there's no boundary, there's no identified uses, or yeah, no specific identified uses on important agricultural lands that are any different from regular agricultural land. Correct me if I'm wrong back there.

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

COMMISSIONER HAZAMA: B and A.

MR. YAMAMOTO: Yes, and A.

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

To be more specific, I mean as a
commission, we look at what we can lock at as what the
tax states, and we've been through situations where the
law's not specific or not clear, it's very ambiguous as
far as, you know, certain situations, and it doesn't
really help us out, especially when we are dealing with
projects that are kind of like the first time
experiencing this application. Okay. All right. Thank
you, sir. I appreciate it.

MR. YAMAMOTO: You're welcome.

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

COMMISSIONER HAZAMA: Okay. It's been
moved.

COMMISSIONER TOLENTINO: Seconded.

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

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

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

COMMISSIONER ANDERSON: Chair, I'd like
to make a motion. I'd like to make a motion to approve
the North Shore - State Special Use Permit - 2014/SUP-6, Kawaiola Solar Farm, with the following conditions. 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. The Applicant shall attend a meeting of the Commission and submit a report to the Commission detailing the Applicant's actual and reasonable efforts to actively seek the establishment of compatible agricultural operations on the usable lands of the Petition Area. The Commission shall determine whether probable cause exists to reevaluate the SUP and to hold a hearing pursuant to Section 2-49 of the Planning Commission Rules. Extensions to the six-month deadline may be granted by the Planning Commission for unforeseen extenuating circumstances.

And I also make one additional revision so they align. 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 six months of 

the start of commercial power generation. Extensions to 

this deadline may be granted by the Director of the DPP 

for unforeseen extenuating circumstances.

COMMISSIONER HAZAMA: Thank you. I

have a motion. Do we have a second?

COMMISSIONER YOUNG: Seconded.

COMMISSIONER HAZAMA: Motion has been

seconded. Commissioners, we are in discussion. Any

discussions or comments?

COMMISSIONER ANDERSON: I just want to

make it clear that the second revision was just to make

them align appropriately, six months versus six to twelve

months.

COMMISSIONER TOLENTINO: I have a

question for the applicant.

COMMISSIONER HAZAMA: Applicant, come

up, please.

COMMISSIONER TOLENTINO: You've heard

the motion. And my question to the applicant, are you

okay with the two additions or recommendations with the

motion?

MR. SAKUMOTO: I think we're okay with

it. I'm not sure I heard all of the language, but from

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

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

COMMISSIONER HAZAMA: Are you almost
done evaluating?

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

COMMISSIONER HAZAMA: It's also
extendable, too.

MR. SAKUMOTO: Right.
COMMISSIONER HAZAMA: The six month period is extendable.

MR. SAKUMOTO: Right. So you know --

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

MR. SAKUMOTO: Okay. Thank you.

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

MR. SAKUMOTO: Thank you.

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

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

MR. SAKUMOTO: Thank you, Mr. Chair.

Thank you for giving us time to confer. The only comment we have here is in the second sentence, which says the applicant shall attend a meeting of the commission and submit a report to the commission, et cetera, I think if you inserted the phrase if requested by the commission the applicant shall attend a meeting, then that would probably logistically make more sense. Otherwise, it sounds like we'd have to send in the notice that we didn't have the ag for six months and then attend the meeting. I think if we sent a notice detailing the explanation and if the explanation is unsatisfactory, the
commission is free to request us to attend, and at your
request, we'll attend.

COMMISSIONER HAZAMA: Again, after the ---

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

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

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

COMMISSIONER HAZAMA: Department, do
you have any comments?

MR. YOUNG: Thank you very much, Mr. Chair. This is Raymond Young. Yes. We discussed
the proposed condition with our deputy and our
management, and we are concerned that this will -- this
project will extend for some what, 35 years, and of
course, we cannot anticipate what might happen, you know,
that long out. So if in the event that there are some
circumstances that this condition may want to be, you
know, modified and no longer applicable, is there a way
we can have the commission just at that point in time
where it's no longer applicable drop it without going
through the entire process of going through, you know --
like what we do now. The rules, the way the rules read, any time you want to modify a condition, you're going to have to come back to the planning commission, you have to have agency review, we got to send it out for comments and all that. It's a long, drawn out process.

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

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

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

COMMISSIONER HAZAMA: Okay. Sure.

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

COMMISSIONER HAZAMA: Well, no, because
the condition states that the time frame is extendable.

MR. YOUNG: But if you wanted to change --

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

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

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

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

COMMISSIONER TOLENTINO: What would the word reasonable do instead of six months? I'm just --
just a question.

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

COMMISSIONER TOLENTINO: Rather than having a six month.

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

COMMISSIONER TOLENTINO: Is that with the word reasonable?

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

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

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

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

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

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

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

COMMISSIONER HAZAMA: Okay, but --

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

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

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

What happened -- what happens though if
the applicant -- an applicant doesn't, you know, doesn't
make a reasonable effort to maintain the agricultural component, so that's kind of like the crux of it.

MR. YOUNG: Understood.

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

Commissioners, any questions?

Department have anything else?

MR. YOUNG: No, not at this time.

COMMISSIONER HAZAMA: Okay. Thank you.

Well, first of all -- before I hear the motion, do you have any objections to the applicant's revision?

COMMISSIONER ANDERSON: No.

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

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COMMISSIONER TOLENTINO: Motion.

COMMISSIONER ANDERSON: Seconded.

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

(Meeting adjourned at 2:39 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.

SHIRLEY L. KEYS, CSR #383

Dated: April 21, 2015

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