

PLANNING COMMISSION
CITY AND COUNTY OF HONOLULU

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July 19, 2017

Mr. Daniel E. Orodener
Executive Officer
State Land Use Commission
P. O. Box 2359
Honolulu, Hawaii 96804-2359

Dear Mr. Orodener:

**SUBJECT: Special Use Permit Amendment Application
File No. 2014/SUP-6 Kawaihoa PV, LLC and
Land Use Commission Docket No. SP15-406**

At its meeting of June 21, 2017, the City and County of Honolulu Planning Commission approved Petitioner's request for amendments to Special Use Permit (SUP) File No. 2014/SUP-6. Attached is the Planning Commission's Decision and Order approving in part the Petitioner's request to modify conditions of the SUP. As the SUP involves land area exceeding 15 acres, the record of the proceedings before the Planning Commission, including original materials, one paper copy, and a digital copy of the record on digital media is transmitted for your consideration. An index of the record is also included for your use.

I am also transmitting for your information a supplemental comment letter from the State Department of Transportation dated June 29, 2017, and received by the Department of Planning and Permitting on July 10, 2017. This letter is not part of the record of the Planning Commission's proceedings on the subject SUP amendment application.

If you or your staff have any questions, please contact Raymond Young of the Department of Planning and Permitting at 768-8049.

Sincerely,

A handwritten signature in black ink, appearing to be "D. Hazama", is written over a faint circular stamp.

DEAN I. HAZAMA, Chair
Planning Commission

DH:gt
Attachments
Doc 1485735

BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

IN THE MATTER OF THE APPLICATION)

FILE NO. 2014/SUP-6

OF)

KAWAIILOA SOLAR, LLC)

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

FOR AN AMENDMENT TO)

STATE SPECIAL USE PERMIT)

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

This matter came before the Planning Commission of the City and County of Honolulu for public hearing on June 21, 2017, at the Mission Memorial Conference Room in Honolulu, Hawaii. Based on the record in this matter, the Commission hereby finds as follows:

FINDINGS OF FACT

A. Background

1. On May 8, 2015, the Planning Commission ("PC") approved with conditions Kawaiiloa Solar, LLC's (also referred to as "Petitioner" or "Applicant") Special Use Permit ("SUP") application to establish a 50 megawatt solar energy facility ("SEF") on 382.2 acres within the State Land Use Agricultural District (hereinafter the "Project").

2. The Project is located primarily on Land Study Bureau Overall Master Productivity rating Class "B" lands. Remaining portions of the Project are located on Class "C" and Class "E" lands.

3. On June 29, 2015, the State of Hawaii Land Use Commission ("LUC") approved the SUP application granted conditional approval by the PC, with modifications ("LUC Order"). Condition No. 6 requires the Petitioner to establish the Project within two years after the date of the LUC Order, or June 29, 2017, and any requests for extension of this deadline shall be filed with the Department of Planning and Permitting ("DPP") prior to the expiration of the deadline.

4. In October 2016, NRG Energy, Inc. acquired Kawaiiloa Solar, LLC and the Project during the bankruptcy proceedings of the Petitioner's former parent company SunEdison, Inc. filed in April 2016.

5. On March 17, 2017, the DPP received a letter from the LUC stating that the PC could not extend the deadline to establish the Project without concurrence from the LUC.

6. On April 21, 2017, the Petitioner filed its request to amend the SUP, LUC File Number SP15-406 and DPP File Number 2014/SUP-6.

B. Description of Proposal

7. The Petitioner proposes the following amendments to the SUP:

- a. LUC Order Condition No. 6. Condition No. 6 requires the Petitioner to establish the SEF within two years after the date the LUC approved the SUP. Petitioner requests that the two-year deadline to establish the SEF be extended by 30 months from the date the SUP amendment is approved by the LUC. Condition No. 6 also specifies a termination date of the SUP, which is 35 years from the date the LUC approves the SUP. The Petitioner requests that the SUP termination date be 35 years from the date the LUC approves the SUP amendment.
- b. LUC Order Condition No. 8. Condition No. 8 allows future major modifications to the SUP to be approved by the PC and subsequently, the LUC. One type of modification which requires PC and LUC review is a significant increase in the number of PV panels proposed. The Petitioner proposes to modify this condition by replacing "number of" to "area covered by" PV panels. The proposed modification removes any reference to the number of panels from Condition No. 8 and adds "area covered by" PV panels as an example of a major modification.
- c. LUC Order Condition No. 4. Condition No. 4 requires a specified amount of funds to decommission the Project. Petitioner requests that the amount specified be an approximate dollar amount.
- d. Petitioner also requests design changes to include a 6-foot high chain-link parameter fencing in place of 4-foot high hog wire fencing and an increase in power production from 50 megawatts to 51 megawatts. This does not require amendments to the LUC conditions of approval, but is disclosed to update the Project description and the Findings of Fact of the LUC Order.

8. The DPP supports the Petitioner's proposal except where the Petitioner proposes in LUC Condition No. 4 that the amount of funds specified to decommission the Project be an "approximate" amount. DPP recommended to the PC that the word "approximate" be replaced with the term "no less than". At the PC hearing of June 21, 2017, the DPP stated that DPP's recommended amendments to Condition No. 1, to address comments submitted by the State Department of Agriculture relating to the potential impacts Project modifications may have on agricultural operations, have been satisfied by the Petitioner and imposition of these amendments were no longer necessary.

C. Procedural Matters

9. The PC received the Report and Recommendation of the Acting Director of DPP on June 13, 2017. The report provides an analysis of the request and a recommendation for approval with modifications.

10. The PC received oral testimony from Aarty Joshi, Senior Manager of Environmental Permitting, NRG Energy, and Wren Wescoatt, Director of Project Development, NRG Energy.

11. Petitioner clarified that the gross capacity of the Project is 50 megawatts, and that there is no change to the permitted area of 382.2 acres. Petitioner clarified that the Project's preliminary configuration of 299.809 acres is the fenced Project area, which is a smaller area within the permitted SUP area of 382.2 acres. As engineering plans are finalized, site improvement may be slightly adjusted due to topography, grade, and sunlight patterns.

12. Petitioner represented that the modifications requested were not significant and would not increase the impacts associated with the Project.

13. Petitioner updated its request that LUC Condition No. 6 be amended so that the deadline to complete construction be set for December 31, 2019. Petitioner explained that the deadline extension was needed due to SunEdison's bankruptcy and the Hawaiian Electric Company's cancellation of their Power Purchase Agreement with Petitioner.

14. The Commission received Petitioner's Exhibits 10 and 11 into the record. The Petitioner represented that Exhibits 10 and 11 satisfy the requirements proposed by the Acting Director of DPP relating to Condition No. 1. DPP staff testified that Exhibits 10 and 11 satisfies DPP's recommended modifications to Condition and said proposed amendments to Condition No. 1 are no longer necessary.

15. Petitioner had no objection to the comments submitted by the State Department of Transportation ("DOT"), Highways Division.

CONCLUSIONS OF LAW

The Planning Commission hereby concludes as follows:

1. The Planning Commission has jurisdiction to amend a Special Use Permit granted pursuant to Section 205-6, Hawaii Revised Statutes ("HRS").

2. Section 2-49 of the Rules of the Planning Commission requires that modifications of conditions imposed by the Planning Commission must be processed in the same manner as the original application of a Special Use Permit.

3. The proposed Special Use Permit amendment does not adversely affect the Planning Commission's Decision and Order to grant the Special Use Permit to allow establishment of the Project and therefore reaffirms its prior conclusion that the Project is an "unusual and reasonable" use as set forth in Section 205-6, HRS, and satisfies the five guidelines established by the Planning Commission, pursuant to Section 2-45 of the Rules of the Planning Commission.

4. The proposed amendments does not change the availability of portions of the site for compatible agriculture in accordance with Section 205-4.5(a)(21)(A), HRS.

5. The proposed amendments would not be contrary to the objectives sought to be accomplished by the State Land Use Law.

DECISION AND ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, the Planning Commission hereby APPROVES the amendment of Condition Nos. 1, 4, 6, and 8 of the LUC's Order dated June 29, 2015 as follows (additional text is underlined, deleted text is bracketed):

"1. Usable lands of the Petition Area, including areas under PV panels, shall be made available for compatible agricultural use at a lease rate that is at least 50 percent below the fair market rent for comparable properties, as long as the Project is in operation. Compatible agricultural operations shall be established, or Applicant shall be actively seeking to have such operations established, within 6 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. Prior to the start of commercial power generation, the Applicant should affirm, through a separate study or other competent means, that the proposed change from hog wire fencing to chain-link fencing, will not restrict or impede compatible agricultural uses within the Petition Area available for compatible agricultural uses. Also, the Applicant shall provide, in writing, a letter from Kualoa Ranch stating that the proposed amendments to the SUP will not have any adverse effect on its planned ranching operation within the Project Area."

"4. Prior to the closing of the building permit for the SEF, the Applicant shall submit to the DPP proof of financial security, such as a posted letter of credit or similar mechanism from a creditworthy financial institution, in favor of the owner of the land subject to the SUP, in the amount of no less than four million dollars (\$4,000,000.00) which security shall remain in place for the duration of the operation of the Project, with evidence of same provided to the Director of DPP on an annual basis, to decommission the Project and restore the Petition Area to substantially the same physical condition as existed prior to the development of the SEF.

The Applicant shall decommission the SEF, including the removal of all equipment related to the SEF, within twelve (12) months following the termination of operations of the SEF. A change in Project ownership or a change in ownership of the land subject to the SUP, which warrants a new proof of financial security to decommission the Project, shall be submitted to DPP for processing through the Planning Commission, within three (3) months of the ownership change,"

"6. The Applicant shall establish the Project no later than December 31, 2019 [within two years of the date of the State Land Use Commission's (LUC) Decision and Order approving the SP]. Future r[R]equest[s] for extensions of this deadline shall be submitted to the Director of the DPP prior to the expiration of the deadline. The LUC may grant [an] extensions to the deadline to establish the Project due to unforeseen circumstances that were beyond the control of the Applicant. This SUP shall be valid for a period of thirty-five (35) years [from the date of the LUC's Decision and Order approving the SUP], subject to further extensions upon a timely request for extension filed with the Planning Commission at least one-hundred twenty (120) days prior to the SUP's expiration.


The 35-year validity period of the SUP shall begin on the date the LUC approves the first amendment request.”

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

All other conditions remain unchanged and are in full effect.

Dated at Honolulu, Hawaii this 19 th day of July, 2017.

PLANNING COMMISSION
CITY AND COUNTY OF HONOLULU

By  _____
DEAN I. HAZAMA, Chair

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