

LAND USE COMMISSION
STATE OF HAWAII

2017 AUG 14 P 2:39

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of)	DOCKET NO. SP15-405
)	
WAIPI'O PV, LLC)	ORDER ADOPTING THE CITY AND
)	COUNTY OF HONOLULU
)	PLANNING COMMISSION'S
For A Special Use Permit To Allow)	FINDINGS OF FACT, CONCLUSIONS
Development of a 47-megawatt Photovoltaic)	OF LAW, AND DECISION AND
(PV) Energy Generation Facility and)	ORDER; AND CERTIFICATE OF
Accessory Uses and Structures On)	SERVICE
Approximately 308.8 Acres Of Land)	
Within The State Land Use Agricultural)	
District At Waipi'o, 'Ewa, O'ahu, Hawai'i)	
Tax Map Key No. (1) 9-5-003: 004 (portion))	

ORDER ADOPTING THE CITY AND COUNTY OF HONOLULU
PLANNING COMMISSION'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER
AND CERTIFICATE OF SERVICE

This is to certify that this is a true and correct
copy of the document on file in the office of the
State Land Use Commission, Honolulu, Hawai'i.

August 14, 2017 by

Daniel E. Orodener, Executive Officer



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ORDER ADOPTING THE CITY AND COUNTY OF HONOLULU
PLANNING COMMISSION'S FINDINGS OF FACT,
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On June 21, 2017, the City and County of Honolulu Planning Commission ("Planning Commission") met in the Mission Memorial Conference Room, Mission Memorial Building, in Honolulu, Hawai'i, to consider Waipi'o PV, LLC's ("Applicant"), request to amend the special use permit that allowed the establishment of a 47-megawatt ("MW") solar photovoltaic energy facility and accessory uses and structures (collectively "SEF" or "Project") on approximately 308.8 acres of land within the State Land Use Agricultural District, identified as Tax Map Key No. 9-5-003: 004 (portion), at Waipi'o, 'Ewa, O'ahu, Hawai'i ("Petition

Area”),¹ by (1) modifying Condition No. 5 to extend the deadline to establish the SEF; and (2) modifying Condition No. 7 to redefine what constitutes a major modification to the SEF of the Findings of Fact, Conclusions of Law, and Decision and Order Approving the Recommendation of the City and County of Honolulu Planning Commission to Approve the State Special Use Permit Petition With Modifications (“Decision and Order”) filed on March 25, 2015.

After due deliberation, the Planning Commission recommended approval of the Applicant’s request to amend the special use permit, subject to amendments to Condition Nos. 1, 3, 5, 7, and deletion of Condition No. 11 of the Decision and Order.

On July 24, 2017, the State of Hawai`i Land Use Commission (“LUC”) received a copy of the decision and a portion of the record of the Planning Commission’s proceedings on the Applicant’s request. On July 31, 2017, the LUC received the remaining portion of the record consisting of the minutes reflecting the adoption of the minutes of the Planning Commission’s June 21, 2017, hearing.

On August 9, 2017, the LUC conducted a meeting to consider the Applicant’s request to amend the special use permit in Honolulu, Hawai`i. Benjamin A. Kudo, Esq.; Sarah Simmons, Esq.; Wren Wescoatt; Patrick Sullivan; and Aarty Joshi appeared on behalf of the Applicant.² Also present were Dawn Takeuchi-Apuna, Esq.; Rodney Funakoshi; and Lorene Maki on behalf of the State of Hawai`i Office of Planning (“OP”), and Raymond Young on

¹ The Petition Area is owned by Waipi`o Land Holdings, LLC (“WLH”). WLH has authorized the Applicant to file the request to amend the special use permit.

² At the proceeding, Commissioner Scheuer disclosed that he served as a consultant to the State of Hawai`i Department of Hawaiian Home Lands where Wren Wescoatt, representative of Waipi`o PV, LLC, and the Applicant, serves as a Hawaiian Homes Commission member. There were no objections to Commissioner Scheuer’s participation in the proceeding.

behalf of the City and County of Honolulu Department of Planning and Permitting (“DPP”).³ At the meeting, the Applicant provided a background of the Project and the requested amendments to the special use permit. The DPP stated that it had no comments. OP stated that it supported the Applicant’s request to amend the special use permit.

Following discussion, a motion was made and seconded to grant the Applicant’s request to amend the special use permit. By a vote tally of 8 ayes, 0 nays, and 1 excused, the motion carried.

The LUC, upon consideration of the Planning Commission’s Findings of Fact, Conclusions of Law, and Decision and Order, the oral arguments of the parties and the records and files herein, and good cause existing, and upon motion duly passed by the LUC,

HEREBY ORDERS that the LUC shall adopt the Planning Commission’s Findings of Fact, Conclusions of Law, and Decision and Order, subject to the following conditions:

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 one year 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 fixed-tilt

³ Commissioner Chang disclosed that she previously did consultation work for the Project. There were no objections to Commissioner Chang’s participation in the proceeding.

racks to single-axis tracking racks, and 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 Tin Roof Ranch stating that the proposed amendments to the SUP will not have any adverse effect on its planned ranching operation within the Petition Area.

2. The Applicant shall submit for review and obtain the approval of the following from the Director of the DPP, prior to the issuance of a grading or building permit:
 - a. A survey map accompanied by a metes and bounds description of the approved Petition Area.
 - b. A site plan showing the area required under Condition 1, above, relating to the minimum land area to be made available for compatible agricultural use.
3. Within one year of the completion of construction or prior to the closing of the building permit for the solar energy facility, 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 SP, 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 the 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 within twelve (12) months following the termination of operation of the SEF, with the exception of the HECO switchyard, which may remain within the Petition Area after termination of the SP.

A change in Project ownership or a change of ownership of the land subject to the SP, which warrants a new proof of financial security to decommission the Project, shall be submitted to the DPP for processing through the Planning Commission, within three months of the ownership change.

4. As needed, the Applicant shall work with the U.S. Fish & Wildlife Service regarding the protection of endangered or migratory bird activity at the Pétition Area.

5. The Applicant shall establish the Project no later than December 31, 2019. Requests for future 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, 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.

6. On or before December 31 of each year that the Special Permit is in effect, the Applicant or its successor shall file an annual report to the Land Use Commission, the State Office of Planning, and the DPP that demonstrates the Applicant's compliance with conditions of the SP.

7. Major modifications to: (1) the Project plans, including but not limited to significant increases in the area covered by 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 Land Use Commission. 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.

8. The Applicant and/or landowner shall notify the Director of DPP of:
 - a. Any change or transfer of licensee on the property;
 - b. Any change in uses on the property;
 - c. Termination of any uses on the property; and/or
 - d. Transfer in ownership of the property.

The Planning Commission, in consultation with the Director of the DPP, shall determine the disposition of this Special Permit, and the facilities permitted herein.

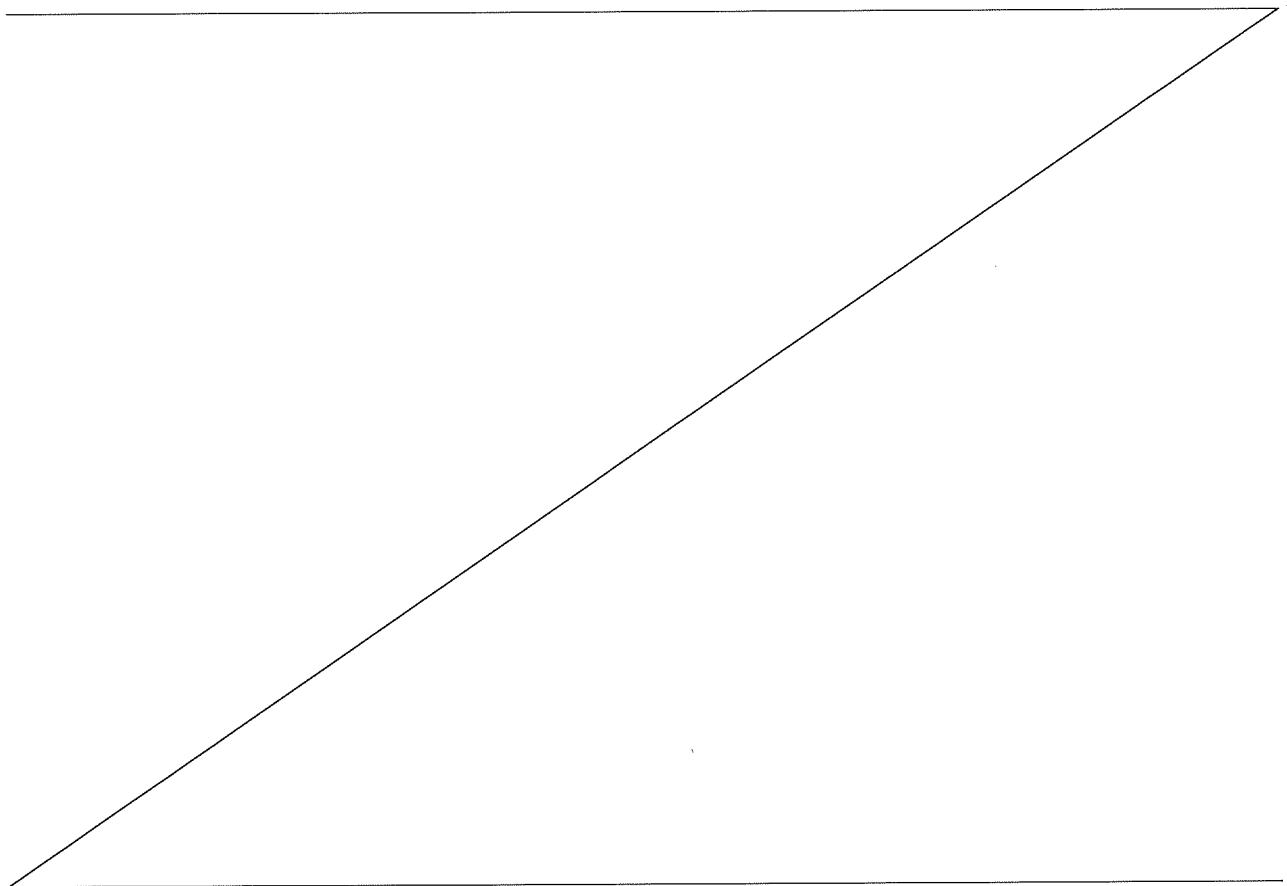
9. Enforcement of the conditions of the SP shall be pursuant to the Rules of the Planning Commission, including the issuance of an order to show cause as to the reason the SP should not be revoked if the Planning Commission has reason to believe that there has been a failure to perform the conditions imposed herein.

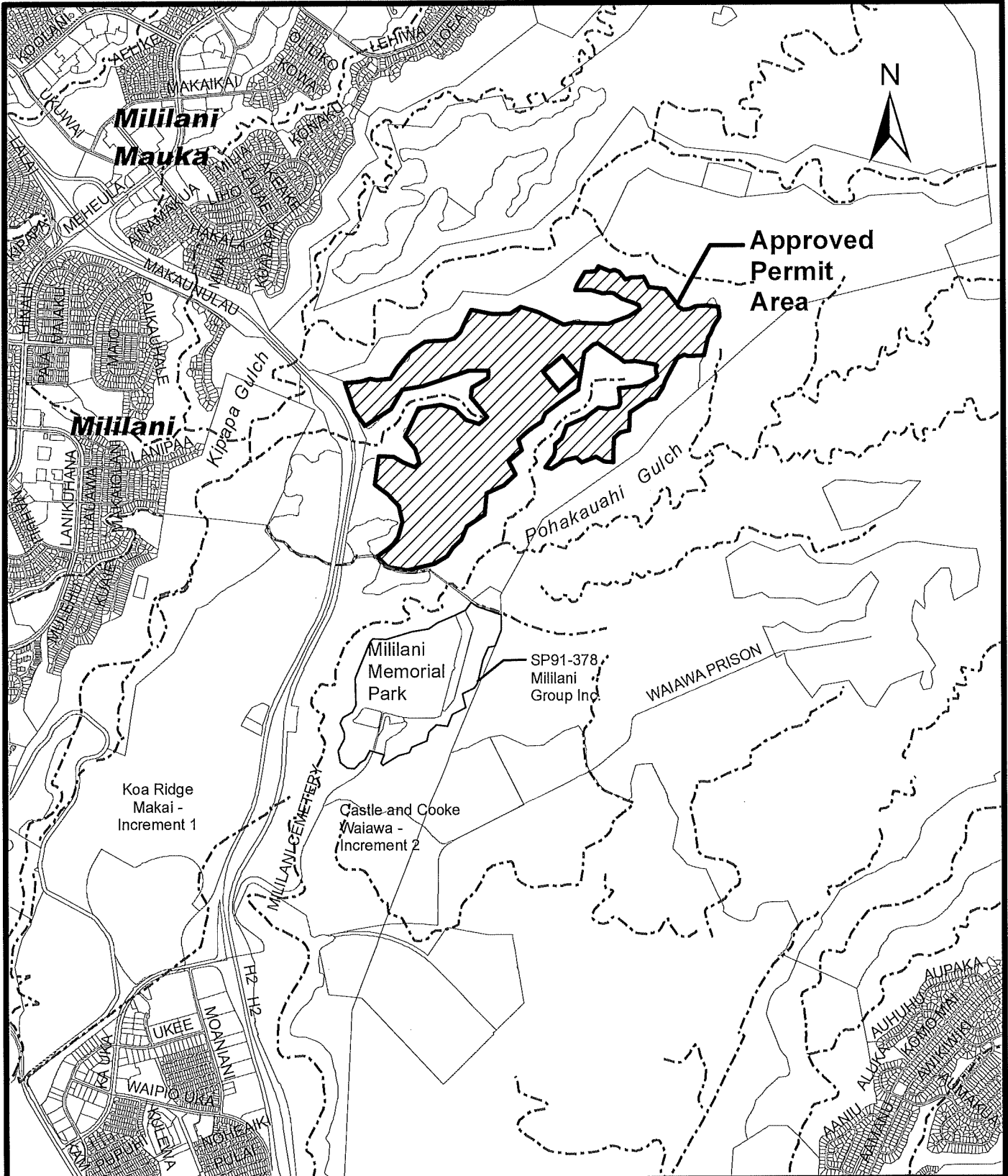
10. If the photovoltaic array creates a hazardous condition for pilots or motorists, the facility operator shall immediately mitigate the hazard upon notification by the Department of Transportation, Airports Division or the Federal Aviation Administration.

11. In the event that historic resources, including human skeletal remains, structural remains, cultural deposits, artifacts, sand deposits, or sink holes, are identified during demolition and/or construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the SHPD, and O`ahu Island Burial Council,

shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites are discovered during the course of construction of the Project, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigation measures have been implemented to its satisfaction.

12. The Petitioner shall develop the Property in substantial compliance with the representations made to the City and County of Honolulu Planning Commission and the State Land Use Commission in obtaining the State Special Permit. Failure to so develop the Property may result in revocation of the permit.





SP15-405 WAIPI'O PV LLC

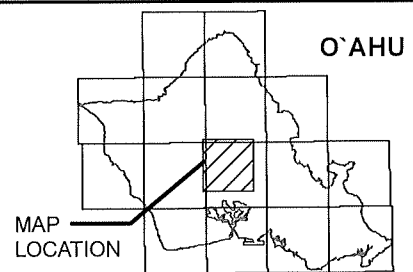
LOCATION MAP

TAX MAP KEY: 9-5-003: PORTION 004

WAIPI'O, 'EWA, O'AHU, HAWAI'I

SCALE: 1: 30,000

EXHIBIT "A"



ADOPTION OF ORDER

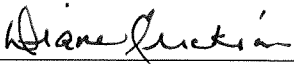
This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this 14th day of August, 2017, per motion on August 9, 2017.


LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAII



Deputy Attorney General

By 

EDMUND ACZON

Chairperson and Commissioner

Filed and effective on:

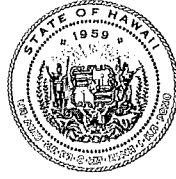
8/14/2017

Certified by:



DANIEL ORODENKER

Executive Officer



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_____)

CERTIFICATE OF SERVICE

I hereby certify that due service of the foregoing was served upon the following parties by hand delivery or certified mail on March 26, 2015, addressed to:

HAND DELIVERY	LEO R. ASUNCION, JR., Director Office of Planning State Office Tower, 6th Floor 235 South Beretania Street Honolulu, Hawai`i 96813
Regular Mail	DAWN TAKEUCHI APUNA, Esq. Deputy Attorney General Department of the Attorney General 425 Queen Street Honolulu, Hawai`i 96813 Attorney for OP

Regular Mail	KATHY SOKUGAWA, Acting Director Department of Planning and Permitting City & County of Honolulu 650 South King Street, 7th Floor Honolulu, Hawai`i 96813
Regular Mail	RAYMOND YOUNG Department of Planning and Permitting City & County of Honolulu 650 South King Street, 7th Floor Honolulu, Hawai`i 96813
Regular Mail	Department of the Corporation Counsel Honolulu Hale 530 South King Street, Room 110 Honolulu, Hawai`i 96813 Attorney for DPP
Regular Mail	PLANNING COMMISSION Department of Planning and Permitting City and County of Honolulu 650 South King Street, 7th Floor Honolulu, Hawai`i 96813
Certified Mail	BENJAMIN KUDO, Esq. SARAH SIMMONS, Esq Ashford & Wriston LLP 999 Bishop Street, Suite 1400 Honolulu, Hawai`i 96813 Attorneys for Applicant – Waipi`o PV LLC



DANIEL E. ORODENKER
Executive Officer

Dated: Honolulu, Hawai`i, March 25, 2015