



LAND USE COMMISSION
STATE OF HAWAII

2017 AUG 14 A 9: 32

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of)	DOCKET NO. SP15-406
)	
KAWAILOA SOLAR, LLC)	ORDER ADOPTING THE CITY AND
)	COUNTY OF HONOLULU
For A Special Use Permit To Establish)	PLANNING COMMISSION'S
A Solar Energy Facility On)	FINDINGS OF FACT, CONCLUSIONS
Approximately 382.2 Acres Of Land)	OF LAW, AND DECISION AND
Within The State Land Use Agricultural)	ORDER; AND CERTIFICATE OF
District At Kawaiiloa, North Shore,)	SERVICE
O`ahu, Hawai`i, Tax Map Keys:)	
6-1-005: Portion Of 1 and 6-1-006:)	
Portion Of 1)	
_____)	

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, HAWAII

8/ 14 /2017 BY 
Date 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 Kawaiiloa Solar, LLC's ("Applicant"), request to amend the special use permit that allowed the establishment of a 50-megawatt ("MW") solar energy facility and accessory uses and structures (collectively "SEF" or "Project") on approximately 382.2 acres of land within the State Land Use Agricultural District, identified as Tax Map Keys: 6-1-005: portion of 1 and 6-

1-006: portion of 1, at Kawailoa, North Shore, O`ahu, Hawai`i ("Petition Area"),¹ by (1) modifying Condition No. 6 to extend the deadline to establish the SEF; and (2) modifying Condition No. 8 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 June 29, 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, 4, 6, and 8 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

¹ The Petition Area is owned by the Trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools ("Kamehameha Schools"). Kamehameha Schools has authorized the Applicant to file the request to amend the special use permit.

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 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,

² Immediately preceding this meeting, the LUC considered the request of Waipi'o PV, LLC (formerly Waiawa PV, LLC), to amend the special use permit issued in Docket No. SP15-405, which established a similar energy generation facility as the Project at Waipi'o, 'Ewa, O'ahu, Hawai'i. At that 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 Waipi'o PV, LLC's, proceeding. Although Commissioner Scheuer did not reiterate his disclosure in the Applicant's proceeding, the LUC and the parties understood that his previous disclosure and the lack of objections to his participation applied to this proceeding as well.

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.

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 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.

2. If at any time during the term of the SUP no compatible agricultural operations exist on the usable lands of the Petition Area for 6 months, the Applicant shall notify the Planning Commission and the Director of the DPP in writing within 30 days of the end of the 6-month period. If requested by the Planning

Commission, the Applicant shall attend a meeting of the Planning Commission and submit a report to the Planning 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 Planning Commission shall determine whether probable cause exists to re-evaluate the SUP and to hold a hearing pursuant to Section 2-49 of the Rules of the Planning Commission. Extensions to the 6-month deadline may be granted by the Planning Commission for unforeseen extenuating circumstances.

3. 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.

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 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, 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 the DPP for processing through the Planning Commission, within three (3) months of the ownership change.

5. The Applicant shall comply with the recommendations of the USFWS and the DOFAW regarding the protection of the endangered Hawaiian hoary bat and endangered and threatened Hawaiian waterbird and shorebird species at the Petition Area.

6. The Applicant shall establish the Project no later than December 31, 2019. Future request 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 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.

7. On or before December 31 of each year that the SUP is in effect, the Applicant or its successor shall file an annual report to the LUC, OP, and the DPP that demonstrates the Applicant's compliance with conditions of the SUP.

8. 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 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.

9. The Applicant and/or landowner shall notify the Director of the DPP of:

- a. Any change or transfer of licensee on the Petition Area;
- b. Any change in uses on the Petition Area;
- c. Termination of any uses on the Petition Area; and/or
- d. Transfer in ownership of the Petition Area.

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

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

11. If the PV array creates a hazardous condition for pilots or motorists, the facility operator shall immediately mitigate the hazard upon notification by the DOT, Airports Division, or the FAA.

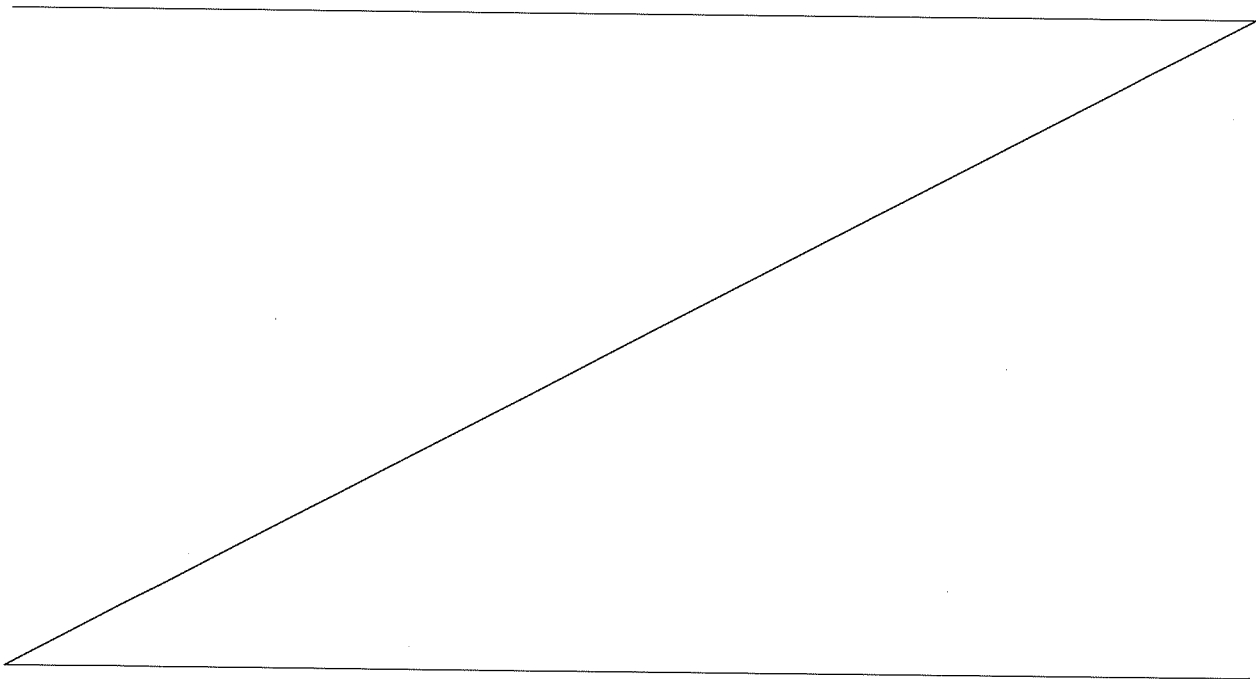
12. The Applicant shall submit an archaeological monitoring plan to the SHPD for review and acceptance prior to any ground disturbing activities.

13. 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 SEF, 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.

14. The Applicant shall develop and operate the SEF, including the implementation of measures to mitigate potential impacts of the Project, in substantial compliance with the representations made to the Planning Commission and the LUC as reflected in this Decision and Order. Such mitigation measures include, but are not limited to, the use of temporary and permanent BMPs to ensure that the development and operation of the SEF do not result in an increase in stormwater runoff that adversely impacts downstream properties. Failure to so develop the Petition Area may result in revocation of the SUP.



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.

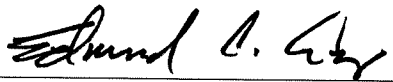
LAND USE COMMISSION

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



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

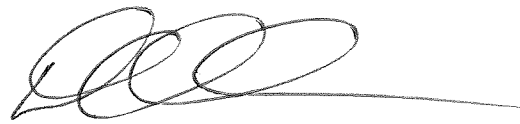
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CERTIFICATE OF SERVICE

I hereby certify that due service of the foregoing 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 was served upon the following parties by hand delivery or certified mail on June 29, 2015, addressed to:

HAND DELIVERY	LEO R. ASUNCION, JR., Acting 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

Regular Mail	GEORGE I. ATTA, Director c/o Kathy Sokugawa 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
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 A. KUDO, Esq. SARAH SIMMONS, Esq. Ashford & Wriston LLP 999 Bishop Street, Suite 1400 Honolulu, Hawaii 96813 Attorneys for Applicant – Kawailoa Solar, LLC



DANIEL ORODENKER

Executive Officer

Dated: Honolulu, Hawai'i, August 14, 2017