

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

STATE BUILDING, 3060 EIWA STREET
CONFERENCE ROOM A & B SECOND FLOOR
LIHUE, HAWAI'I 96766

SP15-407 HEARING AND ACTION

COMMENCING AT 9:36 A.M.

ON JANUARY 13, 2016

Before: Jean Marie McManus, CSR #156

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition) DOCKET NO. SP15-407
of)
SolarCity CORPORATION)
For a Special Use Permit to)
Establish a Solar Energy)
Facility on approximately 50)
acres of land within the State)
Land Use Agricultural District)
at Kapaia, Hanamaulu, Lihue,)
Kauai, Hawai'i, Tax Map Key (4))
3-8-002:002.)
-----)

HEARING AND ACTION PROCEEDINGS

Held on January 13, 2016, at State Office Building,
3060 Eiwa Street, Conference Rooms A & B, 2nd Floor,
Lihue, Kaua'i, commencing at 9:36 a.m.

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 EDMUND ACZON, CHAIRPERSON

3 COMMISSIONERS:

4 JONATHAN SCHEUER, VICE CHAIR

5 ARNOLD WONG, VICE CHAIR

6 AARON MAHI

7 NANCY CABRAL

8 LINDA ESTES

9 CHAD McDONALD

10 KENT HIRANAGA

11 DIANE ERICKSON, ESQ.

12 Deputy District Attorney

13 STAFF:

14 DANIEL ORODENKER, Executive Officer

15 SCOTT A.K. DERRICKSON, AICP Planner

16 RILEY K. HAKODA, Planner/Chief Clerk

17 BRYAN YEE, ESQ.

18 Deputy Attorney General

19 RODNEY FUNAKOSHI, Office of Planning

20 For the State of Hawaii

21 Office of Planning

22 BENJAMIN M. MATSUBARA, ESQ.

23 CURTIS T. TABATA, ESQ.

24 Matsubara-Kotake

25 888 Mililani Street, 8th Floor

Honolulu, Hawaii 96813

For SolarCity Corporation

JODI HIGA, ESQ,

Deputy County Attorney

Office of the County Attorney

4444 Rice Street, Suite 220

Lihue, Kauai 96766

KA'AINA HULL, Deputy Planner Director

For the County of Kaua'i

AGENDA

I.	Call to order	Page 5
II.	Adoption of Minutes	Page 5
III.	Tentative Meeting Schedule	Page 5
IV.	Public Testimony for SP15-407	
	ALLAN RACHAP	Page 9
V.	Hearing and Action SP15-407	Page 14
	KAAINA HULL	
	Direct Examination/County of Kauai	Page 36

1 CHAIRPERSON ACZON: Good morning. Welcome.

2 I just want to mention that we have a
3 former Land Use Commissioner, Dennis Hisake.

4 This is the January 13th, 2016, Land Use
5 Commission meeting.

6 The first order of business is the adoption
7 of the December 7, 2015 and December 10,
8 2015 minutes. Are there any corrections or comments
9 on them?

10 If not, is there a motion to adopt the
11 December 7, 2015 and December 10, 2015 minutes?

12 COMMISSIONER ESTES: So moved.

13 COMMISSIONER MAHI: Second.

14 CHAIRPERSON ACZON: The motion has been
15 made by Commissioner Estes and seconded by
16 Commissioner Mahi to adopt the December 7th and
17 December 10, 2015 minutes.

18 All in favor say "aye", opposed.

19 (All Commissioners responded
20 affirmatively.)

21 The minutes for December 7th and
22 December 10th are unanimously adopted.

23 The next agenda item is the tentative
24 meeting schedule. Mr. Orodénker.

25 EXECUTIVE OFFICER: Thank you, Mr. Chair.

1 The next meeting is scheduled for
2 January 27th, video conference for Adoption of the
3 Order pertaining to this action today.

4 February 10th and 11th will be on Oahu, Ko
5 Olinia Motion for Reconsideration.

6 February 24th and 25th is scheduled for
7 Maui, Maalaea Plantation site visit and departing
8 from the Courtyard Marriott, and a Motion to
9 Intervene at that time.

10 March 9th will be at Honolulu Airport,
11 Update on Waimanalo Gulch; and March 23rd to 24th we
12 have a tentatively scheduled Waikoloa Community
13 Development County Amendment and Queen Lili'uokalani
14 Trust Motion for Order Modifying Findings of Facts.

15 Those are the only appropriate meetings.
16 More may go on the calendar.

17 CHAIRPERSON ACZON: Thank you, Mr.
18 Orodenker.

19 Any question about the tentative schedule?
20 Vice Chair Scheuer.

21 VICE CHAIR SCHEUER: Thank you, Chair. I
22 would just like to ask again -- I think I mentioned
23 this on Maui on December 7th -- I would really hope
24 that we could do the site visit on the Maalaea
25 Plantation in the afternoon.

1 It's very calm there in the mornings, and
2 it's incredibly windy in the afternoons. And if we
3 only go in the morning, we're only to get one
4 perception of what that site is like.

5 EXECUTIVE OFFICER: We're making an attempt
6 to schedule that.

7 VICE CHAIR SCHEUER: Thank you.

8 CHAIRPERSON ACZON: Anybody else? Thank
9 you.

10 This is an action meeting on Docket No.
11 SP15-407 SolarCity Corporation (Kaua'i) to consider
12 Special Permit for real property situated at Kapai'a,
13 Hanamaulu, Lihue, Kaua'i, Hawaii, identified by Kauai
14 Tax Map Key No, (4) 3-8-002:002.

15 Will the Applicant or its representatives
16 please identify themselves for the record?

17 MR. MATSUBARA: Good morning, Mr. Chairman,
18 members of the Commission, Ben Matsubara and Curtis
19 Tabata on behalf of SolarCity Corporation.

20 MS. HIGUCHI: Jodi Higuchi, Deputy County
21 Attorney on behalf of the County.

22 MR. HULL: Deputy Planning Director Kauai
23 County.

24 CHAIRPERSON ACZON: Office of Planning.

25 MR. YEE: Deputy Attorney General Bryan Yee

1 on behalf of Office of Planning. With me is Rodney
2 Funakoshi.

3 CHAIRPERSON ACZON: I will now call for
4 those individuals deciding to provide public
5 testimony on Docket SP15-407 SolarCity Corporation to
6 identify themselves.

7 All such individuals will be called in turn
8 to the witness box where they will be sworn in prior
9 to their testimony.

10 The Chair would like to note from time to
11 time we'll be calling for shot breaks.

12 After completion of the public testimony
13 portion of the proceedings, we will commence with
14 hearing the case in chief-Agenda item # 5.

15 Are there any individuals desiring to
16 provide public testimony on this docket?

17 EXECUTIVE OFFICER: Mr. Chair, we have one
18 person signed up for public testimony, Allan Rachap.

19 CHAIRPERSON ACZON: Please have a seat.
20 May I swear you in?

21 Do you swear that the testimony you're
22 about to give is the truth?

23 THE WITNESS: Yes.

24 CHAIRPERSON ACZON: Please state your name
25 and address for the record and proceed.

1 ALLAN RACHAP

2 Was called as a public witness, was sworn to tell the
3 truth, was examined and testified as follows:

4 DIRECT EXAMINATION

5 THE WITNESS: My name is Allan Rachap. I
6 live at 1714 Keoniloa, Koloa, Hawaii.

7 I guess I'm the only guy from the public
8 here to testify. A lot of high-priced lawyers, but
9 I'm the only guy from the public, so I'll have at it.

10 CHAIRPERSON ACZON: You're the most
11 important one.

12 THE WITNESS: A little bit about my
13 background. I've lived on Kaua'i for 16 years. I'm
14 a resident, a voter, full-time resident.

15 I moved here from the mainland at the end
16 of 1999. And prior to that I lived and worked in
17 Maryland. I was an investment advisor. My last
18 20 years were with Merrill Lynch. I have a MBA in
19 business from Harvard Business School and
20 undergraduate degree in engineering from U.S. Naval
21 Academy.

22 By way of full disclosure, I have a rooftop
23 solar system. Have had one for five, five-and-a-half
24 years. And I have had investments in solar companies
25 and other alternative energy producers, although I

1 have none currently in my portfolios.

2 I have no financial connection with any of
3 the parties to what I would refer to as this "deal",
4 if you'll permit me a throw back to my investment
5 banking days.

6 The parties to the deal SolarCity, KIUC,
7 Grove Farm and the people of Hawaii, the public. Our
8 interests are affected by the outcome.

9 So in brief I'll tell you a little bit
10 about what I know about the participants of the deal.

11 SolarCity, \$4.8 billion corporation. Ten
12 years old from the standing start, 4.8 billion bucks.
13 In ten years they have one-third of the market share
14 in residential solar installations, and that's three
15 times their nearest competitor.

16 They have had experience in utility scale
17 solar projects. To my knowledge, they cut their
18 teeth on it right here in Koloa with KIUC in a
19 project that I think was successful. It had been
20 trouble-free other than a little incident during
21 construction where heavy rains did some damage, but
22 can't hold them for that.

23 So I have no issues at all with respect to
24 SolarCity. I think they will be a good business
25 partner for KIUC, and lucky to have them. And I

1 think in some respects, maybe their motivation for
2 doing this deal and the prior one is to gain
3 experience on utility scale projects and including
4 this unprecedented one with substantial battery
5 backup to provide for power to be utilized by the
6 utility during times when their own solar power
7 generation and the power purchase from other
8 producers is not available. Because of the battery
9 backup, I think this is an extremely important, and
10 significant perhaps breakthrough utilization.

11 The other party, of course, is the guys
12 that are buying the power, KIUC, and it's a
13 cooperative, member owned. I'm a member. I own it.
14 I think their the best utility in the state, as I
15 tell them frequently at their board meetings, which
16 is not speaking very highly of HECO, which I regard
17 as the worst utility in the country.

18 And they have done some good things and
19 they've done some not so good things. My chief
20 quarrel with them, and it is relevant to this
21 particular deal, is that they have in the past
22 ignored the members' chief interest, and that is the
23 holding down the cost of electricity.

24 I think they have overpaid. Overpaid on a
25 number of deals, including solar deals. And the

1 money has gone to enrich the established kamaaina
2 land owning companies. And we would have to throw
3 Grove Farm into that category. Certainly A & B at
4 the top of the pie. But that's a matter that's, I
5 think, regulated by the Public Utilities Commission,
6 a sister agency, I guess, of the Land Use Commission.

7 And then, of course, there's Grove Farm,
8 the landowner. And I have some significant issues
9 with the landowner because that land is going to go
10 back after the 20-year term of this purchase power
11 agreement expires.

12 And so it's still Grove Farm's land, and my
13 understanding of the deal is they lease it to
14 SolarCity, who in turn has a purchase power agreement
15 yet to be approved by the Public Utilities
16 Commission. And so I think we need to really look at
17 Grove Farm.

18 Their stated mission is, and I quote:

19 As a kamaaina company Grove Farm is
20 committed to a leading community and economic
21 development while being a responsible steward of the
22 aina.

23 And I think they have been remiss in that
24 in a number of instances. And, therefore, their
25 actions in this project certainly need to be examined

1 carefully.

2 And in specifics, with regard to the
3 utilization of the aina, pesticide use on their land
4 and industrial agriculture, allowing sewage sludge to
5 be dumped on their land jeopardizing the drinking
6 water. Questions about the diversion of waters in
7 contravention of the Public Use Doctrine.

8 So I have some significant issues with
9 Grove Farm. In some respects I think that they're
10 making a mockery of their alleged claim of
11 responsible stewardship of the aina. Give them the
12 money and they will put in a toxic waste dump.

13 CHAIRPERSON ACZON: You need you to
14 summarize.

15 THE WITNESS: I will summarize, but I'm
16 sure there is a lot of people behind me that want to
17 testify.

18 So on balance, I look at this deal and say,
19 well, okay, yea or nay? What's in it for me, me
20 being the public, me being KIUC customer. And in
21 that sense on balance, this is a good deal.

22 I'm a little uncomfortable with
23 14-and-a-half cents a kilowatt hour, but that's up to
24 the PUC. I think it's a good location. It is
25 reasonable. I think that the ability to use solar

1 energy after the peak solar generating hours is an
2 important consideration. And I think that SolarCity,
3 if they can prove that concept, and can extend it to
4 an important utilization of the solar energy for this
5 country, for the overall betterment of all of its
6 citizens, including the people on Kaua'i.

7 So I would favor the granting of this
8 special permit.

9 CHAIRPERSON ACZON: Thank you. Any
10 questions for Mr. Rachap?

11 Mr. Tabata?

12 MR. MATSUBARA: No questions.

13 CHAIRPERSON ACZON: Commissioners, any
14 questions?

15 Let me update the record.

16 On December 9, 2015, the Commission
17 received the complete record of the County of Kaua'i
18 Planning Commission's proceedings recommending
19 approval of Applicant's application for the Special
20 permit.

21 On January 5, 2016, the Commission mailed
22 the January 13, 2016 LUC meeting agenda notice to the
23 Parties and to the Statewide, and Kaua'i mailing
24 lists.

25 On January 6, 2015, the Commission received

1 OP's comment letter and mailed the amended agenda
2 notice for the January 13, 2016 LUC meeting to the
3 Parties and to the Statewide and Kaua'i mailing
4 lists.

5 On January 8, 2016, the Commission received
6 the Applicant's Proposed Findings of Fact,
7 Conclusions of Law and Decision and Order Approving
8 the Recommendation of the County of Kaua'i Planning
9 Commission to Approve the State Special use Permit
10 Application with Modifications.

11 Let me describe our procedure for today on
12 this docket.

13 First the Applicant will make its
14 presentation.

15 After the completion of the Applicant's
16 presentation, we will receive any public comments
17 from the Kaua'i County Department of Planning.

18 After the completion of the County's public
19 comments, we will receive any public comments from
20 the State Office of Planning.

21 After we receive public comments from the
22 State Office of Planning, the Commission will conduct
23 its deliberations.

24 Are there any questions on our procedure
25 for today?

1 MR. MATSUBARA: No questions.

2 CHAIRPERSON ACZON: Mr. Tabata, please
3 proceed with your presentation.

4 MR. MATSUBARA: I'll be handling the
5 initial presentation.

6 Again, for the record, my name is Benjamin
7 Matsubara, and along with Curtis Tabata, we will be
8 representing the Applicant in this matter, SolarCity
9 Corporation.

10 I would like to reflect that
11 representatives from SolarCity Corporation are
12 present today, Danny Valdez, Jon Yoshimura, Jeremy
13 Sande and Jessica Sager.

14 The matter before you today scheduled for
15 hearing and action is the Special Use Permit which
16 the County of Kauai Planning Commission, by action
17 taken October 27, 2015, is recommending to you for
18 approval.

19 The Special Use Permit being requested by
20 SolarCity Corporation, the Applicant, is to construct
21 and operate a solar facility on approximately
22 46.5 acres of land in Kapai'a, Hanamaulu, Kauai.

23 The procedure governing the filing,
24 consideration and granting of a Special Use Permit is
25 completely different from the procedure utilized in

1 your consideration of District Boundary Amendments.

2 Because of the different procedural rules,
3 the presentation made for each proceeding is totally
4 different.

5 And I say that as background before we
6 begin our actual presentation on this matter.

7 I will briefly discuss the Special Use
8 Permit procedure followed by Mr. Tabata, who will
9 then get into project specific discussions on the
10 record that was presented to the Kaua'i Planning
11 Commission.

12 During our dress rehearsals we kept it to
13 30 minutes, so we hope to do it the same, but I know
14 you're all suspicious of an attorney telling you we
15 will be brief.

16 The Special Use Permit is governed by
17 section 205-6 of the Land Use Law, with District
18 Boundary Amendments governed by 205-4. Different
19 statutes, different regulations.

20 Let me briefly go over the differences and
21 why our presentation to you on the Special Use Permit
22 is going to be different.

23 In a District Boundary amendment, what a
24 party is asking for is a reclassification from one
25 land use classification to another.

1 In a Special Use Permit the Applicant is
2 asking you for permission to use land either
3 designated as Agricultural or Rural for a certain
4 unusual and reasonable purpose that the property is
5 isn't originally classified for. So the land stays
6 in the same classification. There's no change of
7 land use classification. It's just expanded use that
8 would be permitted in an Agricultural or Rural
9 District. And today the property we're dealing with
10 is a Rural District.

11 In terms of the hearing process, in a
12 District Boundary Amendment the Petition and
13 everything else is filed directly with you. You
14 conduct the hearing. You listen to the testimony,
15 you hear the witnesses, and you make the decision
16 based on what you actually see before you. It's a
17 live process.

18 Whereas in a Special Use Permit the
19 application is initially filed with the county where
20 the property is located. In this particular
21 instance, it was filed with Kaua'i County, and it was
22 processed by the Department of Planning, and the
23 hearing itself was conducted by the Kaua'i Planning
24 Commission.

25 It was at that hearing before the Kaua'i

1 Planning Commission that testimony was presented,
2 live witnesses were presented, and cross-examine and
3 questions, if any, were raised and asked.

4 After the County completed the hearing, it
5 was required to transmit to you the complete record
6 of the hearing. That's all the materials that were
7 filed to support their application. The testimony,
8 the exhibits, and the transcript itself of the Kaua'i
9 Planning Commission were all transmitted to you. So
10 you have that complete record to review for purposes
11 of determining whether or not you would follow their
12 recommendation to grant the Special Use Permit that
13 they have recommended you to do.

14 So the presentation we're providing today
15 basically is a summarization of the record that the
16 Kaua'i Planning Commission had before it when they
17 rendered their decision. So you can make your own
18 determination that the appropriate procedure was
19 followed and the necessary evidence submitted to
20 satisfy the requirements for the granting of a
21 Special Use Permit.

22 So in this particular case, you're acting
23 more like an appellate court. You're reviewing what
24 the trial court did and what verdict they came out
25 with, as opposed to in District Boundary Amendment

1 proceedings, you act as the trial court itself. You
2 hear everything live and you make your determination.

3 So in today's hearing our proceeding will
4 be a summarization --

5 VICE CHAIR SCHEUER: Can I just ask, are we
6 going to get to the substance? I think many of the
7 Commissioners are well familiar with the differences
8 between District Boundary Amendments and Special Use
9 Permits.

10 MR. MATSUBARA: We will get now to Mr.
11 Tabata who will be providing you specific information
12 regarding to the application.

13 MR. TABATA: The Petition area for
14 SolarCity is approximately 50 acres of undeveloped
15 agricultural land owned by Grove Farm located in the
16 southeast quadrant of the island, west of Hanamaulu
17 Town.

18 The 50 acres and the surrounding areas are
19 primarily agricultural in use. Directly east of the
20 project site is Kaua'i Island Utility Cooperative's
21 Kapaia Power Plant.

22 The project itself will encompass
23 approximately 46.5 acres comprising 45.8 acres for
24 the solar panels, and 0.65-acre for the battery
25 system.

1 The PV system will include approximately
2 54,285 solar panels, height 77 inches. The solar
3 panels will be installed on posts, so the actual
4 ground disturbance for the panels will be less than
5 one acre.

6 What makes this project special, and public
7 testifier testified to this earlier, that this
8 project is the first of its kind in the nation where
9 its battery system will store solar energy during the
10 day to be used during the nighttime peak demand
11 period.

12 The battery pack system will be comprised
13 of 520 packs. Each pack is 86 inches tall and about
14 the size of a refrigerator. For each ten packs there
15 is 250 kilowatt inverter. And each pack contains
16 pods that are about the size of a laptop computer,
17 and within each pod or cells which are like double A
18 batteries. The cells are insulated by a liquid
19 filled jacket.

20 With the battery system, combined with
21 solar panels, the total ground disturbance for the
22 project will be less than two acres.

23 The intent is to utilize lithium-ion
24 technology from Tesla Motors and has demonstrated a
25 battery system proven to be reliable.

1 The project will have the capacity to
2 produce 17 Mega Watts of Direct Current, which after
3 conversion to alternating currents will be 13 Mega
4 Watts.

5 The battery system capacity is 13 Mega Watt
6 AC at 52 Mega Watt hours.

7 The project output will amount to
8 approximately 6 to 7 percent of Kaua'i's electricity
9 needs.

10 The public benefits of the project are
11 substantial.

12 KIUC's strategic target is to reduce
13 Kauai's dependency on oil by the year 2023.

14 Three years ago that rate was 90 percent
15 electricity from oil. Today it's 75 percent, and
16 next year is expected to be 60 percent.

17 With this SolarCity project, they're
18 anticipating 50 percent target would be reached seven
19 years ahead of schedule.

20 KIUC anticipates that the project will
21 result in approximately 37,474 fewer barrels of oil
22 consumed annually.

23 Reducing oil dependency benefits the
24 environment and also results in lower and more stable
25 rates by minimizing the effect of volatile oil

1 prices.

2 Currently, Kauai's solar producers are
3 close to meeting the midday electricity demand. What
4 the island needs is a way to deliver additional solar
5 power to the nighttime peak demand period. Our
6 project would be the first to do this on a utility
7 scale.

8 Another benefit of a battery system is that
9 the power can you be used to reduce power outages,
10 which has been an issue on Kauai. In theory, the
11 project would be able to reduce outages by 50 percent
12 by delivering electricity when generators go down.

13 Impacts: Potential impacts of the project
14 have been studied and include agricultural,
15 archaeological, flora, fauna, and drainage.

16 SolarCity will comply with statutory
17 requirement of making the usable portions of the
18 petition area available for agricultural use for at
19 least 50 percent below fair market rental value.

20 So I spoke earlier about the ground
21 disturbance being limited to two percent of the
22 petition area. What we're looking to is using the
23 majority of that petition area for agricultural use
24 during the life of the project.

25 SolarCity is in discussions with sheep

1 rancher Darryl Kaneshiro for grazing, and at the end
2 of the 25 to 30 year life of the project, SolarCity
3 will return the petition area to its original
4 condition.

5 Archeology: An archaeological inventory
6 survey was conducted and the only sites found were
7 plantation sugar infrastructure comprised of a cane
8 haul road and a remnant irrigation ditch.

9 Both sites were deemed to be not
10 significant, and the AIS concluded the project would
11 have no historic properties affected. Accordingly,
12 no further archaeological work is recommended by the
13 AIS.

14 Flora and fauna surveys were conducted for
15 the project, and the conclusion was that no mammalian
16 or avian or botanical resources will be endangered by
17 the project.

18 With respect to drainage, the project will
19 have no impact on flooding on or around the project
20 area. All drainage resulting from the project will
21 be retained on-site and subject to best management
22 practices. Retention basin will capture any increase
23 in flow.

24 On January 5, 2016, the Office of Planning
25 filed its recommendation to approve SolarCity's

1 project with 19 proposed conditions. OP's proposed
2 conditions seek to address and mitigate potential
3 impacts relating to agriculture, faunal resources,
4 historic resources, drainage, and environmental
5 concerns, as well as conditions designed to ensure
6 the proper operation and administration of the
7 project.

8 SolarCity has agreed with all of OP's 19
9 proposed conditions and have incorporated all of the
10 conditions in SolarCity's proposed Findings of Fact,
11 Conclusions of Law and Decision and Order filed on
12 January 8th, 2016.

13 I believe the requirements for Special
14 Permits are found at HRS Section 05-6 and Section
15 15-15-95 of the Land Use Commission rules.

16 A proposed use may qualify as a Special
17 Permit where, one: The proposed use is unusual and
18 reasonable; and two, the use will promote the
19 effectiveness, objectives of Chapter 205.

20 Here SolarCity's project is positioned to
21 almost perfectly fit the definitional requirements
22 for a Special Permit.

23 SolarCity's project offers exceptional
24 public benefits while proposing to occupy
25 agricultural lands with a minimal footprint and with

1 minimal impacts on a temporary basis, which will
2 allow continued agricultural use during the life of
3 the project, and at the end of the project, the land
4 will be restored to its original condition.

5 The essential character of the area
6 surrounding the petition area will be unaffected by
7 the project and its operations.

8 SolarCity's project, therefore, is
9 consistent with the overarching purpose of Chapter
10 205. The project will protect and conserve natural
11 resources, and foster intelligent, effective, and
12 orderly land allocation and development.

13 We respectfully request that the Commission
14 approve SolarCity's application for State of Hawaii
15 Special Use Permit. Thank you.

16 CHAIRPERSON ACZON: Any questions for Mr.
17 Tabata, Commissioners?

18 VICE-CHAIR WONG: I have a question about
19 battery pack in terms of it's going to be the
20 structure; is that correct?

21 MR. TABATA: The 520 packs will be in open
22 area. It will be located on a concrete pad.

23 VICE-CHAIR WONG: So the issue I have is
24 what happens if it overheats and there's a fire?
25 What kind of, you know, fire extinguishing, or just

1 you're just going to call five miles away, the fire
2 department will come?

3 MR. TABATA: We have built in safeguards.
4 First of all, each pack is filled with pods, and each
5 pod are filled with cells. The cells are wrapped and
6 insulated by a liquid filled jacket, which acts as an
7 insulator to keep it cool, but if we do have a
8 thermal event, then the system is automatically
9 designed to shutdown a ten pack back system.

10 What we have are 52 ten pack systems. And
11 each ten pack, we have the one 250-kilowatt inverter.
12 So if a pod or a pack were to overheat, that entire
13 ten pack system will shutdown, and that then will
14 isolate it from the rest of the system. Upon
15 shutting down, the liquid filled jackets naturally
16 continue the cooling process. So the heat system
17 will then just -- the increase in heat will just
18 stop.

19 Now, if for some reason there was a fire,
20 some reason, each pack all the packs are in an open
21 area. It is not a single structure. If we had a
22 single structure, then in theory, the whole thing
23 would burn down, but that's not the case here. It's
24 open.

25 VICE-CHAIR WONG: The other thing I was

1 going to come to is, you know, the security issue.
2 Just because it is in open area, what type of
3 security will you have for the area?

4 MR. TABATA: We will be fencing the
5 property. The property will be fenced, and it will
6 be used for agricultural purposes. So it's not going
7 to be vacant, it will be occupied.

8 VICE-CHAIR WONG: Just that, I guess, in my
9 if I was kaohi, you know, a kid, I would say, hey,
10 you know, let's go fool around with this system
11 because there is no one around.

12 MR. TABATA: I'm sure SolarCity system will
13 take whatever method it needs to protect its system.

14 VICE-CHAIR WONG: There are kid out there
15 looking for something to do that's not legal.

16 MR. TABATA: That's something to definitely
17 put on a checklist, I agree.

18 CHAIRPERSON ACZON: Commissioner Cabral.

19 COMMISSIONER CABRAL: I have a couple other
20 questions in that same direction.

21 I love the concept, but I represent the
22 public, and I'll ask some real stupid questions. My
23 batteries often leak. So what is going to happen if
24 your battery starts to leak? Is there something
25 that's going to catch this so that so doesn't leak

1 down -- I don't know anything about it. Could that
2 hurt the soil? Could that cause damage long term to
3 soil if it's not protected or -- so that was one of
4 my questions. And I have several more --

5 So leaking batteries. At one point you
6 said you're going to disturb less than one acre of
7 actual land. A few minutes later you said two acres.
8 I may have missed what the differential was there,
9 and you indicated looking at ag use of grazing
10 cattle.

11 I haven't seen a picture. I love solar,
12 have it on a lot of properties I manage. And being
13 from the Big Island I only wish my kilowatt charge
14 was 14 or something cents. I've been up to 40 plus
15 cents.

16 So anyway, but cattle, you know, how are
17 you going to protect the pillars or whatever these
18 things are mounted on? Because I have cattle. They
19 rub on everything. They will knock something over.
20 So I don't know how realistic that is unless you have
21 something that has been thought through. These are
22 concerns right off the top.

23 MR. TABATA: I'll take them in order.

24 Leaking batteries. The first way we are
25 addressing this is, first of all, going with reliable

1 technology. Tesla Motors has proven through its
2 millions of miles of autos traveling that their
3 battery technology is reliable. So we're making sure
4 that we're using a reliable system, that first of
5 all, will not result in these type of failures.

6 Secondly, our battery system will be
7 monitored. Now, in the testimony before the Kaua'i
8 Planning Commission there was discussion about what
9 happens when batteries degrade, because you charge
10 them, you use them, charge them, eventually the power
11 degrades.

12 They will be monitoring each battery pack
13 system for performance. If it starts degrading to a
14 certain point where their output is going to be
15 endangered, they're going to have to switch them out.
16 And lithium-ion batteries do not contain any liquid,
17 so we can avoid leaking batteries. That's the great
18 answer.

19 For the ground disturbance area, the solar
20 panels will take up less than one acre. The battery
21 packs will take up .65 acres. That's where I come up
22 with less than two acres total. Sorry I didn't make
23 that clear.

24 With respect to ag use, we're proposing,
25 we're contemplating using sheep, not cattle. Sheep

1 may have been proven to be compatible with solar
2 farms in the past, so that's hopefully what will be
3 our ag use.

4 COMMISSIONER CABRAL: I think there were
5 some photos in some of the data sent to us, so that
6 won't require like strong concrete pillars or
7 something, because cattle would knock it down.

8 MR. TABATA: Right, right. They're
9 currently using sheep in the Koloa solar facility
10 right now, and hopefully will be able to implement
11 the same type of ag operation here.

12 COMMISSIONER CABRAL: Thank you.

13 CHAIRPERSON ACZON: Vice chair Scheuer.

14 VICE CHAIR SCHEUER: Thank you, Mr. Chair.

15 A couple questions for the county, but just
16 for you guys right now. Can you tell me, having
17 reviewed the record, where in the record is there an
18 identification of the scope of cultural, historical
19 and natural resources in the petition area, to the
20 extent to which there any traditional and customary
21 practices practiced in the area?

22 I was looking through the materials in the
23 transcripts, and I know there is no archaeological
24 sites, but it's different than T and C,
25 constitutional protected T and C practices.

1 MR. TABATA: What we went through in our
2 analysis, was historical background for the area.
3 And what previous studies have shown is that most of
4 the populations have been concentrated towards the
5 shoreline and not mauka to where we are.

6 That, and the fact that the area has been
7 used for sugarcane cultivation for a good 100 years,
8 has been, at least in our minds, concluded that there
9 are no cultural practices in our petition area or the
10 other neighboring areas that have been used for
11 agricultural use, intensive agricultural use.

12 VICE CHAIR SCHEUER: Just a couple of
13 followup questions on that.

14 Were there Hawaiian experts, practitioners
15 of the general region who were contacted in the
16 course of the development of this project to affirm
17 that there were no practices associated with this
18 particular site?

19 MR. TABATA: I don't believe so, no. I
20 mean, there was nothing active going on in our area,
21 and --

22 VICE CHAIR SCHEUER: That you are aware of?

23 MR. TABATA: That we're aware of. That
24 wasn't done, no.

25 VICE CHAIR SCHEUER: Last thing. Were

1 there any particular findings made by the Kaua'i
2 Planning Commission in this regard to the absence of
3 traditional and customary practices or value, natural
4 or cultural resources in the area?

5 MR. TABATA: Well, they did implement a
6 condition with respect to historical resources that
7 if any were discovered, it would be protected.

8 VICE CHAIR SCHEUER: Was there a particular
9 finding about we affirmatively have found that there
10 is no value, cultural and natural resources in the
11 area that were --

12 MR. TABATA: I'm not aware of it.

13 VICE CHAIR SCHEUER: Thank you, very much.

14 CHAIRPERSON ACZON: Commissioner Wong.

15 VICE-CHAIR WONG: Another question I have
16 is, I know that you did the flora and fauna review of
17 the area, and also -- my thinking is about the panels
18 itself.

19 What type of mitigation factors have we set
20 up for, you know, shearwater birds, or whatever is
21 hitting it, and also FAA flight plan, the flying for
22 any person flying?

23 MR. TABATA: Thank you.

24 We are proposing conditions. Our proposed
25 D and O, and in our proposed Condition 11 we have a

1 condition which says that:

2 If the PV arrays create a hazardous
3 condition for pilots or motorists, the facility
4 operator shall immediately mitigate the hazard upon
5 notification by the DOT Airports Division or the FAA.

6 Mitigation for faunal resources for
7 shearwater, what we are proposing as a condition is
8 that the Applicant shall develop an endangered
9 species awareness training program and all
10 construction workers and employees will undergo this
11 program.

12 And to minimize adverse impacts to species
13 like the Newell's Shearwater and other seabirds, all
14 external lightening shall be only of the following
15 types:

16 Shielded lights, cut-off luminaries, or
17 indirect lighting, spotlights dimmed upward or
18 spotlighting of structures, landscaping or the ocean
19 shall be prohibited.

20 Barbed wire shall not be used on the top of
21 any fencing.

22 Applicant shall monitor avian injuries
23 occurring at the PV system, and report occurrences to
24 the Fish and Wildlife Service.

25 VICE-CHAIR WONG: Thank you.

1 CHAIRPERSON ACZON: Any other questions?

2 Ms. Higuchi, does the county wish to offer
3 any public witness testimony?

4 MS. HIGUCHI: Just for the record, County
5 of Kaua'i has received both the Applicant's proposed
6 Findings of Fact, Conclusion of Law, Decision and
7 Order, and also the State office of Planning's
8 report, and represents that we have no objections to
9 both.

10 CHAIRPERSON ACZON: Mr. Yee.

11 Any questions, sorry -- Commissioners, any
12 questions?

13 VICE CHAIR SCHEUER: Aloha.

14 I noticed that, and I believe I'm
15 recollecting correctly, but I may be prong, in the
16 course of our approving other Special Use Permits for
17 solar facilities, performance bonds were required by
18 the county, and in your case you've chosen, or
19 Planning Commission only chose to require a letter of
20 credit as sufficient.

21 Can you explain perhaps with reference to
22 the record why that was the case?

23 CHAIRPERSON ACZON: I have to swear you in.

24 Do you affirm that the testimony that
25 you're about to give is the truth?

1 KAAINA HULL

2 Was called as a witness by and on behalf of the
3 County, was sworn to tell the truth, was examined and
4 testified as follows:

5 DIRECT EXAMINATION

6 MR. HULL: I do.

7 In reviewing the application, the
8 department wasn't aware that a performance bond would
9 be recommended to the Commission.

10 In reviewing the application, the
11 department wasn't aware that performance bonds have
12 been requested in previous applications. However, we
13 felt in this particular applicant that letter of
14 credit would be sufficient to meet those needs, as
15 well as it also being a condition of approval on the
16 use permitting and past zoning permits that have been
17 ultimately approved, that should they fail to remove
18 the structures, that particular landowner then will
19 be found in violation of those permits, and we can
20 still pursue enforcement clauses through that route.

21 VICE CHAIR SCHEUER: And then the second
22 question is, it might be a question for you or for
23 your counsel.

24 One of the proposed conditions is that any
25 extensions of time beyond the 35-year term of this

1 permit could be approved solely by the County
2 Planning Commission rather than having to come back
3 to the Land Use Commission.

4 Do you have thoughts on how that's been
5 accepted in the delegation of our authority?

6 MR. HULL: Which condition are you
7 referring to?

8 VICE CHAIR SCHEUER: The last sentence in
9 Condition six, which may have been OP's proposed
10 language, though you agreed with it.

11 MR. HULL: The department would feel that
12 if LUC can delegate that authority to the Planning
13 Commission, we have no problem working in that arena;
14 but if there is objection on part of the LUC or
15 general counsel, of course, we're not going to stand
16 in the way of that either.

17 VICE CHAIR SCHEUER: Thank you.

18 Just to be clear, it's not an objection,
19 just wanted to be really clear of just not doing
20 something that we really shouldn't be doing. Thank
21 you.

22 CHAIRPERSON ACZON: Commissioner McDonald.

23 COMMISSIONER McDONALD: Just out of
24 curiosity, I understand the subject lands are not
25 designated by -- was there ever consideration on the

1 county's part to designate -- my understanding is
2 that the subject lands are not designated IAL. Was
3 there any consideration on the county's side to
4 designate these lands IAL or was it ever considered?

5 MR. HULL: I can say that the County of
6 Kaua'i has gone to the IAL review process, and does
7 have a document representing which land to be
8 adopted. I can't speak specifically whether or not
9 these lands are included in this.

10 At this time, that's something I have to
11 get back to you folks on.

12 CHAIRPERSON ACZON: Anybody else? Thank
13 you.

14 Mr. Yee.

15 MR. YEE: Thank you.

16 I certainly recognize how brief Ms. Higuchi
17 was, and so if there is suspicion about attorneys
18 promising to be brief, apparently I will have to take
19 some share in that, I believe.

20 Office of Planning supports the approval of
21 the Special Permit with certain additional and/or
22 amended conditions from the Kaua'i Planning
23 Commission and County Council.

24 We began our discussion with a brief
25 discussion on the law, and what it provided for on

1 the conflicting interest between our goals for
2 renewable energy and goals for preservation of good
3 agricultural lands, and we talked about how the law
4 basically makes it extraordinarily difficult to put
5 on these solar energy directed A lands.

6 There is small exception that I think is
7 only going to be applicable to one case that I can
8 possibly think of. Of the declining B and C lands
9 are allowed to have solar through special permits
10 with certain conditions on them; and D and E lands
11 are allowed to have solar energy facilities,
12 basically they're allowed to have solar energy
13 facilities.

14 So these are all B lands, so it's good
15 agricultural land. Nevertheless, as I said, they're
16 trying to resolve that conflict between these
17 competing interests. The legislature says you may
18 have a Special Permit providing you meet certain
19 conditions. And I will say that those condition
20 are -- it's unusual to put on state requirements on
21 Special Permits because normally Special Permits are
22 granted generically as an authority to the county
23 pursuant to 205-6.

24 So normally the counties have general
25 authority to grant Special Permits essentially

1 variances from the state land use laws use
2 requirements. But in this case the Special Permit
3 has to meet certain additional requirements set forth
4 in the statute.

5 As I said, by the way, the Office of
6 Planning supports the approval of this permit. You
7 will note our letter does not go on about why we
8 support the approval or how wonderful this project
9 is. That's not a reflection of the project, simply
10 because we wanted to focus your attention just on the
11 concerns that we were raising, but that's not to mean
12 we didn't support the project as a whole.

13 Let me turn to the two issues -- I was
14 going to say briefly let me turn to the two issues
15 that we raise and then address some of the conditions
16 that we're asking for.

17 The two issues raised, flora and fauna,
18 that's because we noticed that U.S. Fish and Wildlife
19 had no comments in this case, although they did have
20 comments in other cases. We raised those concerns,
21 had raised those in the Kawaihoa case to have them
22 addressed, and as Mr. Tabata indicated, the developer
23 or petitioner has no objection to that inclusion.

24 I did want to bring your attention,
25 however, to one particular difference between the

1 Kawaihoa case and this with respect to the condition,
2 and that is, it's fairly minor, I think, but in the
3 testimony or in the letter the U.S. Fish and Wildlife
4 talked about how they wanted monitoring that species
5 are occurring at the photovoltaic system. And that
6 was sort of incorporated verbatim into the conditions
7 in Kawaihoa.

8 When we read it again this time, frankly,
9 the condition didn't make a lot of sense. And we did
10 go back to the U.S. Fish and Wildlife about that, and
11 asked them, did you just want to know if there are
12 birds there, or did you want to know if birds were
13 being engineered there?

14 Our understanding, they don't need to count
15 how many birds are there. They need to know whether
16 the birds are being injured, because there were
17 reports on the mainland, and not in necessarily peer
18 review studies, indicating that this was a definite
19 problem at solar facilities.

20 But anecdotal reports that there were some
21 bird that were apparently confusing some of the solar
22 rays with water and were injuring themselves. And if
23 so, Fish and Wildlife was asking if they be informed
24 to give U.S. Fish and Wildlife opportunity to both
25 receive information and as well as possibly work with

1 the landowner or operator facility for a reasonable
2 mitigation effort to avoid those kinds of injuries.

3 So the condition, as you will see in our
4 case, is to monitor injuries, avian injuries, and
5 then to report those occurrences to U.S. Fish and
6 Wildlife. Fairly innocuous, fairly easy to reach.
7 But we do thank them for agreeing to that.

8 We also noted that their consultant had a
9 variety of recommendations for mitigation that were
10 not fully incorporated into the conditions, so we are
11 also recommending that all of the consultant
12 recommendations be incorporated as reflected in our
13 proposed conditions as well.

14 With respect to agricultural, Department of
15 Agriculture noted that they were concerned about
16 insufficiency of the information regarding what
17 specific compatible agricultural activity would be
18 occurring on-site. And as Mr. Matsubara was talking
19 about, this is not like a dba, the record is set at
20 the Planning Commission and rather than -- I mean,
21 let me just be upfront.

22 You could, I suppose, say I don't have
23 enough information, I want to send it back to the
24 Planning Commission. But that really does involve a
25 lot of time and effort and resources. And we felt

1 that a condition -- and we talked with the Department
2 of Agriculture about this as well -- we felt that if
3 there was a condition that addressed our concern,
4 that would be sufficient, and the matter does not
5 need to be sent back.

6 So we will see that actually in a couple of
7 issues that we raised that arose from the Kawaiiloa
8 comparison. So in this case, although we probably
9 would have liked to see some more specific definitive
10 assurances about compatible agriculture activity, we
11 proposed conditions to resolve those concerns mainly
12 that they get it done. It's a requirement that they
13 do it. And that they report it to the county, and
14 that -- and within a certain specified period of
15 time.

16 We did build into that condition the
17 opportunity to get an extension on that period of
18 time given by the county. And let me note at this
19 point, we did make a couple of changes to the
20 Kawaiiloa conditions to amend the approval of
21 approving agency of the county, and the Kawaiiloa
22 approving agency was the council.

23 In this case, the proposed approving agency
24 is the Planning Department. That is frankly for ease
25 of approval. And much of the factual analysis does

1 occur at the Planning Department level.

2 So subject, of course, to the Kaua'i's
3 position, the Office of Planning felt sufficiently
4 satisfied that any issues about extensions, for
5 example, would be appropriately addressed by the
6 Planning Department. We didn't feel it needed to
7 rise to the level of County Council approval, that if
8 the Kaua'i Planning Department is okay with that,
9 then OP is okay with that as well.

10 Going back to agriculture concerns, we have
11 Conditions 1 and 2 and -- 1 and 2 about agriculture.
12 And then Condition 4 regarding financial security, is
13 of course, a requirement under the statute.

14 Let me briefly go to highlight a few of the
15 conditions that we talked about. As I said,
16 Condition 1 and 2 dealt with the requirement to have
17 compatible agricultural activity. We incorporated
18 this into Kawaihoa. It's intended to make sure that
19 compatible agricultural activity actually occur.

20 As I talked about, there is a tradeoff,
21 conflict of interest between agriculture and energy
22 with solar facility. So we want to make sure that
23 these agricultural activities are not a pretext for
24 solar facilities, but there actually is going to be
25 this tradeoff. These actually are going to be use

1 lands made available and used for agricultural
2 activity.

3 So while I don't think that's necessarily
4 going to occur here, incorporating in all these
5 special permits, make sure nobody buys, hopefully, if
6 they are going to use this as pretext, as why we will
7 get it up at some point, we don't know when. So
8 that's the reason for Conditions 1 and 2.

9 Condition 3, of course, is just the
10 incorporation of the flora, fauna concerns that are
11 being more comprehensively addressed.

12 This Condition 4 is the financial security.
13 There is a small difference in the Kawaihoa case in
14 that there was a specific amount for that financial
15 security. In this case we don't know what that
16 amount is. Again, rather than sending it back, we
17 felt it was sufficient to allow the Kaua'i Planning
18 Department to make that decision with the appropriate
19 amount, since they would be the implementing agency
20 or of greatest concern if enforcement was needed, and
21 if they needed to get that facility decommissioned.

22 Condition 6, let me just skip to. I will
23 note that there is -- this is a long permit. This is
24 very long, 35 years that this permit is good for, and
25 that's just in the nature of solar facilities.

1 They need that long time period in order to
2 justify the investment, so I understand why they
3 don't want yearly or annual renewals. At the same
4 time, because it's so long, there really is going to
5 be very little review by the Land Use Commission
6 certainly, and we do -- so we did want to make sure
7 that this facility actually moves forward.

8 Condition 6 we required that the project be
9 established within two years. And because this is
10 not -- it's been continually a problem if people get
11 entitlements that they just hold onto. So this is
12 not -- Special Permit is not intended to give
13 entitlement so that they could sell the land or sell
14 the license. This is intended so that SolarCity can
15 actually build this proposed project.

16 So it needs to be in place in two years.
17 If something happens, we built in an extension
18 approved by the county, and we've -- we did add in
19 that last sentence about approval of time extension
20 shall not be required from the LUC.

21 This was a request actually from the county
22 to put this in, Office of Planning has no objection
23 to it, but that is the difference from the Kawaiiloa
24 case.

25 Let me note, the 35-year date should give

1 them enough time, because useful life is 25 to 30.
2 So they have enough time period, and I recognize
3 facilities operate their useful life, we think this
4 built in enough time.

5 Any of the others I think are fairly
6 self-explanatory. Let me only note that the
7 Condition 11, with respect to the PV array is again
8 one of those issues that was brought up in the
9 Kawailoa case. Although we're not saying solar rays
10 will be hazardous, but just in case they are, we want
11 that immediate notification and mitigation
12 notification by DOT.

13 Just to let you know generally the
14 Department of Transportation is going to be more
15 concerned about probably more about attraction of
16 avian wildlife as their issue but, in facilities that
17 are close to the airports, that will be a continuing
18 source and growing course source of concern by them.

19 Condition 11 was from Kawailoa, agreed to
20 by the Petitioner. It is there as a precautionary
21 provision that we believe can be justified just on
22 that basis rather than having to get any further
23 facts especially given Petitioner's agreement to it.

24 We are happy to answer any questions.

25 CHAIRPERSON ACZON: Commissioners, any

1 questions for Mr. Yee? Commissioner Estes.

2 COMMISSIONER ESTES: I'm interested in the
3 process, so I wonder if you can tell me why the Fish
4 and Wildlife Service -- wasn't a letter was sent on
5 December 30th of this year for them to review the
6 application? Why was that done so late?

7 MR. YEE: It was sent by the office of
8 Planning rather than by the county. And the Office
9 of Planning sent it as soon as Office of Planning was
10 aware of the Special Permit.

11 So because we were not aware of the Special
12 Permit, we didn't inform U.S. Fish and Wildlife. I
13 cannot address your question as to why anyone else
14 didn't send them a letter or why anyone else didn't
15 inform OP, but I can tell you we sent the letter when
16 it came up, and when we discovered it was a matter
17 before the LUC.

18 CHAIRPERSON ACZON: Any other questions?
19 Commissioner Scheuer.

20 VICE CHAIR SCHEUER: Mr. Yee, I understand
21 you're not going to be serving in this capacity much
22 longer.

23 MR. YEE: There is a limit of my duration
24 of my service here.

25 VICE CHAIR SCHEUER: You've been a great

1 help to us on our deliberations on various difficult
2 issues.

3 I just want to ask you your thoughts about,
4 there are certain parts of the proposed conditions
5 which, in my mind, delegate a lot of authority of
6 Land Use Commission to the Kaua'i Planning
7 Commission. For instance, Condition 18, Planning
8 Commission reserves the right to revise, add or
9 delete conditions of approval in order to address or
10 mitigate unforeseen impacts.

11 So I read that to mean that we might add a
12 condition here, but then the Planning Commission
13 could go and delete it without having to come to us.

14 MR. YEE: A couple things. One is that
15 condition is taken verbatim, I think, from the
16 Planning Commission's Decision and Order. I have not
17 read it as being -- as authorizing the Planning
18 Commission to reduce the requirements upon the
19 developer.

20 I had read it as an ability of the Planning
21 Commission to add to the requirements of the
22 Petitioner. I think it would be -- I don't think we
23 would support an ability of the Planning Commission
24 to reduce those obligations, and so if that is not
25 clear, we will certainly support any clarification on

1 that. Whether or not the Land Use Commission also
2 wants to approve any additional requirements -- let
3 me backtrack.

4 Normally once a permit is granted, we don't
5 go back and revisit. So this is unusual in that
6 sense. There are actually a couple of other
7 provisions here that are unusual that LUC would not
8 normally impose. We just included it because it was
9 from the Planning Department.

10 But if that's something that the Land Use
11 Commission would want, we probably would need to add
12 something to that effect. We would happy to assist
13 in drafting anything and working with the parties if
14 that's the Commission's preference.

15 VICE CHAIR SCHEUER: Just that last
16 sentence I asked the county about earlier in
17 Condition 6, approval of extensions, time extensions
18 shall not be required by the LUC.

19 MR. YEE: That was not in the Office of
20 Planning's original proposal, actually. It was
21 requested by Kaua'i county. So we're happy to
22 correct it to the to Land Use Commission.

23 The appropriate balance and responsibility
24 to extend county on these issues is always a matter
25 of judgment and discretion to the extent -- many

1 times enforcement of these issues, especially after
2 the first year or two, is really done all at the
3 county level. So there may be some individuals who
4 think it's perfectly fine to give that authority to
5 the county, because it just isn't necessary for LUC
6 review.

7 We defer to your judgment on that question.
8 But that's the analysis that would apply.

9 And this would not be a hearing without a
10 tough question from you, Commissioner Scheuer.

11 CHAIRPERSON ACZON: Anybody else? Any
12 final questions or comments, Commissioners?

13 Before we move on, we want to take a
14 five-minute recess.

15 (Recess taken.)

16 CHAIRPERSON ACZON: We're back on the
17 record.

18 Commissioners, what is your pleasure on
19 this matter? Commissioner Estes.

20 COMMISSIONER ESTES: I move to approve the
21 profit Special Permit application for SolarCity
22 Corporation, subject to the 19 conditions as proposed
23 by the State Office of Planning, and as agreed to by
24 the Petitioner in their proposed Findings of Fact,
25 Conclusions of Law, and Decision and Order, with the

1 an amendment of the last sentence of the Office of
2 Planning's proposed Condition 6 to now read:

3 Approval of time extensions shall be
4 required from the Land Use Commission.

5 CHAIRPERSON ACZON: Any second?

6 VICE-CHAIR WONG: Second.

7 CHAIRPERSON ACZON: Motion has been made by
8 Commissioner Estes and seconded by Commissioner Wong.
9 Any discussion? Commissioner Scheuer.

10 VICE CHAIR SCHEUER: Thank you, Mr. Chair.
11 I tend to vote in favor of the motion, but I just
12 want to make a couple comments on the record.

13 Regarding my voting in favor, I definitely
14 agree with the amendment. I don't think we could
15 properly delegate to the Planning Commission what
16 would appear to be an indefinite extension of time.

17 And then I'm particularly troubled by the
18 absence on the record of any affirmative attempts by
19 the Applicant or the Planning Commission to identify
20 the scope of traditional and customary practices.

21 I think what we're required to do in this
22 case is -- the core issue is the one identified by
23 the Office of Planning, based solely on the record.
24 How do we balance the state's compelling dual
25 interest in viable agriculture and self-sufficiency

1 against the need for renewable energy, and I think
2 it's very clear in this case, to me at least, that
3 this is a worthwhile project, worthwhile balancing to
4 take this land out of agricultural to do the
5 voltaic -- to use photovoltaic for the proposed
6 project, but in the context of doing that we also --
7 we have to fulfill all of our duties in all of our
8 decision-making, not just District Boundary
9 Amendments, but all decision-making to make sure we
10 follow the test that Supreme Court laid out for us in
11 Kapa'akai.

12 I just want to note for the record, the
13 record is really very silent on whether or not the
14 Planning Commission and we have actually satisfied
15 those tests.

16 So given the nature of this project, the
17 size, the former uses in plantation agriculture, it
18 appears that we're not going to be impacting
19 traditional and customary practices in this action,
20 but there is no specific findings to that effect.
21 Thank you.

22 CHAIRPERSON ACZON: Thank you, Commissioner
23 Scheuer.

24 Anybody else? If there is no further
25 discussion, Mr. Orodener, please poll the

Commissioners.

EXECUTIVE OFFICER: The motion is to approve with amendment to Condition 6 to require a LUC approval of any extension.

Commissioner Estes?

COMMISSIONER ESTES: Yes.

EXECUTIVE OFFICER: Commissioner Wong?

VICE-CHAIR WONG: Aye.

EXECUTIVE OFFICER: Commissioner Mahi?

COMMISSIONER MAHI: Aye.

EXECUTIVE OFFICER: Commissioner Scheuer?

VICE CHAIR SCHEUER: Aye.

EXECUTIVE OFFICER: Commissioner McDonald?

COMMISSIONER McDONALD: Aye.

EXECUTIVE OFFICER: Commissioner Hiranaga?

COMMISSIONER HIRANAGA: Aye.

EXECUTIVE OFFICER: Commissioner Cabral?

COMMISSIONER CABRAL: Aye.

EXECUTIVE OFFICER: Chair Aczon?

CHAIRPERSON ACZON: Aye.

EXECUTIVE OFFICER: Mr. Chair, the motion carries unanimously.

CHAIRPERSON ACZON: Thank you.

Congratulations.

Before we go to the next agenda, Vice Chair

1 Wong has a statement to make.

2 (Statement made off the record.)

3 VICE-CHAIR WONG: Well, for the record,
4 since this is your last time, I had to give him a
5 hard time one last time.

6 But in all respect, I just want to say
7 thank you on behalf of the Commission. And also that
8 hopefully whoever takes your place will have the same
9 dedication, experience and knowledge that you have,
10 even though they may not wear tennis shorts.

11 But thank you for your time and effort
12 efforts in front of the Commission.

13 CHAIRPERSON ACZON: The next agenda item,
14 Executive Session for the Commission on conduct and
15 Commission's authority pertaining to duties,
16 privileges, immunities, powers as it relates with
17 respect to Hawaii.

18 Chair will entertain a motion. If there is
19 no motion, then we don't have to go into executive
20 session. Forget it.

21 We're adjourned.

22 (The proceedings recessed at 11:00 a.m.)
23
24
25

CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on January 13, 2016, at 9:36 a.m ., the
proceedings contained herein was taken down by me in
machine shorthand and was thereafter reduced to
typewriting under my supervision; that the foregoing
represents, to the best of my ability, a true and
correct copy of the proceedings had in the foregoing
matter.

I further certify that I am not of counsel for
any of the parties hereto, nor in any way interested
in the outcome of the cause named in this caption.

Dated this 13th day of January, 2016, in
Honolulu, Hawaii.

JEAN MARIE McMANUS, CSR #156