

LAND USE COMMISSION

STATE OF HAWAII

August 9, 2017

Leiopapa A Kamehameha Building

Conference Room 405

235 S. Beretania Street, Honolulu, Hawaii 96813

Commencing at 9:30 a.m.

I. Call to order

II. Adoption of Minutes
(July 19-20, 2017 and July 26, 2017)

III. Tentative Meeting Schedule

IV. Action

SP15-405 Waipio PV LLC (formerly known as Waiawa
PV LLC) (Oahu)To consider amendments to Waipio PV LLC's
Special Use Permit that established a solar
energy facility at Waipio, Ewa, Oahu, Hawaii.
Tax Map Key No.: (1) 9-5-003:017 (por.)

V. Action

SP15-406 Kawaihoa Solar, LLC (Oahu)

To consider amendments to Kawaihoa Solar, LLC's
Special Use Permit that established a solar
energy facility at Kawaihoa, North Shores, Oahu,
Hawaii. Tax Map Keys.: (1) 6-1-005: portion of
1, 6-1-006: portion of 1

VI. Election of Officers

1 APPEARANCES:

2 EDMUND ACZON, Chairperson
3 JONATHAN SCHEUER, Vice Chair
4 ARNOLD WONG, Vice Chair

5 COMMISSIONERS:

6 LEE OHIGASHI
7 DAWN CHANG
8 LINDA ESTES
9 NANCY CABRAL
10 GARY OKUDA

11 DIANE ERICKSON, ESQ., Deputy Attorney General

12 STAFF:

13 DANIEL ORODENKER, Executive Officer
14 RILEY HAKODA, Staff Planner/Chief Clerk
15 SCOTT DERRICKSON, Staff Planner
16 BERT SARUWATARI, Staff Planner

17 DAWN APUNA, ESQ., Deputy Attorney General for State
18 Office of Planning
19 LORENE MAKI, Planner
20 RODNEY FUNAKOSHI, Planner

21 RAYMOND YOUNG, City and County of Honolulu

22 BENJAMIN KUDO, ESQ. and SARAH SIMMONS, ESQ. for
23 Petitioners Waipio PV LLC and Kawaihoa Solar LLC
24
25

1 CHAIR ACZON: Good morning. This is the
2 August 9, 2017 Land Use Commission Meeting.

3 The first order of business is the adoption
4 of the minutes for the July 19-20, 2017 and July 26,
5 2017 meetings. Are there any corrections or comments
6 on them? If not, is there a motion to adopt the
7 minutes?

8 COMMISSIONER WONG: Move.

9 COMMISSIONER ESTES: Second.

10 CHAIR ACZON: Motion has been made by
11 Commissioner Wong, seconded by Commissioner Estes to
12 adopt the minutes for the July 19-20, 2017 and July
13 26, 2017 meetings. All in favor, say aye.

14 COMMISSIONERS: Aye.

15 CHAIR ACZON: Opposed? The minutes are
16 adopted unanimously.

17 The next agenda item is the tentative
18 meeting schedule. Mr. Orodener.

19 EXECUTIVE OFFICER: Thank you, Mr. Chair.

20 Tomorrow, we will be on Kauai for the
21 adoption of the order for Island School UHCC Kauai.
22 I would note also that your handout is incorrect. We
23 made some modifications. We actually have a busy
24 fall and rest of the summer.

25 August 23rd, we will be on Maui for Pukalani

1 Association's motion for extension of time and for
2 adoption of the orders in this matter if necessary.

3 On September 20th and 22nd, we will be on
4 HCP0 at HCP0 on Oahu. That Friday, we are trying to
5 schedule a site visit on agricultural land petition
6 in Kunia.

7 On September 27 and 28th, we will be on Maui
8 for Waikapu Town.

9 On October 11th and 12th, we will be on Oahu
10 for the Kunia on agricultural land petition.

11 On October 18th and 19th, we will be on
12 Molokai for the -- also for another IAL petition.

13 November 21 and 22 will be Honouliuli
14 Special Permits. I believe that's here on Oahu.

15 And then the schedule at the moment is free
16 for the remainder of the calendar. Although we are
17 expecting a number of petitions to come in.

18 CHAIR ACZON: So the September 6 and 7 is
19 out then?

20 EXECUTIVE OFFICER: Yes.

21 CHAIR ACZON: Commissioners, any questions
22 on our schedules? Thank you, Mr. Orodenger.

23 The next agenda item is a meeting on Docket
24 No. SP15-405 Waipio PV, LLC formerly known was Waiawa
25 PV, LLC. To consider amendments to Waipio PV LLC's

1 Special Use Permit that established a solar energy
2 facility at Waipio, Ewa, Oahu, Hawaii. Tax Map Key
3 No. (1)9-5-003 portion of lot 17.

4 Before I go to the presentation of -- some
5 disclosures I believe?

6 COMMISSIONER CHANG: Yes.

7 CHAIR ACZON: Commissioner Chang?

8 COMMISSIONER CHANG: Good morning. I would
9 like to disclose that when this project was under
10 First Wind, I was doing some consulting work with
11 them several years ago.

12 CHAIR ACZON: Okay. Any opposed?

13 MR. KUDO: No objections.

14 MS. APUNA: No objection.

15 CHAIR ACZON: Commissioners? Thank you,
16 Commissioner Scheuer.

17 VICE CHAIR SCHEUER: I don't even know if
18 this is a conflict. I just see Mr. Wescoatt in the
19 audience. And I work as a consultant for the
20 Department of Hawaiian Homelands of which he is a
21 commissioner. So I don't know his role in these
22 projects but I want to at least disclose that matter.

23 CHAIR ACZON: Any opposed? Any objection?

24 MR. KUDO: No objection.

25 MS. APUNA: No objection.

1 CHAIR ACZON: Thank you.

2 Will the applicant or its representative
3 please identify themselves for the record.

4 MR. KUDO: Representing NRG and the
5 individual solar entities, Ben Kudo and with me is
6 Sarah Simmons from my office. With me, I have
7 Patrick Sullivan from NRG corporate headquarters and
8 also Wren Wescoatt is a consultant and Aarty Joshi
9 who is one of the project entitlement person here.

10 CHAIR ACZON: Thank you. Ms. Apuna.

11 MS. APUNA: Good morning, Deputy Attorney
12 General Dawn Apuna on behalf of the State Office of
13 Planning. Here with me today is Lorene Maki and
14 Rodney Funakoshi.

15 CHAIR ACZON: Thank you.

16 MR. YOUNG: Good morning, Chair, Members of
17 the Land Use Commission. My name is Raymond Young.
18 I'm representing the Department of Planning and
19 Permitting, City and County of Honolulu.

20 CHAIR ACZON: Thank you.

21 A note for the Commission that we are
22 required by Hawaii Revised Statutes, Chapter 92 to
23 allow public testimony of any agenda item. However,
24 I also note that the Commission's consideration of
25 this matter is limited to the record provided by the

1 Honolulu Planning Commission.

2 Mr. Kudo, please proceed with your
3 presentation.

4 MR. KUDO: Thank you.

5 Good morning, Chair Aczon and Vice Chair
6 Scheuer, Wong and Members of the Commission.

7 I'm here representing both Dockets SP15-405
8 and SP15-406. I'll be making a presentation on both
9 dockets at the same time that are generic in nature
10 and then specifically going into each docket
11 separately.

12 Did the Commission wish me to stop after the
13 Waipio docket?

14 CHAIR ACZON: Yes, take it separately.

15 MR. KUDO: All right. As I mentioned, we
16 are -- I have with me both Patrick Sullivan, who is
17 vice president of development at NRG Energy and Wren
18 Wescoatt, a consultant working on both of these
19 projects. They will be giving brief presentations
20 and available for questions from the Commission if
21 you have any.

22 Mr. Sullivan will give a brief introduction
23 of who NRG is as the applicant. As you know, the
24 original SUP permit approved by the Commission in
25 2015 was issued to SunEdison. And SunEdison is no

1 longer around. NRG has assumed their position. So I
2 think it might be a good idea for you to understand
3 who NRG is.

4 And Wren Wescoatt is available to discuss
5 the project history since he was involved with
6 SunEdison in doing the SUPs then in 2015. And he
7 will also address specific issues pertaining to radio
8 frequency interference, an issue raised by the Office
9 of Planning.

10 We're here today seeking your support to
11 amend two --

12 CHAIR ACZON: Mr. Kudo, can I interrupt you
13 for a minute? I just missed one important portion.
14 I'm so sorry about this. I want -- for the benefit
15 of everybody, I just want to complete the record
16 before we go through the whole presentation. I
17 apologize for my mistake.

18 Let me update the record for this docket.

19 On March 5, 2015, Commission Chair took
20 official notice and recognized the change in the name
21 of Petitioner to now be known as Waipio PV, LLC and
22 the Commission voted to grant Applicant's application
23 for Special Permit.

24 On April 21, 2017, the applicant submitted
25 an application to the City and County of Honolulu

1 Planning Commission to amend its special permit.

2 On June 21, 2017, the Honolulu Planning
3 Commission conducting a hearing on applicant's
4 application for an amendment.

5 On July 24, 2017, the Land Use Commission
6 received a copy of the decision and a portion of the
7 record of the Planning Commission's proceedings on
8 the Applicant's request.

9 On July 31st, 2017, the Land Use Commission
10 received the remaining portion of the record
11 consisting of the minutes reflecting the adoption of
12 the minutes of the Planning Commission's June 21st,
13 2017 hearing.

14 On August 2, 2017, the Commission sent an
15 August 9-10, 2017 Land Use Commission agenda notice
16 to the Parties and to the Statewide, Kauai and Oahu
17 mailing lists.

18 Let me briefly describe our procedure for
19 today on this docket.

20 First, I will call for those individuals
21 desiring to provide public testimony on Docket No.
22 SP15 405 to identify themselves. All such
23 individuals will be called in turn to our witness box
24 where they will be sworn in prior to their testimony.

25 Applicant will make its presentation.

1 And after the completion of the Applicant's
2 presentation, you will receive any public comments
3 from the State of Planning.

4 We have County in here. We were told nobody
5 showing up from the County but, you know, since
6 you're here, you're welcome.

7 Are there any questions on our procedure for
8 today? I don't think we have that much public
9 testimony but let me go through the motion. Any
10 public testimonies?

11 COMMISSIONER WONG: None.

12 CHAIR ACZON: Okay. Thank you.

13 So Mr. Kudo, please proceed with your
14 presentation.

15 MR. KUDO: Thank you, Chair Aczon.

16 As I said, we're here today seeking your
17 support to amend two Special Use Permits previously
18 approved by this Commission in 2015. The amended
19 SUPs were recently approved in June by the City and
20 County of Honolulu Planning Commission. But since
21 the land involved in both projects is greater than 15
22 acres, we are here before you seeking your approval
23 as well.

24 Both the Waipio SUP and the Kawaihoa SUP are
25 being heard by you today in this quasi consolidated

1 process. However, we will present each respective
2 project separately.

3 Essentially, the modifications involved in
4 these SUPs, there are three basic changes that we're
5 seeking your approval.

6 First is an extension of time to complete
7 the construction of the respective projects. As you
8 recall, the SUPs approved in 2015 had separate
9 deadlines for the construction of the projects to be
10 completed. Those deadlines have since come and gone.
11 And so we need to have those deadlines extended.

12 Secondly, a change in the number of panels
13 that will be used for the project because we will be
14 selecting a different manufacturer of PV panels which
15 have different dimensions and also greater
16 efficiencies.

17 And third, in the case of the Waipio SUP,
18 rather than a static PV frame -- framing system, they
19 will be framed on an automatic tracking system
20 similar to what was permitted at Kawaihoa. In other
21 words, they'll track the sun. These modifications
22 are minimal but necessary for these projects to move
23 forward.

24 Both Waipio and Kawaihoa SUPs were
25 originally approved by this Commission again in 2015.

1 However, in April 2016, SunEdison filed for
2 bankruptcy. And HECO terminated the purchase power
3 agreements with SunEdison shortly thereafter.

4 NRG Energy purchased these projects through
5 the bankruptcy sale of SunEdison's assets in October
6 of 2016, a few months later.

7 In May of 2017, application to amend the
8 SUPs was filed with the City and County of Honolulu
9 Planning Commission.

10 Since these applications are for a
11 modification of the existing SUPs, we will not repeat
12 arguments already made on whether these projects are
13 an unusual and reasonable use of agricultural lands
14 under Chapter 205 Section 2056 as nothing has changed
15 in that regard.

16 To that end, we plan on having Tin Roof
17 Ranch conduct its ranching operations on the Waipio
18 PV project lands. And Kualoa Ranch will be operating
19 on the Kawaihoa PV project lands. The rent will be
20 significantly reduced to these ranchers at
21 approximately \$10 per acre not to exceed \$2,000 per
22 year. The ranches plan on pasturing sheep on the
23 areas where the PV panels are to be located.

24 There are no changes to the already filed
25 agriculture plan considered by this Commission in

1 2015. PV facilities are a permitted use on
2 agricultural land under Section 205-4.521. And City
3 and County Land Use Ordinance Chapter 21-3.50-4
4 provided that proper permits like the SUP are
5 obtained.

6 Before speaking on the Waipio SUP itself, I
7 wanted to introduce Patrick Sullivan, vice president
8 of the development to orient you with regard to the
9 background of NRG Energy.

10 CHAIR ACZON: Let me swear you in first.

11 Do you swear that the testimony that you're
12 about to give is the truth?

13 PATRICK SULLIVAN: I do.

14 CHAIR ACZON: Please state your name and
15 address for the record.

16 PATRICK SULLIVAN: My name is Patrick
17 Sullivan. I'm vice president of project development
18 for NRG. And my business address is 100 California
19 Street, San Francisco, California.

20 CHAIR ACZON: Please proceed.

21 PATRICK SULLIVAN: Thank you.

22 So I'd like to provide a brief overview of
23 NRG for those members of the Commission that may not
24 be familiar with who we are.

25 NRG is the largest wholesale power

1 generation company in the United States with over 50
2 gigawatts of both conventional and renewable power
3 generation all throughout major wholesale power
4 markets in the United States. We are also one of the
5 largest retail energy companies in the United States
6 with over 3 million retail customers primarily in
7 Texas and the Northeast United States.

8 As a publicly traded Fortune 500 company,
9 we've got about \$14 billion in annual revenue and
10 about \$30 billion in total assets.

11 The renewables business for which I lead our
12 project development platform is the largest
13 integrated renewables platform in the country. Today
14 we own and operate about five gigawatts of renewable
15 assets across the country, about three gigawatts of
16 wind and two gigawatts of solar. We are in
17 development and construction on almost six gigawatts
18 of opportunities in addition to that. We're active
19 in 26 states across the country. And we focus on
20 both utility scale as well as distributed generation
21 solar projects. We are the market leader in
22 community solar projects. And we also have a large
23 presence in distributing generation in CNI type solar
24 technicians.

25 And in terms of sort of the NRG's focus on

1 Hawaii, the two projects that we're here talking to
2 you all about today are two of five projects that we
3 are advancing on Oahu. In addition to the two here,
4 there's a third one that we have a contract with HECO
5 and two earlier stage projects that we are looking to
6 advance development for hopefully align some of the
7 future procurement needs for HECO on the island of
8 Oahu. Thank you.

9 CHAIR ACZON: Any questions? Ms. Apuna?

10 MS. APUNA: No questions.

11 CHAIR ACZON: Commissioners? Commissioner
12 Wong.

13 COMMISSIONER WONG: Just a question. I was
14 wondering, you know, DOA has recommended --
15 Department of Agriculture, sorry, has recommended to
16 change the fencing. Do you have any problems with
17 that?

18 PATRICK SULLIVAN: We do not.

19 COMMISSIONER WONG: Thank you.

20 CHAIR ACZON: Mr. Young, do you have any
21 questions?

22 MR. YOUNG: No, the City doesn't have any
23 questions.

24 CHAIR ACZON: Anybody else? Commissioners?
25 Mr. Sullivan, I understand that the

1 Petitioner is asking for some amendments in the
2 condition. I just want to make sure that are you
3 aware of all the conditions for this docket?

4 PATRICK SULLIVAN: I am yes, as is my team.

5 CHAIR ACZON: Thank you.

6 Anybody else? Thank you. Mr. Kudo.

7 MR. KUDO: I'll now proceed to address the
8 Waipio SUP in particular. Waipio's Exhibit Number 7
9 submitted to the Planning Commission and part of the
10 administrative record before you is blown up here for
11 the Commission's reference and orientation and Sarah
12 will --

13 CHAIR ACZON: Vanna White.

14 MR. KUDO: Beg your pardon? Vanna White.
15 Pointing to Exhibit 7 here.

16 First Wind started the SUP process in 2014.
17 Then SunEdison acquired the Waipio project formerly
18 known as Waiawa in January of 2015. The LUC approved
19 the State Land Special Use Permit on March 25th,
20 2015.

21 SunEdison was unable to finance the project
22 and HECO terminated its purchase power agreement in
23 February of 2016. Thereafter, SunEdison filed
24 bankruptcy and NRG purchased this project during that
25 sale in October of 2016.

1 In December 2016, NRG filed an annual report
2 which requested an extension of time to complete the
3 construction of this project.

4 On February 8, 2017, another request was
5 made for an extension of time.

6 And on February 15, 2017, the City Planning
7 Commission approved the extension request as a minor
8 change.

9 However by letter dated March 14, 2017, the
10 Land Use Commission notified the Department of
11 Permitting that the minor change was actually a
12 quote, modification of the SUP and a decision of the
13 LUC and therefore, needed to comply with a two-stage
14 approval process under the LUC Rules, HAR 15-15-96.1.
15 We met and discussed with both DPP and LUC staff to
16 jointly agree to redo the SUP application for
17 modification for Waipio and to include other
18 modifications that we were doing involving the use of
19 different PV panels from the one SunEdison had
20 proposed.

21 The Planning Commission held a public
22 hearing on June 21st, 2017 and approved the proposed
23 amendments to its findings of fact, conclusions of
24 law and decision and order dated July 19, 2017.

25 There are specific amendments, three

1 specific amendments to the Waipio SUP. The first
2 is -- I mentioned is an extension of the deadline to
3 complete the project. The original date is March
4 25th, 2017 which was over four months ago. And we
5 obviously need more time to comply with this
6 condition. And therefore, we are requesting -- we
7 requested before the Planning Commission and this
8 commission an extension of that deadline to December
9 31st, 2019. And this is for both Kawaihoa as well as
10 Waipio.

11 The second amendment that we are addressing
12 is the number of panels that will be used that differ
13 from the number of panels used by SunEdison or
14 proposed by SunEdison.

15 Condition number 7 of the SUP for Waipio
16 states that a major modification include but are not
17 limited to significant increases in the number of PV
18 panels. Applicant proposed and the Planning
19 Commission approved the removal of the phrase number
20 of and replace it with the area covered by. So that
21 any time that we needed to adjust the number of
22 panels because of the size or dimension of the panel,
23 we wouldn't need to be deemed to be a modification
24 and we would have to go through this process again.
25 So we're replacing the word number of by area covered

1 by the PV panels.

2 Due to SunEdison's bankruptcy, the applicant
3 is unable to purchase their panels. And so
4 therefore, we've had to choose other panels to
5 replace the panels that they had proposed. And they
6 are different in size and efficiencies.

7 Exhibit 8, which Sarah will be pointing to,
8 is a blown up on the large board here and shows the
9 current proposed configuration of the PV panels which
10 is subject to slight adjustments due to factors such
11 as grade, topography and sunlight patterns. An
12 overlay of the previous panel configuration and
13 current preliminary configuration is included as
14 Applicant's Exhibit 9.

15 Thus, Applicant is proposing to better
16 express the spirit and intent of condition number 8
17 by stating that any significant increase in the area
18 covered rather than number of PV panels will be
19 considered a major modification that must be approved
20 by both the Planning Commission as well as this
21 Commission. In other words, we should not use the
22 number of panels as a trigger for modification. This
23 change was approved by the Planning Commission and it
24 clarified that the 35 year life of the project did
25 not start until the date of this Commission's

1 approval.

2 The third amendment that is being addressed
3 in Waipio is the fixed tilt rack -- fixed versus tilt
4 rank mounting. Applicant seeks to change the
5 configuration of the project to include single access
6 tracking racks very similar to the racks approved for
7 the Kawaihoa project. By installing these tracking
8 racks, the project is significantly more efficient
9 and gains additional sunlight time to produce energy.
10 To support this change, applicant submitted an
11 update -- updated reflectivity and glare study
12 showing no increase in reflection from various
13 points. In fact, as I understand it, the glare was
14 reduced.

15 We received several agency comments on the
16 Waipio SUP that I'd like to address. The first was
17 DOT comments from the airports division. Although
18 the Airports Division's official letter was received
19 after the Planning Commission's decision, we have
20 been in discussions with State Department of
21 Transportation about their concerns and addressed
22 them during the Planning Commission hearing. And
23 they appear on page 21 of the Planning Commission
24 minutes.

25 We stated during the commission planning

1 hearing that the airport's concerns regarding glint
2 and glare was addressed by our updated glare
3 analysis. This was submitted to the Planning
4 Commission as the attachment to Exhibit 5.

5 Condition 10 of the SUP which states that if
6 a hazardous condition is created for pilots and/or
7 motorists, the Applicant shall immediately mitigate
8 the hazard upon notification by the DOT Airports
9 Division or the FAA. We believe this condition
10 addresses DOT's concerns and we fully intend on
11 complying with this condition.

12 The DOT also raised concerns regarding radio
13 frequency interference caused by the PV panels. And
14 we also addressed this before the Planning Commission
15 confirming that the proposed PV modules to be used at
16 Waipio are designed to maximize shielding potential
17 RFI by ensuring that the power electronics within the
18 inverters which provides sufficient shielding.

19 I'd like to bring up to the stand Wren
20 Westcoatt because he's our technical consultant to
21 address a recent incident at Wheeler Air Force Base
22 and another solar project, not our solar project,
23 which was producing RFI. Wren.

24 CHAIR ACZON: Let me swear you in first. Do
25 you swear that the testimony that you're about to

1 give is the truth?

2 WREN WESCOATT: I do.

3 CHAIR ACZON: Please state your name and
4 address for the record.

5 WREN WESCOATT: Wren Westcoatt, project
6 development manager for NRG.

7 CHAIR ACZON: Thank you. Mr. Kudo.

8 MR. KUDO: Proceed.

9 WREN WESCOATT: First, I want to say aloha
10 to the Chair and the Vice Chair, Members of the
11 Commission, Land Use Commission Staff, Office of
12 Planning Staff and surprise guest City and County of
13 Honolulu.

14 COMMISSIONER CABRAL: Can I say something?
15 Welcome to Hawaii and I appreciate your testimony.
16 As much as possible, instead of using all your
17 alphabet soup, you know, you have alphabets in
18 everything. And I actually do quite a bit of solar
19 on my buildings I manage but I don't know all of
20 those and I certainly don't know them on the fly. So
21 if you could, you know, not use a lot of alphabets,
22 it will make my picture in my mind clearer. Thank
23 you.

24 WREN WESCOATT: Sure thing.

25 I have -- just by way of background, I have

1 been working on these projects since they were
2 first -- the inception of these two projects back in
3 2012. So I was employed by First Wind and then
4 SunEdison and now working for NRG. So I'm really
5 interested in these projects getting completed. And
6 I thank you all for your patience for many of you who
7 have been here with me most of that time.

8 To address the issue of radio frequency
9 interference, the Waihonu solar project which is in
10 between -- sort of between in -- between Mililani and
11 Wheeler Army Airfield, there are -- there is -- it's
12 approximately seven megawatt solar project owned by
13 another company. So not owned by NRG. And had
14 5,000 -- approximately 5,000 defective solar panels
15 which -- on which there is a microprocessor that was
16 not properly shielded and was therefore, producing
17 this radio frequency interference that was
18 experienced and reported.

19 Once those -- the source was identified to
20 be this defective PV panel, the recommended step was
21 that those panels be changed out. Again, this is not
22 our project so we weren't involved with this. But
23 this was the recommendation in 2016 so I believe
24 that's already happened or is in the process of
25 happening. So that was the reason why these panels

1 were producing this interference.

2 The Waipio project and the Kawaihoa project
3 that we're considering today does not use those
4 particular panels. Does not use that brand of panel.
5 And does not even use that technology where the
6 microprocessor is right on the panel itself. So
7 the -- they won't -- it won't be produced -- these
8 projects will not produce that same type of
9 interference.

10 The power optimization occurs not at the
11 panel level but in our projects, it occurs in the
12 inverter which is on a separate -- those of you that
13 have PV projects know your inverter's in a separate
14 place. And that those inverters are -- have the
15 required shielding so that there's no leakage of that
16 type of interference that was seen from these panels.

17 That's -- concludes that description.

18 MR. KUDO: Thank you, Wren.

19 CHAIR ACZON: Any questions for the witness?
20 Mr. Young?

21 MR. YOUNG: No questions.

22 CHAIR ACZON: Ms. Apuna?

23 MS. APUNA: No questions.

24 CHAIR ACZON: Commissioners? Commissioner
25 Okuda?

1 COMMISSIONER OKUDA: Thank you.

2 CHAIR ACZON: You're welcome.

3 COMMISSIONER OKUDA: Thank you. Sorry, I
4 was at court.

5 Not to minimize the potential, I don't want
6 to even call it harm or RFI but isn't it true that
7 you can get RFI or radio frequency interference from
8 things like just a cable TV service to a
9 neighborhood? So in other words, these types of
10 interference, there's many other sources not just
11 from solar panels, isn't that correct?

12 WREN WESCOATT: It is true that anything
13 that carries electricity can produce electromagnetic
14 interference. Generally, that is proportionate to
15 the amount of electricity that we're talking about.
16 So even a hairdryer or cell phone will create some
17 sort of interference. That's why in these -- in this
18 type of equipment where there's a lot of electricity,
19 there's a lot of emphasis placed on shielding. And
20 that was a defect in this panel that they identified.

21 COMMISSIONER OKUDA: Yeah. I just wanted to
22 make sure the record is clear that we just don't look
23 at solar panels as, you know, the sole source of this
24 radio frequency interference. That it can come from
25 other sources. And it's good that you folks have

1 addressed that issue. Thank you.

2 CHAIR ACZON: Anybody else? Commissioner
3 Chang?

4 COMMISSIONER CHANG: Yes. Good morning.
5 Nice to see you, Wren.

6 One question. With the change of the panels
7 to this -- a tilt rack, does that impact in any way
8 the ag use, the sheep grazing?

9 WREN WESCOATT: No, it does not. The panels
10 will now be on a single axis tracking rack which is
11 going to be very similar to what was approved at the
12 Kawaihoa project where sheep ranching was underway.

13 We also -- the distance to the ground will
14 remain approximately the same. So the lowest point
15 to the ground is still going to be three feet which
16 is going to be generally a sheep compatible height.

17 COMMISSIONER CHANG: Okay. Thank you.

18 WREN WESCOATT: And then just to -- for one
19 additional comment just to clarify. The Department
20 of Agriculture had asked a question about the
21 fencing. Changing from like a hog wire fence which
22 you would typically think of as a typical cattle
23 fence which has rectangular holes to a chain link
24 fence which is the industry standard for solar. The
25 chain link fence of six feet high provides security

1 so you don't have people wandering into the site
2 where there's higher voltage electrical equipment and
3 potentially getting hurt. So the industry standard
4 is chain link fence.

5 Department of Ag asked that we confirm with
6 the ranchers that that change in fencing is not going
7 to be a problem. So we got letters from each of the
8 ranchers saying no, that would be no problem. In
9 fact, one recommended it's actually better for sheep
10 'cause they won't -- their heads won't get stuck in
11 the hog wire fence.

12 CHAIR ACZON: Anybody else, Commissioners?

13 Thank you, Mr. --

14 COMMISSIONER CABRAL: I have a comment.

15 I will confirm that I have sheep and cattle
16 and chain link would be unbelievably nice so you have
17 less problems there. Thank you.

18 CHAIR ACZON: Thank you, Mr. Westcoatt.

19 MR. KUDO: Can you stay there.

20 The next issue that I wanted to address and
21 Wren can speak to this as well is that there's a
22 requirement for \$4 million decommission security
23 because the project has a certain life. And the
24 Commission wanted to make sure that there was enough
25 money at the end of the project's life to

1 decommission the project. And so they required us to
2 maintain the \$4 million security deposit. To that
3 end, we supported changing this condition to the
4 language of the condition saying no less than 4
5 million because the existing condition says
6 approximately 4 million which could be below 4
7 million. So we said why don't we set a floor at no
8 less than 4 million so that you're assured that
9 there's going to be money in. That change was also
10 approved by the Planning Commission as well.

11 The Commission also approved the hog wire
12 fencing and chain link fencing.

13 Wren, perhaps you can talk about the
14 decommissioning and the cost of decommissioning.

15 WREN WESCOATT: Yes. The decommissioning
16 security, previously the language that made it into
17 the decision and order was decommissioning security
18 of \$4 million. So indicating it would be exactly
19 that amount. That -- we found that might be
20 problematic because we will conduct a final
21 decommissioning estimate after construction of the
22 project and that number may be more than 4 million.
23 So we didn't want to be locked into exactly 4 million
24 just so there's sufficient funds there to
25 decommission the project that's posted at security.

1 And we were looking for some flexibility in the
2 language so it could be adjusted. And that's why we
3 came up with -- so the recommendation that we agree
4 with is the no less than 4 million. So if it's
5 4,150,000 for instance, that could be the security.
6 So just allows for some flexibility.

7 CHAIR ACZON: Just follow-up on that. How
8 about if it's less than 4 million? So what happen
9 to -- like 3 million, what happen to the other
10 million?

11 WREN WESCOATT: Yeah. So in that case, we
12 would post at least 4 million. So we have to have at
13 least 4 million. It might come out less. But I
14 think in this case, it's better to have more money
15 set aside than less in terms of making sure there's
16 enough funds to remove everything after that.

17 CHAIR ACZON: Where the extra million
18 dollars go?

19 WREN WESCOATT: We will just have to post --

20 CHAIR ACZON: That's what --

21 WREN WESCOATT: So at that point, I think
22 after -- I'm not sure what NRG would do if there was
23 no longer any further requirement. I believe that
24 would probably -- if the project completes
25 decommissioning, I don't know what -- where the extra

1 4 million would go -- I mean the extra one.

2 CHAIR ACZON: Just wondering.

3 MR. KUDO: Wren, you negotiated the purchase
4 power agreements with Hawaiian Electric on this
5 project. And insofar as it relates to the completion
6 date of the construction which is part of this permit
7 and part of a request, is that date consistent with
8 the purchase power agreement?

9 WREN WESCOATT: It is -- the date we're
10 requesting is aligned with the completion of the
11 project as required under the power purchase
12 agreement.

13 CHAIR ACZON: Excuse me, Mr. Kudo.
14 Commissioner Ohigashi, you have a question?

15 COMMISSIONER OHIGASHI: So my understanding
16 is NRG would be responsible for whatever the cost is
17 in decommissioning it. It's just that the security
18 is \$4 million because that's based on the estimate of
19 what today's cost?

20 WREN WESCOATT: That's correct.

21 COMMISSIONER OHIGASHI: And that if it's
22 more than 4 million, then NRG will still be on --

23 WREN WESCOATT: Still be responsible.

24 COMMISSIONER OHIGASHI: Who's -- is
25 anybody -- I wanted to ask about the coverage, the

1 area coverage.

2 CHAIR ACZON: Maybe we can do that overall.

3 COMMISSIONER OHIGASHI: Is that for this
4 witness or --

5 MR. KUDO: Yes, he can address that, any
6 questions on coverage.

7 CHAIR ACZON: Why don't you do it now.

8 COMMISSIONER OHIGASHI: I just was
9 wondering, the maps up there, are those areas
10 included as part of the record to ensure that the
11 area coverage will be governed by those maps of the
12 solar panels?

13 MR. KUDO: They are approximate because
14 there may be slight adjustments due to grade,
15 topography and sunlight patterns. So we may move it
16 around a little bit the patterns. But those are what
17 we have right now in terms of engineering studies.

18 COMMISSIONER OHIGASHI: I just wanted to
19 know if the condition is you're not going to increase
20 the area, how do we know where the area is? So I
21 wanted to know if the -- is it tied to those maps or
22 is the area we speaking in this condition tied to
23 those maps or --

24 WREN WESCOATT: So we did create a permitted
25 area boundary. So the permitted area that we've

1 applied for is tied to a map which we provided to
2 Department of Planning and Permitting.

3 The -- where the panel locations are here,
4 this is a preliminary layout, all falls within the
5 area that's permitted. So the layout is slightly
6 smaller than the outside boundary that was permitted.
7 And that allows for some flexibility. The project
8 design is not completed yet so there may be some
9 changes. But we would need to stay within the
10 permitted area governed by this proceeding.

11 COMMISSIONER OHIGASHI: So then my question
12 is how does this condition work then if you're going
13 to be limited to an area but you're not sure where
14 the area exactly is? So is it going to be defined
15 later on or is it going to be -- so that the
16 condition will actually say work -- you know, will
17 work rather than you put -- let's say you put a solar
18 power outside that area and so what? That's, you
19 know, will it increase the amount of coverage? We
20 just put it in area that was not designated before.
21 You understand what I'm trying to get at? The
22 condition says not going to increase the area. The
23 area -- I'm assuming each solar panel has a certain
24 amount of square footage. And if you put a square
25 footage, you can put the square footage anyplace.

1 What I'm understanding is you have designated an area
2 where it'll cover. So you cannot put solar panels
3 outside the area, right?

4 MR. KUDO: Right.

5 COMMISSIONER OHIGASHI: But it's not area X
6 amount of square footage for the total amount of
7 panels estimated? I'm just trying to get a feel of
8 how this commission gonna work. I understood how it
9 would work with the amount of solar panels.

10 WREN WESCOATT: So in this case in our
11 application, we have also indicated the area covered
12 by the panels.

13 COMMISSIONER OHIGASHI: Right.

14 WREN WESCOATT: That is I believe it is -- I
15 know Sarah's pointing the number. I believe it's 99
16 acres of area that's actually covered by solar
17 panels. In our permitted area, we have a footprint
18 of about -- for Waipio it's -- I'm sorry, Waipio. I
19 believe it's 99 acres. The permitted area is larger
20 than that. So the area covered, if we have a
21 significant increase beyond -- the 99 acres falls
22 within that 300 acres, 308 acres that we have in the
23 permitted. So we can -- that 99 acres of PV panel
24 coverage, if we increase that, you know. So number
25 one, there's an outline that you're talking about.

1 We have to stay within the 308 acres that is approved
2 under this permit. And that is defined. So we have
3 a map we submitted to DPP and they've approved it.
4 So we have an outer boundary. The 99 acres that's
5 actually covered by PV panels, that's what's
6 represented in the blue right there. That has to
7 stay within that designated boundary. If we
8 change -- and based on the number of the size of the
9 panel, we -- the number, total number could vary
10 quite a bit. But the area it covers is still going
11 to stay within that blue footprint. And so if we
12 change from that -- still 99 acres as it was before.
13 If we change that to, you know, 100 acres, 105 acres,
14 it goes beyond the total area covered, then we would
15 have to come back for a modification.

16 COMMISSIONER OHIGASHI: So does that
17 condition as it's been proposed right now as amended,
18 would that satisfy planning for purposes of defining
19 what the condition is?

20 MR. KUDO: It should. And we put all these
21 figures, the permitted area and the coverage area in
22 Exhibit 5. So it's on the record as to what we're
23 going to be doing.

24 I think in addition as well as technology is
25 advancing so rapidly in the PV area, the panels are

1 getting much more efficient. And so the size of the
2 panels are getting smaller actually because they're
3 much more efficient to produce the same amount of
4 power. And so we're not as concerned about expanding
5 as much as we're going to be basically contracting
6 because of the efficiency of the panels. We're
7 projecting that the actual decrease of the area will
8 be by 11 acres because of the efficiency of the
9 panels. Just every year, they get better and better
10 and better so.

11 WREN WESCOATT: And this is the total
12 permitted outline right here on this exhibit.

13 CHAIR ACZON: Commissioner Chang.

14 COMMISSIONER CHANG: Just a question. Do
15 you have a power purchase agreement?

16 WREN WESCOATT: We do. So the Waipio power
17 purchase agreement was renegotiated with Hawaiian
18 Electric Company and was approved by the Public
19 Utilities Commission on the 31st -- 27th of August.

20 COMMISSIONER CHANG: Okay.

21 WREN WESCOATT: Reapproved.

22 COMMISSIONER CHANG: Is this project tied to
23 the tax credit in any way so that if you don't build
24 it by the expiration of the tax credit, will you
25 continue to still do the project?

1 WREN WESCOATT: The project is -- it's not
2 tied to the tax credit but the --

3 COMMISSIONER CHANG: Or conditioned upon.

4 WREN WESCOATT: Yeah. The tax credit --
5 it's -- the planning is to construct the project
6 within -- to qualify for the full federal and state
7 tax credits. The state tax credit is going to be
8 completely passed through. So any state tax credit
9 that is received by the project will be passed
10 through to Hawaiian Electric and they will pass that
11 through to their -- my understanding they said they'd
12 pass that through --

13 COMMISSIONER CHANG: When is the expiration
14 of that tax credit --

15 WREN WESCOATT: There's no sunset on the
16 state credit right now.

17 COMMISSIONER CHANG: Okay. And one last
18 question about is there an approved archaeological
19 monitoring plan for the project?

20 WREN WESCOATT: For Waipio, there was not a
21 requirement for an archaeological monitoring plan.
22 For Kawaihoa, there is and there was an approved plan
23 that will be utilized.

24 COMMISSIONER CHANG: So that was based upon
25 SHPD in their approval on your archaeological

1 assessment said no archaeological monitoring plan is
2 required?

3 WREN WESCOATT: I don't know if they stated
4 that but they did not require it as they did for
5 Kawaihoa.

6 CHAIR ACZON: Vice Chair Scheuer.

7 VICE CHAIR SCHEUER: Just for the record, I
8 think you indicated the Public Utilities Commission
9 approved the purchase power agreement in August 22nd
10 but you must have meant July?

11 WREN WESCOATT: I'm sorry. That hasn't
12 happened yet. Correction. Thank you. July 27 --

13 VICE CHAIR SCHEUER: It was approved?

14 WREN WESCOATT: It was approved.

15 VICE CHAIR SCHEUER: On July 27?

16 WREN WESCOATT: Yes.

17 VICE CHAIR SCHEUER: Thank you.

18 COMMISSION CABRAL: He's anxious.

19 MR. KUDO: This concludes our presentation
20 for the Waipio Special Use Permit modifications.

21 CHAIR ACZON: Mr. Wescoatt, you can be
22 excused.

23 Any questions, Commissioners?

24 Mr. Young, do you have any testimony --

25 MR. YOUNG: At this time, the Department

1 stands on its recommendation and the Planning
2 Commission's decision and order.

3 CHAIR ACZON: Thank you. Any question, Ms.
4 Apuna?

5 MS. APUNA: Thank you, Chair.

6 Office of Planning reviewed the Waipio PV,
7 LLC application for modification Special Use Permit
8 15-405. Provided the following comments to DPP in a
9 letter dated June 2nd, 2017.

10 OP has no objections to the change in
11 ownership of the facility from SunEdison to NRG
12 Renew, LLC. OP recommended replacing the word
13 approximately with the phrase no less than in
14 condition to regarding the amount of financial
15 security of the applicant to decommission the project
16 and restore the petition area to substantially the
17 same physical condition as existing prior to the
18 development of the SEF.

19 OP supports that amendment of time to
20 establish the project no later than December 2019 in
21 condition 5.

22 OP supports the amendment to condition 7
23 with regard to major modification that are based on
24 the area covered by the panels rather than the number
25 of panels.

1 OP notes that LUC Commission 10 requires
2 immediate mitigation by the applicant of any hazard
3 created by the photovoltaic array for pilots or
4 motorists.

5 OP recommended deletion of condition 11
6 requiring State Historic Preservation Division
7 approval of the draft archaeological assessment dated
8 August 12, 2014 prior to commencement of construction
9 of solar farm. State Historic Preservation accepted
10 the document according to the letter dated January
11 16, 2015. However, OP recommended that condition 12
12 regarding the unanticipated archaeological resources
13 finds be retained.

14 The Planning Commission adopted all of the
15 OP's recommendations and therefore, fully supports
16 the modifications for Special Use Permit 15-405.
17 Thank you.

18 CHAIR ACZON: Commissioners, any questions
19 for Ms. Apuna? Thank you, Ms. Apuna.

20 MS. APUNA: Thank you.

21 CHAIR ACZON: Commissioners, what's your
22 pleasure on this matter? Vice Chair Wong.

23 COMMISSIONER WONG: Chair, I move to accept
24 the changes, amendments made by Petitioner County and
25 OP and DOT and DOA and any other, you know, grammar

1 and other minor changes that staff may have to make
2 on this amendment.

3 COMMISSIONER CABRAL: I'll second that.

4 CHAIR ACZON: Thank you.

5 The motion has been made by Commissioner
6 Wong and seconded by Commissioner Cabral to accept
7 the changes. Is there any discussion?
8 Commissioners, discussion? There's no further
9 discussion --

10 COMMISSIONER OKUDA: Chair, I would just
11 like to have it stated for the record that I believe
12 that this project complies with Hawaii Constitution
13 Article 11 Section 1 which specifically sets forth
14 the requirement that the resources of this community
15 be dealt with including development and I quote,
16 consistent with their conservation and in furtherance
17 of the self sufficiency of the state, close quote. I
18 believe this project and I would find specifically
19 goes towards energy self sufficiency in this state.
20 The Applicant should be commended by proceeding even
21 after a bankruptcy which bankruptcies derail even
22 good projects. But I believe this project
23 specifically is consistent with the mandate of the
24 Hawaii State Constitution with respect to self
25 sufficiency. Thank you.

1 CHAIR ACZON: Thank you, Commissioner Okuda.
2 Mr. Orodenker, please poll the Commission.

3 EXECUTIVE OFFICER: Thank you, Mr. Chair.
4 The motion is to accept the changes and amendments
5 proposed by the Petitioner, OP and County.

6 Commissioner Wong.

7 COMMISSIONER WONG: Aye.

8 EXECUTIVE OFFICER: Commissioner Cabral.

9 COMMISSIONER CABRAL: Yes.

10 EXECUTIVE OFFICER: Commissioner Scheuer.

11 VICE CHAIR SCHEUER: Aye.

12 EXECUTIVE OFFICER: Commissioner Chang.

13 COMMISSIONER CHANG: Yes.

14 EXECUTIVE OFFICER: Commissioner Ohigashi.

15 COMMISSIONER OHIGASHI: Yes.

16 EXECUTIVE OFFICER: Commissioner Okuda.

17 COMMISSIONER OKUDA: Yes.

18 EXECUTIVE OFFICER: Commissioner Estes.

19 COMMISSIONER ESTES: Yes.

20 EXECUTIVE OFFICER: Chair Aczon.

21 CHAIR ACZON: Yes.

22 EXECUTIVE OFFICER: Thank you, Mr. Chair.

23 The motion passes unanimously.

24 CHAIR ACZON: Thank you. We'll take a
25 five-minute recess.

1 (Recessed taken.)

2 CHAIR ACZON: We're back on the record.

3 The next agenda item is a meeting on Docket
4 No. SP15-406 Kawaihoa Solar, LLC Oahu. To consider
5 amendments to Kawaihoa Solar, LLC's Special Use
6 Permit that established a solar energy facility at
7 Kawaihoa, North Shores, Oahu, Hawaii. Tax Map Keys
8 (1) 6-1-005: portion of 1, 6-1-006: portion of 1.

9 Will the Applicant or its representatives
10 please identify themselves for the record.

11 MR. KUDO: Ben Kudo and Sarah Simmons
12 representing NRG Energy, the Applicant to Kawaihoa.

13 MR. YOUNG: Raymond Young representing the
14 Department of Planning and Permitting City and County
15 of Honolulu.

16 MS. APUNA: And Deputy Attorney General Dawn
17 Apuna on behalf of the State Office of Planning with
18 Lorene Maki and Rodney Funakoshi.

19 CHAIR ACZON: Thank you.

20 COMMISSIONER CHANG: Mr. Chair, I'd like to
21 make a disclosure.

22 CHAIR ACZON: Go ahead.

23 COMMISSIONER CHANG: I, like the previous
24 matter, when it was under First Wind, did some
25 consulting work with them.

1 CHAIR ACZON: Any objection?

2 MR. KUDO: No objection.

3 MS. APUNA: No objection.

4 MR. YOUNG: None.

5 CHAIR ACZON: Anybody else?

6 Okay. Let me update the record. On June
7 26, 2015, the Commission voted to approve the
8 Applicant's application for the Special Permit.

9 On April 21, 2017, the Applicant submitted
10 an application to the City and County of Honolulu
11 Planning Commission to amend its Special Permit.

12 On June 21, the Honolulu Planning Commission
13 conducted a hearing on Applicant's application for an
14 amendment.

15 On July 24, 2017, the LUC received a copy of
16 the decision and a portion of the record of the
17 Planning Commission's proceedings on the Applicant's
18 request.

19 On July 31st, 2017, the Land Use Commission
20 received the remaining portion of the record
21 consisting of the minutes reflecting the adoption of
22 the minutes of the Planning Commission's June 21st,
23 2017 hearing.

24 On August 2nd, 2017, the Commission sent a
25 August 9-10, 2017 LUC agenda notice to the Parties

1 and to the Statewide, Kauai and Oahu mailing lists.

2 On August 4, 2017, the Commission -- the
3 County's over here so.

4 Let me briefly describe the procedure today
5 on this docket.

6 First, I will call for those individuals
7 desiring to provide public testimony on Docket No.
8 SP15-406 to identify themselves. All such
9 individuals will be called in turn to our witness box
10 where they will be sworn in prior to their testimony.

11 The Applicant will make its presentation.

12 After the completion of Applicant's
13 presentation, we will receive any public comments for
14 the State Office of Planning. The Department of
15 Planning and Permitting of the City and County of
16 Honolulu is here.

17 After we receive public comment from the
18 State Office of Planning, Commission will conduct its
19 deliberation.

20 Are there any questions on our procedures
21 for today?

22 MR. KUDO: No questions.

23 MS. APUNA: No questions.

24 MR. YOUNG: No questions.

25 CHAIR ACZON: Commissioners? Thank you.

1 Are there any individuals wishing to
2 testify? None.

3 Again, I would like to note for the
4 Commissioners -- no need.

5 Mr. Kudo, please proceed with your
6 presentation.

7 MR. KUDO: Thank you very much, Chair Aczon.

8 Thank you very much for your approval of the
9 Waipio PV project. It's going to be very important
10 for Hawaii and the energy scene here.

11 The Kawaihoa project back on is very similar
12 to Waipio's. Exhibit 7 up here on the large board
13 behind me is provided to orient the Commission to the
14 location of the project.

15 In 2005, First Wind arrived in Hawaii to
16 contribute to the Hawaii's renewal energy portfolio.

17 In 2012, First Wind proposed the Kawaihoa
18 project to HECO and the parties entered into a
19 purchase power agreement negotiations.

20 In 2014, the original state -- Special Use
21 Permit application was filed with the City's Planning
22 Commission. And shortly thereafter in March of that
23 same year, First Wind was acquired by SunEdison.

24 The State Land Use Commission approved the
25 Kawaihoa State Land Use Permit on -- Special Use

1 Permit on June 29, 2015. The SUP had a completion
2 deadline of June 29, 2017, about a month ago.

3 SunEdison was unable to finance the project
4 and HECO cancelled their purchase power agreement in
5 February of 2016. And in April 2016, SunEdison filed
6 for bankruptcy.

7 In October of the same year, NRG Energy
8 purchased this project through the bankruptcy
9 proceedings. And by April 2017, HECO reinstated the
10 purchase power agreement with Kawaihoa Solar that was
11 recently approved by the Public Utilities Commission
12 a couple weeks ago.

13 In early May of this year, Kawaihoa Solar
14 submitted its application to modify the existing
15 State Special Use Permit, the Planning Commission
16 approved the proposed amendments on July 19, 2017.

17 There are only two changes to this
18 particular SUP unlike Waipio which had three. And
19 the two are similar to the first and second,
20 extension of the construction deadline and the number
21 of panels. Kawaihoa already is mounted on a movable
22 trackable system which was approved by this
23 Commission in 2015.

24 For the Kawaihoa project, condition 6
25 imposes a project establishment deadline of no later

1 than two years from the date of this Commission's
2 decision and order or June 29, 2017 which has passed.

3 Again, NRG recently acquired this project so
4 we did -- we do need a new deadline to comply with
5 this condition. Therefore, Kawaiiloa Solar is
6 requesting the deadline be extended to December 31st,
7 2019 which is the same date for the Waipio project.
8 This extension roughly corresponds to the deadlines
9 imposed under the purchase power agreement with HECO
10 as was approved by the Planning Commission and the
11 Public Utilities Commission.

12 The second change that we are asking to the
13 Kawaiiloa SUP is removing the number of and replacing
14 it by the words area covered by.

15 Condition 8 of the SUP states major
16 modifications include but are not limited to
17 significant increases in the number of PV panels. We
18 respectfully ask this Commission to replace the
19 phrase number of with the phrase area covered by in
20 that condition 8. We believe this is more
21 accurate -- more accurately articulates the intent of
22 this condition. The actual permitted area in this
23 case is about 382.2 acres and the coverage area of
24 the panels is 299 acres.

25 The Applicant is presently reviewing bids

1 from various PV panel vendors, some of which proposed
2 different size panels and therefore, the number of
3 panels used to cover the same area may increase or
4 decrease. The specifications of the two types of
5 panels currently being considered by the Applicant
6 were attached as an exhibit to the modification
7 applicant. See Applicant's Exhibit 12 which was
8 filed in June 20th of this year. Based on these
9 specifications, the panel coverage area should remain
10 approximately the same with minor deviations.

11 Applicant's Exhibit Number 9, blown up map
12 on the board, shows a preliminary configuration
13 overlay in comparison with the previous configuration
14 of panels. So the 2015 configuration is overlaid
15 with the present design configuration.

16 We are not reducing the original permitted
17 area of 382.2 acres covered by the SUP. The LUC
18 comment that are noted and apparent discrepancy
19 between the permitted area of the 382.2 acres and the
20 exhibit map labeled Exhibit B in Applicant's letter
21 dated May 5th, 2017 which I will call the overall
22 site plan. See Exhibit 8 on the large board there.

23 The overall site plan list the figure of
24 299.809 acres as SUP area. However, we clarified at
25 the Planning Commission hearing that this is actually

1 the fence project area which is a smaller area within
2 the permitted area of 382.2 acres. That's the area
3 that the chain link fence will go around. The
4 difference in area provides the Applicant with the
5 ability to adjust the configuration of PV panels
6 within the permitted area of 382.2 acres and provides
7 the sheep ranchers with additional space for ranching
8 operations. Once the engineering plans are
9 finalized, panel locations may be determined by such
10 factors as grade, topography and sunlight patterns.
11 Therefore, the actual panel configuration may need to
12 move slightly within that 382.2 acre permitted area.
13 We are requesting that the permitted area of 382.2
14 acres under this SUP remain the same.

15 Under the LUC decision and order, the
16 Applicant is to provide the metes and bounds
17 description of 382.2 permitted area. Once the
18 approvals are secured by the Applicant, the Applicant
19 will survey the permitted area and prepare a metes
20 and bounds description for this Commission.

21 In terms of any comments we received, we
22 received the same comments with regard to the \$4
23 million decommissioning security. The same reasons
24 we would like -- we agree with the Office of Planning
25 that the words should be changed to no less than

1 rather than approximately. And with regard to
2 comments of the hog wire fence and chain link fence,
3 we would ask your approval of the chain link fence as
4 a substitute for the hog wire fence which is the
5 industry standard.

6 The letters from the Department of
7 Agriculture are included in the record as Exhibits 10
8 and 11. And we believe that this condition has been
9 complied with.

10 In closing, the changes that are being
11 requested are relatively minor and do not change the
12 impacts of these -- of this particular project. We
13 are committed to complying with all of the conditions
14 imposed by both the Planning Commission and this
15 Commission. And we look forward to providing
16 renewable energy source for the island of Oahu along
17 with a sustainable source of lamb meat. So we would
18 respectfully request your support and approval of
19 this SUP application. Thank you.

20 CHAIR ACZON: Thank you.

21 I believe you have witnesses to call? You
22 want to call the witnesses now --

23 MR. KUDO: I have no further need for the
24 witnesses. Their testimony would be similar with
25 regard to the same issues so unless you would like to

1 hear --

2 CHAIR ACZON: No, no, no. Any questions?

3 COMMISSIONER CABRAL: I have questions on
4 your maps. So on -- I'm into maps, you know,
5 everybody knows that, right? In 7 now, you have your
6 white lined area. You have that white line that --
7 that is clearly -- your yellow area is 300 acres and
8 your white area. So is that the actual parcel of
9 land that you have ownership of? And then the yellow
10 section is the section that you have designated or
11 separated off that you will put the chain link fence
12 around for your solar panels? Is that what's going
13 on in and then they're better detailed in 8 and 9
14 diagrams?

15 MR. KUDO: We'll let Wren --

16 COMMISSIONER CABRAL: Thank you.

17 WREN WESCOATT: Wren Wescoatt, project
18 development director --

19 CHAIR ACZON: You're still under oath.

20 WREN WESCOATT: The -- you're correct. The
21 white lines are the parcels of land. It's owned by
22 Kamehameha Schools. The yellow on that right hand
23 map defines the project area. The -- so it's similar
24 to the fence you see in the other two maps.

25 COMMISSIONER CABRAL: Okay. Thank you.

1 CHAIR ACZON: Let me just ask you have any
2 questions. Mr. Young, do you have any questions?

3 MR. YOUNG: No questions.

4 CHAIR ACZON: Ms. Apuna?

5 MS. APUNA: No questions.

6 CHAIR ACZON: Thank you.

7 Go ahead Commissioners. Commissioner Chang.

8 COMMISSIONER CHANG: Just one question. Why
9 is the area in this project, it's almost three times
10 the size of your Waipio project. It's 99 acres and
11 this one is 280 something?

12 WREN WESCOATT: So I beg the Commission's
13 patience. This is a little difficult, complicated to
14 explain. That's a good observation. The -- I will
15 start with the larger and go down to the smaller. So
16 the permitted area, the Special Use Permit covers 382
17 acres at Waipio. So I'm just going to reference the
18 Waipio project for the -- to keep them parallel.

19 In the Waipio project, the permitted area is
20 308 acres. Getting smaller from there, within that
21 permitted area, we will build the project and a
22 perimeter fence. So that perimeter fence, all the
23 panels will be within there. At Kawaihoa, that's 299
24 acres. At Waipio, that is approximately 300 acres,
25 about 300 acres at Waipio so slightly smaller. Then

1 what I mentioned before, the actual area covered by
2 the panel, that -- those fenced area include space
3 between the panels, between the roads. The area
4 covered by the panels, if you were to push all those
5 panels together, that's the area covered by the
6 panels. And that's approximately 99 acres. That is
7 very similar to Waipio. It's also approximately 99
8 acres. So that's why there's three different
9 numbers. And so the area covers approximately the
10 same as well.

11 COMMISSIONER CHANG: Okay. 'Cause for the
12 same 50 megawatt? Okay. So --

13 WREN WESCOATT: Correct. Waipio is slightly
14 smaller at 47 but very similar.

15 MR. KUDO: We also have the wind turbines
16 that are on the Kawaihoa lot.

17 CHAIR ACZON: Are you done, Commissioner --

18 COMMISSIONER CHANG: Yes.

19 CHAIR ACZON: Commissioner Cabral.

20 COMMISSIONER CABRAL: Thank you. Yeah, I'm
21 a big supporter of all of this and for everyone's
22 good reasons. But I'm familiar with wind turbines.
23 I'm from the Big Island. We have those and I have
24 myself installed a lot of photovoltaic on many large
25 buildings and I'm thrilled with the results.

1 Just as -- for my own information, cost
2 effectiveness and profit for the owner, I mean is
3 wind turbines in the right location really cost
4 effective or not? I've heard that they're not. I
5 don't own any of those but are they -- I mean
6 photovoltaic has been fantastic but do you find that
7 the wind turbines are really cost effective if you
8 didn't have the tax credits involved? Are they -- or
9 is it really just a tax credit game? Sorry.

10 WREN WESCOATT: No, no apology needed. In
11 both -- both technologies can be cost effective if
12 they're installed in the right areas.

13 Wind, there is more variability in terms of
14 location to location even on the island of Oahu. So
15 the -- just for example, the wind project at Kahuku
16 is much more productive than the wind project at
17 Kawailoa. They're still both economically viable but
18 depending on where you put -- and then the Maui -- on
19 Maui, that's even more wind so that's even more, you
20 know, potentially profitable project. Now so in
21 terms of profit, so I think both are viable but wind,
22 you definitely have to locate it in the right place
23 to be viable.

24 COMMISSIONER CABRAL: Okay. Thank you.

25 CHAIR ACZON: Commissioner Ohigashi.

1 COMMISSIONER OHIGASHI: I just was curious.
2 Is that -- the \$4 million, is that the same 4 million
3 or is it two separate 4 millions?

4 WREN WESCOATT: It's separate. Good
5 question.

6 COMMISSIONER OHIGASHI: I just want to --
7 because one was 200 -- 290 something acres and she
8 answered that question by --

9 MR. KUDO: Unless you want to make it one.

10 WREN WESCOATT: We're required to post
11 separate, you know, at least 4 million for each.

12 CHAIR ACZON: Vice Chair Scheuer.

13 VICE CHAIR SCHEUER: Aloha. This is not a
14 question for the witness but for counsel. I've been
15 interested in OP's thoughts too. I just want to make
16 sure I get this on the record.

17 These two projects differ in that this
18 project is designated as IAL, the land area whereas
19 the last project was not. Can you explain why you
20 think that issuance of a special permit of this
21 matter does not change based on the land's
22 designation as IAL?

23 MR. KUDO: How it doesn't change?

24 VICE CHAIR SCHEUER: Why are we following
25 the same procedures here as in the last docket even

1 though -- for the approval of a special permit even
2 though this land is also designated as IAL in
3 addition to being the state agricultural --

4 MR. KUDO: The original process was
5 followed -- we're not changing, by the way, the
6 agriculture aspect and agricultural plan for this
7 project. And in 2015, I was not the lawyer involved
8 in this particular case for SunEdison. And they had
9 to address the IAL. That's why I said at the very
10 outset that I would not be addressing the ag criteria
11 issues because they were already addressed and
12 approved by the Commission. And since we're not
13 changing anything with regard to the agriculture plan
14 and raising sheep on this, we didn't need -- felt we
15 didn't need to go over it again. I don't know if
16 that answers your question.

17 WREN WESCOATT: Vice Chair, if I may. The
18 County Planning Commission did take a special
19 interest in that difference. So for Kawaihoa, they
20 did require that we submit a specific agriculture
21 plan that they could review because it was IAL and
22 they felt there was a higher level of diligence that
23 they needed to do. So we worked with local ranchers
24 and other ag producers to provide a agricultural plan
25 which was part of the record in the initial planning

1 in 2015.

2 VICE CHAIR SCHEUER: Thank you.

3 CHAIR ACZON: Anybody else, Commissioners?

4 Ms. Apuna?

5 MS. APUNA: Thank you.

6 So when OP reviewed the IAL designation by
7 Kamehameha Schools, wind farms were part of that
8 consideration for designation. So we feel it's okay.

9 CHAIR ACZON: Answer your question?

10 VICE CHAIR SCHEUER: Yes. Thank you.

11 CHAIR ACZON: Anybody, Commissioners? Thank
12 you.

13 So if there's no further discussion on the
14 motion, Commissioners, what's your pleasure?

15 Mr. Young, do you have any comments?

16 MR. YOUNG: No. The City does not have any
17 comments.

18 CHAIR ACZON: Ms. Apuna.

19 MS. APUNA: Thank you, Chair.

20 Office of Planning reviewed the Kawaihoa
21 Solar, LLC application for modification and Special
22 Use Permit 15-406 and provided the following comments
23 to DPP in a letter dated June 2nd, 2017.

24 OP has no objection to the change in
25 ownership of the facility from SunEdison to NRG

1 Renew, LLC. Again, OP recommended replacing the word
2 approximately with the phrase no less than in
3 condition 4 regarding the amount of financial
4 security of Applicant to decommission the project.

5 OP supports the amendment to the time to
6 establish the project earlier than December 2019 in
7 condition 5.

8 OP supports the amendment to condition 8
9 with regard to major modification that are based on
10 the area covered by the panels rather than the number
11 of panels. OP notes that while the number of PV
12 panels will increase, the proposed tracking rack is
13 similar to the original proposal.

14 OP notes that the current condition 11
15 requires immediate mitigation by the Applicant of any
16 hazard created by the photovoltaic array for pilots
17 and motorists.

18 The Planning Commission adopted OP's
19 recommendation. Therefore, OP fully supports the
20 modification to Special Use Permit 15-406. Thank
21 you.

22 CHAIR ACZON: Commissioners, any questions
23 for Ms. Apuna? None. Just want to make sure.

24 Commissioners, what's your pleasure?
25 Commissioner Cabral?

1 COMMISSIONER CABRAL: I'd like to make the
2 same motion that Commissioner Wong made on the last
3 petition. Thank you.

4 COMMISSIONER WONG: Second.

5 CHAIR ACZON: The motion has been made by
6 Commissioner Cabral and seconded by Vice Chair Wong
7 to accept the changes. Is there any discussion?
8 Vice Chair Scheuer.

9 VICE CHAIR SCHEUER: Yeah. I'd just like on
10 a personal note to note that the manager for
11 Kamehameha Schools, Kapu Smith has passed away since
12 this first came in front of the Commission. And if
13 you didn't know Kapu, she made it her career's work
14 after the land reverted from Waialua Sugar to
15 Kamehameha Schools to make this a really viable
16 agricultural asset for the schools respecting the
17 cultural values there, trying to produce income to
18 the institution at the same time is really being
19 compatible with the wishes and desires of the North
20 Shore community. So sad that she's not here to see
21 this further step forward. But I'm grateful for her
22 work and will be voting in favor of the motion.

23 CHAIR ACZON: Commissioner Okuda.

24 COMMISSIONER OKUDA: Chair, thank you.

25 As similar to the prior application, I would

1 find that this project and the request by the
2 Petitioner complies with Hawaii Constitution Article
3 11 Section 1. I think the record is very clear that
4 the project -- the project gives and moves the State
5 forward in furtherance of self sufficiency which self
6 sufficiency is a constitutional mandate.

7 And again, I believe that the Applicant and
8 its counsel should be commended for picking up the
9 pieces after a bankruptcy which normally would derail
10 even the best of projects. And so for that reason
11 and other good reasons on record, I will be voting in
12 favor of this motion.

13 CHAIR ACZON: Anybody else, Commissioners?

14 COMMISSIONER CABRAL: Yeah. I'd like to
15 also speak in favor of this in light of the fact that
16 it is clearly to the best of our -- every one in our
17 community that we try to get away from fossil, fossil
18 fuels and what we know about that. And as I have PV
19 on my house and I've put it on many of the large
20 condominiums I manage, I am thrilled with that in and
21 can't wait for the day that everybody produces all of
22 their own daytime power and has something to store it
23 with to, you know, crank it up at night. So I think
24 that this is really wonderful that we all get to be a
25 part of something so progressive and at the same time

1 we keep sheep on the land. Thank you.

2 CHAIR ACZON: Anybody else, Commissioners?
3 If there's no further discussion, Mr. Orodenker,
4 please poll the Commissioners.

5 EXECUTIVE OFFICER: Thank you, Mr. Chair.
6 The motion is to adopt the order.

7 Commissioner Cabral.

8 COMMISSIONER CABRAL: Aye.

9 EXECUTIVE OFFICER: Commissioner Wong.

10 COMMISSIONER WONG: Aye.

11 EXECUTIVE OFFICER: Commissioner Chang.

12 COMMISSIONER CHANG: Yes.

13 EXECUTIVE OFFICER: Commissioner Ohigashi.

14 COMMISSIONER OHIGASHI: Yes.

15 EXECUTIVE OFFICER: Commissioner Scheuer.

16 VICE CHAIR SCHEUER: Aye.

17 EXECUTIVE OFFICER: Commissioner Okuda.

18 COMMISSIONER OKUDA: Yes.

19 EXECUTIVE OFFICER: Commissioner Estes.

20 COMMISSIONER ESTES: Yes.

21 EXECUTIVE OFFICER: Chair Aczon.

22 CHAIR ACZON: Yes.

23 EXECUTIVE OFFICER: Thank you, Mr. Chair.

24 The motion passes unanimously.

25 CHAIR ACZON: Congratulations.

1 MR. KUDO: Thank you very much.

2 (Recessed taken.)

3 CHAIR ACZON: We're back on record.

4 The next agenda item is a committee report
5 and election of officers. The Chair will hear the
6 nominations and conduct the vote. Commissioner
7 Estes.

8 COMMISSIONER ESTES: First of all, I'd like
9 to say I was on the nomination committee and I
10 originally suggested that we flip a coin between
11 Jonathan and Arnold and the loser got to be Chair.
12 But nobody liked that. So we're going to go in
13 alphabetical order and I would like to nominate
14 Arnold for Chair, Nancy and Jonathan for Vice Chairs.

15 CHAIR ACZON: Who's first and second?

16 COMMISSIONER ESTES: Oh, you have a first
17 Vice Chair? Okay. Jonathan first, Nancy second.

18 I'd like to add something else. I think
19 Edmund has done a fabulous job above and beyond the
20 call of duty. Arnold, you're going to have big shoes
21 to fill.

22 CHAIR ACZON: No, my shoes are small.

23 COMMISSIONER WONG: That's good shoes I'm
24 wearing.

25 COMMISSIONER ESTES: Anyways, those are my

1 nominations.

2 CHAIR ACZON: Any second?

3 COMMISSIONER CHANG: I'll second.

4 CHAIR ACZON: Seconded by Commissioner
5 Chang. Discussions? Go ahead, Commissioner Okuda.

6 COMMISSIONER OKUDA: Yeah. Chair, I'd like
7 to thank you for your work as Chair. I mean since
8 I'm the neophyte here, appreciated how you treated me
9 with respect even though I might not know what I'm
10 doing. You've made me feel welcome.

11 But the more important thing is I've noticed
12 even in contentious hearings how you really made
13 people, the public feel that they had input, a right
14 to give their opinion. In this time of very
15 polarized things that happen politically, I think the
16 way you handle being Chair, the fairness, the
17 openness but also keeping people to their three
18 minute statement which I will limit myself to, I
19 think that's something really positive. And the fact
20 that we haven't had any controversy is a testament to
21 your leadership. So I personally would like to thank
22 you as the new boy on the block.

23 CHAIR ACZON: Thank you for that.

24 I also want to thank you all Commissioners
25 for their patience and confidence in me. I'm glad to

1 have been in this position.

2 Commissioner Ohigashi.

3 COMMISSIONER OHIGASHI: I would like to
4 correct him. I'm the new boy on the block.

5 CHAIR ACZON: Okay. Any other discussions?

6 VICE CHAIR SCHEUER: Just to echo Gary's
7 appreciation for your leadership, Chair.

8 CHAIR ACZON: Thank you.

9 VICE CHAIR SCHEUER: Both in the meetings as
10 well as many other efforts at the rectangular
11 building across the street among other places.

12 CHAIR ACZON: Anybody else? Hearing none.
13 Those in favor of the motion, say aye.

14 COMMISSIONERS: Aye.

15 CHAIR ACZON: Oppose? Motion carried.
16 Congratulations Commissioner Wong and Commissioner
17 Cabral.

18 COMMISSIONER CABRAL: Thank you all.

19 CHAIR ACZON: There being no -- any other
20 business? There being no further business for today,
21 this meeting is recessed and will reconvene tomorrow
22 in Lihue, Kauai at 9:30 at the Kauai County Moikeha
23 Building Conference Rooms 2A and 2B. Thank you.

24 (Concluded at 10:58 a.m.)

25 --oo0oo--

CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, PRISCILLA GONZAGA, CSR #127, do hereby
certify:

That on August 9, 2017, the proceedings
contained herein was taken down by me in machine
shorthand and 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 23 day of August, 2017 in
Honolulu, Hawaii.

/s/ Priscilla Gonzaga

Priscilla Gonzaga, CSR #127