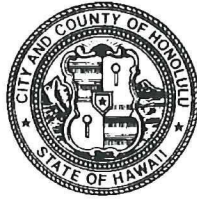


DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

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2015 MAY -8 P 2: 34

KIRK CALDWELL  
MAYOR



GEORGE I. ATTA, FAICP  
DIRECTOR

ARTHUR D. CHALLACOMBE  
DEPUTY DIRECTOR

2014/SUP-6(RY)

May 8, 2015

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

Dear Mr. Orodener:

**SUBJECT:** Special Use Permit Application No. 2014/SUP-6  
Kawailoa Solar, LLC

By Findings of Fact, Conclusions of Law, and Decision and Order dated May 8, 2015, the City and County of Honolulu Planning Commission approved the application of Kawailoa Solar, LLC, for a Special Use Permit to establish a solar energy facility. Since the approved area exceeds 15 acres, the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order, is being transmitted for the State Land Use Commission's review and decision.

Enclosed are one original, one hardcopy, and one digital copy of the record on compact disc and an index of the record. If you or your staff have any questions, please contact Raymond Young of our staff at 768-8049.

Very truly yours,

A handwritten signature in blue ink that reads "George I. Atta".

George I. Atta, FAICP  
Director

GIA:kh  
Doc: 1242683

Enclosures

cc w/o enclosures: Randall Sakumoto, Attorney for the Applicant



4. The Applicant seeks a SUP to establish a 50-megawatt SEF. Sites 1 through 7 of the proposed SEF will primarily contain horizontal single-axis tracking, ground-mounted photovoltaic (PV) panels, generally facing south. Site 8 contains one of two proposed substations with the second substation proposed to be located in Site 1. Other accessory uses and structures consist of electrical equipment such as combiner boxes, below surface collector lines, inverters, transformers, weather monitoring stations, and switch gear.

5. The Applicant proposes to lease a portion of the Petition Area to a local ranch to raise hair sheep in compliance with Section 205-4.5(a)(21), Hawaii Revised Statutes ("HRS") which was adopted under Act 55, 2014 Session Laws of Hawaii ("Act 55"). The sheep ranching will serve as on-site vegetation control and as a food source in compliance with the intent of Act 55 which required that the area occupied by solar energy facilities be made available for compatible agricultural activities.

6. The Petition Area is presently fallow. It was formerly in sugar cane cultivation. The Kawailoa wind energy generation system (wind turbines) is located between and around the Petition Area. Surrounding lands to the east, west, north, and south are owned by Bernice Pauahi Bishop Trust Estate and are either fallow or in diversified agriculture. Beyond these lands to the north is Waimea Valley, managed by Hiipaka, LLC, and to the east is land used for military training.

7. Access to the site is via Ashley Road, a gated, private roadway which is maintained for the existing wind farm, and connects to Kamehameha Highway.

8. By Decision and Order dated March 5, 2015, the State Land Use Commission ("LUC") designated the Petition Area and surrounding lands as Important Agricultural Land ("IAL") pursuant to Section 205-44, HRS. The North Shore Sustainable Communities Plan designates the Petition area as Agriculture. The zoning is AG-1 Restricted Agricultural District.

9. The Petition Area comprises of Class B, C, and E soils, according to the Land Study Bureau overall master productivity rating system. The Petition Area consists of Prime Agricultural Lands pursuant to the Agricultural Lands of Importance to the State of Hawaii Classification System.

10. The Project's solar panels will be constructed about 4 ½ to 9 ½ feet above existing grade. Power generated by the western portion of the SEF would be connected to the Hawaiian Electric Company ("HECO") electrical grid via the existing Makai Switchyard which connects to the existing overhead Waialua-Kahuku 46 kilovolt ("kV") sub-transmission line. Power generated by the eastern portion of the SEF would be connected to the grid via the existing Mauka Switchyard which connects to the Waialua-Kuilima 46 kV sub-transmission line.

11. The energy generated by the SEF will be sold to HECO.

12. The North Shore Neighborhood Board No. 27 considered the Project at its January 27, 2014 meeting but did not take a vote on the Project.

13. The Project is subject to obtaining a Conditional Use Permit, Minor, and grading and building permits. The Project is not subject to environmental disclosure requirements of Chapter 343, HRS.



14. The Commission received a report from the Director of the DPP dated March 13, 2015. The report provides an analysis of the request and a recommendation for approval of the Application subject to conditions.

15. At the public hearing of April 1, 2014, the Commission did not receive any public testimony. The Applicant provided testimony from its staff and consultants on the Project. The Commission received into record, Applicant's Exhibits 1 through 22.

16. Due to the recent designation of the Petition Area as IAL, the Commission requested that Applicant submit an agricultural plan for the proposed sheep ranching component and possible alternative agricultural activities and therefore, continued the public hearing to April 15, 2015.

17. On April 13, 2015, the Applicant submitted a Preliminary Agricultural Plan (Applicant's Exhibit 23 and hereafter referred to as the "PAP"). The PAP presents preliminary plans for the co-location of sheep pasturage and in the event that arrangement is not successful, other agriculture use options including Lowline cattle, free-range poultry, and beekeeping for the Petition Area.

18. At its continued public hearing of April 15, 2015, the Commission accepted the PAP into the record.

### **CONCLUSIONS OF LAW**

The Commission hereby concludes as follows:

1. The Commission has jurisdiction to permit unusual and reasonable uses within the agricultural districts, pursuant to Section 205-6, HRS.
2. The Project is an "unusual and reasonable" use as set forth in Section 205-6, HRS, and the five guidelines established by the Commission, pursuant to Section 2-45 of the Rules of the Commission.
3. The Project would make available portions of the site for compatible agriculture in accordance with Section 205-4.5(a)(21)(A), HRS.
4. The Project complies with relevant sections of Chapter 205, Part III, the IAL Law as follows:
  - a. The use does not conflict with any part of Chapter 205, HRS;
  - b. The public benefit to be derived from the Project is justified by a need for additional lands for non-agricultural purposes,
  - c. The proposed action will have no significant impact upon the viability of agricultural operations on adjacent agricultural lands.
5. The Project would not be contrary to the objectives sought to be accomplished by the State Land Use Law.

## DECISION AND ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, the Commission hereby **APPROVES** the Application for a State Special Use Permit, File No. 2014/SUP-6, for approximately 382.2 acres, Tax Map Keys 6-1-005: Portion of 001 and 6-1-006: Portion of 001, for the establishment of a SEF, as shown on Exhibit A, subject to the following conditions:

1. Usable lands of the Petition Area, including areas under PV panels, shall be made available for compatible agricultural use at a lease rate that is at least 50 percent below the fair market rent for comparable properties, as long as the Project is in operation. Compatible agricultural operations shall be established, or Applicant shall be actively seeking to have such operations established, within 6 months of the start of commercial power generation. Extensions to this deadline may be granted by the Director of the DPP for unforeseen extenuating circumstances.

2. If at any time during the term of the SUP no compatible agricultural operations exist on the usable lands of the Petition Area for 6 months, the Applicant shall notify the Commission and the Director of the DPP in writing within 30 days of the end of the 6-month period. If requested by the Commission, the Applicant shall attend a meeting of the Commission and submit a report to the Commission detailing the Applicant's actual and reasonable efforts to actively seek the establishment of compatible agricultural operations on the usable lands of the Petition Area. The Commission shall determine whether probable cause exists to re-evaluate the SUP and to hold a hearing pursuant to Section 2-49 of the Rules of the Commission. Extensions to the 6-month deadline may be granted by the Commission for unforeseen extenuating circumstances.

3. The Applicant shall submit for review and obtain the approval of the following from the Director of the DPP, prior to the issuance of a grading or building permit:

a. A survey map accompanied by a metes and bounds description of the approved Petition Area.

b. A site plan showing the area required under Condition 1, above, relating to the minimum land area to be made available for compatible agricultural use.

4. Prior to the closing of the building permit for the SEF, the Applicant shall submit to the DPP proof of financial security, such as a posted letter of credit or similar mechanism from a creditworthy financial institution, in favor of the owner of the land subject to the SUP, in the amount of four million dollars (\$4,000,000.00), which security shall remain in place for the duration of the operation of the Project, with evidence of same provided to the Director of the DPP on an annual basis, to decommission the Project and restore the Petition area to substantially the same physical condition as existed prior to the development of the SEF.

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

5. The Applicant shall comply with the recommendations of the U. S. Fish & Wildlife Service regarding the protection of endangered or migratory bird activity at the Petition Area.



6. The Applicant shall establish the Project within two (2) years of the date of the LUC's Decision and Order approving the SUP. Requests for extension of this deadline shall be submitted to the Director of the DPP prior to the expiration of the deadline. The LUC may grant an extension to the deadline to establish the Project due to unforeseen circumstances that were beyond the control of the Applicant. This SUP shall be valid for a period of thirty-five (35) years from the date of the LUC's Decision and Order approving the SUP, subject to further extensions upon a timely request for extension filed with the Commission at least one-hundred twenty (120) days prior to the SUP's expiration.

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

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

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

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

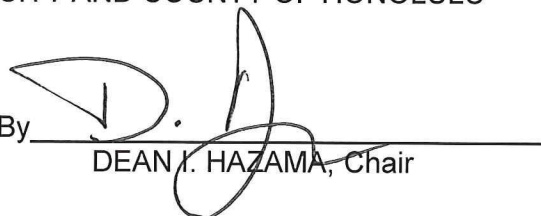
The Commission, in consultation with the Director of the DPP, shall determine the disposition of this SUP, and the facilities permitted herein.

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

Dated at Honolulu, Hawaii this 8th day of May, 2015.

PLANNING COMMISSION  
CITY AND COUNTY OF HONOLULU

By



DEAN J. HAZAMA, Chair

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**SITE PLAN**  
 2014/SUP-6 Kawaiiloa Solar, LLC  
 TMK 6-1-005: Por. 001 & 6-1-006: Por. 001

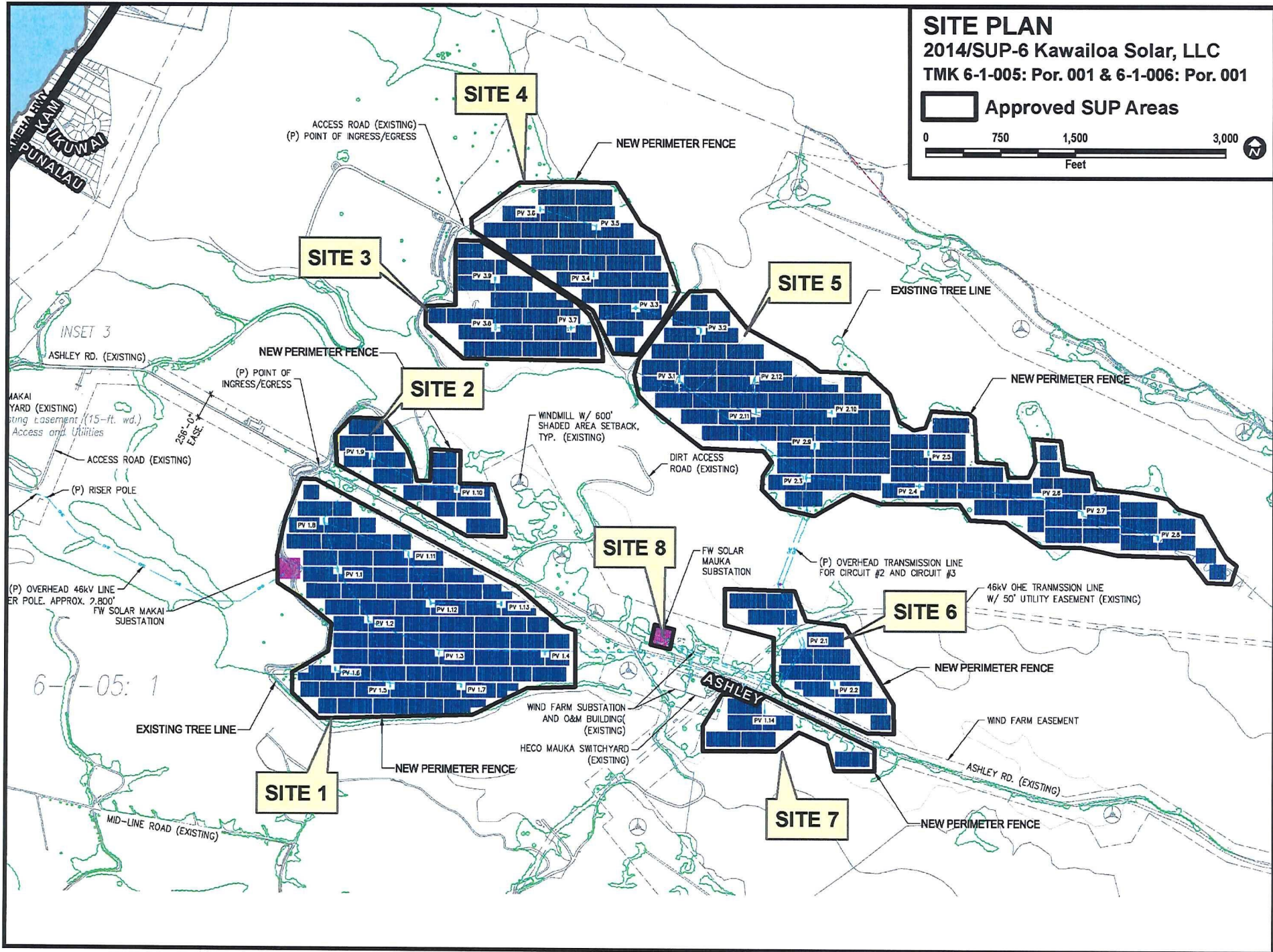
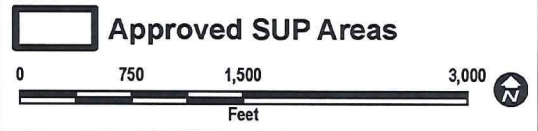


EXHIBIT A