



KAMEHAMEHA SCHOOLS®

LAND USE COMMISSION  
STATE OF HAWAII

February 13, 2017

2017 FEB 13 P 2: 16

Daniel Orodener  
Executive Director  
State of Hawaii Land Use Commission  
State Office Tower  
235 South Beretania Street, Room 406  
Honolulu, HI 96813

**Re: Annual Compliance Report for Special Use Permit (Docket No. SP15-406)**  
**KS: Kamehameha Schools**  
**Developer: Kawailoa Solar, LLC**

Dear Mr. Orodener:

On behalf of the Kawailoa Photovoltaic Facility project (the "Project"), Kamehameha Schools ("KS") respectfully submits to you the enclosed second annual report for the year-ending December 31, 2016 pursuant to Condition No. 7 of the State Land Use Commission's Decision and Order, Special Use Permit, Docket No. SP15-406 (the "SUP").

KS is the assignee of the SUP following the termination of its agreement with Kawailoa Solar, LLC (the "Developer"), whose then-parent company SunEdison Inc. failed to obtain financing for the Project and subsequently filed for bankruptcy. The Developer has a new owner, NRG Energy LLC, and has been negotiating new agreements with KS for an easement over the Project site, and with Hawaiian Electric Company for a new Power Purchase Agreement.

Assuming a new Agreement to Grant Easement between KS and the Developer is finalized and executed, the SUP will be assigned back to the Developer. Thus, KS is submitting the enclosed annual report on behalf of the Project.

Please note that in response to Condition No. 6 of the SUP, KS will be concurrently requesting approval by the Director of the Department of Planning and Permitting of an extension of the deadline to establish the Project from June 29, 2017 to September 30, 2019, as more particularly discussed in the report.

If you have any questions with regard to this letter or the enclosure, please contact the undersigned at (808) 523-6346.

Sincerely,

  
Keith Chang  
Land Asset Manager



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# Annual Compliance Report

LAND USE COMMISSION  
STATE OF HAWAII

## In the Matter of:

2017 FEB 13 P 2: 16

Special Use Permit for Photovoltaic Facility Kawaiiloa  
Solar, LLC

## Prepared by:

Kawaiiloa Solar, LLC (Developer) and  
Kamehameha Schools (Landowner)  
December, 2016

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# 1. Introduction

This Annual Compliance Report has been prepared in compliance with Condition No. 7 of the State Land Use Commission's Decision and Order, Special Use Permit, Docket No. SP15-406, effective on June 29, 2015 (the "Special Use Permit" or "SUP").

This, second annual report, demonstrates the status of compliance of the Solar Energy Facilities ("SEF") with the conditions of the SUP. This report covers the period from January 1, 2016 through December 31, 2016 and provides an update on ownership and schedule, and requests an extension of time for the projects to be established.

In 2015, the parent company of Kawaioloa Solar, LLC ("Kawaioloa Solar") SunEdison Inc., was unable to finance construction of the Project and as a result of broader financial issues, filed for bankruptcy in March 2016. In February of 2016, Hawaiian Electric Company terminated its Power Purchase Agreement with Kawaioloa Solar, but those parties are negotiating a new agreement. This eventually led to the landowner, Kamehameha Schools, terminating its agreement with Kawaioloa Solar in August of 2016. Kawaioloa Solar subsequently assigned the SUP to Kamehameha Schools.

Although, the bankruptcy of its parent was filed, Kawaioloa Solar remained solvent and was acquired through the bankruptcy process in October 2016 by NRG Energy LLC ("NRG"). As the new owner of Kawaioloa Solar, NRG hopes to continue the development and construction of the Project in accordance with the existing SUP. Soon after NRG's acquisition of Kawaioloa Solar, Kamehameha Schools began working with NRG to negotiate a new Agreement to Grant Easement for the subject property, in order to continue the development and construction of the Project as previously planned. Assuming this agreement is finalized and executed, the SUP would be assigned back to Kawaioloa Solar. Therefore Kamehameha Schools is submitting this annual report on behalf of the Project.

Condition #6 of the SUP requires that "the Applicant shall establish the Project within two (2) years of the date of the LUC's Decision and Order approving the SUP." Due to the unforeseen circumstances surrounding the parent company bankruptcy that were beyond the control of Kawaioloa Solar, and the anticipated time needed to execute the land agreement, reinstate the power purchase agreement, obtain the necessary approvals, secure financing and construct the Project, Kamehameha Schools requests approval of an extension of the deadline to establish the Project from June 29, 2017 to September 30, 2019.

## 2. Annual Compliance Report on Conditions of Special Use Permit

## 2.1. SUP Condition #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.*

### 2.1.1. Response SUP Condition #1

The area under the PV panels will be made available for compatible agricultural uses. KS, or its designee, intends to execute a License Agreement closer to the date when the compatible agricultural operation would commence, no later than a year after the solar project has been constructed and is operational, which is targeted for September 30, 2019.

## 2.2. SUP Condition #2

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

### 2.2.1. Response SUP Condition #2

Kawailoa Solar has not started operation of the facility and will advise the Planning Commission and the Director of the DPP in writing should a 6 month period elapse with no compatible agricultural operations existing on the useable lands of the Petition Area.

## 2.3. SUP Condition #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.*

### 2.3.1. Response SUP Condition #3

Kawailoa Solar has complied with both portions of SUP Condition #3.

- a. A survey map with metes and bounds description of the approved Petition Area was submitted to the Director of the DPP for review and approval. (Appendix 1)
- b. A site plan showing the area required under Condition #1 relating to the minimum land area to be made available for compatible agricultural uses was submitted to the Director of the DPP for review and approval. (Appendix 2)

We anticipate receiving a letter of approval from the Director of DPP related to both components of SUP Condition #3.

## 2.4. SUP Condition #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, including the removal of all equipment related to the SEF, within twelve (12) months following the termination of operations of the SEF. A change in Project ownership or a change in ownership of the land subject to the SUP, which warrants a new proof of financial security to decommission the Project, shall be submitted to the DPP for processing through the Planning Commission, within three (3) months of the ownership change.*

## 2.4.1. Response SUP Condition #4

Decommissioning security of \$4,000,000 will be posted for the purpose of meeting SUP Condition #3 and ensuring funds available to decommission the SEF within 12 months following termination of operations. These funds will be put in place at completion of construction of the project and prior to closing the building permit for the project which is targeted for September 30, 2019.

## 2.5. SUP Condition #5

*The Applicant shall comply with the recommendations of the USFWS and the DOFAW regarding the protection of the endangered Hawaiian hoary bat and endangered and*

### 2.5.1. Response SUP Condition #5

Based on information provided by Kawaiiloa Solar: Kawaiiloa Solar has conducted all construction activities including clearing in compliance with the recommendations of the USFWS and the DOFAW regarding the protection of the endangered Hawaiian hoary bat and endangered and threatened Hawaiian waterbird and shorebird species. Clearing activities have been conducted outside of the bat pupping season window to prevent impact to pupping activities of the hoary bat. Ongoing engagement with USFWS will occur to ensure compliance during construction and operation of the SEF.

## 2.6. SUP Condition #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 Planning Commission at least one-hundred twenty (120) days prior to the SUP's expiration.*

### 2.6.1. Response SUP Condition #6

Based on information provided by Kawaiiloa Solar: Kawaiiloa Solar is expected to commence operation by September 30, 2019.. The effective date of the SUP is June 29, 2015 which allows until June 29, 2017 to establish the project operations.



The proposed Power Purchase Agreement with Hawaiian Electric extends 22 years with the ability to extend up to 27 years with a Banked Curtailed Energy Term. In no event shall the project extend beyond 35 years from approval to decommissioning.

## **2.7. SUP Condition #7**

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

### **2.7.1. Response SUP Condition #7**

This second annual report constitutes compliance with SUP Condition #7. Going forward, Kawaiiloa Solar will be timely in the filing of our annual compliance report and ensure the report is submitted prior to the December 31<sup>st</sup> due date each year for review by the Land Use Commission, State Office and Planning and the DPP.

## **2.8. SUP Condition #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 Planning Commission and the LUC.*

### **2.8.1. Response SUP Condition #8**

Based on information provided by Kawaiiloa Solar: there have been no major modifications as described in 1-4 of SUP Condition #8, nor are any major modifications anticipated, and the project has not increased the number of PV panels, has not amended the conditions of approval under the Condition Use Permit, has not expanded the approved area boundary, and has not modified the use of the property in any way

## **2.9. SUP Condition #9**

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

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

## **2.9.1. Response SUP Condition #9**

Kamehameha Schools has not changed or transferred the licensee of the property, has not changed any uses on the property, has not terminated any uses of the property and has not transferred ownership of the property. Once the Agreement to Grant Easement was terminated, the SUP was assigned to Kamehameha Schools. Kamehameha Schools is currently working with NRG to negotiate a new land agreement, to develop and build the Project as previously planned, with NRG as the parent company of Kawaioloa Solar.

NOTE: The preceding annual report indicated that a Purchase & Sale Agreement had been executed with D.E. Shaw Group, Madison Dearborn Capital Partners IV LP and Northwestern University, which anticipated potential sale to the parties of the Waipio PV project by SunEdison. However, this transaction did not take place, and the PSA was eventually terminated. As described above, the parent company of Kawaioloa Solar LLC, SunEdison Inc. filed for bankruptcy in March 2016. Kawaioloa Solar LLC remained solvent and was acquired through the bankruptcy process in October 2016 by NRG Energy LLC ([www.nrg.com](http://www.nrg.com)).

Should any of these changes occur as part of the project financing or otherwise, Kawaioloa Solar will notify the Director of the DPP.

## **2.10. SUP Condition #10**

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

### **2.10.1. Response SUP Condition #10**

Kawaioloa Solar has confirmed to Kamehameha Schools that it is confident in meeting all conditions of the SUP pursuant to the Rules of the Planning Commission and that there has not been a failure to perform the conditions imposed by the SUP.

## **2.11. SUP Condition #11**

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

### **2.11.1. Response SUP Condition #11**

Based on the information provided by Kawaiiloa Solar: A Glint and Glare analysis was conducted for the SEF and no hazardous conditions are predicted by such analysis. Should the array create an unexpected hazardous condition for pilots or motorists once the project is operational, Kawaiiloa Solar will immediately mitigate the hazard in cooperation with direction from the Department of Transportation Airports Division or the Federal Aviation Administration.

## **2.12. SUP Condition #12**

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

### **2.12.1. Response SUP Condition #12**

Kawaiiloa Solar submitted an archeological monitoring plan to the SHPD for review and will obtain approval prior to disturbing ground.

## **2.13. SUP Condition #13**

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

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

## **2.13.1. Response SUP Condition #13**

Grading, demolition and/or construction have not occurred at the site. Kawaioloa Solar confirms that should any historic resources including human skeletal remains, structural remains, cultural deposits, artifacts, sand deposits or sink holes be identified during these activities, all work shall cease in the immediate vicinity, and the find shall be protected from additional disturbance. Kawaioloa Solar will follow protocol of contacting SHPD and Oahu Island Burial Council regarding any find.

## **2.14. SUP Condition #14**

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

## **2.14.1. Response SUP Condition #14**

Kawaioloa Solar has confirmed that all development activities related to the SEF continue to remain in compliance with all the representations made to the City and County of Honolulu Planning Commission and the State Land Use Commission including all Findings of Fact, Conclusions of Law and other documentation in the State Special Permit.