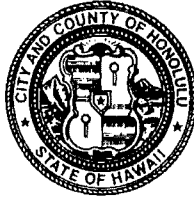


DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 7<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
PHONE: (808) 768-8000 • FAX: (808) 768-6041  
DEPT. WEB SITE: [www.honoluluudpp.org](http://www.honoluluudpp.org) • CITY WEB SITE: [www.honolulu.gov](http://www.honolulu.gov)

KIRK CALDWELL  
MAYOR



KATHY K. SOKUGAWA  
ACTING DIRECTOR

TIMOTHY F. T. HIU  
DEPUTY DIRECTOR

2014/SUP-6 (RY)  
1462754

June 13, 2017

**MEMORANDUM**

TO: Dean I. Hazama, Chair  
and Members of the Planning Commission

FROM: Kathy K. Sokugawa, Acting Director *Kathy Sokugawa*  
Department of Planning and Permitting

SUBJECT: Request to Amend a Special Use Permit (SUP) to Establish a  
Solar Energy Facility  
Kawailoa, North Shore, Oahu  
Tax Map Keys: 6-1-005: Portion of 001 and 6-1-006: Portion of 001

Transmitted for appropriate action is my report and recommendation for approval of the Petitioner's request to amend certain conditions of approval of the Land Use Commission's (LUC) Decision and Order dated June 29, 2015 (Order).

The Petitioner's requests are due to the recent acquisition of Kawailoa Solar LLC's solar energy facility (SEF) and associated entitlements from SunEdison, Inc., by the Petitioner's parent company, NRG Renew LLC in October 2016. The Petitioner desires additional time to restart and complete establishment of the SEF and proposes other amendments to the LUC's Order as a result of the design changes.

Enclosure

cc: Wren Wescoatt  
Jeff Overton, G70  
Craig Cornelius, Waipio PV LLC  
State Land Use Commission

2017 JUN 16 10:39  
LAND USE COMMISSION  
STATE OF HAWAII

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

STATE OF HAWAII

IN THE MATTER OF THE APPLICATION )

OF )

KAWAILOA SOLAR LLC )

FOR AN AMENDMENT TO A )

SPECIAL USE PERMIT )

FILE NO. 2014/SUP-6

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION  
FOR AN AMENDMENT TO A SPECIAL USE PERMIT

I. APPLICATION

A. Basic Information.

PETITIONER	:	Kawaiiloa Solar LLC
LANDOWNER	:	Trustees of The Estate of Bernice Pauahi Bishop dba Kamehameha Schools
LOCATION	:	In the vicinity of Ashley Road, approximately 6,000 feet south of Waimea Beach Park and 4 miles northeast of Haleiwa Town, at Kawaiiloa, North Shore, Oahu, Hawaii
TAX MAP KEYS	:	6-1-005: Portion of 001 and 6-1-006: Portion of 001
AREA OF SPECIAL USE PERMIT	:	382.8 Acres
STATE LAND USE DISTRICT	:	Agricultural
NORTH SHORE SUSTAINABLE COMMUNITIES PLAN LAND USE MAP	:	Agriculture
EXISTING ZONING	:	AG-1 Restricted Agricultural District
EXISTING USE	:	Wind Energy Generation System and Open Space
SURROUNDING LAND USE	:	Pasture, Crop Production, Open Space

- B. Proposal. Kawaiiloa Solar LLC (Petitioner) proposes to modify Condition Nos. 6 and 8 of the Land Use Commission's (LUC) Decision and Order dated June 29, 2015 (see Attachment 1). The Petitioner also proposes design changes to vary the number of photovoltaic (PV) modules within the approved area<sup>1</sup>.

Condition No. 6 required the Petitioner to establish the solar energy facility (SEF) within two years after the date the LUC approved the Special Use Permit (SUP). The Petitioner requests that the two-year deadline to establish the SEF be extended by 30 months from the date this SUP amendment is approved by the LUC. Condition No. 6 also specified a termination date of the SUP, which is 35 years from the date the LUC approved the SUP. The Petitioner requests that the SUP termination date be 35 years from the date the LUC approves this first SUP amendment.

Condition No. 8 allows future major modifications to the SUP to be approved by the City and County of Honolulu's Planning Commission (PC) and, subsequently, the LUC. One type of modification which requires PC and LUC review is any increase in the number of PV panels proposed. The Petitioner proposes to modify this condition by replacing "number of" to "area covered by" PV panels. The proposed modification removes any reference to the number of panels from Condition No. 8 and adds "area covered by" PV panels as an example of a major modification.

In addition, the Petitioner proposes to amend Condition No. 4 such that the amount of the required financial security to decommission the facility be an approximate amount.

Other Project design changes include a 6-foot high chain-link perimeter fencing in place of a 4-foot high hog wire fencing and an increase in projected power production from 50 megawatts to 51 megawatts, both of which do not require amendments to the LUC conditions of approval, but are being disclosed to update the Project description.

- C. Background. On June 29, 2015, the LUC granted the request of Kawaiiloa Solar LLC's SUP application to establish a 50-megawatt SEF (Project) on approximately 382.2 acres of land in the North Shore of Oahu (Property). The SUP approval was subject to 14 conditions of approval. Condition Nos. 6 and 8 were imposed pursuant to the City and County of Honolulu Administrative Rules, Planning Department, Part 1, Rules of the Planning Commission No. 2-46(e) and LUC Administrative Rule No. 15-15-95(f), which establishes that the PC may attach such conditions to any SUP as it considers necessary to protect the public health, safety, and welfare.

Construction of the SEF was scheduled to begin in 2015 with completion projected for 2016. In February, 2015, construction was halted when Hawaiian Electric Company (HECO) terminated its Power Purchase Agreement (PPA) with SunEdison, Inc. In March 2016, the Petitioner's parent company, SunEdison, filed for bankruptcy. NRG Renew LLC purchased Kawaiiloa Solar LLC and two other subsidiary companies that were developing SEFs on Oahu through a court-approved acquisition in October 2016.

The Petitioner has resumed work on development of the Project. A new PPA is to be negotiated with HECO and the Petitioner's revised schedule proposes construction to

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<sup>1</sup> Condition No. 14 of the LUC's Decision and Order requires that the Petitioner develop the Property in substantial compliance with representations made before the PC and the LUC. Failure to do so may result in the revocation of the SUP. Petitioner proposes to use a different PV module from those previously proposed which may result in an increase in PV panels; this information is intended to update the record. An amendment to any of the conditions of approval is not required for the proposed PV module change.

resume in 2018 and completion by 2019. Therefore, the Petitioner is requesting the 30-month extension to the deadline to establish the Project.

- D. Procedural Matters. On March 17, 2017, the Department of Planning and Permitting (DPP) received a letter dated March 14, 2017 (Attachment 2) from the LUC stating that essentially, the PC, with the concurrence of the LUC, may extend the time limit to establish the Project. On April 21, 2017, pursuant to the LUC's letter, the Petitioner filed a request to amend the SUP to extend the deadline to establish the Project and other amendments described above. On May 5, 2017, the DPP accepted the Petitioner's first SUP amendment application for processing.

## II. FINDINGS OF FACT

On the basis of the evidence provided, the Director finds:

- A. Site Location and Characteristics. The Property is located on former sugar cane plantation lands and consists of tablelands. Topography of the Property and surrounding lands ranges from relatively flat or moderate slopes in the former sugar cane fields to steep slopes in the gulches. Elevation of the Property ranges from 200 feet on the western end to 800 feet above mean sea level on the eastern end. Currently, the majority of the Property is vacant open grasslands interspersed with shrubs and trees. With the exception of the wind energy facilities, there are no other developments in the area. Surrounding lands to the east, west, north, and south are owned by Bernice Pauahi Bishop Trust Estate (Bishop 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, the land is used for military training.

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

- B. Public Agency Comments. The following public agencies were requested to evaluate the impact of the proposed amendment:

CITY AND COUNTY OF HONOLULU  
Honolulu Fire Department

STATE  
Department of Agriculture  
Department of Business, Economic Development and Tourism, LUC  
Department of Business, Economic Development and Tourism, Office of Planning  
Department of Transportation

FEDERAL  
Department of the Army

The following government agencies provided substantive comments on the SUP application. A summary of their comments are as follows:

Table 1 – Summary of Agency Comments

Source	Comments Summary
State Office of Planning (OP)	The OP concurs with the DPP that the proposed modification to Condition 4 to include the word “ <u>approximately</u> , four million dollars” be revised to say, “no less than four million dollars.” The OP is in support or has no objections to the proposed SUP modifications to Condition No. 6 (the change in ownership from SunEdison to NRG and extending the time limit by 30 months or about December 2019) as well as Condition No. 8 (increasing the number of panels to the area covered by the panels). The OP concurs that the proposed increase in the area to be covered by the panels is relatively minor since the proposed net capacity of the Project will not be increased.
State Department of Agriculture (DOA)	The Petitioner should affirm that the proposed change from hog wire fencing to chain-link fencing will not restrict or impede compatible agricultural uses within the Petition Area in any way or reduce the acreage within the Petition Area available for compatible agricultural uses. Also, the Petitioner should provide a letter from Kualoa Ranch stating that the proposed amendments to the SUP will not have any adverse effect on its planned ranching operation within the Project Area.

Other government agencies contacted did not object to the Project or did not provide comments.

All comments are included in Attachment 3. Written comments received by the DPP after the writing of this report will be forwarded to the PC via a separate transmittal.

- C. Community Concerns. Copies of the amendment request were transmitted to the North Shore Neighborhood Board (NB) No. 35.

To date, no comment from the NB has been received. Written comments received by the DPP after the writing of this report will be forwarded to the PC via a separate transmittal.

### III. ANALYSIS

- A. City and County of Honolulu Administrative Rules of the PC. Section 1-2, Subchapter 1, provides that the PC is charged with review and decision making for all SUPs within the City and County of Honolulu. Section 2-46, Subchapter 1, provides that the PC may attach conditions to any SUP to protect public health, safety, and welfare. Section 2-49, Subchapter 4, provides that a Petitioner who desires a modification or deletion of a condition imposed by the PC shall make such a request to the PC in writing. The request shall be processed in the same manner as the original application for a SUP.

- B. Analysis of Extending the Deadline to Establish the Project and its Validity Period – Condition No. 6. The PC Rule No. 2-46(e) requires that a reasonable time limit to establish the proposed use be a condition of the SUP. The PC recommended and the LUC approved Condition No. 6, which requires the Project be established two years from the date of the LUC's Decision and Order approving the SUP. The deadline is June 29, 2017. As indicated by the Petitioner, the Project stopped construction due to bankruptcy of its parent company, SunEdison, Inc. Subsequently, NRG Renew LLC acquired the Project and is working with HECO to reinstate the PPA. In order to finance, construct, and connect the Project to the HECO electrical grid, the Petitioner requires additional time to establish the Project and is requesting the deadline be extended for 30 months from the date the LUC approves of the extension request. When the Petitioner acquired the Project from the prior developer, he had no control over the prior developer's bankruptcy or schedule in establishing the Project; therefore, the DPP supports granting the Petitioner's request for a reasonable amount of additional time to complete the Project. The Petitioner did not provide a detailed estimate of the timeframe necessary to complete the establishment of the Project. Nevertheless, an extension of 30 months is not an unreasonable amount of time to allow the current developer to finance, construct, and connect the completed Project to HECO's existing electrical grid.

The DPP also supports the request to base the 35-year validity period to begin on the date this amendment is granted by the LUC. This amendment applies to this instance only. Any future change to the 35-year validity period would be subject to review and approval by the PC and the LUC.

- C. Analysis of Replacing the Limits on the Number of PV Panels with Area Covered by PV Panels – Condition No. 8. Condition No. 8 states, in part, that major modifications to the Project plans, including but not limited to significant increase in the number of PV panels, be subject to review and approval of the PC and the LUC. The Petitioner proposes design changes to the Project, which may result in significant changes in the number of PV panels installed due to a change in the panel manufacturer selected and varying panel dimensions involved. The Petitioner anticipates utilizing PV panels that are smaller in size than originally contemplated, which would result in a large increase in the number of PV panels, but still covers the same amount of acreage as proposed by the previous developer. As the proposed amendment does not alter the amount of land approved under the SUP, the DPP has no objections to this amendment.
- D. Analysis of Approximating the Amount of the Financial Security – Condition No. 4. The remaining amendment request affects Condition No. 4 where the Petitioner proposes the amount of four million dollars (\$4,000,000.00) financial security to be an approximate amount. The DPP prefers that this be the minimum amount required to demonstrate financial security to decommission the Project, especially as this requirement will be applicable for as long as 35 years. The use of the word "approximate", in this instance, is difficult to administer as it leaves the amount of the security open to interpretation and could be reduced substantially, contrary to the intent of Section 205-4.5(a)(21)(B).
- E. Analysis of the State OP Comments. As noted in Paragraph D above, the DPP has previously recommended and thus supports the OP's recommendation that the proposed modification to Condition No. 3 to include the word "approximately, four million dollars" be revised to say, "no less than four million dollars." The DPP accepts OP's concurrence of the other proposed SUP modifications to Conditions Nos. 6 and 8: 1) The change in ownership and property owner from SunEdison to NRG; 2) Extending the

time limit by 30 months or December 2019; 3) Increasing the number of panels to the area covered by the panels, and 4) the additional area covered by the panels is relatively minor, so no further changes to these conditions are needed.

- F. Analysis of the State DOA Comments. The DPP has no objections to the recommendation by the DOA that the Petitioner should affirm that the proposed change from hog wire fencing to chain-link fencing, will not restrict or impede compatible agricultural uses within the Petition Area in any way or reduce the acreage within the Petition Area available for compatible agricultural uses. Also, the Petitioner should provide a letter from Kualoa Ranch stating that the proposed amendments to the SUP will not have any adverse effect on its planned ranching operation within the Project Area. The DPP recommends adding this as an amendment to Condition No.1.
- G. Five Tests in Determining an "Unusual and Reasonable Use". The request for revisions to the conditions of the Decision and Order does not affect the analysis and justifications for granting of the Project pursuant to Section 2-45 "Test to be applied", in the Rules of the PC.
- F. City and County of Honolulu Plans and Programs. The request to modify the affected conditions does not affect the Project's compliance with established City plans and programs.
- G. Public Services and Facilities. There were no objections from public agencies who were provided an opportunity to comment. The proposed amendments do not adversely affect any of the services or facilities provided by public infrastructure agencies or any other regulatory agencies.

#### IV. CONCLUSION

The proposed amendment to Condition No. 6 to allow an extension of time to establish the Project is necessary as the bankruptcy of SunEdison was unforeseen and, thus, beyond the control of the Petitioner. It will not, in any way, affect the intent of Chapter 205, Hawaii Revised Statutes (HRS), to protect surrounding agricultural lands for appropriate uses for the public welfare. In addition, the proposed amendment start date of the SUP's 35-year validity period is reasonable, provided that future amendments that affect deadlines continue to be reviewed by the PC and the LUC.

The proposed amendment to Condition No. 8 to replace the limitation on the number of panels with the area covered by panels (due to design changes) is reasonable and not contrary to the justifications supporting the granting of the SUP.

Amending Condition No. 4, as proposed by the Petitioner, would be contrary to the intent of Section 205-4.5(a)(21)(B), HRS, related to providing proof of financial security to decommission the facility, and is not supported by the DPP.

Amending Condition No. 1, as proposed by the State DOA, is reasonable and in keeping with the justification for supporting the granting of the SUP and in keeping the intent and purpose of the Agricultural District.

## V. RECOMMENDATION

The Director of the DPP recommends that Condition Nos. 1, 4, 6, and 8 of the Land Use Commission's Decision and Order, dated June 29, 2015, be AMENDED as follows (additional text is underlined, deleted text is bracketed):

"1. Usable lands of the Petition Area, including areas under PV panels, shall be made available for compatible agricultural use at a lease rate that is at least 50 percent below the fair market rent for comparable properties, as long as the Project is in operation. Compatible agricultural operations shall be established, or Applicant shall be actively seeking to have such operations established, within 6 months of the start of commercial power generation. Extensions to this deadline may be granted by the Director of the DPP for unforeseen extenuating circumstances. Prior to the start of commercial power generation, the Petitioner should affirm, through a separate study or other competent means, that the proposed change from hog wire fencing to chain-link fencing, will not restrict or impede compatible agricultural uses within the Petition Area in any way or reduce the acreage within the Petition Area available for compatible agricultural uses. Also, the Petitioner shall provide, in writing, a letter from Kualoa Ranch stating that the proposed amendments to the SUP will not have any adverse effect on its planned ranching operation within the Project Area."

"4. Prior to the closing of the building permit for the SEF, the Applicant shall submit to the DPP proof of financial security, such as a posted letter of credit or similar mechanism from a creditworthy financial institution, in favor of the owner of the land subject to the SUP, in the amount of no less than four million dollars (\$4,000,000.00), which security shall remain in place for the duration of the operation of the Project, with evidence of same provided to the Director of the DPP on an annual basis, to decommission the Project and restore the Petition Area to substantially the same physical condition as existed prior to the development of the SEF.

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

"6. The Applicant shall establish the Project within thirty (30) months [two (2) years] of the date of the LUC's Decision and Order approving the SUP. Future r[R]equest[s] for extensions of this deadline shall be submitted to the Director of the DPP prior to the expiration of the deadline. The LUC may grant [an] extensions to the deadline to establish the Project due to unforeseen circumstances that were beyond the control of the Applicant. This SUP shall be valid for a period of thirty-five (35) years [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.

The 30-month period to establish the Project and the 35-year validity period of the SUP shall begin on the date the LUC approves of the first amendment request."



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

Dated at Honolulu, Hawaii this 13<sup>th</sup> day of June 2017.

DEPARTMENT OF PLANNING AND PERMITTING  
CITY AND COUNTY OF HONOLULU  
STATE OF HAWAII

By   
Kathy K. Sokugawa  
Acting Director

Attachments

# Attachment 1



RECEIVED

'15 JUN 30 P12:50

DEPARTMENT OF LAND AND NATURAL RESOURCES  
CITY & COUNTY OF HONOLULU

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of	)	DOCKET NO. SP15-406
	)	
KAWAIILOA SOLAR, LLC	)	FINDINGS OF FACT, CONCLUSIONS
	)	OF LAW, AND DECISION AND
For A Special Use Permit To Establish	)	ORDER APPROVING THE
A Solar Energy Facility On	)	RECOMMENDATION OF THE
Approximately 384.1 Acres Of Land	)	CITY AND COUNTY OF
Within The State Land Use Agricultural	)	HONOLULU PLANNING
District At Kawaiiloa, North Shore,	)	COMMISSION TO APPROVE
O`ahu, Hawai`i, Tax Map Keys:	)	THE STATE SPECIAL USE PERMIT
6-1-005: Portion Of 1 and 6-1-006:	)	PETITION WITH MODIFICATIONS
Portion Of 1	)	
_____	)	

2015 JUN 29 AM 11:00  
LAND USE COMMISSION  
STATE OF HAWAII

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER  
APPROVING THE RECOMMENDATION OF THE CITY AND COUNTY OF  
HONOLULU PLANNING COMMISSION TO APPROVE THE STATE SPECIAL USE  
PERMIT PETITION WITH MODIFICATIONS

AND

CERTIFICATE OF SERVICE

This is to certify that this is a true and correct  
copy of the document on file in the office of the  
State Land Use Commission, Honolulu, Hawai`i.

June 29, 2015 by

Executive Officer

Daniel Orodener, Executive Officer



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

2015 JUN 29 A 1:08  
LAND USE COMMISSION  
STATE OF HAWAII

In The Matter Of The Petition Of	)	DOCKET NO. SP15-406
	)	
KAWAILOA SOLAR, LLC	)	FINDINGS OF FACT, CONCLUSIONS
	)	OF LAW, AND DECISION AND
For A Special Use Permit To Establish	)	ORDER APPROVING THE
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Within The State Land Use Agricultural	)	HONOLULU PLANNING
District At Kawaiiloa, North Shore,	)	COMMISSION TO APPROVE
O'ahu, Hawai'i, Tax Map Keys:	)	THE STATE SPECIAL USE PERMIT
6-1-005; Portion Of 1 and 6-1-006:	)	PETITION WITH MODIFICATIONS
Portion Of 1	)	
_____	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER  
APPROVING THE RECOMMENDATION OF THE CITY AND COUNTY OF  
HONOLULU PLANNING COMMISSION TO APPROVE THE STATE SPECIAL USE  
PERMIT PETITION WITH MODIFICATIONS

AND

CERTIFICATE OF SERVICE



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In The Matter Of The Petition Of	)	DOCKET NO. SP15-406
	)	
KAWAIILOA SOLAR, LLC	)	FINDINGS OF FACT, CONCLUSIONS
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Within The State Land Use Agricultural	)	HONOLULU PLANNING
District At Kawaiiloa, North Shore,	)	COMMISSION TO APPROVE
O'ahu, Hawai'i, Tax Map Keys:	)	THE STATE SPECIAL USE PERMIT
6-1-005: Portion Of 1 and 6-1-006:	)	PETITION WITH MODIFICATIONS
Portion Of 1	)	
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2015 JUN 29  
LAND USE COMMISSION  
STATE OF HAWAII

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER  
APPROVING THE RECOMMENDATION OF THE CITY AND COUNTY OF  
HONOLULU PLANNING COMMISSION TO APPROVE THE STATE SPECIAL USE  
PERMIT PETITION WITH MODIFICATIONS



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In The Matter Of The Petition Of	)	DOCKET NO. SP15-406
	)	
KAWAIILOA SOLAR, LLC	)	FINDINGS OF FACT, CONCLUSIONS
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Approximately 384.1 Acres Of Land	)	CITY AND COUNTY OF
Within The State Land Use Agricultural	)	HONOLULU PLANNING
District At Kawaiiloa, North Shore,	)	COMMISSION TO APPROVE
O'ahu, Hawai'i, Tax Map Keys:	)	THE STATE SPECIAL USE PERMIT
6-1-005: Portion Of 1 and 6-1-006:	)	PETITION WITH MODIFICATIONS
Portion Of 1	)	
_____	)	

2015 JUN 29  
LAND USE COMMISSION  
STATE OF HAWAII

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER  
APPROVING THE RECOMMENDATION OF THE CITY AND COUNTY OF  
HONOLULU PLANNING COMMISSION TO APPROVE THE STATE SPECIAL USE  
PERMIT PETITION WITH MODIFICATIONS

The State of Hawai'i Land Use Commission ("LUC"), having examined the complete record of the City and County of Honolulu Planning Commission ("Planning Commission") proceedings on the State Special Use Permit ("SUP") Petition ("Petition") filed by Kawaiiloa Solar, LLC ("Applicant"),<sup>1</sup> to construct a 50-megawatt

<sup>1</sup> The Applicant is wholly owned by Kawaiiloa Solar Holdings, LLC, which was wholly owned by First Wind Solar Portfolio, LLC ("First Wind Solar"). In turn, First Wind Solar was owned by First Wind Holdings, LLC, which was acquired by SunEdison, LLC, as were its subsidiaries.

solar energy facility and accessory uses and structures (collectively "SEF" or "Project") on approximately 384.1 acres of land within the State Land Use Agricultural District, identified as Tax Map Keys ("TMKs"): 6-1-005: portion of 1 and 6-1-006: portion of 1, at Kawaiiloa, North Shore, O'ahu, Hawai'i ("Petition Area"), and upon consideration of the matters discussed therein, at its meeting on June 9, 2015, hereby makes the following findings of fact, conclusions of law, and decision and order:

### FINDINGS OF FACT

#### PROCEDURAL MATTERS

1. On November 7, 2014, Kawaiiloa Solar, LLC, the Applicant herein, filed the Petition with the City and County of Honolulu Department of Planning and Permitting ("DPP") (File No. 2014/SUP-6), pursuant to section 205-6, Hawai'i Revised Statutes ("HRS"), and section 15-15-95 *et seq.*, Hawai'i Administrative Rules ("HAR").<sup>2</sup>

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<sup>2</sup> Pursuant to section 205-50(b), HRS, the Petition was referred to the State of Hawai'i Department of Agriculture ("DOA") and Office of Planning ("OP") for review and comment given the Important Agricultural Lands ("IAL") designation of the Petition Area. The DOA recommended that a condition be imposed requiring that the Applicant and its successors and/or assigns establish a sheep pasture operation or other agricultural enterprise on the Petition Area in compliance with Act 55, Session Laws of Hawai'i ("SLH") 2014, for the duration of the SEF's operation. OP commented that concerns will remain about the statewide challenge of seeking a balance between maintaining the availability of high quality agricultural lands and promoting renewable energy sources such as solar facilities on lands within the State Land Use Agricultural District. OP also raised concerns that the agricultural component of "agri-voltaic" projects may not be implemented as represented and may become a negligible aspect of the development. OP recommended that should the Petition be granted, the requirements of section 205-4.5(a)(21)(A), (B), and (C), HRS, relating to (i) compatible agricultural activities; (ii) proof of financial security for decommissioning; and (iii) decommissioning requirements be included as conditions of approval.

2. On April 1, 2015, the Planning Commission considered the Petition. There was no public testimony provided at the hearing. The Planning Commission subsequently continued the matter to its next scheduled meeting.

3. After due deliberation at its continued hearing on April 15, 2015, the Planning Commission recommended approval of the Petition to the LUC, subject to ten conditions.

4. On May 8, 2015, the LUC received a copy of the decision and a portion of the record of the Planning Commission's proceedings on the Petition. On June 3, 2015, the LUC received the remaining portion of the record consisting of the adopted transcripts of the Planning Commission's proceedings.

5. On June 5, 2015, the Applicant filed its Proposed Order Adopting the City and County of Honolulu Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order ("Proposed Order").

6. On June 9, 2015, the LUC met in Honolulu, Hawai'i, to consider the Petition.<sup>3</sup> Randall Sakumoto, Esq.; Marguerite Nozaki, Esq.; Wren Wescoatt; and Crystal Kua appeared on behalf of the Applicant. Richard Lewallen, Esq., and Raymond Young were also present on behalf of the DPP. Rodney Funakoshi entered an

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<sup>3</sup> At the beginning of the meeting, Commissioner Scheuer disclosed that he had previously worked for the landowner of the Petition Area as well as with the Applicant's counsel, but that he believed there was no conflict and that he could be impartial in the proceeding. There were no objections to Commissioner Scheuer's participation in the meeting.



appearance on behalf of OP.<sup>4</sup> At the meeting, the Applicant provided an overview of the Project, including a discussion of the Project relative to the SUP guidelines under section 15-15-95(c), HAR. Following the presentation by the Applicant, the LUC raised questions about the operation and impacts of the SEF. Upon further questioning, the Applicant noted the various concerns expressed by the community about the Project. OP then summarized its position on the Petition as well as its written comments on the Applicant's Proposed Order. Discussion then ensued on the Applicant's Proposed Order by the Applicant, DPP, and OP.

Thereafter, a motion was made and seconded to approve the Application with modifications as proposed by the Applicant and OP and with further modifications the LUC staff deems appropriate to conform to the record and chapter 205, HRS. There being a vote tally of 7 ayes, the motion passed.<sup>5</sup>

#### DESCRIPTION OF THE PROPERTY

7. The Petition Area is located approximately 6,000 feet south of Waimea Beach Park and approximately four miles northeast of Hale'iwa Town. It consists of eight separate sites that total approximately 382.2 acres.<sup>6</sup>

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<sup>4</sup> At the meeting, OP filed written comments on the Applicant's Proposed Order.

<sup>5</sup> There are currently seven sitting commissioners on the LUC. The two remaining seats are vacant.

<sup>6</sup> The ninth site, consisting of approximately 1.9 acres of Ashley Road, is proposed to contain approximately 550 linear feet of underground electrical line, which the DPP deemed a permissible use within the State Land Use Agricultural District, and therefore not subject to an SUP. This effectively

8. The Kawaiiloa wind energy generation system is located between and around the Petition Area.

9. With the exception of the wind farm, there is no other development near the Petition Area. The surrounding areas support a variety of uses, including diversified agriculture, conservation, and military operations.

10. The Petition Area is owned by the Trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools.

11. The Petition Area is currently vacant. It was formerly used for sugarcane cultivation. As part of a large sugar plantation, the Petition Area and surrounding areas consist of agricultural fields located atop a series of tablelands interspersed with gulches formed by intermittent drainages. The topography ranges from relatively flat or moderately sloping in the agricultural fields to steeply sloping in the gulches. Elevations range from 200 feet above sea level ("ASL") to 1,280 feet ASL, which equates to an average grade of approximately 7 percent.

12. Local climatic conditions in the area are characteristic of lowland areas on the windward side of O'ahu, with relatively constant temperatures and persistent northeast tradewinds. The average annual rainfall over a 30-year period (1981-2010) is approximately 55 inches. The monthly average ranges between

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reduced the acreage of the Petition Area from approximately 384.1 acres (as identified in the Petition) to its current approximately 382.2 acres.

Docket No. SP15-406 Kawaiiloa Solar, LLC

Findings Of Fact, Conclusions Of Law, And Decision And Order Approving The Recommendation Of The City And County Of Honolulu Planning Commission To Approve The State Special Use Permit Petition With Modifications

approximately 2.8 inches and 7 inches. Minimum temperatures range from 60.1°F to 69.4°F, while maximum temperatures range from 79.1°F to 87.6°F.

13. The Petition Area is accessible via Ashley Road, a gated and private roadway that is maintained for the existing wind farm. It connects to Kamehameha Highway. There is no public access to the Petition Area.

14. By Findings of Fact, Conclusions of Law, and Decision and Order issued on March 5, 2015, the LUC designated the Petition Area as well as other lands in Kawaihoa and Punalu'u as IAL under Docket No. DR14-52/Trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools.

15. The Petition Area includes soils classified by the Land Study Bureau's ("LSB") detailed land classification as overall (master) productivity rating class A, B, C, and E lands. The majority of the Petition Area consists of class B lands, with significantly smaller acreages consisting of, in decreasing order, class C, E, and A lands. The approximately 1.9 acres of land beneath Ashley Road where subsurface improvements of approximately 550 linear feet of underground electrical line are planned consist of class A and B lands.

16. The Natural Resource Conservation Service classifies the soil types on the Petition Area as belonging to the Wahiawā Series (Wahiawā silty clay, 3 to 15 percent slopes) and Leilehua Series (Leilehua silty clay, 2 to 12 percent slopes).

Permeability of these soils is moderately rapid. Runoff is slow to medium, and the erosion hazard is slight to moderate.

17. Under the Agricultural Lands of Importance to the State of Hawai'i ("ALISH") classification system, the soils on the Petition Area consists of prime lands, which are best suited for the production of food, feed, forage, and fiber crops. The land has the soil quality, growing season, and moisture supply needed to produce sustained high yields of crops when properly managed (including water management).

18. The Petition Area is designated as Agriculture by the North Shore Sustainable Communities Plan.

19. The Petition Area is zoned AG-1 Restricted Agricultural District.

20. The Petition Area is located outside of the City and County of Honolulu Special Management Area.

#### DESCRIPTION OF THE PROPOSED USE

21. The purpose of the SEF is to produce clean, low-cost renewable energy for the island of O'ahu. Large solar photovoltaic ("PV") systems are capable of generating electricity for a cost that is substantially less than Hawaiian Electric Company's ("HECO") "avoided cost" to produce the same electricity using fossil fuel without the greenhouse gas emissions from burning that fuel. Based on the projected output of the SEF over a 27-year period, the SEF is expected to produce the energy to

power the equivalent of 15,000 households and save consumers approximately \$200 million compared to HECO's current avoided cost. Further, the SEF will prevent the burning of millions of barrels of oil and millions of tons of CO<sub>2</sub> from entering the atmosphere.

22. Sites 1 through 7 of the SEF will primarily contain horizontal single-axis tracking, ground-mounted panels. Site 1 will also include an electrical substation. Site 8 will contain the second of the two proposed electrical substations. The panels are proposed to face approximately due south, and are expected to extend approximately 4' 6" to 9' 6" off the ground on average. Each panel will generate power at 1,000 volts. In addition to the panels, the SEF will include electrical equipment, such as combiner boxes, collector lines, inverters, weather monitoring stations, and switch gear, as needed, to increase the electrical voltage and aggregate the generated electricity for transmittal via the collector system.

23. The collector system will consist of a network of direct buried underground collection circuits connecting to two electrical substations located on Sites 1 and 8. These Mauka and Makai substations are proposed to provide for the termination of the collector lines, transform the electricity to 46,000 volts, and connect to the existing HECO Mauka and Makai switchyards, both of which were constructed as part of the nearby wind farm project. HECO's Mauka switchyard provides for

interconnection with the HECO's Waialua-Kuilima 46 kilovolt ("kV") sub-transmission line, while HECO's Makai switchyard provides for interconnection with HECO's existing Waialua-Kahuku 46 kV sub-transmission line. The SEF will need to interconnect with both sub-transmission lines.

24. The design of the two substations will consist of an open switchrack with free-standing steel structures, occupying an area of approximately 150 feet by 180 feet. An 8-foot high chain-link perimeter fence is expected to enclose the substations. It is envisioned that new electrical equipment will be installed within each of the existing HECO switchyards to support interconnection of the SEF. An existing fiber optic cable will provide telecommunications.

25. Ashley Road is expected to serve as the main entry point to the SEF as it currently does to the existing wind farm. A series of new interior service gravel roads will need to be constructed within the Petition Area to facilitate construction and allow access for ongoing operations and maintenance. The Applicant plans to construct perimeter fencing around the various sites.

26. In addition to the SEF, the Applicant represents that it will establish or will be actively seeking to establish a compatible agricultural operation on the Petition Area within one year of the commencement of the commercial operation of the SEF in compliance with Act 55, SLH 2014, which requires that the area occupied by

solar energy facilities be made available for compatible agricultural activities. The Applicant proposes to make available the lands for compatible agricultural activities at a lease rate that is at least 50 percent below the fair market rent for comparable properties as required by section 205-4.5(a)(21)(A), HRS, for the duration of the commercial energy generation operations. The Applicant plans to lease the lands for the pasturage of sheep, and has already executed a Letter of Intent to Kualoa Ranch Hawai'i, Inc. ("Kualoa Ranch"), to initiate this process.<sup>7</sup> Under the terms of the lease, the tenant will have use of the fencing and roadways as well as other infrastructure at the Petition Area.

27. The Applicant is confident that the SEF and a large sheep pasture can be co-located on the same land to the mutual benefit of both operations. There is local demand for fresh, grass-fed lamb in restaurants, stores, and farmers' markets. There is also a need on O'ahu for affordable pasture acreage to graze sheep and support the startup of a viable sheep ranch.

28. Construction of the SEF is expected to commence in January 2016 and be completed within ten months. To qualify for the 30 percent federal investment tax credits for solar energy projects, which credits make the SEF financially feasible, the

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<sup>7</sup> In its Preliminary Agricultural Plan, the Applicant provided alternatives in the event Kualoa Ranch does not lease the Petition Area. The contingencies identified by the Applicant include leasing the Petition Area to another sheep rancher, grazing lowline cattle, raising free-range poultry, and beekeeping.

Applicant must have the SEF in commercial operations before the end of 2016. The Applicant intends to sell the energy generated by the SEF to HECO.

29. Once constructed, the SEF will be a primarily passive operation for both solar power generation and ranching. Power generation is generally expected to occur between 9:00 a.m. and 4:00 p.m. based on solar intensity. Normal operation of the SEF will not require onsite personnel, and therefore the SEF will not be manned on a daily basis.

30. The SEF will be co-located with the existing Kawaihoa wind farm. The two operations will complement each other, as one will be generating energy during times when the other technology is not generating clean energy. The SEF will add diversity to the generation resources on the North Shore, enabling more consistent and productive electrical output throughout the year.

31. The SEF is projected to have an operational life of approximately 25 to 30 years. The SEF may be re-powered with new equipment or decommissioned. Decommissioning will involve the removal of all above ground structures, including the panels, transformers, and substation equipment, and all below ground structures and foundations to a depth of 36 inches below grade. As required by section 205-4.5(a)(21)(C), HRS, the Applicant plans to return the Petition Area to its pre-SEF condition following decommissioning. Most of the materials are planned to be either



salvaged or recycled. It is envisioned that most of the material will be shipped to a recycling facility on the mainland, while the remaining materials will be disposed of by a contractor at authorized sites. Decommissioning is planned to take place within 12 months of the conclusion of operation or the useful life of the SEF. Based on industry estimates of removal costs and salvage value of recycled materials, the projected cost to decommission the SEF is approximately \$4 million.

32. Pursuant to section 205-4.5(a)(21)(B), HRS, the Applicant will put financial security in place to cover the estimated cost of decommissioning.

Decommissioning security will be provided in the form of a parent guaranty, letter of credit, or some other acceptable form of security prior to the date of commencement of commercial generation.

33. In addition to a State SUP, the SEF will also require a Conditional Use Permit, Minor, and grading and building permits.

## IMPACTS UPON THE RESOURCES OF THE AREA

### Agricultural Resources

34. The Petition Area includes soils classified by the LSB's detailed land classification as overall (master) productivity rating class A, B, C, and E lands. The majority of the Petition Area consists of class B lands, with significantly smaller acreages consisting of, in decreasing order, class C, E, and A lands. The approximately

1.9 acres of land beneath Ashley Road where subsurface improvements of approximately 550 linear feet of underground electrical line are planned consist of class A and B lands.

35. The Natural Resource Conservation Service classifies the soil types on the Petition Area as belonging to the Wahiawā Series (Wahiawā silty clay, 3 to 15 percent slopes) and Leilehua Series (Leilehua silty clay, 2 to 12 percent slopes). Permeability of these soils is moderately rapid. Runoff is slow to medium, and the erosion hazard is slight to moderate.

36. Under the ALISH classification system, the soils on the Petition Area consists of prime lands, which are best suited for the production of food, feed, forage, and fiber crops. The land has the soil quality, growing season, and moisture supply needed to produce sustained high yields of crops when properly managed (including water management).

37. In conjunction with the SEF, the Applicant will establish or will actively seek to establish a compatible agricultural operation on the Petition Area within one year of the commencement of the commercial operation of the SEF. The Applicant proposes to make available the lands for compatible agricultural activities at a lease rate that is at least 50 percent below the fair market rent for comparable properties as required by section 205-4.5(a)(21)(A), HRS, for the duration of the

commercial energy generation operations. The Applicant has already executed a Letter of Intent to Kualoa Ranch to lease the Petition Area for the pasturage of sheep.

Alternatives to raising sheep on the Petition Area have been identified in the event such endeavor does not succeed.

38. Following decommissioning of the SEF, the Petition Area will be returned to substantially the same condition as existed prior to the establishment of the SEF, enabling future agricultural use of the Petition Area.

#### Archaeological and Cultural Resources

39. ASM Affiliates, Inc., prepared an Archaeological Inventory Survey ("AIS") of the Petition Area in November 2014. Minor revisions to the AIS were subsequently done in January 2015. The AIS involved research of historical and archaeological resources and documents. The Petition Area was used for plantation agriculture and contains fields, plantation roadways, and other related infrastructure. A complete pedestrian survey of the Petition Area was undertaken and previously recorded Site 50-80-04-7171 and newly recorded Site 50-80-04-7716 (both ditch complexes related to plantation-era activities) were documented. Both sites were significant to the extent that they have yielded, or are likely to yield, information important for research on prehistory or history. No historic properties were deemed to

be affected and archaeological monitoring to address inadvertent finds was recommended.

40. The State of Hawai'i Department of Land and Natural Resources ("DLNR"), Historic Preservation Division ("SHPD"), subsequently determined that no historic properties will be affected by the SEF, and that it concurred with the Applicant's proposed archaeological monitoring during construction to ensure proper documentation and treatment of any inadvertent finds, including possible additional features related to Sites -7171 and -7716.

41. As requested by the SHPD, the Applicant plans to submit an archaeological monitoring plan to the SHPD for its review and acceptance prior to any ground disturbing activities.

42. A Cultural Impact Assessment ("CIA") was prepared for the nearby Kawaihoa wind energy generation system in June 2011. The CIA included the entire ahupua'a of Kawaihoa and Kamananui as part of its cultural survey area. Based on the CIA, there was evidence of fishing, gathering, and the cultivation of a variety of crops in the Kawaihoa ahupua'a by Native Hawaiians. There was also evidence of subsequent plantation-era commercial sugarcane cultivation, which dramatically altered the natural landscape during the last two decades of the 19<sup>th</sup> century. The

sugarcane fields were left fallow after the termination of the Waialua Sugar Company in 1998.

43. There have been no specific valued natural and cultural resources identified in the Petition Area. No evidence has been identified to demonstrate that traditional and customary cultural practices are currently being exercised in the Petition Area.

#### Flora and Fauna

44. SWCA Environmental Consultants prepared a Natural Resource Assessment of the Petition Area and surrounding areas. Biological Resources Surveys prepared by Robert W. Hobdy for the Kawaihoa wind energy generation system were also utilized in assessing the impacts of the SEF on the biological resources of the area.

45. The Petition Area consists almost entirely of non-native, weedy plant species. The only native species was 'uhaloa, a common species found throughout the State. The most abundant species on the Petition Area is Guinea grass, an introduced species. No state or federally listed threatened, endangered, or candidate plant species have been recorded on the Petition Area. No designated (or proposed) critical habitat exists. The construction of the SEF is not anticipated to adversely affect the botanical resources on the Petition Area.

46. Of the 26 species of birds observed on the Petition Area and surrounding areas, four are native or winter migrants to the State: the Black-crowned night heron, the Pacific golden-plover, the endangered Newell's shearwater, and the Hawaiian duck-mallard hybrid. It is also possible that the endangered Hawaiian petrel transits the land. Nesting habitat for the seabird species does not exist on the Petition Area. Although there are no open water features or mudflats on the Petition Area, several endangered waterbirds have been observed at nearby waterbodies and/or flying over the Kawailoa area, and could transit the area while moving between nearby habitat. Such waterbirds include the Hawaiian stilt, Hawaiian coot, and the Hawaiian moorhen. The Hawaiian duck-mallard hybrid could also occasionally fly over from Kaua'i.

47. Although the anti-reflective solar panels are not expected to lead to bird collisions, the Applicant agreed to train operations personnel at the Petition Area to document and report any downed wildlife encountered during routine site inspections. Training will include recognizing protected species and establishing standardized protocols for documenting and reporting occurrences of downed wildlife to the U.S. Fish and Wildlife Service ("USFWS") and the DLNR, Division of Forestry and Wildlife ("DOFAW").

48. The endangered, native Hawaiian hoary bat has been documented flying in the Kawaiiloa area. Bat activity has been detected in essentially all habitats in the area, including clearings, along roads, along the edges of tree lines, in gulches, and at irrigation ponds. The bats appear to use these features for travelling and foraging. Consistent with the recommendations of the USFWS and the DOFAW, the Applicant will avoid disturbing, removing, or trimming woody plants greater than 15 feet tall during the birthing and pup rearing season. In addition, the Applicant represents that the perimeter fencing will not include barbed wire that could inadvertently snag bats. Any observations of the hoary bat in the Petition Area will be reported to the DOFAW.

49. The Applicant will consult with the DOFAW and the USFWS throughout the planning process to determine if a threatened or endangered species is likely to be impacted by the Project. In conjunction with the USFWS and the DOFAW, appropriate protocols for the construction and operation of the SEF to monitor and mitigate risks to protected species will be developed.

50. The Applicant will keep the USFWS and the DOFAW apprised of any changes to the SEF to determine if there could be potential impacts to a threatened or endangered species.

### Groundwater Resources

51. The Applicant does not plan to utilize groundwater as a source of water supply for the SEF. A minimal amount of water will be required for the occasional irrigation of landscaping, the periodic cleaning of the solar panels, and to support the co-located ranching operations. Water will be available from rainwater catchment equipment, onsite irrigation ponds, or transported to the Petition Area via truck. No hook-up to the municipal water system is anticipated.

### Visual Resources

52. Views of the SEF from publicly accessible locations in the neighboring areas are expected to be minimal based on the low profile of the solar arrays and the existing topography and vegetation surrounding the Petition Area.

53. Solar panels are designed to reflect approximately 2 percent of incoming sunlight. Panels are typically designed with anti-reflective glass front surfaces to capture and retain as much of the solar spectrum as possible. In general, solar module glass has less reflectivity than water or window glass. A reflectivity study conducted for the SEF evaluated the potential for glare at 14 locations surrounding the Petition Area, including Wheeler and Dillingham Airfields and various roadways and residential areas. Based on the study, none of the observation points will have potential



glare. The potential for significant glare-related impacts is unlikely, and any glare would be of short duration and barely perceptible to aviators.

54. The State of Hawai'i Department of Transportation ("DOT"), Airports Division, noted that if glint or glare does create a hazardous condition for pilots, the Applicant must be prepared to immediately mitigate the hazard, upon notification by the Airports Division or the Federal Aviation Administration ("FAA"). In the event the SEF creates a hazardous condition for pilots, the Applicant will immediately initiate steps to mitigate the hazard upon notification by the appropriate authorities.

## ENVIRONMENTAL QUALITY

### Air Quality

55. During construction of the SEF, exhaust from increased vehicular traffic and fugitive dust from construction activity will generate short-term impacts. Temporary Best Management Practices ("BMPs"), including dust fences, windbreaks, watering of disturbed areas, and other soil management measures, will be implemented. BMPs will be identified and included on the erosion control plans that are required for grading and erosion control permit approvals issued by the State and City and County. Construction activities at the Petition Area will comply with the regulations for fugitive dust control in section 11-60.1, HAR

56. The SEF will not generate direct air emissions. Operation and maintenance activities may result in minimal amounts of fugitive dust or tailpipe emissions from vehicular traffic and landscape maintenance. Adverse impacts to air quality are not anticipated.

#### Noise

57. Ground-mounted inverters and transformers make a humming noise during daytime hours when the solar array generates electricity. This sound is typically inaudible in areas approximately 50 to 150 feet from the boundary of the array. There may be some sound generated from switching gear associated with the power substation, but this is expected to be minimal. Another noise source would include mowers and string trimmers used for vegetation control. None of these are expected to be audible from the nearest residences, which are approximately 0.7 miles from the Petition Area.

#### Water Quality

58. The solar panels do not generate pollution that would impact groundwater or surface water. No chemical agents will be used to clean the panels. The Applicant will employ BMPs to address potential impacts of the development of the SEF to water quality and comply with all necessary permit requirements prior to

construction, including National Pollution Discharge Elimination System permit coverage for construction-related stormwater.

## ADEQUACY OF PUBLIC SERVICES AND FACILITIES

### Roadways

59. Ashley Road, a private road with gated ingress/egress off Kamehameha Highway, provides access to the Petition Area. Maintenance and inspection of the SEF, including supplemental mowing, landscaping, panel cleaning, and electrical maintenance, will occur irregularly with employees driving on a network of internal gravel roads throughout the Petition Area. No centralized parking facilities are planned.

### Water

60. The City and County of Honolulu Board of Water Supply ("BWS") does not service the Petition Area. A minimal amount of water will be required for the occasional irrigation of landscaping, the periodic cleaning of the solar panels, and to support the co-located ranching operations. Water will be available from rainwater catchment equipment, onsite irrigation ponds, or transported to the Petition Area via truck. No hook-up to the municipal water system is anticipated.

### Drainage

61. The Petition Area generally slopes mauka to makai down from elevations of 1,280 feet to 200 feet with an average slope of approximately 7 percent. It

is located in Flood Zone D, an area where flood hazards are undetermined. Existing runoff currently discharges through sheet flow or shallow concentrated flow into swales onto adjacent downstream properties. The solar panels are proposed to be located in the flatter, more gradually sloped areas on the ridgelines and away from the steep ravines that lead to the valleys below.

62. Clearing, grubbing, and grading will be required for placement of the solar panels, equipment, facilities, access driveways, fencing, and vegetated buffer. Site grading will be limited to smoothing out localized high or low spots, and earthwork volumes and related construction costs will be minimized by optimal placement of the PV racks by following the existing grades and elevations.

63. To address grading and erosion control regulations, the Applicant intends to implement temporary BMPs during construction and permanent BMPs thereafter. Temporary erosion control BMPs, which would be implemented in a phased manner through grading increments, may encompass the following: (1) preservation of natural vegetation; (2) minimizing area of clearing and grubbing; (3) vegetated buffers; (4) temporary soil stabilization with grass and/or mulch; (5) silt fences/fiber filtration tubes; (6) gravel bag berms/check dams; (7) stabilized construction entrances; (8) sediment traps and basins; (9) temporary diversion swales and ditches; and (10) water application and/or dust screens.

64. Permanent BMPs will include (1) final stabilization of exposed soils through landscaping or installation of impervious surfaces including pavement and buildings; (2) infiltration trenches; (3) dry wells and sumps; (4) grass swales and ditches; (5) filter strips; and (6) sediment traps and basins.

65. Impacts from impervious infrastructure such as concrete equipment pads, control structures, substations, and micro-pile/pier foundations are expected to be minimal as a result of their even distribution throughout the Petition Area, slight leveling of driveway areas, and use of raised gravel driveways.

66. Onsite stormwater will be directed away from equipment pads and any other structures to minimize erosion. Drainage channels with velocity reduction controls will be constructed in which water will flow to stormwater basins and/or other volume control facilities if required. The volume control facilities will be situated at downstream locations and will discharge out with non-erosive velocities back into the natural drainage features.

67. Any offsite flows will be diverted around the Petition Area or through it so as to not impact the existing drainage paths and the proposed construction. If required, diversion channels will be constructed with check dams, drop structures, or other velocity reducing controls and flow back into the natural drainage features.

68. It is anticipated that the SEF will not result in a significant pre-development to post-development increase in stormwater flows. Nevertheless, while the grassed areas below the solar panels would be exempt from complying with the low impact development (“LID”) requirement of the City and County of Honolulu as they would be considered an acceptable permanent BMP, other areas that could be considered disturbed or developed, as identified above, will need to comply with the LID requirements.

#### Wastewater

69. Normal operation of the SEF will not require permanent onsite personnel; therefore, no permanent wastewater facilities will be required.

#### Solid Waste

70. Construction and operation of the SEF is not expected to generate a significant amount of solid waste. During construction, all waste will be temporarily stored onsite and periodically transported and properly disposed of. Little to no waste will be generated during operation of the SEF. As such, refuse collection services will not be adversely affected.

#### Police and Fire Protection

71. The SEF will not require additional police protection. The Petition Area is only accessible via a private and gated agricultural road.

72. Any building permits will be circulated to the Honolulu Fire Department ("HFD") for review. Any firefighting infrastructure required by the HFD may be imposed at that time.

#### Schools

73. The SEF is not expected to affect any school facilities in the region.

#### CONFORMANCE WITH THE COASTAL ZONE MANAGEMENT PROGRAM

74. The SEF generally conforms to the applicable objectives, policies, and guidelines of the Coastal Zone Management program under chapter 205A, HRS.

#### CONFORMANCE WITH THE SUP GUIDELINES

75. The SEF generally meets the SUP guidelines provided in section 15-15-95(c), HAR, as follows:

1. The use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the LUC.

The SEF is an unusual and reasonable use of agricultural land. The Petition Area was formally used for pineapple cultivation and is currently vacant. Utility scale PV facilities currently require a large amount of relatively gently sloping terrain in proximity to an existing electrical grid such as that provided by the Petition Area. The SEF will be co-located with the existing Kawailoa wind farm, which will complement each other during times when the other technology is not generating clean energy. The SEF will add diversity to the generation resources on the North Shore, enabling more consistent and productive electrical output

throughout the year. In compliance with section 205-4.5(a)(21)(A), HRS, the Applicant proposes to continue agricultural use of the Petition Area by utilizing the land under the solar panels for sheep pasturage. The sheep will provide vegetation control and a food source. The land will be made available at a lease rate that is at least 50 percent below the fair market rent for comparable properties. As required by section 205-4.5(a)(21)(C), HRS, decommissioning will occur within 12 months of the conclusion of the operation or useful life of the SEF. A decommissioning plan has been prepared, which calls for the removal of all aboveground structures, including panels, transformers, and substation equipment, as well as removal of all below ground structures and foundations to a depth of 36 inches below grade. Following decommissioning, the Petition Area will be returned to substantially the same condition as existed prior to the establishment of the SEF as required. In addition, the Applicant will put financial security in place to cover the estimated cost of decommissioning in compliance with section 205-4.5(a)(21)(B), HRS.

2. The proposed use would not adversely affect surrounding property.

The land immediately adjoining the Petition Area is used for a wind energy generation facility. Other surrounding lands are used for diversified agriculture, open space, and military training. The nearest residential areas are located along Kamehameha Highway and in the Pūpūkea Country zoning district, approximately 0.7 miles to the west and one mile to the north, respectively.

Impacts to air quality from the operation of the SEF are not anticipated to impact surrounding properties. Any noise



impacts from construction and maintenance of the SEF will be short term.

With respect to the visual impacts of the SEF, minimal impacts are expected based on the Applicant's view study. Finally, the Applicant has proposed BMPs to control erosion as well as to address potential impacts to water quality and noise and emission levels.

3. The proposed use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and school improvements, and police and fire protection.

The SEF will not unreasonably impact transportation, wastewater, water, and drainage infrastructure nor school, fire, and police services.

Access to the Petition Area is via a private access road with gated ingress/egress off Kamehameha Highway.

Maintenance and inspection of the SEF, including supplemental mowing, landscaping, panel cleaning, and electrical maintenance, will occur irregularly with employees driving on a network of internal gravel roads throughout the Petition Area. No centralized parking facilities are planned.

Normal operation of the SEF will not require permanent onsite personnel; therefore, no permanent wastewater facilities will be required.

The Petition Area is not serviced by the BWS. A minimal amount of water will be required for the occasional irrigation of landscaping, the periodic cleaning of the solar panels, and to support the co-located ranching operations. Water will be available from rainwater catchment equipment, onsite irrigation ponds, or transported to the

Petition Area via truck. No hook-up to the municipal water system is anticipated.

The Petition Area is currently overgrown with a mix of grasses, shrubs, and trees and is well drained. The SEF is not expected to adversely impact the existing drainage patterns, which generally sheet flow into the surrounding gullies. No residential uses are planned and the individual sites within the SEF will be completely fenced.

Additional police services are not warranted as the Petition Area will only be accessible via a private and gated agricultural road. With respect to fire protection, building permits for the SEF will be circulated to the HFD for review, and any firefighting infrastructure required by the HFD may be imposed at that time.

4. Unusual conditions, trends, and needs have arisen since the district boundaries and rules were established.

Large-scale solar energy facilities on O`ahu are a recent development as a result of the availability of tax incentives and the increasing cost of traditional fossil fuels. This has made their development an economically viable alternative to plantation agriculture. The trend to use large areas of land for energy generation was not anticipated at the time the State Land Use Law was established.

5. The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

The Petition Area is considered good quality agricultural land that is suitable for uses permitted within the district. To the extent that the Petition Area will also be made available for compatible agriculture activities consistent with

the statutory requirement under section 205-4.5(a)(21)(A), HRS, there will be little loss of high quality agricultural land.

#### RULINGS ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by any party not already ruled upon by the LUC by adoption, or rejected by clearly contrary findings of fact, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

#### CONCLUSIONS OF LAW

1. The LUC has jurisdiction over this matter pursuant to section 205-6, HRS, and section 15-15-95 *et seq.* HAR.
2. Based upon the record of the proceedings before the Planning Commission, and pursuant to section 205-6, HRS and section 15-15-95 *et seq.*, HAR, the LUC finds that the recommendation of the Planning Commission to approve a State SUP for the Petition Area, consisting of approximately 382.2 acres of land in the State Land Use Agricultural District at Kawaihoa, North Shore, O`ahu, Hawai`i, identified as TMKs: 6-1-005: portion of 1 and 6-1-006: portion of 1, generally meets the guidelines for

determining an “unusual and reasonable use” within the State Land Use Agricultural District.

3. Article XI, section 1, of the Hawai‘i State Constitution requires the State to conserve and protect Hawai‘i’s natural beauty and all natural resources, including land, water, air, minerals, and energy sources, and to promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

4. Article XI, section 3, of the Hawai‘i State Constitution requires the State to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and assure the availability of agriculturally suitable lands.

5. Article XII, section 7, of the Hawai‘i State Constitution requires the LUC to protect Native Hawaiian traditional and customary rights. The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by ahupua‘a tenants who are descendants of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

6. The State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised Native Hawaiian rights to the extent

feasible. *Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission*, 79 Hawai'i 425, 903, P.2d 1246, *certiorari denied*, 517 U.S. 1163, 116 S.Ct. 1559, 134 L.Ed.2d 660 (1996).

7. The LUC is empowered to preserve and protect customary and traditional rights of Native Hawaiians. *Ka Pa`akai O Ka `Aina v. Land Use Commission*, 94 Hawai'i 31, 7 P.3d 1068 (2000).

8. Section 205-4.5(a)(21), HRS, permits SEFs on lands with soil classified by the LSB's detailed land classification as overall (master) productivity rating B or C for which an SUP is granted pursuant to section 205-6, HRS; provided that:

- (A) The area occupied by the SEFs is also made available for compatible agricultural activities at a lease rate that is at least 50 percent below the fair market rent for comparable properties;
- (B) Proof of financial security to decommission the facility is provided to the satisfaction of the appropriate county planning commission prior to date of commencement of commercial generation; and
- (C) SEFs shall be decommissioned at the owner's expense according to the following requirements:
  - (i) Removal of all equipment related to the SEF within 12 months of the conclusion of operation or useful life; and
  - (ii) Restoration of the disturbed earth to substantially the same physical condition as existed prior to the development of the SEF.

## DECISION AND ORDER

Having duly considered the complete record in this matter and the oral arguments presented by the Applicant in this proceeding, the LUC, through a motion having been duly made and seconded at a meeting conducted on June 9, 2015, in Honolulu, Hawai'i, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion, hereby APPROVES the recommendation of the Planning Commission approving a State SUP for the Petition Area, consisting of approximately 382.2 acres of land in the State Land Use Agricultural District at Kawaihoa, North Shore, O'ahu, Hawai'i, identified as TMKs: 6-1-005: portion of 1 and 6-1-006: portion of 1, and approximately shown on Exhibit "A" attached hereto and incorporated by reference herein, 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 Planning Commission and the Director of the DPP in writing within 30 days of the end of the 6-month period. If requested by the Planning Commission, the Applicant shall attend a meeting of the Planning Commission and submit a report to the Planning Commission detailing the Applicant's actual and reasonable efforts to actively seek the establishment of compatible agricultural operations on the usable lands of the Petition Area. The Planning Commission shall determine whether probable cause exists to re-evaluate the SUP and to hold a hearing pursuant to Section 2-49 of the Rules of the Planning Commission. Extensions to the 6-month deadline may be granted by the Planning Commission for unforeseen extenuating circumstances.

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

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

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

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

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

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



bat and endangered and threatened Hawaiian waterbird and shorebird species at the Petition Area.

6. The Applicant shall establish the Project 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.

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

8. Major modifications to: (1) the Project plans, including but not limited to significant increases in the 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. Minor modifications including minor additions to accessory

uses and structures, and new incidental uses and structures in the approved area are subject to review and approval by the Director of the DPP.

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

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

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

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

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

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

13. In the event that historic resources, including human skeletal remains, structural remains, cultural deposits, artifacts, sand deposits, or sink holes, are identified during demolition and/or construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the SHPD and O'ahu Island Burial Council shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites are discovered during the course of construction of the SEF, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigation measures have been implemented to its satisfaction.

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

ADOPTION OF ORDER

This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this 29th, day of June, 2015, per motion on June 26th, 2015.

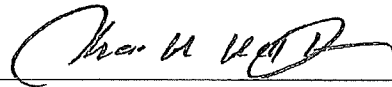
LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAII



Deputy Attorney General

By 

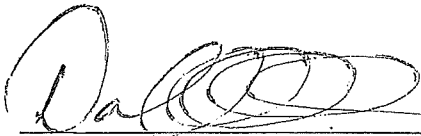
CHAD MCDONALD

Chairperson and Commissioner

Filed and effective on:

6/29/15

Certified by:



DANIEL ORODENKER

Executive Officer

Docket No. SP15-406 Kawaihoa Solar, LLC  
 TMKs: 6-1-005: Por. 1 & 6-1-006: Por. 1

Approved SUP Areas

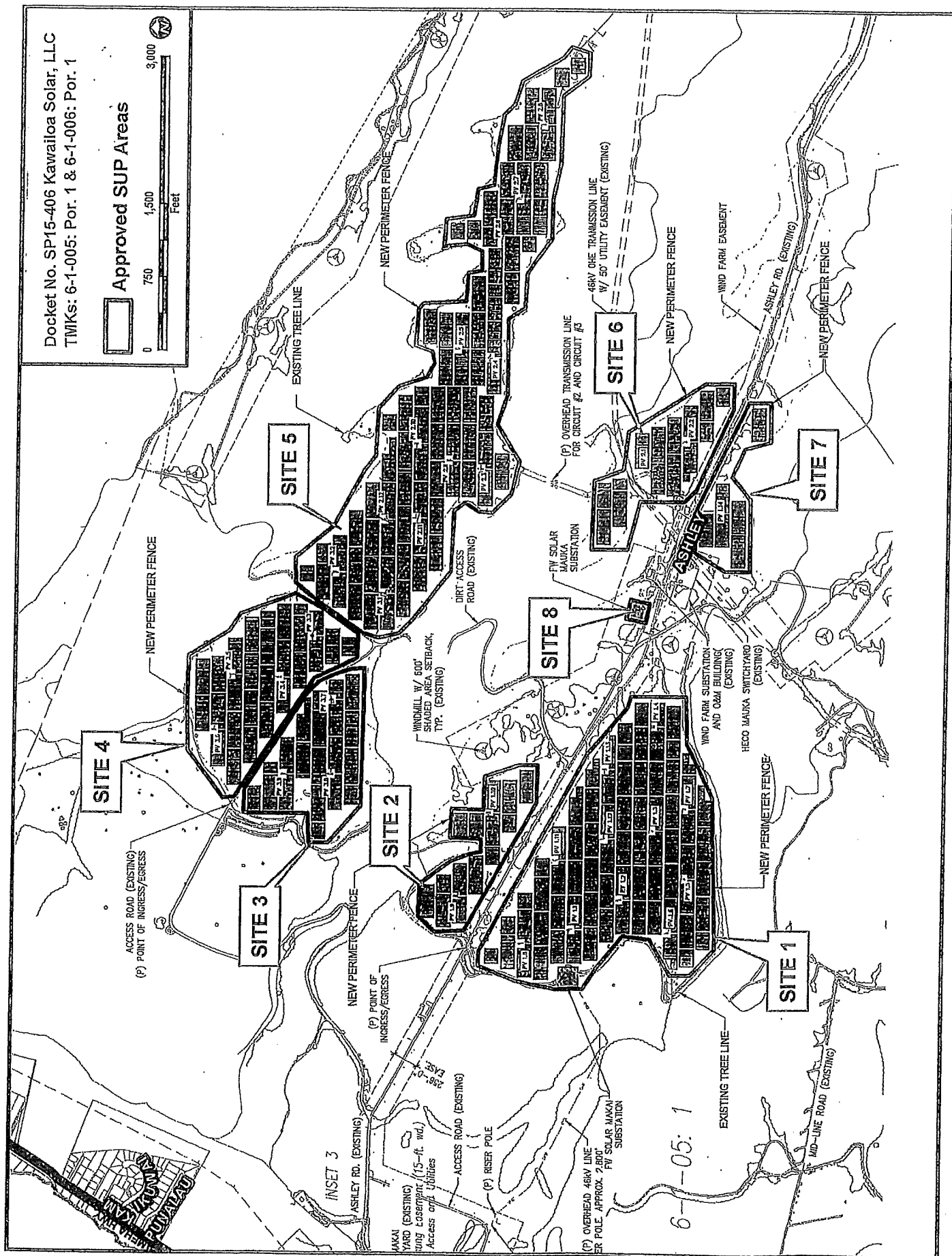


EXHIBIT "A"



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In The Matter Of The Petition Of ) DOCKET NO. SP15-406  
)  
KAWAILOA SOLAR, LLC ) CERTIFICATE OF SERVICE  
)  
For A Special Use Permit To Establish )  
A Solar Energy Facility On )  
Approximately 384.1 Acres Of Land )  
Within The State Land Use Agricultural )  
District At Kawaiiloa, North Shore, )  
O`ahu, Hawai`i, Tax Map Keys: )  
6-1-005: Portion Of 1 and 6-1-006: )  
Portion Of 1 )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

LAND USE COMMISSION  
STATE OF HAWAII  
2015 JUN 29 A 6:59

I hereby certify that due service of the foregoing was served upon the following parties by hand delivery or certified mail on June 26, 2015, addressed to:

HAND DELIVERY	LEO R. ASUNCION, JR., Acting Director Office of Planning State Office Tower, 6th Floor 235 South Beretania Street Honolulu, Hawai`i 96813
Regular Mail	BRYAN YEE, Esq. Deputy Attorney General Department of the Attorney General 425 Queen Street Honolulu, Hawai`i 96813 Attorney for OP

Regular Mail	<p>GEORGE I. ATTA, Director  c/o Kathy Sokugawa  Department of Planning and Permitting  City &amp; County of Honolulu  650 South King Street, 7th Floor  Honolulu, Hawai'i 96813</p>
Regular Mail	<p>RAYMOND YOUNG  Department of Planning and Permitting  City &amp; County of Honolulu  650 South King Street, 7th Floor  Honolulu, Hawai'i 96813</p>
Regular Mail	<p>RICHARD LEWALLEN  Deputy Corporation Counsel  Department of the Corporation Counsel  Honolulu Hale  530 South King Street, Room 110  Honolulu, Hawai'i 96813  Attorney for DPP</p>
Regular Mail	<p>PLANNING COMMISSION  Department of Planning and Permitting  City and County of Honolulu  650 South King Street, 7th Floor  Honolulu, Hawai'i 96813</p>
Certified Mail	<p>Randall Sakumoto, Esq., and Marguerite Nozaki, Esq  McCorriston Miller Mukai MacKinnon LLP  Five Waterfront Plaza, 4<sup>th</sup>  500 Ala Moana Blvd,  Honolulu, HI 96813  Attorneys for Applicant – Kawailoa Solar, LLC</p>



DANIEL ORODENKER

Executive Officer

Dated: Honolulu, Hawai'i, June 29, 2015

# Attachment 2



DAVID Y. IGE  
Governor

SHAN S. TSUTSUI  
Lieutenant Governor

LUIS P. SALAVERIA  
Director

MARY ALICE EVANS  
Deputy Director



LAND USE COMMISSION  
Department of Business, Economic Development & Tourism  
State of Hawai'i

DANIEL E. ORODENKER  
Executive Officer

BERT K. SARUWATARI  
Planner

SCOTT A.K. DERRICKSON, AICP  
Planner

FRED A. TALON  
Drafting Technician

RILEY K. HAKODA  
Chief Clerk/Planner

March 14, 2017

Dear Ms. Sokugawa:

The Land Use Commission was recently contacted by a representative, Wren Westcoatt, of the company that currently owns/controls two projects that are covered by State Special Permits SP15-405 (Waipi'o PV, Ltd.) and SP15-406 (Kawailoa Solar, LLC). Mr. Westcoatt was inquiring about the process to follow in order to request and obtain an extension to the start dates for establishing the two projects.

Staff provided information regarding the two-step process for making amendments to a Decision and Order covering a State Special Permit ("SP") found in Sections 15-15-96.1 and 15-15-95, Hawai'i Administrative Rules ("HAR").

The petitioner's representative informed us that the County Planning Commission had already heard and acted upon the extension request for SP15-405 in February 2017 and the request for an extension for SP15-406 was scheduled for March 29, 2017.

Commission staff followed up with Department of Planning and Permitting (DPP) staff to coordinate receipt of the County Planning Commission's complete record and decisions for both dockets at the same time in order to process them on a single hearing date in the future. At that time DPP staff indicated that SP15-405 was not processed as a modification of a SP but as a minor change that DPP believed the County Planning Commission was empowered to grant.

DPP had determined that the language contained in Condition 5 (SP15-405) directed that requests for extension of the project start date be submitted to the DPP Director and then that the County Planning Commission was able to grant such a request. However, the County was mistaken in this regard as the petitioner's request in both cases is for a modification of a condition of the SP, which is subject to the requirements of section 15-15-96.1, HAR.

Condition 5 states:

*"5. The Applicant shall establish the Project within two years of the date of the State Land Use Commission's (LUC) Decision and Order approving the SP. Requests for extension of this deadline shall be submitted to the Director of DPP prior to the expiration of the deadline. The Commission may grant an extension to the deadline to establish the Project due to unforeseen circumstances that were beyond the control of the Applicant. This SP shall be valid for a period of thirty-five (35) years from the date of the State LUC's Decision and Order approving the SP, subject to further extensions upon a*

*timely request for extension filed with the Commission at least one-hundred twenty (120) days prior to the SP's expiration."*

Reading the document in its entirety, the use of the term "(T)he Commission" is intended to refer to the State Land Use Commission. DPP and the County Planning Commission have mistakenly read the language of the condition to allow the County Planning Commission the authority to grant any requested extension to the deadline to establish a project. Such a request must therefore be made consistent with the process outlined in our administrative rules.

Section 15-15-96.1, HAR, indicates that requests for modification, release or deletion of a condition is first submitted to the county planning commission and then the Land Use Commission, and shall comply with Section 15-15-95, HAR. That section spells out the notice and information requirements, guidelines for determining "unusual and reasonable uses," compliance with county planning commission rules, and ability to impose protective including time limits for establishing and ending the proposed use. Specifically, Section 15-15-95(f), HAR, states "(t)he county planning commission, with the concurrence of the commission, may extend the time limit if it deems that circumstances warrant the granting of the extension."

The time for establishing the proposed use in SP15-405 must also follow the procedures outlined in the Land Use Commission's administrative rules. This would include: notice of the request to the Land Use Commission, the State Office of Planning, and the State Department of Agriculture for review and comment; a decision by the County Planning Commission of their decision along with a complete record and transcript of the proceedings. Should the Land Use Commission receive a recommendation for a time extension request that did not follow the appropriate process or was not supported by the record, then the Land Use Commission may remand the request to the County Planning Commission for further proceedings.

The Land Use Commission and its staff would like to work with the County Planning Commission and the Petitioner to determine the most efficient way to proceed forward to preserve the legal integrity of the SP process. Should you have any questions please contact me at 587-3822.

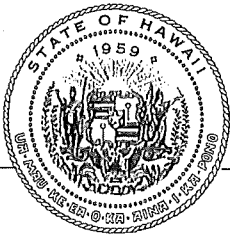
Sincerely,



Daniel E. Orodener  
Executive Officer

Cc: Dean I. Hazama, Chair - City & County Planning Commission  
Leo Asuncion, State Office of Planning  
Scott Enright, State Department of Agriculture  
Wren Westcoatt, NRG Energy LLC via e-mail <wren.wescoatt@nrg.com>

# Attachment 3



## OFFICE OF PLANNING STATE OF HAWAII

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

DAVID Y. IGE  
GOVERNOR

LEO R. ASUNCION  
DIRECTOR  
OFFICE OF PLANNING

2017 JUN -5 PM 3:51

DEPT OF PLANNING  
AND PERMITTING  
CITY & COUNTY OF HONOLULU

Telephone: (808) 587-2846  
Fax: (808) 587-2824  
Web: <http://planning.hawaii.gov/>

Ref. No. P-15622

June 02, 2017

Ms. Kathy K. Sokugawa, Acting Director  
Department of Planning and Permitting  
City and County of Honolulu  
650 S. King Street, 7th Floor  
Honolulu, Hawaii 96813

Dear Ms. Sokugawa:

Subject: Kawaihoa Solar Farm  
Project No.: 2014/SUP-6 and SP15-406  
Tax Map Keys: 6-1-006:001 (por.) and 6-1-005:001 (por.)  
Location: Kawaihoa, Oahu, Hawaii

Thank you for the opportunity to review the subject application for a modification to the Special Use Permit. The Petitioner is requesting modifications to amend an existing Special Permit to modify the proposal and some of the conditions of the approval dated June 29, 2015.

The Office of Planning (OP) has the following comments.

1. The Special Permit Application was originally filed by Kawaihoa Solar LLC, subsidiary of SunEdison. SunEdison had filed for bankruptcy and the project has been obtained by NRG Renew, LLC (NRG).
2. NRG is currently working to reinstate the Power Purchase Agreements with Hawaiian Electric Company, and anticipates that NRG will be able to finance, construct, and connect the project to the electrical grid by December 2019.
3. The Petitioner is requesting to:
  - a. Change the ownership and property owner from SunEdison to NRG;
  - b. Modify Condition 6 requesting an extension of time to establish the project from the original two years from the date of the decision and order (March 25, 2017) to an additional 30 months which would be approximately December 2019;
  - c. Some technical changes with the types of solar panels to be utilized, which will result in a change in the number of solar panels. The area to be covered by the panels would be approximately 100 acres, about 11 acres more than the original area. This would result in the same power output as the originally proposed;

- d. The perimeter fence material would be changed from a four (4) -foot high steel mesh to a six (6) –foot high chain-link mesh, but with no barbed wire; and e. Modify other conditions, as explained below.
- 4. OP has no objection to the change in ownership from SunEdison to NRG.
- 5. The following comments are based on Petitioner's Exhibit F, however, we note that there are some errors in Exhibit F, referring to the conditions as stated in the Land Use Commissions Decision and Order dated June 29, 2015.
  - a. Condition 4. Modification requested to include the word approximately, four million dollars. OP objects to inserting the word approximately into this condition, and suggests the wording could be revised to say, no less than four million dollars.
  - b. Condition 6. Requesting modification of the time to establish the project. OP is in support of this modification to extend the time limit by 30 months or about December 2019.
- 6. Condition 8. Change to the major modification from significant increases in the number of panels to the area covered by the panels. OP would support this modification to this condition. OP also concurs that the proposed increase in the area to be covered by the panels is relatively minor since the proposed net capacity of the project will not be increased.
- 7. OP notes that there was no update from the original Appendix I Glare Analysis, dated September 2014. However, we note that while the number of PV panels will increase, the proposal for tracking racks is similar to the original proposal. We also note that Condition 11 would mitigate adverse impacts to pilots or motorists from the PV panels.

If you have any questions, please contact Lorene Maki of our Land Use Division at (808) 587-2888.

Sincerely,



Leo R. Asuncion  
Director

Attachment

c: Land Use Commission

DAVID Y. IGE  
Governor

SHAN S. TSUTSUI  
Lt. Governor



SCOTT E. ENRIGHT  
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER  
Deputy to the Chairperson

State of Hawaii  
DEPARTMENT OF AGRICULTURE  
1428 South King Street  
Honolulu, Hawaii 96814-2512  
Phone: (808) 973-9600 FAX: (808) 973-9613

June 1, 2017

Ms. Kathy K. Sokugawa  
Acting Director  
Department of Planning and Permitting  
City and County of Honolulu  
650 South King Street 7<sup>th</sup> Floor  
Honolulu, Hawaii 96813

Dear Ms. Sokugawa:

Subject: Petition to Amend Special Use Permit (SUP) (2014/SUP-6)  
Solar Energy Facility  
Kawailoa Solar  
TMK: 6-1-005: portion 1 and 6-1-006 portion 1 (North Shore, Oahu)  
Area: 382.2 acres

The Department of Agriculture (DOA) has reviewed the subject petition and offers the following comments and recommendations.

### Background

On May 8, 2015, the City Planning Commission approved Kawailoa Solar, LLC (Petitioner)'s application for a State SUP (2014/SUP-6) to develop and operate a solar energy facility. Subsequent to the Planning Commission's approval, the Land Use Commission (LUC) approved the petition for Special Permit (SP15-406) on June 29, 2015 for the same project. Petitioner's ultimate parent company, SunEdison, filed for bankruptcy in March, 2015. NRG Renew LLC (NRG) purchased Kawailoa Solar from SunEdison in October 2016, and now seeks to continue the development of the solar energy facility.

The Petitioner wishes to amend SUP (2014/SUP-6) with the following changes:

1. Change of ownership of property owner of Kawailoa Solar from SunEdison to NRG.



2. Extension of time to establish project and term of permit.

The SUP (2014/SUP-6) required that the solar energy facility be established no later than July 29, 2017. Petitioner seeks to amend this deadline to December 31, 2019, and to modify when the 35 year term of the SUP starts from the original start date of June 29, 2015, to the date of when the LUC approves this petition to amend the SUP.

3. Project technical changes.

Petitioner wishes to: modify the number of solar panels that will be used for the project from 196,160 modules to 169,000 modules or 525,000 modules (depending on the size of modules); and, change the perimeter fencing material from 4-foot high hog-wire fence to a 6-foot high chain link fence.

**Comments/Recommendations**

We believe this large-scale project must comply fully with the LUC's Decision & Order (SP15-406, dated June 29, 2015), requiring that: "Usable lands of the Petition Area, including areas under PV panels, shall be made available for compatible agricultural use . . . as long as the Project is in operation." (Page 33).

The DOA recommends that the Petitioner affirm that the proposed change from hog-wire fencing to chain link fencing, will not restrict or impede compatible agricultural uses within the Petition Area in any way, or reduce the acreage within the Petition Area available for compatible agricultural uses.

The DOA also recommends that the Petitioner provide a letter from Kualoa Ranch stating that the proposed amendments to the SUP will not have any adverse effect on its planned ranching operation within the Project Area.

Thank you for the opportunity to provide our input. Should you have any questions, please contact Earl Yamamoto at 973-9466 or email at [earl.j.yamamoto@hawaii.gov](mailto:earl.j.yamamoto@hawaii.gov).

Sincerely,



Scott E. Enright  
Chairperson, Board of Agriculture

c: Office of Planning