



LAND USE COMMISSION  
STATE OF HAWAII

2016 FEB -9 A 11:19

February 9, 2016

*Via Hand Delivery*

Daniel E. Orodenker  
Executive Officer  
State of Hawai'i Land Use Commission  
Department of Business, Economic Development & Tourism  
State Office Tower  
Leiopapa A Kamehameha Building  
235 South Beretania Street, Room 406  
Honolulu, Hawaii 96813

Re: Annual Compliance Report for Special Use Permit - Docket No. SP15-406 Kawaihoa Solar, LLC

Dear Mr. Orodenker,

Pursuant to Condition No. 7 in the Land Use Commission's Order in Docket No. SP15-406, transmitted herewith is an annual compliance report for the Kawaihoa Solar, LLC project.

The project is making progress against key milestones and is in compliance with the conditions set forth in Land Use Commission's Order, effective June 29, 2015.

Please feel free to contact us regarding any questions on the project at [ndoss@sunedison.com](mailto:ndoss@sunedison.com) or phone 808 695 3335.

Best regards,

A handwritten signature in black ink, appearing to read "ND", is positioned above the typed name.

Nicola Doss  
Senior Manager, Project Development  
SunEdison

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# Annual Compliance Report

In the Matter of:

LAND USE COMMISSION  
STATE OF HAWAII

2016 FEB -9 A 11: 22

Special Use Permit for Photovoltaic Facility Kawaiiloa  
Solar, LLC



**Prepared by:**

Kawaiiloa Solar, LLC (owned by SunEdison)  
December, 2015

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# 1.0 Introduction

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

This is the first annual report by Kawaihoa Solar, LLC ("Kawaihoa Solar") demonstrates the status of compliance of the Solar Energy Facilities ("SEF") with the conditions of the SUP. This report covers the period from June 29, 2015 through December 31, 2015.

## 2.0 Annual Compliance Report on Conditions of Special Use Permit

### 2.1 SUP Condition #1

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

#### 2.1.1 Kawaihoa Solar LLC Response SUP Condition #1

Kawaihoa Solar will make the area under the PV panels available for compatible agricultural uses and executed a Letter of Intent to license the property at below 50 percent fair market rent for pasture of sheep. This Letter of Intent was included as part of the approved Application. Kawaihoa intends to execute a License Agreement closer to the date when the compatible agricultural operation would commence, no later than a year after the solar project has been constructed and is operational, which is targeted for December 31, 2016.

## 2.2 SUP Condition #2

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

### 2.2.1 Kawaihoa Solar LLC Response SUP Condition #2

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

## 2.3 SUP Condition #3

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

- a. A survey map accompanied by a metes and bounds description of the approved Petition Area.*
- b. A site plan showing the area required under Condition 1, above, relating to the minimum land area to be made available for compatible agricultural use.*

### 2.3.1 Kawaihoa Solar LLC Response SUP Condition #3

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

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

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

## 2.4 SUP Condition #4

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

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

### 2.4.1 Kawailoa Solar LLC Response SUP Condition #4

Decommissioning security of \$4,000,000 will be posted for the purpose of meeting SUP Condition #4 and ensuring funds available to decommission the SEF within 12 months following termination of operations. These funds will be put in place at completion of construction of the project and prior to closing the building permit for the project which is targeted for December 31, 2016.

## 2.5 SUP Condition #5

*The Applicant shall comply with the recommendations of the USFWS and the DOWAW regarding the protection of the endangered Hawaiian hoary bat and endangered and threatened Hawaiian waterbird and shorebird species at the Petition Area.*

## **2.5.1 Kawaiiloa Solar LLC Response SUP Condition #5**

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

## **2.6 SUP Condition #6**

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

### **2.6.1 Kawaiiloa Solar LLC Response SUP Condition #6**

Kawaiiloa Solar is expected to commence operation by December 31, 2016. The effective date of the SUP is June 29, 2015 which allows until June 29, 2017 to establish the project operations.

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



## 2.7 SUP Condition #7

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

### 2.7.1 Kawaihoa Solar LLC Response SUP Condition #7

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

## 2.8 SUP Condition #8

*Major modifications to:*

- (1) the Project plans, including but not limited to significant increases in the number of PV panels;*
- (2) amendments to the conditions of approval;*
- (3) significant expansions of the approved area; or*
- (4) change in uses stated herein, shall be subject to the review and approval of the Planning Commission and the LUC.*

*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.*

### 2.8.1 Kawaihoa Solar LLC Response SUP Condition #8

Kawaihoa Solar confirms that there have been no major modifications as described in 1-4 of SUP Condition #8, nor are any major modifications anticipated. The project has not increased the number of PV panels, has not amended the conditions of approval under the Condition Use Permit, has not expanded the approved area boundary, and has not modified the use of the property in any way.

## 2.9 SUP Condition #9

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

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

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

### 2.9.1 Kawaioloa Solar LLC Response SUP Condition #9

Kawaioloa Solar has not changed or transferred licensee of the property, has not changed any uses on the property, has not terminated any uses of the property and has not transferred ownership of the property.

A Purchase & Sale Agreement has been executed with D.E. Shaw Group, Madison Dearborn Capital Partners IV LP and Northwestern University, which anticipates future potential sale to the parties of the Kawaioloa Solar project by SunEdison. However, the sale has not yet taken place and constitutes a financing of the project only. SunEdison will likely remain the management entity performing operations and maintenance of the asset. Kawaioloa Solar will notify DPP, OP and LUC if and when a change in ownership takes place and include further details in our next annual report.

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

## 2.10 SUP Condition #10

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

## **2.10.1 Kawaioloa Solar LLC Response SUP Condition #10**

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

## **2.11 SUP Condition #11**

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

## **2.11.1 Kawaioloa Solar LLC Response SUP Condition #11**

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

## **2.12 SUP Condition #12**

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

## **2.12.1 Kawaioloa Solar LLC Response SUP Condition #12**

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

## **2.13 SUP Condition #13**

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

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

### **2.13.1 Kawailoa Solar LLC Response SUP Condition #13**

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

## **2.14 SUP Condition #14**

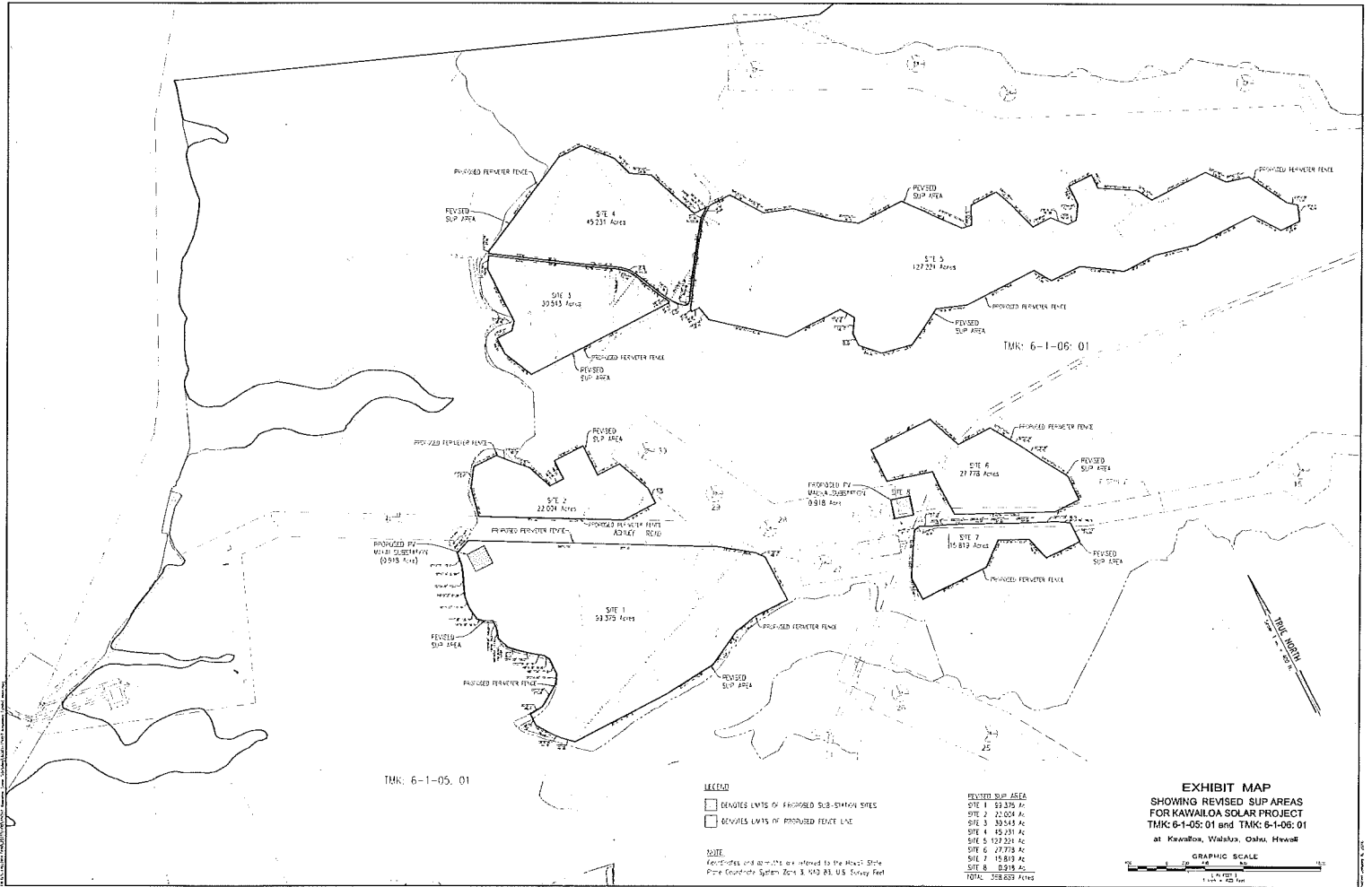
*The Applicant shall develop and operate the SEF, including the implementation of measures to mitigate potential impacts of the Project, in substantial compliance with the representations made to the Planning Commission and the LUC as reflected in this Decision and Order. Such mitigation measures include,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

## **2.14.1 Kawaiola Solar LLC Response SUP Condition #14**

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

## **3.0 Appendices**

### **3.1 Appendix #1 Survey Map of Petition Area**



## 3.2 Appendix #2 Map of Agricultural Use Area

