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Governor

SHAN S. TSUTSUI
Lieutenant Governor

LUIS P. SALAVERIA
Director

MARY ALICE EVANS
Deputy Director



17 MAR 17 AM 10:24
LAND USE COMMISSION
Department of Business, Economic Development & Tourism
State of Hawai'i

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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

Kathy K. Sokugawa, Acting Director

March 14, 2017

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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. Orodenker
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>



925 Bethel Street
5th Floor
Honolulu, HI 96813
808.523.5866
www.g70.design

May 10, 2017
Kathy Sokugawa, Acting Director
City and County of Honolulu
Department of Planning and Permitting
650 South King Street, 7th Floor
Honolulu, HI 96813

Attn: Raymond Young

Subject: Kawailoa Solar Project – Information Addendum
Modification of Special Use Permit (2014/SUP-6; SP15-406)
TMK 6-1-006:001 and 6-1-005:001
Kawailoa, O’ahu, Hawai’i

Dear Ms. Sokugawa:

We are providing an update of the Modification of Special Use Permit (SUP) (2014/SUP-6; SP15-406) Application (April 21, 2017), which was submitted to the City and County of Honolulu, Department of Planning and Permitting. We are also providing additional information for the project in response to correspondence received from Raymond Young received on April 28, 2017.

- 1. The appropriate filing fee is included with this submittal and has been noted as such on the Master Application form.**
- 2. Original signatures on the application form are included with this submittal as Attachment 1.**
- 3. This addendum letter supersedes a prior letter (April 11, 2017) to the Planning Commission requesting withdraw of its approval of the extension of time from consideration by the Land Use Commission. A copy of the April 11, 2017 letter is provided as Attachment 2.**
- 4. Map E200 has been revised in the updated Modification Application (May 5, 2017) to show the approved SUP area per surveyed metes and bounds.**
- 5. The submittal letter dated May 5, 2017, for Modification of Special Use Permit (2014/SUP-6; SP15-406), has been revised to reflect the Applicant (Kawailoa Solar, LLC), as shown on the executed Master Application Form.**
- 6. One hard copy and one electronic copy of the Application and this letter addendum is provided. Please advise the number of copies required for processing/distribution of the Application.**


Exhibit 2

Ms. Kathy Sokugawa, Acting Director
Department of Planning and Permitting
Information Addendum: Modification of 2014/SUP-3; SP15-405
May 10, 2017
Page 2 of 2

The Applicant is continuing to make progress on the SUP approval Conditions detailed in 2014/SUP-6; SP15-406. Condition 12 relating to submittal of an Archaeological Monitoring Plan for the State Historic Preservation Division (SHPD) review and acceptance prior to ground disturbing activities has been completed. A copy of the SHPD approval letter of the Archaeological Inventory Survey and Archaeological Monitoring Plan is provided as Attachment 3 and 4.

Please contact me at 441-2104 or Tracy Camuso at 441-2125 if you have questions.

Sincerely,
GROUP 70 INTERNATIONAL, INC., dba G70


Jeff Overton, AICP, LEED AP
Principal

Attachment(s):

1. Executed Master Application Form
2. Letter to Planning Commission
3. SHPD Approval of Archaeological Inventory Survey
4. SHPD Approval of Archaeological Monitoring Plan

City and County of Honolulu
 DEPARTMENT OF PLANNING AND PERMITTING
 650 South King Street, 7th Floor
 Honolulu, Hawaii 96813

2017 MAY -8 PM 3:47

PLANNING DIVISION MASTER APPLICATION FORM

PLANNING
 DIVISION
 CITY & COUNTY OF HONOLULU

Additional data, drawings/plans, and fee requirements are listed on a separate sheet titled "Instructions for Filing". **PLEASE ASK FOR THESE INSTRUCTIONS.**

All specified materials described in the "Instructions for Filing" and required fees must accompany this form; incomplete applications will delay processing. You are encouraged to consult with Planning Division staff in completing the application. Please call appropriate phone number given in the "Instructions for Filing".

Please print legibly or type the required information.

SUBMITTED FEE: \$ 15,000

PERMIT/APPROVAL REQUESTED (Check one or more as appropriate): (2014/SUP-6; SP15-406)

<input type="checkbox"/> GENERAL PLAN AMENDMENT	<input checked="" type="checkbox"/> SPECIAL USE PERMIT <u> </u> New <u> X </u> Modify Existing
<input type="checkbox"/> STATE LAND USE BOUNDARY AMENDMENT (<15 acres) From _____ (District) To _____ (District)	<input type="checkbox"/> ZONING DISTRICT BOUNDARY ADJUSTMENT, ADMINISTRATIVE
<input type="checkbox"/> DEVELOPMENT PLAN (DP)/SUSTAINABLE COMMUNITIES PLAN (SCP) AMENDMENT Indicate DP/SCP area _____	<input type="checkbox"/> ZONE CHANGE From _____ (District) To _____ (District) <input type="checkbox"/> AMEND UNILATERAL AGREEMENT TO ORDINANCE NO. _____
<input type="checkbox"/> PUBLIC INFRASTRUCTURE MAP REVISION (Indicate Map Symbol Request: <input type="checkbox"/> CY (Corporation Yard) <input type="checkbox"/> DSP (Desalination Plant) <input type="checkbox"/> D (Drainage Way (Open Channel)) <input type="checkbox"/> TS (Transit Station) <input type="checkbox"/> FS (Fire Station) <input type="checkbox"/> GB (Government Building) <input type="checkbox"/> GC (Golf Course) <input type="checkbox"/> P (Parks) <input type="checkbox"/> PS (Police Station) <input type="checkbox"/> PKG (Parking Facility/Transit Center) <input type="checkbox"/> RES (Water Reservoir) <input type="checkbox"/> SPS (Sewage Pump Station) <input type="checkbox"/> STP (Sewage Treatment Plant) <input type="checkbox"/> SW (Solid Waste Facility) <input type="checkbox"/> RTC (Rapid Transit Corridor) <input type="checkbox"/> R (Arterial & Collector Roadway) <input type="checkbox"/> W (Potable Well)	

(Project/Parcel specific information should be provided for General Plan and Development Plan amendments only if appropriate.)

TAX MAP KEY(S): 6-1-006:001 and 6-1-005:001

STREET ADDRESS/LOCATION OF PROPERTY: Ashley Road (Kawailoa), approx. 4 miles north of Haleiwa

APPLICATION/SUBJECT AREA (Acres/sq.ft.): 382.2 acres, approx.

THE PROPOSED PROJECT IS LOCATED INSIDE OUTSIDE THE:

- Urban Growth Boundary Community Growth Boundary
 Urban Community Boundary Rural Community Boundary

OF THE North Shore

ZONING DISTRICT(S): AG-1

DEVELOPMENT PLAN/SUSTAINABLE COMMUNITY PLAN STATE LAND USE DISTRICT: Agriculture

RECORDED FEE OWNER:

Name (& title, if any) Keith Chang, Land Assets Manager
 Organization Kamehameha Schools
 Mailing Address 567 S.King St, Suite 200
Honolulu, HI 96813
 Phone Number 808-523-6200
 Signature [Signature]

APPLICANT:

Name Craig Cornelius, President
 Organization Kawailoa Solar LLC
 Mailing Address 100 California St., #400
San Francisco, CA 94111
 Phone Number 415-627-1646
 Signature [Signature]

PRESENT USE(S) OF PROPERTY/BUILDING:

Cattle ranching

AUTHORIZED AGENT/CONTACT PERSON:

Name Wren Wescoatt
 Mailing Address 3662 Woodlawn Terrace Pl.
Honolulu, HI. 96822
 Phone Number 808-780-1000
 Signature [Signature]

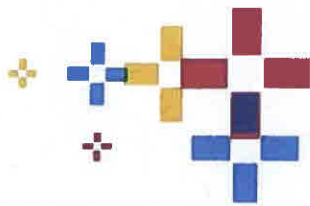
PROJECT NAME (if any): Kawailoa Solar Project

REQUEST/PROPOSAL (Briefly describe the nature of the request, proposed activity or project):

Modification of permit #2014/SUP-6; SP15-406 project dates and minor changes to equipment.

DPP/ELOG NO. _____

DPP/POSSE NO. _____



Kawaioloa Solar, LLC
100 California St, Suite 400
San Francisco, CA 94111

May 2, 2017

Department of Planning and Permitting
City and County of Honolulu
650 S. King Street, 7th Floor
Honolulu, Hawaii 96813

Re: **Kawaioloa Solar, LLC (2014/SUP-06; SP15-406)**
Applicant Authorization for Consultant

To Whom It May Concern:

Kawaioloa Solar, LLC is the applicant and permittee involved in the above-referenced Special Use Permit (SUP). Kawaioloa Solar, LLC now seeks to modify the SUP. Accordingly, Kawaioloa Solar, LLC hereby authorizes its consultant, Group 70 International, Inc., to act as its agent on this application to modify the above-referenced SUP.

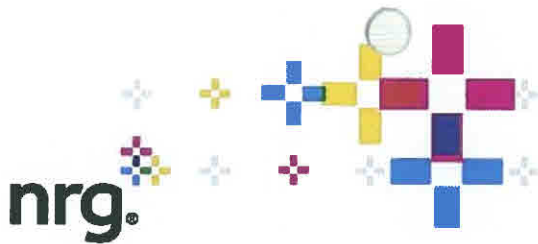
Kawaioloa Solar, LLC hereby acknowledges that Kawaioloa Solar, LLC and its successors shall be bound and subject to the SUP and its conditions.

If you have any questions or concerns, please do not hesitate to contact me.

Best regards,

A handwritten signature in blue ink, appearing to read "Craig Cornelius".

Craig Cornelius,
President
Kawaioloa Solar, LLC



NRG Renew, LLC
100 California St, Suite 400
San Francisco, CA 94111

April 11, 2017

Attention: Planning Commission
Department of Planning and Permitting
650 S. King Street, 7th Floor
Honolulu, Hawaii 96813

Re: Kawaihoa Solar, LLC SP15-406
Waipi'o PV, Ltd. SP-405

To Whom It May Concern:

The above referenced State Special Use Permits ("SUPs") are held by Waipi'o PV, Ltd. and Kawaihoa Solar, LLC, ("Waipio Project" and "Kawaihoa Project", respectively), wholly owned subsidiaries previously held by SunEdison. As you may know, SunEdison filed for bankruptcy and NRG purchased both the Waipio and Kawaihoa Projects.

NRG has worked with Hawaiian Electric Company ("HECO") to reinstate the Power Purchase Agreements ("PPAs") for both Projects, and will need to finance, construct and interconnect both projects to the Oahu electrical grid by 2019. Based on the additional time required to establish the Projects, NRG is requesting a modification of the permit conditions (SP15-405, condition #5; SP15-406, condition #6) to extend the deadline to complete the projects from 2017 to 2019. Additionally while the respective physical footprints and output of the projects will remain similar, NRG is requesting certain minor technical modifications to the existing SUPs. For example, the panel specifications indicated in the initial application were based on panels manufactured by SunEdison. Because NRG will need to purchase panels from a different manufacturer, the panel specifications differ, though the area covered only changes slightly. In addition, the Waipio Project approved fixed-tilt panels, but NRG will request that the Waipio Project SUP be modified to allow horizontal-axis tracking panels, similar to the Kawaihoa Project. NRG believes that these minor changes will not alter the impacts of either Project beyond what was analyzed and approved by the Planning Commission and State Land Use Commission.

NRG requests that the minor modifications to the conditions be processed as a request for modification of a condition under the Rules of the Planning Commission ("PC Rule"), Subchapter 4, § 2-49. NRG will be

preparing the proper documentation to modify the above reference SUPs and will submit any other information the Planning Commission may require for its review of the condition modifications.

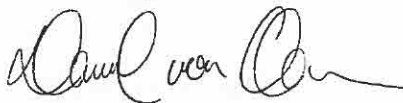
As you know, the Planning Commission acted on NRG's original request for an extension of time to establish the Waipio Project in February 2017, and the Land Use Commission has 45 days to approve or reject that extension. To simplify the review process and in light of our additional modifications to the Waipio Project's SUP conditions, NRG requests that the Planning Commission withdraw its approval of the extension of time to from consideration by the Land Use Commission.

NRG is obligated to achieve certain performance milestones in its PPAs with HECO, making the timely review and approval of these SUPs extremely important for both Projects. As such, NRG would appreciate if the DPP and the Planning Commission could use any means within its discretion to expedite the processing of these requests.

Finally, NRG respectfully requests that both SUP modifications be processed as expeditiously as possible. During prior meetings with the Department of Planning and Permitting, the parties discussed and agreed to an expedited timeline within the parameters of the rules and the simultaneous review of both SUPs by the Planning Commission. NRG must have the modifications approved in order to meet financing deadlines.

We thank you for your continued support of these energy projects. Should you have any questions, please contact NRG as soon as possible.

Sincerely,



Daniel von Allmen
Senior Analyst, Project Development

cc:
Land Use Commission
Ray Young, Department of Planning and Permitting