

BEFORE THE PLANNING COMMISSION  
OF THE CITY AND COUNTY OF HONOLULU  
STATE OF HAWAII

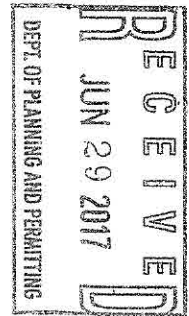
In the Matter of the Application of

FILE NO. 2014/SUP-6(RY)

KAWAILOA SOLAR, LLC

FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND DECISION AND ORDER TO  
AMEND SP15-406

For an Amendment to a Special Use Permit to Allow Development of a 50-megawatt photovoltaic (PV) Energy Generation Facility and Accessory Uses and Structures on Lands Rated Class A, B and C by the Land Study Bureau, Ashley Road, Kawaiiloa Ahupua'a, Wailua District, Oahu, Hawai'i, Portions of Tax Map Key Nos.: (1) 6-1-005:001 and (1) 6-1-006:001, Part of Kamehameha School's Kawaiiloa Plantation



FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
DECISION AND ORDER TO AMEND SP15-406

In November 2014, Applicant Kawaiiloa Solar, LLC, ("Applicant") filed an Application for a State Special Use Permit ("Original Application") with the Department of Planning and Permitting, City and County of Honolulu ("DPP") proposing a 50 megawatt solar energy facility ("Project") on 382.2 acres of land. The Original Application was approved with amendments by the City and County of Honolulu Planning Commission ("Planning Commission") via Findings of Fact, Conclusions of Law, and Decision and Order dated May 8, 2015. Upon review of the Planning Commission record, the State of Hawaii Land Use Commission ("LUC") approved the

Original Application via Findings of Fact, Conclusions of Law, and Decision and Order Approving the Recommendation of the City and County of Honolulu Planning to Approve the State Special Use Permit Petition with Modifications dated June 29, 2015.

In February 2017, the Applicant requested to extend the deadline to establish the Project under Condition No. 6. The request was scheduled for hearing before the Planning Commission on March 29, 2017. On March 17, 2017, the DPP received a letter from the LUC stating that the Planning Commission could not extend the deadline to establish the Project without concurrence from the LUC.<sup>1</sup> By Letter dated April 11, 2017, the immediate parent company of Kawaihoa Solar, LLC, NRG Renew, LLC, notified the Planning Commission of its intent to file an application requesting modification of the State Special Use Permit (“SUP”) 15-406 under Planning Commission Rules § 2-49.

Applicant submitted its Application to Modify State Special Use Permit 15-406 on April 21, 2017 (“Modification Application”). On May 5, 2017, DPP accepted the Modification Application. On June 21, 2017, the Planning Commission held a public hearing on the Modification Application.

The Planning Commission, having examined the testimony, evidence and arguments of counsel presented during the hearings, along with the pleadings filed herein, hereby makes the following findings of fact, conclusion of law, and decision and order to support amendments to SUP 15-406.

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<sup>1</sup> This letter dated March 17, 2017 also referred to Waipio PV, LLC, another entity owned by NRG, that was applying for a similar extension of time to establish the a solar energy facility in Waipio.

## FINDINGS OF FACT

### I. FACTS & PROCEDURAL MATTERS

1. By Findings of Fact, Conclusions of Law, and Decision and Order Approving the Recommendation of the City and County of Honolulu Planning to Approve the State Special Use Permit Petition with Modifications dated June 29, 2015, the Original Application was approved by the LUC, with Conditions. (“LUC’s D&O”).
2. SunEdison, the Applicant’s former parent company, was unable to finance construction of the Project and filed for bankruptcy in April 2016.
3. In October 2016, NRG Energy, Inc. purchased Kawaihoa Solar, LLC through the SunEdison bankruptcy proceeding.
4. On February 13, 2017, a request was filed with the Planning Commission to extend the deadline to establish the Project.
5. The request for a two-year extension was scheduled to be heard by the Planning Commission on March 29, 2017.
6. On March 17, 2017, the Planning Commission received a letter from the LUC stating that the Planning Commission could not extend the deadline to establish the Project unilaterally, but was required to process the request as a “modification” requiring the concurrence of the LUC, pursuant to Hawaii Administrative Rules (“HAR”) § 15-15-96.1.
7. Applicant’s immediate parent company, NRG Renew, LLC, submitted a letter dated April 11, 2017, notifying the Planning Commission that it intended to submit the Modification Application.

8. On April 21, 2017, Applicant submitted its Modification Application to amend SUP 15-406.
9. Applicant submitted additional materials on May 5, 2017 and May 10, 2017.
10. DPP accepted the Modification Application for processing as of May 5, 2017.
11. By letters dated May 12, 2017, with copies of the Modification Application enclosed, DPP solicited comments on the Modification Application from various City, State, and Federal agencies, as well as community organizations.
12. In May and June, 2017, DPP received comments on the Modification Application from the Office of Planning ("OP"), LUC, Department of Transportation ("DOT"), and Department of Agriculture ("DOA").
13. DPP also received public testimony in support of the Modification Application from Pacific Resource Partnership by letter dated June 21, 2017.
14. On May 22, 2017, notice of the public hearing on the Modification Application was published in the Honolulu Star-Advertiser.
15. On June 13, 2017, DPP filed its report and recommendation for approval of Applicant's Modification Application ("DPP Recommendation").
16. On June 19, 2017, Applicant filed its First List of Witnesses; First List of Exhibits "1" – "11".
17. On June 20, 2017, Applicant filed its First Supplemental List of Exhibits; Exhibit "12".
18. No petitions to intervene before the Planning Commission were filed.

