

LAND USE COMMISSION  
STATE OF HAWAII

2017 DEC 11 A 8:46

December 06, 2017

Riley K. Hakoda  
State of Hawaii  
Land Use Commission  
Mail: PO Bx 2359, Honolulu, HI 96804

**Re: Year-End Permit Condition Compliance Summary for the Kapaia Solar Photovoltaic and Battery Energy Storage Project, Located in the County of Kaua'i, State of Hawai'i (TMK # [4] 3-8-002:002)**

Mr. Dahilig,

The Kaua'i Island Utility Cooperative (KIUC) Kapaia Solar Photovoltaic and Battery Energy Storage Project (Project) was proposed before the Kaua'i County Planning Department by SolarCity Corporation (SolarCity) on September 30, 2015, recommended for Special Permit approval by the Kauai County Planning Commission on October 27, 2015 and formally approved by the Hawai'i Land Use Commission (LUC) on January 29, 2016. Construction of the project commenced in August 2016 and received permission to operate in May 2017. The purpose of this submittal is to satisfy Condition 7 of the LUC approval (Docket No. SP15-407) and report on SolarCity's continued compliance in accordance with all required Project Conditions. Please refer to the enclosed summary table (Table 1) for a description of permit conditions and associated compliance statements, with reference to relevant submittals made to the Kaua'i County Planning Department. All submittal documents referred to in the attached compliance statements are on file with the Kaua'i County Planning Department and can be made available to other interested parties by direct request to SolarCity.

Should you have any questions or comments related to this compliance summary, please do not hesitate to contact me at [rhumes@tesla.com](mailto:rhumes@tesla.com) or (801) 996-9211.

Sincerely,



**Ryan Humes**

Contract Analyst, Commercial Contracts - OM | [SolarCity](#)

Enc.

Cc: State of Hawaii / Land Use Commission  
Leo R. Asuncion/Office of Planning  
Jon Yoshimura/SolarCity  
Danny Valdez/SolarCity  
Jeremy Sande/SolarCity

TABLE 1

**Project Conditions of Approval with Statement of Compliance**

LUC Condition of Approval	Compliance Statement
<p><b>Condition 1.</b> Usable lands of the Petition Area 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, beginning within 6 months of start of commercial power generation.</p>	<p>The approved Grazing Plan was submitted to the Kaua'i County Planning Director in July 2016. Grazing in The Petition Area commenced in June 2017. Accordingly, SolarCity is in compliance with this condition of approval.</p>
<p><b>Condition 2.</b> If at any time during the term of the Special Permit no compatible agricultural operations exist on the usable lands of the Petition Area for 6 months, the Applicant shall notify the Director of the Kaua'i Planning Department in writing within 30 days of the end of the 6-month period.</p>	<p>As applicable, SolarCity will comply with this condition during operation. No immediate action required. Accordingly, SolarCity is in compliance with this condition of approval.</p>
<p><b>Condition 3.</b> The Applicant shall submit for review and obtain the approval of the following from the Director of the Kaua'i Planning Department, prior to the issuance of a grading or building permit:</p> <ol style="list-style-type: none"> <li>a. Applicant shall minimize or avoid clearing and grading activities from June 1 through Sept 15.</li> <li>b. A survey map accompanied by a metes and bounds description of the approved Petition Area.</li> <li>c. 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.</li> </ol>	<ol style="list-style-type: none"> <li>a. Substantial construction and grading activities began following September 15, 2016, and grading was kept to the minimum feasible through design. Earthwork was limited to grading for site stormwater features and installation of gravel perimeter road.</li> <li>b. A professional boundary survey was conducted for the project and was submitted to the Kaua'i County Planning Director in July 2016.</li> <li>c. The County-approved Grazing Plan was submitted to the Kaua'i County Planning Director in July 2016.</li> </ol> <p>Accordingly, SolarCity is in compliance with this condition of approval.</p>
<p><b>Condition 4.</b> Prior to the closing of the building permit for the Project, the Applicant shall submit to the Kaua'i Planning Department proof of financial security, such as a letter of credit or similar assurance, from a creditworthy financial institution satisfactory to Kaua'i Planning Department.</p>	<p>Satisfactory proof of financial security was provided to the Kaua'i County Planning Director in July 2016. Accordingly, SolarCity is in compliance with this condition of approval.</p>
<p><b>Condition 5.</b> The Applicant shall mitigate impacts to fauna on site as follows:</p> <ol style="list-style-type: none"> <li>a. Applicant shall develop an endangered species awareness training module, which shall include all potential endangered species that may frequent the Petition Area.</li> <li>b. All construction workers and solar facility employees shall undergo endangered species awareness training prior to starting work.</li> <li>c. In order to minimize adverse impacts on the Federally Listed Threatened Species, Newell's Shearwater and other seabirds, external lighting shall be only of the following types: shielded lights, cut-off luminaries, or indirect lighting. Spotlights aimed upward or spotlighting of structures, landscaping or the ocean shall be prohibited.</li> </ol>	<ol style="list-style-type: none"> <li>a. SolarCity developed the approved endangered species awareness training module submitted to the Kaua'i County Planning Director in July 2016.</li> <li>b. All construction workers went through the approved endangered species awareness training module prior to starting work.</li> <li>c. No permanent operational lighting was installed in the Project area.</li> </ol>



<p>d. Barbed wire shall not be used on the top of any fencing.</p> <p>e. Applicant shall monitor avian injuries occurring at the Project site, and report occurrences to the United States Fish &amp; Wildlife Service.</p>	<p>d. No barbed wire is being installed as part of the Project.</p> <p>e. There have been no observed incidents of injuries or mortality of protected avian species. SolarCity will report cases of injuries or mortality of protected avian species to the U.S. Fish &amp; Wildlife Service</p> <p>Accordingly, SolarCity is in compliance with this condition of approval.</p>
<p><b>Condition 6.</b> The Applicant shall construct and begin operation of the Project within two (2) years of the date of the LUC's Decision and Order approving the Special Permit.</p>	<p>Construction commenced in August 2016, and received permission to operate in May 2017. Therefore, the Project was compliant with this condition.</p>
<p><b>Condition 7.</b> On or before December 31 of each year that the Special Permit is in effect, the Applicant or its successor shall file an annual report to the LUC, OP, and the Kaua'i Planning Department that demonstrates the Applicant's compliance with conditions of the Special Permit.</p>	<p>This memo serves to demonstrate compliance with this condition and will be submitted to the LUC, OP, and the Kaua'i Planning Department prior to December 31, 2017. Accordingly, SolarCity is in compliance with this condition of approval.</p>
<p><b>Condition 8.</b> 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 Kaua'i Planning Department.</p>	<p>SolarCity will continue to comply with this condition.</p> <p>A minor modification to the Project was approved by the Kaua'i County Planning Director on June 8, 2016, as Departmental Determination DD-2016-67. No further modifications have been required or proposed.</p> <p>Accordingly, SolarCity is in compliance with this condition of approval.</p>
<p><b>Condition 9.</b> The Applicant and/or landowner shall notify the Director of Kaua'i Planning Department of:</p> <ul style="list-style-type: none"> <li>a. Any change or transfer of licensee on the Petition Area.</li> <li>b. Any change in uses on the Petition Area.</li> <li>c. Termination of any uses on the Petition Area; and/or</li> <li>d. Transfer in ownership of the Petition Area.</li> </ul>	<p>SolarCity has been acquired by Tesla and is in the process of completing the transition and rebranding. By next year, the annual report will reflect the rebranding.</p>
<p><b>Condition 10.</b> Enforcement of the conditions of the Special Permit shall be pursuant to the Rules of the Kaua'i Planning Commission, including the issuance of an order to show cause as to the reason the Special Permit should not be revoked if the Kaua'i Planning Commission has reason to believe that there has been a failure to perform the conditions herein.</p>	<p>SolarCity understands this condition and will continue to maintain compliance with all conditions of the Special Permit. No immediate action required. Accordingly, SolarCity is in compliance with this condition of approval.</p>
<p><b>Condition 11.</b> If the PV array or the Project creates a hazardous condition for pilots or motorists, the facility operator shall immediately mitigate the hazard upon notification by the Department of Transportation, Airports Division, or the Federal Aviation Administration.</p>	<p>The project will not cause glare or otherwise create a hazardous condition for pilots or motorists. SolarCity has obtained a Determination of No Hazard from the Federal Aviation Administration which was provided to the Kaua'i County Planning Director in July 2016. Accordingly, SolarCity is in compliance with this condition of approval.</p>

<p><b>Condition 12.</b> In the event that historic resources 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 Kaua'i Island Burial Council, as applicable, 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 Project, 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.</p>	<p>There were no incidents of historic or cultural resource discovery within the Petition Area to date. SolarCity will continue to comply with this condition, and has developed a cultural resources awareness training module which was presented to all workers during site orientation and general training. The approved cultural resources awareness training module was submitted to the Kaua'i County Planning Director in July 2016. Accordingly, SolarCity is in compliance with this condition of approval.</p>
<p><b>Condition 13.</b> The Applicant shall comply with the requirements of the State Department of Health, the County's Fire Department, Department of Water, and Department of Public Works, as well as any other applicable government agencies.</p>	<p>The Project was designed and constructed, and will continue to be operated in compliance with all relevant requirements of applicable government agencies. Accordingly, SolarCity is in compliance with this condition of approval.</p>
<p><b>Condition 14.</b> The Applicant shall develop and utilize Best Management Practices (BMPs) during all phases of development in order to minimize erosion, dust, and sedimentation impacts of the Project to abutting properties.</p>	<p>The Project obtained coverage under the NPDES Construction General Permit and developed and implemented a Stormwater Pollution Prevention Plan (SWPPP) that included installation and continued maintenance of BMPs to minimize erosion, dust, and sedimentation impacts. Per regulatory requirements, weekly SWPPP inspections were performed through completion and stabilization of the site. Accordingly, SolarCity is in compliance with this condition of approval.</p>
<p><b>Condition 15.</b> The Applicant shall develop and operate the Project, 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 Project do not result in an increase in stormwater runoff that adversely impacts downstream properties. Failure to so develop the Project may result in revocation of the Special Permit.</p>	<p>SolarCity understands this condition. Please see compliance statement for Condition 14 above. Accordingly, SolarCity is in compliance with this condition of approval.</p>
<p><b>Condition 16.</b> To the extent possible within the confines of union requirements and applicable prohibitions against discrimination in employment, the Applicant shall seek to hire Kaua'i contractors, and shall seek to employ residents of Kaua'i in temporary construction and permanent jobs</p>	<p>SolarCity utilized Kaua'i contractors to the greatest extent feasible and will continue to comply with this condition. Accordingly, SolarCity is in compliance with this condition of approval.</p>

<p><b>Condition 17.</b> The Applicant shall implement to the extent possible sustainable building techniques and operational methods for the Project.</p>	<p>The Project was built in a sustainable manner, is now operational will continue to generate renewable energy to help KIUC and the County achieve its overall sustainability goals. Accordingly, SolarCity is in compliance with this condition of approval.</p>
<p><b>Condition 18.</b> The Planning Commission reserves the right to revise, add, or delete conditions of approval in order to address or mitigate unforeseen impacts the Project may create, or to revoke the permits through the proper procedures should conditions of approval not be complied with or be violated.</p>	<p>SolarCity understands this condition. No immediate action required. Accordingly, SolarCity is in compliance with this condition of approval.</p>
<p><b>Condition 19.</b> The Applicant is advised that additional government agency conditions may be imposed. It shall be the Applicant's responsibility to resolve those conditions with the respective agencies.</p>	<p>SolarCity understands this condition. No immediate action required. Accordingly, SolarCity is in compliance with this condition of approval.</p>