

4900 N Scottsdale Rd. Suite 5000  
Scottsdale, AZ 85251

Clearwayenergygroup.com



December 20, 2021

VIA EMAIL AND MAIL DELIVERY

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



**RE: Annual Compliance Report for Special Use Permit – Docket No. SP15-406 Kawaioloa Solar, LLC**

Dear Mr. Orodener,

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 Kawaioloa Solar, LLC project.

The project is in compliance with the conditions set forth in Land Use Commission's Order, effective June 29, 2015.

If you have any questions, please feel free to contact Travis Stuard at (719) 439-5349 or [travis.stuard@clearwayenergy.com](mailto:travis.stuard@clearwayenergy.com). Thank you very much for your consideration.

Thank you,

*Travis Stuard*

Travis Stuard  
Asset Manager  
719-439-5349

## **Annual Compliance Report In the Matter of:**

**Special Use Permit (2014SUP-6/SUP15-406)  
for a 50 Megawatt Photovoltaic Energy  
Generation Facility**



**Prepared by:**  
Kawailoa Solar, LLC  
December 2021



# Contents

Contents.....	2
1.0 Introduction .....	3
2.0 Annual Compliance Report on Conditions of Special Use Permit.....	4
2.1 SUP Condition #1 .....	4
2.1.1 Response to Condition #1 .....	4
2.2 SUP Condition #2 .....	5
2.2.1 Response to Condition #2 .....	5
2.3 SUP Condition #3 .....	5
2.3.1 Response to Condition #3 .....	5
2.4 SUP Condition #4 .....	6
2.4.1 Response to Condition #4 .....	6
2.5 SUP Condition #5 .....	6
2.5.1 Response to Condition #5 .....	6
2.6 SUP Condition #6 .....	7
2.6.1 Response to Condition #6 .....	7
2.7 SUP Condition #7 .....	7
2.7.1 Response to Condition #7 .....	7
2.8 SUP Condition #8 .....	8
2.8.1 Response to Condition #8 .....	8
2.9 SUP Condition #9 .....	8
2.9.1 Response to Condition #9 .....	8
2.10 SUP Condition #10 .....	9
2.10.1 Response to Condition #10 .....	9
2.11 SUP Condition #11 .....	9
2.11.1 Response to Condition #11 .....	9
2.12 SUP Condition #12 .....	9
2.12.1 Response to Condition #12 .....	9
2.13 SUP Condition #13 .....	10
2.13.1 Response to Condition #13 .....	10
2.14 SUP Condition #14 .....	10
2.14.1 Response to Condition #14 .....	10



## **1.0 Introduction**

This Annual Compliance Report has been prepared in compliance with the State Land Use Commission's Decision and Order, Special Use Permit, Docket No. SP15-406, approved by the Land Use Commission on August 14, 2017 (the "Special Use Permit" or "SUP"). This is the Annual Report by Kawailoa Solar, LLC ("Permittee") which provides an update on ownership and schedule, and demonstrates the status of compliance of the Solar Energy Facilities ("SEF" or the "Project") with the conditions of the SUP. This report covers the period from January 1, 2021 through December 31, 2021.

In 2016, Permittee submitted a request for modification of the previously approved SUP to accommodate an extension of time in which to construct the Project and certain changes in equipment. This application was processed by the Department of Planning and Permitting and subsequently approved by the Honolulu Planning Commission and the Hawaii Land Use Commission on August 14, 2017.

The Project was completed and began commercial operation on November 20<sup>th</sup>, 2019. This annual report includes the updated conditions as modified by the LUC.



## **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 six 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 Applicant should affirm, through a separate study or other competent means, that the proposed change from fixed-tilt racks to single-axis tracking racks, and the proposed change from hog wire fencing to chain-link fencing, will not restrict or impede compatible agricultural uses within the Petition Area available for compatible agricultural uses. Also, the Applicant 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.*

#### **2.1.1 Response to Condition #1**

Permittee has made the area under the PV panels available for compatible agricultural use. Permittee has executed a license agreement (lease) with Kahuhipa Land Management to graze sheep on the property at less than 50% below fair market rent. Sheep pasturing is established on the property, with approximately 418 sheep.

Permittee has confirmed with the rancher that all fencing and access conditions remain compatible with long term sheep ranching operations. The fencing design has not changed since the last report. Permittee considers Condition #1 to be in compliance.



## **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 Commission and the Director of the DPP in writing within 30 days of the end of the 6-month period. If requested by the Commission, the Applicant shall attend a meeting of the Commission and submit a report to the 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 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 Commission. Extensions to the 6-month deadline may be granted by the Commission for unforeseen extenuating circumstances.*

### **2.2.1 Response to Condition #2**

If no agricultural activities are in place for a period of six months, Permittee will notify DPP and LUC as required in Condition #2.

## **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 Response to Condition #3**

Permittee reviewed both maps with DPP planners in 2017 and received written approval from the Director on January 18, 2018. A copy of this approval letter in previous reports. This Condition has been satisfied.



## **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 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 operation of the SEF. A change in Project ownership or a change of 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 months of the ownership change.*

### **2.4.1 Response to Condition #4**

Decommissioning security of \$4,782,444 has been posted with CoBank (Letter of Credit No. 00652591) for the purpose of meeting this Condition and ensuring that funds are available to decommission the SEF within 12 months following termination of operations. These funds were put in place prior to closing the building permit on April 7, 2020.

## **2.5 SUP Condition #5**

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

### **2.5.1 Response to Condition #5**

Regular observations of the Project will take place during operations, and any injured or downed listed wildlife be reported to the appropriate agencies. No reported deaths or injuries to Hawaiian hoary bats and endangered and threatened Hawaiian waterbird and shorebird species to date.



## **2.6 SUP Condition #6**

*The Applicant shall establish the Project no later than December 31, 2019. Future request 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 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, 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 35-year validity period of the SUP shall begin on the date the LUC approves the first amendment request.*

### **2.6.1 Response to Condition #6**

Permittee began construction in April 2018 (start of civil work) and began Commercial Operations on November 20, 2019, which constitutes establishment of the project by the date required in this Condition.

## **2.7 SUP Condition #7**

*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 Land Use Commission, the State Office of Planning, and the DPP that demonstrates the Applicant's compliance with conditions of the SUP.*

### **2.7.1 Response to Condition #7**

This annual report constitutes compliance with this Condition.



## 2.8 SUP Condition #8

*Major modifications to:*

*(1) the Project plans, including but not limited to significant increases in the area covered by 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 Land Use Commission. 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 Response to Condition #8

Since the latest approval by the LUC, Permittee confirms that there have been no further major modifications as described in SUP Condition #8, nor are any further major modifications anticipated.

## 2.9 SUP Condition #9

*The Applicant and/or landowner shall notify the Director of 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 Response to Condition #9

On August 31, 2018, NRG closed on the sale of its entire renewables platform to Global Infrastructure Partners, rebranding as Clearway Energy Group at this time. This sale was completed well upstream of Permittee, but did include the project company and all of its assets. No ownership change of Kawaihoa Solar, LLC has occurred since. There has also been no change in the uses on the property.



## **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 Response to Condition #10**

Permittee 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 Department of Transportation, Airports Division or the Federal Aviation Administration.*

### **2.11.1 Response to Condition #11**

A reflectivity analysis was conducted for the SEF based on the equipment, and no hazardous conditions are expected. Furthermore, no known hazardous conditions for pilots or motorists have occurred to date. If any notification is received in the future, Kawaihoa Solar, LLC will immediately mitigate the hazard in cooperation with direction from the relevant agencies.

## **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 Response to Condition #12**

Permittee's archaeological monitoring plan was approved by SHPD in 2015 and confirmed in the record for this project. This Condition has been satisfied.



## **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 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.*

### **2.13.1 Response to Condition #13**

No events under Condition #13 occurred during construction. Permittee will contact SHPD and Oahu Island Burial Council regarding any find during the operation of project.

## **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 Response to Condition #14**

Permittee has continued to maintain its BMPs throughout the construction process to remain in compliance with all 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 SUP. In September through November 2018, the project site received significant rainfall including two Hurricanes that impacted the site. Permittee received a Citation from the Board of Health on October 8, 2018 following the most significant event. The site was

**Clearway Energy Group**  
100 California Street, Floor 4  
San Francisco, CA 94111  
clearwayenergygroup.com



immediately brought back into compliance and has not received any additional Citations since.



