

NRG Energy LLC
100 California St, Ste 400
San Francisco, CA 94111

31 December 2016

Daniel Orodener
Executive Officer
State of Hawaii Land Use Commission
State Office Tower
235 South Beretania Street, Room 406
Honolulu, HI 96813

Re: Annual Report for Special Use Permit (SP15-405), Waipio PV, LLC

Dear Mr. Orodener:

Pursuant to Condition No. 6 of the Land Use Commission's Order in Docket No. SP15-405, please find enclosed 2016 annual report for the Waipio Solar Project for 2016. The Project is in compliance with the conditions set forth in the Order, effective March 25, 2015.

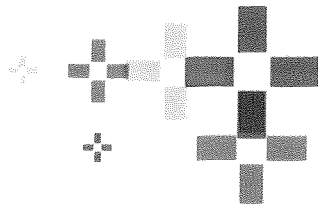
While the Applicant (Waipio PV LLC) remains the owner of the Project, this report provides an update on a change in the parent company ownership of the Applicant. The new parent company, NRG Energy LLC, plans to resume development of the Project with no major modifications, and the Applicant requests of the Director of DPP an extension of time in which to establish the Project, pursuant to Condition No. 5 of the Order.

Please feel free to contact me with any questions on the Project at wren.wescoatt@nrg.com or 808-780-1000.

Mahalo,

Wren Wescoatt
Director of Development
NRG Energy LLC
808-780-1000
wren.wescoatt@nrg.com

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LAND USE COMMISSION
STATE OF HAWAII



NRG Energy LLC
100 California St, Ste 400
San Francisco, CA 94111

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

Special Use Permit for 47-Megawatt Photovoltaic (PV) Energy
Generation Facility Waipio PV, LLC

Prepared by:

Waipio PV, LLC (owned by NRG)
December 31, 2016

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1.0 Introduction

This Annual Compliance Report has been prepared in compliance with Condition No. 6 of the State Land Use Commission's Decision and Order, Special Use Permit, Docket No. SP15-405, effective on March 25, 2015 (the "Special Use Permit" or "SUP"). This is the 2016 annual report by Waipio PV, LLC ("Waipio PV") 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, 2016 through December 31, 2016.

In 2015, The parent company of Waipio PV LLC, SunEdison Inc. was unable to finance construction of the Project and, as a result of broader financial issues, filed for bankruptcy in March 2016. Waipio PV remained solvent and was acquired through the bankruptcy process in October 2016 by NRG (www.nrg.com). As the new owner of Waipio PV, NRG plans to continue the development and construction of the Project in accordance with the existing SUP.

Condition #5 of the SUP requires that "the Project be established no later than March 31, 2017." Due to these unforeseen circumstances and the anticipated time needed to reinstate the power purchase contracts, obtain the necessary approvals, secure financing and construct the Project, Waipio PV requests that the Director of the Department of Planning and Permitting approve an extension of the deadline to establish the Project from March 31, 2017 to June 30, 2019.

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 one year 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 Waipio PV LLC Response SUP Condition #1

Waipio PV will make the area under the PV panels available for compatible agricultural uses and has 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. Waipio PV 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 begun commercial power generation, which is expected to begin no later than June 30, 2019.

2.2 SUP Condition #2

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.*

2.2.1 Waipio PV LLC Response SUP Condition #2

Waipio PV has complied with both portions of SUP Condition #2.

- 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 received approval.
- 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 received approval.

2.3 SUP Condition #3

Within one year of the completion of construction or prior to the closing of the building permit for the solar energy facility, 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 SP, 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 within twelve (12) months following the termination of operation of the SEF, with the exception of the HECO switchyard, which may remain within the Petition Area after termination of the SP. A change in Project ownership or a change of ownership of the land subject to the SP, 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.

2.3.1 Waipio PV LLC Response SUP Condition #3

Decommissioning security of \$4,000,000 will be posted for the purpose of meeting SUP Condition #3 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 expected no later than June 30, 2019.

2.4 SUP Condition #4

As needed, the Applicant shall work with the U.S. Fish & Wildlife Service regarding the protection of endangered or migratory bird activity at the Petition Area.

2.4.1 Waipio PV LLC Response SUP Condition #4

Waipio PV previously held discussions with the U.S. Fish & Wildlife Service in order to ensure the protection of endangered or migratory bird activity at the Petition Area. No species of concern have been identified or any impacts expected from the SEF. Regular observations of the Project will take place

and any injured or downed listed wildlife be reported to the appropriate agencies.

2.5 SUP Condition #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 the 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 timely request for extension filed with the Commission at least one-hundred twenty (120) days prior to the SP's expiration.

2.5.1 Waipio PV LLC Response SUP Condition #5

In 2015, The parent company of Waipio PV LLC, SunEdison Inc. was unable to finance construction of the Project and, as a result of broader financial issues, beyond the cause or control of Waipio PV, filed for bankruptcy in March 2016. The local subsidiary Waipio PV remained solvent and was subsequently acquired through the approved bankruptcy process in October 2016 by NRG Energy LLC ("NRG"). Under the ownership of NRG, Waipio PV plans to continue the development and construction of the Project in accordance with the existing SUP, with the only substantial change being the following proposed extension.

Condition #5 of the SUP requires that "*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,*" which would be March 25, 2017. Unfortunately, due to the unforeseen circumstances described above, which were certainly beyond the control of the Waipio PV, the Project was unable to be developed and constructed by the deadline envisioned in the SUP. Under new ownership, the Applicant is now able to resume work on the Project, expects to begin construction in 2018 and to establish the Project in early 2019.

Condition #5 also states, "*Requests for extension of this deadline shall be submitted to the Director of the 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.*"

Due to these unforeseen circumstances that were beyond the control of the Applicant, and accounting for the anticipated time needed to reinstate the power purchase agreement, obtain the necessary approvals, secure financing and construct the SEF, Waipio PV hereby requests that the Director of the DPP approve an extension of the time to establish the Project to June 30, 2019. For

clarity, Waipio PV is not requesting an extension to the approved 35-year term of the SUP, only the deadline to establish the Project.

2.6 SUP Condition #6

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 SP.

2.6.1 Waipio PV LLC Response SUP Condition #6

This annual report constitutes compliance with SUP Condition #6.

2.7 SUP Condition #7

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) 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.*

2.7.1 Waipio PV LLC Response SUP Condition #7

Waipio PV confirms that there have been no major modifications as described in 1-4 of SUP Condition #7, nor are any major modifications anticipated.

2.8 SUP Condition #8

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

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

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

2.8.1 Waipio PV LLC Response SUP Condition #8

Waipio PV has not changed or transferred licensee of the property, has not changed any uses on the property, and has not terminated any uses of the property. However, ownership of the subject property has changed, as described below.

In 2016, the subject property was transferred from Renewable Land Holdings LLC to Waipio Land Holdings LLC (both wholly owned affiliates of SunEdison). Through the bankruptcy process, NRG acquired Waipio Land Holdings LLC and the subject property on which the Project will be constructed. NRG plans to continue the development and construction of the Project in accordance with the existing SUP.

NOTE: The preceding annual report indicated that, a Purchase & Sale Agreement had been executed with D.E. Shaw Group, Madison Dearborn Capital Partners IV LP and Northwestern University, which anticipated potential sale to the parties of the Waipio PV project by SunEdison. However, this transaction did not take place, and the PSA was eventually terminated. As described above, the parent company of Waipio PV LLC, SunEdison Inc. filed for bankruptcy in March 2016. Waipio PV remained solvent and was acquired through the bankruptcy process in October 2016 by NRG Energy LLC (www.nrg.com).

2.9 SUP Condition #9

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

2.9.1 Waipio PV LLC Response SUP Condition #9

Waipio PV 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.

2.10 SUP Condition #10

If the photovoltaic 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.

2.10.1 Waipio PV LLC Response SUP Condition #10

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

2.11 SUP Condition #11

Petitioner shall obtain approval of the draft archaeological assessment, dated August 2014, from the State Historic Preservation Division (SHPD) prior to commencement of construction of the solar farm.

2.11.1 Waipio PV LLC Response SUP Condition #11

Waipio PV has obtained approval of the AIS dated August 2014 from the State Historic Preservation Division (SHPD). A copy was previously provided as part of the record.

2.12 SUP Condition #12

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.

2.12.1 Waipio PV LLC Response SUP Condition #12

Waipio PV 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. Waipio PV will follow protocol of contacting SHPD and Oahu Island Burial Council regarding any find.

2.13 SUP Condition #13

The Petitioner shall develop the Property in substantial compliance with the representations made to the City and County of Honolulu Planning Commission and the State Land Use Commission in obtaining the State Special Permit. Failure to so develop the Property may result in revocation of the permit.

2.13.1 Waipio PV LLC Response SUP Condition #13

Waipio PV confirms that all development activities related to the Property 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.