



2017/ELOG-789

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

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DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU

Re: Kawailoa 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 Kawailoa Solar, LLC, ("Waipio Project" and "Kawailoa Project", respectively), wholly owned subsidiaries previously held by SunEdison. As you may know, SunEdison filed for bankruptcy and NRG purchased both the Waipio and Kawailoa 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 Kawailoa 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

Raymond,

I received your email with questions on the applications for modifications, in italics, and our numbered responses below:

For 2014/SUP-3, NRG Energy LLC prepared the letter for the modification but the DPP Master Application form cites the applicant as Waipio PV LLC. What is the relationship between NRG Energy LLC and the applicant? It may be less confusing if the request for modification letter came from Craig Cornelius as Pres. of Waipio PV LLC.

With a number of entities involved, the Master Application form (MAF) does not track the letters from NRG Renew LLC and the letter of authorization which is from Waipio Land Holdings LCC which should be from Waipio PV LLC unless the landowner is the entity retaining the consultant and you. The landowner only needs to sign the Master Application form as owner of the land there are more than one owner of the land, then all owners must sign the MAF or letter authorizing the SUP application.

Responses regarding Waipio application:

1. Both Waipio PV LLC (Applicant) and Waipio Land Holdings LLC (landowner) are wholly owned subsidiaries of NRG Renew LLC.
2. Craig Cornelius is president of NRG Renew LLC, Waipio PV LLC and Waipio land holdings LLC so his title and signature are accurate for all three entities. He simply signed the cover letter as president of the senior entity. Please advise if we should re-submit the cover letter directly from Waipio PV LLC.
3. Waipio land holdings LLC is the sole owner the land, so we provided a "landowner authorization letter" from that entity as an exhibit. We included this letter to provide additional documentation, as we did on a previous SUP submission. However, If the separate landowner authorization letter is not required or confusing, then please ignore or remove the authorization letter from our application file.

As for Kawaihoa Solar, LLC, KSBE signed the MAF as land owner which is sufficient. However, is KSBE retaining Group 70 as the planning consultant or is it Kawaihoa Solar LLC retaining the consultant? If Group 70 is being retained by Kawaihoa Solar LLC, then the letter from KSBE should not have mentioned Group 70 or you as related to the project. In fact, their letter is not needed at all as they already signed the MAF as owner.

Responses regarding Kawaihoa application:

4. Group 70 is being retained by Kawaihoa Solar LLC (not KSBE) as planning consultant on the project. However, please contact me directly with any questions.
5. KSBE's letter was intended to provide additional documentation for landowner authorization, which as you point out is not necessary. The references to Group 70 (or me) we're simply intended to direct any follow up question to others. Again, if the separate landowner

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authorization letter is not required or confusing, then please ignore or remove the authorization letter from our application file, at Applicant's request.

Additional Information:

6. Please contact me with any questions and cc: Aarty Joshi (aarty.joshi@nrg.com). We will forward to other parties (Jeff Overton, Ben Kudo) as needed.

7. As mentioned in the original Waipio SUP filing, the exhibit maps illustrate areas intended for use by Castle & Cooke for a future water reservoir and freeway interchange, which are not included in the permitted area and are unrelated to the scope of this permit application.

8. Since the original Kawaihoa SUP filing, the Archeological Inventory Survey was accepted by the State Historic Preservation Department.

9. Since the original Kawaihoa SUP filing, the State Department of Transportation confirmed that because plans for a new restaurant in the area were suspended, a traffic study is no longer requested.

Thank you,
Wren

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lieutenant Governor

LUIS P. SALAVERIA
Director

MARY ALICE EVANS
Deputy Director



LAND USE COMMISSION
Department of Business, Economic Development & Tourism
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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

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. Orodener
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>