

Clearway Energy Group
100 California Street, Floor 4
San Francisco, CA 94111

clearwayenergygroup.com



Clearway

LAND USE COMMISSION
STATE OF HAWAII

2018 DEC 28 P 2:22

December 27, 2018

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

2018 DEC 28 P 2:23

LAND USE COMMISSION
STATE OF HAWAII

Re: Annual Compliance Report for Special Use Permit – Docket No. SP15-405
Waipio PV, LLC

Dear Mr. Orodenker,

Pursuant to Condition No. 6 in the Land Use Commission's Order in Docket No. SP15-405, transmitted herewith is an annual compliance report for the Waipio PV, LLC project.

The project is making progress against key milestones and is in compliance with the conditions set forth in Land Use Commission's Order, effective March 25, 2015.

Please feel free to contact us regarding any questions on the project at Daniel.vonallmen@clearwayenergy.com or by phone at 415-627-1646.

Best Regards,

Daniel von Allmen
Development Project Manager
Clearway Energy Group

Clearway Energy Group
100 California Street, Floor 4
San Francisco, CA 94111

clearwayenergygroup.com



LAND USE COMMISSION
STATE OF HAWAII

2018 DEC 28 P 2:23

Annual Compliance Report In the Matter of:

Special Use Permit (2014SUP-3/SUP15-405)
for a 47 Megawatt Photovoltaic (PV) Energy
Generation Facility

Prepared by:

Waipio PV, LLC
December 27, 2018



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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. SP15-405, approved by the Land Use Commission on August 14, 2017 (the "Special Use Permit" or "SUP"). This is the 2018 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, 2018 through December 31, 2018.

In 2016, Waipio PV LLC 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 to make the project more efficient. 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 is substantially the same as was initially proposed and proceeding toward financing and construction under new ownership. 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 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. 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 Tin Roof Ranch stating that the proposed amendments to the SUP will not have any adverse effect on its planned ranching operation within the Petition Area.

2.1.1 Response to 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. Over the last year, Waipio PV has issued a request for proposals from additional grazing contractors to determine the best fit for the needs of the land. The team is in the final selection process now, and 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.

Waipio PV has continued to include local ranchers in ongoing conversations to ensure that all fencing and access conditions are compatible with long term ranching operations. The fencing design has not changed since the last report. Waipio PV considers Condition #1 to have been satisfied in 2017,



but will continue to maintain this communication as a best practice until the completion of construction.

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 Response to Condition #2

Waipio PV 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 is included with this submission.



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 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 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 Response to Condition #3

Decommissioning security of no less than \$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 December 31, 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 Response to Condition #4

Regular observations of the Project will take place during operations, and any injured or downed listed wildlife be reported to the appropriate agencies.



2.5 SUP Condition #5

The Applicant shall establish the Project no later than December 31, 2019. Requests for future extension of this deadline shall be submitted to the Director of the DPP prior to the expiration of the deadline. The LUC may grant an 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.

2.5.1 Response to Condition #5

Waipio PV began construction in March 2018 (start of civil work) and is currently undergoing Mechanical Completion review. Commissioning work will begin in March 2019 and the project will reach Commercial Operations well before the deadline of December 31, 2019.

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 Response to 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 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.

2.7.1 Response to Condition #7

Since the latest approval by the LUC, Waipio PV confirms that there have been no further major modifications as described in SUP Condition #7, nor are any further 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 Response to Condition #8

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 Waipio PV, but did include the project company and all of its assets. Following the sale, Clearway notified DPP and affirmed its commitment to complete all three of its Hawaii projects on the timelines and per the conditions previously agreed.



2.9 SUP Condition #9

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.

2.9.1 Response to 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 Response to Condition #10

An updated reflectivity analysis was conducted for the SEF based on the new equipment, 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 relevant agencies.



2.11 SUP Condition #11

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.

2.11.1 Response to Condition #11

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.

2.12 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.

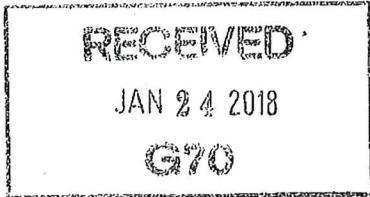
2.12.1 Response to Condition #13

Waipio PV 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.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honolulu.gov • CITY WEB SITE: www.honolulu.gov

KIRK CALDWELL
MAYOR



January 18, 2018

KATHY K. SOKUGAWA
ACTING DIRECTOR

TIMOTHY F. T. HIU
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

2014/SUP-3(ry)

Mr. Dan von Allmen
Project Development
NRG
100 California Street, Suite 400
San Francisco, California 94111

Dear Mr. Allmen:

The maps entitled "SUP Area Map" and "Grazing Area Map", stamped received on December 6, 2017, are APPROVED and replaces the previously approved maps showing the livestock grazing and SUP areas, stamped received on September 25, 2015. Enclosed is a copy of the approved maps which have been forwarded to the State of Hawaii Land Use Commission for Docket No. SP15-405.

Should you have any questions, please contact Raymond Young, of our staff, at 768-8049.

Very truly yours,



Kathy K. Sokugawa
Acting Director

KKS:ah

Enclosure

cc: Land Use Commission
Ashford & Wriston/Benjamin A. Kudo
✓G70/Jeffrey H. Overton, ASCP, LEED AP

Doc 1548407

