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December 20, 2022

VIA EMAIL AND MAIL DELIVERY

**Attn: 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



**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 in compliance with the conditions set forth in Land Use Commission's Order, effective March 25, 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-3/SUP15-405)  
for a 47-Megawatt Photovoltaic Energy  
Generation Facility**



**Prepared by:**  
Waipio PV, LLC  
December 20, 2022



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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 Annual Report by Waipio PV, LLC ("Waipio PV" or "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, 2022 through December 31, 2022.

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 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 was completed and began commercial operation on September 19<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 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 affect on its planned ranching operation within the Petition 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 actively established on the property, with approximately 270 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

*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

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.

## 2.3 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 \$4,000,000 has been posted with Arch Insurance Company (Bond No. SU-1168023) for the purpose of meeting this Condition and ensuring that funds are available to decommission the SEF within 12 months following termination of operations.

### **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. No reported deaths or injuries to Hawaiian hoary bats and endangered and threatened Hawaiian waterbird and shorebird species to date.

### **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 extension 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.*

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

Permittee began construction in March 2018 (start of civil work) and began Commercial Operations on September 19, 2019, which constitutes establishment of the project by the date required in this Condition.



## **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 this Condition.

## **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, Permittee 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 Permittee, but did include the project company and all of its assets. No ownership change of Waipio PV LLC has occurred since. There has also been no change in the uses on the property.

## **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**

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.



## **2.10 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, Permittee 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**

No events under Condition #11 occurred during construction. Permittee will contact SHPD and Oahu Island Burial Council regarding any find during the operation of project.



## **2.12 SUP Condition #12**

*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 #12**

Permittee maintained its BMPs throughout construction 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.

