

EXHIBIT "13"

Michael A. Dahilig
Director of Planning



Ka'aina S. Hull
Deputy Director of Planning

COUNTY OF KAUA'I
PLANNING DEPARTMENT

SUBJECT TO CHANGE

DIRECTOR'S REPORT

I. SUMMARY

Action Required by Planning Commission: Consideration of Class IV Zoning Permit, Use Permit, and Special Permit to allow construction of a new solar utility facility and associated site improvements.

Permit Application Nos. Class IV Zoning Permit Z-IV-2018-2
Use Permit U-2018-1
Special Permit SP-2018-1

Name of Applicant(s) AES LAWA'I SOLAR, LLC

II. PERMIT INFORMATION

PERMITS REQUIRED	
<input checked="" type="checkbox"/> Use Permit	Pursuant to Section 8-2.4 of the KCC, 1987, as amended, a Use Permit is required because the proposed project is a utility facility to be located within the County of Kaua'i Agriculture (A) and Open (O) Zoning Districts.
<input type="checkbox"/> Project Development Use Permit	
<input type="checkbox"/> Variance Permit	
<input checked="" type="checkbox"/> Special Permit	Pursuant to Section 205 of the Hawai'i Revised Statutes (HRS) and Chapter 13 of the Rules of Practice and Procedures of the Planning Commission, a Special Permit is required for a use in the State Land Use Agricultural (A) District that is not a permissible use as set forth in Chapter 205 of the HRS.
<input checked="" type="checkbox"/> Zoning Permit Class <input checked="" type="checkbox"/> IV <input type="checkbox"/> III	Pursuant to Section 8-8.4 of the KCC, 1987, as amended, a Class IV Zoning Permit is a procedural requirement for obtaining a Use Permit in the Agriculture (A) Zoning District.
<input type="checkbox"/> Special Management Area Permit <input type="checkbox"/> Use <input type="checkbox"/> Minor	

EXHIBIT "13"

G.2.a.1.
SEP 1. 2 2017

AMENDMENTS	
<input type="checkbox"/> Zoning Amendment	
<input type="checkbox"/> General Plan Amendment	
<input type="checkbox"/> State Land Use District Amendment	

Date of Receipt of Completed Application: August 8, 2017
Date of Director's Report: September 7, 2017
Date of Public Hearing: September 26, 2017
Deadline Date for PC to Take Action (60TH Day): September 11, 2017
 November 10, 2017 (Oct 24 Meeting)

III. PROJECT DATA

PROJECT INFORMATION	
Parcel Location:	The project site is located along the makai side of Koloa Road, approximately 600 feet south east of the Koloa Road and Lawailoa Lane intersection
Tax Map Key(s):	2-6-003:001 Area: Approx. 196.33 acres
ZONING & DEVELOPMENT STANDARDS	
Zoning:	Agriculture (A), Open (O)
State Land Use District:	Agricultural
General Plan Designation:	Agriculture
Height Limit:	50 feet
Max. Land Coverage:	50% of lot area
Parking Requirement:	1 parking stall per 200 s.f. office space.
Front Setback:	10 feet
Rear Setback:	10 feet
Side Setback:	5 feet
Community Plan Area:	South Kaua'i Community Plan
Community Plan Land Use Designation:	Agricultural
Deviations or Variances Requested:	NA.

IV. LEGAL REQUIREMENTS

<p>Section 8-3.1(f), KCC: This report is being transmitted to the Applicant and Planning Commission in order to satisfy the requirements of Section 8-3.1(f), relating to the provision of the Planning Director's report and</p>
--

recommendation on the subject proposal within sixty (60) days of the filing of a completed application. The application was received on August 17, 2017 and the Applicant, through its authorized agent, was notified accordingly of the Planning Department's intent to commence permit processing.

Public Hearing Date: SEPTEMBER 26, 2017

V. PROJECT DESCRIPTION AND USE

As stated in the application, the Applicant proposes to construct a twenty-eight (28) megawatt solar generation facility, encompassing approximately 196.33 acres of the subject property (total acreage: 1,062.291). In addition to the solar panel arrays, a twenty (20) megawatt battery energy storage system and related interconnection and ancillary facilities are also proposed.

The solar facility will consist of solar panels mounted on single-axis trackers that will rotate along a fixed horizontal axis from east to west, tracking the movement of the sun. All of the power generated by the solar panels will be directed to a new proposed electrical substation.

The solar project site will be surrounded by a seven (7) foot high chain link security fence. There will be a twenty-five (25) foot buffer around the outside of the security fence. Interior access roads throughout the site will allow for access within the site to all major equipment. The solar systems will have an average height of 7.5 feet above ground, and they will be aligned in rows distanced apart from each other from between eighteen (18) feet to twenty-five (25) feet.

Please refer to the application for further description.

VI. APPLICANT'S REASONS/JUSTIFICATION

Please refer to Application.

VII. AGENCY COMMENTS

Forthcoming

VIII. PRELIMINARY EVALUATION

In evaluating the Applicant's request to construct and operate the proposed solar utility facility, the following should be considered:

General Plan

1. Section 5.2 of the Kaua'i General Plan sets the following polices concerning

Agriculture Lands:

- A. Lands included within the Agriculture designation shall be predominantly used for or held in reserve to be used in the future for agricultural activities. These activities include breeding, planting, nourishing and caring for, gathering, and processing of any animal or plant organism, including aquatic animals and plants, for the purpose of producing food or material for non-food products; the commercial growing of flowers or other ornamental plants; the commercial growing of forest products; and the commercial breeding and caring for domestic animals and pets.
- B. The primary intent of the Agriculture designation is to conserve land and water resources in order to:
 - (1) Insure an excellent resource base for existing and potential agricultural uses;
 - (2) Assure a sufficient supply of land available for sale or lease at a cost that is economically feasible for agricultural enterprise; and
 - (3) Promote and preserve open agricultural lands as a key element of Kaua'i's rural character and lifestyle, essential to its image as "The Garden Island" and to the continued viability and development of Kaua'i's visitor industry.
2. The overall parcel will remain predominantly free of development and the proposed structures will function in conjunction with the overall agriculture use of the parcel.

Use Permit

1. The proposed request is to be evaluated pursuant to Section 8-3 of the Kauai County Code (KCC), 1987, as amended, relating to the standards of issuance for a Use Permit:

A Use Permit may be granted only if the Planning Commission finds that the establishment, maintenance, or operation of the construction, development, activity, or use in particular case is a compatible use and is not detrimental to health, safety, peace, morals, comfort, and general welfare of persons residing or working the neighborhood of the proposed use, or detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the community, and will not cause any substantial harmful environmental consequences on the land of the applicant or on other lands or waters, and will not be inconsistent with the intent of this Chapter and the General Plan.

2. A solar utility facility is permissible in the Agriculture (A) Zoning District and the Open (O) Zoning District with a Use Permit.

3. The overall parcel will remain predominantly free of development and the proposed structures will function in conjunction with the overall agriculture use of the parcel.
4. The useable portions of the site will be leased for pasture purposes at a rate or rates that are at least fifty percent (50 %) below the fair market rental value.
5. The proposed use will not interfere with other agricultural uses that are generally allowed within the Agriculture (A) Zoning District.
6. Following the anticipated twenty-five (25) to thirty-five (35) year life and operation of the solar facility, all equipment can either be retrofitted with new equipment or will be removed from the site, and the site will be restored to its preconstruction condition.
7. The existing vegetation on the subject property should screen the proposed project site from being visible from Koloa Road and the residential area northwest of the project site.
8. If necessary to mitigate visual impacts, the applicant does propose to install new landscaping around the project area to further screen the site from Aka Road or Koloa Road.
9. The nearest residential structures are approximately .25 miles northwest of the subject site; therefore, no significant impacts should be generated that affect those residing on the closest residential properties.
10. During operation, the solar panels will not make any noise; however, the inverters and transformers will emit less than fifty (50) decibels (dBA) at less than ten (10) feet. This level of noise would not be considered significant.
11. The proposed project is not anticipated to increase traffic impacts in the area. During construction, the applicant proposes to employ traffic control personnel to control traffic entering the northern staging area from Koloa Road.
12. For wastewater treatment and disposal, the proposed project will utilize individual wastewater systems approved by the State Department of Health.
13. For solid waste, the proposed project will dispose of solid waste at the County's transfer station for disposal at the County landfill.
14. As discussed in the application's Biological Report, the existing state of botanical resources and wildlife have been heavily compromised by past and present agricultural uses on the subject property; and as a result, there do not appear to be

any mammalian or avian species or botanical resources that will be negatively impacted by the proposed project.

15. As a result of significant agricultural cultivation in the past, the subject property has been heavily disturbed, and there does not appear to be any pre-contact archaeological resources; however, nine (9) post-contact historic resources have been identified (all related to sugar cane cultivation). The applicant proposes to follow an archaeological monitoring plan to mitigate any activities that could adversely affect these historic properties.
16. The application states that the Applicant has completed an analysis of the traditional and cultural practices occurring on and around the subject property, and the analysis reflects that the proposed project will have no impact on any traditional or customary practices of native Hawaiians. However, based on the documents submitted by the Applicant, the Department is unclear as to whether the Applicant has provided sufficient evidence concerning cultural impacts given the standards established in Ka Paakai O Ka Aina v. Land Use Commission, 94 Hawaii 31 (2000). In particular, the Department is not able to determine that the Applicant has identified whether any valued cultural, historical, or natural resources exists in the subject property area, and whether any native Hawaiian traditional or customary practices were exercised in the subject property area. As such, the Department cannot determine the extent that any resources and traditional and customary practices will be affected by the proposed use and cannot develop any proposed feasible conditions to mitigate any such impacts.

As such, it would be advisable that prior to action, the applicant submit additional documents demonstrating that a proactive approach that has been taken with the area's cultural practitioners to ensure that traditional or customary practices are not impacted.

Special Permit

1. The use will not be contrary to the objectives sought to be accomplished by the HRS Chapter 205 and 205A, and the SLUC Rules.
 - The useable portions of the site will be leased for pasture purposes at a rate or rates that are at least fifty percent (50 %) below the fair market rental value.
 - The proposed use will not interfere with other agricultural uses that are generally allowed within the Agricultural District.
 - Following the anticipated twenty-five (25) to thirty-five (35) year life and operation of the solar facility, all equipment can either be retrofitted with

new equipment or will be removed from the site, and the site will be restored to its preconstruction condition.

2. The desired use will not adversely affect surrounding property.
 - The proposed use will be compatible with the surrounding area, and it will not prevent surrounding lands from being used for agricultural purposes.
 - As previously stated, the nearest residential structures are approximately .25 miles north west of the subject site; therefore, no significant impacts should be generated that affect those residing on the closest residential properties.
3. The use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection.
 - Fire and police services are located approximately four (4) miles away. Aside from standard fire and police protection, the proposed project is not anticipated to significantly impact these agencies.
 - The closest schools are Koloa Elementary School and Kalaheo Elementary School; however, it is not anticipated that the proposed project will impact these schools.
 - The proposed use is not anticipated to place additional burdens on other public agencies.
4. Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established.
 - As stated in the application, the State has recently recognized the need to promote alternative energy production, including solar energy production. Such facilities require large tracts of land. As compared to the State Land Use Urban or Rural Districts, these large tracts are predominantly located in the State Land Use Agriculture District. Provided such new uses do not prevent or adversely impact agricultural uses in the surrounding area, they are recognized as necessary and permissible in the Agricultural District.
5. The land on which the proposed use is sought is unsuited for the uses permitted within the District.
 - As proposed in the application, through grazing opportunities, the site will be used for agricultural production.

Environmental Impacts -- As discussed in the application's Biological Report, the existing state of botanical resources and wildlife have been heavily compromised by past and present agricultural uses on the subject property; and as a result, there do not appear to be any mammalian or avian species or botanical resources that will be negatively impacted by the proposed project.

For wastewater treatment and disposal, the proposed project will utilize individual wastewater systems approved by the State Department of Health.

For Solid waste, the proposed project will dispose of solid waste at the County's transfer station for disposal at the County Landfill.

Cultural and Historic Impacts -- As a result of significant agricultural cultivation in the past, the subject property has been heavily disturbed, and there does not appear to be any pre-contact archaeological resources; however, nine (9) post-contact historic resources have been identified (all related to sugar cane cultivation). The Applicant proposes to follow an archaeological monitoring plan to mitigate any activities that could adversely affect these historic properties.

The application states that the Applicant has completed an analysis of the traditional and cultural practices occurring on and around the subject property, and the analysis reflects that the proposed project will have no impact on any traditional or customary practices of native Hawaiians. However, based on the documents submitted by the Applicant, the Department is unclear as to whether the Applicant has provided sufficient evidence concerning cultural impacts given the standards established in Ka Paakai O Ka Aina v. Land Use Commission, 94 Hawaii 31 (2000). In particular, the Department is not able to determine that the Applicant has identified whether any valued cultural, historical, or natural resources exists in the subject property area, and whether any native Hawaiian traditional or customary practices were exercised in the subject property area. As such, the Department cannot determine the extent that any resources and traditional and customary practices will be affected by the proposed use and cannot develop any proposed feasible conditions to mitigate any such impacts.

As such, it would be advisable that prior to action, the applicant submit additional documents demonstrating that a proactive approach that has been taken with the area's cultural practitioners to ensure that traditional or customary practices are not impacted.

Agency Comments -- The Applicant should resolve and comply with all agency requirements as recommended in the permit application review, including but not limited to the fire code requirements as imposed by the County Fire Department, drainage requirements for DPW-Engineering Division, wastewater requirements for the State Department of Health (DOH), and the archaeological/historical requirements of the State Historic Preservation Division (SHPD).

IX. PRELIMINARY CONCLUSION

Based on the information contained in the Staff Report Findings and Evaluation, the Planning Department concludes that the proposed development should not have any detrimental impact to the environment or the surrounding area. The proposed use should not be detrimental to persons, property, or the environment in the surrounding area.

However, based on the documents submitted by the Applicant, the Department is unclear as to whether the Applicant has provided sufficient evidence concerning cultural impacts given the standards established in Ka Paakai O Ka Aina v. Land Use Commission, 94 Hawaii 31 (2000). In particular, the Department is not able to determine that the Applicant has identified whether any valued cultural, historical, or natural resources exists in the subject property area, and whether any native Hawaiian traditional or customary practices were exercised in the subject property area. As such, the Department cannot determine the extent that any resources and traditional and customary practices will be affected by the proposed use and cannot develop any proposed feasible conditions to mitigate any such impacts.


Therefore, prior to action, the Applicant should submit additional documents demonstrating that a proactive approach has been taken to identify whether any valued cultural, historical, or natural resources existing in the subject property, and whether any native Hawaiian traditional or customary practices were exercised in the subject property area.

X. PRELIMINARY RECOMMENDATION

Based on the foregoing evaluation and conclusion it is hereby recommended Class IV Zoning Permit Z-IV-2018-2, Use Permit U-2018-1, and Special Permit SP-2018-1 can be approved; however, approval shall be contingent upon a demonstration that comprehensive efforts have been taken to identify whether any valued cultural, historical, or natural resources existing in the subject property, and whether any native Hawaiian traditional or customary practices were exercised in the subject property area. If any impacts are demonstrated to resources or practices are found, then feasible conditions should be imposed to mitigate said impacts.

The Planning Commission is further advised that this report does not represent the Planning Department's final recommendation in view of the forthcoming public hearing process scheduled for SEPTEMBER 26, 2017 whereby the entire record should be considered prior to decision making. The entire record should include but not be limited to:

- a. Pending government agency comments;
- b. Testimony from the general public and interested others; and
- c. The Applicant's response to staff's report and recommendation as provided herein.

By 
KA'AINA HULL
Deputy Director of Planning

Approved & Recommended to Commission:

By 
MICHAEL A. DAHLIG
Director of Planning

Date: 9/7/17