

**EXHIBIT "36"**

## Max Graham

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**From:** Max Graham  
**Sent:** Monday, September 25, 2017 12:04 PM  
**To:** Max Graham  
**Subject:** FW: Lawai Solar 1 of 2 - additional bumps from USFWS

**From:** "Griesemer, Adam" <[adam\\_griesemer@fws.gov](mailto:adam_griesemer@fws.gov)>  
**Subject:** Re: Lawai Solar 1 of 2  
**Date:** September 25, 2017 at 11:09:40 AM HST  
**To:** Reginald David <[davidr003@hawaii.rr.com](mailto:davidr003@hawaii.rr.com)>  
**Cc:** Aaron Nadig <[aaron\\_nadig@fws.gov](mailto:aaron_nadig@fws.gov)>, "Nagatani, Leila" <[leila\\_nagatani@fws.gov](mailto:leila_nagatani@fws.gov)>

Hi Reggie,

In addition to the above, the Service recommends the following. Regards, Adam

Please note that some photovoltaic systems on the United States mainland are resulting in impacts to migratory waterfowl and shorebirds. This source of mortality has been described previously (McCrary et. al. 1986), and recent impacts are being observed at solar facilities in California, including the Desert Sunlight Solar Farm and Genesis Solar Energy Project. Birds have been inadvertently attracted to these sites due to solar panels' resemblance to water and their proximity to important migratory flyways (Donnelly-Shores 2013 and Clarke 2013). Once attracted, collisions with the solar arrays have resulted in injuries and mortalities; once grounded, birds are also subject to predation (Kagan et. al. 2014). While attraction to solar arrays has not yet been documented in Hawaii, the State harbors a significant diversity of waterbird and shorebird species, including Hawaiian waterbirds and Hawaiian goose. We recommend that personnel at the solar site be educated about the potential for birds to be attracted and inadvertently harmed. If monitoring indicates that species are occurring at the photovoltaic system, or additional information about the facility's impacts to native Hawaiian species becomes available, please contact us so we may assist you in avoiding and minimizing impacts.

### References:

Clarke, C. 2013. "*Endangered Bird Found Dead at Desert Solar Power Facility*" (On-line), KCET. Available online at <http://www.kcet.org/news/rewire/solar/photovoltaic-pv/endangered-bird-dead-at-desert-solar-facility.html>

Donnelly-Shores, P. 2013. "*Big Solar and Avian Mortality*" (On-line), Berkeley Energy & Resources Collaborative. Available online at <http://berc.berkeley.edu/big-solar-and-avian-mortality/>

Kagan et. al. 2014. National Fish and Wildlife Forensics Laboratory. Avian Mortality at Solar Energy Facilities in Southern California: A Preliminary Analysis.

McCrary et. al.1986. Avian Mortality at a Solar Energy Power Plant. Journal of Field Ornithology 57(2):135-141.

On Fri, Sep 22, 2017 at 4:51 PM, Reginald David <[davidr003@hawaii.rr.com](mailto:davidr003@hawaii.rr.com)> wrote:  
Aloha Adam,

Deeply appreciate your very fast processing on our request. I owe you one. Have a great weekend.

Mahalo  
Reg.

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Please consider the environment before printing this email.

On Sep 22, 2017, at 4:17 PM, Griesemer, Adam <[adam\\_griesemer@fws.gov](mailto:adam_griesemer@fws.gov)> wrote:

Hi Reggie,

The U.S. Fish and Wildlife Service (Service) received your email (above) requesting our review of the proposed project. AES Lawai Solar, LLC (AES) proposes to construct and operate a utility-scale solar energy facility on approximately 196 acres of land owned by McBryde Sugar Company, LLC. The proposed action consists of a photo-voltaic (PV) system, Battery Energy Storage System (BESS), and related interconnection and ancillary facilities. The project includes construction of PV and BESS facilities, installation of above ground as well as underground electrical connections, installation of shielded lighting, construction of electrical component systems, and access roads. A seven foot high chain link fence will be installed along the perimeter of the project site. The application states that although solar facilities will be connected by underground electrical lines elsewhere in the project, above ground lines spanning the valley will need to be installed to connect the Northern Solar Arrays to the Southern Solar Arrays. Our comments are provided under the authorities of the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C 1531 et seq.).

The application for the County of Kauai permits identify endangered or threatened species known to occur or transit the proposed project area, including the following: the endangered Hawaiian petrel (*Pterodroma sandwichensis*), band-rumped storm-petrel (*Oceanodroma castro*), and the threatened Newell's shearwater (*Puffinus auricularis newelli*) (hereafter collectively referred to as Hawaiian seabirds); the endangered Hawaiian goose (*Branta sandvicensis*); the endangered Hawaiian hoary bat (*Lasiurus cinereus semotus*); and the endangered Hawaiian gallinule (*Gallinula galeata sandvicensis*), Hawaiian coot (*Fulica alai*), Hawaiian duck (*Anas wyvilliana*), and Hawaiian stilt (*Himantopus mexicanus knudseni*) (hereafter collectively referred to as Hawaiian waterbirds).

We acknowledge all measures described to avoid and minimize impacts (recommendations from the Biological Report) to Hawaiian seabirds, Hawaiian goose, Hawaiian hoary bat, and Hawaiian waterbirds. The Service also acknowledges that the route selected to install the lines 29 feet above ground spanning a distance of 600 feet long will be shielded by vegetation at or above the height of the lines located upslope of the route (Endangered Species Report, Exhibit E9).

We appreciate your efforts to conserve endangered species.

Regards, Adam

On Fri, Sep 8, 2017 at 7:19 AM, Reginald David <[davidr003@hawaii.rr.com](mailto:davidr003@hawaii.rr.com)> wrote:  
Aloha Adam,

We really appreciate your willingness to help us on this one. I have checked with the powers that be and an email with your views is adequate for our needs. This project will not be going before the LUC, but will be before the County Planning Department on the 26th of this month.

To reiterate what I told you yesterday, the applicant did have a biological survey conducted by SWCA, following that they hired me to work with the engineers and project managers to assist them in picking the best route for the one stretch of overhead power line, and to recommend appropriate minimization measures to avoid impacts to listed seabirds.

I am sending you two documents under separate cover as they are rather large. In the second file I am sending you will find the biological survey report as Exhibit E-5, and the Endangered Species Report and recommendations as Exhibit E-9.

Please let me know that you got both emails - I am a little nervous about the size of the second one.

Mahalo

Reg.

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