

BELLES GRAHAM LLP

ATTORNEYS AT LAW

MAX W.J. GRAHAM, JR.
JONATHAN J. CHUN
IAN K. JUNG

Federal I.D. No. 99-0317663

WATUMULL PLAZA
4334 RICE STREET, SUITE 202
LIHUE, KAUAI, HAWAII 96766-1388

TELEPHONE NO: (808) 245-4705
FACSIMILE NO: (808) 245-3277
E-MAIL: mail@kauai-law.com

OF COUNSEL

MICHAEL J. BELLES
DAVID W. PROUDFOOT
DONALD H. WILSON

December 20, 2021

Mr. Daniel E. Orodener
Executive Officer
Land Use Commission
State of Hawaii
P. O. Box 2359
Honolulu, Hawaii 96804-2359

VIA EMAIL & REGULAR MAIL

2021 DEC 23 P 32
LAND USE COMMISSION
STATE OF HAWAII

Re: **Approving Agency: Planning Commission, County of Kauai
In The Matter Of The Application Of AES LAWA'I SOLAR, LLC,
a Delaware limited liability company, for a Use Permit, a
Class IV Zoning Permit, and a Special Permit for real property
situated at Kōloa and Lāwa'i, Kona, Kaua'i, Hawai'i, identified by
Kaua'i Tax Map Key No. (4) 2-6-003:001 (por.)
Use Permit No. U-2018-1
Class IV Zoning Permit No. Z-IV-2018-1
Special Permit No. SP-2018-2**

**Approving Agency: State Land Use Commission
In The Matter Of The Application Of AES Lawa'i Solar, LLC For A
Special Use Permit To Establish A Solar Energy Facility On
Approximately 196.33 Acres Of Land Within The State Land Use
Agricultural District At Kōloa And Lāwa'i, Kaua'i, Hawai'i,
Tax Map Key (4) 2-6-003:001 (portion)
Docket No. SP17-408**

Dear Mr. Orodener:

I have attached a copy of the AES Lawa'i Solar, LLC 2021 Annual Report-Special Use Permit Compliance ("2021 Report") for your review. The 2021 Report is being submitted pursuant to the conditions contained in the following approvals:

1. Condition 8 of the Conditions of Approval contained in the Order Adopting The County Of Kauai Planning Commission's Recommendation, Findings Of Fact, Conclusions Of Law, And Decision And Order To Approve The State Special Use Permit, With Modifications (Docket No. SP17-408) approved by the State Land Use Commission, filed November 22, 2017.

Mr. Daniel E. Orodener
December 20, 2021
Page 2

2. Condition 8 of the Conditions of Approval contained in Findings Of Fact, Conclusions Of Law, And Decision And Order (Special Permit SP-2018-2, Use Permit U-2018-1, and Class IV Zoning Permit Z-IV-2018-1) approved by the Planning Commission of the County of Kauai on September 26, 2017.

Please contact me if you have any questions or need additional information concerning the 2021 Annual Report.

Thank you very much.

Sincerely yours,

BELLES GRAHAM LLP



Max W. J. Graham, Jr.

MWJG:jgm
Enclosure

AES LAWA'I SOLAR, LLC,
2021 Annual Report - Special Use Permit Compliance

#	LAWA'I PERMIT COMPLIANCE/CONDITIONS	AES RESPONSES
1	The solar utility facility shall be constructed and operated as represented. Any changes to the facility and/or operation shall be reviewed by the Department to determine whether Planning Commission review and approval is required.	2021 – No status change for the year as the plant remains operational.
2	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 by the Applicant and its successors and/or assigns within six 6 months of the start of commercial power generation. Extensions to this deadline may be granted by the Director of the County of Kaua'i Planning Department (PD) for unforeseen extenuating circumstances. Additional consideration may be given if the Applicant is actively seeking to have such operations established.	2021 – No status change for the year and this item remains N/A.
3	If at any time during the term of the Special Permit (SP) no compatible agricultural operations exist on the usable lands of the Petition Area for 6 months, the Applicant shall notify the Director of the Kaua'i PD in writing within 30 days of the end of the 6-month period. If requested by the Planning Director, the Applicant shall attend a meeting of the Planning Commission and submit a report to the Planning Commission detailing the Applicant's actual and reasonable efforts to establish compatible agricultural operations on the usable lands of the Petition Area. The Planning Commission may determine whether probable cause exists to re-evaluate the SP and to hold a hearing pursuant to the Rules of the Planning Commission. Extensions to the 6- month deadline may be granted by the Planning Director for unforeseen extenuating circumstances.	2021 – No status change for the year and this item remains N/A.

AES LAWA'I SOLAR, LLC,
2021 Annual Report - Special Use Permit Compliance

#	LAWA'I PERMIT COMPLIANCE/CONDITIONS	AES RESPONSES
4	<p>The Applicant shall submit for review and obtain the approval of the following: rom the Director of the Kaua'i PD, prior to the issuance of a grading or building permit:</p> <ul style="list-style-type: none"> a. Applicant shall minimize or avoid clearing and grading activities from June 1 through September 15. b. A survey map accompanied by a metes and bounds description of the APPROVED Petition Area. c. 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. 	<p>2021 – Nothing additional to provide.</p>
5	<p>Prior to the closing of the building permit for the facility, the Applicant shall submit to the Kaua 'i PD proof of financial security, such as a letter of credit or similar assurance, from a creditworthy financial institution satisfactory to Kaua'i PD. The security shall remain in place for the duration of the operation of the Project, with evidence of same provided to the Director of the Kaua'i PD on an annual basis, in an amount approved by the Kaua'i PD as sufficient to decommission the Project and restore the Petition Area to substantially the same physical condition as existed prior to the development of the facility.</p> <p>The applicant shall decommission the facility, including the removal of all equipment related to the facility, within twelve (12) months following the termination of operations of the facility. A change in project ownership or a change in 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 Kaua'i DP for processing through the Planning Commission, within three (3) months of the ownership change.</p> <p>The Applicant shall incorporate this condition in the license and/or lease agreement with the land owner, and said license and/or lease agreement shall be reviewed for approval by the Kaua'I PD.</p>	<p>2021 – Nothing additional to provide.</p>

AES LAWA'I SOLAR, LLC,
2021 Annual Report - Special Use Permit Compliance

#	LAWA'I PERMIT COMPLIANCE/CONDITIONS	AES RESPONSES
6	<p>The Applicant shall mitigate impacts to fauna on site as follows:</p> <ol style="list-style-type: none"> a. Applicant shall develop an endangered species awareness training module, which shall include all potential endangered species that may frequent the Petition area. b. All construction workers and solar facility employees shall undergo endangered species awareness training prior to starting work. c. In order to minimize adverse impacts on the Federally Listed Threatened Species, Newell's Shearwater and other seabirds, external lighting shall be only of the following types: shielded lights, cut-off luminaries, or indirect lighting. Spotlights aimed upward or spotlighting of structures, landscaping or the ocean shall be prohibited. d. Barbed wire shall not be used on the top of any fencing. e. Applicant shall monitor avian injuries occurring at the photovoltaic system, and report occurrences to the USFWS. 	<p>2021 –</p> <ol style="list-style-type: none"> a) The program developed in by Reginald David of Rana Biological Consulting (Kailua-Kona) can be provided upon request. b) All solar facility employees underwent the training prior to starting work on site. c) The Lawai facility's use of lighting is still limited to shielded lighting in its high voltage substation. d) Barb wire is still not being used on any top of any fencing. e) Within the Lawai Facility's <i>Operational Endangered Species Awareness & Protection Plan</i> procedures are detailed for monitoring, recovering and reporting of injured or dead T&E species.
7	<p>The Applicant shall establish the Project within two (2) years of the date of the LU C's Decision and Order approving the SP. Requests for extension of this deadline shall be submitted to the Director of the Kaua'i PD 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 SP shall be valid for a period of thirty-five (35) years from the start of commercial operations, 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 SP's expiration. Approval of time extensions shall not be required from the LUC.</p>	<p>2021 – Condition has been met and item #7 is longer applicable.</p>
8	<p>On or before December 31 of each year that the SP is in effect, the Applicant or its successor shall file an annual report to the LUC, OP, and the Kaua'i PD that demonstrates the Applicants' compliance with conditions of the SP.</p>	<p>2021 – This report is meant to demonstrate compliance.</p>

AES LAWA'I SOLAR, LLC,
2021 Annual Report - Special Use Permit Compliance

#	LAWA'I PERMIT COMPLIANCE/CONDITIONS	AES RESPONSES
9	Major modifications to: (1) the Project plans, including but not limited to significant increases in the number of PV panels; (2) amendments to the conditions of approval; (3) significant expansions of the approved area; or (4) change in uses stated herein, shall be subject to the review and approval of the Planning Commission and the LUC. 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 Kaua'i PD.	2021 – There were no major modifications to project plans, amendments to the conditions of approval, expansions of the approved area, or changes in uses as stated in the permit compliance condition.
10	The Applicant and/or landowner shall notify the Director of Kaua'i PD of: <ul style="list-style-type: none"> a. Any change or transfer of licensee on the Petition Area. b. Any change in uses on the Petition Area. c. Termination of any uses on the Petition Area; and/or d. Transfer in ownership of the Petition Area. 	2021 - There was no change, termination or transfer of any items listed to the Petition Area
11	Enforcement of the conditions of the SP shall be pursuant to the Rules of the Planning Commission, including the issuance of an order to show cause as to the reason the SP should not be revoked if the Planning Commission has reason to believe that there has been a failure to perform the conditions herein.	No response required.
12	If the PV array creates a hazardous condition for pilots or motorists, the facility operator shall immediately mitigate the hazard upon notification by the DOT, Airports Division, or the FAA.	2021 – There have been no notifications from DOT, Airports or FAA.
13	If required to mitigate visual impacts, new landscaping shall be installed and maintained around the Solar Project to screen it when viewed from Aka Road or Koloa Road. The Planning Department shall determine whether additional landscape screening is necessary and the degree at which it is provided.	2021 - AES continues to maintain a vegetative screening barrier around the site such that it is not visible from any major roads and has not been notified by the Planning Department of a need for additional landscape screening.

AES LAWA'I SOLAR, LLC,
2021 Annual Report - Special Use Permit Compliance

#	LAWA'I PERMIT COMPLIANCE/CONDITIONS	AES RESPONSES
14	<p>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 Kaua 'i Island Burial Council, as applicable, 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 facility, 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.</p>	<p>2021 – No significant findings were identified during the construction or operational phase of life for the Lawai project.</p>
15	<p>The Applicant shall comply with the requirements of the State Department of Health, the County's Fire Department, the Department of Water, and the Department of Public Works, as well as any other applicable government agencies.</p>	<p>2021 – AES remains in compliance with all listed governmental agencies.</p>
16	<p>The Applicant shall develop and utilize Best Management Practices (BMP's) during all phases of development in order to minimize erosion, dust, and sedimentation impacts of the project to abutting properties.</p>	<p>2021 – Condition was met during construction phase and item #16 no longer applicable.</p>

AES LAWA'I SOLAR, LLC,
2021 Annual Report - Special Use Permit Compliance

#	LAWA'I PERMIT COMPLIANCE/CONDITIONS	AES RESPONSES
17	<p>The Applicant shall develop and operate the facility, including the implementation of measures to mitigate potential impacts of the Project, in substantial compliance with the representations made to the Planning Commission and the LUC as reflected in this Decision and Order. Such mitigation measures include, but are not limited to, the use of temporary and pennant BMPs to ensure that the development and operation of the facility do not result in an increase in storm water runoff that adversely impacts downstream properties. Failure to so develop the Petition Area may result in revocation of the SP.</p>	<p>2021</p> <ul style="list-style-type: none"> • The Lawai facility completed construction using Best Management Practices in Dust Control, Matting, Silt Fencing and SWPPP and did not impact anyone downstream of the site or any abutting properties or waterways. • AES developed and implemented an endangered species awareness program and training module for the Lawai facility's operational phase of life. This program was developed in by Reginald David of Rana Biological Consulting (Kailua-Kona) which was prepared by a local biologist and can be provided upon request. • AES developed and implemented a Spill Prevention Control & Countermeasures Plan for the Lawai facility's operational phase of life. This program was developed by EA Engineering, Science, and Technology, Inc. (Honolulu) and can be provided upon request.
18	<p>To the extent possible within the confines of union requirements and applicable prohibitions against discrimination in employment, the Applicant shall seek to hire Kaua 'i contractors, and shall seek to employ residents of Kaua'i in temporary construction and permanent jobs. It is recognized that the applicant may have to employ non-Kaua'i residents for particular skilled jobs where no qualified Kaua'i resident possesses such skills. For the purpose of this condition, the Commission shall relieve the applicant of this requirement if the applicant is subjected to anti-competitive restraints on trade or other monopolistic practice.</p>	<p>2021 – To the extent possible, AES continues to leverage local Kauai contractors/employees whenever possible.</p>
19	<p>The Applicant shall implement to the extent possible sustainable building techniques and operational methods for the project, such as Leadership in Energy and Environmental Design (LEED) standards or another comparable state approved, nationally recognized, and consensus-based guideline, standard, or system, and strategies, which may include but is not limited to recycling, natural lighting, extensive landscaping, solar panels, low-energy fixtures, low energy lighting and other similar methods and techniques. All such proposals shall be reflected on the plans submitted for building permit review.</p>	<p>Not applicable.</p>

AES LAWA'I SOLAR, LLC,
2021 Annual Report - Special Use Permit Compliance

#	LAWA'I PERMIT COMPLIANCE/CONDITIONS	AES RESPONSES
20	The Planning Commission reserves the right to revise, add, or delete conditions of approval in order to address or mitigate unforeseen impacts the project may create, or to revoke the permits through the proper procedures should conditions of approval not be complied with or be violated.	No comment.
21	The Applicant is advised that additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agencies.	No comment.
22	As recommended by the State Office of Planning the Applicant shall develop an endangered species awareness training module, which shall include all potential endangered species that may frequent the Petition area. The County shall receive a copy of the training module materials before utilization.	2021 – Per the 2019 update, AES developed and implemented an endangered species awareness program and training module for the Lawai facility's operational phase of life.
23	As recommended by the State office of Planning, Applicant shall ensure all construction workers and solar facility employees shall undergo endangered species awareness training prior to starting work.	2021 – Per the 2019 update, in accordance with the aforementioned endangered species awareness program, all solar facility employees have undergone endangered species awareness training prior to starting work.
24.	Prior to building permit submittal, the Applicant shall hold a public meeting for residents in the areas of Lawa'i, Oma'o, Koloa, Kalaheo and Po'ipu to review the construction plans for the Solar Project to solicit input and mitigate where possible concerns raised.	2021 – Condition has been met and item #24 is no longer applicable.