
December 12, 2023

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. SP21-411 AES West
O'ahu Solar, LLC

Dear Mr. Orodenker,

Pursuant to Condition No. 11 in the Land Use Commission Decision & Order (“Order”) in Docket No. SP21-411, attached is the annual compliance report for the AES West O'ahu Solar, LLC project (“Project”).

As detailed in the attached report, the Project complies with the conditions set forth in the Order, effective June 24, 2021.

Please contact us if there are any questions or concerns.

Sincerely,

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AES West O'ahu Solar, LLC
2023 Annual Report – Special Use Permit Compliance (SP21-411)

#	Condition	Petitioner Response
1	<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 permanent Best Management Practices ("BMPs") to ensure that the development and operation of the facility does not result in an increase in stormwater runoff that adversely impacts downstream properties. Failure to so develop the Petition Area may result in revocation of the SP.</p>	<p>The Project obtained necessary governmental approvals to complete construction.</p> <p>Stormwater retention drawings and Best Management Practices ("BMPs") were implemented during construction.</p> <p>The Project is at 100% completion for site clearing, grading, mechanical solar panel installation, and substation construction.</p> <p>The Project is in substantial compliance with the representations made to the Planning Commission and the LUC upon receipt of the required governmental approvals.</p>
2	<p>Usable lands of the Petition Area, as required under Condition No. 5a below, 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 six months of the start of commercial power generation (referred to as the "initial six-month period"). Extensions to this deadline may be granted by the Director of the DPP for unforeseen circumstances that were beyond the control of the Applicant.</p>	<p>The Project is at 100% completion for site clearing, grading, mechanical solar panel installation, and substation construction. Once in operation, compatible agricultural activities will be established in compliance with this condition.</p>
3	<p>If at any time during the term of the SUP, no compatible agricultural operations exist on the usable lands of the Petition Area for six months after the initial six- month period (referred to as the "subsequent six- month periods"), the Applicant shall notify the Planning Commission and the Director of the DPP in writing within 30 days of the</p>	<p>The Project is at 100% completion for site clearing, grading, mechanical solar panel installation, and substation construction.</p> <p>Once in operation, compatible agricultural activities will be established in compliance with this condition. If agricultural operations do not exist or</p>

	<p>end of any subsequent six-month periods. If requested by the Planning Commission, 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 actively seek the establishment of compatible agricultural operations on the usable lands of the Petition Area. The Planning Commission shall determine whether probable cause exists to re-evaluate the SUP and to hold a hearing pursuant to Section 2-49 of the Rules of the Planning Commission. Extension to any subsequent six-month period's deadlines may be granted by the Planning Commission for unforeseen circumstances that were beyond the control of the Applicant.</p>	<p>lapse in the specified time frame, AES will notify the Planning Commission and the Director of DPP as specified in this condition.</p>
4	<p>This SUP shall be valid for a period of 29 years from the date of the LUC's Decision and Order approving the SUP, subject to further extensions upon a timely request for extension filed with the Planning Commission at least 120 days prior to the SUP's expiration, and with the approval of the Land Use Commission.</p>	<p>The Special Use Permit is effective as of June 24, 2021. No request for extension is contemplated at this time.</p>
5	<p>The Applicant, its assignees, or the landowner, shall cause the decommissioning of the Project at the Applicant's, assignee's, or owner's expense by removing all of the equipment related to the solar energy facility within 12 months of the conclusion of Project operation, or its useful life, and the restoration of the disturbed earth to substantially the same physical condition as existed prior to the development of the SEF.</p>	<p>AES will decommission the Project within 12 months of the conclusion of Project operation, or its useful life, in accordance with the requirements of this condition.</p>
6	<p>The Applicant shall submit for review and obtain the approval of the following from the Director of the DPP, prior to any subdivision action or the issuance of a grading or building permit:</p>	<p>By letter dated August 31, 2021, the DPP found the information provided by AES to fulfill the intent of Conditions 6a and 6b.</p>

	<p>a. A site plan showing the minimum land area to be made available for compatible agricultural use.</p> <p>b. An alternative design plan(s) that reduces the visual appearance of the Project on native Hawaiian cultural resources and public viewpoints.</p> <p>Alternatives to be considered include, but not limited to, colored SEF infrastructure such as colored photovoltaic (PV) panels and their supporting posts and frames, any energy storage units painted to blend with the existing environment, avoidance of the complete removal of groundcover vegetation, additional screening and landscaping, including tall trees, in select areas, and/or a combination of various recommendations set forth by the cultural practitioner Ms. Lynette Paglinawan, or her representative, and by the United States Bureau of Land Management (BLM) publication or most recent updates to the publication entitled, Best Management Practices for Reducing Visual Impacts of Renewable Energy Facilities on BLM-Administered Lands.</p>	
7	<p>As mitigation for impacts to cultural resources, Petitioner shall coordinate with UH West O'ahu to provide cultural orientation and education to AES and its contractors associated with this Project, prior to construction.</p>	<p>By letter dated October 22, 2021, University of Hawai'i West O'ahu affirmed AES and UHWO coordinated to provide cultural orientation and education to AES and its contractors associated with the Project.</p>
8	<p>Prior to the close of the building permit for the SEF, the Applicant shall submit to the DPP proof of financial security to decommission the Project and restore the Petition Area to substantially the same physical condition as existed prior to the development of the Project. Such proof may include, but not be limited to, a posted letter of credit, performance bond, escrow account, or similar mechanism from a creditworthy financial institution. This shall be in favor of the owner of the land subject to the SUP, in the amount estimated by the Applicant to</p>	<p>In accordance with the executed Agreement to Grant Easement between AES and University of Hawai'i (as amended), AES provided a letter of credit as financial security in the amount of the estimated cost of decommissioning, dismantling, removing the SEF and restoring the land.</p> <p>The security was posted on 10-16-2023, before close of the building permit for the SEF in accordance with this condition, and will be held for the duration of the</p>

	<p>decommission the Project at the time of building permit closure. Said security shall remain in place for the duration of the operation of the Project. Evidence of same shall be provided to the Director of the DPP on an annual basis.</p>	<p>Project with evidence provided to the Director of the DPP on an annual basis.</p> <p>A copy of the letter of credit was submitted to the Director of the DPP on 11-02-2023 via certified mail and received confirmation on 11-06-2023.</p>
9	<p>The Applicant shall comply with the recommendations of the U.S. Fish and Wildlife Service ("USFWS") and the State Department of Land and Natural Resources, Division of Forestry and Wildlife ("DOFAW") regarding the protection of endangered Hawaiian hoary bat and endangered and threatened Hawaiian water bird and shorebird species at the Petition Area.</p>	<p>Please see below for responses to the sub-parts of this condition.</p>
9a	<p>No trees or shrubs greater than 15 feet tall shall be disturbed, trimmed or removed during the Hawaiian hoary bat birthing and pupping season (June 1 through September 15).</p>	<p>Grubbing and grading activities are completed, and the Project was in compliance with this condition. Trees or shrubs greater than 15 feet tall were cleared before June 1. This requirement has also been included in the wildlife education and orientation program (see response to Condition 9c).</p>
9b	<p>Any fences that are erected as part of the Project shall not have barbed wire to prevent entanglements of the Hawaiian hoary bat.</p>	<p>The Project is in compliance with this condition. This requirement has also been included in the wildlife education and orientation program (see response to Condition 9c).</p>
9c	<p>A wildlife education and observation program (WEOP) shall be implemented for all construction and regular on-site-staff. Staff shall be trained to identify listed species that may be found on-site (including Hawaiian hoary bat, pueo, Hawaiian seabirds and waterbirds) and to take appropriate steps if these species are observed. If a federally-or state-listed species is observed to be impacted by the Project, a systematic post-construction monitoring program shall be developed and implemented.</p>	<p>By letter dated November 9, 2021, Tetra Tech provided wildlife education and orientation program materials, which was included in AES' Site Orientation and Operations Plan (SOP) for all construction and regular on-site staff. All construction and on-site staff have attested to compliance with the program requirements.</p>
9d	<p>Speed limits shall be established and enforced within the Project area and along the access road.</p>	<p>Speed limits are posted, and the Project is in compliance with this condition. This requirement has also been included in the</p>

		wildlife education and orientation program (see response to Condition 9c).
9e	Construction activities shall be restricted to daylight hours as much as possible during the seabird peak fallout period (September 15-December 15) to avoid the use of nighttime lighting that could attract seabirds.	Construction activities are complete and nighttime construction was avoided to be in compliance with this condition. This requirement has also been included in the wildlife education and orientation program (see response to Condition 9c).
9f	Should nighttime construction be required during the seabird fallout period, a biological monitor shall be present in the construction area from approximately one half hour before sunset to one half hour after sunrise to watch for the presence of seabirds. Should a seabird (or other listed species) be observed and appear to be affected by the lighting, the monitor shall notify the construction manager to reduce or turn off construction lighting until the individual(s) move out of the area.	Construction activities are complete and nighttime construction was avoided to be in compliance with this condition. This requirement has also been included in the wildlife education and orientation program (see response to Condition 9c).
9g	Any on-site lighting shall be fully shielded, triggered by motion detector, and fitted with light bulbs having a correlated color temperature of four thousand Kelvin or less, to the extent possible. Lighting shall also be directed away from the solar arrays to minimize the potential for reflection and shall only be used when necessary.	Construction has completed and the Project was in compliance with this requirement. This requirement has also been included in the wildlife education and orientation program (see response to Condition 9c).
9h	Construction of overhead lines shall be minimized to reduce the collision risk for seabird species.	Overhead lines have been minimized to the extent possible.
9i	Prior to clearing vegetation within the Project area, pre-construction pueo surveys shall be conducted by a qualified biologist following the Pueo Project survey protocol. If a ground nest or an owl nesting on the ground is observed, an approximately 50-foot buffer shall be established and marked in the field. In accordance with existing protocol for UH West O'ahu, a designated UH West O'ahu representative shall be contacted immediately, and that representative shall provide notification to DOFAW. No	A preconstruction pueo survey based on the Pueo Project protocol was conducted on the evenings of December 9 and December 23, 2021. Transect surveys were conducted on December 21 and December 22, 2021. No pueo were detected at the Project. Due to construction delays, additional supplemental preconstruction pueo survey based on the Pueo Project protocol was conducted on the evenings of March 3 and March 18, 2022. Transect surveys were conducted on March 23 and March

	vegetation clearing shall occur until pueo nesting ceases.	24, 2022. No pueo were detected at the Project. The Project is in compliance with the requirements of this condition.
9j	If a live pueo is observed on-site by Project staff, all activities within 50 feet of the bird shall cease, and the bird shall not be approached.	Construction has completed and the Project was in compliance with this condition. No live pueo have been observed on-site. This requirement has also been included in the wildlife education and orientation program (see response to Condition 9c).
9k	No rodent baiting shall occur as part of the Project to prevent secondary poisoning from toxins in pueo prey.	Construction has completed and the Project was in compliance with this condition. This requirement has also been included in the wildlife education and orientation program (see response to Condition 9c).
9l	No surface water features shall be created by the Project during construction or operation to avoid attracting waterbirds to areas with sub-optimal habitat.	Construction has completed and the Project was in compliance with this condition. This requirement has also been included in the wildlife education and orientation program (see response to Condition 9c).
10	The Applicant shall establish the Project within two years of the date of the LUC's Decision and Order approving the SUP. Requests for extension of this deadline shall be submitted to the Director of the DPP prior to the expiration of the deadline. The Land Use Commission shall be informed and receive a copy of any request for extension of this deadline. The Planning Commission may grant an extension to the deadline to establish the Project due to unforeseen circumstances that were beyond the control of the Applicant.	The Special Use Permit is effective as of June 24, 2021. No request for extension is contemplated at this time.
11	On or before December 31 of each year that the SUP is in effect, the Applicant or its successor shall file an annual report to the DPP, the State Office of Planning, and the Land Use Commission that demonstrates the Applicant's compliance with conditions of the SUP.	This report shall be updated and submitted to the DPP, State Office of Planning and LUC on an annual basis to demonstrate compliance with conditions of the SUP.

12	<p>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 the DPP.</p>	<p>There have been no major modifications to the Project plans including but not limited to significant increases in the number of PV panels, amendments to the conditions of approval, significant expansions of the approved area, or changes in uses stated herein.</p>
13	<p>The Applicant and/or landowner shall notify the Director of the DPP of:</p> <ul style="list-style-type: none"> 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. 	<p>There have been no change or transfer in licensee of the property, change in uses on the property, termination of any uses on the property, or transfer in ownership of the property.</p>
14	<p>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.</p>	<p>There has been no failure to perform the conditions imposed by the Special Use Permit.</p>
15	<p>Previously Unidentified Burials and Archaeological/Historic Sites. In the event that historic or archaeological resources, including human skeletal remains, are found and/or identified during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the State Historic Preservation Division (SHPD) shall be contacted immediately as required by HRS Chapter 6E and its applicable rules. Without limitation to any condition found herein, if</p>	<p>Construction has completed and the Project was in compliance with this condition.</p> <p>The Archaeological Monitoring Plan (AMP) was submitted to the State Historic Preservation Division (SHPD) on May 11, 2021 (HICRIS #2020PR32397, Submission No M4PG8G3C9W4W).</p> <p>A newly identified historic property consisting of artifact concentration associated with the former plantation</p>

	<p>any burials or archaeological or historic sites or artifacts not previously identified in studies referenced to in these Findings of Fact and Conclusions of Law 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.</p>	<p>camp, Pump Camp 5 was identified during construction.</p> <p>Requirements in the AMP were followed to address the new finds during construction. Please see response to permit condition 17 for notification details.</p>
16	<p>Archaeological/Historic Sites. Petitioner shall adhere to mitigation commitments as specified in the SHPD letter dated January 4, 2021 or as modified by SHPD:</p> <ul style="list-style-type: none"> a. Avoidance of adverse impacts to SIHP Site 50-80-08-5593 Feature 2 (2A through 2E) within the project area; b. Historic American Engineering Record (HAER) documentation of SIHP Site 50-80-08-5593 Feature 2; c. Incorporation of the portion of SIHP Site 20-80-09-2268 within and immediately adjacent to the project area into an Addendum to the existing Ditch Historic Context Study (Mason Architects, Inc. 2018); and d. Data Recovery in the form of archaeological monitoring in the immediate vicinity of "Pump Camp 5." Prior to any ground disturbance or construction, Petitioner shall comply with all interim and/or permanent mitigation and preservation measures recommended and approved by the SHPD. Petitioner shall confirm in writing to the LUC that the SHPD has found Petitioner's preservation mitigation commitments to be acceptable and has determined that any required historic preservation measures have been successfully implemented. The SHPD shall be notified at the initiation of the Project. 	<p>Please see response to each subpart of the mitigation commitments specified in the SHPD letters dated January 4, 2021 and December 21, 2021:</p> <ul style="list-style-type: none"> a. Avoidance of adverse impacts to SIHP Site 50-80-08-5593 Feature 2 (2A through 2E) within the project area: Project has been designed to avoid Features 2A, 2B, 2C. By letter dated Mar 10, 2021, Cultural Surveys Hawaii on behalf of AES, submitted a request to the SHPD for approval of alternative mitigation measures for 2D and 2E. By email dated April 30, 2021, SHPD concurred with the proposed mitigation commitments for 2D and 2E. This approval is formalized in the SHPD letter dated December 21, 2021. b. Historic American Engineering Record (HAER) documentation of SIHP Site 50-80-08-5593 Feature 2: HAER documentation was accepted by US National Park Service and was subsequently submitted to SHPD on October 1, 2021. SHPD's acceptance of the HAER documentation is detailed in SHPD letter dated December 21, 2021. c. Incorporation of the portion of SIHP Site 20-80-09-2268 within and immediately adjacent to the project area into an Addendum to the existing Ditch Historic Context Study (Mason Architects, Inc. 2018): Addendum to Thematic Historic Context Study: Irrigation Ditches In Hawaii

		<p>was submitted to SHPD on September 7, 2021. SHPD's acceptance of the addendum is detailed in SHPD letter dated December 21, 2021.</p> <p>d. Data Recovery in the form of archaeological monitoring in the immediate vicinity of "Pump Camp 5.": Archeological monitoring took place during construction in the area of Pump Camp 5 as stated in the AMP.</p> <p>The AMP was approved and SHPD has found the preservation mitigation commitments to be acceptable and have determined that required historic preservation commitments have been successfully implemented.</p>
17	<p>Petitioner shall employ archaeological monitors for Pump Camp 5 feature. Petitioner shall submit an archaeological monitoring plan for ground disturbing activities to the SHPD for its review and acceptance or approval prior to project initiation. Data obtained from the archaeological monitoring plan shall be provided to the SHPD upon the completion of the monitoring of the Project.</p>	<p>An AMP was submitted to SHPD on May 11, 2021 (HICRIS #2020PR32397, Submission No M4PG8G3C9W4W) and was approved by SHPD on December 21, 2021.</p> <p>By email dated 11/20/2023, data obtained from the archaeological monitoring was provided to SHPD. SHPD is in the process of assigning State Inventory of Historic Places (SIHP) number to the newly identified historic property consisting of artifacts associated with remnants of Pump Camp 5.</p>