



**APPLICANT'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND DECISION AND ORDER APPROVING THE RECOMMENDATION  
OF THE COUNTY OF KAUAI PLANNING COMMISSION TO APPROVE  
THE STATE SPECIAL USE PERMIT APPLICATION WITH MODIFICAITONS**

Comes now, Applicant SOLARCITY CORPORATION, by and through its attorneys, MATSUBARA - KOTAKE, and respectfully submits its Proposed Findings of Fact, Conclusions of Law, and Decision and Order Approving the Recommendation of the County of Kauai Planning Commission to Approve the State Special Use Permit Application with Modifications.

DATED: Honolulu, Hawai'i January 8, 2016.



Of Counsel:  
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SOLARCITY CORPORATION

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition of	)	Docket No. SP15-407
	)	
SOLARCITY CORPORATION	)	FINDINGS OF FACT, CONCLUSIONS
	)	OF LAW, AND DECISION AND
For a Special Use Permit to Establish	)	ORDER APPROVING THE
a Solar Energy Facility on	)	RECOMMENDATION OF THE
approximately 50 acres of Land	)	COUNTY OF KAUAI PLANNING
within the State Land Use Agricultural	)	COMMISSION TO APPROVE THE
District at Kapaia, Hanamaulu, Lihue,	)	STATE SPECIAL USE PERMIT
Kauai, Hawai'i , Tax Map Key	)	APPLICATION WITH
(4) 3-8-002:002.	)	MODIFICATIONS
_____	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION  
AND ORDER APPROVING THE RECOMMENDATION OF THE  
COUNTY OF KAUAI PLANNING COMMISSION TO APPROVE  
THE STATE SPECIAL USE PERMIT APPLICATION WITH MODIFICAITONS**

The State of Hawai'i Land Use Commission ("LUC"), having examined the complete record of the County of Kaua'i Planning Commission ("Planning Commission") proceedings on the State Special Use Permit ("SUP") Application ("Application") filed by SolarCity Corporation ("Applicant"), to construct a solar energy facility and accessory uses and structures ("Project") on approximately 50 acres of land in the State Land Use Agricultural District identified by Kauai Tax Map Key No. (4) 3-8-002:002 in Kapaia, Hanamaulu, Lihue, Kaua'i, Hawai'i ("Petition Area"), and upon consideration of the matters discussed therein, at its meeting on January 13, 2016, hereby makes the following findings of fact, conclusions of law, and decision and order:

## FINDINGS OF FACT

### PROCEDURAL MATTERS

1. On September 30, 2015, Applicant filed the Application with the County of Kaua`i Planning Department ("PD") (Special Permit No. SP-2016-2), pursuant to section 205-6, Hawai`i Revised Statutes ("HRS"), and section 15-15-95 *et seq.*, Hawai`i Administrative Rules ("HAR").

2. On October 27, 2015, the Planning Commission considered the Petition. There was no public testimony at the hearing. After due deliberation, the Planning Commission recommended approval of the Application to the LUC, subject to eleven conditions.

3. On December 7, 2015, the LUC received a copy of the decision and the record of the Planning Commission's proceedings on the Application.

4. On January 8, 2016, Applicant filed its Proposed Findings of Fact, Conclusions of Law, and Decision and Order Approving the County of Kaua`i Planning Commission's Recommendation ("Proposed Order").

5. On January 13, 2016, the LUC met in Lihue, Kaua`i, Hawai`i, to consider the Petition. Benjamin Matsubara, Esq. and Curtis Tabata, Esq. appeared on behalf of the Applicant; Planning Director Michael Dahilig and Jodi Sayegusa, Esq. appeared on behalf of PD; and Rodney Funakoshi and Bryan Yee, Esq. appeared on behalf of the Office of

Planning, State of Hawai'i ("OP"). At the meeting the Applicant provided a description of the Project relative to SUP guidelines.

**DESCRIPTION OF THE PROPERTY**

6. The property which is the subject matter of this Application ("Petition Area") is described as an approximately fifty (50) acre portion of Lot 1-A-3 located in Kapaia, Hanamaulu, Lihue, Kaua'i, Hawai'i, identified by Kaua'i Tax Map Key No. (4) 3-8-002:002 ("Master Lot"). The Petition Area contains approximately 50 acres and the Master Lot contains 5,341.493 acres.

7. Grove Farm Company, Incorporated, a Hawai'i corporation, is the owner of the Master Lot.

8. The Petition Area has been used for agricultural purposes in the past, including sugar cane cultivation, cattle and livestock pasture and seed corn cultivation purposes. The Petition Area has been used most recently for seed corn cultivation purposes.

9. The Petition Area lies to the west of Hanamaulu Town and is undeveloped. There are no existing buildings or structures on the Petition Area. The Kaua'i Island Utility Cooperative's ("KIUC") Kapaia Power Plant is located across the road from, and to the east of, the Petition Area. For the past 100 years, agricultural activities on the Petition Area have included sugarcane cultivation, cattle raising, and most recently seed corn cultivation. A private, paved Cane Haul Road (which extends from Maalo Road,

Highway 583, a State highway) provides access along the eastern boundary of the Petition Area. With the exception of the KIUC Power Station and the Kaua'i Sporting Clays facility (a skeet shooting range), the surrounding area is primarily rural, dominated by a mixture of agricultural uses.

10. The Master Lot is located adjacent to, or within 300 feet of, the properties identified on the Adjacent Property Index which include Grove Farm Company, Incorporated, University of Hawai'i, Kaua'i Island Utility Cooperative, County of Kaua'i c/o Office of the County Attorney, and the State of Hawai'i c/o Agribusiness Development Corporation.

11. The Petition Area is composed of gently sloping lands (3% - 8%) in an area generally lying north of Lihue and west of Hanamaulu Town across the road from, and to the west of, KIUC's Kapaia power plant. The Petition Area is located approximately 285-295 feet above sea level. To the south of the Petition Area are the Hanamaulu Stream and the De Mello Reservoir.

12. The Petition Area receives approximately 60 to 80 inches of annual rainfall.

13. According to the Federal Insurance Rate Map (Map No. 1500020307E) (Exhibit "C-9"), the Petition Area is located in Flood Zone X, which is an area determined to be outside of the 500 year flood plain.

14. The Petition Area is located in the State Land Use Agricultural District. The Petition Area has been located in the State Land Use Agricultural District since the

inception of the State Land Use Districts. The Petition Area has not been designated as Important Agricultural Lands under Part III of HRS chapter 205 ("IAL").

15. The Petition Area is located in the Kaua`i General Plan Agriculture Land Use Designation. The Petition Area has been consistently located in an Agriculture designation or classification under prior General Plans.

16. The Petition Area has been located in the County of Kaua`i Comprehensive Zoning Ordinance ("CZO") Agriculture District since the adoption of the CZO.18.

17. The Petition Area is located within the Lihue Development Plan Area. The Petition Area has always been located within the Lihue Development Plan Area since the original adoption of the original Lihue Development Plan (Ordinance No. 335, November 29, 1977), which was recently updated by the Lihue Community Plan (Ordinance No. 989, June 22, 2015).

18. None of the Petition Area is located within the Special Management Area ("SMA") of the County of Kaua`i.

19. There are no existing violations of any land use laws or regulations on the Petition Area.

20. The Petition Area is not subject to any land use conditions.

#### **DESCRIPTION OF PROPOSED USE**

21. The Project will be located on a 46.5 acre portion of the Petition Area. It will consist of an approximately 17 Mega Watt-Direct Current (MW-dc)/13 Mega Watt-

Alternating Current (MW-ac) ground-mount solar PV system, coupled with a 13 MW-ac/52 Mega Watt hour (MWh) Battery Energy Storage System (BESS), and related interconnection and ancillary facilities. The interconnection facilities will include a dedicated 12.47 kilovolt (kV) overhead infrastructure that will run from the Solar Project Site, located directly adjacent to the Kaua'i Island Utility Cooperative's existing Kapaia Power Plant and switchyard, to a generator step-up transformer located on KIUC property just outside the Kapaia switchyard footprint. The generator will convert the power generated into utility-quality power, which will tie into KIUC's existing transmission system. Additional communication connections and equipment will be installed to interface with KIUC's supervisory control and data acquisition (SCADA) system so that the energy generated by the Solar Project can be remotely controlled and dispatched by KIUC. The Project Site will be surrounded by a seven-foot tall chain link security fence.

22. The chart below summarizes the Project dimensions and overall ground disturbance associated with major permanent Project features.

<b>Approximate Solar Project Component Dimensions</b>			
	Solar PV System	Battery Energy Storage System	TOTAL
Height	77"	86"	---
Width	1.6"	52"	---
Length	39"	38"	---
Number of Units	54,285 panels	520 batteries	--
Total Surface Area	45.85 acres	0.65-acre	46.50 acres



Total Ground Disturbance (new impervious surface)	< 1 acre	0.65-acre	< 2 acres
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(i) The proposed ground-mounted solar PV system will be approximately 6.5 feet (77 inches) in height at its highest point. Each panel is roughly 1.6 inches in width by 3.2 feet (39 inches) in length, and approximately 54,285 total panels will be installed. Given that panels will be spaced to allow infiltration of runoff through sheet flow, the total amount of new impervious surface from the PV system will be minimal (less than 1 acre). Accordingly, while the overall surface area of the panels will be approximately 45.85 acres, less than 1 acre of new ground disturbance will occur as a result of the PV system installation.

(ii) The BESS units will be approximately 7.2 feet (86 inches) in height, and each BESS unit is roughly 4.3 feet (52 inches) in width by 3.2 feet (38 inches) in length. Approximately 520 BESS units will be installed, requiring a total area of approximately 0.65-acre.

(iii) The combined surface area required for the PV system and the BESS is 46.5 acres, while less than two (2) acres of new impervious surface will result from the Solar Project. The two acres of impervious surface will add only a small fraction of the total land coverage allowed on the Master Lot.

23. Project construction and commissioning is proposed to commence in March or April 2016 and is anticipated to be completed so as to allow full-scale commercial operation in the fourth quarter of 2016.

24. The general sequence of construction will be to install sediment and erosion control measures, install posts, underground electrical conduit and wire, solar panel racking, panel installation, array wiring, battery storage array, and finally electrical equipment installation and connection. The posts will be installed via hydraulic driver to a predetermined depth according to soil conditions. The posts are structural and will not generally require the addition of concrete footers for foundations. The solar racking spans the posts, and the panels bolt to the racking to form the array. The terminus of each array will include an approximately two-foot wide and three-foot deep trench for the conduit providing underground electrical connection to the power inverters and BESS. All wiring will be performed and inspected to National Electric Code and best industry practices. Trench excavation will be performed with a backhoe and trench backfilling will be done with the excavated, native soil, and compacted to design specifications in order to prevent sinking. Disturbed soil will be stabilized and seeded per sediment and erosion control plans and applicable state environmental guidelines. In addition to post drivers and backhoes as noted above, typical construction equipment will include all-terrain forklifts, skidsteer with fork attachments for unloading and dispersing material, and other equipment as necessary.

25. The solar panels will be elevated on structural posts, minimizing new impervious area. Due to the topography of the site, no major earthwork is anticipated. The total land occupied by the Project will be approximately 46.5 acres (less than 1 percent) of the total area of the Master Lot. This includes temporary disturbance for underground electrical conduit along with the proposed permanent impervious surface. The overall permanent disturbance to the site will be minimal given that the proposed solar panels are mounted on structural posts with a racking system. The proposed development will add less than two (2) acres of new impervious surface, which will consist of the solar panel mounting posts, transformer pads, battery storage area, and fence posts. Because of the small amount of increase in impervious area, the storm water runoff characteristics will not be significantly altered.

26. In order to mitigate visual impacts, landscaping will be installed and maintained around the Project as may be necessary to screen it when viewed from Maalo Road.

27. The Project Site is level and will require minimal grading. Some grading may be required for interior service roads. The Applicant will obtain all necessary grading permits.

28. After construction and commissioning, the system will operate with minimal servicing and maintenance.

29. Metering equipment will send performance and production data to continuously monitored servers. The Applicant's software will notify its Operations & Maintenance team if the system is underperforming, after which a technician can be dispatched as required. These occurrences are infrequent and typically consist of one technician for service and repair.

### **NEED FOR THE PROJECT**

30. The proposed Project will provide the key benefit of improving electric grid stability by enabling KIUC to utilize stored energy from the BESS to help meet KIUC's afternoon and evening peak demand. KIUC intends to use approximately 80%-85% of the output from the PV system to charge the BESS, such that KIUC will be able to dispatch the stored energy to: (1) help with ramping towards KIUC's afternoon/evening peak (which will avoid or reduce the need for KIUC to ramp up its conventional oil-fueled units), and (2) shave the evening peak, avoiding or reducing the need to dispatch KIUC's most inefficient conventional oil-fueled unit(s).

31. The projected reduction in oil use will result in significant cost savings for KIUC and its members/customers. KIUC anticipates that once the Project is placed into service, KIUC and its members/customers will use approximately 37,474 fewer barrels of oil annually. KIUC estimates that this would result in \$12.8 to \$52.6 million (net present value) in total savings over the 20-year term of the PPA.

32. The Project will also provide benefits to human health and environment through the use of an alternative “green” energy source that does not generate greenhouse gases and does not result in water contamination or other environmental impacts often associated with fossil fuel production. The energy generated will assist KIUC in achieving the State of Hawai`i’s Renewable Portfolio Standard (RPS), as set forth in Hawai`i Revised Statutes § 269-91 *et seq.* It will also be consistent with KIUC’s 2013-2025 Strategic Plan to move towards energy independence and decreased reliance on foreign imported oil by meeting at least 50% of KIUC’s annual electricity sales with energy generated by renewable resources by the year 2023.

33. The construction and maintenance of the system will benefit the public as a whole and support the local economy through increased tax revenues, reduced unemployment, and an increase in the sale of local goods and services. The Applicant and KIUC have entered into a Power Purchase Agreement. By its terms, KIUC will purchase the electrical power generated by the Solar Project over a twenty (20) year period.

34. In addition to the SUP, the Project will require a Use Permit pursuant to CZO Section 8-3.2 for the construction of the Project, and issuance of a Class IV Zoning Permit as a condition of the Use Permit approval pursuant to CZO Section 8-8.4(4).

## IMPACTS UPON THE RESOURCES OF THE AREA

### Agricultural Resources

35. The soils within the Petition Area are Puhi Silty Clay Loam. These soils are described as follows:

#### **"Pu hi Series**

This series consists of well-drained soils on uplands on the island of Kauai. These soils developed in material derived from basic igneous rock. They are nearly level to steep. Elevations range from 175 to 500 feet. The annual rainfall amounts to 60 to 80 inches. The mean annual soil temperature is 73° F. Puhi soils are geographically associated with Lihue and Kapaa soils.

These soils are used for sugarcane, pineapple, truck crops, orchards, pasture, woodland, wildlife habitat, water supply, and homesites. The natural vegetation consists of guava, Java plum, pangolagrass, kikuyugrass, elephantopus, joe, yellow foxtail, and rhodomyrtus.

**Puhi silty clay loam, 3 to 8 percent slopes (PnB).**—On this soil, runoff is slow and the erosion hazard is slight.

This soil is used for sugarcane, pineapple, orchards, pasture, truck crops, and homesites. (Capability classification Ile, irrigated or nonirrigated; sugarcane group 1; pineapple group 5, pasture group 8; woodland group 7).

**Puhi silty clay loam, 8 to 15 percent slopes (PnC).**—On this soil, runoff is slow and the erosion hazard is slight.

This soil is used for sugarcane, pineapple, pasture, and orchards. (Capability classification Ille, irrigated or nonirrigated; sugarcane group 1; pineapple group 6; pasture group 8; woodland group 7)."

36. The Petition Area includes soils classified by the Land Study Bureau, University of Hawai'i. The Over-all Productivity Rating for lands within the Petition Area is Class B (B78).

37. The Applicant will lease the usable portions of the Petition Area for the pasturing of sheep and/or goats at rates which are at least 50% below the fair market rental value as required by section 205-4.5(a)(21)(A), HRS.

38. At the end of the life of the Project (approximately 25 to 30 years) Applicant will decommission and restore the site to pre-existing conditions, enabling future agricultural uses of the Petition Area.

#### **Archaeological and Cultural Resources**

39. An Archaeological Inventory Surface Survey Report was prepared by Cultural Surveys Hawai'i, Inc. for the Petition Area.

40. The AIS was prepared by performing a historical and archaeological background research, a complete (100%) systematic pedestrian inspection of the Petition Area to identify any potential surface historic properties, as appropriate consultation with knowledgeable individuals regarding the Petition Area's past, and as appropriate laboratory work to process collected samples.

41. The Petition Area was entirely within the Lihue Plantation Company sugarcane fields, resulting in grading and repeated plowing of the land surface.

Extensive portions of the Petition Area appear to have been in seed corn production for some time.

42. Two minor remnants of Lihue Plantation infrastructure were identified including a cane haul road and a remnant ditch. Cultural Surveys Hawai'i's project specific effect recommendation is "no historic properties affected." The proposed Project will not adversely affect any significant historic properties located within the Project's Area of Potential Effect, based on the lack of cultural subsurface deposits observed in the field. Accordingly, no further archaeological work is recommended within the Project area.

43. The County of Kaua'i Planning Department reviewed the AIS and concurred that no historic properties will be affected by the Project and therefore determined that the State Historic Properties Division does not need to be advised of the Project.

44. The Project will have no impact on any known traditional or customary practices of native Hawaiians. There are no known traditional or customary practices of native Hawaiians that are presently occurring within the Petition Area that will be affected by the Project. There are no special gathering practices taking place within the portion of the Petition Area where the Project will occur that will be affected. The Project will not detrimentally affect: access to any streams; access to the shoreline or other adjacent shoreline areas; or gathering along any streams, the shoreline or in the ocean.



There are no known religious practices taking place within the portion of the Petition Area where the Project will occur. The Project will have no negative impact on any cultural or historic sites or resources located within the Petition Area.

### **Flora and Fauna**

45. Rana Biological Consulting and LeGrande Biological Surveys, Inc. prepared a Flora and Fauna Surveys assessment of the Petition Area aka Project site.

46. The existing state of botanical resources and wildlife have been heavily compromised by past and present agricultural uses on the Petition Area. As a result, there do not appear to be any mammalian or avian species or botanical resources that will be endangered by the Project. The habitat currently present on the Project site is comprised of former sugarcane lands which have been used for various diversified agricultural purposes since the closure of sugarcane operations in the area. The vegetation is dominated almost to the exclusion of native species by alien introduced grasses and weedy species. Terrestrial mammals present on the Project site and within the vicinity are likewise alien species. There is the possibility that the endemic endangered Hawaiian hoary bat (*Lasiurus cinereus semotus*) overflies the Project site and possibly forages for insects on a seasonal basis above the Project site. Avian species present on the Project site are likewise prominently alien species, though there is the possibility that the endangered NeNe (*Branta sandvicensis*) may use resources within the project area on a seasonal basis. There are no resident seabirds on the Project site, though

both the threatened Newell's Shearwater (*Puffinus newel*) and the endangered Hawaiian Petrel (*Pterodroma sandwichensis*) have been recorded overflying the general Project site area on an annual basis during the nesting season.

### **Groundwater Resources**

47. The Solar Project will have no well facilities, and will have no impact on Groundwater Resources.

### **Visual Resources**

48. The Petition Area is located within the "Open Space, Parks, Agriculture, Conservation" Heritage Resources Designation ("Open Space H.R. Designation") (Kaua'i General Plan, November 2000). These Maps document the Heritage Resources of Kaua'i, including mountains, stream valleys and gulches, bluffs and other coastal features. Within the Open Space H.R. Designation are landforms that may have ecological, recreational, cultural and scenic values. In the case of the Petition Area, only its scenic values would have importance.

49. The proposed Project will be located on a relatively level portion of the Petition Area. The public view of the Project will be from parts of Maalo Road (which is a Scenic Roadway Corridor). All structures will be designed to the extent possible to blend harmoniously into the surrounding environment. Building materials and exterior colors will be compatible with the surrounding environment. All of the structures will be landscaped so as to minimize visual impacts.

## ENVIRONMENTAL IMPACTS

### Chapter 343, HRS

50. The Project is not subject to the provisions of Hawaii Revised Statutes Chapter 343. HRS Chapter 343 requires the preparation of an Environmental Assessment and/or an Environmental Impact Statement for certain activities as specified in HRS Section 343-5. The proposed Project does not fall within such specified activities, in that the Project does not:

- a. Propose the use of state or county lands or the use of state or county funds;
- b. Propose any use within any land classified as conservation district by the State Land Use Commission under HRS Chapter 205;
- c. Propose any use within the shoreline area as defined in HRS Section 205A-41;
- d. Propose any use within any historic site as designated in the National Register or Hawaii Register as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or HRS Chapter 6E;
- e. Propose any use within the Waikiki area of Oahu, the boundaries of which are delineated in the land use ordinance as amended, establishing the "Waikiki Special District";
- f. Propose any amendments to existing county general plans where such amendment would result in designations other than agriculture, conservation, or preservation;
- g. Propose any reclassification of any land classified as conservation district by the State land Use Commission under HRS Chapter 205;
- h. Propose the construction of new, or the expansion or modification of existing, helicopter facilities within the state; or

- i. Propose the construction of a wastewater treatment unit, waste-to-energy facility, oil refinery, or power generating facility (which use petroleum based fuels).

### **Air Quality**

51. The Project will have little or no impact on the air quality in the area. Air quality may be affected at a very minimal level during the development activities. All vehicles or equipment used by the Applicant during construction will be properly muffled, housed and maintained to reduce any emission impacts. The Environmental Protection Agency (EPA) and State of Hawaii air quality standards will not be exceeded.

### **Noise**

52. During operation, the solar panels are silent. The solar inverters are also very quiet, emitting less than 50 a-weighted decibels (dBA) at 3 meters (less than 10 feet), which is approximately the loudness of a conversation. All vehicles or equipment used by the Applicant during construction will be properly muffled, housed and maintained to reduce any noise impacts.

### **Water Quality**

53. The Project will not need to withdraw water from, and will have no impact on, any streams, including but not limited to, the Hanamaulu Stream (located to the west and south of the Petition Area).

## **SOCIO-ECONOMIC IMPACTS**

54. The Project will have the following economic impacts:

a. Jobs. The construction activities associated with the Project will result in 75 to 100 jobs. Thereafter, existing employees of the Applicant will operate the Solar Facility.

b. Housing. The Project will not result in the need for additional worker housing. Once construction is complete, the Solar Facility will be operated by the Applicant's employees, who will be Kauai residents who are already living on Kauai.

c. Property Values. Since the fair market value of real property is based on the value of the land and physical improvements, the completion of the Project will increase the value of the Petition Area. This will result in increased real property taxes on the Petition Area, which will directly benefit the County of Kauai. However, it will not, in and of itself, have a material impact on the value of, or real property taxes assessed against, surrounding properties.

d. Population. The Project will not result in any increase in population.

## **ADEQUACY OF PUBLIC SERVICES AND FACILITIES**

### **Roadways**

55. The major roads which service the Petition Area are Maalo Road (Highway 583), a State highway, and a private, paved Cane Haul Road. The Project, in and of itself, will not significantly increase traffic on these roads.

## Water

56. The Project will not need potable water. To the extent needed, water for the Subject Property will be obtained from the irrigation system operated by the Owner on and adjacent to the Subject Property.

## Drainage

57. The Petition Area is situated within Flood Zone X (Areas outside of 500 year flood plain), as shown on the County of Kaua'i's flood insurance rate map (Flood Insurance Rate Map 150002-0307E). The Project will be located within Flood Zone X. The Project will meet all of the requirements of the Flood Plain Management Ordinance of the County of Kaua'i, as contained in Chapter 15, Article 1, of the Kaua'i County Code, 1987. The Project will have no impact on flooding on or around the Petition Area. All drainage resulting from construction activities, from agricultural activities, and from the increase in land coverage will be retained on site and subject to best management practices. No new surface water flows will be discharged into the Hanamaulu Stream or the De Mello Reservoir.

58. Best Management Practices of the National Pollutant Discharge Elimination System ("NPDES") will be applied before construction. Practices that will be included on the Project will include but not be limited to self-pads, stabilized construction entrance, revegetation for erosion control, gravel bags as necessary for silt control, and temporary silt basin.

59. There will be a retention basin to retain any increased flow on the Petition Area. The quality and quantity of water leaving the Petition Area should be the same as prior to construction.

#### **Wastewater**

60. The Project will not utilize or need an Individual Wastewater Systems ("IWS"). If necessary, the Applicant will use portable toilets approved by the State Department of Health.

#### **Solid Waste**

61. Solid waste collection will be provided by private means. Solid waste will be taken to the County's Transfer Stations for disposal in the County Landfill.

#### **Police and Fire Protection**

62. Fire and police services in the vicinity are located in Lihue, approximately five (5) miles from the Petition Area. The development of the Petition Area will not significantly increase the need for existing fire and police services.

#### **Schools**

63. The closest schools are Wilcox Elementary School and Kaua'i High School located in Lihue and King Kaumualii Middle School located in Hanamaulu. The Project will not generate any additional enrollment.

## CONFORMANCE WITH THE COASTAL ZONE MANAGEMENT PROGRAM

64. The Project generally conforms the applicable objectives, policies, and guidelines of the Coastal Zone Management program under chapter 205A, HRS.

## CONFORMANCE WITH THE SUP GUIDELINES

65. Special Permit Requirements. The proposed Project will meet with the requirements for a SUP, as contained in Hawai`i Revised Statutes Section 205-6 and in Section 15-15-95, *et seq.* of the Land Use Commission Rules (Hawai`i Administrative Rules) as set forth herein.

66. 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 proposed Project will not interfere with other agricultural uses which are generally allowed within the SLUC Agricultural District. It is consistent with solar facility uses which are allowed (with a Special Permit) in the SLUC Agricultural District. It is also located (across the road from the KIUC Power Plant) so as to minimize impacts on agricultural activities in this area. The proposed Project is consistent with the objectives to protect and conserve natural resources and foster intelligent, effective, and orderly land allocation and development.

67. The desired use will not adversely affect surrounding property. As discussed herein, the proposed use will be compatible with the surrounding neighborhood and uses, and will not generate any significant adverse impacts. It will not prevent surrounding lands from being used for agricultural purposes. The amount of



additional traffic that will be generated as a result of this proposal will be insignificant and will not create any substantial adverse impacts. The proposed Project is an exceptional situation where the desired use would not change the essential character of the district nor be inconsistent therewith.

68. The use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection.

As discussed herein, no burden will be placed on public agencies to provide additional facilities, services, and utilities as a result of this proposal. Conversely, by providing an alternative green source of energy for electricity, it will promote the sustainability and availability of electrical production resources for the public. The proposed Project is a reasonable use of the Petition Area.

69. Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. The State has recently recognized the need to promote alternative energy production, including solar energy production. Such facilities require large areas, as are available in the SLUC Agricultural District compared to the SLUC Urban District. Provided such new uses do not adversely impact surrounding agricultural activities, they are recognized as necessary and permissible in the SLUC Agricultural District. The proposed Project is an unusual and reasonable use of the Petition Area.

70. The land on which the proposed use is sought is unsuited for the uses permitted with the District. Although the Subject Property is suitable for agricultural uses, it is better suited at this time for the production of alternative energy production via the Solar Energy Facilities proposed herein. The Petition Area will be made available for suitable agricultural uses during the life of the Project.

### **RULINGS ON PROPOSED FINDINGS OF FACT**

Any of the proposed findings of fact submitted by any party not already ruled upon by the LUC by adoption, or rejected by clearly contrary findings of fact, are hereby denied.

Any conclusions of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; and finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

### **CONCLUSIONS OF LAW**

1. The LUC has jurisdiction over this matter pursuant to § 205-6, HRS, and § 5-15-95 *et seq.* HAR.

2. Based upon the record of the proceedings before the Planning Commission, and pursuant to § 205-6, HRS and § 15-15-95 *et seq.*, HAR, the LUC finds that the recommendation of the Planning Commission to approve a State SUP for the Petition Area, consisting of approximately 50 acres of land in the State Land Use Agricultural District identified by Kauai Tax Map Key No. (4) 3-8-002:002 in Kapaia, Hanamaulu,

Lihue, Kaua`i, Hawai`i, generally meets the guidelines for determining an “unusual and reasonable use” and “would promote the effectiveness and objectives” of chapter 205 within the State Land Use Agricultural District.

3. The Project constitutes an unusual and reasonable use within the agricultural district other than those for which the district is classified, and complies with § 205-6(a), HRS.

4. The Project constitutes an exceptional situation where the use desired would not change the essential character of the district nor be inconsistent therewith. *Save Sunset Beach Coalition v. City and County of Honolulu*, 102 Haw. 465, 78 P.3d 1 (2003).

5. The Project constitutes a use that would promote the effectiveness and objectives of chapter 205, HRS, and complies with § 205-6(c), HRS.

6. The Project is consistent with the “overarching purpose” of HRS chapter 205 which is to “protect and conserve natural resources and foster intelligent, effective, and orderly land allocation and development.” *Kauai Springs v. Planning Commission*, 130 Haw. 407, 312 P.3d 283 (2013).

7. The Petition Area is not designated as Important Agricultural Land under Part III of HRS chapter 205, and therefore the Project does not conflict with any part of HRS chapter 205, and complies with § 205-6(c), HRS.

8. Article XI, section 1, of the Hawai`i State Constitution requires the State to conserve and protect Hawai`i’s natural beauty and all natural resources, including land,

water, air, minerals, and energy sources, and to promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

9. The LUC has considered Article XI, section 1, of the Hawai`i State Constitution and finds that the Project is in compliance and non-violative therewith.

10. Article XI, Section 3, of the Hawai`i State Constitution requires the State to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and assure the availability of agriculturally suitable lands.

11. The LUC has considered Article XI, Section 3, of the Hawai`i State Constitution and finds that the Project is in compliance and non-violative therewith.

12. Article XII, Section 7, of the Hawai`i State Constitution requires the LUC to protect Native Hawaiian traditional and customary rights. The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by ahupua`a tenants who are descendants of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

13. The LUC has considered Article XII, Section 7, of the Hawai`i State Constitution and finds that the Project is in compliance and non-violative therewith.

14. The State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised Native Hawaiian rights to the extent feasible.

*Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission*, 79 Hawai'i 425, 903, P.2d 1246, *certiorari denied*, 517 U.S. 1163, 116 S.Ct. 1559, 134 L.Ed.2d 660 (1996). The LUC has considered such responsibilities and obligations and finds the Project to be consistent and non-violative therewith.

15. The LUC is empowered to preserve and protect customary and traditional rights of Native Hawaiians. *Ka Pa`akai O Ka`Aina v. Land Use Commission*, 94 Hawai'i 31, 7 P.3d 1068 (2000). The LUC has considered such responsibilities and obligations and finds the Project to be consistent and non-violative therewith.

16. Section 205-4.5(a)(21), HRS, permits SEFs on lands with soil classified by the LSB's detailed land classification as overall (master) productivity rating B or C for which an SUP is granted pursuant to § 205-6, HRS; provided that:

- (A) The area occupied by the SEFs is also made available for compatible agricultural activities at a lease rate that is at least 50 percent below the fair market rent for comparable properties;
- (B) Proof of financial security to decommission the facility is provided to the satisfaction of the appropriate county planning commission prior to date of commencement of commercial generation; and
- (C) SEFs shall be decommissioned at the owner's expense according to the following requirements:
  - (i) Removal of all equipment related to the SEF within 12 months of the conclusion of operation or useful life; and
  - (ii) Restoration of the disturbed earth to substantially the same physical condition as existed prior to the development of the SEF.

17. The LUC finds the Project has satisfied the requirements of Section 205-4.5(a)(21), HRS.

## DECISION AND ORDER

Having duly considered the complete record in this matter and the oral arguments presented by the Applicant in this proceeding, the LUC, through a motion having been duly made and seconded at a meeting conducted on January 13, 2016, in Lihue, Hawai'i, and the motion having received the affirmative votes required by § 15-15-13, HAR, and there being good cause for the motion, hereby APPROVES the recommendation of the Planning Commission approving a State SUP for the Petition Area, consisting of approximately 50 acres of land in the State Land Use Agricultural District identified by Kauai Tax Map Key No. (4) 3-8-002:002 in Kapaia, Hanamaulu, Lihue, Kauai, Hawai'i, and approximately shown on Exhibit "A" attached hereto and incorporated by reference herein, subject to the following conditions:

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 by the Applicant and its successors and/or assigns within 6 months of the start of commercial power generation. Extensions to this deadline may be granted by the Director of the County of Kauai Planning Department (PD) for unforeseen extenuating circumstances. Additional consideration may be given if the Applicant is actively seeking to have such operations established.

2. 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 Kauai 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.

3. The Applicant shall submit for review and obtain the approval of the following from the Director of the Kauai PD, prior to the issuance of a grading or building permit:

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.

4. Prior to the closing of the building permit for the facility, the Applicant shall submit to the Kauai PD proof of financial security, such as a letter of credit or similar assurance, from a creditworthy financial institution satisfactory to Kauai 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 Kauai PD on an annual basis, in an amount approved by the Kauai 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.

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 Kauai DP for processing through the Planning Commission, within three (3) months of the ownership change.

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 Kauai PD.



5. The Applicant shall mitigate impacts to fauna on site as follows:

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.

6. The Applicant shall establish the Project within two (2) years of the date of the LUC's Decision and Order approving the SP. Requests for extension of this deadline shall be submitted to the Director of the Kauai 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 date of the LUC's Decision and Order approving

the SP, 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.

7. 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 Kauai PD that demonstrates the Applicant's compliance with conditions of the SP.

8. 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 Kauai PD.

9. The Applicant and/or landowner shall notify the Director of Kauai PD of:

- 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.

10. 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.

11. 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.

12. 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 Kauai 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.

13. 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.

14. 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.

15. 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 BMPs to ensure that the development and operation of the facility do 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.

16. To the extent possible within the confines of union requirements and applicable prohibitions against discrimination in employment, the Applicant shall seek to hire Kauai contractors, and shall seek to employ residents of Kauai in temporary construction and permanent jobs. It is recognized that the applicant may have to employ non-Kauai residents for particular skilled jobs where no qualified Kauai 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.


17. 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.

18. 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.

19. 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.

DATED: Honolulu, Hawai'i January 8, 2016.



Of Counsel:  
MATSUBARA – KOTAKE  
A Law Corporation

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BENJAMIN M. MATSUBARA  
CURTIS T. TABATA  
Attorneys for Applicant  
SOLARCITY CORPORATION

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of ) Docket No. SP15-407  
)  
SOLARCITY CORPORATION ) CERTIFICATE OF SERVICE  
)  
For a Special Use Permit to Establish )  
a Solar Energy Facility on )  
approximately 50 acres of Land )  
within the State Land Use Agricultural )  
District at Kapaia, Hanamaulu, Lihue, )  
Kauai, Hawai`i , Tax Map Key )  
(4) 3-8-002:002. )  
\_\_\_\_\_)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was duly served upon the following by depositing the same in the AS INDICATED BELOW on January 8, 2016:

LEO R. ASUNCION, JR., AICP, Acting (HAND DELIVERY)  
Director  
Office of Planning, State of Hawai`i  
235 South Beretania Street  
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Attorney for THE OFFICE OF  
PLANNING

MICHAEL DAHILIG, Director  
Planning Department, County of Kauai  
4444 Rice Street  
Lihue, Kaua'i, Hawai'i 96766

(CERTIFIED MAIL, RETURN  
RECEIPT REQUESTED)

KAUAI COUNTY PLANNING  
COMMISSION  
c/o Planning Department, County of Kauai  
4444 Rice Street  
Lihue, Kaua'i, Hawai'i 96766

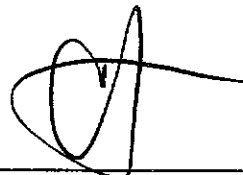
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JODI SAYEGUSA, ESQ.  
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(CERTIFIED MAIL, RETURN  
RECEIPT REQUESTED)

DATED: Honolulu, Hawai'i January 8, 2016

Of Counsel:  
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