

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

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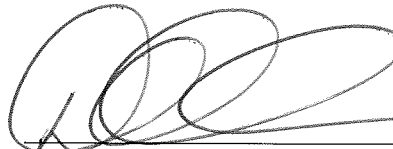
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LAND USE COMMISSION  
STATE OF HAWAI'I

In the Matter of the Application 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 KAUA'I PLANNING
within the State Land Use Agricultural	)	COMMISSION TO APPROVE THE
District at Kapaia, Hanamā'ulu, Līhu'e,	)	STATE SPECIAL USE PERMIT
Kaua'i, 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 KAUA'I PLANNING COMMISSION TO APPROVE  
THE STATE SPECIAL USE PERMIT APPLICATION WITH MODIFICATIONS

This is to certify that this is a true and correct copy of the document on file in the office of the State Land Use Commission, Honolulu, Hawai'i.

1/29/16 \_\_\_\_\_ by

  
\_\_\_\_\_  
Daniel E. Orodenker, Executive Officer



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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION  
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THE STATE SPECIAL USE PERMIT APPLICATION WITH MODIFICATIONS

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 ("Petition Area") identified by Kaua'i Tax Map Key No. (4) 3-8-002:002 in Kapaia, Hanamā'ulu, Līhu'e, Kaua'i, Hawai'i ("Master Lot"), 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 ("County") (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 9, 2015, the LUC received a copy of the decision and the record of the Planning Commission's proceedings on the Application and assigned it Docket No. SP15-407.
4. On January 5, 2016, The LUC mailed the notice and meeting agenda for the January 13, 2016 meeting in Līhu'e, Kaua'i to the parties and the Statewide and Kaua'i mailing lists.
5. On January 6, 2016, the LUC mailed an amended notice and meeting agenda to all parties and the Statewide and Kaua'i mailing lists.
6. On January 6, 2016, the LUC received the Office of Planning's ("OP") comment letter on SP15-407.
7. 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").

8. On January 13, 2016, the LUC met in Līhu‘e, Kaua‘i, Hawai‘i, to consider the Petition. Benjamin Matsubara, Esq. and Curtis Tabata, Esq. appeared on behalf of the Applicant; Deputy Planning Director Ka‘āina Hull and Jodi Higuchi, Esq., Deputy Corporation Counsel, appeared on behalf of the County; and, Rodney Funakoshi and Deputy Attorney General Bryan Yee. appeared on behalf of the Office of Planning, State of Hawai‘i (“OP”). The Commission heard public testimony from one individual, Mr. Llen Rachap; and, from Mr. Yee on behalf of OP. At the meeting the Applicant provided a description of the Project relative to SUP guidelines under Section 15-15-95(c), HAR. Following the presentation by the Applicant, the LUC raised questions about the operation of the Project and its impacts. The County provided a brief overview of its decision recommending approval of the Application and the conditions it imposed. OP summarized its position on the Petition as well as its written comments on the Applicant’s Proposed Order. The Applicant stated that it agreed to all the conditions proposed by OP.

Thereafter, a motion was made and seconded to approve the Application and the County's recommendation, with modifications as proposed by OP and the LUC, and as agreed to by the Applicant.

9. On January 19, 2016, the LUC mailed out the agenda and notice of hearing for the January 27, 2016, LUC video-conference meeting to all parties, and the Statewide and Kaua‘i mailing lists.

10. On January 27, 2016, the LUC conducted a meeting to adopt the form of the Order on this docket via simultaneous video-conferencing at the following: Kalanimoku Building (Honolulu, O‘ahu), Līhu‘e State Office Building (Līhu‘e, Kaua‘i), State DOT District Office (Kahului, Maui), and Hilo State Office Building (Hilo, Hawai‘i). Entering appearances were

Benjamin Matsubara, Esq. and Curtis Tabata, Esq. for Applicant; and Deputy Attorney General Bryan Yee, Esq. and Rodney Funakoshi for OP. In attendance on Kaua'i, one member of the public attended: Michael Belles. The Commission provided an opportunity for public testimony. There was no public testimony.

### **DESCRIPTION OF THE PROPERTY**

1. The property which is the subject matter of this Application is described as an approximately fifty (50) acre portion of Lot 1-A-3 located in Kapaia, Hanamā'ulu, Līhu'e, 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.
2. Grove Farm Company, Incorporated, a Hawai'i corporation, is the owner of the Master Lot.
3. The Petition Area has been used for agricultural purposes in the past, including sugar cane cultivation, cattle and livestock pasture and seed corn cultivation. The Petition Area has most recently been used for seed corn cultivation.
4. The Petition Area lies to the west of Hanamā'ulu 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 Mā'alo Road, Highway 583, a State highway) provides access along the eastern boundary of the Petition Area. With the exception of the KIUC power plant and the Kaua'i Sporting Clays facility (a skeet shooting range), the surrounding area is primarily rural, dominated by a mixture of agricultural uses.

5. 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, KIUC, County of Kaua'i Office of the County Attorney, and the State of Hawai'i Agribusiness Development Corporation.
6. The Petition Area is composed of gently sloping lands (3% - 8%) in an area generally lying north of Līhu'e and west of Hanamā'ulu 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 Hanamā'ulu Stream and the De Mello Reservoir.
7. The Petition Area receives approximately 60 to 80 inches of rainfall annually.
8. According to the Federal Insurance Rate Map (Map No. 1500020307E), the Petition Area is located in Flood Zone X, which is an area determined to be outside of the 500 year flood plain.
9. 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").
10. 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.
11. The Petition Area has been located in the County of Kaua'i Comprehensive Zoning Ordinance ("CZO") Agriculture District since the adoption of the CZO.

12. The Petition Area is located within the Līhu‘e Development Plan Area. The Petition Area has always been located within the Līhu‘e Development Plan Area since the original adoption of the original Līhu‘e Development Plan (Ordinance No. 335, November 29, 1977), which was recently updated by the Līhu‘e Community Plan (Ordinance No. 989, June 22, 2015).
13. None of the Petition Area is located within the Special Management Area (“SMA”) of the County of Kaua‘i.
14. There are no existing violations of any land use laws or regulations on the Petition Area.
15. The Petition Area is not subject to any land use conditions.

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

16. 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 Project site, located directly adjacent to the KIUC'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 Project can be remotely controlled and dispatched by KIUC. The Project site will be surrounded by a seven-foot tall chain link security fence.

17. 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 Installed	54,285 panels	520 batteries	--
Total Surface Area	45.85 acres	0.65-acre	46.50
Total Ground Disturbance (new impervious surface)	< 1 acre	0.65-acre	< 2 acres

- (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.

18. 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.
19. 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.
20. 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.

21. 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 Mā‘alo Road.
22. 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.
23. After construction and commissioning, the system will operate with minimal servicing and maintenance.
24. 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**

25. 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).

26. 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 power purchase agreement with KIUC.
27. 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-generated energy production. The energy generated will assist KIUC in achieving the State of Hawai'i's Renewable Portfolio Standard (RPS), as set forth in section 269-91, HRS, *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.
28. 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.

29. 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**

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

#### **“Puhi Series**

This series consists of well-drained soils on uplands on the island of Kaua‘i. 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 Lihu‘e and Kapa‘a 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, joece, 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 IIe, 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 IIIe, irrigated or nonirrigated; sugarcane group 1; pineapple group 6; pasture group 8; woodland group 7).”

31. 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).

32. 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.
33. 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**

34. An Archaeological Inventory Surface Survey (AISS) Report was prepared by Cultural Surveys Hawai'i, Inc. for the Petition Area.
35. The AISS 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.
36. The Petition Area was entirely within the Līhu'e 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.
37. Two minor remnants of Līhu'e 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.

38. The County of Kaua'i Planning Department reviewed the AISS and concurred that no historic properties will be affected by the Project and therefore determined that the State Historic Properties Division ("SHPD") does not need to be advised of the Project.
39. 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 be built 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 be built. The Project will have no negative impact on any cultural or historic sites or resources located within the Petition Area.

#### **Flora and Fauna**

40. Rana Biological Consulting and LeGrande Biological Surveys, Inc. prepared a Flora and Fauna Survey assessment of the Petition Area.
41. The existing state of botanical resources and wildlife have been heavily compromised by past and present agricultural uses on the Master Lot and 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 Petition Area 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 Petition Area and within the vicinity are likewise alien species. There is the possibility that the endemic endangered Hawaiian hoary bat (*Lasiurus cinereus semotus*) overflies the Petition Area and possibly forages for insects on a seasonal basis above the Petition Area. Avian species present on the Project site are likewise prominently alien species, though there is the possibility that the endangered Nēnē (*Branta sandvicensis*) may use resources within the Petition Area on a seasonal basis. There are no resident seabirds on the Petition Area, though both the threatened Newell's Shearwater (*Puffinus newel*) and the endangered Hawaiian Petrel (*Pterodroma sandwichensis*) have been recorded overflying the general Petition Area area on an annual basis during the nesting season.

#### **Groundwater Resources**

42. The solar Project will have no well facilities, and will have no impact on groundwater resources.

#### **Visual Resources**

43. 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.
44. 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 Mā‘alo 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**

45. The Project is not subject to the provisions of chapter 343, HRS. Chapter 343, HRS, requires the preparation of an Environmental Assessment and/or an Environmental Impact Statement for certain activities as specified in section 343-5, HRS. 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 chapter 205, HRS;
  - c. Propose any use within the shoreline area as defined in section 205A-41, HRS;
  - 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 chapter 6E, HRS;
  - 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 chapter 205, HRS;
  - 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**

46. 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**

47. 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**

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

### **SOCIO-ECONOMIC IMPACTS**

49. 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 Project.
  - b. Housing. The Project will not result in the need for additional worker housing. Once construction is complete, the solar Project will be operated by the Applicant's

employees, who will be Kaua‘i residents who are already living on Kaua‘i.

- 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 Kaua‘i. 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**

- 50. The major roads which service the Petition Area are Mā‘alo 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**

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

### **Drainage**

- 52. 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 Hanamā‘ulu Stream or the De Mello Reservoir.

53. 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.
54. 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**

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

#### **Solid Waste**

56. Solid waste collection will be provided by private means. Solid waste will be taken to the County of Kauai's transfer stations for disposal in the County of Kauai's landfill.

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

57. Fire and police services in the vicinity are located in Līhu‘e, 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**

58. The closest schools are Wilcox Elementary School and Kaua'i High School located in Līhu'e and King Kaumuali'i Middle School located in Hanamā'ulu. The Project will not generate any additional enrollment.

#### **CONFORMANCE WITH THE COASTAL ZONE MANAGEMEN PROGRAM**

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

#### **CONFORMANCE WITH THE SPECIAL PERMIT GUIDELINES**

60. Special Permit Requirements. The proposed Project will meet with the requirements for a Special Permit, as contained in section 205-6, HRS, and in section 15-15-95, HAR, *et seq.* as set forth herein.
61. The use will not be contrary to the objectives sought to be accomplished by the chapters 205 and 205A, HRS, and the LUC's administrative rules. The proposed Project will not interfere with other agricultural uses which are generally allowed within the State Land Use ("SLU") Agricultural District. It is consistent with solar facility uses which are allowed (with a Special Permit) in the SLU Agricultural District. It is also located 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.
62. 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 the proposed Project 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.

63. 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 the proposed Project. 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, a portion of the Master Lot.
64. 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.
65. The land on which the proposed use is sought is unsuited for the uses permitted with the district. Although the portion of the Master Lot identified for the proposed Project is suitable for agricultural uses, it is better suited at this time for alternative energy production in conjunction with suitable agricultural uses via the proposed Project. The Petition Area, including the Project site, 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 the Applicant not already ruled upon by the LUC by adoption, or rejected by clearly contrary findings of fact, are hereby denied and rejected.

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 section 205-6, HRS, and section 5-15-95 *et seq.* HAR.
2. Based upon the record of the proceedings before the Planning Commission, and pursuant to section 205-6, HRS and section 15-15-95 *et seq.*, HAR, the LUC finds that the recommendation of the Planning Commission to approve a State Special Permit for the Petition Area, consisting of approximately 50 acres of land in the State Land Use Agricultural District identified by Kaua'i Tax Map Key No. (4) 3-8-002:002 in Kapaia, Hanamā'ulu, Līhu'e, 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, HRS, 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 section 205-6(a), HRS.

4. The Project constitutes an exceptional situation where the proposed use 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 section 205-6(c), HRS.
6. The Project is consistent with the “overarching purpose” of chapter 205, HRS, which is to “protect and conserve natural resources and foster intelligent, effective, and orderly land allocation and development.” *Kaua‘i 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 chapter 205, HRS, and therefore the Project does not conflict with any part of chapter 205, HRS, and complies with section 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 Solar Energy Facilities (“SEF”) on lands with soil classified by the LSB’s detailed land classification as overall (master) productivity rating B or C for which a special permit is granted pursuant to section 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, together with public testimony, and a motion having been duly made and seconded at a meeting conducted on January 13, 2016, in Līhu‘e, Hawai‘i, to approve the recommendation of the Planning Commission, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion, the LUC hereby APPROVES the recommendation of the Planning Commission approving a State Special Permit for the Project site within Petition Area with modifications as proposed by OP and the LUC, and as agreed to by the Applicant, consisting of approximately 50 acres of land in the State Land Use Agricultural District identified by Kaua‘i Tax Map Key No. (4) 3-8-002:002 in Kapaia, Hanamā‘ulu, Līhu‘e, Kaua‘i, 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 Kaua‘i Planning Department 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 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 Planning Department 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 Special Permit 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 Kaua‘i Planning Department, 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 Project, the Applicant shall submit to the Kaua'i Planning Department proof of financial security, such as a letter of credit or similar assurance, from a creditworthy financial institution satisfactory to Kaua'i Planning Department. 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 Planning Department on an annual basis, in an amount approved by the Kaua'i Planning Department 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 Special Permit, which warrants a new proof of financial security to decommission the Project, shall be submitted to the Kaua'i Planning Department 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 Kaua'i Planning Department.

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 Project site, and report occurrences to the United States Fish & Wildlife Service.
6. The Applicant shall construct and begin operation of the Project within two (2) years of the date of the LUC's Decision and Order approving the Special Permit. Requests for extension of this deadline shall be submitted to the Director of the Kaua'i Planning Department 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 Special Permit shall be valid for a period of thirty-five (35) years from the date of the LUC's Decision and Order approving the Special Permit, 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 Special Permit's expiration. Approval of time extensions shall be required from the LUC.
7. On or before December 31 of each year that the Special Permit is in effect, the Applicant or its successor shall file an annual report to the LUC, OP, and the Kaua'i Planning Department that demonstrates the Applicant's compliance with conditions of the Special Permit.
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 Kaua'i Planning Department.

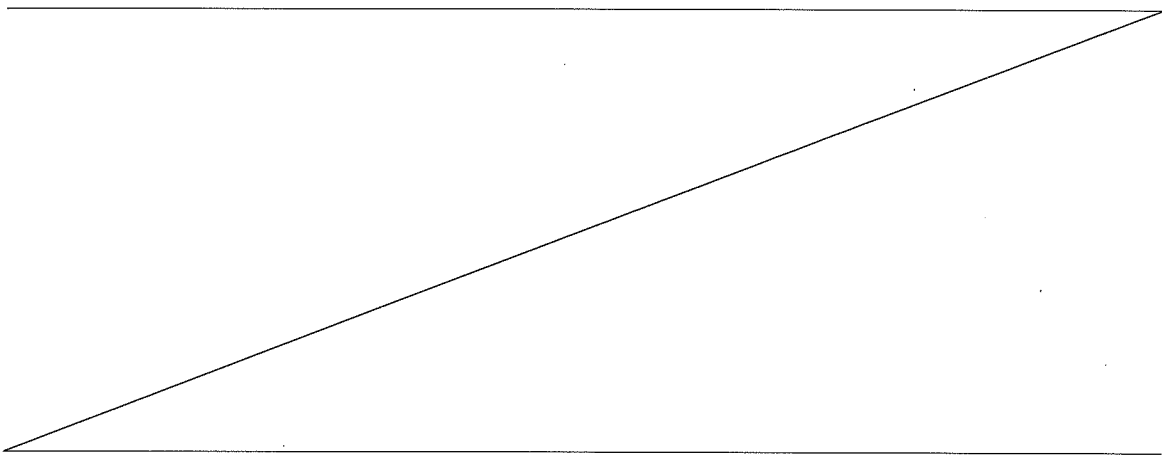
9. The Applicant and/or landowner shall notify the Director of Kaua'i Planning Department of:
  - a. Any change or transfer of licensee on the Petition Area.
  - b. Any change in uses on the Petition Area.
  - c. Termination of any uses on the Petition Area; and/or
  - d. Transfer in ownership of the Petition Area.
10. Enforcement of the conditions of the Special Permit shall be pursuant to the Rules of the Kaua'i Planning Commission, including the issuance of an order to show cause as to the reason the Special Permit should not be revoked if the Kaua'i Planning Commission has reason to believe that there has been a failure to perform the conditions herein.
11. If the PV array or the Project creates a hazardous condition for pilots or motorists, the facility operator shall immediately mitigate the hazard upon notification by the Department of Transportation, Airports Division, or the Federal Aviation Administration.
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 State Historic Preservation Division ("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 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.

13. The Applicant shall comply with the requirements of the State Department of Health, the County's Fire Department, Department of Water, and 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 Project, 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 Project do not result in an increase in stormwater runoff that adversely impacts downstream properties. Failure to so develop the Project may result in revocation of the Special Permit.
16. 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 Planning Commission shall relieve the 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 are 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.



ADOPTION OF ORDER

This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this 29th, day of January, 2016, per motion on January 13, 2015 in Lihue, Kauai.

LAND USE COMMISSION

STATE OF HAWAI'I

APPROVED AS TO FORM

  
\_\_\_\_\_  
Deputy Attorney General

By   
\_\_\_\_\_  
EDMUND ACZON  
Chairperson and Commissioner

Filed and effective on:

1/29/16

Certified by:

  
\_\_\_\_\_  
DANIEL E. ORODENKER  
Executive Officer



BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Application 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 COUNTY
approximately 50 acres of Land	)	OF KAUA'I PLANNING COMMISSION
within the State Land Use Agricultural	)	TO APPROVE THE STATE SPECIAL
District at Kapaia, Hanamā'ulu, Līhu'e,	)	USE PERMIT APPLICATION WITH
KAUA'I, Hawai'i , Tax Map Key	)	MODIFICATIONS AND CERTIFICATE
(4) 3-8-002:002.	)	OF SERVICE
_____)		

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 27, 2016:

LEO R. ASUNCION, JR., AICP, Acting Director **(HAND DELIVERY)**  
Office of Planning, State of Hawai'i  
235 South Beretania Street  
6<sup>th</sup> Floor, Leiopapa A Kamehameha Bldg.  
Honolulu, Hawai'i 96813

BRYAN C. YEE, ESQ. **(HAND DELIVERY)**  
Deputy Attorney General  
Department of the Attorney General  
425 Queen Street  
Honolulu, Hawai'i 96813  
Attorney for the Office of Planning

MICHAEL DAHLIG, Director **(CERTIFIED MAIL, RETURN RECEIPT REQUESTED)**  
Planning Department, County of Kaua'i  
4444 Rice Street  
Līhu'e, Kaua'i, Hawai'i 96766

KAUA'I COUNTY PLANNING COMMISSION **(CERTIFIED MAIL, RETURN RECEIPT REQUESTED)**  
c/o Planning Department, County of Kaua'i  
4444 Rice Street  
Līhu'e, Kaua'i, Hawai'i 96766

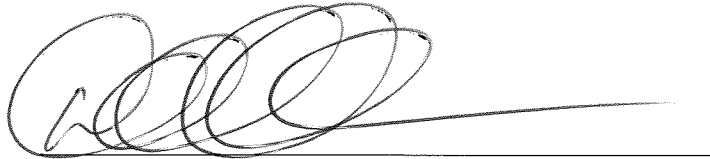
JODI HIGUCHI, ESQ.  
Office of the County Attorney  
4444 Rice Street, Suite 220  
Līhu'e, Kaua'i, Hawai'i 96766  
Attorney for Kaua'i County Planning Department

**(CERTIFIED MAIL, RETURN  
RECEIPT REQUESTED)**

BENJAMIN M. MATSUBARA, ESQ.  
CURTIS T. TABATA, ESQ.  
888 Mililani Street, Eighth Floor  
Honolulu, Hawai'i 96813

**(CERTIFIED MAIL, RETURN  
RECEIPT REQUESTED)**

DATED: Honolulu, Hawai'i 1/29/16

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right, positioned above a horizontal line.

DANIEL E. ORODENKER  
Executive Officer