

Exhibit B

(Director's Report and 6E
Memorandum)

**COUNTY OF KAUA'I
PLANNING DEPARTMENT
LIHU'E, KAUA'I**

PLANNING DIRECTOR'S REPORT

Date of Receipt of Completed Application: September 30, 2015
Date of Director's Report: October 12, 2015
Date of Public Hearing: October 27, 2015
60th Day: December 11, 2015 (Dec 8: Commission)
Additional Hearing Dates: **None—Time Extension Necessary**

PROJECT: Class IV Zoning Permit Z-IV-2016-5
Use Permit U-2016-5
Special Permit SP-2016-2

APPLICANT: Solar City Corporation

FINDINGS

LOCATION: Kapai'a, Kaua'i

TAX MAP KEY: 3-8-002:002

AREA: 50 acre portion of a
5341.493 acre lot of record

ZONING: Open (O)/Agriculture (A)

SLUD: Agricultural (A)

GEN. PLAN: Agriculture

EXIST. USE: Vacant

I. ACTIONS REQUIRED:

Pursuant to Chapter 8-2.4 of the K.C.C., the construction of a utility facility requires a Use Permit when proposed within the Agriculture (A) Zoning District.

Pursuant to Chapter 8-8.7, a Class IV Zoning Permit is a procedural requirement for obtaining a Use Permit in the Agriculture (A) Zoning District.

Pursuant to Section 205-4.5 of the Hawaii Revised Statutes (HRS), a solar energy facility that occupies more than ten per cent of the acreage of the parcel, or more than twenty acres of land within the State Land Use Agricultural District (Soil Classification A or B) requires a Special Permit.

Pursuant to Section 205-6 of the HRS, Special Permits for proposals on lands greater than fifteen (15) acres in size shall be subject to the approval of the State Land Use Commission.

DR Rec'd
OCT 13 2015

E.L.A.
OCT 27 2015

II. PROJECT DESCRIPTION AND USE:

As stated in the application, the Applicant proposes to construct an approximately seventeen (17) megawatt solar generation facility on the subject property. In addition to the solar panel arrays, a thirteen (13) megawatt battery energy storage system and related interconnection and ancillary facilities are also proposed.

The solar facility will be ground mounted and will be approximately 6.5 feet in height at its highest point. Each panel is roughly 1.6 inches in width by 3.2 feet in length. Approximately 54,285 panels are proposed to be installed. The panels will be spaced to allow infiltration of runoff through sheet flow. The total surface area of the panels will be approximately 45.85 acres.

Please refer to the application for further description.

III. LEGAL REQUIREMENTS:

This report is being transmitted to the Applicant and Planning Commission in order to satisfy the requirements of Section 8-3.1 of the Kauai County Code (K.C.C.), relating to the provision of the Planning Director's report and recommendation on the subject proposal within sixty (60) days of the filing of a completed application.

In accordance with Section 8-3.1 the public hearing for this matter is scheduled on October 27, 2015.

In accordance with Section 8-3.1 the Applicant shall notify at least 85 % of the property owners of all parcels within 300 feet from the nearest point of the premises involved in the application of the subject permits' application, the proposed use, and the corresponding public hearing date.

IV. APPLICANT'S REASONS/JUSTIFICATION:

Please refer to Applicant's petition.

Additional Findings

Property Information

The subject site is located in Kapaia, and the facility is to be located 900 feet southwest of the Ehiku Street and Maalo Road intersection. There are no existing structures at the subject site. The site was previously used for agriculture purposes.

Surrounding Area

The surrounding area is all within the Agriculture (A) and Open (O) Zoning Districts. These lands are either vacant or are primarily used for agriculture purposes. The closest residential structures are located within the Residential (R-4 and R-6) Zoning District, which is located approximately 0.85 miles east of the project site.

AGENCY COMMENTS: (forthcoming)

V. PRELIMINARY EVALUATION

In evaluating the Applicant's request to construct and operate the proposed solar utility facility, the following should be considered:

General Plan

1. Section 5.2 of the Kaua'i General Plan sets the following polices concerning Agriculture Lands:
 - a. Lands included within the Agriculture designation shall be predominantly used for or held in reserve to be used in the future for agricultural activities. These activities include breeding, planting, nourishing and caring for, gathering, and processing of any animal or plant organism, including aquatic animals and plants, for the purpose of producing food or material for non-food products; the commercial growing of flowers or other ornamental plants; the commercial growing of forest products; and the commercial breeding and caring for domestic animals and pets.
 - b. The primary intent of the Agriculture designation is to conserve land and water resources in order to:
 - (1) Insure an excellent resource base for existing and potential agricultural uses;
 - (2) Assure a sufficient supply of land available for sale or lease at a cost that is economically feasible for agricultural enterprise; and
 - (3) Promote and preserve open agricultural lands as a key element of Kaua'i's rural character and lifestyle, essential to its image as "The

Garden Island” and to the continued viability and development of Kaua'i's visitor industry.

2. The overall parcel will remain predominantly free of development and the proposed structures will function in conjunction with the overall agriculture use of the parcel.

Use Permit

1. The proposed request is to be evaluated pursuant to Section 8-3 of the Kauai County Code (KCC), 1987, as amended, relating to the standards of issuance for a Use Permit:

A Use Permit may be granted only if the Planning Commission finds that the establishment, maintenance, or operation of the construction, development, activity, or use in particular case is a compatible use and is not detrimental to health, safety, peace, morals, comfort, and general welfare of persons residing or working the neighborhood of the proposed use, or detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the community, and will not cause any substantial harmful environmental consequences on the land of the applicant or on other lands or waters, and will not be inconsistent with the intent of this Chapter and the General Plan.

2. A solar utility facility is permissible in the Agriculture (A) Zoning District with a Use Permit.
3. As previously stated, the overall parcel will remain predominantly free of development and proposed structures will function in conjunction with the overall agriculture use of the parcel.
4. The useable portions of the site will be leased for pasture purposes at a rate or rates that are at least fifty percent (50 %) below the fair market rental value.
5. The proposed use will not interfere with other agricultural uses that are generally allowed within the Agriculture (A) Zoning District.
6. Following the anticipated twenty-five (25) to thirty (30) year life and operation of the solar facility, all equipment will either be retrofitted with new equipment or will be removed from the site, and the site will be restored to its preconstruction condition.
7. The nearest residential structure is approximately .85 miles east of the subject site; therefore, no significant impacts should be generated that affect those residing on the

closest residential properties.

8. The proposed panels will follow the natural terrain of the land thereby mitigating visual impacts that the facility may create.
9. The proposed site is to be landscaped so as to mitigate any additional visual impacts created by the site.
10. The proposed operation should not be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the surrounding area, and should not cause any substantial harmful environmental consequences.

Special Permit

1. 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 useable portions of the site will be leased for pasture purposes at a rate or rates that are at least fifty percent (50 %) below the fair market rental value.
 - The proposed use will not interfere with other agricultural uses that are generally allowed within the Agricultural District.
 - It is located in close proximity to a power plant so as to minimize the impacts on agriculture activities in the area.
 - Following the anticipated twenty-five (25) to thirty (30) year life and operation of the solar facility, all equipment will either be retrofitted with new equipment or will be removed from the site, and the site will be restored to its preconstruction condition.
2. The desired use will not adversely affect surrounding property.
 - The proposed use will be compatible with the surrounding area, and it will not prevent surrounding lands from being used for agricultural purposes.
 - As previously stated, the nearest residential structure is approximately .85 miles east of the subject site; therefore, no significant impacts should be generated that affect those residing on the closest residential properties.
3. The use will not unreasonably burden public agencies to provide roads and

streets, sewers, water, drainage and school improvements, and police and fire protection.

- The proposed use is not anticipated to place an additional burden on public agencies.
4. Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established.
- As stated in the application, the State has recently recognized the need to promote alternative energy production, including solar energy production. Such facilities require large tracts of land. As compared to the State Land Use Urban or Rural Districts, these large tracts are predominantly located in the State Land Use Agriculture District. Provided such new uses do not prevent or adversely impact agricultural uses in the surrounding area, they are recognized as necessary and permissible in the Agricultural District.
5. The land on which the proposed use is sought is unsuited for the uses permitted within the District.
- As proposed in the application, through grazing opportunities, the site will be used for agricultural production.

VI. PRELIMINARY CONCLUSION

Based on the foregoing findings and evaluation, it is hereby concluded that the proposed solar utility facility is appropriate, and it is compatible with other uses on the property. The use should not be detrimental to persons, property, or the environment in the surrounding area.

The Applicant should institute the "Best Management Practices" to insure that the operation of this facility does not generate impacts that may affect the health, safety, and welfare of those in the surrounding area of the proposal.

VII. PRELIMINARY RECOMMENDATION NUMBER 1 (CZO PERMITS)

Based on the foregoing evaluation and conclusion it is hereby recommended that subject request to construct and operate a solar utility facility under Use Permit U-2016-5 and Class IV Zoning Permit Z-IV-2016-5 be approved with the following conditions:

1. The solar utility facility shall be constructed and operated as represented. Any changes to the facility and/or operation shall be reviewed by the Department to determine whether Planning Commission review and approval is required.
2. Pursuant to HRS 205-4.5, the area occupied by the solar energy facility shall also be made available for compatible agricultural activities at a lease rate that is at least fifty percent (50 %) below the fair market rent for comparable properties.
3. Pursuant to HRS 205-4.5, the solar energy facility shall be decommissioned at the owner's expense according to the following requirements:
 - a. Removal of all equipment related to the solar energy facility within twelve months of the conclusion of operation or useful life; and
 - b. Restoration of the disturbed earth to substantially the same physical condition as existed prior to the development of the solar energy facility.

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 Planning Department.

4. 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.
5. The Applicant shall develop and utilize Best Management Practices (B.M.P.'s) during all phases of development in order to minimize erosion, dust, and sedimentation impacts of the project to abutting properties.
6. The applicant is advised the should any archaeological or historical resources be discovered during ground disturbing/construction work, all work in the area of the archaeological/historical findings shall immediately cease and the applicant shall contact the State Department of Land and Natural Resources, Historic Preservation Division and the Planning Department to determine mitigation measures.
7. In order to minimize adverse impacts on the Federally Listed Threatened Species, Newell's Shearwater and other seabirds, all 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.

8. To the extent possible within the confines of union requirements and applicable legal prohibitions against discrimination in employment, the Applicant shall seek to hire Kauai contractors as long as they are qualified and reasonably competitive with other 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 purposes 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 practices.
9. 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 (L.E.E.D.) 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.
10. 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.
11. 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.

IX. PRELIMINARY RECOMMENDATION NUMBER 2 (SPECIAL PERMIT)

Based on the foregoing evaluation and conclusion it is hereby recommended that subject request to construct and operate a solar utility facility under Special Permit SP-2016-2 be recommended to be approved to the State Land Use Commission with the following conditions:

1. The solar utility facility shall be constructed and operated as represented. Any changes to the facility and/or operation shall be reviewed by the Department to determine whether Planning Commission review and approval is required.

2. Pursuant to HRS 205-4.5, the area occupied by the solar energy facility shall also be made available for compatible agricultural activities at a lease rate that is at least fifty percent (50 %) below the fair market rent for comparable properties.
3. Pursuant to HRS 205-4.5, the solar energy facility shall be decommissioned at the owner's expense according to the following requirements:
 - a. Removal of all equipment related to the solar energy facility within twelve months of the conclusion of operation or useful life; and
 - b. Restoration of the disturbed earth to substantially the same physical condition as existed prior to the development of the solar energy facility.

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 Planning Department.

4. 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.
5. The Applicant shall develop and utilize Best Management Practices (B.M.P.'s) during all phases of development in order to minimize erosion, dust, and sedimentation impacts of the project to abutting properties.
6. The applicant is advised the should any archaeological or historical resources be discovered during ground disturbing/construction work, all work in the area of the archaeological/historical findings shall immediately cease and the applicant shall contact the State Department of Land and Natural Resources, Historic Preservation Division and the Planning Department to determine mitigation measures.
7. In order to minimize adverse impacts on the Federally Listed Threatened Species, Newell's Shearwater and other seabirds, all 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.
8. To the extent possible within the confines of union requirements and applicable legal prohibitions against discrimination in employment, the Applicant shall seek to hire Kauai contractors as long as they are qualified and reasonably competitive with other 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 purposes 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 practices.

9. 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 (L.E.E.D.) 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.
10. 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.
11. 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.
12. Should the State Land Use Commission approve the subject Special Permit, any additions or modifications the State Land Use Commission makes to these conditions of approval shall have the final authority.

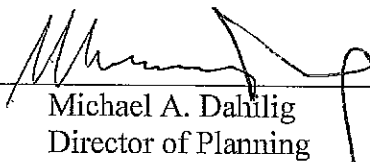
The applicant is advised that additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agencies. The Planning Commission is further advised that this report does not represent the Planning Department's final recommendation in view of the forthcoming public hearing process scheduled for October 27, 2015 whereby the entire record should be considered prior to decision making. The entire record should include but not be limited to:

- a. pending government agency comments;
- b. testimony from the general public;

- c. the Applicant's response to staff's Director's Report and recommendation as provided herein.

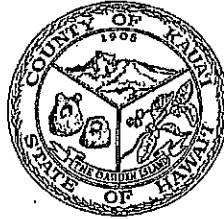
By  _____
Ka'aina Hull
Deputy Director of Planning

Approved & Recommended to Commission

By  _____
Michael A. Dahilig
Director of Planning

Date  _____

Bernard P. Carvalho, Jr.
Mayor



Michael A. Dahilig
Director of Planning

Nadine K. Nakamura
Managing Director

Ka'aina S. Hull
Deputy Director of Planning

PLANNING DEPARTMENT
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MEMORANDUM

To: To File
Zoning Permit Z-IV-2016-4; Use Permit U-2016-4 and Special Permit SP-2015-4

Fr: ^{For} Michael A. Dahilig *[Signature]*
Director of Planning

Date: September 30, 2015

RE: Required HRS 6E-42 Review and Determination Concerning DLNR-SHPD Permit Advise
Zoning Permit Z-IV-2016-4; Use Permit U-2016-4 and Special Permit SP-2015-4

RECEIVED
15 OCT -1 AM '15
County of Kauai
PLANNING DEPT

We have accepted the above referenced permit concerning the proposed SolarCity solar array and battery station at TMK (4)-3-8-002:002 (por.). In their application, the applicant has asserted the project will not affect any historic property. We have reviewed the application materials, in particular, with reference to whether the potential approval of this project via the above referenced entitlements may affect historic property.

In support of their claim, the applicant has conducted an Archaeological Inventory Surface Survey conducted by Cultural Surveys Hawaii dated September 2015. I have reviewed the document and its findings.

Pages 32 and 33 of the report cite the numerous archaeological investigations in the vicinity of the project area. The report cites the explosion of the sugar industry and its spatial effects due to sugarcane operations. The identification of this area as former sugar lands is consistent with our records, given its ownership by the former Lihue Plantation. Also aerial imagery confirms images consistent with land in industrial agricultural cultivation. Under Section 4.1, we are aware that Lihue Plantation infrastructure, including a cane haul road and remnant ditch are present on the property.

With respect to the road, it is constructed of clay loam, basalt aggregate and coral pebbles. The pictures on page 49 of the report indicate the road has been used over time, has no curbing and no constructed drainage.

The remnant ditch has been largely destroyed by grading activity (p.45), and has been characterized in the report as a minor drainage feature.

Based on the foregoing, given the large amount of ground disturbance due to its known agricultural past use, and as confirmed by the surface survey, I concur with the professional recommendation of Cultural Surveys that no historic properties will be affected and therefore have determined SHPD does not need to be advised of this permit.