

BEFORE THE PLANNING COMMISSION

COUNTY OF KAUA'I

In the Matter of :

AES LĀWA'I SOLAR, LLC,

For a Special Use Permit to Establish a Solar Energy Facility on Approximately 196.33 acres of land within the State Land Use Agricultural District at Kōloa and Lāwa'i, Kona, Kaua'i, Hawai'i.

Special Permit SP-2018-2
Use Permit U-2018-1
Class IV Zoning Permit Z-IV-2018-1
TMK: (4) 2-6-003:001

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER

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DECISION AND ORDER

Based upon the foregoing findings of fact and conclusions of law, the Planning Commission of the County of Kaua'i renders a Decision and Order granting Applicant a Special Permit, a Use Permit and a Class IV Zoning Permit in order to allow the establishment of a Solar Energy Facility on Approximately 196.33 acres of land within the State Land Use Agricultural District at Kōloa and Lāwa'i, Kona, Kaua'i, Hawai'i with the above referenced conditions that the Planning Commission deems appropriate and consistent with the laws of the County and the State of Hawai'i.

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The County of Kaua'i Planning Commission ("Planning Commission"), having examined the complete record of proceedings on State Special Use Permit ("SUP") Application SP-2018-2, Use Permit U-2018-1, and Class IV Zoning Permit Z-IV-2018-1 (hereinafter collectively referred to as "Application") filed by AES Lāwa'i Solar, LLC ("Applicant"), to construct a solar energy facility and accessory uses and structures ("Project") on approximately 196.33 acres of land in the State Land Use Agricultural District identified by Kaua'i Tax Map Key No. (4) 2-6-003:001 in Kōloa and Lāwa'i, Kona, Kaua'i, Hawai'i ("Petition Area"), and upon consideration of the matters discussed therein, at its meeting on September 26, 2017 hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On August 17, 2017, Applicant filed the Application with the County of Kaua'i Planning Department ("PD") (Special Permit No. SP-2018-1), pursuant to section 205-6, Hawai'i Revised Statutes ("HRS"), and section 15-15-95 *et seq.*, Hawai'i Administrative Rules ("HAR").

2. On September 26, 2017, the Planning Commission considered the Petition. Public testimony was received at the hearing. After due deliberation, the Planning Commission recommended approval of the Application to the LUC, subject to twenty-one (21) conditions.

DESCRIPTION OF THE PROPERTY

3. The property which is the subject matter of this Application ("Petition Area") is described as an approximately 196.33 acre portion of Lot B located in Kōloa and Lāwa'i, Kona, Kaua'i, Hawai'i, identified by Kaua'i Tax Map Key No. (4) 2-6-003:001 ("Master Lot"). The Petition Area contains approximately 196.33 acres and the Master Lot contains 1,062.291 acres.

4. McBryde Sugar Company, LLC is the owner of the Master Lot.

5. The Petition Area has been used for agricultural purposes in the past, including sugar cane cultivation and cattle and livestock pasture. The Petition Area has been used most recently for small-scale ranching purposes.

6. The Petition Area lies to the northwest of Kōloa Town and is undeveloped. There are no existing buildings or structures on the Petition Area. For the past 100 years, agricultural activities on the Petition Area have included sugarcane cultivation and cattle raising. A private Cane Haul Road (which extends from Kōloa Road) provides access along the northeastern boundary of the Petition Area. The surrounding area is primarily rural and agricultural dominated by a mixture of agricultural and residential uses.

7. The Master Lot is located adjacent to, or within 300 feet of, the properties identified on the Adjacent Property Index which include residential and resort properties located in the State Land Use Commission ("SLUC") Urban District and Rural District, and agricultural properties located in the SLUC Agricultural District.

8. The Petition Area is composed of gently sloping lands (3% - 8%) in an area generally lying west of Kōloa Town, east of Kalaheo Town, and south of Kōloa Road across the road from,. The Petition Area is located approximately 400 feet above sea level.

9. The Petition Area receives approximately 55 inches of annual rainfall.

10. According to the Federal Insurance Rate Map (Map Nos. 1500020311 E and 150020313E), the Petition Area is located in Flood Zone X, which is an area determined to be outside of the 500 year flood plain.

11. 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").

12. 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.

13. The majority of the Petition Area is located within the County of Kaua'i Comprehensive Zoning Ordinance ("CZO") Agriculture District and a small portion of the Petition Area is located within the CZO Open District. These areas of land have been within the CZO Agriculture and Open Districts, respectively, since the adoption of the CZO.

14. The Petition Area is located within the South Kaua'i Community Plan Area. The Petition Area has always been located within the South Kaua'i Community Plan Area since the original adoption of the original Kōloa-Poipu-Kalaheo Development Plan (Ordinance No. 254, June 16, 1975), which was recently updated by the South Kaua'i Community Plan (Ordinance No. 990, July 10, 2015).

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

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

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

DESCRIPTION OF PROPOSED USE

18. The Solar Project will be located on the Subject Property and will consist of an approximately 28 Mega Watt-Direct Current (MW-DC)/20 Mega Watt-Alternating Current (MW-AC) ground-mount solar photo-voltaic ("PV") system, coupled with a 20 MW-AC/100 Mega Watt hour (MWh) Battery Energy Storage System (BESS), and related interconnection and ancillary facilities. The PV system will consist of solar panels mounted on single-axis trackers which will rotate along a fixed horizontal axis from east to west as the sun moves across the sky, increasing the efficiency of the system as opposed to a traditional fixed tilt system. The Solar Project will include solar panels which will produce direct current electricity. The output of the solar panels will be either directed to the BESS to be stored or to go directly into the power grid operated by the Kaua'i Island Utility Cooperative ("KIUC"). The output will go through an inverter which will convert the electricity from direct current to alternating current. The inverters will be connected to step-up transformers to convert the inverter output to medium voltage. All of the

power generated by the Solar Project will be directed to a new substation ("Solar Project Substation") where a generator step-up transformer will convert the medium voltage to transmission voltage to interconnect with an adjacent KIUC Substation. The KIUC Substation will be constructed by KIUC at the same time as the Solar Project, and will be located on an approximately 2.5 acre portion of the Master Lot. The Solar Project Substation will be located immediately adjacent to the KIUC Substation and will be connected via an underground line.

19. 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 Solar Project will include an energy management system ("EMS") that will: allow all operations to be supervised and all system functions to be protected in response to real-time dispatch signals from KIUC; and will report production data, energy forecasts, and other system health data.

20. The Solar Project site will be surrounded by seven (7) foot high chain link security fence. There will be a 25 foot buffer around the outside of the security fence and there will be access roads throughout the site which will allow for convenient access and navigation within the site to all major equipment. The distance between the rows of solar panels will range from 18 feet (in the south section) to 25 feet (in the north section). The average height of the solar panels will be 7.5 feet above ground level. This will allow for easy access through the entire Solar Project site, even between rows of panels.

21. The Northern Section of the Subject Property is separated from the Southern Section of the Subject Property by a valley containing three of the Reservoirs. The Northern Section and the Southern Section are connected by three dams (Northern Dam, Central Dam, Southern Dam). Both the Northern Section and the Southern Section will be used for the

placement of the arrays of solar panels ("Solar Arrays"). Although the solar facilities will be connected by underground lines elsewhere in the Solar Project, the physical conditions of the three Dams prohibit the installation of underground facilities within the Dam structures. As a result, the Northern Solar Arrays will need to be connected to the Southern Solar Arrays by overhead lines spanning the valley. As discussed in the Endangered Species Recommendations for the Lawa'i Solar and Storage Project dated August 3, 2017, prepared by Reginald K. David, Rana Biological Consulting ("Endangered Species Report"), the most optimal place to install the overhead lines is across the Central Dam. The Applicant will follow these recommendations, and will implement all of the mitigative measures contained in the Endangered Species Report.

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

Approximate Solar Project Component Dimensions					
	Solar Panels	Solar Trackers	BESS Containers	Inverters	TOTAL
Height	N/A	7' 6" avg. 13' 6" max.	10' 2"	8'	
Width	3' 5"	14'	8'	5' 5"	
Length	6' 9"	148'	44' 4"	22' 6"	
Number of Units Installed	64,800 panels	720	32	8	
Total Surface Area	34 acres	34 acres	0.26 acre	<1 acre	35 acres
Total Ground Disturbance (new impervious surface)	-0- acre	<1 acre	1 acre (with foundations)	<1 acre (with foundations)	<2 acres

23. The proposed ground mounted solar PV system will be on a single axis tracking system which will tilt the panels along a horizontal axis to follow the sun as it moves across the

sky from east to west. The average height of the system will be 7.5 feet off the ground at a stow position where the panels are flat. As they rotate, their highest point will reach 13.5 feet high. Given the panels will be approximately 7.5 feet off the ground, there will be room for people and grazing sheep to move under and around the system with ease. The trackers will integrate all wiring into a consolidated bus attached near the center structure tube, raising all cables roughly 6.5-7 feet off the ground. The highest tilt angle will only occur for a brief time at dawn and at dusk.

24. Additionally, the rows of panels will be spaced from 18 to 25 feet apart, which is greater than a typical fixed tilt ground mount system. This will allow for people, sheep and vehicles to pass between rows with ease. The large distance between rows is required to ensure panels do not shade each other. It also serves a greater purpose of allowing infiltration of runoff water to the vegetation between the panels. The total amount of new impervious surface from the PV system will be very minimal (less than 1 acre).

25. The BESS Containers will be a 10.2 feet (122 inches) in height, 8 feet (96 inches) in width, and 44.3 feet (532 inches) in length. The BESS Containers will include the Lithium-Ion battery modules. In addition, each BESS Container will have several layers of protection to avoid failures and to contain hazards in the event of a failure. In this regard, each container will house up to 32 racks of batteries with integrated monitoring and circuit protection; include a self-contained Heating Ventilation Air Cooling system (painted white and insulated to minimize cooling loads); and be equipped with its own fire detection and suppression system specifically designed for Lithium-Ion battery energy storage systems.

26. There will be thirty-two (32) BESS Containers (together with an associated inverter and transformer) distributed on eight (8) sites throughout the Solar Project. These sites are referred

to as BESS Blocks/Power Conversion Stations (PCS) ("BESS Blocks (PCS)"). Each BESS Block (PCS) will contain four (4) BESS Containers and will be located on a 150 foot by 46 foot concrete pad with 6,900 square feet of land coverage. The total land coverage for the eight (8) BESS Blocks (PCS) will be 55,200 square feet (1.27 acres).

27. The Solar Project construction and commissioning is proposed to commence within thirty (30) days of final approval of all permits and is anticipated to be completed within fourteen (14) months thereafter.

28. The general sequence of construction will be to install: sediment and erosion control measures; posts; underground electrical conduit and wire; solar panel racking; panels; array wiring; battery storage array; and electrical equipment. 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 will span the posts, and the panels will 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 Block (PCS) Containers. 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.

29. The solar panels will be elevated on structural posts, minimizing new impervious area. The proposed development will add approximately two (2) acres of new impervious surface, which will consist of the solar panel mounting posts, transformer pads, BESS Blocks (PCS), inverters, transformers, and fence posts. Because of the small amount of increase in impervious area, the storm water runoff characteristics will not be significantly altered.

30. 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 Kōloa Road.

31. Due to the topography of the site, some grading will be required to reduce the slope in certain portions of the site and accommodate the solar panels. Some additional grading may be required for interior roadways. The overall permanent disturbance to the site will be minimal given that the proposed solar panels are mounted on structural posts with a tracking system. The Applicant will obtain all necessary grading permits.

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

33. 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.

NEED FOR THE PROJECT

34. The proposed Project will provide eleven percent (11%) of KIUC's total electric generation. One of its key benefits will be to improve electric grid stability by enabling KIUC to utilize stored solar energy from the BESS to be dispatched at any time KIUC needs. This assists KIUC to meet its morning, afternoon, and evening peak demand, along with other supporting ancillary services on the grid. It is anticipated the Project will reduce KIUC's fossil fuel usage by

over 3.7 million gallons annually.

35. 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 3,700,000 fewer barrels of oil annually. KIUC estimates that this would result in \$97 million (net present value) in total savings over the 25-year term of the PPA.

36. 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 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.

37. The construction and maintenance of the system will benefit the public as a whole and support the local economy through increased tax revenues, providing jobs, and an increase in the sale of local goods and services.

38. 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) and Section 8-9.4.

IMPACTS UPON THE RESOURCES OF THE AREA

Agricultural Resources

39. The soils within the Petition Area are Puhi Silty Clay Loam, Lihu'e Silty Clay on the southwest, and Rough Broken Land along the southeast and southwest boundaries as well as the central north portion surrounding Aepeo and Aepealua reservoirs.

Puhi soils are described as follows:

... 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 degrees 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. [Foote et al. 1972:115]

Lihue soils are described as follows:

... well-drained soils on uplands on the island of Kaua'i. These soils developed in material weathered from basic igneous rock. They are gently sloping to steep. Elevations range from nearly sea level to 800 feet. The annual rainfall amounts to 40 to 60 inches. The mean annual soil temperature is 75 degrees F. Lihue soils are geographically associated with Ioleau and Puhi soils.

These soils are used for irrigated sugarcane, pineapple, pasture, truck crops, orchards, wildlife habitat, woodland, and homesites. The natural vegetation consists of lantana, guava, koa haole, joe, kikuyugrass, molassesgrass, guineagrass, bermudagrass, and Java plum. [Foote et al. 1972:82]

Rough broken land is described as follows:

... very steep land broken by numerous intermittent drainage channels. In most places it is not stony. It occurs in gulches and on mountainsides on all the islands except Oahu. The slope is 40 to 70 percent. Elevations range from nearly sea level to about 8,000 feet. The local relief is generally between 25 and 500 feet. Runoff is rapid, and geologic erosion is active. The annual rainfall amounts to 25 to more than 200 inches.

These soils are variable. They are 20 to more than 60 inches deep over salt, weathered rock. In most places some weathered rock fragments are mixed with the soil material. Small areas of rock outcrop, stones, and soil slips are common. Included in mapping were areas of colluvium and alluvium along gulch bottoms.

This land type is used primarily for watershed and wildlife habitat. In places it is used also for pasture and woodland. The dominant natural vegetation in the drier areas consists of guava, lantana, Natal redbud, bermudagrass, koa haole, and molassesgrass. Ohia, kukui, koa, and ferns are dominant in the wetter areas. Puakeawe, aalii, and sweet vernalgrass are common at the higher elevations. (Capability classification VIIe, nonirrigated). [Foote et al. 1972:119]

Using *Soil Survey of the Islands of Kaua'i, O'ahu, Maui, Moloka'i, and Lāna'i, State of Hawai'i* (Foote et al. 1972), and their survey of Pineapple management, the project area would belong in the category of "Pineapple Group 5", which consists of the following:

... dominantly clays, silty clays, and silty loams. They occur in areas where solar insolation is moderate to high. The slope ranges from 3 to 8 percent. The elevation ranges from near sea level to 2,200 feet. The average annual rainfall is 40 to 70 inches.

Permeability is slow to moderately rapid. Runoff is slow, and the erosion hazard is slight to moderate. About 1 to 2 inches of water is available per foot of soil. The rooting depth is 20 to 60 inches or more.

All planting and tilling are done across the slope or on the contour. Field roads serve as diversions. Grassed waterways are needed in some areas. Rainfall is ample; no irrigation is needed. In nearly all areas the old plants are plowed under. Crop residue mulch is not used because it increases heart rot and root rot diseases.

Yields are 35 to 45 tons per acre for the plant crop and 25 to 35 tons per acre for the ratoon crop. [Foot et al. 1972:140]

40. 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, C, and D.

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

42. At the end of the life of the Project (approximately 25 to 35 years) Applicant will decommission and restore the site to pre-existing conditions, enabling future agricultural uses of the Petition Area.

Archaeological and Cultural Resources

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

44. The Archeological Inventory (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.

45. The Subject Property has been heavily disturbed by past and present agricultural activities. As a result, and as set forth in the AIS, there do not appear to be any pre-contact archaeological, cultural, or historical resources on the surface of the Subject Property.

46. Two (2) post-contact historic properties were re-identified and seven (7) post-contact historic properties were identified during the current AIS within the Subject Property. All of these historic properties were related to the former sugarcane cultivation of the Master Lot.

47. The Applicant will follow the recommendation of the AIS to complete an archaeological monitoring plan (AMP) to mitigate any activities that could adversely affect these historic properties.

48. The proposed Solar Project will not have any significant impacts on the Historic Sites in the vicinity, or on any other known historic, cultural, or archeological resources located on or near the Subject Property.

49. An Cultural Impact Assessment (CIA) Report was prepared by Cultural Surveys Hawai'i, Inc. for the Petition Area.

50. Through Background Research and Community Consultation the CIA was prepared to provide information pertinent to the assessment of the Solar Project's impacts to cultural beliefs, practices, and resources.

51. 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.

51A. Pursuant to Ka Pa'akai v. Land Use Commission, 94 Haw. 31, 74 (2000), the Commission must:

- a. Identify the valued cultural, historical, or natural resources in the area the applicant seeks to develop and the extent that Native Hawaiian traditional and customary rights were exercised;

- b. determine the extent that the value natural resources and Native Hawaiian traditional and customary practices will be affected by the proposed action; and
- c. determine a feasible action that the applicant must execute that mitigates any effects and protects Native Hawaiian rights if those rights are found to exist.

51B. The Cultural Impact Assessment found that there are no known traditional and customary Native Hawaiian rights exercised in the petition area. Under Pa'akai, the required analysis therefore ends after the determination that there are known traditional; and customary Native Hawaiian rights exercised in the 221-acre project area.

Flora and Fauna

52. SWCA Environmental Consultants prepared a Flora and Fauna Surveys assessment of the Petition Area aka Project site.

53. 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, including ranching, 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, although a Hawaiian moorhen

(*Gallinula galeate sandvicensis*) was observed in the vicinity of the Subject Property (in an adjacent reservoir). There is the possibility that endangered species may use resources within the project area on a seasonal basis, including: Nene (*Branta sandvicensis*), and Hawai'ian duck (*Anas wyvilliana*). 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 area on an annual basis during the nesting season.

Groundwater Resources

54. The Solar Project will have no well facilities, and will have no impact on Groundwater Resources. The Applicant will use an existing pump to draw water from the Aepo Reservoir for the agricultural activities associated within the Solar Project. The Solar Project will obtain potable water from an existing waterline on the Master Lot, which is connected to the County of Kaua'i, Department of Water system. The water will be used primarily for the bathroom facilities within the Solar Project.

Visual Resources

55. The Subject Property 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 Subject Property, only its scenic values would have importance.

56. Because of the existing vegetative screening on the Subject Property, the Solar Project will not be visible from Kōloa Road or the neighborhood to the northwest of the Solar

Project adjacent to Aka Road. The Applicant will preserve this existing vegetation to screen the Northern Staging Areas (also referred to as the Lay Down Area) along Kōloa Road from the view of the residents to the west. If it is necessary to mitigate visual impacts, new landscaping is proposed to be installed and maintained around the Solar Project as may be necessary to screen it when viewed from Aka Road or Kōloa Road.

ENVIRONMENTAL IMPACTS

Chapter 343, HRS

57. The Project is not subject to the provisions of HRS 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 Hawai'i 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 O'ahu, 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

58. 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 Hawai'i air quality standards will not be exceeded.

Noise

59. During operation, the solar panels are silent. The BESS Blocks, inverters, and transformers 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.

Water Quality

60. The Solar Project will not need to withdraw water from, and will have no impact on, any streams in the vicinity, including but not limited to, the Lāwa'i Stream (located to the west of the Subject Property). The Applicant will use an existing pump to draw water from the Aepe Reservoir for the agricultural activities associated within the Solar Project. The Solar Project will

obtain potable water from an existing waterline on the Master Lot, which is connected to the County of Kaua'i, Department of Water system. The water will be used primarily for the bathroom facilities within the Solar Project.

SOCIO-ECONOMIC IMPACTS

61. The Project will have the following economic impacts:

A. Jobs. The construction activities associated with the Project will result in an average of 25 to 30 static jobs and, at its peak, an estimated 80 to 100 jobs. Thereafter, the Applicant estimates that the following permanent jobs will be generated:

- (i) Operations and Maintenance – 3 positions.
- (ii) Vegetation Maintenance – 5 to 10 positions.
- (iii) Security and Monitoring – 1 position.
- (iv) Contractor Operation and Maintenance – 2 to 3 positions.

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 or by local contractors or hires, 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

62. The major roads which service the Petition Area are Kōloa Road (a State Highway) and Aka Road (a County Road) to the north, Lāwa‘i Road (a County Road) and Ala Kukuiula (a private road) to the south and private, improved Cane Haul Roads within the Master Lot. The Project, in and of itself, will not significantly increase traffic on these roads. During the construction phase of the Solar Project, the Applicant will maintain a staging area at the north end of the Solar Project adjacent to Kōloa Road and a staging area at the south end of the Solar Project. An access entry will be constructed along Kōloa Road to allow construction vehicles to enter the northern staging area. During the construction activities, the Applicant will employ traffic control personnel to help control traffic entering the northern staging area from Kōloa Road.

Water

63. The Applicant will use an existing pump to draw water from the Aepo Reservoir for the agricultural activities associated within the Solar Project. The Solar Project will obtain potable water from an existing waterline on the Master Lot, which is connected to the County of Kaua‘i, Department of Water system. The water will be used primarily for the bathroom facilities within the Solar Project.

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 1500020311E and 1500020313E). 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 Lāwa‘i Stream or the Reservoirs.

64. Best Management Practices of the National Pollutant Discharge Elimination System ("NPDES") will be applied before construction. Practices that will be included on the Solar 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.

65. Detention Basins and Retention Ponds as necessary will be installed to retain any increased flow on the Subject Property. The quality and quantity of water leaving the Subject Property should be the same as prior to construction.

Wastewater

66. The Project will utilize an Individual Wastewater System ("IWS") approved by the State Department of Health for the wastewater from the Bathroom.

Solid Waste

67. 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

68. Fire and police services in the vicinity are located in Pō‘ipu, approximately four (4) miles from the Petition Area. The development of the Petition Area will not significantly increase the need for existing fire and police services.

Schools

69. The closest schools are Kōloa Elementary School in Kōloa, Kalaheo Elementary School in Kalaheo, Waimea Canon Middle School, and Waimea High School in Waimea, and Kaua'i High School and Chiefess Kamakahelei Middle School in Līhu'e. The Project will not generate any additional enrollment.

Air Operation Areas

70. The Solar Project is not located within a 5 mile range of any airport facilities, also known as Air Operation Areas (AOA), and it is not located beneath any flight paths. It will not create any Glint/Glare issues for any airport uses. In addition, the solar panels that will be used for the Solar Project have Anti-Reflective Coating (ARC) surfaces to minimize reflection and maximize the absorption of light. Finally, the solar arrays will be mounted on solar trackers that are aligned in a north to south direction and that move with the sun to maximize absorption and minimize reflection.

CONFORMANCE WITH THE COASTAL ZONE MANAGEMENT PROGRAM

71. The Solar Project on the Subject Property will have no negative impact on the Coastal Zone Management Act (CZMA) and will be consistent with and non-violative of the objectives and policies of the CZMA in the following respects:

- A. The Solar Project will be compatible with existing uses in areas on or around the Subject Property.
- B. The Solar Project will not negatively impact scenic or open space resources within the CZMA.
- C. The Solar Project will not increase runoff or otherwise endanger the coastal ecosystem.

D. The Solar Project on the Subject Property will not be located in a coastal hazard area.

E. The Solar Project will have no detrimental impact on recreational, historic, or economic resources.

F. The Solar Project will not have detrimental impacts on beach or marine resources.

G. Approval of the Solar Project will not result in the foreclosure of future management options for development in the area.

H. The design, siting, and landscaping of the Solar Project as proposed will ensure that the proposed Solar Project will recognize, preserve, maintain and contribute to the characteristics of the surrounding lands. In particular, the Solar Project will be compatible with, and will protect, the unique natural forms of, biologic systems contained within, and aesthetic characteristic of, the CZMA.

CONFORMANCE WITH THE SUP GUIDELINES

72. Special Permit Requirements. The proposed Project will meet with the requirements for a SUP, as contained in HRS Section 205-6 and in Section 15-15-95, *et seq.* of the Land Use Commission Rules (HAR) as set forth herein.

73. 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 so as to minimize impacts on agricultural activities in this area.

74. The desired use will not adversely affect surrounding property. 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.

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

76. 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.

77. The land on which the proposed use is sought is unsuited for the uses permitted with the District. To the extent feasible, the Applicant will continue to use the Subject Property for sheep raising purposes as described in the Agricultural Plan. In addition, 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. 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 Planning Commission 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 Planning Commission has jurisdiction over this matter pursuant to Section 205-6, HRS, and Section 5-15-95 *et seq.* HAR; Sections 8-2.4(q)(16), 8-2.4(r)(12) and (14), 8-3.2 and 8-4.4(4), Kaua'i County Code; and Chapter 13 of the Rules of Practice and Procedure of the Planning Commission.

2. Based upon the record of the proceedings before the Planning Commission, and pursuant to PC Rules Chapter 13, Section 205-6, HRS and Section 15-15-95 *et seq.*, HAR, the Planning Commission finds that the recommendation of the Planning Department to approve a State SUP for the Petition Area, consisting of approximately 196.33 acres of land in the State Land Use Agricultural District identified by Kaua'i Tax Map Key No. (4) 2-6-003:001 in Kōloa and Lāwa'i, Kona, 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.” 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 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 Planning Commission 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 Planning Commission 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 Planning Commission to protect Native Hawaiian traditional and customary rights. The County 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 Planning Commission 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, Counties and their 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 Planning Commission has considered such responsibilities and obligations and finds the Project to be consistent and non-violative therewith.

15. The Planning Commission is empowered to preserve and protect customary and traditional rights of Native Hawaiians. Pa'akai, 94 Hawai'i 31. The Planning Commission 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 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 Planning Commission finds the Project has satisfied the requirements of Section 205-4.5(a)(21), HRS.

18. The Planning Commission finds the County and the Applicant have satisfied the Notice requirements contained in Section 205-6, HRS; Section 15-15-95(d), HAR; Sections 8-8.4(4), 8-9.4(b), 8-3.1(f) and 8-3.2(f), Kaua'i County Code; and Planning Commission Rules Section 1-13-5(d).

19. The Planning Commission finds the Solar Project is consistent with and non-violative of the objectives, policies, and goals continued in: the State Plan; the Kaua'i General Plan; Chapter 8, Kaua'i County Code; and the South Kaua'i Community Plan.

20. The Planning Commission finds that the Solar Project is consistent with and non-violative of the standards and requirements for Use Permits contained in Section 8-3.2(e)(1), Kaua'i County Code.

21. The Planning Commission that the Solar Project is consistent with and non-violative standards and requirements for Class IV Zoning Permits contained in Sections 8-3.1(f), 8-7.4(a)(4), and 8-8.4(4), Kaua'i County Code.

22. The Planning Commission finds that the Solar Project conforms with the policies and objectives of the Coastal Zone Management Act and Chapter 205A, HRS.

23. The Planning Commission finds no evidence to support concerns that the Solar Project will not create any glint or glare issues for airport related uses or aircraft operation.

DECISION AND ORDER

Having duly considered the complete record in this matter and the oral arguments presented by the Applicant in this proceeding, the Planning Commission, through a motion having been duly made and seconded at a meeting conducted on September 26, 2017, in Lihue, Hawai'i, and the motion having received the affirmative votes required by relevant sections of the HRS, Kaua'i County Code, Kaua'i County Planning Commission Rules of Practice and Procedure, and Section 15-15-13, HAR, and there being good cause for the motion, hereby APPROVES the Applicant's Application for a County Use Permit and Class IV Zoning Permit and APPROVES AND FORWARDS WITH A RECOMMENDATION TO APPROVE TO THE STATE LAND USE COMMISSION the Applicant's Application for a SUP for the Solar Project within the Petition Area consisting of approximately 196.33 acres of land in the State Land Use Agricultural District

identified by Kaua'i Tax Map Key No. (4) 2-6-003:001 in Kōloa and Lāwa'i, Kona, Kaua'i, Hawai'i, subject to 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. Usable lands of the Petition Area, including areas under PV panels, shall be made available for compatible agricultural use at a lease rate that is at least 50 percent below the fair market rent for comparable properties, as long as the Project is in operation. Compatible agricultural operations shall be established by the Applicant and its successors and/or assigns within six 6 months of the start of commercial power generation. Extensions to this deadline may be granted by the Director of the County of Kaua'i Planning Department (PD) for unforeseen extenuating circumstances. Additional consideration may be given if the Applicant is actively seeking to have such operations established.

3. If at any time during the term of the Special Permit (SP) no compatible agricultural operations exist on the usable lands of the Petition Area for 6 months, the Applicant shall notify the Director of the Kaua'i PD in writing within 30 days of the end of the 6-month period. If requested by the Planning Director, the Applicant shall attend a meeting of the Planning Commission and submit a report to the Planning Commission detailing the Applicant's actual and reasonable efforts to establish compatible agricultural operations on the usable lands of the Petition Area. The Planning Commission may determine whether probable cause exists to re-evaluate the SP and to hold a hearing pursuant to the Rules of the Planning Commission. Extensions to the 6-month deadline may be granted by the Planning Director for unforeseen extenuating circumstances.

4. The Applicant shall submit for review and obtain the approval of the following from the Director of the Kaua'i 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.

5. Prior to the closing of the building permit for the facility, the Applicant shall submit to the Kaua'i PD proof of financial security, such as a letter of credit or similar assurance, from a creditworthy financial institution satisfactory to Kaua'i PD. The security shall remain in place for the duration of the operation of the Project, with evidence of same provided to the Director of the Kaua'i PD on an annual basis, in an amount approved by the Kaua'i PD as sufficient to decommission the Project and restore the Petition Area to substantially the same physical condition as existed prior to the development of the facility.

The applicant shall decommission the facility, including the removal of all equipment related to the facility, within twelve (12) months following the termination of operations of the facility. A change in project ownership or a change in ownership of the land subject to the SP, which warrants a new proof of financial security to decommission the project, shall be submitted to the Kaua'i DP for processing through the Planning Commission, within three (3) months of the ownership change.

The Applicant shall incorporate this condition in the license and/or lease agreement with the land owner, and said license and/or lease agreement shall be reviewed for approval by the

Kaua'i PD.

6. 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.
7. 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 Kaua'i PD prior to the expiration of the deadline. The LUC may grant an extension to the deadline to establish the Project due to unforeseen circumstances that were beyond the control of the Applicant. This SP shall be valid for a period of thirty-five (35) years from the start of commercial operations, subject to further extensions upon a timely request for extension filed with the Planning Commission at least one hundred twenty (120) days prior to the SP's expiration. Approval of time extensions shall not be required from the LUC.
8. On or before December 31 of each year that the SP is in effect, the Applicant or its successor shall file an annual report to the LUC, OP, and the Kaua'i PD that demonstrates the

Applicant's compliance with conditions of the SP.

9. Major modifications to: (1) the Project plans, including but not limited to significant increases in the number of PV panels; (2) amendments to the conditions of approval; (3) significant expansions of the approved area; or (4) change in uses stated herein, shall be subject to the review and approval of the Planning Commission and the LUC. Minor modifications including minor additions to accessory uses and structures, and new incidental uses and structures in the approved area are subject to review and approval by the Director of Kaua'i PD.

10. The Applicant and/or landowner shall notify the Director of Kaua'i 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.

11. Enforcement of the conditions of the SP shall be pursuant to the Rules of the Planning Commission, including the issuance of an order to show cause as to the reason the SP should not be revoked if the Planning Commission has reason to believe that there has been a failure to perform the conditions herein.

12. If the PV array creates a hazardous condition for pilots or motorists, the facility operator shall immediately mitigate the hazard upon notification by the DOT, Airports Division, or the FAA.

13. If required to mitigate visual impacts, new landscaping shall be installed and maintained around the Solar Project to screen it when viewed from Aka Road or Kōloa Road. The Planning Department shall determine whether additional landscape screening is necessary and the degree at which it is provided.

14. In the event that historic resources, including human skeletal remains, structural remains, cultural deposits, artifacts, sand deposits, or sink holes, are identified during demolition and/or construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the SHPD and Kaua'i Island Burial Council, as applicable, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites are discovered during the course of construction of the facility, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigation measures have been implemented to its satisfaction.

15. 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.

16. 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.

17. 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.

18. To the extent possible within the confines of union requirements and applicable

prohibitions against discrimination in employment, the Applicant shall seek to hire Kaua'i contractors, and shall seek to employ residents of Kaua'i in temporary construction and permanent jobs. It is recognized that the applicant may have to employ non-Kaua'i residents for particular skilled jobs where no qualified Kaua'i resident possesses such skills. For the purpose of this condition, the Commission shall relieve the applicant of this requirement if the applicant is subjected to anti-competitive restraints on trade or other monopolistic practice.

19. 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.

20. The Planning Commission reserves the right to revise, add, or delete conditions of approval in order to address or mitigate unforeseen impacts the project may create, or to revoke the permits through the proper procedures should conditions of approval not be complied with or be violated.

21. The Applicant is advised that additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agencies.

22. As recommended by the State Office of Planning the Applicant shall develop an endangered species awareness training module, which shall include all potential endangered species that may frequent the Petition area. The County shall receive a copy of the training module

materials before utilization.

23. As recommended by the State office of Planning, Applicant shall ensure all construction workers and solar facility employees shall undergo endangered species awareness training prior to starting work.

24. Prior to building permit submittal, the Applicant shall hold a public meeting for residents in the areas of Lāwa'i, Oma'ō, Kōloa, Kalaheo and Pō'ipu to review the construction plans for the Solar Project to solicit input and mitigate where possible concerns raised.

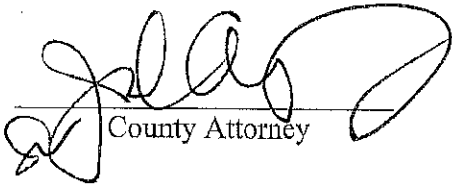
SO ORDERED BY THE PLANNING COMMISSION OF THE COUNTY OF KAUA'I by a 4-1-0 vote of its Commissioners at its meeting on September 26, 2017.

DATED: Lihu'e, Hawai'i;

9/26/2017


KIMO M. KEAWE
Chair
County of Kaua'i Planning Commission

Approved as to Legality & Form


County Attorney

BEFORE THE PLANNING COMMISSION

COUNTY OF KAUAI

In the Matter of:

AES LAWA'I SOLAR, LLC,

For a Special Use Permit to Establish a Solar Energy Facility on Approximately 196.33 acres of land within the State Land Use Agricultural District at Kōloa and Lāwa'i, Kona, Kaua'i, Hawai'i.

Special Permit SP-2018-2
Use Permit U-2018-1
Class IV Zoning Permit Z-IV-2018-1
TMK: (4) 2-6-003:001

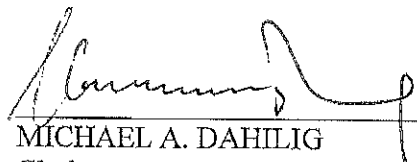
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing document was duly served on the following parties by placing the same in the United States mail, postage prepaid, on the date specified below:

MICHAEL J. BELLES, ESQ.
MAX W.J. GRAHAM, JR. ESQ.
IAN K. JUNG, ESQ
Belles Graham Proudfoot Wilson and Chun, LLP
4334 Rice Street, Suite 202
Līhu'e, Hawai'i 96766

Attorney for AES LAWA'I SOLAR, LLC

DATED: Līhu'e, Kaua'i, Hawai'i, 9/26/2017


MICHAEL A. DAHLIG
Clerk
County of Kaua'i Planning Commission