

EXHIBIT "15"

Michael A. Dahilig
Director of Planning



Ka'aina S. Hull
Deputy Director of Planning

COUNTY OF KAUA'I
PLANNING DEPARTMENT

SUBJECT TO CHANGE

**SUPPLEMENT #1 TO
PLANNING DIRECTOR'S REPORT**

RE: Class IV Zoning Permit Z-IV-2018-2
Use Permit U-2018-2
Special Permit SP-2018-1

APPLICANT: AES LAWA'I SOLAR, LLC

I. ADDITIONAL FINDINGS

AGENCY COMMENTS

Attached for the Planning Commission's reference as Exhibit A are comments from the various government agencies regarding the proposed development.

Staff received the following agency comments, which have been incorporated into the Department's recommendations:

- State of Hawai'i, Department of Health dated September 13, 2017
- State of Hawai'i, DLNR Historic Preservation Div. September 15, 2017
- County of Kaua'i, Fire Department, dated September 18, 2017
- County of Kaua'i, Transportation Agency dated August 28, 2017
- County of Kaua'i, Department of Water dated September 10, 2017
- County of Kaua'i, Housing Agency dated September 1, 2017

WRITTEN TESTIMONY

Attached for the Planning Commission's reference as Exhibit B is written testimony from members of the public:

- Tom and Alice Lyles, email dated September 14, 2017.

Z-IV-2018-2; Supplement #1 to Director's Report
AES LAWA'I SOLAR, LLC
9.15.2017

EXHIBIT "15"

E.1.a.3.

SEP 26 2017

II. EVALUATION

In addition to the evaluative points made in the original Director's Report dated September 12, 2017 (attached as Exhibit C), and with the supplemental material provided by the Applicant, the following evaluation is provided.

1. 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.
2. There are no public recreational opportunities taking place on the Subject Property. The Proposed Solar Project will have no impact on the public's access rights to the Shoreline or Forest Reserve areas. The construction of the Solar Project will not overburden the use of, nor restrict access to, the Shoreline or the Forest Reserve areas.
3. The proposed Solar Project will not have any significant impacts on the Historic sites in the vicinity, or any other known, historic, cultural, or archeological resources located on or near the Subject Property. The Applicant will continue to protect and preserve the Historic Sites identified in the Archeological Inventory Survey (AIS).
4. There are no known traditional or customary practices of native Hawaiians (including gathering or religious practices) presently occurring on the Subject Property; there are nor pre-contact cultural or historic sites or resources located on the Subject Property; and there are no known native Hawaiian burials on the Subject Property. In addition, the Solar Project will not detrimentally affect access to streams, to the shoreline, or to mountain areas.
5. 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.

III. CONCLUSION

In addition to the conclusion points made in the original Director's Report dated September 12, 2017 (attached as Exhibit C), the following conclusion is provided.

1. The Solar Project is in compliance with the provision of HRS Chapter 6E and Title 13, Subtitle 13, Chapter 284 of the Hawaii Administrative Rules.
2. The Solar Project is consistent with the provision of HRS Section 1-1 and 7-1 and Article 12, Section 7 of the Hawaii State Constitution and will have no negative impacts on any traditional or customary practices of native Hawaiians.
3. The Solar Project is consistent with the objectives and policies governing uses in the Coastal Zone Management Act as set forth in HRS Chapter 205A.

IV. RECOMMENDATION NUMBER

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-2018-1, Use Permit U-2018-1, and Class IV Zoning Permit Z-IV-2018-2 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. Usable lands of the Petition Area, including areas under PV panels, shall be made available for compatible agricultural use at a lease rate that is at least 50 percent below the fair market rent for comparable properties, as long as the Project is in operation. Compatible agricultural operations shall be established by the Applicant and its successors and/or assigns within 6 months of the start of commercial power generation. Extensions to this deadline may be granted by the Director of the County of Kauai Planning Department (PD) for unforeseen extenuating circumstances. Additional consideration may be given if the Applicant is actively seeking to have such operations established.
3. If at any time during the term of the subject permits no compatible agricultural operations exist on the usable lands of the Petition Area for 6 months, the Applicant shall notify the Director of the Kauai PD in writing within 30 days of the end of the 6-month period. If requested by the Planning Director, the Applicant shall attend a meeting of the Planning Commission and submit a report to the Planning Commission detailing the Applicant's actual and reasonable efforts to establish compatible agricultural operations on the usable lands of the Petition Area. The Planning Commission may determine whether probable cause exists to re-evaluate the subject permits 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 Kauai PD, prior to the issuance of a grading or building permit:
 - a. Applicant shall minimize or avoid clearing and grading activities from June 1 through September 15.
 - b. A survey map accompanied by a metes and bounds description of the approved Petition Area.
 - c. A site plan showing the area required under Condition 2, 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 Kauai PD proof of financial security, such as a letter of credit or similar assurance, from a creditworthy financial institution satisfactory to Kauai PD. The security shall remain in place for the duration of the operation of the Project, with evidence of same provided to the Director of the Kauai PD on an annual basis, in an amount approved by the Kauai PD as sufficient to decommission the Project and restore the Petition Area to substantially the same physical condition as existed prior to the development of the facility.

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

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

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 Kauai PD prior to the expiration of the deadline. The LUC may grant an extension to the deadline to establish the Project due to unforeseen circumstances that were beyond the control of the Applicant. This SP shall be valid for a period of thirty-five (35) years from the date of the LUC's Decision and Order approving the SP, subject to further extensions upon a timely request for extension filed with the Planning Commission at least one hundred twenty (120) days prior to the SP's expiration. Approval of time extensions shall not be required from the LUC.
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 Kauai PD that demonstrates the Applicant's compliance with conditions of the subject permits.
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 Kauai PD.
10. The Applicant and/or landowner shall notify the Director of Kauai PD of:
 - a. Any change or transfer of licensee on the Petition Area.
 - b. Any change in uses on the Petition Area.
 - c. Termination of any uses on the Petition Area; and/or
 - d. Transfer in ownership of the Petition Area.
11. Enforcement of the conditions of the subject permits shall be pursuant to the Rules of the Planning Commission, including the issuance of an order to show cause as to the reason the subject permits 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 Koloa 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 Kauai Island Burial Council, as applicable, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites are discovered during the course of construction of the facility, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigation measures have been implemented to its satisfaction.
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 the 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 subject permits.
18. To the extent possible within the confines of union requirements and applicable prohibitions against discrimination in employment, the

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

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.

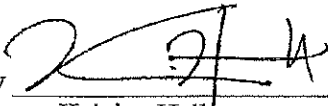
Additionally the Department recommends that the attached (Exhibit D) proposed Findings of Fact, Conclusion of Law and Decision and Order be approved and adopted.

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 September 26, 2017 whereby the entire record should be considered prior to decision making. The entire record should include but not be limited to:

- a. government agency comments;
- b. testimony from the general public;
- c. the Applicant's response to staff's Director's Report and recommendation as

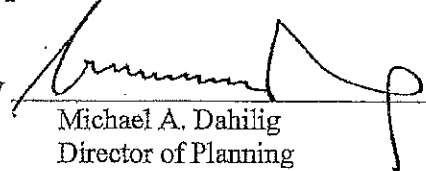
provided herein.

In the event that the Planning Commission approves the subject permits, The Department has drafted a proposed Decision and Order for the Special Permit (attached as Exhibit D) to be forwarded to the Planning Commission.

By 

Ka'aina Hull
Deputy Director of Planning

Approved & Recommended to Commission

By 

Michael A. Dahilig
Director of Planning

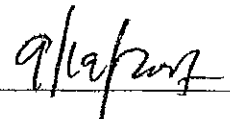
Date 

Exhibit A

Kaaina Hull

From: Jeremy Lee
Sent: Monday, August 28, 2017 1:30 PM
To: Kaaina Hull
Cc: Celia Mahikoa; Lee Steinmetz
Subject: class IV zoning permit Z-IV-2018-2, use permit U-2018-1, special permit SP-2018-1, TMK:(4)2-6-3:1, AES Lawai Solar, LLC.

Kaaina,

Mahalo for giving us the opportunity to provide feedback and comment on the subject permit.

The CTA does not have any comments.

Mahalo,

Jeremy Kalawaia Lee

Program Specialist III


County Transportation Agency

3220 Hoolako Street

Lihue, Hawaii 96766

808-246-8112

jlee@kauai.gov

 Please consider the environment before printing this email

COUNTY OF KAUAI
PLANNING DEPARTMENT
4444 RICE STREET, SUITE A473, LIHUE, HI 96766
(808) 241-4050

County of Kauai
PLANNING DEPT.

FROM: Michael A. Dahilig, Director (Hull) Thursday, August 24, 2017 1:13

SUBJECT: Class IV Zoning Permit Z-IV-2018-2, Use Permit U-2018-1, Special Permit SP-2018-1, To Construct and Operate a Solar Utility Facility
Key:(4)2-6-3:1, AES Lāwa'i Solar, LLC

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TO:

- | | |
|---|--|
| <input type="checkbox"/> Department of Transportation - STP | <input checked="" type="checkbox"/> DPW-Engineering |
| <input type="checkbox"/> DOT-Highway, Kauai (info only) | <input type="checkbox"/> DPW-Wastewater |
| <input type="checkbox"/> DOT-Airports, Kauai (info only) | <input type="checkbox"/> DPW-Building |
| <input type="checkbox"/> DOT-Harbors, Kauai (info only) | <input type="checkbox"/> DPW-Solid Waste |
| <input checked="" type="checkbox"/> State Department of Health | <input type="checkbox"/> Department of Parks & Recreation |
| <input type="checkbox"/> State Department of Agriculture | <input checked="" type="checkbox"/> Fire-Department |
| <input type="checkbox"/> State Office of Planning | <input checked="" type="checkbox"/> County Economic Development |
| <input type="checkbox"/> State Dept. of Bus. & Econ. Dev. Tourism | <input type="checkbox"/> County Economic Development |
| <input type="checkbox"/> State Land Use Commission | <input type="checkbox"/> KHPRC |
| <input type="checkbox"/> State Historic Preservation Division | <input checked="" type="checkbox"/> Water Department |
| <input type="checkbox"/> DLNR- Land Management | <input type="checkbox"/> Kauai Civil Defense |
| <input type="checkbox"/> DLNR-Foresty & Wildlife | <input type="checkbox"/> U.S. Postal Department |
| <input type="checkbox"/> DLNR-Aquatic Resources | <input checked="" type="checkbox"/> UH Sea Grant |
| <input type="checkbox"/> DLNR- OCCL | <input checked="" type="checkbox"/> Other: <u>Lee S. (Trans. Planner)</u> |
| | <input checked="" type="checkbox"/> County Transportation Agency |

FOR YOUR COMMENTS(pertaining to your department):

Dear Mr. Dahilig:

Mahalo for the opportunity to provide comment on this matter. We have no comment for this project at this time.

Should you have any questions, please contact Koa Duncan at (808) 241-4426 or kduncan@kauai.gov.

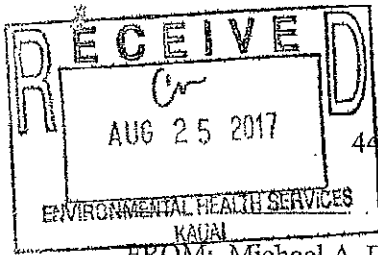
Sincerely,


Kanani Fu
Housing Director

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on Tuesday, September 26, 2017 at the Lihue Civic Center, Moikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Lihue, Kauai, at 9:00 am or soon thereafter.

If we do not receive your agency comments within one (1) month from the date of this request, we will assume that there are no objections to this permit request. Mahalo!

COUNTY OF KAUAI
HOUSING AGENCY



COUNTY OF KAUAI
PLANNING DEPARTMENT
4444 RICE STREET, SUITE A473, LIHUE, HI 96766
(808) 241-4050

County of Kauai
PLANNING DEPT.

FROM: Michael A. Dahilig, Director (Hull) Thursday, August 24, 2017

SUBJECT: Class IV Zoning Permit Z-IV-2018-2, Use Permit U-2018-1, ~~Special Permit~~ SP-2018-1, To Construct and Operate a Solar Utility Facility., Tax Map
Key:(4)2-6-3:1, ABS Lāwa'i Solar, LLC

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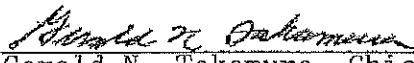
TO:

- | | |
|---|--|
| <input type="checkbox"/> Department of Transportation - STP | <input checked="" type="checkbox"/> DPW-Engineering |
| <input type="checkbox"/> DOT-Highway, Kauai(info only) | <input type="checkbox"/> DPW-Wastewater |
| <input type="checkbox"/> DOT-Airports, Kauai (info only) | <input type="checkbox"/> DPW-Building |
| <input type="checkbox"/> DOT-Harbors, Kanai (info only) | <input type="checkbox"/> DPW-SolidWaste |
| <input checked="" type="checkbox"/> State Department of Health | <input type="checkbox"/> Department of Parks & Recreation |
| <input type="checkbox"/> State Department of Agriculture | <input checked="" type="checkbox"/> Fire-Department |
| <input type="checkbox"/> State Office of Planning | <input checked="" type="checkbox"/> County Housing-Agency |
| <input type="checkbox"/> State Dept. of Bus. & Econ. Dev. Tourism | <input type="checkbox"/> County Economic Development |
| <input type="checkbox"/> State Land Use Commission | <input type="checkbox"/> KHPRC |
| <input type="checkbox"/> State Historic Preservation Division | <input checked="" type="checkbox"/> Water Department |
| <input type="checkbox"/> DLNR- Land Management | <input type="checkbox"/> Kauai Civil Defense |
| <input type="checkbox"/> DLNR-Forestry & Wildlife | <input type="checkbox"/> U.S. Postal Department |
| <input type="checkbox"/> DLNR-Aquatic Resources | <input checked="" type="checkbox"/> UH_Sea_Grant |
| <input type="checkbox"/> DLNR- OCCL | <input checked="" type="checkbox"/> Other: Lee S. (Trans. Planner) |
| | <input checked="" type="checkbox"/> County Transportation Agency |

FOR YOUR COMMENTS(pertaining to your department):

See comments on attached sheets.

September 6, 2017


Gerald N. Takamura, Chief
District Environmental Health Program
Kauai

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on Tuesday, September 26, 2017 at the Lihue Civic Center, Moikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Lihue, Kauai, at 9:00 am or soon thereafter.

If we do not receive your agency comments within one (1) month from the date of this request, we will assume that there are no objections to this permit request. Mahalo!

Class IV Zoning Permit Application: **Z-IV-2018-2**
Use Permit: **U-2018-1**
Special Permit: **SP-2018-1**
Applicant: **AES Lawai Solar, LLC.**

Based on our review of the application, we offer the following environmental health concerns for your consideration.

1. The use of individual wastewater systems is allowed. However, this assumes that access is available for pumping trucks to access site. The type and number of individual wastewater systems to be used on each lot will be determined by the wastewater rules in effect at the time of building permit application.
2. Noise will be generated during the construction and demolition phase of this project. The applicable maximum permissible sound levels as stated in Title 11, Hawaii Administrative Rules (HAR), Chapter 11-46, "Community Noise Control" shall not be exceeded unless a noise permit is obtained from the State Department of Health (DOH).
3. The construction and grub waste that is generated by the project shall be disposed of at a solid waste disposal facility that complies with the applicable provisions of Title 11, HAR, Chapter 11-58.1 "Solid Waste Management Control". The open burning of any of these wastes on or off site prohibited.
4. The Department of Health (DOH), Clean Water Branch (CWB) has reviewed the subject document and offers these comments. Please note that our review is based solely on the information provided in the subject document and its compliance with the Hawaii Administrative Rules (HAR), Chapters 11-54 and 11-55. You may be responsible for fulfilling additional requirements related to our program. We recommend that you also read our standard comments on our website at:
<http://health.hawaii.gov/epo/files/2013/05/Clean-Water-Branch-Std-Comments.pdf>
5. Any project and its potential impacts to State waters must meet the following criteria:
 - a. Antidegradation policy (HAR, Section 11-54-1.1), which requires that the existing uses and the level of water quality necessary to protect the existing uses of the receiving State water be maintained and protected.
 - b. Designated uses (HAR, Section 11-54-3), as determined by the classification of the receiving State waters.
 - c. Water quality criteria (HAR, Sections 11-54-4 through 11-54-8).

6. You may be required to obtain National Pollutant Discharge Elimination System (NPDES) permit coverage for discharges of wastewater, including storm water runoff, into State surface waters (HAR, Chapter 11-55).

For NPDES general permit coverage, a Notice of Intent (NOI) form must be submitted at least 30 calendar days before the commencement of the discharge. An application for a NPDES individual permit must be submitted at least 180 calendar days before the commencement of the discharge. To request NPDES permit coverage, you must submit the applicable form ("CWB Individual NPDES Form" or "CWB NOI Form") through the e-Permitting Portal and the hard copy certification statement with the respective filing fee (\$1,000 for an individual NPDES permit or \$500 for a Notice of General Permit Coverage). Please open the e-Permitting Portal website located at: <https://eha-cloud.doh.hawaii.gov/epermit/>. You will be asked to do a one-time registration to obtain your login and password. After you register, click on the Application Finder tool and locate the appropriate form. Follow the instructions to complete and submit the form.

7. If your project involves work in, over, or under waters of the United States, it is highly recommended that you contact the Army Corp of Engineers, Regulatory Branch (Tel: 835-4303) regarding their permitting requirements.

Pursuant to Federal Water Pollution Control Act [commonly known as the "Clean Water Act" (CWA)], Paragraph 401(a)(1), a Section 401 Water Quality Certification (WQC) is required for "[a]ny applicant for Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters..." (emphasis added). The term "discharge" is defined in CWA, Subsections 502(16), 502(12), and 502(6); Title 40 of the Code of Federal Regulations, Section 122.2; and Hawaii Administrative Rules (HAR), Chapter 11-54.

8. Please note that all discharges related to the project construction or operation activities, whether or not NPDES permit coverage and/or Section 401 WQC are required, must comply with the State's Water Quality Standards. Noncompliance with water quality requirements contained in HAR, Chapter 11-54, and/or permitting requirements, specified in HAR, Chapter 11-55, may be subject to penalties of \$25,000 per day per violation.
9. It is the State's position that all projects must reduce, reuse, and recycle to protect, restore, and sustain water quality and beneficial uses of State waters. Project planning should:
 - a. Treat storm water as a resource to be protected by integrating it into project planning and permitting. Storm water has long been recognized as a source of irrigation that will not deplete potable water resources.

What is often overlooked is that storm water recharges ground water supplies and feeds streams and estuaries; to ensure that these water cycles are not disrupted, storm water cannot be relegated as a waste product of impervious surfaces. Any project planning must recognize storm water as an asset that sustains and protects natural ecosystems and traditional beneficial uses of State waters, like community beautification, beach going, swimming, and fishing. The approaches necessary to do so, including low impact development methods or ecological bioengineering of drainage ways must be identified in the planning stages to allow designers opportunity to include those approaches up front, prior to seeking zoning, construction, or building permits.

- b. Clearly articulate the State's position on water quality and the beneficial uses of State waters. The plan should include statements regarding the implementation of methods to conserve natural resources (e.g. minimizing potable water for irrigation, gray water re-use options, energy conservation through smart design) and improve water quality.
- c. Consider storm water Best Management Practice (BMP) approaches that minimize the use of potable water for irrigation through storm water storage and reuse, percolate storm water to recharge groundwater to revitalize natural hydrology, and treat storm water which is to be discharged.
- d. Consider the use of green building practices, such as pervious pavement and landscaping with native vegetation, to improve water quality by reducing excessive runoff and the need for excessive fertilization, respectively.
- e. Identify opportunities for retrofitting or bio-engineering existing storm water infrastructure to restore ecological function while maintaining, or even enhancing, hydraulic capacity. Particular consideration should be given to areas prone to flooding, or where the infrastructure is aged and will need to be rehabilitated.

If you have any questions, please visit our website at: <http://health.hawaii.gov/cwb/>, or contact the Engineering Section, CWB, at (808) 586-4309.

10. National Pollutant Discharge Elimination System (NPDES) permit coverage is required for pollutant discharges into State surface waters and for certain situations involving storm water (HAR, Chapter 11-55).

- a. Discharges into Class 2 or Class A State waters can be covered under an NPDES general permit only if all of the NPDES general permit

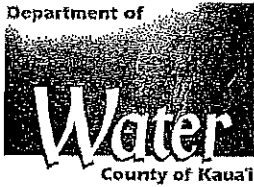
requirements are met. Please see the DOH-CWB website (<http://health.hawaii.gov/cwb/>) for the NPDES general permits and instructions to request coverage.

- b. All other discharges into State surface waters (including discharges from Concentrated Animal Feeding Operations) and discharges into Class 1 or Class AA State waters require an NPDES individual permit. To request NPDES individual permit coverage, please see the DOH-CWB forms website located at: <http://health.hawaii.gov/cwb/site-map/clean-water-branch-home-page/forms/>
- c. NPDES permit coverage for storm water associated with construction activities is required if your project will result in the disturbance of one (1) acre or more of total land area. The total land area includes a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under a larger common plan of development or sale. NPDES permit coverage is required before the start of the construction activities.

Land disturbance includes, but is not limited to clearing, grading, grubbing, uprooting of vegetation, demolition (even if leaving foundation slab), staging, stockpiling, excavation into pavement areas which go down to the base course, and storage areas (including areas on the roadway to park equipment if these areas are blocked off from public usage, grassed areas, or bare ground).

- 11. Please note that all discharges related to the project construction or operation activities, whether or not NPDES permit coverage and/or Section 401 WQC are required, must comply with the State's Water Quality Standards. Noncompliance with water quality requirements contained in HAR, Chapter 11-54, and/or permitting requirements, specified in HAR, Chapter 11-55, may be subject to penalties of \$25,000 per day per violation.

Due to the general nature of the application submitted, we reserve the right to implement future environmental health restrictions when information that is more detailed is submitted.



Water has no substitute... Conserve it!

4398 PUA LOKE STREET, PO BOX 1706
LIHU'E, KAUA'I, HAWAII 96766
PHONE: 808-245-5400 FAX: 808-245-5813

County of Kauai
PLANNING DEPT.

DATE: September 10, 2017
TO: Planning Department
Michael Dahilig, Director (Hull)
SUBJECT: Z-IV-2018-2; Use Permit U-2018-1, Special Permit SP-2018-1, Construct and Operate a Solar Utility Facility, TMK: 2-6-03:001; (AES Lawai Solar, LLC.)

17 SEP 18 12:54

RECEIVED

DOW COMMENTS:

We have no objections to the proposed Class IV Zoning Permit Z-IV-2018-2 and Use Permit U-2018-1 Applications to construct and operate a solar utility facility on TMK: 2-6-03:001. Water service will be limited to the existing water meters serving this parcel. Requests for additional water meters or an increase in water meter size will be dependent on the adequacy of the source, storage, and transmission facilities existing at that time.

Edward Doi

Edward Doi
Chief of Water Resources and Planning

9/11/17

Date

Z-IV-2018-2 AES Lawai Solar-Operate Solar Facility-2-6-03-001/RF:mlm



PLANNING DEPARTMENT
 4444 RICE STREET, SUITE A473, LIHUE, HI 96766
 (808) 241-4050
 County of Kauai
 PLANNING DEPT

FROM: Michael A. Dahilig, Director (Hull) Thursday, August 24, 2017

SUBJECT: Class IV Zoning Permit Z-IV-2018-2, Use Permit U-2018-1, Special Permit
 SP-2018-1, To Construct and Operate a Solar Utility Facility., Tax Map
 Key:(4)2-6-3:1, AES Lāwa'i Solar, LLC

17 SEP 18 PM 2:53
RECEIVED

TO:

- | | |
|---|--|
| <input type="checkbox"/> Department of Transportation - STP | <input checked="" type="checkbox"/> DPW-Engineering |
| <input type="checkbox"/> DOT-Highway, Kauai (info only) | <input type="checkbox"/> DPW-Wastewater |
| <input type="checkbox"/> DOT-Airports, Kauai (info only) | <input type="checkbox"/> DPW-Building |
| <input type="checkbox"/> DOT-Harbors, Kauai (info only) | <input type="checkbox"/> DPW-Solid Waste |
| <input checked="" type="checkbox"/> State Department of Health | <input type="checkbox"/> Department of Parks & Recreation |
| <input type="checkbox"/> State Department of Agriculture | <input checked="" type="checkbox"/> Fire Department |
| <input type="checkbox"/> State Office of Planning | <input checked="" type="checkbox"/> County Housing Agency |
| <input type="checkbox"/> State Dept. of Bus. & Econ. Dev. Tourism | <input type="checkbox"/> County Economic Development |
| <input type="checkbox"/> State Land Use Commission | <input type="checkbox"/> KHPRC |
| <input type="checkbox"/> State Historic Preservation Division | <input checked="" type="checkbox"/> Water Department |
| <input type="checkbox"/> DLNR- Land Management | <input type="checkbox"/> Kauai Civil Defense |
| <input type="checkbox"/> DLNR-Forestry & Wildlife | <input type="checkbox"/> U.S. Postal Department |
| <input type="checkbox"/> DLNR-Aquatic Resources | <input checked="" type="checkbox"/> UH Sea Grant |
| <input type="checkbox"/> DLNR- OCCL | <input checked="" type="checkbox"/> Other: Lee S. (Trans. Planner) |
| | <input checked="" type="checkbox"/> County Transportation Agency |

FOR YOUR COMMENTS (pertaining to your department):

9/14/17

*This project shall comply with
 the Kauai County Fire Code*

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on Tuesday, September 26, 2017 at the Lihue Civic Center, Moikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Lihue, Kauai, at 9:00 am or soon thereafter.

If we do not receive your agency comments within one (1) month from the date of this request, we will assume that there are no objections to this permit request. Mahalo!

DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
KAKUHIHewa BUILDING
601 KAMOKILA BLVD, STE 555
KAPOLEI, HAWAII 96707

COUNTY OF HAWAII
PLANNING DEPT.

17 SEP 18 P 3

RECEIVED

SOZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCES MANAGEMENT
ROBERT K. MASUDA
FIRST DEPUTY
JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
COMMISSION ON CONVEYANCES
COMMISSION ON WATER RESOURCES MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENHANCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAWA'I AND OAHU ISLAND RESERVE COMMISSION
LAND
STATE PARKS

September 15, 2017

Lisa Kettley, Project Manager
CH2M HILL
1132 Bishop St., Suite 1100
Honolulu, HI 96813
Lisa.Kettley@CH2M.com

IN REPLY REFER TO:
Log No. 2017.02053
Doc. No. 1709JA05
Archaeology

Dear Ms. Kettley:

SUBJECT: Chapter 6E-42 Historic Preservation Review –
Archaeological Inventory Survey Report for the AES Lawai Solar and Storage Project
Lāwai and Kōloa Ahupua'a, Kōloa District, Kawa'i (Revised draft)
TMK: (4) 2-6-003:001 por.

Thank you for submitting for review the revised draft *Archaeological Inventory Survey Report for the AES Lawai Solar and Storage Project, Lāwai and Kōloa Ahupua'a, Kōloa District, Kawa'i*. TMK: 4-2-6-003:001 por. (Wildsey et al., September 2017). The State Historic Preservation Division (SHPD) received this submittal on September 12, 2017. The original draft archaeological inventory survey report (AISR) was received by SHPD on July 27, 2017. Revisions were requested by SHPD in a letter dated August 30, 2017 (Log No. 2017.01617, Doc. No. 1708JA09). We appreciate your prompt response.

This archaeological inventory survey report (AISR) was prepared by Cultural Surveys Hawai'i, Inc., (CSH) at the request of CH2M Hill, for (private) project proponent AES Distributed Energy, Inc., (AES DE) and affiliate AES Lawa'i Solar, LLC. The AES Lawai Solar and Storage project will involve construction and operation of a 28-megawatt (MW) direct-current (dc) / 20-MW alternating-current (ac) solar photovoltaic (PV) system with a 20-MW-5-hour Battery Energy Storage System (BESS) in Lāwai, near Kawa'i's south shore. The 221-acre (89-hectare) project area, part of a 1,062-acre parcel, TMK: (4) 2-6-003:001, will be leased from owner Alexander & Baldwin, Inc. (A&B). AES Lawa'i Solar, LLC, has executed a Power Purchase Agreement (PPA) with the (private, non-profit) Kawa'i Island Utility Cooperative (KIUC); the required approval by the (State) Hawai'i Public Utilities Commission (PUC) will take approximately nine months to process. AES Lawa'i Solar, LLC, seeks to obtain the required land-use and zoning permits in late 2017 or early 2018.

The project area is bounded by Lāwai town and Aepe Reservoir in the northwest, Kōloa Road in the north, the west bank of Aepeha Reservoir in the southeast, and the southeast-trending Aka Road branch in the southwest. In the west, the project area is bounded by Kaupale Reservoir and an unnamed Lāwai Stream tributary that feeds Kaupale and Kumano Reservoirs. The property forms two areas, a north portion north of Aepe, Aepeoaha, and Aepeokolu Reservoirs, and a south, larger, portion south of the reservoirs. Three narrow, north-south project-area crossings flank and pass between Aepeoaha and Aepeokolu Reservoirs. The general area is dominated by the six reservoirs: Aepe, Aepeoaha, and Aepeokolu, from northwest to southeast; Aepeoaha, outside the property in the southeast; and Kaupale and Kumano, outside in the southwest. The most prominent features within the project area, both in the south portion, are two long ditches labeled No. 18 Reservoir Ditch and No. 19 Reservoir Ditch on the 1996 U.S. Geological Survey (USGS) Kōloa Quadrangle topographic map.

Ms. Kettley
September 15, 2017
Page 2

No Land Commission Awards (LCAs) were awarded in the project area during Māhale. Lāwā'i Ahupua'a was awarded to James Young Kanehoa, the son of John Young. Kōloa Ahupua'a was controlled by the ruling chief of Kaua'i. The main role played by the project area in the 19th and early 20th centuries was as sugar plantation land. Beginning in 1835, the Koloa Sugar Company was the first plantation-organized industry in Hawai'i. Soon, three Kaua'i sugar plantations had extensive lands that included the project area. The western area belonged to McBryde Plantation, the eastern area to Koloa Plantation, and certain parcels to Grove Farm. In 1899 the three merged as the McBryde Sugar Company. All reservoirs and other water features in the area are reportedly associated with the McBryde plantation. Aepoahua, the first of the six reservoirs to be established, is shown under excavation in a 1910 USGS topographic map. The No. 18 and 19 Ditches are shown, but not labeled, on the 1912 USGS map of Kaua'i.

Seven previously documented properties were re-visited during the AIS; six are associated with State Inventory of Historic Places (SIHP) Site 50-30-10-1051. The first two are the No. 18 and No. 19 Reservoir Ditches, designated Site 1051 Features A and B during an earlier project (Hammatt and Shideler 2007). The four Aepo reservoirs, outside the project area and briefly re-visited, are designated Site 1051 Features B1-B4. The seventh previously documented property is Bennett's (1931) Site 73 (SIHP Site 50-30-10-0073), a boulder pile with interior wall remnants, now bulldozer-damaged, which was re-visited briefly in the south, outside the project area because of changes in plans since the AIS began. A clearing mound nearby is now designated Site 0073 Feature 1.

Thirty-two archaeological features were newly documented during the AIS. Fifteen features including, among others, culverts and sluice gates, are associated with Ditch 18 (Site 1051 Feature A) or Ditch 19 (Feature B) and are assigned alphanumeric feature designations (SIHP Site 1051 Features A1-A4, SIHP Site 1051 Features B1-B11) that connect them with the relevant ditch. Sixteen newly documented features associated with the plantation but not with the ditches are assigned alphanumeric designations within SIHP Site 1051. Site 1051 Features C1-C6 are plantation roads and associated features. Features D1 and D2 are field berms. Features E1-E6 include the four Aepo reservoirs, a spillway between Aepoahua and Aepoekolu Reservoirs, and a slab that may be part of a culvert between Aepoekolu and Aepoeha Reservoirs. Features F and G, both southeast outside the project area, include a ditch and a water-control pipe. The 32nd newly documented feature, also south outside the project area, is a boulder clearing mound near Bennett's (1931) Site 73 and, like it, recently bulldozed; the newly identified mound is Site 0073 Feature 1.

The AIS results support Hammatt and Shideler's (2007) evaluation of SIHP Site 50-30-10-1051 as a significant historic property under Criterion d, per Hawaii Administrative Rules (HAR) §13-284-6, for its potential to provide information regarding the sugarcane plantation agricultural system. SIHP Site 50-30-10-0073 (outside the project area) is not evaluated. SHPD concurs with the evaluation of Site 1051 as significant; with the project effect determination, "effect, with agreed upon mitigation commitments," per HAR §13-284-7(e); and with proposed mitigation, data recovery in the form of archaeological monitoring, per HAR §13-284-8(a)(1)(c). An archaeological monitoring plan (AMP) that satisfies the requirements of HAR §13-279-4 shall be prepared to guide monitoring. The AMP must be accepted by SHPD before work begins.

This revised draft AISR provides very good environmental, historical and mythological, and archaeological background information, and describes each historic property thoroughly and clearly. The revisions address the issues and concerns identified in our previous correspondence. The report meets the minimum requirements of HAR §13-276-5. It is accepted. Please send two hardcopies of the document, clearly marked FINAL, along with a text-searchable PDF version to the Kapolei SHPD office, attention SHPD Library.

Aloha,



Susan A. Lebo, PhD
Archaeology Branch Chief

cc: William Folk, CSH, wfolk@culturalsurveys.com
David Shideler, CSH, dshideler@culturalsurveys.com

Exhibit B

Kaaina Hull

From: t lyles <tom.lyles@outlook.com>
Sent: Thursday, September 14, 2017 9:14 AM
To: Kaaina Hull
Subject: Application of AES Lawa'i Solar- Koloa Solar Project

Kauai Planning Commission
4444 Rice Street
Lihue Kauai

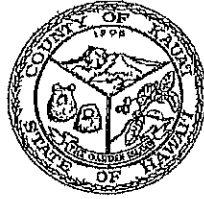
To Whom it May Concern,

We own property within 300' of the proposed project. My wife and I have reviewed the Application and Exhibits. Our only comment/suggestion is to incorporate the stipulations in "Landscaping", section 3.5 of the Application, in the permit.

Sincerely,
Tom and Alice Lyles

Exhibit C

Michael A. Dahilig
Director of Planning



Ka'aina S. Hull
Deputy Director of Planning

COUNTY OF KAUAI
PLANNING DEPARTMENT

SUBJECT TO CHANGE

DIRECTOR'S REPORT

I. SUMMARY

Action Required by Planning Commission: Consideration of Class IV Zoning Permit, Use Permit, and Special Permit to allow construction of a new solar utility facility and associated site improvements.

Permit Application Nos. Class IV Zoning Permit Z-IV-2018-2
Use Permit U-2018-1
Special Permit SP-2018-1

Name of Applicant(s) AES LAWA'I SOLAR, LLC

II. PERMIT INFORMATION

PERMITS REQUIRED	
<input checked="" type="checkbox"/> Use Permit	Pursuant to Section 8-2.4 of the KCC, 1987, as amended, a Use Permit is required because the proposed project is a utility facility to be located within the County of Kaua'i Agriculture (A) and Open (O) Zoning Districts.
<input type="checkbox"/> Project Development Use Permit	
<input type="checkbox"/> Variance Permit	
<input checked="" type="checkbox"/> Special Permit	Pursuant to Section 205 of the Hawai'i Revised Statutes (HRS) and Chapter 13 of the Rules of Practice and Procedures of the Planning Commission, a Special Permit is required for a use in the State Land Use Agricultural (A) District that is not a permissible use as set forth in Chapter 205 of the HRS.
<input checked="" type="checkbox"/> Zoning Permit Class <input checked="" type="checkbox"/> IV <input type="checkbox"/> III	Pursuant to Section 8-8.4 of the KCC, 1987, as amended, a Class IV Zoning Permit is a procedural requirement for obtaining a Use Permit in the Agriculture (A) Zoning District.
<input type="checkbox"/> Special Management Area Permit <input type="checkbox"/> Use <input type="checkbox"/> Minor	

G.2.a.1.
SEP 12 2017

AMENDMENTS	
<input type="checkbox"/> Zoning Amendment	
<input type="checkbox"/> General Plan Amendment	
<input type="checkbox"/> State Land Use District Amendment	

Date of Receipt of Completed Application: August 8, 2017
 Date of Director's Report: September 7, 2017
 Date of Public Hearing: September 26, 2017
 Deadline Date for PC to Take Action (60TH Day): September 11, 2017
 November 10, 2017 (Oct 24 Meeting)

III. PROJECT DATA

PROJECT INFORMATION	
Parcel Location:	The project site is located along the makai side of Koloa Road, approximately 600 feet south east of the Koloa Road and Lawailoa Lane intersection
Tax Map Key(s):	2-6-003:001
Area:	Approx. 196.33 acres
ZONING & DEVELOPMENT STANDARDS	
Zoning:	Agriculture (A), Open (O)
State Land Use District:	Agricultural
General Plan Designation:	Agriculture
Height Limit:	50 feet
Max. Land Coverage:	50% of lot area
Parking Requirement:	1 parking stall per 200 s.f. office space.
Front Setback:	10 feet
Rear Setback:	10 feet
Side Setback:	5 feet
Community Plan Area:	South Kana'i Community Plan
Community Plan Land Use Designation:	Agricultural
Deviations or Variances Requested:	NA.

IV. LEGAL REQUIREMENTS

Section 8-3.1(f), KCC: This report is being transmitted to the Applicant and Planning Commission in order to satisfy the requirements of Section 8-3.1(f), 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. The application was received on August 17, 2017 and the Applicant, through its authorized agent, was notified accordingly of the Planning Department's intent to commence permit processing.

Public Hearing Date: SEPTEMBER 26, 2017

V. PROJECT DESCRIPTION AND USE

As stated in the application, the Applicant proposes to construct a twenty-eight (28) megawatt solar generation facility, encompassing approximately 196.33 acres of the subject property (total acreage: 1,062.291). In addition to the solar panel arrays, a twenty (20) megawatt battery energy storage system and related interconnection and ancillary facilities are also proposed.

The solar facility will consist of solar panels mounted on single-axis trackers that will rotate along a fixed horizontal axis from east to west, tracking the movement of the sun. All of the power generated by the solar panels will be directed to a new proposed electrical substation.

The solar project site will be surrounded by a seven (7) foot high chain link security fence. There will be a twenty-five (25) foot buffer around the outside of the security fence. Interior access roads throughout the site will allow for access within the site to all major equipment. The solar systems will have an average height of 7.5 feet above ground, and they will be aligned in rows distanced apart from each other from between eighteen (18) feet to twenty-five (25) feet.

Please refer to the application for further description.

VI. APPLICANT'S REASONS/JUSTIFICATION

Please refer to Application.

VII. AGENCY COMMENTS

Forthcoming

VIII. 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 Kauai 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 Kauai's rural character and lifestyle, essential to its image as "The Garden Island" and to the continued viability and development of Kauai'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 and the Open (O) Zoning District with a Use Permit.

3. 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.
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-five (35) year life and operation of the solar facility, all equipment can 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 existing vegetation on the subject property should screen the proposed project site from being visible from Koloa Road and the residential area northwest of the project site.
8. If necessary to mitigate visual impacts, the applicant does propose to install new landscaping around the project area to further screen the site from Aka Road or Koloa Road.
9. The nearest residential structures are approximately .25 miles northwest of the subject site; therefore, no significant impacts should be generated that affect those residing on the closest residential properties.
10. During operation, the solar panels will not make any noise; however, the inverters and transformers will emit less than fifty (50) decibels (dBA) at less than ten (10) feet. This level of noise would not be considered significant.
11. The proposed project is not anticipated to increase traffic impacts in the area. During construction, the applicant proposes to employ traffic control personnel to control traffic entering the northern staging area from Koloa Road.
12. For wastewater treatment and disposal, the proposed project will utilize individual wastewater systems approved by the State Department of Health.
13. For solid waste, the proposed project will dispose of solid waste at the County's transfer station for disposal at the County landfill.
14. As discussed in the application's Biological Report, the existing state of botanical resources and wildlife have been heavily compromised by past and present agricultural uses on the subject property; and as a result, there do not appear to be

any mammalian or avian species or botanical resources that will be negatively impacted by the proposed project.

15. As a result of significant agricultural cultivation in the past, the subject property has been heavily disturbed, and there does not appear to be any pre-contact archaeological resources; however, nine (9) post-contact historic resources have been identified (all related to sugar cane cultivation). The applicant proposes to follow an archaeological monitoring plan to mitigate any activities that could adversely affect these historic properties.
16. The application states that the Applicant has completed an analysis of the traditional and cultural practices occurring on and around the subject property, and the analysis reflects that the proposed project will have no impact on any traditional or customary practices of native Hawaiians. However, based on the documents submitted by the Applicant, the Department is unclear as to whether the Applicant has provided sufficient evidence concerning cultural impacts given the standards established in Ka Paakai O Ka Aina v. Land Use Commission, 94 Hawaii 31 (2000). In particular, the Department is not able to determine that the Applicant has identified whether any valued cultural, historical, or natural resources exists in the subject property area, and whether any native Hawaiian traditional or customary practices were exercised in the subject property area. As such, the Department cannot determine the extent that any resources and traditional and customary practices will be affected by the proposed use and cannot develop any proposed feasible conditions to mitigate any such impacts.

As such, it would be advisable that prior to action, the applicant submit additional documents demonstrating that a proactive approach that has been taken with the area's cultural practitioners to ensure that traditional or customary practices are not impacted.

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.
 - Following the anticipated twenty-five (25) to thirty-five (35) year life and operation of the solar facility, all equipment can 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 structures are approximately .25 miles north west 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.
 - Fire and police services are located approximately four (4) miles away. Aside from standard fire and police protection, the proposed project is not anticipated to significantly impact these agencies.
 - The closest schools are Koloa Elementary School and Kalaheo Elementary School; however, it is not anticipated that the proposed project will impact these schools.
 - The proposed use is not anticipated to place additional burdens on other 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.

Environmental Impacts – As discussed in the application’s Biological Report, the existing state of botanical resources and wildlife have been heavily compromised by past and present agricultural uses on the subject property; and as a result, there do not appear to be any mammalian or avian species or botanical resources that will be negatively impacted by the proposed project.

For wastewater treatment and disposal, the proposed project will utilize individual wastewater systems approved by the State Department of Health.

For Solid waste, the proposed project will dispose of solid waste at the County’s transfer station for disposal at the County Landfill.

Cultural and Historic Impacts – As a result of significant agricultural cultivation in the past, the subject property has been heavily disturbed, and there does not appear to be any pre-contact archaeological resources; however, nine (9) post-contact historic resources have been identified (all related to sugar cane cultivation). The Applicant proposes to follow an archaeological monitoring plan to mitigate any activities that could adversely affect these historic properties.

The application states that the Applicant has completed an analysis of the traditional and cultural practices occurring on and around the subject property, and the analysis reflects that the proposed project will have no impact on any traditional or customary practices of native Hawaiians. However, based on the documents submitted by the Applicant, the Department is unclear as to whether the Applicant has provided sufficient evidence concerning cultural impacts given the standards established in Ka Paakai O Ka Aina v. Land Use Commission, 94 Hawaii 31 (2000). In particular, the Department is not able to determine that the Applicant has identified whether any valued cultural, historical, or natural resources exists in the subject property area, and whether any native Hawaiian traditional or customary practices were exercised in the subject property area. As such, the Department cannot determine the extent that any resources and traditional and customary practices will be affected by the proposed use and cannot develop any proposed feasible conditions to mitigate any such impacts.

As such, it would be advisable that prior to action, the applicant submit additional documents demonstrating that a proactive approach that has been taken with the area’s cultural practitioners to ensure that traditional or customary practices are not impacted.

Agency Comments – The Applicant should resolve and comply with all agency requirements as recommended in the permit application review, including but not limited to the fire code requirements as imposed by the County Fire Department, drainage requirements for DPW-Engineering Division, wastewater requirements for the State Department of Health (DOH), and the archaeological/historical requirements of the State Historic Preservation Division (SHPD).

IX. PRELIMINARY CONCLUSION

Based on the information contained in the Staff Report Findings and Evaluation, the Planning Department concludes that the proposed development should not have any detrimental impact to the environment or the surrounding area. The proposed use should not be detrimental to persons, property, or the environment in the surrounding area.

However, based on the documents submitted by the Applicant, the Department is unclear as to whether the Applicant has provided sufficient evidence concerning cultural impacts given the standards established in Ka Paakai O Ka Aina v. Land Use Commission, 94 Hawaii 31 (2000). In particular, the Department is not able to determine that the Applicant has identified whether any valued cultural, historical, or natural resources exist in the subject property area, and whether any native Hawaiian traditional or customary practices were exercised in the subject property area. As such, the Department cannot determine the extent that any resources and traditional and customary practices will be affected by the proposed use and cannot develop any proposed feasible conditions to mitigate any such impacts.

Therefore, prior to action, the Applicant should submit additional documents demonstrating that a proactive approach has been taken to identify whether any valued cultural, historical, or natural resources exist in the subject property, and whether any native Hawaiian traditional or customary practices were exercised in the subject property area.

X. PRELIMINARY RECOMMENDATION

Based on the foregoing evaluation and conclusion it is hereby recommended Class IV Zoning Permit Z-IV-2018-2, Use Permit U-2018-1, and Special Permit SP-2018-1 can be approved; however, approval shall be contingent upon a demonstration that comprehensive efforts have been taken to identify whether any valued cultural, historical, or natural resources exist in the subject property, and whether any native Hawaiian traditional or customary practices were exercised in the subject property area. If any impacts are demonstrated to resources or practices are found, then feasible conditions should be imposed to mitigate said impacts.

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 SEPTEMBER 26, 2017 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 and interested others; and
- c. The Applicant's response to staff's report and recommendation as provided herein.

By 
KA'AINA HULL
Deputy Director of Planning

Approved & Recommended to Commission:

By 
MICHAEL A. DAHLING
Director of Planning

Date: 9/9/17

Exhibit D

BEFORE THE PLANNING COMMISSION

COUNTY OF KAUAI

In the Matter of :

AES LA WAI 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 Koloa and Lawai, Kona, Kauai, Hawaii.

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

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

DECISION AND ORDER

Based upon the foregoing findings of fact and conclusions of law, the Planning Commission of the County of Kauai 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 Koloa and Lawai, Kona, Kauai, Hawaii with the above referenced conditions that the Planning Commission deems appropriate and consistent with the laws of the County and the State of Hawaii.

BEFORE THE PLANNING COMMISSION

COUNTY OF KAUAI

In the Matter of :

AES LAWAI 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 Koloa and Lawai, Kona, Kauai, Hawaii.

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

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

The State of Hawaii Land Use Commission ("LUC"), having examined the complete record of the County of Kauai Planning Commission ("Planning Commission") proceedings on the State Special Use Permit ("SUP") Application ("Application") filed by AES Lawai 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 Kauai Tax Map Key No. (4) 2-6-003:001 in Koloa and Lawai, Kona, Kauai, Hawaii ("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 Kauai Planning Department ("PD") (Special Permit No. SP-2018-1), pursuant to section 205-6, Hawaii Revised Statutes ("HRS"), and section 15-15-95 *et seq.*, Hawaii 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 Koloa and Lawai, Kona, Kauai, Hawaii, identified by Kauai 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. McBryce 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 Koloa 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 Koloa 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 Koloa Town, east of Kalahaio Town, and south of Koloa 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 Kauai 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 Kauai Comprehensive Zoning Ordinance ("CZO") Agriculture District and a small portion of the Petition Area is located within the County of Kauai CZO Open District. These areas of land have been within the County of Kauai CZO Agriculture and Open Districts, respectively, since the adoption of the CZO.

14. The Petition Area is located within the South Kauai Community Plan Area. The Petition Area has always been located within the South Kauai Community Plan Area since the original adoption of the original Koloa-Poipu-Kalaheo Development Plan (Ordinance No. 254, June 16, 1975), which was recently updated by the South Kauai 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 Kauai.

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 Kauai 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 Koloa 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 Hawaii's Renewable Portfolio Standard (RPS), as set forth in Hawaii Revised Statutes § 269-91 *et seq.* It will also be consistent with KIUC's 2013-2025 Strategic Plan to move towards energy independence and decreased reliance on foreign imported oil by meeting at least 50% of KIUC's annual electricity sales with energy generated by renewable resources by the year 2023.

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 Puhī Silty Clay Loam, Lihue Silty Clay on the southwest, and Rough Broken Land along the southeast and southwest boundaries as well as the central north portion surrounding Aepo and Aepoahua reservoirs.

Puhī soils are described as follows:

... well-drained soils on uplands on the island of Kauai. These soils developed in material derived from basic igneous rock. They are nearly level to steep. Elevations range from 175 to 500 feet. The annual rainfall amounts to 60 to 80 inches. The mean annual soil temperature is 73 degrees F. Puhī 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 thodomytus. [Foote et al. 1972:115]

Lihue soils are described as follows:

... well-drained soils on uplands on the island of Kauai. 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 Puhī 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 redtop, 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 Kauai, Oahu, Maui, Molokai, and Lanai, State of Hawaii* (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 30 to 45 tons per acre for the plant crop and 25 to 35 tons per acre for the ratoon crop. [Foote et al. 1972:140]

40. The Petition Area includes soils classified by the Land Study Bureau, University of Hawaii. 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 Hawaii, 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 Hawaii, 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.

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 Hawaiian duck (*Anas wyvilliana*). There are no resident seabirds on the Project site, though both the threatened Newell's Shearwater (*Puffinus newell*) 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 Kauai, 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") (Kauai General Plan, November 2000). These Maps document the Heritage Resources of Kauai, 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 Koloa 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 Koloa 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 Koloa Road.

ENVIRONMENTAL IMPACTS

Chapter 343, HRS

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

- A. Propose the use of state or county lands or the use of state or county funds;
- B. Propose any use within any land classified as conservation district by the State Land Use Commission under HRS Chapter 205;
- C. Propose any use within the shoreline area as defined in HRS Section 205A-41;
- D. Propose any use within any historic site as designated in the National Register or Hawaii Register as provided for in the Historic Preservation Act of 1966, Public

Law 89-665, or HRS Chapter 6E;

E. Propose any use within the Waikiki area of Oahu, the boundaries of which are delineated in the land use ordinance as amended, establishing the "Waikiki Special District";

F. Propose any amendments to existing county general plans where such amendment would result in designations other than agriculture, conservation, or preservation;

G. Propose any reclassification of any land classified as conservation district by the State Land Use Commission under HRS Chapter 206;

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 Hawaii 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 Lawai Stream (located to the west of the Subject Property). 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 Kauai, 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 Kauai residents who are already living on Kauai.

C. Property Values. Since the fair market value of real property is based on the value of the land and physical improvements, the completion of the Project will increase

the value of the Petition Area. This will result in increased real property taxes on the Petition Area, which will directly benefit the County of Kauai. However, it will not, in and of itself, have a material impact on the value of, or real property taxes assessed against, surrounding properties.

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

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Roadways

62. The major roads which service the Petition Area are Koloa Road (a State Highway) and Aka Road (a County Road) to the north, Lawai 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 Koloa Road and a staging area at the south end of the Solar Project. An access entry will be constructed along Koloa 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 Koloa 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 Kauai, 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 Kauai'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 Kauai, as contained in Chapter 15, Article 1, of the Kauai 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 Lawai 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 silt-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 Poipu, 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 Koloa Elementary School in Koloa, Kalaheo Elementary School in Kalaheo, Waimea Canon Middle School, and Waimea High School in Waimea, and Kauai High School and Chiefess Kamakahelei Middle School in Lihue. 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 airports. 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 Hawaii Revised Statutes Section 205-6 and in Section 15-15-95, *et seq.* of the Land Use Commission Rules (Hawaii Administrative Rules) 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 LUC by adoption, or rejected by clearly contrary findings of fact, are hereby denied.

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

CONCLUSIONS OF LAW

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

2. Based upon the record of the proceedings before the Planning Commission, and pursuant to § 205-6, HRS and § 15-15-95 *et seq.*, HAR, the LUC finds that the recommendation of the Planning Commission to approve a State SUP for the Petition Area, consisting of approximately 196.33 acres of land in the State Land Use Agricultural District identified by Kauai Tax Map Key No. (4) 2-6-003:001 in Koloa and Lawai, Kona, Kauai, Hawaii, 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, 178 P.3d 1 (2003).

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

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

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

8. Article XI, section 1, of the Hawaii State Constitution requires the State to conserve and protect Hawaii'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 Hawaii State Constitution and finds that the Project is in compliance and non-violative therewith.

10. Article XI, Section 3, of the Hawaii 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 Hawaii State Constitution and finds that the Project is in compliance and non-violative therewith.

12. Article XII, Section 7, of the Hawaii 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 ahupuaa 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 Hawaii 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 Hawaii v. Hawaii County Planning Commission*, 79 Hawaii 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 Paakai O KaAina v. Land Use Commission*, 94 Hawaii 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 on lands with soil classified by the LSB's detailed land classification as overall (master) productivity rating B or C for which an SUP is granted pursuant to § 205-6, HRS; provided that:

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

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

DECISION AND ORDER

Having duly considered the complete record in this matter and the oral arguments presented by the Applicant in this proceeding, the Planning Commission, through a motion having been duly made and seconded at a meeting conducted on September 26, 2017, in Lihue, Hawaii, and the motion having received the affirmative votes required by § 15-15-13, HAR, and there being good cause for the motion, hereby APPROVES the recommendation of the Planning Commission approving a State SUP for the Petition Area, consisting of approximately 196.33 acres of land in the State Land Use Agricultural District identified by Kauai Tax Map Key No. (4) 2-6-003:001 in Koloa and Lawai, Kona, Kauai, Hawaii, 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 6 months of the start of commercial power generation. Extensions to this deadline may be granted by the Director of the County of Kauai Planning Department (RD) 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 Kauai PD in writing within 30 days of the end of the 6-month period. If requested by the Planning Director, the Applicant shall attend a meeting of the Planning Commission and submit a report to the Planning Commission detailing the Applicant's actual and reasonable efforts to establish compatible agricultural operations on the usable lands of the Petition Area. The Planning Commission may determine whether probable cause exists to re-evaluate the SP and to hold a hearing pursuant to the Rules of the Planning Commission. Extensions to the 6-month deadline may be granted by the Planning Director for unforeseen extenuating circumstances.

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

a. Applicant shall minimize or avoid clearing and grading activities from June 1 through September 15.

b. A survey map accompanied by a metes and bounds description of the approved Petition Area.

c. A site plan showing the area required under Condition 1, above, relating to the minimum land area to be made available for compatible agricultural use.

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

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

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

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 Kauai PD prior to the expiration of the deadline. The LUC may grant an extension to the deadline to establish the Project due to unforeseen circumstances that were beyond the control of the Applicant. This SP shall be valid for a period of thirty-five (35) years from the date of the LUC's Decision and Order approving the SP, subject to further extensions upon a timely request for extension filed with the Planning Commission at least one hundred twenty (120) days prior to the SP's expiration. Approval of time extensions shall not be required from the LUC.

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 Kauai 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 Kauai PD.

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

- a. Any change or transfer of licensee on the Petition Area.
- b. Any change in uses on the Petition Area.
- c. Termination of any uses on the Petition Area; and/or
- d. Transfer in ownership of the Petition Area.

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 Koloa 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 Kauai Island Burial Council, as applicable, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites are discovered during the course of construction of the facility, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigation measures have been implemented to its satisfaction.

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 Kauai contractors, and shall seek to employ residents of Kauai in temporary construction and permanent

jobs. It is recognized that the applicant may have to employ non-Kauai residents for particular skilled jobs where no qualified Kauai resident possesses such skills. For the purpose of this condition, the Commission shall relieve the applicant of this requirement if the applicant is subjected to anti-competitive restraints on trade or other monopolistic practice.

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.

SO ORDERED BY THE PLANNING COMMISSION OF THE COUNTY OF KAUAI by a X-X-X vote
of its Commissioners at its meeting on September 26, 2017.

DATED: Lihue, Hawaii; _____

KIMO M. KEAWE
Chair
County of Kauai Planning Commission

Approved as to Legality & Form

County Attorney

DRAFT