EXHIBIT "30"

BELLES GRAHAM PROUDFOOT WILSON & CHUN, LLP

MAX W. J. GRAHAM, JR. 926-0
MICHAEL J. BELLES 1577-0
IAN K. JUNG 8626-0
4334 Rice Street, Suite 202
Lihue, Kauai, Hawaii 96766
Telephone: (808) 246-6962
Facsimile: (808) 245-3277
Email: mwg@kauai-law.com
mjb@kauai-law.com
ikj@kauai-law.com

Attorneys for Applicants,
AES LAWA'I SOLAR, LLC,
a Delaware limited liability company

BEFORE THE PLANNING COMMISSION

OF THE

COUNTY OF KAUAI

In The Matter Of The Application Of AES LAWA'I SOLAR, LLC, a Delaware limited liability company, for a Use Permit, a Class IV Zoning Permit, and a Special Permit for real property situated at Kōloa and Lāwa'i, Kona, Kaua'i, Hawai'i, identified by Kaua'i Tax Map Key No. (4) 2-6-003:001 (por.).	USE PERMIT NO. U-2018-1 CLASS IV ZONING PERMIT NO. Z-IV-2018-1 SPECIAL PERMIT NO. SP-2018-2 **APPLICANT'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER** **(LĀWA'I SOLAR PROJECT)**

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APPLICANT'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER

The Planning Commission of the County of Kaua'i ("Planning Commission") having examined the complete record of the proceedings on the Application ("Application") filed by AES Lawa'i Solar, LLC ("Applicant") to construct a solar energy facility and accessory uses and structures ("Solar Project") on an approximately 196.33 acre portion of land in the State Land Use Agricultural District ("Subject Property") identified by Kauai Tax Map Key No. (4) 2-6-003:001 in Kōloa and Lāwa'i, Kona, Kaua`i, Hawai`i ("Master Lot"), 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. Effective August 17, 2017, Applicant filed a complete Application with the County of Kaua`i Planning Department ("County"), pursuant to: Section 205-6, Hawai`i Revised Statutes ("HRS"); Section 15-15-95 *et seq.*, Hawai`i Administrative Rules ("HAR"); Chapter 13 of the Rules of Practice and Procedure of the Planning Commission ("PC Rules"); and Sections 8-2.4(q)(16), 8-2.4(r)(12) and (14), 8-3.2, and 8-8.4(4) of the Comprehensive Zoning Ordinance of the County of Kaua'i, Title IV, Chapter 8 of the Kaua'i County Code, 1987 ("CZO").

2. On August 22, 2017, the County published notice of a public hearing to be held in this matter on September 26, 2017, in The Garden Island, a newspaper of general circulation in the County of Kaua'i.

3. On August 25, 2017, the Applicant caused notice of the public hearing to be mailed to at least eighty-five percent (85%) of owners of parcels of real property located within three hundred feet (300') of the Master Lot pursuant to: CZO Sections 8-8.4(4), 8-9.4(b), 8-3.1(f) and 8-3.2(f); Section 1-13-5(d) of the PC Rules; and HAR Section 15-15-95(d).

4. At the Planning Commission meeting held on September 12, 2017, the Planning Director of the County of Kaua'i ("Planning Director") submitted the Planning Director's Report on the Application to the Planning Commission.

5. On September 26, 2017, the Planning Commission held a public hearing on the Application and received testimony from the Applicant, the Applicant's Witnesses, and members of the public.

6. On September 26, 2017, after the conclusion of the public hearing, and after due deliberation, the Planning Commission recommended approval of the Application, subject to the conditions contained herein.

APPLICANT

1. The Applicant is AES Lawa'i Solar, LLC, a Delaware limited liability company. AES is an affiliate of AES Distributed Energy, Inc. which is a wholly owned subsidiary of the The AES Corporation. The AES Corporation has a long history in the development and operation of solar powered electric facilities, battery energy storage systems and other renewable and conventional power generation facilities. AES Corporation is a Fortune 200 global power company with over 37,000 MW of generating capacity, seven utility companies, and 19,000 employees in 17 countries.

DESCRIPTION OF THE PROPERTY

2. The property which is the subject matter of the Application ("Subject Property") is described as an approximately 196.33 acre portion of Lot B-1 located in Kōloa and Lāwa'i, Kona, Kaua`i, Hawai`i, identified by Kaua`i Tax Map Key No. (4) 2-6-003:001 ("Master Lot"). The Subject Property contains approximately 196.33 acres and the Master Lot contains 1,062.91 acres.

3. McBryde Sugar Company, LLC, a Delaware limited liability company ("McBryde"), is the owner of the Master Lot. The Applicant proposes to develop a Solar Project within the Master Lot consisting of: a photo-voltaic solar energy facility on an approximately 196.33 acre portion of the Master Lot; two (2) construction staging areas; and access roads. McBryde has agreed to grant the Applicant an easement ("Solar Project Easement") to use: the 196.33 acre portion of the Master Lot to operate the solar facility; the roads within the Master

Lot for access purposes; and the two (2) staging areas during the construction of the Solar Project. The term of the Solar Project Easement is twenty-five (25) years from the start of commercial operations of the Solar Project, and may be extended an additional ten (10) years by the Applicant. McBryde has authorized Applicant to file this Application pursuant to an Owner's Authorization.

4. The Subject Property has been used for agricultural purposes in the past, including sugar cane cultivation and cattle and livestock pasture. The Subject Property lies to the west of Koloa Town and is undeveloped. There are no existing buildings or structures on the Subject Property. For the past 100 years, agricultural activities on the Subject Property have included sugarcane cultivation and cattle raising. Private roads ("Cane Haul Roads") which extend from Koloa Road to Lawai Road provide access to the Subject Property. The Subject Property is surrounded by the Master Lot, which is primarily rural, dominated by a mixture of agricultural uses. The Master Lot is located adjacent to agricultural, resort and residential areas in Lāwa'i, Po'ipu and Kōloa.

5. 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.

6. The Subject Property is composed of general gently sloping lands (3%-8%) in an area generally lying west of Koloa Town, east of Kalaheo Town, and south of Koloa Road. The Subject Property is located approximately 400 feet above sea level. The Subject Property contains level areas interspersed with gullies and valleys, and is currently used for local, small-scale cattle ranching. As a result, most of the Subject Property consists of open

pastures. There is an existing network of Cane Haul Roads within the Master Lot which provides access to the Subject Property from Koloa Road and Aka Road, to the north, and from Ala Kukuiula, to the south.

The northern (mauka) section of the Subject Property ("Northern Section") is separated from its southern (makai) section ("Southern Section") by a valley (which is not part of the Subject Property). Located within the valley are the Aepo Reservoir, the Aepoalua Reservoir and the Aepoekolu Reservoir. The Northern Section and the Southern Section are physically connected by: the dam that separates the Aepo Reservoir and the Aepoalua Reservoir ("Northern Dam"); the dam that separates the Aepoalua Reservoir from the Aepoekolu Reservoir ("Central Dam"); and the dam at the east end on the Aepoekolu Reservoir ("Southern Dam"). In addition to the Aepo, Aepoalua and Aepoekolu Reservoirs, the following other reservoirs are located on the Master Lot in the vicinity of the Subject Property: Kaupale Reservoir (to the west); Kumano Reservoir (to the southwest); and Aepoeha Reservoir (to the southeast). These six reservoirs are collectively referred to as the "Reservoirs".

7. The Subject Property receives approximately 55 inches of annual rainfall.

8. According to the Federal Insurance Rate Map (Map No. 1500020311E and 1500020313E), the Subject Property is located in Flood Zone X, which is an area determined to be outside of the 500 year flood plain.

9. The Subject Property is located in the State Land Use Agricultural District. The Subject Property has been located in the State Land Use Agricultural District since the inception of the State Land Use Districts. The Subject Property has not been designated as Important Agricultural Lands under Part III of HRS chapter 205 ("IAL").

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

11. The Subject Property is located in the CZO Agriculture District and the CZO Open District. The Subject Property has been located in the CZO Agriculture and Open Districts since the adoption of the CZO.

12. The Subject Property is located within the Koloa-Poipu-Kalaheo Development Plan Area. The Subject Property has always been located within the Koloa-Poipu-Kalaheo Development 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 Form Based Code (Ordinance No. 990, July 10, 2015).

13. None of the Subject Property is located within the Special Management Area ("SMA") of the County of Kaua`i.

14. There are no existing violations of any land use laws or regulations on the Subject Property.

15. The Subject Property is not subject to any land use conditions.

DESCRIPTION OF PROPOSED USE

16. 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.

17. 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.

18. 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.

19. 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.

20. 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

21. 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.

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).

22. 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.

23. 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).

24. 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.

25. 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.

26. 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.

27. 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 Area (also referred to as the Lay Down Area) along Koloa Road from the view of residents to the west. If it is necessary to mitigate visual impacts, new landscaping will be installed and maintained around the Solar Project as may be necessary to screen it when viewed from Aka Road or Koloa Road.

28. Due to the topography of the site, some earthwork will be required to reduce the slope in certain portions of the site and accommodate the solar panels. The tracking system being installed can tolerate up to a 10 degree slope of the land. The overall permanent disturbance to the site will be minimal given that the proposed solar panels are mounted on structural posts with a racking system. Some grading may also be required for interior service roads. The Applicant will obtain all necessary grading permits. As discussed in the Drainage Report, all additional drainage resulting from construction and grading activities will be maintained on site.

29. After construction and commissioning, the system will operate with minimal servicing and maintenance. 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. If necessary, a technician can be dispatched as required to address any issues. The Applicant will have dedicated employees monitoring the Solar Project twenty-four (24) hours per day seven (7) days per week, including an operator on island.

30. During operation, the solar panels will be silent. The BESS Blocks (PCS), inverters and transformers are also very quiet, emitting less than fifty (50) a-weighted decibels (dBA) at three (3) meters (less than 10 feet), which is approximately the loudness of a conversation.

31. Permanent lighting may be required for the Solar Project for site security. Any onsite lighting will be motion sensor-activated as well as angled downward and shielded to avoid excess light or glare beyond the Solar Project boundary. All lighting requirements will be met by using LED lights that meet the requirements of the International Dark-Sky Association.

32. Following the anticipated twenty-five (25) to thirty-five (35) year life and operation of the Solar Project, the Applicant: will remove all equipment including the solar panels, racking, footings, BESS Blocks, inverters, transformers, concrete pads, fences, and foundations to a depth of three feet below grade; cover up all pit holes, trenches or other borings or excavations; reseed the soil with appropriate grass seed if necessary; and will otherwise return the land to substantially the same condition as its original condition. The Applicant will provide McBryde with a Removal Security (not to exceed $2,100,000.00) to guaranty the decommissioning of the Solar Facility as required by the Solar Project Easement.

NEED FOR THE PROJECT

33. The proposed Solar 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 desires. This will help KIUC to meet its morning, afternoon, evening peak demand, along with other supporting ancillary services on the grid. KIUC intends to use approximately 72% of the output from the PV system to charge the BESS, such that KIUC will be able to dispatch the

stored energy to: (1) provide energy as the sun sets and into the evening to offset KIUC's evening peak demand; (2) provide energy in the morning to offset KIUC's morning peak; and (3) respond to low-frequency events by supplying additional power automatically, all of which will help KIUC reduce its dependence on more expensive and inefficient conventional oil-fired units. It is anticipated the Solar Project will reduce KIUC's fossil fuel usage by over 3.7 million gallons annually.

34. The projected reduction in oil use will result in significant cost savings for KIUC and its members/customers. KIUC anticipates that once the Solar 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.

35. The Solar 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 amount of clean renewable green energy expected to be generated from the Solar Project per year is 51,226 Megawatt-hours (MWh). This is enough to power almost 3,800 homes. By EPA estimates, this would offset the emissions of over 85 million miles driven by the average passenger vehicle. The energy generated will also 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 whose goals include: moving towards energy independence; decreasing reliance on foreign imported oil; and meeting at least 50% of KIUC's annual electricity sales with energy generated by renewable resources by the year 2023.

36. The construction and maintenance of the system will benefit the public as a whole and support the local economy by: increasing tax revenues; providing jobs; and increasing the sale of local goods and services. It will also provide power to the KIUC electrical grid at less than the current cost of oil-fired power, which should help stabilize and even reduce electric rates to KIUC's members.

37. The Applicant and KIUC have entered into a Power Purchase Agreement ("PPA"). By the terms of the PPA, KIUC will purchase the electrical power generated by the Solar Project over the twenty-five (25) to thirty-five (35) year life of the Solar Project.

IMPACTS UPON THE RESOURCES OF THE AREA

Agricultural Resources

38. The soils within the Subject Property are Puhi Silty Clay Loam. According to the U.S. Department of Agriculture ("USDA") Soil Survey Geographic ("SSURGO") database (2001) and soil survey data gathered by Foote et al. (1972), the soils within the Subject Property consist of: Puhi silty clay loam on the northeast (PnB [3 to 8% slopes]; PnC [8 to 15% slopes], and PnE [25 to 40% slopes]); Lihue silty clay on the southwest (LhB [0 to 8% slopes], LhC [8 to 15% slopes], LhD [15 to 25% slopes], and LhE2 [25 to 40% slopes]); Rough broken land (rRR) along the boundary of the southeast and southwest sides as well as the central north portion surrounding Aepo and Aepoalua reservoirs; and Water (W) visible within the Reservoirs.

Puhi 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° F. Puhi soils are geographically associated with Lihue and Kapaa soils.

These soils are used for sugarcane, pineapple, truck crops, orchards, pasture, woodland, wildlife habitat, water supply, and homesites. The natural vegetation consists of guava, Java plum, pangolagrass, kikuyugrass, elephantopus, joee, yellow foxtail, and rhodomyrtus. [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 73° F. Lihue soils are geographically associated with Ioleau and Puhi soils.

These soils are used for irrigated sugarcane, pineapple, pasture, truck crops, orchards, wildlife habitat, woodland, and homesites. The natural vegetation consists of lantana, guava, koa haole, joee, 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 solt, 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 clay 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, arid the erosion hazard is slight to moderate. About 1 to 2 inches of water is available per foot of soil. The rooting depth is 20 to 60 inches or more.
>
> All planting and tilling are done across the slope or on the contour. Field roads serve as diversions. Grassed waterways are needed in some areas. Rainfall is ample; no irrigation is needed. In nearly all areas the old plants are plowed under. Crop residue mulch is not used because it increases heart rot and root rot diseases.
>
> Yields are 35 to 45 tons per acre for the plant crop and 25 to 35 tons per acre for the ratoon crop. [Foote et al. 1972:140]

39. As shown on the Detailed Land Classification Map (Island of Kauai) (Land Study Bureau, University of Hawaii), the Over-all Productivity Rating for lands within the Subject Property is Class B (approximately 126 acres), C (approximately 45 acres) and D (approximately 25 acres).

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

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

Archaeological and Cultural Resources

42. An Archaeological Inventory Survey Report for the AES Lawa'i Solar and Storage Project was prepared by Hallett H. Hammatt, McKenzie Wildey, William H. Folk II, and Nancine "Missy" Kamai of Cultural Surveys Hawaii, Inc. dated September 2017 ("AIS"). The AIS was approved by the State Historic Preservation Division ("SHPD") by letter from Susan A. Lebo, Ph.D., dated September 15, 2017. As noted in the AIS: the Subject Property has been heavily disturbed by past and present agricultural activities; and there do not appear to be any pre-contact archaeological, cultural or historical resources on the surface of the Subject Property in which the Solar Project will take place which will be affected by the Solar Project.

43. Two post-contact historic properties were re-identified and thirty-two new 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. 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. The AMP will be submitted to SHPD for approval. In the event of inadvertent historic site or burial discovery in the future, the Applicant will immediately contact SHPD.

44. An analysis of the traditional or cultural practices occurring on or related to the Subject Property have been addressed in the AIS and in the Cultural Impact Assessment Report for AES Lawai Solar and Storage Project dated September 2017 prepared by

McKenzie Wildey, Nicole Ishihara, Chantellee Konohia Spencer, and Hallett H. Hammatt, Ph.D. ("CIA"). The conclusion contained in the CIA is that the Solar Project will have no impact on any known traditional or customary practices of native Hawaiians within the Subject Property. As noted in the AIS, no traditional cultural properties were identified as existing, and no traditional cultural practices were identified as taking place, within the Subject Property or its vicinity.

45. The Applicant will implement the following recommendations contained in Section 8.2 of the CIA:

> "8.2 **Impacts and Recommendations**
>
> Based on information gathered from the cultural and historic background, no impacts were identified. However, in the event that any *iwi kūpuna* and/or cultural finds are encountered, CSH recommends the following:
>
> 1. Project construction workers and all other personnel involved in the construction and related activities of the project should be informed of the possibility of inadvertent cultural finds, including human remains. In the event that any potential historic properties are identified during construction activities, all activities will cease and SHPD will be notified pursuant to HAR §13-280-3. In the event that *iwi kūpuna* are identified, all earth moving activities in the area will stop, the area will be cordoned off, and the SHPD, coroner, and Police Department will be notified pursuant to HAR §13-300-40. In addition, in the event of an inadvertent discovery of human remains, the completion of a burial treatment plan, in compliance with HAR §13-300 and HRS §6E-43, is recommended.

2. In the event that *iwi kūpuna* and/or cultural finds are encountered during construction, project proponents should consult with cultural and lineal descendants of the area to develop a reinterment plan and cultural preservation plan for proper cultural protocol, curation, and long-term maintenance."

46. In summary, the Solar Project will have no impact on any known traditional or customary practices of native Hawaiians for the following reasons:

a. There are no known traditional or customary practices of native Hawaiians that are presently occurring within the Subject Property.

b. There are no special gathering practices taking place within any portion of the Subject Property.

c. The Solar 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.

d. There are no known religious practices taking place within the Subject Property.

e. There are no known pre-contact cultural or historic sites or resources located within the Subject Property.

f. There are no known burials within the Subject Property.

Flora and Fauna

47. The biological resources within the Subject Property are described in the Biological Resources Survey Report dated June 2017 prepared by SWCA Environmental Consultants ("Biological Report").

48. The vegetation types and plant species identified during the survey are not considered unique and are typical of lands previously used for agriculture. Six indigenous plant species were identified and are common throughout the Hawaiian Islands. None of the plant species observed in or near the survey area were considered rare, and none are federally listed or state-listed threatened or endangered species, species proposed for listing, or candidate species. Therefore, the proposed Solar Project is not expected to have a significant, adverse effect on terrestrial vegetation.

49. Twenty-two avifuana species were observed in the survey area; of these, only two species are indigenous or endemic (native) to the Hawaiian Islands. The endangered endemic Hawaiian moorhen (*Gallinula galeata sandvicensis*) was observed foraging within the reservoirs adjacent to the survey area. The indigenous black-crowned night-heron (*Nycticorax nycticorax*) was also observed foraging in the reservoirs. No migratory species were observed because the majority of migrant species are likely in their respective summering grounds outside of Hawaii at the time of this survey.

50. As discussed in the Biological Report, the existing state of botanical resources and wildlife have been heavily compromised by past and present agricultural uses on the Subject Property. As a result, there do not appear to be any mammalian or avian species or botanical resources that will be endangered by the Solar Project. The habitat currently present on the Subject Property 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 Subject Property and within the vicinity are likewise alien species. There is the possibility that the endemic

endangered Hawaiian hoary bat (*Lasiurus cinereus semotus*) overflies the Subject Property and possibly forages for insects on a seasonal basis above the Subject Property. Avian species present on the Subject Property are likewise prominently alien species, although a Hawaiian moorhen (*Gallinula galeata sandvicensis*) was observed in the vicinity of the Subject Property (in an adjacent Reservoir). There is the possibility that other endangered species may use resources within the project area on a seasonal basis, including: Nēnē (*Branta sandvicensis*); Hawaiian coot (*Fulica alai*); Hawaiian stilt (*Himatopus mexicanus Knudsen*); and Hawaiian duck (*Anaswyvilliana*). There are no resident seabirds on the Subject Property, though both the threatened Newell's Shearwater (*Puffinus newel*) and the endangered Hawaiian Petrel (*Pterodroma sandwichensis*) have been recorded overflying the general area on an annual basis during the nesting season.

51. To protect the biological resources, the Applicant will implement the following recommendations from the Biological Report:

a. All construction equipment and vehicles arriving from outside Kauai should be washed and inspected before entering the project area.

b. Construction materials arriving from outside of Kauai should also be washed and/or visually inspected (as appropriate) for excessive debris, plant materials, and invasive or harmful non-native species (plants, amphibians, reptiles, and insects).

c. Inspection and cleaning activities should be conducted at a designated location. The inspector should be a qualified botanist and/or entomologist that is able to identify invasive species that are of concern relevant to the point of origin of the equipment, vehicle, or material.

d. When possible, raw materials (e.g., fill materials) should be purchased from a local supplier on Kauai to avoid introducing non-native species not present on the island.

e. If a nest with eggs or chicks/ducklings is discovered, work should cease within 100 feet of the nest until the chicks/ducklings have fledged.

f. Nests or broods found in the project area before or during construction should be reported to the U.S. Fish & Wildlife Service ("USFWS") within 48 hours.

g. If an endangered Hawaiian waterbird is present or flies into the area during ongoing activities, all activities within 100 feet of the bird should cease, and the bird should not be approached. Work may continue after the bird leaves the area of its own accord.

h. All regular on-site staff should be trained to identify the Hawaiian goose, and they should know what appropriate steps to take if Hawaiian geese are present on-site. Training would not be necessary if a biological monitor is present for the duration of the construction.

i. If a Hawaiian goose is found in the area during ongoing activities, all activities within 100 feet of the bird should cease, and the bird should also not be approached. If a nest is discovered, the USFWS must be contacted. If a nest is not discovered, work may continue after the bird leaves the area of its own accord.

j. Construction activity should be restricted to daylight hours as much as practicable during the seabird peak fallout period (September 15-December15) to avoid the use of nighttime lighting that could attract seabirds.

k. All outdoor lights should be shielded to prevent upward radiation. This has been shown to reduce the potential for seabird attraction (Reed et al. 1985; Telfer et al. 1987). A selection of acceptable seabird-friendly lights can be found online at the Kauai Seabird Habitat Conservation website (2013).

l. Outside lights that are not needed for security and safety should be turned off from dusk through dawn during the fledgling fallout period (September 15-December 15).

m. Any fences that are erected as part of the project should have barbless top-strand wire to prevent entanglements of the Hawaiian hoary bat on barbed wire. No fences in the survey area were observed with barbed wire during the survey; however, if fences are present, the top strand of barbed wire should be removed or replaced with barbless wire.

n. No trees taller than 15 feet should be trimmed or removed as a result of the Solar Project between June 1 and September 15, when juvenile bats that are not yet capable of flying may be roosting in the trees.

Groundwater Resources

52. The Solar Easement provides the Applicant with the right to use an existing water pump adjacent to the Aepo Reservoir ("Water Pump") for the following non-potable purposes: agricultural activities; and dust control during construction. The source of this water is from surface waters collected in the Aepo Reservoir or from wells located elsewhere on McBryde's property. The water used for agricultural activities will be for consumption by the sheep and will be a minimal amount. The dust control use will be temporary and also minimal. The use will have no significant impact on: the maintenance of the natural flow of surrounding streams; the domestic water use in the area; the use of such water in the exercise of any

Native Hawaiian and traditional and customary rights; and the reservation of water enumerated in the State Water Code. The proposed use will be reasonable and beneficial use of water narrowly tailored to promote the beneficial use of the Subject Property: as a Solar Project; and as a site for agricultural activities.

Visual Resources

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

54. The proposed Solar Project will be located on a relatively level portion of the Subject Property. With current screening vegetation, the Solar Project will not be visible from any public roads. All structures will be designed to the extent possible to blend harmoniously into the surrounding environment. Building materials and exterior colors will be compatible with the surrounding environment. If necessary, the Solar Project will be landscaped so as to minimize visual impacts.

ENVIRONMENTAL IMPACTS

Chapter 343, HRS

55. The Solar 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 Solar Project does not fall within such specified activities, in that the Solar Project does not:

a. Propose the use of state or county lands or the use of state or county funds;

b. Propose any use within any land classified as conservation district by the State Land Use Commission under HRS Chapter 205;

c. Propose any use within the shoreline area as defined in HRS Section 205A-41;

d. Propose any use within any historic site as designated in the National Register or Hawaii Register as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or HRS Chapter 6E;

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

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

g. Propose any reclassification of any land classified as conservation district by the State land Use Commission under HRS Chapter 205;

h. Propose the construction of new, or the expansion or modification of existing, helicopter facilities within the state; or

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

Air Quality

56. The Solar 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

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

Water Quality

58. The Solar Project will have no impact on water quality in the area, or on any streams, including but not limited to, the Lāwa'i Stream (located to the west of the Subject Property).

SOCIO-ECONOMIC IMPACTS

59. The Solar Project will have the following economic impacts:

a. Jobs. The construction activities associated with the Solar 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 Solar Project will not result in the need for additional worker housing. Once construction is complete, the Solar Project will be operated by the Applicant's existing employees or by 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 Solar Project will increase the value of the Subject Property. This may result in increased real property taxes on the Subject Property, which would 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 Solar Project will not result in any increase in population.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Roadways

60. The major roads which service the Subject Property are: Koloa Road (a State highway) and Aka Road (a County road) to the north; Ala Kukuiula (a private road) to the south; Halewili Road (a County road) to the west; and private, improved Cane Haul Roads within the Master Lot. The Solar 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 ("North Staging Area") and a staging area at the south end of the Solar Project ("South Staging Area"). An access entry will be constructed along Koloa Road to allow construction vehicles to enter the North Staging

Area. During the construction activities, the Applicant will employ traffic control personnel to help control traffic entering the North Staging Area from Koloa Road.

Water

61. 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 ("Bathroom").

62. The Solar Project will obtain water for non-potable uses from the Water Pump.

Drainage

63. The Subject Property is situated within Flood Zone X (Areas outside of 500 year flood plain), as shown on the County of Kaua`i's flood insurance rate map (Flood Insurance Rate Map 150002-0311E and 150002-0313E). The Solar Project will be located within Flood Zone X. The Solar Project will meet all of the requirements of the Flood Plain Management Ordinance of the County of Kaua`i, as contained in Chapter 15, Article 1, of the Kaua`i County Code, 1987. The Solar Project will have no impact on flooding on or around the Subject Property. All increases in 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 any adjacent streams or Reservoirs.

64. Best Management Practices of the National Pollutant Discharge Elimination System ("NPDES") will be applied before construction. Practices that will be included on the Solar Project will include but not be limited to self-pads, stabilized construction

entrance, revegetation for erosion control, gravel bags as necessary for silt control, and temporary silt basin.

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

Wastewater

66. The Solar Project will utilize an Individual Wastewater Systems ("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 Subject Property. The development of the Solar Project 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 Canyon Middle School and Waimea High School in Waimea, and Kauai High School and Chiefess Kamakahelei Middle School in Lihue. The Solar Project will not generate any additional enrollment.

CONFORMANCE WITH THE SPECIAL PERMIT GUIDELINES

70. Special Permit Requirements. The proposed Solar Project will meet the requirements for a Special Permit, as contained in Section 205-6, HRS, and in Section 15-15-95, *et seq.* as set forth herein.

71. The use will not be contrary to the objectives sought to be accomplished by Chapters 205 and 205A, HRS, and the LUC's administrative rules. The proposed Solar 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. The proposed Solar Project is consistent with the objectives to protect and conserve natural resources and foster intelligent, effective, and orderly land allocation and development.

72. The desired use will not adversely affect surrounding property. As discussed herein, the proposed use will be compatible with the surrounding neighborhood and uses, and will not generate any significant adverse impacts. It will not prevent surrounding lands from being used for agricultural purposes. The amount of additional traffic that will be generated as a result of the proposed Solar Project will be insignificant and will not create any substantial adverse impacts. The proposed Solar Project is an exceptional situation where the desired use would not change the essential character of the district nor be inconsistent therewith.

73. The use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection. As discussed herein, no burden will be placed on public agencies to provide additional facilities, services, and utilities as a result of the proposed Solar Project. Conversely, by providing an

alternative green source of energy for electricity, it will promote the sustainability and availability of electrical production resources for the public. The proposed Solar Project is a reasonable use of the Subject Property, a portion of the Master Lot.

74. 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 Solar Project is an unusual and reasonable use of the Subject Property.

75. The land on which the proposed use is sought is unsuited for the uses permitted with the district. Although the portion of the Master Lot identified for the proposed Solar Project is suitable for agricultural uses, it is better suited at this time for alternative energy production in conjunction with suitable agricultural uses via the proposed Solar Project. The Subject Property, including the Solar Project site, will be made available for suitable agricultural uses (sheep raising) during the life of the Solar Project.

CONFORMANCE WITH STATE PLANNING ACT

76. The State Planning Act contains Objectives and Policies to assist the State in attaining its long-range planning Goals. Included in the Objectives and Policies are the following:

> a. **"§226-18 Objectives and policies for facility systems—energy.**
>
> (a) Planning for the State's facility systems with regard to energy shall be directed toward the achievement of the following objectives, giving due consideration to call:

(1) Dependable, efficient, and economical statewide energy systems capable of supporting the needs of the people;

(2) Increased energy, self-sufficiency where the ratio of indigenous to imported energy use is increased;

(3) Greater energy security and diversification in the face of threats to Hawaii's energy supplies and systems; and

(4) Reduction, avoidance, or sequestration of greenhouse gas emissions from energy supply and use.

. . .

(c) To further achieve the energy objectives, it shall be the policy of this State to:

(1) Support research and development as well as promote the use of renewable energy sources;

. . .

(7) Promote alternate fuels and transportation energy efficiency;

(8) Support actions that reduce, avoid, or sequester greenhouse gases in utility, transportation, and industrial sector applications;

. . .

(10) Provide priority handling and processing for all state and county permits required for renewable energy projects....

b. **§226-108 Sustainability.** Priority guidelines and principles to promote sustainability shall include:

. . .

(2) Encouraging planning that respects and promotes living within the natural resources and limits of the State...."

77. The proposed Solar Project complies with the State Planning Act in that it will: provide dependable, efficient and economical energy; increase energy self-sufficiency; promote energy security; reduce greenhouse gas emissions; and promote living within the natural resources and limits of the State.

CONFORMANCE WITH KAUAI GENERAL PLAN

78. The Subject Property is located in the Kaua'i General Plan Agriculture Land Use Designation. The policies governing such lands are set forth in Section 5.4 of the Kaua'i General Plan, which provides in relevant part as follows:

> "**5.2.1 Policy**
>
> (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 the breeding, planting, nourishing and caring for, gathering, and processing of any animal or plant organism, including aquatic animals and plants, for the purpose of producing food or material for non-food products; the commercial growing of flowers or other ornamental plants; the commercial growing of forest products; and the commercial breeding and caring for domestic animals and pets.
>
> (b) The primary intent of the Agriculture designation is to conserve land and water resources in order to:
>
> (1) insure an excellent resource base for existing and potential agricultural uses;
>
> (2) assure a sufficient supply of land available for sale or lease at a cost that is economically feasible for agricultural enterprise; and

(3) promote and preserve open agricultural lands as a key element of Kaua'i's rural character and lifestyle, essential to its image as "The Garden Island" and to the continued viability and development of Kaua'i's visitor industry.

(c) In administering zoning and subdivision regulations, the County shall seek to preserve important agricultural lands. Important agricultural lands include those designated "A" or "B" by the Land Study Bureau evaluation or "Prime" or "Unique" by the Agricultural Lands of Importance State of Hawai'i evaluation; provided that these ratings shall be superseded at such time as the State of Hawai'i officially maps and designated Important Agricultural Lands, as mandated in the State Constitution.

(d) Lands designated Agriculture shall include: important agricultural lands; lands in active agricultural use; lands with potential for agriculture, silviculture or aquaculture; and other lands not suited for urban development because of location, topography, economy of public services, or other purpose related to general health, safety and welfare.

(e) The secondary intent of the Agriculture designation is to provide an opportunity for Kaua'i citizens to reside in an agricultural community. An "agricultural community" is an area that has both agricultural uses and residences. Typically, an agricultural community is established through subdivision of land and provision of roads and potable water service. Agricultural communities are generally located in outlying areas, do not have convenient access to County facilities, and may not receive the full range or highest level of County services such as are available to residential communities, towns, and urban centers.

(f) The primary intent of the Agriculture designation shall take precedence over the secondary intent.

(g) To implement the Agriculture designation, specific controls on the subdivision and alteration of designated lands shall be formulated to prevent the dissipation of agricultural potential, the loss of rural character, and the dispersal of residential and other urban uses.

(h) The following principles shall be applied in the development of an agricultural community:

(1) maintain irrigation works and easements where feasible and beneficial to existing or potential agricultural uses within the site or downstream; and

(2) preserve wetlands and streams and provide a riparian buffer area to prevent land disturbance and to filter runoff."

79. The proposed uses include solar energy facilities and utilities. The Solar Project itself will have no significant impact on the surrounding environment. The Solar Project will include uses that are compatible with agricultural and other uses in the area, as well as with the surrounding environment. The Solar Project will help provide a stable, independent source of energy production, which is necessary for agricultural activities on Kauai. The Solar Project complies with the Kaua'i General Plan policy for the Agricultural Designation as a use which promotes agricultural uses.

CONFORMANCE WITH CZO AGRICULTURE AND OPEN DISTRICT

80. The Solar Project is located primarily within the CZO Agriculture District. The purposes of the CZO Agriculture District are set forth in CZO Article 8, which provides in relevant part as follows:

"**Sec. 8-8.1 Purpose.**

The Agriculture District establishes means by which land needs for existing and potential agriculture can be both protected and accommodated, while providing the opportunity for a wider range of the population to become involved in agriculture by allowing the creation of a reasonable supply of various sized parcels.

(a) To protect the agriculture potential of lands within the County of Kaua'i to insure a resource base adequate to meet the needs and activities of the present and future.

(b) To assure a reasonable relationship between the availability of agriculture lands for various agriculture uses and the feasibility of those uses.

(c) To limit and control the dispersal of residential and urban use within agriculture lands."

81. CZO Section 8-2.4(q) contains the Permitted Uses in the CZO Agriculture District, which include the following:

"(16) Solar energy facilities placed within land with soil classified by the State of Hawaii Land Study Bureau's detailed land classification as overall (master) productivity rating B, C, D or E; those facilities placed within land with soil classified as overall productivity rating class B and C shall not occupy more than ten percent (10%) of the acreage of the parcel, or twenty (20) acres of land, whichever is less."

82. CZO Section 8-2.4(r) contains the Uses in the CZO Agriculture District which require a Use Permit and include the following:

"(12) Private and public utility facilties.

. . .

(14) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this section and appropriate to the District."

83. The proposed Solar Energy Facilities will require a Use Permit pursuant to CZO Sections 8-2.4(q)(16) and 8-2.4(r)(12) and (14). The Solar Project itself will have no significant impact on the surrounding environment. The Solar Project will include uses that are compatible with other uses in the area, as well as with the surrounding environment. As such, the Solar Project complies with CZO Section 8-8.1 in that it: assure a reasonable relationship between the availability of agricultural lands for various agricultural uses and the feasibility of those uses; and will be incidental to the agricultural uses and the agricultural character of the surrounding lands.

84. A small portion of the Subject Property is located within the CZO Open District. The purposes of the CZO Open District are set forth in CZO Article 9, which provides in relevant part as follows:

> "**Sec. 8-9.1 Purpose.**
>
> The Open District is established and regulated to create and maintain an adequate and functional amount of predominantly open land to provide for the recreational and aesthetic needs of the community or to provide for the effective functioning of land, air, water, plant and animal systems or communities.
>
> (a) To preserve, maintain or improve the essential characteristics of land and water areas that are:
>
> (1) of significant value to the public as scenic or recreational sources;
>
> (2) important to the overall structure and organization of urban areas and which provide accessible and usable open areas for recreational and aesthetic purposes;
>
> (3) necessary to insulate or buffer the public and places of residence from undesirable environmental factors caused by, or related to, particular uses such as noise, dust, and visually offensive elements.
>
> (b) To preserve, maintain or improve the essential functions of physical and ecological systems, forms or forces which significantly affect the general health, safety and welfare.

(c) To define and regulate use and development within areas which may be potentially hazardous.

(d) To include areas indicated on the County General Plan as open or as parks.

(e) To include areas clearly indicated on the County General Plan or on Zoning maps as "Special Treatment – Open Space" if an applicant represents to government authorities that any properties or areas within a development proposal or subdivision application will remain in either permanent open space or private park areas, or if the Council in the exercise of its zoning power requires as a condition of rezoning that an area be designated for permanent open space or private park. This does not preclude the Council from exercising its zoning authority as provided in Sec. 46-4, Hawai'i Revised Statutes. Within areas so designated, no uses, structures, or development inconsistent with such designation shall be generally permitted or permitted by use permit without express provision to the contrary. The Council is hereby authorized to make such factual determinations as necessary incident to this section.

(f) To provide for other areas which because of more detailed analysis, or because of changing settlement characteristics, are determined to be of significant value to the public."

85. CZO Section 8-2.4(t) contains the Uses And Structures Permitted With A Use Permit within the CZO Open District, which includes the following:

"(13) Utility Installations"

86. CZO Section 8-9.2 regulated land coverage in the CZO Open District and provides as follows:

"(a) Land Coverage:

(1) The amount of land coverage created, including buildings and pavement, shall not exceed ten per cent (10%) of the lot or parcel area."

87. The Solar Project is a use and structure permitted with a Use Permit within the CZO Open District pursuant to CZO Section 8-2.4(t)(13). The Solar Project will comply with the CZO Use Permit Standards. The Land Coverage on the Subject Property will not exceed ten percent (10%). The Solar Project itself will have no significant impact on the surrounding environment. As such, the Solar Project complies with CZO Section 8-9.1 in that it: will help to preserve, maintain and improve the natural characteristics of the area; will allow the area to remain predominantly free of development; and will be incidental to the use and open character of the surrounding lands.

CONFORMANCE WITH CZO USE PERMIT AND ZONING PERMIT

88. Pursuant to CZO Section 8-3.2, the Applicant has applied for a Use Permit for the proposed Solar Project. Consistent with CZO Sections 8-2.4(q)(16), 8-2.4(r)(12) and (14), and 8-2.4(t)(13), the proposed uses and structures are Solar Energy Facilities which are Uses And Structures For Which A Use Permit Is Required within the CZO Agriculture District.

89. The Subject Property is surrounded by properties located within the SLUC Agricultural District, Urban District and Rural District, and the CZO Agriculture District, Residential District, and Open District. Uses on the surrounding lands include farm dwelling uses, residential uses, and agricultural uses. The Subject Property is similar in topography, character and nature with adjacent and surrounding properties, and the Solar Project is consistent with such surrounding uses.

90. The Solar Project on the Subject Property complies with the standards for Use Permits as contained in CZO Section 8-20.5(a) in that the Solar Project will be:

a. a compatible use;

b. not detrimental to health of persons residing or working in the neighborhood;

c. not detrimental to safety of persons residing or working in the neighborhood;

d. not detrimental to peace of persons residing or working in the neighborhood;

e. not detrimental to morals of persons residing or working in the neighborhood;

f. not detrimental to comfort and general welfare of persons residing or working in the neighborhood;

g. not detrimental or injurious to property or improvements in the neighborhood;

h. not detrimental to the general welfare of the community;

i. not a cause of substantial harmful environmental consequences to the Subject Property, or to other lands or waters;

j. not inconsistent with the intent of Chapter 8, KCC; and

k. not inconsistent with the General Plan.

91. The Applicant has complied with the procedural provisions for a Class IV Zoning Permit by its filing and processing of this Application.

CONFORMANCE WITH DEVELOPMENT PLAN

92. The goals and objectives of the Koloa-Poipu-Kalaheo Community Plan ("KPK Community Plan") for the area surrounding the Subject Property is for continued rural and residential uses, including agricultural activities and open space preservation. However, the KPK Community Plan, in its Goals And Objectives, contains the following:

> "Public Facilities
>
> - Encourage the development of...public facilities necessitated by existing uses and proposed growth."

93. The proposed use of the Subject Property will not conflict with any of the Goals And Objectives contained in the KPK Community Plan. The design, layout and outside appearance of the Solar Project is and will be compatible with the natural beauty of the area and will not interfere with surrounding agricultural or residential uses in the area. The proposed use will provide economic opportunity for Kauai residents. The proposed use will have no negative impact on the public safety or welfare, on any endangered species of plants or animals, on archaeologic or historic sites, or on recreational opportunities on or around the Subject Property. The development of alternative energy sources will promote the policies of the KPK Community Plan for Public Facilities.

CONFORMANCE WITH THE COASTAL ZONE MANAGEMENT PROGRAM

94. Coastal Zone Management Area. As set forth in HRS Chapter 205A (Part I), all lands in the State of Hawaii (including the Subject Property) are located in the CZMA and subject to the objectives and policies of the CZMP. HRS Section 205A-2 describes these objectives and policies, all of which seek to protect and preserve the following public resources; recreational resources; historic resources; scenic and open space resources; coastal

ecosystems; economic uses; coastal hazards; managing development; public participation; beach protection; and marine resources.

95. Location Within CZMA.

a. The Subject Property is an approximately 196.33 acre parcel located within and surrounded by a larger 1,062.91 acre agricultural parcel referred to as the Master Lot. The Subject Property at its closest point (south/makai) is located approximately 1.14 miles from the shoreline, at an elevation of approximately 330 feet above mean sea level ("MSL"). The Subject Property rises in the northerly (mauka) direction to an elevation of approximately 465 feet above MSL. At its mauka side, the Subject Property is located approximately 1.26 miles from the State's Forest Reserve Lands.

b. Lāwa'i Road, a County road, runs along the coastline to the south (makai) of the Subject Property and Master Lot. As a result, access to the shoreline to the south of the Subject Property is provided from Lāwa'i Road.

c. Koloa Road and Kaumuali'i Highway (both of which are State Highways) are located to the north (mauka) of the Subject Property. As a result, access to mountain areas and the Forest Reserve are provided from Kaumuali'i Highway.

d. The Subject Property was formerly licensed to third-parties for cattle pasture purposes. The areas of the Master Lot adjacent to the Subject Property are currently being licensed to third-parties for cattle pasture. Because of these ongoing agricultural activities, the Subject Property has not been made available for public, recreational uses.

e. Lāwa'i Stream is located at its closest point approximately 4,267 feet (.81 miles) to the west of the Subject Property. Lāwa'i Stream is a perennial stream that runs from the mountains through Lāwa'i Valley to the ocean.

96. Recreational Resources. There are no public recreational opportunities taking place on the Subject Property. The proposed Solar Project will have no impacts 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.

97. Historic Resources. 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 archaeological resources located on or near the Subject Property. The Applicant will continue to protect and preserve the Historic Sites identified in the AIS. As discussed in the CIA: there are no known traditional or customary practices of native Hawaiians (including gathering or religious practices) presently occurring on the Subject Property; there are no 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.

98. Scenic and Open Space Resources. The proposed Solar Project will have only minor impacts on the scenic and open space resources on and around the Subject Property. The Solar Project will be compatible with and blend into the surrounding area. The Solar Project will not interfere with any views to or along the Shoreline. The Applicant will use additional landscaping, if necessary, to provide reasonable mitigation to the visual impacts the Solar Project may have on the scenic quality of the Subject Property and on views from surrounding areas.

99. Coastal Ecosystems. The Subject Property is not located near or along the Shoreline and is not part of the coastal ecosystem of this area. The proposed Solar Project will have no impact on the coastal ecosystem. The Solar Project will be constructed and maintained

so that any erosion or increased runoff will be maintained on site, and will not be allowed to enter into the Shoreline, the ocean, the Lāwa'i Stream, or any drainageways leading to the ocean. No aspect of the Solar Project will endanger the coastal ecosystem or have any negative impacts on it.

100. Economic Uses. The Solar Project will create short term economic benefits associated with the construction of the Solar Project and long-term economic benefits associated with maintenance and operational activities on the Subject Property. The proposed Solar Project will not have any negative impacts on the economy. As discussed in Section 3.9, the Solar Project will: provide an estimated 11% of Kauai's electric demand; reduce Kauai's dependency on fossil fuels; resulting cost savings for KIUC's customers; and provide benefits to human health and the environment through the use of an alternative "green energy" source.

101. Coastal Hazards. The Subject Property is not located near or along the Shoreline and will not be subject to any coastal hazards. The Subject Property is located in Flood Zone X and will not be exposed to flooding. The proposed Solar Project will have no contributory impact on flooding on or around the Subject Property. Any additional surface water flows caused by the Solar Project will be maintained on site.

102. Managing Development/Public Participation. The Solar Project and other proposed activities on the Subject Property are complimentary to, and consistent with, present and future coastal zone development in this area of Kauai.

103. Beach Protection/Marine Resources. The Subject Property is not located near or along the Shoreline. The Solar Project will have no impact on any shoreline or beach areas, or an any open space areas along the Shoreline. The Solar Project will not involve any development within the beach or coastal area which would have any negative impact on marine

or coastal resources. The Applicant is not aware of any existing fishponds, seawalls or revetments in the vicinity of the Subject Property.

104. Impacts Within CZMA. The Solar Project on the Subject Property will have no negative impact on the CZMA and will be consistent with and non-violative of the objectives and policies of the CZMP 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 GLINT/GLARE REQUIREMENTS

105. Airports.

a. Location. The Subject Property is located approximately 10.75 miles from the Lihue Airport (a State facility), 7.14 miles from the Port Allen Airport (a State facility), and 19.5 miles from the Barking Sands Airport (a U.S. Navy facility). The Subject Property is not located near or beneath any flight paths for these airports.

b. FAA/Wildlife. The U.S. Department of Transportation, Federal Aviation Administration ("FAA") has issued an Advisory Circular (ACNO: 150/5200-33b) entitled Hazardous Wildlife Attractants On Or Near Airports. This AC provides guidance on certain land uses that have the potential to attract hazardous wildlife (avian species) within a five (5) mile range of any airports (referred to as "Air Operation Areas" or "AOA"). Because the Solar Project is not located within the five (5) mile range of any AOA, and is not located beneath any flight paths, it is not subject to the AC. In any event, the Applicant does not anticipate that the Solar Project will attract any more wildlife than is already present on the Subject Property in its current condition. It should be noted that "photovoltaic and solar farms" are not among the enumerated land-use practices in the AC that have the potential for attracting hazardous wildlife.

c. DOT-AIR/Noise Exposure. The State Department of Transportation, Airports Division ("DOT-AIR"), has issued a Lihue Airport 5-Year (2011) Noise Exposure Map for areas located beneath flight paths for the Lihue Airport. Because the Subject Property is not located within five (5) miles of the Lihue Airport or any other airport, and is not

beneath flight paths for any of these airports, it will not be subject to noise impacts associated with such operations.

d. OP TAM/Glint-Glare. The State Office of Planning has issued Technical Assistance Memorandum TAM-2016-1 ("TAM") pursuant to FAA Order 5190.6B. The TAM discusses the State's obligation to restrict land uses adjacent to or in the immediate vicinity of airports (which have received federal funds) to activities and purposes compatible with normal airport operations. The TAM adopts the five (5) mile range (discussed above in the AC) in evaluating adjacent land uses. One of the concerns is the ocular impact (referred to as "Glint/Glare") of solar panels on aircraft use, especially as solar facilities are being incorporated into current airport operations. As discussed in the FAA Technical Guidance for Evaluating Selected Solar Technologies On Airports (Report No. FAA-ARP-TR-10-1), the primary concern is that light reflection (Glint/Glare) from solar facilities does not cause the temporary loss of vision to pilots on arrival or departure from airports, or to Air Traffic Control personal in the control tower. This concern affects solar facilities located adjacent to or near the AOA (i.e., within the 5 miles range) or within the flight paths for the airport.

e. Solar Project Compliance. Because the Solar Project is not located within the 5 mile range of any AOA, and is not located beneath any flight paths, it will not create any Glint/Glare issues for any airport uses. In addition, the solar panels which 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 which are aligned in a north to south direction and which move with the sun to maximize absorption and minimize reflection.

RULINGS ON PROPOSED FINDINGS OF FACT

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

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

CONCLUSIONS OF LAW

1. The Planning Commission has jurisdiction over this matter pursuant to: Section 205-6, HRS; HAR Section 5-15-95 *et seq.*; CZO Sections 8-2.4(q)(16), 8-2.4(r)(12) and (14), 8-3.2 and 8-8.4(4); and Chapter 13 of the Rules of Practice and Procedure of the Planning Commission.

2. Based upon the record of the proceedings before the Planning Commission, and pursuant to PC Rules Chapter 13, HRS Section 205-6, and HAR Section 15-15-95 *et seq.*, the Planning Commission recommends the approval of a State Special Permit for the Subject Property, consisting of an approximately 196.33 acre portion of land in the SLUC Agricultural District identified by Kauai Tax Map Key No. (4) 2-6-003:001 in Kōloa and Lāwa'I, Kona, Kaua`i, Hawai`i, generally meets the guidelines for determining an "unusual and reasonable use" and "would promote the effectiveness and objectives" of HRS Chapter 205 within the SLUC Agricultural District.

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

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

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

6. The Solar 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 Subject Property is not designated as Important Agricultural Land under Part III of HRS Chapter 205, and therefore the Solar Project does not conflict with any part of HRS Chapter 205, and complies with HRS Section 205-6(c).

8. Article XI, Section 1, of the Hawai`i State Constitution requires the State and the County to conserve and protect Hawai`i's natural beauty and all natural resources, including land, water, air, minerals, and energy sources, and to promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

9. The Planning Commission has considered Article XI, Section 1, of the Hawai`i State Constitution and finds that the Solar Project is in compliance and non-violative therewith, particularly with regard to its use of water resources.

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

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

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

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

14. The State, the County, and their agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised Native Hawaiian rights to the extent feasible. *Public Access Shoreline Hawai`i v. Hawai`i County Planning Commission*, 79 Hawai`i 425, 903, P.2d 1246, *certiorari denied*, 517 U.S. 1163, 116 S.Ct. 1559, 134 L.Ed.2d 660 (1996). The Planning Commission has considered such responsibilities and obligations and finds the Solar Project to be consistent and non-violative therewith.

15. The Planning Commission is empowered to preserve and protect customary and traditional rights of Native Hawaiians. *Ka Pa`akai 0 Ka`Aina v. Land Use Commission*, 94 Hawai`i 31, 7 P.3d 1068 (2000). The Planning Commission has considered such responsibilities and obligations and finds the Solar Project to be consistent and non-violative therewith.

16. HRS Section 205-4.5(a)(21) 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 a special permit is granted pursuant to HRS Section 205-6; provided that:

(A) The area occupied by the SEFs is also made available for compatible agricultural activities at a lease rate that is at least 50 percent below the fair market rent for comparable properties;

(B) Proof of financial security to decommission the facility is provided to the satisfaction of the appropriate county planning commission prior to date of commencement of commercial generation; and

(C) SEFs shall be decommissioned at the owner's expense according to the following requirements:

(i) Removal of all equipment related to the SEF within 12 months of the conclusion of operation or useful life; and

(ii) Restoration of the disturbed earth to substantially the same physical condition as existed prior to the development of the SEF.

17. The Planning Commission finds the Solar Project has satisfied the requirements of HRS Section 205-4.5(a)(21).

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

19. The Planning Commission finds that the Solar Project is consistent with and non-violative of the objectives, policies, and goals contained in: the State Plan; the Kauai General Plan; CZO Chapter 8, Article 8 (Agriculture Districts) and Article 9 (Open Districts); and the Koloa-Poipu-Kalaheo Community Plan.

20. The Planning Commission finds that the Solar Project is consistent with and non-violative of the standards and requirements for Use Permits contained in CZO Section 8-20.5(a).

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

22. The Planning Commission finds that the Solar Project conforms with the policies and objectives of the CZMP and HRS Chapter 205A.

23. The Planning Commission finds that the Solar Project will not create any Glint/Glare issues for airport related uses or aircraft operation.

DECISION AND ORDER

Having duly considered the complete record in this matter and the oral arguments presented by the Applicant in this proceeding, together with public testimony, and a motion having been duly made and seconded at a meeting conducted on September 26, 2017, in Lihue, Hawai`i, to approve the recommendation of the Planning Department, and the motion having received the affirmative votes required by the CZO, the PC Rules, and HAR 15-15-13, and there being good cause for the motion, the Planning Commission hereby APPROVES the recommendation of the Planning Department approving a CZO Use Permit and CZO Class IV Zoning Permit, and RECOMMENDS APPROVAL of a State Special Permit, for the Solar Project, within the Subject Property with modifications as proposed by the Planning Department and the Planning Commission and as agreed to by the Applicant, consisting of an approximately 196.33 acre portion of land in the SLUC Agricultural District identified by Kauai Tax Map Key No. (4) 2-6-003:001, Kōloa and Lāwa'i, Kona, Kauai, Hawai`i, and approximately shown on Exhibit "A" attached hereto and incorporated by reference herein, subject to the following conditions:

1. Usable lands of the Subject Property, 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 Solar 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 Planning Director for unforeseen extenuating circumstances. Additional consideration may be given if the Applicant is actively seeking to have such operations established.

2. If at any time during the term of the Special Permit no compatible agricultural operations exist on the usable lands of the Subject Property for 6 months, the Applicant shall notify the Planning Director 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 Subject Property. The Planning Commission may determine whether probable cause exists to re-evaluate the Special Permit and to hold a hearing pursuant to the PC Rules. Extensions to the 6-month deadline may be granted by the Planning Director for unforeseen extenuating circumstances.

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

a. A plan to minimize or avoid clearing and grading activities on the Subject Property from June 1 through September 15.

b. A survey map and metes and bounds description of the approved Subject Property.

c. A site plan showing the land area to be made available for compatible agricultural use.

4. Prior to the issuance of the building permit for the Solar Project, the Applicant shall submit to the Planning Director proof that under the Solar Project Easement the Applicant will be obligated to decommission the Solar Project, and will be required to provide financial security or assurance to McBryde or its successor to insure such compliance. The Applicant shall decommission the Solar Facility, including the removal of all equipment related to the facility, within twelve (12) months following the termination of operations of the Solar Facility. A change in the Solar Project ownership or a change in ownership of the land subject to the Special Permit, which warrants a new proof of assurance or financial security to decommission the Solar Project, shall be submitted to the Planning Director for approval within three (3) months of the ownership change.

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

a. Applicant shall develop an endangered species awareness training module, which shall include all potential endangered species that may frequent the Subject Property.

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. The Applicant shall monitor avian injuries occurring at the Solar Project, and report occurrences to the United States Fish & Wildlife Service as required.

6. The Applicant shall construct and begin operation of the Solar Project within two (2) years of the date of the SLUC's Decision and Order approving the Special Permit. Requests for extension of this deadline shall be submitted to the Planning Director prior to the expiration of the deadline. The SLUC may grant an extension to the deadline to establish the Solar Project due to unforeseen circumstances that were beyond the control of the Applicant. This Special Permit shall be valid for a period of thirty-five (35) years from the date of the start of commercial operations of the Solar Project as described in the PPA, subject to further extensions upon a timely request for extension filed with the Planning Commission at least one hundred twenty (120) days prior to the Special Permit's expiration. Approval of time extensions shall not be required from the SLUC.

7. On or before December 31 of each year that the Special Permit is in effect, the Applicant or its successor shall file an annual report to the SLUC, Office of Planning of the State of Hawaii ("State OP"), and the Planning Department that demonstrates the Applicant's compliance with conditions of the Special Permit.

8. Major modifications to: (1) the Solar 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 SLUC. 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 Planning Director.

9. The Applicant shall notify the Planning Director of:

a. Any change or transfer of the Solar Project Easement on the Subject Property.

b. Any change in uses on the Subject Property.

c. Termination of any uses on the Subject Property; and/or

d. Transfer in ownership of the Subject Property.

10. The conditions of the Use Permit, Class IV Zoning Permit, and/or Special Permit shall be enforced pursuant to the PC Rules, including the issuance of an order to show cause as to the reason the permits should not be revoked if the Planning Director has reason to believe that there has been a failure to perform the conditions herein.

11. If the PV array or the Solar Project creates a hazardous condition for pilots or motorists, the facility operator shall immediately mitigate the hazard upon notification by the State Department of Transportation, State Airports Division, or the Federal Aviation Administration.

12. In the event that historic resources, including human skeletal remains, structural remains, cultural deposits, artifacts, sand deposits, or sink holes, are identified during demolition and/or construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the State Historic Preservation Division ("SHPD") and 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 Solar Project, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigation measures have been implemented to its satisfaction.

13. The Applicant shall comply with the requirements of the State Department of Health, the County Fire Department, the County Department of Water, and the County Department of Public Works, as well as any other applicable government agencies.

14. The Applicant shall develop and utilize Best Management Practices (BMP's) during all phases of development in order to minimize erosion, dust, and sedimentation impacts of the Solar Project to abutting properties.

15. The Applicant shall develop and operate the Solar Project, including the implementation of measures to mitigate potential impacts of the Solar Project, in substantial compliance with the representations made to the Planning Commission and the SLUC. Such mitigation measures shall include, but are not limited to, the use of temporary and permanent BMPs to ensure that the development and operation of the Solar Project do not result in an increase in stormwater runoff that adversely impacts downstream properties. Failure to so develop the Solar Project may result in revocation of the Special Permit.

16. To the extent possible within the confines of union requirements and applicable prohibitions against discrimination in employment, the Applicant shall seek to hire 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 Planning Commission shall relieve the applicant of this requirement if the applicant is subjected to anti-competitive restraints on trade or other monopolistic practice.

17. The Applicant shall implement to the extent possible sustainable building techniques and operational methods for the Solar Project, such as Leadership in Energy and Environmental Design (LEED) standards or another comparable state approved, nationally recognized, and consensus-based guideline, standard, or system, and strategies, which may include but is not limited to recycling, natural lighting, extensive landscaping, solar panels, low-energy fixtures, low energy lighting and other similar methods and techniques. All such proposals shall be reflected on the plans submitted for building permit review.

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

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

DATED: Lihue, Kauai, Hawaii, _____.

BELLES GRAHAM PROUDFOOT
WILSON & CHUN, LLP

By_____
MAX W. J. GRAHAM, JR.
MICHAEL J. BELLES
IAN K. JUNG
Attorneys for Applicant,
AES LAWA'I SOLAR, LLC,
a Delaware limited liability company

ADOPTION OF DECISION AND ORDER

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

Done at Lihue, Kaua'i, Hawai'i, this _____ day of _____, 20____, per motion on September 26, 2017, Lihue, Kaua'i, Hawai'i.

PLANNING COMMISSION
COUNTY OF KAUAI

By_____

APPROVED AS TO FORM:

_____
Deputy County Attorney
County of Kauai

Filed and effective on:

_____

Certified by:

_____
MICHAEL A. DAHILIG
Clerk of the Planning Commission