

DOCKET NO. SP26-416

AES Ka‘awanui Solar

Special Permit Application

For approximately 269.195 acre portion of land located in Makaweli, Waimea, Kaua‘i, Hawai‘i, identified by Kaua‘i Tax Map Key Nos. (4) 1-7-006:006 (por.) ("Parcel 6") and 010 (por.) ("Parcel 10").

STAFF REPORT

Hearing
May 13, 2026

Daniel Orodener, Executive Officer



Approved for Submittal: May 5, 2026

TABLE OF CONTENTS

<u>Section No.</u>		<u>Page No.</u>
1.	Explanation of the Proceeding	
	Legal precedent and obligations	3 - 5
2.	Background Information and Procedural Matters	5 - 6
3.	Summary of Petitioner's Position	7 - 10
4.	Summary of County Position	10 - 16
5.	Office of Planning and Sustainable Development	16
6.	Staff Analysis and Questions for Resolution	16 - 20

1. EXPLANATION OF THE PROCEEDING

The proceeding before the Land Use Commission (“Commission” or “LUC”) is an Application for a State Special Use Permit ("SUP") Application SP26-416 (County: SP-2026-4, Use Permit U-2026-9, and Class IV Zoning Permit Z-IV-2026-12) (hereinafter collectively referred to as the "Application") filed by Ka‘awanui Solar, LLC ("Applicant"), to construct a solar energy facility and accessory uses and structures (referred to herein as the "Project", the "Solar Project", or the "facility") on approximately 269.195 acres of land in the State Land Use Agricultural District identified by Kaua‘i Tax Map Key Nos. (4) 1-7-006 (por.) and (4) 1-7-006:010 (por.) in Makaweli, Kaua‘i, Hawai‘i.

Special Permit application proceedings are made initially at the appropriate county planning commission, in this case the County of Kaua‘i Planning Commission. For an application that involves an area greater than 15 acres the record is developed at the county level and a decision with recommendations is transmitted to the Land Use Commission for appropriate modifications and final decision making.

The Commission must decide on the request within 45 days after receipt of the complete record¹ of the proceedings held by the County. Five affirmative votes are required to approve, deny, or modify such a request

AUTHORITY AND LEGAL PRECEDENT

Hawai‘i Administrative Rules (“HAR”) § 15-15-70(a) provides that “[a]ny party may make motions before, during, or after the close of a hearing.”

HAR §15-15-95(b) “Special permits for areas greater than fifteen acres require approval of both the county planning commission and the commission...”

HAR §15-15-95(f) “The county planning commission may impose such protective conditions as it deems necessary in the issuance of a special permit...,and if appropriate, a time limit for the duration of the special permit, provided, however, that the commission for good cause shown, may specify or change the time period of the special permit...The county planning commission, with the concurrence of the commission, may extend the time limit if it deems that circumstances warrant the granting of the extension.”

¹ Transmitted on May 4, 2026, 45-day deadline is June 18, 2026

HAR §15-15-96(a) “Within forty-five days after the receipt of the county planning commission’s decision and the complete record of the proceeding before the county planning commission..., the commission shall act to approve, approve with modifications, or deny the petition. The commission may impose additional restrictions as may be necessary or appropriate in granting the approval, including adherence to representations made by the petitioner. Upon determination by the commission, the petition may be remanded to the county planning commission for further proceedings.”

Hawai‘i Revised Statutes (“HRS”) §91-10(5), the party initiating the proceeding shall have the burden of proof², including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence³. Petitioner has the burden to show good cause for the request and a preponderance of evidence.

If good cause is shown, the Commission may modify or delete any of the conditions imposed or modify the Commission’s order (HAR §15-15-94(b)). “Good cause” can mean “a substantial reason amounting in law to a legal excuse,” and that it will also depend on the specific circumstances of an individual case. Determining “good cause” is at the discretion of the Commission.

Guidelines for Special Permits

The guidelines for Special Permits are contained within HAR 15-15-95, that allows certain “unusual and reasonable” uses within the Agricultural and Rural Districts. These guidelines are to be used in determining whether a proposed use is “unusual and reasonable.”

1. The use shall not be contrary to the objectives sought to be accomplished by Chapters 205 and 205A, HRS, and the rules of the Commission.
2. The desired use would not adversely affect surrounding property.
3. The use would not unreasonable burden public agencies to provide

² A party’s obligation to prove its claims or defenses. It has two parts: the duty to produce evidence, and the duty to persuade the judge or jury that the evidence meets the required standard of proof. (*Blacks Law Dictionary (abridged 4th Edition, 1984 and 12th Edition, 2024)*)

³ The word “preponderance” means something more than weight of evidence; it denotes superiority of weight, or outweighing. That which best accords with reason and probability. The standard of proof in most civil cases. It means the fact at issue is more likely true than not true—essentially, that the evidence weighs slightly in favor of one side. (*Blacks Law Dictionary (abridged 4th Edition, 1984 and 12th Edition, 2024)*)

- streets, sewers, water, drainage, schools, fire, and police resources.
4. Unusual conditions, trends, and needs have arisen since the district boundaries and rules were established.
 5. The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

In addition, recent changes to Chapter 205, HRS, in 2014 and 2018, required that solar energy facilities may be permitted on land with LSB Class B or C lands for which a Special Permit is granted provided that:

- The area occupied by the solar energy facilities is also made available for compatible agricultural activities at a lease rate that is at least fifty percent below the fair market rent for comparable properties;
- Proof of financial security to decommission the facility is provided to the satisfaction of the appropriate county planning commission prior to the date of the commencement of commercial generation; and
- Solar energy facilities shall be decommissioned at the owner's expense and according to certain requirements.

The County Planning Commission's Decision and Order should contain findings of fact that address these guidelines and provisions.

2. **BACKGROUND INFORMATION and PROCEDURAL MATTERS**

On January 5, 2026, the Applicant Ka'awanui Solar, LLC, AES Solar, ("Petitioner" or "Applicant"), filed an application together with a Standard Zoning Permit Application, General Class III and IV Requirement Checklist, Process Election Form, Checklist of State Special Permit Application Requirements, Authorizations of Applicant, Owner and Lessee, Ka'awanui Solar Project Report with the County of Kaua'i ("County") to construct and operate a solar energy facility on the Project Site (the "Project"). The Project Site consists of an approximately 269.195 acre portion of land located in Makaweli, Waimea, Kaua'i, Hawai'i, identified by Kaua'i Tax Map Key Nos. (4) 1-7-006:006 (por.) ("Parcel 6") and 010 (por.) ("Parcel 10"). The Project Site is owned by Robinson Family Partners and managed by Gay & Robinson, Inc., both of which have granted the Applicant with an option to acquire easements to operate the Project on the Project Site.

The Project Site (the "Project") consists of an approximately 269.195 acre portion of land located in Makaweli, Waimea, Kaua'i, Hawai'i, identified by Kaua'i Tax Map Key Nos. (4) 1-7-006:006 (por.) ("Parcel 6") and 010 (por.) ("Parcel 10"), and will include the following improvements ("Project Improvements"): a solar photovoltaic ("PV") system with solar panels and racking system; power conversion stations; a Battery Energy Storage System ("BESS"); a network of electrical collector lines; communications equipment; an

Operations & Maintenance Shed; an AES Hawai'i Substation; a Ka'awanui Substation and interconnection lines (which will be transferred to Kaua'i Island Utility Cooperative "KIUC"); fencing; and access roads.

By letter dated January 13, 2026, the Planning Director found the Application to be complete effective January 12, 2026, and began processing the Application pursuant to Section 8-3.1 of the Comprehensive Zoning Ordinance ("CZO") as contained in Title IV, Chapter 8 of the Kaua'i County Code, 1987.

By Notice of Public Hearing published in The Garden Island newspaper, a newspaper of general circulation in the County of Kaua'i, the Planning Director provided notice to the public that the agency hearing with a public hearing and an opportunity for public testimony would be held on the Application on March 10, 2026, at 9:00 a.m. or shortly thereafter, at the Līhu'e Civic Center, Moikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Līhu'e, Kaua'i, Hawai'i.

On February 6, 2026, the Applicant mailed a Notice of Public Hearing pursuant to CZO Section 8-3.1(f), Section 1-13-5(d) of the Rules of Practice and Procedure of The Planning Commission of The County of Kaua'i ("P.C. Rules") to 85% of owners of parcels located within 300 feet of Parcels 6 and 10.

On February 6, 2026, the Applicant mailed an Affidavit as to Mailing of Notice to the Planning Director in compliance with CZO Section 8-3.1(f), the receipt of which was acknowledged by the Planning Department on February 9, 2026.

At its February 24, 2026, meeting, the Planning Commission received the Planning Director's Report on the Application prepared in compliance with CZO Section 8-3.1(f)(3).

At its March 10, 2026, meeting, the Planning Commission approved, by a vote of a majority of the members of the Planning Commission, Use Permit No. U-2026-9 and Class IV Zoning Permit No. Z-IV-2026-12, and recommended approval of Special Permit No. SP-2026-4 to the State Land Use Commission ("SLUC"), subject to the twenty-four (24) conditions of approval contained in the Decision and Order.

On April 28, 2026, SLUC sent the agenda to the Kaua'i County and Statewide email and mailing lists.

On May 4, 2026, the County transferred the record to the SLUC, and the record was posted to the LUC website available for public review.

3. **SUMMARY OF PETITIONER’S MOTION**

On January 5, 2026, the Applicant Ka’awanui Solar, LLC, AES Solar, (“Petitioner” or “Applicant”), filed an application together with a Checklist of State Special Permit Application Requirements, Authorizations of Applicant, Owner and Lessee, and Ka’awanui Solar Project Report with the County of Kaua’i (“County”) to construct and operate a solar energy facility on the Project Site (the "Project"). The Project Site consists of an approximately 269.195 acre portion of land located in Makaweli, Waimea, Kaua’i, Hawai’i, owned by Robinson Family Partners and managed by Gay & Robinson, Inc., both of which have granted the Applicant with an option to acquire easements to operate the Project on the Project Site.

The Project will include the following improvements ("Project Improvements"): a solar photovoltaic (“PV”) system with solar panels and racking system; power conversion stations; a Battery Energy Storage System ("BESS"); a network of electrical collector lines; communications equipment; an Operations & Maintenance Shed; an AES Hawai’i Substation; a Ka’awanui Substation and interconnection lines (which will be transferred to Kaua’i Island Utility Cooperative “KIUC”); fencing; and access roads.

Land Ownership [Exhibit 8](#)

The land owned by Robinson Family Partners and managed by Gay & Robinson, Inc., both of which have granted the Applicant with an option to acquire easements to operate the Project on the Project Site.

- Robinson Family Partners, will grant temporary site control to AES Hawai’i for the duration of the project’s contract term
- Ka’awanui Solar is a temporary land use (up to 44 years). AES Hawai’i will remove all infrastructure from the land at the end of the project’s contract term and restore the land to its existing state or comparable.
- AES Hawai’i will not commence construction until all necessary permits and approvals are obtained.
- The Owner also acknowledges that (1) it has entered into that certain Option Agreement with Ka’awanui Solar, LLC (“Ka’awanui”) that provides Ka’awanui the right to enter into an Easement Agreement with the Owner for the above-referenced Property for a Construction Term of 3 years, with two options to extend the Construction Term for 6 months each and an Operating Tem of 25 years, with three options to extend the Operating Term for 5 years each, for a **maximum total Easement Agreement term of 44 years**, and (2) the land uses described in the petition for Special Permit are consistent with the allowed land uses in the Option Agreement and future Easement Agreement.

Land Study Bureau (“LSB”) and Agriculture Plan [Exhibit 4, pg. 195](#)

Land Classification Map (Island of Kaua’i) (Land Study Bureau, University of Hawai’i), the Over-all Productivity Rating for most of the lands within the Project

Site is **Class B**. The Project Site is also designated as Agricultural Lands Important to the State of Hawai'i ("ALISH").

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 solar energy facilities is also made available for compatible agricultural activities at a lease rate that is at least fifty 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) Solar energy facilities shall be decommissioned at the owner's expense according to the following requirements:
 - (i) Removal of all equipment related to the solar energy facilities 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 solar energy facilities.

Petitioner asserts that the Project will help provide additional electric generation and storage resources for agricultural activities on Kaua'i. The Project will have no negative impact on surrounding agricultural uses, and will remove only a minimal amount of land from the 136,908 acres of lands available within the SLUC Agricultural District on Kaua'i.

As discussed in the Compatible Agriculture Plan Feasibility Assessment attached as [Exhibit 4, pg. 195](#), the Applicant will lease the usable portions of the Project Site for Agricultural Activities at rates which are at least 50% below the fair market rental value.

The Kaua'i Planning Commission finds the Project has satisfied the requirements of HRS Section 205-4.5(a)(21), HRS 205-6, AR Section 15-15-95(d), CZO Sections 8-8.4, 8-9.4, 8-3.1(f) and 8-3.2(f), and PC Rules Section 1-13-5. (Exhibit 41, Pg. 60)

Condition 2 of the County Decision and Order:

Usable lands of the Petition Area, including areas under PV panels, shall be made available for compatible agricultural use at a lease rate that is at least 50 percent below the fair market rent for comparable properties, as long as the Project is in operation. Compatible agricultural operations shall be established by the Applicant and its successors and/or assigns within 6 months of the start of commercial power generation. Extensions to this deadline may be granted by the Director of the County of Kaua'i Planning

Department for unforeseen extenuating circumstances. Additional consideration may be given if the Applicant is actively seeking to have such operations established

Solar Panels [Exhibit 2](#)

The proposed ground mounted solar panels 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 Solar Panels will be five (5) feet off the ground at a stow position where the panels are flat. As they rotate, their highest point will reach eight (8) feet high. Given the height of the panels, there will be room for people to move under and around the system with ease.

Additionally, the rows of panels will be spaced at a distance, which is greater than a typical fixed tilt ground mount system. This will allow for people 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 Project Improvements will be very minimal.

The ground-mounted fixed-tilt racking system modules will stand about 6-8 feet above ground level when flat and each PV panel is approximately 48 inches wide and 79 inches long and dark in color.

Battery Energy Storage System (“BESS”) [Exhibit 2](#)

The BESS Containers will be ten (10) feet in height, eight (8) feet in width, and twenty (20) feet 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. There will be forty-four (44) BESS Containers located adjacent to the AES Hawai'i Substation

Decommissioning [Exhibit 2](#)

As described in [Exhibit 4](#); Exhibit L, pg. 263, following the life and operation of the Project under the Project GOE, the Applicant will remove the solar energy facility which includes the following: (1) solar panels and racking system, including steel posts, (2) power conversion stations (3) BESSs, including batte1y units and batte1y modules, inverters and transfo1mers, and other auxiliary equipment (4) AES Hawai'i Substation and related components including communication, operations, and security equipment, (5) electrical wiring and connections, and (6) fencing and gates. The Applicant will cover up all pit holes, trenches, 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 proof of financial security to decommission the facility as required by HRS §205-4.5(a)(21).

Traditional and Cultural, native Hawaiian, and Ka Pa‘akai O Ka Aina

Exhibit 4; Exhibit X, pg. 915

Planning Commission Decision and Order, Exhibit 41 FOF 147 and 148
147. Traditional or Cultural Practices. An analysis of the traditional or cultural practices occurring on or related to the Project Site have been addressed in the Archaeological Reports, in the Community Outreach Report, in the Cultural Impact Assessment and Ka Pa‘akai Analysis for Ka‘awanui Project (Cultural Surveys Hawaii, Inc.), and in the Cultural Study (collectively, the "Ka Pa‘akai Report"). The conclusion contained in the Ka Pa'akai Report is that the Project will have no impact on any known traditional or customary practices of native Hawaiians within the Project Site. As noted in the Ka Pa‘akai Report, no traditional cultural properties were identified as existing, and no traditional cultural practices were identified as taking place, within the Project Site or its vicinity.

148. Summary of Impacts on Traditional or Cultural Practices. In summary, the 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 Project Site.
- b. There are no special gathering practices taking place within any portion of the Project Site.
- c. The Project will not detrimentally affect: access to any streams; access to the shoreline or other adjacent shoreline areas; or gathering along any streams, the shoreline or in the ocean.
- d. There are no known religious practices taking place within the Project Site.
- e. There are no known pre-contact cultural or historic sites or resources located within the Project Site.
- f. There are no known burials within the Project Site.

**4. SUMMARY OF COUNTY OF KAUA‘I PLANNING DEPARTMENT
POSITION STATEMENT and PLANNING COMMISSION
RECCOMENDATION**

The County of Kaua‘i Planning Commission transferred the record to the Land Use Commission on May 4, 2026.

Transmittal Exhibit List

Exhibit	Description
---------	-------------

1	Correspondence from Belles Graham LLP to Planning Director Hull dated January 5, 2026, regarding the Ka‘awanui Project Application submittal.
2	Ka‘awanui Project Application dated January 5, 2026.
3	G70’s project documents dated January 2026.
4	G70’s Exhibits to project documents dated January 2026.
5	General Class III and IV Requirements Checklist.
6	Checklist of State Special Permit Requirements.
7	Authorization of Applicant.
8	Authorization of Owner and Lessee.
9	Letter from the Planning Department to Belles Graham LLP dated January 13, 2026, regarding the acceptance of the Ka‘awanui Project application.
10	Planning Department — Standard Zoning Permit Application.
11	Planning Department — Permit/Petition Intake Form.
12	Planning Department — Application Fee Receipt.
13	Planning Department — Notice of Public Hearing/Notification of Procedures.
14	Planning Department — Agency Routing Form.
15	Correspondence from Belles Graham LLP to Planning Director Hull dated February 6, 2026, regarding the submission of the Affidavit As To Mailing Of Notice.
16	Correspondence from Belles Graham LLP to Planning Director Hull dated March 2, 2026, regarding the submission of an ADA-Compliant digital version of the Application dated January 5, 2026, together with the Ka‘awanui Solar Project Report and Exhibits, Ka‘awanui Solar+Storage Power Point presentation, and the Applicant’s Witness List and Exhibit List.
17	Applicant’s Witness List.
18	Applicant’s Exhibit List.
19	Correspondence from Belles Graham LLP to Planning Director Hull dated March 3, 2026, regarding the submission of an ADA-Compliant digital version of the Application dated January 5, 2026, together with the Ka‘awanui Solar Project Report and Exhibits and the Ka‘awanui Solar+Storage Power Point presentation.
20	Ka‘awanui Solar+Storage Power Point presentation.
21	Correspondence from Belles Graham LLP to Planning Director Hull dated March 9, 2026, regarding a final, revised version in Word format (clean and redlined) of the Findings Of Fact, Conclusions Of Law, And Decision And Order, concerning revisions to Conditions as written in the Director’s Report.
22	Findings Of Fact, Conclusions Of Law, And Decision And Order (Clean Version).
23	Findings Of Fact, Conclusions Of Law, And Decision And Order (Redlined Version).
24	Planning Commission Meeting Notice and Agenda (March 10, 2026).

25	Ka‘awanui Project Application – Item G.2.a. of the March 10, 2026, Planning Commission Agenda.
26	Director’s Report – Item G.2.a.1 of the March 10, 2026, Planning Commission Agenda.
27	Transmittal of Agency Comments to Planning Commission dated March 4, 2026 — Item G.2.a.2 of the March 10, 2026, Planning Commission Agenda.
28	Transmittal of Public Testimony to Planning Commission dated March 4, 2026 — Item G.2.a.3 of the March 10, 2026, Planning Commission Agenda.
29	Transmittal of Agency Comments to Planning Commission dated March 9, 2026.
30	Items received by the Planning Department less than 24 hours prior to the March 10, 2026, Planning Commission meeting (Document dated March 10, 2026).
31	Correspondence from Belles Graham LLP to Planning Director Hull dated March 16, 2026, regarding a final, revised version in Word format (clean and redlined) of the Findings Of Fact, Conclusions Of Law, And Decision And Order, concerning revisions to Conditions as written in the Director’s Report and as further amended by the Planning Commission.
32	Findings Of Fact, Conclusions Of Law, And Decision And Order (Clean Version).
33	Findings Of Fact, Conclusions Of Law, And Decision And Order (Redlined Version).
34	Correspondence from Belles Graham LLP to Planning Director Hull dated March 25, 2026, regarding the submission of the Original Transcript of the March 10, 2026, proceedings for review.
35	Original Transcript .
36	Correspondence from Belles Graham LLP to Planning Director Hull dated April 6, 2026, confirming that Belles Graham LLP has no recommended corrections to the Original Transcript and concurs with the designation of the record as contained in Paragraph 10 of the Findings Of Fact, Conclusions Of Law, And Decision And Order.
37	Correspondence from Belles Graham LLP to Planning Director Hull dated April 10, 2026, regarding the submission of the Sealed Original Transcript.
38	Planning Commission Meeting Notice and Agenda (April 14, 2026).
39	Sealed Original Transcript — Item D.3. of the April 14, 2026, Planning Commission Agenda.
40	Letter from the Clerk of the Kaua‘i Planning Commission to Belles Graham LLP dated April 15, 2026, regarding the approval of the excerpt of the March 10, 2026, Planning Commission Minutes concerning transcripts in the matter of the Ka‘awanui Solar LLC Application.
41	Executed Findings Of Fact, Conclusions Of Law, And Decision And Order.

The County of **Kaua‘i Planning Department Submittal (EXHBIT 26):**

Based on the Counties findings and evaluation, it is concluded that through proper mitigative measures and compliance efforts, the proposed development can be considered, and it should not have significant adverse impacts to the environment or the surrounding area. The proposal is generally in compliance with the criteria outlined for the granting of a Use Permit and Class IV Zoning Permit. In addition, the proposed development is consistent with the policies outlined in the General Plan, as well as the development standards prescribed by the Comprehensive Zoning Ordinance.

It is further concluded that the Special Permit and Use Permit could be considered in that the proposed use should promote the overall goals and objectives of Chapter 205, HRS. While the proposal does not directly increase agricultural productivity, it is a permissible use under Chapter 205, HRS with a Special Permit.

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

Preliminary Recommendation

Based on the foregoing evaluation and conclusion, it is hereby recommended that Class IV Zoning Permit Z-IV-2026-12, Use Permit U-2026-9, and Special Permit SP-2026-4, be APPROVED subject to the following conditions (listed 23).

The County of **Kaua'i Planning Commission Recommendation:**

On March 10, 2026, the Kaua'i Planning Commission approved 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 for the Project (including the Ka'awanui Substation), subject to 24 conditions.

The Kaua'i Planning Commission RECOMMENDS APPROVAL of the State Special Permit for the Project (not including the Ka'awanui Substation), within the Project Site with modifications as proposed by the Planning Department and the Planning Commission and as agreed to by the Applicant (County Decision and Order, Exhibit 41).

Summary of the 24 Conditions in the County Decision and Order (Exhibit 41):

For full Conditions please refer to the County Decision and Order Exhibit 41

1. Constructed as represented to the Planning Commission, and changes must be reported to the Planning Director

2. Usable lands of the Petition Area, including areas under PV panels, shall be made available for compatible agricultural use at a lease rate that is at least 50 percent below the fair market rent for comparable properties
3. If at any time during the term of the subject permits no compatible agricultural operations exist on the usable lands of the Petition Area for 6 months, the Applicant shall notify the Director of the County of Kaua'i Planning Department in writing within 30 days of the end of the 6-month period.
4. The Applicant shall submit for review and obtain the approval of the following from the Director of the County of Kaua'i Planning Department, prior to the issuance of a grading or building permit:
 - i) Survey map with metes and bounds of Petition Area
 - ii) Site plan showing the area required under Condition 2, above, relating to the minimum land area to be made available for compatible agricultural use
5. Prior to the closing of the building permit for the facility, the Applicant shall submit to the County of Kaua'i Planning Department proof of financial security, such as a letter of credit or similar assurance, from a creditworthy financial institution satisfactory to the County of Kaua'i Planning Department...The Applicant shall decommission the facility (not including the Ka'awanui Substation), including the removal of all equipment related to the facility, within twelve (12) months following the termination of operations of the facility...
6. The Applicant shall mitigate impacts to flora on site as follows:
 - i) Prior to initiating any ground-disturbing activities, the Applicant should identify and implement feasible measures to reasonably protect, replace or relocate any indigenous or native plant species, or cultural and natural resources within the project area, based on consultation with applicable governmental agencies.
7. The Applicant shall mitigate impacts to fauna on site as follows:
 - i) Applicant shall develop an endangered species awareness training module, which shall include all potential endangered species that may frequent the Petition Area.
 - ii) All construction workers and solar facility employees shall undergo endangered species awareness training prior to starting work
 - iii) 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.
 - iv) Barbed wire shall not be used on the top of any fencing.
 - v) Applicant shall monitor avian injuries occurring within the Project Site, and report occurrences to the United States Fish and Wildlife Service ("USFWS").
 - vi) Applicant shall minimize or avoid clearing or grading activities from June 1 through September 15.
8. Applicant shall begin commercial operations of the Project within four (4) years of the date of the Land Use Commission's (LUC) Decision and Order approving the Special Permit... 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 Project, 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 LUC.**

9. On or before December 31 of each year that the Special Permit is in effect, the Applicant or its successor shall file an annual report to the LUC, State of Hawai'i Office of Planning, and the County of Kaua'i Planning Department that demonstrates the Applicant's compliance with conditions of the subject permits.
10. Major modifications to: (1) the Project plans, including but not limited to significant increases in the number of PV panels; (2) amendments to the conditions of approval; (3) significant expansions of the approved area; or (4) change in uses stated herein, shall be subject to the review and approval of the Planning Commission and the SLUC. Minor modifications including minor additions to accessory uses and structures, and new incidental...
11. The Applicant shall notify the Director of the County of Kaua'i Planning Department of:
 - i) Any change or transfer of the license on the Petition Area.
 - ii) Any change in uses on the Petition Area.
 - iii) Termination of any uses on the Petition Area; and/or
 - iv) Transfer in ownership of the Petition Area.
12. Enforcement of the conditions of the subject permits shall be enforced pursuant to the Rules of the Planning Commission, including the issuance of an order to show cause...
13. If the PV array or the Project creates a hazardous condition for pilots or motorists, the facility operator shall immediately mitigate the hazard upon notification by the State of Hawai'i Department of Transportation...
14. If required to mitigate visual impacts, new landscaping shall be installed and maintained around the Solar Project to screen it when viewed from Kaumuali'i Highway...
15. In the event that historic resources, including human skeletal remains, structural remains, cultural deposits... the find shall be protected from additional disturbance, and the State Historic Preservation Division (SHPD) and Kaua'i Island Burial Council, as applicable, shall be contacted immediately.
16. Project construction workers and all other personnel involved in the construction and related activities of the Project shall be informed of the possibility of inadvertent cultural finds, including human skeletal remains...
17. In the event iwi kupuna and/or cultural finds are encountered during construction, Project proponents shall 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.
18. The Applicant shall resolve and comply with all agency requirements as recommended in the permit application review, including but not limited to the permit requirements...
19. The Applicant shall develop and utilize Best Management Practices (BMP's) to ensure the Project does not generate impacts that may affect the health, safety,

and welfare of those in the surrounding area of the proposal.

20. The Applicant shall implement to the extent possible sustainable building techniques and operational methods for the Project, such as Leadership in Energy and Environmental Design (L.E.E.D.) standards or another comparable state-approved...
21. To the extent possible within the confines of union requirements and applicable prohibitions against discrimination in employment, the Applicant shall seek to hire Kaua'i contractors as long as they are qualified and reasonably competitive with other contractors, and shall seek to employ residents of Kaua'i in temporary construction and permanent jobs...
22. The Applicant is advised that prior to construction and/or use, additional government agency conditions may be imposed. It shall be the Applicant's responsibility to resolve those conditions with the respective agency(ies).
23. The Planning Commission reserves the right to revise, modify, add or delete conditions of approval in order to address or mitigate unforeseen impacts this project may create, or revoke the permits through the proper procedures should conditions of approval be violated or adverse impacts be created that cannot be properly addressed.
24. The portion of the Project containing the Ka'awanui Substation shall be subject to Conditions 1, 4a., 6, 7, 12, and 14 through 23, but shall not be subject to Conditions 2, 3, 4b., 5, 8 through 11, and 13.

5. SUMMARY OF POSITION STATEMENT FILED BY THE OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT ("OPSD")

During the review of the County Record, Exhibit 14, indicates that the Application may not have transmitted to the LUC, OPSD, or Department of Agriculture and Biosecurity, resulting in a lack of comments for these agencies at the County Level.

If during the hearing OPSD and DAB provide concerns or comments that were not addressed at the county level, LUC staff suggests remanding this Petition to the County for further development of the record (see secondary suggested motion).

As of 5/5/2026, the Land Use Commission has not received comments from the OPSD, or the Department of Agriculture and Biosecurity ("DAB").

6. STAFF ANALYSIS, CONCERNS, AND RECCOMENDATION

Staff Concerns:

During the review of the County Record, Exhibit 14, indicates that the Application was not transmitted to the LUC, OPSD, or Department of Agriculture and Biosecurity, resulting in a lack of comments for these agencies at the County Level.

- Staff Suggests the Commission ask the Petitioner and County if the

Department of Agriculture and Office of Planning and Sustainable Development were consulted in the permitting process due to the use of agricultural land and implications of HRS 205 and 205A.

If during the hearing OPSD and DAB provide concerns or comments that were not addressed at the county level, LUC staff suggests remanding this Petition to the County for further development of the record (see secondary suggested motion).

Staff Analysis:

HRS 205-6 and HAR15-15-96(a) provides the alternative actions that may be taken by the LUC in its consideration of the Special Permit application. The LUC may approve, approve with modification, or deny the Application. The LUC may impose additional restrictions as may be necessary or appropriate in granting the approval. However, any modifications or additional restrictions must be based on the record as developed by the County Planning Commission. The LUC may also remand the Application to the Planning Commission for further proceedings if they determine that consideration of new information, relevant to the application, is warranted.

Staff believes that sufficient information exists that the Petitioner has met the guidelines for a State Special Permit. The documented record from the County includes the Planning Commission’s record memorializing their decision and identifying the 24 conditions they recommended, the Special Permit application and supporting documents, the Planning Director’s Report, and approved hearing transcripts/minutes.

Further, LUC Staff believes the proposed uses include the development of: solar energy facilities (within B rated lands); and utilities. The AES Hawai’i Substation and the Ka’awanui Substation are permitted uses pursuant to HRS Section 205-4.5(a)(7). The remainder of the Project is a use under HRS Sections 205-2(d)(6)(B) and 205-4.5(a)(21) which may be permitted, subject to the issuance of a Special Permit pursuant to HRS Section 205-6.

Compliance With Requirements For SLUC Special Permit

1. Special Permit Requirements. The proposed Project meets the requirements for an SLUC Special Permit, as contained in Hawai’i Revised Statutes Section 205- 6 and in Section 15-15-95 of the Land Use Commission Rules as set forth herein.
2. The use will not be contrary to the objectives sought to be accomplished by the HRS Chapter 205 and 205A , and SLUC Rules.

The proposed use will not interfere with other agricultural uses which are generally allowed within the SLUC Agricultural District as conditions require compatible agriculture uses on the lands of the Petition Area. 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.

3. 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 this proposal will be insignificant and will not create any substantial adverse impacts.

4. 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 this proposal. Conversely, by providing an alternative green source of energy for electricity, it will promote the sustainability and availability of electrical production resources for the public.

5. 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.

6. The land on which the proposed use is sought is unsuited for the uses permitted with the District. To the extent feasible, the Applicant will continue to use the Project Site for Agricultural Activities as described in the Agricultural Plan. In addition, although the Project Site is suitable for agricultural uses, it is better suited at this time for the production of alternative energy production via the Project proposed herein.

Staff Recommendation:

Suggested Amendments to Conditions

Condition 2 of the County Decision and Order

LUC Staff suggests adding the language in red to condition 2 of the County Decision and Order, to ensure that the Agency with direct interest and involvement is included in time extensions.

Usable lands of the Petition Area, including areas under PV panels, shall be made available for compatible agricultural use at a lease rate that is at least 50 percent below the fair market rent for comparable properties, as long as the Project is in operation. Compatible agricultural operations shall be established by the Applicant and its successors and/or assigns within 6 months of the start of commercial power generation. Extensions to this deadline may be granted by the Director of the County of Kaua'i Planning Department, **after consultation with the Department of Agriculture and Biosecurity** for unforeseen extenuating circumstances. Additional consideration may be given if the Applicant is actively seeking to have such operations established

Condition 8 of the County Decision and Order

LUC Staff suggests adding the language in red to condition 8 of the County Decision and Order, to ensure that the LUC; the State permitting body with direct interest and involvement is included in time extensions. Conditions with this language are present in other Special Permits involving Solar Developments, see SP21-412 (Condition 3)

Applicant shall begin commercial operations of the Project within four (4) years of the date of the Land Use Commission's (LUC) Decision and Order approving the Special Permit... 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 Project, 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 LUC.~~ **Approval of Special Permit time extensions shall be required from the Land Use Commission.**

Condition 11 of the County Decision and Order

The Applicant shall notify the Director of the County of Kaua'i Planning Department **and the Land Use Commission** of:

- (1) Any change or transfer of the license on the Petition Area.
- (2) Any change in uses on the Petition Area.
- (3) Termination of any uses on the Petition Area; and/or
- (4) Transfer in ownership of the Petition Area.

With the following recommended changes to Conditions 2, 8, and 11, to clarify the importance of consultation to DAB prior to granting extensions for establishing required agricultural operations, adding LUC approval for any requested time extensions for the Special Permit, and include the LUC to be notified by Applicant for any changes in lease, ownership, or use of the Petition Area.

Suggested Motion based on Staff Recommendation:

The LUC Staff recommends **the Commission approve the Ka‘awanui Solar Special Permit Application for solar development** on approximately 269.195 acre portion of land located in Makaweli, Waimea, Kaua‘i, Hawai‘i, identified by Kaua‘i Tax Map Key Nos. (4) 1-7-006:006 (por.) ("Parcel 6") and 010 (por.) ("Parcel 10"), **subject to the 24 County Conditions and the three additional Condition amendments** from the LUC Staff, **adopt the condition language in the Counties Decision and Order, and authorize the Chairperson to execute the order necessary to effectuate the Commission’s decision**, subject to review and approval by the Department of the Attorney General.

Secondary Motion if OPSD and DAB provide comments and concerns not on County Record

Due to new evidence introduced by ___, the LUC remands this back to Kaua‘i County for further proceedings to complete the record.