

**Clarification suggested by the
Applicant/Petitioner to the
DPP Director's
Recommendations
(Final Version)**

V. RECOMMENDATIONS

The Director of the Department of Planning and Permitting (DPP) recommends that Special Use Permit (SUP) Petition File No. 2020/SUP-7, for the establishment of a 120-megawatt (MW) solar energy generation facility (SEF), a 480-megawatt-hour (MWh) battery energy storage (BESS) facility to address peak energy demand, and accessory support infrastructure and uses (together referred to as the Project) on approximately 620.0 acres (Petition Area), Tax-Map Keys 9-2-001: 020 portion, 9-2-004: 003 portion, 9-2-004: 006 portion, 9-2-004: 010 portion, and 9-2-004: 012 portion as approximately shown on Exhibit A, be approved, subject to the following conditions:

1. Usable lands of the Petition Area, as required under Condition No. 6a, 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, or Petitioner shall be actively seeking to have such operations established, within six months of the start of commercial power generation (referred to as the “initial six-month period”). Extensions to this deadline may be granted by the Director of the DPP for unforeseen extenuating circumstances. The agricultural plan, approved by the Director of the DPP, shall include the following:
 - a. The Agrivoltaics Program as outlined in the Petition as ‘proof-of-concept’ to determine the suitability of the to-be-determined agricultural activities to be researched and field trialed by the Hawaii Agriculture Research Center (HARC).
 - b. A collaborative process establishing an organization or association between the HARC and the individual agricultural operators interested in and working in the Petition Area for agricultural productions including livestock, crops, or hydroponics.
 - c. An irrigation system proposed for future agricultural activities that may occur under and adjacent to the solar panel arrays.
 - d. Fencing and gating to be in place prior to full operation of the Project to prepare for the needs of the anticipated agricultural activities.
2. If at any time during the term of the SUP, no compatible agricultural operations exist on the usable lands of the Petition Area for six months after the initial six-month period (referred to as the “subsequent six-month periods”), the Petitioner shall notify the Planning Commission (PC) and the Director of the DPP in writing within 30 days of the end of any subsequent six-month periods. If requested by the PC, the Petitioner shall attend a meeting of the PC and submit a report to the PC detailing the Petitioner’s actual and reasonable efforts to actively seek the establishment of compatible agricultural operations on the usable lands of the Petition Area. The PC shall determine whether probable cause exists to re-evaluate the SUP and to hold a hearing pursuant to Section 2-49 of the Rules of the PC. Extension to any subsequent six-month period’s deadlines may be granted by the PC for unforeseen extenuating circumstances.
3. This SUP operational period shall be valid for a period of 25 years plus a 10-year extension preceded by three-years of construction and 12 months of decommissioning

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from the date of the State Land Use Commission's (LUC) Decision and Order approving the SUP, subject to further extensions upon a timely request for extension filed with the PC at least 120 days prior to the SUP's 39-year expiration.

4. The Petitioner shall establish the Project within two years of the date of the LUC's Decision and Order approving the SUP. Requests for extension of this deadline shall be submitted to the Director of the DPP prior to the expiration of the deadline. The PC may grant an extension to the deadline to establish the Project due to unforeseen circumstances that were beyond the control of the Petitioner.
5. Approval of the Archaeological Inventory Survey (AIS) from the State Historic Preservation Division (SHPD) shall be obtained prior to the issuance of building permits. The Director of the DPP shall add any specific required conditions of such approval to the required Conditional Use Permit.
6. The Petitioner shall submit for review and obtain the approval of the following from the Director of the DPP, prior to any subdivision action or the issuance of a grading or building permit:
 - a. The agricultural plan listed in Condition No. 1 with a site plan showing the minimum land area to be made available and the types of agricultural activity proposed for compatible agricultural use.
 - b. A revised landscape plan showing a landscape treatment to screen the Project along the southern (makai) boundary of Project Area 5, adjacent to the Honouliuli National Historic Site. If the Project creates a negative visual impact to the Honouliuli National Site in the future, and vegetative visual screening is requested by the U.S. National Park Service, then the Petitioner shall install such screening.
7. The Petitioner, its assignees, or the landowner, shall cause the decommissioning of the Project at the Petitioner's, assignee's, or owner's expense by removing all of the equipment related to the SEF by no more than 24 months of the conclusion of Project operation, or its useful life, and the restoration of the disturbed earth to substantially the same physical condition as existed prior to the development of the SEF.
8. Prior to the closing of a building permit for the SEF, the Petitioner shall submit to the DPP proof of financial security, to decommission the Project and restore the Petition Area to substantially the same physical condition as existed prior to the development of the Project. Such proof may include, but not be limited to, a posted letter of credit, performance bond, escrow account, or similar mechanism from a creditworthy financial institution. This shall be in favor of the owners of the land subject to the SUP, in the amount based on the used acreage of that landowner by the Project multiplied by the 2020 estimated rate of decommissioning established by the Petitioner's consultant, Engineering Analytics, Incorporated (\$6,830 per acre escalated per year for inflation). Said security shall remain in place for the duration of the SUP.
9. The Petitioner shall comply with the recommendations of the State of Hawaii, Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW), regarding the protection of endangered, threatened, and native flora and fauna species

and their associated habitat should be monitored and observed. If identified in the Petition Area, the Petitioner shall follow the mitigation, monitoring, and avoidance measures contained in the Biological Resource Report prepared for the Project.

10. On or before December 31 of each year that the SUP is in effect, the Petitioner or its successor shall file an annual report to the DPP that demonstrates the Petitioner's compliance with conditions of the SUP. The annual report shall also include, but not be limited to:
 - a. The total acreage per type of agricultural activity, their yields, amount sold locally and out-of-state, and revenues in aggregate for each agricultural activity.
 - b. Evidence of proof of financial security for decommissioning of the Project.
 - c. Detailed records of inspection of deceased wildlife as a result of natural causes or facility operations; the hours spent by specialists training operations staff in the proper response, documentation, and reporting of any downed wildlife observed; the results of the established and implemented Downed Wildlife Observation Program; the recorded fatalities of state-listed species, federally-listed species, or species protected under the Migratory Bird Treaty Act that were reported to the DOWAW and the United States Fish and Wildlife Service; and invasive species found in the Petition Area that were reported to the Oahu Invasive Species Committee.
 - d. Avoidance and mitigation measures conducted to protect and preserve historic, cultural, and archeological features, sites, and resources.
 - e. Quantities of water demand, storage, pumping, delivery, availability by source for each of the five Project Areas prior to Phase Two of the Agrivoltaics Program of the agricultural plan.
11. 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 PC and the LUC. Minor modifications including minor additions to accessory uses and structures, and new incidental uses and structures in the approved area are subject to review and approval by the Director of the DPP.
12. The Petitioner and/or landowner shall notify the Director of the DPP of:
 - a. Any change or transfer of licensee on the property;
 - b. Any change in uses on the property;
 - c. Termination of any uses on the property; and/or
 - d. Transfer in ownership of the property.

The PC, in consultation with the Director of the DPP, shall determine the disposition of this SUP, and the facilities permitted herein.

13. Enforcement of the conditions of the SUP shall be pursuant to the Rules of the PC, including the issuance of an order to show cause as to the reason the SUP should not be revoked if the PC has reason to believe that there has been a failure to perform consistent with representations made by the Petitioner or the conditions imposed herein.

Dated at Honolulu, Hawaii this 20th day of May 2021.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU
STATE OF HAWAII

By _____
Dean Uchida
Director

Attachments

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DPP Director's
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CITY & COUNTY OF HONOLULU

V. RECOMMENDATIONS

The Director of the Department of Planning and Permitting (DPP) recommends that Special Use Permit (SUP) Petition File No. 2020/SUP-7, for the establishment of a 120-megawatt (MW) solar energy generation facility (SEF), a 480-megawatt-hour (MWh) battery energy storage (BESS) facility to address peak energy demand, and accessory support infrastructure and uses (together referred to as the Project) on approximately 620.0 acres (Petition Area), Tax Map Keys 9-2-001: 020 portion, 9-2-004: 003 portion, 9-2-004: 006 portion, 9-2-004: 010 portion, and 9-2-004: 012 portion as approximately shown on Exhibit A, be approved, subject to the following conditions:

1. Usable lands of the Petition Area, as required under Condition No. 64a, 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, or Petitioner shall be actively seeking to have such operations established, within six months of the start of commercial power generation (referred to as the “initial six-month period”). Extensions to this deadline may be granted by the Director of the DPP for unforeseen extenuating circumstances. The agricultural plan, approved by the Director of the DPP, shall include the following:
 - a. The Agrivoltaics Program as outlined in the Petition as ‘proof-of-concept’ to determine the suitability of the to-be-determined agricultural activities to be researched and field trialed by the Hawaii Agriculture Research Center (HARC).
 - b. A collaborative process establishing an organization or association between the HARC and the individual agricultural operators interested in and working in the Petition Area for agricultural productions including livestock, crops, or hydroponics.
 - c. A ~~drip~~ irrigation system proposed for future agricultural activities that may occur under and adjacent to the solar panel arrays.
 - d. Fencing and gating to be in place prior to full operation of the Project to prepare for the needs of the anticipated agricultural activities.
2. If at any time during the term of the SUP, no compatible agricultural operations exist on the usable lands of the Petition Area for six months after the initial six-month period (referred to as the “subsequent six-month periods”), the Petitioner shall notify the Planning Commission (PC) and the Director of the DPP in writing within 30 days of the end of any subsequent six-month periods. If requested by the PC, the Petitioner shall attend a meeting of the PC and submit a report to the PC detailing the Petitioner’s actual and reasonable efforts to actively seek the establishment of compatible agricultural operations on the usable lands of the Petition Area. The PC shall determine whether probable cause exists to re-evaluate the SUP and to hold a hearing pursuant to Section 2-49 of the Rules of the PC. Extension to any subsequent six-month period’s deadlines may be granted by the PC for unforeseen extenuating circumstances.
3. This SUP operational period shall be valid for a period of 25 years plus a 10-year extension preceded by ~~two~~three-years of construction and ~~18 to 24~~12 months of

decommissioning from the date of the State Land Use Commission's (LUC) Decision and Order approving the SUP, subject to further extensions upon a timely request for extension filed with the PC at least 120 days prior to the SUP's 39-year expiration.

4. The Petitioner shall establish the Project within two years of the date of the LUC's Decision and Order approving the SUP. Requests for extension of this deadline shall be submitted to the Director of the DPP prior to the expiration of the deadline. The PC may grant an extension to the deadline to establish the Project due to unforeseen circumstances that were beyond the control of the Petitioner.
5. Approval of the Archaeological Inventory Survey (AIS) from the State Historic Preservation Division (SHPD) shall be obtained prior to the ~~PC decision issuance of building permits.~~ Any recommendations from the SHPD shall be included in such decision. The Director of the DPP shall add any specific required conditions of such approval to the required Conditional Use Permit. ~~Should SHPD approval of the AIS and recommended mitigation measures not be obtained prior to the PC's decision, the identified historic sites shall be preserved in place with an adequate buffer to avoid disturbance of the sites.~~
6. The Petitioner shall submit for review and obtain the approval of the following from the Director of the DPP, prior to any subdivision action or the issuance of a grading or building permit:
 - a. The agricultural plan listed in Condition No. 1 with a site plan showing the minimum land area to be made available and the types of agricultural activity proposed for compatible agricultural use.
 - b. A revised landscape plan showing a landscape treatment to screen the Project along the southern (makai) boundary of Project Area 5, adjacent to the Honouliuli National Historic Site. If the Project creates a negative visual impact to the Honouliuli National Site in the future, and vegetative visual screening is requested by the U.S. National Park Service, then the Petitioner shall install such screening.
 - c. ~~A Pohakea Trail survey and access plan conducted with consultation by the appropriate agencies and persons who would have more knowledge of the trail's historical location and possible status.~~
7. 12 months The Petitioner, its assignees, or the landowner, shall cause the decommissioning of the Project at the Petitioner's, assignee's, or owner's expense by removing all of the equipment related to the SEF by no more than 24 months of the conclusion of Project operation, or its useful life, and the restoration of the disturbed earth to substantially the same physical condition as existed prior to the development of the SEF.
8. \$ 4.2M Prior to the issuance-closing of a building permit for the SEF, the Petitioner shall submit to the DPP proof of financial security, ~~i.e., bond, letter of credit, or similar financial instrument,~~ to decommission the Project and restore the Petition Area to substantially the same physical condition as existed prior to the development of the Project. Such proof may include, but not be limited to, a posted letter of credit, performance bond, escrow account, or similar mechanism from a creditworthy financial institution. This shall

be in favor of the owners of the land subject to the SUP, in the amount based on the used acreage of that landowner by the Project multiplied by the 2020 estimated rate of decommissioning established by the Petitioner's consultant, Engineering Analytics, Incorporated (\$6,830 per acre escalated per year for inflation). Said security shall remain in place for the duration of the SUP.

9. The Petitioner shall comply with the recommendations of the State of Hawaii, Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW), regarding the protection of endangered, threatened, and native flora and fauna species and their associated habitat should be monitored and observed. If identified in the Petition Area, the Petitioner shall follow the mitigation, monitoring, and avoidance measures contained in the Biological Resource Report prepared for the Project.
10. On or before December 31 of each year that the SUP is in effect, the Petitioner or its successor shall file an annual report to the DPP that demonstrates the Petitioner's compliance with conditions of the SUP. The annual report shall also include, but not be limited to:
 - a. The total acreage per type of agricultural activity, their yields, amount sold locally and out-of-state, and revenues in aggregate for each agricultural activity.
 - b. Evidence of proof of financial security for decommissioning of the Project.
 - c. Detailed records of inspection of deceased wildlife as a result of natural causes or facility operations; the hours spent by specialists training operations staff in the proper response, documentation, and reporting of any downed wildlife observed; the results of the established and implemented Downed Wildlife Observation Program; the recorded fatalities of state-listed species, federally-listed species, or species protected under the Migratory Bird Treaty Act that were reported to the DOFAW and the United States Fish and Wildlife Service; and invasive species found in the Petition Area that were reported to the Oahu Invasive Species Committee.
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The PC, in consultation with the Director of the DPP, shall determine the disposition of this SUP, and the facilities permitted herein.

- 13. Enforcement of the conditions of the SUP shall be pursuant to the Rules of the PC, including the issuance of an order to show cause as to the reason the SUP should not be revoked if the PC has reason to believe that there has been a failure to perform consistent with representations made by the Petitioner or the conditions imposed herein.

Dated at Honolulu, Hawaii this 20th day of May 2021.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU
STATE OF HAWAII

By _____
Dean Uchida
Director

Attachments