

**STATE OF HAWAI'I
OFFICE OF PLANNING
& SUSTAINABLE DEVELOPMENT**

235 South Beretania Street, 6th Floor, Honolulu, Hawai'i 96813
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Coastal Zone
Management
Program

Environmental Review
Program

Land Use Commission

Land Use Division

Special Plans Branch

State Transit-Oriented
Development

Statewide Geographic
Information System

Statewide
Sustainability Branch

DTS 202409170939SO
SP21-412
2020/SUP-7
2024/GEN-3

September 26, 2024

TO: Daniel Orodener, Executive Officer
Land Use Commission

FROM: Mary Alice Evans, Director *Mary Alice Evans*
Office of Planning and Sustainable Development

SUBJECT: Land Use Commission (“LUC”) Docket No. SP21-412 Mahi Solar
(2024/GEN-3)
Mahi Solar, LLC (“Petitioner”)
TMKs: (1) 9-2-001: 020 (por.), (1) 9-2-004: 003 (por.), CPR Units
1, 2, and 4, and (1) 9-2-004:010 (por.)

On March 28, 2024, the Office of Planning and Sustainable Development (“OPSD”) received a request for comments from the City and County of Honolulu Department of Planning and Permitting (“DPP”) regarding an application (“Petition”) proposing an amendment to Special Use Permit (“SUP”) File No. 2020/SUP-7 (LUC Docket No. SP21-412). SUP File No. 2020/SUP-7 approved the establishment and operation of a 120-megawatt alternating current solar energy facility, a 480-megawatt-hour battery energy storage system, and a 34.5-kilovolt substation and accessory uses and structures on 620 acres of land in Kunia, O’ahu (“Project”). Due to pandemic-related supply-chain disruptions, the Petitioner is requesting an extension to the deadline for establishing the Project. Condition No. 4 of the 2020/SUP-7 Decision and Order (“D&O”) requires the establishment of the Project within three years of the date of the LUC’s D&O approving the SUP. The three-year deadline expired on September 17, 2024.

In a letter dated May 7, 2024, OPSD expressed support for the Petition through comments provided to the DPP. **We defer to the May 7, 2024, letter for a detailed explanation of OPSD’s position on the Project and the extension request.** The letter is included in Appendix A of the DPP’s Director’s Report for 2024/GEN-3 and is also attached to this memo.

Mr. Daniel Orodener, Executive Officer
September 26, 2024
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On May 22, 2024, the DPP issued its Director's Report recommending approval of the Petition. A public notice of a June 26, 2024, public hearing was published in the Star Advertiser on May 27, 2024.

On June 19, 2024, the Petitioner submitted a letter to the Planning Commission of the City and County of Honolulu (PC) explaining that negotiations regarding the Power Purchase Agreement (PPA) between the Petitioner and Hawaiian Electric Company (HECO) began in January 2024 but cannot be finalized until a technical analysis is completed regarding the Project's effect on HECO's grid and facilities. The letter mentions that the technical analysis requires at least another 12 months to finalize, after which the PPA will be executed and submitted to the Public Utilities Commission for review and approval. Additionally, to secure financing and begin construction, the Petitioner needs to obtain all discretionary approvals, including the subject Petition, a conditional use permit, and all ministerial permits, including building permits.

The letter proposed amending Condition Number 4 to allow the establishment of the Project "within three years from the latter of (i) the date of the LUC's Decision and Order approving the requested amendment of the SUP or (ii) the date that Petitioner and HECO enter into a new [PPA] for the Project." The underlined text represents the proposed language amending the existing Condition No. 4 of the 2020/SUP-7 D&O. The DPP expressed concerns that the Petitioner's request does not commit the Project to a deadline to establish the Project since the proposed language does not set a deadline for the execution of a PPA between the Petitioner and HECO. Consequently, the Petitioner and the DPP mutually agreed to a five-year extension of the deadline to establish the Project.

OPSD believes the compromise is reasonable and supports amending Condition No. 4 to require the establishment of the Project within five years of the LUC's D&O approving the amended SUP, as approved by the PC on August 7, 2024. Five years provides the Petitioner flexibility while ensuring the Project progresses and delivers benefits to the community in a timely manner. A five-year deadline to establish the Project aligns with the State of Hawai'i's goal to reach 100 percent renewable energy by 2045. Additionally, the Petitioner's 2023 Annual Compliance Report details the substantial effort to progress the Project and comply with conditions despite supply chain disruptions.

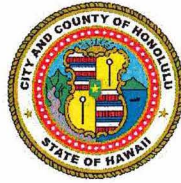
Thank you for the opportunity to comment on the modification to the Mahi Solar SUP. If you respond to this comment letter, please include DTS 202409170939SO in the subject line. If you have any questions, please contact Brandon Soo at brandon.a.soo@hawaii.gov or (808) 587-2888.

Enclosures

PLANNING COMMISSION
KOMIKINA HO'OLĀLĀ
CITY AND COUNTY OF HONOLULU

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JOY KIMURA
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2020/SUP-7

August 21, 2024

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MAHI SOLAR, LLC

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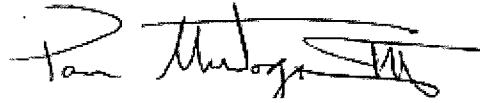
Attorneys for
OFFICE OF PLANNING, STATE OF HAWAII

RE: PLANNING COMMISSION FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER
APPROVING MAHI SOLAR, LLC'S APPLICATION FOR AN
AMENDMENT TO A STATE SPECIAL USE PERMIT, DOCKET
NO. 2020/SUP-7

Dear Sirs and Madam,

Enclosed is the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order, August 7, 2024, for the above subject Special Use Permit, Docket No. 2020/SUP-7.

Very truly yours,

A handwritten signature in black ink, appearing to read "Pane Meatoga III". The signature is stylized with a large initial "P" and a long horizontal stroke extending to the right.

Pane Meatoga III, Chair
Planning Commission

PM:gt

Enclosure

cc: Tracy Camuso, AICP, G70
Rozelle Agag, Deputy Corporation Counsel for the Planning Commission

BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

IN THE MATTER OF THE APPLICATION) FILE NO. 2020/SUP-7
)
OF) FINDINGS OF FACT,
) CONCLUSIONS OF LAW, AND
MAHI SOLAR, LLC) DECISION AND ORDER
) APPROVING MAHI SOLAR, LLC'S
FOR AN AMENDMENT TO A) APPLICATION FOR AN
) AMENDMENT TO A STATE
STATE SPECIAL USE PERMIT) SPECIAL USE PERMIT
)
_____)

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER APPROVING MAHI SOLAR, LLC'S APPLICATION
FOR AN AMENDMENT TO A STATE SPECIAL USE PERMIT**

Mahi Solar, LLC (Petitioner) filed an application (Application) proposing an amendment to Special Use Permit (SUP) File No. 2020/SUP-7¹, Condition No. 4 to extend the Petitioner's timeline for establishing the project for another three years. The Application was heard by the Planning Commission (PC) of the City and County of Honolulu on July 10, 2024 at 1:30 p.m., at the Frank F. Fasi Municipal Building, 650 South King Street, 6th Floor Conference Room, Honolulu, Hawaii. The PC having heard and examined the testimony and evidence, presented during the hearing, along with the Application, Director's Report, written testimony, written comments, and correspondence filed with the PC, and makes the following Findings of Fact, Conclusions of Law, and Decision and Order. Based on the record in this matter, the PC hereby finds as follows:

FINDINGS OF FACT

A. Procedural History

1. On July 29, 2021, the PC approved with conditions the Petitioner's SUP Application to establish a 120-megawatt solar photovoltaic and Battery Energy Storage System facility on 620 acres of land within the State Land Use Agricultural District (Project).

¹ Also referred to as the State Land Use Commission Docket No. SP21-412.

2. On September 17, 2021, the State Land Use Commission (LUC) approved the SUP Application with the conditions approved by the PC, with additional modifications (LUC Decision and Order).

3. Condition No. 4 of the LUC Decision and Order requires the Petitioner to establish the Project within three years of the date of the LUC Decision and Order approving the SUP, or September 17, 2024. Any requests for extension of this deadline are required to be submitted to the Director of the Department of Planning and Permitting (DPP) prior to the expiration of this deadline. Both the PC and the LUC may grant an extension or this deadline due to unforeseen circumstances that are beyond the control of Petitioner.

4. On March 26, 2024, the Petitioner submitted a letter along with the Application to amend SUP File No. 2020/SUP-7 to the DPP: (a) advising that the Petitioner does not anticipate meeting the September 17, 2024 deadline to establish the Project due to unforeseen circumstances that were beyond the control of the Petitioner; and (b) requesting that Condition No. 4 of the LUC Decision and Order be modified so that the Petitioner has an additional three years to establish the Project from the date of the LUC's Decision and Order approving the SUP amendment. The Petitioner's letter explained that the unforeseen circumstances beyond the control of the Petitioner included matters such as a global supply chain crisis that resulted from the COVID-19 pandemic, which caused labor shortages, logistics delays, and significant price increases on materials and services, and concluded that the Project could no longer be established by the original deadline.

5. On March 28, 2024, the DPP accepted the Application for processing and assigned it File No. 2024/GEN-3.

6. On March 28, 2024, the DPP sent a request for comments to local, state, and federal agencies, and community organizations to evaluate the Application.

7. On April 12, 2024, the DPP issued a time extension to May 27, 2024 for agencies and organizations to submit their comments. The DPP received comments from eight agencies. No agency objected to the Application.

8. On May 22, 2024, the DPP issued its Director's Report recommending approval of the Application.

9. Public notice of the June 26, 2024 PC Hearing was published by the Honolulu Star-Advertiser on May 27, 2024.

10. On June 19, 2024, the Petitioner submitted a letter to the DPP explaining that: (a) the Power Purchase Agreement (PPA) between the Petitioner and Hawaiian Electric Company (HECO) was still being negotiated; (b) the PPA could not be finalized

until a detailed technical analysis known as an interconnection requirements study (IRS) is first completed; (c) the IRS examines, among other things, the Project's effect on HECO's grid and engineering of interconnection facilities and equipment; (d) the Petitioner estimates that the IRS is roughly 50% complete and typically takes 12 months or longer to finalize, after which the PPA will be executed and submitted to the Public Utilities Commission for review and approval; and (e) even after the PPA has been executed, the Petitioner will be unable to secure debt financing for or begin construction of the Project unless and until all discretionary approvals have first been obtained. The Petitioner, therefore, requested that Condition No. 4 of the LUC Decision and Order be modified so that Petitioner is required to establish the Project within three years from the latter of (i) the date of the LUC's Decision and Order approving the amended SUP, or (ii) the date that Petitioner and HECO enter into a new PPA for the Project.

11. On June 20, 2024, notice was given to the Petitioner that the June 26, 2024 PC Hearing was cancelled due to a lack of quorum and was re-scheduled to July 10, 2024.

12. On July 8, 2024, the Corporation Counsel for the City and County of Honolulu verbally informed legal counsel for the Petitioner that the DPP staff was not comfortable with the open-ended nature of the Petitioner's proposed modification of Condition No. 4 contained in Petitioner's June 19, 2024 letter. The DPP position was justified, since there was no deadline by which the Petitioner and the HECO would be required to enter into the PPA, leaving no actual deadline by which the Petitioner must establish the Project. The DPP and the Applicant mutually agreed to a five-year extension of the deadline to establish the Project.

13. On July 10, 2024, the PC conducted an in-person and remote public hearing on the sixth floor of the Frank F. Fasi Municipal Building, 650 South King Street, Honolulu, Hawai'i 96813.

B. Description of the Proposal

1. To address the DPP's concerns while still acknowledging the other matters referred to above, which the Petitioner must still address to begin construction of the Project, the Petitioner modified its extension request by proposing that Condition No. 4 of the LUC's Decision and Order be amended to read as follows:

The Petitioner shall establish the Project within five years of the date of the LUC's Decision and Order approving the amended SUP. Requests for extension of this deadline shall be submitted to the Director of the DPP prior to the expiration of the deadline. The Planning Commission may grant an extension to the deadline to establish the Project due to unforeseen circumstances that were beyond the control of the Petitioner.

2. At the PC hearing on July 10, 2024, DPP expressed its support for Petitioner's modified extension request. After due deliberation, the PC approved the Application with the modified extension request.

CONCLUSIONS OF LAW

The PC hereby concludes as follows:

1. The PC has jurisdiction to amend a SUP granted pursuant to Hawai'i Revised Statutes (HRS), Section 205-6.

2. Section 2-49 of the Rules of the Planning Commission requires that modifications of conditions imposed by the PC must be processed in the same manner as the original application of a SUP.

3. The proposed SUP amendment does not adversely affect the PC's Decision and Order to grant the SUP to allow establishment of the Project and therefore reaffirms its prior conclusion that the Project is an "unusual and reasonable" use as set forth in HRS, Section 205-6, and satisfies the five guidelines established by the PC, pursuant to Section 2-45 of the Rules of the Planning Commission.

4. The proposed amendments would not be contrary to the objectives sought to be accomplished by the State Land Use Law.

DECISION AND ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, the Planning Commission hereby APPROVES the amendment of Special Use Permit File No. 2020/SUP-7 Condition No. 4 as follows (additional text is underlined, deleted text is bracketed):

The Petitioner shall establish the Project within [three] five years of the date of the LUC's Decision and Order approving the amended SUP. Requests for extension of this deadline shall be submitted to the Director of the DPP prior to the expiration of the deadline. The Planning Commission may grant an extension to the deadline to establish the Project due to unforeseen circumstances that were beyond the control of the Petitioner.

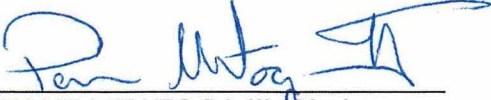
All other conditions remain unchanged and are in full effect.


IT IS FURTHER ORDERED that the approval of the Application shall be subject to the approval of the State Land Use Commission.

IT IS FURTHER ORDERED that this decision and fifteen copies of the complete record herein shall be transmitted to the Land Use Commission pursuant to Rules of the Planning Commission, Section 2-47(b).

PLANNING COMMISSION
CITY AND COUNTY OF HONOLULU

Dated: August 7, 2024


PANE MEATOGA III, Chairperson


HILARIE ALOMAR

Excused
MELISSA MAY

Excused
NATHANIEL KINNEY


ELENA BRYANT


RYAN KAMO, Vice-Chairman


KANNANI KRAUT

Term expired June 30, 2024
KEN HAYASHIDA


JOY KIMURA



RANDALL F. SAKUMOTO
ATTORNEY

2024 JUN 19 AM 6:39

DEPT OF PLANNING AND PERMITTING
CITY & COUNTY OF HONOLULU

H-B

DIRECT #:
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2024 JUN 19 PM 3:56
DEPT OF PLANNING AND PERMITTING
CITY & COUNTY OF HONOLULU

VIA E-MAIL and HAND DELIVERY

Email: gtakara@honolulu.gov

Planning Commission
City & County of Honolulu
c/o Ms. Gloria Takara
650 S. King Street, 7th Floor
Honolulu, HI 96813

Re: Special Use Permit Application to Extend Deadline
For Establishing the Mahi Solar Generation Facility
DPP File No. 2020/SUP-7 (FK); DPP File No. 2024/GEN-3

Dear Commissioners:

We have reviewed a copy of the Department of Planning and Permitting's ("DPP") report and recommendation in the above referenced matter, dated May 22, 2024, and thank the DPP for the work that it has done in preparing this matter for the Planning Commission's meeting on June 26, 2024.

We also appreciate the DPP's recommendation to approve a modification of Condition Number 4 of the Planning Commission's Decision and Order "to restart the three-year deadline to establish the Project from the date the [Land Use Commission] approves an amended D&O due to the unforeseen circumstances encountered by the Applicant that were beyond their control." (DPP report, page 9)

In anticipation of the Planning Commission's meeting on June 26th, we reaffirm Mahi Solar, LLC's request for an extension of time to establish the Project, but respectfully request that the Planning Commission consider the specific language change to Condition Number 4 shown below. Because Mahi Solar is unable to commence with the establishment of the Project until both (i) the LUC has approved an amended D&O and (ii) the necessary Power Purchase Agreement ("PPA") has been negotiated and executed by Mahi Solar and Hawaiian Electric Company ("HECO"), we believe the three-year time period to establish the Project should appropriately start only after both (i) and (ii) have been accomplished. Based on Mahi Solar's past experience with PPAs, it is anticipated that a considerable amount of time may be needed to complete the negotiation and execution of this complex document.

The negotiation of the PPA between Mahi Solar and HECO began in January 2024; however, the PPA cannot be finalized unless and until a detailed technical analysis known as an interconnection

requirements study (“IRS”) is first completed. The IRS is conducted by HECO but paid for by Mahi Solar. The IRS examines, among other things, the Project's effect on HECO's grid and engineering of interconnection facilities and equipment. Mahi Solar estimates that the IRS is roughly 50% complete as of this date, and typically takes 12 months or longer to finalize, after which the PPA will be executed and submitted to the Public Utilities Commission for review and approval.

Even after the PPA has been executed Mahi Solar will not be able to secure financing or begin construction unless and until all discretionary approvals have first been obtained, including, but not limited to, the approval by the Planning Commission and the Land Use Commission of the time extension requested herein, the approval by DPP of a Conditional Use Permit for the project, and all ministerial permits, including all applicable building permits, have first been obtained.

Accordingly, we request that Condition Number 4 be amended to read as follows:

4. The Petitioner shall establish the Project within three years ~~of~~ from the latter of (i) the date of the LUC's Decision and Order approving the requested amendment of the SUP or (ii) the date that Petitioner and HECO enter into a new power purchase agreement for the Project. Requests for extension of this deadline shall be submitted to the Director of the DPP prior to the expiration of the deadline. The Planning Commission may grant an extension to the deadline to establish the Project due to unforeseen circumstances that were beyond the control of the Petitioner.

Amending the language of Condition Number 4 as shown above should provide a reasonable amount of flexibility to secure the LUC's approval of the requested amendment; to allow the IRS to be completed; to allow HECO and Mahi Solar to negotiate and execute the PPA, and obtain the PUC's approval thereof; and to enable Mahi Solar to establish the Project as contemplated. As part of the Planning Commission's approval of the extension described above, we also ask that the Planning Commission generally approve a corresponding extension of any other deadline imposed by the SUP which may be related to the establishment of the Project.

Thank you.

Very truly yours,

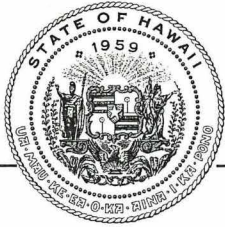
McCORRISTON MILLER MUKAI MacKINNON LLP



Randall F. Sakumoto

RFS:kmm

cc: client
Department of Planning and Permitting (Attn: Mr. Franz Krintz and Ms. Dina L. Wong)
G70 (Attn: Ms. Tracy Camuso and Ms. Noelle Besa Wright)



**STATE OF HAWAII
OFFICE OF PLANNING
& SUSTAINABLE DEVELOPMENT**

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR

MARY ALICE EVANS
DIRECTOR

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DTS 202403281232NA
2024/GEN3-3(FK)

Coastal Zone
Management
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Environmental Review
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Land Use Commission

Land Use Division

Special Plans Branch

State Transit-Oriented
Development

Statewide Geographic
Information System

Statewide
Sustainability Branch

May 7, 2024

Franz Krantz
Community Planning Branch Chief
Department of Planning and Permitting
650 South King Street, 7th floor
Honolulu, Hawai'i 96813
Via email to ailene.hipolito@honolulu.gov

Dear Mr. Krantz:

Subject: Application to amend Special Use Permit File No. 2020/SUP-7 (2024/GEN-3), Land Use Commission Docket No. SP21-412, to establish a Solar Energy Facility on approximately 620 acres of land in Kunia, O'ahu
Applicant: Mahi Solar, LLC
Request: Modification of Condition No. 4 of the 2020/SUP-7 Decision & Order to extend the deadline to establish the project
TMKs: 9-2-001: 020 (por.), 9-2-004: 003 (por.), CPR Units 1, 2, and 4, and 9-2-004:010 (por.)

Thank you for the opportunity to comment on the subject application.

The Applicant is proposing an amendment to Special Use Permit (SUP) File No. 2020/SUP-7, Hawai'i State Land Use Commission (LUC) Special Permit Docket No. SP21-412. 2020/SUP-7 approved the establishment and operation of a 120-megawatt alternating current (MWac) solar energy facility (SEF), a 480-megawatt-hour (MWh) battery energy storage system (BESS), and a 34.5 kilovolt (kV) substation and accessory uses and structures on 620 acres of land in Kunia, O'ahu ("Project"). The Project now encompasses portions of Tax Map Keys (TMKs) (1) 9-2-001:020 and (1) 9-2-004:003, Condominium Property Regime (CPR) Units 1, 2, and 4, and (1) 9-2-004:010 ("Petition Area").

The Application ("2024/GEN-3") contains information about minor changes to the Project, land use approvals obtained thus far, a request for time extension, and an update on the Project's compliance with the conditions of the

Mr. Franz Kraintz, Branch Chief
May 7, 2024
Page 2

SP21-412 Findings of Fact, Conclusions of Law, and Decision and Order (D&O).

Background

On December 30, 2020, the State Public Utilities Commission (PUC) approved a Power Purchase Agreement (PPA) between the Petitioner and the Hawaiian Electric Company, Inc. (HECO) in PUC Docket No. 2020-0140.

The Petition Area is located within the State Agricultural District and includes soils classified by the Land Study Bureau of the University of Hawai'i (LSB) as Classes "B," "C," "D," and "E." Section 205-4.5(a)(21), Hawai'i Revised Statutes (HRS), permits SEFs on lands with productivity classifications of "B" and "C" with the approval of a SUP, provided that the area occupied by the SEF is made available for compatible agricultural activities at a lease rate that is at least 50% below the fair market rent and if the project satisfies requirements related to decommissioning the facility.

On April 9, 2021, the City and County of Honolulu, Department of Planning and Permitting (DPP) accepted for processing 2020/SUP-7, pursuant to Section 205-6, HRS. On June 23, 2021, the Honolulu Planning Commission held a public hearing and recommended approval of the petition to the LUC.

On September 9, 2021, the LUC held a public hearing and voted to approve 2020/SUP-7, subject to 18 conditions of approval.

On September 17, 2021, the D&O was approved by the LUC. Pursuant to Section 205-6(d), HRS, approval from the LUC was required because the 620-acre Petition Area contains a land area greater than 15 acres and involves approximately 69.5 acres of land that was voluntarily designated as Important Agricultural Lands (IAL) by Hartung Brothers Hawai'i, LLC ("Hartung Brothers") via LUC Docket No. DR18-61. Hartung Brothers has since registered a CPR for the portion of their property located in the Petition Area. Those condominium units (Units 2 and 4) are now owned by Mahi Land Holdings, LLC, an affiliate of the Petitioner. Another 40.2 acres of the Petition Area, owned by Monsanto Technology, LLC, was voluntarily designated as IAL via LUC Docket No. DR 17-59.

On December 13, 2021, the DPP approved Conditional Use Permits (CUP), File Nos. 2021/CUP-42, 43, and 44 for the Project, pursuant to Revised Ordinances of Honolulu (ROH), Chapter 21, the Land Use Ordinance. Additionally, Zoning Waivers, File Nos. 2021/W-31 and 32, were obtained to allow the Project to exceed the standard height and development footprint of the AG-1 Restricted Agricultural District.

Mr. Franz Krantz, Branch Chief
May 7, 2024
Page 3

On February 15, 2022, HECO submitted a letter to the PUC requesting approval to amend the PPA, which would extend the date of operation and increase the Unit Price per kilowatt-hour by 1.9 cents. The amendment request was a consequence of COVID-19-related supply-chain disruptions and associated costs. The PUC declined to approve the amendment.

On April 20, 2023, the Petitioner submitted a new proposal for the Project in response to HECO's Stage 3 Request for Proposal and was selected in the Final Award group. The Petitioner and HECO are in the process of negotiating a new PPA.

Project Description

The Project involves 370,000 ground-mounted, single-axis photovoltaic arrays that rotate to follow the sun, a 480 MWh BESS, and a 34.5 kV substation. The BESS and substation will connect to a 138 kV switching station adjacent to Kahe-Waiiau transmission circuit west of Kunia Road. Each photovoltaic panel stands approximately 9 to 12 feet tall when at maximum rotation, or 50-degree tilt. The Project is expected to produce 120 megawatts annually, which amounts to approximately 4% of O'ahu's electricity demands, enough to power 370,000 homes. The 480 MWh battery system would store energy generated during the day to provide power at night.

When the Project is established, the Petitioner intends to work with local farmers and ranchers to co-locate agricultural operations with the solar energy panels within the Petition Area. The Petition Area involves 306 acres of land currently in agricultural production, 98.8 acres of which are being used for food production. The operations proposed in the Project's Agricultural Plan would utilize approximately 488.9 acres for food production. Therefore, the establishment of the Project is anticipated to result in more land being utilized for food production than what exists without the Project. This is being accomplished by providing long-term leases to farmers at a nominal cost, the installation of irrigation infrastructure and fencing to support crop production, and fostering coordination with the Hawai'i Agricultural Research Center and other farmers to research and eventually establish agrivoltaics effectively in Kunia.

The Project is situated on lands classified for "Agriculture and Preservation" in the Central O'ahu Sustainable Communities Plan and the 'Ewa Development Plan. The Petition Area is surrounded by agricultural land to the north, south, and east, with Honouliuli Forest Reserve to the west. The National Park Service Honouliuli National Historic Site is located to the south. An Archaeological Inventory Survey for the Project was accepted by the Department of Land and Natural Resources, State Historic Preservation Division on September 8, 2021. Additionally, by approving 2020/SUP-7, the LUC found that the Project's Ka Pa'akai Analysis appropriately considered impacts to Native Hawaiian customary and traditional practices. Related mitigative conditions were applied to the 18 conditions of approval for 2020/SUP-7.

Request

Condition No. 4 of the 2020/SUP-7 D&O reads:

4. *The Petitioner shall establish the Project within three years of the date of the LUC's [D&O] approving the SUP. Requests for extensions of this deadline shall be submitted to the Director of the DPP prior to the expiration of the deadline. The [LUC] may grant an extension to the deadline due to unforeseen circumstances that were beyond the control of the Petitioner.*

The Petitioner indicated it is unlikely the Project can be established in time to satisfy the September 17, 2024, deadline. The delay is due to supply-chain disruptions and associated costs resulting from the COVID-19 pandemic. Consequently, the Petitioner's PPA with HECO was impacted and had to be renegotiated. The 2024/GEN-3 request involves modifying Condition No. 4 of the 2020/SUP-7 D&O to restart the three-year deadline to establish the Project, to begin on the date the amended D&O is approved by the LUC. The request does not involve changes to the Petition Area or total building area.

OPSD Comments

1. OPSD supports the Petitioner's request to extend the deadline to establish the Project due to pandemic-related costs and supply-chain issues. These complications have halted the development of several renewable energy projects across the state and qualify as "unforeseen circumstances beyond the control of the Petitioner". According to the State Energy Data System, about 31% of the state's total generation came from renewables in 2023. Large-scale renewable energy facilities, such as the subject Project, are necessary to achieve the statewide goal of 100 percent of electricity sales coming from renewable sources by the year 2045.
2. SEFs are often best sited on land with high agricultural potential due to various shared needs, such as flat terrain, stone-free soils, high sun exposure, inexpensive land, and access to utility connections. Accordingly, the present conflict between the establishment of SEFs and the preservation of Hawai'i's most productive agricultural land has been an area of policy debate in government and local communities. The Mahi Solar Project is slated to be a 'proof of concept' for the feasibility of co-locating crops and livestock production underneath or adjacent to solar panels, also known as agrivoltaics. The Petitioner intends to implement a mutually beneficial project that furthers the energy and agricultural interests of the state. These commitments are reflected in the Petitioner's 2020/SUP-7 application and were subsequently adopted as conditions of permit approval by the LUC. OPSD looks forward to reviewing future annual compliance reports

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detailing the successes and failures of the Agrivoltaics Program.

3. Finally, OPSD agrees that the updated information provided by the Petitioner, related to the relocation of the BESS and a change in the Petition Area's TMK parcels, is minor in nature and should not require major modifications to the permit and conditions.

Thank you again for the opportunity to review the Special Permit application. If you have any questions, please contact Brandon Soo of our Land Use Division at brandon.a.soo@hawaii.gov. If you wish to respond to this comment letter, please include DTS 202403281232NA in the subject line.

Mahalo,

Mary Alice Evans

Mary Alice Evans
Director