

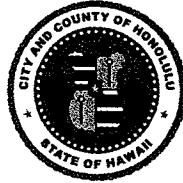
Authorization Dawn Takeuchi Apuna, Director
Advertisement May 27, 2024
Public Hearing June 26, 2024

DEPARTMENT OF PLANNING AND PERMITTING
KA'ŌIHAŌANA HO'OLĀLĀ A ME NĀ PALAPALA 'AE
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041 • WEBSITE: honolulu.gov/dpp

RECEIVED
10/01/2024
11:52 am
STATE OF HAWAII
LAND USE COMMISSION

RICK BLANGIARDI
MAYOR
MEIA



DAWN TAKEUCHI APUNA
DIRECTOR
P.O.

May 22, 2024

2020/SUP-7(FK)
2024/GEN-3

MEMORANDUM

TO: Pane Meatoga III, Chair
and Members of the Planning Commission

FROM: Dawn Takeuchi Apuna, Director
Department of Planning and Permitting (DPP)

SUBJECT: Special Use Permit (SUP) Application to Extend the Deadline for
Establishing the Mahi Solar Energy Generation Facility,
94-520 and 94-880 Kunia Road, Honouliuli, O'ahu, Hawai'i,
Tax Map Keys: 9-2-001: 020 (portion), 9-2-004: 003
(portion, CPR Units 1, 2, and 4), and 9-2-004: 010 (portion)

DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU

24 MAY 22 AM 11:33

RECEIVED

Transmitted for appropriate action is our report and recommendation for **APPROVAL** of the requested modification to extend the deadline for establishing the 120-Megawatt (mW) Mahi Solar Energy Generation and 480-mW battery energy storage facility on the mauka side of Kunia Road, north of the H-1 Freeway.

The project was initially approved by the Planning Commission in its Findings of Fact, Conclusions of Law, and Decision and Order (D&O), SUP 2020/SUP-7, in July 2021, and by the State Land Use Commission in its D&O, Docket No. SP21-412, in September 2021. The project was expected to take three years to complete. However, due to unforeseen circumstances caused by the effects of the global COVID-19 pandemic, the project could not be established within the three-year timeframe. Condition No 4 of the D&O allows the Applicant to request an extension of this deadline due to unforeseen circumstances that were beyond the control of the Applicant.

Should you have any questions, please contact Franz Kraintz, of our staff, at (808) 768-8046 or fkraintz@honolulu.gov. Both this report and the initial Director's Report for this SUP can be found on the DPP website at: <https://www.honolulu.gov/dpp/public-input.html>.

Enclosure

cc: State Land Use Commission
Mahi Solar, LLC

DEPARTMENT OF PLANNING AND PERMITTING
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

IN THE MATTER OF THE APPLICATION)
)
 OF)
)
 MAHI SOLAR LLC)
)
 FOR AN AMENDMENT TO A)
)
 STATE SPECIAL USE PERMIT)
)

FILE NO. 2020/SUP-7

FINDINGS OF FACT
CONCLUSIONS OF LAW, AND RECOMMENDATION

I. APPLICATION

A. Basic Information

APPLICANT : Mahi Solar, LLC.

LOCATION : Various parcels on the mauka or Waianae side of Kunia Road beginning approximately 7,000 feet north of the intersection of Kunia Road and H-1 Freeway, Honouliuli, 'Ewa, (**Exhibit 1**).

TAX MAP KEYS : 9-2-001: 020 (portion), (1) 9-2-004: 003 (portion) and (1) 9-2-004: 010 (portion).

AREA OF SPECIAL USE : 620.0 Acres.

STATE LAND USE DISTRICT : Agricultural.

COUNTY ZONING DISTRICT : AG-1 Restrictive Agricultural District.

'EWA DEVELOPMENT PLAN : Agricultural and Preservation.

LAND STUDY BUREAU RATING :	Overall Master Productivity Rating of Class “B,” “C,” “D,” “E,” and Unclassified.
EXISTING USES :	Diversified crops, cultivation of seeds, fallow fields, open space.
SURROUNDING LAND USE :	Agriculture and open space and the Kunia Village residential community to the north; agriculture, golf course, Royal Kunia, and open space to the east; agriculture to the south; upslope forest, open space, and patches of agricultural uses to the west.

B. Proposal

Mahi Solar LLC (“Applicant”) is requesting an extension of the deadline to establish a 120-megawatt (mW) solar energy facility (“SEF”) and Battery Energy Storage System (“BESS”) located in Kunia, O’ahu (the “Project”). Condition No. 4 of the Special Use Permit (“SUP”) File No. 2020/SUP-7 and State Land Use Commission (“LUC”) Docket No. SP21-412 Decision and Order (“D&O”) states the Applicant shall establish the Project within three years of the date of the LUC’s D&O approving the SUP. The LUC approved the SUP on September 17, 2021. For reasons explained later, the Applicant cannot establish the Project by September 17, 2024. Condition No. 4 further states that an extension may be granted if the Director of the Department of Planning and Permitting (DPP) is notified before the expiration of the deadline and the Project cannot be established due to unforeseen circumstances beyond the control of the Applicant. That being the case, the Applicant is requesting an additional three years to establish the Project.

It should be noted that included in this application, there are items of a non-substantive nature to update for the Project. They are:

1. The footprint of the BESS has been re-configured slightly, but remains in the same location in Area 3 and has all the same physical characteristics, i.e., height, size, setbacks, etc.
2. On March 23, 2023, Hartung Brothers Hawaii, LLC created a condominium property regime (CPR) (Kunia Section 6 Condominium) combining three parcels, and new Tax Map Keys (TMKs) were issued for each CPR unit. On March 30, 2023, Hartung Brothers Hawaii, LLC sold Units 2 and Unit 4 in this CPR to Mahi Land Holdings, LLC. As such, the TMKs for the Project have changed.

3. In addition to the real property acquisition, the Applicant entered into a long-term lease agreement with Fat Law's Farm, Inc. for the use of a portion of TMK 9-2-004: 010. The Applicant also entered into an option agreement with Monsanto Company to acquire a leasehold easement interest in the portion of the Project Area within TMK 9-2-001: 020.

C. Background

Pursuant to Condition No. 4 of the D&O, the Applicant is required to establish the Project within three years of the date of the LUC's D&O approving the SUP. Accordingly, the deadline by which the Applicant was to establish the Project is September 17, 2024. Requests for an extension of this deadline must be submitted to the Director of the DPP prior to its expiration. The LUC may then grant the extension if it is found that there are unforeseen circumstances beyond the control of the Applicant.

In this case, the unforeseen circumstances primarily center on the Power Purchase Agreement for Renewable Dispatchable Generation dated September 11, 2020 ("PPA"), between the Applicant and the Hawaiian Electric Company Inc., ("HECO"). The unprecedented circumstances stemming from the COVID-19 pandemic caused global supply-chain disruptions and exorbitant shipping costs. Consequently, the Applicant's PPA with HECO was impacted and had to be renegotiated. It led to such instability that it was difficult for the two parties to agree to terms. Ultimately, the instability and uncertainty surrounding the events led to a dissolution of the PPA in May 2022. The Applicant then was encouraged to respond to the next HECO Request for Proposals ("RFP") for Renewable Dispatchable Generation and Energy Storage for the island of O'ahu ("Stage 3 RFP").

On January 20, 2023, HECO issued its Stage 3 RFP. On April 20, 2023 the Applicant submitted a new proposal for the Project in response to HECO's Stage 3 RFP. On December 1, 2023, HECO confirmed that Mahi Solar was selected in the Final Award Group. As a result, the Applicant and HECO are in the process of negotiating a new PPA.

Despite the challenges encountered with finalizing the initial PPA due to these unforeseen circumstances, the Applicant remains committed to the Project. The Applicant has continued to invest time and funding towards the implementation of the approved Agricultural Plan for the Project. The Applicant is actively collaborating with Hawai'i Agricultural Research Center to conduct agricultural research to study what crops can be successfully farmed under and between solar panels. The Applicant has provided three years of funding to support ongoing research on more than 30 agricultural crops to better understand their viability when grown at a commercial solar facility. Additionally, the Applicant is

currently negotiating its first sublease with Nalo Farms, LLC, a local hydroponic lettuce producer, for 45 acres of the Project site.

II. FINDINGS OF FACT

On the basis of evidence provided, the Director of the DPP finds that:

The SUP was approved and adopted by the LUC on September 17, 2021 (Docket No. SP21-412) subject to conditions. Condition No. 4 of the D&O established three years from the date of the LUC's D&O to establish the Project. Due to the unprecedented conditions caused by the global COVID-19 pandemic, the Applicant was unable to deliver the Project within this initial three-year period. Thus the need to request an extension of the deadline for establishing the Project by an additional three years.

Aside from minimal re-positioning of the BESS, all other physical characteristics and aspects of the Project such as: 1) commitment to partnering with local farmers to implement an agrivoltaics program on-site; 2) mitigative measures to address anticipated impacts; 3) conformance with applicable regulations and county and state plans; and 4) adherence to the existing SUP conditions of the Project remain the same. The request is merely to extend the time period to establish the Project.

A. Public Agency Comments

On March 28, 2024, the following City and County of Honolulu ("City"), State, and Federal governmental agencies were first requested to evaluate the proposed modification. A notice to extend the comment period to May 13, 2024 was sent to those listed agencies on April 12, 2024:

City Agencies

1. Board of Water Supply
2. Office of Climate Change, Sustainability, and Resiliency
3. Department of Transportation Services
4. Honolulu Emergency Services Department
5. Honolulu Fire Department
6. Honolulu Police Department
7. Offices of Council Members Andria Tupola and Matthew Weyer

State Agencies

1. Board of Agriculture
2. Department of Business, Economic Development and Tourism, Office of Planning and Sustainable Development
3. Department of Business, Economic Development and Tourism, Land Use Commission
4. Department of Hawaiian Home Lands
5. Department of Land and Natural Resources
6. Department of Transportation
7. Office of Hawaiian Affairs
8. State Senator Michelle Kidani
9. State Representative Elijah Pierick

Federal Agencies

1. Federal Aviation Administration
2. Department of the Interior, Fish and Wildlife Service
3. Navy Facilities Command, Joint Base Pearl Harbor Hickam

No objections were raised by the public agencies. However, the State Department of Transportation and the City and County of Honolulu Police and Fire Departments re-iterated their previous positions in response to the initial SUP application about adhering to their regulatory standards. The State Office of Planning and Sustainable Development provided supportive language to the request to extend the deadline.

The U.S. Fish and Wildlife Service (USFWS) provided additional measures that should be implemented as part of this Project to safeguard Hawaiian waterbirds. However the Biological Resource Report in the initial SUP application noted Hawaiian waterbirds were unlikely to nest in the Project areas due to a lack of permanent water resources and aquatic vegetation.

The comments submitted by agencies are provided in **Attachment A**. Any responses received after this Report is filed will be sent directly to the City and County of Honolulu Planning Commission (PC).

B. Community Organizations

On March 28, 2024, notice of the Application submittal was transmitted to the Mililani/Waipio/Melemanu Neighborhood Board (NB) No. 25, and the Kapolei/Makakilo/Honokai Hale NB No. 34. Follow-up contact was made to the NBs on April 12, 2024 to extend the comment period to May 27, 2024.

As of the date of this report, no comments were received from the NBs. Should NB comments or those of any community organization or group come in after this Report is filed, they will be forwarded to the PC before the public hearing.

III. ANALYSIS

A. Conformance with the SUP Guidelines

The proposed site is within the State Land Use Agricultural District. Of the total 620-acres Project area, 69.5 acres are located with lands voluntarily designated as Important Agricultural Lands.

Section 205-6, Hawai'i Revised Statutes (HRS), allows certain unusual and reasonable uses within the Agricultural District other than those uses for which the district is classified so long as they would promote the effectiveness and objectives of the Agricultural District. In their 2021 deliberations concerning the Project, both the PC and the LUC found the Project met the guidelines for determining an unusual and reasonable use and would promote the effectiveness and objectives of Chapter 205, HRS.

In determining whether a proposed use is deemed "unusual and reasonable," Section 2-45 of the Rules of the Planning Commission (PC Rules) established five guidelines to be applied. These guidelines are also found in Title 15-15, of the Hawaii Administrative Rules for the LUC.

The Director finds that the request to extend the deadline for establishing the Project for an additional three years from the date of the LUC's approving this D&O meets the requirements of Chapter 205 and the five guidelines of Section 2-45 of the PC Rules as follows:

Guideline 1: Such use shall not be contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

As indicated in the Application, the request to extend the deadline is a result of unforeseen and extraordinary circumstances beyond the control of the Applicant. The Applicant intends to complete the Project as initially represented and approved (except for slight re-positioning of the BESS) by both the PC and the LUC.

The Applicant's request to extend the deadline for establishing the Project per Condition No. 4 is not contrary to the objectives sought to be accomplished by the Land Use Law and Regulations to preserve and protect lands for its best use and to encourage uses for which lands are best suited as determined in the initial SUP's Findings of Fact.

Guideline 2: The desired use would not adversely affect surrounding property.

As contained in the initial Findings of Fact and Analysis in the initial Director's Report for this SUP, the Project would not adversely affect surrounding property. The impacts, if any, were adequately addressed and the Applicant's commitment to address any concerns remains the same. The request for modifying the SUP is merely to extend the deadline for establishing the Project by another three years.

Guideline 3: The use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and school improvements and police and fire protection.

The Applicant's request to extend the deadline for establishing the Project will not burden public agencies to provide necessary infrastructure, school improvements, or police and fire protection.

During the public comment period, agencies providing such services did not have objections to extending the deadline for establishing the Project. However, the State Department of Transportation and the City and County of Honolulu Police and Fire Departments re-iterated their previous positions in response to the initial SUP application about adhering to their regulatory standards. The USFWS did provide measures that the Applicant should implement for Hawaiian waterbirds if encountered in the Project Area. However the Biological Resource Report in the initial SUP application noted Hawaiian waterbirds were unlikely to nest in the Project areas due to a lack of permanent water resources and aquatic vegetation. Therefore, a condition related to these measures is not recommended at this time. Instead, Condition 9 of the D&O will be relied upon if any species are observed in these areas. Agency comments are provided in **Attachment A**.

Guideline 4: Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established.

Unforeseen circumstances caused by the global COVID-19 pandemic led to extraordinary supply-chain disruptions and volatile pricing and market conditions that were beyond the control of the Applicant. Collectively, these circumstances caused the establishment of the Project to be delayed. Accordingly, providing the Applicant with additional time to establish the Project now that conditions have stabilized is in the public's best interest to increase renewable energy sources at a fair and reasonable price, and to move the State towards its goal of achieving 100 percent clean energy by 2045.

Guideline 5: The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

The Project Area is suited for the uses permitted within the State Land Use Agricultural District, including agricultural cultivation and SEFs. With co-location of agricultural uses and the SEF, the proposed use of the site has not changed since the original SUP was approved.

B. State and County Plans, Programs, and Zoning Regulations

The extension of the deadline to establish the Project by another three years remains consistent with the Hawai'i State Plan, the O'ahu General Plan, the 'Ewa Development Plan, and the Central O'ahu Sustainable Communities Plan.

The Conditional Use Permit (CUP) (DPP File Nos. 2021/CUP-42, 43, and 44) for the Project was approved on December 13, 2021 to allow use of the Project Area for a Utility Installation, Type B pursuant to the 2021 Revised Ordinances of Honolulu, Chapter 21, Land Use Ordinance. Additionally, a Waiver Permit was approved to allow the Project to exceed the development standards of the AG-1 (Restricted Agricultural) Zoning District (DPP File Nos. 2021/W-31 and 31). Condition W of 2021/CUP-42, 43, and 44 and 2021/W-31 and 32 states that the Applicant must obtain the required building permits and complete construction of the utility installations within five (5) years from the date of these approvals, or the CUPs and Waivers will lapse.

Therefore, the extension of the deadline to establish the Project by another three years is consistent with State and City plans. However, the Applicant will be required to seek new CUPs and Waiver Permits if construction of the Project is not completed by December 13, 2026.

C. Social Impacts

Extending the deadline to establish the Project by another three years will not have any increased social impacts that were not already addressed in the Director's prior analysis and report to the PC.

IV. CONCLUSION

Providing the Applicant with an additional three years to establish the Project is in the best interest of the public to achieve energy self-sufficiency for the island of O'ahu and the State of Hawai'i.

Denial of the request to extend the deadline to establish the Project would be detrimental to the State's ability to achieve its goal of 100 percent clean energy by 2045. Granting the extension of the deadline is recognition of the

unforeseen circumstances and challenges associated with the global COVID-19 pandemic. These circumstances were beyond the control of the Applicant and are preventing delivery of the Project by September 17, 2024. Therefore, the granting of this request is a reasonable and necessary decision.

The request to give the Applicant more time to establish the Project is also in compliance with relevant State and City policies with no adverse infrastructure or social impacts anticipated. Thus, the modification of the deadline to establish the Project is “unusual and reasonable” as set forth in Chapter 205-6, HRS, and the five guidelines established by the PC, pursuant to Section 2-45, PC Rules.

V. RECOMMENDATION

The Director of the DPP recommends the PC modify Condition No. 4 of the 2020/SUP-7 D&O to restart the three-year deadline to establish the Project from the date the LUC approves an amended D&O due to the unforeseen circumstances encountered by the Applicant that were beyond their control. All other conditions shall remain in full force and effect.

Dated at Honolulu, Hawai'i, this 22nd day of May, 2024.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU
STATE OF HAWAI'I

By



Dawn Takeuchi Apuna
Director

Attachments

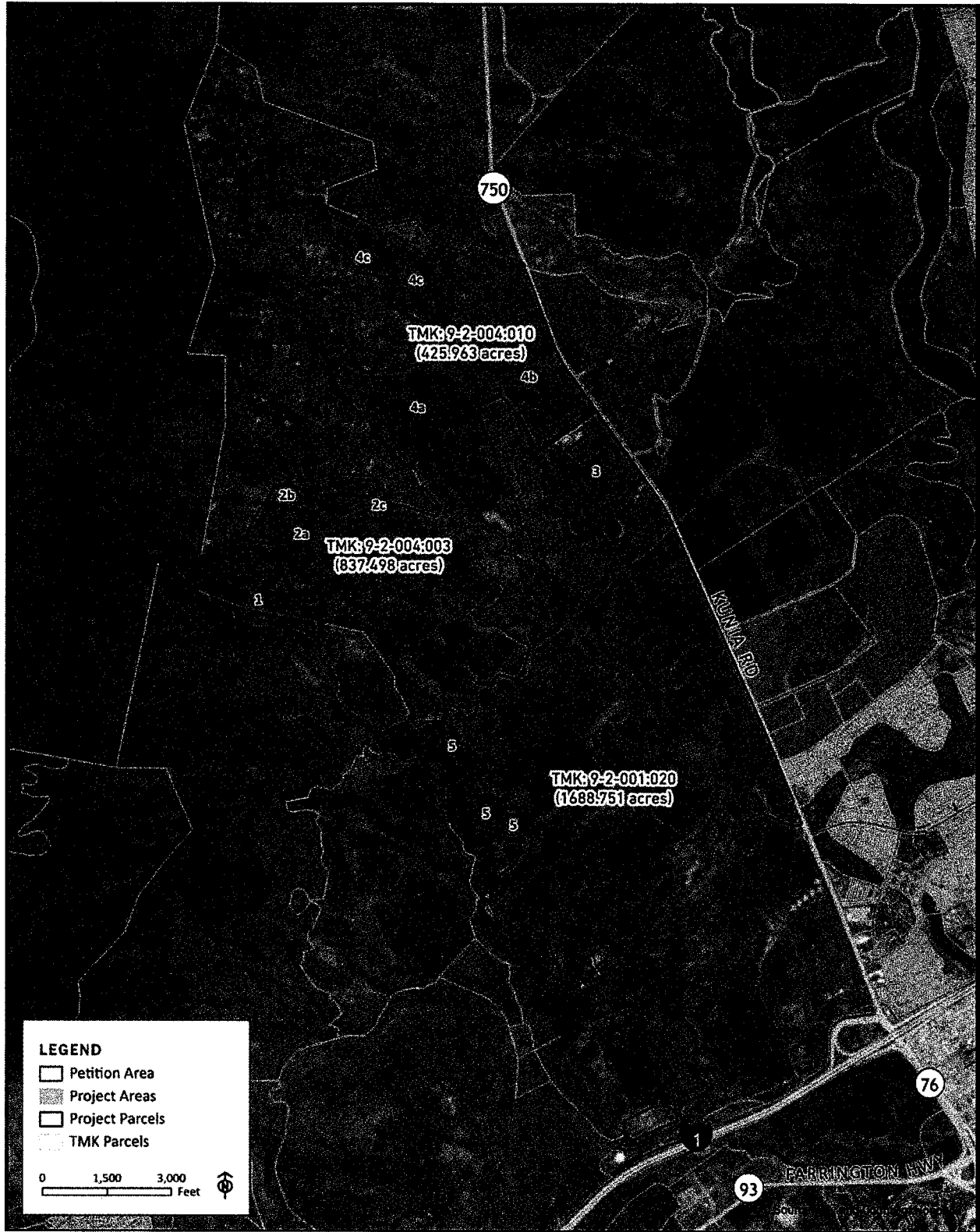


Exhibit 1: Location Map with Updated Tax Map Keys

ATTACHMENT A

Government Agency Comments

HONOLULU POLICE DEPARTMENT
KA 'OIHANA MĀKA'I O HONOLULU
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET • HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 • WEBSITE: www.honolulu.gov

RICK BLANGIARDI
MAYOR
MEIA



ARTHUR J. LOGAN
CHIEF
KAHU MĀKA'I

KEITH K. HORIKAWA
RADE K. VANIC
DEPUTY CHIEFS
HOPE LUNA NUI MĀKA'I

OUR REFERENCE EO-DK

April 12, 2024

SENT VIA EMAIL

Ms. Ailene Hipolito
ailene.hipolito@honolulu.gov

Dear Ms. Hipolito:

This is in response to a Notice of Application from the Department of Planning and Permitting for a Special Use Permit for the Mahi Solar Energy Project. The project is located on multiple parcels along Kunia Road, 'Ewa 9-2-001: 020 (por.), 9-2-001: 003, CPR Units 1, 2, and 4, and 9-2-004: 010 (por.).

The Honolulu Police Department recommends that all necessary signs, lights, barricades, and other safety equipment be installed and maintained by the contractor during the construction phase of the project. The impact of the ingress and egress of construction vehicles, equipment, and deliveries should be evaluated to ensure the traffic flow is not adversely affected. Security issues relating to machinery and equipment should also be addressed.

If there are any questions, please call Major Gal Beckley of District 8 ('Ewa/Kapolei/Wai'anae) at (808) 723-8400.

Sincerely,

A handwritten signature in black ink that reads "Glenn Hayashi".

Glenn Hayashi
Assistant Chief of Police
Support Services Bureau

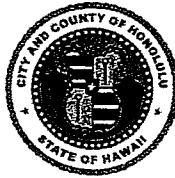
**HONOLULU FIRE DEPARTMENT
KA 'OIHANA KINAI AHI O HONOLULU
CITY AND COUNTY OF HONOLULU**

636 SOUTH STREET • HONOLULU, HAWAII 96813

2024 APR - 4 PM 1:56
PHONE: (808) 723-7139 • FAX: (808) 723-7111 • WEBSITE: honolulu.gov

RICK BLANGIARDI
MAYOR
MEIA

DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU



SHELDON K. HAO
FIRE CHIEF
LUNA NUI KINAI AHI

JASON SAMALA
DEPUTY FIRE CHIEF
HOPE LUNA NUI KINAI AHI

April 3, 2024

TO: FRANZ KRAINTZ, CHIEF
DEPARTMENT OF PLANNING AND PERMITTING

ATTN: AILENE HIPOLITO, OFFICE ASSISTANT III

FROM: CRAIG UCHIMURA, ASSISTANT CHIEF

SUBJECT: SPECIAL USE PERMIT 2020/SUP-7
MAHI SOLAR ENERGY PROJECT
MULTIPLE PARCELS ALONG KUNIA ROAD
TAX MAP KEYS: 9-2-001: 020 (POR.), 9-2-001: 003, CPR UNITS 1, 2,
AND 4, AND 9-2-004: 010 (POR.)

In response to your Notice of Application dated March 28, 2024, regarding the abovementioned subject, the Honolulu Fire Department (HFD) reviewed the submitted information and requires that the following be complied with:

1. Fire department access roads shall be provided such that any portion of the facility or any portion of an exterior wall of the first story of the building is located not more than 150 feet (46 meters) from fire department access roads as measured by an approved route around the exterior of the building or facility. (National Fire Protection Association [NFPA] 1; 2018 Edition, Sections 18.2.3.2.2 and 18.2.3.2.2.1, as amended.)

A fire department access road shall extend to within 50 feet (15 meters) of at least one exterior door that can be opened from the outside and that provides access to the interior of the building. (NFPA 1; 2018 Edition, Section 18.2.3.2.1.)

2. Fire department access roads shall be in accordance with NFPA 1; 2018 Edition, Section 18.2.3.

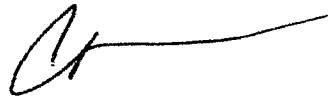
Franz Krintz, Chief
Page 2
April 3, 2024

3. An approved water supply capable of supplying the required fire flow for fire protection shall be provided to all premises upon which facilities, buildings, or portions of buildings are hereafter constructed or moved into the jurisdiction. The approved water supply shall be in accordance with NFPA 1; 2018 Edition, Sections 18.3 and 18.4.
4. Civil drawings submitted to your department shall be routed to the HFD for review and approval.

The abovementioned provisions are required by the HFD. This project may necessitate that additional requirements be met as determined by other agencies.

Should you have questions, please contact Battalion Chief Jean-Claude Bisch of our Fire Prevention Bureau at 808-723-7151 or jbisch@honolulu.gov.

Sincerely,



CRAIG UCHIMURA
Assistant Chief

CU/MD:jl

**BOARD OF WATER SUPPLY
KA 'OIHANA WAI
CITY AND COUNTY OF HONOLULU**

2024 MAY -3 AM 9:12
BERETANIA STREET • HONOLULU, HAWAII 96843
Phone: (808) 748-5000 • www.boardofwatersupply.com

RICK BLANGIARDI
MAYOR
MEIA

DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU

ERNEST Y. W. LAU, P.E.
MANAGER AND CHIEF ENGINEER
MANAKIA A ME KAHU WILIKI

ERWIN KAWATA
DEPUTY MANAGER
HOPE MANAKIA




NĀ'ĀLEHU ANTHONY, Chair
KAPUA SPROAT, Vice Chair
BRYAN P. ANDAYA
JONATHAN KANESHIRO
EDWIN H. SNIFFEN, Ex-Officio
GENE C. ALBANO, P.E., Ex-Officio

May 3, 2024

TO: DAWN TAKEUCHI APUNA, DIRECTOR
DEPARTMENT OF PLANNING AND PERMITTING

ATTN: FRANZ KRAINTZ, CHIEF
COMMUNITY PLANNING BRANCH
DEPARTMENT OF PLANNING AND PERMITTING

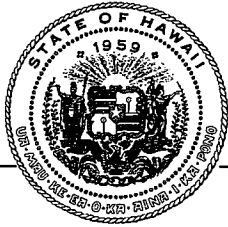
FROM: ERNEST Y. W. LAU, P.E., MANAGER AND CHIEF ENGINEER
BOARD OF WATER SUPPLY 

SUBJECT: YOUR LETTER DATED MARCH 28, 2024, REGARDING THE NOTICE
OF APPLICATION, SPECIAL USE PERMIT FOR MAHI SOLAR ENERGY
PROJECT BY APPLICANT MAHI SOLAR LLC, TAX MAP KEYS 9-2-
001:020, 9-2-001:003 AND 9-2-004:010, MODIFICATION OF
CONDITION 4 OF SPECIAL USE PERMIT 2020/SUB-7

Please accept our apologies for the late reply regarding the subject application. The Board of Water Supply (BWS) has no objections to the requested modification of Condition 4 of the subject special use permit.

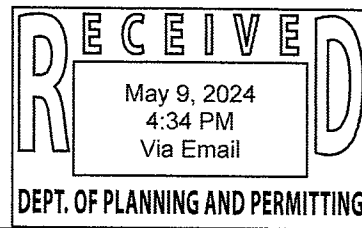
BWS understands that due to supply chain issues and consequences from the world-wide disruption caused by the COVID-19 pandemic, applicant Mahi Solar LLC will be unable to establish the 120 megawatt solar photovoltaic and battery energy storage system facility in Kunia, O'ahu on the subject properties by the original deadline of September 17, 2024, and requires an additional three (3) years to do so.

If you have any questions, please contact Michael Matsuo of our Land Division at (808) 748-5951.



2024/ELOG-878

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



JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR

MARY ALICE EVANS
DIRECTOR

235 South Beretania Street, 6th Floor, Honolulu, Hawai'i 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawai'i 96804

Telephone: (808) 587-2846
Fax: (808) 587-2824
Web: <https://planning.hawaii.gov/>

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 202403281232NA
2024/GEN3-3(FK)

May 7, 2024

Franz Kraintz
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. Kraintz:

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 Krintz, 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 Kraintz, 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

Mr. Franz Kraintz, Branch Chief
May 7, 2024
Page 5

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

JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor

2024 MAY 10 PM 1:18

DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU



State of Hawai'i
DEPARTMENT OF AGRICULTURE
KA 'OIHANA MAHI'AI
1428 South King Street
Honolulu, Hawai'i 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

#2589665

SHARON HURD
Chairperson, Board of Agriculture

DEXTER KISHIDA
Deputy to the Chairperson

May 6, 2024

Rec. #28160

Mr. Franz Kraintz, Chief
Community Planning Branch
Department of Planning and Permitting
City and County of Honolulu
650 South King Street 7th Floor
Honolulu, Hawaii 96813

Dear Mr. Kraintz:

Subject: Mahi Solar Energy Project
Mahi Solar LLC
Special Use Permit (SUP) 2020/SUP-7
Land Use Commission Docket No. SP21-412
TMK: 9-2-001: 020 (por.)
9-2-004: 003, CPR units 1, 2, and 4
9-2-004: 010
Area: 629 acres
Kunia, Oahu
State Agricultural District
AG-1 (Restricted Agricultural District)

The Department of Agriculture (Department) has reviewed the application to modify Special Use Permit (SUP) 2020/SUP-7 and Land Use Commission Special Permit No. SP21-412 by extending the deadline to establish the solar energy facility by another three years. The reason for the request is due to unforeseen circumstances. The Department has no objections to the applicant's request.

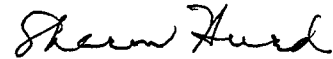
Please note that the Notice of Application's reference to TMK 9-2-001: 003 is incorrect and the zoning district is AG-1 (Restricted Agricultural) and not AG-2.



Mr. Franz Krintz, Chief
May 6, 2024
Page Two of Two

Please direct any questions to Earl Yamamoto at (808) 973-9466 or email at earl.j.yamamoto@hawaii.gov.

Sincerely,



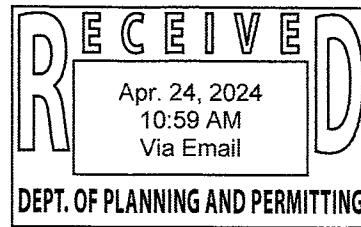
Sharon Hurd, Chairperson
Department of Agriculture

C: Office of Planning and Sustainable Development
Mary Alice Evans, Director
Land Use Commission
Dan Orodener, Executive Officer

Mahi Solar – Amendment SUP-7 (2020) and LUC SP21-412 620 acres Oahu

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

2024/ELOG-768



EDWIN H. SNIFFEN
DIRECTOR
KA LUNA HO'OKOLE

Deputy Directors
Nā Hope Luna Ho'okele
DREANALEE K. KALILI
TAMMY L. LEE
ROBIN K. SHISHIDO

IN REPLY REFER TO:

STP 00455.24
STP 8.3740

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF TRANSPORTATION | KA 'OIHANA ALAKAU
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

April 24, 2024

VIA EMAIL: ailene.hipolito@honolulu.gov

Ms. Dawn Takeuchi Apuna, Director
Department of Planning and Permitting
City and County of Honolulu
650 South King Street, 7th Floor
Honolulu, Hawaii 96813

Dear Ms. Apuna:

Subject: Mahi Solar Energy Project
Application to Modify Condition No. 4 of Special Use Permit 2020/SUP-7 and
State Land Use Commission Docket No. SP21-412.
Kunia, Oahu, Hawaii
Tax Map Keys: (1) 9-2-001: 020 (por.), 003, CPR Units 1, 2, and 4; 9-2-004: 010 (por.)

Thank you for your letter, dated March 28, 2024, requesting the Hawaii Department of Transportation's (HDOT) review and comments on the subject application. HDOT understands that Mahi Solar LLC is requesting to modify Condition No. 4 to allow for a three-year time extension to establish the project due to supply-chain issues, disruptions caused by the COVID-19 pandemic, and delays related to the power purchase agreement with the Hawaiian Electric Company.

HDOT has no objection to the requested time extension of three years to establish the project. We emphasize that our prior comments related to Airports in letter STP 8.3162 dated May 4, 2021, for the original application, remains valid and applicable to the project.

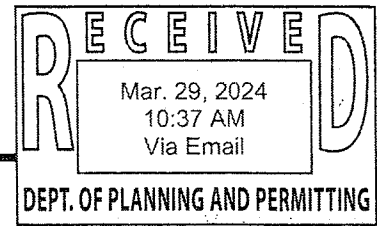
Please submit any subsequent land use entitlement related requests for review or correspondence to the HDOT Land Use Intake email address at DOT.LandUse@hawaii.gov.

If there are any questions, please contact Mr. Blayne Nikaido, Planner, Land Use Section of the HDOT Statewide Transportation Planning Office at (808) 831-7979 or via email at blayne.h.nikaido@hawaii.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Sniffen".

EDWIN H. SNIFFEN
Director of Transportation



Hipolito, Ailene

From: Dang, Charmian I <charmian_dang@fws.gov>
Sent: Friday, March 29, 2024 10:37 AM
To: Hipolito, Ailene; Kraintz, Franz
Cc: Wong, Dina L
Subject: Mahi Solar Energy Project - Notice of Special Use Permit Application to Modify 2020/SUP-7 and LUC Docket No. 21-412

CAUTION: Email received from an EXTERNAL sender. Please confirm the content is safe prior to opening attachments or links.

Dear Ms. Hipolito,

Our office received an email dated March 28 from Mr. Kraintz requesting the U.S. Fish and Wildlife Service's input on the Notice of Special Use Permit Application to Modify 2020/SUP-7 and LUC Docket No. 21-412 for the Mahi Solar Energy project on Oahu.

After reviewing the application which included the G70 report please include the following for the Hawaiian waterbirds (page 4-18)

Hawaiian waterbirds are currently found in a variety of wetland habitats including freshwater marshes and ponds, coastal estuaries and ponds, artificial reservoirs, kalo or taro (Colocasia esculenta) lo'i or patches, irrigation ditches, sewage treatment ponds, and in the case of the Hawaiian duck, montane streams and marshlands. The Hawaiian stilt may also be found wherever ephemeral or persistent standing water may occur.

To avoid and minimize potential project impacts to Hawaiian waterbirds, the following measures will be implemented:

- In areas where waterbirds are known to be present, reduced speed limits will be posted and implemented; project personnel and contractors will be informed about the presence of endangered species on-site.
• Applicable best management practices regarding work in aquatic environments will be incorporated if water resources are located within or adjacent to the project site.
• A biological monitor that is familiar with the species' biology will conduct Hawaiian waterbird nest surveys where appropriate habitat occurs within the vicinity of the project site prior to project initiation. Surveys will be repeated within 3 days of project initiation and after any subsequent delay of work of 3 or more days (during which the birds may attempt to nest). If a nest or active brood is found:
o The Service will be contacted within 48 hours for further guidance.
o A 100-foot buffer will be established and maintained around all active nests and/or broods until the chicks/ducklings have fledged. No potentially disruptive activities or habitat alteration will be conducted within this buffer.
o A biological monitor that is familiar with the species' biology will be present on the project site during all construction or earth moving activities until the chicks/ducklings fledge to ensure that Hawaiian waterbirds and nests are not adversely impacted.

The G70 report addressed the Service's concerns for the Hawaiian hoary bat and the Hawaiian seabirds.

In Attachment 2 on page 18 it states that "Hawaiian hoary bat, 'elepaio, and Hawaiian short-eared owl (pueo) are known to be present adjacent to or at times within the site. While other state and federally listed species are present on O'ahu, none require implementation of specific study or mitigation measures."

Please include the Hawaiian seabirds and Hawaiian waterbirds and their conservation measures that were addressed in the G70 report and the water bird's conservation measures mentioned above.

Please feel free in contacting me if you have questions.

Aloha,
Charmian Dang

~~~~~  
Charmian Dang  
U. S. Fish and Wildlife Biologist  
Pacific Islands Fish and Wildlife Office  
300 Ala Moana Boulevard, Room 3-122  
Honolulu, Hawaii 96850  
808-792-9400