



RANDALL F. SAKUMOTO
ATTORNEY



E-MAIL - SAKUMOTO@M4LAW.COM

~~2024 JUN 19 AM 6:39~~

~~DEPT OF PLANNING AND PERMITTING~~ H-B
~~CITY & COUNTY OF HONOLULU~~ June 19, 2024

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:

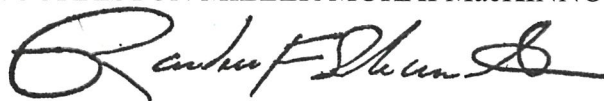
4. The Petitioner shall establish the Project within three years ~~of~~ from the latter of (i) the date of the LUC's Decision and Order approving the requested amendment of the SUP or (ii) the date that Petitioner and HECO enter into a new power purchase agreement for the Project. Requests for extension 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 Kraintz and Ms. Dina L. Wong)
G70 (Attn: Ms. Tracy Camuso and Ms. Noelle Besa Wright)