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July 29, 2024

**VIA E-MAIL and HAND DELIVERY**

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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:

As a follow up to the Planning Commission's meeting on June 26, 2024, we hereby submit for your review and approval the enclosed 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. This document was drafted by the Petitioner and edited by the Department of Planning and Permitting. We understand that this matter will be placed on the Planning Commission's agenda for its meeting on August 7, 2024. Thank you.

Very truly yours,

McCORRISTON MILLER MUKAI MacKINNON LLP

Randall F. Sakumoto

RFS:kmm

Enclosure

Cc with Encl.:

client

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

BEFORE THE PLANNING COMMISSION  
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAI'I

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  
)

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**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-7<sup>1</sup>, 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, Hawai'i. 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).

<sup>1</sup> 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: \_\_\_\_\_

\_\_\_\_\_  
PANE MEATOGA III, Chairperson

\_\_\_\_\_  
RYAN KAMO, Vice-Chairman

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HILARIE ALOMAR

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KAI NANI KRAUT

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MELISSA MAY

\_\_\_\_\_  
KEN HAYASHIDA

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NATHANIEL KINNEY

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JOY KIMURA

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ELENA BRYANT