

DOCKET NO. SP21-412

MAHI SOLAR, LLC

Application to Amend SP21-412 (SUP No. 2020/SUP-7). Request to modify Condition No. 4 of the LUC’s Findings of Fact, Conclusions of Law, Decision, and Order, certified on September 17, 2021, to extend the Petitioner's timeline for establishing the project by an additional three years. The subject Application is regarding approximately 620 acres in the Agricultural District, identified as TMK Nos. (1) 9-2-001:020 (por.), (1) 9-2-004:003 (por.) and 010 (por.).

STAFF REPORT

Hearing
October 10, 2024



Daniel E. Orodenker, Executive Officer

Approved for Submittal: October 4, 2024

TABLE OF CONTENTS

<u>Section No.</u>		<u>Page No.</u>
1.	Explanation of the Proceeding	
	Legal precedent and obligations	3 - 4
2.	Background Information	4 - 13
3.	Summary of Petitioner’s Position	13 - 15
4.	Summary of County Position	15
5.	Office of Planning and Sustainable Development	15
6.	Staff Analysis and Questions for Resolution	15 - 17

1. EXPLANATION OF THE PROCEEDING

The proceeding before the Land Use Commission (“Commission” or “LUC”) is Mahi Solar’s Motion to Amend Condition No. 4 of the LUC’s Findings of Fact, Conclusions of Law, Decision, and Order, certified on September 17, 2021 (the “D&O”), which the Commission received on October 11, 2024 (“[Motion](#)”). The Motion includes the following information: (1) an update on minor changes to the Project¹, including a change in the “Petition Area’s”² TMK parcels and the relocation of the battery energy storage system (“BESS”); (2) the status of various land use approvals obtained for the Project; (3) details regarding the basis for Mahi Solar’s (“Petitioner’s”) request for a time extension, including its description of alleged unforeseen circumstances and the current status of the Petitioner’s Power Purchase Agreement (“PPA”) with Hawaiian Electric Company (“HECO”); and, (4) an update on the Project’s compliance with the conditions of the D&O.

Special Permit application proceedings are made initially at the appropriate county planning commission, in this case, the City and County of Honolulu Planning Commission. For an application that involves an area of land greater than 15 acres, as is the case for the Petition Area here, the record is developed at the County level and transferred to the Land Use Commission for final decision making.

The Commission must decide on the request within 45 days after receipt of the complete record of the proceeding held by the County; here, that means the Commission must issue its decision on or before November 15, 2024. Five affirmative votes are required to approve such a request.³

LEGAL PRECEDENT AND OBLIGATIONS

Hawai‘i Administrative Rules (“HAR”) § 15-15-70(a) provides that “[a]ny party may make motions before, during, or after the close of a hearing.”

¹ The Project is to construct a 120-megawatt (MW) solar energy generation facility, a 480-megawatt-hour battery energy storage facility to address peak energy demand, and accessory support infrastructure and uses (together referred to as the Project) on 620.0 acres (Petition Area). The Project was selected as part of the Hawaiian Electric Company’s (HECO) Stage 2 renewable energy projects.

² The parcels at issue include approximately 620 acres in the Agricultural District, which are further identified as Tax Map Key (“TMK”) Nos. (1) 9-2-001:020 (por.), (1) 9-2-004:003 (por.) and 010 (por.).

³ See HAR § 15-15-13(a). Note, however, that “[i]f the commission’s action to approve a petition for a special permit under § 205-6, HRS, fails to obtain five affirmative votes, findings of fact, conclusions of law, and a decision and order denying the petition shall be filed by the commission.” HAR § 15-15-13(c).

Pursuant to **HAR § 15-15-94**, such a party (i.e., a petitioner) who desires to have a modification or deletion of a condition that was imposed by the Commission, or a modification of the Commission’s order shall file a motion in accordance with HAR § 15-15-70, which must be properly served. If the motion requires the consideration of facts not appearing in the record, it must be filed and served together with sworn affidavits or declarations setting forth those facts.

If good cause is shown, the Commission may modify or delete any of the conditions imposed, or it may modify the Commission’s order (**HAR § 15-15-94(b)**). “Good cause” can mean “a substantial reason amounting in law to a legal excuse,” and that it will also depend on the specific circumstances of an individual case. Determining “good cause” is at the discretion of the Commission. Pursuant to Hawai‘i Revised Statutes (“HRS”) **§ 91-10(5)**, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence. Petitioner has the burden to show good cause for the request and to demonstrate that its request is reasonable by a preponderance of evidence.

The Commission has further discretion, based on the facts presented, to consider other factors, including (1) whether the need for the condition still exists; (2) whether an alternative method for ensuring compliance exists that protects the public trust; or (3) whether compliance with the condition would create an undue hardship.

2. BACKGROUND INFORMATION

The 2021 original decision approved Special Use Permit Establish a Solar Energy Facility on approximately 620- acres of land within the State Land Use Agricultural District at ‘Ewa District of O‘ahu, Hawai‘i; Tax Map Key No. (1) 9-2-001:020(por.), and (1) 9-2-004:003 (por.), :006 (por.), :010 (por.), and :012 (por.).

The current 2024 Motion to Amend Condition No. 4 to extend the Petitioners timeline for establishing the project for another three years.

The Commission received filings by the City and County of Honolulu Planning Commission (the “PC”) on 10/01/2024. Following transmission of this record, the Land Use Commission has 45 days to render a decision.

This matter is scheduled to be heard on October 10, 2024 and also (tentatively) on

November 7, 2024.

2021 Original Petition

On August 6, 2021, the LUC Received the [2021 SUP Application](#) for Special Use Permit for Mahi Solar and the PC's Index of records Petitioner.

2021 Special Use Permit Application was for the construction of a 120-megawatt ("MW") solar energy generation facility, a 480-megawatt-hour battery energy storage facility to address peak energy demand, and accessory support infrastructure and uses (together referred to as the Project) on 620.0 acres (Petition Area) of State Land Use Agricultural land.

The Project was selected to be included as part of HECO's Stage 2 renewable energy projects. The contract between Mahi Solar and HECO is expected to last 25 years with an option to extend 10 years, for a total Project operational life of 35 years.

[2021 Decision and Order](#)

The Commission Approved the Petition for a State Special Permit for the Project, consisting of approximately 620 acres of land in the State Land Use Agricultural District identified by TMK Nos. (1) 9-2-001:020 por. and (1) 9-2-004:003 por., 006 por., 010 por., and 012 por. in the AG-1 Restricted Agricultural District of O'ahu, Hawai'i, on September 17, 2021, and thus issued the requested Special Use Permit ("SUP") subject to the following 18 conditions:

1. Usable lands of the Petition Area, as required under Section 205-4.5(a)(21)(A), HRS, shall be made available for compatible agricultural use at a lease rate that is at least 50 percent below the fair market rent for comparable properties, as long as the Project is in operation. Compatible agricultural operations shall be established, or the Petitioner shall be actively seeking to have such operations established, within six months of the start of commercial power generation (referred to as the "initial six-month period"). Extensions to this deadline may be granted by the Director of the DPP due to unforeseen circumstances that were beyond the control of the

Applicant. The Agricultural Plan, approved by the Director of the DPP, shall include the following:

- a. The Agrivoltaics Program as outlined in the Petition as ‘proof-of-concept’ to determine the suitability of the to-be-determined agricultural activities to be researched and field trialed by the Hawai‘i Agricultural Research Center (“HARC”).
 - b. A collaborative process establishing an organization or association between the Petitioner and the individual agricultural operators interested in and working in the Petition Area for agricultural productions including livestock, crops, or hydroponics.
 - c. An irrigation system proposed for future agricultural activities that may occur under and adjacent to the solar panel arrays.
 - d. Fencing and gating to be in place prior to full operation of the Project to prepare for the needs of the anticipated agricultural activities.
2. If at any time during the term of the SUP no compatible agricultural operations exist on the usable lands of the Petition Area for six months after the initial six-month period (referred to as the “subsequent six-month periods”), the Petitioner shall notify the Planning Commission and the Director of the DPP in writing within 30 days of the end of any subsequent six-month periods. If requested by the Planning Commission, the Petitioner shall attend a meeting of the Planning Commission and submit a report to the Planning Commission detailing the Petitioner’s actual and reasonable efforts to actively seek the establishment of compatible agricultural operations on the usable lands of the Petition Area. The Planning Commission shall determine whether probable cause exists to re-evaluate the SUP and to hold a hearing pursuant to Section 2-49 of the Rules of the Planning Commission. Extension to any subsequent six-month period’s deadlines may be granted by the Planning Commission for unforeseen extenuating circumstances.

3. This SUP operational period shall be valid for a period of 25 years plus a 10-year extension preceded by three-years of construction and 12 months of decommissioning from the date of the State LUC Decision and Order approving the SUP, subject to further extensions upon a timely request for extension filed with the Planning Commission at least 120 days prior to the SUP's 39-year expiration. Approval of time extensions shall be required from the Land Use Commission.

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

Note: Condition four is the condition that the Motion seeks to modify. Additionally, the three-year deadline was on September 17, 2024.

5. Approval of the Archaeological Inventory Survey ("AIS") from the State of Hawai'i Historic Preservation Division (" SHPD") shall be obtained prior to the issuance of building permits. Any specific required conditions of such approval may be added to the CUP or grading permit or building permit at the discretion of the Director of the Department of Planning and Permitting ("DPP")

6. The Petitioner shall submit for review and obtain the approval of the following from the Director of the DPP, prior to any subdivision action or the issuance of a grading or building permit:

a. The Agricultural Plan listed in Condition No. 1 with a site plan showing the minimum land area to be made available and the types of agricultural activity proposed for compatible agricultural use.

b. A revised landscape plan showing a proposed

landscape treatment to screen the Project along the southern (makai) boundary of Petition Area Number 5, adjacent to Honouliuli National Historic site. If the Project creates a negative visual impact to the Honouliuli National Historic site in the future, and vegetative visual screening is requested by the National Park Service, the Petitioner shall install such screening.

7. Upon the conclusion of Project operations, the Petitioner, its assignees, or the landowner, shall cause the decommissioning of the Project at the Petitioner's, assignee's, or owner's expense by removing all of the equipment related to the solar energy facility ("SEF") by no more than 12 months of the conclusion of operation or its useful life and the restoration of the disturbed earth to substantially the same physical condition as existed prior to the development of the SEF.
8. Prior to the closing of a building permit for the SEF, the Petitioner shall submit to the DPP proof of financial security to decommission the Project and restore the Petition Area to substantially the same physical condition as existed prior to development of the Project. Such proof may include, but not be limited to, a posted letter of credit, performance bond, escrow account, or similar mechanism from a creditworthy financial institution. This shall be in favor of the owners of the land subject to the SUP, in the amount based on the used acreage of that landowner by the Project multiplied by the 2020 estimated rate of decommissioning established by the Petitioner's consultant, Engineering Analytics, Incorporated (\$6,830 per acre of the constructed Project, escalated per year for inflation), which security shall remain in place for the duration of the SUP.
9. The Petitioner shall comply with the recommendations of the State of Hawai'i, Department of Land and Natural Resources, Division

of Forestry and Wildlife (“DOFAW”), regarding the protection of endangered, threatened, and native flora and fauna species and their associated habitat should be monitored and observed. If identified in the Petition Area, the Petitioner shall follow the mitigation, monitoring, and avoidance measures contained in the Biological Resource Report prepared for the Project.

10. On or before December 31 of each year that the SUP is in effect, the Petitioner or its successor shall file an annual report to the DPP, the State Office of Planning and Sustainable Development, the State Department of Agriculture and the Land Use Commission that demonstrates the Petitioner’s compliance with conditions of the SUP. The annual report shall also include, but not be limited to:
 - a. The total acreage per type of agricultural activity, their yields, amount sold locally and out-of-state, and revenues in aggregate for each agricultural activity.
 - b. Evidence of proof of financial security for decommissioning of the Project
 - c. Detailed records of inspection of deceased wildlife as a result of natural causes or facility operations; the hours spent by specialists training operations staff in the proper response, documentation, and reporting of any downed wildlife observed; the results of the established and implemented Downed Wildlife Observation Program; the recorded fatalities of state-listed species, federally-listed species, or species protected under the Migratory Bird Treaty Act that were reported to the DOFAW and the United States Fish and Wildlife Service; and invasive species found in the Petition Area that were reported to the Oahu Invasive Species Committee
 - d. Avoidance and mitigation measures conducted to protect and preserve historic, cultural, and archeological features, sites, and resources.
 - e. Quantities of water demand, storage,

pumping, delivery, availability by source for each of the five Project Areas prior to Phase Two of the Agrivoltaics Program of the Agricultural Plan.

11. Major modifications to: (1) The Project plans, including but not limited to significant increases in the number of PV panels; (2) Amendments to the conditions of approval; (3) Significant expansions of the approved area; or (4) Change in uses stated herein, shall be subject to the review and approval of the Planning Commission and the LUC. Minor modifications including minor additions to accessory uses and structures, and new incidental uses and structures in the approved area are subject to review and approval by the Director of the DPP.
12. The Petitioner and/or landowner shall notify the Director of the DPP of:
 - a. Any change or transfer of licensee on the property;
 - b. Any change in uses on the property;
 - c. Termination of any uses on the property; and/or
 - d. Transfer in ownership of the property.The Planning Commission, in consultation with the Director of the DPP, shall determine the disposition of this SUP, and the facilities permitted herein.
13. Enforcement of the conditions of the SUP shall be pursuant to the Rules of the Planning Commission and the Land Use Commission, including the issuance of an order to show cause as to the reason the SUP should not be revoked if the Planning Commission has reason to believe that there has been a failure to perform consistent with representations made by the Petitioner or the conditions imposed herein.
14. The Applicant shall develop and operate the facility, including the implementation of measures to mitigate potential impacts of the Project, in substantial

compliance with the representations made to the Planning Commission and the LUC as reflected in this Decision and Order. Such mitigation measures include, but are not limited to, the use of temporary and permanent best management practices (“BMPs”) to ensure that the development and operation of the facility does not result in an increase in stormwater runoff that adversely impacts downstream properties. Failure to so develop the Petition Area may result in revocation of the SP.

15. In the event that historic resources, including human skeletal remains, structural remains, cultural deposits, artifacts, sand deposits, or sink holes, are identified during demolition and/or construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the SHPD and O’ahu Island Burial Council, as applicable, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites are discovered during the course of construction of the facility, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigation measures have been implemented to its satisfaction. An Archaeological Monitoring Plan (“AMP”) that satisfies the requirements of HAR section 13-279-4, shall be prepared to guide monitoring and be reviewed and accepted by SHPD before work begins.

16. The Applicant will comply with the recommendations made in the AIS with regards to the:

- a. Waiāhole Ditch – avoidance and protection during development activities
- b. O’ahu Sugar Company irrigation infrastructure – conduct archaeological monitoring during development activities and prepare an archaeological monitoring plan subject to acceptance by the State Historic Preservation Division prior to ground-disturbing activities.

17. The Applicant and its successors shall (1) maintain the surface and aboveground areas of the easement of the Waiāhole Ditch where it traverses the Petition Area and shall have non-exclusive access to such areas; and (2) not interrupt or impair delivery of Waiāhole Ditch water during construction and operation of the Project.

18. As recommended by Petitioner’s *Ka Pa‘akai*⁴ analysis to mitigate impacts to traditional and customary practices, Petitioner shall consult with appropriate agencies and persons who have knowledge of the Pōhākea trail’s historical location and possible status and incorporate consultation recommendations in its development plans. Petitioner shall also identify and avoid all native plant communities and their associated habitats.

Hyperlinks to materials from previous LUC Hearings relevant to resolution of the instant Motion are provided below, for reference:

September 08-09, 2021:

[Agenda](#) | [Minutes](#) | [YouTube 09/08](#) | [YouTube 09/09](#)

September 17, 2021: [Agenda](#) | [Minutes](#) | [YouTube](#)

**2024 Motion to Amend
(Subject Proceeding)**

Mahi Solar, LLC (“Petitioner”) filed an application (“2024 Motion”) proposing an amendment to Special Use Permit (SUP) File No. 2020/SUP-7/ LUC SP21-412, Condition No. 4 to extend the Petitioner's timeline for establishing the project for another three years.

On March 26, 2024, Applicant Mahi Solar, LLC., filed an submitted a letter along with the Application to amend SUP File No. 2020/SUP-7, DPP accepted the application for processing on March 28, 2024.

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

⁴ See *Ka Pa‘akai O Ka‘Aina v. Land Use Comm’n*, 94 Hawai‘i 31, 7 P.3d 1068 (2000).

approved the Application with the modified extension request.

On October 1, 2024, the Land Use Commission received the filings and record from the City and County of Honolulu Planning Commission and posted them to the Land Use Commission Website for public review.

The Honolulu Planning Commission adopted the Decision and Order on August 7, 2024, approving the amendment to Condition No. 4 as follows (additional text is underlined, and deleted text is bracketed) containing the following provisions and conditions:

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 in full effect.

Durning this proceeding in front of the Commission the Commission can; **adopt, deny, or modify the pre-existing Decision and Order.**

3. SUMMARY OF PETITIONER'S MOTION

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 its 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.

Within the Petitioner’s Motion to extend, Petitioner disclosed a Project Description and Site Plan Update (see [Exhibit no.1, Attachments 1 and 4](#)). The changes include refined configuration of the battery energy storage system (BESS), as shown in [Attachment 4](#), of Exhibit no. 1. The BESS will remain within Area 3, and modifications to the building area are not proposed. There are no additional changes to the Petition Area or building area, the project characteristics, such as dimensions, building area, height, and setbacks, are planned to remain as detailed. As such, Petitioner argues the modifications to the Project are not considered substantial.

The Petitioner has filed the following documents, which include the Motion and various files were entered into the record at the County level during the Planning Commission contested case proceedings.

[Exhibit 01](#); Application for Modification

[Exhibit 07](#); Written Testimonies to the Planning Commission

[Exhibits 01-A](#); Attachment 1 of the Original March 2021 Application (713 pages)

[Exhibit 08](#); Planning Commission Agenda July 10, 2024

[Exhibit 01-B \(Part 1 and Part 2\)](#); Attachments 2 - 13 are updated Attachments for the 2024 Application (360 pages)

[Exhibit 09](#); Planning Commission Minutes of July 10, 2024

[Exhibit 02](#); DPP Director's Report and Recommendation to the Planning Commission, Special Use Permit

[Exhibit 10](#); Transcript of Meeting of July 10, 2024

[Exhibit 11](#); From McCorriston Miller Mukai MacKinnon LLP Decision and Order

[Exhibit 03](#); Planning Commission Notice of Public Hearing for June 26, 2024

[Exhibit 12](#); Planning Commission Agenda August 7, 2024

[Exhibit 04](#); Letter from McCorriston Miller Makai MacKinnon LLP

[Exhibit 13](#); Planning Commission Findings of Fact, Conclusions of Law, and Decision and Order, Approving

[Exhibit 05](#); From G70 to the Planning Commission

[Exhibit 14](#); Planning Commission Minutes of August 7, 2024

[Exhibit 06](#); Cancelled Notice of Planning Commission June 26, 2024

[Exhibit 15](#); Transmittal of record to LUC

4. SUMMARY OF COUNTY PLANNING DEPARTMENT POSITION STATEMENT

The City and County of Honolulu has not filed with the LUC as of 10/04/2024.

5. SUMMARY OF POSITION STATEMENT FILED BY THE OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT (“OPSD”)

The Office of Planning and Sustainable Development filed their [position statement](#) on September 27, 2024. OPSD defers to their May 7, 2024, letter to DPP in support of the extension ([Exhibit 2, DPP Directors Report Attachment](#)). In short, OPSD’s position is as follows:

- OPSD supports the Petitioner's request to extend the deadline to establish the Project due to pandemic-related costs and supply-chain issues.
- OPSD agrees that the updated information provided by the Petitioner, related to the relocation of the battery energy storage system 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.

6. STAFF ANALYSIS AND QUESTIONS FOR RESOLUTION

Decision making process limitations presented in special permit proceedings:

Durning this proceeding in front of the Commission the Commission can; **adopt, deny, or modify the pre-existing [Decision and Order](#)** (from City and County of HNL Planning Commission).

Recent Annual Report:

[2023 Annual Report](#)

Please note that the 2024 annual report is NOT late, as condition 10, requires

filing on or before December 31, as well as specific areas of reporting.

Staff encourages more detail be provided in future annual reports, including description of difficulty/ changes in the permitting and establishment processes, and land ownership changes.

Ka Pa‘akai Analysis

The original 2021 Special Permit Application included a Ka Pa‘akai Analysis for the projects petition area, which identified numerous valued cultural, historical, or natural resources present in the project area.

The Ka Pa‘akai Analysis findings were included in the 2021 LUC Decision and Order (Exhibit 01-B [Part 1](#), pdf pg. 19-21).

Considering the Motion in front of the LUC, LUC staff believes that the previous Ka Pa‘akai Analysis and its documentation in the previous record is sufficient and applicable to the current motion to Amend Condition No. 4 to extend the Petitioners timeline for establishing the project for another five years.

Tax Map Key (TMK):

The Projects original Special Permits list TMKs (1) 9-2- 001:02 (por.), (1) 9-2-004:003 (por.), 006 (por.), 010 (por.), and 012 (por.)

County records and filings indicate that the current TMKs for the Project are:) (1) 9-2-001: 020 (por.) and (1) 9-2-004: 003 (por.) and 010 (por.)

[Exhibit One page 7](#) of the Petitioners Application, indicates that there was a change to TMK's and uses.

Questions for Resolution:

The modification of Condition No. 4 of the 2021 LUC D&O to allow for an extension time from the date of the LUC's order granting the deadline extension, in addition to an extension of other relevant deadlines associated with the establishment of the Project.

Petitioner requested three years; Planning commission gave five years.

The modification of Condition No. 4, as proposed by the Planning Commission reads 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.

Staff Recommendation:

The LUC Staff believes the Commission could resolve the motion by making the following findings:

- 1) Petitioner did not meet the September 17, 2024, deadline to establish the Project due to unforeseen circumstances that were beyond the control of the Petitioner
- 2) The Commission's decision on the Motion is also not an "act" or "action" that will affect Native Hawaiian customary and traditional rights under the *Ka Pa'akai* case, and the action being requested for the purposes of HRS Chapter 343 is simply an extension of time that will not result in any changed environmental impacts, and therefore analysis under the *Ka Pa'akai* case and a supplemental environmental impact statement are not required at this time.
- 3) Approve the Special Permit amendment using the City and County Planning Commission's Findings of Fact and Decision and Order.