



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of	)	DOCKET NO. SP21-412
	)	
MAHI SOLAR, LLC.	)	
	)	FINDINGS OF FACT, CONCLUSIONS OF
To Modify Special Use Permit (SUP) SP21-	)	LAW, AND DECISION AND ORDER
412 (2020/SUP-7) to Establish a Solar Energy	)	APPROVING APPLICATION TO MODIFY
Facility on approximately 620- acres of land	)	RECEIVED OCTOBER 1, 2024; AND
within the State Land Use Agricultural	)	CERTIFICATE OF SERVICE
District at Honouliuli , ‘Ewa District of O‘ahu,	)	
Hawai‘i, Tax Map Key No.: (1) 9-2-001:20	)	
(por.), and (1) 9-2-004:003(por.), and 010	)	
(por.)	)	
_____	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER**  
**APPROVING APPLICATION TO MODIFY RECEIVED OCTOBER 1, 2024 AND**  
**CERTIFICATE OF SERVICE**

This is to certify that this is a true and correct copy of the document on file in the office of the State Land Use Commission, Honolulu, Hawai‘i.

\_\_\_\_\_  
BY \_\_\_\_\_  
DANIEL E. ORODENKER  
Executive Officer



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**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER**  
**APPROVING APPLICATION TO MODIFY RECEIVED OCTOBER 1, 2024,**  
**MODIFYING CONDITION NO. 4 OF THE SEPTEMBER 17, 2021 ORDER**

The State of Hawai‘i Land Use Commission (“LUC” or “Commission”), having examined the complete record of the City and County of Honolulu Planning Commission’s (“Planning Commission”) consolidated proceedings on Mahi Solar LLC.’s (“Applicant” or “Petitioner”) application to modify the State Special Use Permit SP21-412 (County Special Use Permit No.2020/SUP-7), to modify Condition No. 4 of the Planning Commission’s Findings of Fact, Conclusions of Law, and Decision and Order, dated July 29, 2021, and Condition No. 4 of the LUC’s Findings of Fact, Conclusions of Law, and Decision and Order Approving the

Special Use Permit, certified September 17, 2021 (“LUC 2021 Decision and Order”), which application (the “2024 Application to Modify”) was received by the LUC on October 1, 2024.

The 2024 Application to Modify specifically sought to amend Condition No.4 of the LUC 2021 Decision and Order, to allow for an extension of three (3) years 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 on Tax Map Key (“~~TMK~~”) Nos. (1) 9-2-001:020 (por.), (1) 9-2-004:003 (por.) and 010 (por.)<sup>1</sup> .

The Commission, having heard and examined the testimony, evidence, and argument of counsel for the Petitioner, and other Partiesparties present during the October 10, 2024, hearing, along with the Planning Commission’s pleadings filed herein, and public testimony received, makes the following Findings of Fact, Conclusions of Law, and Decision and Order Approving the 2024 Application to Modify.

## FINDINGS OF FACT

### PROCEEDURAL MATTERS

#### **2021 Original Permit Petition**

1. On July 29, 2021, the Planning Commission approved with conditions the Petitioner’s Special Use Permit Application to establish a 120-megawatt solar photovoltaic and

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<sup>1</sup> The Original 2021 Special Permit Application and 2021 Land Use Commission Findings of Fact, Conclusions of Law, Decision and Order, and Certificate of Service approved the special permit for TMK Nos. (1) 9-2-001:020(por.), and (1) 9-2-004:003 (por.), 006 (por.), 010 (por.) and 012 (por.), but the 2024 Application to Modify noted a change to the TMKs, thus the removal of TMK Nos. 006 and 012 from the description and header [2024 Planning Commission Filing, Exhibit 1, pg7, Exhibit 01-B Part 1, page 55 (map), and 2024 Transcripts (“Trn.”) pg. 20, lines 6-20.]

Battery Energy Storage System facility on 620 acres of land within the State Land Use Agricultural District (“Project”).

2. On September 9, 2021, the LUC approved the Special Use Permit Application with the conditions approved by the Planning Commission, with additional modifications, and on September 17, 2021, issued the LUC 2021 Decision and Order.

### **2024 Application to Modify Planning Commission Proceedings**

1. On March 26, 2024, the Petitioner submitted a letter along with the 2024 Application to ~~amend~~Modify SUP File No. 2020/SUP-7 to the Department of Planning and Permitting (“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 2021 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 (~~“2024 Application to Amend”~~).
2. The 2024 Application to ~~Amend Application~~Modify sought to extend the date of the ~~LUC’s~~LUC 2021 Decision and Order, in addition to an extension of other relevant deadlines associated with the establishment of the Project for an additional three (3) years from September 17, 2024, which would be an extension until September 17, 2027.

3. On May 22, ~~2023~~2024, DPP issued its Director’s Report recommending approval of the Application. *See* Planning Commission filing, Exhibit 2.
4. The Planning Commission’s ~~the~~ public hearing to consider the 2024 Application to Modify, was scheduled for June 26, 2024, and public notice was published in the Honolulu Star-Advertiser on May 27, 2024. *See* Planning Commission filing, Exhibit 3.
5. 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 (“PUC”) 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 2021 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 Special Use Permit, or (ii) the date that Petitioner and HECO enter into a new PPA for the Project. *See* Planning Commission filing, Exhibit 4 [Cnty. Trn. 07/10/2024 p16-18 Exhibit 10].

6. On June 20, 2024, cancellation notice of the June 26, 2024, Planning Commission Hearing was sent due to a lack of quorum and was re-scheduled to July 10, 2024. *See* Planning Commission filing, Exhibits 3, 6, and 7.
7. 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~~ Petitioner mutually agreed to a five-year extension of the deadline to establish the Project.
8. On July 10, 2024, the Planning Commission 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. *See* Planning Commission filing, Exhibits 8, 9, and 10.
9. At the July 10, 2024, Planning Commission Hearing, the Planning Commission approved the amendment of the Special Use Permit File No. 2020/SUP-7, with the DPP recommended and the Petitioner agreed upon five-year time extension. *See* Planning Commission filing, Exhibits 8, 9, and 10.
10. The amendment of Condition 4 in the Planning Commission Findings of Fact, Conclusions of Law, and Decision and Order, Approving Mahi Solar, LLC’s Application for an Amendment to a State Special Use Permit, No. 2020/SUP-7, adopted August 7, 2024, 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.

All other conditions remain unchanged and are in full effect. *See* Planning Commission filing, Exhibit 13.

### **2024 Application to Modify Land Use Commission Proceedings**

11. On May 13, 2024, ~~The~~ LUC received the ~~Courtesy Copy~~ courtesy copy of the Letter of No Objection to Petitioners Request for Time Extension, from the State of Hawai'i Department of Agriculture. The filing was stamped and posted to the ~~Land Use Commission~~ LUC website for public review.
12. On September 27, 2024, the LUC ~~Received~~ received the ~~Office of Planning and Sustainable Development's~~ ("OPSD") comment letter on the 2024 Application to Modify SP21-412 Mahi Solar. The filing was stamped and posted to the ~~Land Use Commission~~ LUC website for public review.
13. On September 30, 2024, the Agenda notice for the October 9-10, 2024, hearings were mailed and emailed to parties, O'ahu and Statewide mailing lists.
14. On October 1, 2024, the ~~Land Use Commission~~ LUC received the record from the City and County of Honolulu Planning Commission for the 2024 Application to Modify the Deadline in Condition No 4. Of the 2021 Decision and Order for the State Special Use



Permit No. 2020/SUP-7; ~~State Land Use Commission~~LUC Docket No. SP21-412. The record was stamped and posted on the ~~Land Use Commission~~LUC website for public review.

15. On October 4, 2024, the ~~Land Use Commission~~LUC Staff Report was signed and posted on the ~~Land Use Commission~~LUC website for public review.
16. On October 9, 2024, the ~~Land Use Commission~~LUC received public testimony from the Hawai‘i Regional Council of Carpenters, which was stamped and posted to the ~~Land Use Commission~~LUC website for public review.
17. On October 10, 2024, the ~~Land Use Commission~~LUC held its meeting in person, at 9:00 a.m., at the Airport Conference Center (in Hawaiian Airlines Terminal Building) 400 Rodgers Blvd., 7th Floor, IIT Suite 700, Room #3, Honolulu, HI 96819, to consider the 2024 Planning Commission Order for the 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~~Project by an additional three years. Randall Sakumoto, Esq., Wren Wescoatt, and Tracy Camuso appeared on behalf of the ~~Applicant~~Petitioner. John Dubiel, Esq. and Franz Krintz appeared on behalf of the ~~City and County of Honolulu Department of Planning and Permitting (“DPP”)~~. Alison Kato, Esq. and Katia Balassiano appeared on behalf of the ~~State of Hawai‘i Office of Planning and Sustainable Development (“OPSD”)~~.
18. At the October 10, 2024, hearing, there were no members of the public present that wished to provide verbal public testimony prior to the ~~Parties~~parties’ presentations.

19. At the October 10, 2024, hearing, the LUC then heard presentations from the ~~Applicant~~Petitioner, DPP, and OPSD, all witnesses were sworn in prior to presentations and addressing questions from the Commissioners.
20. At the October 10, 2024, hearing, the LUC then reopened public testimony, prior to deliberation. There were no members of the public who provided verbal testimony.
21. At the October 10, 2024, hearing after the ~~Applicant~~Petitioner, DPP, and OPSD were given the opportunity to provide final comments, the LUC entered deliberations on this matter. Following discussion, a motion was made and seconded to approve the Application for Modification in accordance with the City and County of Honolulu Planning Commissions Findings of Fact, Conclusions of Law, and Decision and Order, adopted August 7, 2024. After additional discussion, a vote was taken on this motion. There being a vote ~~total~~ of 7 ayes, 0 nays, and 2 excused the motion passed.

#### **OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT-~~(“OPSD”)~~ POSITION**

22. The OPSD filed their position statement on the SP21-412 Mahi Solar, LLC’s Application for an Amendment to the State Special Use Permit, with the ~~Land Use Commission~~LUC on September 27, 2024. OPSD deferred to the May 7, 2024, letter sent to the ~~Department of Planning and Permitting~~DPP for a detailed explanation of OPSD’s position on the Project, and believes the compromise is reasonable and supports amending Condition No. 4 to require the establishment of the Project within five years of the LUC’s D&O approving the amended special use permit, as approved by ~~the City and County of~~

~~Honolulu~~ Planning Commission on August 7, 2024. Specifically, OPSD supports the 2024 Application to Modify for the following reasons:

- a. Pandemic-related costs and supply-chain issues
  - i. Complications have halted the development of several renewable energy projects across the state and qualify as “unforeseen circumstances beyond the control of the Petitioner”
- b. Implementation of a mutually beneficial project for energy and agriculture
  - i. Soar energy facilities (“SEF”) 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.
  - ii. 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
- c. OPSD agreed 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.

23. During the LUC’s October 10, 2024, hearing, OPSD presented their statement in support of the 2024 Application to Modify. OPSD further presented that the Petitioner described in detail the unforeseen circumstances that led to the delay of construction of the Project meet statements in the LUC 2021 ~~LUC~~ Decision and Order for extension of time. *See* 10/10/24 Tr. at 55-56.

**CITY AND COUNTY OF HONOLULU DEPARTMENT OF PLANNING AND PERMITTING POSITION**

24. The ~~City and County of Honolulu Department of Planning and Permitting~~ (“DPP”) did not file a written position statement directly with the ~~Land Use Commission~~LUC, but its rationale is set forth in the director’s report dated May 22, 2024 [Planning Commission Exhibit 2], and during the July 10, 2024, Planning Commission Hearing on the matter [Planning Commission Exhibit 10, p.18]. *See* 10/10/24 Tr. at 53-54.
25. During the ~~Land Use Commission~~LUC October 10, 2024, hearing, DPP represented its support for the Planning Commission and recommended that the Commission approve the amendment to Condition 4 to five years after the date of the Commission’s order. *See* 10/10/24 Tr. at 53-54.

**SIGNIFICANT ADDITIONAL FINDINGS BY THE COMMISSION DURING THE OCTOBER 10, 2024, HEARING**

26. The ~~Mahi Solar LLC~~, Project requires a special permit for its operations. Its current special permit was issued by the LUC on September 17, 2021, and remains in full force and effect.
27. Condition 4 of the LUC 2021 Decision and Order established the deadline for the establishment of the Project within three years of the date of the ~~LUC’s~~LUC 2021 Decision and Order approving the SUP. The Condition further specifies that requests for extension of this deadline shall be submitted to the Director of the DPP prior to the expiration of the deadline, and that ~~The Land Use Commission~~the LUC may grant an

extension to the deadline to establish the Project due to unforeseen circumstances that were beyond the control of the Petitioner.

28. Petitioner describes “establishment of the project” as the completion of the ~~project~~Project, and commencement of general commercial operation. *See* 10/10/24 Tr. at 31-32.
29. At the time of the hearing, the Project had been selected by ~~Hawaiian Electric Company, Inc. (“HECO”)~~ in their request for proposal (~~“RFP”~~); ~~however,~~ the interconnection requirement study needs completing, ~~Maui Solar LLC, IRS still needed to be completed.~~ Once the IRS is completed, the Petitioner will then continue negotiations with HECO to determine pricing, and following the finalization of costs, the ~~Power Purchase Agreement (“PPA”) with the Public Utilities Commission (“PUC”) needs~~ will need to be finalized and approved. ~~The Project is still completing the interconnection requirement study. by the PUC.~~ *See* 10/10/24 Tr. at 32-34.
30. Following the PUC approval of the ~~power purchase agreement~~PPA, the completion of engineering for permitting, submitting and approval of the conditional use permit and other permits, and completion of a final energy report need to be completed prior to securing commercial financing for the ~~project~~Project. Construction is estimated to take 18 ~~-months~~ and is followed by a HECO testing phase of 5 ~~-months~~. Commissioning and procurement of solar equipment, batteries, and transformers is expected to take upwards of two years. *See* 10/10/24 Tr. at 48-50.
31. Petitioner intends to farm all acres of land within the Petition Area, aside from areas limited for safety reasons. *See* 10/10/24 Tr. at 36.

32. The COVID-19 Pandemic lead to price increases of equipment, steel, and other components necessary to develop the Project. At the time of the hearing Petitioner indicated that prices and markets have stabilized, resulting in the willingness of banks to finance the Project. Costs that have not come down will be recovered in the increase of price in the PPA. *See* 10/10/24 Tr. at 37-38.
33. Petitioner intends to sublease land to farmers at \$1 per acre per year. *See* 10/10/24 Tr. At 39.
34. Petitioner has satisfied HECO with regard to absolute site control. *See* 10/10/24 Tr. at 42.
35. Petitioner ~~and Project~~ stated that the Petition Area has water available through the Kunia Water Association and Fat Law Farms, to provide water to the farmers ~~on~~ within the ~~property~~ Petition Area. Portions of the ~~property~~ Petition Area have irrigation installed and other portions will require trucking the water to the farmers. *See* 10/10/24 Tr. at 43.
36. Single ~~-~~ axis tracking panels at the typical commercial height, between four and six feet off the ground. Adjustments will be made to the distance between and wideness of ~~troughs~~ rows, to accommodate different types of farming. *See* 10/10/24 Tr. at 44-45.
37. The Project and the ~~interconnection requirement study includes~~ IRS contemplate inclusion of a new ~~Hawaiian Electric~~ HECO switching station with a double circuit 138 kV extension to tie into the Kahe-Waiiau ~~Power~~ transmission line. *See* 10/10/24 Tr. at 47.
38. The price of megawatt hour increased from the Stage 2 former bid from the low \$100s around \$105-110 to the current Stage 3 bid price of \$175. *See* 10/10/24 Tr. at 52.

39. ~~The Internal Revenue Service (“IRS”) is conducting the facility study and the system impact study. The studies by HECO is conducting the IRS. The IRS examines, among other things, the Project’s effects on HECO’s grid and engineering of interconnection facilities and equipment. Therefore,~~ the IRS must be completed prior to the completion of the PPA. *See* 10/10/24 Tr. at 60-61.
40. Based upon the record and files herein, and in light of the proposed findings of fact set out by the Planning Commission in the 2024 Planning Commission Order, the LUC hereby finds that there is substantial evidence in the record to support granting the ~~Applicant’s~~Petitioner’s request to extend deadline for establishing the Project to five years from the date of this Decision and Order.
41. Based upon the record and files herein, and in light of the proposed findings of fact set out by the Planning Commission in the 2024 Planning Commission Order, the LUC further finds that the conditions imposed, including the condition that the ~~Applicant~~Petitioner report on its progress to both the Planning Commission and the LUC, are necessary or appropriate in granting the approval for reasons including but not limited to, ensuring the adherence to representations made by the Applicant and curtailing adverse impacts on surrounding properties. The LUC further finds that the conditions imposed are supported by substantial evidence in the record.
42. After additional discussion during the October 10, 2024, LUC meeting, a motion was made to approve the 2024 Application to Modify in accordance with the City and County of Honolulu Planning Commissions Findings of Fact, Conclusions of Law, and Decision

and Order, adopted August 7, 2024. A vote was taken on this motion. There being a vote ~~total~~of 7 ayes, 0 nays, and 2 excused, and the motion passed.

## **RULINGS ON FINDINGS OF FACT**

Any of the findings of fact submitted by Petitioner or other parties not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

## **CONCLUSIONS OF LAW**

1. Subject to HRS § 205-6, a county planning commission may permit certain unusual and reasonable uses of lands within agricultural and rural districts other than those for which the district is classified. *See* HRS § 205-6(a).
2. The Mahi Solar Project requires a special use permit (“SUP”) for its operations.
3. Pursuant to HRS § 205-6(d), ~~special use permits~~SUPs for land with an area of greater than fifteen acres shall be subject to approval by the LUC.
4. Pursuant to HAR§ 15-15-95(b), ~~special permits~~SUPs for ~~areas~~land with an area greater than fifteen acres require approval of both the county planning commission and the LUC.



5. Because the ~~Applications seek a special use permit~~ Petitioner seeks a SUP for land the area of which is greater than fifteen acres, the LUC has jurisdiction over this matter pursuant to HRS § 205-6 and HAR § 15-15-95.
6. Pursuant to HAR § 15-15-95(c), the following guidelines have been established for purposes of determining whether a proposed use is “unusual and reasonable:”
  - a. The use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the LUC.
  - b. The proposed use would not adversely affect surrounding property.
  - c. The proposed use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and school improvements, and police and fire protection.
  - d. Unusual conditions, trends, and needs have arisen since the district boundaries and rules were established.
  - e. The land on which the proposed use is sought is unsuited for the uses permitted within the district.
7. Based upon the record and files herein and the findings set forth above, and pursuant to HRS § 205-6 and HAR § 15-15-95, the LUC concludes that the Mahi Solar Project is an “unusual and reasonable use” within the State Land Use Agricultural District.
8. Within forty-five days after receipt of the complete record from the county planning commission, the LUC shall act to approve, approve with modification, or deny the petition. *See* HRS§ 205-6(e).

9. The LUC may impose additional restrictions as may be necessary or appropriate in granting the approval, including the adherence to representations made by the ApplicantPetitioner. See HRS § 205-6(d).
10. Based upon the record and files herein and the findings set forth above, the LUC concludes that there is substantial evidence in the record to support the conditions imposed below.
11. Based upon the record and files herein and the findings set forth below, the LUC further concludes that the conditions imposed below are necessary or appropriate in granting the approval, including but not limited to, ensuring the adherence to representations made by the ApplicantPetitioner.
12. Article XI, section 1, of the Hawai‘i State Constitution requires the State to conserve and protect Hawai‘i’s natural beauty and all natural resources, including land, water, air, minerals, and energy sources, and to promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.
13. Article XI, section 3, of the Hawai‘i State Constitution requires the State to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and assure the availability of agriculturally suitable lands.
14. HRS §205-1(c) authorizes the Commission to “adopt rules guiding its conduct[.]”
15. As defined in HAR §15-15-03,  
“Proceeding” means any matter brought before the commission over which the commission has jurisdiction and shall include, but not be limited to:

- (1) Petitions for district boundary amendment;

- (2) Petitions for special permit;
  - (3) Proceedings for the adoption, amendment, or repeal of rules under sections 91-3 and 205-7, HRS;
  - (4) Petitions for declaratory orders under section 91-8, HRS;
  - (5) An investigation or review instituted or requested to be initiated by the commission; and
  - (6) All other matters in the administration of chapter 205, HRS.
16. Pursuant to HAR §15-15-70(a), any party may make a motion before, during, or after the close of hearing.
17. Pursuant to HAR §15-15-94(a), if a petitioner desires to have a modification or deletion of a condition that was imposed by the Commission, or modification of the Commission's order, the petitioner shall file a motion in accordance with HAR §15-15-70 , including proper service and affidavits or declarations if the motion requires the consideration of facts not appearing in the record.
18. HRS §91-10(5) provides "Except as otherwise provided by law, 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."
19. HAR §15-15-59(a), provides that "...Unless otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence and the burden of persuasion."
20. Pursuant to HAR §15-15-94(b), for good cause shown, the Commission may act to modify or delete any of the conditions imposed or modify the Commission's order.

21. The courts have recognized that an agency, acting as a factfinder, has the discretion to determine the credibility of a witness and weigh the evidence before it.<sup>2</sup>

### **DECISION AND ORDER**

The LUC, having duly considered the written and oral arguments presented by the ~~Applicant~~Petitioner, Mahi Solar LLC, ~~the City and County of Honolulu Department of Planning~~DPP, the ~~State Office of Planning and Sustainable Development~~OPSD, and members of the public, and a motion having been made and seconded at the meeting on October 10, 2024, held at the Honolulu Airport Conference Center, 400 Rodgers Blvd., 7th Floor, IIT Suite 700, Room #3, Honolulu, HI 96819, and the motion having received the affirmative votes required by HAR § 15-15-13, and there being good cause for the motion,

HEREBY FINDS AND CONCLUDES that, pursuant to HRS Chapter 205 and the Commission Rules under HAR chapter 15-15, upon consideration of the decision-making criteria set forth in HRS § 205-17, and based upon the preponderance of the evidence and good cause shown, the extension requested in the ~~Applicants~~Petitioner's 2024 Application to Modify is reasonable, and Condition 4 is modified.

NOW, THEREFORE, ~~the Applicant's~~Petitioner's 2024 Application 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, be GRANTED, to extend the timeline for establishing the project from

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<sup>2</sup> *State v. Pioneer Mill Co., Ltd.*, 64 Haw. 168, 179, 637 P. 2d 57, 65 (1996) (citing *Territory v. Adelmeyer*, 45 Haw. 144, 163, 363 P.2d 979, 989 (1961)); *State v. Eastman*, 81 Hawai'i 131, 139, 913 P.2d 57, 65 (1996); *Sierra Club v. D.R. Horton-Schuler Homes, LLC*, 136 Hawai'i 505, 52, 364 P.3d 213, 230 (2015); *In re Gray Line Hawai'i, Ltd.*, 93 Hawai'i 45, 52-53, 995 P.2d 776, 783-784 (2000); and *Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9<sup>th</sup> Cir. 2015)).

September 17, 2024, for an additional five years from the signature of this Findings of Fact, Conclusions of Law, Decision and Order, and Certificate of Service, in accordance with the City and County of Honolulu Planning Commission Findings of Fact, Conclusions of Law, Decision and Order, and Certificate of Service dated August 7, 2024.

ADOPTION OF DECISION AND ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing DECISION AND ORDER on \_\_\_\_\_. This DECISION AND ORDER may be executed in counterparts. This DECISION AND ORDER shall take effect upon the date this DECISION AND ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this \_\_\_\_ day of \_\_\_\_\_, November, 2024, per motion on October 10, 2024.

APPROVED AS TO FORM

\_\_\_\_\_  
Miranda C. Steed  
Deputy Attorney General

LAND USE COMMISSION

STATE OF HAWAI'I

By \_\_\_\_\_  
DAN GIOVANNI  
Chairperson and Commissioner

Filed and effective on:

\_\_\_\_\_

Certified by:

\_\_\_\_\_  
DANIEL E. ORODENKER  
Executive Officer



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

In the Matter of the Application of	)	DOCKET NO. SP21-412
	)	
MAHI SOLAR, LLC.	)	
	)	FINDINGS OF FACT, CONCLUSIONS OF
To Modify Special Use Permit (SUP) SP21-	)	LAW, AND DECISION AND ORDER
412 (2020/SUP-7) to Establish a Solar Energy	)	APPROVING APPLICATION TO MODIFY
Facility on approximately 620- acres of land	)	RECEIVED OCTOBER 1, 2024; AND
within the State Land Use Agricultural	)	CERTIFICATE OF SERVICE
District at Honouliuli , 'Ewa District of O'ahu,	)	
Hawai'i, Tax Map Key No.: (1) 9-2-001:20	)	
(por.), and (1) 9-2-004:003(por.), and 010	)	
(por.)	)	
_____	)	

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND DECISION AND ORDER APPROVING THE APPLICATION TO MODIFY  
RECEIVED OCTOBR 1, 2024, was served upon the following, by either hand delivery or  
depositing the same in the U.S. Postal Service by regular or certified mail on the date appearing  
below, as follows:

HAND            Director  
DEL.:           Office of Planning and Sustainable Development  
                    P. O. Box 2359  
                    Honolulu, Hawai'i 96804-2359

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DEL.: Deputy Corporation Counsel  
Department of the Corporation Counsel  
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CERTIFIED FRANZ KRAINTZ and DINA WONG  
DEL.: DAWN TAKEUCHI-APUNA, Director  
Department of Planning and Permitting  
City and County of Honolulu  
650 South King Street, 7th Floor  
Honolulu, Hawai'i 96813

Dated \_\_\_\_\_  
Honolulu, Hawai'i.

\_\_\_\_\_  
DANIEL E. ORODENKER  
Executive Officer