

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, HI, 96813

March 11, 2010

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Land Board Members:

SUBJECT: REQUEST FOR APPROVAL OF HABITAT CONSERVATION PLAN, ACCOMPANYING INCIDENTAL TAKE LICENSE, AND IMPLEMENTING AGREEMENT FOR KAHUKU WIND POWER

SUMMARY:

Submitted for your approval are the Habitat Conservation Plan (HCP), Incidental Take License (ITL-10), and Implementing Agreement for Kahuku Wind Power LLC (Attachment I, Attachment II, and Attachment IV, respectively). The purpose of the HCP is to provide for avoidance, minimization and mitigation of potential injury and death to eight endangered and threatened species, the 'ua'u (*Pterodroma sandwichensis*), 'a'o (*Puffinus auricularis newelli*), a'eo (*Himantopus mexicanus knudseni*), koloa maoli (*Anas wyvillian*), 'alae 'ula (*Gallinule chloropus sandvicensis*), 'alae ke'oke'o (*Fulica alai*), pueo (*Asio flammeus sandwichensis*) and 'ōpe'ape'a (*Lasiurus cinereus semotus*). The HCP also outlines measures to ensure net recovery benefit to the covered species.

BACKGROUND:

Kahuku Wind Power proposes to construct and operate a new 30-megawatt (MW), 12-turbine commercial wind energy generation facility in the Kahuku area on the northeastern portion of Oahu. The proposed project is situated on approximately 578 acres (234 ha) of privately owned land, near the U.S. Army Kahuku Training Range. Kahuku Wind Power would supply wind-generated electricity to the Hawaiian Electric Company (HECO). Kahuku Wind Power will consist of 12 Clipper 2.5-MW wind turbine generators (WTGs), an operations and maintenance building, one permanent unguyed meteorological (met) tower, three microwave towers (one on-site and two off-site), an electrical substation (Figure 1, 2), and overhead lines. Unpaved service roadways will also be created to connect the new WTGs to other project components. Up to three temporary guyed met towers will be also be erected for varying lengths of time prior to and during construction to gather meteorological data.

It is anticipated that construction and operation of Kahuku Wind Power has the potential to result in the incidental take of eight threatened and endangered species.

Kahuku Wind Power has incorporated several measures to avoid and minimize the risk to listed and other wildlife species that may be adversely impacted by the project. These measures include, but are not necessarily limited to:

- Using monopole steel tubular turbine towers rather than lattice towers. Tubular towers are considerably more visible than lattice towers and should reduce collision risk;
- The use of an unguyed instead of a guyed permanent met tower for the project site;
- Marking guy wires on temporary certification met towers (scheduled to be in place for approximately four months) with high visibility bird diverters made of spiraled PVC and twin 12 inch white poly vinyl marking tape to improve the visibility of the wires;
- Utilizing a rotor with a significantly slower rotational speed (9.6 – 15.5 rpm) compared to older designs (28.5 - 34 rpm). This increases the visibility of turbine blades during operation and decreases collision risk;
- Placing new power collection lines underground to the extent practicable to minimize the risk of collision with new wires. All overhead collection lines will be spaced according to Avian Power Line Interaction Committee (APLIC 1994) guidelines to prevent possible electrocution of the Hawaiian short-eared owl. The horizontal spacing will be at least 30 inches (75 cm, based on estimated wrist to-wrist distance), the vertical spacing at least 15 inches (38 cm, head-to-foot length) with adequate spacing between the conductors. Any jumper wires will be insulated;
- Improving drainage in areas to eliminate the accumulation of standing water after a period of heavy rains to minimize potential of attracting waterbirds to the site;
- Where feasible, minimizing night-time construction activities to avoid the use of lighting that could attract seabirds and possibly bats;
- Refraining from clearing of trees for construction at the times of the year when Hawaiian hoary bat juveniles may be present on the project site (June to August);
- Use of minimal on-site lighting at buildings and using shielded fixtures that will be utilized only on infrequent occasions when workers are at the site at night;
- A speed limit of 10mph will be observed while driving on site, to minimize collision with species listed in the HCP, in the event they are found to be utilizing habitat on site or injured.

The HCP outlines measures to mitigate for take of covered species, as well as provide a net recovery benefit. These measures are summarized as follows:

Species	Proposed Mitigation by Measured Take Level		
	Lower	Baseline	Higher
Seabirds	Same as Baseline	Mitigation for Newell's shearwater and Hawaiian petrel at Makamaka'ole or other suitable seabird nesting sites on Maui or Kauai or elsewhere	Increased predator control and fencing at the same site or additional mitigation measures at one or more additional sites on Maui or Kauai or elsewhere
Waterbirds	Same as Baseline	Predator control and vegetation maintenance at Hamakua Marsh for 3 to 5 years; subsequent mitigation efforts to meet baseline requested take as required	Increased predator control, vegetation maintenance, and monitoring at Hamakua Marsh or at one or more additional wetlands
Hawaiian short-eared owl	Same as Baseline	Upfront contribution of \$25,000 for research and rehabilitation and \$25,000 up to a maximum of \$50,000 for management as it becomes available	Additional funding of \$15,000 for research and rehabilitation and \$15,000 up to a maximum of \$30,000 to implement management strategies
Hawaiian hoary bat	Same as Baseline	Up to a maximum of \$150,000 for management of bat habitat	Low-wind speed curtailment and additional funding of \$15,000 up to a maximum of \$75,000 for management

The HCP also allows for adaptive management. Adaptive management is defined as a formal, structured approach to dealing with uncertainty in natural resources management, using the experience of management and the results of research as an on-going feedback loop for continuous improvement. Adaptive approaches to management recognize that the answers to all management questions are not known and that the information necessary to formulate answers is often unavailable. Adaptive management also includes, by definition, a commitment to change management practices when determined appropriate.

The HCP outlines detailed monitoring and reporting protocols to account for injury or mortality to the covered species, as well as to ensure avoidance, minimization, and mitigation measures are being accomplished and goals and objectives are being met.

At the August 28, 2009, Board of Land and Natural Resources meeting, the draft HCP was approved for release for public review. The Division held a public hearing on November 4, 2009, during the 60 day comment period. The only attendee at the public hearing was a member of the neighborhood board for the project area, but he did not provide testimony. The Division did not receive written testimony during the 60 day comment period. The Division did receive comments from the Office of Hawaiian Affairs, regarding concern over the duration and quality of mitigation activities outlined in the draft HCP. The Division worked closely with Kahuku Wind Power and the US Fish and Wildlife Service to revise the draft in response to the comments. Specifically,

changes were made to lengthen the duration of mitigation efforts for seabirds and waterbirds, as well as improvements to the mitigation measures. (Attachment V)

At the February 18, 2010 Endangered Species Recovery Committee (ESRC) meeting, the ESRC recommended the Board approve the HCP and ITL-10 for Kahuku Wind Power, conditional on final revisions to the HCP regarding 1) details of monitoring plan, specifically turbine search radius area and frequency, 2) details of mitigation plan, specifically seabird plan and bat plan, 3) details of funding; with these revisions to be approved by Division of Forestry and Wildlife (Attachment III). The Division has worked closely with the applicant and is satisfied that all conditions indentified by the ESRC as necessary for approval have been met.

RECOMMENDATION:

The Department recommends that the Board:

1. Approve the Kahuku Wind Power Habitat Conservation Plan accompanying Incidental Take License by the required two-thirds vote of the authorized membership, subject to review and approval by the Attorney General.
2. Approve the Implementing Agreement, subject to review and approval by the Attorney General.

Respectfully submitted,



Paul J. Conry, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson
Board of Land and Natural Resources

Attachment I. Habitat Conservation Plan

Attachment II. Incidental Take License

Attachment III. ESRC Recommendations

Attachment IV. Implementing Agreement

Attachment V. DOFAW response to OHA comments, OHA comments

ATTACHMENT II

State of Hawaii
 Department of Land & Natural Resources
 Division of Forestry and Wildlife
 1151 Punchbowl Street, Room 325
 Honolulu, Hawaii 96813

Incidental Take License No. ITL-10
 Date of Issue: _____
 Valid Until: 20 years from date of issue

INCIDENTAL TAKE LICENSE

to accompany:

Kahuku Wind Power Habitat Conservation Plan

The Board of Land and Natural Resources hereby grants permission under the authority of §195D-4(g) Hawaii Revised Statutes and all other applicable laws, to:

Kahuku Wind Power LLC
 c/o First Wind
 33 Lono Avenue, Suite 380
 Kahului, Hawai'i 96732

To: take of (if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity);

The following species:

Common Name	Scientific Name	Mitigation Tier	Annual Take Limit	Five (5) Year Take Limit	Twenty (20) Year Take Limit	Location
'Ua'u (Hawaiian petrel)	<i>Pterodroma sandwichensis</i>	Baseline	4	8	8	Lands owned or otherwise controlled by Kahuku Wind Power, LLC on the Island of Oahu, Hawaii 5-6-005:007, 5-6-5:014
		Higher	8	12	12	
'A'o (Newell's shearwater)	<i>Puffinus auricularis newelli</i>	Baseline	3	6	12	
		Higher	6	12	18	
Koloa maoli (Hawaiian duck)	<i>Anas wyvilliana</i>	Baseline	4	8	16	
		Higher	8	16	24	
Ae'o (Hawaiian stilt)	<i>Himantopus mexicanus knudseni</i>	Baseline	3	6	12	
		Higher	6	12	18	
'Alae ke'oke'o (Hawaiian coot)	<i>Fulica alai</i>	Baseline	3	6	12	
		Higher	6	12	18	

Common Name	Scientific Name	Mitigation Tier	Annual Take Limit	Five (5) Year Take Limit	Twenty (20) Year Take Limit	Location
'Ālae 'ula (Hawaiian moorhen)	<i>Gallinula chloropus sandvicensis</i>	Baseline	4	7	14	
		Higher	7	14	20	
'Ōpe'ape'a (Hawaiian hoary bat)	<i>Lasiurus cinereus semotus</i>	Baseline	7	14	21	
		Higher	14	21	32	
Pueo (Hawaiian owl)	<i>Asio flammeus sandwichensis</i>	Baseline	4	8	16	
		Higher	8	16	24	

Subject to the following conditions:

I. GENERAL CONDITIONS

1. This license only authorizes incidental take of the covered species by the permittee on the lands owned or otherwise controlled by Kahuku Wind Power LLC on the island of O'ahu, Hawaii at the time this license is issued pursuant to the "Kahuku Wind Power Habitat Conservation Plan" dated March 2010 (hereafter "HCP").
2. This license is valid only if Kahuku Wind Power LLC abides by the terms and conditions of the HCP, ITL and Implementing Agreement for the duration of the license.
3. This license is valid for species protected by federal law only if accompanied by valid federal authorization.
4. This license shall become valid upon completion of the following:
 - i. A legal representative of Kahuku Wind Power LLC has acknowledged understanding and agreement to abide by its conditions by signing two copies of Attachment I, which is attached hereto and made a part of this license.
 - ii. Both copies of the signed license must be returned to the Division of Forestry and Wildlife. Upon approval by the Chairperson of the Board of Land and Natural Resources, a copy of the license will be returned to the applicant.
5. The Board may suspend or revoke this license if the HCP is suspended or revoked. The Board may also suspend or revoke this license in accordance with applicable laws and regulations in force during the term of the license.
6. Persons in violation of the terms and conditions of this license and/or related or appropriate laws may be subject to criminal and or administrative penalty under §§183D-5, 183D-21, 195D-9, and 195D-27, Hawaii Revised Statutes, and §124-8, Hawaii Administrative Rules, or as otherwise provided by law, and/or revocation of this permit.

II. SPECIAL CONDITIONS

1. The allowable incidental take authorized by this license for the covered species includes both observed, unobserved, direct and indirect take as defined in the HCP.
2. The estimation of incidental take for the covered species will be calculated according to adjustments made to the observed direct take according to methods detailed in the HCP, including but not limited to adjustments to include unobserved and indirect take.
3. The incidental take authorized by this license for the covered species are defined by two tiered levels, each of which is identified in the HCP. In the event that the take level for a covered species is reached, incidental take at the tier 2 level is authorized, provided that Kahuku Wind Power LLC abides by the terms and conditions of the HCP for the tier 2 level for the duration of the HCP.
4. DLNR will be notified within 3 days of any mortalities, injuries, or disease observed on the property. Injured individuals or carcasses will be handled according to guidelines in the HCP.

LAURA H. THIELEN, Chairperson and
Member Board of Land and Natural Resources

- C: DOFAW O'ahu Branch
DOCARE
USFWS Pacific Islands Office, Honolulu
Senior Resident Agent, USFWS-Law Enforcement, Honolulu

Attachment No. 1 to INCIDENTAL TAKE LICENSE No. ITL-10

The undersigned has read, understands and hereby agrees to abide by General Conditions 1 - 5 and Special Conditions 1 - 5 stipulated on pages 1 through 3 in INCIDENTAL TAKE LICENSE No. ITL-10.

KAHUKU WIND POWER LLC

By: _____

Dave Cowan, Vice President Environmental Affairs

Date: _____

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

DIVISION OF FORESTRY AND WILDLIFE
1151 PUNCHBOWL ST., ROOM 325
HONOLULU, HAWAII 96813
TEL (808) 587-0166 FAX (808) 587-0160

Laura H. Thielen
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVIYANCE
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

March 11, 2010

TO: Honorable Chairperson and Members
Board of Land and Natural Resources

FROM: Endangered Species Recovery Committee (ESRC)

Loyal Meyerhoff, USFWS
Gordon Tribble, USGS
Laura H. Thielen, DLNR
Cliff Morden, Environmental Center
Patrick Hart, Appointed Member
John Harrison, Appointed Member

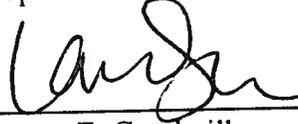
SUBJECT: ESRC conditional recommendation of approval of the Habitat Conservation Plan for Kahuku Wind Power

At the February 18, 2010 meeting of the Endangered Species Recovery Committee (ESRC), the ESRC recommended conditionally that the Board approve the HCP and ITL-10 for Kahuku Wind Power. The purpose of this Habitat Conservation Plan (HCP) is to provide for avoidance, minimization, and mitigation for potential injury and death to eight endangered and threatened species, the 'ua'u (*Pterodroma sandwichensis*), 'a'o (*Puffinus auricularis newelli*), 'a'eo (*Himantopus mexicanus knudseni*), koloa maoli (*Anas wyvillian*), 'alae 'ula (*Gallinule chloropus sandvicensis*), 'alae ke'oke'o (*Fulica alai*), pueo (*Asio flammeus sandwichensis*) and 'ōpe'ape'a (*Lasiurus cinereus semotus*). The draft HCP also outlines measures to ensure a net recovery benefit to the covered species.

The ESRC requested that three aspects of the HCP be clarified and recommends approval of the HCP by the Board on the condition that the Division can confirm these issues have been adequately clarified in the HCP. These aspects are:

- Details of monitoring plan, specifically turbine search radius area and frequency
- Details of mitigation plan, specifically seabird plan and bat plan
- Details of funding

Prepared and Submitted by:

A handwritten signature in black ink, appearing to read 'Lauren', written over a horizontal line.

Lauren E. Goodmiller
Habitat Conservation Planning Associate
Division of Forestry and Wildlife

**IMPLEMENTING AGREEMENT
KAHUKU WIND POWER GENERATING FACILITY
February __, 2010**

1.0 PARTIES

The parties to this Implementing Agreement (Agreement) are Kahuku Wind Power, LLC, a Delaware limited liability company (Licensee), and the State of Hawai'i (State) Department of Land and Natural Resources (DLNR) through its Division of Forestry and Wildlife (DOFAW).

2.0 RECITALS AND PURPOSES

2.1 Recitals. The parties have entered into this Agreement in consideration of the following facts:

(a) The Kahuku Wind Power Generating Facility (Project) project site has been determined to provide, or potentially provide, habitat for the following seven (7) federally listed threatened or endangered species: the Hawaiian stilt or ae'o (*Himantopus mexicanus knudseni*), Hawaiian coot or 'alae ke'oke'o (*Fulica alai*), Hawaiian duck or koloa maoli (*Anas wyvilliana*), Hawaiian moorhen or 'alae 'ula (*Gallinula chloropus sandvicensis*), Newell's shearwater (*Puffinus auricularis newelli*) or 'a'o, Hawaiian petrel (*Pterodroma sandwichensis*) or 'ua'u, and Hawaiian hoary bat or 'ope'ape'a (*Lasiurus cinereus semotus*); and one (1) State-listed endangered species, the Hawaiian short-eared owl or pueo (*Asio flammeus sandwichensis*); and

(b) The Licensee has developed a series of measures, described in the Habitat Conservation Plan (HCP), to minimize, mitigate and monitor, to the maximum extent practicable, the effects of take of Covered Species incidental to Licensee's Covered Activities.

2.2 Purposes. The purposes of this Agreement are:

(a) To ensure implementation of each of the terms of the HCP and provide benefit to the Covered Species;

(b) To describe the remedies and recourse in the event that any party should fail to perform its obligations as set forth in this Agreement; and

(c) To provide assurances to Licensee that as long as the terms of the HCP, the Incidental Take License (ITL), and this Agreement are met, no additional mitigation will be required of Licensee with respect to Covered species except as provided for in this Agreement or required by law and/or applicable regulations.

3.0 DEFINITIONS

The following terms as used in this Agreement will have the meanings set forth below. Terms used in this Agreement and specifically defined in regulations adopted by DLNR shall have the

same meaning as in those implementing regulations, unless this Agreement expressly provides otherwise.

3.1 “Adaptive Management” means a flexible approach to the long-term management of the fish, wildlife and habitat resources of the project area that is directed over time by the results of ongoing monitoring activities and other information.

3.2 “Changed Circumstances” means a change in circumstances affecting a Covered Species or the geographic area covered by the HCP that can reasonably be anticipated by the parties to the HCP and that can reasonably be planned for in the HCP (e.g. the listing of a new species or a fire or other natural catastrophic event in areas prone to such event). Changed Circumstances and the planned responses to those circumstances are described in Chapter 8 (“Implementation”) of the HCP. Changed Circumstances are not Unforeseen Circumstances.

3.3 “Covered Activities” means certain activities carried out by Licensee on Covered Lands that may result in incidental take of Covered Species. Covered Activities means the following activities, provided that these activities are otherwise lawful: construction and operation of 12 Clipper 2.5-MW wind turbine generators (WTGs), an operations and maintenance building, a battery energy storage system enclosure, one permanent unguyed meteorological (met) tower, three microwave towers (one on-site and two off-site), and an electrical substation (Figure 1, 2); construction of unpaved service roadways to connect the new WTGs to other project components; construction of up to three temporary guyed met towers for varying lengths of time prior to and during construction to gather meteorological data and for power-curve testing; overhead collection lines; maintenance of all of the aforementioned and related infrastructure; site visits by appointment for public education and outreach, and management of on-site vegetation in coordination with wildlife and forestry officials.

3.4 “Covered Species” means the following species, each of which the HCP addresses in a manner sufficient to meet all of the criteria for issuing an incidental take license under Chapter 195D Hawai`i Revised Statutes (“HRS”): the Hawaiian stilt or ae`o (*Himantopus mexicanus knudseni*), Hawaiian coot or `alae ke`oke`o (*Fulica alai*), Hawaiian duck or koloa maoli (*Anas wyvilliana*), Hawaiian moorhen or `alae `ula (*Gallinula chloropus sandwicensis*), Newell’s shearwater (*Puffinus auricularis newelli*) or `a`o, Hawaiian petrel (*Pterodroma sandwichensis*) or `ua`u, and Hawaiian hoary bat or `ope`ape`a (*Lasiurus cinereus semotus*); and the Hawaiian short-eared owl or pueo (*Asio flammeus sandwichensis*).

3.5 “HCP” means the Habitat Conservation Plan prepared by Licensee for the Project and includes the Hamakua Marsh Waterbird Management Plan for Kahuku Wind Power Habitat Conservation Plan (Implemented Under the Baseline Scenario for Waterbird Mitigation).

3.6 “ITL” means the Incidental Take License (ITL) issued by DLNR to Licensee pursuant to Chapter 195D HRS, for take incidental to Covered Activities relating to the Project as it may be amended from time to time.

3.7 “Licensee” means Kahuku Wind Power, LLC, a Delaware limited liability company.

3.8 “Listed Species” means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is listed as endangered or threatened under Chapter 195D-4 HRS.

3.9 “Plan Area” means the lands upon which the permits authorize incidental take of Covered Species and the lands to which the HCP’s conservation and mitigation measures apply. These lands are described in Chapters 2 and 3 of the HCP.

3.10 “Take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect any listed or unlisted Covered Species. Harm means an act that actually kills or injures a member of a Covered Species, including an act that causes significant habitat modification or degradation where it actually kills or injures a member of a Covered Species by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

3.11 “Unforeseen Circumstances” means a change in circumstances affecting a species or geographic area covered by a conservation plan that could not have been reasonably anticipated by Licensee and DLNR at the time of the HCP’s negotiation and development, and that result in a substantial and adverse change in the status of the Covered Species.

3.12 “Unlisted Species” means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is not listed as endangered or threatened under State law, including proposed, candidate and other species.

4.0 OBLIGATIONS OF THE PARTIES

4.1 Obligations of Licensee.

4.1.1 General

(a) Chapter 6 of the HCP identifies impacts to Covered Species from Covered Activities. As identified in Chapter 7 of the HCP, the Licensee is to perform measures to avoid, minimize and monitor those impacts to Covered Species during the Covered Activities. In addition, as identified in Chapters 7 and 8 of the HCP, the Licensee will undertake mitigation measures and implement a monitoring program in order to assure that potential effects on Covered Species are mitigated so as to achieve a net recovery benefit. As identified in Chapter 8 of the HCP, the Licensee will engage in monitoring and adaptive management. The Licensee’s activities under the HCP will be subject to DLNR review and approval as described in the HCP.

(b) The Licensee will fully and faithfully perform all obligations assigned to it under this Agreement, the ITL and the HCP.

(c) Funding for implementation of the HCP shall be included as an annual operating expense of the Project; provided, however, that the maximum amount to be spent for implementation of the HCP over the life of the Project shall not exceed \$2.75M for the Baseline tier (or \$3.85M for the Baseline tier plus waterbird and monitoring contingencies if they are triggered, or \$4.59M for take at the Higher tier plus waterbird and monitoring contingencies, if

triggered, or \$5.38M for take at the Higher tier plus waterbird and monitoring contingencies, if triggered, plus all four mitigation contingencies if fully escalated to Year 20 and expended per 4.1.1.(d)). Assurances that adequate funding will be available to support the proposed monitoring and mitigation measures will be provided by Licensee in the form of a bond, letter of credit ("LC") or similar instrument (the "Surety") naming DLNR as the beneficiary. Licensee will provide a Surety in the amount of \$500,000 to secure the obligation to fund implementation of the HCP. The Surety will have a term of one year, and will be automatically renewed prior to expiration, unless it is determined to no longer be necessary by DLNR. DLNR may draw upon the Surety to fund or otherwise pay for any outstanding mitigation obligations of the Project only in the event that Licensee fails to fund or otherwise pay for the proposed monitoring and mitigation measures when required under the HCP or in the event that Licensee is bankrupt.

(d) The Licensee will establish an additional letter of credit or other credit support in the amount of \$475,000 in order to support the four (4) contingency funds specified for each of the Covered Species in Chapter 7 of the HCP. The separate amounts of the four (4) contingency funds are as follows: \$150,000 for the Seabird Contingency Fund; \$150,000 for the Waterbird Contingency Fund; \$75,000 for the Hawaiian Short-eared Owl Contingency Fund; and \$100,000 for the Hawaiian Hoary Bat Contingency Fund. The amount of the letter of credit or other credit support will increase at 2.5% annually over the term of the HCP. If contingency funds are used, the amount of the bond would be reduced accordingly, and the net amount would continue to increase at a 2.5% annual rate.

4.2 Obligations of DLNR. Upon execution of this Agreement by all parties, and satisfaction of all other applicable legal requirements, DLNR will issue Licensee an Incidental Take License (ITL) under Chapter 195D HRS, authorizing incidental take by Licensee of each Covered Species resulting from Covered Activities on Covered Lands.

4.2.1 ITL coverage. The ITL will identify all Covered Species. The ITL will take effect for Covered Species at the time the ITL is issued.

4.2.2 "No surprises" assurances. Provided that Licensee has complied with its obligations under the HCP, this Agreement, and the ITL (including any provisions for changed circumstances, adaptive management, or any other contingency measures provided for in the HCP), DLNR can require Licensee to provide mitigation beyond that provided for in the HCP only under Unforeseen Circumstances, and only in accordance with the "No Surprises" requirements set forth in Section 8.7 of the HCP.

4.3 Interim obligations upon a finding of Unforeseen Circumstances. If DLNR makes a finding of Unforeseen Circumstances, during the period necessary to determine the nature and location of additional or modified mitigation, Licensee will avoid contributing to appreciably reducing the likelihood of the survival and recovery of the affected species.

5.0 INCORPORATION OF HCP

The HCP and each of its provisions are intended to be and by this reference are incorporated herein. In the event of any direct contradiction between the terms of this Agreement and the

HCP, the terms of this Agreement will control. In all other cases, the terms of this Agreement and the terms of the HCP will be interpreted to be supplementary to each other.

6.0 MONITORING AND REPORTING

6.1 Planned period reports. As described in the HCP, Licensee will submit periodic reports describing its activities and results of the monitoring program provided for in the HCP.

6.2 Other reports. The Licensee will provide, within 30 days of being requested by DLNR, any additional information in its possession or control related to implementation of the HCP that is requested by DLNR for the purpose of assessing whether the terms and conditions of the permits and the HCP, including the HCP's adaptive management plan, are being fully implemented.

6.3 Certification of reports. All reports will include the following certification from a responsible company official who supervised or directed preparation of the report:

I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate and complete.

6.4 Monitoring by DLNR. DLNR may conduct inspections and monitoring in connection with the permits in accordance with Chapter 195D HRS and any regulations adopted under that statute.

7.0 CHANGED CIRCUMSTANCES

7.1 General

(a) Chapter 8 of the HCP identifies Changed Circumstances. The Licensee shall carry out the responses identified in that chapter, including coordination with DLNR and other agencies as appropriate.

(b) The Parties acknowledge that, notwithstanding the assurances provided by Section 4.2 herein, future modifications to mitigation that are specifically contemplated under the HCP and this agreement may require adjustments in the mitigation program set forth in the HCP as of the effective date, including Adaptive Management changes in the Plan Area. Such changes are part of the operating conservation program, and do not violate the assurances of Section 4.2. In particular, mitigation actions related to Changed Circumstances and to changes in mitigation deriving from Adaptive Management of the Plan Area remain the responsibility of the Licensee in accordance with the responsibilities under the HCP and this agreement and do not violate the assurances of Section 4.2. Notwithstanding the foregoing, the Parties further acknowledge that such modifications to the mitigation program described in the HCP shall not require funding in addition to that set forth in the HCP.

7.2 Notification of Changed and Unforeseen Circumstances

7.2.1 Licensee-initiated response to Changed Circumstances. Licensee will give notice to DLNR within seven days after learning that any of the Changed Circumstances listed in Chapter 8 of the HCP has occurred. As soon as practicable thereafter, but no later than 30 days after learning of the Changed Circumstances, Licensee will modify its activities in the manner described in Chapter 8 of the HCP to the extent necessary to mitigate the effects of the Changed Circumstances on Covered Species, and will report to DLNR on its actions. Licensee will make such modifications without awaiting notice by DLNR.

7.2.2 DLNR-initiated response to Changed Circumstances. If DLNR determines that Changed Circumstances have occurred and that Licensee has not responded in accordance with Chapter 8 of the HCP, DLNR will so notify Licensee and will direct Licensee to make the required changes. Within 30 days after receiving such notice, Licensee will make the required changes and report to DLNR on its actions. Such changes are provided for in the HCP, and hence do not constitute Unforeseen Circumstances or require amendment of the permits or HCP.

7.3 Listing of species that are not Covered Species.

(a) The Parties acknowledge that the HCP covers eight (8) species listed as endangered or threatened under State law which have been found or are likely to be found in the Plan Area. The Parties further acknowledge that the HCP, this Agreement and the ITL do not authorize any take, or violation of State law, with respect to species other than Covered Species which are listed as endangered or threatened, or with respect to species that are listed subsequent to the Effective Date. When and if a species that is not a Covered Species is listed under State law or a Listed Species other than a Covered Species in the Plan Area is found to be affected by the Project, the Parties shall follow the procedures of this Section including, if necessary, amendments to the ITL.

(b) If a species which is not included as a Covered Species in the HCP is proposed for listing under State law during the term of this Agreement, including a proposal for listing on an emergency basis, and DLNR determines that the species may be affected by the Covered Activities, DLNR shall notify the Licensee of the proposed listing as early as feasible. Similarly, DLNR shall notify the Licensee if other Listed Species are found to be present in the Plan Area.

(c) The Licensee shall evaluate the potential effect of the Covered Activities on the species identified in paragraphs (a) and (b) above, based on the HCP, the information developed through the ongoing management of the Plan Area and other relevant information, and the Licensee shall inform DLNR in writing of its determination with regard to such potential effect.

(d) If the Licensee notifies DLNR that the Covered Activities may affect the species, or if DLNR disagree with the Licensee's determination that the Covered Activities will not affect the species, the Parties shall meet and confer in order to develop an appropriate response.

(e) If DLNR determines, after consultation with the Licensee, that feasible modifications in the Adaptive Management program or minor adjustments in the Covered Activities can be used to assure that the Covered Activities remain in compliance with Chapter 195D HRS, the Licensee will implement those changes and no amendment to the HCP, this Agreement or the ITL will be necessary. If DLNR determines after consultation with Licensee that more substantial modifications are necessary in order to remaining compliance with Chapter 195D HRS, such modification may be made by minor modifications pursuant to Section 12.1 of this Agreement or by standard amendment pursuant to Section 12.2 of this Agreement.

8.0 ADAPTIVE MANAGEMENT

8.1 Adaptive management. Parties will implement the adaptive management provisions in Section 8.3 of the HCP when changes in management practices are necessary to remain in compliance with Chapter 195D HRS, to achieve the HCP's biological goals and objectives or to respond to monitoring results or new scientific information as provided for in the HCP.

8.2 DLNR-initiated adaptive management. If DLNR determines that one or more of the adaptive management provisions in the HCP have been triggered and that Licensee has not changed its management practices in accordance with Chapter 8 of the HCP, DLNR will so notify Licensee and will direct Licensee to make the required changes. Within 30 days after receiving such notice, Licensee will make the required changes and report to DLNR on its actions. Such changes are provided for in the HCP, and hence do not constitute Unforeseen Circumstances or require amendment of the ITL or HCP, except as provided in this section.

8.3 No reduction in conservation benefit. Licensee will not implement adaptive management changes that may result in less mitigation or a lower recovery benefit than provided for Covered Species under the original terms of the HCP, unless DLNR first provides written approval. The amount of money spent on mitigation may be less than the estimated amounts included in Appendix 6 of the HCP, provided the mitigation is sufficient to provide a net conservation benefit to the species. Licensee may propose any such adaptive management changes by notice to DLNR, specifying the adaptive management modifications proposed, the basis for them, including supporting data, and the anticipated effects on Covered Species, and other environmental impacts. Within 120 days of receiving such notice, DLNR will approve the proposed adaptive management changes, approve them as modified by DLNR, or notify Licensee that the proposed changes constitute permit amendments that must be reviewed under Section 12.2 of this Agreement.

8.4 No increase in take. This section does not authorize any modifications that would result in an increase in the amount and nature of take, or increase the impacts of take, of Covered Species beyond that analyzed under the original HCP and any amendments thereto. Any such modification must be reviewed as a permit amendment under Section 12.2 of this Agreement.

9.0 FUNDING

Licensee warrants that it has, and will expend, such funds as may be necessary to fulfill its obligations under the HCP. Licensee will promptly notify DLNR of any material change in Licensee's financial ability to fulfill its obligations. In addition to providing any such notice, Licensee will provide DLNR with a copy of its annual report each year of the ITL, or with such other reasonably available financial information that the Parties agree will provide adequate evidence of Licensee's ability to fulfill its obligations.

10.0 EFFECTIVE DATE AND TERM

10.1 Effective date and term of the Agreement. This Agreement and the HCP will become effective on the date that DLNR issues its ITL. This Agreement, the HCP and the ITL will remain in effect for a period of twenty (20) years from issuance of the original ITL, except as provided below.

10.2 ITL suspension or revocation. DLNR may suspend or revoke its ITL for cause in accordance with the laws and regulations in force at the time of such suspension or revocation, except that DLNR may revoke the ITL based on a determination that the continuation of the permitted activity would be likely to jeopardize the continued existence of the Covered Species only if DLNR have not been successful in remedying the situation in a timely fashion through other means.

10.3 Relinquishment of the ITL.

10.3.1 Generally. Licensee may relinquish the ITL in accordance with the regulations of DLNR in force on the date of such relinquishment. Notwithstanding relinquishment of the ITL, Licensee will be required to provide post-relinquishment mitigation for any take of Covered Species that DLNR determines will not have been fully mitigated under the HCP by the time of relinquishment. Licensee's obligations under the HCP and this Agreement will continue until DLNR notifies Licensee that no post-relinquishment mitigation is required, or that all post-relinquishment mitigation required by DLNR is completed. Unless the Parties agree otherwise, DLNR may not require more mitigation than would have been provided if Licensee had carried out the full term of the HCP.

10.3.2 Procedure for relinquishment. If Licensee elects to relinquish the ITL before expiration of the full term of the HCP, Licensee will provide notice to DLNR at least 120 days prior to the planned relinquishment. Such notice will include a status report detailing the nature and amount of take of all Covered Species, the mitigation provided for those species prior to relinquishment, and the status of Licensee's compliance with all other terms of the HCP. Within 120 days after receiving a notice and status report meeting the requirements of this paragraph, DLNR will give notice to Licensee stating whether any post-relinquishment mitigation is required and, if so, the amount and terms of the mitigation, and the basis for the DLNR conclusion. If DLNR determines that no post-relinquishment mitigation is required, all obligations assumed by the Parties under this Agreement will terminate upon the DLNR issuance of such notice. If Licensee disagrees with the DLNR determination, the Parties may choose to use the dispute resolution procedures described in Section 13 of this Agreement. Licensee will continue to carry out its obligations under the HCP until any such dispute is resolved. If the

Parties are unable to agree, DLNR will have the final authority to determine whether Licensee is required to provide post-relinquishment mitigation.

10.3.3 Extension of the ITL. Upon agreement of the Parties and compliance with all applicable laws, the ITL may be extended beyond its initial term under regulations of DLNR in force on the date of such extension. If Licensee desires to extend the ITL, it will so notify DLNR at least 180 days before the then-current terms are scheduled to expire. Extension of the ITL constitutes extension of the HCP and this Agreement for the same amount of time, subject to any modifications that DLNR may require at the time of extension.

11.0 LAND TRANSACTIONS

11.1 Acquisition of land by Licensee. Nothing in the agreement, the HCP or the ITL limits Licensee's right to acquire additional lands. Any lands that may be acquired will not be covered by the ITL except upon amendment of the ITL as provided in Section 12.2 of this Agreement.

11.2 Disposal of land by Licensee. DLNR ITLs may be transferred in accordance with regulations in force at the time of transfer. Licensee's transfer of ownership or control of Covered Lands will require prior approval by DLNR and an amendment of the ITL in accordance with Section 12.2 of the Agreement, except that transfers of Covered Lands may be processed as minor modifications in accordance with Section 12.1 of this Agreement if:

(a) The land will be transferred to an agency of the federal government and, prior to transfer, DLNR has determined that transfer will not compromise the effectiveness of the HCP based on adequate commitments by that agency regarding management of such land;

(b) The land will be transferred to a non-federal entity that has entered into an agreement acceptable to DLNR (e.g. an easement held by the County of Maui with DLNR as third-party beneficiaries) to ensure that the lands will be managed in such a manner and for such duration so as not to compromise the effectiveness of the HCP;

(c) The land will be transferred to a non-federal entity that, prior to completion of the land transaction, has agreed to be bound by the HCP as it applies to the transferred land and has obtained an incidental take license following normal permit procedures covering all species then covered by the Licensee's ITL; or

(d) DLNR determines that the amount of land to be transferred will not have a material impact on the ability of the Licensee to comply with the requirements of the HCP and the terms and conditions of the ITL.

12.0 MODIFICATIONS AND AMENDMENTS

12.1 Minor modifications.

(a) Minor modifications to the HCP shall not require amendment of this Agreement or the ITL.

(b) Minor modifications are modifications to the HCP of a minor or technical nature where the effect on Covered Species and levels of incidental take are not significantly different than those described in the HCP as originally adopted. Minor modifications to the HCP which would not require amendment of the ITL may include modifications that are minor in relation to the HCP and to which DLNR agrees. They include, but are not limited to, corrections of typographic, grammatical, and similar editing errors that do not change the intended meaning; correction of any maps or exhibits to correct errors in mapping or to reflect previously approved changes in the ITL or HCP; and minor changes to survey, monitoring or reporting protocols. Any other modifications to the HCP will be processed as amendments in accordance with Section 12.2.

(c) Any Party may propose minor modification of the HCP or this Agreement by providing notice to all other Parties. Such notice shall include a statement of the reason for the proposed modification and an analysis of its environmental effect, including its effects on operations under the HCP and on Covered Species.

(d) The Parties will use best efforts to respond to proposed modifications within 60 days of receipt of such notice. Proposed modifications will become effective upon all other Parties' written approval. If, for any reason, a receiving Party objects to a proposed modification, it must be processed as an amendment of the ITL in accordance with subsection 12.2 of this section. DLNR will not propose or approve minor modifications to the HCP or this Agreement if DLNR determines that such modifications would result in (i) operations under the HCP that are significantly different from those analyzed in connection with the original HCP, (ii) adverse effects on the environment that are new or significantly different from those analyzed in connection with the original HCP, or (iii) additional take not analyzed in connection with the original HCP.

12.2 Standard Amendment

(a) Standard amendments to the HCP shall mean any amendments which are not treated as minor modifications. Standard amendments to the HCP shall require an amendment to this Agreement and to the ITL.

(b) The Parties anticipate that amendment of the ITL will be treated as an original permit application, pursuant to applicable legal requirements under Chapter 195D HRS and applicable regulations. Such applications typically require submittal of a revised Habitat Conservation Plan, a complete permit application form with appropriate fees, a revised implementation agreement, and may require environmental review documents prepared in accordance with State law. However, the Parties acknowledge that specific documentation requirements may vary based on the nature of the amendment.

13.0 REMEDIES, ENFORCEMENT AND DISPUTE RESOLUTION

13.1 In general. Except as set forth below, each Party shall have all remedies otherwise available to enforce the terms of this Agreement, the ITL and the HCP.

13.2 No monetary damages. No Party shall be liable in damages to any other Party or other person for any breach of this Agreement, any performance or failure to perform a

mandatory or discretionary obligation imposed by this Agreement or any other cause of action arising from this Agreement.

13.3 Injunctive and temporary relief. The Parties acknowledge that the Covered Species are unique and that therefore injunctive and temporary relief may be appropriate to ensure compliance with the terms of this Agreement.

13.4 Dispute resolution. The Parties recognize that disputes concerning implementation of, compliance with, or termination of this Agreement, the HCP and the ITL may arise from time to time. The Parties agree to work together in good faith to resolve such disputes, using the informal dispute resolution procedures set forth in this section, or such other procedures upon which the Parties may later agree. However, if at any time any Party determines that circumstances so warrant, it may seek any available remedy without waiting to complete the informal dispute resolution.

13.5 Informal dispute resolution process. Unless the Parties agree upon another dispute resolution process, or unless an aggrieved Party has initiated administrative proceedings or suit in State court as provided in this section, the Parties may use the following process to attempt to resolve disputes:

(a) The aggrieved Party will notify the other Parties of the provision that may have been violated, the basis for contending that a violation has occurred, and the remedies it proposes to correct the alleged violation.

(b) The Party alleged to be in violation will have 30 days, or such other time as may be agreed, to respond. During this time it may seek clarification of the information provided in the initial notice. The aggrieved Party will use its best efforts to provide any information then available to it that may be responsive to such inquiries.

(c) Within thirty (30) days after such response was provided or was due, representatives of the Parties having authority to resolve the dispute will meet and negotiate in good faith toward a solution satisfactory to all Parties, or will establish a specific process and timetable to seek such a solution.

(d) If any issues cannot be resolved through such negotiations, the Parties will consider non-binding mediation and other alternative dispute resolution processes and, if a dispute resolution process is agreed upon, will make good faith efforts to resolve all remaining issues through that process.

14.0 MISCELLANEOUS PROVISIONS

14.1 No partnership. Neither this Agreement nor the HCP shall make or be deemed to make any Party to this Agreement the agent for or the partner of any other Party.

14.2 Notices. Any notice permitted or required by this Agreement shall be in writing, delivered personally to the persons listed below, or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any Party may from time to time specify to the

other Parties in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by certified mail. Notices shall be transmitted so that they are received within the specified deadlines.

Chairman of the Board
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809
Telephone: 808-587-0400
Telefax: 808-587-0390

Kahuku Wind Power, LLC
810 Richards Street, Suite 650
Honolulu, HI 96813
Telephone: 808-695-3330
Telefax: 808-572-8378

With a copy to:

First Wind Energy, LLC
179 Lincoln Street, Suite 500
Boston, MA 02111
Attention: General Counsel
Telephone: 617-960-9640
Telefax: 617-960-2889

14.3 Entire agreement. This Agreement, together with the HCP and the ITL, constitutes the entire agreement among the Parties. It supersedes any and all other agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein.

14.4 Elected officials not to benefit. No member of the Hawaii State Legislature shall be entitled to any share or part of this Agreement, or to any benefit that may arise from it.

14.5 Availability of funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the State of Hawaii. The Parties acknowledge that DLNR will not be required under this Agreement to expend any State agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

14.6 Duplicate originals. This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties hereto.

14.7 No third-party beneficiaries. Without limiting the applicability of rights granted to the public pursuant to Chapter 195D HRS or any other state law, this Agreement shall not create any right or interest in the public, or any member thereof, as a third party beneficiary hereof, nor shall it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this agreement. The duties, obligations and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing law.

14.8 Relationship to other authorities. The terms of this Agreement shall be governed by and construed in accordance with Chapter 195D HRS and applicable State law. In particular, nothing in this Agreement is intended to limit the authority of DLNR to seek penalties or otherwise fulfill their responsibilities under Chapter 195D HRS. Moreover, nothing in this Agreement is intended to limit or diminish the legal obligations and responsibilities of DLNR as an agency of the State government.

14.9 References to regulations. Any reference in this Agreement, the HCP or the ITL to any regulation or rule of DLNR shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

14.10 Applicable laws. All activities undertaken pursuant to this Agreement, the HCP, or the ITL must be in compliance with all applicable State and federal laws and regulations.

14.11 Successors and assigns; Assignment. This Agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns. Assignment or other transfer of the ITL shall be governed by DLNR regulations in force at the time of assignment or transfer. Licensee shall be entitled to assign this Agreement to an affiliate of Licensee and shall be entitled to collaterally assign this Agreement to any financing party or lender providing financing for the Project.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the later date that DLNR issues its ITL.

BY _____ Date _____
Chairman of the Board
Department of Land and Natural Resources
State of Hawai'i

BY _____ Date _____
Evelyn Lim, Secretary
Kahuku Wind Power, LLC

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

DIVISION OF FORESTRY AND WILDLIFE
1151 PUNCHBOWL ST., ROOM 325
HONOLULU, HAWAII 96813
TEL. (808) 587-0166 FAX (808) 587-0160

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCE
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENGINEERING
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

March 1, 2010

TO: Clyde W. Nāmu‘o, Administrator
Office of Hawaiian Affairs

FROM: Paul J. Conry, Administrator
Division of Forestry and Wildlife

A handwritten signature in black ink, appearing to read "Paul J. Conry".

SUBJECT: DOFAW response to OHA comments on Draft Habitation Conservation Plan for
Kahuku Wind Power

We appreciate your comments on the draft Habitat Conservation Plan (HCP) for Kahuku Wind Power, as well as your commitment to long term conservation goals for threatened and endangered species. OHA commented that:

"We note that after three years proposed baseline mitigations for seabirds drop 80%, for waterbirds there is none, for owls there is nothing proposed beyond the initial investment and for bats beyond the initial funding the applicant "will consider" lowering the speed of project operations."

"OHA notes that long term 20 year take limits have been estimated and we ask that equitable long term commitments to provide a net benefit to the species impacted by this proposal be generated by the parties in this HCP."

The Division appreciates that inadequate information was provided in the HCP to justify the likelihood of net recovery benefit to the species. In order to address this concern, we have collaborated with Kahuku Wind Power and the U.S. Fish and Wildlife Service to revise the Habitat Conservation Plan. Specific to your comments, changes were made to lengthen the duration of mitigation efforts for seabirds and waterbirds, as well as improvements to the mitigation measures. These revisions are detailed in Section 7.0 Mitigation Measures, Appendix 11 and Appendix 14 of the HCP.

Per Hawaii Revised Statutes, Chapter 195D-30, a Habitat Conservation Plan is required to provide a net recovery benefit to covered species. The mitigation measures were developed using the best available data to address the most pressing threats to covered species to ensure net recovery benefit.

PHONE (808) 594-1888

FAX (808) 594-1865



STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
711 KAPI'OLANI BOULEVARD, SUITE 500
HONOLULU, HAWAII 96813

HRD09/4609

August 25, 2009

Paul Conry, Administrator
Department of Natural Resources
1151 Punchbowl Street, Room 325
Honolulu, Hawai'i 96813

RE: Request for comments on the proposed Kahuku Wind Power Draft Habitat Conservation Plan (HCP), O'ahu.

Aloha e Paul Conry,

The Office of Hawaiian Affairs (OHA) is in receipt of the above-mentioned letter dated July 20, 2009. OHA has reviewed the project and offers the following comments.

OHA is having trouble understanding the long-term commitment demonstrated in this HCP and how the applicant will contribute to the recovery of these species in the future. We note that after three years proposed baseline mitigations for seabirds drops 80%, for waterbirds there is none (page 77 of the HCP states that mitigation measures may not be needed), for owls there is nothing proposed beyond the initial investment (see HCP, section 7.5) and for bats beyond the initial funding the applicant "will consider" lowering the speed of project operations (see HCP, section 7.6.3).

OHA notes that long-term 20 year take limits have been estimated and we ask that equitable long-term commitments to provide a net benefit to the species impacted by this proposal be generated by the parties in this HCP.

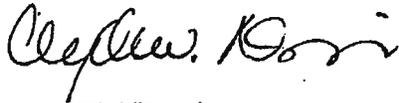
We do recognize the need to update our renewable energy portfolio and to be more aggressive in our efforts in moving towards enforceable standards and potential sources of renewable energy. In these terms we are supportive of this proposal. However, we are unwilling to rush into expedited reviews and actions at the potential expense of our valued resources.

Paul Conry
August 25, 2009
Page 2

The Interim Guidelines to Avoid and Minimize Wildlife Impacts from Wind Turbines recommends an average of three years monitoring data should be collected and used to determine peak use dates for specific sites. While this recommendation is for seasonal concentrations, it does establish a level of data collection that we did not see reflected in this document. (for example, HCP, section 3.8) Our concerns are somewhat amplified by the project's location, which is inland from an undisturbed coastal area and directly in between two wildlife refuges known to attract birds.

Thank you for the opportunity to comment. If you have further questions, please contact Grant Arnold by phone at (808) 594-0263 or e-mail him at granta@oha.org.

'O wau iho nō me ka 'oia'i'o,



Clyde W. Nāmu'o
Administrator