

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

November 12, 2010

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

PSF No.: 06MD-161

MAUI

Issuance of a Direct Lease to Kaheawa Wind Power II, LLC, Together with Easements for Access, Utilities, and Covering a Portion of State Land Under the Operation of General Lease No. S-5731, for Commercial Renewable Wind Energy Generation Facility Purposes, and Delegate to the Chairperson the Authority to Negotiate the Final Terms and Conditions of the Lease at Olowalu-Ukumehame, Lahaina, Maui, Tax Map Key (TMK): (2) 3-6-01: Portion 14, and (2) 4-8-01: Portion of 1.

APPLICANT:

Kaheawa Wind Power II, LLC a Delaware Limited Liability Company.

LEGAL REFERENCE:

Sections 171-95 and 171-95.3, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of the Government (Crown) Land of Ukumehame, situated at Ukumehame, Lahaina, Wailuku, Maui, identified by TMK: (2) 3-6-01: Portion 14 and (2) 4-8-01: Portion 1, as shown on the attached vicinity and site plan maps labeled Exhibit A.

AREA:

143 acres, more or less, which include the shared use of approximately eight (8) acres under the operation of General Lease No. S-5731 issued to Kaheawa Wind Power, LLC, an affiliate of the Applicant. The eight (8) acre portion is in close proximity to the proposed Kaheawa Wind Power II, LLC, site.

The above areas are subject to confirmation by the Department of Accounting and General Services, Survey Division.

ZONING

State Land Use District: Conservation
County of Maui CZO: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the State Constitution: NO

CURRENT USE STATUS:

TMK: (2) 3-6-01: 14, a portion of which is the site of the proposed Kaheawa Wind Power II, LLC facility, is vacant and unencumbered.

The eight (8) acre portion of TMK: (2) 4-8-01: 1 is under the operation of General Lease No. S-5731, issued to Kaheawa Wind Power, LLC, for renewable wind energy generation facility purposes. As noted earlier, Kaheawa Wind Power, LLC, is affiliated with the Applicant.

CHARACTER OF USE:

Construct, operate, and maintain a commercial renewable wind energy generation facility for the production of electrical power to be sold to an electric utility company.

LEASE TERM:

Twenty-one (21) years with an option to extend twenty (20) additional years, subject to a rental reopening and a mutual agreement to amend or modify the lease to reflect the then current industry leasing standards for wind energy projects.

The access easement, utility easement, and easement covering the shared portion of General Lease No. 5731, shall be co-terminus with the proposed subject lease.

COMMENCEMENT DATE:

On or before November 24, 2010, as approved by the Chairperson.

ANNUAL RENT:

The lease rent for the first year of the lease is waived, pursuant to Section 171-6(7), HRS, as amended, which allows the Board of Land and Natural Resources (Board) to waive the first year's rent on any industrial, commercial or business use of public land requiring substantial improvements.

The Department's Land Division staff appraiser report recommended the following rents:

The first 10 years of the lease term to be the greater of \$150,000 per year or 2.5% of gross revenues.

The rent for the remaining term to be renegotiated with the

recommendation that the percentage rent be no lower than 2.5% or greater than 3.5% in keeping with the industry range.

A copy of the appraisal report is attached as Exhibit B.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

The rent shall be reopened and redetermined as of the day following the expiration of the 10th year of the term and at repowering.

"Repowering" shall mean (1) the renewal or replacement of the majority (more than 80%) of the wind turbines as evidenced by, but not limited to, contemporaneous replacement of the wind turbines with different models or (2) a significant modification to that portion of the facility located on the premises such that a significant revision to the existing land use permit or a new land use permit is required for the premises.

However "Repowering" shall not mean (1) reuse of the facility improvements, including roads, erosion control and premises access improvements, meteorological towers or transmission interconnection related to the premises, (2) replacement of the facility substation for any reasons, (3) replacement of the wind turbines on the premises with substantially the same make and model in the same locations, or (4) replacement of any or all of the wind turbines and facility improvements on the premises as a result of casualty or loss.

PERFORMANCE BOND:

The performance bond shall be due prior to the commencement of on-site construction. The performance bond shall be in the amount of \$1,500,000.

IMPROVEMENTS:

The Applicant is proposing to construct, operate, and maintain a commercial renewable wind energy generation facility comprised of fourteen (14) wind turbines, access roadways, and supporting equipment producing up to twenty-one (21) megawatts of electrical power on TMK: (2) 3-6-01: Portion 14.

On TMK: (2) 4-8-01: Portion 1, an easement would be issued to the Applicant to construct, operate, and maintain supporting equipment necessary to the operation of the Kaheawa Wind Power II, LLC, facility.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The subject State-owned land is located in the State Conservation District, accordingly, the Applicant's compliance with Chapter 343 requirements has been addressed through the conservation district permitting process.

The Applicant's Conservation District Use Permit (CDUP) No. MA-3533 was approved by the Department on August 17, 2010 under Agenda Item K-2. The Applicant's Final Environmental Impact Statement was accepted by the Department on May 19, 2010. The Final Environmental Impact Statement was published in the Office of Environmental Quality Control Environmental Notice on June 8, 2010.

The Applicant has developed a Habitat Conservation Plan (HCP) in conjunction with the US Department of Fish and Wildlife Service (USFWS) and the State Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW). The draft HCP has completed public comment at the state level and the final version was approved by the Endangered Species Recovery Committee (ESRC) at its September 16, 2010 meeting. The Applicant anticipates final approval of the HCP in November 2010 by USFWS and the Board.

DCCA VERIFICATION:

Place of business registration confirmed: YES
Registered business name confirmed: YES
Applicant in good standing confirmed: YES

APPLICANT REQUIREMENTS:

1. Obtain final approval of the HCP by USFWS and the Board.
2. Secure project-financing commitments.
3. Provide Survey maps and descriptions according to Department of Accounting and General Services, Survey Division.

REMARKS:

At its September 22, 2006, meeting, under agenda item D-5, the Board approved, as amended, the issuance of a direct lease, in principle, to Kaheawa Wind Power II, LLC, the Applicant, for a commercial renewable wind energy generation facility. The Board amended item D-5 by authorizing the Department to issue a right-of-entry to the Applicant to conduct a flora and fauna study.

The Applicant has obtained a Conservation District Use Permit, completed an archeological survey of the site, conducted a flora and fauna assessment and completed wind tests for the site. The

Applicant's decision to pursue a different site containing 143 acres instead of the original 325-acre site was to avoid areas of native flora and fauna.

This item is being brought back to the Board for its final approval of the direct issuance of a lease to the Applicant for a commercial renewable wind energy generation facility.

The Applicant, an affiliate of First Wind Holdings, LLC (First Wind), proposes to construct, operate, and maintain a twenty-one (21) megawatt renewable wind energy generation facility on 143 acres of the Government (Crown) Lands of Ukumehame, Lahaina, Wailuku, located in the Conservation district at Maalaea, on the island of Maui.

The proposed facility would occupy a portion of two State-owned parcels identified by TMK: (2) 3-6-01: Portion 14 and TMK: (2) 4-8-01: Portion 01.

The Applicant's proposed renewable wind energy generation facility would be similar and located adjacent to the existing thirty (30) megawatt Kaheawa Wind Power facility that commenced operating in the summer of 2006. The existing Kaheawa Wind Power facility is on 200 acres of former Kaheawa Pasture lands, under the operation of General Lease No. S-5731, issued to Kaheawa Wind Power, LLC for use as a commercial renewable wind energy generation facility. The proposed site's close proximity to the existing facility would allow the Applicant to utilize infrastructure developed for the existing facility and in doing so reduce the proposed facility's adverse environmental impacts by minimizing its overall footprint.

The renewable energy generated via wind power at the Kaheawa Wind Power II facility will be sold to Maui Electric Company, Ltd. The electricity will assist the State of Hawaii in its efforts to meet the renewable (energy) portfolio standard established under Section 269-92, HRS, as amended. The indigenous renewable wind energy would provide a hedge against future fossil or bio-fuel cost increases. It would also provide environmental benefits in the form of reduced emissions of greenhouse gases and other pollutants.

On September 20, 2010, the Applicant and Maui Electric Company, Ltd., entered into a Power Purchase Agreement (PPA) for a twenty (20) year term with an indefinite extension option.

Compliance with Chapter 343 requirements has been satisfied through the Applicant's CDUP as approved by the Department with conditions and the Final Environmental Impact Statement which has been accepted by the Department. The Applicant anticipates final approval of the HCP in November 2010.

The Kaheawa Wind Power II, LLC, facility was originally planned for a location to the west and south of the existing Kaheawa Wind Power, LLC, facility. Further diligence and studies revealed that the original location would require a significant amount of additional access roads and would place the facility close to the existing nene release pen and native vegetation areas. The proposed new location of the facility minimizes the footprint of the disturbed area and is further away from the existing nene release pen and native vegetation areas.

The Applicant has satisfied Section 171-95.3, HRS, as amended, by submitting a project description to the Department of Land and Natural Resources and the Department of Business, Economic Development and Tourism. The project description is attached as Exhibit C.

Further, the Applicant has satisfied Section 171-95.3(c) and (d), relating to public hearings including the requirement that the Board's award of a renewable energy lease be done on the island affected.

The construction of the proposed facility will be financed through a combination of First Wind equity and a construction loan. Upon the Commercial Operations Date of the facility, the construction loan is expected to be repaid with the proceeds from an Investment Tax Credit (ITC) grant and the proceeds of a term loan or tax equity financing. The typical source of construction and term loans is the commercial bank market. Although the tax equity market is not as deep as the commercial banking market, Applicant notes that it has strong relationships with multiple organizations in this market and is currently in the process of cultivating new relationships with tax equity investors as well as other commercial banks. Applicant further notes it will not be able to obtain a project financing commitment without land control: e.g. Applicant must obtain an executed General Lease with the State prior to securing financing, as such Applicant requests the execution of the General Lease in advance of project financing.

Over the past two years, the ITC grant has played an important part of the financing plan for several of First Wind's projects. Applicant expects the ITC grant to be an important source of capital for the proposed project. In order for the project to be ITC grant eligible, construction must begin by December 1, 2010 and proceed continuously until construction is substantially complete and the project is commercially operational.

Construction of the facility is targeted to commence with on-site mobilization on December 1, 2010 with a target Commercial Operations Date in the 4th quarter of 2011. The expected life span of the facility is twenty (20) years, after which time Applicant will either

exercise an option to extend the land lease and the PPA, or will remove the facilities and restore the site to its original or better condition per the terms of the lease.

Applicant requests that if the HCP has not received final approval by the USFWS and the Board prior to the commencement date, then the Applicant shall be allowed access onto the project site for the character of use including to commence preliminary construction activities, with the exception that Applicant shall not be allowed to erect wind turbines until the HCP receives final approval.

Given the importance of the ITC grant to the project, Applicant has been able to establish with its contractors the ability to meet the commencement of construction requirements if they are able to mobilize onto the project site by December 1, 2010. However, construction financing and subsequent mobilization on-site is contingent upon the Board's approval of the General Lease and Easements. In order for the Applicant to obtain the ITC grant and project financing, Applicant has requested that the Board establish commencement of the General Lease and Easements by or before November 24, 2010.

The lease form will primarily be based on General Lease No. 5731, previously issued to Kaheawa Wind Power, LLC¹ for the first phase of the Maui Wind Farm project (i.e. Maui Wind Farm No. 1), which project has been implemented and in operation for over five (5) years. The Applicant has requested certain modifications to the prior model wind farm lease, which as of the writing of this submittal is being reviewed and analyzed by staff and the assigned Deputy Attorney General. Staff is requesting the Board delegate to the Chairperson the authority to negotiate the final lease terms and conditions. Staff would like to point out that in the prior wind farm lease (General Lease No. 5731), the Board felt that, in addition to the standard performance bond (covering lease defaults), it wanted the bond to cover the removal of any improvements or equipment constructed or installed on the premises in the event an unfortunate situation results in the project failing or being abandoned. As such, with the assistance of the attorney general's office, special removal language was added and the Board decided to set the performance bond amount at \$1,500,000 in order to assure the adequacy of the bond amount and language of this current lease for phase 2 remain identical with the prior Wind Farm No. 1 lease. Therefore, the current wind farm lease's performance bond amount will also be set at \$1,500,000.

¹ Kaheawa Wind Power, LLC is a separate legal entity from the current Applicant, Kaheawa Wind Power II, LLC, although they have the same parent company.

The Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board

1. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a direct lease, together with co-terminus non-exclusive access, electrical transmission line, and shared use easements, to Kaheawa Wind Power II, LLC, covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - A. Terms and conditions similar to General Lease No. 5731, as applicable.
 - B. The lessee shall comply with the terms and conditions of Conservation District Use Permit MA-3533.
 - C. A Performance bond in the amount of \$1,500,00 to restore the site to its original condition. The State of Hawaii shall be named as an obligee on the bond.
 - D. The project be completed free and clear of liens.
 - E. Vertical construction of the wind turbines shall not commence until the Lessee's HCP has been approved by the USFWS and the Board.
 - F. Approval by the Public Utilities Commission of the Power Purchase Agreement between the Lessee and the utility company purchasing the electricity.
 - G. The State of Hawaii makes no warranties as to the condition or prior uses of the subject premises. The Lessee has inspected the premises and accepts said premises as is.
 - H. Review and approval by the Department of the Attorney General.
 - I. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

2. Delegate to the Chairperson the authority to negotiate the final lease terms and conditions for the subject lease.

Respectfully Submitted,



Gary Martin, Land Agent

APPROVED FOR SUBMITTAL



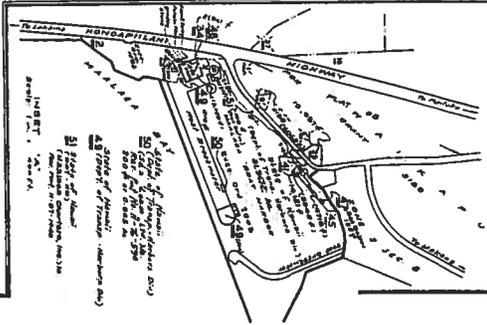
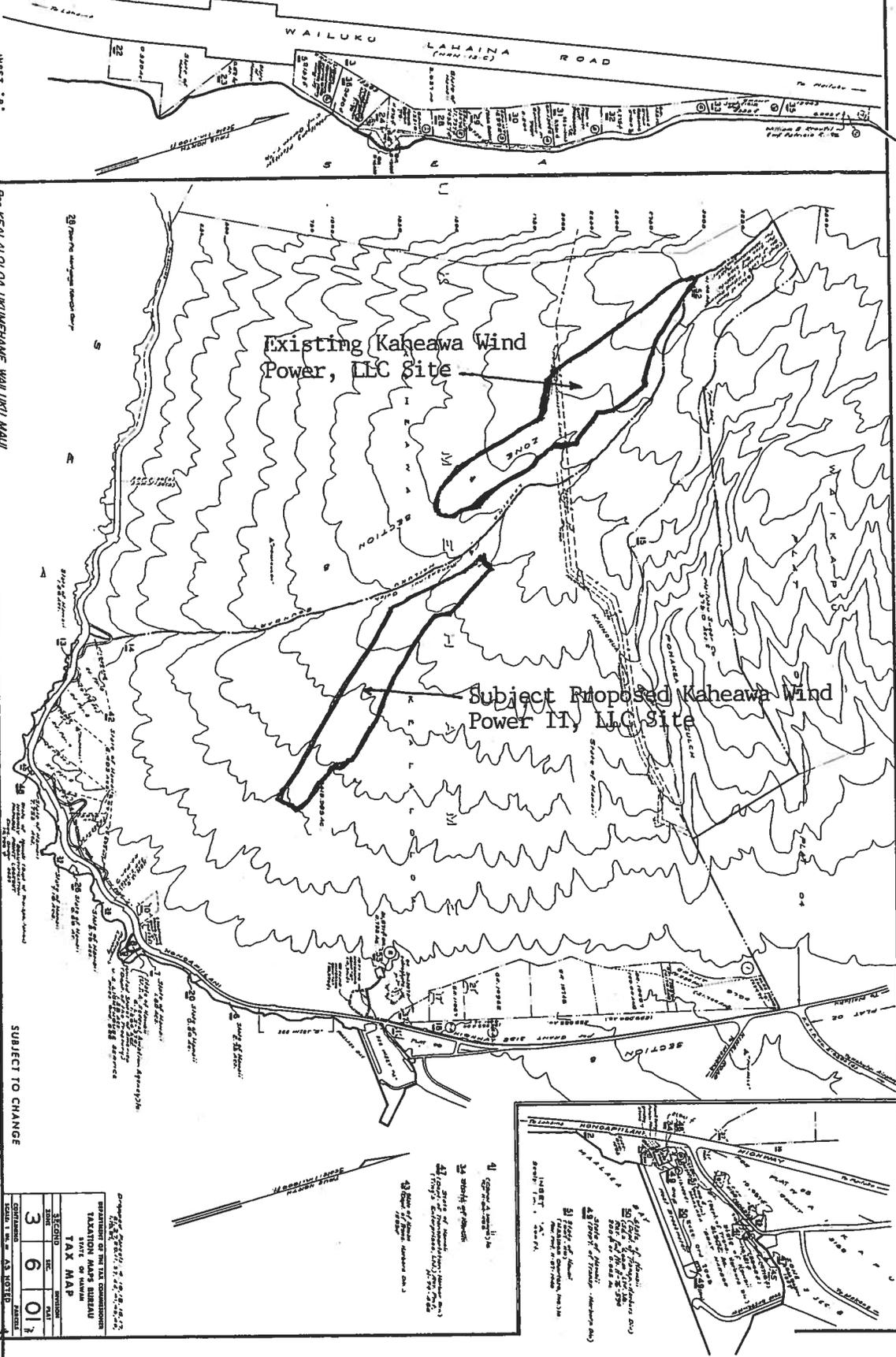
Laura H. Thielen, Chairperson

Scale 1 in. = 100 ft.
 Contour Interval 20 ft.
 Elevation of Bench Mark 100 ft.
 Date of Survey 1978
 Project No. 100-100-100
 Sheet No. 100-100-100

INSET "B"

FOR KEALALOHA, UKIHEAHE, WAILUKU, MAUI

SUBJECT TO CHANGE



PREPARED BY THE TAX COMMISSIONER
 TALKER SERVICE OF HAWAII
TAX MAP

DATE	BY	REVISION
3	6	01

SCALE 1 IN. = 100 FT. AS NOTED

3 - 5 - 01 2ND DIV

EXHIBIT B

Exhibit B contains some proprietary and confidential information that will only be provided to the Land Board Members.



KAHEAWA WIND POWER II

HRS §171-95.3 (a) Project Description for BLNR and DBET

*Pursuant to and in accordance with HRS §171-95.3 section (a),
Kaheawa Wind Power II, LLC provides the enclosed
project description for BLNR and DBEDT review.*

September 27, 2010

BUSINESS CONCEPT

Kaheawa Wind Power II, LLC ("KWPII"), an affiliate of First Wind Holdings, LLC, proposes to construct, operate, and maintain a 21 megawatt ("MW") renewable wind energy generation facility at Kaheawa Pastures located above Mā'alaea, on the island of Maui. Kaheawa Pastures is situated on a portion of the Government (Crown) Land of Ukumehame, Lahaina, and Wailuku. The renewable wind energy generation facility ("KWPII Project") would be similar to and located adjacent to the existing 30 MW Kaheawa Wind Power I facility ("KWPI") which commenced operation in the summer of 2006.

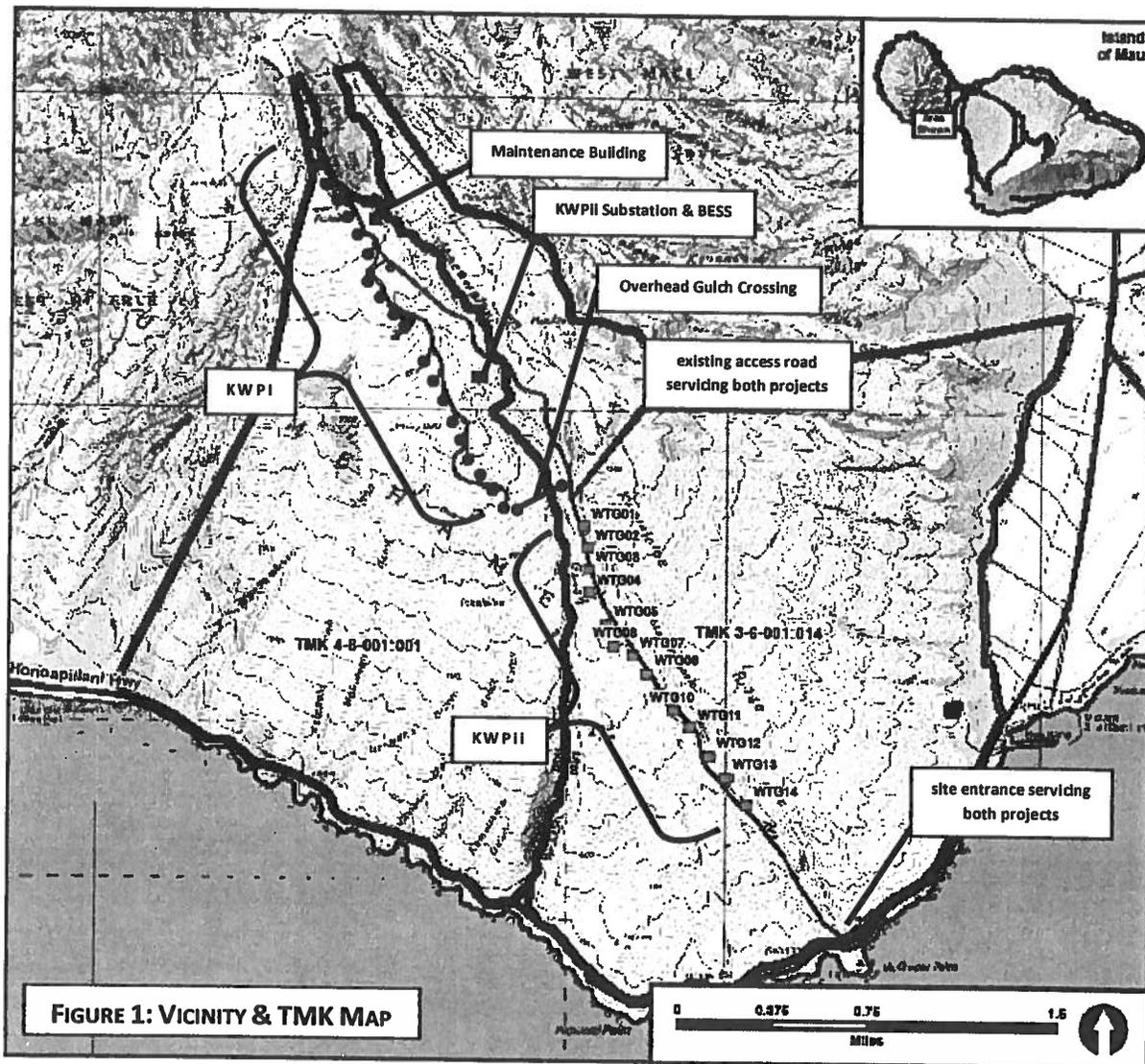
The renewable energy generated via wind power would be sold to Maui Electric Company, Ltd ("MECO") providing revenues for KWPII. Electricity sold from KWPII would assist the State of Hawaii in its efforts to meet to the renewable (energy) portfolio standard established under HRS §269-92. The indigenous renewable wind energy would provide a hedge against future fossil or bio-fuel cost increases. It would also provide environmental benefits in the form of reduced emissions of greenhouse gases and other pollutants. On September 20, 2010, KWPII and MECO entered into a 20 year Power Purchase Agreement ("PPA") with indefinite extension.

As the KWPII Project would be located on State lands, KWPII anticipates entering into lease and easement agreements with the State, specifically the DLNR-Land Division, in accordance with HRS §171-95 (a)(2) & (a)(3). The Board has approved in principle a Direct Lease and has authorized the Land Division to negotiate an agreement resulting in a General Lease. Pursuant to such lease and easement agreements, KWPII would pay an annual lump sum fee or royalty percentage of KWPII's annual revenues, whichever is greater, to the State. The term of the agreement would be similar to the PPA's term of 20 years, plus the length of time required to complete development and construction activities.

THE SITE

The site selected for KWPII is located on a portion of State Conservation land under the administration of the State of Hawaii's DNLNR. KWPII's Wind Farm will be situated on approximately 143 acres in the Conservation District, in an area generally known as Kaheawa Pastures, on a portion of the Government (Crown) Land of Ukumehame, Lahaina, and Wailuku, Maui. Reference vicinity and TMK map in Fig. 1 on preceding page. The State conservation lands can be identified by Tax Map Key (2) 3-6-001:014 (por) and (2) 4-8-001:001 (por). Similar to the existing Kaheawa Wind Power facility, KWPII intends to enter into a land lease agreement with the State, which will include a lease agreement of approximately 135 acres on TMK 3-6-001:014 and an easement agreement of approximately 8 acres on TMK 4-8-001:001. KWPII will also need to obtain easement rights for access to and use of the existing entrance and main site access road (which are on both TMKs).

It is generally understood that Kaheawa Pastures was formerly used for cattle ranching purposes and that the ranching was discontinued on or before the turn of the century. Other than KWPI, Kaheawa Pastures contains two 69kV MECO transmission corridors which transect the site. A portion of the Lahaina Pali Trail also crosses over Kaheawa Pastures and the main site access road.



DESIGN CONCEPT

As seen in the aerial photo in Fig. 2, KWP II is located in close proximity to KWPI. Co-locating the two facilities reduces the amount of access roadways as well as infrastructure and operations facilities of the KWP II project compared to what would be required if it were designed to be a stand-alone project. This reduction of features is a reduction in the overall footprint of KWP II.

Upon start of construction, KWP II will realign a portion of the existing Kaheawa Pastures main access road and construct short service roads that connect KWP II turbine sites to that main access road.

The KWP II Project will utilize fourteen GE 1.5MW SE model wind turbines, which are similar in make and model to the KWPI wind turbines. Each turbine is capable of converting kinetic wind power to electrical energy. The KWP II turbines were delivered to Maui in December 2008 and are currently in a storage area located nearby in Kihei. Installation includes excavating and constructing foundations, erecting support towers, and placement of transformers.

Nearby the wind turbines, KWP11 will install one un-guyed meteorological tower. The tower will be used to forecast wind conditions for operational purposes.

The KWP11 Project will also utilize a Battery Energy Storage System ("BESS") housed in an enclosure building. The BESS will work in concert with the wind farm to improve the ability of the MECO system to absorb additional as-available wind power. The BESS will also provide support to the MECO system on an on-call basis.

Delivery of electricity from KWP11 to MECO will occur at a proposed 34.5/69kV substation installed adjacent to the existing KWPI substation and within the KWPI lease area. The substation will interconnect to MECO's grid via nearby existing transmission lines. Due to system limitation on the MECO transmission lines and KWPI substation capacity, KWP11 requires a new substation and interconnection point separate and independent of KWPI.

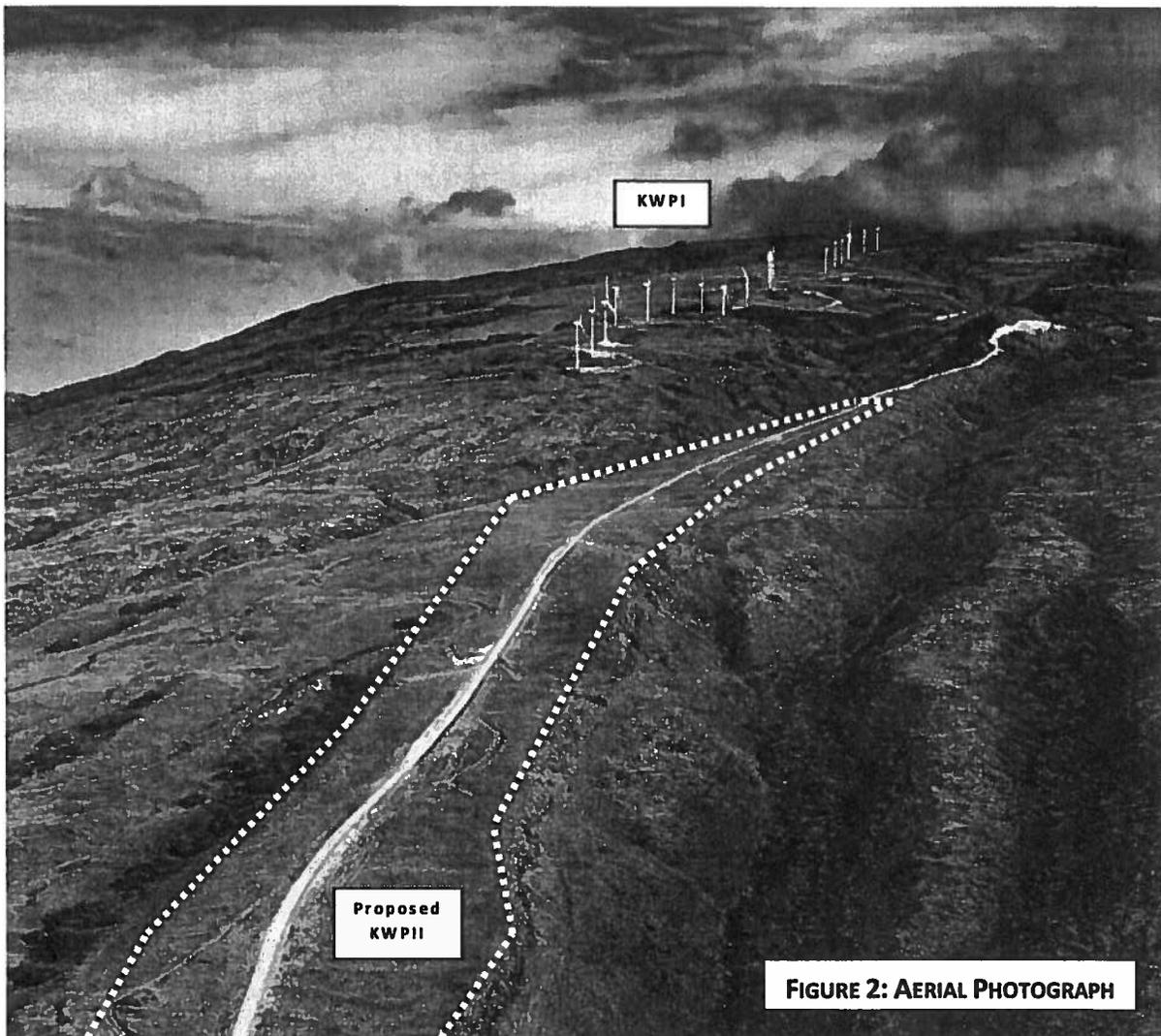


FIGURE 2: AERIAL PHOTOGRAPH

KWPPII will provide interior improvements to the existing operations building at KWPI including expanding the office area, reducing the shop area, and adding stand-alone non-potable plumbing and bathrooms. The stand-alone non-potable water system will require a water storage tank and a septic tank. KWPPII will erect an additional maintenance building nearby to the operations building. Both buildings will be shared by KWPI and KWPPII. KWPPII will execute a shared facilities agreement and licensing agreements as necessary with KWPI to use the existing road and to construct and operate proposed KWPPII facilities within the KWPI lease area.

Finally, KWPPII will install an underground fiber optic network and electrical collection system connecting all of the KWPPII turbines, substation, BESS, meteorological tower, existing KWPI communications tower, and the operations building. The electrical collection system will include an overhead span across Manawainui Gulch, adjacent and parallel to an existing MECO line, for the purposes of conveying communications and power from the turbines to the substation.

FINANCIAL PLAN

The construction of KWPPII is expected to be financed with a combination of First Wind equity and a construction loan. Upon the Commercial Operations Date ("COD"), the construction loan is expected to be repaid with the proceeds from an Investment Tax Credit ("ITC") grant and the proceeds of a term loan or a tax equity financing.

The typical source of construction and term loans is the commercial bank market. Although the tax equity market is not as deep as the commercial banking market, First Wind has strong relationships with multiple organizations in this market and is currently in the process of cultivating new relationships with tax equity investors as well as other commercial banks. Over the past two years, the ITC grant has played an important part of the financing plan for several of First Wind's projects. First Wind expects the ITC to be an important source of capital for KWPPII, providing for up to 30% of construction expense. So much so, that the commercial feasibility of the KWPPII Project's financial model is based upon obtaining the ITC grant. In order for First Wind to be eligible for the ITC grant for KWPPII, construction of the KWPPII Project must begin upon the start of December of 2010 and proceed continuously until construction is substantially complete and the project is commercially operational.

TIMELINE

Generally speaking, construction of the facility is targeted to commence with on-site mobilization on December 1, 2010 with a target COD in late 2011. Reference Fig. 3 Gantt chart on preceding page.

The expected life span of the facility is 20 years, after which time KWPPII will either exercise an option to extend the lease and the PPA, or will remove the facilities and restore the site to its original or better than condition.

Given the importance of the ITC grant to the KWPPII project, KWPPII has been able to establish with its contractors the ability to meet the commencement of construction requirements if they are able to mobilize onto the project site by December 1, 2010. However construction financing and subsequent mobilization on-site is contingent upon the Board's approval of the lease and easement agreements. In

order for KWP II to obtain the 30% ITC grant, it is requested that the Board provide a ruling on the lease and easement agreements by or before November 24, 2010.

FIGURE 3: PROJECT GANTT CHART

