

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

January 25, 2013

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

PSF No. 05OD-266
Oahu

SECOND RESUBMITTAL: DEVELOPMENT AGREEMENT BETWEEN STATE OF HAWAII AND WEST WIND WORKS, LLC FOR THE FORMER EWA FEEDLOT SITE AT CAMPBELL INDUSTRIAL PARK, HONOULIULI, EWA, OAHU, HAWAII, TAX MAP KEY: (1) 9-1-031:001:

- (1) Status of Outstanding Delinquencies and Termination of the Development Agreement Between the State of Hawaii and West Wind Works, LLC, for the former Ewa Feedlot site at Campbell Industrial Park, Honouliuli, Ewa, Oahu, Hawaii, Tax Map Key: (1) 9-1-031:001
- (2) (a) Termination of the Development Agreement between the State of Hawaii and West Wind Works, LLC, for the former Ewa Feedlot site at Campbell Industrial Park, Honouliuli, Ewa, Oahu, Hawaii, Tax Map Key: (1) 9-1-031:001; or
 - (b) Approval of a modified Development Agreement for a portion of the former Ewa Feedlot site at Campbell Industrial Park, Honouliuli, Ewa, Oahu, Hawaii, Tax Map Key: (1) 9-1-031:Portion 001

BACKGROUND:

At its meeting of May 25, 2012, under agenda item D-16, (the "May Submittal"), staff recommended the Board of Land and Natural Resources ("BLNR") terminate the Development Agreement between West Wind Works, LLC ("3W") and the State of Hawaii ("State"), which set forth the terms and conditions under which BLNR would issue a directly-negotiated lease to 3W (the "Development Agreement").

In response, 3W introduced International Electric Power, LLC (IEP), a privately-held company with purported experience in developing large renewable energy projects. Together, 3W and IEP requested BLNR defer action on the May Submittal, and proposed amending the Development Agreement and assigning the modified Development Agreement from 3W to an entity in which IEP would be a majority partner, with 3W participating in a reduced capacity.

Based on the foregoing, BLNR approved 3W's request to defer termination of the Development Agreement for a period of 60 days.

BLNR's deferral was to provide 3W and IEP an opportunity to work with staff on possible solutions, including but not limited to curing of existing defaults, amendments to the Development Agreement, and the subsequent assignment of a modified Development Agreement as requested. A copy of BLNR's action is attached as **Exhibit A**.

Following BLNR's deferral of the May Submittal, IEP initiated discussions with Land Division and subsequently submitted proposal to DLNR on July 25, 2012 (the "Initial Proposal"), a copy of which is attached as **Exhibit B**.

On August 6, 2012, Land Division met with IEP-ORP to discuss the Initial Proposal. Based on those discussions, IEP-ORP agreed to provide DLNR with another proposal.

Considering the amount of time that lapsed and BLNR's 60-day deferral, BLNR was provided a status report at its meeting on August 10, 2012, and under agenda item D-10, approved deferring this matter or an additional 60-days to allow Land Division and its assigned counsel sufficient time to thoroughly review and analyze a submitted proposal.

STATUS REPORT:

Since BLNR's deferral of this agenda item on August 10, 2012, Land Division has received and reviewed several proposals, which are identified below along with brief comments. For comparison purposes, the general terms of the Development Agreement and 3W's original proposal, together with the general terms of the subsequent proposals are summarized on the table attached as **Exhibit C**.

- Proposal dated September 27, 2012, submitted by 3W (the "September Proposal").¹ Attached hereto as **Exhibit D-1**.

Whereas the September Proposal was inconsistent with discussions between IEP-ORP and Land Division, Land Division expressed its dissatisfaction with the September Proposal to 3W.

- Proposal dated October 1, 2012, hereinafter the "October Proposal", submitted by 3W and IEP, a copy of which is attached as **Exhibit D-2**.

Based on a review of the October Proposal, Land Division submitted questions to 3W and requested additional information for further clarification of the October Proposal.

¹ Both IEP and 3W separately informed Land Division that IEP had submitted a revised proposal to 3W for review. However, 3W apparently was not satisfied with IEP's proposal, and 3W forwarded its own proposal to Land Division in lieu of IEP's proposal.

- Answers to DLNR Questions, dated November 8, 2012, submitted by 3W in conjunction with IEP (the "November Proposal"). A copy of the November Proposal is attached as Exhibit D-3.

In sum, the November Proposal proposes the modified Development Agreement be assigned to an entity owned and managed by a subsidiary of IEP, with additional ownership interests held by ORP, and Abacus Financial Group ("Abacus"), hereinafter "IEP-ORP, LLC"; installment payments to cure monetary delinquencies with payments being due upon certain events; a proposed 17-acre site located along Olai Street; prorated Development Agreement fees payable upon the execution of a Power Purchase Agreement and the closing of project financing; and proposed lease terms.

REMARKS:

Qualifications for IEP and its principals were previously submitted. Based on the information provided therein, IEP itself appears to possess experience in the development, management and operations of renewable energy facilities. Members of ORP include individuals or entities that have been involved in 3W's original proposal, prior negotiations, and all previous activities under the current Development Agreement. No qualifications for Abacus were provided.² However, only individuals or entities holding a 10% ownership interest were required to be identified under the Request for Qualifications/Request for Proposals dated November 8, 2009 (the "RFQ/RFP"). Consequently, qualifications for Abacus, which purportedly will have a 5% ownership interest, are not required under the RFQ/RFP provisions.

The November Proposal, however, is not acceptable to Land Division for the following reasons:

- **Existing monetary delinquencies will not be cured in a timely manner.** The November Proposal proposes to cure monetary delinquencies totaling \$528,125.35, paid in four equal installments if and when certain events occur. Moreover, two of the proposed events are not expected to occur until 2015, if at all;
- **The proposed site would adversely impact the remaining ±93 acre site.** As shown in the November Proposal, the location of the proposed 17-acre site takes up about half of the subject Property's Olai Street frontage located closest to the Kalaeloa Boulevard intersection. Consequently access and

² The November Proposal indicates "Abacus Financial Group" is primarily a financial investor that will have a limited role in project development. A cursory search for "Abacus Financial Group" resulted in a listing of multiple entities nation-wide.

future development potential to the remaining ±93 acres would be adversely impacted;

- **No timely payments of future development agreement fees.** The November Proposal indicates the payment of future development would occur if IEP-ORP, LLC executes a Power Purchase Agreement with HECO and upon the closing of project financing. Both of these events are not expected to occur until 2015, if at all, and just prior to the proposed execution of a lease; and
- **The proposed lease term is legally prohibited.** The November Proposal proposes a lease term of up to 65 years, with an option to renew. Pursuant to Section 171-36, Hawaii Revised Statutes, options for the renewal of lease terms are prohibited.

Moreover, although the November Proposal indicates the proposed annual rent is subject to adjustment based on an independent appraisal, staff believes the proposed annual rent of \$30,000 per acre for the initial fixed rent period is low for industrial land.³

Moreover, Land Division notes the November Proposal's project schedule does not identify the preparation of any environmental studies necessary for compliance with Chapter 343, Hawaii Revised Statutes, the subdivision of proposed project site from the subject ±110-acre site, or any other governmental permits or approvals that may be required.

Notwithstanding the above, should BLNR consider approving a modified Development Agreement (whether as proposed by IEP or 3W, or simply as the BLNR deems in the best interest of the State), Land Division recommends BLNR require at the very least:

- **Relocation of the project site to preserve access and future development potential of the remaining site.** Land Division recommends BLNR require the project site to be located generally in the area as originally proposed by 3W for biomass processing facilities under the currently existing Development Agreement, and previously approved by DLNR,⁴ together with a driveway or interior road, subject to DLNR approval.

Land Division notes that the November Proposal does not indicate that the flight clearance easements would prohibit the development of improvements other than the smokestack, or that the smokestack could not be situated on the original site

³ Based on a 8% rate of return, the proposed annual rent of \$30,000 per acre reflects a fee simple value of \$375,000 per acre, or \$8.60 per square foot.

⁴ The biomass facility originally proposed by 3W and approved by DLNR totaled 10 acres of land located at the western end of the former Ewa Feedlot, referred to as "Green Waste", and as shown on Exhibit 3a. in the November Proposal.

in areas outside of the flight easement. Furthermore, it is not apparent that the distance from Olai Street, or the proximity to the shoreline, prohibits the development of the proposed biomass processing facilities at the original location previously approved.

As an alternative to locating the project site generally as originally proposed/approved, Land Division would also consider a location along the eastern end of Olai Street.

The two project sites (i.e., Land Division's recommended site and the alternate site along the eastern end of Olai Street), are generally shown on **Exhibit E**, attached.

The final location and configuration of the project site, including any interior roads, shall be subject to DLNR approval and legally subdivided by IEP-ORP, LLC at IEP-ORP, LLC's expense. Land Division further recommends that IEP-ORP, LLC be allowed to give up the remaining ±93 acres not included in the revised project site, allowing DLNR/BLNR to accept unsolicited or solicited proposals for the remaining lands.

- **Bonding of monetary payments.** Land Division recommends BLNR allow IEP-ORP, LLC to cure existing monetary delinquencies as proposed and pay future development agreement fees based on the ±15-acre project site as discussed above. However, Land Division recommends BLNR require IEP-ORP, LLC to provide a bond to provide security that all proposed installments to cure the existing monetary delinquency and all proposed future development agreement fees are paid to DLNR as proposed by IEP-ORP, LLC and summarized below:
 - Monetary delinquency of \$528,125.35, paid in four equal installments, within 30 days of:
 1. The assignment of the Development Agreement to IEP-ORP, LLC;
 2. IEP-ORP, LLC becoming short listed on HECO's RFP;
 3. Signing of Power Purchase Agreement; and
 4. Financial close and execution of lease agreement.
 - Future development agreement fees of \$53,318 annually, accruing quarterly and paid upon:
 1. Execution of a PPA with HECO; and
 2. Closing of project financing.

Land Division also recommends the following two benchmarks be established to allow Land Division to monitor progress of the proposed project;

- IEP-ORP, LLC's preparation of a draft environmental assessment ("EA") and publication of the draft EA in the Office of Environment Quality Control's Environmental Notice by August 1, 2013; and

- IEP-ORP, LLC to submit a subdivision application to the City and County of Honolulu no later than January 31, 2014.

In lieu of assessing monetary penalties for missing any future benchmark deadlines, Land Division recommends that DLNR/BLNR be allowed to consider alternative development proposals for the land from other potential developers.⁵

RECOMMENDATION: That the Board reject the terms of the proposed Development Agreement amendments submitted by West Wind Works, LLC, and International Electric Power, LLC, dated November 8, 2012, which is attached as Exhibit D-3, and either:

- a. Terminate the Development Agreement between the State of Hawaii and West Wind Works, LLC, for the former Ewa Feedlot site at Campbell Industrial Park, Honouliuli, Ewa, Oahu, Hawaii, Tax Map Key: (1) 9-1-031:001, under the terms and conditions recommended on May 25, 2012, under agenda item D-16, attached hereto as Exhibit A, which by this reference are incorporated herein; **OR**
- b. Approve the modification and assignment of the Development Agreement under the terms and conditions cited above, which by this reference are incorporated herein, and subject to any other terms or conditions as may be prescribed by the Chairperson to best serve the interest of the State.

Respectfully Submitted,



Gavin Chun
Project Development Specialist

APPROVED FOR SUBMITTAL:



William J. Afla, Jr., Chairperson

⁵ Should IEP-ORP, LLC fail to meet any of the future benchmark deadlines, IEP-ORP, LLC could continue seeking all necessary approvals at their own risk without accruing additional Development Agreement fees. However, DLNR/BLNR would no longer be obligated to issue a lease to IEP-ORP, LLC as to the current proposed to reserve ±17 acres, even if they satisfied all other terms and conditions set forth in the modified Development Agreement; and, as proposed for the remaining ±93 acres, DLNR/BLNR would also be allowed to accept unsolicited or solicit proposals from other private entities as to the ±17-acre site as well; or enter into an exclusive agreement or lease for the land covered by the modified Development Agreement. At the end of the day, if IEP-ORP, LLC is successful in obtaining all of its benchmark deadlines and entitlements, and no other takers come forward for the ±97 acre site or the ±13 acre site, then the BLNR may consider at that time issuing a lease to IEP-ORP, LLC, again.

EXHIBIT A

Copy of BLNR Deferral

May 25, 2012, Agenda Item D-16

DEFERRED

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

May 25, 2012

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

PSF No. 050D-266
Oahu

(1) Status of Outstanding Delinquencies and Termination of the Development Agreement Between the State of Hawaii and West Wind Works, LLC, for the former Ewa Feedlot site at Campbell Industrial Park, Honouliuli, Ewa, Oahu, Hawaii, Tax Map Key: (1) 9-1-031:001

(2) Termination of the Development Agreement between the State of Hawaii and West Wind Works, LLC, for the former Ewa Feedlot site at Campbell Industrial Park, Honouliuli, Ewa, Oahu, Hawaii, Tax Map Key: (1) 9-1-031:001

APPLICANT:

Department of Land and Natural Resources ("DLNR")

SUBJECT PROPERTY:

Approximately 110.106 acres of government lands at Honouliuli, Ewa, Oahu, Hawaii, identified by Tax Map Key: (1) 9-1-31:01, as shown on the attached tax map labeled **Exhibit I** ("Subject Property").

OVERVIEW OF SUBJECT DEVELOPMENT AGREEMENT:

On November 8, 2009, DLNR issued a Request for Qualifications/Request for Proposals ("RFQ/RFP") to select a developer for the Subject Property.¹ As a result of the RFQ/RFP process, the State of Hawaii, by its Chairperson of the Board of Land and Natural Resources ("Chairperson") entered in to a Development Agreement with West Wind Works, LLC ("3W"), made effective November 24, 2010.² A copy of the Development Agreement is attached as **Exhibit II**.

Generally, the Development Agreement allows 3W to conduct due diligence and perform predevelopment activities necessary for the successful development of a proposed renewable energy park on the

¹ At its meeting of August 25, 2006, under agenda item D-12, the Board of Land and Natural Resources authorized the issuance of an RFQ/RFP to select a developer for the Subject Property.

² At its meeting of August 14, 2009, under agenda item H-5, BLNR, in part, amended the RFQ/RFP process and delegated authority to the Chairperson to select a developer for the Subject Property, negotiate the terms of any development agreement or lease, and to execute any documents that are necessary or appropriate to effectuate the intent of the disposition, subject to the provisions of Chapter 171, HRS and Department of the Attorney General's approval.

Deferred
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES *mw*
AT ITS MEETING HELD ON
May 25, 2012

Subject Property as proposed by 3W. The Development Agreement also sets forth terms and conditions that 3W must satisfy in order for it to be issued a ground lease for the Subject Property.

In part the Development Agreement requires 3W to pay DLNR a Development Agreement Fee of \$345,000 per year, payable in quarterly installments, and to:

1. Prepare a draft environmental assessment ("EA") for 3W's proposed renewable energy park, and have the Draft EA published in the State of Hawaii Office of Environmental Quality Control's ("OEQC") *The Environmental Notice* by October 31, 2011. Thereafter, follow the EA process, prepare a final EA, and obtain a Finding of No Significant Impact by August 31, 2012;
2. Obtain a non-utility generator determination or approval from Hawaii Electric Company by June 30, 2011;
3. Have an application for a Special Management Area Permit ("SMP") accepted by the City and County of Honolulu ("City") by December 31, 2011, and obtain City Council approval of the SMP by December 31, 2012;
4. Obtain approval from the United States of America and the State Department of Transportation (if applicable) that allows 3W to develop and operate its' proposed renewable energy park;
5. Have an application for a Conditional Use Permit ("CUP") accepted by the City by January 5, 2012;
6. Obtain fully executed Power Purchase Agreements ("PPA") for a 5MW of wind-to-hydrogen component, a 5MW biomass-to-energy component, a 5MW tracking solar farm component, and a +5MW expansion solar farm(s); and
7. By January 31, 2013, obtain State of Hawaii Public Utilities Commission approval of all PPAs cited above.

The Development Agreement also describes the terms and conditions for any deadline extension, Development Agreement modifications, and both party's rights to terminate the Development Agreement. The State's right to terminate includes, but is not limited to the 3W's failure to obtain permits, approvals and PPAs by the specified deadlines, and 3W's failure to make full payments of any installment.

HISTORY OF NOTICES OF DEFAULT ("NOD") ISSUED:

DLNR has issued three NOD's to 3W for monetary and non-monetary defaults under the Development Agreement. The three NOD's along with 3W's responses are briefly summarized below.

1. On March 2, 2011, 3W was issued an NOD for an outstanding balance due of \$142,500.00, which was due on February 24, 2011. The amount due represented the second quarterly installment of Development Agreement Fees.

In response, 3W submitted the \$142,500.00 payment on March 28, 2011.

2. On October 13, 2011, 3W was issued an NOD for failure to keep Development Agreement fee payments current and failure to comply with Section 9.b.1) of the Development Agreement.³ The amount owed by 3W was \$96,300.35, being attributed to the fourth quarterly installment of Development Agreement Fees and other accrued fees and assessments, including a bank assessed service charge for a returned check.

Although 3W failed to cure the cited defaults, 3W submitted a letter to Land Division dated November 30, 2011 (**Exhibit III.a**), requesting a meeting to discuss "adequate remedies".⁴

3. On March 2, 2012, DLNR issued 3W an NOD for failure to keep Development Agreement fee payments current and failure to comply with Section 9.b.1), 2) and 3) of the Development Agreement. The amount owed by 3W at the time was \$268,975.35, resulting from failure to make fourth, fifth and sixth quarterly installments of the Development Agreement Fee and other accrued fees and assessments, but not including a \$25 service charge resulting for a returned check.

Pursuant to the NOD and consistent with the terms of the Development Agreement, 3W was given until April 9, 2012 to cure all monetary defaults and until May 8, 2012 to cure all non-monetary defaults.

In lieu of curing the cited defaults, 3W submitted a letter to DLNR dated April 8, 2012, requesting additional time to cure all monetary defaults. A copy of 3W's letter dated April 8, 2012 is attached as **Exhibit IV**.

CURRENT STATUS OF SUBJECT DEVELOPMENT AGREEMENT:

Despite the issuance of NODs cited above, 3W remains delinquent in its payments of Development Agreement Fees and satisfying non-monetary benchmark deadlines. The current statuses of 3W's monetary and non-monetary obligations are summarized below.

1. **Development Agreement Fees (Monetary).** 3W has paid DLNR \$260,360.25 in Development Agreement Fees, accrued late fees, and interest penalties. The last Development Agreement Fee installment 3W paid was credited to the third quarterly

³ 3W previously submitted a written request to extend the deadline for obtaining a NUG determination to October 31, 2011 and to amend the Development Agreement. 3W also submitted a check to DLNR (dated September 19, 2011) in the amount of \$96,275.35. DLNR was notified by memorandum dated October 10, 2011, that the check was returned due to insufficient funds. Consequently, approval of 3W's requested extension and amendment was held in abeyance and the NOD dated October 13, 2011 was issued.

⁴ In response DLNR submitted a letter to 3W dated December 21, 2011, in which DLNR agreed to meet 3W provided 3W first submit written explanations of its inability to comply with the terms of the Development Agreement, proposed remedies and timelines, and evidence of 3W's ability to pay past due amounts and future development fees. A copy of DLNR's letter dated December 21, 2011, is attached as **Exhibit III.b**.

installment due May 24, 2011. As of the May 25, 2012, the date of this Land Board meeting, 3W is \$374,375.35 in arrears.⁵

2. **Land Use Entitlements, Regulatory/Utilities Approvals, and Power Purchase Agreements (Non-Monetary).** Thus far, 3W has failed to meet the following non-monetary benchmark deadlines set forth in the Development Agreement:
 - A. Prepare a draft EA for 3W's proposed renewable energy park and have the Draft EA published in OEQC's *The Environmental Notice* by October 31, 2011;
 - B. Obtain a NUG determination or approval from Hawaii Electric Company by June 30, 2011;
 - C. Have a SMP application accepted by the City by December 31, 2011; and
 - D. Have a CUP application accepted by the City by January 5, 2012.

REMARKS:

In a letter dated January 4, 2012, attached as **Exhibit V.a**, 3W proposed to pay on or before March 9, 2012, all past due payments and all remaining payments to DLNR expected through November 23, 2013, and requested converting the Development Agreement into a "Conditional Lease". In response, DLNR requested 3W to provide specific information necessary for DLNR to properly evaluate 3W's alternate proposal.⁶ As indicated in DLNR's letter to 3W dated March 2, 2012, attached as **Exhibit V.c**, DLNR reminded 3W that "[a]s previously explained to you in our meeting and then again in writing, the Development Agreement that was entered into is probably the most the Land Board can legally approve at this point, especially because the Chapter 343 requirements have not yet been satisfied."

Although as of yet no written response from 3W has been received by DLNR, DLNR has received a letter from International Electric Power ("IEP") dated April 23, 2012.⁷ Therein, IEP ensures 3W will cure all monetary defaults, proposing two installments totaling \$368,287.85 be made to DLNR on May 2, 2012 and May 30, 2012. Thereafter, IEP requested to meet with DLNR to discuss how 3W's proposed renewable energy project might move forward. A copy of IEP's April 23, 2012 letter to DLNR is attached as **Exhibit VI**.

⁵ The amount owed as of May 25, 2012 is applicable through May 31, 2012, after which, pursuant to the Development Agreement, additional late fees and/or interest will be applied. The amount owed is allocated as follows: \$345,025.35 in Development Fees; \$18,975.00 in interest; \$10,000 in Extension Fees; \$350.00 in Monthly Late Fees; and \$25.00 service charge for a returned check due to insufficient funds.

⁶ Letters from DLNR to 3W (dated February 3, 2012 and March 2, 2012) both requesting information from 3W are attached as **Exhibits V.b and V.c**, respectively.

⁷ 3W previously identified IEP as a financial partner and majority shareholder in an entity being formed to own the renewable energy project proposed by 3W.

Notwithstanding the above requests, as of the date of this Land Board meeting, May 25, 2012, 3W has not provided the information requested by DLNR that is necessary to allow a proper evaluation of any alternative resolution 3W has, or intends to propose. Moreover, as DLNR has previously notified 3W, the Development Agreement is probably the most the Land Board can legally approve considering Chapter 343 requirements have not been satisfied.

Based on the foregoing, and considering 3W's continuing inability to satisfy both monetary and non-monetary requirements set forth in the Development Agreement; or cure both monetary and non-monetary defaults pursuant to the Development Agreement, Staff recommends BLNR terminate the Development Agreement, effective as of May 25, 2012, the date of this meeting.⁸

Subject to BLNR's approval to terminate the Development Agreement, pursuant to Section 171-13, Hawaii Revised Statutes, 3W, including 3W principles and/or partners, may not be eligible to purchase or lease public lands, or be granted a license, permit, or easement covering public lands for a period of five years from the date of termination.⁹

RECOMMENDATION: That the Board terminate the Development Agreement effective as of May 25, 2012, pursuant to Paragraph 13 of the Development Agreement, and without waiving any other remedies to which the State may be entitled:

1. Authorize retention of any advance payment of Development Agreement Fees or other payments or charges made by 3W;
2. Authorize the prosecution of any claim against 3W for Development Agreement Fees or other payments or charges that accrued prior to the effective date of termination, including interest thereon;
3. Authorize the assertion of any claim that the State may have against the 3W for any damages, costs, or expenses, suffered or incurred by the State; and
4. Require 3W to remove, at 3W's sole cost and expense, immediately and with due diligence, any improvements made on or to the Subject Property by 3W and return the portions of

⁸ Staff is cognizant of the fact that it takes a minimum of 4 Board members to vote in favor of, or against a proposed course of action, in order for any board action to take place. In the event the majority of the Board is inclined to accept a payment or allow 3W more time, staff strongly recommends no payment should be accepted unless the payment cures all outstanding monetary arrearages, and such payment should be made by 3W unconditionally. Unconditionally would mean no promise or obligation upon the State or DLNR to subsequently negotiate even the possibility of amending certain provisions of the DA.

⁹ At its meeting on August 8, 2008, under Agenda Item D-10, the Land Board, in part, approved in principle of the issuance of a direct lease to 3W covering State lands in Kahuku-Malaekahana, Koolauloa, Oahu, Tax Map Key (1) 5-6-08:06. At the time the Land Board was informed that 3W had not had a lease, permit or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions. As a result of the termination of this Development Agreement, the Land Board may be subsequently requested to rescind its prior approval in principle to issue 3W a direct lease.

the Subject Property under such 3W-made improvements to a good and even grade; and

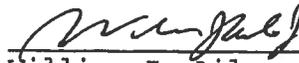
5. Provided that the termination of the Development Agreement shall not revoke the Board's prior approvals of August 25, 2006, under Agenda Item D-12, and August 14, 2009, under Agenda Item H-5.

Respectfully Submitted,



Gavin Chun
Project Development Specialist

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

Land Board Meeting: May 25, 2012; D-16; Deferred:
Deferred for sixty (60) days.¹

COPY

DEVELOPMENT AGREEMENT

for

FORMER EWA FEEDLOT SITE

Department of Land and Natural Resources
Land Division
State of Hawaii

EXHIBIT "II"



DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and effective this 24th day of November, 2010 ("Effective Date"), by and between the STATE OF HAWAII, by its Chairperson of the Board of Land and Natural Resources ("Chairperson") by the authority granted by the Board of Land and Natural Resources ("Board") at its meetings held on August 25, 2006 and August 14, 2009, for the Department of Land and Natural Resources, Land Division, whose principal place of business and post office address is 1151 Punchbowl Street, Room 220, Honolulu, Hawaii 96813, ("State"), and WEST WIND WORKS, LLC, a Hawaii limited liability company, whose principal place of business and post office address is 67-287 Kahaone Loop, Waialua, Hawaii 96791, ("Developer").

RECITALS:

A. The State owns in fee simple that certain parcel of land situated at Honouliuli, Ewa, Oahu, Hawaii and shown as the shaded area on Exhibit A. The parcel consists of approximately 110.106 acres and is identified by Tax Map Key No. (1) 9-1-031:001. The parcel is also known as Land Court Lot 12022, as shown on Land Court Map 888 of Land Court Application 1069 and described on Land Court Certificate of Title No. 498,504. The parcel shall be referred to hereinafter as the "Subject Property."

B. The Board made a finding on August 25, 2006, that the public interest demanded that the Subject Property be approved for disposition by lease through a direct negotiation process. On November 8, 2009, the State issued a Request for Qualifications / Request for Proposals ("RFQ/RFP") for the Former Ewa Feedlot to select a developer to develop the Subject Property.

C. Pursuant to the RFP process, Developer submitted a development proposal entitled "OAHU RENEWABLE ENERGY PARK OAHU, HAWAII: Development Proposal For The Former Ewa Feedlot," dated March 30, 2010 ("Development Plan"), incorporated herein by reference, for its proposed Oahu Renewable Energy Park, which provides for the development of different renewable energy facilities by various providers, including wind, solar, and biomass facilities, under a ground lease arrangement between Developer and the State.

D. Developer has represented that it will be the sole entity responsible for the lessee's performance under the lease and will not issue subleases to the individual providers.

E. Pursuant to the RFP process, the State selected Developer to enter into exclusive negotiations of a development agreement and lease for the Subject Property.

F. This Agreement sets forth the terms and conditions that Developer must satisfy in order for it to be issued a ground lease for the Subject Property, which terms and conditions include, among other things, Developer to pay fees to the State during the term of this Agreement, obtain all governmental, quasi-governmental and utility land use entitlements,

approvals, permits, and power purchase agreements necessary to develop and operate Developer's proposed project.

G. The State will lease the Subject Property to Developer under a ground lease with a term not to exceed sixty-five (65) years upon Developer successfully performing all requirements set forth in this Agreement.

H. This Agreement itself does not convey any right, title or possessory interest in the Subject Property. Developer will not have any right to occupy or possess any part of the Subject Property, until a lease or right of entry for the Subject Property has been executed and delivered.

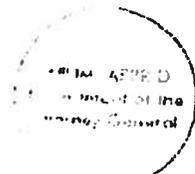
AGREEMENT:

In consideration of the recitals and the mutual covenants, obligations and conditions set forth in this Agreement, the State and Developer hereby mutually agree as follows:

1. Term. The term of this Agreement shall commence on the effective date stated above and terminate on December 31, 2013 (the "Expiration Date"), unless terminated sooner pursuant to the terms of this Agreement.

2. Development Agreement Fees to State. During the term of this Agreement, Developer shall pay to the State in legal tender of the United States of America, Development Agreement Fees in the sum of THREE HUNDRED FORTY-FIVE THOUSAND AND NO/100 DOLLARS (\$345,000.00) per year, which shall be paid quarterly, in advance, commencing on the Effective Date. The initial quarterly payment shall be \$30,000.00 payable upon execution of this Agreement and the balance of the initial quarterly payment of \$56,250.00 shall be added to the second quarterly payment in the event that Developer elects to proceed following the conclusion of the Due Diligence Period as set forth in Section 6. In the event the Effective Date does not occur on the first of the month, the quarterly payments thereafter shall be due and payable on the same day of the month as the date of the Effective Date, in February, May, August, and November of each year during the term of this Agreement. The interest rate on any and all unpaid Development Agreement Fees shall be at one percent (1%) per month, with a service charge of FIFTY and NO/100 DOLLARS (\$50.00) per month for each delinquent payment. It is understood that if the lease is issued by the State in accordance with the provisions of this Agreement, that the annual Development Agreement Fee that has been paid hereunder for any period of time after the effective date of the lease will on a pro rata basis be credited against the initial base rent payable under the lease.

3. Taxes and Assessments. Developer shall be responsible for all taxes and assessments applicable to or arising from the Subject Property. Developer will pay or cause to be paid all taxes, assessments or other governmental charges levied upon any of Developer's property or Developer's income derived from the Subject Property or under this Agreement before the same become delinquent.



4. Development Plan.

a. In response to the State's RFQ/RFP, Developer prepared and submitted to the State a proposed development plan for its proposed Oahu Renewable Energy Park dated March 30, 2010, a copy of the conceptualized development plan map is attached hereto as **Exhibit B** and made a part hereof (as the development plan map). The approval of the selection of Developer by the Chairperson shall not be deemed a warranty or other representation on the part of the State or DLNR that Developer will be able to obtain all necessary federal, state and county entitlements, permits or other approvals required to enable Developer to develop its proposed project.

b. The Development Plan contemplates the development and operation of Developer's proposed Oahu Renewable Energy Park ("ORP") on the Subject Property with the following renewable energy components:

1) Onshore ORP Substation. An onshore substation that will house interconnection and power-correction equipment for the ORP's individual power providers.

2) Wind to Hydrogen Project. A five-acre 5 megawatt ("MW") wind to hydrogen conversion facility.

3) Biomass-to-Energy Project. A 10-acre 5 MW biomass-to-energy facility (which may include a biomass-to-fuel component).

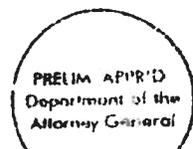
4) Tracking Solar Farm. A 28-acre 5 MW solar farm.

5) Renewable Expansion Area. Additional 57-acre area reserved for future solar farm(s).

c. Developer assumes all risks of development. Developer agrees and admits that Developer is solely at risk with respect to the profitability or financial success of the proposed ORP.

5. Condition of the Subject Property. The Subject Property shall be leased in an "as is" condition, and the State makes no representations regarding the condition of the Subject Property or the suitability of the Subject Property for the proposed ORP. Developer shall, at its sole expense, be responsible for conducting its own investigations and due diligence regarding the Subject Property and any site work necessary to develop the ORP, including but not limited to demolishing existing improvements and removing hazardous materials, if any.

6. Due Diligence Period. Developer shall have ninety (90) days from the Effective Date to conduct a due diligence investigation (the "**Due Diligence Period**"). Developer may request, in writing, an extension of the Due Diligence Period, and the Chairperson may, in his/her sole and absolute discretion, extend the Due Diligence Period provided any extension shall be conditioned on Developer's payment of an extension fee equal to TWENTY-EIGHT



THOUSAND SEVEN HUNDRED FIFTY AND NO/100 DOLLARS (\$28,750.00) per 30-day increment of the due diligence extension period.

Developer shall be responsible for all costs associated with its due diligence investigation. Copies of all due diligence reports shall be provided to the State and shall identify DLNR as an authorized user of said reports.

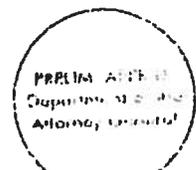
Developer may, as the result of its due diligence investigation, elect to terminate this Agreement by providing written notice to the State prior to the expiration of the Due Diligence Period (including any extended Due Diligence Period approved by the Chairperson). In the event Developer provides such written notice of its decision to terminate this Agreement, the State shall retain all sums paid by Developer, and Developer shall have no obligation to pay any remaining balance of the initial quarterly development fee payment or any future development fee payments and neither Developer nor DLNR shall have any further rights, duties or obligations under this Agreement.

7. Right of Entry. After execution of this Agreement, the State will grant Developer a right of entry. The right of entry will authorize Developer, including its employees, agents, consultants, counsel, advisors, equity owners, contractors and subcontractors, to enter the Subject Property with prior notice and, while thereon, make surveys and appraisals; take measurements, geotechnical investigation, test borings, other tests of surface and subsurface conditions and soil tests and sampling; make structural and engineering studies, and inspect the Subject Property, all at Developer's sole cost and expense. The right of entry shall not grant Developer any right to develop, construct or install any improvements on the Subject Property, and Developer will not have any such right to develop, construct or install any improvements on the Subject Property until the lease has been executed and delivered. Under such right of entry, Developer shall indemnify, defend and hold and save the State harmless from and against all claims, demands or liability for loss or damage, including property damage, personal injury and wrongful death, mechanic's and material men's claims, design or construction defects, and third party claims, arising out of or in connection with any such entry upon the Subject Property by Developer or its employees, agents, consultants, contractors and subcontractors. The foregoing covenants of Developer shall survive any termination of this Agreement.

8. Environmental Assessments/Environmental Impact Statements.

a. At its sole cost and expense, Developer shall prepare and process any and all required environmental assessments, environmental impact statement preparation notices, and environmental impact statements ("EA/EIS") required under Chapter 343 of the Hawaii Revised Statutes ("HRS") and for Developer to implement the Development Plan.

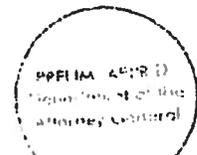
b. Without limiting the foregoing, Developer shall prepare a draft environmental assessment ("EA") for the Development Plan and have the draft EA published in the State of Hawaii Office of Environmental Quality Control's ("OEQC") *The Environmental Notice* by no later than October 31, 2011. Developer shall diligently follow the EA process, prepare the final EA, and obtain issuance of a Finding of No Significant Impact ("FONSI") by no later than August 31, 2012.



The State may, in the sole and absolute discretion of the Chairperson, elect to extend the EA and FONSI deadlines above, subject to Developer's payment of an extension fee equal to TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00). If the State elects to do so, Developer shall diligently and with all commercially reasonable efforts seek to submit the draft EA and obtain the FONSI by the extended deadlines. The extension fee shall be in addition to the Development Agreement Fees, and Developer shall pay all applicable Development Agreement Fees and other payments and charges due hereunder during any such extended period.

Notwithstanding the foregoing, if a FONSI is not issued by the required deadline for the reason that a full environmental impact statement ("EIS") is required, Developer may request, in writing, that Developer be allowed to pursue development of the ORP under the Agreement by preparing and processing a full EIS. The State may, in the sole and absolute discretion of the Chairperson, approve Developer's request, provided such approval shall be made subject to (i) specific deadlines acceptable to the Chairperson for Developer to submit and obtain final acceptance of the EIS, (ii) a revised timeline with revised deadlines acceptable to the Chairperson for Developer to apply for and obtain all necessary land use entitlements, utilities/regulatory approvals, and agreements under Section 9 below; and (iii) Developer's payment of an extension fee equal to TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00). The extension fee shall be in addition to the Development Agreement Fees, and Developer shall pay all applicable Development Agreement Fees and other payments and charges due hereunder during any such extended period.

c. It is understood and agreed that if a FONSI is not issued and/or a full environmental impact statement or statements ("EIS") is or are required, Developer shall be required to obtain the State's "final approval" of the Development Plan, and that the State's final review and final approval or disapproval of the Development Plan shall not occur until after Developer has received final non-appealable acceptances of all required final EIS covering the Development Plan and until after all such final EIS are presented at a public meeting of the Board. It is understood and agreed that the State shall have the right to withhold final approval of the Development Plan and to terminate this Agreement if, based on the final EIS or matters raised in connection therewith, the State decides that implementing the Development Plan is not acceptable or desirable. In making this decision, the State shall not be limited to considering the factors involved in determining whether the final EIS is or are legally acceptable under HRS Chapter 343. Rather, the State shall have the right to consider fully all the environmental factors involved in the Development Plan and to weigh the benefits against the adverse impacts of the Development Plan and may withhold final approval of the Development Plan and terminate this Agreement for reasons including, but not limited to: (1) the adverse environmental impacts resulting from implementing the Development Plan, including environmental, economic, social, and cultural impacts; (2) the inadequacy of measures proposed by Developer to mitigate the adverse environmental impacts of the Development Plan identified in the final EIS; (3) the nature of any adverse environmental impacts of the Development Plan as identified in the final EIS which cannot be avoided or mitigated; or (4) alternatives described in or raised in connection with the final EIS.



Within sixty (60) days after all final EIS have been presented at a public meeting of the Board, the State shall notify Developer whether the State has: (a) granted final approval of the Development Plan; (b) granted final approval of the Development Plan subject to Developer's acceptance of certain specified conditions; or (c) denied final approval of the Development Plan and will terminate this Agreement. Within thirty (30) days of Developer's receipt of notice of any specified conditions to State's final approval, Developer shall notify State in writing whether it accepts such conditions. If Developer fails to accept such conditions within the thirty-day period, the State shall be deemed to have denied final approval of the Development Plan and to have elected to terminate the Agreement. No such final approval of the Development Plan by the State shall be deemed a warranty or other representation on its part that Developer will be able to obtain all necessary federal, state and county entitlements, permits or other approvals required to enable Developer to develop the Subject Property in accordance with the Development Plan.

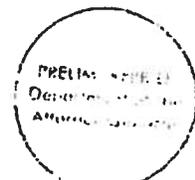
9. Developer to Obtain All Necessary Land Use Entitlements, Regulatory/Utilities Approvals, and Power Purchase Agreements.

a. Developer shall at Developer's sole cost and expense, expeditiously and diligently seek to obtain all necessary and appropriate land use entitlements, permits, and regulatory approvals, including, but not limited to, all special management area, public utilities, and other approvals, permits and entitlements from the United States of America, State of Hawaii (including the State Legislature if applicable and Public Utilities Commission), City and County of Honolulu ("City"), and Hawaiian Electric Company ("HECO") so as to enable Developer to develop and use the Subject Property in accordance with the Development Plan. Developer shall use its diligent and all commercially reasonable efforts to obtain all required approvals, permits and entitlements from the United States of America, State of Hawaii, City, and HECO prior to expiration of the term of this Agreement.

b. Without limiting the foregoing, Developer shall comply with the deadlines set forth below to apply for, and obtain the following entitlements and approvals:

1) Non-Utility Generator ("NUG") Determination/Approval. Developer shall, by no later than June 30, 2011, obtain NUG determinations or approvals from the Hawaiian Electric Company for (A) the 5 MW wind-to-hydrogen component; (B) the 5 MW biomass-to-energy component; (C) the 5 MW tracking solar farm component; and (D) the 5+ MW expansion solar farm(s).

2) Special Management Area Permit ("SMP"). Developer shall, by no later than December 31, 2011, have its application accepted by the City for an SMP that allows Developer to develop and use the Subject Property in accordance with the Development Plan, and by no later than December 31, 2012, obtain SMP approval from the City Council. In the event separate applications are required for certain renewable energy components, all such applications must be accepted by the City, and all such SMP approvals obtained from the City Council, by the deadlines specified above.



3) Conditional Use Permit ("CUP"). Developer shall, by no later than January 5, 2012, have its application accepted by the City for a CUP that allows Developer to develop and use the Subject Property in accordance with the Development Plan, and by no later than December 31, 2012, obtain CUP approval or a written confirmation from the City confirming that a CUP is not required to implement the Development Plan. In the event separate applications are required for certain renewable energy components, all such applications must be accepted by the City, and all such CUP approvals or confirmations obtained from the City by the deadlines specified above.

4) Flight Path Easements. The Subject Property is encumbered by flight easements in favor of the United States of America. Developer shall, prior to the Expiration Date, obtain approval from the United States of America (including the Federal Aviation Administration) and the State Department of Transportation (if applicable) that allows Developer to develop and use the Subject Property in accordance with the Development Plan.

5) Power Purchase Agreements ("PPA"). Developer shall, by no later than July 31, 2012, obtain fully executed PPAs for (A) the 5 MW wind-to-hydrogen component; (B) the 5 MW biomass-to-energy component; (C) the 5 MW tracking solar farm component; and (D) the 5+ MW expansion solar farm(s).

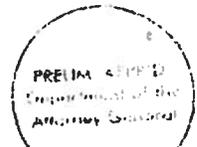
6) State of Hawaii Public Utilities Commission ("PUC") Approval. Developer shall, by no later than January 31, 2013, obtain PUC approval of the PPAs for (A) the 5 MW wind-to-hydrogen component; (B) the 5 MW biomass-to-energy component; (C) the 5 MW tracking solar farm component; and (D) the 5+ MW expansion solar farm(s).

The State may, in the sole and absolute discretion of the Chairperson, elect to extend the deadlines for any of the entitlements/approvals/PPAs listed above, subject to Developer's payment of an extension fee equal to TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) per each entitlement/approval/PPA extended. If the State elects to do so, Developer shall diligently and with all commercially reasonable efforts seek during such extension period to obtain the necessary entitlements, permits, governmental or regulatory approvals. The extension fee shall be in addition to the Development Agreement Fees, and Developer shall pay all applicable Development Agreement Fees and other payments and charges due hereunder during any such extended period.

c. Prior to issuance of a lease, Developer shall conduct and submit a metes and bounds survey description of the Subject Property, for approval by the Chairperson.

d. Developer shall, within 30 days of the State's request, provide the State with a written report and shall meet with the State and/or the State's staff regarding the status of and material issues relating to Developer's due diligence and Developer's efforts to obtain the required entitlements and approvals.

10. Modifications to the Development Plan. Developer shall be entitled to make such changes and modifications thereto as may be required to address and satisfy any comments made or issues raised by the appropriate agencies of the United States of America, State of Hawaii,



City and County of Honolulu, or Hawaiian Electric Company without the further consent or approval of the State, so long as: (a) Developer provides advance written notice to the State of the changes or modifications, including a reasonably specific explanation of why the changes and modifications are being undertaken and their anticipated effect; and (b) such changes or modifications do not: (i) materially alter or change the development of the ORP as set forth in the Development Plan, including without limitation, the nature, size, and quality of the renewable energy components; (ii) reduce the rents to be paid under the lease; (iii) do not provide for uses that are not permitted by applicable laws or ordinances; or (iv) adversely affect or delay for more than six (6) months the development timeline.

In addition, the State recognizes that from time to time the Development Plan may require changes or modifications initiated by Developer. Developer may make any such changes or modifications to said Development Plan with the prior written consent of the State, which consent may be withheld by the State if such changes or modifications: (a) require the preparation of a new or supplemental EA or EIS; (b) materially alter or change the development of any of the renewable energy components as set forth in the Development Plan, including without limitation, the nature, size, and quality of said components; (c) reduce the rents to be paid under the lease; or (d) adversely affect or delay for more than six (6) months the development timeline.

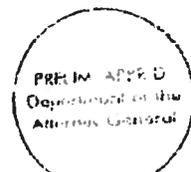
11. Agreement to Issue Lease. The terms of the lease to be issued by the State to the Developer for the Subject Property shall be negotiated between the State and Developer; provided, however, that the lease rents shall not be less than (a) fair market rent as determined by independent appraisal pursuant to Section 171-17(b), HRS, as amended, and (b) the lease rents provided in the Developer's development proposal. The lease shall encompass the entire Subject Property and payment of the lease rent for the entire Subject Property shall commence upon issuance of the lease. Notwithstanding the foregoing, it is understood and agreed that the State shall issue the lease only if Developer has fully complied with all of the terms and conditions of this Agreement and satisfactorily complied with each of the following conditions:

a. Final EA and FONSI. Developer shall have caused to be published in the OEQC *The Environmental Notice* a final EA and FONSI covering the entire Development Plan and all of the renewable energy components proposed in the Development Plan.

b. Final Approval of Development Plan. Developer shall have obtained the State's final approval of the Development Plan if required pursuant to Section 8.c. hereof.

c. Land Use Entitlements and Approvals. Developer shall have obtained from the United States of America, State of Hawaii (including the State Legislature if applicable, and Public Utilities Commission), City and County of Honolulu, and Hawaiian Electric Company final non-appealable approvals and determinations for all necessary land use, zoning, special management area, utilities, and other approvals, permits, agreements, and entitlements to enable Developer to develop the Subject Property in accordance with its Development Plan.

d. Lease Rent. Developer and the State shall have agreed on the lease rent payable under the lease.



e. Financing. Developer shall have submitted evidence reasonably satisfactory to the Chairperson that Developer has adequate funding and/or financing to fully develop the Subject Property in accordance with its Development Plan, including without limitation, pro forma financial statements for the project, financing and/or equity commitment letters, and confirmations/evidence of tax credit eligibility.

12. Developer's Right to Terminate Agreement. Developer may at any time prior to the Expiration Date (subject to extension in accordance with Section 25 below), at its option and in its sole and absolute discretion by giving written notice thereof to the State, terminate this Agreement, for any of the following reasons:

a. If Developer is unable to obtain at any time and for any reason: (1) the necessary United States of America, State of Hawaii (including the State Legislature if applicable, and Public Utilities Commission), City and County of Honolulu, and Hawaiian Electric Company land use, zoning, special management area, approvals and power purchase agreements to allow for the development of the Subject Property in accordance with the Development Plan, (2) the State's final approval the Development Plan if required under Section 8.c. or (3) the State's consent to Developer's proposed modifications to the Development Plan;

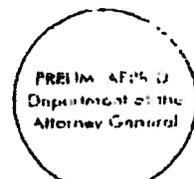
b. Determination by Developer based on its environmental assessment and review of the Subject Property that the Subject Property is subject to environmental contamination, remediation and/or clean up issues which are deemed unacceptable to Developer;

c. Imposition by the United States of America, the State of Hawaii, and/or City and County of Honolulu of onerous requirements or conditions on Developer's receipt of the land use, zoning, special management area, or Public Utilities Commission entitlements or approvals necessary to implement the Development Plan, which requirements or conditions are unacceptable to Developer; and

If Developer exercises its option to terminate this Agreement for any of the reasons above, Developer (1) shall not be entitled to any compensation or other payment whatsoever by the State on account of such termination or for any improvements constructed by Developer on the Subject Property (if any), and (2) shall deliver to the State, without cost or charge, copies of all plans, specifications, permits and studies prepared for or germane to the Subject Property or part thereof.

13. State's Right to Terminate Agreement. The State may at its option and in its sole and absolute discretion by giving written notice thereof to Developer, terminate this Agreement for any of the following reasons:

a. If a FONSI is not issued and the State withholds or denies "final approval" to the Development Plan as required in Section 8.c. hereof, including Developer's failure to accept within the specified time period the conditions to the State's final approval;



b. If the State withholds or denies consent to Developer's proposed modifications to the Development Plan as provided in Section 10 hereof and Developer will not or cannot implement the Development Plan without the proposed modifications;

c. If Developer fails to obtain all United States of America, State of Hawaii (including the State Legislature if applicable, and Public Utilities Commission), City and County of Honolulu, and Hawaiian Electric Company entitlements, permits, approvals and power purchase agreements necessary for implementation of the Development Plan by the applicable deadlines specified in Section 9.b. hereof, or if no deadline is so specified, prior to the Expiration Date, (subject to any extensions of deadlines or the Expiration Date approved pursuant to this Agreement);

d. If Developer fails to make full payment of any installment of the Development Agreement Fees or full payment of any other payments or charges due hereunder at the times and in the manner provided in this Agreement, and this failure continues for a period of more than thirty (30) days after delivery by the State of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to Developer;

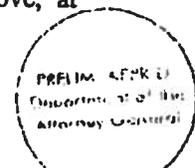
e. If Developer becomes bankrupt or insolvent, or seeks protection under any provision of any bankruptcy or insolvency law or any similar law providing for the relief of debtors, or abandons the project contemplated under the Development Plan, or if any assignment is made of Developer's rights hereunder for the benefit of creditors;

f. If Developer fails to observe and perform any of the material covenants, terms, and conditions contained in this Agreement and on its part to be observed and performed, and such failure continues for a period of more than sixty (60) days after delivery by the State of a written notice of breach or default and demand for cure (set forth in reasonable detail), by personal service, registered mail or certified mail to Developer;

g. If the Subject Property or any part of the Subject Property, appurtenances or improvements are used, or intended to be used in any manner to commit or to facilitate the commission of a crime; or

h. If the Developer is not in compliance with HRS section 171-36(4).

Upon any termination under this Section, this Agreement shall become null and void except as to any provisions which expressly survive its termination, Developer will not be entitled to issuance of a lease for the Subject Property, Developer shall have no rights to develop the Subject Property or any part thereof, and Developer shall have no rights or interest whatsoever in or to the Subject Property. Upon termination and without waiving any other remedies to which it may be entitled, the State shall be entitled to: (1) retain any advance payment of Development Agreement Fees or other payments or charges made by Developer, (2) prosecute any claim against Developer for Development Agreement Fees or other payments or charges that accrued prior to the effective date of termination of the Agreement, including interest thereon; (3) assert any claim that it may have against Developer for any damages, costs, or expenses, suffered or incurred by the State; and (4) require Developer to remove, at



Developer's sole cost and expense, immediately and with due diligence, any improvements made on or to the Subject Property by Developer and return the portions of the Subject Property under such Developer-made improvements to a good and even grade, which obligation shall survive termination of this Agreement.

In the event the lease for the Subject Property is issued as per this Agreement, this Agreement shall terminate in its entirety on the date that is one day after the date that the Lease for the Subject Property is issued to Developer, and shall thereupon automatically become null and void, except as to any provisions of this Agreement which expressly survive its termination.

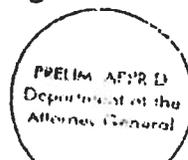
14. Liens. Developer will not commit or suffer any act or neglect whereby the Subject Property or any improvements thereon or the estate or interest of the State therein shall at any time during the term of this Agreement become subject to any attachment, judgment, lien, charge or encumbrance whatsoever, and will indemnify, defend and hold the State harmless from and against all loss, cost or expense with respect thereto (including reasonable attorney's fees). If any lien for work, labor, services or materials done for or supplied to the Subject Property by, on behalf of or through Developer is filed against the Subject Property, Developer shall have sixty (60) days from the date of filing in which to cause such lien to be discharged of record by payment, deposit, bond or other reasonably satisfactory alternative approved by the State, as the case may be. The foregoing covenants of Developer shall survive any termination of this Agreement.

15. Observance of Laws, Ordinances and Regulations. Each party hereto, and their respective officers, agents, assigns, employees, consultants and/or contractors, or persons acting for or on its behalf, shall at all times observe and comply with all applicable laws, ordinances, rules and regulations of the Federal, State and County governments.

16. Archaeology; Historic Preservation. Developer, including any agent or contractor, upon encountering any previously unidentified archaeological resources such as artifacts, shell, bone or charcoal deposits, human remains, or any historic properties or burials, on the Subject Property, will immediately stop work and contact the State DLNR Historic Preservation Division in compliance with Chapter 6E, HRS.

17. Recordation. This Agreement shall not be recorded. However, upon request by either the State or Developer, a short form memorandum of this Agreement shall be prepared by the State and shall be duly executed and acknowledged in proper form and may be placed of record so as to give public notice as to the existence of this Agreement.

18. Notices. Any notice or demand to the State or Developer provided for or permitted by this Agreement shall be given in writing and: (a) mailed as registered or certified U.S. mail, return receipt requested, postage prepaid, addressed to such party at its post office address herein specified or the last such address designated by such party in writing to the other; or (b) delivered personally within the City and County of Honolulu to the State or to any officer of Developer, or (c) sent by facsimile transmission (herein "Fax") to the Fax number, if any, of such party as specified herein or such other Fax number designated by such party in writing to



the other. Any such written notice shall be deemed conclusively to have been received at the time of such personal delivery, or receipt of Fax, or at 4:00 p.m. on the third business day after being deposited with the United States mail as aforesaid, as follows:

If to the State: Board and Department of Land and Natural Resources
1151 Punchbowl Street, Room 220
Honolulu, Hawaii 96813
Attention: Chairperson
Fax no.: (808) 587-0390

And a copy to: Department of the Attorney General
Attention: Land/Transportation Division
Kekuanaoa Building
465 South King Street, Suite 300
Honolulu, Hawaii 96813
Fax no.: (808) 587-2999

If to Developer: Keith Avery
West Wind Works, LLC
67-287 Kahaone Loop
Waiialua, Hawaii 96791
Email: keith@westwindworks.com

19. Status Reports – Developer Cooperation. Developer acknowledges that State's staff may be required to periodically report to the Board of Land and Natural Resources during the term of this Agreement on the status of Developer's progress under the Agreement. Developer agrees to reasonably assist State's staff in making such reports, including without limitation, upon commercially reasonable advance written notice, having a representative available to answer questions at any meetings of the Board at which such reports are given, providing information that State's staff reasonably requests for the purposes of making such reports, and being available to meet with the State's staff prior to the time such reports are made.

20. Costs and Attorney's Fees. Developer shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the State in enforcing the covenants and conditions of this Agreement, in recovering possession of the Subject Property, or in the collection of delinquent fees, taxes, assessments, and any and all other charges. In case the State shall, without any fault on its part, be made a party to any litigation commenced by or against the State, the Developer shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the State.

21. Construction and Amendment. This Agreement has been negotiated extensively by Developer and the State with and upon the advice of their respective counsel, all of whom have participated in the drafting hereof. Consequently, the usual rule of construction shall not be



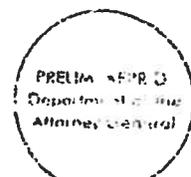
applicable, which provides that the document is to be interpreted against the interests of the party who has primarily drafted the language in an agreement. No amendment or modification of this Agreement or any Exhibit attached hereto shall be effective unless incorporated in a written instrument executed by the State and Developer. The State and Developer agree to execute such other documents and instruments as may be reasonably requested by the other party and as may be necessary to effectuate the terms of this Agreement.

22. Partial Invalidity. In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect which is not material to the transactions contemplated hereunder, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.

23. Assignment. Any and all rights hereunder granted to Developer may not be sold, assigned, conveyed or transferred in any manner by Developer to any other person or entity without the prior written consent of the State, such consent not to be unreasonably withheld, conditioned or delayed, and any such sale, assignment, conveyance or transfer in breach of this provision shall be null and void; provided, however, that the State may withhold consent if the State determines the potential purchaser, assignee, or transferee does not possess the experience, expertise or financial capacity to perform the Developer's obligations under this Agreement or that the proposed sale, assignment, conveyance or transfer is inconsistent with the purpose, intent, qualification process, or selection process of the RFQ/RFP. Notwithstanding the foregoing, Developer may assign this entire Agreement and the development rights provided for herein to an institutional lender or lenders providing financing for the development of all or any portion of the Subject Property as security for the repayment of such loan or loans, with the prior written consent of the State.

24. State's Right to Assign. It is specifically understood and agreed that the State (through the Board) may convey or otherwise transfer the "Subject Property" subject to the terms and conditions of this Agreement, and assign this entire Agreement (including, but not limited to the assignment of any lease issued or to be issued under this Agreement) to any other department or agency of the State of Hawaii, subject to such department or agency affirmatively agreeing to accept such Subject Property subject to the terms and conditions of this Agreement and assuming all undertakings and obligations under this Agreement and/or the lease issued or to be issued under this Agreement. Upon any such assignment, Developer agrees to attorn to the assignee on the terms and conditions of this Agreement, the lease, or any other lease that is part of this Agreement.

25. Extension of Agreement. The State may, in the sole and absolute discretion of the Chairperson, elect to extend the term of this Agreement for a maximum period of twelve (12) months, subject to Developer's payment of an extension fee equal to TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00). The extension fee shall be in addition to any Development Agreement Fees, and Developer shall pay all applicable Development Agreement Fees and other payments and charges due hereunder during such extended period.



26. Development Rights. Upon the expiration or any early termination of this Agreement for whatever reason (except for termination as a result of the issuance of the lease as provided for in Section 11 above), all development rights, permits, approvals, plans, specifications, etc. prepared by or for Developer in connection with Developer's efforts relating to or under this Agreement shall, to the extent owned by and/or assignable by Developer, vest with and become the Subject Property of the State. At the request of the State, Developer shall do all things reasonably necessary to assign to the State, all such development rights, permits, approvals, plans, specifications, etc.

27. Modification. This Agreement may only be amended or modified by written agreement signed by all parties; provided however, this Agreement may only be amended or modified with the approval of the Chairperson.

28. DLNR. Notwithstanding anything herein to the contrary, it is specifically understood and agreed by the parties that: (a) the "State" as used herein means the Department of Land and Natural Resources, State of Hawaii, and the "Chairperson" as used herein means the Chairperson of the Board of Land and Natural Resources; (b) whenever action is taken, or required to be taken by the "State" under this agreement (e.g., approve, disapprove, consent, or otherwise), it shall be deemed to be an act of only the Board of Land and Natural Resources, and shall not be construed to be the act of any other department or agency of the State of Hawaii. Developer acknowledges and accepts the responsibility for obtaining all entitlements and governmental approvals from the other applicable governing boards, agencies and departments of the State of Hawaii, City and County of Honolulu, and the United States of America.

29. No Third Party Beneficiaries. No third party beneficiaries are intended by this Agreement, and the terms and provisions of this Agreement shall not give rise to any right in third parties to enforce the provisions of this Agreement.

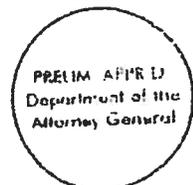
30. Nondiscrimination. The use of the Subject Property shall not be in support of any policy which discriminates against anyone based upon race, creed, color, national origin or a physical handicap.

31. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

32. Time is of the essence. Time is of the essence in all provisions of this Agreement.

33. Exhibits. The following exhibits are attached hereto and made a part of this Agreement:

- A. Map of Subject Property
- B. Map of Developer's Proposed Development Plan dated March 30, 2010



IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

Approved and Executed by the Chairperson pursuant to authority granted by the Board of Land and Natural Resources at its meeting held on August 14, 2009.

STATE OF HAWAII

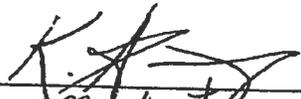
By 
Chairperson of the Board of Land and
Natural Resources
State

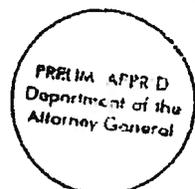
APPROVED AS TO FORM:


Deputy Attorney General

Dated: 11/17/10

WEST WIND WORKS, LLC a Hawaii
Limited Liability Company

By 
Its: president
Name: Keith Avery
Developer



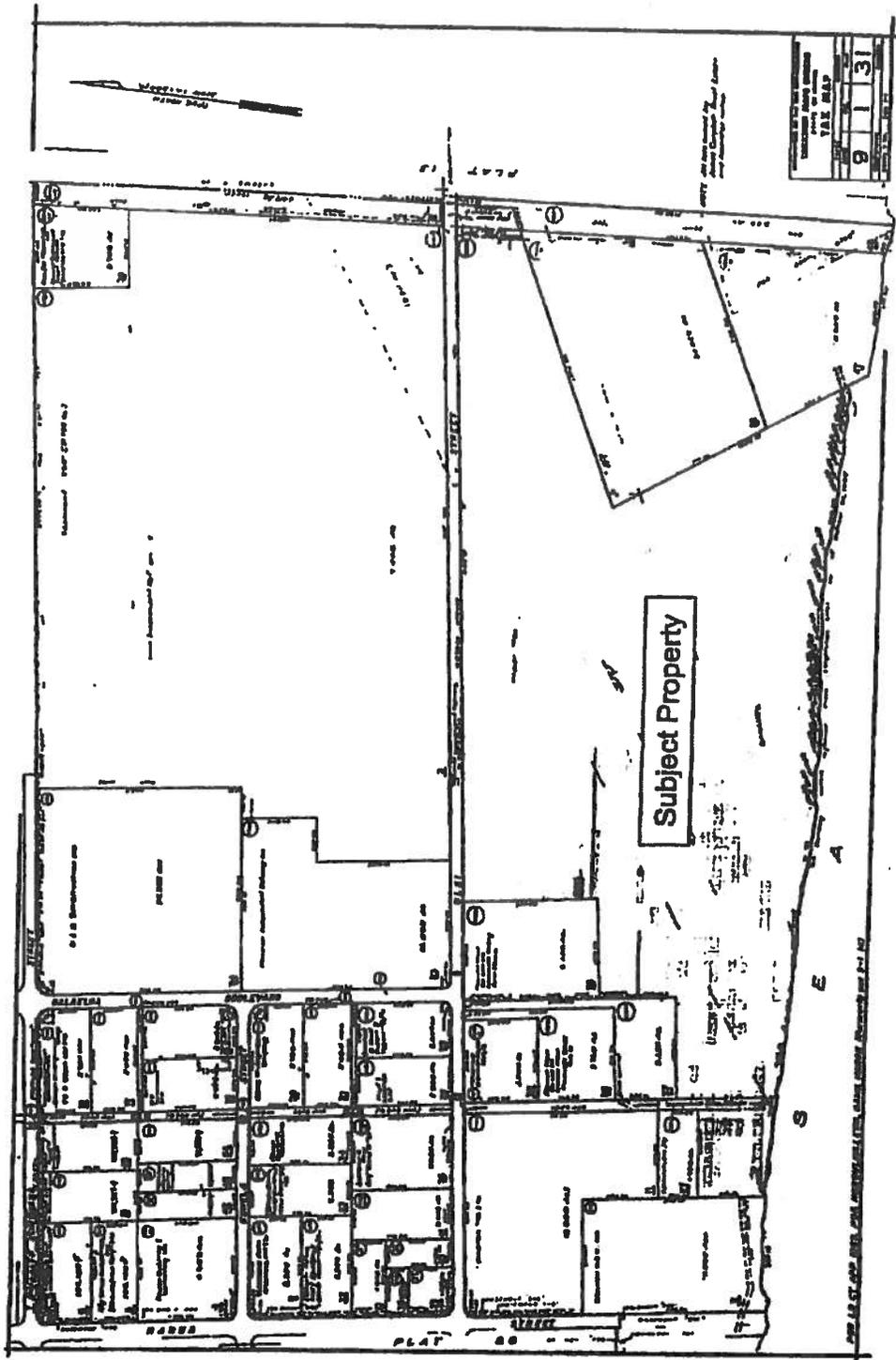
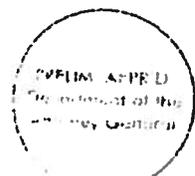


Exhibit A

Development Agreement for
Former Ewa Feedlot Site



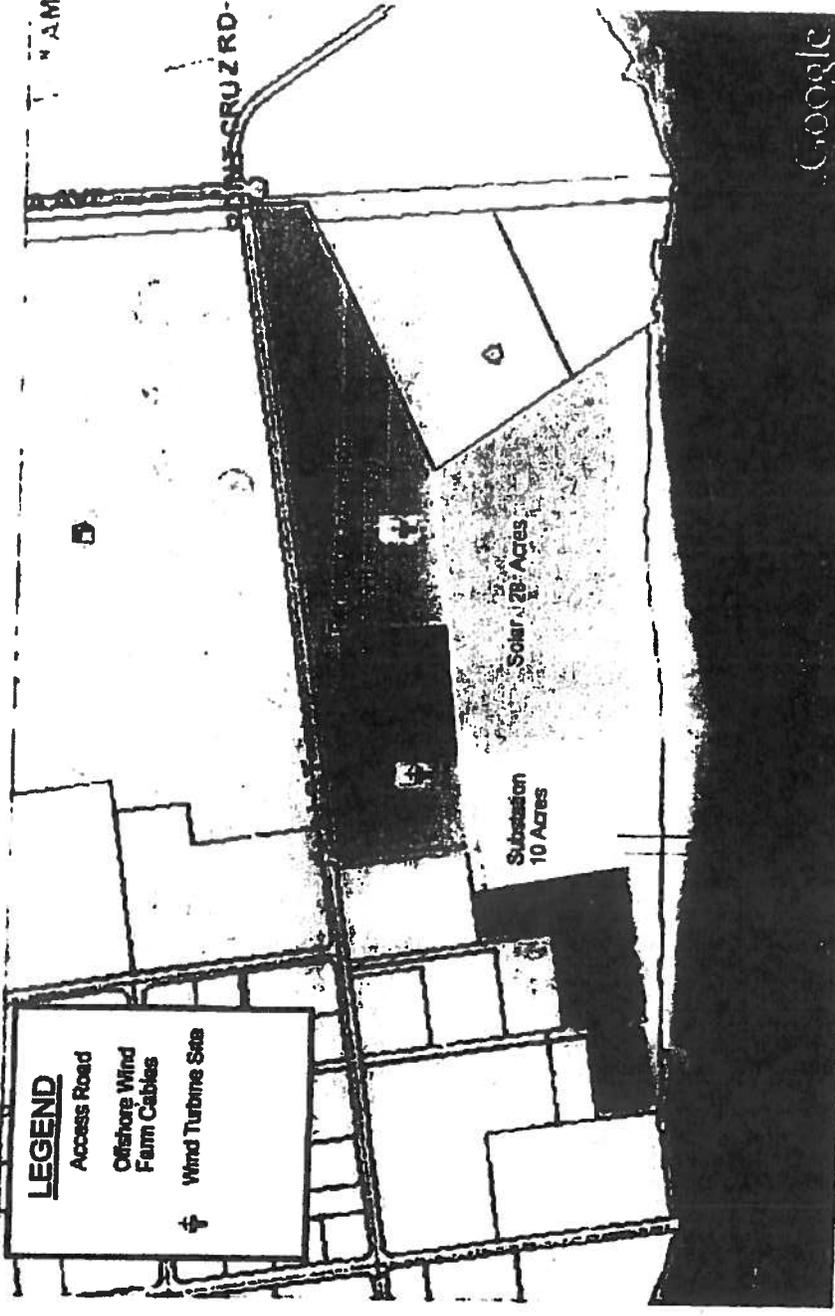
Bionrgy

SUNPOWER



3. Development Plan

3a. Site Plan



See Appendix C on various technology design specifics and requirements
3-1

March 30, 2010

Oahu Renewable Energy Park

Exhibit B

Development Agreement for
Former Ewa Feedlot Site

PRELIM APPRO'D
Department of the
Attorney General



November 30, 2011

Mr. Keith Chun
Department of Land and Natural Resources
1151 Punchbowl
Honolulu, Hawaii 96813

Re: Plan for the Oahu Renewable Energy Park Moving Forward

Dear Keith,

I am pleased to inform you that the ORP principles have recently signed a Term Sheet with International Electric Power (IEP) to provide most all project development funding and ultimately all Project(s) financing up to \$100+ million. At the same time, it is painfully obvious that we have not made the latest quarterly payment(s) and missed certain milestone events.

We take notice that you have followed our progress diligently with little room for error, changes or modifications from the original Development Agreement and have notified us of any defaults. Rather than reflecting on the Projects missteps I would like to take the opportunity to explain why this extremely valuable renewable integration project is so important to the DLNR, Oahu and its residents.

The ORP's goals have always been to provide Oahu with substantial socio-economic and energy supply and price security using Oahu's indigenous and abundant renewable energy resources, biomass, solar, wind and bio fuel. The proposed energy integration is new, state of the art technology, and this has created development issues that are difficult hurdles and were not anticipated when the ORP was conceived.

We did not anticipate certain site restrictions, individual project financing hurdles, and other development complications that have required more time to bring such a diverse and strategically important Project to completion.

I would like to remind the DLNR of the benefits to the state in long term Lease payments, 20 year fixed price electricity, and favorable balance of fossil fuel trade dollars, as well as fulfilling the State RPS, and providing energy and job diversification. The revenues from Lease payments alone will be at least \$3.5 million to 4.5 million year and represent substantial Lease revenue for the DLNR. No other development will have the capability to pay such an amount.

67-287 Kahaone Loop
Waialua, Hawaii 96791
Ph: 808.430.9989

1800 Eagle Mill Road
Ashland, Oregon 97520
keith@westwindworks.com

EXHIBIT 



There are no flaws or faults to the project viability; in fact the benefits keep improving as the ORP design formulates. The issue isn't concerning project success but is about how long it has taken to work through the various and required steps like placing several independent or having one diversified energy project on one parcel where investors require potential independent land title, this is not new but continued to be a critical issue.

The process, like most land and energy developments on Oahu has taken much more time to develop the infrastructure and interconnecting pieces than anticipated. Those pieces are many, for there are various roadblocks in the process to entitlements, permits and financing that were not anticipated even after initial due diligence. Issues like difficulties in obtaining Power Purchase Agreement(s) with HECO due to new RFP release, FAA limitations, and other details.

The history of the Former Ewa Feedlot goes back to 1969 when the State spent \$40+million to help maintain Hawaii's cattle industry and bought the 110 acre parcel. The Feed Lot failed and the land has been idle since with no revenues for over 50 years, until our payments. Now, as we press for more time to gather the final ingredients that will provide Oahu with a show piece of renewable integration we are held to a standard impossible to reach in the short time.

We therefore respectfully request a meeting of all parties to discuss adequate remedies and realistic time schedule and to cure the default rent payments. The ORP plans to pay all past due accounts payable and maintain a reasonable timetable going forward.

Sincerely,

Keith Avery
president

67-287 Kahaone Loop
Waialua, Hawaii 96791
Ph: 808.430.9989

1800 Eagle Mill Road
Ashland, Oregon 97520
[*keith@westwindworks.com*](mailto:keith@westwindworks.com)



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

December 21, 2011

Ref. No.: 05OD-266

Via USPS and email

Mr. Keith Avery
West Wind Works, LLC
67-287 Kahaone Loop
Waiialua, Hawaii 96791
Email: keith@westwindworks.com

Dear Mr. Avery:

Subject: Development Agreement for the Former Ewa Feedlot Site between State of Hawaii and West Wind Works, LLC dated November 24, 2010 (the "Development Agreement")

We are in receipt of your letter to Keith Chun dated November 30, 2011, in which you acknowledge West Wind Works, LLC's defaults under the Development Agreement for failing to make the required development fee payments and meet various deadlines.

Your letter also requests a meeting to "discuss adequate remedies and realistic time schedule and to cure the default rent payments." We are willing to meet with you to discuss this matter, but request that you first submit for our consideration a written explanation that: (1) details the reasons for 3W's inability to comply with the terms of the Development Agreement; (2) explains 3W's proposed remedies and timeline; and (3) provides evidence of 3W's ability to pay the past due development fees totaling \$182,650.35 (e.g., a loan commitment letter) and future development fees as described in the Development Agreement (the next quarterly installment of \$86,250.00 being due on February 24, 2012).

As you are aware, the cure period cited in the most recent Notice of Default dated October 13, 2011, lapsed over four weeks ago on November 18, 2011. Accordingly, if your written explanation is not received by **January 6, 2012**, we will proceed with terminating the Development Agreement pursuant to the terms therein. Please also note that pursuant to Section 171-13, Hawaii Revised Statutes, if the Development Agreement is terminated due to your failure to satisfy the terms and conditions thereof, you will not be eligible to purchase or lease public lands, or be granted a license, permit, or easement covering public lands for a period of five years following the termination. We urge you to give this matter your immediate attention.

Very truly yours,

A handwritten signature in black ink, appearing to read "Russell Y. Tsuji".

Russell Y. Tsuji
Administrator

cc: Central File
District File
Paul Shinkawa, Oahu Renewable Energy Park LLC
Riley Saito, SunPower Corporation, Systems

EXHIBIT "II.b"



April 8, 2012

Via E-mail and Parcel Post: Russell.Y.Tsujii@hawaii.gov

Mr. Russell Tsuji, Administrator
State of Hawaii
Department of Land and Natural Resources
Post Office Box 621
Honolulu, Hawaii 96809

RE: April 9, 2012 Payment Due

Dear Mr. Tsuji,

We appreciate the time you provided for the Oahu Renewable Energy Park to bring the Development Agreements terms and payments to a point of fulfillment. We have been and continue to work diligently with our partners International Electric Power, Inc. who we introduced previously.

We have a commitment to pay all of the monies due the DLNR as agreed in our DA and need until April 23, 2012 to complete the transfer of funds to West Wind Works and arrange a certified check for the DLNR.

Regarding our development schedule, we are completing agreements with our technology partners to engineer, finance, and build the following Projects:

1. Global Energy Solutions/Hurst Boiler 5MW biomass system;
2. GES/Hurst/Sopogy 5MWCSP Hybrid solar system;
3. ECC/SP/LE 5MW PV solar system.

We are working towards the optimum integrated renewable energy project design utilizing Oahu's natural energy assets, as proposed, so may provide the State with significant long term revenues through our lease of the Former Iwa Feedlot.

Please contact me with any questions, concerns or guidance.

Sincerely,

Keith Avery
president

67-287 Kahaone Loop, Waialua, Hawaii 96791
keith@westwindworks.com

EXHIBIT "IV"

7120



RECEIVED
LAND DIVISION RECEIVED

January 4, 2012

2012 JAN 17 A 10:38
JAN 12 P12:36

Mr. William Aila, Chairman
Department of Land and Natural Resources
1151 Punchbowl
Honolulu, Hawaii 96813

DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII
DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

Re: Plan for the Oahu Renewable Energy Park

Dear Mr. Aila,

Thank you for taking the time to meet with us last week, to discuss the status of the Oahu Renewable Energy Park (ORP).

As we described, the ORP's goals have always been to provide Oahu with substantial socio-economic benefits, energy supply and price security using Oahu's indigenous and abundant renewable energy resources; biomass, solar, wind and bio fuel. The proposed energy integration is new, state of the art technology, and which has raised development issues that are difficult hurdles and were not anticipated when the ORP was conceived.

After one year of the development process, we have learned that the design of the ORP is guided by:

1. HECO's RFP requirements as the sole off-taker for the purchase of the integrated renewable power; and
2. Complicated financing of various Independent Power Producers (IPP) using various cutting edge technology's, as one 25MW Integrated Power Project versus five individual 5MW Projects.
3. The Development Agreement (DA) if morphed into a Conditional Lease, will provide us with the flexibility we need to attract additional technologies and allow our financial partner to be more liberal with funding.

The process has taken much more time to plan for and develop the infrastructure and interconnecting pieces than anticipated because technology & preliminary financing commitments must be made to make meaningful progress on the various issues in the process to entitlements, permits and financing. We therefore propose reevaluating the need for the DA while simultaneously completing a formal Conditional Lease. The Conditional Lease will be in effect but extend to its full term upon meeting each condition, including a fully executed and approved PPA.

Our financial Partners, IEP, would like to be able to negotiate the major terms of the Conditional Lease immediately. We assume negotiations, including any appraisals, SMA and FAA determinations and designations, and other details that control the final design outcome, may take up to 6 months.

67-287 Kahaone Loop, Waialua, Hawaii 96791
kent@westwindworks.com

EXHIBIT "I.a"



While we work on completing a Conditional Lease, we propose to pay, on or before March 9, 2012:

1. All rents due including currently past due payments; as well as
2. \$1.035 million, less amounts previously paid, to fulfill payments expected for the three years through November 23, 2013;

This will provide a foundation for investment ultimately providing long term revenues to the State. The ORP will prove to be a good and reliable long term source of revenue for this DLNR parcel.

Please contact me with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Avery", written over a horizontal line.

Keith Avery
president



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

February 3, 2012

Ref. No.: 05OD-266

Via USPS and email: keith@westwindworks.com

Mr. Keith Avery
West Wind Works, LLC
67-287 Kahaone Loop
Waialua, Hawaii 96791

Subject: Development Agreement between State of Hawaii and West Wind Works, I.L.C
("3W") dated November 24, 2010 (the "Development Agreement")

Dear Mr. Avery:

Your letter to Chairperson William J. Aila, Jr. dated January 4, 2012 has been referred to this office. Your letter requests converting the Development Agreement into a Conditional Lease and proposes to pay all past, present, and future fees payable to DLNR under the Development Agreement by March 9, 2012 while the terms of the Conditional Lease are being negotiated.

In order for us to properly evaluate your request, please provide for our review the following by Friday, February 17, 2012:

- (1) A description of your financial partner, IEP, and its proposed role in the Oahu Renewable Energy Park project ("ORP"). For example, will IEP's role be solely that of providing capital or financing? Or will IEP become a limited liability company member of 3W? If IEP will become an LLC member or have some type of ownership interest in 3W or the ORP, provide details of IEP's background and the proposed ownership structure of 3W to the extent that DLNR will be able to evaluate the entity's qualifications as a prospective lessee.
- (2) Details of 3W's arrangement with IEP, including the amount of financing or capital to be provided, the timeframe for such funding, the terms and conditions that 3W must meet before funding is provided, and any pertinent milestones or deadlines. Provide any additional terms and conditions that must be met in order for 3W to pay to DLNR all of the development fees by March 9, 2012.
- (3) An explanation of how the Conditional Lease differs from the existing Development Agreement and DLNR's form lease previously provided to you. Explain how a Conditional Lease will allow you to attract additional technologies and allow IEP to be more liberal with funding.
- (4) Provide 3W's proposal for the major terms and conditions of the Conditional Lease.
- (5) Provide an updated timeline of all major milestones for the ORP, including funding milestones, due diligence matters (e.g., SMA and FAA determinations), compliance with

EXHIBIT B.6

Mr. Keith Avery
February 3, 2012
Page 2

HRS Chapter 343 (I:A/I:IS), land use entitlements/approvals, and projected construction timelines.

Please be reminded that pursuant to Section 171-13, Hawaii Revised Statutes, if the Development Agreement is terminated due to 3W's failure to satisfy the terms and conditions thereof, you will not be eligible to purchase or lease public lands, or be granted a license, permit, or easement covering public lands for a period of five years following the termination. Accordingly, we urge you to give this matter your immediate attention.

Very truly yours,


Russell Y. Tsuji
Administrator

cc: Central File
District File
BLNR Chairperson William J. Aila, Jr.
Paul Shinkawa, Oahu Renewable Energy Park LLC
Riley Saito, SunPower Corporation, Systems



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

March 2, 2012

Ref. No.: 05OD-266

Via USPS and Email: keith@westwindworks.com

Mr. Keith Avery
West Wind Works, LLC
67-287 Kahaone Loop
Waialua, Hawaii 96791

Subject: Development Agreement between State of Hawaii and West Wind Works, LLC
("3W") dated November 24, 2010 (the "Development Agreement")

Dear Mr. Avery:

We are in receipt of your letter dated February 16, 2012, which responded to our letter dated February 3, 2012 requesting information necessary to evaluate your request to convert the above-referenced Development Agreement into a Conditional Lease.

Your letter, however, failed to provide the requested information, specifically all of the information requested in Questions (2) through (5) of our letter. As such, we cannot approve your request.

As we previously explained to you in our meeting and then again in writing, the Development Agreement that was entered into is probably the most the Land Board can legally approve at this point, especially because the Chapter 343 requirements have not yet been satisfied. Further, we asked you to articulate specifically the type of changes (proposed terms and conditions) you will be proposing to the existing Development Agreement if it could be converted to something called a "Conditional Lease." With such information, we will then be able to consult with our lawyers to assist us in evaluating and determining whether a "Conditional Lease" is even legally possible given the current scenario and having not satisfied the Chapter 343 requirements.

Since we have requested this information in the past and have not been provided the information to date, we request once again the following information¹ be provided immediately. In addition, please provide the following requested information:

- (1) In response to Question (1), you explained that International Electric Power ("IEP") is the majority shareholder in the entity formed to own the project, initially with a 70% ownership stake. Please provide copies of the new entity's organizational documents for

¹ Includes a confirmation of the information provided in response to Question (1), and all of the information requested in Questions (2) through (5) of our prior letter to you dated February 3, 2012.

EXHIBIT "D.c"

our review. Please also note that any assignment of 3W's interest in the Development Agreement to the new entity is subject to approval by the Board of Land and Natural Resources.

- (2) Details of West Wind Works' ("3W") arrangement with IEP, including the amount of financing or capital to be provided, the timeframe for such funding, the terms and conditions that 3W must meet before funding is provided, and any pertinent milestones or deadlines. Provide any additional terms and conditions that must be met in order for 3W to fulfill its proposal to pay to DLNR all of the development fees by March 9, 2012.
- (3) Explain how a Conditional Lease will allow you to attract additional technologies and allow IEP to be more liberal with funding.
- (4) Provide 3W's proposal for the major terms and conditions of the Conditional Lease.

Very truly yours,



Russell Y. Tsuji
Administrator

cc: William J. Aila, Jr, Chairperson
Central Files
District Files
Paul Shinkawa, Oahu Renewable Energy Park LLC
Riley Saito, SunPower Corporation, Systems

INTERNATIONAL ELECTRIC POWER



April 23, 2012

Russell Tsuji
Board of Department of Land and Natural Resources
1151 Punchbowl Street, Room 220
Honolulu, HI 96813

Dear Russell:

Over the past six months, International Electric Power ("IEP") has been working with Keith Avery, Dexter Sato and Paul Shinkawa of West Wind Works, LLC ("WWW") and Oahu Renewable Energy Park, LLC ("ORP") on developing what we are calling the IEP-Oahu Renewable Energy Park (the "Project"). We at IEP are very excited about the prospect of bringing low-cost, reliable and environmentally-friendly electric power to the island of Oahu.

During the time we have been involved in the Project, we have reviewed and vetted the technological aspects of the intended design; interviewed various potential partners and counterparties, from contractors, to vendors, to fuel suppliers, and others; built a detailed pro forma financial model, and identified the sources of capital necessary for the Project. We are confident that the Project can obtain the necessary permits, approvals and power purchase agreement(s) to reach a successful financial close.

While under the terms of our joint venture agreement with ORP, IEP is not responsible for payments to the DLNR pursuant to the Development Agreement for Former EWA Feedlot Site (the "Development Agreement" or "DA"), we have only very recently become aware that WWW, a partner in ORP, has fallen behind on various periodic payments required by the Development Agreement. IEP also understands that WWW has been notified of its payment delinquency, and consequently WWW and others at ORP are arranging the capital necessary to bring the DA back into compliance. Once we collectively accomplish that, IEP looks forward to (in conjunction with ORP) meeting with DLNR to restructure the DA so it may be consistent with our ability to bring this project to successful completion, the terms of which will be beneficial to both sides of the agreement.

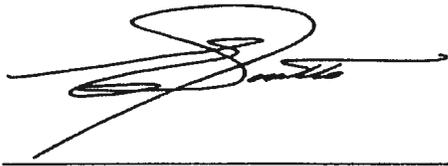
As the controlling member of the joint venture that is to develop the Project, we share your concern regarding the status of the DA, are dismayed to hear that these payments are delinquent and especially aggrieved that unfunded checks have been written to DLNR. IEP assures DLNR that this situation will be rectified by WWW and ORP, or in the alternative, represent to you that IEP will take the measures

necessary to ensure compliance with the DA terms and develop and finance the Project. Our collective efforts will result in payments being made that will fully bring WWW into compliance with the DA. Payment will be made in two parts: the first, consisting of \$100,000, will be made on May 2, 2011 and the second, to be made by May 30, 2011, will consist of the balance due, which at that time will be \$268,287.85 (the then-balance of the amount now due, \$182,037.85, plus \$86,250.00). Both amounts will be paid as requested via certified check.

Once this occurs, we wish to discuss with DLNR ways in which we can effectively move forward to the benefit of the Project and all parties associated with it. In our extensive experience developing regulated and independent power projects worldwide, we understand these "hiccups" to be more the norm rather than the exception. Many of the most beneficial and successful independent power projects have been challenged by roadblocks at one or more times during their development. We sincerely hope that this challenge to the IEP-ORP Project will not derail what we know will be a successful venture for IEP and ORP, and a beneficial power project for the people of Oahu.

Recognizing that we are at a critical juncture in this Project, and that we have not had an opportunity to meet or speak directly with the DLNR on this issue, we ask that DLNR further forbear, for a short period of time, from any drastic action regarding the DA that would result in a waste of all the effort that has been expended to date. IEP (and of course WWW and ORP) are very concerned about the possibility of contract termination and Peter Dailey, IEP's Chairman, and I would like to meet with you in Hawaii at your earliest convenience to discuss this issue with the intent of satisfying the DA deficiencies and addressing any other DLNR concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Enzo M. Zoratto', is written over a horizontal line. The signature is stylized and cursive.

Enzo M. Zoratto
President
International Electric Power, LLC

CC: Peter Dailey
Keith Avery

EXHIBIT B

Proposal Dated July 25, 2012

Submitted by

International Electric Power

The "Initial Proposal"



July 25, 2012

Mr. Russell J. Tsuji
Administrator
Department of Land and Natural Resources
Post Office Box 621
Honolulu, Hawaii 96809

Re: Transmittal of Oahu Renewable Park Information

Dear Russell,

International Electric Power, LLC (IEP) is pleased to provide you with the first of 4 deliverables in support of our upcoming discussions on the Development Agreement (DA) and assignability of the contract from West Wind Works (3W) to a new company, IEP-ORP LLC, where IEP will be the majority owner and 3W will remain a minority participant.

This first submittal summarizes our proposed changes to the DA and will be followed with a Statement of Qualifications and an Assignment Justification Memorandum on Friday, July 27, 2012. Following this, we will prepare a modified "redlined" version of the DA once an understanding of the terms is acceptable to both the DLNR and IEP.

I ask that you regard the enclosed proposal as sincere effort to put our "best foot forward" and make this project a reality. While we recognize that it may fall short of certain DLNR objectives, we are certain that it will also surpass your expectations in other areas. Given this, I propose that we use our meeting of August 7, 2012 to understand each other's perspective with the objective of finding common ground to move forward and complete a successful negotiation.

We remain excited about the great tangible and intangible benefits that the project will provide to Hawaii's renewable energy agenda and are confident that the project can be financed and constructed to achieve stakeholder objectives.

Sincerely,

A handwritten signature in blue ink, appearing to read "Enzo M. Zoratto", is written over a light blue circular stamp.

Enzo M. Zoratto
President & COO
International Electric Power, LLC

Attachment: IEP-3W Proposal for Campbell Industrial Park Ewa Feedlot Development Agreement

CC: Peter Dailey, IEP
Keith Avery, 3W
Paul Shinkawa, ORP
Morris Atta, DLNR
Gavin Chun, DLNR
Keith Chun, DLNR
Darlene Ariola, DLNR
Bill McCorriston, M4Law
Peter J. Hamasaki, M4Law

MCCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

July 25, 2012

Mr. Russell J. Tsuji
Administrator
Department of Land and Natural Resources
Post Office Box 621
Honolulu, Hawaii 96809

Re: Campbell Industrial Park Ewa Feedlot Development Agreement

Dear Mr. Tsuji:

As you may be aware, we are jointly representing West Wind Works, LLC, a Hawaii limited liability company ("3W"), the Developer under that certain Development Agreement dated November 24, 2010 ("Development Agreement"), and International Electric Power, LLC ("IEP"), 3W's proposed partner in the development of the Oahu Renewable Energy Park ("Project") at the former Ewa Feedlot site at Campbell Industrial Park, Honouliuli, Ewa, Oahu, Hawaii.

A. Current Status of Development Agreement.

At the meeting of the Board of Land and Natural Resources ("Board") on May 25, 2012, under agenda Item D-16, the DLNR staff recommended that the Board consider terminating the Development Agreement for the following reasons:

- 3W failed to demonstrate adequate progress against key milestones and deliverables as stated in the Development Agreement;
- 3W failed to make certain required payments and penalty payments for missed milestones in the Development Agreement; and
- 3W was \$374,375 in arrears in development fee payments as of May 25, 2012.

In response to the foregoing, 3W solicited the support of IEP to present a pathway to curing such deficiencies, as well as spearhead the effort to develop the Project.

At the meeting on May 25, 2012, the Board agreed to defer action for 60 days on agenda Item D-16. The deferral was for the purpose of giving the State, 3W and IEP the opportunity to discuss an assignment of the Development Agreement to a joint-venture between 3W, IEP and other parties, and an amendment of the Development Agreement, both with the goals of curing the payment defaults and addressing the issues that have arisen during the course of the development of the Project.

B. Deliverables to be Provided to the DLNR.

Pursuant to the Board's action and discussion with DLNR staff, we understand that the following are being requested of 3W and IEP:

1. IEP and 3W will provide the DLNR with a summary of the proposed amendments to the Development Agreement. The proposed amendments are summarized in Section C of this letter.

2. In connection with the request for the assignment of the Development Agreement to IEP-ORP LLC, a Delaware limited liability company ("IEP-ORP"), 3W and IEP will provide the DLNR with organizational information for IEP-ORP and its constituent members. IEP-ORP will be a newly-formed joint venture between IEP (70%) and Oahu Renewable Park, LLC ("ORP") (30%). ORP is a Hawaii limited liability company in which 3W has an ownership interest, while IEP-ORP is a Delaware limited liability company to be registered to do business in the State of Hawaii, in which IEP will have a majority controlling interest.

3. IEP-ORP will provide a revised Statement of Qualifications for the development team for the Project. The revised Statement of Qualifications is being provided to you under separate cover.

4. Based upon the DLNR's review of the summary of proposed amendments to the Development Agreement, IEP-ORP will prepare either a redlined draft of a proposed Amended and Restated Development Agreement or a proposed Assignment and Amendment of Development Agreement, for review by the DLNR.¹

C. Proposal for Amendment of Development Agreement

IEP and 3W's proposal for amendment of the Development Agreement is set forth below. The proposal assures that the State will be fully paid all development fee amounts, including the amounts currently in arrears and provides for a potential \$1,000,000 additional rent payment if the Project qualifies for Federal 1603 Renewable Energy Refundable Tax Credit(s).

This proposal assumes that the assignment described in Item 2 above is approved and that the revised Statement of Qualifications described in Item 3 above is acceptable to the DLNR.

Execution of a Lease pursuant to the amended Development Agreement would be conditioned upon closing of the financing for the Project.

In summary, IEP and 3W propose the following:

1. DLNR will consent to the assignment of the Development Agreement (as amended) from 3W to IEP-ORP. IEP will be the majority member of IEP-ORP, while 3W would remain a minority participant through its membership in ORP.
2. The Lease will allow for the inclusion of a sublease of 30-40 acres of the property to SunPower for a separate 5 MW solar PV development.
3. IEP-ORP will make all payments currently due under the Development Agreement, equal to \$374,375.35 (through May 25, 2012), plus \$86,000 (through August 25, 2012), together with simple interest thereon at the rate of 6% per annum. One half of this amount will be paid within sixty (60) days following the

¹ For financing purposes, a conditional lease would be preferable to a development agreement; however, we understand that the DLNR has expressed preliminary concerns as to whether a conditional lease may be executed prior to completion of compliance with chapter 343, Hawaii, Revised Statutes. If it is subsequently determined that a conditional lease may be executed prior to completion of compliance with chapter 343, Hawaii, Revised Statutes, that would be preferable from the developer's perspective.

- execution of the Power Purchase Agreement (PPA) with HECO and the remaining one-half will be paid within sixty (60) days following the closing of the financing for the Project.
4. Within sixty (60) days following the closing of the financing for the Project, an additional lump-sum payment will be made in the amount of the aggregate accrued quarterly development fee payments that would have been due from August 25, 2012, to the date of closing, together with simple interest thereon at the rate of 6% per annum.
 5. Closing of the financing for the Project will occur no later than December 31, 2014, unless mutually extended; if closing does not occur by that date, the Development Agreement (and Lease, if executed prior thereto) may be terminated by the DLNR.
 6. The various intermediate milestones contained in the current Development Agreement will be eliminated and replaced with the following two milestones: (a) execution of the PPA with HECO, and (b) closing of the financing for the Project. We are proposing to eliminate the intermediate milestones currently contained in the Development Agreement to allow for flexibility and ease of scheduling, as well as to eliminate incurring additional fees associated with delays. As a practical matter, the funding to the Project will not close without acceptance by the Project's lenders of the PPA with HECO and the execution of the Lease, and the PPA and Lease will not be executed until the required permits have been obtained and the requirements of chapter 343, Hawaii Revised Statutes, have been satisfied; therefore including these as separate milestones is redundant.
 7. The Lease rent payments will need to conform to the market rents for each type of energy generation. For example, estimated market lease rent in Hawaii for photovoltaic projects is \$10,000 per acre per year. The fair market rents for CSP and Biomass energy generation also will need to be factored into creating a blended aggregate rental amount under the Lease that reflects market rents for these types of energy generation.
 8. The Lease will be executed at closing of the financing for the Project, with quarterly rent payments under the Lease beginning immediately thereafter and continuing through the construction period for the Project and the remainder of term of the Lease.
 9. If the Project is eligible, once the Project is commissioned, operational, and receives the proceeds of Federal 1603 Renewable Energy Refundable Tax Credit(s), IEP-ORP will make a one-time payment of additional rent to the State in the amount of \$1,000,000.
 10. As part of the original proposal, IEP-ORP will offer to sell power directly to the State for a fixed price (escalated annually) over the next 20 years in lieu of Lease rent payments.

D. Summary of Financial Benefits for State. The purpose of the proposed amendments to the Development Agreement is to ensure that the Project is viable and that the State therefore will receive the development fees and lease rents provided for in the Development Agreement and the Lease. Specific financial benefits to the State under the proposed amendments to the Development Agreement are summarized below:

Summary of Financial and Contractual Benefits to State		
Description	Current DA	Amended DA
Development Fees and Interest Through August 2012 (DA negotiations complete) – paid ½ within 60 days of execution of PPA and ½ within 60 days of Financial Closing, at 6% simple interest annually	\$460,875	\$244,528 in September, 2013; \$259,199 in September, 2014; For total of \$503,728
Development Fees and Interest Through December 2014 at 6% simple interest annually	\$774,000	\$820,440
Additional rent payment to State if the Project Qualifies for 1603 Refundable Tax Credits	N/A	\$1,000,000
Power in exchange for lease rent payments – 2.5 MW at \$0.24/kWh with 1% escalator versus \$0.26/kWh with 3% escalator over 20 years	N/A	Savings of \$25,308,064.35*
Execution Risk	Moderate	Low
Ability to Secure Financing	Low	High
Team Stability and Capitalization	Moderate	High
*Net Present Value, estimated with payments starting Jan 1, 2015, at a 3% discount rate		

E. Remaining Deliverables.

The information related to IEP-ORP in connection with the requested assignment of the Development Agreement referenced in Item 2 above will be transmitted to you shortly under separate cover.

The revised Statement of Qualifications referenced in Item 3 above also will be provided to you under separate cover. The qualifications submittal will reflect revisions to our team equipment suppliers and installation subcontractors.

The proposed amendment to the Development Agreement referenced in Item 4 above will be prepared upon agreement between the DLNR and IEP-ORP on the basic terms of the amendments, as outlined in this letter above.

Please note that we also are awaiting the State’s response to our request for to extend the deferral of action on Item D-16 of the May 25, 2012, Board agenda for an additional 30 days. The additional time will be used to validate all costs, schedules and technologies so that we may assure delivery of a successful Project on time and on budget. The proposed points listed above are for the purpose of initiating discussions with respect to the amendment to the Development Agreement between DLNR and IEP-ORP.

Mr. Russell J. Tsuji
Department of Land and Natural Resources
July 25, 2012
Page 5

Thank you for your consideration of the foregoing. Please contact me with any questions.

Very truly yours,

MCCORRISTON MILLER MUKAI MACKINNON LLP

A handwritten signature in black ink, appearing to read "Bill McCorrison". The signature is fluid and cursive, with a long horizontal flourish at the end.

William C. McCorrison

EXHIBIT C

Summary of Proposals

Exhibit C

SUMMARY OF PROPOSALS

	Proposal ^[1] /Development Agreement ("DA")	Initial Proposal (July 25, 2012)	September Proposal (September 27, 2012)	October Proposal (October 1, 2012)	November Proposal (November 8, 2012)
Monetary Delinquencies/Proposed Cure	\$528,125.35 ^[2] as of 11/8/12	<ul style="list-style-type: none"> \$244,528 w/in 60 days of PPA (September 2013) \$259,199 w/in 60 days of Fin. (September 2014) 	100% of the DA payments accrued prior to September 30, 2012 paid in one lump sum amount after assignment of the modified DA	<ul style="list-style-type: none"> \$136,719 upon execution of a modified DA \$136,719 upon FONSI from DLNR \$136,719 upon lease issuance \$136,719 upon receipt of PPA 	<ul style="list-style-type: none"> Total of \$528,125.35^[2], paid: • 25% at assignment of the DA • 25% at IEP-ORP being short listed on HECO RFP • 25% at signing of PPA • 25% at financing & lease execution
Development Agreement/Proposed Modifications					
Developer/Proposed Assignee (State of Registr./HQ)	West Wind Works, LLC (HI)	IEP-ORP LLC (DE) • IEP, LLC (PA)-70% • ORP, LLC (HI)-30%	ORP, LLC (HI)	IEP-ORP, LLC (HI) pending • IEP, LLC • ORP, LLC	IEP-ORP, LLC (HI) pending • IEP, LLC subsidiary-60% • ORP, LLC-35% • Abacus Financial Group-5%
Development Proposal	110 ac. for renewable energy park • 5 ac. Wind to Hydro. • 10 ac Biomass • 28 ac Tracking Solar • 57 ac future solar expan.	110 ac. for renewable energy • 5MW Photovoltaic • 5MW Concentrated Solar • 5MW Biomass	17 ac. for up to two 5MW Biomass plants Development of the remaining 93 ac. subject to DLNR negotiations w/a company identified by 3W	17 ac. for up to two 5MW Biomass plants Balance of the property (approx. 93 ac.) to be released for development by others on a non-exclusive basis	17 ac. located along Olai Street for up to two 5MW Biomass plants Balance of the property (approx. 93 ac.) to be released for development by others on a non-exclusive basis
Fees	\$345,000 per year paid in quarterly installments	\$820,400 (DA Fees and Interest through December 2014) paid w/in 60 days of closing project financing	Pro rata share of current fees, payable as agreed to in a negotiated modified DA	Total of \$98,675 paid in quarterly installments from October 1, 2012 to December 2014, or completion of long term lease	\$53,318 annually. Payments to accrue quarterly and paid upon issuance of the PPA and financing
Benchmarks	• NUG determine/appr. • SMA Permit • Conditional Use Permit • PPA execution • PUC Approval	• Execution of PPA w/HECO • Closing of project financing	• Execution of PPA with HECO • Closing of project financing	• Execution of PPA with HECO • Closing of project financing no later than December 31, 2014	• Execution of PPA with HECO, est. completion January 7, 2015 • Closing of project financing, est. completion April 30, 2015
Proposed Lease Terms					
Lease Term	25 yrs. & 25-yr opt to renew	N/A	N/A	N/A	Max 65 years w/option to renew
Annual Base Rent	\$5,520,000	To be determined based on market rent for the type of use proposed	\$30,000/ac. (17 ac.), or \$510,000/yr.	\$30,000/ac. (17 ac.), or \$510,000/yr.	\$30,000/ac. to be adjusted subj to an appraisal
Other		<ul style="list-style-type: none"> • Offer to sell power in exchange for lease rent • Payment of SIM as add'l one-time rent IF the project qualifies for certain federal tax credits 	N/A	<ul style="list-style-type: none"> • No annual rent escalations • Offer to sell power in exchange for or addition to lease rent. 	<ul style="list-style-type: none"> • Rent fixed for 25 yrs or term of PPA whichever is longer • Rent re-opening each 20 year period thereafter

[1] Renewable Energy Park, Oahu, Hawaii; Development Proposal for the Former Ewa Feedlot, dated March 30, 2010, submitted by 3W in response to the RFQ/RFP.

[2] Pursuant to Tenant Statement (Document Number 050d266) dated November 13, 2012, which does not include a 1% monthly assessment on unpaid Development Agreement Fees.

EXHIBIT D-1

Proposal Dated September 27, 2012

the "September Proposal"



September 27, 2012

Via E-mail: Russell.Y.Tsuji@hawaii.gov

September 27, 2012

Mr. Russell J. Tsuji
Administrator
Department of Land and Natural Resources
Post Office Box 621
Honolulu, Hawaii 96809

Re: Campbell Industrial Park Ewa Feedlot Development Agreement

Dear Mr. Tsuji:

West Wind Works, LLC ("3W") is pleased to submit this final proposal to the DLNR to modify the Development Agreement for the former Ewa Feedlot site at Campbell Industrial Park, Honouliuli, Ewa, Oahu, Hawaii, dated November 24, 2010. Should the terms of this proposal be accepted by the DLNR, it is anticipated that the parties will negotiate the final Development Agreement within 30 days, which will result in the assignment of the Development Agreement from 3W to:

1. ORP, LLC. Oahu Renewable Energy Park LLC for 17-acres
2. The DLNR to consider the opportunity for 3W to bring SunPower Corporation into negotiations with the DLNR for the remaining 93-acres;

A. Proposal for Amendment of Development Agreement

We propose paying the State all agreed upon development fee amounts, including the amounts currently in arrears upon assignment of the DA. Execution of a Lease pursuant to the amended Development Agreement would be conditioned upon closing of the financing for the Project.

In summary, 3W proposes the following:

- DLNR will consent to the assignment of the Development Agreement (as amended) for the exclusive use of 17-acres, from 3W to ORP, LLC (Hawaii) and its related entities.
- ORP LLC will retain with IEP-ORP LLC, its biomass area of the 17-acre plot of the 110-acre parcel and will consent to the assignment of the balance of the property (93 acres) to SunPower.



- IEP-ORP will develop one or two 5MW biomass plants on its share of the 17 acres of land, depending upon PPA negotiations with HECO and economic factors.
- The Lease rent payments offered by IEP-ORP for its share of the 17 acres of land will be \$30,000 per acre annually.
- ORP LLC Hawaii will pay 100% of the Development Agreement Payments accrued prior to September 30, 2012. Such payments would be paid in one lump sum after attaining an BLNR approved assignment of the modified DA. (An escrow account for full payment will be established in favor of the DLNR to be distributed upon completion of the DA modifications and assignment.)
- IEP-ORP would pay 100% of the Development Payments applicable beginning October 1, 2012, based on its prorated share of the property in which it will have the exclusive rights to develop (17/110ths of the current Development Payments). Such payments will be paid as agreed in the modified DA.
- The Lease will be executed at closing of the financing for the Project, with quarterly rent payments under the Lease beginning immediately thereafter and continuing through the construction period for the Project and the remainder of the term of the Lease.

The various intermediate milestones contained in the current Development Agreement will be eliminated and replaced with the following two milestones: (a) execution of one or more PPAs with HECO, and (b) closing of the financing for the Project. We are proposing to eliminate the intermediate milestones currently contained in the Development Agreement to allow for flexibility and ease of scheduling, as well as to eliminate incurring additional fees associated with delays. As a practical matter, the funding to the Project will not close without acceptance by the Project's lenders of the PPA(s) with HECO and the execution of the Lease, and the PPA(s) and Lease will not be executed until the required permits have been obtained and the requirements of Chapter 343, Hawaii Revised Statutes, have been satisfied; therefore including these as separate milestones is redundant.

Thank you for your consideration of the foregoing. Please contact me with any questions. We would like to set up a meeting at your earliest convenience with 3W, ORP, LLC, IEP and SunPower to finalize our discussions.

Very truly yours,

Keith Avery
President

67-287 Kahaone Loop, Waialua, Hawaii 96791
keith@westwindworks.com

EXHIBIT D-2

Proposal Dated October 1, 2012

the "October Proposal"



October 1, 2012

Via E-mail: Russell.Y.Tsuji@hawaii.gov

Mr. Russell J. Tsuji
Administrator
Department of Land and Natural Resources
Post Office Box 621
Honolulu, Hawaii 96809

Re: Campbell Industrial Park Ewa Feedlot Development Agreement

Dear Mr. Tsuji:

West Wind Works, LLC ("3W") and International Electric Power, LLC ("IEP") are please to submit this final proposal to the DLNR to modify the Development Agreement for the former Ewa Feedlot site at Campbell Industrial Park, Honouliuli, Ewa, Oahu, Hawaii, dated November 24, 2010. Should the terms of this proposal be accepted by the DLNR, it is anticipated that the parties will negotiate the final Modified Development Agreement (MDA) within 30 days, which result in the assignment of the MDA from 3W to IEP-ORP, LLC ("IEP-ORP"), a Hawaii LLC to be formed by 3W and ORP LLC and with IEP will remain an owner of the project, to be hereafter referred to as the Oahu Renewable Energy Park ("Project").

A. Proposal for Amendment of Development Agreement

The proposal assures that the State will be fully paid all development fee amounts, including the amounts currently in arrears. In summary, IEP and 3W propose the following:

- DLNR will consent to the assignment of the Development Agreement (as amended) from 3W to IEP-ORP, LLC.
- IEP-ORP would retain the exclusive right to develop a 17-acre plot (specified in Figure 1) of the 110-acre parcel and allow the DLNR to release the balance of the property (93 acres) for development by others on a non-exclusive basis.
- IEP-ORP would develop one or two 5MW biomass plants on its 17 acres of land, depending upon PPA negotiations with HECO and economic factors.
- The Lease rent payments offered by IEP-ORP for its 17 acres of land will be \$30,000/acre per year. This payment will not be subject to annual escalations.



- IRP-ORP would pay 100% of the Development Payments accrued prior to September 30, 2012. Such payments would be paid according to Section B. Summary of Financial and Contractual Benefits schedule:
- IEP-ORP would pay 100% of the Development Payments applicable beginning October 1, 2012, based on its prorata share of the property in which it will have the exclusive rights to develop (17 acres or 17/110ths of the current Development Payments). Such payments will accrue quarterly and be paid within 30 days of Financial Close.
- Should IEP-ORP be unsuccessful at obtaining a PPA with HECO, it will advise DLNR within 30 days of this event and the DLNR will be free to release the property for development by others.
- The Lease will be executed after the Project receives a FONSI from the DLNR, with quarterly rent payments under the Lease beginning immediately thereafter and continuing through the construction period for the Project and the remainder of the term of the Lease.
- Closing of the financing for the Project will occur no later than December 31, 2014, unless it is mutually agreed between the parties to extend this deadline. If closing does not occur by that date, the MDA may be terminated by the DLNR.
- The various intermediate milestones contained in the current Development Agreement will be eliminated and replaced with the following two milestones: (a) execution of one or more PPAs with HECO, and (b) closing of the financing for the Project. We are proposing to eliminate the intermediate milestones currently contained in the Development Agreement to allow for flexibility and ease of scheduling, as well as to eliminate incurring additional fees associated with delays. As a practical matter, the funding to the Project will not close without acceptance by the Project's lenders of the PPA(s) with HECO and the execution of the Lease, and the PPA(s) and Lease will not be executed until the required permits have been obtained and the requirements of Chapter 343, Hawaii Revised Statutes, have been satisfied; therefore including these as separate milestones is redundant.
- As part of the original proposal, IEP-ORP will offer to sell power directly to the State for a fixed price (escalated annually) over the next 20 years in lieu of or in addition to Lease rent payments. This offer will remain in effect throughout the initial 5 year term of the lease.



B. Summary of Financial Benefits for State

Specific financial benefits to the State under the proposed amendments to the Development Agreement are summarized below:

Summary of Financial and Contractual Benefits to State	
Description	Payments to DLNR
100% of Development Payments accrued and not paid through September 30, 2012, paid as follows: Upon execution of MDA\$ 136,719 Upon receipt of FONSI from DLNR.....\$ 136,719 Upon receipt of long term Lease..... \$ 136,719 Upon receipt of PPA.....\$ 136,719	\$546,875
100% of Development Payments paid quarterly from October 1, 2012 to December 2014 or completion of long term Lease (based on a 17 acre parcel)	\$98,675
Annual Lease rent payment (based on 17 acres)	\$510,000
Power in exchange for or in addition to lease rent payments – 2.5 MW at \$0.24/kWh with 1% escalator	Savings of \$25,308,064.35*
*Net Present Value, estimated with payments starting Jan 1, 2015, at a 3% discount rate	

C. Release from Development Agreement Fees

This proposal is predicated on IEP-ORP being assigned the rights to the MDA and IEP-ORP LLC providing the payment for all Development Payment in arrears. Should this proposal be acceptable to the DLNR, 3W will be released from all of its obligations as they pertain to the Development Agreement currently in effect, including any and all obligations to cure past-due or delinquent Development Payments

Thank you for your consideration of the foregoing. Please contact me with any questions.

Very truly yours,

Keith Avery
president

EXHIBIT D-3

Answers to DLNR Questions Dated November 8, 2012

the "November Proposal"



**Answers to DLNR Questions
From
West Wind Works LLC (3W)
In Conjunction with
International Electric Power LLC (IEP)**

November 8, 2012

1. IEP-ORP, LLC is the proposed assignee of the Development Agreement and shall be the developer of the proposed power project to be sited on a portion of the Ewa Feedlot property. The members of IEP-ORP, LLC, a Hawaiian-registered company (to be formed), and their respective ownership percentages are currently as following:

- A Hawaiian-registered subsidiary of IEP(to be formed) – 60%
- Oahu Renewable Park, LLC (ORP) – 35%
- Abacus Financial Group (Abacus) - 5%

Responsibilities of the parties are expected to be as follows:

- IEP will serve as primary project developer and in that capacity will negotiate project contracts, obtain permits, arrange financing and oversee project construction.
- ORP is the Project's local partner, and will assist in most phases of project development (especially those parts of development having to do with local constituencies), including permitting, PPA negotiation, feedstock supply and O&M contracting.
- Abacus is primarily a financial investor and will have a limited role in project development.

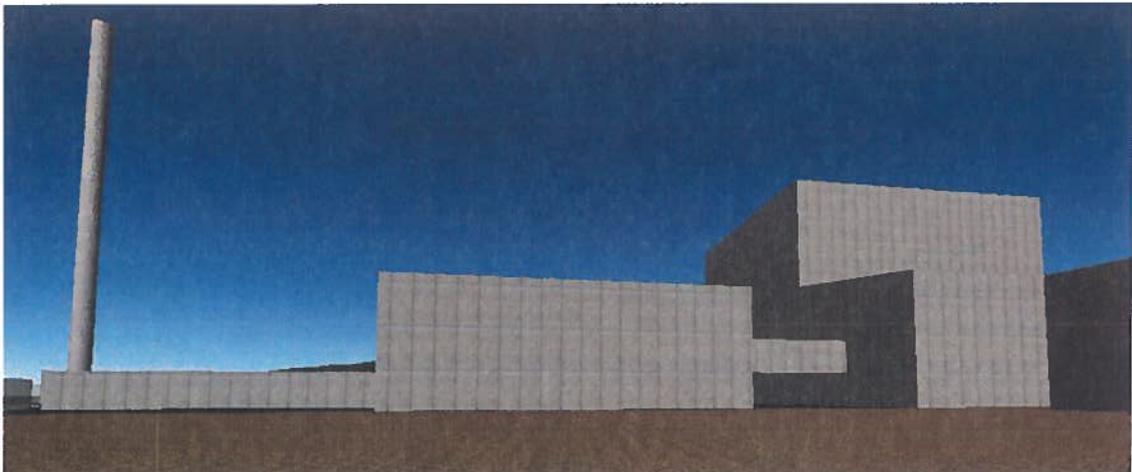
IEP-ORP, LLC will be member-managed, with IEP being the managing member of the LLC.

2. The proposed site covers a footprint of 17 acres along Olai St, with access to the main road. Below is an image showing the new proposed footprint in relation to the footprint suggested by 3W (shown in red blocks) in its proposal dated October 1, 2012. The new footprint shall be the basis for the assignment of the Development Agreement to IEP-ORP.

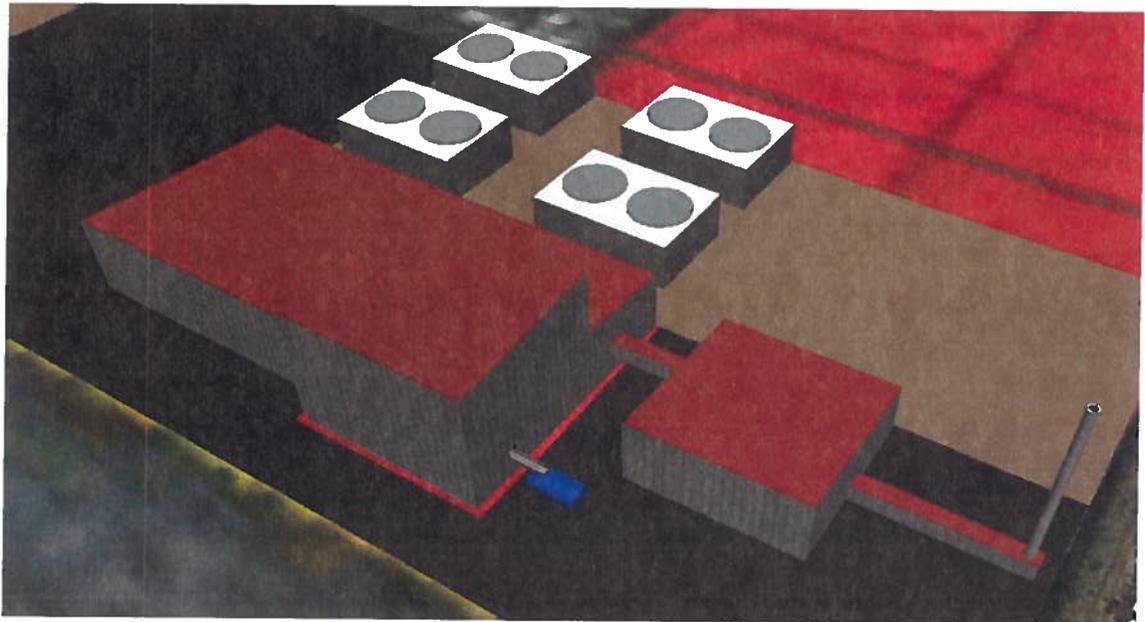
67-287 Kahaone Loop, Waialua, Hawaii 96791
keith@westwindworks.com



The planned improvements for the site include a multi-building energy generation facility, a substation, and a feedstock processing/holding area. The maximum building height is estimated to be 60 feet, which is the height of the tallest building housing the generator. The smokestack is anticipated to be up to 100 feet, which may be adjusted to meet Hawaii state regulations and will depend on the environmental controls for the system. A 3-D rendering of the smokestack and generator building is shown below:



67-287 Kahaone Loop, Waialua, Hawaii 96791
keith@westwindworks.com

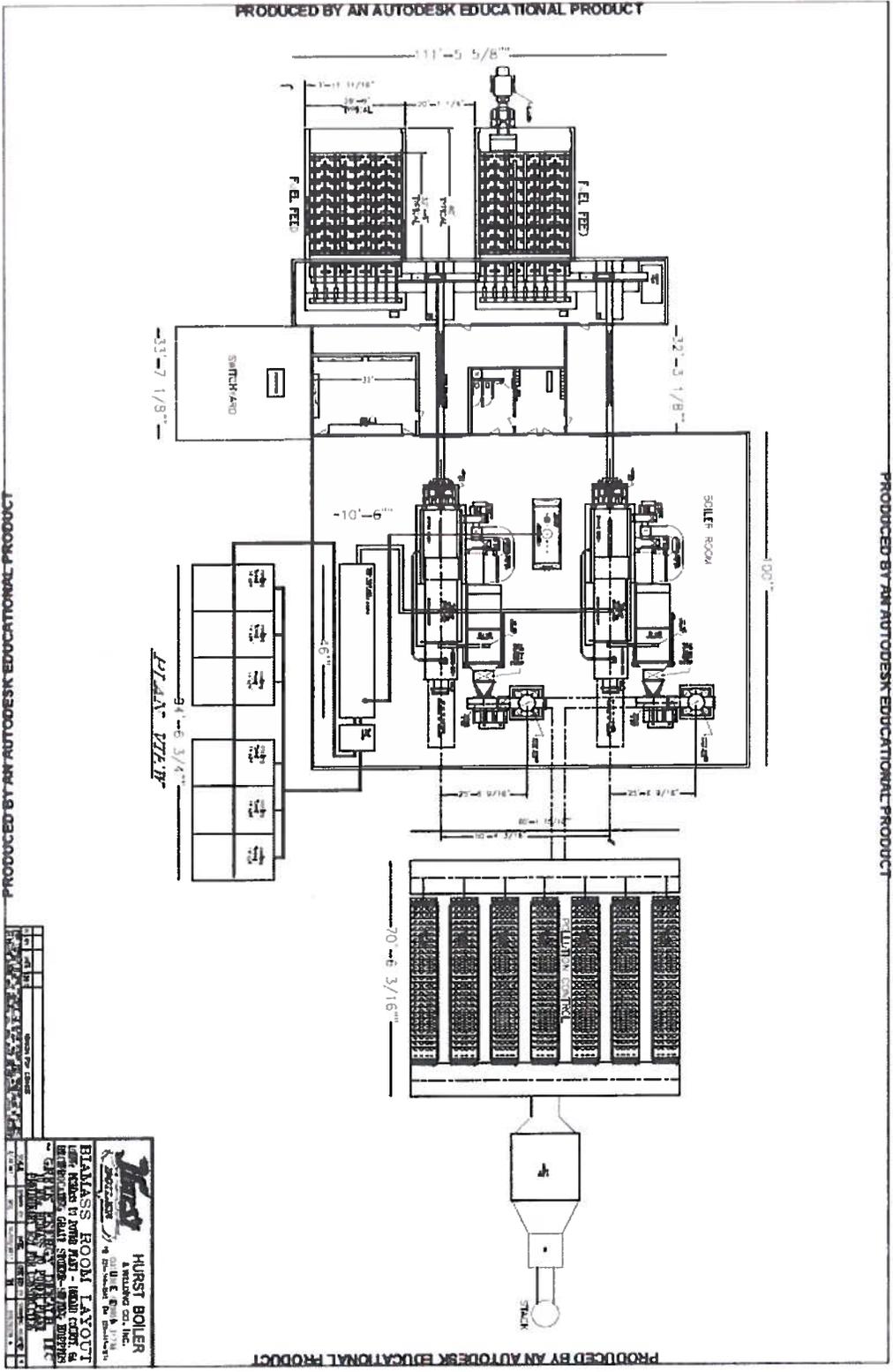


The surrounding infrastructure improvements to the property for two 5 MW plants located on the 17 acre leased property will include:

- Removal of any unnecessary fencing and concrete left by former feedlot
- Grading of lot for construction
- Installation of new fencing around IEP-ORP facility
- Multiple entry points from Olai St, and an access road for construction and feedstock delivery
- Utility hookup and access for the site, as well as drilled water wells
- Drainage system
- Lighting and security

IEP-ORP has removed the construction of an Eco-Center from its plans due to the real estate constraints, but will work with other land users on the balance of the property to see if this concept can be promoted and properly funded. The building footprint will fully encompass the equipment necessary and is expected to be configured with the approximate dimensions as shown below. IEP-ORP plans to a design very similar to the plan below, which is currently under construction in Georgia, using our expected technology partner Hurst/GES.

67-287 Kahaone Loop, Waiialua, Hawaii 96791
keith@westwindworks.com



67-287 Kahaone Loop, Waialua, Hawaii 96791
keith@westwindworks.com

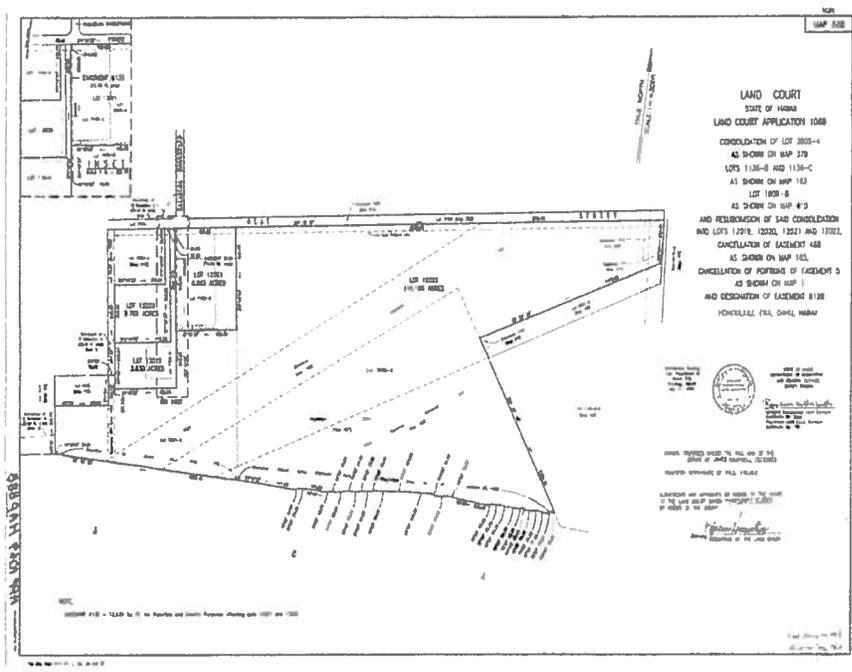


- Initially the biomass facility placement by 3W showed the plant along the left border of the property (labeled Green Waste), as shown on the right:

This location was far from the access point of Olai St, along the shoreline, and partially covered with flight easement restrictions shown on the plot below:



See Appendix C on various technology design specifics and requirements
 O'ahu Renewable Energy Park 3-1 March 30, 2010



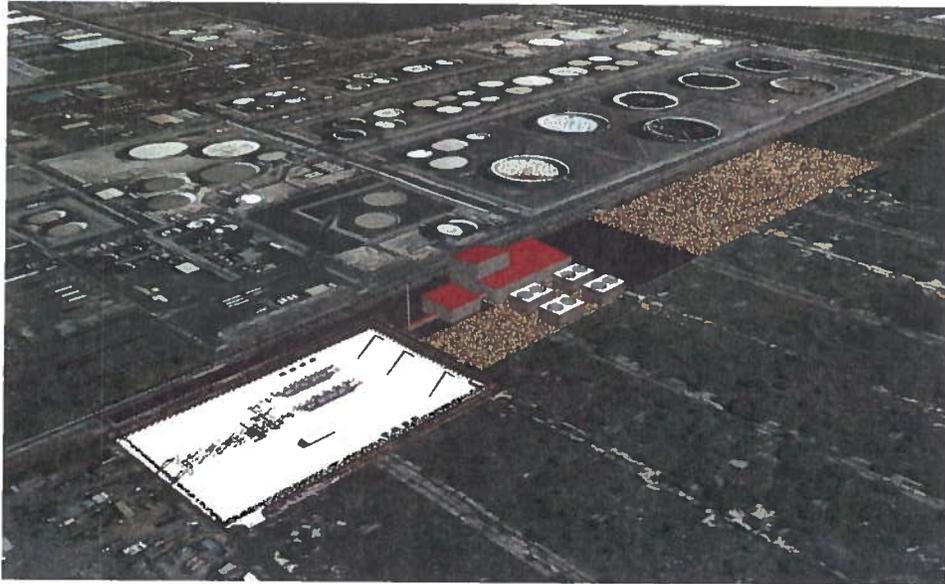
Since the initial submission of the RFP, this area has been more thoroughly reviewed for its suitability for construction. This space will not work for a sublease arrangement as there is no direct access to public roads, and the flight path covering half of the allotted land would also be prohibitive for stack height restrictions. This required IEP-ORP to reconsider the



optimal location of the plant, situating the plant along Olai St appeared to be the best location to avoid the issues above.

The new proposed footprint of the biomass facility (one or two generators) is shown below:

A) View in relation to the Campbell Industrial Park:



B) View in relation to shoreline:





In both scenarios, the generation buildings will create savings by sharing a common feedstock processing area. The black outline is the broken-out property for IEP-ORP. The final design may differ in arrangement for optimization of operations.

4. IEP-ORP refers to DLNR's document number 05od266 in which it is indicated that the total amount of Development Fees outstanding, including late fees, is \$528,125.35 as of November 24, 2012. IEP-ORP proposes to pay this amount in the following installments, within 30 days of the milestones mentioned below:

- Payment 1 - 25% at the assignment of the DA to IEP-ORP
- Payment 2 - 25% at IEP-ORP becoming short listed on HECO RFP
- Payment 3 - 25% at signing of Power Purchase Agreement (PPA)
- Payment 4 - 25% at Financial Close and execution of lease agreement

Payment 1 will be placed in an escrow account by Abacus on behalf of the DLNR upon acceptance of 3W's proposal as amended by this correspondence and any subsequent negotiations. It will be released to the DLNR once the DA is assigned to IEP-ORP.

Payment 2 will be placed in an escrow account by Abacus on behalf of the DLNR upon issuance of the HECO RFP. It will be released to the DLNR when IEP-ORP is short-listed on the procurement.

Payment 3 will be placed in an escrow account by either Abacus or IEP-ORP on behalf of the DLNR upon submittal of the application for the PPA to the Public Utilities Commission (PUC). It will be released to the DLNR when IEP-ORP obtains the PPA.

Payment 4 will not be placed in escrow and will be paid to the DLNR by either IEP-ORP or Abacus upon execution of the lease agreement, anticipated to be around Financial Close.

Proof of funds for Payments 1 through 4 has been provided by Abacus to IEP-ORP's legal counsel, Mr. Bill McCorrison at McCorrison, Miller, Mukai and Mackinnon in Hawaii, who will also administer the escrow accounts. Development Fees accrued after DLNR's assignment of the Development Agreement to IEP-ORP will be calculated based on the prior fee of \$345,000 annually, multiplied by 17 acres out of 110 acres, which amounts to \$13,329 per quarter of \$53,318 annually. These payments will accrue quarterly and be paid by IEP-ORP upon issuance of the PPA and Financial Close.



5. Attached to this document as Figure 5-1 is a project schedule that shows the anticipated major milestones for the project, including responding to the HECO RFP, navigating through the development approval process, and finally, through financing, construction, commissioning and operations of the facility. Operations are anticipated to commence by November 2016. This schedule anticipates the HECO RFP released in March 2013, and will be adjusted once the final RFP is released.

6. IEP-ORP has proposed that an annual rent of \$30,000/acre is used in the Development Agreement. This figure is intended to be adjusted subject to an appraisal to be conducted by the State and funded by IEP-ORP of the 17 acre parcel in question. The timing of this appraisal shall be prior to Financial Close. IEP-ORP recognizes that the State will expect to receive rental payments equal to 8% of the appraised value of the property.

For the purposes of completing the Development Agreement, the proposed lease terms are listed below:

- Maximum term 65-years with an option to renew;
- Initial fixed rent for 25-years or term of PPA, whichever is longer;
- Rent re-opening each 20 year period until term fulfilled.

ID	Task Name	Start	Finish	Q1	Q2	Q3	Q4																
1	Project Development	Tue 10/18/13	Thu 11/21/13																				
2	Land Development Agreement	Fri 11/29/13	Fri 11/29/13																				
3	RFP Releases	Fri 11/29/13	Fri 11/29/13																				
4	RFP Bid Submittals	Thu 5/1/13	Thu 5/1/13																				
5	Short List of Bidders Determined	Tue 10/15/13	Tue 10/15/13																				
6	System Impact Studies	Tue 5/13/14	Tue 5/13/14																				
7	PPA and Approvals	Wed 3/18/15	Wed 3/18/15																				
8	Fed O'gry Submittals for PPA	Wed 5/11/14	Wed 5/11/14																				
9	Fed Awards Grids Approved	Wed 7/9/14	Wed 7/9/14																				
10	HECO IRS Studies	Fri 11/27/14	Fri 11/27/14																				
11	PPA with HECO Executes	Wed 1/7/15	Wed 1/7/15																				
12	FUC Approval Requested	Wed 3/15/15	Wed 3/15/15																				
13	Preconstruction Requirements	Fri 5/1/15	Fri 5/1/15																				
14	ECC O&M Agreements	Wed 4/1/15	Wed 4/1/15																				
15	Site Lease Executes	Fri 3/27/15	Fri 3/27/15																				
16	Secure Project Financing	Thu 4/30/15	Thu 4/30/15																				
17	Notice to Proceed	Fri 5/1/15	Fri 5/1/15																				
18	Design Phase	Tue 9/15/15	Tue 9/15/15																				
19	Team Kickoff Meetings	Tue 5/12/15	Tue 5/12/15																				
20	Infrastructure	Tue 9/15/15	Tue 9/15/15																				
21	Biomass Gasifier	Tue 9/15/15	Tue 9/15/15																				
22	Construction Phase	Mon 7/25/16	Mon 7/25/16																				
23	Procurement	Tue 5/4/15	Tue 5/4/15																				
24	Mobilization	Tue 5/4/15	Tue 5/4/15																				
25	Construction	Mon 7/25/16	Mon 7/25/16																				
26	Site Preparation	Tue 9/15/15	Tue 9/15/15																				
27	Foundation Construction	Tue 10/27/15	Tue 10/27/15																				
28	Mechanical Construction	Mon 11/16/15	Mon 11/16/15																				
29	Biomass Installation	Mon 11/16/16	Mon 11/16/16																				
30	Substation and OH Work	Mon 2/8/16	Mon 2/8/16																				
31	Electrical Construction	Mon 4/11/16	Mon 4/11/16																				
32	Utility Interconnection	Mon 6/13/16	Mon 6/13/16																				
33	Final System Testing	Mon 7/25/16	Mon 7/25/16																				
34	Commissioning and Closeout	Mon 10/17/16	Mon 10/17/16																				

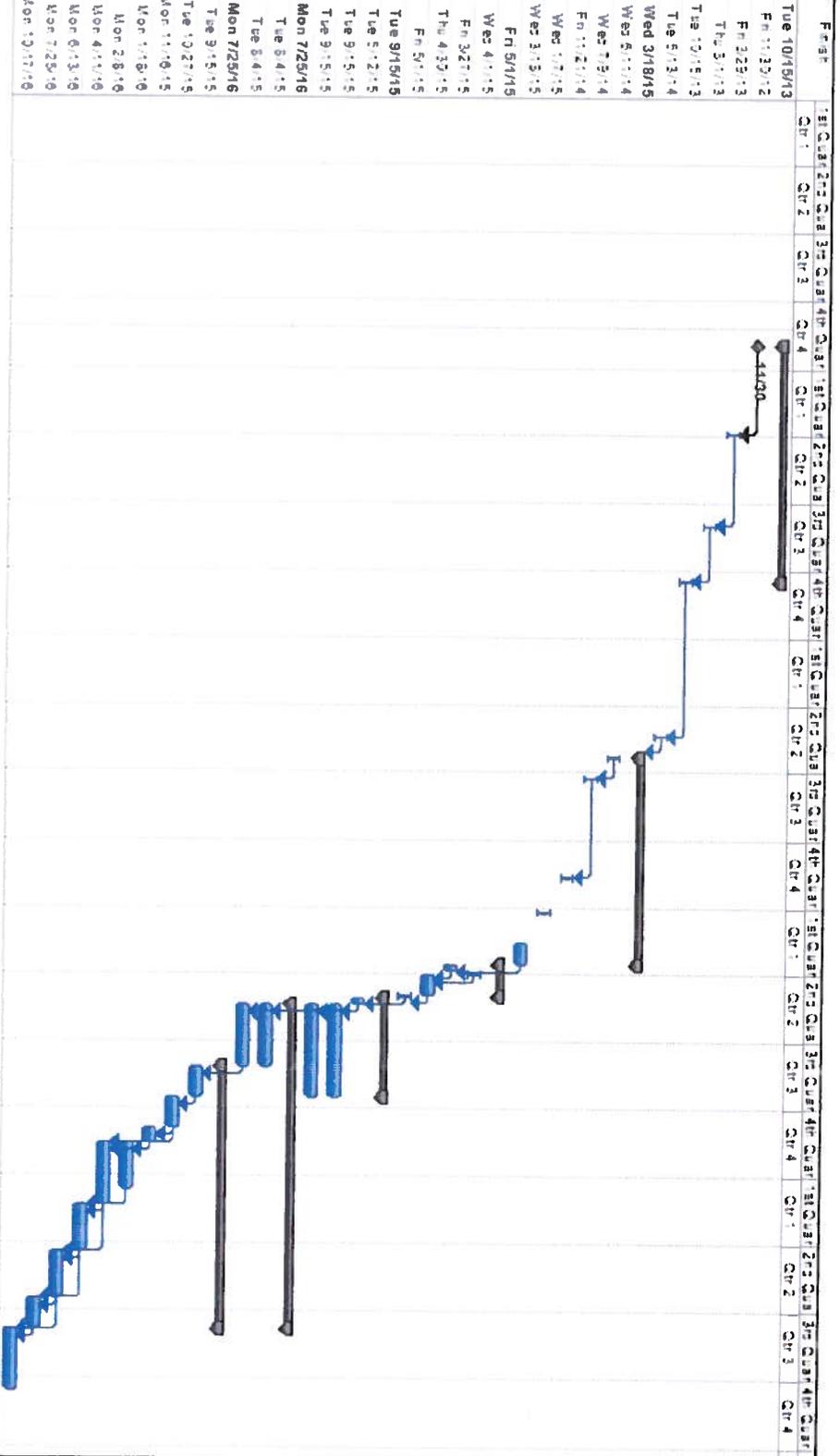
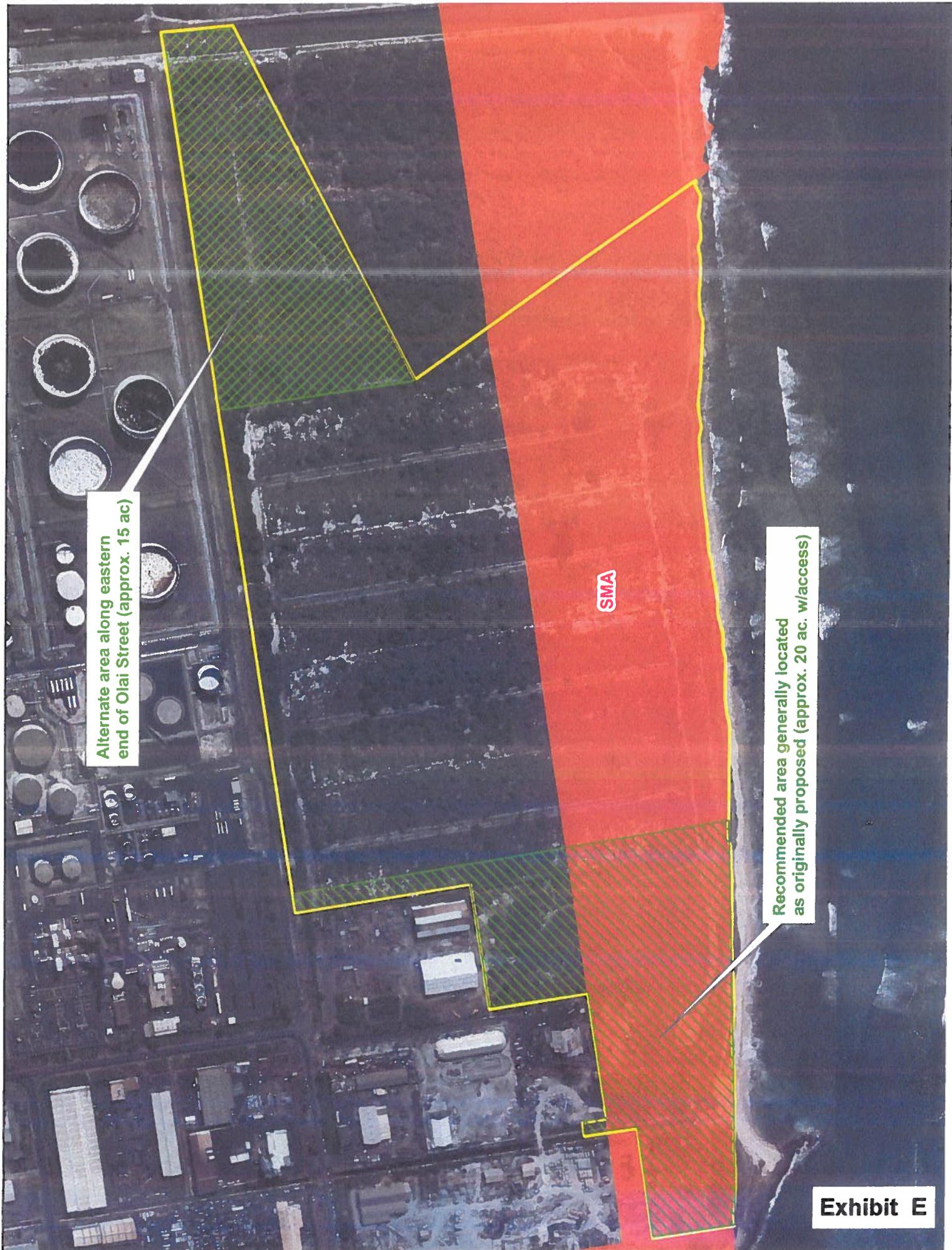


EXHIBIT E

General Location of Preferred Project Site



Alternate area along eastern end of Olai Street (approx. 15 ac)

SMA

Recommended area generally located as originally proposed (approx. 20 ac. w/access)