



STATE OF HAWAII

DEPARTMENT OF HAWAIIAN HOME LANDS

November 16-17, 2015

To: Chairman and Members, Hawaiian Homes Commission

Through: Peter "Kahana" Albinio, Jr., Acting Administrator
Land Management Division 

From: Allen G. Yanos, Property Development Agent 

Subject: Approval to Issue Right-of-Entry Permit and General Lease to Boulevard Associates, LLC and Delegate to the HHC Chairman the Authority to Negotiate the Final Terms and Conditions of the Lease at Kahikinui, Island of Maui, Tax Map Key No. (2) 1-9-001:003 (por)

RECOMMENDED MOTION/ACTION

That the Hawaiian Homes Commission (HHC) authorizes the following:

1. The issuance of a Right-of-Entry ("ROE") permit for due diligence activities for the purpose of developing a wind project generating up to 60MW of energy on land at the Southeastern portion of Tax Map Key No. (2) 1-9-001:003 (portion) at Kahikinui, Island of Maui, covering approximately 500 acres within the delineated area shown on Exhibit "A" attached hereto ("the Project Location Area"). Issuance shall be upon the terms and conditions in Exhibit "B" attached hereto;
2. A General Lease to Boulevard Associates, LLC, an affiliate of NextEra Energy, Inc., a Florida corporation, ("Boulevard Associates") for the development, construction, operations and maintenance of the aforesaid wind project upon the terms and conditions in Exhibit "B"; and
3. Delegation of authority to the HHC Chairman to negotiate the final terms and conditions of the General Lease.

DISCUSSION/HISTORY

This request for approval is the culmination of a long process initiated by the HHC in January, 2013 to take advantage of an opportunity to offer land in Honokowai, Pulehunui, and Kahikinui, on

the Island of Maui, for renewable energy projects and to generate revenue for the Hawaiian Home Lands Trust. The primary authority for this process is Section 171-95.3, HRS, which permits DHHL to lease land for a renewable energy project and to negotiate directly with a renewable energy producer. DHHL consulted with the State Department of Business, Economic Development & Tourism as part of this process.

Among the many respondents that submitted a letter of interest in response to DHHL's public notice on January 15, 2013, pursuant to Section 171-95.3(a), HRS, for parties interested in developing various renewable energy projects on the Island of Maui was NextEra Energy Resources, LLC ("NEER"). NEER responded to DHHL's public notice, submitting a letter of interest in developing a wind project at Kahikinui and setting forth the required information pursuant to Section 171-95.3(a), HRS. Numerous companies responded to the public notice for renewable energy projects but following meetings with DHHL's beneficiaries, DHHL eventually pursued a wind project at Kahikinui because of its excellent wind resource and opposition to renewable energy projects at Honokowai and Pulehunui.

Four developers of wind projects at Kahikinui submitted letters of interest for review and evaluation by DHHL. DHHL selected two finalists out of the four for further clarification of their proposed wind projects and face-to-face negotiations.

Following negotiations with the two finalists and a request to submit their final and best offers, NEER was selected in January, 2015 to develop the wind project. Subsequently, NEER identified Boulevard Associates, as the related entity that would be the actual developer of the project and the proposed lessee.

DHHL conducted two public hearings held in Wailuku, on the Island of Maui, on July 29 and 30, 2015, pursuant to Section 171-95.3(c), HRS where the wind project will be located. Notices of the public hearings were published in the newspapers statewide. DHHL distributed the outline of Boulevard Associates' proposal for the wind project to the attendees at the hearings and received testimony from the general public.

The HHC accepted the Beneficiary Consultation Report providing the official public record of beneficiary issues, questions, concerns, and comments made at the public hearings on the Island of Maui on July 29 and 30, 2015 relative to the proposed Kahikinui wind project at its October 19-20, 2015 meeting.

The ROE and General Lease terms and conditions negotiated up to this point for the HHC's evaluation and determination to award or not award a lease to Boulevard Associates at its November, 2015 HHC meeting on Maui (in fulfillment of Section 171-95.3 (d), HRS) are reflected in Exhibit "B". To the extent possible and practical, the concerns raised by the HHC and clarifications requested at its August, 2015 meeting have been addressed and are reflected in the terms and

conditions in Exhibit "B". These terms and conditions are acceptable to Boulevard Associates and DHHL, and subject to final language and approval during the balance of the lease negotiation process.

Some of the information, specifically, the additional rent and additional community benefits will not be finalized until after the Power Purchase Agreement ("PPA") is negotiated with Maui Electric Company ("MECO") and approved by the Public Utilities Commission ("PUC"). The PPA is the agreement between Boulevard Associates and MECO to sell power to MECO at a negotiated price and terms. For the purposes of this request for approval, the lease rent, additional lease rent, and additional community benefits fee are not being publicly disclosed for the time being. The reason for this is that Boulevard Associates has requested that the lease rents remain confidential until after the PPA is executed and approved by the PUC. Also, Boulevard Associates anticipates responding to a future MECO Request for Proposals to purchase energy from renewable energy projects on Maui. If the lease rents are disclosed prior to the RFP, other firms competing with Boulevard Associates for the RFP will have an unfair advantage.

Further, some of the other terms and conditions for the General Lease may need to change as circumstances in the future also change. For that reason, the Land Management Division respectfully requests that the HHC Chairman be delegated the authority to negotiate the final terms and conditions of the General Lease.

Setting aside any individual prejudices or sentiments about the wind project, the HHC's ultimate consideration whether or not to award the ROE and General Lease to Boulevard Associates should be based on the following: 1) is the wind project in the best interests of the Hawaiian Home Lands Trust; and 2) will the wind project help to further the purpose of the Hawaiian Homes Commission Act and fulfill the desire of Prince Jonah Kuhio Kalaniana'ole to place more native Hawaiians on their land and achieve self-sufficiency?

Notwithstanding the arguments and sentiments by many against the wind project or any renewable energy project, for that matter, at Kahikinui, the following are what the Land Management Division finds as some of the major compelling reasons for approval:

- The wind project will be another renewable energy resource for the County of Maui and help achieve the State's commitment to clean energy by having the utility companies generate 100% of their electricity sales from renewable energy resources by the Year 2045.
- The wind project will generate a substantial revenue stream for the Hawaiian Homes Land Trust for at least twenty (20) years on land that has not typically generated much revenue in the past. DHHL will have the right of first refusal to take over the wind

project, if it so chooses after conducting due diligence, at the end of the Lease term.

- The Kahikinui community, through the Ka Ohana O Kahikinui, supports the wind project because of the community benefits that will help provide for its residents' needs, especially for the improvement of existing roads to make them safer, construction of new roads to access their homestead lots, and for water source development. The minimum \$300,000.00 annual community benefit will provide funds over the course of the Lease term for projects to further enhance the residents' lives and help pursue their plans to be more self-sufficient.
- The Kahikinui community sees the wind project as a potential catalyst to attract like-minded, younger families who do not mind the simple lifestyle and who can help bring new life to the region, creating a more vibrant homestead community. Many job openings will become available during the construction phase of the project that will also serve as a catalyst.
- Boulevard Associates has addressed the Kahikinui community's desire to locate the wind project away from their homestead properties' view plane by considering sites within the Project Location Area in the southeastern portion of the region, below the highway. Boulevard Associates has also held meetings with Ka Ohana O Kahikinui and clearly understands the concerns to protect the region's archaeological and cultural sites and historic legacy.
- Kahikinui has been identified as a region with a superior wind resource. Boulevard Associates is an affiliate of NextEra Energy, Inc. which has the financial wherewithal and expertise to successfully develop a world-class project at Kahikinui. Its wind project is not dependent on the construction of any cable between Maui and Oahu, and the construction of the wind project is not dependent on the proposed merger between its parent company, NextEra Energy, Inc. and the Hawaiian Electric Company.
- If the wind project is not approved or there is opposition to any renewable energy project in Kahikinui, it may be years before another opportunity comes along that will directly benefit the Kahikinui community financially. In addition, other adjacent landowners may entertain expansion of their existing wind project or allow the development of new wind projects on their properties leaving the Kahikinui community with limited input on the decision-making and not being able to benefit directly from the project but yet subjected to the visual impact of more wind turbines on their side of the island.

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RECOMMENDATION

Land Management Division recommends approval of the requested motion/action as stated.

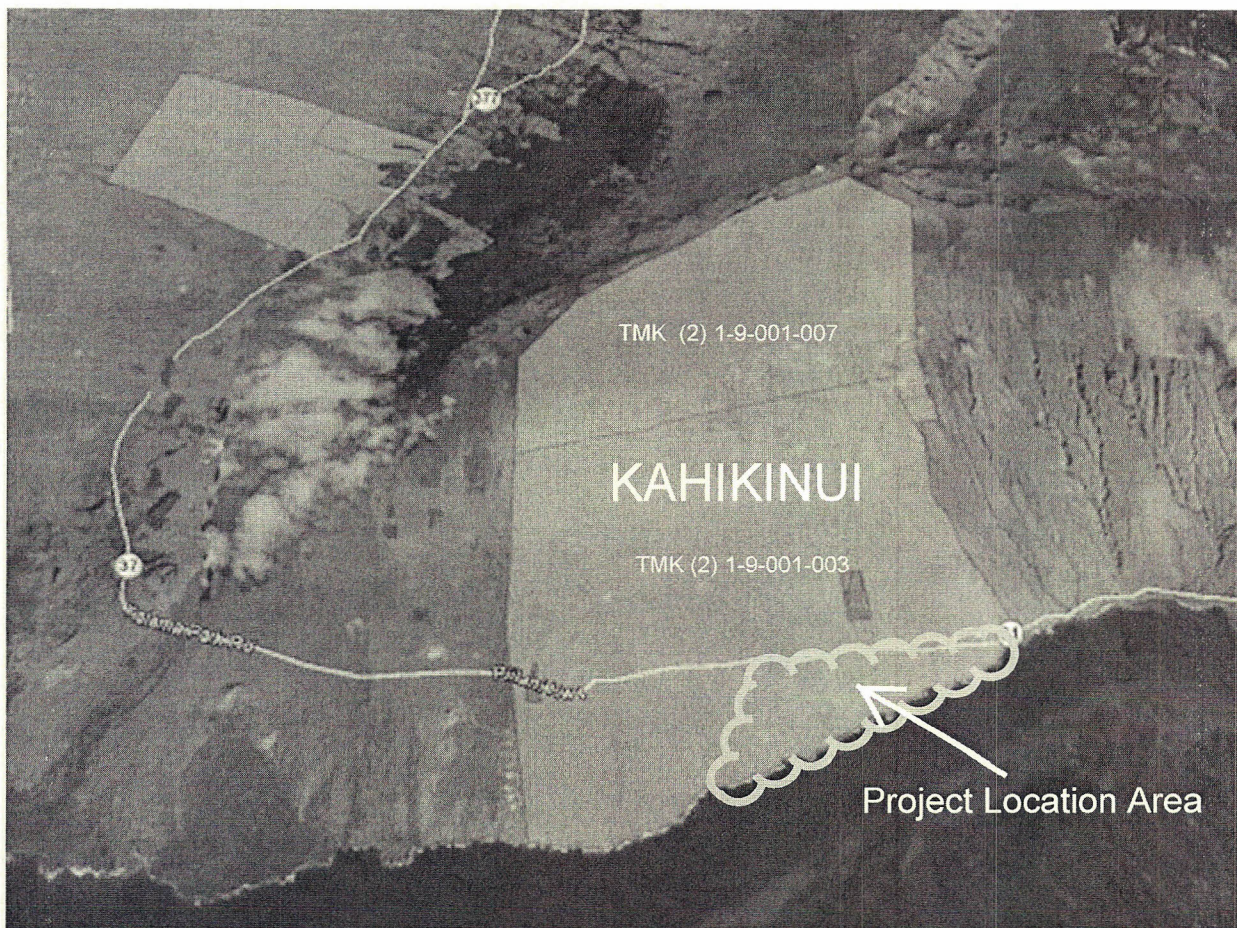


Exhibit "A"

**KAHIKINUI WIND PROJECT RIGHT-OF-ENTRY
AND LEASE TERMS**

1. Use. 500 acres within the Project Location Area shall be used as a buffer and during construction. 30 acres, more or less, will eventually be used for the wind turbine sites and other related improvements with final acreage to be mutually agreed upon once final design is completed. The sites will be surveyed and metes and bounds descriptions furnished as part of the legal description to the General Lease document. (Note: Section 201N-14, HRS, "Exemption from Subdivision Requirements" permits the leasing of a portion of a legal lot as a site for a renewable energy project or access to the project.)

Upon construction of the project, DHHL will provide an easement for access via improved roadways to and from the wind project. Development or use of the balance of the land area will be subject to final approval of DHHL. Residential use is strictly prohibited.

2. Right-of-Entry ("ROE"). DHHL will grant BOULEVARD ASSOCIATES an initial three (3)-year ROE for its due diligence and investigation for the wind project. The ROE term may be extended for additional two (2) one-year periods.

3. ROE Fee. The non-refundable fee for the three (3)-year ROE shall be One Hundred Seventy-Five Thousand Dollars (\$175,000.00) per annum. Within thirty (30) days after the Effective Date of the ROE, BOULEVARD ASSOCIATES shall pay DHHL, in advance, the fee for two (2) years, for a total of Three Hundred Fifty Thousand Dollars (\$350,000.00). On or prior to the third anniversary of the Effective Date of the ROE, BOULEVARD ASSOCIATES shall pay to DHHL, in advance, the fee for the third year.

In the event BOULEVARD ASSOCIATES exercises its options to extend the ROE term, BOULEVARD ASSOCIATES shall pay the extension fee in the amount of Two Hundred Thousand Dollars (\$200,000.00) per annum prior to the commencement of any such extension of the ROE term.

4. General Lease. Subject to BOULEVARD ASSOCIATES' final negotiation of the Power Purchase Agreement ("PPA") with Maui Electric Co. (MECO), DHHL will work with BOULEVARD ASSOCIATES on a General Lease pursuant to the requirements of Section 171-95.3, HRS, as amended. BOULEVARD ASSOCIATES shall bear all legal costs associated with the Lease and DHHL participation in this transaction that are reasonable and customary.

Exhibit "B"

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5. Term of General Lease. Term of the General Lease shall be twenty (20) years or coterminous with the term of the PPA but in no event shall exceed twenty-five (25) years. The Lease term shall commence upon the receipt of all necessary entitlements for the commencement of construction at which time the ROE will be canceled at the effective date of the Lease.

6. Lease Rent. Annual lease rent for the ultimate use of 30 acres shall be a Base Rent in the amount of \$X.XX per annum, plus Additional Rent in the amount of \$X.XX per annum during the entire term of the Lease¹. Lessee is responsible for real property tax and any other assessments relating to the land.

7. Commencement of Lease Rent Payments. DHHL has waived a previously-proposed Project Success Fee which will instead be replaced by the Base Rent and Additional Rent which shall accrue upon commencement of the Lease, but not be payable to DHHL until forty-five (45) days after Commercial Operations Date ("COD")². After COD, BOULEVARD ASSOCIATES shall pay the accrued Base Rent and Additional Rent due (covering the first year when construction is ongoing and no revenue is generated), in addition to the ongoing annual Base Rent and Additional Rent due thereafter.

8. Community Benefits Fee. BOULEVARD ASSOCIATES shall pay a Community Benefits Fee of Three Hundred Thousand Dollars (\$300,000.00) per annum plus Additional Community Benefits in the amount of \$X.XX per annum which shall be due and payable after COD, to DHHL.

9. Surrender Fee. During the Lease term, in the event BOULEVARD ASSOCIATES determines that the wind project is no longer feasible, which determination shall be made in BOULEVARD ASSOCIATES' sole and absolute discretion, BOULEVARD ASSOCIATES shall have the right to terminate the Lease by giving advance notice to DHHL (the "**Surrender Notice**"). The Surrender Notice shall specify the date for the termination of the Lease, which date shall not be less than ninety (90) days from the date of the Surrender Notice (the "**Surrender Date**"). The Lease shall be of no further force or effect as of the Surrender Date; provided, however, that BOULEVARD ASSOCIATES shall pay to DHHL a fee in an amount equal to (i) two (2) years of Base Rent plus (ii) an amount equal to the two (2) previous years of Additional Rent (the "**Surrender Fee**").

¹ The Base Rent and Additional Rent in this paragraph, and the Additional Community Benefits in Paragraph 8 shall be confidential, not for public disclosure, pursuant to Section 92F-13(3), HRS, until the PPA is executed and approved by the Public Utilities Commission.

² COD, for the purpose of the Lease, shall be defined as the date that MECO determines that the wind project is capable of producing and delivering power from the wind project to the power grid.

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10. Surrender and Decommission Bond. DHHL's standard surrender provisions shall apply. However, in the event that BOULEVARD ASSOCIATES is not required to post a bond to remove any improvements for the wind project at the end of the Lease term, on the 15th anniversary of the Effective Date of the Lease, BOULEVARD ASSOCIATES shall post a performance bond and name DHHL as a recipient of the bond. The bond shall be in a form and substance reasonably satisfactory to DHHL securing performance of the removal obligations, which bond shall be equal to the estimated amount, if any (the "**Net Removal Cost**"), by which the cost of removing the Improvements exceeds the salvage value of such Improvements, which Net Removal Cost shall be determined by BOULEVARD ASSOCIATES in good faith. BOULEVARD ASSOCIATES shall keep such bond, or a like replacement bond, in force throughout the remainder of the Lease term. Notwithstanding the foregoing, the Net Removal Cost shall not exceed \$200,000 per wind turbine installed as part of the wind project.

11. Right of First Refusal. During the last two (2) years of the Lease term, in the event that all or any portion of the wind project is offered for sale and/or BOULEVARD ASSOCIATES receives a *bona fide*, acceptable offer to purchase the same, BOULEVARD ASSOCIATES grants DHHL a Right of First Refusal to purchase the wind project (or portion of the wind project, as the case may be) at the same price and under the same terms and conditions as the acceptable offer. Lessee shall give notice of the offer, including a copy of the offer, in the manner provided in the Lease. The Right of First Refusal must be exercised by DHHL, if at all, by written confirmation sent to BOULEVARD ASSOCIATES by certified mail, return receipt requested (the "**Exercise Notice**"), and received by BOULEVARD ASSOCIATES no later than fourteen (14) calendar days after the date of BOULEVARD ASSOCIATES' notice to DHHL of the offer (the "**Deadline**"). If BOULEVARD ASSOCIATES does not receive the Exercise Notice before the Deadline, then DHHL's Right of First Refusal shall terminate and DHHL shall have no further right to purchase the wind project (or a portion thereof, as applicable). The Right of First Refusal shall be for a term equal to the term of Lease and any and all extensions thereof.

12. BOULEVARD ASSOCIATES shall comply with all federal, state and county regulations or requirements regarding environmental issues and the safe handling and disposal of any hazardous materials. Upon termination, BOULEVARD ASSOCIATES shall be responsible for any clean-up of any contamination or hazardous material brought onto the site or caused by BOULEVARD ASSOCIATES' activities.

13. Stockpiling of any material such as rocks, concrete, construction debris, green waste, and dirt on the premises shall be strictly prohibited.

14. BOULEVARD ASSOCIATES shall provide proof of and keep in full force a general liability insurance policy of no less than \$1

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million per occurrence, and \$2 million in the aggregate and an automobile liability insurance policy of no less than \$500,000.00 per occurrence, and \$1 million in the aggregate, if BOULEVARD ASSOCIATES operates any motor vehicle on the premises. DHHL shall be named as additional insured on all policies.

15. BOULEVARD ASSOCIATES shall comply with all federal, state, and county statutes, regulations, codes and ordinance applicable to the proposed use of the site, including compliance with Chapter 343, HRS.

16. BOULEVARD ASSOCIATES shall pay for all the costs of establishing utility services to the site for the wind project and pay for all consumption of utilities. For the avoidance of doubt, BOULEVARD ASSOCIATES is responsible for all power grid upgrade costs required by MECO for the interconnection of the Project to MECO's power grid.

17. BOULEVARD ASSOCIATES shall obtain DHHL's prior approval of any construction plans for the wind project.

18. BOULEVARD ASSOCIATES will abide by local hiring preferences pursuant to language mutually agreed upon by BOULEVARD ASSOCIATES and DHHL.

19. BOULEVARD ASSOCIATES shall be responsible for the security of the wind project and all personal property thereon.

20. Standard terms of a Right-of-Entry and General Lease documents or as may be negotiated between BOULEVARD ASSOCIATES and DHHL.

21. Other terms and conditions deemed prudent by the Chairman of the Hawaiian Homes Commission.
