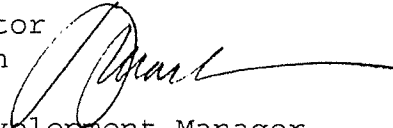


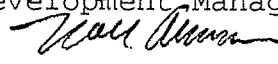
Jodie Alione

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

October 20, 2009

To: Chairman and Members, Hawaiian Homes Commission

Through: Linda Chinn, Administrator
Land Management Division 

From: Noel Akamu, Property Development Manager
Income Property Branch 

Subject: Issuance of General Lease, Recurrent Energy; Kalaeloa, Oahu

RECOMMENDED MOTION/ACTION

That the Hawaiian Homes Commission (HHC) authorizes the issuance of a general lease (Lease) to Recurrent Energy (LESSEE) for the use of approximately 29.853 acres (1,300,397 square feet) of Hawaiian Home Lands in Kalaeloa, Oahu, identified as Tax Map Key No. (1)9-1-13:29, and shown as the diagonally-lined area on Exhibit "A", attached hereto, for the development, operation, management and maintenance of a solar power production facility subject to the following conditions:

1. The site shall be used for placement of solar photovoltaic (PV) panels that will produce electrical current to be sold to Hawaiian Electric Company (HECO) and for construction of a small storage shed with small parking area for maintenance purposes.
2. The initial term of the Lease shall be for twenty (20) years and shall commence on the date the system is placed in service. The Chairman of the HHC (Chairman) shall be authorized to extend the term of the Lease for good cause to be shown by LESSEE or as agreed to through negotiations with LESSEE.
3. Upon approval of the HHC, the Chairman shall be authorized to issue a temporary permit or the Lease which will allow LESSEE to conduct due diligence studies and HRS Chapter 343 compliance to be followed by site preparation and construction, provided LESSEE pays a good faith deposit of \$35,000.00. Said deposit shall be applied to the rent once the system is placed in service, however the deposit shall be forfeited if the project is not placed in service within a reasonable time (approximately 18 months) after the date the GL is executed and LESSEE fails to

provide DHHL with compelling reasons, beyond LESSEE'S control, that justify a full or partial refund.

4. The rent commencement date shall be the date the system is placed in service. The annual rent for the first ten (10) years of the Lease shall not be less than \$302,760.00, payable in monthly installments of \$25,230.00. Annual rent for years 11 to 15 shall not be less than \$378,450.00 (a 25% increase) and for years 16 to 20 the rent shall not be less than \$425,756.00 (a 12.5% increase). Rent provisions above and beyond the minimum stated herein, such as, but not limited to, annual rent increases and/or option fees, shall be subject to negotiations and established prior to execution of the Lease provided such negotiated rents shall not be less than those shown above nor shall rent for any subsequent year of the Lease be less than that for the year immediately preceding. Should the LESSEE request and be granted an extension beyond the initial 20-year term of the Lease, the Chairman of the HHC shall be authorized to negotiate changes to the Lease deemed prudent, if any.

5. LESSEE shall pay a non-refundable processing and documentation fee totaling \$275.00 prior to issuance of the LEASE.

6. The Premises shall be rented "as is" and LESSEE understands that there are no existing utility services to the site. LESSEE agrees to pay for all the costs of establishing and maintaining utility services to the property and pay for all consumption of utilities on the licensed premises, as may be needed by LESSEE, including interim services that may be provided by the U. S. Navy.

7. No residential use shall be permitted on the premises, including overnight camping.

8. LESSEE shall purchase liability insurance with a minimum coverage of \$2 million and name the Department of Hawaiian Home Lands as an additional insured.

9. LESSEE shall pay all real property taxes assessed by the City and County of Honolulu for the licensed area.

10. LESSEE shall be responsible for the security of the leased premises and all of LESSEE'S personal property thereon. LESSEE shall be allowed to install a security system provided LESSOR has reviewed and approved the type of system to be installed.

11. LESSEE agrees to cooperate with and support LESSOR's Home Ownership Assistance Program (HOAP) to provide training and job opportunities to native Hawaiians in a manner consistent with applicable federal and state labor law. LESSEE also agrees to include in its community support program support for community development, job training and placement, and educational and/or cultural programs for residents of Hawaiian home lands on the island of Oahu.

12. LESSEE shall comply with all federal, state and county regulations or requirements regarding environmental issues and the safe handling and disposal of toxic or hazardous materials. LESSEE shall be responsible for environmental clean up of any contamination or hazardous materials found on the site that is caused by LESSEE'S activities on the Premises.

13. LESSEE is aware that the primary substrate on the Premises is coralline material and grubbing or grading the site could uncover sink holes that may contain archeologically sensitive material, therefore LESSEE shall exercise caution when undertaking any disturbance of the existing ground surface. If a suspected archeological site is discovered, LESSEE shall comply with all governmental requirements for properly handling such discovery.

14. Other standard terms and conditions of similar leases issued by DHHL.

15. The Lease shall be subject to the review and approval of the Department of the Attorney General.

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

DISCUSSION

Recurrent Energy (Recurrent) is a renewable energy producer whose main office and mailing address is 300 California Street, 8th Floor, San Francisco, California 94104. Although Recurrent is a fairly new "utility scale" energy producer, it appears to have prior experience as a partner in developing several large projects with other renewable energy producers. There were three notable projects listed in Recurrent's proposal and of these, LMD staff was able to contact two of the project landowners, the City of San Francisco and the North Face. The City of San Francisco recently completed negotiations for a 5MW PV project that will be built on a large covered water reservoir. Ms. Barbara Hale, Asst. General Manager of the

Public Utilities Commission for City of San Francisco, said Recurrent was very professional throughout negotiations and was both supportive and patient with the typical government bureaucratic process besides being very responsive in the lessor/lessee relationship and in public dialogue. The North Face is large retailer of camping/hiking and other outdoor equipment. North Face's project manager said "Everything was very positive in working with Recurrent, they were knowledgeable, easy to communicate with and completed the project on schedule. I would highly recommend them."

While there are many issues still to be resolved, primarily between Recurrent and HECO, such as inter-connection and power purchase agreements, if the HHC grants approval as requested herein, Recurrent shall be able to move forward in its negotiations with HECO while conducting other site evaluation studies and an environmental assessment in compliance with Chapter 343 of the Hawaii Revised Statute. Subject to HHC approval, LMD intends negotiate the lease to include contingencies that the Chairman deems reasonable.

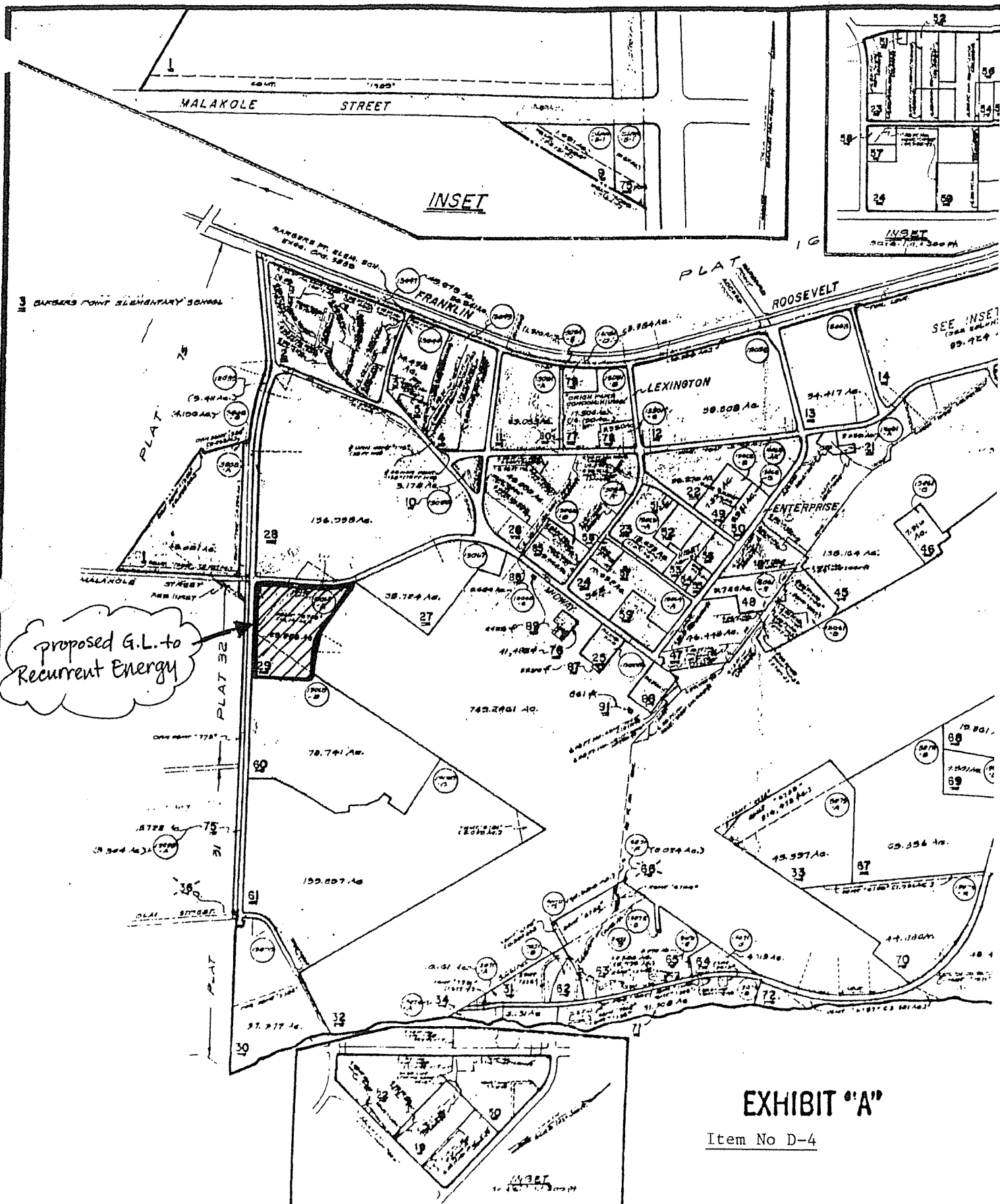
The authority for the Hawaiian Homes Commission to issue leases is found in Section 204(a)(2), HHCA, 1920, as amended. The procedure to implement this or similar type leases is found in Section 10-4-1, DHHL Administrative Rules, 1998, as amended.

The same DHHL Rules permit DHHL, subject to the approval of the HHC, to negotiate and consummate the rental rate of a lease, when prudent management does not dictate that the rental rate be established by appraisal. Further, the Governor's renewable energy initiative authorizes State Departments to enter into direct negotiations with renewable energy producers pursuant to HRS Chapter 171-95.

Chapter 343, Environmental Assessment: The proposed Lease shall be subject to Chapter 343 compliance, however, the project is not expected to cause major impacts on the environment or surrounding community and therefore a Finding of No Significant Impact (FONSI) is anticipated. Said FONSI shall be subject to the review and acceptance of the HHC.

RECOMMENDATION

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



Proposed G.L. to Recurrent Energy

EXHIBIT 'A'

Item No D-4

ITEM NO: D-4

SUBJECT: Issuance of License Easement, County of Hawai`i, Ane Keohokalole Highway, Kealakehe, Hawai`i

CORRECTION: The license easement should be issued to the County of Hawai`i instead of the Department of Finance. License should be issued to the Department of Public Works.

MOTION

Moved by Commissioner T. Morikawa, seconded by Commissioner M. Kamaka..

DISCUSSION

Hawai`i County representative, Gerald Takase, is hoping to break ground by the end of 2009 with a completion date scheduled for 2012. DHHL has been assisting the County in meeting its aggressive deadline.

ACTION

Motion carried unanimously.

ITEM NO: D-5

SUBJECT: Issuance of License Agreement, Sopogy, Inc., Kalaeloa, O`ahu

MOTION

Moved by Commissioner M. Kamaka, seconded by Commissioner P. Artates.

DISCUSSION

Van Matsushige, Project Developer for Sopogy, Inc., explained why the solar thermal storage system being built in Kalaeloa is limited to a 4 megawatt project. A 5 megawatt project would have required a bidding process with Hawaiian Electric. The time frame is to have this system operational in 2010. Sopogy's goal is to develop alternative electric projects throughout Maui, Kaua`i and the Big Island and to work in conjunction with the Hawai`i clean energy initiative. Students at Konawaena High School participated in this hands-on outreach project, learning the technological environmental benefits of solar thermal system.

ACTION

Motion carried unanimously.