

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS  
**HAWAIIAN HOMES COMMISSION MEETING/WORKSHOP AGENDA**  
Paukūkalo Community Center, 657 Kaumuali'i Street, Wailuku, HI 96793  
Thursday, May 30, 2019 at 10:00 a.m.

**I. ORDER OF BUSINESS**

- A. Roll Call
- B. Approval of Agenda
- C. Public Testimony on Agendized Items

**II. ITEMS FOR DECISION MAKING**

**A. REGULAR AGENDA**

Land Development Division

- E-1 Approval to Increase the Funding Ceiling for the Design and Construction of the Honokaia Non-Potable Water System Project at Honokaia, Island of Hawai'i, previously designated as Tax Map Key No.: (3) 4-6-11:03, 11, 12 & 13.
- E-2 Approval to Amend the Source of Funding for the Development Agreement between the Department of Hawaiian Home Lands and Ikaika Ohana for "Hawaiian Home Lands Rental Housing in the Villages of Laiopua.

Land Management Division

- F-1 Approval to Issue a Right-of-Entry Permit and Conditional Approval for a General Lease to AEP Wind Holdings, 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 (portion).

Planning Office

- G-1 Recommend the transmission of the Final Environmental Impact Statement (FEIS) for the Pūlehunui Regional Infrastructure Master Plan, Pūlehunui, Maui; TMK (2) 3-8-008, 035, 036 (Pūlehunui North) and (2) 3-8-008:034 (Pūlehunui South) for acceptance by the Governor of the State of Hawai'i.
- G-2 Acceptance of Beneficiary Consultation Report on a Water Reservation Related to the East Maui Irrigation System's Request for Water Lease from DLNR, and Reauthorize the Chairman to Formally Request a Related Water Reservation from the Commission on Water Resource Management for Hawaiian Home Lands on Maui.

**III. EXECUTIVE SESSION**

The Commission anticipates convening in executive meeting pursuant to Section 92-5(a)(4), HRS, to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities on these matters.

- 1. Royal Contracting v. DHHL
- 2. Kahikinui Energy Project

#### IV. ANNOUNCEMENTS AND ADJOURNMENT

- A. Next Regular Meeting – June 17 & 18, 2018, Kapolei, Oahu, Hawai‘i
- B. Adjournment



William J. Aila Jr., Chairman  
Hawaiian Homes Commission

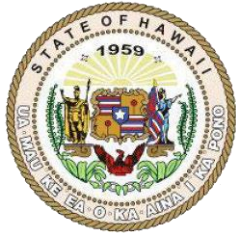
#### COMMISSION MEMBERS

Randy K. Awo, Maui  
Michael P. Kahikina, O‘ahu  
Wren W. Wescoatt, O‘ahu  
Dennis L. Neves, Kaua‘i

Zachary Z. Helm, Moloka‘i  
David B. Ka‘apu, West Hawai‘i  
Pauline N. Namu‘o, O‘ahu  
Vacant, East Hawai‘i

Special Accommodations (such as Sign Language Interpreter, large print, taped material) can be provided, if requested, at least five (5) working days before the scheduled meeting on the respective island by calling the **Information & Community Relations Office**, on Oahu, (808) 620-9590.





HAWAIIAN HOME LANDS

HAWAIIAN HOMES COMMISSION · DEPARTMENT OF HAWAIIAN HOME LANDS

# NOTICE

## Hawaiian Homes Commission Public Hearings on the Proposed Kahikinui Wind-Energy Project

Wednesday, May 29, 2019 at 6:00 p.m., or  
Thursday, May 30, 2019 at 9:00 a.m.

Purpose: To provide an outline of the wind-energy project proposed by AEP Wind Holdings, LLC on DHHL lands in Kahikinui, Maui and receive testimony from interested parties and the general public.

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# NOTICE

## Hawaiian Homes Commission Special Meeting

Thursday, May 30, 2019 at 10:00 a.m.

All meetings will be at the

Paukukalo Community Center  
655 Kaumuali'i Street  
Wailuku, Hawai'i

Hawaiian Homes Commission Meeting agendas are available approximately one week in advance on the HHC Meetings page of our website: [dhhl.hawaii.gov](http://dhhl.hawaii.gov)


*To request accommodations for a sign language interpreter or accessible parking (must be requested five days prior to the meeting date), or for more information, please contact the DHHL at 808-620-9591*

# ITEM E-1

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

May 30, 2019

TO: Chairman and Members, Hawaiian Homes Commission

FROM: Stewart Matsunaga, Acting Administrator   
Land Development Division

SUBJECT: Approval to Increase the Funding Ceiling for the Design and Construction of the Honokaia Non-Potable Water System Project at Honokaia Island of Hawai'i previously designated as Tax Map Key No.: (3) 4-6-11:03;11;12 &13.

RECOMMENDED MOTION/ACTION

1. The Land Development Division (LDD) requests Hawaiian Homes Commission approval to increase the funding ceiling for the design and construction of the Honokaia Non-Potable Water System project from \$1,165,000.00 to \$1,465,000.00, subject to written contractual assurance by the Plaintiffs from *Honokaia 'Ohana v. Hawaiian Homes Commission* that users and licensees of the water system shall be responsible for said system's operation and maintenance, as provided in the stipulated settlement agreement filed September 19, 2013.

DISCUSSION

1. The Stipulated Settlement Agreement attached as Exhibit "A" from the *Honokaia 'Ohana* case provides for a funding ceiling of \$1,165,000.00 to design and construct the Honokaia Water System. The current design cost is \$360,193.00, which leaves a balance of \$804,807.00 for construction.
2. Bid Opening for the subject project was held on December 19, 2018. Two (2) sealed bids were received were greater than the \$804,807.00 balance remaining for construction under the settlement's funding ceiling.
3. LDD worked with the Honokaia 'Ohana to value-engineer the project to bring the construction cost within the settlement amount. However, any further reductions to the scope of the project will make the project's construction infeasible.
4. Current DHHL Fiscal Year 2019 Development Budget includes Project Code 18301100, Honokaia Non-Potable Water System for \$780,000.00. Additional funds could be provided by DHHL Fiscal Year 2019 Development Budget, Project Code 00002700, Dispute Resolution. After settlement payout in *Paradigm Construction v.*

*Department of Hawaiian Home Lands et al.*, there is approximately \$750,000.00 remaining in this budget item.

5. Approval to increase the funding ceiling by \$300,000 will allow LDD to recommend award of the construction contract for the Honokaia Non-Potable Water System project to the lowest responsible and responsive bidder.

#### RECOMMENDATION

The Department recommends favorable consideration for the recommended motion above.

NATIVE HAWAIIAN LEGAL CORPORATION  
1164 Bishop Street, Suite 1205  
Honolulu, Hawaii 96813  
Telephone: (808) 521-2303

ALAN T. MURAKAMI 2285  
SHARLA A. MANLEY 8868  
ASHLEY K. OBREY 9199  
Attorneys for Plaintiffs

1ST CIRCUIT COURT  
STATE OF HAWAII  
FILED

2013 SEP 19 PM 4:11

N. ANAYA  
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAII

HONOKAIA 'OHANA, T.J. AKIONA, ) Civil No. 09-1-1615-07 ECN  
DOLORES RAMOS, YVONNE L.K. DELUZ, ) (Declaratory Relief and Other Civil Action)  
LEHUA HO'OPAI, DIANA TERUKINA, )  
RUBY ISAACS, and MICHAEL ISAACS, )

Plaintiffs,

vs.

) STIPULATION FOR DISMISSAL WITH  
) PREJUDICE OF ALL CLAIMS AND  
) PARTIES; EXHIBIT A

JOBIE MASAGATANI, in her capacity as )  
Chairperson of the Hawaiian Homes )  
Commission and the Director of the )  
Department of Hawaiian Home Lands; GENE )  
ROSS DAVIS, JEREMY K. HOPKINS, )  
PATRICIA W. SHEEHAN, WALLACE A. )  
ISHIBASHI JR., MICHAEL KAHIKINA, )  
RENWICK V.I. TASSIL, and LEIMANA K. )  
DAMATE, in their capacities as members of )  
the Hawaiian Homes Commission; )  
HAWAIIAN HOMES COMMISSION; and )  
the DEPARTMENT OF HAWAIIAN HOME )  
LANDS, STATE OF HAWAII, JOHN DOES )  
1-10; JANE DOES 1-10; Governmental Units or )  
Other Entities 3-20, )

Defendants

) Judge: Honorable Edwin C. Nacino

) Trial Date: **Week of June 24, 2013**

**STIPULATION FOR DISMISSAL WITH PREJUDICE  
OF ALL CLAIMS AND PARTIES**

ITEM NO. E-1  
EXHIBIT "A"



WHEREAS, on July 13, 2009, the Honokaia 'Ohana along with a number of Honokaia lessees or individuals related to them filed a complaint against the Hawaiian Homes Commission ("HHC"), the Department of Hawaiian Home Lands ("DHHL"), Jobie Masagatani, in her official capacity as Chairperson of the HHC and Director of the DHHL, and the other members of HHC, also in their official capacities (hereinafter, collectively, "Defendants") in the Circuit Court of the First Circuit, State of Hawai'i (Civil No. 09-1-1615-07 ECN);

WHEREAS, on August 24, 2009, Defendants removed the case to the Federal District Court for the District of Hawai'i pursuant to 28 U.S.C. §§ 1441 and 1446.

WHEREAS, on May 5, 2010, with leave of court, Plaintiffs filed a second amended complaint, which listed as plaintiffs Honokaia 'Ohana, T.J. Akiona, Joseph Papalimu, Allen H.N. Lindsey, Troy K. Familiar, Allison Mayeda, Dolores Ramos, Yvonne L.K. DeLuz, Lehua Ho'opai, Penny Miranda, Flora Beamer Solomon, Malama Solomon, Leimomi Lum, Angela Thomas, Diana Terukina, Ruby Isaacs, and Michael Isaacs;

WHEREAS, on July 23, 2010, Plaintiffs filed three motions for partial summary judgment claiming (1) breach of trust, (2) breach of settlement agreement, and (3) violation of Plaintiffs' equal protection rights based on Defendants' failure to provide water to the lessees at the DHHL's Honokaia pastoral subdivision and Defendants also filed a motion for judgment on the pleadings and for summary judgment.

WHEREAS, on October 25, 2010, after a hearing on the motions on October 18, 2010, the Federal Court granted the Defendants' Motion for Judgment on the Pleadings and for Summary Judgment with respect to two of the counts, denied Defendants' Motion for Judgment on the Pleadings and for Summary Judgment with respect to the remaining counts, denied

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Stipulation for Dismissal With Prejudice of All Claims and Parties; *Honokaia 'Ohana, et al. vs. Jobie Masagatani, et al.*, Civil No. 09-1-1615-07 ECN.

Plaintiffs' motions for partial summary judgment, and remanded the remaining state law claims to the Circuit Court of the First Circuit in Hawai'i;

WHEREAS, during the pendency of this action, Jobie Masagatani replaced Micah Kane as Chairperson of the Hawaiian Homes Commission and the Director of the Department of Hawaiian Home Lands and new commissioners replaced named commissioners whose terms expired, *see* Hawai'i Rules of Civil Procedure (HRCP) Rule 25(d)(1);

WHEREAS, during the pendency of this action, the parties stipulated to dismiss with prejudice all individual claims of Flora Beamer Solomon, Malama Solomon, Leimomi Lum, Angela Thomas, Allen H.N. Lindsey, Troy K. Familiar, Allison Mayeda, and Penny Miranda;

WHEREAS, during the pendency of this action, Plaintiffs' counsel filed a Suggestion of Death Upon Record for Plaintiff Joseph Papalimu;

WHEREAS, the parties entered into settlement negotiations in 2011, resulting in a draft settlement agreement that was approved by the HHC in executive session on March 19, 2013 and approved by the Attorney General on or before April 8, 2013;

WHEREAS, on April 11, 2013, during a settlement conference with the Honorable Judge Karen Nakasone, the parties read into the record the key terms of the settlement agreement, referring specifically to the above-referenced settlement agreement;

WHEREAS, on August 20, 2013, the HHC formally ratified the Settlement, Release and Indemnity Agreement, attached hereto as Exhibit "A";

WHEREAS, in reliance on the terms and conditions of the attached Settlement, Release and Indemnity Agreement, all remaining Plaintiffs Honokaia 'Ohana, T.J. Akiona, Dolores

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Stipulation for Dismissal With Prejudice of All Claims and Parties; *Honokaia 'Ohana, et al. vs. Jobie Masagatani, et al.*, Civil No. 09-1-1615-07 ECN.

Ramos, Yvonne L.K. Deluz, Lehua Ho'opai, Diana Terukina, Ruby Isaacs, and Michael Isaacs, have agreed to dismiss their lawsuit with prejudice;

NOW THEREFORE, IT IS HEREBY STIPULATED by and amongst the parties through their respective undersigned counsel that, pursuant to Hawai'i Rules of Civil Procedure Rule 41(a)(1)(B), Plaintiffs HONOKAIA 'OHANA, T.J. AKIONA, DOLORES RAMOS, YVONNE L.K. DELUZ, LEHUA HO'OPAI, DIANA TERUKINA, RUBY ISAACS, and MICHAEL ISAACS, by and through their undersigned counsel, and Defendants JOBIE MASAGATANI, in her capacity as Chairperson of the Hawaiian Homes Commission and the Director of the Department of Hawaiian Home Lands; GENE ROSS DAVIS, JEREMY K. HOPKINS, PATRICIA W. SHEEHAN, WALLACE A. ISHIBASHI JR., MICHAEL KAHIKINA, RENWICK V.I. TASSIL, and LEIMANA K. DAMATE, in their capacities as members of the Hawaiian Homes Commission, HAWAIIAN HOMES COMMISSION, the DEPARTMENT OF HAWAIIAN HOME LANDS, and the STATE OF HAWAII, by and through their undersigned counsel, hereby agree to dismiss the above-captioned case with prejudice.

However, upon proper motion filed by any aggrieved party, this Court retains jurisdiction over this matter to enforce the terms and conditions of the Settlement, Release and Indemnity Agreement.

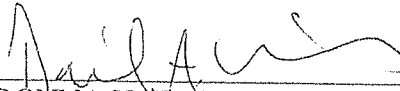
Except as otherwise provided in the Settlement, Release and Indemnity Agreement, each party is to bear his or her own respective costs and attorneys' fees.

A trial date was set for the week of June 24, 2013. Upon approval by this Court of this Stipulation, all claims and parties to this action will be dismissed with prejudice.

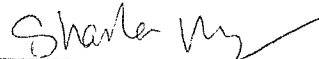
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Stipulation for Dismissal With Prejudice of All Claims and Parties; *Honokaia 'Ohana, et al. vs. Jobie Masagatani, et al.*, Civil No. 09-1-1615-07 ECN.

DATED: Honolulu, Hawai'i, September 12, 2013.



DONNA H. KALAMA  
DANIEL A. MORRIS  
Attorneys for Defendants



ALAN T. MURAKAMI  
SHARLA A. MANLEY  
ASHLEY K. OBREY  
Attorneys for Plaintiffs

DATED: Honolulu, Hawaii, \_\_\_\_\_.

APPROVED AND SO ORDERED



JUDGE OF THE ABOVE ENTITLED COURT

Stipulation for Dismissal With Prejudice of All Claims and Parties; *Honokaia 'Ohana, et al. vs. Jobie Masagatani, et al.*, Civil No. 09-1-1615-07 ECN.

**SETTLEMENT, RELEASE AND INDEMNITY AGREEMENT**

This Settlement, Release and Indemnity Agreement, by and between Plaintiffs HONOKAIA 'OHANA, T.J. AKIONA, DOLORES RAMOS, YVONNE L.K. DELUZ, LEHUA HO'OPAI, DIANA TERUKINA, RUBY ISAACS, and MICHAEL ISAACS and Defendants JOBIE MASAGATANI, in her capacity as Chairperson of the Hawaiian Homes Commission and the Director of the Department of Hawaiian Home Lands, GENE ROSS DAVIS, JEREMY K. HOPKINS, PATRICIA W. SHEEHAN, WALLACE A. ISHIBASHI JR., MICHAEL KAHIKINA, RENWICK V.I. TASSIL, and LEIMANA K. DAMATE, in their capacities as members of the Hawaiian Homes Commission; HAWAIIAN HOMES COMMISSION, and the DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAI'I, relates to Civil No. 09-1-1615-07.

**WITNESSETH**

WHEREAS, on July 13, 2009, the Honokaia 'Ohana along with a number of Honokaia lessees or individuals related to them filed a complaint against the Hawaiian Homes Commission ("HHC"), the Department of Hawaiian Home Lands ("DHHL"), Micah Kane, in his official capacity as Chairperson of the HHC and Director of the DHHL, and the other members of HHC, also in their official capacities (hereinafter, collectively, "Defendants") in the Circuit Court of the First Circuit, State of Hawai'i (Civil No. 09-1-1615-07 ECN) ("Action");

WHEREAS, on August 24, 2009, Defendants removed the case to the Federal District Court for the District of Hawai'i pursuant to 28 U.S.C. §§ 1441 and 1446;

WHEREAS, on May 5, 2010, with leave of court, Plaintiffs filed a second amended complaint, which listed as plaintiffs Honokaia 'Ohana, T.J. Akiona, Joseph Papalimu, Allen H.N.



Lindsey, Troy K. Familiar, Allison Mayeda, Dolores Ramos, Yvonne L.K. DeLuz, Lehua Ho'opai, Penny Miranda, Flora Beamer Solomon, Malama Solomon, Leimomi Lum, Angela Thomas, Diana Terukina, Ruby Isaacs, and Michael Isaacs;

WHEREAS, on July 23, 2010, Plaintiffs filed three motions for partial summary judgment claiming (1) breach of trust, (2) breach of settlement agreement, and (3) violation of Plaintiffs' equal protection rights based on Defendants' failure to provide water to the lessees at the DHHL's Honokaia pastoral subdivision and Defendants also filed a motion for judgment on the pleadings and for summary judgment;

WHEREAS, on October 25, 2010, after a hearing on the motions on October 18, 2010, the Federal Court granted the Defendants' Motion for Judgment on the Pleadings and for Summary Judgment with respect to two of the counts, denied Defendants' Motion for Judgment on the Pleadings and for Summary Judgment with respect to the remaining counts, denied Plaintiffs' motions for partial summary judgment, and remanded the remaining state law claims to the Circuit Court of the First Circuit in Hawai'i;

WHEREAS, during the pendency of this action, Jobie Masagatani replaced Micah Kane as Chairperson of the Hawaiian Homes Commission and the Director of the Department of Hawaiian Home Lands and new commissioners replaced named commissioners whose terms expired, *see* Hawai'i Rules of Civil Procedure (HRCP) Rule 25(d)(1);

WHEREAS, during the pendency of this action, the parties stipulated to dismiss with prejudice all individual claims of Flora Beamer Solomon, Malama Solomon, Leimomi Lum, Angela Thomas, Allen H.N. Lindsey, Troy K. Familiar, Allison Mayeda, and Penny Miranda, and Plaintiffs' counsel filed a Suggestion of Death Upon Record for Plaintiff Joseph Papalimu; and

WHEREAS, the Parties desire to settle any and all issues related to the Action;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, as follows:

**A. Construction of a Non-Potable Water System**

1. In consideration of the terms, conditions and promises to be made by the Parties<sup>1</sup> in this Settlement, Release and Indemnity Agreement (the "Agreement"), Defendants<sup>2</sup> will agree to fund the planning, design, engineering and construction of all primary components, including all laterals off the main line as well as submeters, of a gravity-fed, non-potable water system designed to serve all current and future lessees of the Honokaia subdivision<sup>3</sup> (hereinafter referred to as the "Water System").
2. Defendants' obligation to fund the design and construction of the primary components of the Water System is conditioned on the following:
  - a. The cost to design and construct the Water System does not exceed \$1,165,000.00, based on actual bids/proposals received in response to solicitations by DHHL for bids/proposals to design and construct the Water System. If the Water System cannot be designed and constructed for less than \$1,165,000.00, Defendants shall enter into renegotiation with Releasors to assess the feasibility of a less costly design for the Water System.
  - b. In consultation with a designated representative of Releasors<sup>4</sup> during the design phase of the planning for the Water System as to the (1) route of the pipeline, (2) the location of the meters, and (3) the general

<sup>1</sup> "Parties" refers to the Releasors and Defendants (defined below).

<sup>2</sup> "Defendants" refers to Jobie Masagatani, in her capacity as Chairperson of the Hawaiian Homes Commission and the Director of the Department of Hawaiian Home Lands, Gene Ross Davis, Jeremy K. Hopkins, Patricia W. Sheehan, Wallace A. Ishibashi Jr., Michael Kahikina, Renwick V.I. Tassill, Leimana K. DaMate, in their capacities as members of the Hawaiian Homes Commission, the Hawaiian Homes Commission, and the Department of Hawaiian Home Lands, State of Hawai'i.

<sup>3</sup> The "Honokaia subdivision" means the subdivision at Honokaia, Honokaa, Big Island, Hawaii, previously designated as TMK: (3) 4-6-11: 3, 11, 12 & 13, which lots were consolidated and resubdivided by DHHL, including both Phase I and Phase II.

<sup>4</sup> "Releasors" refers to Plaintiffs Honokaia 'Ohana, T.J. Akiona, Dolores Ramos, Yvonne L.K. DeLuz, Lehua Ho'opai, Diana Terukina, Ruby Isaacs, and Michael Isaacs.

design/functionality of the design chosen as part of DHHL's request for proposals, Defendants will fund the design and construction of the water system, which consists of: a hookup to a Department of Water Supply, County of Hawaii ("DWS") line located at TMK (3) 4-7-07:05 (conditioned on the lessee of that parcel entering into a utility and access easement to allow the hookup and laying of pipe and other infrastructure); main storage tank(s) in such number, size, and location(s) to be determined by an engineer retained by DHHL to design the Water System; the main water meter(s) (no more than four of a type required and approved by DWS); the main lines running from the DWS hookup to the main storage tanks and from the main storage tanks to the Honokaia subdivision; laterals and individual submeters for each lot, to be placed as close to the property line as possible; and any air relief valves or other components necessary for proper functioning of the main lines, all subject to obtaining necessary easements. Each Honokaia lessee<sup>5</sup> shall be responsible for constructing/installing and maintaining individual water lines only beyond the sub-meter and onto lessees' respective lots, and any other infrastructure the lessees may determine is appropriate to convey and store the water from the main lines to and on their respective lots, including pumps and individual storage systems, so long as such individual infrastructure does not impair proper functioning of the Water System.

- c. DWS' approval of the hookup of the Water System to its water system as contemplated by the Agreement.
- d. The Water System shall use water meters appropriately sized by engineers to service the system. The water meter(s) shall be assigned to four lots within the Honokaia subdivision to be determined by the engineers selected to design the system in consultation with a designated representative of Releasors and with the approval of DWS.
- e. Releasors agree not to hold Defendants responsible for the limitations on water availability imposed by DWS, whether for operational reasons or based on water shortages or drought. In entering into this Agreement, Releasors do not waive their right to sue DWS and/or the County if

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<sup>5</sup> "Honokaia lessee" means an individual who at the present time or in the future is a lessee under a valid, authorized pastoral lease issued by DHHL for a lot in Honokaia subdivision, or the duly authorized successor of such individual.

necessary to assert rights to additional water at Honokaia in support of homesteading contained in the Hawaiian Homes Commission Act (HHCA) § 221, or any other legal authority.

- f. It is expressly understood and agreed by all Parties that DWS has imposed restrictions on the amount of water that may be used for the proposed system for operational reasons and that it may further restrict or prohibit the use of water from its system for other operational reasons or due to water shortages or system malfunctions. Releasors, which consist of the Honokaia 'Ohana and the individually named Plaintiffs in *Honokaia 'Ohana, et al. v. Masagatani, et al.*, Civ. No. 09-01-1615-07 ENC, bear the risk of any such restrictions, prohibitions, and malfunctions, and Defendants shall in no way be responsible for DWS's actions or its system's performance or the inability of DWS to deliver water to the Water System for any reason, including but not limited to operational reasons or due to water shortages, system malfunctions, or drought, subject to paragraph B(5) below.
  - g. Releasors acknowledge that water from the Water System is non-potable and shall be used solely for stock water and shall not be used for irrigation or as potable water, and Releasors bear the risk of use of the water for any purposes.
  - h. This Agreement in no way modifies the leases issued by DHHL to Honokaia lessees or the ranch plans that were submitted by Honokaia lessees to DHHL, including but not limited to the obligation to build catchment or similar systems as a primary water system.
3. Benchmarks. Although the parties fully acknowledge that circumstances prevent a rigid schedule to implement the steps in paragraph A(2) above, they agree that time is of the essence to provide the contemplated water infrastructure. Accordingly, they agree to strive for meeting the benchmark steps to construct the planned Water System in twenty-four (24) months or less, in accordance with the sequential schedule below:
- a. Procure a Professional Engineer to design the project within three (3) months of the execution of this Agreement.
  - b. Design the Water System to specifications (including topography study, design, county plan review, permits) needed to issue a request for

proposals within nine (9) months following the procurement of a professional engineer pursuant to paragraph A(3)(a).

- c. Conduct a bidding process within one (1) month following final design of the Water System pursuant to paragraph A(3)(b).
  - d. Award and Contract with a general contractor to build the Water System within two (2) months after beginning the bidding process as contemplated by paragraph A(3)(c).
  - e. Complete construction with regular oversight by Defendants within nine (9) months after the award of the contract to build the Water System, pursuant to paragraph A(3)(d).
  - f. Within the construction period, insure completion of the Road A water system (Phase I) *before* completion of the Road B water system (Phase II).
4. Defendants shall confer with designated representative of Releasors to report on the progress made to achieve each benchmark (above) and any corrective action taken should there be a failure to meet any benchmark within the expected time frame (above). Upon request by Releasors, Defendants shall meet with Releasors to discuss any issue related to implementation of above benchmarks.

**B. Operation and Maintenance of the Water System**

1. The Water System will not be operated or maintained by Defendants. Defendants' continuing obligations under paragraph B(5) below are conditioned on a homestead association or other entity of which the Honokaia lessees are eligible for membership or participation (the "licensee") -- *e.g.*, the Waimea Hawaiian Homestead Association -- entering into a license or similar agreement with Defendants for the Water System, by which the licensee agrees to operate and maintain the Water System in accordance with this Agreement (*see below*).
2. Upon completion of design and construction of the Water System, Defendants shall, with the approval of the Commission, offer and, if agreement is reached, enter into a license or similar agreement with the Waimea Hawaiian Homestead Association or other licensee, which shall be responsible for the operation and maintenance of the Water System at no cost to Defendants. In agreeing to this term, Releasors do not waive any right to assert in other homestead areas that the State is obligated to fund such costs as administrative and operating expenses of the DHHL, or to assert in other homestead areas a claim for State funding of such



costs and expenses pursuant to Haw. Const., Art. XII, § 1, the HHCA or any other legal authority. Nothing in this Agreement shall be deemed to preclude DHHL from asserting claims or seeking funding from the legislature for operation, maintenance, or repair costs associated with this or any other water system.

3. The Waimea Hawaiian Homestead Association or designated licensee shall be the customer of DWS, responsible for paying all charges of DWS for the use of water from the DWS system or for any and all other charges levied or imposed by DWS (which charges the licensee will pass on to and collect from the Honokaia lessees).
4. The Waimea Hawaiian Homestead Association or designated licensee shall be responsible for the following:
  - a. Maintaining the Water System in good working order;
  - b. Operating the Water System for the benefit of all Honokaia lessees who choose to use the Water System, who pay for the installation of infrastructure from authorized connection points on the main lines of the Water System to their respective lots, and who agree to be bound by any operating agreement the licensee may impose on Honokaia lessees;
  - c. Performing daily maintenance tasks and paying for all minor maintenance of the Water System, including inspection of the system, any surface line repairs, and any necessary landscape maintenance;
  - d. Billing the Honokaia lessees for the use and maintenance of the Water System, including any charges for water taken from the Water System, collecting the same, and paying DWS any amounts billed to the licensee;
  - e. Acquiring and maintaining in force at all times insurance for the maintenance and operation of the Water System, in form and amounts to insure proper operation of the Water System, with Defendants named as additional insureds; and
  - f. Maintaining adequate signage that notifies persons who may come into contact with water from the Water System that the water is non-potable and not suitable for human consumption.
5. Notwithstanding the maintenance costs borne by the Waimea Hawaiian Homestead Association or designated licensee, Defendants shall be responsible for all major repairs of the Water System, including, but not limited to, major repair and replacement of tanks and pipelines and all major appurtenances due to

normal wear and tear, acts of God, accidents, vandalism, theft, or other human-caused events beyond the day-to-day maintenance activities of the Waimea Hawaiian Homestead Association or designated licensee. Defendants shall also be responsible for requiring that all non-Plaintiff and future Honokaia lessees understand that, in order to use the Water System, they must pay all fees pursuant to the agreement with the Waimea Hawaiian Homestead Association or designated licensee, including any pre-paid deposit requirements imposed, and assume liability of any costs and fees related to collection for unpaid fees that accrue. Defendants' responsibility under this paragraph in no way precludes Defendants' right to seek recovery of costs from others, including users of the Water System, who are or may be responsible for damage caused to the Water System.

6. Defendants make no warranties that the water from the Water System will provide a particular level of water pressure or that the water is adequate or safe for use by cattle or other animals.

**C. Releases, Indemnification Obligations, and Dismissal**

1. In consideration for the promises and other consideration given by Defendants, Releasors, for themselves and their heirs, executors, administrators, successors, and assigns, will fully and finally release, acquit, and forever discharge Defendants, the State of Hawaii, and their departments, agencies, directors, officers, agents, employees, representatives, insurers, attorneys, administrators, and assigns and all other persons acting on their behalf (collectively "Releasees"), from and against any and all claims against Releasees which Releasors have, or have ever had, or may ever have, whether known or unknown through oversight or error, and which, if known, would materially affect Releasors' decision to enter into the Agreement, resulting from, arising out of, to arise out of, or connected with, directly or indirectly, the events and claims described in Civil No. 09-1-1615-07 (the "Lawsuit"), the development and leasing of the Honokaia subdivision, the Settlement Agreement and Release and Stipulation for Dismissal With Prejudice and Order in the Aged Hawaiians lawsuit (Civil No. 89-244), the decision of Defendants to provide or not provide or fund water and water infrastructure for the Honokaia subdivision, the form of any water system that may be installed at the Honokaia subdivision in the future and any limitations on the amount of water or level of water pressure it may provide; including but in no way limited to all claims, theories, demands, and causes of actions asserted in the Lawsuit (collectively, the "Released Claims"), subject to the limitations in paragraph C(4) below.

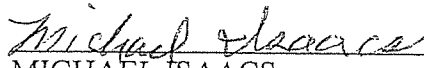
2. Concurrent with the execution of this Agreement, Releasors shall execute and deliver to Defendants' counsel for immediate filing a Stipulation for Dismissal With Prejudice of All Claims Against Defendants in the Lawsuit, Civil No. 09-1-1615-07, by which the Lawsuit and all claims therein shall be finally terminated.
3. Releasors expressly waive and release any and all damages claims that they may have against Releasees. No monetary payments of any kind shall be made to Releasors, except as explicitly provided in this Agreement.
4. In agreeing to the terms of this Agreement, Releasors do not waive any right to seek remedies in other homestead areas, based on the HHCA, the state Constitution, statutes, or any other legal authority, to (a) obtain water, including water "free of all charge" pursuant to HHCA § 221(c), in support of homesteading, from the county or any other agency; (b) seek general funds to defray the costs of operation and maintenance of water systems in other homestead areas as administrative and/or operational expenses of the DHHL. *Nelson v. Hawaiian Homes Commission*, 127 Hawaii 185, 277 P.3d 279 (2012). In addition, Defendants shall not assert that Releasors, in entering into this Agreement, have waived any claims other than those released in this Agreement to assert rights to water in support of homesteading contained in the HHCA, the state Constitution, statutes, or any other legal authority.
5. Subject to the foregoing paragraph, Releasors covenant and agree that they will forever refrain from instituting, prosecuting, maintaining, proceeding on or advising to be commenced against Releasees any action or proceeding which arises out of, or is or may be, in whole or in part, based upon, related to or connected with any of the Released Claims. Releasors understand that the releases and waivers contained in the Agreement will be a complete defense to any action or other proceeding asserting any of the Released Claims which may be instituted by or on behalf of Releasors.
6. Releasors expressly waive and release any and all claims they may have now or in the future based on the assertion that the Water System is inadequate to serve the water needs of Plaintiffs or that water from the Water System is not fit for human or animal consumption.

**D. Additional Provisions**

1. Attorneys' fees and costs. Each Party to this Agreement and each party in the Lawsuit shall bear their own attorneys' fees and costs, except that Defendants shall pay Plaintiffs \$10,000.00 for attorneys' fees and costs.
2. Advice of Counsel. All Parties represent that they are fully advised by counsel in this matter.
3. No Admission of Wrongdoing. The Parties agree that the covenants, promises, agreements, and releases contained in this Agreement are not to be construed as admissions of negligence, gross negligence, willful or intentional misconduct, breach of contract, breach of warranties, breach of trust duties, violation of any statute or constitutional provision, liability, or fault of any kind whatsoever but are to be construed solely as the compromise and settlement of disputed claims.
4. No Representations. The Parties acknowledge that no promise, agreement, fact, or opinion not expressed in this Agreement has been made by or to them to induce this Agreement and that the settlement is made with full knowledge of this fact and of the possibilities of the subject matters of the Agreement.
5. No Waiver. A waiver of any breach of this Agreement by any Party shall not be deemed to be a waiver by any Party of any other breach of this Agreement.
6. Interpretation. The terms of this Agreement have been negotiated at arms length among knowledgeable Parties represented by experienced counsel. As a result, the rule of "interpretation against the drafter" shall not apply in any dispute over interpretation of the terms of this Agreement.
7. Warranties. Releasors warrant that they are the owners in their respective names of all Released Claims, and that they have not assigned, sold, transferred, mortgaged, conveyed, hypothecated or otherwise disposed of the Released Claims or any of them to anyone.
8. Entire Agreement. This Agreement contains all of the terms and agreements between the Parties and supersedes and cancels each and every other prior conflicting agreement, promise, and negotiation between them.

9. Captions and Headings. The captions and headings or paragraphs in this Agreement are inserted for convenience, reference, and identification purposes only, and shall not control, define, limit, or affect any provisions of the Agreement.
10. Amendments. This Agreement, which shall constitute the entire agreement between the Parties, may be changed, amended, or modified only by a written instrument signed by all parties.
11. Counterparts. This agreement may be signed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. Facsimile and Portable Document Format (PDF) signatures shall be deemed valid, original signatures.
12. Additional Documents. The Parties agree to cooperate fully and execute any and all supplementary documents and take additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.
13. Authority. The Parties represent and warrant to each other that they have full power and authority to enter into this Agreement, and to perform in accordance with its provisions, and that any representative executing this Agreement on behalf of any Party is duly authorized by his, her, or its principal to execute and deliver the Agreement.

DATED: Honolulu, Hawai'i, August 25, 2013.

  
MICHAEL ISAACS  
For Plaintiff Honokaia 'Ohana



T.J. AKIONA  
Plaintiff

DOLORES RAMOS  
Plaintiff

YVONNE L.K. DELUZ  
Plaintiff

LEHUA HO'OPAI  
Plaintiff

MICHAEL ISAACS  
Plaintiff

DIANA TERUKINA  
Plaintiff

RUBY ISAACS  
Plaintiff

APPROVED AS TO FORM AND CONTENT:

ALAN T. MURAKAMI  
SHARLA A. MANLEY  
ASHLEY K. OBREY  
Attorneys for Plaintiffs

T.J. AKIONA  
Plaintiff

DOLORES RAMOS  
Plaintiff

*Yvonne L.K. DeLuz*  
YVONNE L.K. DELUZ  
Plaintiff

LEHUA HO'OPAI  
Plaintiff

MICHAEL ISAACS  
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DIANA TERUKINA  
Plaintiff

ALAN T. MURAKAMI  
SHARLA A. MANLEY  
RUBY ISAACS  
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Plaintiff

*Michael Isaacs*  
MICHAEL ISAACS  
Plaintiff

DIANA TERUKINA  
Plaintiff

*Ruby Isaacs*  
RUBY ISAACS  
Plaintiff

APPROVED AS TO FORM AND CONTENT:

ALAN T. MURAKAMI  
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ASHLEY K. OBREY  
Attorneys for Plaintiffs

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Plaintiff

*Dolores Ramos*  
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Plaintiff

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MICHAEL ISAACS  
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RUBY ISAACS  
Plaintiff


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SHARLA A. MANLEY  
ASHLEY K. OBREY  
Attorneys for Plaintiffs

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Plaintiff

  
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MICHAEL ISAACS  
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DIANA TERUKINA  
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RUBY ISAACS  
Plaintiff

APPROVED AS TO FORM AND CONTENT:

ALAN T. MURAKAMI  
SHARLA A. MANLEY  
ASHLEY K. OBREY  
Attorneys for Plaintiffs


T.J. AKIONA  
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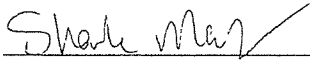
LEHUA HO'OPAI  
Plaintiff

MICHAEL ISAACS  
Plaintiff

  
DIANA TERUKINA  
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RUBY ISAACS  
Plaintiff

APPROVED AS TO FORM AND CONTENT:

  
ALAN T. MURAKAMI  
SHARLA A. MANLEY  
ASHLEY K. OBREY  
Attorneys for Plaintiffs

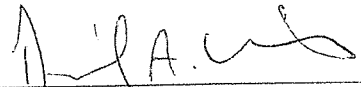
HAWAIIAN HOMES COMMISSION

  
By: JOBIE MASAGATANI, Chairperson

THE DEPARTMENT OF HAWAIIAN  
HOME LANDS

  
By: JOBIE MASAGATANI, Director

APPROVED AS TO FORM AND CONTENT:

  
DONNA H. KALAMA  
DANIEL A. MORRIS  
Deputy Attorneys General  
Attorneys for Defendants

# ITEM E-2




STATE OF HAWAII

DEPARTMENT OF HAWAIIAN HOME LANDS

May 30, 2019

TO: Chairman and Members, Hawaiian Homes Commission

FROM: Stewart Matsunaga, Acting Administrator  
Land Development Division 

SUBJECT: Approval to Amend the Source of Funding for the Development Agreement between the Department of Hawaiian Home Lands and Ikaika Ohana for "Hawaiian Home Lands Rental Housing in the Villages of Laiopua"

RECOMMENDED MOTION/ACTION

1. Approval to Amend the Fiscal Year 2019 Development Budget source of funding in the amount of \$5,000,000 from the Native American Housing and Self-Determination Act (NAHASDA) fund to Hawaiian Home Lands Trust Fund for the Development Agreement between the Department of Hawaiian Home Lands and Ikaika Ohana for "Hawaiian Home Lands Rental Housing in the Villages of Laiopua", subject to no increase above the current funding level established by the Hawaiian Homes Commission for FY 2019 Development Budget.

DISCUSSION

1. On August 25, 2017, Ikaika Ohana was awarded development agreement contract, pursuant to RFP-16-HHL-004, "Hawaiian Home Lands Rental Housing in the Villages of Laiopua". The Development Agreement provides for the development of 118 lots in Village 4 and 45 lots in Village 5 through a 15-year Rent with Option to Purchase project. This Rent with Option to Purchase project provides low income rental housing to families who incomes do not exceed 60% of the area median income. This project will also provide for families whose incomes do not exceed 30% and 40% of median income. Upon financial qualification and selection of a single-family rental unit, the tenant is provided with an Option to Purchase the unit at completion of 15-year rental compliance period.
2. The project funding for the construction of homes will primarily come from the sale of Low-Income Housing Tax Credits. In addition, DHHL had committed to support this project with additional equity. In June 2018, the Hawaiian Homes Commission approved \$5,000,000 in NAHASDA funding for this project.

3. On February 12, 2019, DHHL and Ikaika Ohana executed the Development Agreement for the subject project.
4. On February 15, 2019, Ikaika Ohana submitted its Low-Income Housing Tax Credit application to Hawaii Housing Finance Development Corporation (HHFDC). Ikaika Ohana's application included DHHL's commitment to provide \$5,000,000 in NAHASDA funds for construction support.
5. During the HHFDC vetting process of reviewing Ikaika Ohana's rental program rates, DHHL was informed by the Housing and Urban Development Office of Native American Programs, that if NAHASDA funds are used in the project, there can be no adverse action taken against tenants who have no ability to pay the required affordable rents. With this stipulation, Ikaika Ohana's LIHTC application does not pencil out and may be subject to disapproval, unless additional annual subsidies from DHHL are provided. If Ikaika Ohana's LIHTC application is disapproved, then the Development Agreement will be terminated in the best interest of the State, and the Rent with Option to Purchase project will not be implemented.
6. At this late stage of the application, in order to keep Ikaika Ohana's LIHTC application successful, as an alternative means of financing, DHHL recommends that that source of financing for the subject Development Agreement be amended to the Hawaiian Home Lands Trust Fund, rather than NAHASDA funds. DHHL expects that the use of Hawaiian Home Lands Trust Fund would be repaid to DHHL at the completion of house sales at the end of the rental compliance period, similarly if NAHASDA would have been used.
7. The total Trust Fund budget in Fiscal Year 2019 (FY19), approved the HHC is \$72,283,000. Currently, LDD expects to encumber approximately, \$20,000,000 up to June 30, 2019. Since several major development projects were not able to move forward in FY19, there is an unencumbered balance of Trust Funds in the approximate amount of \$50,000,000. LDD will defer encumbrance of Trust Fund funded projects in the amount of \$5,000,000 to permit for the switch of \$5,000,000 in NAHASDA funds to Trust Funds, without exceeding the FY19 HHC authorization in the Trust Fund budget. NAHASDA funds in the amount of \$5,000,000 would be restored in the DHHL FY19 Development Budget.

#### RECOMMENDATION

The Department recommends favorable consideration for the recommended motion above.


# ITEM F-1


Submittal not available at the time of packet distribution

**STATE OF HAWAII**  
**DEPARTMENT OF HAWAIIAN HOME LANDS**

May 30, 2019

To: Chairman and Members, Hawaiian Homes Commission

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

From: Allen G. Yanos, Property Development Agent  
Land Management Division 

Subject: Approval to Issue a Right-of-Entry Permit and Conditional Approval for a General Lease to AEP Wind Holdings, 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)

APPLICANT:

AEP Wind Holdings, LLC, formerly known as Sempra Renewables, LLC, a Delaware limited liability company ("AEP Wind")

RECOMMENDED MOTION/ACTION:

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

1. Issuance of a Right-of-Entry permit ("ROE") to AEP Wind within the Project Area as shown in Exhibit "A" attached hereto. The ROE shall be for due diligence activities to assess the potential of developing an estimated 30MW renewable energy ("project") on Hawaiian home lands in Kahikinui, Island of Maui;
2. Conditional approval of the General Lease to AEP Wind or its authorized assignee for the development, construction, operations, management, and maintenance of the project on land within the Project Area, to be more fully described in a metes and bounds survey, and necessary non-exclusive licenses for access, maintenance, and other project purposes upon exercising the option for the General Lease;
3. Issuance of the ROE and the General Lease shall be upon the proposed terms and conditions attached hereto as Exhibit "B";
4. Delegate authority to the HHC Chairman to negotiate the final terms and conditions of the ROE and a General Lease with AEP Wind, and ancillary documents reasonably necessary or contemplated in connection with the Project; and
5. Prescribe such terms and conditions deemed prudent and necessary by the HHC.

ITEM NO. F-1

LOCATION:

Hawaiian home lands in Kahikinui, Island of Maui, being a portion of Tax Map Key No. (2) 1-9-001:003 within the Project Area shown outlined and cross-hatched on the attached Exhibit "A".

DISCUSSION/HISTORY

On December 21, 2018, the Department of Hawaiian Home Lands ("DHHL") solicited developers for renewable energy projects in Kahikinui, on the Island of Maui through a competitive process. Through the public solicitation, DHHL will offer the land under a ROE for due diligence activities with the option for a long-term general lease to develop, construct, operate, manage, and maintain the project. The project would generate revenue for the Hawaiian Home Lands Trust and provide community benefits for the impacted community. 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.

There were two applicants that responded to DHHL's solicitation by the January 18, 2019 deadline to be considered for selection to develop the project. Both Sempra Renewables, LLC ("Sempra") and Elemental Energy (US), Inc., a Washington corporation, proposed wind projects at Kahikinui. Following evaluation of their proposals, Sempra was ranked first pursuant to the process for selecting the finalist that would enter into negotiations to proceed with the leasing process. A schedule of the selection and leasing process is attached in Exhibit "C". Following negotiations with Sempra, DHHL confirmed Sempra's selection as the developer to proceed with the leasing process.

During DHHL's evaluation of the applicants' proposals, Sempra disclosed its pending sale to American Electric Power Company, Inc. ("AEP") based in Columbus, Ohio, through a renewable energy subsidiary, AEP Clean Energy Resources, LLC. The sale was finalized on or around April 22, 2019 and DHHL was subsequently informed that the applicant for the Kahikinui land solicitation (Sempra Renewables, LLC) was acquired by AEP and had its name changed to AEP Wind Holdings, LLC.

AEP is focused on building a smarter energy infrastructure and delivering new technologies and custom energy solutions to its customers. AEP's approximately 18,000 employees operate and maintain the nation's largest electricity transmission system and nearly 220,000 miles of distribution lines to efficiently deliver safe, reliable power to nearly 5.4 million regulated customers in 11 states. AEP also is one of the nation's largest electricity producers with approximately 32,000 megawatts of diverse generating capacity, including more than 4,300 megawatts of renewable energy. AEP was 192<sup>nd</sup> on the 2018 Fortune 500 of the largest U.S. companies by revenue.

DHHL conducted a beneficiary consultation meeting on March 19, 2019 at the Kula Community Center, on Maui, where DHHL and AEP Wind presented background information and details about the project at Kahikinui. Invitations to attend the beneficiary consultation meeting were mailed to 381 DHHL lessees and applicants residing in the Kula 96790 zip code area where the project would be located.

The HHC accepted the beneficiary consultation report providing the official public record of beneficiary issues, questions, concerns, and comments made at the March 19, 2019 beneficiary consultation meeting in Kula, Maui at its April 15-16 meeting.

The HHC will conduct two public hearings on Maui where the project will be located, in satisfaction of one of the requirements under Section 171-95.3(c), HRS. The hearings, scheduled for May 29 and 30, 2019, at the Paukukalo Community Center in Wailuku, Maui, will be held just prior to decision-making by the HHC.



scheduled for May 30, 2019. As this request for approval is being submitted prior to the conclusion of the public hearings at which the HHC will be present, feedback from those hearings are not included in this discussion.

Notices of the public hearings were published in the newspapers statewide and on DHHL's website on May 8, 2019. An outline of AEP Wind's proposal for the project will be distributed to the attendees at the two public hearings where the HHC will receive oral and written testimony from the general public.

Developers are hesitant to expend funds and resources to develop a project under circumstances where there is uncertainty. DHHL's attempt to reduce this uncertainty has been provided through the ROE and option for a general lease where, upon the satisfaction of all terms and conditions set forth now, the developer will have the certainty of obtaining a long-term lease for the development, construction, operations and maintenance of its project and, more importantly, satisfy MECO's RFP requirement for site control. Otherwise, undertaking due diligence first for the development of the project under a short-term ROE and then applying separately for a long-term lease of the land that may not materialize would involve substantial developer risk. The term sheet attached to the ROE reflects the key commercial terms and conditions of AEP Wind's offer for a general lease. The final terms and conditions of a general lease, however, must be negotiated. For that reason, Land Management Division respectfully requests that the HHC Chairman be delegated the authority to negotiate the final terms and conditions of a general lease, and, if necessary, the ROE.

DHHL's selection and leasing process schedule coincides well with the upcoming MECO RFP anticipated for June 2019; thus, timely approval by the HHC of AEP Wind's request for the ROE would greatly enhance AEP Wind's ability to respond to MECO's RFP and satisfy MECO's site control requirement. Otherwise, AEP Wind would need to wait for another RFP to develop its project, resulting in delay of the revenue generation and community benefits that DHHL is seeking.

Land Management Division believes that AEP Wind's proposed project is in the best interests of the Hawaiian Home Lands Trust and will help to further the purpose of the Hawaiian Homes Commission Act by fulfilling the desire of Prince Jonah Kuhio Kalaniana'ole to place more native Hawaiians on their land and achieve self-sufficiency based on the following reasons:

- The project will generate a substantial revenue stream of \$4.375 million, at a minimum, for the Hawaiian Homes Land Trust over at least twenty-five (25) years on land that has not typically generated much revenue in the past.
- The Kahikinui community, through the Ka Ohana O Kahikinui, supports the project because if the lease option is exercised, the community benefits will help partially fund the community's priority projects. There is also the potential for additional community benefits over the course of the lease term for other projects to further enhance the residents' lives and help pursue their plans to be more self-sufficient.
- The Kahikinui community sees the 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. Potential job openings may become available during the construction phase of the Project.
- AEP Wind has been a good neighbor over the years with its adjacent Auwahi wind project on Ulupalakua Ranch land and has accommodated the Kahikinui community's desire to locate the project away from their homestead properties' view plane by considering sites in the

southeastern portion of the region, below Piilani Highway. AEP Wind has also held meetings in the past with Ka Ohana O Kahikinui on matters relating to its adjacent Auwahi wind project, gaining its trust, and clearly understands the concerns to protect the region's archaeological and cultural sites, and historic legacy.

- Kahikinui is in a rugged, remote, sparsely-populated area with lack of infrastructure that offers very little opportunities for development and growth. If the project is not approved or there is opposition to any renewable energy project, 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 still subjected to the visual impact of more wind turbines in the region.
- The 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.

#### PLANNING AREA:

Kahikinui, Maui

#### LAND USE DESIGNATION:

Special District. This designation is for land with special opportunities such as natural, cultural or historic resources or severe constraints such as flood control or endangered species.

#### CURRENT STATUS:

The Project Area is on vacant undeveloped land, Makai of Piilani Highway, characterized by various short and tall grass, and shrubs, with rocky and moderate to steep slopes.

#### CHARACTER OF USE:

Due diligence studies to assess the potential for a wind project under a ROE and if the option for the long-term general lease is exercised, for the eventual development, construction, operations, management, and maintenance of a wind production facility.

#### CHAPTER 343 – ENVIRONMENTAL ASSESSMENT

##### Issuance of the ROE:

The issuance of the ROE is exempt from the preparation of an Environmental Assessment. In accordance with the Exemption List for the State of Hawaii, Department of Hawaiian Home Lands, as reviewed and

concurred upon by the Environmental Council on June 30, 2015, the subject request should be exempt from the preparation of an environmental assessment.

The direct, cumulative, and potential impacts of the action described have been considered pursuant to Chapter 343, Hawaii Revised Statutes and Chapter 11-200, Hawaii Administrative Rules. Since the action as proposed is determined to have minimal or no significant impact on the environment, it would therefore be exempt from the preparation of an environmental assessment. The Planning Office has documented the action as being eligible for exemption from the preparation of an Environmental Assessment.

Issuance of the General Lease:

The issuance of the General Lease is subject to the terms and conditions of the ROE, including, but not limited to, compliance with HRS Chapter 343 and HAR Chapter 11-200, and is not exemptible under DHHL's exemption list.

CONSISTENCY WITH DHHL PLANS, POLICIES, AND PROGRAMS

**General Plan (2002)**

The recommended action is consistent with the following goals and objectives of the General Plan:

***Land Use Planning***

Goals:

- Utilize Hawaiian Home Lands for uses most appropriate to meet the needs and desires of the beneficiary population.

Objectives:

- Provide space for and designate a mixture of appropriate land uses, economic opportunities and community services in a native Hawaiian-friendly environment.
- Direct urban growth to priority development areas based on infrastructure availability, feasible site conditions, beneficiary preferences and job opportunities.

***Land and Resource Management***

Goals:

- Be responsible, long-term stewards of the Trust's lands and the natural, historic and community resources located on these lands.

Objectives:

- Manage interim land dispositions in a manner that is environmentally sound and does not jeopardize their future uses.
- Enforce governmental health and safety standards and protect life and property from the effects of natural hazards and disaster on Hawaiian home lands.

***Economic Development***

Goals:

- Generate significant revenue to provide greater financial support towards fulfilling the Trust's mission.

Objectives:

- Create a professionally managed investment portfolio with a well-balanced mix of assets.



#### **Maui Island Plan (2004)**

The recommended action is consistent with the Maui Land Use “Special District” designation. This designation is for land with special opportunities such as natural, cultural or historic resources or severe constraints such as flood control or endangered species. The land can also be used for compatible activities, if managed correctly.

#### **Kahikinui Regional Plan (2011)**

The Kahikinui Regional Plan recognized the potential for the neighboring Auwahi wind project to possibly extend the power grid to Kahikinui and that the cost of transmission lines to extend service to Kahikinui should be evaluated. Wind and solar assessments indicated that Kahikinui had good potential for the use of both these resources and that these potentials should be explored and pursued if negative impacts could be addressed and/or mitigated.

#### **Beneficiary Consultation Policy (2009)**

This project is compliant and consistent with the Beneficiary Consultation Policy.

#### **Program Plans**

##### ***Ho`omaluō Energy Policy (2009)***

Objective 2 of the *Ho`omaluō Energy Policy* is “Ko`o: Facilitate the use of diverse renewable energy resources” and the second listed activity for that objective is to:

Pursue the leasing of those lands that are identified as suitable for renewable energy projects. (First priority should be given to entities that would provide “firm” renewable energy power such as garbage-to-energy (mass-burn), geothermal, pump-storage hydropower, solar-thermal and second priority to “as-available” renewable energy power such as wind, solar-photovoltaic, and wave.

#### **AUTHORITY**

Section 204(a)(2) of the Hawaiian Homes Commission Act, 1920, as amended, reads in part... “In the management of any retained available lands not required for leasing under Section 207(a), the department may dispose of such lands to the public, including native Hawaiians, on the same terms, conditions, restrictions and uses applicable to the disposition of public lands as provided in Chapter 171, Hawaii Revised Statutes, provided that the Department may not sell or dispose of such land in fee simple...”

Section 10-4-1 of the Department’s Administrative Rules, as amended, states in part that... “The department may lease, license or otherwise deal with any available lands as may not be immediately needed for the purposes of the Act as provided by Section 204(a)(2) of the act and Chapter 171, HRS, upon such terms and conditions as to it may deem fair reasonable.”

Pursuant to §171-55, Hawaii Revised Statutes, as amended, a permit may be issued “...for the temporary occupancy of state lands or an interest therein on a month-to-month basis by direct negotiation without public auction, under conditions and rent which will serve the best interests of the State, subject, however, to those restrictions as may from time to time be expressly imposed by the board. A permit on a month-to-month basis may continue for a period not to exceed one year from the date of its issuance; provided that the board may allow the permit to continue on a month-to-month basis for additional one-year periods.”

Section 171-95, HRS, as amended, authorizes disposition to public utilities and renewable energy producers of public lands for terms up to, but not in excess of, sixty-five years at such rental and on such other terms and conditions as the Board may determine. For the purposes of this section, "renewable energy producer" means "any producer or developer of electrical or thermal energy produced by wind, solar energy hydropower, geothermal resources, landfill gas, waste-to-energy; ocean thermal energy conversion, cold seawater, wave energy, biomass, including municipal solid waste...that sell all of the net power produced from the demised premises to an electric utility company regulated under Chapter 269...."

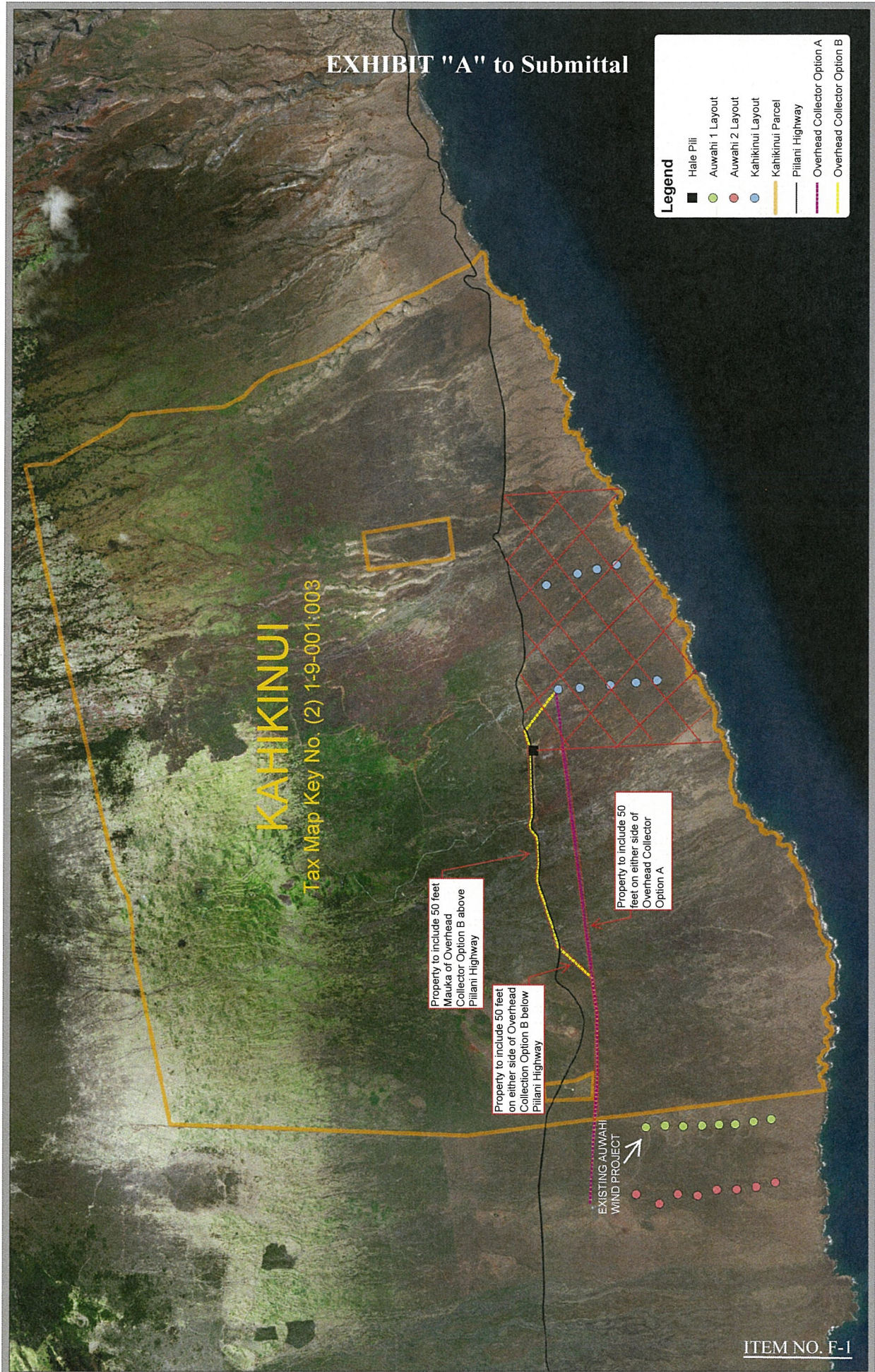
Section 171-95.3, HRS, authorizes the lease or renewal of a lease of public lands "to renewable energy producers, as defined in section 171-95, without public auction only pursuant to a public process that includes public notice under Section 1-28.5 providing other interested renewable energy producers opportunity to participate in the process...."

#### RECOMMENDATION

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



# EXHIBIT "A" to Submittal





## EXHIBIT "B" to Submittal

### STATE OF HAWAII DEPARTMENT OF HAWAIIAN HOME LANDS

RIGHT-OF-ENTRY NO. \_\_\_\_\_

This RIGHT-OF-ENTRY NO. \_\_\_\_\_ ("ROE") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date") by and between the State of Hawaii, DEPARTMENT OF HAWAIIAN HOME LANDS, whose place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, ("PERMITTOR" or "DHHL"), and AEP WIND HOLDINGS, LLC, a Delaware limited liability company, whose place of business is 488 8<sup>th</sup> Avenue, San Diego, California 92101 ("PERMITTEE").

1. RIGHT OF ENTRY. PERMITTOR hereby grants to PERMITTEE and its employees, agents, representatives, contractors, and subcontractors (collectively, "Permittee Representatives"), a revocable, non-exclusive right to enter upon the portion of that certain parcel of Hawaiian home lands, located at Kahikinui, Island of Maui, State of Hawai'i, identified by Tax Map Key No. (2) 1-9-001:003 (the "Property") outlined and cross-hatched or otherwise identified on the map attached hereto as Exhibit "A" attached hereto and made a part hereof, and all improvements or fixtures permitted thereon (the "Premises"), only for the Permitted Uses (defined below) and in connection with assessing the feasibility for PERMITTEE to develop a renewable energy project ("Project"). Notwithstanding the generality of the foregoing, during the term of this ROE, PERMITTOR agrees that it shall not grant to any other person or entity the right to assess the feasibility of or to develop a renewable energy project on the Premises.
2. TERM. The initial term of this ROE shall be for two (2) years, commencing on the Effective Date and expiring on \_\_\_\_\_. Subject to the terms of this ROE, PERMITTEE may extend the term of this ROE for up to three additional one-year periods (each an "extension") by providing PERMITTOR with prior written notice at least 60 days' prior to the expiration of the initial term or any subsequent extension. Notwithstanding the foregoing, this ROE shall automatically terminate upon the effective date of a general lease PERMITTOR may enter into with PERMITTEE (see Paragraph 13 below). PERMITTEE may in its sole and absolute discretion immediately terminate this ROE upon at least 30 days' prior written notice thereof to PERMITTOR.

If, pursuant to Paragraph 13.F, PERMITTEE is awaiting the issuance of a Finding of No Significant Impact or an acceptance of a final environmental impact statement for the Project or is appealing the non-acceptance of a final environmental impact statement for the Project, as the case may be, and PERMITTEE extends the term of this ROE as provided in the preceding paragraph, then upon issuance of a Finding of No Significant Impact or acceptance of a final environmental impact statement, the extension fee paid by PERMITTEE pursuant to Paragraph 4 below shall be prorated for the extension period then in effect based on the date such issuance or acceptance occurs.

Additionally, if, pursuant to Paragraph 13.F, PERMITTEE is awaiting the issuance of a Finding of No Significant Impact or an acceptance of a final environmental impact

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statement for the Project or is appealing the non-acceptance of a final environmental impact statement for the Project, as the case may be, and PERMITTEE has elected to extend the term of this ROE for the final one-year period (i.e., the third of three extension periods), then upon PERMITTEE's request not later than ninety (90) days prior to the end of such extension period, PERMITTOR shall seek approval from the Chairman of the Hawaiian Homes Commission to extend the term of this ROE for an appropriate time in order for such issuance or acceptance to occur (and no further extension fee shall be payable by PERMITTEE for any such extension approved by the Hawaiian Homes Commission).

3. PERMITTED USE. The Premises shall be used only for due diligence activities and investigation related to the development of the Project and for no other purpose(s), which due diligence activities shall include only those exempt classes of action under Hawaii Revised Statutes Chapter 343. Examples of permitted uses may include but are not limited to the right to determine the feasibility of wind energy conversion and other power generation in connection with the Project, including, but not limited to, conducting environmental studies, soil tests and studies of wind speed, wind direction, installation of meteorological towers and collection of meteorological and other related data. In connection with the foregoing, PERMITTEE also intends during the term of this ROE to satisfy itself with regard to the feasibility of obtaining approvals and permits from governmental agencies or departments which have or may have jurisdiction over the Project and the Premises (or the use thereof by PERMITTEE), and which PERMITTEE deems necessary or desirable in connection therewith, including, but not limited to, permits and approvals required with respect to zoning, planning, building and safety, fire, police, and access, soils, geotechnical and environmental matters.
4. FEE. On or before the date that is fifteen (15) days after the effective date of this ROE (which shall be the date the last party signs this ROE), PERMITTEE shall pay PERMITTOR a non-refundable fee for the first two years (i.e., the initial term) in the amount of TWO HUNDRED THOUSAND and 00/100 DOLLARS (\$200,000.00). This fee shall be inclusive of PERMITTEE's initial deposit of TEN THOUSAND and 00/100 DOLLARS (\$10,000.00). For any extension, PERMITTEE shall pay PERMITTOR a non-refundable fee in the amount of ONE HUNDRED THOUSAND and 00/100 DOLLARS (\$100,000.00), to be paid in advance on or before the start of any such extension.
5. CONSTRUCTION AND MAINTENANCE. During the term of this ROE, PERMITTEE shall keep the Premises in good and orderly condition consistent with good industry practice but in no case less than reasonable practice. PERMITTEE shall not make or allow any waste, spoil, nuisance, or unlawful, improper or offensive use of the Premises. PERMITTEE and Permittee Representatives shall comply with all rules, regulations, ordinances and/or laws of the State of Hawaii and any other municipal and/or federal rule, regulation, or authority applicable to the Premises.
6. RIGHT TO ENTER. PERMITTOR, the State of Hawaii, and the employees, agents, and representatives thereof (collectively, "Permittor Representatives") may access and inspect the Premises at all reasonable times to determine whether the covenants herein are being fully observed and performed and for the performance of any public or official duties;



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provided, however, that in the exercise of such rights, PERMITTOR and Permittor Representatives shall not unreasonably interfere with PERMITTEE's use of the Premises.

7. BREACH. PERMITTOR may terminate this ROE following written notice to the PERMITTEE of its failure to comply with the specified term(s) of the ROE and PERMITTEE's failure to cure such breach within thirty (30) days of receipt of the notice of breach; provided that if such breach, by its nature, is curable, but is not reasonably curable within thirty (30) days, PERMITTOR shall provide PERMITTEE a reasonable time to cure such breach so long as PERMITTEE has commenced to cure the breach within the initial 30-day period and diligently prosecutes the same to completion. If PERMITTOR, in its discretion, determines that PERMITTEE has abandoned the Premises for a period of twelve (12) consecutive months or more, PERMITTOR shall immediately terminate this ROE and thereupon take immediate possession of the Premises without prejudice to any additional remedy or right of action PERMITTOR may have under the law.
8. NO TRANSFER, MORTGAGE, OR SUBLEASE. This ROE is personal to PERMITTEE and PERMITTEE may not assign, sublease, sublicense, transfer, mortgage, pledge, or devise any of its rights or interests under this ROE, except to another wholly-owned subsidiary of PERMITTEE, its parent company, or an entity acquiring all of PERMITTEE's assets of the Project or controlling interest in PERMITTEE, and only upon PERMITTOR's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed.
9. TERMINATION/ABANDONMENT. Upon cancellation, termination, or expiration of this ROE (except if this ROE is terminated pursuant to Paragraph 13 below), PERMITTEE, at its sole cost and expense, shall have sixty (60) days after such cancellation, termination, or expiration to remove from the Premises all of PERMITTEE's buildings, structures and equipment. Any such buildings, structures and equipment, together with all interests granted by this ROE and any permitted improvement constructed by PERMITTEE on the Premises, which are not removed by PERMITTEE, and which PERMITTOR expressly accepts, shall revert to, and become the property of PERMITTOR. In the event operations cease for reasons beyond PERMITTEE's control, such as fire or other casualty that renders the facilities unusable, PERMITTEE shall have a reasonable period of time in which to resume operations.
10. INSURANCE. PERMITTEE shall, at its own expense, effect, maintain and keep in force throughout the term of this ROE, the following minimum insurance coverages, or as the parties may otherwise agree:
  - A. Comprehensive commercial general liability insurance policy, with limits of not less than \$1,000,000.00 for each occurrence, including property damage, personal injury and advertising injury; (b) \$100,000.00 for fire damages to the Premises for any one fire; \$10,000.00 in medical expenses for any one person, and an aggregate limit of \$2,000,000.00 per policy year.

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- B. Workers Compensation Insurance to include Employer's Liability. Such coverage shall apply to all of its employees.
- C. Automobile Insurance, covering all owned, non-owned and hired automobiles in the following amounts: Bodily Injury: \$1,000,000.00 per person and \$1,000,000.00 per occurrence; Property Damage: \$1,000,000.00 per accident; or a combined single limit of \$1,000,000.00.

Such insurance policy shall (a) be issued by an insurance company or surety company authorized to do business in the State of Hawaii or approved in writing by the Chairman, Hawaiian Homes Commission; (b) name the State of Hawaii, DEPARTMENT OF HAWAIIAN HOME LANDS, as an additional insured; (c) provide that the DEPARTMENT OF HAWAIIAN HOME LANDS shall be notified at least thirty (30) days prior to any termination, cancellation or material change in the insurance coverage; and (d) cover all injuries, losses or damages arising from, growing out of or caused by any acts or omissions of PERMITTEE or Permittee Representatives in connection with PERMITTEE's use or occupancy of the Premises.

PERMITTEE shall insure during the term of this ROE the entire Premises, including all improvements built or located on the Premises by PERMITTEE. The insurance shall cover loss or damage by fire and other hazards, casualties and contingencies, including vandalism and malicious mischief. The insurance shall be on a replacement cost basis of such improvements.

PERMITTEE shall furnish to PERMITTOR prior to entry onto the Premises, certificates evidencing such insurance policy or policies to be issued to PERMITTEE and to be in force, and shall furnish like certificates upon each renewal thereof. Failure of PERMITTEE to provide and keep in force such insurance shall be regarded as material default under this ROE. PERMITTOR shall be entitled to exercise any or all of the remedies provided in this ROE for default of PERMITTEE.

The procuring of such required insurance coverages shall not be construed to limit PERMITTEE's obligation to indemnify PERMITTOR under this ROE, nor limit, restrict, release, or relieve PERMITTEE of any liability arising under this ROE.

PERMITTEE's insurance shall be primary. Any insurance maintained by PERMITTOR and/or the State of Hawaii shall apply in excess of, and shall not contribute with, insurance provided by PERMITTEE.

11. HAZARDOUS MATERIAL. PERMITTEE shall not cause or permit the escape, disposal, or release of any hazardous materials used by PERMITTEE on the Premises. PERMITTEE shall not store or use such materials on the Premises in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow PERMITTEE's employees or agents to do so, or to bring or allow PERMITTEE's employees or agents to bring onto the Premises any such materials except to use in the ordinary course of PERMITTEE's business. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of



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hazardous materials by PERMITTEE, then PERMITTEE shall be responsible for the costs thereof if it is reasonably determined that PERMITTEE caused such release. In addition, PERMITTEE shall execute affidavits, representations and the like from time to time at PERMITTOR's request concerning PERMITTEE's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by PERMITTEE.

PERMITTEE agrees to indemnify, defend, and hold harmless PERMITTOR, its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all reasonable attorney's fees, and all claims, suits, and demands therefore, directly arising out of, or resulting from, any use or release of hazardous materials on the Premises or adjacent property, or elsewhere to the extents caused by PERMITTEE or PERMITTEE's agents, and occurring while PERMITTEE is in possession of the Premises. PERMITTEE's liability to PERMITTOR shall be limited to direct damages and shall exclude any other liability, including, without limitation, liability for special, indirect, punitive or consequential damages in contract, tort, warranty, strict liability or otherwise. These covenants shall survive the expiration or earlier termination of this ROE.

For the purpose of this ROE, the term "hazardous material" as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present or future federal, state or local statutes, regulation or ordinance, such as the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, and the Federal Clean Water Act, as amended from time to time, and also including but not limited to petroleum, petroleum based substances, asbestos, polychlorinated-biphenyls ("PCB"), formaldehyde, and also including any substance designated by federal, state or local regulations, now or in the future, as presenting a risk to human health or the environment.

Prior to the termination of this ROE (except where termination is due to the issuance and execution of the General Lease), if PERMITTOR has a reasonable belief that a violation of any applicable hazardous material law has occurred as a result of PERMITTEE's use or occupancy of the Premises, PERMITTOR may require PERMITTEE to conduct a Level One (1) Hazardous Waste Evaluation and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency and the Department of Health, as applicable; provided however, that this provision shall not be applicable if the ROE is terminated pursuant to Paragraph 13, below.

12. DEFENSE AND INDEMNITY. PERMITTEE shall, defend, indemnify and hold harmless PERMITTOR, its officers, and employees, from and against all liability, loss, damage, cost, and expense, including all reasonable attorneys' fees, and all claims, suits, and demands therefore, directly arising out of or resulting from personal injury or death of persons and property damage to the extent arising from the acts or omissions of PERMITTEE and/or PERMITTEE's officers, employees, agents, or contractors and occurring during or in connection with the exercise of this ROE. PERMITTEE's liability to PERMITTOR shall be limited to direct damages and shall exclude any other liability, including, without limitation, liability for special, indirect, punitive or consequential damages in contract, tort, warranty, strict liability or otherwise. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this ROE.



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13. GENERAL LEASE AND PROJECT EASEMENTS; CONDITIONS. PERMITTOR shall lease to PERMITTEE or any party that has properly assumed the terms and conditions of this ROE pursuant to Paragraph 8 above the Premises or a portion of the Premises upon such terms and conditions of a general lease that shall be substantially on the terms attached as Exhibit "B" (the "General Lease"), and provided that PERMITTOR determines, in its sole discretion, that: (a) PERMITTEE is not in default under this ROE; and (b) PERMITTEE has satisfied (or PERMITTOR has expressly waived in writing) the conditions below and such other conditions PERMITTOR may reasonably require, if any, which PERMITTOR may in good faith determine are necessary to satisfy any concerns raised by the beneficiaries and/or the Hawaiian Homes Commission in order for PERMITTOR to enter into the General Lease. PERMITTOR shall also license or grant easements to PERMITTEE, concurrently with the execution of the General Lease, for access, utilities and electrical transmission lines over, under, or through PERMITTOR's lands as reasonably necessary for and in connection with PERMITTEE's development, construction, and operation of the Project (the "Project Easements"), upon such terms and conditions as the parties shall mutually agree. Upon the effective date of any such General Lease and Project Easements, this ROE shall automatically terminate.
- A. PERMITTEE shall submit a written request to PERMITTOR for the issuance of a general lease ("Request for General Lease") no less than sixty (60) days prior to the expiration of this ROE, with a non-refundable payment of THIRTY-FIVE THOUSAND and 00/100 DOLLARS (\$35,000.00) (the "Option Fee").
  - B. All applicable requirements of Hawaii Revised Statutes Chapter 171 have been met, and specifically pursuant to Hawaii Revised Statutes Section 171-95.3 for renewable energy producers.
  - C. PERMITTOR's beneficiary consultation process for the Project has been completed, and all commitments, promises, or benefits required for the beneficiaries have either been agreed to in writing by PERMITTEE or, if PERMITTEE does not agree to such commitments, promises, or benefits, waived by PERMITTOR.
  - D. All requirements of Hawaii Revised Statutes Chapter 343 have been met, including but not limited to, the preparation, at PERMITTEE's sole expense, of an environmental assessment and/or environmental impact statement, and the issuance of a Finding of No Significant Impact or the acceptance of a final environmental impact statement, as the case may be. All mitigation measures prescribed pursuant to Chapter 343, if any, shall be included as material terms of the General Lease.
  - E. PERMITTOR shall have approved PERMITTEE's site plan depicting the locations within the Premises of any facilities, roads, and other infrastructure and improvements required for the Project, such approval to not be unreasonably withheld, conditioned, or delayed.
  - F. PERMITTEE shall have prepared metes and bounds descriptions and surveyed the portions of the Premises to be demised under the General Lease and granted under

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a Project Easement, prepared by a professional land surveyor licensed in the State of Hawai'i.

G. PERMITTEE shall submit the following documents to PERMITTOR:

- i. A certified copy of PERMITTEE's articles or certificate of organization (or similar instrument) certified by the jurisdiction where PERMITTEE is organized.
- ii. A certificate of good standing (or similar instrument) issued by the jurisdictions under which Permittee is organized, which certificate is dated no more than 6 months before the effective date of the General Lease.
- iii. A copy of resolution, certificate, or similar instrument evidencing PERMITTEE's authority to exercise its option under this section certified by the officer, manager, controlling member(s), or agent of PERMITTEE authorized to make such certification.
- iv. Evidence reasonably acceptable to PERMITTOR of PERMITTEE's or the Guarantor's financial ability to develop, operate, and maintain the Project, and to make rent payments as required under the General Lease. The "Guarantor" shall mean any person or entity guaranteeing the obligations of PERMITTEE under the General Lease.

### 14. SPECIAL CONDITIONS.

- A. PERMITTEE shall keep and maintain the Premises and any and all equipment and personal property of PERMITTEE upon the Premises in a strictly clean, neat, orderly and sanitary condition, free of waste, rubbish and debris, and shall provide for the safe and sanitary handling and disposal of all trash, garbage and other refuse resulting from its activities on the Premises.
- B. PERMITTEE accepts the Premises as-is, where-is, with all faults. PERMITTEE understands and acknowledges that there are no existing utility services to the Premises. PERMITTEE is solely responsible for obtaining and paying for any and all utility services required by PERMITTEE to use or make use of the Premises as contemplated under this ROE.
- C. PERMITTEE may grub and clear the existing vegetation on the Premises only to the extent needed for the Permitted Uses, provided further that PERMITTEE has obtained all necessary permits or approvals to conduct such activities.
- D. SURRENDER; RESTORATION OF PREMISES. Upon the termination of this ROE, PERMITTEE shall peaceably and quietly surrender and deliver up to PERMITTOR possession of the Premises. Permittee shall restore, at its own cost and risk, the Premises to a condition similar to that which existed before the Effective Date, reasonable and ordinary wear and tear and damage by acts of God excepted, and peacefully surrender possession thereof to PERMITTOR. This



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includes the removal of any Improvements that PERMITTOR elects to not accept. If PERMITTEE fails to restore the Premises, PERMITTOR may undertake all work it deems necessary or appropriate to restore the Premises on PERMITTEE's behalf and expense, whether by its own employee or contractor(s) and may charge all such costs and expenses to PERMITTEE. PERMITTEE shall remit payment for all such costs and expenses to PERMITTOR within sixty (60) days of receipt of PERMITTOR's invoice. This provision shall not be applicable if the ROE is terminated pursuant to Paragraph 13, above.

- E. All associated construction costs under this ROE shall be borne solely by the PERMITTEE and shall not, in any case, be reimbursable by PERMITTOR.
- F. PERMITTEE shall take all precautions to minimize disturbance to the areas surrounding the site of an activity being undertaken for study or exploration and to avoid spreading the seeds of invasive species when entering areas of native vegetation.
- G. Should any activity involve substantial construction, or extensive excavation or drilling during the term of this ROE that is not otherwise exempt under the Comprehensive Exemption List for the State of Hawaii Department of Hawaiian Home Lands as approved by the Environmental Council as of June 30, 2015, PERMITTEE will contact PERMITTOR in advance for written approval to proceed, which approval shall not be unreasonably withheld, conditioned, or delayed.
- H. PERMITTEE understands and acknowledges that, except as protected under applicable law, any document, record, or information PERMITTEE discloses or transmits to PERMITTOR may be deemed a government record, subject to Hawaii Revised Statutes Chapters 92, 92F, or 94 (as the same may be amended or re-codified; collectively the "Public Records Laws"), and which PERMITTOR may be required, advised, or compelled by law or court, agency, or other administrative rule or order to disclose or make available to the general public. PERMITTOR understands that all financial information relating to PERMITTEE and any of its affiliates that is submitted by PERMITTEE to PERMITTOR may be deemed information in which PERMITTEE has a significant privacy interest under Chapter 92F, Hawaii Revised Statutes, and consequently withheld from public disclosure if PERMITTOR is requested to disclose or make available to the general public any document, record, or information PERMITTEE discloses or transmits to PERMITTOR, PERMITTOR will not do so without first notifying PERMITTEE in writing (to allow PERMITTEE a reasonable opportunity to object and seek an appropriate protective order or other appropriate relief to prevent or limit such disclosure or availability) and upon the advice or opinion of the Office of Information Practices. In the event PERMITTEE does object to such disclosure by PERMITTOR, (i) PERMITTOR will not disclose the requested document, record, or information while PERMITTEE is seeking an appropriate protective order or other appropriate relief unless PERMITTOR is otherwise compelled to do so by court order, and (ii) PERMITTOR will reasonably cooperate with PERMITTEE in

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PERMITTEE's efforts to protect the document, record, or information from disclosure.

- I. Except as otherwise required by Chapter 171, Hawaii Revised Statutes, any notice, request, offer, approval, consent or other communication required or permitted to be given by or on behalf of either party to the other shall be given or communicated in writing by personal delivery, reputable overnight courier service which keeps receipts of deliveries (i.e., Federal Express), or United States certified mail (return receipt requested with postage fully prepaid) or express mail service addressed to the other party as follows:

If to PERMITTEE:                   AEP Wind Holdings, LLC  
488 8<sup>th</sup> Avenue  
San Diego, California 92101  
Attention: Richard Chandler

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to PERMITTOR:                   Department of Hawaiian Home Lands  
91-5420 Kapolei Parkway  
Kapolei, HI 96707  
Attention: Land Management Division

And a copy to:                   Department of the Attorney General  
425 Queen Street  
Honolulu, HI 96813  
Attention: AG PSHH

- J. This ROE may be executed in any number of counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one agreement. Any counterpart may be delivered by any party by transmission of signature pages to the other parties at the addresses and in the manner set forth herein, whether in hardcopy or electronic format, by PDF, email, or facsimile.
- K. This ROE is binding upon, and inures to the benefit of, the parties and their respective successors and permitted assigns.
- L. This ROE shall be construed in accordance with the laws of the State of Hawaii, without regard or application to its principles of conflicts of laws. PERMITTEE submits to the jurisdiction of the State of Hawaii. Any dispute arising under or in connection with this ROE shall be filed and adjudicated in the Circuit Court of the First Circuit of the State of Hawaii, and PERMITTEE irrevocably waives any objection now or hereafter respecting choice of law, jurisdiction, or venue and consents to the service of process by means of registered or certified mail, return

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receipt requested, to the address(es) set forth above or as PERMITTEE shall furnish to PERMITTOR in writing.

[REMAINDER OF PAGE BLANK -- SIGNATURE PAGE(s) FOLLOW]

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IN WITNESS WHEREOF, PERMITTOR and PERMITTEE have caused this ROE to be executed by the duly authorized officers/individuals as of the day and year first above written.

APPROVED BY THE HHC  
AT ITS MEETING HELD ON

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

\_\_\_\_\_  
APPROVED AS TO FORM:

By \_\_\_\_\_  
William J. Aila, Jr., Chairman  
Hawaiian Homes Commission

\_\_\_\_\_  
Deputy Attorney General  
State of Hawai'i

PERMITTOR

AEP WIND HOLDINGS, LLC  
a Delaware limited liability company

By \_\_\_\_\_  
Name:  
Its:

PERMITTEE

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STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that \_\_\_\_ is the person who executed the foregoing instrument and acknowledged to me that \_\_\_\_ executed the same freely and voluntarily for the use and purposes therein set forth.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

Printed Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_



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STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that \_\_\_\_\_ is the Chairman of the Hawaiian Homes Commission and the person who executed the foregoing instrument and acknowledged to me that \_\_\_\_\_ executed the same freely and voluntarily for the use and purposes therein set forth.

\_\_\_\_\_  
Notary Public, State of Hawaii

\_\_\_\_\_  
Printed Name of Notary Public  
My commission expires: \_\_\_\_\_

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Doc. Date: \_\_\_\_\_ or ☐ Undated at time of notarization.

No. of Pages: \_\_\_\_\_ Jurisdiction: First Circuit  
(in which notarial act is performed)

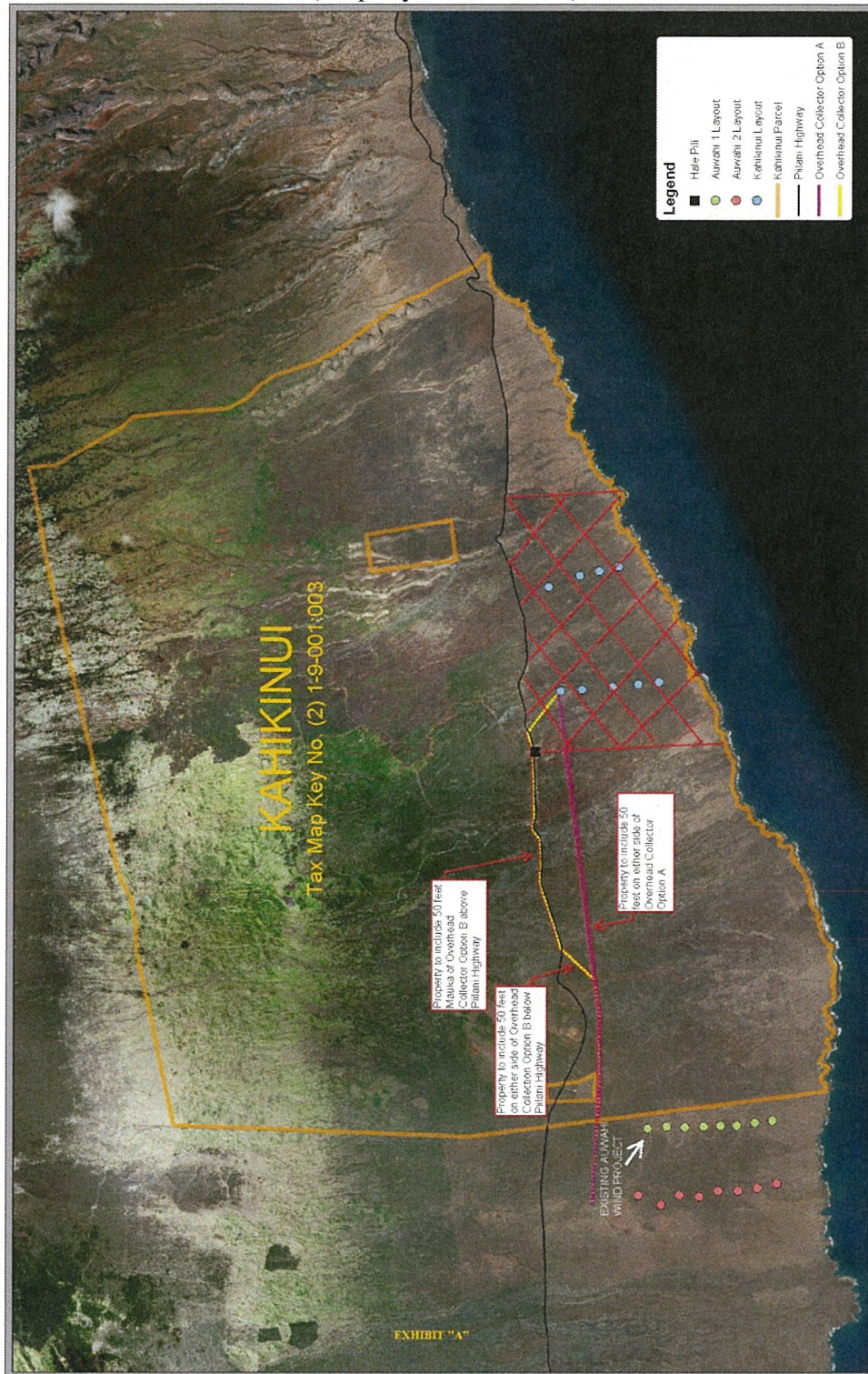
\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Date of Notarization and  
Certification Statement

\_\_\_\_\_  
Printed Name of Notary



**EXHIBIT "A"**  
(Property and Premises)



**END OF EXHIBIT "A"**

Exhibit "A"

## EXHIBIT "B" to Submittal

### **EXHIBIT "B"**

(Terms for General Lease)

#### 1. Parties

- (a) Lessor Department of Hawaiian Home Lands, an executive agency of the State of Hawaii.
- (b) Lessee AEP Wind Holdings, LLC, a Delaware limited liability company, and its permitted successors and assigns.

#### 2. Premises; Uses

- (a) Property That certain approximately 15,000 acres of available lands situated in Kahikinui, County of Maui, State of Hawaii, identified as Tax Map Key No. (2) 1-9-001-003.

- (b) Premises A to-be designated portion of the Property, comprising approximately 50 acres, which will be defined during Lessee's due diligence.

Lessee will have the exclusive right to use any wind-use and air-use rights on or pertaining to the Premises.

- (c) Easements Concurrently with the execution of the Lease, and as a condition to the effectiveness of the Lease, Lessor shall grant Lessee such easements for access, utilities and electrical transmission lines over, under and through the Property as reasonably necessary in connection with Lessee's development, construction and operation of the Project, such easements to be in form reasonably acceptable to Lessee and Lessor (the "***Project Easements***").

Lessee may grant as sublicenses, subleases, or easements (i.e., the Project Easements) to any utility, power provider, or other party, the right to construct, operate, and maintain transmission facilities on the Premises and for access to such facilities, subject, however, to Lessor's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed.

- (d) Uses; Limits Lessee may use the Premises to install, maintain, and operate a renewable energy project, which may include, without limitation, electricity generating wind turbines and



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similar, related, and incidental equipment and facilities (the "**Project Improvements**"), for generating, storing, and transmitting electricity, consistent with the purposes described or defined in the Final Environmental Assessment (for which a FONSI has been issued) or the accepted Final Environmental Impact Statement (the "**Project**").

Lessor reserves the right to grant, co-locate, and relocate easements for pedestrian and vehicular access.

Lessee will cooperate with Lessor in good faith to plan, site, design, and install any Project Improvements and to locate any easements to minimize disruption or interference with Lessor's use of the Property not constituting the Premises (i.e., not leased to Lessee) (the "**Reserved Property**").

(e) Restrictions on Lessor's Use  
of the Reserved Property

Lessor may use the Reserved Property for any purpose so long as such uses do not unreasonably interfere with or disrupt Lessee's operations on or enjoyment of the Premises and the rights granted under the Lease and such uses comply with all applicable laws. Lessor will not use the Reserved Property for hunting, except for feral species removal or control, which activities will be coordinated with Lessee.

### 3. Term

(a) Construction Term

Initial term of 2 years from the Effective Date, with three one-year options to extend (i.e., up to 5 years).

(b) First Operational Term

25 years from the commencement of commercial operations.

(c) Second Operational Term

25 years from the end of the First Operational Term.

### 4. Lessor's Reserved Rights

Lessor reserves all rights to:

(a) Minerals and Water

Minerals, surface, and groundwater resources, and any water rights appurtenant to the Premises.

(b) Historic Remains

Historic or archeological remains.

(c) Withdrawal

To withdraw all or any portion of the Premises for the purposes of the Hawaiian Homes Commission Act of 1920.

## EXHIBIT "B" to Submittal

Lessor will provide Lessee no less than 15 years' prior written notice of such withdrawal and shall pay reasonable compensation to Lessee as provided for in the Lease.

- (d) Grant/Relocate Easements Lessor reserves the right to create, designate, grant and relocate from time to time, at its sole cost and expense, any and all necessary easements for underground utilities and services, including drainage, water, sewer, electricity and other utilities, and access for the ingress and egress of pedestrians and vehicles, across, through, under or over the Premises, provided that such easements do not cross through, under, or over any existing or planned Project Improvements and any restricted area as designated in the Lease. The work to construct and install any such easements shall be done, and the easement shall be utilized, to not unreasonably interfere with or disrupt Lessee's use of the Premises.

### 5. Rent

- (a) Construction Term \$150,000.00 per year.
- (b) First Operational Term The greater of (i) \$175,000.00, or (ii) 2.75% of Gross Revenues (as defined in the Lease) (the "**Percentage Rent**"), per year. The Percentage Rent shall increase 0.25% beginning on the fifth anniversary of the commencement of the First Operational Term and every five (5) years thereafter.
- (c) Second Operational Term By mutual agreement of the parties.
- (d) Community Benefits Fees Within 10 business days after the commencement of the First Operational Term, at the election of the beneficiaries, either a one-time lump sum payment of \$500,000.00 or \$50,000.00 per year during the First Operational Term.
- During the Second Operational Term: by mutual agreement of the parties.
- (e) Commercial Operation Date Fee \$35,000.00 within 10 days after the commencement of the First Operational Term.
- (f) Easement Fees [Reserved for future discussion]
- (g) Utilities, Taxes, Assessments Paid by Lessee.

## EXHIBIT "B" to Submittal

### 6. Lessee Covenants

- (a) Project Improvements      Lessee will construct and maintain all Project Improvements in accordance with all applicable laws. Lessee will not construct or install any Project Improvements costing more than \$50,000 without Lessor's prior approval, which approval will not be unreasonably withheld, conditioned, or delayed.
- (b) Insurance      The Lease shall include insurance provisions substantially the same as provided in the Right-of-Entry.
- (c) Hazardous Materials      The Lease shall include hazardous substantially the same as provided in the Right-of-Entry.
- (d) Indemnity      The Lease shall include indemnity provisions substantially the same as provided in the Right-of-Entry.

### 7. Assignment/Subletting

Lessee may not assign or sublet all or any portion of the Premises, except with Lessor's prior written consent, which consent will not be unreasonably withheld, conditioned, or delayed.

### 8. Surrender and Restoration

Upon expiration or termination of the Lease, the Premises and all Project Improvements shall be peaceably surrendered to Lessor. Upon Lessor's request, within 24 months after termination, Lessee will remove any Project Improvements on the Premises up to 18 inches below the ground and restore the surface of the Premises to its approximate original condition. Lessee will provide such financial security for such removal and restoration obligations in an amount and in form acceptable to Lessor and Lessee and set forth in the Lease.

### 9. Miscellaneous

- (a) Lessor Reporting      Within 90 days of the commencement of the First Operational Term, and within a reasonable time after the completion of any future improvement permitted on the Premises, Lessee will provide Lessor with GIS/GPS shape files, survey information, and "as built" plans, detailing the locations of improvements constructed and of infrastructure existing on the Premises.

## EXHIBIT "B" to Submittal

- (b) Beneficiary Reporting      During the pre-construction and construction phases of the Project, Lessee will organize and hold annual progress meetings for Lessor's beneficiaries in Wailuku, Maui, including detailing compliance with the EA/EIS for the Project during the first 3 years of the term of the Lease; and thereafter, upon Lessor's written request.
- (c) Guaranty      Lessee's obligations under the Lease shall be guaranteed in the manner provided in the Lease, which may include, without limitation, a corporate guaranty, a letter of credit, a cash security deposit, or bond.
- (d) Tax Credits      Lessee will have the benefit of all federal, state, and local tax credits associated with the generation of electricity from any clean or renewable power source.
- (e) Recordation      Concurrently with the execution of the Lease, Lessor and Lessee shall execute a memorandum of lease and record the same in the Bureau of Conveyances of the State of Hawaii.
- (f) No Limits on Trust Powers or Duties      The Lease shall not be construed to encumber or otherwise limit the duties or powers of the Hawaiian Homes Commission or the Department of Hawaiian Home Lands in exercise or fulfillment of its fiduciary duties, obligations, rights, or powers arising under the Hawaiian Homes Commission Act of 1920 or any law of the State of Hawaii.

**END OF EXHIBIT "B"**



**EXHIBIT “C” to Submittal  
GENERAL LEASING PROCESS AND SCHEDULE**

<b>ACTION/TASK</b>	<b>DEADLINES/ TIMEFRAME</b>
1. Issue Public Notice of solicitation; post solicitation Information Packet on DHHL’s website	December 21, 2018
2. Solicitation questions due	January 4, 2019 at 2:00 pm HST
3. Post solicitation addendum on DHHL’s website, compiling all solicitation questions and responses	January 8, 2019
4. Applications due	January 18, 2019 at 2:00 pm HST
5. Evaluate, score and rank applications	Two weeks after application deadline*
6. Issue application status letters; select applicants for negotiations on draft lease terms	Five days after selection of applicants*
7. Negotiate draft lease terms <ul style="list-style-type: none"> <li>• Upon agreement, staff prepares request for Hawaiian Homes Commission (HHC) approval to proceed with Beneficiary Consultation (BC) meetings for selected applicants</li> <li>• If agreement not reached, negotiations are terminated; DHHL begins negotiations with next-ranked applicant</li> </ul>	Upon selection of applicants* February 1-15, 2019
8. Issue selection status letters; selected applicants to proceed with leasing process; \$10,000 Right-of Entry permit deposit due	Upon completion of negotiations for acceptable lease terms* February 15, 2019
9. Provide solicitation status to HHC; request approval to conduct BC meetings	February 19-20, 2019 HHC Meeting
10. Mail notices to affected beneficiaries inviting participation in the BC meetings and attend the public hearings	One week after HHC Meeting* February 27, 2019
11. Conduct BC meetings	Two weeks following mail-out* March 13, 2019
12. Negotiate final lease terms, as necessary, to address beneficiary issues and concerns	Two weeks after BC meeting* March 27, 2019
13. BC comments due	30 days after BC meeting* April 13, 2019
14. Submit BC report to HHC for acceptance as official record of comments	April 15-16, 2019 HHC Meeting

ACTION/TASK	DEADLINES/ TIMEFRAME
15. Publish public hearings notice in newspapers	Three days after HHC meeting* April 19, 2019
16. HHC conducts two (2) public hearings followed by decision-making to issue Right-of-Entry permit with option for General Lease (ROE)	Two weeks after public hearing notice published* May 3, 2019
17. Issue approval letter to selected applicants confirming issuance of ROE	Four days after HHC approval* May 7, 2019
18. Issue ROE for execution; balance of ROE fees due, in advance, under initial two-year term	One week after approval letter issued* May 14, 2019
19. Permittee completes due diligence work, technical studies and secures Chapter 343, HRS compliance, and other conditions	Within ROE term: initial two years with three one-year options
20. Issue General Lease for execution	Upon payment of Option Fee and satisfaction of all conditions

*\*DHHL may extend or accelerate the timeframes shown at any time, at its sole discretion. Any dates shown following these timeframes are provided for reference purposes only and are subject to change.*



ITEM G-1

STATE OF HAWAI'I  
DEPARTMENT OF HAWAIIAN HOME LANDS

May 30, 2019

To: Chairman and Members, Hawaiian Homes Commission

Thru: Andrew H. Choy Acting Planning Program Manager *AK*

From: Malia M. Cox, Planner *M. Cox*

Subject: Recommend the transmission of the Final  
Environmental Impact Statement (FEIS) for the  
Pūlehunui Regional Infrastructure Master Plan,  
Pūlehunui, Maui; TMK (2) 3-8-008, 035, 036  
(Pūlehunui North) and (2) 3-8-008:034 (Pūlehunui  
South) for acceptance by the Governor of the  
State of Hawai'i

Recommended Actions

That the Hawaiian Homes Commission recommend the transmission of the FEIS for acceptance by the Governor of the State of Hawai'i.

Discussion

The purpose of this informational briefing is to update the Hawaiian Homes Commission (HHC) on the status of the Pūlehunui Regional Infrastructure Master Plan.

Informational briefings about this project have been presented to the HHC three previously:

- November 21, 2017, an Environmental Impact Statement Preparation Notice (EISPN)
- October 16, 2018, a Draft EIS
- May 21, 2019, a Final EIS

The focus of this briefing is to review the Pūlehunui Master Plan and discuss the Final EIS (See Exhibit A) and project schedule.

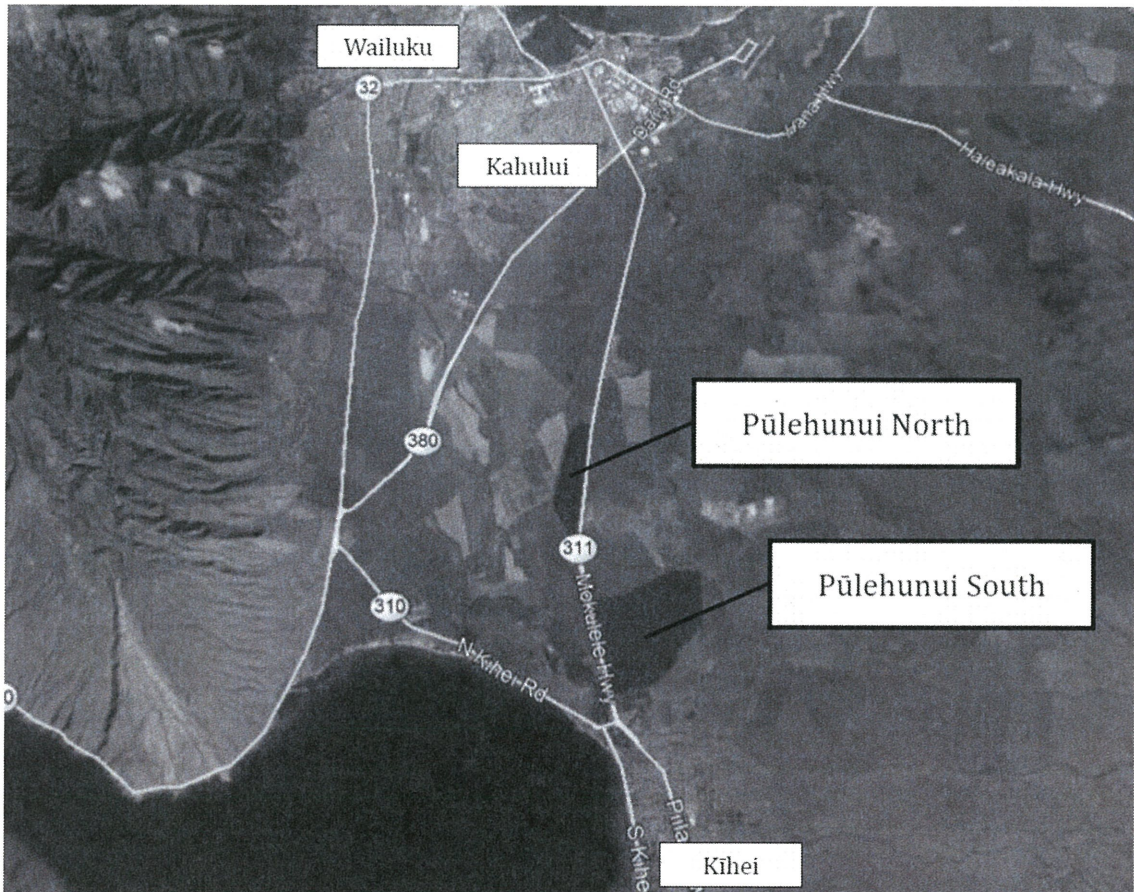
## Review of Master Planning Process

### **Background**

The DHHL owns two tracts of land in Pūlehunui totaling 830 acres. These lands were designated for commercial, light industrial and agriculture uses in the 2004 Maui island Plan as described below:

Pūlehunui North-184 acres- commercial and light industrial

Pūlehunui South-100 acres- light industrial use  
546 acres- agricultural use



Although Pūlehunui North was designated for industrial and commercial uses, Notices of Proposed Disposition were unsuccessful due in part to a lack of up-front environmental approvals.

To move the development of Pūlehunui forward, DHHL along with three other regional State agency stakeholders, (Department of Land and Natural Resources {DLNR}, Department of Accounting and General Services {DAGS}, and the Department of Public Safety {PSD}), agreed to work collaboratively. This effort resulted in a 2014, Memorandum of Understanding (MOU) charging this group to work synergistically on joint infrastructure financing, planning and development providing significant economic benefits to Maui.

DHHL's joint efforts with these regional State agency stakeholders resulted in the following legislative appropriations to DHHL:

- \$4 Million Dollars- Development of Regional Infrastructure Plan and EIS
- \$17.5 Million Dollars- Design and Construction of Wastewater Infrastructure

The proposed regional planning effort will facilitate development in Pūlehunui that is financially and environmentally efficient, maximizes the use of State funds while minimizing unavoidable environmental impacts.

The Pūlehunui Regional Infrastructure Master Plan proposed action is anticipated to have a substantial positive impact on DHHL, its beneficiaries, the County of Maui and the State of Hawai'i. The project is expected to result in the following positive outcomes:

- Provide income-generating uses that support DHHL projects, programs, and beneficiaries
- Provide farming/gardening, and homesteading opportunities for DHHL beneficiaries.
- Provide community facilities (educational/meeting facility) to meet DHHL beneficiaries' needs
- Generate new jobs
  - Temporary Development Related Jobs:  
320-390 on Maui  
170 -210 elsewhere in State
  - Long-term Net New Jobs:  
3,600 on Maui



700 elsewhere in State

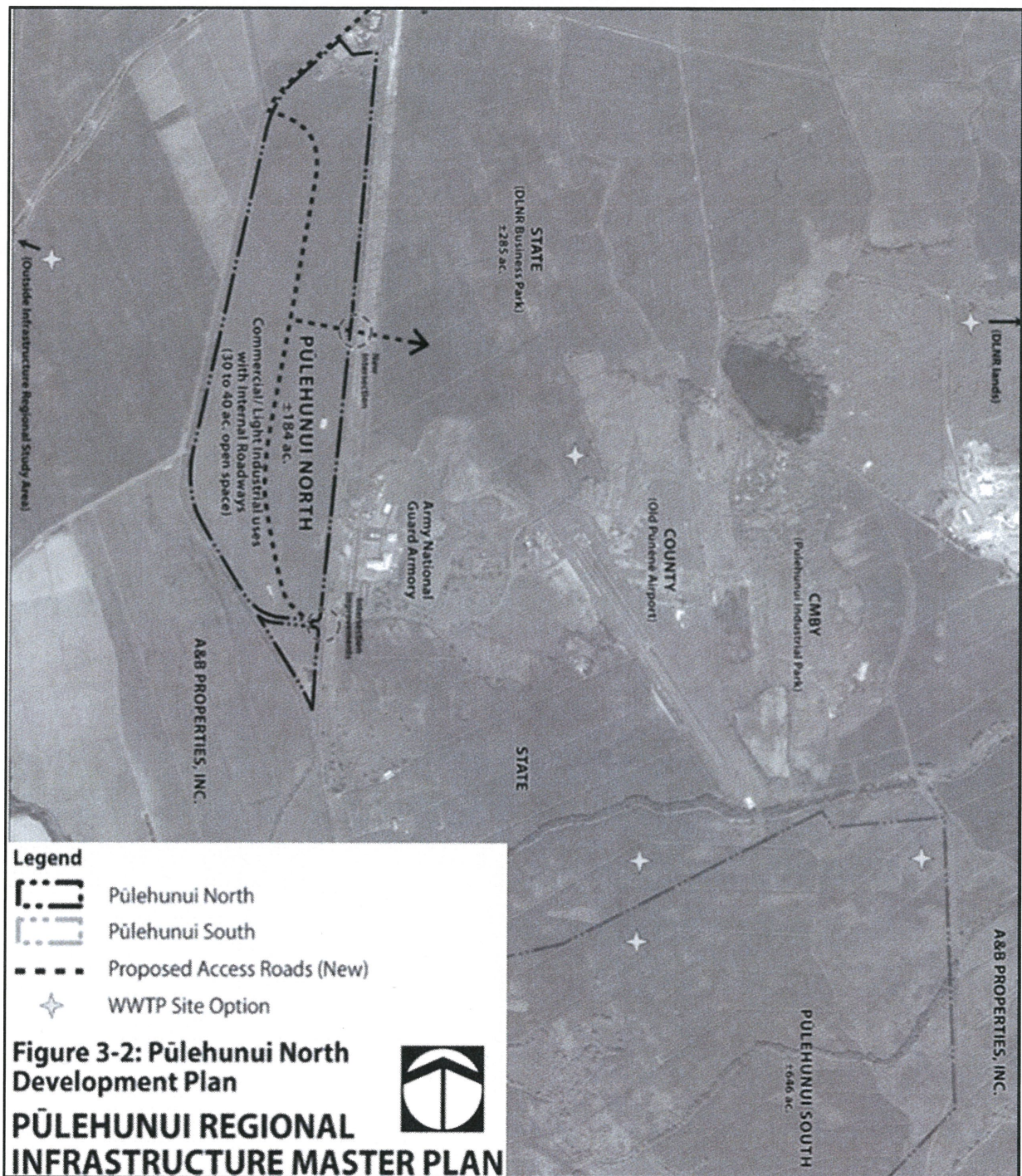
- Generate Revenue
  - County- Net revenues projected at approximately \$2.3 million per year at buildout
  - State- The Proposed Action is expected to generate some \$1.03 billion in development expenditures in the State, or about \$49.0 million to \$59.8 million per year over the anticipated 19-year development period. Net revenues are projected at approximately \$9 million per year at completion of initial buildout.

### **Master Planning Efforts**

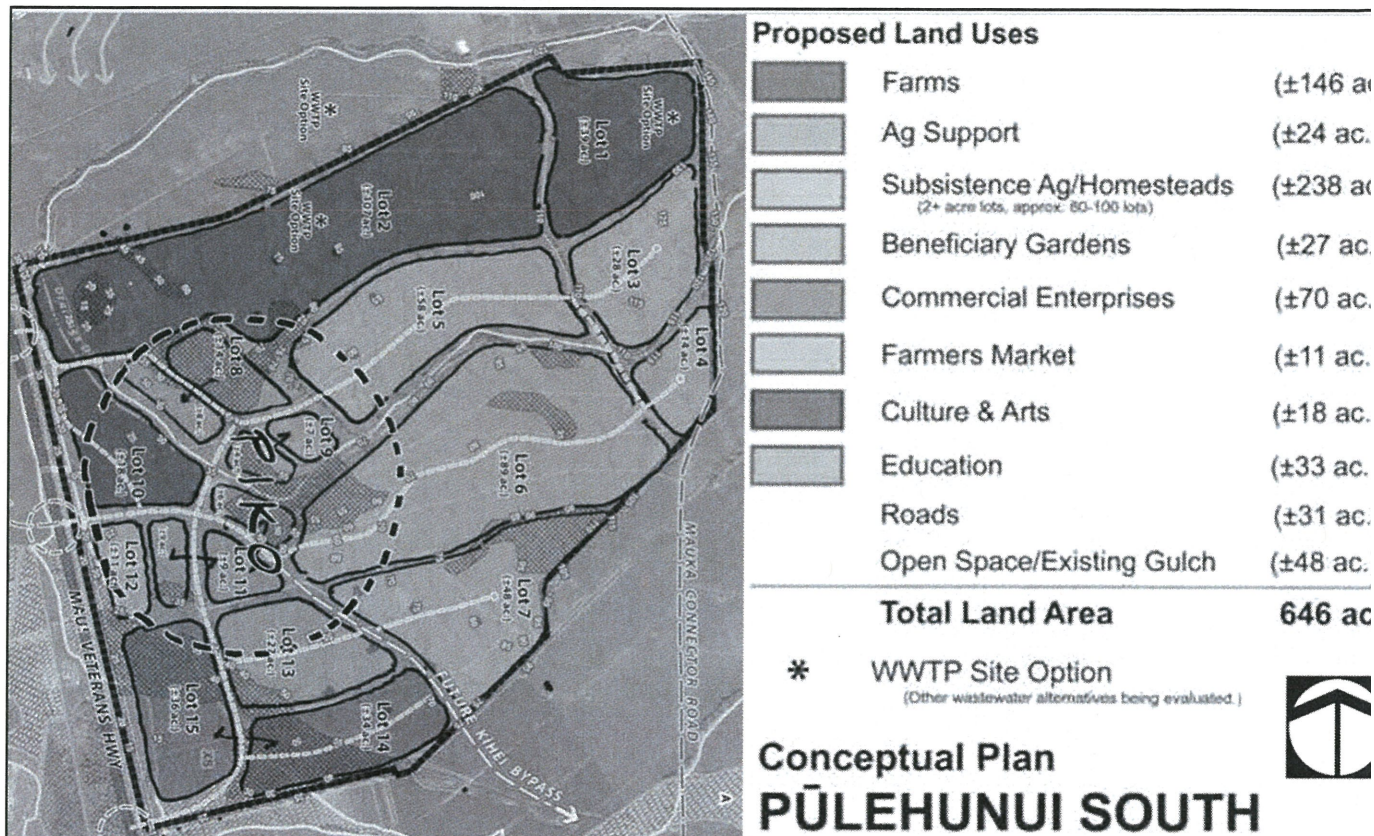
Pursuant to DHHL's mission, this project also supports refining land uses in Pūlehunui through the beneficiary consultation process. This ensures conformance with the DHHL's Maui Island Plan. Based on consultation efforts, DHHL beneficiaries indirectly/directly profit from consultation activities through land improvement, homesteading opportunities, and opportunities to pursue revenue generating through various lease/license instruments in Pūlehunui. DHHL has engaged in beneficiary consultation activities since November 2017. Beneficiary outreach efforts undertaken to date include:

- November 21, 2017: HHC Meeting/Workshop
- December 23, 2017: Publication of the EIS Preparation Notice
- January 18, 2018: EIS Public Scoping Meeting
- April 1-31, 2018: Beneficiary Online Agriculture Survey
- April 21 & 28, 2018: Beneficiary Planning Charrettes
- September 5, 2018: Beneficiary Report Back Meeting
- October 16, 2018: HHC Meeting/Workshop
- December 8, 2018: Publication of the Draft EIS
- May 21, 2019: HHC Meeting/Workshop

DHHL developed the following master plan for Pūlehunui North and South informed by beneficiary input.







## Final Environmental Impact Statement

### Differences Between Environmental Assessment Process and Environmental Impact Statement Process

This master planning project is different from most brought before the HHC. Typically, the master planning projects brought before the HHC have either no significant impacts or the impacts are mitigatable. For these "typical projects," the HHC approves the EA and issues a finding of no significant impact (FONSI).

The Pūlehunui Regional Infrastructure Master Plan process is different because DHHL determined that the magnitude of the actions would likely have a significant effect on the environment up front. According to Section 11-200-12 of the Hawaii Administrative Rules (HAR) if a project is anticipated to have an impact on at least one of 13 significance criteria,

an Environmental Impact Statement is required. These 13 significance criteria were presented to HHC during the previous informational briefings in 2017 and 2018. The project was evaluated by DHHL and determined to likely have an impact on the following four significance criteria listed below.

- Substantially affects the economic welfare, social welfare, and cultural practices of the community or State,
- Involves secondary impacts, such as population changes or effects on public facilities,
- Is individually limited but cumulatively has a considerable effect upon the environment or involves a commitment for larger actions
  - o Cumulative impacts to landscape and view plans
  - o Positive cumulative economic impacts
  - o Temporary cumulative impacts related to construction  
(air quality, stormwater runoff, noise, and traffic)
- Requires substantial energy consumption.
  - o Will require additional energy consumption related to buildout and ongoing operations

Because this project was found to have an impact on four significance criteria, the level of review moved from the typical Environmental Assessment/FONSI route to the higher review level of review needed for an Environmental Impact Statement. In addition to changing the type of documentation, this higher level of review also changes the approval/acceptance process.

The task of accepting the Final EIS falls upon the Governor rather than HHC.

The HHC and the Office of Environmental Quality Control (OEQC) must complete the following before the Governor's office will accept the Final EIS:

- HHC Tasks:
  - a. Determine the acceptability of the Final EIS



- b. Approve the transmission of the Final EIS to the Governor's Office for acceptance.

• OEQC Tasks:

- a. Review the Final EIS to determine if it is:
- complete in form,
  - an information instrument that fulfills the definition of EIS
  - able to adequately disclose and describe all identifiable environmental impacts, and
  - able to satisfactorily respond to review comments.
- b. Provide the Governor with a recommendation of the acceptability of the Final EIS.

Once the Governor receives the Final EIS from the DHHL, and an acceptance recommendation from OEQC, he can review and accept the Final EIS based on his schedule. There is no limit of time for the governor to review and accept the Final EIS.

### Mitigation Measures

Whenever possible, mitigation measures were proposed to minimize this project's impacts. The comments received, and consultation conducted during the Draft EIS comment period did not result in substantial mitigation changes. A summary of the final list of proposed mitigation measures is shown in Table G1-1. Comments received during open comment periods as well as written responses are included in Appendix B of the Final EIS (See Exhibit 2).

*Table G1-1 Pūlehunui Regional Infrastructure Master Plan  
Impact Mitigation Measures*

Impact	Proposed Mitigation Measures to Avoid, Rectify, or Reduce Impact
Climate	<ul style="list-style-type: none"><li>• Localized heat island effect mitigated with landscaping and landscape buffers in non-agricultural areas</li></ul>
Geology & Topography	<ul style="list-style-type: none"><li>• Design will respect existing topography and minimize extensive cut and fill.</li><li>• Low-Impact Development Strategies will be considered</li><li>• Interagency coordination on grading is proposed</li></ul>
Noise/Visual Impacts	<ul style="list-style-type: none"><li>• Noise/visual buffer areas on both sides of the highway</li><li>• Buffer zone design may include grade-separated bike paths and stormwater management features.</li></ul>

Impact	Proposed Mitigation Measures to Avoid, Rectify, or Reduce Impact
	<ul style="list-style-type: none"> <li>• Setbacks will be established for hotel, commercial and light industrial uses is constructed</li> <li>• Sound attenuating walls and/or berms will be considered for both indoor and outdoor spaces.</li> <li>• DHHL will consider re-locating sensitive uses within the property as needed.</li> <li>• HUD compliant noise study will be conducted</li> </ul>
Soils	<ul style="list-style-type: none"> <li>• Windbreaks and crop rotation will be used to reduce fallow land and exposed soils</li> <li>• Best Management Practices are proposed for construction activities</li> </ul>
Natural Hazards	<ul style="list-style-type: none"> <li>• No structures will be built in the area of Pūlehunui South in flood zone AE</li> </ul>
Biological Resources	<ul style="list-style-type: none"> <li>• No site clearing will occur between June 1 and September 15 to avoid 'ōpe'ape'a.</li> <li>• Examination of tree tobacco plants will occur during November through April</li> <li>• DHHL will advise against outdoor nighttime construction between September 15 and December 15</li> <li>• Consult DLNR for any disturbance of woody vegetation taller than 15 feet</li> <li>• Barbed wire will not be used for fencing</li> <li>• USFWS guidance will be sought/followed prior to site clearing</li> <li>• Nēnē transiting through area will not be bothered or harassed</li> <li>• Appropriate lighting/shielding will be used to mitigate impact to seabirds</li> <li>• Proper site drainage will avoid attracting wildlife to the property, to mitigate aircraft strike risk and avoid predation by invasive species</li> <li>• DHHL will take appropriate measures to ensure the proper mitigation of the potential wildlife hazard and follow FAA Advisory Circular 150/5200-33B guidance</li> <li>• Specifications will be included with information for developers regarding design and landscaping that does not attract wildlife</li> <li>• Embrace the use of native plantings</li> </ul>
Water Resources	<ul style="list-style-type: none"> <li>• Develop drainage plan to mitigate existing insufficient capacity. Onsite runoff will be reduced by 96% compared to existing conditions.</li> <li>• Best Management Practices are proposed for construction activities</li> <li>• Native plants will be used as a method for water conservation</li> </ul>

Impact	Proposed Mitigation Measures to Avoid, Rectify, or Reduce Impact
	<ul style="list-style-type: none"> <li>• Building and landscape design should reduce overall water demand</li> <li>• Use water quality (potable/non-potable) appropriate for projected need</li> <li>• Consider potential alternative water sources such as rainwater catchment and opportunities to increase overall system efficiency</li> <li>• Site users will be encouraged to use conservation measures in indoor and outdoor environments</li> </ul>
Archaeological and Historic Resources	<ul style="list-style-type: none"> <li>• Continue consultation with SHPD.</li> <li>• DHHL and future developers will follow recommended strategies to mitigate impacts</li> </ul>
Cultural Resources	<ul style="list-style-type: none"> <li>• DHHL will employ mitigations proposed in CIA (See Exhibit 2, Pūlehunui Final Environmental Impact Statement Appendix M) to honor traditional landscape and protect cultural resources</li> <li>• The revised CIA recommended embracing the use of native plantings</li> <li>• The revised CIA recommended that lot design consider traditional trail systems.</li> </ul>
Traffic	<ul style="list-style-type: none"> <li>• Traffic signal timing plans will be optimized</li> <li>• DHHL will coordinate with DOT on its fair share of improvements.</li> <li>• DHHL and DLNR will coordinate with DOT on Statewide Transportation Improvement Program regarding Maui Veterans Highway capacity</li> <li>• DHHL will coordinate with DLNR regarding proposed new intersection</li> <li>• Consider connections to existing and future public and multimodal transportation networks.</li> </ul>
Man-made hazards	<ul style="list-style-type: none"> <li>• DHHL will coordinate with the DOH and USACE regarding former NAS Pu'unēnē and adhere to applicable technical guidance.</li> <li>• DHHL will consult the DOH regarding any anticipated residential or other sensitive uses of the DHHL project areas including areas formerly under agriculture production. DHHL will adhere to DOH guidance regarding pesticide contamination.</li> </ul>
Solid Waste	<ul style="list-style-type: none"> <li>• DHHL will work with contractors to minimize the amount of solid waste generated during the construction</li> <li>• Implement strategies from the County of Maui Integrated Solid Waste Management Plan (2009) for recycling options</li> </ul>



Impact	Proposed Mitigation Measures to Avoid, Rectify, or Reduce Impact
Agriculture	<ul style="list-style-type: none"> <li>• Windbreaks and crop rotation will be used to reduce fallow land and exposed soils</li> <li>• Temporary best management practices will be implemented to minimize soil loss and erosion hazards during construction</li> </ul>
Construction	<ul style="list-style-type: none"> <li>• Coordinate with State and County traffic control operations</li> <li>• Coordinate amongst the agencies party to the MOU to mitigate cumulative impacts related to construction shortages should multiple projects be under construction at the same time.</li> <li>• Use best management practices</li> </ul>
Public Service	<ul style="list-style-type: none"> <li>• DHHL will coordinate with Federal, State, and County agencies</li> <li>• DHHL will consult and comply with DOE school impact fees requirements and other potential impacts to educational resources</li> <li>• Proper site drainage will avoid attracting wildlife to the property, to ensure aircraft safety</li> <li>• Should unforeseen impacts arise from aircraft activities on site users which are not mitigated by the strategies described in this EIS, DHHL will consider additional measures</li> </ul>
Energy Use	<ul style="list-style-type: none"> <li>• Consider use of alternative and renewable energy source.</li> <li>• Engage in energy saving strategies</li> <li>• Consider connections to existing and future public and multimodal transportation networks to reduce vehicular energy consumption</li> <li>• Develop new electrical substation</li> </ul>

### Unavoidable Adverse Environmental Effects

During the assessment of the Pūlehunui Regional Infrastructure Master Plan, the environmental effects identified in Table G1-2 were found to be unavoidable and cannot be completely mitigated.

*Table G1-2 Probable Adverse Environmental Effects that are Unavoidable in Pūlehunui Regional Infrastructure Master Plan*

<b>Impact</b>	<b>Unavoidable Environmental Effect</b>
Land & Visual Character	The visual character will permanently change from vacant to commercial industrial, and agricultural uses.
Traffic	The project will generate an increase in vehicle trips that will add to already projected increase to traffic on Maui Veterans Highway from Kuihelani Highway in Kahului to Pi'ilani Highway in Kihei
Water	The project will increase potable and non-potable water consumption over the existing vacant, fallow, non-irrigated land.
Solid Waste	The project will increase solid waste generation over the existing land use.
Public Services	Increased demand for public services (police, fire, public schools)
Energy	The project will significantly increase energy consumption

### **Alternatives Considered**

DHHL considered four types of alternatives to the project as proposed. The alternatives stayed the same between the Draft and Final EIS except as noted in Table G1-3:

*Table G1-3 Alternatives to the Pūlehunui Regional Infrastructure Master Plan*

<b>Alternative</b>	<b>Summary of Alternative(s) as described in the Draft EIS</b>	<b>Change between Draft EIS and Final EIS</b>
No Action	Each agency would need to develop separately and DHHL lands would remain vacant	No Change
Alternatives Requiring Actions of a Significantly Different Nature	Convert proposed "Homestead Agriculture" to non-"Homestead" agricultural use in Pūlehunui South	No Change

<b>Alternative</b>	<b>Summary of Alternative(s) as described in the Draft EIS</b>	<b>Change between Draft EIS and Final EIS</b>
	Lease out all non-commercial/industrial areas of Pūlehunui South to one or a few, larger, experienced farmers in Pūlehunui South	No Change
Alternatives Related infrastructure design and details	Water- four alternatives were considered. Development of water system owned and operated by DWS is the preferred alternative	No Change
	Wastewater- four alternatives were considered. The preferred alternative would connect and coordinate on the County's newly proposed Central Maui wastewater facility	YES  Change summarized below in <i>Change to Preferred Wastewater Alternative</i>
Postponing Action Pending Further Study	DHHL would continue to study options resulting in a temporary underutilization of DHHL lands	No Change

### **Revisions of Draft EIS to Final EIS**

Since the submission of the Draft EIS to HHC in October 2018, DHHL received 16 comments from 13 agencies and 1 individual. Responses to these comments are included in Appendix B-2 of the Final EIS. The following actions were taken as a result of the comments:



- The Traffic Study was revised (see Exhibit 2, Final EIS-Appendix H)
- The Cultural Impact Assessment was revised (see Exhibit 2, Final EIS-Appendix M)
- Contract for an additional investigation of hazards created from former military and agriculture uses. The purpose of the additional investigation is to further delineate contamination that has already been described in the Final EIS. Completion of this investigation is not needed for the Final EIS to be accepted by the Governor.

The remainder of the changes made as a result of these 16 comments (from 13 agencies and 1 individual) were to improve clarity and provide great detail in the Final EIS. They did not substantively change the content of the Final EIS from what was presented in the Draft EIS.

In addition, during the May 21, 2019, HHC informational workshop, the Commission voiced their concern regarding potential pesticide contamination as a result of previous high intensity agricultural use. DHHL is contracting for additional testing to evaluate the extent of pesticide contamination under DOH guidance. The Final EIS includes text recommending compliance to DOH requirements.

#### **Continued Exploration of Regional Infrastructure Alternatives**

The stakeholders and their technical experts continued to explore the four major infrastructure components of the Pūlehunui Regional Infrastructure Master Plan since the project was presented to the HHC in October 2018. The following changes were made to the Final EIS as a result of this continued evaluation.

Table G1-4 Exploration of Regional Infrastructure Alternatives

<b>Infrastructure</b>	<b>Alternative Selected as of May 2019</b>	<b>Change since Presentation of Project to HHC in October 2018</b>
Traffic	Fair Share Contributions	None
Water Alternative	Preferred Alternative 1A	None
Drainage	Site based Stormwater management	None
Wastewater	Preferred Alternative 2A-1	Yes

#### **Change to Preferred Wastewater Alternative**

The preferred alternative for wastewater described in the Draft EIS was rejected in favor of Alternative 2A-1. This revision was made to the Final EIS, *Possible Regional Infrastructure Improvements*, section §3.3.3 changing the preferred from Alternative 4 to alternative 2A-1 (See Exhibit 2).

Alternative 2A-1 was determined to have the following advantages:

- a. Design can accommodate substantial interim regional demand and is appropriately sized for temporary use.
- b. Construction could be completed in advance of regional demand with a target date of 2023 if construction commences in fall 2020.
- c. Design can maximize use of currently available funding.
- d. R-1 effluent water produced by WWRF can be utilized for irrigation in this alternative reducing irrigation demand
- e. Alternative 2A-1 treatment facility may be expanded, relocated, and/or repurposed in the future, at which point impacts would be more similar to those under Alternative 2A, 2C, or 4. Therefore, a range of future impacts for this alternative are already addressed in this EIS.



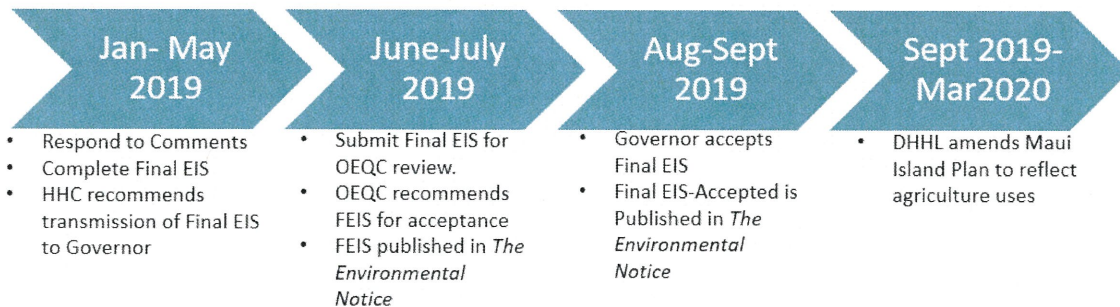
## Project Schedule

DHHL, their three State Agency Stakeholder partners, the State legislature, the Governor's office, and DHHL beneficiaries have been working diligently to move this project forward since November 2017. As a group we are nearing the finish line for the planning process.

The next steps for the HHC is determine the acceptability of the Final EIS and recommend the transmission of the Final EIS to the Governor for acceptance.

DHHL anticipates the planning phase of this project will be completed in September 2019 with the acceptance of the Final EIS by the Governor.

## ***Planning Schedule Milestones*** ***Pūlehunui Regional Infrastructure Master Plan (EIS)***



Once the Final EIS is accepted by the Governor, this project will move into the development phase. Following is the anticipated schedule for development:

## ***Development Schedule Milestones*** ***Pūlehunui Regional Wastewater Infrastructure Development***



ITEM G-2

STATE OF HAWAII

DEPARTMENT OF HAWAIIAN HOME LANDS

May 30, 2019

To: Chairman and Members, Hawaiian Homes Commission

Thru: Andrew H. Choy, Acting Planning Program Manager *AC*

From: Halealoha Ayau, Water Resource Management Specialist

Subject: Acceptance of Beneficiary Consultation Report on a Water Reservation Related to the East Maui Irrigation System's Request for Water Lease from the Department of Land and Natural Resources (DLNR), and Reauthorize the Chairman to Formally Request a Related Water Reservation from the Commission on Water Resource Management for Hawaiian Home Lands on Maui

RECOMMENDED MOTION/ACTION

That the Hawaiian Homes Commission (HHC):

1. Accept the Beneficiary Consultation Report as the official record of beneficiary issues, questions, concerns, and comments regarding the East Maui Irrigation (EMI) Request for Water Lease from the Department of Land and Natural Resources (DLNR) and DHHL's proposed water reservation relating to the same; and
2. Reauthorize the Chairman to formally request a water reservation from the Commission on Water Resource Management for Hawaiian Home Lands in Kēōkea, Waiohuli, and Pūlehunui, supplementing and clarifying the authorization given in Action 1 of item G-3 taken on August 10, 2015; and
3. Take other actions as necessary to effectuate these requests.

DISCUSSION

This discussion is broken into three major sections which discuss 1. The legal context of the EMI system and water leases; 2. The method for calculating and basis for requesting water reservations for these lands; and 3. The report from the Beneficiary consultation.

## 1. The legal context of the EMI system and water leases

Each section itself is comprised of different elements. To describe the legal context of the EMI system which is essentially to understanding the reasons for requesting water reservations, the following are reviewed:

- a. The EMI system
- b. System ownership
- c. Legal requirements related to diverting water
- d. Water leases and DHHL reservations

### 1.a. The EMI System

The EMI system diverts waters into a 75-mile long network of tunnels, ditches, flumes, and reservoirs that spans across significant parts of East, Upcountry, and Central Maui. The system until recently diverted an average of 165 million gallons a day (mgd), and up to 450 mgd. It is the largest water diversion system in Hawai'i.<sup>1</sup>

The streams and the waters in them diverted originate largely on Crown and Kingdom lands taken by the Republic of Hawai'i, ceded to the US Federal Government at annexation, and transferred to the State of Hawai'i via the Admissions Act.<sup>2</sup> At least 27 named streams are diverted, including Honopou, Hanehoi/Puolua (Huelo), Waikamoi, Alo, Wahinepe'e, Puohokamoa, Ha'ipua'ena, Punalau/Kōlea, Honomanū, Nuaailua, Pi'ina'au, Palauhulu, `Ōhi'a (Waianu), Waiokamilo, Kualani (Hamaui), Wailuanui, Waikani, West Wailuaiki, East Wailuaiki, Kopiliula, Puaka'a, Waiohue, Pa'akea, Waia'aka, Kapaula, Hanawī, and Makapipi.<sup>3</sup> See Figure 1, below.

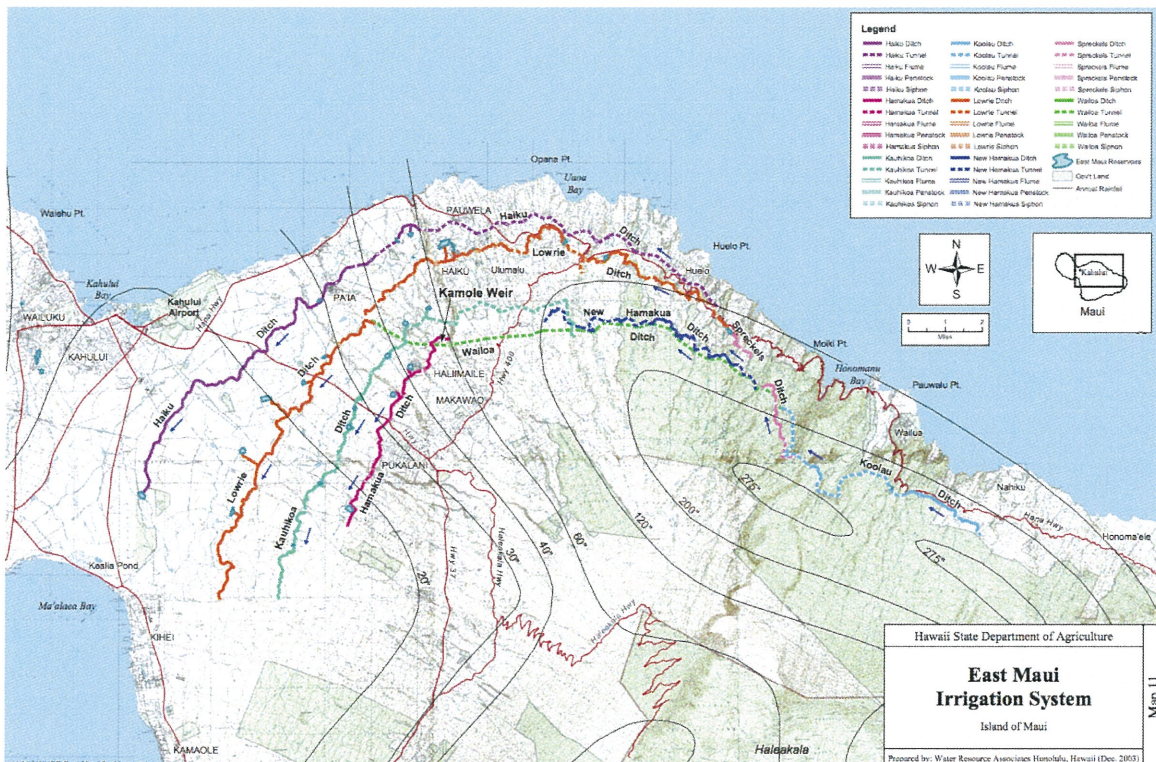
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<sup>1</sup> For comparison, the Honolulu Board of Water Supply in their Fiscal Year 2014 delivered approximately 139.2 million gallons of potable water per day and 10.8 million gallons of non-potable water per day to roughly one million customers on O'ahu. (Honolulu Board of Water Supply Fiscal Year 2014 Report, at 27).

<sup>2</sup> Van Dyke, John. 2008. Who owns the crown lands of Hawai'i? Honolulu: University of Hawai'i Press.

<sup>3</sup> Diacriticals for these stream names follow the use of Hawai'i Board on Geographic Names.

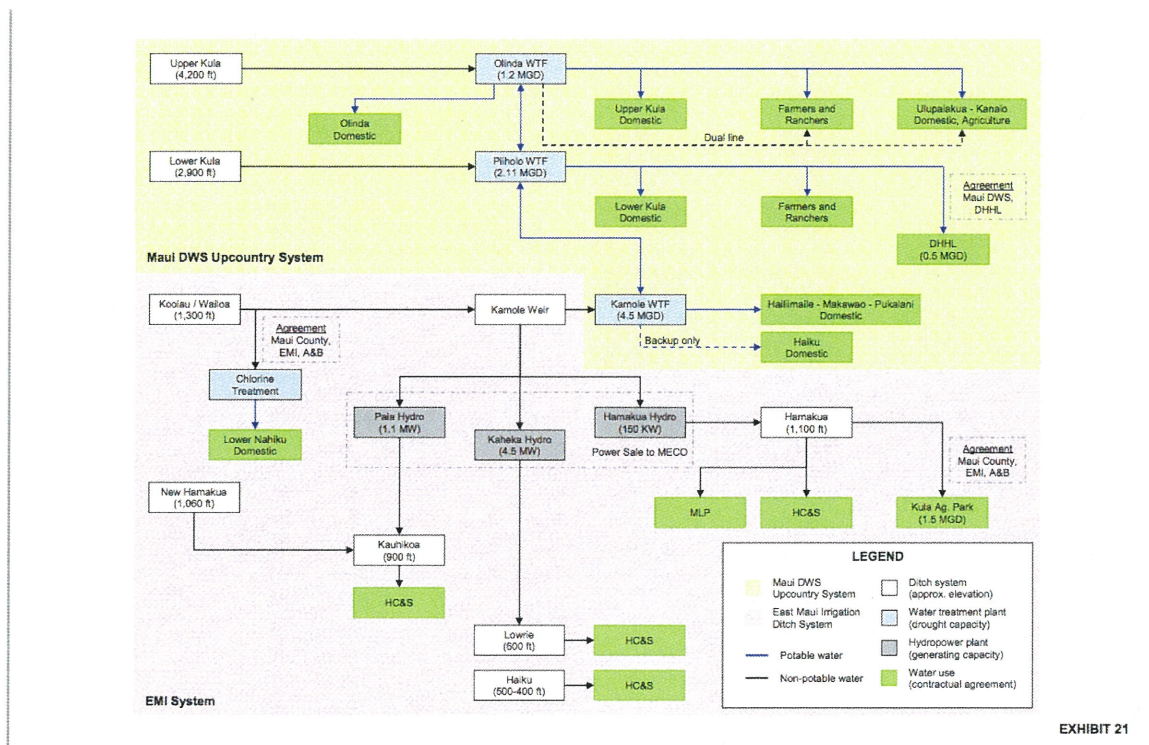




**Figure 1: East Maui Irrigation System.** (Source: December 2003. Water Resource Associates. "Hawai'i Department of Agriculture Map 11")

These streams historically provided water for kalo irrigation, domestic purposes, and supported traditional and customary uses in Hawaiian communities on East Maui. The diverted waters in the EMI system provide or have provided water to Central Maui, including Pūlehunui lands; the Maui County Department of Water Supply (DWS) Upcountry water system, including Kēōkea and Waiohuli homesteads, and others.<sup>4</sup> These diversions are subject to the concerns of system owners as well as state control and regulation as described immediately below.

<sup>4</sup> State of Hawai'i Agricultural Water Use Development Plan, at 136-37 (Dec. 2003).



**Figure 2. CWRM Simplified Schematic of the Maui DWS Upcountry System, EMI System, and System Users (Source: Beneficiary)**

### 1.b. System ownership

Historically the system was owned by Alexander & Baldwin (A&B). In late 2018, Mahi Pono, a farming venture between Pomona Farming and Canada's Public Sector Pension Investment Board, purchased 41,000 acres of land from A&B and announced plans for a creation of a joint venture to own and manage EMI.<sup>5</sup> The ownership of the physical infrastructure is unclear; previous long term leases of water may have required the reversion of ditches, even on privately owned land, to the Territory / state upon conclusion of the lease.

### 1.c. Legal requirements related to the EMI System

The amount of water currently diverted by the system is not readily determined. The maximum quantity of water that can possibly be diverted in the future by this system is also unknown and will be lower than the older historic flows due to recent state administrative, judicial, and legislative actions. Most significantly, on June 20, 2018, the Commission on Water

<sup>5</sup> <https://www.businesswire.com/news/home/20181220005936/en/Mahi-Pono-Purchase-HCS-Lands-Helps-Ensure>



Resource Management (CWRM) adopted a final Decision and Order setting Interim Instream Flow Standards for the twenty-seven above mentioned streams. This action ordered the full restoration of some streams and partial restoration of others, and as a result reduces the available flow for the system compared to previous conditions where multiple streams were completely dewatered. Revision of the IIFS resolved some portions of more than two decades of litigation over these diversions, and was a precondition of the state considering issuing a new long-term lease of water diverted by this system.

Long term leases of water must issued by the Board of Land and Natural Resources (BLNR) under the authority of HRS 171-58; they may also issue shorter term Revocable Permits (RPs) for the same use. In January 2016, litigation related to the continued issuance of RPs for years resulted in a First Circuit court ruling by judge Rhonda Nishimura that the continued issuance of RPs was illegal for this system. In response, in 2016, the Legislature in 2016 amended HRS Ch. 171-58 to allow the continued issuance of RPs while long term leases were being pursued for no more than three years, which means the last possible RP would expire by December 31, 2019. In the 2019 Legislative session, various extensions to this deadline and other modifications of 171-58 were proposed, but none were passed; as a result, the three-year modification to the statute will revert to what it was prior to 2016. While this will not necessarily negatively affect other water RPs in Hawai'i, it may directly affect this system.

#### 1.d. Water leases and DHHL reservations

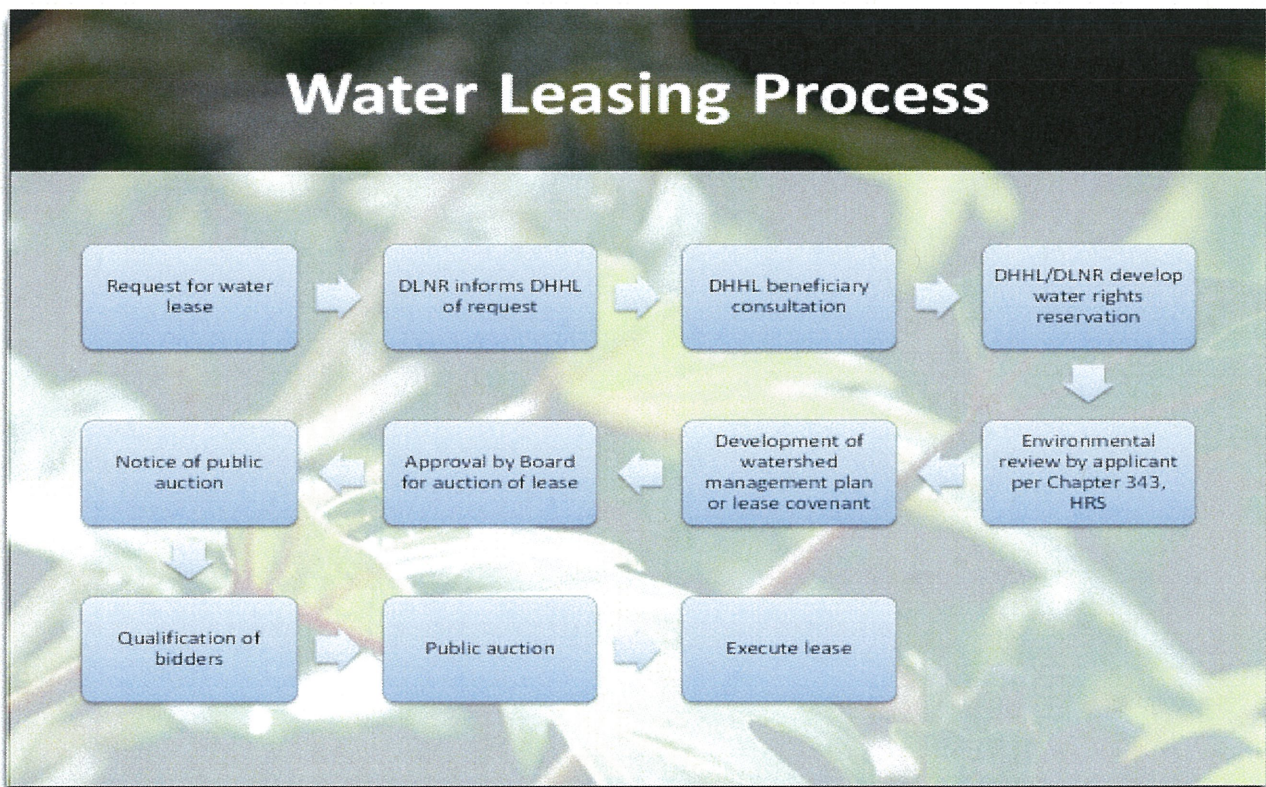
A&B had previously applied to the Board of Land and Natural Resources (BLNR) for EMI to seek a new 65 year water lease under the requirements of Chapter 171-58, Hawaii Revised Statutes, an application that is still pending and is being pursued by EMI despite the change in ownership. As part of that water leasing process, Chapter 171-58(g) states:

*"The department of land and natural resources shall notify the department of Hawaiian home lands of its intent to execute any new lease, or to renew any existing lease of water rights. After consultation with affected beneficiaries, these departments shall jointly develop a reservation of water rights sufficient to support current and future homestead needs. Any lease of water rights or renewal shall be subject to the rights of the department of Hawaiian*

*home lands as provided by section 221 of the Hawaiian Homes Commission Act."*

Until 2017, this particular provision had never been implemented since its creation in 1990. In 2017, working with DLNR and the Hawai'i Electric Light Company on the Wailuku River (Hilo) leasing process, DLNR and DHHL piloted implementation. Staff of both departments determined that "beneficiaries" referred exclusively to DHHL beneficiaries, and DHHL staff recommended that consultation be completed in accordance with the DHHL Beneficiary Consultation Policy. Then, following adoption of a Beneficiary Consultation Report and an authorization to the Chairman to seek a reservation of water by CWRM, CWRM could act on a reservation request related to the possible lease.

Subsequent to the adoption of a water reservation related to the system for DHHL, other steps in the leasing process can be pursued. These are presented in Figure 3, below.



**Figure 3. Water Leasing Process - Chapter 171-58, HRS** (Source: Beneficiary Consultation DLNR Presentation)

The calculation of actual water needs for DHHL that can be the basis of the Department's reservation request to CWRM are based on DHHL land use designations and county and other water system



standards. The specific manner in which staff calculated these is presented below.

## 2. DHHL Land Use Plans and Water Needs related to the EMI System<sup>6</sup>

DHHL has received water reservations from CWRM in non-designated areas since 2015 based on a consistent methodology. Whether taking data as contained in the current State Water Projects Plan (SWPP) or based on more current information, staff and consultants first identify the land use designations existing or proposed in Island, Regional, and Project Plans and the acreages involved. They then apply appropriate water system standards as contained in water system standards or other state plans or applicable documents. Finally, existing allocations, water credits, or other factors are considered.

### 2.a. Lands at Kēōkea and Waiohuli (Upcountry Maui):

*Land Use Designations and areas.* The Department holds in trust 6,112 acres of the Upcountry Kula region lands on the slopes of Haleakalā at Kēōkea / Waiohuli: (1) Kula Residence Lots subdivision; (2) Waiohuli Undivided Interest subdivision; and (3) Kēōkea Farm Lots.<sup>7</sup> The Kēōkea / Waiohuli subdivision consists in 320 residential lots and 66 Kēōkea Farm Lots and the Department has long range plans to construct another 1,100 residential lots below this subdivision. Kēōkea/ Waiohuli are part of the Department's Upcountry planning region. A key community concern in the regional plan was water development. Land use designations are tallied in Table I, below.

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<sup>6</sup> DHHL is not seeking here to reserve water related to its parcels of land in Ke`anae and Wailuanui in East Maui as was anticipated in action related to item G-3 of August 10, 2015. At that time water was being diverted by the EMI system from those east Maui lands, and the DHHL would have needed to seek IIFS amendments or reservations to ensure water availability there. However, the streams feeding those `āina were ordered fully restored by the 2018 CWRM actions.

<sup>7</sup> Other lands in this broad area of Maui - including parcels near Ulupalakua, Makena, and the lands at Kahikinui - cannot be foreseeably provided water from the EMI system due to distance and infrastructure constraints.

LAND USE DESIGNATION	TOTAL ACRES
Residential	1,160
Subsistence Agriculture	170
Community Use	69
Conservation	773
General Agriculture	3,940
<b>Total</b>	<b>6,112</b>

**TABLE I: KĒŌKEA & WAIOHULI HHC LAND USE DESIGNATIONS**

*Existing water allocations.* The Department's Kēōkea/Waiohuli developments currently receive water from EMI's diversions via its 1997 water credits agreement with DWS, but EMI's diversions also affect the Ha'ipua'ena, Waiakamoi and Honomanu streams, which feed into the Upper Kula System. However, there are no allocations for existing farm lot nonpotable needs, or general agriculture non potable needs.

The SWPP (page 4-26) identified 809,700 in potable needs and 578,000 in non-potable needs - for existing and planned lots. However, because the timeframe for the SWPP is the next twenty years, the time frame specified in the water code for reservations is "forseeable" needs (HRS 174C-101(a)). As a result, there is no existing reservation yet for the general agriculture designated lands in this area.

Based on the SWPP, in September 2018 CWRM did reserve 2.5471 mgd of groundwater in this area from the Kamaole aquifer, based on Appendix B of the SWPP. The breakdown by tract was:

- 1.7340 for "Pu`unene" (Pūlehunui)
- 0.4608 for Kēōkea / Waiohuli
- 0.3489 for Kēōkea / Waiohuli Phase 1-4
- 0.0034 for lands Ulupalakua

Taking into account these existing reservations and unmet needs, staff believe the following table reflects the future water needs that could be met by waters collected and distributed by the EMI System at Kēōkea / Waiohuli.

KĒŌKEA-WAIOHULI	POTABLE	NON-POTABLE
FROM SWPP	809,700	578,000
ALREADY RESERVED	813,000	
3,940 ACS. GEN. AG @2500 <sup>8</sup>		9,850,000
ADJUSTED TOTALS	-3,300 <sup>9</sup>	10,428,000

**TABLE II: KĒŌKEA & WAIOHULI REMAINING NEEDED RESERVATIONS**

**2. b. Pulehunui (Central Maui):**

*Land Use Designations and areas.* The Department holds in trust 831 acres of lands at Pulehunui, also known as Pu`unene, in Central Maui. These lands were acquired in two different transactions from the Department of Land and Natural Resources (DLNR) as part of the larger settlement over previous trust breaches. These lands had designations placed on them in DHHL's Maui Island Plan (MIP) approved by HHC in 2004, and a subsequent Beneficiary Consultation Report accepted by the HHC. More recently, these lands were the subject of a master planning effort. Based on that last document, these lands have the following land use designations summarized in Table III, below.

LAND USE DESIGNATION	TOTAL ACRES
General Agriculture	546
Industrial	101
Commercial	184
Total	831

**TABLE III: PŪLEHUNUI LAND USE DESIGNATIONS**

As presented in Table II, above, the CWRM in September 2018 reserved ground water for DHHL lands in Pūlehunui. As was the case with reservations from the same aquifer for Kēōkea / Waiohuli, because they relied on the SWPP as the basis for

<sup>8</sup> In other areas such as Waimea Kaua'i, DHHL based its demands for general agricultural water on the water duty in the most recent version of the state's Agricultural Water Use and Development Plan. That figure of 3,400 gallons per acre per day for diversified agriculture is a useful planning number absent other information. In this area, the CWRM made specific findings (Finding of Fact number 697) as to the water demand for lands that could only be irrigated with stream water as part of the IIFS decision and order. Based on that, we use that 2,500 gallons per acre per day figure here.

<sup>9</sup> As described above the DHHL lands at Ulupalakua are not included in this reservation; the 3,300 gallons per day are left out of calculations of what has been reserved.



calculating needs and the timeframe for that document is the next twenty years, the time frame specified in the water code for reservations is "foreseeable" needs (HRS 174C-101(a)), and water was not allocated for general agricultural lands.

	Potable	Non-Potable
Pūlehunui Demand	1,734,000	1,027,510
Already Reserved	1,734,000	
Adjusted Total	0	1,027,510

**TABLE IV: PŪLEHUNUI REMAINING NEEDED RESERVATIONS**

*Combined water needs from the EMI System.* Based on the above, staff calculated that a request for a reservation related to the EMI system for a combined **11,455,510 gpd**. That information was presented to beneficiaries and others during the beneficiary consultation process described next.

### 3. BENEFICIARY CONSULTATION

HRS Chapter 171-58(g) requires that for DLNR and DHHL "... After consultation with affected beneficiaries, these departments shall jointly develop a reservation of water rights sufficient to support current and future homestead needs." Based on previous experience working with DLNR and the Hawai'i Electric Light Company Wailuku River (Hilo) leasing process, the Departments determined that a beneficiary consultation meeting with presentations by EMI/Mahi Pono, DLNR, and DHHL would be prudent to submit a report of findings to the Hawaiian Homes Commission to ensure that beneficiary concerns are properly documented, compiled and reported.

#### Notification

On December 10, 2018, DHHL mailed an invitation letter (see Exhibit A) to 487 Kēōkea and Waiohuli residential and agricultural lessees and 2,180 Maui Agricultural Wait List applicants with Maui zip codes for a total of 2,667 invitation letters.

Beneficiaries were invited to attend a consultation meeting on January 14, 2019 from 6:00 pm - 8:00 pm at the Paukūkalo Hawaiian Homes Community Center (655 Kaumuali'i Street, Wailuku). The meeting was held to share information on EMI/Mahi Pono farming plans and to get mana'o regarding DHHL's water needs for its lands at Kēōkea, Waiohuli, and Pūlehunui in order

to make a water reservation as part of the process identified above.

### Beneficiary Consultation Meeting

Twenty-three people registered at the sign-in desk, but the actual attendance was estimated at approximately 35. A total of 11 individuals self-identified as beneficiaries. In addition, three DHHL staff and 2 consultants were in attendance.

The meeting presentations started with Alexander & Baldwin who shared a power point on the EMI Ditch System followed by Mahi Pono who presented its farming plans. DLNR then shared an overview of the water leasing process (Chapter 171-58, HRS). Lastly, DHHL provided the planning and land use context of its lands at Kēōkea, Waiohuli, and Pūlehunui by reviewing the Maui Island Plan, Kēōkea-Waiohuli Regional Plan and Pūlehunui Regional infrastructure Master Plan and provided its water needs context by reviewing the State Water Project Plan and CWRM groundwater reservations for Kēōkea-Waiohuli and Pūlehunui. DHHL also discussed how historically this system affected its lands at Ke'anae and Wailuanui, but stream restoration has now made formerly diverted water available to those tracts. Based on these plans and needs, DHHL reviewed the estimated water demands for the three areas and a potential water reservation amount that is proposed to be requested from the CWRM.

At the close of the presentation, the following questions were used to facilitate discussion and solicit feedback from beneficiaries:

- (1) Should DHHL's water reservation request include only non-potable uses?
- (2) Where should this water come from to meet those water needs?
- (3) Are there any water needs that DHHL did not account for? What are they?

Meeting Notes that include questions and comments raised during the meeting, agenda, handouts, invitation letter, a copy of the EMI presentation, and a copy of the DHHL presentation are presented in Exhibit A. The deadline to submit comments was set for February 14, 2019 and extended to March 4, 2019.

## Consultation Findings & Analysis

The table below summarizes information DHHL received from all sources including:

- Questions and comments made during the Consultation Meeting (Exhibit A)
- Email comments received before the deadline for comments (Exhibit B)

DHHL's potable and non-potable water demands for its lands at Kēōkea, Waiohuli, and Pūlehunui can be met by a variety of water sources that may include but not be limited to ambient rainfall, surface water from the EMI Ditch System and ground water. These sources should account for redundancy and potential climate change (i.e. utilize both rainfall and surface water for non-potable demands, not just one or the other).

Distribution and use of these water sources can be provided in various ways that include but are not limited to water catchment systems, reservoirs, river/stream/tributary diversions, treated or grey water reuse, the existing Department of Water Supply Kula Water System, or new well development. The water reservation request may want to identify quantity, source, and where applicable, the mechanism to distribute water to DHHL Kēōkea, Waiohuli, and Pūlehunui lands.

Based on the approved plans and land uses by the Hawaiian Homes Commission, the SWPP and CWRM existing groundwater reservations, a water demand of 11,455,510 gpd of non-potable water is an adequate and foreseeable amount of water for future needs in DHHL's Kēōkea, Waiohuli, and Pūlehunui lands. There currently is no mechanism to base water demands and reservations on the number of applicants on the waitlist.

The State has yet to implement Chapter 171-58(g) since its promulgation and establish a reservation for DHHL in the course of converting a revocable permit to a water lease. This is only the second conversion to proceed to beneficiary consultation following the HELCO Wailuku River Hydroelectric Plant project in Hilo. DHHL will work closely with both DLNR and EMI/Mahi Pono in this water lease process to ensure that DHHL's rights to water are protected and that revenues generated from the water lease meet constitutional mandates. Similar processes with other permit to lease conversions will continue to be forthcoming, so aggressively asserting DHHL's rights to water is essential and a requirement per the HHC's Water Policy Plan of 2014.



DAVID Y. IGE  
GOVERNOR  
STATE OF HAWAII

DOUGLAS S. CHIN  
LT. GOVERNOR  
STATE OF HAWAII



JOBIE M. K. MASAGATANI  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION

WILLIAM J. AILA, JR.  
DEPUTY TO THE CHAIRMAN  
HAWAIIAN HOMES COMMISSION

**STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS**

P. O. BOX 1879  
HONOLULU, HAWAII 96805

December 10, 2018

Aloha Hawaiian Home Lands Beneficiaries,

The Department of Hawaiian Home Lands (DHHL) intends to request a water reservation from the Department of Land and Natural Resources and the Commission on Water Resources Management as part of a proposed water leasing process being pursued by Alexander and Baldwin and the East Maui Irrigation Company (EMI). The reserved water would serve potable and non-potable uses for development on DHHL-owned lands at Kēōkea, Waiohuli, and Pūlehunui on the island of Maui. Specifically, DHHL intends to request use of surface water diverted by the EMI system for existing and future development on these lands.

DHHL will be sharing information and accepting comments regarding the proposed water reservation request at a Beneficiary Consultation Meeting on:

**Monday, January 14, 2018  
Paukūkalo Hawaiian Homes Community Center  
655 Kaumuali'i Street, Wailuku, Hawai'i, 96793  
6:00 p.m. to 8:00 p.m.**

The Beneficiary Consultation Meeting will provide you with an opportunity to share your mana'o regarding the proposed water reservation request. Your comments will be presented to the Hawaiian Homes Commission to assist in their decision-making process. As a beneficiary on the island of Maui, your input is important, and we encourage you to attend.

If you have any questions, please contact Kaleo Manuel, Acting Planning Program Manager, at (808) 620-9481 or via email at [dhhl.planning@hawaii.gov](mailto:dhhl.planning@hawaii.gov).

Mahalo,

Jobie M.K. Masagatani, Chairman  
Hawaiian Homes Commission

Exhibit A



Exhibit A

Beneficiary Consultation on EMI's Water Lease and DHHL's Water Reservation  
January 14, 2019



Department of Hawaiian Home Lands

**Beneficiary Consultation**  
**ON**  
**EMI's Water Lease and**  
**DHHL's Water Reservation**

January 14, 2019  
Paukūkalo Community Center  
6:00 – 8:00 pm

1

**Agenda**

- A. Introduction and Purpose
- B. Presentations
  1. EMI: Proposed Water Lease
  2. DLNR: Water Leasing Process
  3. DHHL: Water Needs & Reservation Request
- C. Discussion
- D. Next Steps and Closing

2

**Purpose of Consultation**

1. Share Information on EMI's Request for a Water Lease
2. Explain BLNR's Water Leasing Process
3. Discuss DHHL's Water Needs in the Same Area:
  - How are Water Needs Identified
  - Water Already Reserved
  - Discussion on Other Water Needs to make a Water Reservation as part of the State's Water Leasing Process

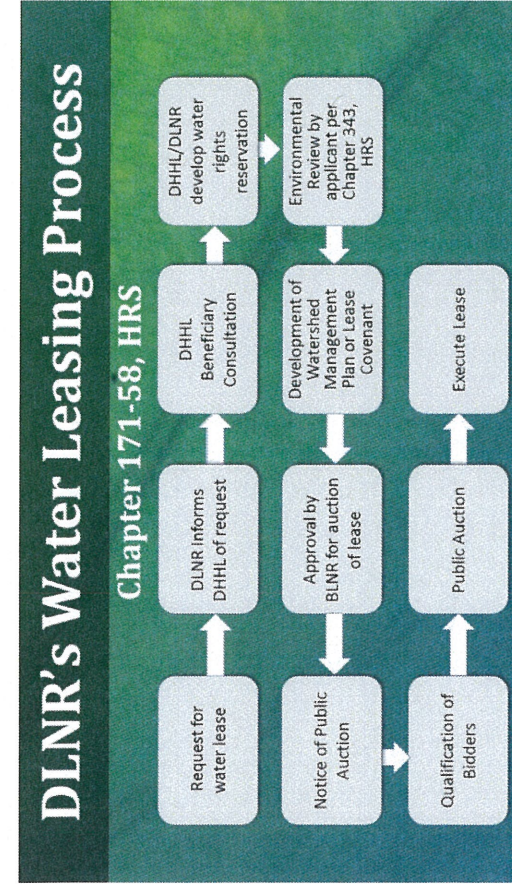
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**EMI's Proposed Water Lease**

Project Details and Timelines

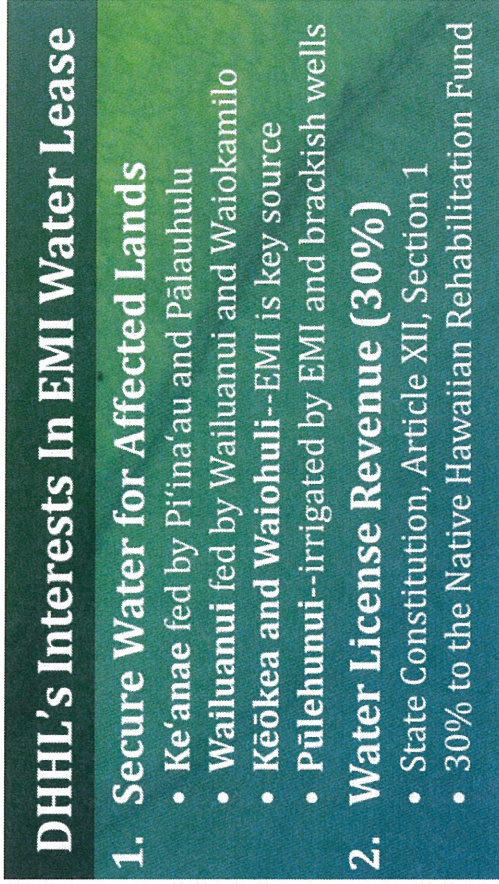
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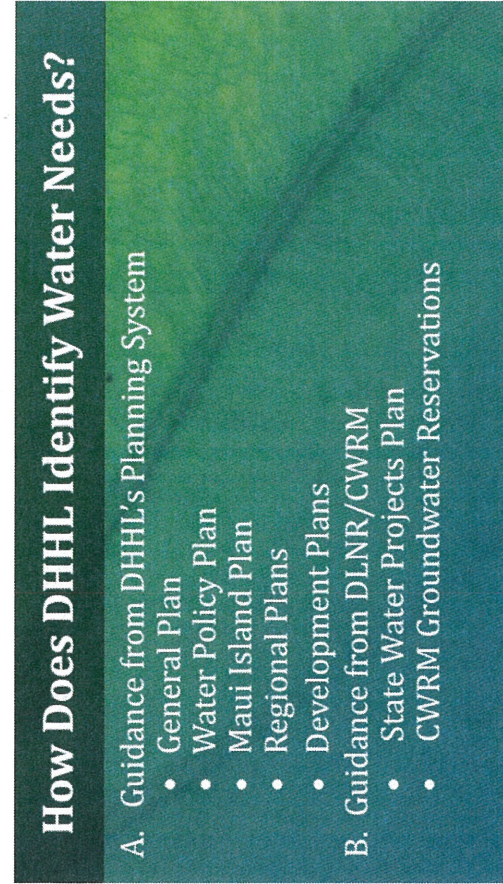


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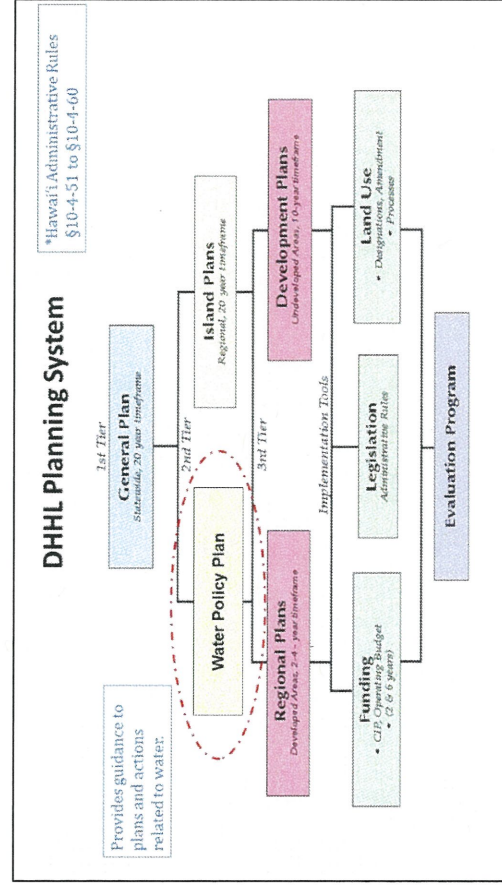
Exhibit A



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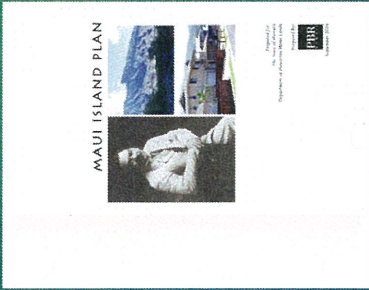
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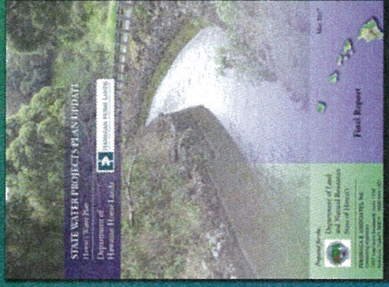
## Maui Island Plan (2005)



- 20 year time frame
- Identifies Land Use Designations for 31,000 acres on Maui
- Different land uses (e.g. subsistence agriculture, residential) have different water demands

9

## State Water Projects Plan (SWPPP)



- Approved by Commission on Water Resource Management – May 2017
- Identifies DHHL Water Needs Over Next 20 Years
- Calculates Water Demand Based on DHHL Plans
- Notes Where Future Numbers Will be Refined

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## Existing CWRM Reservations

- In September 2018 – CWRM reserved potable groundwater for DHHL lands based on the State Water Projects Plan.
- Potable Water Reserved in Areas Related to EMI:
  - 1,734,000 gpd for Pūlehunui
  - 813,000 gpd for Kēōkea-Waiohuli
  - 3,000 gpd for Ke'anae-Wailuanui
- Tonight, we're asking if DHHL's Reservation Request here should only include non-potable water uses? Are there other water needs that DHHL should include?

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## Ke'anae-Wailuanui



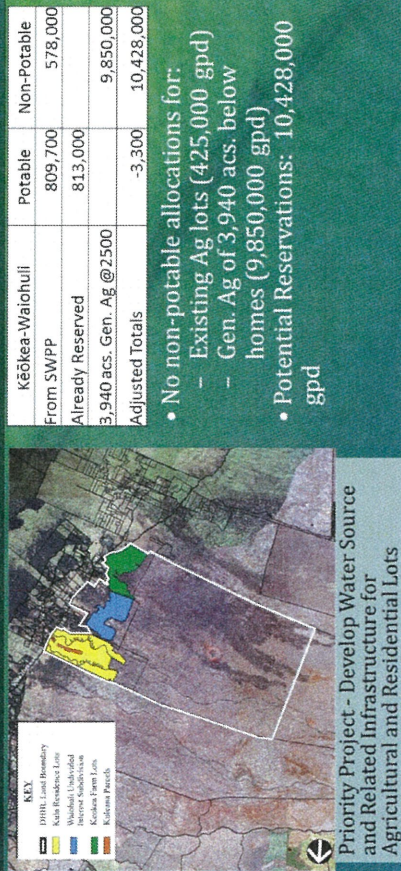
	Potable	Non-Potable	Total
Ke'anae	3,400	4,587,800	4,591,200
Wailuanui	6,600	2,280,200	2,286,800
Already Reserved	3,000		3,000
Potential Reservations	7,000	6,868,000	6,875,000

- Ke'anae is fed by Pi'ina'au and Pālahulu Streams; Wailuanui is fed by Wailuanui and Waiokamilo Streams. These streams were fully restored so no need to reserve non-potable water.
- Add Wailuanui potable (11 lots @ 600 gpd=6,600 gpd)
- Potential Reservations: 6,875,000 gpd

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# Kēōkea-Waiohuli



13

# New Reservations from EMI System

- Potential New Reservations From EMI System
- Non-Potable Unreserved Needs
- Total: 11,455,510 gpd

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# Pūlehunui



Kēakea-Waihoiuli	Potable	Non-Potable
From SWPP	809,700	578,000
Already Reserved	813,000	
3,940 acs. Gen. Ag @2500		9,850,000
Adjusted Totals	-3,300	10,428,000

- No non-potable allocations for:
  - Existing Ag lots (425,000 gpd)
  - Gen. Ag of 3,940 acs. below homes (9,850,000 gpd)
- Potential Reservations: 10,428,000 gpd

	Potable	Non-Potable
Pūlehunui	1,734,000	1,027,510
Already Reserved	1,734,000	
Adjusted Total	0	1,027,510

- Pūlehunui Regional Infrastructure Master Plan, Draft EIS submitted
- Includes Other Agencies
- New Community Visions
- Groundwater is brackish
- Potential Reservations: 1,027,510 gpd

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## Discussion Questions

- Should DHHL's Reservation Request Here Include Only Non-Potable Uses?
- Where Should This Water Come From to Meet Those Water Needs?
- Are There Any Water Needs that DHHL Did Not Account For? What Are They?

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## Discussion Kuleana

- Be creative!
- Work toward future solutions/aspirations
- Disagreement is OK as long as we are respectful of each other
- Everyone gets a turn first, then repeats
- Cell phones off or on silent
- Take all calls/texting outside

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## Discussion Kuleana

*Help to promote good discussion by:*

- Making sure everyone has an equal opportunity to express their ideas;
- Actively listening;
- Keeping an open mind and maintaining a positive attitude;
- Keeping side conversations to a minimum.

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## Discussion Questions

- Should DHHL's Reservation Request Include Only Non-Potable Uses?
- Where Should This Water Come From to Meet Those Water Needs?
- Are There Any Water Needs that DHHL Did Not Account For? What Are They?

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## Next Steps and Closing

- Comment Deadline: February 14, 2019
- Beneficiary Consultation Report & Recommendations will be presented to the Hawaiian Homes Commission at its Meeting in March
- DHHL Will Submit a Water Reservation Request to the Commission on Water Resource Management (CWRM)
- CWRM Action Will be Required on DHHL Water Reservation
- DLNR and EMI Will Continue with Water Lease Process

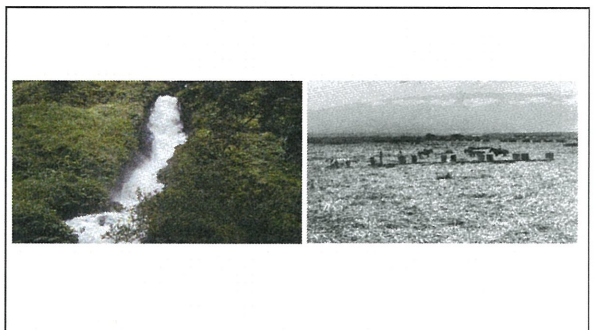
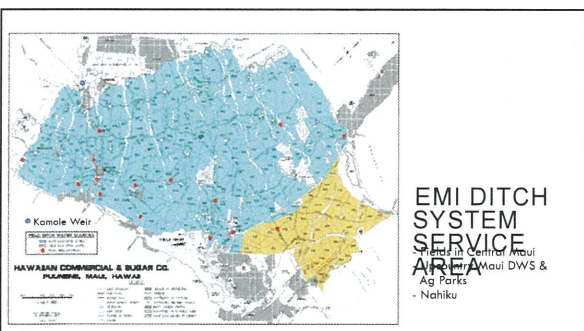
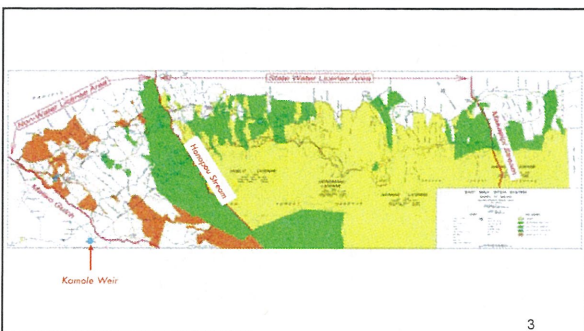
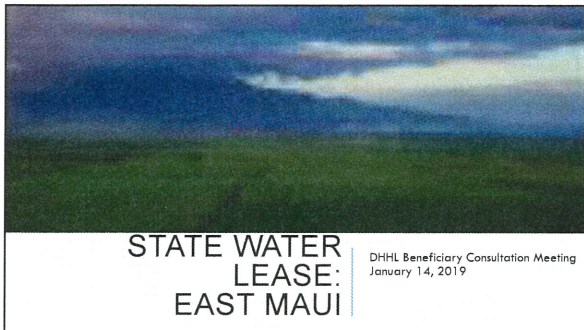
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# Contacts

- DHHL Planning: [dhhl.planning@hawaii.gov](mailto:dhhl.planning@hawaii.gov)
- Kaleo Manuel  
Acting Planning Program Manager  
DHHL Planning Office  
[kaleo.l.manuel@hawaii.gov](mailto:kaleo.l.manuel@hawaii.gov)
- Halealoha Ayau  
Water Resource Management Specialist  
DHHL Planning Office  
[e.halealoha.ayau@hawaii.gov](mailto:e.halealoha.ayau@hawaii.gov)













## COMMITTED TO SUSTAINABLE AGRICULTURE ON MAUI

It starts with our name, Mahi Pono. We will farm properly, carefully and correctly.

- Stewards of 41,000 acres of prime agricultural land
- Committed to food security and self-sufficiency
- Dedicated to sustainable agriculture
- Prioritizing conservation and natural resource management



## MAHI PONO FARMS IS FOCUSED ON AGRICULTURE AND RELATED USES.

We are farmers, not developers.

- Solicit input from the community and interested stakeholders
- Grow organic and non-GMO crops
- Focus on producing high-quality foodstuffs for local consumption and with export potential
- Promote sustainability through the use of conservation practices such as silvopastoral systems, agroforestry and soil remediation
- Make fiscal investments and commitments to Maui farmers

## BUILDING RELATIONSHIPS WITH THE COMMUNITY

OUR SUCCESS WILL BE DEPENDENT ON YOUR SUPPORT

- Engage the Native Hawaiian community to learn about traditional Hawaiian farming practices
- Create meaningful partnerships with Maui farmers and lend our expertise, resources, equipment, development and farming capital to improve the viability of sustainable agriculture on Maui
- Invest in Maui farmers and their future by providing education and business courses
- Support community initiatives that promote sustainability like the Aloha Pono Hawaii State Farm-to-School program that was initiated by former Lt. Governor Shun Tsuru

## MANAGING WATER THE PONO WAY

COMMITTED TO PRESERVING AND PROTECTING HAWAII'S PUBLIC TRUST RESOURCES

- 1 Use only what we need
- 2 Share with others
- 3 Preserve for future generations





### ASSEMBLING THE MAHI PONO TEAM

Hiring a local team that is passionate about agriculture – and Maui.

- Led by former U. of Hawaii and Maui native, Shon Tashai
- Offering positions to all active agriculture personnel from A&E
- Generating hundreds of direct and indirect jobs for Maui residents over time
- Providing job training and educational programs to employees

