

INTERIM HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM

CHAPTER 36

RENEWABLE ENERGY FACILITY SITING PROCESS RULES

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SUBCHAPTER 1

GENERAL PROVISIONS

§15-36-01 Purpose. This chapter governs the practice and procedure before the energy resources coordinator and shall be construed to encourage, to the extent permitted by law, expedited permitting in the renewable energy siting process to facilitate the timely development of renewable energy facilities that utilize Hawaii's indigenous renewable energy resources for the health, safety, and welfare of the residents of Hawaii. The rules under this chapter are promulgated pursuant to authority provided by chapter 201N, HRS. The purpose of the rules of this chapter is to establish a renewable energy facility siting process for permits required for the siting, construction, and operation of renewable energy facilities. Except as indicated otherwise, the energy resources coordinator shall use the rules of this chapter to determine whether to approve a coordinated permit plan and, if the energy resources coordinator approves a coordinated permit plan for a facility, to implement, facilitate, and expedite the coordinated permit plan process and to oversee the construction and operation of the renewable energy facility.

[Eff. **JUL 01 2010**] (Auth: HRS §201N-12) (Imp: HRS §201N-12)

§15-36-02 Definitions. In addition to the definitions contained in section 201N-1, HRS, the following definitions shall apply:

"Coordinator" means the energy resources coordinator under chapters 196 and 201N, HRS.

"Days" means business days.

"Facilitator" means the renewable energy facilitator under section 201-12.5, HRS.

"Federal permit" means a permit that is subject to approval by a federal agency pursuant to federal law and includes a delegated environmental permit or any other permit subject to issuance by a state agency under authority delegated by federal law.
[Eff. **JUL 01 2010**] (Auth: HRS §201N-12) (Imp: HRS §§196-3, 201N-3, 201N-4)

§15-36-03 Energy resources coordinator. The energy resources coordinator or "coordinator" is the director of the department of business, economic development, and tourism. The powers and duties of the energy resources coordinator are contained in sections 196-4 and 201N-3, HRS. The energy resources coordinator has sole discretion regarding the acceptance and approval of a renewable energy facility permit plan. [Eff. **JUL 01 2010**] (Auth: HRS §201N-12) (Imp: HRS §§196-3, 196-4, 201N-3, 201N-4)

§15-36-04 Renewable energy facilitator. (a) The duties of the renewable energy facilitator are contained in section 201-12.5, HRS. The renewable energy facilitator shall report to the energy resources coordinator, and shall help develop, coordinate, and implement the permit plan on the coordinator's behalf. The renewable energy facilitator shall:

- (1) Consult and coordinate with the appropriate federal, state, and county agencies to assist the coordinator in developing and establishing a permit plan application format and procedure designed to ensure a timely review to process and obtain required permits and approvals for all renewable energy facilities;
- (2) Receive a permit plan application on behalf of the coordinator, in a form as the coordinator shall prescribe, from an applicant for the approval of the siting, development, construction, and operation of a renewable energy facility, with the initial application fee;

- (3) Identify all federal, state, and county permits necessary for approval of the renewable energy facility;
- (4) Assist in the permit plan application process by coordinating permitting processes, giving technical assistance, overseeing the creation of the permit plan, and providing general oversight and assistance in whatever form necessary to facilitate the timely review and permitting of the siting, development, construction, and operation of a renewable energy facility;
- (5) Gather from the applicant any information the coordinator finds relevant and necessary for the reviewing and processing of a permit application by federal, state, and county agencies;
- (6) Prepare a hearings calendar and the agenda for all meetings, under the direction of the coordinator; and to the fullest extent possible, shall endeavor to consolidate all required federal, state, and county permit hearings;
- (7) Work with federal, state, and county agencies and the applicant and convene interagency working groups as needed to determine the terms and conditions of the permit plan and all permits that are necessary to effectuate this chapter and to protect the public health and safety and promote the general welfare.

(b) The renewable energy facilitator may appear or speak on the coordinator's behalf at public meetings. [Eff. JUL 01 2010] (Auth: HRS §201N-12) (Imp: HRS § 201-12.5, 201N-3)

SUBCHAPTER 2

PERMIT PLAN APPLICATION PROCESS

§15-36-05 Permit plan pre-application conference; post-conference report. (a) Before submitting an application for a coordinated permit plan the applicant shall meet with the energy resources coordinator or the renewable energy facilitator for a pre-application conference to discuss the type of renewable energy facility, the location of the facility, the contents of the permit plan application, all of the anticipated necessary federal, state, and county permits, and any other information necessary for the facility that must be submitted for the necessary permits.

(b) Within ten days following the conference, the facilitator shall issue a post-conference report identifying the permits needed for the development of the facility and any additional information required to complete the permit plan application.

[Eff. **JUL 01 2010**] (Auth: HRS §201N-12) (Imp: HRS §201N-4)

§15-36-06 Permit plan application processing; estimated fees. (a) Following the pre-application conference, the applicant shall submit to the energy resources coordinator, in a manner allowed by the coordinator, a request for renewable energy facility permit plan application processing. The request shall include information deemed necessary by the coordinator and facilitator in the pre-application conference to determine the fees to be incurred in processing the application and overseeing the permit plan process.

(b) The coordinator shall inform the applicant of the estimated fee amount and, upon the applicant's acceptance of the amount, the coordinator shall require the applicant to make periodic payments of such fees pursuant to a cost reimbursement agreement. Fees are discussed in more detail in subchapter 4.

(c) Should the applicant file amendments or supplements to the application or should the coordinator find that additional study for the application is required, additional fee estimates shall be prepared by the coordinator, and the applicant shall be advised of the additional fees. [Eff. **JUL 01 2010**] (Auth: HRS §201N-12) (Imp: HRS §201N-4)

§15-36-07 Permit plan application contents. The permit plan application shall include:

- (1) The legal name of the applicant and location of the principal place of business, and if the applicant is a corporation, limited liability company, trust, or other organization, the state in which the applicant was organized or incorporated.
- (2) The name, title, and address of the person to whom correspondence or communications in regard to the application are to be addressed.
- (3) Description of the subject property upon which the proposed renewable energy facility will be developed, including tax map key number and location maps.
- (4) Description of:
 - (A) The renewable energy facility, including the identification of the category of renewable energy as defined in section 269-91, HRS;
 - (B) Any renewable energy production structure or equipment;
 - (C) Any energy transmission line for the facility to a public utility's electricity transmission or distribution system;
 - (D) Any on-site and off-site infrastructure, and any on-site building, structure, other improvement, or equipment necessary for the production of electricity or biofuel from the renewable energy site,

- transmission of the electricity or biofuel, or any accommodation for employees of the facility.
- (5) Description of all federal, state, and county permits reasonably anticipated by the applicant to be necessary for approval of the renewable energy facility, including a proposed plan for all permits to be processed concurrently, along with a proposed plan to coordinate the issuance of delegated environmental permits, a proposed timeline for coordination of permit processing with potential environmental impact statements, and an anticipated list of required federal, state, and county technical support and data required.
 - (6) A true copy of all pending applications for federal, state, and county permits previously submitted and reasonably anticipated by the applicant to be necessary for approval of the renewable energy facility. These are permits applied for prior to applying for a renewable energy facility permit plan.
 - (7) A true copy of all completed applications for all other federal, state, and county permits previously submitted and reasonably anticipated by the applicant to be necessary for approval of the renewable energy facility. These are permits that have already been granted to the project prior to applying for a renewable energy facility permit plan.
 - (8) Any other information deemed necessary by the energy resources coordinator or renewable energy facilitator.

[Eff. **JUL 01 2010**] (Auth: HRS §201N-12) (Imp: HRS §201N-3)

§15-36-08 Environmental impact review. (a) The applicant shall file contemporaneously with the permit plan application a draft environmental impact

statement preparation notice or environmental assessment for the proposed facility pursuant to chapter 343, HRS. The energy resources coordinator may receive and process, but shall not accept as complete, a permit plan application prior to the acceptance of a final environmental impact statement for the facility. Notwithstanding any provision of chapter 343 to the contrary, the department of business, economic development, and tourism shall be the accepting authority for any final environmental impact statement that is prepared by an applicant for any renewable energy facility under chapter 201N, HRS.

(b) The applicant shall file, with the respective federal, state, and county agencies, at the earliest practicable time, applications for federal, state, and county permits necessary for approval of the facility. The coordinator shall conduct meetings and discussions with the applicant and agencies to coordinate, review, and commence processing all necessary federal, state, and county permit applications prior to the acceptance of the permit plan application, provided that no action to grant or deny a permit shall be taken until after final acceptance of an environmental impact statement. The coordinator shall implement the following policies and goals in the pre-acceptance meetings and discussions:

- (1) Efficiently utilizing and minimizing the time period from the filing of the environmental impact statement preparation notice to the final acceptance of the final environmental impact statement;
- (2) Providing the applicant with technical assistance in providing the required information for necessary permit applications at the earliest practicable time; and
- (3) Coordinating with all agencies to achieve concurrent and efficient review and processing of permit applications.

[Eff. **JUL 01 2010**] (Auth: HRS §201N-12) (Imp: HRS §201N-8)

§15-36-09 Action on permit plan application.

(a) Within ten days of acceptance of a final environmental impact statement, the energy resources coordinator shall accept the permit plan application so long as it is complete and complies with the permit plan format and procedure and other requirements of this chapter. If the permit plan application is accepted, the coordinator shall notify the applicant of such acceptance in writing within said ten-day period.

(b) If the permit plan application does not meet the requirements of this chapter, the coordinator shall provide the applicant with a written report of all reasons why the permit plan application is incomplete and unacceptable as soon as possible but in any event not more than ten days from the filing of the permit plan application. In the event a pre-application conference is held, the post conference-report shall satisfy the written report requirement of this section.

(c) The applicant shall re-submit a revised permit plan application with additional information addressing the deficiencies identified in the coordinator's written report, and the re-submitted application shall be evaluated for acceptability on the basis of whether it satisfactorily addresses the findings of the coordinator's written report. The evaluation shall occur and a written notice of acceptance or a written report detailing the deficiencies in the application shall be provided to the applicant as soon as possible but in any event not more than ten days from the filing of the revised permit plan application.

(d) If the coordinator does not issue a written report explaining why the permit plan application or revised permit plan application is incomplete and unacceptable within the ten-day period, then the permit plan application shall be deemed accepted by the coordinator, subject to final acceptance of the environmental impact statement.

[Eff. JUL 01 2010 1 (Auth: HRS §201N-12) (Imp: HRS §201N-4)]

§15-36-10 Permit plan application publication.

Within ten days of acceptance of a permit plan application by the energy resources coordinator, the coordinator shall publish public notice of the acceptance of the permit plan application in two consecutive publications of the office of environmental quality control's environmental notice, published pursuant to section 343-3, HRS. The public notice shall include:

- (1) The name of the applicant;
- (2) The location of the proposed renewable energy facility;
- (3) A summarized description of the facility;
- (4) The state and county permits required for the facility; and
- (5) Any other information deemed necessary or desirable by the coordinator.

[Eff. **JUL 01 2010**] (Auth: HRS §201N-12) (Imp: HRS §201N-4)

§15-36-11 Public meetings. (a) As soon as reasonably practicable following acceptance of a permit plan application, the energy resources coordinator shall hold a public meeting on the island where a renewable energy facility is proposed to be developed to:

- (1) Allow members of the affected communities to provide input regarding the development of the renewable energy facility;
- (2) Promote public awareness of the plan for the renewable energy facility in the proposed area; and
- (3) Allow the coordinator, the renewable energy facilitator, the applicant, and any applicable agency to gain public sentiment and input regarding the proposed development of the renewable energy facility, and to incorporate to the extent reasonable and practicable the public sentiment and input into the planning of the proposed renewable energy facility.

(b) Notice of the public meeting shall be published at least once on the island where the renewable energy facility is proposed and statewide, and shall be mailed to the applicant, to persons who have made a timely written request of the coordinator for advance notice of the meeting, and to all federal, state, and county agencies identified in the permit plan application at least fifteen days in advance of the meeting.

(c) The coordinator shall allow all interested persons an opportunity to submit oral or written testimony on any agenda item in the public meeting. The coordinator may, for reasonable administration of testimony, limit the time for each person's oral testimony.

(d) During the public meeting, the coordinator may have removed any person who wilfully disrupts the meeting to prevent or compromise the conduct of the meeting.

(e) The coordinator shall coordinate with federal, state, and county agencies that are required to process permits applicable to the renewable energy facility so that the public meeting held hereunder may comply with and satisfy the procedures and requirements for a public meeting or hearing applicable to such permits.

(f) The coordinator shall coordinate with federal, state, and county agencies that are required to process permits applicable to the renewable energy facility to combine the public meetings or hearings required in the permit plan application into as few meetings as possible and allow for separate agencies to hear several different permit applications at one meeting. Notice of such combined meetings shall be in accordance with the applicable federal, state, or county requirements. [Eff. **JUL 01 2010**] (Auth: HRS §201N-12) (Imp: HRS §§201N-3, 201N-5, 201N-6, 201N-7, 201N-10)

SUBCHAPTER 3

PERMIT PLAN PROCESSING

§15-36-12 Permit plan drafting. (a) Following the pre-application conference, the public meeting held pursuant to section 15-36-11, and any subsequent coordinating meetings with permitting agencies, the facilitator on behalf of the coordinator shall compile a permit plan, which shall include:

- (1) All federal, state, and county permits needed;
- (2) All relevant applicant and facility information required;
- (3) A plan and schedule for all permits to be processed concurrently, along with a plan to coordinate the issuance of delegated environmental permits with approval of federal, state, and county permits;
- (4) A list of required federal, state and county technical support and data required;
- (5) Agreement on timeline and coordination for potential state and federal environmental impact statements and permit concurrence, review, and issuance, provided that the permit plan shall be designed to ensure that all state and county permits identified in the permit plan shall be processed and either approved or denied no later than twelve months after the date that the permit plan application is accepted by the coordinator, subject to any extensions that may be requested by the applicant;
- (6) Agreement on conditions under which any timelines may be extended;
- (7) Agreement on cost reimbursement agreement; and
- (8) Any other requirements the coordinator reasonably shall deem necessary for inclusion in the permit plan.

(b) Following the drafting of the permit plan, the applicant shall review the permit plan for

adequacy of the permits required and the permitting timeline. If the permit plan is deficient, the applicant shall submit a written report within ten days identifying the deficiencies in the permit plan. The facilitator shall have five days to respond or re-submit to the applicant a revised permit plan for review. [Eff. JUL 0 1 2010] (Auth: HRS §201N-12) (Imp: HRS §201N-4)

§15-36-13 Permit plan posting. The permit plan shall be available to the public and posted on the department of business, economic development, and tourism's website, and shall be regularly updated with current information. [Eff JUL 0 1 2010] (Auth: HRS §201N-12) (Imp: HRS §201N-4)

§15-36-14 Permit plan timeline. (a) Each appropriate state and county agency shall diligently endeavor to process and approve or deny any permit in the permit plan no later than twelve months after a completed permit plan application is approved by the coordinator. If a permit is not approved or denied within twelve months after approval of a completed permit plan application, the permitting agency shall provide the coordinator with a report identifying diligent measures that are being taken by the agency to complete processing and action as soon as practicable. The report shall include the following:

- (1) The name of the applicant;
- (2) A description of the project proposed by the applicant;
- (3) A description of the permit or approval being sought by the applicant, and the legal authority of the permitting agency in issuing the permit or approval;
- (4) A chronology of the diligent measures that have been taken by the agency in reviewing and processing the application from the submittal of the application to the current status of the permit application;
- (5) A discussion of the facts, procedures, and circumstances that describe the reasons why

the application has not been approved or denied within twelve months from the coordinator's acceptance of the permit plan application; and

- (6) A timetable describing the diligent measures that will be taken by the agency to provide the agency's approval or denial of the permit application within eighteen months from the coordinator's acceptance of the permit plan application.

(b) Notwithstanding whether a state or county permitting agency has provided a report to the coordinator that meets the requirements of section (a), if a permit has not been approved or denied within eighteen months following the approval of a completed permit plan application by the coordinator, the permit shall be deemed approved.

[Eff. **JUL 01 2010**] (Auth: HRS §201N-12) (Imp: HRS §201N-4)

§15-36-15 Approval of state permits. (a) When the coordinator accepts a permit plan application for a renewable energy facility that requires state permits, the renewable energy facilitator, on behalf of the energy resources coordinator, shall facilitate the timely processing of the permit plan with the state agency or agencies responsible for approving, monitoring, and enforcing the terms and conditions of the permit in accordance with the permit plan.

(b) The facilitator, on behalf of the coordinator, may conduct discussions, meetings, conferences, or working groups with the agencies for the purpose of facilitating the timely processing of the permit plan, identifying all informational requirements necessary to obtain approval of the permit applications, and discussing the agency's preliminary evaluation of the sufficiency of the permit application. The agencies' duty to take diligent measures to complete processing and action as soon as practicable shall include the agencies' timely and meaningful participation in the discussions,

meetings, conferences, or working groups conducted by the facilitator.

(c) In the event a state agency denies a permit application under the permit plan, the coordinator shall request the agency to provide a written report to the coordinator and applicant setting forth in detail a complete list of all reasons supporting the denial of the permit application and all steps required to be taken by the applicant to obtain approval of the permit application.

(d) Each appropriate state agency shall diligently endeavor to process and approve or deny any permit in the permit plan no later than twelve months after a completed permit plan application is approved by the coordinator. If the coordinator has given at least thirty days' written notice stating that the permit plan application is subject to this section and a permit is not approved or denied within twelve months after approval of a completed permit plan application, the permitting agency, within thirty days following the end of the twelve-month period, shall provide the coordinator with a report identifying diligent measures that are being taken by the agency to complete processing and action as soon as practicable. If no further processing and action are reported by the permitting agency within five months following the end of the thirty-day agency report period, the coordinator may deem the permit approved. If a permitting agency fails to provide this report identifying diligent measures and if the permit has not been approved or denied within eighteen months following the approval of a completed permit plan application by the coordinator, the permit shall be deemed approved.

[Eff. **JUL 01 2010**] (Auth: HRS §201N-12) (Imp: HRS §§201N-4, 201N-5)

§15-36-16 Approval of county permits. (a) When the coordinator accepts a permit plan application for a renewable energy facility that requires county permits, the renewable energy facilitator, on behalf of the energy resources coordinator, shall facilitate

the timely processing of the permit plan with the county agency or agencies responsible for approving, monitoring, and enforcing the terms and conditions of the permit in accordance with the permit plan.

(b) The facilitator, on behalf of the coordinator, may conduct discussions, meetings, conferences, or working groups with the agencies for the purpose of facilitating the timely processing of the permit plan, identifying all informational requirements necessary to obtain approval of the permit applications, and discussing the agency's preliminary evaluation of the sufficiency of the permit application. The agencies' duty to take diligent measures to complete processing and action as soon as practicable shall include the agencies' timely and meaningful participation in the discussions, meetings, conferences, or working groups conducted by the facilitator. County agencies may request additional funding to expedite building or grading permit processing subject to section 15-36-19.

(c) In the event a county agency denies a permit application under the permit plan, the coordinator shall request the agency to provide a written report to the coordinator and applicant setting forth in detail a complete list of all reasons supporting the denial of the permit application and all steps required to be taken by the applicant to obtain approval of the permit application.

(d) Each appropriate county agency shall diligently endeavor to process and approve or deny any permit in the permit plan no later than twelve months after a completed permit plan application is approved by the coordinator. If a permit is not approved or denied within twelve months after approval of a completed permit plan application, the permitting agency shall provide the coordinator with a report identifying diligent measures that are being taken by the agency to complete processing and action as soon as practicable. If a permitting agency fails to provide this report and if the permit has not been approved or denied within eighteen months following the approval of a completed permit plan application by

the coordinator, the permit shall be deemed approved.
[Eff. **JUL 01 2010**] (Auth: HRS §201N-12) (Imp: HRS §§201N-4, 201N-6, 201N-9)

§15-36-17 Permit re-application. (a) To the extent allowed by law, in the event a state or county agency denies a permit application under the permit plan, the applicant may re-apply for the denied permit at the earliest practicable time and submit a true copy of the permit re-application to the coordinator.

(b) The coordinator shall update the permit plan with the permit re-application and conduct any meetings, discussion, and workshops the coordinator deems necessary to coordinate the concurrence, review, and issuance of the permit re-application with all other permits and environmental impact statements.

(c) The time limitations contained in the permit plan described in §15-36-14 shall begin to run with respect to the permit re-application upon the filing of the re-application with the applicable agency and the coordinator. In the event the approval of other permits is dependent upon the approval of the re-applied permit, the coordinator shall determine a reasonable time extension for the approval of the dependent permits. [Eff. **JUL 01 2010**] (Auth: HRS §201N-12) (Imp: HRS §201N-4)

§ 15-36-18 Federal permit coordination. The coordinator shall facilitate and assist an applicant with obtaining all federal permits required in connection with a renewable energy facility. This assistance includes but is not limited to consulting with federal agencies, convening interagency working groups, coordinating federal permitting processes, and providing general oversight and assistance with the federal permitting process to facilitate the timely review of all permit applications.

[Eff. **JUL 01 2010**] (Auth: HRS §201N-12) (Imp: HRS §201N-7)

2901

SUBCHAPTER 4

FEEES

§ 15-36-19 Fees; cost reimbursement agreement.

(a) This subchapter sets forth rules relating to fees for the energy resources coordinator's services in overseeing the permit plan process, including but not limited to, independent consultant studies, regular and expedited application processing, determining compliance, and potential site studies.

(b) The fees shall pay for all costs and expenses incurred by the coordinator, the coordinator's staff and contractors, and the department of business, economic development, and tourism in assisting the applicant, and any other state or county agency in providing input and advice related to the permit review and decision of the agency. These costs and expenses shall include, but shall not be limited to, legal expenses, expenses incurred in processing and evaluating the application, issuing a final order, commissioning an independent study by a contractor, and indirect and direct staff costs.

- (1) Relevant state and county agencies, and if necessary, any contractor contracted by the coordinator to assist the applicant, may seek reimbursement for reasonable costs and expenses incurred in connection with providing their input or advice or issuing the required permits by providing to the coordinator in writing a detailed description of the items sought for reimbursement and the method for calculating such reasonable costs and expenses.
- (2) Requests for reimbursement shall occur on a periodic basis, as determined by the coordinator, and shall be accompanied by a detailed description of items sought for reimbursement and the method for calculating such reimbursement, including the requests

for reimbursement received from any relevant state or county agencies.

- (3) The coordinator shall transmit to the relevant state and county agencies, or independent contractor, those reasonable reimbursed costs and expenses that are received from the applicant and owed to the state or county agencies, or independent contractor.

(c) In no event shall the coordinator incur costs and expenses in excess of one hundred ten per cent of the fee in the cost reimbursement agreement unless the coordinator provides prior notification to the applicant and a detailed projected budget the coordinator believes is necessary to complete the permit plan process.

(d) If costs and expenses are less than the fee paid, the coordinator shall refund the excess to the applicant. The cost reimbursement agreement shall provide for payment of twenty-five per cent of the estimated costs and expenses when the applicant submits the permit plan application. If costs and expenses exceed the fee in the cost reimbursement agreement, the applicant shall pay any excess amounts shown in an itemized statement prepared by the coordinator.

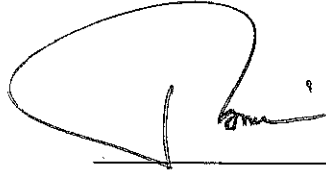
(e) The cost reimbursement agreement shall be designed to recover actual costs of evaluating, developing, and processing the permit plan. The fees shall be based upon costs and expenses expected to be incurred during the process. The fees shall reflect the size and complexity of the project and other appropriate variables having an effect on processing costs.

Eff. **JUL 01 2010**] (Auth: HRS §201N-12) (Imp: HRS §201N-4)

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM

Pursuant to section 201N-12, HRS, the energy resources coordinator may adopt these interim rules without regard to the notice and public hearing requirements of section 91-3 or the small business impact review requirements of chapter 201M; provided that any amendment of the interim rules shall be subject to chapters 91 and 201M. The energy resources coordinator adopted these rules on JUN 20 2010.

These interim rules shall take effect ten days after filing with the Office of the Lieutenant Governor.



THEODORE E. LIU
Director
Department of Business,
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and Tourism

APPROVED AS TO FORM:

Margaret Shaw
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APPROVED:

DATE: 6/21/10

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FILED: _____

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