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

August 10, 2012

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

PSF No. 05OD-266
Oahu

RESUBMITTAL/STATUS SEEKING EXTENSION OF SIXTY (60) DAY DEFERRAL ON:

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

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

APPLICANT:

Department of Land and Natural Resources ("DLNR")

REMARKS:

At its meeting of May 25, 2012, under agenda item D-16, a copy of which is attached, the BLNR approved 3W's request and deferred any action to terminate the DA for sixty (60) days, allowing 3W to work with staff on possible resolutions, including but not limited to curing of existing defaults and a possible assignment and amendment of the Development Agreement.[1]

Based on the BLNR's 60-day deferral, Land Division requested 3W (or its proposed assignee) provide:

1. A redlined draft of the Development Agreement and Lease showing the proposed changes;

2. A cover letter summarizing and explaining the proposed changes to the Development Agreement and Lease, together with an explanation (legal) how the Land Board can agree to those changes legally under the solicitation documents issued,

[1] The BLNR's 60-day deferral provided 3W until July 24, 2012, to resolve all outstanding issues.

Chapter 171, HRS including 171-59 in which this solicitation arises; and

3. Background information on the proposed assignee of the majority interest in West Wind to make sure the proposed assignee would otherwise have qualified to submit a proposal under the solicitation documents issued.

On July 25, 2012, the majority owner of the proposed assignee provided Land Division with a letter summarizing the proposed amendments to the Development Agreement. As of the date of staff preparing this submittal, Land Division has not yet received a Statement of Qualifications and an Assignment Justification Memorandum, or any redlined proposed changes to the Development Agreement or Lease. The proposed assignee indicated the other items mentioned above would be forthcoming shortly. In order to allow Land Division and its assigned counsel sufficient time to receive and thoroughly review, analyze and provide the Board with a recommendation on the proposal, staff requests additional sixty (60) days (second meeting in September) before reporting back to the Board.

RECOMMENDATION: That the Board defer this matter for an additional sixty (60) days (second meeting in September)before reporting back to the Board with a recommendation on whether to proceed with the original staff recommendation of terminating the Development Agreement, or an alternative recommendation involving an assignment and proposed changes to the existing Development Agreement.

Respectfully Submitted,

Gavin Chun
Project Development Specialist

APPROVED FOR SUBMITTAL:

William J. Aila, Jr., Chairperson

D-14

DEFERRED

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

May 25, 2012

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

PSF No. 05OD-266
Oahu

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

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

APPLICANT:

Department of Land and Natural Resources ("DLNR")

SUBJECT PROPERTY:

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

OVERVIEW OF SUBJECT DEVELOPMENT AGREEMENT:

On November 8, 2009, DLNR issued a Request for Qualifications/ Request for Proposals ("RFQ/RFP") to select a developer for the Subject Property.[1] As a result of the RFQ/RFP process, the State of Hawaii, by its Chairperson of the Board of Land and Natural Resources ("Chairperson") entered in to a Development Agreement with West Wind Works, LLC ("3W"), made effective November 24, 2011.[2] A copy of the Development Agreement is attached as **Exhibit II**.

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

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

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

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

D-16

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

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

1. Prepare a draft environmental assessment ("EA") for 3W's proposed renewable energy park, and have the Draft EA published in the State of Hawaii Office of Environmental Quality Control's ("OEQC") *The Environmental Notice* by October 31, 2011. Thereafter, follow the EA process, prepare a final EA, and obtain a Finding of No Significant Impact by August 31, 2012;

2. Obtain a non-utility generator determination or approval from Hawaii Electric Company by June 30, 2011;

3. Have an application for a Special Management Area Permit ("SMP") accepted by the City and County of Honolulu ("City") by December 31, 2011, and obtain City Council approval of the SMP by December 31, 2012;

4. Obtain approval from the United States of America and the State Department of Transportation (if applicable) that allows 3W to develop and operate its' proposed renewable energy park;

5. Have an application for a Conditional Use Permit ("CUP") accepted by the City by January 5, 2012;

6. Obtain fully executed Power Purchase Agreements ("PPA") for a 5MW of wind-to-hydrogen component, a 5MW biomass-to-energy component, a 5MW tracking solar farm component, and a +5MW expansion solar farm(s); and

7. By January 31, 2013, obtain State of Hawaii Public Utilities Commission approval of all PPAs cited above.

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

<u>HISTORY OF NOTICES OF DEFAULT ("NOD") ISSUED</u>:

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

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

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

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

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

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

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

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

CURRENT STATUS OF SUBJECT DEVELOPMENT AGREEMENT:

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

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

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

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

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

2. **Land Use Entitlements, Regulatory/Utilities Approvals, and Power Purchase Agreements (Non-Monetary)**. Thus far, 3W has failed to meet the following non-monetary benchmark deadlines set forth in the Development Agreement:

   A. Prepare a draft EA for 3W's proposed renewable energy park and have the Draft EA published in OEQC's *The Environmental Notice* by October 31, 2011;

   B. Obtain a NUG determination or approval from Hawaii Electric Company by June 30, 2011;

   C. Have a SMP application accepted by the City by December 31, 2011; and

   D. Have a CUP application accepted by the City by January 5, 2012.

REMARKS:

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

Although as of yet no written response from 3W has been received by DLNR, DLNR has received a letter from International Electric Power ("IEP") dated April 23, 2012.[7] Therein, IEP ensures 3W will cure all monetary defaults, proposing two installments totaling $368,287.85 be made to DLNR on May 2, 2012 and May 30, 2012. Thereafter, IEP requested to meet with DLNR to discuss how 3W's proposed renewable energy project might move forward. A copy of IEP's April 23, 2012 letter to DLNR is attached as **Exhibit VI**.

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

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

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

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

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

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

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

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

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

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

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

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

Respectfully Submitted,

Gavin Chun
Project Development Specialist

APPROVED FOR SUBMITTAL:

William J. Aila, Jr., Chairperson

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

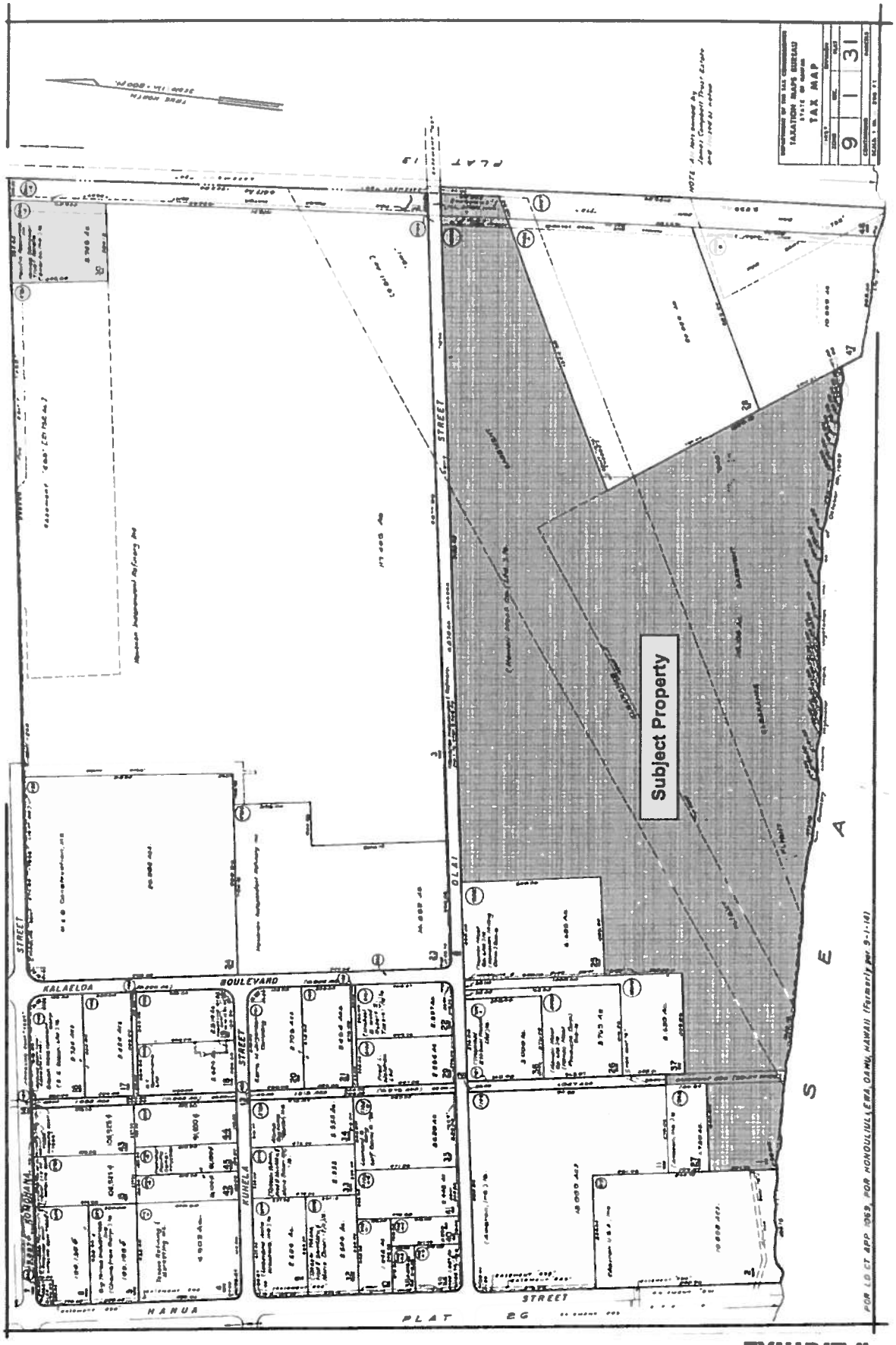
TAXATION MAPS BUREAU
TAX MAP
9 1 31
Subject Property
KALAELOA BOULEVARD
HANUA STREET
PLAT 26
S E A

EXHIBIT "I"

COPY

DEVELOPMENT AGREEMENT

for

FORMER EWA FEEDLOT SITE

Department of Land and Natural Resources
Land Division
State of Hawaii

PRELIM. APPROVED
Department of the
Attorney General

EXHIBIT "II"

DEVELOPMENT AGREEMENT

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

RECITALS:

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

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

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

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

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

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

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

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

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

AGREEMENT:

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

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

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

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

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Attorney General

4. Development Plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Environmental Assessments/Environmental Impact Statements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Attorney General

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

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

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

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

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

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

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

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

If to the State:	Board and Department of Land and Natural Resources 1151 Punchbowl Street, Room 220 Honolulu, Hawaii 96813 Attention: Chairperson Fax no.: (808) 587-0390
And a copy to:	Department of the Attorney General Attention: Land/Transportation Division Kekuanaoa Building 465 South King Street, Suite 300 Honolulu, Hawaii 96813 Fax no.: (808) 587-2999
If to Developer:	Keith Avery West Wind Works, LLC 67-287 Kahaone Loop Waialua, Hawaii 96791 Email: keith@westwindworks.com

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATE OF HAWAII

By _____
Chairperson of the Board of Land and Natural Resources

State

APPROVED AS TO FORM:

_____
Deputy Attorney General

Dated: 11/17/10

WEST WIND WORKS, LLC a Hawaii Limited Liability Company

By _____
Its: President

Name: Keith Avery

Developer

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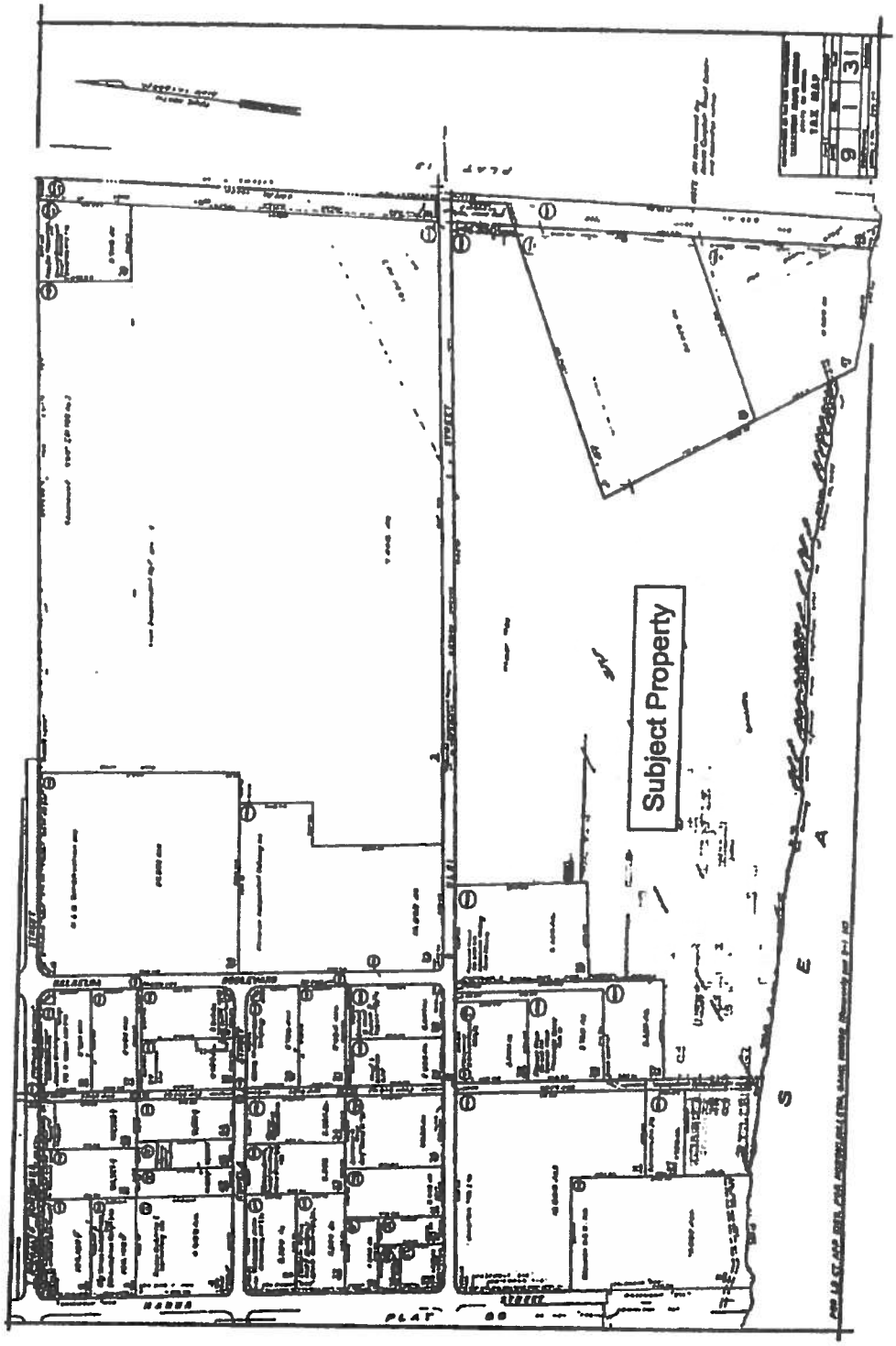


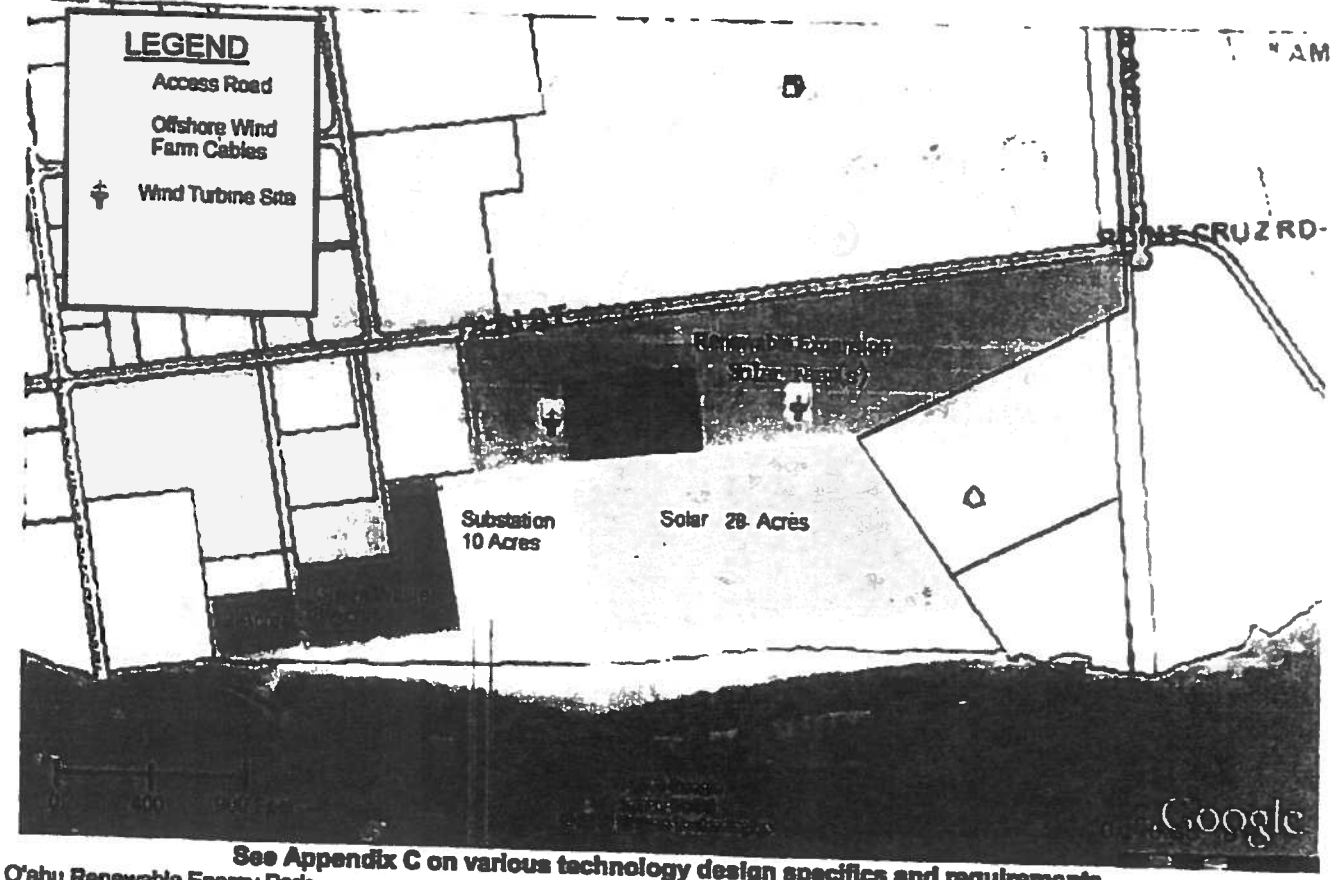
Exhibit A

BioNRGY

SUNPOWER

3a. Site Plan

3. Development Plan



See Appendix C on various technology design specifics and requirements

Development Agreement for Former Eva Feedlot Site

Exhibit B

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Department of the Attorney General

November 30, 2011

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

Re: Plan for the Oahu Renewable Energy Park Moving Forward

Dear Keith,

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

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

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

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

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

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

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

EXHIBIT "11"

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

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

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

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

Sincerely,

Keith Avery
president

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

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

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

December 21, 2011

Ref. No.: 05OD-266

Via USPS and email

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

Dear Mr. Avery:

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

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

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

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

Very truly yours,

Russell Y. Tsuji
Administrator

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

EXHIBIT "III.b"

April 8, 2012

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

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

RE: April 9, 2012 Payment Due

Dear Mr. Tsuji,

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

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

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

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

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

Please contact me with any questions, concerns or guidance.

Sincerely,

Keith Avery
president

EXHIBIT "IV"

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

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DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

DEPT OF LAND
NATURAL RESOURCES
STATE OF HAWAII

January 4, 2012

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

Re: Plan for the Oahu Renewable Energy Park

Dear Mr. Aila,

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

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

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

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

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

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

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

EXHIBIT "V.a"

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

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

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

Please contact me with any questions or concerns.

Sincerely,

Keith Avery
president

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

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

WILLIAM J. AILA, JR.
CHAIRPERSON

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

February 3, 2012

Ref. No.: 05OD-266

Via USPS and email: keith@westwindworks.com

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

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

Dear Mr. Avery:

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

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

(1) A description of your financial partner, IEP, and its proposed role in the Oahu Renewable Energy Park project ("ORP"). For example, will IEP's role be solely that of providing capital or financing? Or will IEP become a limited liability company member of 3W? If IEP will become an LLC member or have some type of ownership interest in 3W or the ORP, provide details of IEP's background and the proposed ownership structure of 3W to the extent that DLNR will be able to evaluate the entity's qualifications as a prospective lessee.

(2) Details of 3W's arrangement with IEP, including the amount of financing or capital to be provided, the timeframe for such funding, the terms and conditions that 3W must meet before funding is provided, and any pertinent milestones or deadlines. Provide any additional terms and conditions that must be met in order for 3W to pay to DLNR all of the development fees by March 9, 2012.

(3) An explanation of how the Conditional Lease differs from the existing Development Agreement and DLNR's form lease previously provided to you. Explain how a Conditional Lease will allow you to attract additional technologies and allow IEP to be more liberal with funding.

(4) Provide 3W's proposal for the major terms and conditions of the Conditional Lease.

(5) Provide an updated timeline of all major milestones for the ORP, including funding milestones, due diligence matters (e.g., SMA and FAA determinations), compliance with

EXHIBIT "V.b"

HRS Chapter 343 (EA/EIS), land use entitlements/approvals, and projected construction timelines.

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

Very truly yours,

Russell Y. Tsuji
Administrator

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

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

March 2, 2012

Ref. No.: 05OD-266

Via USPS and Email: keith@westwindworks.com

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

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

Dear Mr. Avery:

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

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

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

Since we have requested this information in the past and have not been provided the information to date, we request once again the following information[1] be provided <u>immediately</u>. In addition, please provide the following requested information:

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

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

EXHIBIT "IV.c"

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

(2) Details of West Wind Works' ("3W") arrangement with IEP, including the amount of financing or capital to be provided, the timeframe for such funding, the terms and conditions that 3W must meet before funding is provided, and any pertinent milestones or deadlines. Provide any additional terms and conditions that must be met in order for 3W to fulfill its proposal to pay to DLNR all of the development fees by March 9, 2012.

(3) Explain how a Conditional Lease will allow you to attract additional technologies and allow IEP to be more liberal with funding.

(4) Provide 3W's proposal for the major terms and conditions of the Conditional Lease.

Very truly yours,

Russell Y. Tsuji
Administrator

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

INTERNATIONAL ELECTRIC POWER

April 23, 2012

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

Dear Russell:

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

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

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

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

EXHIBIT "VI"

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

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

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

Sincerely,

Enzo M. Zoratto
President
International Electric Power, LLC

CC: Peter Dailey
Keith Avery