

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

October 9, 2015

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

GL S-6076

Hawaii

Amend General Lease No. S-6076, Water Board of the County of Hawaii (WBCH), Lessee, to Include Within the Lease Premises a Right of Ingress and Egress Over a Portion of Land Office Deed No. S-28,237, a Perpetual Non-exclusive Easement for Electric Transmission Line Purposes to the Hawaii Electric Light Company, Inc.; Authorize an Immediate Right-of-entry to WBCH Over a Portion of Land Office Deed No. S-28,237 While Lease Amendment Document is Processed, Lalamilo, South Kohala, Hawaii, Tax Map Keys: 3rd/ 6-6-01:02 por., 71 & 76.

BACKGROUND:

At its meeting of January 9, 2015, under agenda item D-8 (as amended), the Board approved the above subject matter regarding the issuance of a direct lease to the Water Board of the County of Hawaii (WBCH) for wind farm and related communication/energy facility purposes. A copy of the approved submittal is attached as Exhibit A (excluding exhibits 2- 5). General Lease No. S-6076 was subsequently issued to WBCH on April 20, 2015.

A Final Environmental Assessment (FEA) for the subject parcel was published in the OEQC's The Environmental Notice on October 23, 2014 with a finding of no significant impact. Page 2, section 1.1.5 of the FEA describes the access roadway as follows: "Access to the Project Area is from an existing, paved unnamed road, commonly called the Department of Water Supply Lalamilo-Parker Well Site access road, off of Queen Ka'ahumanu Highway near the Puako Beach intersection." In addition, page 15 of the FEA identifies the internal access road as "Existing roads remaining from the original Lalamilo Wind Farm would be used to access the turbines."

To access the windfarm, WBCH currently utilizes easements within Executive Order No. 3221 (EO 3221), setting aside land to the DWS for reservoir, well site and access purposes, as well as easements within Land Office Deed No. S-28,519 (LOD S-28,519) issued to DWS for access and utility easement purposes.

Subsequent to the issuance of General Lease No. S-6076, it was brought to the attention of staff that there is a gap in WBCH's legal access to the wind farm. The gap extends from the end of LOD S-28,519 to the beginning of Easement J over an established route currently being utilized by WBCH. The gap is indicated as "Access Easement 'A'" on Exhibit B attached. This portion of the access route lies within a perpetual, non-exclusive utility easement identified as Land Office Deed No. S-28,237 (LOD S-28,237) in favor of the Hawaii Electric Light Company, Inc. (HELCO). The location of the wind farm site (Lot A) was previously subleased to HELCO for wind farm purposes and as a result, access over its own easement was not an issue.

REMARKS:

To correct this oversight and in order to provide complete legal ingress/egress to the wind farm site, staff is requesting the Land Board authorize an amendment of General Lease No. S-6076 to the Water Board of the County of Hawaii to include access rights of over that portion of LOD S-28,237 between Easement J and LOD S-28,519 as identified as "Access Easement 'A'" on Exhibit B.

No comments were solicited on the proposed action. The FEA and prior Board approvals all contemplated WBCH having legal access to the windfarm site over the route set forth herein. This item is a housekeeping matter.

RECOMMENDATION: That the Board:

1. Amend General Lease No. S-6076, Water Board of the County of Hawaii, Lessee, to include within the lease premises a right of ingress and egress over a portion of Land Office Deed No. S-28,237, to the Hawaii Electric Light Company, Inc. as described above, subject to:
 - a. The terms and conditions of the most current lease amendment document form, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize an immediate right-of-entry permit to the Water Board of the County of Hawaii, its contractors, consultants, and persons acting on its behalf, covering the subject area.
 - a. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;

- b. The term of the right of entry shall be effective from the date of the Board submittal and shall continue until the execution of the amendment document; and
- c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,



Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



EXHIBIT A

D-8

AMENDED

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

January 9, 2015

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

PSF No.: 10HD-183

Hawaii

Issuance of Direct Lease to the Water Board of the County of Hawaii for Windfarm and Related Communication/Energy Facilities Purposes; Consent to Sublease Between the Water Board of the County of Hawaii, as Sublessor, and Lalamilo Wind Company, LLC, as Sublessee; Consent to Subleasehold Mortgage, Security Agreement and Financing Statement, Lalamilo Wind Company, LLC, as Mortgagor, to American Savings Bank, F.S.B., as Mortgagee; Issuance of Right-of-Entry to Water Board of the County of Hawaii for Survey and Maintenance Purposes, Lalamilo, South Kohala, Hawaii, Tax Map Keys: 3rd/ 6-6-01:02 por., 71 & 76.

APPLICANT:

Water Board of the County of Hawaii

LEGAL REFERENCE:

Sections 171-95, -22 and -36(a)(6), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Lalamilo, being an ili of the land of Waimea situated at Lalamilo, South Kohala, Hawaii, identified by Tax Map Keys: 3rd/ 6-6-01:02 por., 71 & 76, as shown on the attached map labeled Exhibit 1.

LEASE AREA:

Tax Map Key 3rd/	Area
6-6-01:02 por. (Easement J - access)	1.947 acres
6-6-01:02 por. (Easement K - electrical)	3.795 acres
6-6-01:71 (main windfarm site)	78.081 acres
6-6-01:76 (substation site)	0.174 acre
Total:	83.997 acres

ZONING:

State Land Use District: Agriculture
County of Hawaii CZO: A-5a

as amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
January 9, 2015 *g.o.*

D-8

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Previously encumbered by General Lease No. S-5240 to the Water Commission of the County of Hawaii. The lease expired on December 13, 2010.

LEASE CHARACTER OF USE:

Windfarm and Related Communication/Energy Facilities purposes.

LEASE TERM:

Fifty (50) years

LEASE COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL LEASE RENT:

The services of an independent appraiser were procured and the fair market rent for the premises was determined to be \$56,000 per annum for the first ten years of the lease term. However, the Water Board of the County of Hawaii has requested that the rent be reduced to \$7,000 per annum, which is close to the \$6,400 per annum it was paying at the end of the prior lease. The new lease is being issued under HRS Section 171-95, and, therefore, the Board has authority to lease land to the applicant "at such rental and on such other terms and conditions as the board may determine." At the applicant's request, staff is recommending that payments under the new lease be waived for the first year pursuant to HRS Section 171-6(7).

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

At the 10th, 20th, 30th and 40th years of the lease term, by staff or independent appraisal.

SUBLEASE AREA:

44.5 acres.

TERM OF SUBLEASE:

Twenty (20) years.

ANNUAL SUBLEASE RENT:

\$7,700.

SUBLEASE TERMS AND CONDITIONS:

Sublessee Lalamilo Wind Company, LLC, will construct and operate a windfarm for the purpose of providing energy to the sublessor, the Water Board of the County of Hawaii, to operate the pumping system for the well sites in South Kohala.

RECOMMENDED ADJUSTMENT TO LEASE RENTAL:

None at this time. The Water Board of the County of Hawaii is essentially passing on the lease costs to its sublessee, together with an overhead of 10%.

PERFORMANCE BOND:

Twice the annual rental amount. The performance bond shall be due at the time the sublease between the Water Board of the County of Hawaii and Lalamilo Wind Company, LLC is executed, or within six months of the execution of the lease between the State and the Water Board, whichever occurs first.

MORTGAGE LOAN AMOUNT AND USE OF LOAN PROCEEDS:

The anticipated loan amount is \$10,000,000. The purpose of the loan is to finance the purchase of the major windfarm components. Additional equity will be injected to cover the construction and installations of the equipment.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was published in the OEQC's The Environmental Notice on October 23, 2014 with a finding of no significant impact (FONSI). (Exhibit 2)

DCCA VERIFICATION:

LESSEE:

The Water Board of the County of Hawaii, as the governing board of the Department of Water Supply of the County of Hawaii, is not required to register with the Department of Commerce and Consumer Affairs.

SUBLESSEE:

Place of business registration confirmed:	YES <u>X</u>	NO <u>___</u>
Registered business name confirmed:	YES <u>X</u>	NO <u>___</u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u>___</u>

REMARKS:

At its meeting of February 11, 2011, under agenda item D-8, the Board of Land and Natural Resources approved, in concept, the issuance of a direct lease to the Water Board of the County of Hawaii (WBCOH), for windfarm and related communication/energy facilities purposes. (Exhibit 3)

As a condition of the approval in concept, WBCOH was required to conduct an Environmental Assessment (EA) and obtain a Finding of No Significant Impact (FONSI) for the project. On October 23, 2014, a FONSI was published in the Office of Environmental and Quality Control's (OEQC) The Environmental Notice. Results from the EA indicate the area is covered primarily with introduced plant species and the land has been heavily disturbed as a result of cattle grazing over a long period of time. Based on the findings from the EA, it was determined that the project will not result in the loss or destruction of any natural or cultural resources. Additionally, access to the area will be limited to Department of Water Supply (DWS) and its sublessee and contractors.

WBCOH was also required to conduct auditory and monitoring surveys of the site to determine whether any animal species listed as endangered or protected under Federal or State law would be affected by the proposed project. A Biological Reconnaissance Survey was conducted in December 2013. No Federal or State listed threatened species were found during the survey. The flora and fauna observed in the area are typical of the region.

Land Division procured the services of an appraiser to determine the fair market rent for the premises, and the appraised value was determined at \$56,000 per annum.¹ However, WBCOH has requested that the rent be reduced to the same amount it was paying when its prior lease for the premises expired, i.e., \$6,400 per annum. The new lease is being issued under HRS Section 171-95, and, therefore, the Board has authority to lease land to the county "at such rental and on such other terms and conditions as the board may determine." Staff supports the below-market rent request in this case because this is a government renewable energy project, and WBCOH has represented that the energy savings will be passed on to the ratepayers. (Exhibit 4)

WBCOH has requested a rent waiver under HRS Section 171-6(7) as discussed in the Board's approval in concept, and staff is including a one-year rent waiver in the recommendations section. Staff is also including recommendations for the lease to include special provisions relating to the potential for unexploded ordnance on the premises and fencing to exclude cattle, for the reasons discussed in the approval in

¹ The Board action of February 11, 2011, agenda Item D-8, that approved the lease in concept, contemplated the lease rent would be established at fair market rates.

concept (Exhibit 3, pp. 10-11). Staff is further recommending specific language in the lease that the land and any improvements thereon are leased in "as is, where is" condition, with all faults and defects, whether latent or patent.

WBCOH has entered into a sublease agreement with Lalamilo Wind Company, LLC (LWC) to construct and operate the windfarm project, and sell the energy behind the meter to DWS through a negotiated Power Purchase Agreement (PPA). A copy of the sublease is attached Exhibit 5, and portions of the PPA are attached as Exhibit A of Exhibit 5.² The proposed project will provide renewable energy to power the eight (8) existing water wells in the Lalamilo water distribution system. The project is located adjacent to the DWS water wells and will generate significant energy savings for DWS, and ultimately, water ratepayers. The project will consist of five (5) Vestas V47-660 kilowatt (kw) wind turbines to provide a total generating capacity of 3.3 MW to the existing water wells.

The PPA dated October 22, 2013 between WBCOH and LWC contemplates the potential sale of excess energy from the windfarm directly to HELCO.³ However, the Board's approval in concept of the direct lease to WBCOH precluded WBCOH (and its contractors) from operating as renewable energy producers without first complying with HRS Section 171-95(c) and 171-95.3, and obtaining the prior written consent of the Board. Accordingly, staff is including a recommendation below that the lease include language to this effect. If either WBCOH or LWC is going to make money from selling electricity to HELCO, then staff believes the Board should share in the revenues, especially in light of the substantially below-market rent that is being proposed for the lease to WBCOH.

In addition to the windfarm, the approved lease character of use will allow the installation and maintenance of radio communications equipment for the reasons explained in the prior Board approval (Exhibit 3, p. 8).

As part of the transaction, LWC intends to borrow funds from American Savings Bank, F.S.B. to purchase the main components of the windfarm. WBCOH is therefore requesting the Board's consent to a subleasehold mortgage in the amount of \$10,000,000.

Staff is also including a recommendation below that a right-of-entry be issued to WBCOH, its consultants, contractors and persons acting on its behalf, to allow WBCOH to conduct the necessary surveys and test borings of the site. Additionally, because some infrastructure remains on the land as noted above, the right-of-entry will allow WBCOH to check on the building and other structures periodically, safeguard them against vandalism, and maintain them in their existing condition. No construction of new improvements will be allowed until the lease is executed.

² Staff has omitted some of the voluminous Exhibits to the sublease agreement and PPA from the documents attached to this submittal.


³ See Exhibit A of Exhibit 5, at sections 5.2 and 5.3 on pages 15-16 of Exhibit A.

RECOMMENDATION: That the Board:

1. Authorize the issuance of a direct lease to the Water Board of the County of Hawaii covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current government agency lease document form, as may be amended from time to time;
 - B. Payment of lease rent shall be waived for the first year pursuant to HRS Section 171-6(7);
 - C. WBCOH is aware that the lease premises are located in a formerly used defense site and acknowledges the potential presence of unexploded ordnance on the premises and assumes all risks associated therewith. WBCOH shall cooperate with any undertaking of the United States Army Corps of Engineers to survey the premises for unexploded ordnance and to remove any ordnance found, at no cost to the State;
 - D. WBCOH shall be responsible for fencing off any areas of the lease premises that it does not want livestock to enter, at its own cost;
 - E. The land and any improvements thereon are leased in "as is, where is" condition, with all faults and defects, whether latent or patent;
 - F. WBCOH, its consultants and contractors, are prohibited from operating as a renewable energy producer on the demised premises without the prior written consent of the Board of Land and Natural Resources, which may include a condition of an upward adjustment of rent;
 - G. Review and approval by the Department of the Attorney General; and
 - H. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Consent to the sublease between the Water Board of the County of Hawaii, as Sublessor, and Lalamilo Wind Company, LLC, as Sublessee, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following terms and conditions:
 - A. The standard terms and conditions of the most current consent to sublease form, as may be amended from time to time;
 - B. The Lessee shall submit construction plans of the Sublessee's improvements to the Land Division for the Chairperson's approval prior to constructing any improvements on the demised premises;

- C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Consent to the mortgage between Lalamilo Wind Company, LLC, Mortgagor, and American Savings Bank, F.S.B., Mortgagee, subject to the following:
- A. The standard terms and conditions of the most current consent to mortgage form, as may be amended from time to time;
 - B. The loan proceeds shall be used for the purposes as stated in "Use Mortgage of Loan Proceeds" above. The Lessee shall ensure that Lalamilo Wind Company, LLC maintains records of loan expenditures which may be inspected by the Department;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Authorize the issuance of a right-of-entry permit to the Water Board of the County of Hawaii and/or the Lalamilo Wind Company, LLC covering the subject land under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
- A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time; and
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.

Respectfully Submitted,



Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

Land Board Meeting: January 9, 2015;
D-8: Approved as amended.

Approved as amended. See attached page.

Land Board Meeting: January 9, 2015; D-8: Approved as amended.

Approved as amended. The Land Board amended staff recommendation by adding the following: (1) providing the Department with discretion to either require or waive the standard performance bond requirement in leases based upon on this lease being with another governmental entity, the County of Hawaii; and (2) requiring the lease document to contain a provision about the tenant's obligation, upon lease expiration or other early lease termination, to decommission and remove all of the turbines and other improvements placed on the leased premises.

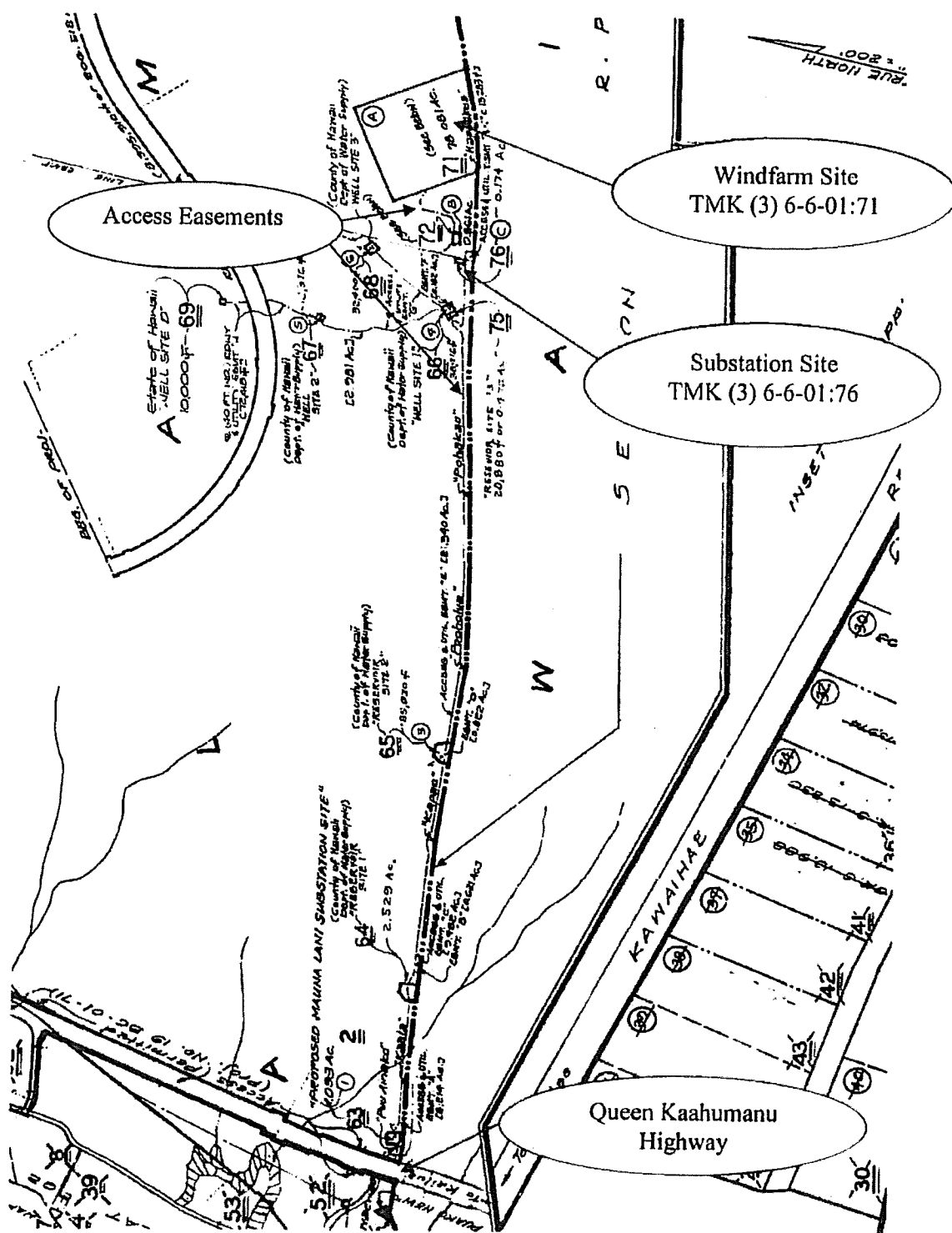


EXHIBIT 1

EXHIBIT B

PORTION EASEMENT "2"
(C.S.F. No. 18,999)

267° 59' 50"
100.00

177° 59' 50"
544.11
ACCESS EASEMENT "A"
A = 58,307 SQ. FT.
357° 59' 50"
572.04

EASEMENT "J"
(C.S.F. No. 25,422)

HELCO EASEMENT
LOD S-28,237

GOVERNMENT (CROWN) LAND OF WAIMEA

EASEMENT "K"
(C.S.F. No. 21,647)
LOT C
(C.S.F. No. 21,647)

WBCH EASEMENT
LOD S-28519

EO 3221

Non-Exclusive Electric Transmission
Lines and Anchor Easement
(C.S.F. 20,007)
2,173.18 S
29,234.62 W
"FU PA Δ"

EASEMENT "E-1"
(C.S.F. 22,913)
102.41
75° 27' 15"

R. P. 5671 L. C. AN. 8521-B, LOT 5. Apana FILE PLAN 1172 to G. D. HUEU



This work was prepared by me
or under my direct supervision.

Ronald B. Aurelio

Licensed Professional Land Surveyor
Certificate Number 7564
Expires April 30, 2016

MAP SHOWING
ACCESS EASEMENT "A"
BEING A PORTION OF THE LAND OF LALAMILO,
AN ILI OF THE GOVERNMENT (CROWN) LAND OF WAIMEA
LALAMILO, WAIMEA, SOUTH KOHALA, ISLAND OF HAWAII, HAWAII
TAX MAP KEY: 3RD DIV. 6-6-001: PORTION 002

