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KEEP THE NORTH SHORE COUNTRY

2019 DEC 23 AM 11:05
CITY & COUNTY OF HONOLULU

BEFORE THE ZONING BOARD OF APPEALS
CITY AND COUNTY OF HONOLULU
THE STATE OF HAWAII

In the Matter of the Petition of) Case No. _____
)
KEEP THE NORTH SHORE COUNTRY, a) PETITION TO APPEAL DIRECTOR'S
nonprofit corporation, concerning the Na Pua) APPROVALS OF CONDITIONAL USE
Makani Wind Project - Subprojects A & B, 56-) PERMITS, WAIVER, AND
668 Kamehameha Highway, Kahuku, O'ahu, Tax) MODIFICATIONS; APPENDICES "01"-
Map Key (1) 5-6-008:008 & -018) "04"; CERTIFICATE OF SERVICE
)
From the Actions of the Director of Planning)
and Permitting, dated October 24, 2016)
(2016/CUP-49); January 20, 2017 (2016/CUP-69)
& 2016/W-63), & June 7, 2019 (2019/MOD-34,)
-35 & -36)

PETITION TO APPEAL DIRECTOR'S APPROVALS OF CONDITIONAL USE PERMITS,
WAIVER, AND MODIFICATIONS

Petitioner KEEP THE NORTH SHORE COUNTRY, a nonprofit corporation, (Petitioner) hereby petitions the ZONING BOARD OF APPEALS of the City and County of Honolulu, State of Hawai'i (Board) to appeal the DIRECTOR OF THE DEPARTMENT OF PLANNING AND PERMITTING, City and County of Honolulu (Director) approvals of: (1) Conditional Use Permit (CUP) No. 69 and Waiver-63, both dated January 20, 2017 (2016/CUP-69 & 2016/W-63); (2) Minor Modification Nos. -34 and -35, dated June 7, 2019 to CUP-69 and Waiver-63 (2019/MOD-34 & -35); (3) CUP-49, dated October 24, 2016; and (4) Minor Modification No. 36 to CUP-49

(2019/MOD-36), dated June 7, 2019, for the reasons stated below. Petitioner respectfully requests the Board vacate the approvals and remand the matter with instructions as requested herein.

1. This petition concerns for the Na Pua Makani Wind Project - Subprojects A and B, located at 56-668 Kamehameha Highway, Kahuku, O'ahu on Tax Map Keys (1) 5-6-008:008 and - :018 respectively.

2. In 2016, Na Pua Makani Power Partners (NPM) applied for a minor Conditional Use Permit (CUP) and a Waiver Permit for NPM's subproject-A, which consists in four wind turbines, each of which were 591 feet (Turbine Nos. 1-4). The turbines were proposed to be located between 284 and 591 feet from the nearest property line.

3. Also in 2016, NPM applied for a CUP for its subject-B, which consists in four wind turbines: Turbine No. 6 (590.5 ft) and Nos. 7-9 (656.3 ft each).

4. As found by the Director, the nearest properties to the turbines include farm dwellings occupied by farm workers, the Kahuku Fire Station and Police substation, the Kahuku Medical Center, and the Kahuku Elementary and High Schools.

5. In regard to NPM subprojects-A and B, the Director stated that she processed NPM's CUP and Waiver application in accordance with Sections 21-2.40-1 and 21-2.90 et seq. of the Land Use Ordinance (LUO)

6. All wind machines "must be set back from all property lines a minimum distance equal to the height of the system." LUO §21-5.700.

7. Wind machines are exempt from zoning district height limits under the following condition: "[w]ind machines, where permitted, provided that each machine shall be set back from all property lines one foot for each foot of height, measured from the highest vertical extension of the system." LUO §21-4.60(c)(7).

8. In regard to NPM’s subproject-A application, the Director’s approval of setbacks for wind machines cited “waiver” provisions for “[p]ublic or public/private uses and structures, and utility installations” under LUO §21-2.130(a)(1), which provides in relevant part:

Waiver of requirements. (a) A waiver of the strict application of the development or design standards of this chapter may be granted by the director for the following:

(1) Public or public/private uses and structures, and utility installations.

[. . . .]

(b) The granting of the waiver shall not, under the circumstances and conditions applied in the particular case, adversely affect the health or safety of persons, and shall not be materially detrimental to the public welfare or injurious to nearby property improvements. The burden of proof in showing the reasonableness of the proposed waiver shall be on the applicant seeking it.

[. . . .]

9. The general requirements for conditional use permits further provide, in relevant part: “[a]t no time may the director modify the minimum standards for a specific conditional use.” LUO §21-2.90-2(c).

10. The minimum requirements for conditional wind turbine uses require them to be set back from all property lines a minimum distance equal to the height of the wind turbine system.

11. On January 20, 2017, the Director approved NPM’s application for 2016/CUP-69 and Zoning Waiver No. 2016/W-63, which exempted four wind turbines from LUO general agricultural height restrictions and waived specific wind machine setback requirements as follows:

Turbine Nos.	Height (ft)	Setback (ft)	Encroachment (ft)
1	591	284	307
2	591	372.5	218.7
3	591	591	0
4	591	591	0

See Appendix “01.”

12. The Director’s January 20, 2017 grant of 2016/CUP-69 and W-63 waiver was premised on findings that the Applicant will provide the Kahuku Community a Community Benefits package that equates to approximately \$2 million dollars over the 20- to 25-year life of the Project and the funding would be provided “directly to the Kahuku community.”

13. On May 8 and 21, 2019, NPM sought modifications of 2016/CUP-69 and 2016/W-63 to reduce the height of the four turbines to 567.6 feet.

Turbine Nos.	Height (initial/ revised)	Setback (initial/ revised)	Encroachment (initial/ revised)
1	591/567.6 ft	284/ 275.1 ft	307/292.5 ft
2	591/567.6 ft	372.5/354.5	218.7/135.8
3	591/567.6 ft	591/567.6	0
4	591/567.6 ft	591/567.6	0

14. By letter dated June 7, 2019, the Director granted NPM’s request for modifications under 2019/MOD-34 & -35, which impermissibly modified minimum standards for conditional wind turbine uses. LUO §21-2.90-2(c). *See* Appendix “02.”

15. In regard to subproject-A, which the Director approved on January 20, 2017, NPM, or its successor owner, has represented that it will deliver a community benefits package, but many of the benefits are not directly going to Kahuku communities, such as direct payments to the La‘ie Community Association, funding for a “North Shore community” recreation center, and a “North Shore Hometown Opportunities” organization, which serves the North O‘ahu area, from Ka‘ena Point to Kualoa Ranch and was based out of Hau‘ula and not Kahuku.

16. By order dated October 27, 2016, the Director approved 2016/CUP-49 for Turbine Nos. 6-9 and no waiver because NPM represented that these turbines would meet the minimum standard setbacks for wind machines. *See* Appendix “03.”

17. The Director’s October 24, 2016 decision to grant 2016/CUP-49 was premised on the finding that NPM would “pay \$10,000 per wind turbine per year over the life of the Project to benefit the Kahuku Community” which translates to “the equivalent of approximately \$2,000,000 of direct economic benefits to the Kahuku Community.” These funds were anticipated to be administered by a board of local community members who would make decisions as to the use of the proceeds and which activities, programs, groups, and events will be sponsored.

18. By letter dated June 7, 2019, the Director granted NPM's request for modifications under 2019/MOD-36, under which NPM represented that Turbine Nos. 6-9 would be reduced in height from 590.5 ft (Turbine 6) and 656.2 ft (Turbines 7, 8, 9) to 567.6 feet each. *See Appendix "04"*.

19. This petition is properly before the Zoning Board of Appeals pursuant to §6-1516 of the Revised Charter of Honolulu and §22-1 of the Rules of the Zoning Board of Appeals.

20. This petition relates to LUO §§ 21-2.90 et. seq and 21.5-700, articles 2, 3, and 4 of chapter 21 of the Revised Ordinances of the City and County of Honolulu.

21. Petitioner KEEP THE NORTH SHORE COUNTRY is, and at all times relevant, a 501(c) (3) non-profit organization, registered to do business in the State of Hawai'i. Petitioner's mailing address is 66-250 Kamehameha Hwy, Suite D103, Haleiwa, Hawai'i 96712.

22. Petitioner is a grassroots, volunteer-based North Shore non-profit, formed in 2006, "to preserve, protect and enhance the heritage and rural character of the North Shore of O'ahu in partnership with North Shore communities, including Kahuku.

23. Petitioner has specific interests in the property because Applicant's proposed wind turbine project may affect: (1) Petitioner and its members' rights to a clean and healthy environment as defined by laws including the City's land use ordinance; (2) Petitioner's mission as an environmental protection organization; and (3) the health, recreation, livelihood, and cultural and spiritual practices of Petitioner and its members.

24. The Hawai'i Supreme Court recognized Petitioner's ability to represent environmental interests on the North Shore in the landmark Turtle Bay Resort development case, which compelled Kuilima Resort Company, located in Kahuku, to supplement its 1985 Environmental Impact Statement. *Unite Here! Local 5 vs. City and County of Honolulu*, 123 Hawai'i 150, 231 P.3d 423 (2010).

25. Petitioner's members include those who live, recreate, study, and work in Kahuku, including those who would be under the shadow of the Applicant's turbines. The massive structures pose a physical threat to Petitioner's members because of their proximity to homes, schools, and farmlands, as well as through their operation, which entails shadow flicker, stray voltage, and other phenomena that have untested impacts on human health and the environment.

26. Petitioner and its members have specific and personal recreational, aesthetic, cultural, scientific, and spiritual interests that are directly and indirectly Petitioners' members also include those whose traditional and cultural, recreational, and aesthetic practices include and rely on native birds and 'ōpe'ape'a that will be adversely impacted by the installation and operation of the wind turbines. They have interests in protecting endangered and threatened species, native species, and wildlife. Petitioners' members have volunteered on wildlife conservation projects throughout the state, including Kahuku Point, Malaekahana, and James Campbell National Wildlife Refuge, near or within the area affected by the Project.

27. Petitioner's members include those whose children regularly attend Kahuku Elementary and High schools.

28. Petitioner and its members participated in many of the meetings NPM represented to the Director as having been held in regard to the proposed wind turbine project.

29. Petitioner expressed opposition to the project through its President as well as its member and supporters, in a petition on file for the 2016/CUP-69, 2016/W-3, 2019/MOD-34 & 35, 2016/CUP-49, and 2019/MOD-36 permits.

30. Where petitioners provided specific notice of their concerns with a particular project, and the Director approves the project applications, those petitioners are entitled to appeal the approval, notwithstanding rules limiting appeals to those taken within thirty-days of the Director's decision.

31. Petitioner hereby appeals the Director's decisions dated January 20, 2017 and June 7, 2019 because these decisions are in excess of her authority under LUO §§ 21-2.130, 21-2.90, and 21-5.700.

32. The Director's January 20, 2017 grant of 2016/CUP-69 and W-63 waiver for the two wind turbines was not permitted under LUO § 21-2.130 because the Director was not authorized to augment the minimum standards for conditional uses pursuant to LUO §21-2.90-2(c).

33. Under the Director's June 7, 2019 decision, Turbine Nos. 1 and 2 violate the minimum setbacks for wind turbines. LUO §§ 21-2.90, and 21-5.700.

34. The Director's June 7, 2019 modification of 2016/CUP-69 exceeded her authority because she was not permitted to augment the minimum standards for conditional uses pursuant to LUO §21-2.90-2(c).

35. The Director's acts in violation of the LUO injure Petitioner and its members by permitting the wind turbines to be located closer to Kahuku community properties than is allowed under the Land Use Ordinance.

36. The Director's approvals of 2016/CUP-49 and 2016/CUP-69 and W-63, as well as subsequent modification permitting under 2019/MOD-34, 35, & 36, were premised on inaccurate findings and representations that the Kahuku community would directly receive community benefits from the proposed wind turbine subprojects-A and B.

CONCLUSION

Based on the foregoing, Petitioner respectfully requests that the Zoning Board of Appeals sustain this appeal and remand this action to the Director with instructions to:

- (1) rescind 2016/CUP-69, 2016/W-3, and 2019/MOD-34 & -35;
- (2) rescind 2016/CUP-49, 2016/W-3, and 2019/MOD-36;

- (3) require Applicant Na Pua Makani Power Partners to ensure that its wind turbine projects comply with the Land Use Ordinance by moving Turbine Nos. 1 and 2 further away from adjacent properties and/or lowering the height of Turbine Nos. 1 and 2;
- (4) require the Applicant to establish that representations to the Director as to community benefits tied to the project are going directly to the Kahuku community and not neighboring communities; and,
- (5) any further relief deemed proper by the Zoning Board of Appeals.

DATED: Honolulu, Hawai'i

December 23, 2019



LAW OFFICE OF LANCE D COLLINS
LANCE D. COLLINS
Attorney for Petitioner

DEPARTMENT OF PLANNING AND PERMITTING
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

IN THE MATTER OF THE APPLICATION)
)
 OF)
)
 NA PUA MAKANI WIND PROJECT)
)
 SUBPROJECT A)
)
 FOR A)
)
 CONDITIONAL USE PERMIT (MINOR))
)
 AND)
)
 ZONING WAIVER)
)
 _____)

FILE NO. 2016/CUP-69(WA)
2016/W-63

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DECISION AND ORDER

I. APPLICATION

A. Basic Information:

PROJECT: Na Pua Makani Wind Project - Subproject A
LANDOWNER: State of Hawaii (Department of Land and Natural Resources (DLNR))
APPLICANT: Na Pua Makani Power Partners, LLC
(Mike Cutbirth)
AGENT: Tetra Tech, Inc. (Neal Dixon)
LOCATION: 56-668 Kamehameha Highway - Kahuku (Exhibit A)
TAX MAP KEY: 5-6-8: 6
LAND AREA: 232 Acres
STATE LAND USE: Agricultural District (Exhibit B)
ZONING: AG-1 Restricted Agricultural District and AG-2 General
Agricultural District (Exhibit C)
EXISTING USE: Vacant Land
SURROUNDING LAND USE: Kahuku Military Training Area; Kahuku Wind Farm; and
Kahuku Agricultural Park

This application was processed in accordance with Sections 21-2.40-1 and 21-2.90 et seq. of the Land Use Ordinance (LUO).

B. Proposal:

1. Conditional Use Permit (CUP): The Applicant proposes to construct and operate a 25 megawatt (MW) wind farm consisting of a total of nine wind turbines and accessory infrastructures on an approximately 232 acre parcel. However, this application is one of three proposed CUP (Minor) (CUPm) for the Project designated as Subproject A, and includes four wind turbines, access roads, underground collector lines, and a met tower.

The clean, renewable power from the approximately 25 MW wind farm would be generated in response to demand from the Hawaiian Electric Company (HECO) grid.

The Applicant has proposed this Project in three CUPm's rather than opt for joint development of the two adjacent parcels Tax Map Keys (TMKs) 5-6-6: 18 and 5-6-8: 6 because the two parcels are under different ownership. The wind farm will be owned and operated by the Applicant and the switching station located adjacent to the wind farm will be owned and operated by HECO (see Exhibits A-1 through A-11). The wind farm will consist of the following items.

- a. Wind Turbine Generators: Subproject A consists of four wind turbines. Turbines No. 1 and 2 will be 591 feet in height (measured from grade to rotor tip). Turbine No. 1 will be set back from the nearest property line, a minimum of 284 feet, and No. 2 will be set back a minimum of 372 feet from the nearest property line. Thus, a zoning waiver will be required. Turbines No. 3 and 4 will be set back a minimum of 591 feet from the nearest property line. All the turbines are white, which is the industry standard.
- b. Electric Collector System and Substation: Power generated by the turbines will be stepped up to 34.5 kilovolts (kV) at pad-mounted transformers and then collected through an underground electrical collection system. This system will feed into an onsite electrical substation, will step up the voltage to 46 kV and transmit the power to the point of interconnect at the adjacent HECO-owned and operated switching station. The substation will be enclosed within an 18,832-square-foot fenced area.
- c. Met Tower: One 185-foot temporary guyed tower will be installed at the site. This tower supports weather instruments that measure and record weather data to measure performance and guide project operation.
- d. Access Roads: On-site access will be provided via existing private access roads which will be modified and via the grading of new private roads. Access from the public right-of-way to the site will be via Malaekahana Valley Road from Kamehameha Highway.

Once construction is completed, the Project will employ five full-time employees. Maintenance of the wind farm will occur Monday through Friday during normal work day hours. Power will be generated based on demand from the HECO grid.

The Applicant states that the anticipated life of the wind farm Project is 21 years. After that time the Project will be evaluated and a determination will be made to continue operation or decommission it. Should a decision be made to continue operations, the facility may be upgraded and repowered with renegotiated leases and necessary permit approvals. If the Project is decommissioned, the Applicant will remove all equipment and return the site as close to preconstruction conditions as possible within 12 months, as required by the land lease.

2. Zoning Waiver: The wind farm also requires a zoning waiver from LUO Section 21-4.60(c)(7) and LUO Section 21-5.700(a) related to wind machine setbacks (see Exhibits A-1 and A-2).

II. FINDINGS OF FACT

On the basis of the evidence presented, the Director has found:

- A. Description of Site and Surrounding Uses: The Project is located on Oahu's north shore, at the base of the northern part of the Koolau Range, sloping to the coastal plain near the town of Kahuku (see Exhibit D). The elevation ranges from approximately 56 feet (17 meters) Above-Mean Sea Level (AMSL) on the northeastern edge to approximately 614 feet (187 meters) AMSL on the southwestern edge of the parcel and consists of steep, dissected ridges surrounding gently sloping valleys as well as flat, coastal plains. The site is accessible via Malaekahana Valley Road, a private access road that directly joins Kamehameha Highway.

The 232 acre Project site is zoned AG-1 Restricted Agricultural District and AG-2 General Agricultural District. Higher elevations of the site are fallow ridges not actively used for agriculture. The site was assessed by the Applicant to identify areas that would be too steep for construction or that would be inaccessible by construction vehicles. The presence of several steep ridges and deep gullies trending in southwest-to-northeasterly directions eliminated some portions of the wind farm site from consideration because construction in these areas would be logistically infeasible and/or terrain ruggedness would inflate construction costs. After portions of the site were eliminated due to topography, the remaining land area was determined to have a sufficient area for a viable project.

The site consists of five different Land Study Bureau (LSB) ratings of Category A, B, C, D, and E with Category A (most productive) which includes the majority of the site to Category E (least productive) soil which covers a small western portion of the site. The majority of the site (68 percent) is rated Category D. A very small portion of the site (0.6 percent) is rated Category A, no turbines are located near this area.

Surrounding land uses include the existing vacant agricultural lands, both active and fallow. To the west and south is the military training area. To the north is the adjacent Kahuku Wind Farm with 12 wind turbines, as well as the Kahuku Agricultural Park which is owned by the Hawaii Department of Agriculture. There are several farm dwellings located on the parcel adjacent to TMK 5-6-6: 49 which are occupied by farm workers. Other uses near the site, but not adjacent, are the Kahuku Fire Station and Police Substation, Kahuku Medical Center, and Kahuku Elementary and High Schools. Keana

Farms operates an agri-tourism business which includes agricultural educational tours and a zipline.

- B. Special Management Area (SMA): The parcel is not located in the SMA, and is not subject to the requirements of Chapter 25, Revised Ordinances of Honolulu (ROH).
- C. Koolauloa Sustainable Communities Plan (KSCP): The KSCP contains guidelines and policies relating to the Project. The guidelines and policies are discussed in the Analysis section of this report.
- D. Other Permits and/or Approvals: The following permits and approvals were approved for the subject properties:
 - 1. CUP: Wind machines are permitted in the AG-1 Restricted Agricultural District and AG-2 General Agricultural District, subject to the approval of a CUPm, and as a special accessory use subject to standards enumerated in Article 5 of the LUO.
 - 2. Grading Permits: The proposed wind turbines, buildings, and structures associated with the Applicant's request will require grading and grubbing permits.
 - 3. Building Permits: The proposed buildings and structures associated with the Applicant's request will require building permits.
 - 4. State of Hawaii Department of Transportation (SDOT) Approval: Transportation of turbine components via transport vehicles will require approval from the SDOT and implementation of an approved traffic control plan.
- E. Environmental Review Requirements: The Project is partially located on State of Hawaii lands, triggering environmental review under the Hawaii Environmental Policy Act (HEPA) Chapter 343, Hawaii Revised Statutes (HRS). The Hawaii DLNR served as the accepting Agency for the Environmental Impact Statement (EIS). A portion of the proposed Project's transmission line is located within the SDOT right-of-way, which also triggers environmental review under HEPA.

The Draft EIS, published on June 8, 2015, in The Environmental Notice, was prepared as a joint Federal and State document in accordance with HRS Chapter 343 and HAR§11-200-25 and with National Environmental Policy Act (NEPA) implementing regulations, specifying that federal agencies shall cooperate with State and local agencies to the fullest extent possible to avoid duplication between NEPA and State requirements. The U. S. Fish and Wildlife Service is the Federal lead agency. Due to differences in procedural requirements, the HEPA and NEPA processes have diverged and will continue along separate paths. The Final EIS was accepted by DLNR on July 22, 2016.
- F. Flood District: The Federal Emergency Management Agency Flood Insurance Rate Map Community Panel Number 0045H, revised November 5, 2014, indicates that the Project site is within Flood Zone D, undetermined, but possible, and Flood Zone X areas determined to be outside the 0.2 percent annual chance floodplain (see Exhibit E).

- G. Compliance with Chapter 205: Pursuant to HRS Section 205-4.5(a), wind energy facilities are permissible uses on agricultural district lands with an overall LSB productivity rating of Category A or B, provided that such facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land. The Project site has an LSB mixed rating of Category A, B, C, D, and E. The Project is mainly in the Category E rated portion of the site. The proposed Project will impact less than 0.6 percent of the Category A-rated agricultural lands in the Koolauloa District.

The site is also in the State Land Use Agricultural District (see Exhibit B). The DPP has determined that the proposal does not require an Special Use Permit since the proposed use is compatible with existing diversified agricultural activities. The use should have minimal adverse impact on the land for future agricultural uses.

- H. Public Notification and Comments: The Applicant has held numerous public meetings with small focus groups, individual community leaders, and elected officials. The Applicant submitted the following table listing key public meetings.

Meeting/Presentation/Update/Site Visit	Date
Kahuku Community Association	May 30, 2013
Kahuku Community Association	August 15, 2013
Scoping Meeting (NEPA)	November 13, 2013
Scoping Meeting (HEPA)	January 10, 2014
Koolauloa Neighborhood Board No. 28	January 9, 2014
Talk Story Meeting: Health Impacts and HECO/Rooftop Photovoltaic System Installation	January 15, 2014
Laie Community Association	February 6, 2014
Koolauloa Neighborhood Board No. 28	February 13, 2014
Laie Community Association	March 6, 2014
Hauula Community Association	2014 date not specified
Scoping Meeting No. 2 (HEPA)	November 19, 2014
Kahuku Community Association	February 19, 2014
Kahuku Community Association	May 20, 2015
Office of Environmental Quality Control	June 17, 2015
Draft EIS Public Meeting (HEPA and NEPA)	June 24, 2015
Laie Community Association	July 27, 2015
Kahuku Community Association	August 20, 2015
Kahuku Community Association	November 19, 2015
Endangered Species Recovery Committee Meeting (Habitat Conservation Plan)	December 17, 2015
Endangered Species Recovery Committee Meeting (Habitat Conservation Plan)	February 23, 2016
Second Draft EIS Public Meeting (HEPA)	May 15, 2016

Five required public meetings were held for the HRS 343 environmental review process. During the public comment periods on the original Draft EIS and the second Draft EIS, many letters were received from residents in the Kahuku community. Some letters of opposition to the Project and concern over specific issues were received. The topics most commonly brought up included traffic, visual impacts, Project siting, socioeconomics, public health and safety, and community benefits. The Applicant responded to all the questions and concerns.

- I. Community Benefits: The Applicant has proposed to honor the commitment of the prior developer to pay \$10,000 per wind turbine per year over the life of the Project to benefit the Kahuku Community. This translates into \$90,000 per year over a 20-to 25-year

Project life or the equivalent of approximately \$2,000,000 of direct economic benefits to the Kahuku Community.

It is anticipated that the Project funds would be administered by a board of local community members who would make decisions as to the use of the proceeds and which activities, programs, groups, and events will be sponsored.

- J. The DPP Public Hearing: No Public Hearing was held by the DPP. The CUPm does not require a Public Hearing.
- K. Applicant's Justification: The Applicant provided justification statements which are part of the file.

III. ANALYSIS

The Director of the DPP may allow a conditional use upon finding that the proposed use satisfies the following criteria:

- A. The proposed use is permitted as a conditional use in the underlying zoning district and conforms to the requirements of the LUO. Pursuant to LUO Section 21-3.50-4(a) [Table 21-3], a wind farm is permitted in the AG-1 Restricted Agricultural District and AG-2 General Agricultural District with an approved CUPm.

1. AG-1 Restricted Agricultural District Standards:

LUO Standards	LUO Provisions	Project Site
Minimum Lot Area (Acres)	5 acres	232 acres (10,105,920 square feet) - Complies
Minimum Lot Width/Depth	150 feet	160 feet minimum - Complies
Yards: Front Side/Rear	15 feet 10 feet	Irregular shaped parcels Complies Complies
Maximum Building Area	10 percent zoning lot area (for non-agricultural structures) (23.2 acres)	Less than 0.001 percent (3,217 square feet) - Complies
Maximum Height	25-30 feet	Exempted Wind turbines: 591 feet Met tower: 185 feet

AG-2 General Agricultural District Standards:

LUO Standards	LUO Provisions	Project Site
Minimum Lot Area (Acres)	Three acres for major livestock production, two acres for all other uses	452.7 acres (19,719,612 square feet) - Complies
Minimum Lot	150 feet	160 feet minimum - Complies

LUO Standards	LUO Provisions	Project Site
Width/Depth		
Yards: Front Side/Rear	15 feet 10 feet	Complies Complies
Maximum Building Area	10 percent zoning lot area (for non-agricultural structures) (23.2 acres)	Less than 0.001 percent (3,217 square feet) - Complies
Maximum Height	25-30 feet	Exempted Wind turbines: 591 feet Met tower: 185 feet

Pursuant to LUO Section 21-4.60(c)(7), the maximum permitted wind machine height is based on a setback from all property lines of one foot for every foot of wind machine height. Two of the proposed structures do not meet the one-to-one setback requirement and will require a zoning waiver.

2. LUO Section 21-5.700, Specific Use Standards for Wind Machines:

LUO Standard	LUO Provisions	Project Site
Setback of Structures	All wind machines shall be set back from all property lines a minimum distance equal to the height of the system. Height shall include the height of the tower and the farthest vertical extension of the wind machine.	Does Not Comply Turbine No. 1 height and minimum set back: 591 feet Proposed set back: 284 feet Encroaches: 307 feet Turbine No. 2 height and minimum set back: 591 feet Proposed set back: 372.5 feet Encroaches: 218.7 feet Complies Turbine Nos. 3 and 4 height and minimum set back: 591 feet
Wind Machine Rated Capacity	In the agricultural and country zoning districts, accessory wind machines shall have a rated capacity of no more than 100 kW. Wind machines with a rated capacity of more than 100 kW shall require a CUPm.	Complies The wind machines have a rated capacity of 3.45 MW. Thus, the Project requires a CUPm.

This project will meet the specific use standards for wind machines.

3. LUO Sections 21-4.70 and 21-4.70-1, Landscaping, Screening, and Buffering:

Standard	LUO Provisions	Project Site
Parking Lots of Five or More Spaces	Minimum 5-foot wide landscape strip adjacent to any adjoining street right-of-way.	Not Applicable.
	The 5-foot landscape strip shall contain a continuous screening hedge not less than 36 inches in height at 18 inches on center. A minimum 36-inch-height wall/fence may be placed behind the setback line in lieu of a hedge with a vine or shrub along the front side of the wall.	Not Applicable.
	One canopy-form tree, a minimum of 2-inch caliper, shall be planted in the landscape strip for each 50 feet of street frontage.	Not Applicable.
Open Parking Lots With More Than Ten Parking Stalls	One canopy-form tree, a minimum of 2-inch caliper, for every 6 parking stalls, or one canopy-form tree of 6-inch caliper for every 12 parking stalls.	Not Applicable; only six parking stalls proposed.
Outdoor Trash Storage Area	Screened on a minimum of three sides by a wall or hedge at least six feet in height.	Not Applicable; no trash storage area proposed.

The Applicant states that solid wastes generated during construction of the Project will be taken to the Waimanalo Gulch Sanitary Landfill or the H-Power facility in Kapolei.

4. LUO Article 6, Off-Street Parking and Loading Requirements: The Applicant proposes to provide a minimum of six off-street parking spaces to be located adjacent to the O&M Building located on the adjacent parcel. [Note: Parking lots with more than ten parking spaces will require parking lot trees as enumerated in the table above]. Pursuant to LUO Section 21-6.20 [Table 21-6.1], the off-street parking requirement for wind machines shall be "as determined by the Director". During normal operating hours, as many as six regular employees are expected to be on the site at, any given time. Six off-street parking spaces are acceptable given the Applicants' proposal and the fact that the LUO provides no parking standard for this use.

5. Signs: No signs are proposed for the site.

B. The site must be suitable for the proposed use considering size, location, topography, infrastructure and natural features. The size, location, topography, and terrain of the site and the infrastructure available are suitable for the proposed installation. There are notable natural features on the property.

1. Size, Location, Topography, and Natural Features: The 232-acre site is within the Koolauloa District, west of the town of Kahuku where the best wind resources on the island are located. The site has several steep ridges and deep gullies trending in southwest-to-northeasterly directions which eliminated some portions

of the wind farm site from consideration because construction in these areas is unsuitable. After those portions of the site were eliminated, due to the topography, the remaining land area was determined to have a sufficient area for a viable Project.

The Project also made adjustments based on input from the surrounding communities regarding visual impacts and concerns about City and County of Honolulu setback distances. The Project eliminated locations that were the closest and most visible from Kamehameha Highway and Kahuku Town. The wind turbines have been sited to minimize impacts to existing agricultural cultivation on the site.

2. Infrastructure:

- a. Water: During construction of the Project approximately 10,000 to 15,000 gallons of water per day will be needed for dust control, equipment wash down, and emergency fire suppression. If concrete is batched on site, water would be delivered to the site and stored in an onsite water tank. The water would be drawn from existing irrigation lines or come from a similar source. Excavation for the Project may require blasting which could result in physical disturbance of existing agricultural water wells in the immediate vicinity. Both excavation and blasting, if necessary, would be relatively shallow and would not impact the deeper aquifers typically used for potable water supplies. The Applicant will coordinate with landowners and tenants to identify the location of private wells within the wind farm site and will adjust the final layout to avoid impacting any existing wells. Should an impact to an existing well be unavoidable, the Applicant will work with the landowner to provide appropriate mitigation. No public water system infrastructure is located on the wind farm site.
- b. Wastewater: The Project will generate a minor amount of wastewater from portable toilets which will be provided and serviced on a contracted basis during construction. The contractor will dispose of sanitary wastewater in accordance with all applicable regulations. The existing wastewater infrastructure in Kahuku and its wastewater treatment plant will have adequate capacity to accommodate the temporary increase in sanitary wastewater during construction. During operation of the wind farm, minimal amounts of wastewater will be produced from the O&M Building which will be processed using an on-site septic system approved by DOH. There is no wastewater infrastructure located on site. The Project will not have any impacts on wastewater infrastructure.
- c. Fire: A Fire Management Plan (FMP) has been prepared for the proposed Project. The FMP analyzed the information regarding fuel conditions, weather and climate conditions, fire history in the vicinity of the Project, firefighter access, and other factors. The FMP concluded that the likelihood of a wildfire during construction of the Project is very low. Water tanks will be maintained onsite for emergency fire suppression during construction. The Honolulu Fire Department is located near the site and additional fire suppression measures will be included into the Site Safety Handbook.

- d. Police: There is a Honolulu Police Substation near the Project site. Should an incident occur during construction of the Project or during the operation, the response times will be short. With the implementation of the Site Safety Plan and observance of safe working practices during construction, potential for serious accidents will be greatly reduced.
- e. Solid Waste: The Applicant will dispose of solid waste generated during construction of the Project at the Waimanalo Gulch Sanitary Landfill or the H-Power facility in Kapolei. The amount of waste generated is not expected to adversely impact existing waste management services or facility capacity.
- f. Drainage: The Applicant will confirm storm water runoff requirements and if necessary incorporate storm water control measures such as seepage pit, drywells, and/or detention basins prior to grading and other construction activities. This will ensure there is no potential to alter drainage patterns within the wind farm site. As a condition of approval the Applicant shall provide verification of storm water control measures.

Disturbance during construction would occur within a wider buffer to allow adequate passage for the crawler crane and transport trucks, as well as turn-around locations for equipment. The road width of the corridor to be temporarily disturbed would be approximately 50 feet along the access roads. All access roads would have a gravel surface and will be constructed with storm water erosion and control features.

- C. The proposed use will not alter the character of the surrounding area in a manner substantially limiting, impairing or precluding the use of surrounding properties for the principal uses permitted in the underlying zoning district. The Project site is in the AG-1 Restricted Agricultural District and AG-2 General Agricultural District. Uses which support wind farm development are permitted, subject to an approved CUPm.

1. Koolauloa Sustainable Communities Plan (SCP):

The following are guidelines and policies relating to the Project within the Koolauloa SCP:

- *Mountain Areas and Trails: Avoid the establishment of utility corridors and other uses that would disturb areas with high concentration of native and endangered species.*

The Project requires compliance with the Federal Endangered Species Act (ESA) and Migratory Bird Treaty Act (MBTA), and the State Hawaii Revised Statutes 196-D which prohibits the taking of any endangered or threatened species. The Applicant has taken measures to avoid and minimize impacts to vegetation, wildlife, and threatened and endangered species. Incidental take of wildlife species is unavoidable and the Applicant has prepared a Habitat Conservation Plan (HCP) that outlines mitigation measures of these impacts.

- *Agriculture: Protect and preserve the agricultural lands from conversion to uses that are primarily residential, industrial, or commercial in purpose.*

The Applicant states that construction and operation of the Project would impact less than seven percent of LSB rated A and B agricultural lands within the wind farm site over the long term, and less than one percent within the Koolauloa District.

- *Agriculture: Allow recreational or educational programs or other activities which provide supplemental income necessary to sustain the primary agricultural activity, as long as they are compatible with the character of the rural agricultural area and are accessory to the primary agricultural use of the site.*

In 2008, the Board of Agriculture withdrew the portion of the wind farm site that is owned by the State DLNR from the Kahuku Agricultural Park as the lands were not used for the intended farming purposes because the area acted as a buffer between the Kahuku Agricultural Park, the military training area, and the existing Kahuku Wind Farm. The land is steep with no road access and no water infrastructure; therefore, it is not conducive to farming in the area. Therefore, the Board of Agriculture returned the lands to the DLNR Land Division for other economic uses.

- *Electrical Systems: Locate and design system elements such as renewable energy facilities (e.g., wind and solar), electrical substations, communication sites, and transmission lines, including consideration of underground transmission lines, to avoid or mitigate visual impacts on scenic and natural resources, as well as public safety considerations.*

Some of the visual impacts from a utility-scale wind farm site are unavoidable no matter where the Project is located.

- *Electrical Systems: Encourage the development and use of renewable energy sources and energy conservation measures.*

The purpose of the Project is to provide clean, renewable wind energy for the island of Oahu.

- *Wildlife preserve management plans should emphasize conservation and restoration of native plants, birds, fish and invertebrates. Private landowners should be encouraged to investigate the various State and Federal programs that provide incentives for landowners to manage their lands for the benefit of the wildlife.*

See "Mountain Areas and Trails", above.

2. Short-Term Impacts: Fugitive dust and noise may be generated during grading and construction activities. The Applicant will comply with all applicable State Department of Health's (DOH's) rules and regulations pertaining to dust and noise control during grading and construction activities.

3. Long-Term Impacts: The proposed wind farm will comply with the development standards of the AG-1 Restricted Agricultural District, and should not alter the character of the surrounding area in a manner substantially limiting, impairing, or precluding the use of the surrounding properties. Some of the visual impacts from a utility-scale wind farm site are unavoidable. Although the Project is expected to have a visual impact, alternative energy sources, such as wind, are an integral part of meeting the State's renewable energy goals. To ensure that the proposed wind farm does not significantly impact surrounding land uses, the Applicant shall be made aware, as a condition of approval, that the CUPm will be re-evaluated if it is determined that the impacts of the wind farm are greater than anticipated.

a. Visual: A viewshed analysis was conducted to identify locations within the analysis area from which the proposed Project would potentially be visible. It was determined that the wind turbines would be most visible at viewpoints within approximately one mile of the wind farm site. The turbines would be significantly taller than most existing structures in the area with the exception of the existing wind turbines from a previously approved wind farm project. Visibility of the wind turbines would be blocked or partially obscured by topography in some locations and could be diminished in other locations because of factors such as distance from viewers, the angle of observation, atmospheric conditions, and the presence of vegetation and/or structures. The height of the wind turbines makes them highly visible, which is an unavoidable consequence. Although the Project is expected to have a visual impact, alternative energy sources (such as wind) are an integral part of meeting the State's renewable energy goals.

b. Natural Habitats: The Project site is predominantly non-native shrub land and forest primarily a mixture of aggressive non-native weedy species that took over following abandonment of agricultural production of sugar cane. Only a few native plants have been able to survive. No Federal or State threatened, endangered, or candidate plant series were found. No plant species proposed for listing or special status plant species were found. No portion of the site has been designated as critical habitat for any listed plant species.

The Project site provides a wildlife habitat for a variety of birds, most of which are non-native, as well as several non-native mammal species and numerous invertebrates. There are no wetlands or water bodies within the Project site. There is no breeding or foraging habitat for seabirds, shorebirds, waterfowl, or wading bird species protected by the Migratory Bird Treaty Act. However, there are eight State and/or Federally threatened and endangered species known to occupy the Project site and surrounding areas. These include the Hawaiian hoary bat, Newell's shearwater, Hawaiian goose, Hawaiian stilt, Hawaiian coot, Hawaiian moorhen, Hawaiian duck, and Hawaiian short-eared owl. Each of these species are covered under the Project Habitat Conservation Plan which discusses anticipated direct and indirect impacts from the Project, mitigation for impacts, and avoidance and minimization measures.

- c. Historic Sites/Cultural Resources: The Applicant conducted an archaeological and cultural assessment. In 2014, Pacific Legacy conducted a pedestrian survey of close to 100 percent of the Area of Potential Effect (APE), excluding only areas that were too steep to traverse, to identify archaeological sites. The APE includes an area that represented the maximum footprint of the Project within which all ground disturbing activities would occur and which would be occupied by the wind farm. In the portion of the APE within the Project, the Archaeological Inventory Survey identified a total of 22 new (not identified during previous archaeological investigations) archaeological sites, consisting of 93 distinct features. A majority of these features (59) were associated with a single archaeological site (SIHP No. 50-80-12-7844) that is a large discontinuous district of structural remnants of the former Kahuku Sugar Plantation. Of the remaining 21 sites located within the Project site, 19 were traditional Hawaiian pre-contact activities and 2 were historic.

Survey data were used by project engineers to refine the location of proposed facilities to avoid archaeological features. This resulted in a revision of the APE. Three features of the Kahuku Sugar Plantation site and 14 of the other 21 documented sites within the Project area are now located outside of the APE and would not be affected by the Project footprint. This leaves 56 features of the Kahuku Sugar Plantation site and 7 other sites (consisting of 12 distinct features) within the revised APE. Each of these 8 sites (Kahuku Sugar Plantation plus 7 other sites) has either yielded or has the potential to yield information important to state and national history. The Project will be developed and operate in a way that is respectful to Hawaii's culture and natural resources.

- d. Noise Impacts: The Applicant indicates a noise analysis was conducted for the Project. The acoustic analysis area includes parcels located within 1.2 miles of the Project. Construction of the Project may cause short-term, but unavoidable, noise impacts. Sounds generated by construction activities would likely require a permit from the DOH, to allow the operation of construction equipment that exceed the maximum permissible noise level at property line locations. Time restrictions may be placed on time periods when the loudest construction activities are likely to occur between 7:00 a.m. and 7:00 p.m., Monday through Friday, and between 9:00 a.m. and 6:00 p.m. on Saturday.

During operation, the wind turbines are expected to generate sound on a regular basis. Based on the results from the acoustic monitoring and comparison of those results to the measured existing ambient sound levels, the predicted wind turbine sounds are expected to increase the ambient sound levels by no more than four decibels at the nearest sensitive receptor. The nearest residential area to the Project site is a distance of approximately one mile away and is a sufficient distance so that the wind turbine sounds are predicted to be at or below acceptable ambient noise levels of no more than four decibels.

The Applicant has adequately considered noise nuisance issues as part of its planning, design, and operations. Since the Applicant is required to comply with applicable State laws relating to noise generated during the construction phase, a condition of approval does not appear to be necessary.

D. The use at its proposed location will provide a service or facility which will contribute to the general welfare of the community-at-large or surrounding neighborhood. The proposed wind farm will provide clean, renewable energy that will contribute to the general welfare of the community at large. The proposed wind farm can benefit the North Shore community and Oahu by providing clean, renewable wind energy. The Kahuku Community will also receive a Community Benefits package that equates to approximately \$2 million dollars over the 20- to 25-year life of the Project. The community benefits package from the Applicant will provide funding directly to the Kahuku community. The wind farm will contribute to the general welfare of the community-at-large and the surrounding neighborhood.

E. Zoning Waiver: Pursuant to LUO Section 21-2.130(a)(1), public or public/private uses and structures and utility installations, are eligible for a waiver from the strict development and/or design standards of the LUO, subject to the following: The granting of the waiver shall not, under the circumstances and conditions applied in the particular case, adversely affect the health or safety of persons, and shall not be materially detrimental to the public welfare or injurious to nearby property improvements.

Turbine No. 1 will be located 284 feet from the nearest property line and Turbine No. 2 will be located 372 feet from the nearest property line. The Applicant states that establishing compliant setbacks would require moving these two turbines off the top of the ridgeline and placing them down slope or mauka of the ridgeline. This would require a greater height for the turbines in order to capture the same wind resource as the turbine would if located at the top of the ridge. Furthermore, construction of the turbine pads, if sited down slope of the ridge top, would require additional grading and removal of fill.

Alternative arrangements to the turbine array were considered such as spacing the turbines closer together or shifting the four turbine array east. The Applicant concluded that a denser array is not feasible because of minimum spacing requirements associated with safety and efficiency recommended by the turbine manufacturers. Further, shifting the array eastward would lead to poor wind due to topographical features that severely limit the wind resources.

The Applicant also prepared a Setback Waiver Risk Assessment which concluded that the likelihood of turbine collapse in the direction of the several farm dwellings located on the adjacent parcel is very low due to the design standards set forth by the International Electrotechnical Commission (IEC) as applied to the proposed siting of the wind turbines.

IV. CONCLUSIONS OF LAW

The Director hereby makes the following Conclusions of Law:

- A. The proposed wind machines are permitted as a conditional use in the underlying AG-1 Restricted Agricultural District and AG-2 General Agricultural District with an approved CUPm.
- B. The site is suitable for the proposed wind farm use considering its size, shape, location, topography, infrastructure, and natural features.
- C. The proposed wind machines will not alter the character of the surrounding area in a manner substantially limiting, impairing, or precluding the use of the surrounding properties for the principal uses permitted in the underlying zoning district, provided appropriate conditions of approval are imposed.
- D. The use at its proposed location will provide a service or facility which will contribute to the general welfare of the community-at-large.
- E. The granting of the waiver will not, under the circumstances and conditions applied in the particular case, adversely affect the health or safety of persons, and shall not be materially detrimental to the public welfare or injurious to nearby property improvements.

V. DECISION AND ORDER

Pursuant to the Findings of Fact and Conclusions of Law, the Director of the Department of Planning and Permitting (DPP) hereby **APPROVES** the application for a Conditional Use Permit (Minor) (CUPm) and Zoning Waiver (W) from LUO Section 21-4.60(c)(7) and LUO Section 21-5.700(a) related to wind machine setbacks to allow in the AG-1 Restricted Agricultural District and AG-2 General Agricultural District, subject to the following conditions:

- A. Development and operation of the wind farm shall be in general conformance with the approved Project, as described herein and shown on Exhibits A-1 through A-11, attached hereto, which shall be deemed the approved plans for the Project. Any modification of the approved Project and/or plans shall be subject to the prior review of and approval by the Director of the DPP. Minor modifications shall be processed in accordance with Section 21-2.20(k) of the Land Use Ordinance (LUO). Major modifications shall require a new CUPm and/or a new Waiver.
- B. Upon termination of the Project, the Applicant shall be required to decommission and remove all equipment, and restore and re-vegetate the Project site within 12 months after the end of operations.
- C. Prior to the application of building permits, the Applicant shall submit to the DPP a parking plan which shall show a minimum of six off-street parking spaces, the dimensions of the spaces and maneuvering areas, and the parking surface material to be used. The parking area shall consist of crushed rock, limestone or gravel, or an acceptable all-weather surface.

- D. Prior to the application of building permits, the Applicant shall submit a Final Drainage Report upon completion of the drainage study.
- E. The Applicant shall implement quiet hours between the hours of 7:00 p.m. and 6:00 a.m., daily, with respect to construction activity. Activities which may generate noise impacts to the surrounding communities shall not be permitted during the stipulated quiet hours.
- F. This application has only been reviewed and approved pursuant to the provisions of LUO Section 21-5.40 (Wind Machines) and LUO Section 21-4.60(c)(7) and LUO Section 21-5.700(a) related to wind machine setbacks. The Project shall comply with all other applicable LUO provisions.
- G. Approval of this CUPm and Waiver shall not constitute compliance with other LUO or governmental agencies' requirements, including building and/or sign permit approval. These are subject to separate review and approval. The Applicant shall be responsible for insuring that the final plans for the Project approved under this permit comply with all applicable government agencies' provisions and requirements.
- H. The Applicant and/or landowners shall notify the Director of the DPP in writing within 30 days concerning:
 - 1. Any proposed change in use, including discontinued use and/or termination of any use on the property; and/or
 - 2. Transfer in ownership of the property or of any use on the property.

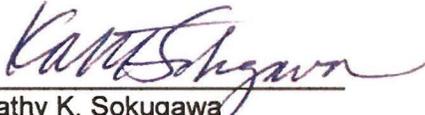
In the case of a change in use, the Director of the DPP will determine if the proposed change requires a minor or major modification of the CUP and/or Waiver. In the event of a change of ownership, the Director of the DPP shall notify the new owner (by copy of the CUP report) that the site and/or facility is permitted and/or governed by the CUP and Waiver, and that compliance with all the conditions of approval is required.

- I. The Applicant shall obtain the first development or building permit for the approved wind farm within two years from the date of this approval, or the CUPm and Waiver shall lapse.
- J. If, during construction, any previously unidentified archaeological sites or remains, (such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings, or wall) are encountered, the Applicant shall stop work and contact the State Historic Preservation Division (SHPD) immediately. Work in the immediate area shall be stopped until SHPD is able to assess the impact and make further recommendations for mitigative activity.
- K. The Director may modify the conditions of this permit by imposing additional conditions, modifying existing conditions, or deleting conditions deemed satisfied upon a finding that circumstances related to the approved Project have significantly changed so as to warrant a modification to the conditions of approval.

- L. The Director may re-evaluate the CUPm after construction of the facility to determine if visual, noise, or other impacts are significantly greater than anticipated (i.e., as represented by the Applicant). The Director may impose additional conditions to mitigate greater adverse impacts, or revoke the CUPm if adverse impacts cannot be mitigated.
- M. In the event of the noncompliance with any of the conditions set forth herein, the Director may terminate all uses approved under this permit or halt their operation until all conditions are met or may declare this CUPm and Waiver null and void or seek civil enforcement.

Dated at Honolulu, Hawaii, this 20th day of January, 2017.

Department of Planning and Permitting
City and County of Honolulu
State of Hawaii

By 
Kathy K. Sokugawa
Acting Director

Attachments

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
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FILE

KIRK CALDWELL
MAYOR



KATHY K. SOKUGAWA
ACTING DIRECTOR

TIMOTHY F. T. HIU
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

June 7, 2019

2019/MOD-34WA)
2019/MOD-35
2016/CUP-69
2016/W-63

Ms. Leslie McClain
Tetra Tech, Incorporated
737 Bishop Street, Suite 2340
Honolulu, Hawaii 96813

Dear Ms. McClain:

SUBJECT: Request for Minor Modifications
Minor Modification No. 2019/MOD-34
Minor Modification No. 2019/MOD-35
Conditional Use Permit No. 2016/CUP-69
Zoning Waiver No. 2016/W-63
Na Pua Makani Wind Project - Subproject A
56-668 Kamehameha Highway - Kahuku
Tax Map Key 5-6-008: 006

The request for minor modification received, May 8 and 21, 2019, to the above-mentioned Conditional Use Permit (CUP) No. 2016/CUP-69 and Zoning Waiver (W) No. 2016/W-63, to modify the previously approved wind farm, is **APPROVED**, subject to the following conditions:

1. Operation and development of the wind farm, shall be in general conformance with the approved Project, as described herein and shown on plans and drawings labeled Exhibits B-1 through B-4 (received May 8, 2019), on file at the Department of Planning and Permitting (DPP). Any modification to the Project and/or approved plans shall be subject to the prior review and approval by the Director of the DPP. Minor modifications shall be processed in accordance with Land Use Ordinance (LUO) Section 21-2.20(k). Major modifications shall require a new Conditional Use Permit (CUP) and Zoning Waiver.

APPENDIX "02"

2. This application has only been reviewed and approved pursuant to the provisions of LUO Sections 21-2.90, (CUP), and 21-5.650(b) (Utility Installations, Type A); approval of this minor modification does not constitute compliance with other LUO or governmental requirements, including building and/or sign permit approval. These are subject to separate review and approval. The Applicant shall be responsible for insuring that the final plans for the Project approved under these permits comply with all applicable coded and other governmental provisions and requirements.
3. Except as modified herein, the approved plans and conditions of Conditional Use Permit No. 2016/CUP-69 and Zoning Waiver No. 2016/W-63, shall remain in force.
4. The Director may modify the conditions of this approval by imposing additional conditions, modifying existing conditions, or deleting conditions deemed satisfied upon a finding that circumstances related to the approved Project have significantly changed so as to warrant modification to the conditions of approval. In the event of the noncompliance with any of the conditions set forth herein, the Director may terminate all uses approved under this permit or halt their operation until all conditions are met or may disclose this permit null and void or seek civil enforcement.

The Applicant proposes to modify the location and height of four previously approved wind turbines. The original height of the four proposed wind turbines was 591 feet and they will be reduced to 567.6 feet or 23.4-foot reduction. The original setback for Turbine No. 1 was 284 feet and the proposed setback will be 275.1 feet or 8.9-foot reduction. The original setback for Turbine No. 2 was 372.3 feet from the property line and the proposed setback will be 354.5 feet or 17.8-foot reduction. The original setback for Turbine Nos. 3 and 4 was 591 feet from the property line and the proposed setback will be reduced to 567.6 feet (required setback equal to its proposed height) or 23.4-foot reduction. The original height for the Met Tower was 185 feet and it will be increased to 344 feet or 159-foot increase but it will be setback more than 500 feet from the nearest property line (see Exhibits B-1 through B-4).

On January 20, 2017, Conditional Use Permit No. 2016/CUP-69 and Zoning Waiver No. 2016/W-63 was approved to allow a wind farm with four wind turbines and provide less than the required wind machine setbacks.

Given the circumstances and conditions, the proposal is reasonable, consistent with the intent of the original Zoning Waiver, does not significantly increase the intensity of scope of the utility installation use, and does not create adverse land use impacts for the surrounding neighborhood.

Ms. Leslie McClain
June 7, 2019
Page 3

Any party (to the case) wishing to appeal the Director's action must submit a written petition to the Zoning Board of Appeals (ZBA) within 30 calendar days from the date of mailing or personal service of the Director's written decision (ZBA Rules Relating to Procedure for Appeals, Rule 22-2, Mandatory Appeal Filing Deadline). Essentially, the ZBA rules require that a petitioner show that the Director based his/her action on an erroneous finding of a material fact, and/or that the Director acted in an arbitrary or capricious manner, or manifestly abused his/her discretion. Generally, the ZBA can only consider the evidence previously presented to the Director of the Department of Planning and Permitting (DPP). The filing fee for appeals to the ZBA is \$400 (payable to the City and County of Honolulu).

Failure to comply with ZBA Rules Chapter 22, Procedure for Appeals, may result in the dismissal of the appeal. Copies of the ZBA rules are available at the DPP. Appeals should be addressed to:

Zoning Board of Appeals
c/o Department of Planning and Permitting
650 South King Street, 7th Floor
Honolulu, Hawaii 96813

Should you have any questions or need additional information concerning this Minor Modification, please contact William Ammons, of our staff, at 768-8025 or via email at wammons@honolulu.gov.

Very truly yours,


for Kathy K. Sokugawa
Acting Director

Enclosure: Receipt No. 122614 and 122615
Exhibits B-1 through B-4

The clean, renewable power from the approximately 25 MW wind farm would be generated in response to demand from the Hawaiian Electric Company (HECO) grid.

The Applicant has proposed this Project in three CUPm's rather than opt for joint development of the two adjacent parcels because the two parcels are under different ownership. The wind farm will be owned and operated by the Applicant and the switching station located adjacent to the wind farm will be owned and operated by HECO (see Exhibits A-1 through A-12). The wind farm will consist of the following items.

1. Wind Turbine Generators

Subproject B consists of four turbines. Three of the turbines will be 656 feet in height and one turbine will be 590.5 feet (measured from grade to rotor tip). Each turbine will be setback from the nearest property line a minimum of 590.7 feet, the total height of the shortest turbine. All the turbines are white, which is the industry standard.

2. Electric Collector System and Substation

Power generated by the turbines will be stepped up to 34.5 kilovolts (kV) at pad-mounted transformers and then collected through an underground electrical collection system. This system will feed into an onsite electrical substation, which will step up the voltage to 46kV and transmit the power to the point of interconnect at the adjacent HECO-owned and operated switching station. The substation will be enclosed within an 18,832-square-foot fenced area.

3. Met Tower

One 262-foot temporary guyed tower will be installed at the site. This tower supports weather instruments that measure and record weather data to measure performance and guide project operation. The met tower will be removed during construction of the turbines.

4. Operation and Maintenance Building

The Operation and Maintenance building will be located on an 8.3 acre portion of the site along with vehicle parking for the site.

5. Access Roads

On-site access will be provided via existing access roads which will be modified and via the grading of new roads. Access from the public right-of-way to the site will be via Malaekahana Valley Road.

6. Construction Staging and Equipment Laydown

The construction staging and equipment laydown area will be used as a temporary storage area for equipment and materials. It will also be used as a refueling location, waste collection area, construction office, and portable sanitary facilities.

Once construction is completed, the Project will employ five full-time employees. Operation and maintenance of the wind farm will occur Monday through Friday during normal work day hours. Power will be generated based on demand from the HECO grid.

The Applicant states that the anticipated life of the wind farm Project is 21 years. After that time the Project will be evaluated and a determination will be made to continue operation or decommission it. Should a decision be made to continue operations, the facility may be upgraded and repowered with renegotiated leases and necessary permit approvals. If the Project is decommissioned the Applicant will remove all equipment and return the site as close to preconstruction condition as possible within 12 months as required by the land lease.

II. FINDINGS OF FACT

On the basis of the evidence presented, the Director has found:

- A. Description of Site and Surrounding Uses: The Project is located on Oahu's north shore, at the base of the northern part of the Koolau Range, sloping to the coastal plain near the town of Kahuku (see Exhibit D). The elevation ranges from approximately three feet (1 meter) Above-Mean Sea Level (AMSL) on the eastern edge to approximately 370 feet (113 meters) AMSL on the western portions of the parcel and consists of steep, dissected ridges surrounding gently sloping valleys as well as flat, coastal plains. The site is accessible via Malaekahana Valley Road, a private access road that directly joins Kamehameha Highway at the northeastern most point.

The 452.7-acre Project site is zoned AG-1 Restricted Agricultural District. Higher elevations of the site are fallow ridges not actively used for agriculture. Other portions of the site are used for agriculture with a wide variety of crops being cultivated by lessees and private landowners. Between the patches of crops is fallow agricultural land. The site was assessed to identify areas that would be too steep for construction or that would be inaccessible by construction vehicles. The presence of several steep ridges and deep gullies trending in southwest-to-northeasterly directions eliminated some portions of the wind farm site from consideration because construction in these areas would be logistically infeasible and/or terrain ruggedness would inflate construction costs. After portions of the site were eliminated due to topography, the remaining land area was determined to have a sufficient area for a viable project.

The site consists of four different Land Study Bureau (LSB) ratings of Category A, B, C, and E with Category A (most productive) which includes the majority of the site to Category E (least productive) soil which covers a small western portion of the site. The Project area is in Category A and B.

Surrounding land uses include the existing Kahuku Wind Farm north of the Project site, military training area to the west and south, and agricultural farm land to the east. The nearest residences to the proposed wind turbine generators are in the northeast corner of the site along with the Kahuku Fire Station and Police Substations, Kahuku Medical Center, and Kahuku Elementary and High Schools. Keana Farms operates an agri-tourism business which includes agricultural educational tours and a zipline.

- B. Special Management Area (SMA): The parcel is not located in the SMA, and is not subject to the requirements of Chapter 25, Revised Ordinances of Honolulu (ROH).
- C. Koolauloa Sustainable Communities Plan (KSCP): The KSCP contains guidelines and policies relating to the Project. The degree to which this project follows the guidelines and policies is discussed in the Analysis section of this report.
- D. Other Permits and/or Approvals: The following permits and approvals were approved for the subject properties:

- 1. Special Use Permit (SUP)

The site is in the State Land Use Agricultural District (see Exhibit B). The DPP has determined that the proposal does not require an SUP since the proposed use is compatible with existing diversified agricultural activities. The use should have minimal adverse impact on the land for future agricultural uses.

- 2. CUP

Wind machines are permitted in the AG-1 Restricted Agricultural District, subject to the approval of a CUPm, and as a special accessory use subject to standards enumerated in Article 5 of the LUO.

- 3. Grading Permits

The proposed wind turbines, buildings, and structures associated with the Applicant's request will require grading and grubbing permits.

- 4. Building Permits

The proposed buildings and structures associated with the Applicant's request will require building permits.

- 5. State Department of Transportation (SDOT) Approval

Transportation of turbine components via transport vehicles will require approval from the SDOT and implementation of an approved traffic control plan.

- E. Environmental Review Requirements: The Project is partially located on State of Hawaii lands, triggering environmental review under the Hawaii Environmental Policy Act (HEPA) Chapter 343, Hawaii Revised Statutes (HRS). The Hawaii DLNR served as the accepting Agency for the Environmental Impact Statement (EIS). A portion of the proposed project's transmission line is located within the SDOT right-of-way, which also triggers environmental review under HEPA.

The Draft EIS, published on June 8, 2015, in The Environmental Notice, was prepared as a joint Federal and State document in accordance with HRS Chapter 343 and HAR§11-200-25 and with National Environmental Policy Act (NEPA) implementing regulations, specifying that federal agencies shall cooperate with State and local agencies to the fullest extent possible to avoid duplication between NEPA and State

requirements. The U. S. Fish and Wildlife Service, as the Federal lead agency. Due to differences in procedural requirements, the HEPA and NEPA processes have diverged and will continue along separate paths. The Final EIS was accepted by DLNR on July 22, 2016.

- F. Flood District: For this parcel, the Federal Emergency Management Agency Flood Insurance Rate Map Community Panel Number 0045H, revised November 5, 2014, indicates that the Project site is within Flood Zone X areas determined to be outside the 0.2 percent annual chance floodplain (see Exhibit E). Other portions of the site are in Flood Zones XS, AE, and AEF.
- G. Compliance with Chapter 205: In accordance with HRS Section 205-4.5(a), wind energy facilities are permissible uses on agricultural district lands with an overall LSB productivity rating of Category A or B, provided that such facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land. The Project site has an LSB mixed rating of Category A, B, C, D, and E. The Project is mainly in the Category B rated portion of the site and would remove 13.9-acres or 5.1 percent of LSB Category A- and B-rated land and an additional 8-acres or 4.6 percent of lower rated lands from potential agricultural productivity. The proposed Project will impact less than 0.4-percent of the Category A- and B-rated agricultural lands in the the Koolauloa District.
- H. Public Notification and Comments: The Applicant has held numerous public meetings with small focus groups, individual community leaders, and elected officials. The following table lists key public meetings.

Meeting/Presentation/Update/Site Visit	Date
Kahuku Community Association	May 30, 2013
Kahuku Community Association	August 15, 2013
Scoping Meeting (NEPA)	November 13, 2013
Scoping Meeting (HEPA)	January 10, 2014
Koolauloa Neighborhood Board No. 28	January 9, 2014
Talk Story Meeting: Health Impacts and HECO/Rooftop Photovoltaic System Installation	January 15, 2014
Laie Community Association	February 6, 2014
Koolauloa Neighborhood Board No. 28	February 13, 2014
Laie Community Association	March 6, 2014
Hauula Community Association	2014 date not specified
Scoping Meeting No. 2 (HEPA)	November 19, 2014
Kahuku Community Association	February 19, 2014
Kahuku Community Association	May 20, 2015
Office of Environmental Quality Control	June 17, 2015
Draft EIS Public Meeting (HEPA and NEPA)	June 24, 2015
Laie Community Association	July 27, 2015
Kahuku Community Association	August 20, 2015
Kahuku Community Association	November 19, 2015
Endangered Species Recovery Committee Meeting (Habitat Conservation Plan)	December 17, 2015
Endangered Species Recovery Committee Meeting (Habitat Conservation Plan)	February 23, 2016
Second Draft EIS Public Meeting (HEPA)	May 15, 2016

Five public meetings were held for the HRS 343 environmental review process. During the public comment periods on the original Draft EIS and the Second Draft EIS, many letters were received from residents in the Kahuku community. Some letters of opposition to the Project and concern over specific issues were received. The topics most commonly brought up included traffic, visual impacts, Project siting, socioeconomics, public health and safety, and community benefits. The Applicant responded to all the questions and concerns.

- I. Community Benefits: The Applicant has proposed to honor the commitment of the prior developer to pay \$10,000 per wind turbine per year over the life of the Project to benefit the Kahuku Community. This translates into \$90,000 per year over a 20-to 25-year Project life or the equivalent of approximately \$2,000,000 of direct economic benefits to the Kahuku Community. It is anticipated that the Project funds would be administered by a board of local community members who would make decisions as to the use of the proceeds and which activities, programs, groups, and events will be sponsored.
- J. Compliance With Condition B of CUP No. 2013/CUP-23: Condition B requires dedication of 226-acres, or 50 percent of the lot area of the site for agricultural use for 10 years or the duration of the agribusiness activities, whichever is longer. Up to approximately 4.69-acres of permanent impacts from the site would occur within the agriculture dedication area. However, only 2.46-acres of the 4.69-acres are currently being farmed. No change will be made to the existing farmer's leases or any agricultural areas. There is no net loss of active agriculture as a result of the wind farm Project. Given the relatively small amount of land that will be removed from agricultural productivity, the use is compatible and will cause minimal loss of agricultural lands.
- K. Department of Planning and Permitting Public Hearing: No Public Hearing was held by the DPP. CUPm does not require a Public Hearing.
- L. Applicant's Justification: The Applicant provided justification statements which are part of the file.

III. ANALYSIS

The Director of DPP may allow a conditional use upon finding that the proposed use satisfies the following criteria:

- A. The proposed use is permitted as a conditional use in the underlying zoning district and conforms to the requirements of the LUO. Pursuant to LUO Section 21-3.50-4(a) [Table 21-3], A wind farm is permitted in the AG-1 Restricted Agricultural District with an approved CUPm.

1. AG-1 Restricted Agricultural District Standards:

LUO Standards	LUO Provisions	Project Site
Minimum Lot Area (acres)	5 acres	452.7 acres (19,719,612 square feet) - Complies
Minimum Lot Width/Depth	.150 feet	160 feet minimum - Complies
Yards: Front Side/Rear	15 feet 10 feet	Complies Complies
Maximum Building Area	10 percent zoning lot area (for non-agricultural structures) (45.2 acres)	Less than 0.001 percent (15,217 square feet) - Complies
Maximum Height	25-30 feet	Complies Wind turbines: 656 feet O&M building: 25 feet Met tower: 262 feet

In accordance with LUO Section 21-4.60(c)(7), the maximum permitted wind machine height is based on a setback from all property lines of one foot for every foot of wind machine height. The proposed structures meet all development standards for the AG-1 District

2. LUO Section 21-5.700, Specific Use Standards for Wind Machines:

LUO Standard	LUO Provisions	Project Site
Setback of Structures	All wind machines shall be setback from all property lines a minimum distance equal to the height of the system. Height shall include the height of the tower and the farthest vertical extension of the wind machine.	Complies Turbine 6 height and minimum setback: 591 feet. Turbines 7, 8, 9 height and minimum setback: 656 feet. Electrical substation equipment will be less than 30 feet, lighting mast less than 85 feet. Minimum setback of substation established according to highest vertical extension and will be met as the substation is located more than 85 feet from the property line.
Wind Machine Rated Capacity	In the agricultural and country zoning districts, accessory wind machines shall	Complies The wind machines have a

LUO Standard	LUO Provisions	Project Site
	have a rated capacity of no more than 100 kilowatts (kW). Wind machines with a rated capacity of more than 100 kW shall require a CUP(minor).	rated capacity of 3.45 MW. Thus, the Project requires a CUP (Minor).

This project will meet the specific use standards for wind machines.

3. LUO Sections 21-4.70 and 21-4.70-1, Landscaping, Screening, and Buffering:

Standard	LUO Provisions	Project Site
Parking Lots of Five or More Spaces	Minimum 5-foot wide landscape strip adjacent to any adjoining street right-of-way.	Not Applicable.
	The 5-foot landscape strip shall contain a continuous screening hedge not less than 36 inches in height at 18 inches on center. A minimum 36-inch-height wall/fence may be placed behind the setback line in lieu of a hedge with a vine or shrub along the front side of the wall.	Not Applicable.
	One canopy-form tree a minimum of 2-inch caliper shall be planted in the landscape strip for each 50 feet of street frontage.	Not Applicable.
Open Parking Lots With More Than Ten Parking Stalls	One canopy-form tree a minimum of 2-inch caliper for every 6 parking stalls, or one canopy-form tree of 6-inch caliper for every 12 parking stalls	Not Applicable; only six parking stalls proposed.
Outdoor Trash Storage Area	Screened on a minimum of three sides by a wall or hedge at least six feet in height.	Not Applicable; no trash storage area proposed.

The Applicant states that solid wastes generated during construction of the Project will be taken to the Waimanalo Gulch landfill or the H-Power facility in Kapolei.

4. LUO Article 6, Off-Street Parking and Loading Requirements: The Applicant proposes to provide a minimum of six off-street parking spaces to be located adjacent to the O&M Building. [Note: Parking lots with more than ten parking spaces will require parking lot trees as enumerated in the table above]. Pursuant to LUO Section 21-6.20 [Table 21-6.1], the off-street parking requirement for wind machines shall be "as determined by the Director". During normal operating hours, as many as six regular employees are expected to be on the site at any given time. Six off-street parking spaces is acceptable given the Applicants proposal and the fact that the LUO provides no parking standard for this use.

5. Signs: No signs are proposed for the site.

6. Access: The site is accessible via Malaekahana Valley Road, a private access road that directly joins Kamehameha Highway at the northeastern most point. Access to the site is adequate for the proposed Project.

B. The site must be suitable for the proposed use considering size, location, topography, infrastructure and natural features. The size, location, topography, and terrain of the site and the infrastructure available are suitable for the proposed installation. There are notable natural features on the property.

1. Size, Location, Topography, and Natural Features: The 452.7-acre site within the Koolauloa District, west of the town of Kahuku where the best wind resource on the island is located. The site has several steep ridges and deep gullies trending in southwest-to-northeasterly directions which eliminated some portions of the wind farm site from consideration because constructions in these areas are unsuitable. After those portions of the site were eliminated, due to the topography, the remaining land area was determined to have a sufficient area for a viable Project.

The Project also made adjustments based on input from the surrounding communities regarding visual impacts and concerns about City and County of Honolulu setback distances. The Project eliminated locations that were the closest and most visible from Kamehameha Highway and Kahuku Town. The wind turbines have been sited to minimize impacts to existing agricultural cultivation on the site.

The proposed wind farm can benefit the North Shore community and Oahu by providing clean, renewable wind energy. The Kahuku Community will also receive a Community Benefits package that equates to approximately \$2 million dollars over the 20- to 25-year life of the Project.

2. Infrastructure:

- a. Water: During construction of the Project approximately 10,000 to 15,000 gallons of water per day will be needed for dust control, equipment wash down, and emergency fire suppression. If concrete is batched on site, water would be delivered to the site and stored in an onsite water tank. The water would be drawn from existing irrigation lines or come from a similar source. Excavation for the Project may require blasting which could result in physical disturbance of existing agricultural water wells in the immediate vicinity. Both excavation and blasting, if necessary, would be relatively shallow and would not impact the deeper aquifers typically used for potable water supplies. The Applicant will coordinate with landowners and tenants to identify the location of private wells within the wind farm site and will adjust the final layout to avoid impacting any existing wells. Should an impact to an existing well be unavoidable, the Applicant will work with the landowner to provide appropriate mitigation. No public water system infrastructure is located on the wind farm site.
- b. Wastewater: The Project will generate a minor amount of wastewater from portable toilets which will be provided and serviced on a contracted basis during construction. The contractor will dispose of sanitary

wastewater in accordance with all applicable regulations. The existing wastewater infrastructure in Kahuku and its wastewater treatment plant will have adequate capacity to accommodate the temporary increase in sanitary wastewater during construction. During operation of the wind farm minimal amounts of wastewater will be produced from the O&M Building which will be processed using an on-site septic system. There is no wastewater infrastructure located on site. The Project will not have any impacts on wastewater infrastructure.

- c. Fire: A Fire Management Plan (FMP) has been prepared for the proposed Project. The FMP analyzed the information regarding fuel conditions, weather and climate conditions, fire history in the vicinity of the Project, firefighter access, and other factors. The FMP concluded that the likelihood of a wildfire during construction of the Project is very low. Water tanks will be maintained onsite for emergency fire suppression during construction. The Honolulu Fire Department is located near the site and additional fire suppression measures will be included into the Site Safety Handbook.
- d. Police: There is a Honolulu Police Substation near the Project site. Should an incident occur during construction of the Project or during the operation the response times will be short. With the implementation of the Site Safety Plan and observance of safe working practices during construction potential for serious accidents will be greatly reduced.
- e. Solid Waste: The Applicant will dispose of solid waste generated during construction of the Project at the Waimanalo Gulch landfill or the H-Power facility in Kapolei. The amount of waste generated is not expected to adversely impact existing waste management services or facility capacity.
- f. Drainage: The Applicant will confirm storm water runoff requirements and if necessary incorporate storm water control measures such as seepage pit, drywells, and/or detention basins prior to grading and other construction activities. This will ensure there is no potential to alter drainage patterns within the wind farm site. As a condition of approval the Applicant shall provide verification of drainage.
- g. Access and Circulation: Access to the site will be from Kamehameha Highway and via Malaekahana Valley Road, a private access road. The existing road surfaces will be improved as needed and widened to meet construction and maintenance activity requirements. Approximately 1.01 miles of new internal access roads will be required.

Disturbance during construction would occur within a wider buffer to allow adequate passage for the crawler crane and transport trucks, as well as turn-around locations for equipment. The road width of the corridor to be temporarily disturbed would be approximately 50 feet along the access roads. All access roads would have a gravel surface and will be constructed with storm water erosion and control features.

C. The proposed use will not alter the character of the surrounding area in a manner substantially limiting, impairing or precluding the use of surrounding properties for the principal uses permitted in the underlying zoning district. The Project site is in the AG-1 Restricted Agricultural District. Uses which support wind farm development are permitted, subject to an approved CUPm.

1. Koolauloa Sustainable Communities Plan (SCP)

The following are guidelines and policies relating to the Project within the Koolauloa SCP:

- *Mountain Areas and Trails: Avoid the establishment of utility corridors and other uses that would disturb areas with high concentration of native and endangered species.*

The Project requires compliance with the Federal Endangered Species Act (ESA) and Migratory Bird Treaty Act (MBTA), and the State Hawaii Revised Statutes 196-D which prohibits the take of any endangered or threatened species. The Applicant has taken measures to avoid and minimize impacts to vegetation, wildlife, and threatened and endangered species. Incidental take of wildlife species is unavoidable and the Applicant has prepared a Habitat Conservation Plan (HCP) that outlines mitigation measures of these impacts.

- *Agriculture: Protect and preserve the agricultural lands from conversion to uses that are primarily residential, industrial, or commercial in purpose.*

The Applicant states that agriculture, construction, and operation of the Project would impact less than seven percent of LSB rated A and B lands within the wind farm site over the long term, and less than one percent within the Koolauloa District.

- *Agriculture: Allow recreational or educational programs or other activities which provide supplemental income necessary to sustain the primary agricultural activity, as long as they are compatible with the character of the rural agricultural area and are accessory to the primary agricultural use of the site.*

In 2008, the Board of Agriculture withdrew the portion of the wind farm site that is owned by the State Department of Land and Natural Resources (DLNR) from the Kahuku Agricultural Park as the lands were not used for the intended farming purposes because the area acted as a buffer between the Kahuku Agricultural Park, the military training area, and the existing Kahuku Wind Farm. The land is steep with no road access and no water infrastructure; therefore, it is not conducive to farming in the area. Therefore, the Board of Agriculture returned the lands to the DLNR Land Division for other economic uses.

- *Electrical Systems: Locate and design system elements such as renewable energy facilities (e.g., wind and solar), electrical sub-stations,*

communication sites, and transmission lines, including consideration of underground transmission lines, to avoid or mitigate visual impacts on scenic and natural resources, as well as public safety considerations.

Some of the visual impacts from a utility-scale wind farm site are unavoidable no matter where the Project is located. Although the Project is expected to have a visual impact, alternative energy sources (such as wind) are an integral part of meeting the State's renewable energy goals.

- *Electrical Systems: Encourage the development and use of renewable energy sources and energy conservation measures.*

The purpose of the Project is to provide clean, renewable wind energy for the island of Oahu.

- *Prohibit encroachment or intensification of residential or other urban uses near wildlife sanctuaries and nature parks.*

Installation of fencing at the Hamakua Marsh for waterbird mitigation under the HCP is intended to minimize the presence of waterbirds in the adjacent parking lot, limit the access of dogs to the area, and control illegal trash dumping. The fencing will provide an improvement to the waterbird species.

- *Wildlife preserve management plans should emphasize conservation and restoration of native plants, birds, fish and invertebrates. Private landowners should be encouraged to investigate the various State and Federal programs that provide incentives for landowners to manage their lands for the benefit of the wildlife.*

See analysis above.

- *Identifying and protecting endangered species habitats and other important ecological zones from threats such as fire, weeds, feral animals, and human activity.*

This mitigation area has been identified as an area to protect the Hawaiian hoary bat; therefore, these areas and the mitigation activities associated with them are consistent with the Central Oahu SCP.

2. Short-Term Impacts: Fugitive dust and noise may be generated during grading and construction activities. The Applicant will comply with all applicable State Department of Health's (DOH's) rules and regulations pertaining to dust and noise control during grading and construction activities.

3. Long-Term Impacts:

- a. Visual: A viewshed analysis was conducted to identify locations within the analysis area from which the proposed Project would potentially be visible. It was determined that the wind turbines would be most visible at

viewpoints within approximately one mile of the wind farm site. The turbines would be significantly taller than most existing structures in the area with the exception of the existing wind turbines from a previously approved wind farm Project. Visibility of the wind turbines would be blocked or partially obscured by topography in some locations and could be diminished in other locations because of factors such as distance from viewers, the angle of observation, atmospheric conditions, and the presence of vegetation and/or structures. The height of the wind turbines makes them highly visible which is an unavoidable consequence.

- b. Natural Habitats: The Project site is predominantly non-native shrub land and forest primarily a mixture of aggressive non-native weedy species that took over following abandonment of agricultural production of sugar cane. Only a few native plants have been able to survive. No federal or State threatened, endangered, or candidate plant series were found. No plant species proposed for listing or special status plant species were found. No portion of the site has been designated as critical habitat for any listed plant species.

The Project site provides a wildlife habitat for a variety of birds, most of which are non-native, as well as several non-native mammal species and numerous invertebrates. There are no wetlands or water bodies within the Project site. There is no breeding or foraging habitat for seabirds, shorebirds, waterfowl, or wading bird species protected by the Migratory Bird Treaty Act. However, there are eight State and/or Federally threatened and endangered species known to occupy the Project site and surrounding areas. These include the Hawaiian hoary bat, Newell's shearwater, Hawaiian goose, Hawaiian stilt, Hawaiian coot, Hawaiian moorhen, Hawaiian duck, and Hawaiian short-eared owl. Each of these species are covered under the Project Habitat Conservation Plan which discusses anticipated direct and indirect impacts from the Project, mitigation for impacts, and avoidance and minimization measures.

- c. Historic Sites/Cultural Resources: The Applicant conducted an archaeological and cultural assessment. In 2014, Pacific Legacy conducted a pedestrian survey of close to 100 percent of the Area of Potential Effect (APE), excluding only areas that were too steep to traverse, to identify archaeological sites. The APE includes an area that represented the maximum footprint of the Project within which all ground disturbing activities would occur and which would be occupied by the wind farm. In the portion of the APE within the Project, the Archaeological Inventory Survey identified a total of 22 new (not identified during previous archaeological investigations) archaeological sites, consisting of 93 distinct features. A majority of these features (59) were associated with a single archaeological site (SIHP No. 50-80-12-7844) that is a large discontinuous district of structural remnants of the former Kahuku Sugar Plantation. Of the remaining 21 sites located within the Project site, 19 were traditional Hawaiian pre-contact activities and two were historic.

Survey data were used by project engineers to refine the location of proposed facilities to avoid archaeological features. This resulted in a revision of the APE. Three features of the Kahuku Sugar Plantation site and 14 of the other 21 documented sites within the Project area are now located outside of the APE and would not be affected by the Project footprint. This leaves 56 features of the Kahuku Sugar Plantation site and 7 other sites (consisting of 12 distinct features) within the revised APE. Each of these 8 sites (Kahuku Sugar Plantation plus 7 other sites) has either yielded or has the potential to yield information important to state and national history. The Project will be developed and operate in a way that is respectful to Hawaii's culture and natural resources.

- d. Noise Impacts: The Applicant indicates a noise analysis was conducted for the Project. The acoustic analysis area includes parcels located within 1.2 miles of the Project. Construction of the Project may cause short-term but unavoidable noise impacts. Sounds generated by construction activities would likely require a permit from the DOH, to allow the operation of construction equipment that exceed the maximum permissible noise level at property line locations. Time restrictions may be placed on time periods when the loudest construction activities are likely to occur between 7:00 a.m. and 7:00 p.m., Monday through Friday, and between 9:00 a.m. and 6:00 p.m. on Saturday.

During operation, the wind turbines are expected to generate sound on a regular basis. Based on the results from the acoustic monitoring and comparison of those results to the measured existing ambient sound levels, the predicted wind turbine sounds are expected to increase the ambient sound levels by no more than four decibels at the nearest sensitive receptor. The nearest residential area to the Project site is a distance of approximately one mile away and is a sufficient distance so that the wind turbine sounds are predicted to be at or below acceptable ambient noise levels of no more than four decibels.

The Applicant has adequately considered noise nuisance issues as part of its planning, design, and operations. Since the Applicant is required to comply with applicable State laws relating to noise generated during the construction phase, a condition of approval does not appear to be necessary.

The proposed wind farm will comply with the development standards of the AG-1 Restricted Agricultural District, and should not alter the character of the surrounding area in a manner substantially limiting, impairing, or precluding the use of the surrounding properties. Some of the visual impacts from a utility-scale wind farm site are unavoidable. Although the Project is expected to have a visual impact, alternative energy sources, such as wind, are an integral part of meeting the State's renewable energy goals. To ensure that the proposed wind farm does not significantly impact surrounding land uses, the Applicant shall be made aware that the CUPm will be re-evaluated if it is determined that the impacts of the wind farm are greater than anticipated. This requirement should be imposed as a condition of approval.

- D. The use at its proposed location will provide a service or facility which will contribute to the general welfare of the community-at-large or surrounding neighborhood. The proposed wind farm will provide clean, renewable energy that will contribute to the general welfare of the community at large. A generous community benefits package to the community by the Applicant will provide funding directly to the Kahuku community. The wind farm will comply with all LUO requirements. The proposed wind farm should not adversely limit, impair, or preclude use of the surrounding neighborhood.

IV. CONCLUSIONS OF LAW

The Director hereby makes the following Conclusions of Law:

- A. The proposed wind machines are a permitted as a conditional use in the underlying AG-1 Restricted Agricultural District with an approved CUPm.
- B. The site is suitable for the proposed wind farm use considering its size, shape, location, topography, infrastructure, and there are no natural features.
- C. The proposed wind machines will not alter the character of the surrounding area in a manner substantially limiting, impairing, or precluding the use of the surrounding properties for the principal uses permitted in the underlying zoning district, provided appropriate conditions of approval are imposed.
- D. The use at its proposed location will provide a service or facility which will contribute to the general welfare of the community-at-large.

V. DECISION AND ORDER

Pursuant to the Findings of Fact and Conclusions of Law, the Director of the Department of Planning and Permitting (DPP) hereby **APPROVES** the application for a Conditional Use Permit, Minor (CUPm) to allow wind machines in the AG-1 Restricted Agricultural District, subject to the following conditions:

- A. Development and operation of the wind farm, on the site shall be in general conformance with the approved Project, as described herein and shown on Exhibits A-1 through A-12, attached hereto, which shall be deemed the approved plans for the Project. Any modification of the approved Project and/or plans shall be subject to the prior review of and approval by the Director of the DPP. Minor modifications shall be processed in accordance with Section 21-2.20(k) of the Land Use Ordinance (LUO). Major modifications shall require a new CUPm.
- B. Upon termination of the Project, the Applicant shall be required to decommission and remove all equipment, and restore and re-vegetate the Project site within 12 months after the end of operations.

- C. Prior to application for building permits, the Applicant shall submit to the DPP a parking plan which shall show a minimum of six off-street parking spaces, the dimensions of the spaces and maneuvering areas, and the parking surface material to be used. The parking area shall consist of crushed rock, limestone or gravel, or an acceptable all-weather surface.
- D. The Applicant shall submit a Final Drainage Report upon completion of the drainage study.
- E. The Applicant shall implement quiet hours between the hours of 7:00 p.m. and 6:00 a.m., daily, during construction. Activities which may generate noise impacts to the surrounding communities shall not be permitted during the stipulated quiet hours.
- F. This application has only been reviewed and approved pursuant to the provisions of LUO Section 21-5.40 (Wind Machines) and development shall comply with all other applicable LUO provisions.
- G. Approval of this CUPm shall not constitute compliance with other LUO or governmental agencies' requirements, including building and/or sign permit approval. These are subject to separate review and approval. The Applicant shall be responsible for insuring that the final plans for the Project approved under this permit comply with all applicable government agencies' provisions and requirements.
- H. The Applicant and/or landowners shall notify the Director of the DPP within 30 days concerning:
 1. Any proposed change in use, including termination of any use on the property; and/or
 2. Transfer in ownership of the property or of any use on the property.

In the case of a change in use, the Director of the DPP will determine if the proposed change requires a minor or major modification of the CUP. In the event of a change of ownership, the Director of the DPP shall notify the new owner (by copy of the CUP report) that the site and/or facility is permitted and/or governed by the CUP, and that compliance with all the conditions of approval is required.
- I. The Applicant shall obtain the first development or building permit for the approved wind farm within two years from the date of this approval, or the CUPm shall lapse.
- J. If, during construction, any previously unidentified archaeological sites or remains, (such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings, or wall) are encountered, the Applicant shall stop work and contact the State Historic Preservation Division (SHPD) immediately. Work in the immediate area shall be stopped until SHPD is able to assess the impact and make further recommendations for mitigative activity.
- K. The Applicant shall submit written notification to the Director within 30 days from the date the wind farm is discontinued and/or terminated.

- L. The Director may modify the conditions of this permit by imposing additional conditions, modifying existing conditions, or deleting conditions deemed satisfied upon a finding that circumstances related to the approved Project have significantly changed so as to warrant a modification to the conditions of approval.
- M. The Director may re-evaluate the CUPm after construction of the facility to determine if visual, noise, or other impacts are significantly greater than anticipated (i.e. as represented by the Applicant). The Director may impose additional conditions to mitigate greater adverse impacts, or revoke the CUPm if adverse impacts cannot be mitigated.
- N. In the event of the noncompliance with any of the conditions set forth herein, the Director may terminate all uses approved under this permit or halt their operation until all conditions are met or may declare this CUPm null and void or seek civil enforcement.

Dated at Honolulu, Hawaii, this 27th day of October, 2016.

Department of Planning and Permitting
City and County of Honolulu
State of Hawaii

By _____
Arthur D. Challacombe
Acting Director

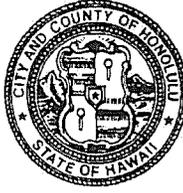
Attachments

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honolulu.gov • CITY WEB SITE: www.honolulu.gov

FILE

KIRK CALDWELL
MAYOR



KATHY K. SOKUGAWA
ACTING DIRECTOR

TIMOTHY F. T. HIU
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

June 7, 2019

2019/MOD-36(WA)
2016/CUP-49

Ms. Leslie McClain
Tetra Tech, Incorporated
737 Bishop Street, Suite 2340
Honolulu, Hawaii 96813

Dear Ms. McClain:

SUBJECT: Request for Minor Modifications
Minor Modification No. 2019/MOD-36
Conditional Use Permit No. 2016/CUP-49
Na Pua Makani Wind Project - Subproject B
56-452 Kamehameha Highway - Kahuku
Tax Map Key 5-6-006: 018

The request for minor modification received May 8, 2019, to the above-mentioned Conditional Use Permit (CUP) No. 2016/CUP-49, to modify the previously approved wind farm, is **APPROVED**, subject to the following conditions:

1. Operation and development of the wind farm, shall be in general conformance with the approved Project, as described herein and shown on plans and drawings labeled Exhibits B-1 through B-3 (received May 8, 2019), on file at the Department of Planning and Permitting (DPP). Any modification to the Project and/or approved plans shall be subject to the prior review and approval by the Director of the DPP. Minor modifications shall be processed in accordance with Land Use Ordinance (LUO) Section 21-2.20(k). Major modifications shall require a new Conditional Use Permit (CUP) and Zoning Waiver.
2. This application has only been reviewed and approved pursuant to the provisions of LUO Sections 21-2.90, (CUP), and 21-5.650(b) (Utility Installations, Type A); approval of this minor modification does not constitute compliance with other LUO or governmental requirements, including building and/or sign permit approval. These are subject to separate review and approval. The Applicant

APPENDIX "04"

shall be responsible for insuring that the final plans for the Project approved under these permits comply with all applicable coded and other governmental provisions and requirements.

3. Except as modified herein, the approved plans and conditions of Conditional Use Permit No. 2016/CUP-49, shall remain in force.
4. The Director may modify the conditions of this approval by imposing additional conditions, modifying existing conditions, or deleting conditions deemed satisfied upon a finding that circumstances related to the approved Project have significantly changed so as to warrant modification to the conditions of approval. In the event of the noncompliance with any of the conditions set forth herein, the Director may terminate all uses approved under this permit or halt their operation until all conditions are met or may disclose this permit null and void or seek civil enforcement.

The Applicant proposes to modify the height of four previously approved wind turbines. The original height for Turbine No. 6 was 590.5 feet and the original height for Turbine Nos. 7, 8, and 9 was 656.2 feet. The proposed height for all turbines will be lowered to 567.6 feet or 22.9- and 88.6-foot reductions. All of the turbines will still meet the setback requirements (see Exhibits B-1 through B-3).

On October 27, 2016, Conditional Use Permit No. 2016/CUP-49 was approved to allow a wind farm with four wind turbines.

Given the circumstances and conditions, the proposal is reasonable, consistent with the intent of the original Zoning Waiver, does not significantly increase the intensity of scope of the utility installation use, and does not create adverse land use impacts for the surrounding neighborhood.

Any party (to the case) wishing to appeal the Director's action must submit a written petition to the Zoning Board of Appeals (ZBA) within 30 calendar days from the date of mailing or personal service of the Director's written decision (ZBA Rules Relating to Procedure for Appeals, Rule 22-2, Mandatory Appeal Filing Deadline). Essentially, the ZBA rules require that a petitioner show that the Director based his/her action on an erroneous finding of a material fact, and/or that the Director acted in an arbitrary or capricious manner, or manifestly abused his/her discretion. Generally, the ZBA can only consider the evidence previously presented to the Director of the Department of Planning and Permitting (DPP). The filing fee for appeals to the ZBA is \$400 (payable to the City and County of Honolulu).

Ms. Leslie McClain
June 7, 2019
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Failure to comply with ZBA Rules Chapter 22, Procedure for Appeals, may result in the dismissal of the appeal. Copies of the ZBA rules are available at the DPP. Appeals should be addressed to:

Zoning Board of Appeals
c/o Department of Planning and Permitting
650 South King Street, 7th Floor
Honolulu, Hawaii 96813

Should you have any questions or need additional information concerning this Minor Modification, please contact William Ammons, of our staff, at 768-8025 or via email at wammons@honolulu.gov.

Very truly yours,


FOR Kathy K. Sokugawa
Acting Director

Enclosure: Receipt No. 122625
Exhibits B-1 through B-3

