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BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF

A Contested Case Hearing Re Final Habitat Conservation Plan and Incidental Take License for the Na Pua Makani Wind Energy Project by Applicant Na Pua Makani Power Partners, LLC; Tax Map Key Nos. (1) 5-6-008:006 and (1) 5-6-006:018, Ko'olauloa District, Island of O'ahu, Hawai'i

Case No. BLNR-CC-17-001

APPLICANT NA PUA MAKANI POWER PARTNERS, LLC'S **OPPOSITION TO KEEP THE NORTH SHORE COUNTRY'S MOTION AND MEMORANDUM TO RECUSE SAM GON III IN RESPONSE TO MINUTE ORDER NO. 13, FILED JANUARY 24, 2018; CERTIFICATE OF SERVICE**

**APPLICANT NA PUA MAKANI POWER PARTNERS, LLC'S
OPPOSITION TO KEEP THE NORTH SHORE COUNTRY'S
MOTION AND MEMORANDUM TO RECUSE SAM GON III IN
RESPONSE TO MINUTE ORDER NO. 13, FILED JANUARY 24, 2018**

Applicant Na Pua Makani Power Partners, LLC ("**Applicant**" or "**NPM**") submits this **Opposition** to Keep the North Shore Country's ("**KNSC**") Motion and Memorandum to Recuse Sam Gon III in Response to Minute Order No. 13, filed January 24, 2018 ("**Motion**"), under Hawai'i Administrative Rules ("**HAR**") § 13-1-34 and Minute Order No. 13.

I. INTRODUCTION

KNSC's Motion argues that Sam Gon III, a Member of the Board and Land and Natural Resources ("**Board**"), should recuse himself from participating in decision-making on

Applicant's Habitat Conservation Plan ("HCP") for two reasons: (1) because his participation violates HRS § 91-9(g) and § 91-13; and (2) that because Member Gon was a member of the Endangered Species Recovery Committee ("ESRC") that reviewed and recommended approval of the HCP to the Board, he is biased or prejudiced. Motion at 2-4. KNSC is mistaken.

Based on the applicable law discussed below, Member Gon is not required to recuse himself. First, the rule governing disqualification for these matters is contained in Hawai'i Revised Statutes ("HRS") § 84-14, and only requires disqualification where the decision-maker has a substantial financial interest that will benefit from the decision or serves as a representative for the Applicant or Project. No evidence exists to support either contention here. Second, there is no evidence that Member Gon has violated HRS § 91-9(g) or § 91-13, or that any statements made about his prior involvement as a member of the ESRC were improper. Third, *Liberty Dialysis-Hawaii, LLC v. Rainbow Dialysis, LLC* does not support recusal either directly or by analogy since there are no applicable agency recusal rules that conflict with HRS § 84-14, and HRS § 84-14 has not been violated. KNSC's Motion should therefore be denied.

II. ARGUMENT

A. MEMBER GON'S PARTICIPATION DOES NOT REQUIRE RECUSAL OR VIOLATE HRS § 91-9(g) OR § 91-13

1. The Correct Legal Standard of Conduct for Public Officers and Employees is Contained in HRS § 84-14

The controlling statutory provision over the issue raised here is HRS § 84-14(a), which governs conflicts of interest for public officers and employees, including members of the Board who are appointed by the Governor of the State of Hawai'i. See HRS § 84-2.¹ HRS § 84-14(a) states that no state employee shall take any official action *directly affecting*: "(1) A business or

¹ The Board does not have its own rules governing conflicts of interest or recusals. See Hawai'i Administrative Rules Title 13, Chapter 1.

other undertaking in which the employee has a substantial financial interest; or (2) A private undertaking in which the employee is engaged as legal counsel, advisor, consultant, representative, or other agency capacity." (Emphases added.)

In this case, there is absolutely no evidence that Member Gon has *any* (much less a substantial) financial interest that would be directly affected by the decision on Applicant's project, or otherwise is engaged as a representative of Applicant in any capacity.

HRS § 84-14(a) (emphasis added) further provides:

"A person whose position on a board, commission, or committee is mandated by statute, resolution, or executive order to have particular qualifications *shall only be prohibited from taking official action that directly and specifically affects a business or undertaking in which the person has a substantial financial interest*; provided that the substantial financial interest is related to the member's particular qualifications."

Member Gon was appointed to the ESRC based on his expertise as a conservation biologist. Tr. 01/12/18 at 45:5-10. Member Gon was appointed to the Board for his specific expertise and knowledge in native Hawaiian culture and traditional and customary practices. *See* HRS § 171-4(c); <https://dlnr.hawaii.gov/boards-commissions/blnr/member-samuel-ohu-gon-iii/>.

Under the applicable law, Member Gon would only need to recuse himself from considering this HCP if it is demonstrated that he has a substantial financial interest in the HCP's outcome. *See* HRS § 84-14(a). There is absolutely no evidence that Member Gon has a substantial financial interest in the outcome of this Project or involvement with this Applicant.

The Hawai'i Supreme Court's holding in *Liberty Dialysis-Hawaii, LLC v. Rainbow Dialysis, LLC* also does not require Member Gon to recuse himself in this situation. In *Liberty Dialysis*, the Court considered whether or not two administrators of the State Health Planning & Development Agency ("**SHPDA**") were required under the Department of Health's ("**DOH**") administrative rules to recuse themselves from decision-making on a reconsideration proceeding.

130 Hawai'i 95, 306 P.3d 140 (2013). The SHPDA granted a Certificate of Need ("CON") to Rainbow Dialysis ("Rainbow"). Administrator Terry participated in the initial decision on the CON, and the reconsideration proceeding brought by Liberty Dialysis-Hawaii ("Liberty"). Liberty argued that Administrator Terry should have been recused from the reconsideration proceeding on the basis that HAR § 11-1-25 barred a hearing officer from hearing or deciding a contested case in which he or she substantially participated in the decision or action contested. *See id.* at 96-97, 306 P.3d at 141-422. Liberty also argued that Reconsideration Committee member Trygstad should have recused herself because HAR § 11-1-25 disqualifies a hearing officer, director or member who is related within the third degree by blood or marriage to any party or party representative in a proceeding before the SHPDA. *Id.* With respect to Administrator Terry, the Court found that HAR § 11-1-25, the rule that Liberty argued was controlling, conflicted with HRS § 323D-47, which requires the SHPDA administrator to participate on the Reconsideration Committee, and that he was not required to recuse himself under HRS § 323D-47 or a separate DOH rule (HAR § 11-185-32), which was found to be consistent with the statute. *Id.* at 99, 306 P.3d at 144. As for Trygstad, the Court found that even though she was the sister in law of a witness who testified on behalf of Rainbow, because the witness was not a "party," she was not disqualified under the specific provisions of HAR § 11-1-25. *Id.* at 108-12, 306 P.3d at 153-57. Trygstad was also not required to recuse herself under HAR §11-185-32 because Liberty did not raise that argument. *Id.* at 112, 306 P.3d at 157.

Although *Liberty* is factually distinguishable on some points as it relates to this proceeding, the principles and analysis articulated by the Hawai'i Supreme Court apply. First, the Department of Land and Natural Resources ("DLNR") does not have separate rules governing disqualification or recusal of members of the Board. Thus, where the agency does not

have its own rules, HRS § 84-14 controls. Second, the Court in *Liberty* compared HAR § 11-185-32 with HRS § 84-14 and found that they were consistent. Third, the Court emphasized that under the DOH rule and HRS 84-14, the Legislature intended that State officials be disqualified from decision-making in very limited circumstances: where the decision-maker has a direct financial interest in a matter or is a representative of the party or project. *See id.* at 108, 306 P.3d at 153. Therefore, HRS § 84-14 does not require someone who participated in an underlying decision to recuse him or herself solely for that reason (and the Court in *Liberty* struck down such a rule as conflicting with HRS § 323D-47, although it appears the Court would have upheld the rule had it not conflicted with the statute). Here, the Board has no specific rule requiring recusal in this situation.

Nothing in *Liberty Dialysis* supports disqualification here. Accordingly, there is no requirement for Member Gon to recuse himself under HRS § 84-14.

2. Member Gon's Participation Does Not Violate HRS §§ 91-9(G) or 91-13

HRS § 91-9(g) or § 91-13 do not mandate Member Gon's recusal and KNSC cites to no authority supporting such a claim. KNSC argues that at the January 12, 2018 oral argument before the Board, Member Gon recited his experience and history, which KNSC considered to be outside of the record, and thus a violation of HRS § 91-9(g) or § 91-13 requiring his recusal and disqualification. Motion at 2-3. KNSC cites to statements made by Member Gon at the January 12, 2018 oral arguments *after* KNSC had already stated its intent to file this Motion and requested that Member Gon recuse himself based solely on his prior participation on the ESRC. *Id.* at 2. KNSC's arguments do not apply for several reasons.

First, under HRS § 91-9(e), the record consists of:

- (1) All pleadings, motions, intermediate rulings;
- (2) Evidence received or considered, including oral testimony, exhibits, and a statement of matters officially noticed;
- (3) Offers of proof and

rulings thereon; (4) Proposed findings and exceptions; (5) Report of the officer who presided at the hearing; (6) Staff memoranda submitted to members of the agency in connection with their consideration of the case.

The ESRC proceedings, as well as all evidence and testimony taken as part of the contested case proceeding, are part of the administrative record in this case. The ESRC is an advisory committee to the Board, thus a part of the same agency, whose specific function is to "serve as a consultant to the board and the department on matters relating to endangered, threatened, proposed and candidate species," including reviewing all HCPs and making recommendations to DLNR and the Board about whether or not to approve, amend, or reject the HCP. HRS § 195D-25(a) & (b)(1). In fact, the Board is statutorily required to consult with the ESRC and to consider the ESRC's recommendation before the Board can make its own decision on the HCP. *See* HRS §§ 195D-21(b)(1) and 195D-4(g) (providing for additional duties on the Board if it makes a decision on an HCP that is inconsistent with the ESRC's recommendation, and providing that the Board may issue an incidental take license only after consultation with the ESRC). Thus, considering ESRC proceedings cannot be improper or "outside of the record."

Second, all of the ESRC meetings are publicly noticed meetings subject to the Sunshine Law, HRS Chapter 92. It is disingenuous for KNSC to argue that available public record information from members of the ESRC and the ESRC proceedings are "outside of the record." KNSC had the full and complete opportunity to participate in those ESRC meetings and did in fact attend and participate. *See* Applicant's FOF 100, 248.²

Third, KNSC relies on Member Gon's statement about "[t]he fact that it does not show up in the HCP record . . ." as a basis for arguing that the information was in fact not in the *[administrative]* record. *See* Motion at 2-3. That is not the case. Member Gon's statements

² Applicant's Proposed Findings of Facts ("FOF"), Conclusions of Law ("COL") and Decision and Order was filed on September 11, 2017.

contain no new information that is not already in the record or information that was not otherwise available to the public and those who attended the ESRC meetings, including KNSC. Member Gon's actual statement that KNSC recites was this:

And then continuing on now, the idea that the ESRC did not consider other turbine projects and other bats and the ramifications of that on this particular case is probably erroneous. I mean, the fact that it doesn't show up in the HCP record kind of flies in the face of the fact that the ESRC went to visit as many of these projects in person to look at the areas that were being surveyed, to consider the records for each of those places, the different conditions and habitat, the – everything from the vegetation, to the wind, typical wind, behavior, and the like in order to assess what was most appropriate to apply to this particular HCP.

Tr. 01/12/18 at 47:8-20.

This statement is consistent with the evidence already in the record. First, the ESRC conducted a site visit on March 30, 2015 and surveyed the Project area, the purpose of the site visit being "to see what the site looks like on the ground, review the materials in the HCP, and provide comments to the applicant on the HCP." [Ex. A-33 (03/30/15 ESRC Meeting Minutes for the Site Visit) at 1; *see also* HO FOF 10;³ Ex. A-34 (03/31/15 ESRC Meeting Minutes) at 30-31; Ex. B-13 (11/1 & 2/16 ESRC Minutes) (showing that site visits are conducted for other project sites as well)]. Second, the record reflects that there is evidence: (a) that the ESRC discussed and considered that the take estimate for the Hawaiian hoary bat for this Project was based on the Kahuku wind farm's data, and (b) of the fact that the Kahuku wind project is adjacent to the project site, and has the same vegetation, topography, wind regime, and habitat as the proposed Project [*see, e.g.*, Ex. A-33 (03/30/15 ESRC Meeting Minutes for the Site Visit) at 1-6; Ex. A-34 (03/31/15 ESRC Meeting Minutes) at 33-34; Ex. A-2 (DLNR Staff Report) at 4;

³ The Hearing Officer's ("**HO**") Recommended Findings of Fact, Conclusions of Law, and Decision and Order was filed as Minute Order No. 11 on November 1, 2017 ("**Hearing Officer Recommendation**").

see also Ex. A-1 (HCP); Applicant FOF 68-101 (the extensive consultation done for the Project); Ex. A-55 (2015 Kahuku Annual Report); Ex. B-23 (Kahuku HCP);]. Third, the record reflects that the location, topography and vegetation [and wind regime] at the Kahuku wind farm "are the most influential factors in estimating the Project's potential take" of the Hawaiian hoary bat [HO FOF 193; Ex. A-29 (Oller WDT) at ¶ 34; Ex. A-1 at 41-42; Ex. A-27 (Snetsinger WDT) at ¶¶ 12-13; Vol. 1, Tr. 08/07/17 at 41:19-23]. All of this is in the existing record so there is no violation of HRS § 91-9(g) because the fact that the ESRC performs site visits to wind projects was not new information introduced at the January 12, 2018 meeting, as clearly reflected in the record.

Fourth, simply because Member Gon has prior experience on the ESRC and has knowledge of the agency's involvement with this Project, which information is fully documented and analyzed in the HCP and multiple public filings and hearing materials related to this proceeding, including a comprehensive EIS, this does not require Member Gon's recusal or disqualification. Expertise and knowledge in a particular area has been a long-standing consideration for persons serving on State agencies and boards. As the Hawai'i Supreme Court aptly stated in *Tangen v. State Ethics Comm'n*:

Finally, we approve of the Conflicts-of-Interest Act which appeared in 1 Harv.J.Legis. 68 (1974): . . . A well-drawn statute should prohibit conflicts of interest which are most damaging to the standards of good government *and yet not prohibit so much that competent people will be discouraged from serving. For example, a state would be hurt more than helped by a statute which in effect barred experts from serving on advisory boards.* Therefore the scope of the Act has been limited in certain areas where broad prohibitions would do more harm than good.

57 Haw. 87, 94, 550 P.2d 1275, 1280 (1976) (quoting 1 Harv.J.Legis. at 69) (quotation marks omitted); see also S. Stand. Comm. Rep. No. 670-72, in 1972 Senate Journal, Reg. Sess., at 1034-1035.

Lastly, KNSC argued the case of *Mauna Kea Power Co. v. BLNR*, 76 Hawai'i 259, 874

P.2d 1084 (1994), supports its position that the Board should allow KNSC to question DLNR staff and ESRC members regarding Member Gon's comments in order to cure the alleged violation of HRS §§ 91-9(g) and 91-13. This case is factually distinguishable from the instant matter. *Mauna Kea Power Co.* involved a situation where the Board made an independent site visit *after* the conclusion of a contested case hearing. 76 Hawai'i 259, 261, 874 P.2d 1084, 1086 (1994). For the same reasons as those stated above regarding alleged violations of HRS § 91-14(g), Member Gon has not violated HRS § 91-13 (which only prohibits consultation on the facts outside of the record by an agency official rendering a decision in a contested case hearing, unless there is notice and opportunity for all parties to participate). Member Gon's comments relate directly to facts and issues already in the administrative record. KNSC had the opportunity to cross-examine and present rebuttal witnesses and evidence on these matters in the contested case process, but chose not to or failed to call additional witnesses on these issues, and its position was never raised in questioning the agency witness or any other witness at the hearing.

B. MEMBER GON'S PARTICIPATION IN THE ESRC AND STATEMENTS MADE DURING THE JANUARY 12, 2018 ORAL ARGUMENTS DO NOT DEMONSTRATE BIAS OR PREJUDICE

The burden for a movant seeking recusal lies with the party seeking disqualification. *See Hawaii-Pac. Venture Capital Corp. v. Rothbard*, 437 F.Supp. 230, 234 (D. Haw. 1977). KNSC has not met its burden with demonstrable evidence of actual bias. Instead, KNSC posits that Member Gon's "demonstrated bias ... should preclude his participation in this contested case hearing," because (1) he was a member of the ESRC that recommended approval of the HCP, (2) the issues before the ESRC are virtually identical to those before the Board, and (3) he specifically made reference to knowledge that is not in the record when commented on his recollection of the record during the January 12, 2018 oral arguments. Motion at 2-4. None of those reasons demonstrate a bias by Member Gon as to the outcome of this proceeding.

First, KNSC offers no instance of any "demonstrated bias," simply an unsupported allegation that a Board member's prior position somehow imparts bias. As discussed, the ESRC is in fact a part of the DLNR, and the primary purpose of the ESRC is to review the same materials presented to the Board and give a recommendation to the Board on the HCP. Member Gon and the other members of the Board are certainly able to review and compare the evidence in the record to the findings of the ESRC. That is exactly what each Board member must do. There is no basis to say that Member Gon has already prejudged the outcome of the Board's deliberations based on his prior involvement with ESRC. No facts presented by KNSC to date demonstrate such actual or perceived bias here.

Second, Member Gon's participation in the prior ESRC recommendation and now as a member of the Board is pursuant to official action. Therefore, HRS § 84-14 is the sole governing statute applicable to any alleged conflicts of interest here. *See supra* Part II.A.1.

Third, there is nothing in Member Gon's disclosure that indicates that he will not or cannot be impartial in deliberations about the HCP and the evidence in the record. KNSC provides no definitive factual support to demonstrate bias. The mere fact that Member Gon served on the ESRC that initially recommended approval of the HCP that is now being considered by the Board based on evidence from a contested case hearing, does not equate to automatic bias towards the outcome.

In court actions, "the test for disqualification due to even the 'appearance of impropriety' is an *objective* one, based not on the beliefs of the petitioner or the judge, but on the assessment of a reasonable impartial onlooker apprised of all the facts." *State v. Ross*, 89 Haw. 371, 380, 974 P.2d 11, 20 (1998) (emphasis added). Thus, the alleged facts must be sufficient "for a sane and reasonable mind to fairly infer bias or prejudice." *Jou v. Shcmidt*, 117 Haw. 447, 483, 184

P.3d 792, 798 (App. 2008). In order to support a motion to disqualify a decision-maker for lack of impartiality, specific facts and reasons must be laid out; conclusory allegations and speculations are not sufficient. *Hawaii-Pac. Venture Capital Corp.*, 437 F.Supp. at 234. Here, KNSC provides no evidence of actual or perceived bias, only mere speculation. The simple fact that Member Gon served previously on the ESRC, and reviewed this HCP before the contested case hearing evidence was taken and considered, does not automatically mean he is biased. No evidence exists that Member Gon cannot objectively review the record from the contested case proceeding and properly evaluate this matter.

Member Gon's statements at the January 12, 2018 oral arguments affirmed that he will be impartial in his decision-making and open minded about all of the evidence in the record:

The idea of my ability to take in fresh information and provide for an opinion on this particular case is not in question. I enjoy looking at new information, considering whether or not it provides a significant deviation from what has already been known at the time. I'm actually in a really good position to determine whether or not what I hear today, what I've read in the contested case information does represent relatively new information. So the decision was made in consultation with the AG for me to remain in this deliberation.

Tr. 01/12/18 at 46:14-47:7.

There is no indication that Member Gon has prejudged this matter based on his participation on the ESRC. There is no reason to think a respected member of the Board and former member of the ESRC, appointed for his expertise in biology and the Hawaiian hoary bat in particular, is not going to make an objective, impartial decision. Even though the Hearing Officer Recommendation differed from the recommendation of the agencies and the ESRC, the consideration of competing positions alone is not sufficient to require recusal. *See Matter of Beverly Hills Bancorp Commercial Paper Holders v. Rw Hine*, 752 F.2d 1334, 1341 (9th Cir. 1984); *State v. Ortiz*, 981 P.2d 1127, 91 Hawai'i 181 (1999).

Furthermore, although KNSC attempts to show that Member Gon's vote to recommend approval of the HCP while he was on the ESRC amounts to prejudgment under the *Mauna Kea Anaina Hou v. Bd. of Land and Natural Res.* case, 136 Hawai'i 376, 363 P.3d 224 (2015), that case is factually distinguishable from the instant proceeding. In *Mauna Kea Anaina Hou*, the Board's decision to conditionally grant a conservation district use permit prior to holding a contested case hearing was reversed and found to be a violation of due process. *Id.* at 391, 363 P.3d at 239. As KNSC quotes, contested case "procedures are designed to ensure that the record is fully developed and subjected to adversarial testing before a decision is made. Yet that purpose is frustrated if, as was the case here, the decision-maker rules on the merits before the factual record is even developed." *Id.*

In this case, we do not have a situation where the decision-maker is making a decision before the record has been developed. The decision-maker on this HCP is the *Board*. See HRS §§ 195D-4(g), 195D-21. The statutory process under HRS Chapter 195D requires the ESRC to make a recommendation on the HCP to the Board, based on the information presented to the ESRC. HRS § 195D-25. The ESRC did that. Following the ESRC's recommendation and upon request by KNSC, the Board, prior to decision-making on the HCP, granted the contested case proceeding. The evidentiary portion of the contested case is complete and the decision on the HCP is now before the Board. There is no evidence of prejudgment by this Board.

Member Gon does not have a disqualifying interest under HRS § 81-14. His statements at the hearing on January 12, 2018 do not rise to the level of conduct to show bias or prejudgment on the HCP.

C. KNSC'S REQUEST IS UNTIMELY AND CALCULATED FOR DELAY

KNSC was aware of Member Gon's participation on the ESRC when it requested the contested case hearing back in October 2016. See Motion at 4-5. KNSC did not formally object

to Member Gon's participation at that time. If KNSC had a problem with Member Gon's participation or doubted his impartiality, the time to seek recusal on such grounds was at the outset. Nothing has changed about the recusal-related issues belatedly raised by KNSC now, as they existed before the matter became a contested case hearing. Based on KNSC's failure to object in a timely manner earlier, KNSC has waived this argument and should be estopped from seeking recusal for the first time some 15 months after it requested the contested case hearing in October 2016, which Member Gon voted on. Waiting until the January 12, 2018 oral arguments, the very last step in the process before the Board considers the HCP, to seek recusal of Member Gon for *the first time* reflects KNSC's desire to delay a final decision on this HCP, knowing that any delay may jeopardize the financial viability of this renewable energy wind project which relies on certain tax credits that will expire in the near future.

KNSC's additional request in its Motion is to be given an opportunity to (a) question DLNR staff members, (b) question the ESRC members, and (c) present this corrected information to the Board. This would simply further delay a final decision in this matter.

KNSC's motivations appear disingenuous because of the contradictory positions taken by KNSC. KNSC's Motion challenges the basis for the ESRC approval, *see* Motion at 4 ("It is that committee's [ESRC] recommendation that the hearing officer and Keep the North Shore Country found to be lacking."), but at oral argument, counsel represented that it was not questioning the ESRC's decision. *See* Tr. 01/12/18 at 48:16-21 ("And I just wanted to say one last thing is that there's nobody on our side who is saying that the [ESRC] didn't do their job. You folks work very hard. What we're saying is the applicant didn't meeting their burden.").

For the record, Applicant again notes that the hearing officer did *not* find that the ESRC's recommendation was lacking and did not make a single finding of fact or conclusion of law that

the ESRC's recommendation was in any manner wrong or was not supported by the evidence in the record. If KNSC is not in fact challenging the ESRC's recommendation directly, then there is no reason for Member Gon to recuse himself on the basis of his participation on the ESRC's initial review and recommendation.

In sum, there is no basis to allege that Member Gon cannot or will not perform his Board functions ethically and properly, and otherwise there is no legal basis to disqualify him based on the governing statutory language in HRS § 81-14.

III. CONCLUSION

For these reasons, Member Gon is not required to recuse himself from this proceeding on the basis of any alleged bias and Applicant respectfully requests the Board to deny the Motion.

DATED: Honolulu, Hawai'i, January 31, 2018.



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BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF

A Contested Case Hearing Re Final Habitat Conservation Plan and Incidental Take License for the Na Pua Makani Wind Energy Project by Applicant Na Pua Makani Power Partners, LLC; Tax Map Key Nos. (1) 5-6-008:006 and (1) 5-6-006:018, Ko'olauloa District, Island of O'ahu, Hawai'i

Case No. BLNR-CC-17-001

CERTIFICATE OF SERVICE

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The undersigned certifies that the above-referenced document was served upon the following parties by email unless indicated otherwise:

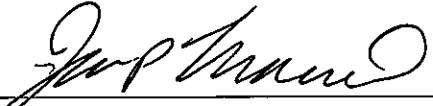
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