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Attorneys for Keep the North Shore Country

BOARD OF LAND AND NATURAL RESOURCES
STATE OF HAWAII

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, Koolauloa District, Island of
O'ahu, Hawai'i.

Case No. BLNR-CC-17-001

KEEP THE NORTH SHORE COUNTRY'S
MOTION FOR EXTENSION OF
DEADLINE; CERTIFICATE OF SERVICE

CONTESTED CASE HEARING

DATE: AUGUST 7, 2017

TIME: 9:00 A.M.

HEARING OFFICER: YVONNE Y. IZU

**KEEP THE NORTH SHORE COUNTRY'S MOTION
FOR EXTENSION OF DEADLINE**

Keep the North Shore Country moves for an extension of the deadline for the filing of Proposed Findings of Fact, Conclusions of Law, and Decision & Order as well as the Closing Brief. The deadline is currently set for September 8, 2017 — which was supposed to be almost four weeks after the transcripts of the contested case hearing were going to be available. Keep the North Shore County requests that the deadline be extended until September 29, 2017.

Apparently, the transcript was made available to the Division of Forestry and Wildlife, the deputy attorney general for this contested case hearing and the hearing officer on August 16, 2017. Despite repeated requests from Keep the North Shore Country, DOFAW staff have

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refused to make the transcript available.

HRS § 92F-12(a) states: “(a) Any other provision in this chapter to the contrary notwithstanding, **each agency shall make available for public inspection and duplication during regular business hours:** . . . (16) Information contained in or compiled from a **transcript**, minutes, report, or summary of a proceeding open to the public.” HAR § 13-1-9(a) states, “**All government records of the board shall be available for inspection** in the office of the board, Honolulu, Hawaii, during established office hours unless public inspection of these records is prohibited by law[.]” HAR § 13-1-9(b) states, “Photocopies of government records shall be made and given by the chairperson to any person upon request and upon payment of the fees established by law.” Two opinions of the Office of Information Practices establish that the public has the right to copies of transcripts prepared in the course of a contested case hearing. OIP Opinion Letter No. 95-22 and 96-1.


Despite the plain language of HRS § 92-15 (“any other provision in this chapter to the contrary notwithstanding”— i.e., notwithstanding any requirement enacted pursuant to HRS § 92F-42), DOFAW, upon the advice of its attorney general, is requiring that Keep the North Shore Country wait ten days until after its written request before it can review the transcript. An unnecessary formal written request was submitted on August 22, 2017. Ten business days after August 22 is September 6 — two days before the current deadline.

DOFAW’s refusal to make the transcripts available promptly is arbitrary and petulant. If DOFAW was able to promptly make the transcripts available to its deputy attorney and the hearing officer, there is no practical impediment to its providing the transcript to Keep the North Shore Country immediately.

Given DOFAW’s obstinacy, Keep the North Shore Country must request that the

deadline be extended so that its due process rights are not impacted. There is no justifiable reason that Keep the North Shore Country should be forced to pay exorbitant rates to a court reporter to preserve its due process rights. Forcing it do so is prejudicial. If the attorney general's office and DOFAW are not going to change their mind, then the current deadline must be extended.

DATED: Honolulu, Hawai'i, August 23, 2017.



David Kimo Frankel
Maxx E. Phillips
Attorneys for Keep the North Shore Country

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, Koolauloa District, Island of O'ahu, Hawai'i.

Case No. BLNR-CC-17-001

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Keep The North Shore Country's motion for an extension of the deadline was duly served upon the following parties, by Hand Delivery, U.S.

Mail, postage prepaid, or electronically, on August 23, 2017, at the addresses below:

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DATED: Honolulu, Hawai'i, August 23, 2017.



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