

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

IN THE MATTER OF ) Case No. BLNR-CC-17-001  
)  
A Contested Case Hearing Re Final Habitat ) MINUTE ORDER NO. 6; CERTIFICATE  
Conservation Plan and Incidental Take License ) OF SERVICE  
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, Hawaii. )  
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MINUTE ORDER No.6

ISSUES

Following is the Hearing Officer’s list of issues to be addressed in this contested case. Na Pua Makani Power Partners, LLC, the applicant in this case, has the burden of proof.

Any exceptions to the list of issues to allocation of the burden of proof shall be filed no later than Friday, May 5, 2017.

ISSUES

- I. Will the Habitat Conservation Plan (“HCP” or plan) further the purposes of HRS chapter 195D by protecting, maintaining, restoring, or enhancing identified ecosystems, natural communities, or habitat types upon which endangered, threatened, proposed, or candidate species depend within the area covered by the plan? HRS § 195D-21(b)(1)(A).
- II. Will the HCP increase the likelihood of recovery of the endangered or threatened species that are the focus of the HCP? HRS § 195D-21(b)(1)(B).
- III. Does the HCP satisfy all the requirements of HRS Chapter 195D? HRS § 195D-21(b)(1)(C).
  - A. Does the HCP identify the geographic area encompassed by the plan; the ecosystems, natural communities, or habitat types within the plan areas that are the focus of the plan; and the endangered, threatened, proposed, and candidate species known or reasonably expected to be present in those ecosystems, natural communities, or habitat types in the plan area? HRS § 195D-21(b)(2)(A).

- B. Does the HCP describe the activities contemplated to be undertaken within the plan area with sufficient detail to allow DLNR to evaluate the impact of the activities on the particular ecosystems, natural communities, or habitat types within the plan area that are the focus of the plan? HRS § 195D-21(b)(2)(B).
- C. Does the HCP identify the steps that will be taken to minimize and mitigate all negative impacts, including without limitation, the impact of any authorized incidental take, with consideration of the full range of the species on the island so that cumulative impacts associated with the take can be adequately assessed; and the funding that will be available to implement those steps? HRS § 195D-21(b)(2)(C).
- D. Does the HCP identify those measure or actions to be undertaken to protect, maintain, restore, or enhance the ecosystems, natural communities, or habitat types within the plan area; a schedule for implementation of the measure or actions; and an adequate funding source to ensure that the actions or measures, including monitoring, are undertaken in accordance with the schedule? HRS § 195D-21(b)(2)(D).
- E. Is the HCP consistent with the goals and objectives of any approved recovery plan for any endangered or threatened species known or reasonably expected to occur in the ecosystems, natural communities, or habitat types in the plan area? HRS § 195D-21(b)(2)(E).
- F. Does the HCP provide reasonable certainty that the ecosystems, natural communities, or habitat types will be maintained in the plan area, throughout the life of the plan, in sufficient quality, distribution, and extent to support within the plan area those species typically associated with the ecosystems, natural communities, or habitat types, including any endangered, threatened, proposed, and candidate species known or reasonably expected to be present in the ecosystems, natural communities, or habitat types within the plan area? HRS § 195D-21(b)(2)(F).
- G. Does the HCP contain objective, measurable goals, the achievement of which will contribute significantly to the protection, maintenance, restoration, or enhancement of the ecosystems, natural communities, or habitat types; time frames within which the goals are to be achieved; provisions monitoring (such as field sampling techniques), including periodic monitoring by representatives of DLNRT or the endangered species recovery committee, or both; and provisions for evaluating progress in achieving the goals quantitatively and qualitatively? HRS § 195D-21(b)(2)(G).
- H. Does the HCP provide for an adaptive management strategy that specifies the actions to be taken periodically if the plan is not achieving its goals? HRS § 195D-21(b)(2)(H).

IV. Based on the best scientific and reliable data available, will the cumulative activities to be undertaken within the areas covered by the HCP not be environmentally beneficial? HRS § 195D-21(c).

V. Will implementation of the HCP likely to jeopardize the continued existence of any endangered, threatened, proposed, or candidate species identified in the plan area? HRS § 195D-21(c)(1).

VI. Will implementation of the HCP likely to cause any native species not endangered or threatened at the time of plan submission to become threatened or endangered? HRS § 195D-21(c)(2).

VII. Does the HCP contain sufficient information for the BLNR to ascertain with reasonable certainty the likely effect of the plan upon any endangered, threatened, proposed, or candidate species in the plan area and throughout its habitat range? HRS § 195D-21(c).

VIII. Was the public notified of the proposed HCP through the periodic bulletin of the office of environmental quality control, and was the proposed HCP and application available for public review and comment for at least 60 days prior to approval? HRS § 195D-21(a).

- A. Did the notice in the OEQC bulletin identify the area encompassed by the HCP, the proposed activity, and the ecosystems, natural communities, and habitat types within the plan area? HRS § 195D-21(a).
- B. Did the notice in the OEQC bulletin solicit public input and relevant data? HRS § 195D-21(a).

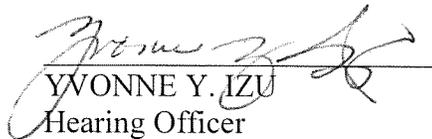
IX. Does the HCP meet the criteria of HRS § 195D-4(g)?

- A. Was the HCP developed after consultation with the endangered species recovering committee? HRS § 195D-4(g).
- B. Is the take authorized by the incidental take license incidental to, and not the purpose of, the carrying out of an otherwise lawful activity? HRS § 195D-4(g).
- C. Is the applicant required, to the maximum extent practicable, minimize and mitigate the impacts of the take? HRS § 195D-4(g)(1).
- D. Is there a guarantee that the applicant will provide adequate funding for the HCP? HRS § 195D-4(g)(2).
- E. Is the applicant required to post a bond, provide an irrevocable letter of credit, insurance, or surety bond, or provide other similar financial tools, including depositing a sum of money in the endangered species trust fund created under

HRS § 195D-31, or provide other means approved by the Board, adequate to ensure monitoring of the species by the State and to ensure that the applicant takes all actions necessary to minimize and mitigate the impacts of the take? HRS § 195D-4(g)(3).

- F. Does the HCP increase the likelihood that the species will survive and recover? HRS § 195D-4(g)(4).
- G. Does the HCP take into consideration the full range of the species on the island so that cumulative impacts associated with the take can be adequately assessed? HRS § 195D-4(g)(5).
- H. Will the measures required under HRS § 195D-21(b) be met, and has the Department required, and received, any other assurances that the plan will be implemented? HRS § 195D-4(g)(6).
- I. Does the activity, which is permitted and facilitated by issuance of the incidental take license involve the use of submerged lands, mining, or blasting? HRS § 195D-4(g)(7).
- J. Will the cumulative impact of the activity, which is permitted and facilitated by issuance of the incidental take license, provide net environmental benefits? HRS § 195D-4(g)(8).
- K. Is the take likely to cause the loss of genetic representation of an affected population of any endangered, threatened, proposed, or candidate plant species? HRS § 195D-4(g)(9).
- L. Was a public hearing held on this matter on Oahu? HRS § 195D-4(g).

DATED: Honolulu, Hawai'i, April 27, 2017.

  
YVONNE Y. IZU  
Hearing Officer

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of Minute Order No. 5 was duly served upon the following parties, by Hand Delivery, U.S. Mail, postage prepaid, or electronically, at the addresses below:

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DATED: Honolulu, Hawai'i, April \_\_, 2017.

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KATHERINE CULLISON  
Department of Land and Natural Resources