

RECEIVED APR 10 2017

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. 3;
Conservation Plan and Incidental Take License)	ATTACHMENTS A THROUGH D;
for the Na Pua Makani Wind Energy Project by)	CERTIFICATE OF SERVICE
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.)	
)	

MINUTE ORDER NO. 3

STANDING AND FIRST PRE-HEARING CONFERENCE

The Board of Land and Natural Resources (“Board”) approved holding a contested case based on the petition filed by Keep the North Shore Country on the Request for Approval of a habitat conservation plan and incidental take license in connection with Na Pua Makani’s Wind Energy Project. Additionally the Board authorized the consolidation of four petitions filed by the following entities with the contested case for Keep the North Shore Country.

- Elizabeth Rago (Attachment A)
- Kahuku Community Association through Kent Fonoimoana (Attachment B)
- Makani Pono `O Kahuku through Kent Fonoimoana (Attachment C)
- Kent Fonoimoana (Attachment D)

However, the Board did not determine that these four petitioners had standing, but instead directed the Hearing Officer to make that determination.

STANDING

Objections to any of the four petitioners participating in the contested case shall be filed no later than the close of business on **Monday, April 17, 2017**.

Responses to objections shall be filed no later than the close of business on **Monday, April 24, 2017**.

A hearing on standing will be held on Thursday, April 27, 2017 beginning at 1:00 pm in the BLNR Board Room, Kalanimoku Building, 1151 Punchbowl Street, Honolulu, Hawai`i.

PRE-HEARING CONFERENCE

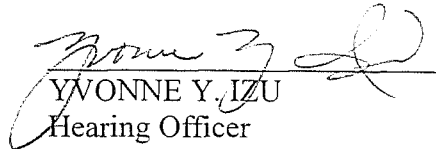
Immediately following the hearing on standing, there will be a pre-hearing conference, the primary purpose of which will be to establish a schedule for the contested case. Please bring your calendars with you.

FILINGS

All documents filed in this case shall use the caption above. One original and one copy shall be filed with James Cogswell at 1151 Punchbowl Street, Room 325, Honolulu, Hawaii 96813. Electronic copies shall be sent to the Hearing Officer at yizu@moriharagroup.com and to the Deputy Attorney General at cindy.y.young@hawaii.gov.

Service on the parties shall be as set forth in the attached Certificate of Service.

DATED: Honolulu, Hawai'i, April 6, 2017.


YVONNE Y. IZU
Hearing Officer

ATTACHMENT A



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

OFFICIAL USE ONLY	
Case No.	Date Received
Board Action Date / Item No.	Division/Office

INSTRUCTIONS:

- File (deliver, mail or fax) this form within ten (10) days of the Board Action Date to:

Department of Land and Natural Resources
Administrative Proceedings Office
1151 Punchbowl Street, Room 130
Honolulu, Hawaii 96813
Phone: (808) 587-1496, Fax: (808) 587-0390
- DLNR's contested case hearing rules are listed under Chapter 13-1, HAR, and can be obtained from the DLNR Administrative Proceedings Office or at its website (<http://dlnr.hawaii.gov/forms/contested-case-form/>). Please review these rules before filing a petition.
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- All materials, including this form, shall be submitted in three (3) photocopies.

RECEIVED
 2016 NOV 21 10:15 AM
 DEPARTMENT OF LAND AND NATURAL RESOURCES
 ADMINISTRATIVE PROCEEDINGS OFFICE

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name Elizabeth J. Rago	2. Contact Person Elizabeth J. Rago	
3. Address 56-331 Kekauoha St	4. City Kahuku	5. State and ZIP HI
6. Email elizabethrago@gmail.com	7. Phone 808-271-9011	8. Fax

B. ATTORNEY (if represented)		
9. Attorney Name	10. Firm Name	
11. Address	12. City	13. State and ZIP
14. Email	15. Phone	16. Fax

C. SUBJECT MATTER	
<p>17. Board Action Being Contested Approval of incidental take license and conservation habitat plan for Napua Makani wind energy project on the island of O'ahu</p>	
<p>18. Board Action Date October 28, 2016</p>	<p>19. Item No. C-2</p>
<p>20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action I will be directly and immediately affected by the proposed action because my home is two blocks from the proposed wind farm. The turbine flicker would adversely affect me as the flicker and the "woosh" sound being reported by my neighbors as causing symptoms of imbalance, exhaustion, ringing in ears, and sleeplessness. Furthermore, my property's value will decline 12 percent if the proposed action moves forward. I will be directly and immediately affected by the proposed action because The Hawaiian hoary bat is important to me as it provides natural pest control by eating mosquitoes in our neighborhood and by spreading seeds. Most important regarding these bats are the genealogical connection to the indigenous peoples of Hawai'i have with the Hoary bats. They are the manifestation of Kanaloa, God of the ocean and an ancestor of native Hawaiians. They are our legacy and as such, we have a responsibility to mālama them.</p>	
<p>21. Any Disagreement Petitioner May Have with an Application before the Board</p> <p>In proposing the number of take for the Hoary bats, Na Pua Makani used the take per turbine in the existing Sun Edison project to determine the proposed take for this project. However, they did so without taking into account that their proposed turbines currently stands significantly taller with blades that are significantly longer than the blades on the Sun Edison's project. The current proposal for the number of Hoary bats allowed to kill does not take into consideration that these proposed turbines have blades that are significantly longer than the turbines currently in existence in Kahuku and that since they are larger, they will kill more bats.</p> <p>The proposed HCP does not provide evidence that the proposed research or the short-term Poamoho Ridge management actions would increase the population of bats on O'ahu by one bat, let alone 51 bats. The proposed removal of pigs at Poamoho Ridge, for instance, is likely to reduce mosquito prey availability, so bat numbers at the mitigation site may decline rather than increase. The proposed "mitigation" may harm the species rather than benefit it. The proposed research will not, in itself, result in any increase in bat numbers on Oahu. There is no mention of any required increases in bat detection at Poamoho Ridge in the HCP measures of success. As it's currently written, the HCP does not require the applicant to undertake any action that would increase bat numbers to offset the requested level of bat take.</p> <p>The page 65, section 6.3.1 Net Benefit section of the proposed HCP (http://dlnr.hawaii.gov/wildlife/files/2013/09/Item-6-Na-Pua-Makani-Final-HCP.pdf) indicates: "Funding for Hawaiian hoary bat research provides a net benefit to the species by increasing the knowledge base about the species, thus allowing for more effective mitigation and conservation efforts...". Although the proposed research could inform what this applicant could do to mitigate for take of the bat, the research in and of itself would not have a tangible benefit to a bat. The research would not increase the Oahu bat population by even one bat. If research must be completed to figure out how to mitigate for take of the bat, then that research would need to be completed and a bat conservation project based on the results of the research, with some anticipated actual benefit to the bat, would need to be incorporated into the HCP as proposed conservation actions before the HCP will meet incidental take license issuance criteria pursuant to Hawaii Revised Statute §195D-4</p>	

(g). Implementation of the actions specified in the proposed wind farm HCP, as it's currently written, would not mitigate the impacts of the take of 51 bats, would not increase the likelihood the endangered bat species will survive and recover, and would not provide a net environmental benefit to the bat. I therefore advise the Board against issuing the incidental take license based on the current draft of the HCP.

(Hawaii State Law Background Information: Pursuant to Hawaii Revised Statute §195D-4 (g) (http://www.hawaii.edu/ohelo/statutes/HRS195D/HRS_195D-4.htm), the Board may only issue an incidental take license provided that:

- (1) The applicant, to the maximum extent practicable, shall minimize and mitigate the impacts of the take;
- (2) The applicant shall guarantee that adequate funding for the plan will be provided;
- (3) The applicant shall post a bond, or deposit a sum of money in the fund created by section 183D-10.5, adequate to ensure monitoring of the species by the State and to assure that the applicant takes all actions necessary to minimize and mitigate the impacts of the take;
- (4) The plan shall increase the likelihood that the species will survive and recover;
- (5) The plan takes into consideration the full range of the species on the island so that cumulative impacts associated with the take can be adequately assessed;
- (6) The measures, if any, required under section 195D-21(b) shall be met, and the department has received any other assurances that may be required so that the plan may be implemented;
- (7) The activity, which is permitted and facilitated by issuing the license to take a species, does not involve the use of submerged lands, mining, or blasting;
- (8) The cumulative impact of the activity, which is permitted and facilitated by the license, provides net environmental benefits; and
- (9) The take is not likely to cause the loss of genetic representation of an affected population of any endangered, threatened, proposed, or candidate plant species.

22. Any Relief Petitioner Seeks or Deems Itself Entitled to

The Board should send the application back to the Endangered Species Recovery Committee for revision to incorporate the Hawaiian hoary bat mitigation required by State Law (HRS 195D

23. How Petitioner's Participation in the Proceeding Would Serve the Public Interest

The contested case provides an avenue that, when compared to litigation, may enable the HCP to come into conformance with state law in a more timely manner.

Nov 17, 2016

Industrial Wind Turbines Killing Culturally Significant Winged Creatures in Hawai'i

Aloha nui mai kākou,

My name is Tēvita 'Ō. Ka'ili and I am a resident of Kahuku Ahupua'a. I am also a strong advocate for clean, green, and renewable energy for our 'āina. As a cultural anthropologist and a descendant of our ancestors Tangaloa (Kanaloa), Māui, and Hina, I have become quite concerned that industrial wind turbines in Hawai'i have killed close to 100 of our culturally significant birds, bats, and moths (see chart). Many of these beautiful winged creatures are identified in the Kumulipo (Hawaiian Creation Chant) and other Polynesian creation stories as indigenous, as ancestors, as protectors, as creators, and as our elders. Some are 'aumākua (ancestral gods), makua (parent birds), keiki (children of parent birds), kia'i (guardian/caretaker birds), and others are kinolau (body forms) of principal gods in Oceania. Below is a chart of nearly 100 culturally significant winged creatures killed by the largest industrial wind turbines in Hawai'i from 2007 to 2014. This data is based on the list obtained by KITV from the U.S. Fish and Wildlife Service (Source: <http://www.kitv.com/blob/view/-/25786724/data/1/-/n01e00z/-/Windmill-kills-animals-PDF.pdf>). These are the reported numbers. It is likely that the numbers are much higher.

Based on the data, industrial wind turbines are killing 'Ōka'i (Blackburns Sphynx Moths), Kōlea (Pacific Golden Plovers), 'Iwa (Great Frigatebirds), Koa'e Kea (White-tailed Tropicbirds), Nēnē (Hawaiian Geese), Pueo (Hawaiian Owls), 'Ōpe'ape'a (Hawaiian Hoary Bats), 'Ua'u (Hawaiian Petrel), and 'Ua'u Kani (Wedge-tailed Shearwater). As you know, most of these winged creatures are 'Ōiwi (Indigenous/Native) to Hawai'i and are also recognized in the Kumulipo as kūpuna (ancestors). In the Kumulipo, the Nēnē and Pueo are kia'i, guardian/caretaker birds. The 'Iwa is a makua, parent bird, and the Kōlea and Koa'e Kae as keiki, children of parent birds. In Hawaiian tradition, the Kōlea, Pueo, and 'Ua'u are 'aumākua, deified ancestral guardians, who protect and give guidance to their descendants. The Kōlea, known as Tuli in Sāmoan and Kiu in Tongan, is identified in Sāmoan and Tongan creation stories as an embodiment of the ancestral god Tagaloa/Tangaloa – a major pan-Polynesian god who is known as Kanaloa in Hawaiian and recognized in the Kumulipo as an ancestor (KL line 615). The 'Ōpe'ape'a (Hawaiian Hoary Bat) is a kinolau (body form) of Kanaloa in Hawaiian tradition. All of these winged creatures are our relatives and legacy of our common Polynesian cultures. It is our responsibility to mālama them. The United Nations recognizes the right of Indigenous Peoples to maintain and protect their cultural heritage (UNDRIP, Article 31). I urge the Board of Land and Natural Resources to send the Napua Makani application back to the Endangered Species Recovery Committee for revision to incorporate the Hawaiian hoary bat mitigation required by State Law (HRS 195D).

Mahalo nui,

Tēvita 'Ō. Ka'ili

Tēvita 'Ō. Ka'ili, PhD.




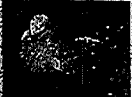





Associate Professor, Brigham Young University Hawai'i

International Cultural Studies – Cultural Anthropology

Jonathan Nāpela Center for Hawaiian & Pacific Islands Studies – Pacific Islands Studies

**Culturally Significant Manu (Winged Creatures) Killed by
Industrial Wind Turbines in Hawai'i
August 2007 – March 2014**

(Data Obtained by KITV from U.S. Fish & Wildlife Service)

Hawaiian Name	English Name	Scientific Name	*Kumulipo: Hawaiian Creation Chant	Cultural Significance	Photo (www.fws.gov)	# Killed
'Ōka'i	Blackburn's Sparrow-Moth	<i>Manduca blackburni</i>		'Ōwi – indigenous to Hawai'i		1
Kōlea	Pacific Golden Plover	<i>Pluvialis fulva</i>	KL line 298	'Aumakua – ancestral god Keiki – child bird of the Uluk (Snipe)		4
'Iwa	Great Frigatebird	<i>Fregata minor</i>	KL line 317	Makua – parent bird of the Keake bird		2
Koa'e Kea	White-tailed Tropicbird	<i>Phaethon lepturus darrotheae</i>	KL line 318	Keiki – child bird of the 'Iwa		15
Nēnē	Hawaiian Goose	<i>Branta sandwichensis</i>	KL line 329	Kia'i – guardian bird of the Hehe 'Ōwi – indigenous to Hawai'i		3
Pueo	Hawaiian Owl	<i>Asio flammeus sandwichensis</i>	KL line 361	'Aumakua – ancestral god Kia'i – guardian bird of Neio 'Ōwi – Indigenous to Hawai'i		4
'Ope'ape'a	Hawaiian Hoary Bat	<i>Lasiurus hinertsi semotis</i>	KL lines 590 591, 591-592	Kinohao – body form of Kanaloa 'Ōwi – indigenous to Hawai'i		1
'Ua'u	Hawaiian Petrel	<i>Pterodroma sandwichensis</i>		'Aumakua – ancestral god 'Ōwi – indigenous to Hawai'i		4
'Ua'u kani / Hō'io	Wedge-tailed Shearwater	<i>Puffinus pacificus</i>		'Ōwi – indigenous to Hawai'i		3
Total						93

*KL – Creature is culturally identified in Kumulipo (KL) line.

ATTACHMENT B



STATE OF HAWAII
 BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

NOV 21 PM 1:51
 DEPARTMENT OF LAND AND NATURAL RESOURCES
 STATE OF HAWAII

OFFICIAL USE ONLY	
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A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name Kahuku Community Association	2. Contact Person Kent Fonoimoana	
3. Address PO Box 007	4. City Kahuku	5. State and ZIP Hi 96731
6. Email kent@trisland.com	7. Phone 808-294-9991	8. Fax

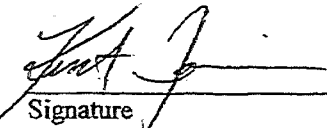
B. ATTORNEY (if represented)		
9. Attorney Name James H. Wright	10. Firm Name Law Offices of James H. Wright	
11. Address 745 Fort St. Ste. 1925	12. City Honolulu	13. State and ZIP Hi 96813
14. Email wright@hawaii.rr.com	15. Phone 808-523-1127	16. Fax 808-523-1127

C. SUBJECT MATTER

17. Board Action Being Contested Approval of Incidental Take License and Final Habitat Conservation Plan for Na Pua Makani Wind Energy Project by Applicants Na Pua Makani Power Partners, LLC and the former Champlin Hawaii Wind Holdings, LLC; Tax Map Key Nos. (1) 5-6-06:018 and (1) 5-6-08:006, Koolauloa District, Island of O'ahu, Hawai'i.	
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23. How Petitioner's Participation in the Proceeding Would Serve the Public Interest We are the public. As members of the public, we are invested in the Kahuku community and interested in issues that impact us.	
24. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR See criteria at §13-1-31 HAR (b 1-3).	

Check this box if Petitioner is submitting supporting documents with this form.

Check this box if Petitioner will submit additional supporting documents after filing this form.

Kent Fonoumora  11-19-2016
Petitioner or Representative (Print Name) Signature Date



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

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- All materials, including this form, shall be submitted in three (3) photocopies.

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name Makani Pono 'o Kahuku	2. Contact Person Kent Fonoimoana	
3. Address PO Box 122	4. City Laie	5. State and ZIP Hi 96762
6. Email kent@trisland.com	7. Phone 808-294-9991	8. Fax

B. ATTORNEY (if represented)		
9. Attorney Name James H. Wright	10. Firm Name Law Offices of James H. Wright	
11. Address 745 Fort St. Ste. 1925	12. City Honolulu	13. State and ZIP Hi 96813
14. Email wright@hawaii.rr.com	15. Phone 808-523-1127	16. Fax 808-523-1127

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Check this box if Petitioner will submit additional supporting documents after filing this form.

Kent Foncannon *Kent Foncannon* 11-19-2016
 Petitioner or Representative (Print Name) Signature Date

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Kent Fonouma *Kent Fonouma* *11-19-2016*
Petitioner or Representative (Print Name) Signature Date

ATTACHMENT D



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14. Email wright@hawaii.rr.com	15. Phone 808-523-1127	16. Fax 808-523-1127

C. SUBJECT MATTER

17. Board Action Being Contested Approval of Incidental Take License and Final Habitat Conservation Plan for Na Pua Makani Wind Energy Project by Applicants Na Pua Makani Power Partners, LLC and the former Champlin Hawaii Wind Holdings, LLC; Tax Map Key Nos. (1) 5-6-06:018 and (1) 5-6-08:006, Koolauloa District, Island of O'ahu, Hawai'i.	
18. Board Action Date 11/10/2016	19. Item No. C-1
20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action Health & safety of humans and flying animals. Negative impacts on environment, culturally significant sites, private real property values, community identity and individual/collective well being.	
21. Any Disagreement Petitioner May Have with an Application before the Board The Kahuku Community is in overwhelming opposition to the Na Pua Makani proposal. <i>INADEQUATE EIS.</i>	
22. Any Relief Petitioner Seeks or Deems Itself Entitled to We seek a contested case hearing pursuant to HRS § 91-14.	
23. How Petitioner's Participation in the Proceeding Would Serve the Public Interest We are the public. As members of the public, we are invested in the Kahuku community and interested in issues that impact us.	
24. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR See criteria at §13-1-31 HAR (b 1-3).	

Check this box if Petitioner is submitting supporting documents with this form.

Check this box if Petitioner will submit additional supporting documents after filing this form.

Kent Konomona [Signature] 11-19-2016
Petitioner or Representative (Print Name) Signature Date

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) CERTIFICATE OF SERVICE
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, Hawaii.)
_____)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Minute Order No. 3 was duly served upon the following parties, by U.S. Mail, postage prepaid, at the addresses below:

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c/o Maxx Phillips, Esq.
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BOARD OF LAND AND NATURAL RESOURCES

DATED: Honolulu, Hawai'i, April 7, 2017.



KATHERINE CULLISON
Department of Land and Natural Resources