

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. 8;  
Conservation Plan and Incidental Take License ) CERTIFICATE 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. )  
\_\_\_\_\_ )

**MINUTE ORDER NO. 8**

DENIAL OF REQUEST FOR SUBPOENAS

On July 13, 2017, Keep the North Shore Country (KNSC) filed a request for subpoenas for the following persons:

- Scott Fretz
- Dr. Frank Bonaccorso
- Marcos Gorreson
- Corinna Pinzari
- Andre Raine
- Jay Penniman

Na Pua Makani Power Partners, LLC (NPM) filed an objection to the request for subpoenas on July 17, 2017, and KNSC responded to NPM’s objection on July 18, 2017.

On July 17, 2017, pursuant to Minute Order No. 5, KNSC filed its responsive brief, witness list, written witness statement, exhibit list and exhibits. Although the above-listed persons were included in KNSC’s witness list, there were no witness statements for any of them.

Minute Order No. 5 provides that at the evidentiary hearing, beginning on August 7, 2017, witnesses will briefly summarize their written witness statements and be available for cross examination. As none of the above persons provided written witness statements, nor has there been an offer of proof as to what, specifically, they will be asked to testify to, these persons will have nothing to summarize at the evidentiary hearing and nothing upon which they can be cross-examined. Therefore, their presence at the hearing is not required.

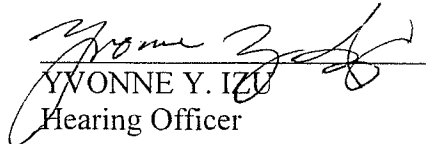
KNSC states that the witnesses, most of whom are government employees, do not want to give the appearance of favoring one side or the other in this case. KNSC could have had each of these witnesses prepare “neutral” witness statements – favoring neither side – and filed them in

accordance with Minute Order No. 5. Alternatively, KNSC could have made an offer of proof indicating the specific questions to be asked of the witnesses and the testimony KNSC hoped to elicit from these witnesses but failed to do so.

By indicating that these witnesses are willing to work with Deputy Attorney General Cindy Young “to satisfy HAR § 13-33(c)”<sup>1</sup> regarding the payment of fees and mileage, and because the subpoenas tendered by KNSC for the Hearing Officer’s signature does not indicate that KNSC has requested the subpoena (see HAR§ 13-1-33(b)), it appears that KNSC is asking that the Hearing Officer subpoena these witnesses on behalf of the Board of Land and Natural Resources (Board). Although the Board has the power to subpoena witnesses *sua sponte*<sup>2</sup>, and presumably, the Hearing Officer, acting on behalf of the Board may do so, the Hearing Officer declines to exercise that power on behalf of the Board at this time.

Based on the foregoing, KNSC’s request for subpoenas is DENIED.

DATED: Honolulu, Hawai’i, July 19, 2017.

  
YVONNE Y. IZU  
Hearing Officer

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<sup>1</sup> HAR § 13-1-33(c) is the correct citation.

<sup>2</sup> HAR § 13—1-33(a)(1).  
{00113020-1}

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\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of Minute Order No. 8 was duly served upon the following parties, by Hand Delivery, U.S. Mail, postage prepaid, or electronically, at the addresses below:

Yvonne Y. Izu  
Hearing Officer  
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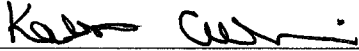
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DATED: Honolulu, Hawai'i, July 20 2017.

  
KATHERINE CULLISON  
Department of Land and Natural Resources