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Testimony to
BOARD OF LAND AND NATURAL RESOURCES

December 10, 2024

Agenda Item D-7
REQUEST FOR APPROVAL OF HOLDOVER TERM FOR
GENERAL LEASE NO. S-5731 UPON EXPIRATION THEREOF

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

Thank you, members of the Board for the opportunity to provide this testimony. Kaheawa Wind Power, LLC ("KWP") respectfully submits this testimony to request that the Board of Land and Natural Resources ("BLNR" or the "Board") approve an approximately one-year holdover term for its 30 MW renewable wind energy project (the "Project").

Pursuant to Hawaii Revised Statutes ("HRS") §171-40, KWP wrote to the Department of Land and Natural Resources (the "Department") on September 25, 2024 to request a holdover term of its General Lease No. S-5731 (the "Existing Lease"), which is a long-term lease from the Department that was issued on January 19, 2005 and expires on January 31, 2025, for the Project.

The Project is a 30 MW renewable wind energy project operated by KWP and is located on lands subject to the Existing Lease. Prior to January 31, 2025 and pursuant to HRS §171-40, KWP is allowed to request a one-year holdover term from the Department, which upon approval from the Board will permit KWP to continue operating the Project on the land and generating reliable, low cost energy until January 29, 2026.

I. Executive Summary

- KWP holds General Lease No. S-5731, a long-term lease from the Department that was issued on January 19, 2005 and expires on January 31, 2025. In order to secure the Project's ability to continue serving its existing Power Purchase Agreement ("PPA") with Hawaiian Electric, KWP wrote to the Department on September 25, 2024 to request a one-year holdover term pursuant to HRS §171-40.

- Continuing operations of the Project is firmly in the public interest and best serves the interests of the State of Hawaii and the County of Maui, because the facility makes essential contributions to energy affordability, grid reliability, economic development, and environmental protection.

- KWP is fully permitted during the holdover term (see Appendix for permitting timeline) and will continue to deliver its habitat conservation plan during the holdover term.

- The Board has authority to immediately approve an approximately one-year holdover term, and KWP kindly requests the Board exercise this authority.

II. Background

KWP's 30 MW renewable wind energy project on Maui has been operating since 2006 and is capable of producing enough clean energy to power the equivalent of 17,000 homes annually on the island of Maui. It has been a reliable energy generator on the Maui Electric grid and Maui Electric relies upon this facility to address its energy generation needs on the island of Maui. The Project is located on lands leased from the Department through a long-term lease (General Lease No. S-5731) that was issued on January 19, 2005 and expires on January 31, 2025. Prior to commencing construction and prior to operation of the Project under the Existing Lease, KWP completed its 1999 Environmental Impact Statement ("EIS") and 2004 Environmental Assessment ("EA") for the Project. In December 2023, KWP was selected through the competitive Stage 3 Request for Proposals ("Stage 3 RFP") issued by Hawaiian Electric to extend the life of the existing project for an additional twenty (20) years.

In this document, we explain that continued operation of the facility over the holdover term is firmly in the public interest, that the Project is fully permitted over the holdover term and will continue delivery of its Habitat Conservation Plan, and that all HRS Chapter 343 requirements for the holdover term are already satisfied, and we request that the Board exercise its authority to grant KWP a holdover term.

III. Continuing Operations of the Project Is Firmly in the Public Interest Because the Facility Makes Essential Contributions to Energy Affordability, Grid Reliability, Economic Development, and Environmental Protection.

The Project reduces consumer energy prices & contributes to price stability. The facility is among the lowest cost electricity generators in the State and saves customers ~$10 million per year vs. fossil fuels, a savings that would otherwise come as an immediate cost to consumers if the facility ceased operation.[1] In 2024, the Project provided energy at 15%-30% below the cost of fossil-fueled generators on Maui.[2] The Project delivers energy at a low, fixed price that reduces Maui's exposure to fossil fuel price volatility, a cost that is otherwise directly passed along to consumers and contributes to unpredictable electricity costs. The cost to replace energy from the Project would be passed immediately to consumers and would disproportionately impact lower income households because those customers already bear the highest relative electricity cost burdens.

[1] Since January 2023, Hawaiian Electric's "Schedule Q" avoided energy costs for the Maui Division has averaged ~$200 / MWh. KWP's current rate is ~$136 / MWh.
[2] Energy cost comparison based on avoided energy costs and energy cost recovery filings for Maui.

Maui is facing electricity supply shortages in the near term and has seen the majority of proposed renewable generation projects fail to reach commercial operation including several notable recent project failures. Retaining the Project is essential to maintaining reliability and reducing the risk of outages in the near term. Hawaiian Electric has demonstrated that the Project plays an important role in supporting Maui grid reliability, which is extremely important due to the increasing risk of rolling outages in the near term.[3] These risk factors include more frequent problems with Maui's aging conventional generating units, upcoming planned retirement of multiple generating units in Kahului and Maalaea, and further delays/withdrawals of new energy projects. Under all the scenarios Hawaiian Electric analyzed, extending the life of the Project reduced risks of future rolling outages on Maui.[4] The Project is located on a highly productive wind site and is an essential contributor to resource diversity, generating power during the day and night as well as when it is cloudy.

Understanding the scale of future planned retirements highlights the importance of maintaining Maui's existing renewable generation sources. Hawaiian Electric's analyses anticipate that approximately 50% of Maui's current fossil-fueled generation fleet will need to retire by 2030. [5] This capacity will need to be replaced by the projects selected in the recent competitive solicitations to maintain a reliable system.

Four of the five solar plus storage projects that were proposed in the first two rounds of bidding this recent competitive process have withdrawn, further underscoring the continued challenges of new projects in meeting the planned retirement timelines. On May 31, 2024, Hawaiian Electric informed the Hawaii Public Utilities Commission ("PUC") that the developer of the 20 MW/80 MWh Puu Hao solar plus storage project on Maui withdrew from negotiating a power purchase agreement under the current RFP. On October 29, 2024, Hawaiian Electric informed the PUC that the developers of three solar plus storage projects proposed on Oahu and Hawaii Island also withdrew those projects from the current RFP due in part to the financial risks of Hawaiian Electric's non-investment grade credit rating relating to the Maui wildfires. The utility's credit rating creates similar uncertainty in financing the remaining new generation projects on Maui.

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[3] Hawaiian Electric's reliability analyses use a Loss of Load Expectation ("LOLE") of 0.1 days /year as a reference value for acceptable system reliability. This value reflects a power system that would on average experience 1 day every 10 years with unserved power, which is a commonly accepted reliability criteria for the U.S. power industry.

[4] Updated grid reliability analysis based on Integrated Grid Plan 2024 Annual Update – see pp. 132-169 for discussion of Maui grid reliability. New analyses quantified reliability risks of aging conventional generation fleet, decreases in generating capacity with upcoming retirements, and potential delays/withdrawals of Stage 3 renewable energy projects.

[5] See Integrated Grid Planning Report, Maui Grid Needs Assessment, at p. 173, and IGP 2024 Annual Update at p. 135. The analyses assume retirement of four generating units at the Maalaea Power Plant in 2027 (49 MW), all four units at the Kahului Power Plant (32.5 MW), and nine additional units at the Maalaea plant in 2030 (40.5 MW). Collectively, these total 122 MW of generating capacity. According Hawaiian Electric's Sustainability Map for Maui, Maui has 253.7 MW of firm generating capacity.

Forcing the decommissioning of the Project and replacing it with other resources would necessarily involve building new generation facilities. New solar facilities would require significantly more land to produce the same amount of energy. New combustion-based generation sources on Maui would need to be sited and permitted and are likely to worsen the State's and the County of Maui's exposure to volatile fuel prices and increase greenhouse gas emissions as compared to retaining the Project.

KWP is home to well paying, on-site, full-time local jobs and supports a wide variety of local union & non-union contractors that depend on the facility for recurring work. These are real, local jobs, that support Maui residents and depend on KWP's ability to operate and contribute to the Island and State's economy.

KWP delivers significant environmental benefits in avoided emissions and habitat conservation. The renewable energy generated at the wind farm decreases the community's reliance on fossil fuels, improves air quality, and combats climate change. The Project provides a net environmental benefit through mitigation programs throughout Maui Nui which are required to provide a greater benefit to threatened and endangered species than any anticipated negative impacts.

IV. KWP Is Fully Permitted Over the Holdover Term and Is Proud to Continue Delivering a Habitat Conservation Plan During the Holdover Period.

Habitat Conservation Plan

KWP operates the Project under the terms and conditions outlined in its Habitat Conservation Plan ("HCP") and associated federal Incidental Take Permit ("ITP") and Incidental Take License ("ITL"). The ITP authorizes incidental take of federally threatened and endangered species under section 10(a)(1)(B) of the Endangered Species Act, as amended, while the ITL authorizes take of state threatened and endangered species under HRS Section 195(d).

The ITP and ITL are currently set to expire January 29, 2026, and cover incidental take of the following Covered Species for the requested holdover term (see Appendix for permitting timeline):

- ʻŌpeʻapeʻa or Hawaiian hoary bat (*Lasiurus cinereus semotus*)
- Nēnē or Hawaiian Goose (*Branta sandvicensis*)
- ʻUaʻu or Hawaiian Petrel (*Pterodroma sandwichensis*)
- ʻAʻo or Newellʻs Shearwater (*Puffinus newelli*)

As part of the HCP program, KWP has provided over $4 million in compensatory mitigation efforts, providing a net conservation benefit for the four Covered Species. A summary of the current mitigation status is provided in the table below.

Covered Species	Estimated Adjusted Take through FY 2024	Mitigation
ʻŌpeʻapeʻa (Hawaiian hoary bat; *Lasiurus semotus*)	≤32	Completed for 50 bats
Nēnē (Hawaiian goose; *Branta sandvicensis*)	≤54	>81 successful fledglings Mitigation on-going; currently at ~45.7 nēnē credits
ʻUaʻu (Hawaiian petrel; *Pterodroma sandwichensis*)	≤23	Completed for >38 ʻuaʻu
ʻAʻo (Newell's shearwater; *Puffinus auricularis newelli*)	No take observed	Completed for >4 ʻaʻo

Mitigation for each species has included the following:

- **ʻŌpeʻapeʻa**: KWP provided DOFAW with funding to support research in December 2006, which met the mitigation obligation for 20 ʻŌpeʻapeʻa. Additional funding for research was provided in FY2017 for research in east Maui, and from 2018 through 2022, funding was provided to the United States Geological Survey Hawaiian Hoary Bat Research Group. In total, over $1.4 million was provided by KWP, and mitigation obligations have been met for 50 ʻŌpeʻapeʻa, well beyond the 32 ʻŌpeʻapeʻa that have been estimated to-date. In addition, KWP has voluntarily continued acoustic bat monitoring at the site beyond the initial 12-month requirement, with >18 years of acoustic monitoring data to-date.
- **Nēnē**: KWP provided Division of Forestry and Wildlife ("DOFAW") with the funding to construct a release pen for nēnē at the Haleakala Ranch in December 2007, and the pen construction was completed in 2011 with the first release of birds on May 5, 2011. Funding was provided to DOFAW to cover management of the pen from 2011 through December 2022, when KWP took over pen management at the request of DOFAW. Through last year, a total of 87 nēnē have fledged from the pen and KWP has received approximately 45.7 nēnē credits towards the obligation of 60 credits. KWP continues to manage the release pen and has been adapting the management in coordination with DOFAW and U.S. Fish and Wildlife Service ("USFWS") in attempts to increase

production. In addition, KWP is working with DOFAW and USFWS to support a translocation effort of nēnē to the island of Moloka'i and plans to manage a similar release pen on Moloka'i starting in early 2025.

- '**Ua'u**: Intial mitigation for 'ua'u began at Makamaka'ole, however, 'ua'u activity was rare and no 'ua'u were detected starting in 2017, so KWP adaptively managed mitigation activities for this species in consultation with DOFAW and USFWS to the island of Lāna'i. Starting in 2018, KWP funded Pūlama Lāna'i to support 'ua'u breeding colony protection on Lāna'i, including predator control and burrow monitoring in the Greater Hi'i area. The success of the program resulted in 89.72 adult 'ua'u credits, which exceeded the required 38 credits for KWP and was combined with mitigation efforts for the adjacent Kaheawa Wind Power II project (collectively, an obligation of 64.48 credits across the two projects).
- **'A'o**: KWP funded nesting colony searches in the West Maui Mountains, which began during HCP development in 2005. The Makamaka'ole site was identified in 2007, and subsequent surveys were conducted from 2008 through 2010. Predator trapping at the site began in October 2009. Two predator-free fenced enclosures were constructed in 2013, after which activities focused on trapping and monitoring rodents and predators, fence maintenance, and seabird monitoring. The site also incorporates artificial burrows and call playback systems to attract seabirds. Mitigation credits for 'a'o were achieved in FY2022; during FY2024/FY2025 KWP has worked with DOFAW to provide $750,000 in funding to repair the existing fence and is currently resuming management activities at the site.

KWP has been working closely with DOFAW and USFWS to implement the HCP, including adaptive management, mitigation, and minimization. This includes bi-weekly calls with staff, site visits, and in-person meetings.

Any impacts to threatened and endangered species during the holdover term are already covered by the existing HCP and related permits and have either already been mitigated for or will be mitigated for by ongoing programs.

Conservation District Use Permit (CDUP)

KWP holds a valid Conservation District Use Permit MA-3103 dated September 27, 2005 that covers the holdover term.

V. The Board Has Full Authority to Immediately Approve an Approximately One-Year Holdover Term, and KWP Requests the Board Exercise This Authority.

The Existing Lease was issued to KWP on January 19, 2005 and expires on January 31, 2025, after approximately 20 years. Under the Existing Lease, KWP is in full compliance with rent, insurance, and performance bond requirements. Since 2006, the Project has generated enough clean energy to power approximately 17,000 Maui homes annually and contributes to energy affordability, energy security, and the State's and the County of Maui's progress towards its mandate of 100% renewable energy by 2045. To continue to serve Maui and its energy needs,

KWP now requests a holdover term of approximately one year to extend the Existing Lease to January 29, 2026.

A. Hawaii Law Clearly Permits the Board to Approve a Holdover Term.

HRS §171-40 explicitly authorizes the Board to approve KWP's request for the holdover term to commence upon the expiration of the Existing Lease:

> **§171-40 Expired leases; holdover.** Upon expiration of the lease term, if the leased land is not otherwise disposed of, the board of land and natural resources may allow the lessee to continue to hold the land for a period not exceeding one year upon such rent, terms, and conditions as the board may prescribe. . .

B. All HRS Chapter 343 Requirements for the Holdover Term Are Already Satisfied.

1. The Project's 1999 EIS and 2004 EA Cover Project Impacts During the Period for Which the Board Would Approve the Holdover Term.

Prior to issuance of the Existing Lease, Project impacts were considered under HRS Chapter 343. An EIS was prepared for the Project and accepted by the Department in 1999 (the "1999 EIS"). Subsequently, the Project proposal was updated to use fewer, taller turbines, and an EA dated November 2004 (the "2004 EA") was conducted, analyzing the visual impacts only, as all other potential impacts had been analyzed in the 1999 EIS and were determined to be unaffected by the change in number and size of turbines. The DLNR Land Division Office of Conservation and Coastal Lands concurred that the proposed change in turbines "should not result in significant impacts over and above those already discussed and mitigated in the original EIS", in its 2004 Finding of No Significant Impact (FONSI) determination dated November 8, 2004[6], which accompanied publication of the 2004 EA.

The 1999 EIS and 2004 EA (together, the "Chapter 343 Documents") evaluated environmental impacts for the expected life of the Project. At the time, the expected life of the Project was at least 25 years. Although the Existing Lease is approximately 20 years, the Chapter 343 Documents contemplated a 25-year lease (i.e., ending January 31, 2030). Similarly, the Chapter 343 Documents contemplated a 20-year Power Purchase Agreement ("PPA"), with a 5-year extension term. The PPA contemplated by the Chapter 343 Documents expires on June 21, 2026 without the 5-year extension, and June 21, 2031 with the 5-year extension. Because these lease and PPA periods were contemplated in the drafting and execution of the Chapter 343 Documents, the documents evaluated environmental impacts of the Project over a 25-year period in order to capture in full the then-anticipated periods of the Existing Lease and the current PPA, thus evaluating several years beyond the end of the requested holdover term.

[6] State of Hawaii, Department of Land and Natural Resources, Land Division, Memorandum regarding Final Environmental Assessment (FEA) for the Kaheawa Pastures Wind Energy Generation Facility, Island of Maui (TMKs: 4-8-1:1 and 3-6-1:14), dated November 8, 2005.

Therefore, potential impacts during the holdover term have already been evaluated by the existing Chapter 343 Documents that were meant to cover a 25-year lease.

2. No Supplemental EIS Is Required for the Board to Approve the Holdover Term.

Hawaii Administrative Rules ("HAR") Section 11-200.1-30(a) provides that,

> An EIS that is accepted with respect to a particular action shall satisfy the requirements of this chapter and no supplemental EIS for that proposed action shall be required, to the extent that the action has not changed substantively in size, scope, intensity, use, location, or timing, among other things.

During the holdover term, the Project components will remain the same (i.e., no change in size or scope), the Project will continue to operate in the same fashion (i.e., no change in intensity, use, or location), and the Project will be consistent with an EIS anticipated 25-year lease term and 25-year PPA term for the Project (i.e., no change in timing). Thus, no Supplemental EIS is required for the holdover term.

Furthermore, the surrounding environment has not meaningfully changed since the Chapter 343 Documents were completed. The Project is within a conservation district, and there have been no new developments in surrounding areas.

Note that even if there was a substantive change, for a Supplemental EIS to be required, HAR Section 11-200.1-30(a) requires that such change would be likely to have a "significant" effect on the environment. That is not the case here. The Project's HCP / ITL is valid until January 29, 2026, and take of listed species has been or will be mitigated through January 29, 2026, as outlined in the HCP and in Section IV above.

Lastly, the holdover term is not a phase or part of the separate potential long-term lease currently under Chapter 343 review. Instead, the holdover term is merely an extension of the Existing Lease which Hawaii law authorizes the Board to approve and is a separate and independent action from such separate potential long-term lease, which may or may not be approved.

C. While an Exemption May Apply, it Is Not Necessary in this Case.

As detailed in the Department staff submittal dated December 13, 2024, Exemption #40 may be available to the Board to exempt the holdover term from Chapter 343 review. However, use of an exemption is not necessary here where the Chapter 343 Documents already cover the holdover term. The most straightforward path in this instance is to rely on the existing Chapter 343 Documents rather than engaging in avoidable further review of a potential exemption.

D. KWP's Request to the Board.

Based on the analysis above, **KWP respectfully requests that the Board approve (1) the holdover term and (2) HRS Chapter 343 compliance based upon coverage of any potential environmental impacts associated with the holdover term under the existing 1999 EIS and 2004 EA for the Project**.

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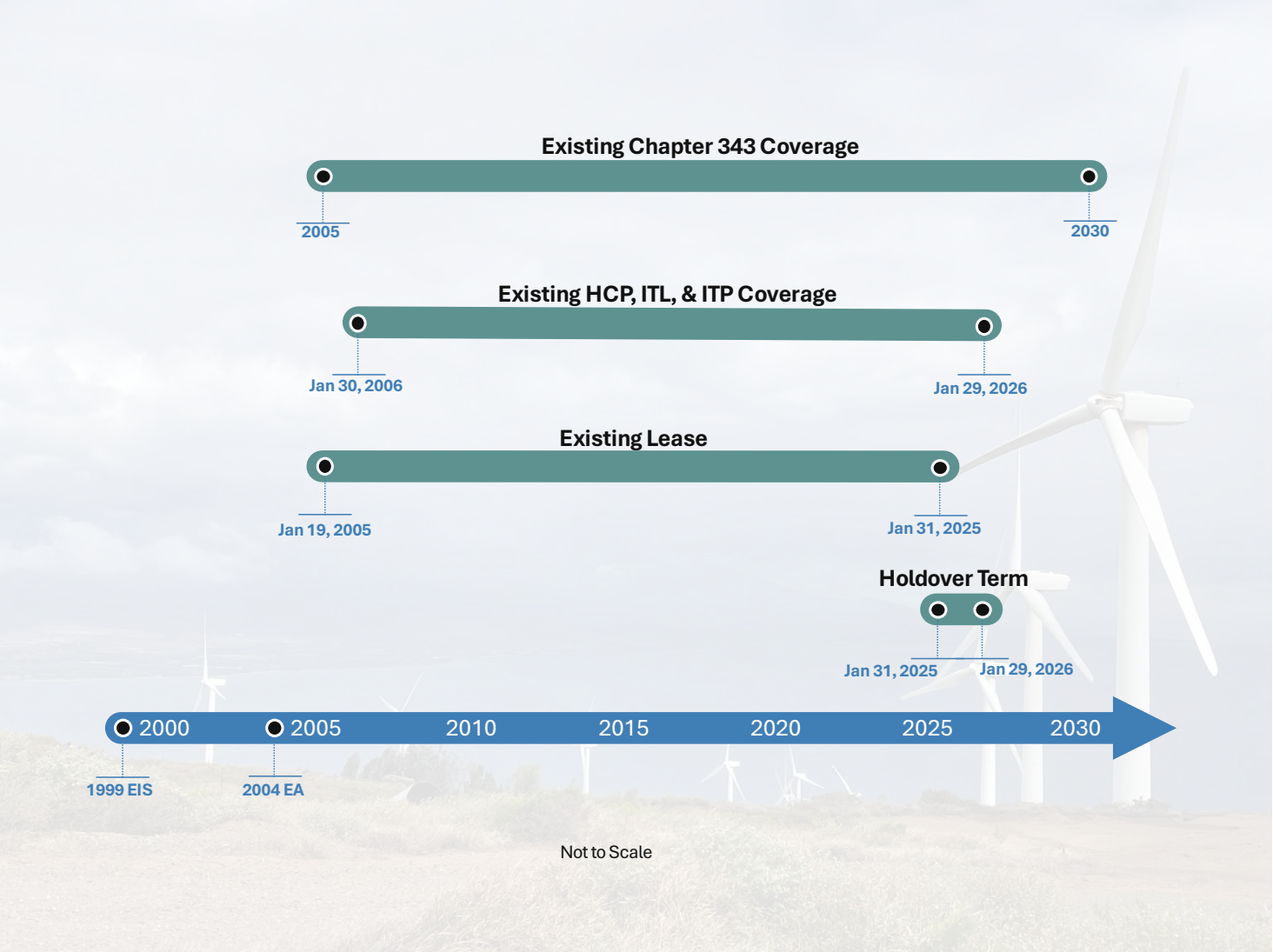
Sincerely,

KAHEAWA WIND POWER, LLC

By: 

Ben Stafford, Chief Operating Officer

Appendix: KWP Continued Use Illustrative Project Timeline



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