

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

December 9, 2016

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Land Board Members:

SUBJECT: PETITION FOR CONTESTED CASE HEARING FROM KEEP THE NORTH SHORE COUNTRY REGARDING BOARD ACTION OF NOVEMBER 10, 2016, AGENDA ITEM C-1, *REQUEST FOR APPROVAL OF INCIDENTAL TAKE LICENSE AND HABITAT CONSERVATION PLAN FOR NA PUA MAKANI WIND ENERGY PROJECT ON THE ISLAND OF OAHU, HAWAII*

BACKGROUND FACTS

On October 28, 2016, a Request for Approval of Incidental Take License and Habitat Conservation Plan for Na Pua Makani Wind Energy Project on the Island of Oahu, Hawaii, was on the Board of Land and Natural Resources' (Board) agenda. At the meeting, the agenda item was deferred by the Board.

On November 10, 2016, Na Pua Makani Wind Energy Project (Na Pua Makani) request for approval of a habitat conservation plan and incidental take license in connection with its wind energy project was again placed on the Board's agenda. As part of the application process for the habitat conservation plan, a public hearing had been held on June 4, 2015, on the island of Oahu, to solicit comments from the public.

RECEIVED PETITION

It is not clear whether any member of Keep the North Shore Country was present at the October 28, 2016 Board meeting. No oral or written request for a contested case hearing was made prior to the end of the October 28, 2016 Board meeting.

At the November 10, 2016 meeting, Gil Rivere, on behalf of the Keep the North Shore Country organization, orally requested a contested case hearing. A written petition was transmitted to DLNR from Keep the North Shore Country on November 19, 2016, and is attached as Attachment A.

Petition for a Request for a Contested Case Hearing
Keep the North Shore Country Regarding
Na Pua Makani Wind Energy Project ITL/HCP

DISCUSSION

A contested case is defined by Hawai'i Revised Statutes (HRS) § 91-1(5) as "a proceeding in which the legal rights, duties, or privileges of specific persons are required by law to be determined after an opportunity for agency hearing." An "agency hearing" is defined by section 91-1(6) as "such hearing held by an agency immediately prior to a judicial review of a contested case as provided in section 91-14." Applicable rules require that a contested case be requested orally or in writing no later than the close of the board meeting at which the item is discussed. In addition, the requester must follow up with a written petition for a contested case within ten calendar days.¹ For good cause the Board may waive these time requirements. HAR § 13-1-29.

Assuming a proper and timely request is made, the question of whether a contested case must be afforded in any particular matter may usefully be divided into two parts. First, could anyone be entitled to a contested case, i.e. is an agency hearing required that would determine the rights, duties or privileges of specific parties? Second, does the particular person requesting a contested case have standing, i.e. is the requestor one of the specific persons at issue in the first part of the inquiry?

A contested case hearing is "required by law" if the statute or rule governing the activity in question mandates a hearing prior to the administrative agency's decision-making, or if a hearing is mandated by due process. HRS section 195D-21(b)(1) states, in part, that "the board, upon recommendation from the department, ... *after a public hearing on the island affected*, and upon an affirmative vote of not less than two-thirds of its authorized membership, may enter into a habitat conservation plan" if the plan meets certain requirements (emphasis added). Under applicable case law, the public hearing mentioned in this section is "required by law."

The next issue is whether a hearing, if it is held, would determine the rights, duties, and privileges of specific parties. With regard to whether a hearing would determine the rights, duties, and privileges of specific parties, the inquiry is properly directed at the party whose application was under consideration. In this case, the appropriate inquiry is whether a hearing, if held, would determine the rights, duties and privileges of Na Pua Makani.

¹ Hawai'i Administrative Rules (HAR) § 13-1-29 provides, in part,

An oral or written request for a contested case hearing must be made to the board no later than the close of the board meeting at which the subject matter of the request is scheduled for board disposition. An agency or person so requesting a contested case must also file (or mail a postmarked) written petition with the board for a contested case no later than ten calendar days after the close of the board meeting at which the matter was scheduled for disposition.

Petition for a Request for a Contested Case Hearing
Keep the North Shore Country Regarding
Na Pua Makani Wind Energy Project ITL/HCP

In this case, the request is for approval of a habitat conservation plan. Na Pua Makani's use of the leased site for its wind energy project is implicated in the habitat conservation plan because the wind energy project anticipates take of endangered species in connection with the operation of the wind energy project. Na Pua Makani could not operate its wind energy project without being subject to penalties, including potential criminal penalties, unless it first receives approval of a habitat conservation plan and incidental take license. The habitat conservation plan and incidental take license also contain Na Pua Makani's duties with respect to minimization and mitigation of all negative impacts on threatened and endangered species. Under applicable case law, a contested case hearing on the habitat conservation plan would determine rights, duties and privileges of Na Pua Makani.

The crucial inquiry with regard to standing is whether the plaintiff has alleged such a personal stake in the outcome of the controversy as to warrant his or her invocation of the court's jurisdiction and to justify exercise of the court's remedial powers on his or her behalf. The courts have developed a three-part standing test as follows: (1) has the plaintiff suffered an actual or threatened injury; (2) is the injury fairly traceable to the defendant's actions; and (3) would a favorable decision likely provide relief for plaintiff's injury.

Courts in Hawaii have also recognized public interest concerns that warrant the lowering of standing barriers in cases pertaining to environmental concerns. In particular, in the realm of environmental concerns, the courts have not been inclined to foreclose challenges to administrative determinations through restrictive applications of standing requirements. Plaintiffs in environmental cases are not required to show that the asserted injury is particular to the plaintiffs and harms to environmental interests will provide the basis for standing.

Keep the North Shore Country has asserted in its petition that it was formed "to preserve, protect and enhance the heritage and rural character of the North Shore of O'ahu, Hawai'i, in partnership with communities from Ka'ena Point to Kahalu'u." In addition, Keep the North Shore Country's mission is to "preserve, protect, and enhance the heritage and rural character of the North Shore, which includes protecting endangered and threatened species and their habitat."

Keep the North Shore Country has also asserted that it has members that have lived in Kahuku their entire lives and are familiar with the site and wildlife likely to be impacted by the proposed Na Pua Makani project. Keep the North Shore Country has also asserted that its members have "specific and personal recreational, aesthetic, cultural, scientific, educational, and environmental interests that would be directly and indirectly affected by the approval of the incidental take license and habitat conservation plan and its adverse impacts on the eight federally and state-listed threatened and endangered species."

Petition for a Request for a Contested Case Hearing
Keep the North Shore Country Regarding
Na Pua Makani Wind Energy Project ITL/HCP

In connection with the petition from Keep the North Shore Country, the Board must consider whether the oral request and petition for a contested case hearing was timely and properly made, whether a hearing that would determine the rights, duties and liabilities of a specific party is required by law, and whether Keep the North Shore Country has standing to participate in any contested case hearing that is held.

Respectfully submitted,



David G. Smith, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



Suzanne B. Case, Chairperson
Board of Land and Natural Resources

Attachment A: Petition for a Contested Case Hearing



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.
- If you use the electronic version of this form, note that the boxes are expandable to fit in your statements. If you use the hardcopy form and need more space, you may attach additional sheets.
- Pursuant to §13-1-30, HAR, a petition that involves a Conservation District Use Permit must be accompanied with a \$100.00 non-refundable filing fee (payable to "DLNR") or a request for waiver of this fee. A waiver may be granted by the Chairperson based on a petitioner's financial hardship.
- 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 KEEP THE NORTH SHORE COUNTRY	2. Contact Person Gil Riviere	
3. Address 66-250 Kamehameha Hwy, Suite D103	4. City Hale'iwa	5. State and ZIP Hawai'i 96712
6. Email info@keepthenorthshorecountry.org	7. Phone (808)220-2280	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

17. Board Action Being Contested
Request for 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 November 10, 2016	19. Item No. C-1
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20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action
Please see attached petition for contested case.

21. Any Disagreement Petitioner May Have with an Application before the Board
Please see attached petition for contested case.

22. Any Relief Petitioner Seeks or Deems Itself Entitled to
Board of Land and Natural Resources not allow the Incidental Take License and not approve the Final Habitat Conservation Plan for Na Pua Makani Wind Energy Project because the statutory standards required by Hawai'i Revised Statute (HRS) §195D-4(g) have not been met.

23. How Petitioner's Participation in the Proceeding Would Serve the Public Interest
Please see attached petition for contested case.

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
Please see attached petition for contested case.

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.

Maxx Phillips on behalf of Gil Riviere
Petitioner or Representative (Print Name)


Signature

11/19/16
Date

KEEP THE NORTH SHORE COUNTRY,
a Hawai'i non-profit corporation
66-250 Kamehameha Hwy, Suite D103
Hale'iwa, Hawai'i 96712
Telephone: (808)220-2280
E-mail: info@keepthenorthshorecountry.org

BEFORE BOARD OF LAND AND NATURAL RESOURCES
STATE OF HAWAI'I

In the Matter of the Petition
for Contested Case Hearing by

KEEP THE NORTH SHORE COUNTRY

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.

Docket No.:

PETITION FOR A CONTESTED CASE
HEARING REQUESTING DENIAL OF
IMPROPER INCIDENTAL TAKE
LICENSE AND INADEQUATE FINAL
HABITAT CONSERVATION PLAN FOR
NA PUA MAKANI WIND ENERGY
PROJECT; CERTIFICATE OF SERVICE

**PETITION FOR A CONTESTED CASE HEARING REQUESTING DENIAL OF
IMPROPER INCIDENTAL TAKE LICENSE AND INADEQUATE FINAL HABITAT
CONSERVATION PLAN FOR NA PUA MAKANI WIND ENERGY PROJECT**

I. INTRODUCTION

1. Petitioner KEEP THE NORTH SHORE COUNTRY (Petitioner or KNSC) submits this petition, pursuant to Hawai'i Administrative Rules (HAR) § 13-1-29, for a contested case hearing on the proposed Incidental Take License (ITL) and Final Habitat Conservation Plan (HCP) for the Na Pua Makani Wind Energy Project (Project) on the island of O'ahu, Hawai'i.

2. Na Pua Makani proposes to construct and operate nine wind turbine generators (WTGs) and associated infrastructure on 706.7 acres in Kahuku, on O'ahu, Hawai'i.

3. The Project will have the largest WTGs in Hawai'i, with a maximum blade tip height of 656 feet (200 meters) above ground level.

4. The Project will likely kill or injure eight federally and state-listed threatened and endangered species: 'a'o or Newell's shearwater (*Puffinus newelli*); the ae'o or Hawaiian black-necked stilt (Hawaiian stilt, *Himantopus mexicanus knudseni*); the 'alae ke'oke'o or Hawaiian coot (*Fulica alai*); the 'alae 'ula or Hawaiian common moorhen (Hawaiian moorhen, *Gallinula chloropus sandvicensis*); the koloa maoli or Hawaiian duck (*Anas wyvilliana*); the nēnē or Hawaiian goose (*Branta sandvicensis*); the pueo or Hawaiian short-eared owl (*Asio*

flammeus sandwichensis); and the 'ope'ape'a or Hawaiian hoary bat (*Lasiurus cinereus semotus*). Therefore, under HRS Chapter 195D, the Project must prepare a Habitat Conservation Plan and acquire an Incidental Take License from the Board of Land and Natural Resources (BLNR or Board).

5. The ITL and corresponding HCP submitted to the Board for the Project are fatally flawed. KNSC is particularly concerned that the Project will likely have significant adverse impacts on the endangered Hawaiian hoary bat without adequate mitigation measures and required environmental net benefit. The Hawaiian hoary bat is the State's official land mammal, designated by the Legislature in 2015 (SB 1183) and signed by Governor Ige as Act 13. The bill to designate the Hawaiian hoary as the state land mammal was officially supported in testimony by the State Department of Land and Natural Resources.

6. On November 10, 2016, under agenda item C-1, the Project's ITL and HCP were submitted to the Board for final approval. Prior to board approval, Gil Riviere, President of KNSC, made an oral request for a contested case hearing and now submits this written petition on November 19, 2016, within the required ten calendar days in accordance with HAR § 13-1-29(a).

7. As detailed below, BLNR must not approve the ITL and HCP because the statutory standards required by Hawai'i Revised Statute (HRS) §195D-4(g) have not been met.

II. NATURE AND EXTENT OF PETITIONER'S INTEREST AND RIGHT

8. Petitioner KEEP THE NORTH SHORE COUNTRY (KNSC), is a 501(c)(3) non-profit organization, registered to do business in the State of Hawai'i. Petitioner's mailing address is 66-250 Kamehameha Hwy, Suite D103, Hale'iwa, Hawai'i 96712. Petitioner's phone number is (808)220-2280, and email is info@keepthenorthshorecountry.org. Petitioner is a grassroots, volunteer-based North Shore non-profit, formed in 2006, "to preserve, protect and enhance the heritage and rural character of the North Shore of O'ahu, Hawai'i, in partnership with communities from Ka'ena Point to Kahalu'u." More information about Petitioner is available at www.keepthenorthshorecountry.org.

9. The Hawai'i Supreme Court has recognized KNSC's ability to represent environmental interests on the North Shore. KNSC, with co-plaintiff Sierra Club, Hawai'i Chapter, won the landmark Turtle Bay Resort development case in the Hawai'i Supreme Court in 2010 that compelled Kuilima Resort Company, located in Kahuku, to Supplement its 1985 Environmental Impact Statement. *Unite Here! Local 5 vs. City and County of Honolulu*, 123 Haw. 150, 231 P.3d 423 (2010).

10. KNSC also filed Civil No. 13-1-3143-12 regarding improper analysis and methodology by Turtle Bay Resort, LLC in preparation of its Supplemental EIS. One condition in the

Settlement and Release Agreement requires Turtle Bay to provide \$200,000 over a five-year period toward conservation of threatened and endangered species, critical habitat, and towards a comprehensive predator control program, which is near or within the area affected by the Project.

III. APPROVAL OF INCIDENTAL TAKE LICENSE AND INADEQUATE FINAL HABITAT CONSERVATION PLAN FOR NA PUA MAKANI WIND ENERGY PROJECT WOULD ADVERSELY AFFECT KNSC'S INTERESTS

11. KNSC members have an interest in protecting endangered and threatened species, native species, and wildlife. KNSC's mission is to preserve, protect, and enhance the heritage and rural character of the North Shore, which includes protecting endangered and threatened species and their habitat. Members advocate for the preservation of the natural environment and see biodiversity as an integral part of the rural character of the North Shore. KNSC and its members have volunteered on wildlife conservation projects throughout the state, including Kahuku Point, Malaekahana, and James Campbell National Wildlife Refuge, near or within the area affected by the Project.

12. KNSC has members that have lived in Kahuku their entire lives and are familiar with the site and wildlife likely to be impacted by the proposed Na Pua Makani project.

13. Petitioner KNSC and its members have specific and personal recreational, aesthetic, cultural, scientific,

educational, and environmental interests that would be directly and indirectly affected by the approval of the ITL and HCP and its adverse impacts on the eight federally and state-listed threatened and endangered species and therefore has legal standing to bring this petition.

IV. THE INCIDENTAL TAKE LICENSE AND FINAL HABITAT

CONSERVATION PLAN MUST BE DENIED BECAUSE THE STATUTORY STANDARDS UNDER HRS § 195D-4(g) HAVE NOT BEEN MET.

14. Pursuant to HRS § 195D-4(g), the Board may issue an incidental take license only as part of a habitat conservation plan if the applicant minimizes and mitigates the impacts of the take to the maximum extent practicable. HRS § 195D-4(g)(1). The HCP must "**increase the likelihood** that the species will survive and recover . . . [and 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)(4)(5) (emphasis added).

15. The Project's avoidance, minimization, and mitigation of impacts to the Hawaiian hoary bats on O'ahu are improper and violate HRS § 195D-4(g)(1) for a multitude of reasons.

16. First, the Project did not adequately study the presence of the Hawaiian hoary bat on site. The Project improperly used only two Anabat detectors, which were replaced due to malfunction with only two Wildlife Acoustic detectors,

for a project site that is over 700 acres. Each detector has a limited range (around 50 meters), and thus using only two on such a large area could not possibly and accurately conclude the true presence of Hawaiian hoary bats on site. The Project then improperly uses the incomplete data from this inadequate study to justify the assumption that bat use is expected to be low in the area.

17. The Project used inaccurate and misleading information to provide justification for a more favorable incidental take estimate by selecting cherry-picked data sources for the calculations rather than using the best available science or reliable data to derive an accurate estimate. The Project relies on low wind speed curtailment (LWSC) measures to lower the Project's estimated incidental take by 65%. The best available data, however, indicate not only that LWSC measures do not reduce incidental take of Hawaiian hoary bats on O'ahu at anywhere near this percentage, but also that the Project's baseline take estimate prior to LWSC is too low.

18. One of the foundational problems in the Project's conservation plan is that, although it initially states the existence of two other wind operations on O'ahu (Kahuku and Kawaiiloa) from which it can gather data for the take estimate, the Project conveniently chose to base their estimate only off of data from Kahuku. The justification that given for choosing

to use Kahuku data, and thus disregarding Kawaiiloa data, which is much more extensive, was that Kahuku has fewer wind turbines and the physical factors of the land -- specifically the similarity of slope, aspect, and elevation between the two sites, -- which actually have no bearing on bat biology on O`ahu.

19. Contrary to the Project's assumptions, the reality is that take is likely to be higher than estimated in the HCP, and higher than the Kahuku data might indicate, given that the proposed Na Pua Makani wind turbine blades (656 ft) are longer than the Kahuku Wind Farm blades (420 ft) used to estimate anticipated levels of bat take.

20. Furthermore, the Project used flawed adaptive management by relying on improper wind speed curtailment analysis. The Project again cherry-picked data from Kahuku ignoring the best available data. The result of the Project deriving its data from an inadequate study on site and then selecting data from the most favorable site when other data were available resulted in an under-estimation of the projected take, even before the implementation of flawed LWSC assumptions.

21. In addition to improperly justifying the data the Project used to calculate a favorable baseline take estimate, it erroneously used research (Arnet et al. 2009, 2010) that allowed the Project to further reduce, improperly, the incidental take estimation by 65%. The LWSC study that the Project used to

justify that reduction was not from Hawai'i - it was from a temperate, continental location, and it studied different species of bats, which means that both the habitat and the behavioral biology are not comparable. There is no scientific justification for including the results of Arnet et al. (2009, 2010) in the Project's estimations. The Project should have considered bat take data from Kawailoa because it is on O'ahu, along the same coastline, has higher wind blade tip height (493 ft), used LWSC, and has relevant recent data demonstrating impacts to the same subspecies of bat.

22. The best available data from Kawailoa show that LWSC does not decrease take by 70% (the number Kawailoa used in their Habitat Conservation Plan that was based off the Arnet Study). The data in fact indicate that LWSC has little beneficial impact as take is actually higher than the Kawailoa Habitat Conservation Plan anticipated. In the Habitat Conservation Plan, Kawailoa estimated bat take of 160 with a reduction of 70% resulting in a take of **48 bats** over the 20 year permit (2.4 bats per year). However, the actual take even with extended LWSC is on-track to be **166 bats** based on the 25 actual bat takes as of Kawailoa's 2015 Annual Report.

23. Additionally, the state endangered species law requires that the "cumulative impact of the activity . . . provides **net environmental benefits** . . . and [t]he take is not

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)(8)(9) (emphasis added). Basically, the species must be better off after the Project than if the project did not happen. The burden of proof is on the applicant to demonstrate compliance with all aspects of HRS § 195D in its application. This burden of proof is not met in the Project's HCP application.

24. The Project requests authorized take of 51 endangered Hawaiian hoary bats. The Applicant proposes to "mitigate" for the death of 51 bats by providing \$50,000 per bat in a combination of funding for research into bat population size, bat habitat selection, bat diet studies, and monitoring bat occurrence at DLNR's Poamoho Ridge site in addition to funding 12 years of maintenance of an existing intact native forest area at Poamoho Ridge, an area slated for Natural Area Reserve status. At Poamoho Ridge, the applicant proposes to fund the following actions for 12 years: removal of ungulates, invasive species management, and maintenance of a brand new fence.

25. The proposed HCP presents no evidence supporting the net benefits of the proposed research or short-term Poamoho Ridge management actions to the endangered bat. The increase in the bat population in the restoration areas is never mentioned.

26. The HCP's proposed measures of success are that the Project has funded the research and the 12 years of actions at Poamoho. The "mitigation" would be considered to be completed if these actions are completed. There is no mention of any required increases in bat detection at Poamoho Ridge in the HCP measures of success; the applicant does not appear to be required to undertake any action that would actually increase bat numbers to offset the requested level of bat take.

27. The burden is on the Applicant to demonstrate that the proposed mitigation would increase the population of bats on O'ahu, therefore, with the lack of measures in place to assure such a net benefit and the under-estimated loss of 51 bats from the Project, it is clear there will not be a net environmental benefit to the species as required by HRS §195D-4(g) (8).

28. For the above stated reasons and more to be shown by Petitioner in the contested case proceeding, the ITL and HCP do not meet the required legal standards of HRS § 195D-4(g). Thus, the Board of Land and Natural Resources must not issue an incidental take license for Project's take of the endangered Hawaiian hoary bat or approve the Project's HCP because the Project does not propose to mitigate the impacts of the take to the maximum extent practicable, increase the likelihood that the species will survive and recover, or provide a net environmental benefit as required by law.

29. Petitioner reserves the right to raise similar arguments regarding the inadequacy of the ITL and HCP related to the other species listed in the HCP as well as other species that are improperly omitted from the HCP.

V. KNSC PARTICIPATION IN THIS PROCEEDING WOULD SERVE THE PUBLIC INTEREST

30. The HCP for Na Pua Makani Wind Energy Project's lack of compliance with HRS § 195D-4(g) has improperly shifted the burden of proof from Na Pua Makani to the public to assess and mitigate the environmental impacts of this project. This improper placement of the burden on the community violates the spirit and letter of the laws protecting Hawai'i's precious endangered and threatened species, the public trust doctrine, and the precautionary principle.

31. There are no other mechanisms by which KNSC can cross-examine Na Pua Makani and its witnesses to establish facts and present detailed expert testimony. By asking questions, presenting alternative information, pointing out inadequacies in the ITL and HCP, and framing legal issues, KNSC will help better inform the Board and public at large about threats currently facing Hawaiian Hoary Bats and other species at risk from this Project.

VI. CONCLUSION

32. Based on the forgoing, KNSC respectfully request that the Board grant this petition for a contested case.

33. Petitioner reserves the right to amend this Petition to set out in more detail the reasons why the Incidental Take License and Final Habitat Conservation Plan for the Na Pua Makani Wind Energy Project must be denied.

DATED: Honolulu, Hawai'i, November 19, 2016.



Gil Riviere
President
KEEP THE NORTH SHORE COUNTRY

Electronic signature authorized by
Gil Riviere on 11/19/2016;
original signature to be provided
on amended signature page to be
filed promptly.

CERTIFICATE OF SERVICE

I hereby certify that one copy of the foregoing document was duly served upon the party listed below by mailing through the United States Postal Service, postage prepaid, on November 19, 2016.

Suzanne D. Case
Chairperson, Department of Land and Natural Resources
Board of Land and Natural Resources
1151 Punchbowl Street, #130
Honolulu, HI 96813
Courtesy email sent to: Suzanne.Case@hawaii.gov

DATED: Honolulu, Hawai'i, November 19, 2016.



Gil Riviere
President
KEEP THE NORTH SHORE COUNTRY
Electronic signature authorized by
Gil Riviere on 11/19/2016;
original signature to be provided
on amended signature page to be
filed promptly.