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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

November 8, 2019

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

PSF No. 19MD-107

Maui

Consent to Mortgage with Estoppel Certificate, General
Lease Nos. S-6003 and S-6004, Kaheawa Wind Power II, LLC,
Lessee, Kealaloloa, Ukumehame, Wailuku, Maui, Tax Map Keys:
(2) 3-6-001: portion of 014 and (2) 4-8-001: portion of
001.

APPLICANT AND REQUEST:

Consent to Mortgage from Kaheawa Wind Power II, LLC, Lessee/
Mortgagor, to HSBC Bank USA, National Association, as collateral
agent for the secured parties, Mortgagee, in an amount not to
exceed one hundred thirty-seven million dollars (\$137,000,000).

For Mortgagor to qualify for this mortgage, Mortgagee requires an
estoppel certificate from Lessor (State of Hawaii).

LEGAL REFERENCE:

Sections 171-22 and 36(b), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of the State of Hawaii situated
at Kealaloloa, Ukumehame, Wailuku, Maui, identified by Tax
Map Keys: (2) 3-6-001: portion of 014 and (2) 4-8-001:
portion of 001, as shown on the attached map labeled
Exhibit A.

AREA:

135.098 acres, more or less, for GL S-6003
25.894 acres, more or less, for GL S-6004

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: YES _____ NO X

ENCUMBRANCES:

Both TMKs (2) 3-6-001:014 and (2) 4-8-001:001

GL S-6004 to Kaheawa Wind Power II, LLC, recorded January 25, 2011, amended July 12, 2011 and July 17, 2012, for access and utility easement purposes;

Land Office Deed (LOD) 18671 to Maui Electric Company (MECO), recorded March 9, 1962, for perpetual non-exclusive easement for electric transmission line purposes;

LOD 27700 to MECO, recorded August 16, 1988, for perpetual non-exclusive easement for electric lines and pole purposes.

Only TMK (2) 3-6-001:014

GL S-6003 to Kaheawa Wind Power II, LLC, recorded January 25, 2011, amended July 12, 2011 and July 17, 2012, for lease of wind farm area;

LOD 24803 to County of Maui Department of Water Supply, recorded July 11, 1969, for perpetual non-exclusive easements for water pipeline, access, and tank site purposes; and

LOD 27379 to Hawaiian Telephone Company, recorded January 16, 1984, for perpetual non-exclusive easements for telephone lines and access purposes.

Only TMK (2) 4-8-001:001

GL S-5731 to Kaheawa Wind Power, LLC, recorded February 22, 2005 for lease of wind farm area and access and utility purposes; and

Executive Order (EO) 2328 to State of Hawaii Department of Transportation, dated August 16, 1967, for highway purposes.

CHARACTER OF USE:

GL S-6003: for wind farm purposes.
GL S-6004: for wind farm access and utility easements.

TERM OF LEASE:

Original term of twenty-one (21) years, commencing on December 1, 2010 and expiring on November 30, 2031. Option to extend lease, with right of first refusal, for an additional twenty (20) years.

ANNUAL RENTAL:

Current rent is \$150,000 minimum annually, due in semi-annual installments of \$75,000 on January 1st and July 1st of each year. In addition, the lessee is required to pay a percentage rent of 2.5% of gross revenue to the extent such amount exceeds the minimum annual rent in any year. The percentage rent applies to the second to eleventh years of the lease term. The last year percentage rent was paid by lessee was for December 1, 2016 through November 30, 2017, in the amount of \$212,432.74. Lessee is currently delinquent in paying percentage rent for the subsequent year, December 1, 2017 through November 30, 2018. Pursuant to the lease, the percentage rent is due within thirty days of the end of the lease year.

RENTAL REOPENINGS:

Rent Re-openings are at the end of the 11th year, and at repowering. "Repowering" means 1) the renewal or replacement of the majority (more than 80%) of the wind turbines as evidenced by, but not limited to, contemporaneous replacement of the wind turbines with different models or 2) a significant modification to that portion of the wind project located on the premises such that a significant revision to the existing land use permit or a new land use permit is required for the premises.

USE OF LOAN PROCEEDS:

To refinance Lessee's equity invested in the facility. As part of the refinance, Lender will have a leasehold mortgage on the property.

DCCA VERIFICATION:

Place of business registration confirmed:	YES	<u>X</u>	NO	_____
Registered business name confirmed:	YES	<u>X</u>	NO	_____
Applicant in good standing confirmed:	YES	<u>X</u>	NO	_____

APPLICANT REQUIREMENTS:

Lessee shall provide Lessor with the percentage rent for the December 1, 2017 through November 30, 2018 period which is currently several months in arrears.

REMARKS:

Kaheawa Wind Power II, LLC is a foreign limited liability company.

General Leases (GL) S-6003 and S-6004 were originally executed November 24, 2010. GL S-6003 is for the lease area for the wind farm area existing on TMK (2) 3-6-001:014, and GL S-6004 is for access and utility easements on both subject TMKs needed to operate the windfarm. Both leases were subsequently amended on June 8, 2011 and May 10, 2012. On October 20, 2011 the DLNR approved a Leasehold Mortgage, Security Agreement, Assignment of Rents, and Financing Statement as Fixture Filing.

Lessee is requesting a mortgage and estoppel certificate to refinance Lessee's equity invested in the property. The mortgage is a requirement of the lenders who are providing the funds. Equity is being refinanced due to a lower cost of capital.

The leased premises have been used substantially for the purpose for which they were leased, which is wind farm purposes.

Lessee is currently in compliance with lease terms pertaining to minimum rent, insurance, and performance bond; however, lessee is late in providing the percentage rent report together with payment of any percentage rent owing for the year ending November 30, 2018. A Notice of Default letter was sent to Lessee on September 23, 2019. MDLO was subsequently notified by Lessee that the percentage rent check was sent in January 2019, however MDLO has no record of receiving the percentage rent report or the check. On October 16, 2019, Lessee indicated they will stop payment on the missing check dated January 2019 and then send another check and the percentage rent report. If the delinquency is not cured by the time the estoppel certificate is prepared, it will need to be identified in the estoppel certificate as a non-compliance item.

Rent re-opening is at the end of the 11th year, and at repowering. The next rental reopening is on November 24, 2021.

Of note, since 2007 lessee has been paying the County of Maui property taxes. The total amount of County taxes levied thus far is

\$9,680,628. Kaheawa Wind Power II and its affiliate Kaheawa Wind Power (collectively, "KWP") are currently in tax litigation with the County of Maui. The County of Maui is taking the position that the projects' wind turbines are taxable as real property while KWP believes they are taxable personal property, and therefore not subject to the County's taxing power. The litigation stems from an ordinance change in 2014 in which the County of Maui specifically defined wind turbines as "real property" for tax purposes. KWP asserts that the County cannot transform personal property into real property merely by putting a new label on the same property. The case is currently with the Hawaii Supreme Court and a decision is expected soon. The projects have been paying the full amount of assessed taxes into escrow pending resolution of the case and will receive refunds if the decision is favorable.

Lessee is substantially in compliance with the habitat conservation plan which is part of the implementing agreement between Kaheawa Wind Power, LLC, the United States Fish and Wildlife Service, and DOFAW.

Staff of MDLO reached out to DOFAW for their comments regarding the Wind Farm site. Pursuant to Item No. 18 of S-6004, DOFAW recommends removal of ironwood trees that contribute to fire hazards in the area, and to establish and maintain a fire break along the wind farm access road. The reason is because the lease area and surrounding properties are susceptible to fire. Fires in the area threaten communities, homes, watersheds, and public safety and cause road closures that cut the west side of Maui off from vital services. The wind farm access road has the potential to serve as an important fire break to ensure that any west-moving fires are contained before spreading into leeward areas. High fuel loads adjacent to the road place crews at risk and prevent fire crews from operating in mauka areas during a fire. The department constructs and maintains fire controls on state lands in similar areas at considerable cost. The lessee has an obligation to construct and maintain fire pre-suppression measures consistent with department actions. MDLO staff plans to work with the tenant to coordinate and conduct site visits along with DOFAW and USDA Natural Resource Conservation Service staff to determine best management practices in order to comply with lease provision No. 18.

RECOMMENDATION:

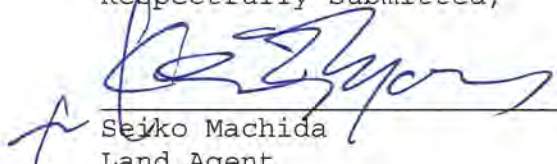
That the Board, subject to the Applicant fulfilling the Applicant requirement listed above:

1. Consent to the mortgage with estoppel certificate between

Kaheawa Wind Power II, LLC, Mortgagor, and HSBC Bank USA, National Association, as collateral agent, Mortgagee, subject to the following:

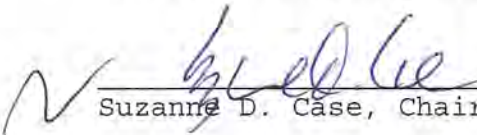
- A. The loan proceeds shall be used solely for the operations or improvements of the leased premises as identified in the "Use of Loan Proceeds" section above. The Lessee shall maintain records of loan expenditures which may be inspected by the Department;
- B. The standard terms and conditions of the most current consent to mortgage form, as may be amended from time to time;
- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Seiko Machida
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

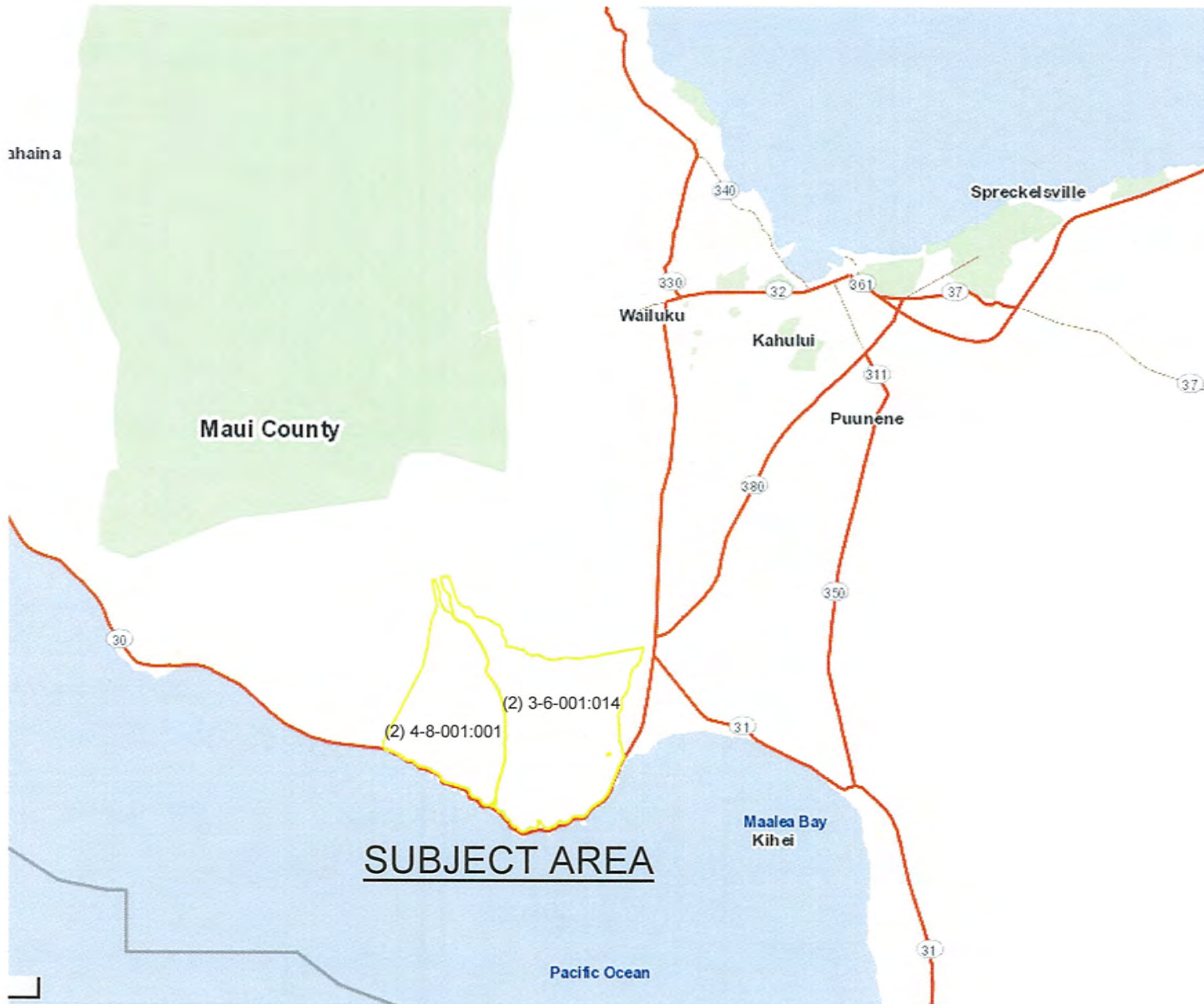
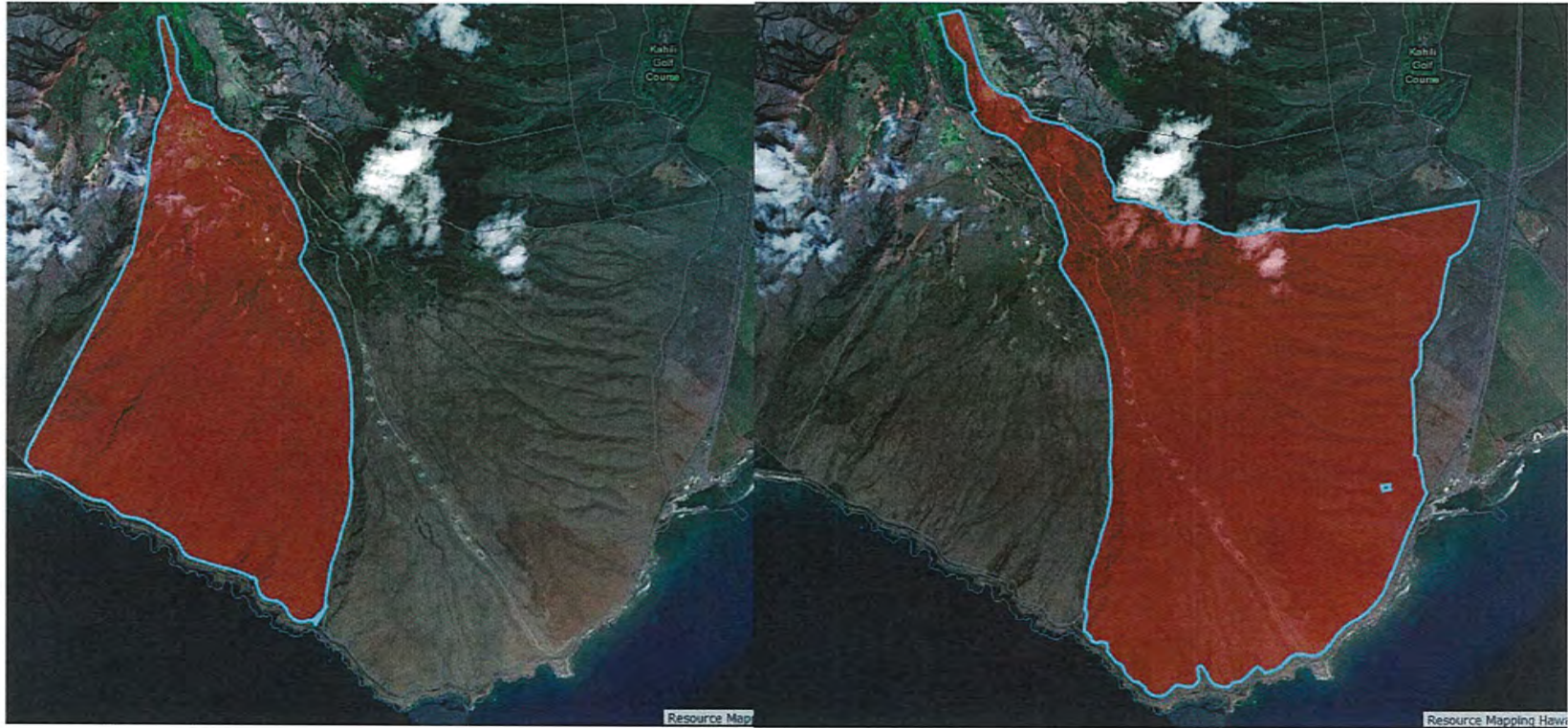


Exhibit A



TMK: (2) 4-8-001:001

GL S-6004

TMK: (2) 3-6-001:014

GL S-6003 & S-6004