

SECOND AMENDMENT TO IMPLEMENTING AGREEMENT

THIS SECOND AMENDMENT TO IMPLEMENTING AGREEMENT (this "Amendment") is made to be effective as of the 30th day of April, 2012, by and between KAHEAWA WIND POWER, LLC, ("KWP"), the U.S. FISH AND WILDLIFE SERVICE (the "Service") and the HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES ("DLNR"). KWP, the Service, and DLNR are sometimes collectively referred to herein as the "Parties."

Recitals

WHEREAS, the Parties executed that certain Implementing Agreement (the "Agreement") on January 26, 2006, as amended February 26, 2006, in conjunction with the issuance of Incidental Take Permit TE-118901-0 and Incidental Take License ITL-08 (collectively "Permits") to KWP.

WHEREAS, on April 30, 2012, the Service and DLNR approved an amendment to the Permits, reducing the amount of authorized take for the Hawaiian petrel and Newell's shearwater (the "Seabirds") and removing the "Notably Higher Take" scenario from the Permits for the Seabirds ("Permit Amendment"). To conform to the Permit Amendment, the HCP has been amended to remove references to a Notably Higher Take scenario for the Seabirds ("HCP Amendment").

WHEREAS, the HCP Amendment also reduces take for the Seabirds under the Higher Take Scenario and removes references to a Lower Take Scenario for the Seabirds.

WHEREAS, the purpose of the Agreement is to ensure the implementation of each of the terms of the HCP.

WHEREAS, certain Agreement provisions require revision to conform to the Permit Amendment and HCP Amendment.

WHEREAS, the Parties also wish to replace the existing "Modification and Amendment" section with updated language.

WHEREAS, the Parties wish to amend the Agreement to reflect the Permit Amendment, the HCP Amendment, and the updated language as set forth below.

Amendment

The Agreement will be revised as set forth below.

1. Subsection 4.1.1(d) of the Agreement will be amended to read as follows:

(d) FWS, DLNR and Permittee shall review the amounts of the two LOCs during the annual meetings held pursuant to Chapter VI, Implementation, of the HCP. If circumstances warrant, in accordance with the HCP, the amounts of the LOCs may be decreased, increased or eliminated during the annual meetings. If unmitigated Notably Higher Take is occurring for the Nene or Hawaiian hoary bat, either during any given year or cumulatively, then Permittee shall increase the amount of the \$500,000 Mitigation LOC to \$1 million. If unmitigated Notably Higher Take for the Nene or Hawaiian hoary bat continues to occur during Year 11 or thereafter, the Parties agree during the annual meeting to evaluate the adequacy of the Mitigation LOC based on the amount of mitigation funds already spent in relation to the total mitigation obligation of \$3.76 million for the project. If FWS/DLNR believe an increase in the Mitigation LOC is warranted after the amount of the Mitigation LOC has been increased to \$1 million pursuant to this paragraph, FWS/DLNR may require an increase in the Mitigation LOC amount. FWS/DLNR will consider the following factors in deciding whether such an increase is warranted: length of time the project has operated under the Notably Higher Take scenario; difference between the unspent portion of the total project mitigation obligation of \$3.76 million and \$1 million; financial condition of Permittee; and Permittee's history of performance of mitigation obligations.

2. Section 12.0 will be replaced in its entirety with the following language:

12.1 Minor modifications.

(a) Minor modifications to the HCP shall not require amendment of the Agreement, the Permits or the ITL.

(b) Minor modifications are modifications to the HCP of a minor or technical nature where the effects on Covered Species and levels of incidental take are not more adverse or higher than those described in the HCP as originally adopted. Minor modifications to the HCP which would not require amendment of the Permits may include modifications that are minor in relation to the HCP and to which the Service and DLNR agree. They include, but are not limited to, corrections of typographic, grammatical, and similar editing errors that do not change the intended meaning; correction of any maps or exhibits to correct errors in mapping or to reflect previously approved changes in the Permits or HCP; minor changes to survey, monitoring or reporting protocols; implementation of adaptive management measures; and implementation of any measures that would result in a reduction in adverse effects on or take levels of Covered Species. Any other modifications to the HCP will be processed as amendments in accordance with Section 12.2.

(c) Any Party may propose minor modification of the HCP or this Agreement by providing notice to all other Parties. Such notice shall include a statement of the reason for the proposed modification and an analysis of its environmental effect, including its effects on operations under the HCP and on Covered Species.

(d) The Parties will use best efforts to respond to proposed modifications within 60 days of receipt of such notice. Proposed modifications will become effective upon all other Parties' written approval. If, for any reason, a receiving Party objects to a proposed modification, it must be processed as an amendment of the Permits in accordance with subsection 12.2 of this section. The Service and DLNR will not propose or approve minor modifications to the HCP or this Agreement if the Service or DLNR determine that such modifications would result in (i) operations under the HCP that are significantly different from those analyzed in connection with the original HCP, (ii) adverse effects on the environment that are new or significantly different from those analyzed in connection with the original HCP, or (iii) additional take not analyzed in connection with the original HCP.

12.2 Standard Amendment

(a) Standard amendments to the HCP shall mean any amendments not treated as minor modifications. Standard amendments to the HCP shall require an amendment to this Agreement and the Permits.

(b) Standard Amendments may include, but are not limited to, the following:

- (1) Adding a new species to the list of Covered Species contained in the HCP and/or the Permits;
- (2) Changes to the Covered Activities which were not addressed in the HCP as originally adopted, and which otherwise do not meet the criteria for a Minor Amendment as discussed above; and
- (3) Extending the term of the Permits.

(c) A Standard Amendment requires submittal to the USFWS and DLNR of a written application and implementation of all permit processing procedures applicable to an original Permit. The specific documentation required to comply with the ESA, HRS Chapter 195D, and the National

Environmental Policy Act may vary based on the nature of the Amendment.

Miscellaneous

1. In the event of any inconsistency between this Amendment and the terms of the Agreement, the terms set forth in this Amendment shall govern and control. Except as expressly amended hereby, the Agreement shall remain in full force and effect as of the date thereof. Unless specifically defined herein or the context requires otherwise, all capitalized terms used herein shall have the meaning ascribed to them in the Agreement.

2. This Amendment may be executed in one or more counterparts, which shall be construed together as one document. For purposes of the execution hereof, telecopied signatures may be treated as originals.

3. This Amendment (i) shall be binding upon and shall inure to the benefit of each of the Parties and their respective successors, assigns, heirs, receivers and trustees; (ii) may be modified or amended only by a written agreement executed by each of the Parties; and (iii) shall be governed by and construed in accordance with the laws of the State of Hawaii.

4. Descriptive headings used in this Amendment are for convenience only, and are not intended to control or affect the meaning or construction of any provision of this Amendment.

5. The Parties and their respective counsel have participated in the review and negotiation of this Amendment; therefore, this Amendment shall be construed without presumption of any rule requiring construction to be made against the party causing same to be drafted.

<Signatures on following pages>

EXECUTED to be effective as of the date first written above, which shall be the date of the last execution below.

Kaheawa Wind Power, LLC

By: Michael U. Alvarez

Name: Michael U. Alvarez

Title: Vice President

U.S. Fish and Wildlife Service,

By: Richard Hanan

Name: RICHARD HANAN

Title: DEPUTY REGIONAL DIRECTOR

Department of Land and Natural Resources,

State of Hawai'i

By: Guy H. Kanukukui

Name: GUY H. KANUKUKUI

Title: Deputy Director

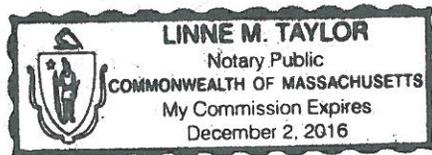
COMMONWEALTH OF MASSACHUSETTS)
) ss.:
COUNTY OF SUFFOLK)

On this 29th day of March, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared Michael U. Alvarez, the Vice President of
Kahawa Wind Power, LLC, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is subscribed to the within instrument and acknowledged to me that s/he executed the same in her/his capacity, and that by her/his, signature on the instrument, the individual(s) or the person(s) upon behalf of which the individual acted, executed the instrument.

Linne M. Taylor
Notary Public

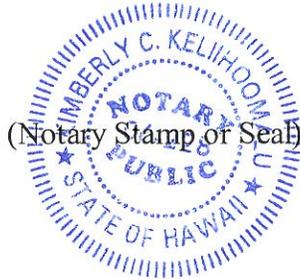
My commission expires:

December 2, 2016



STATE OF HAWAII)
) SS.
CITY & COUNTY OF HONOLULU)

On this 11 day of April, 20 12, before me personally appeared Guy H. Kaulu Kukui and _____ to me known to be the person(s) described herein, and who, being duly sworn, did say that he/~~she~~/they is/are the said First Deputy named in the foregoing instrument, and that he/~~she~~/they executed said instrument as his/~~her~~/their own free act and deed.



Kimberly C. Kelihoomalu
(Signature)

(Signature)

Notary Public, State of Hawaii
My commission expires: 4/30/2014

Doc. Date: <u>undated</u>	# of Pages: <u>6</u>
Notary Name: <u>Kimberly Kelihoomalu</u>	<u>1st</u> Circuit
Doc. Description: <u>2nd Amendment to Implementation Agreement</u>	
<u>Kimberly C. Kelihoomalu</u>	<u>4/11/12</u>
Notary Signature	Date
NOTARY CERTIFICATION	

