

**MINUTES FOR THE
MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, AUGUST 12, 2005
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:15a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Ted Yamamura
Mr. Toby Martyn
Ms. Taryn Schuman

Mr. Tim Johns
Mr. Gerald DeMello
Mr. Ron Agor

STAFF

Mr. Harry Yada, Land
Mr. Carl Watanabe, BOC
Mr. Dan Quinn, Parks
Mr. Les Yoshimasu, DOT
Mr. Michael Constantinides, DOFAW

Mr. Sam Lemmo, OCCL
Mr. Richard Rice, DOBOR
Mr. Mike Shinozuka, DOT
Mr. Paul Conry, DOFAW
Mr. Roger Imoto, DOFAW

OTHER

Mr. Colin Lau, Deputy Attorney General
Mr. Greg Mooers, K-2
Mr. Allen Yanos, G-1
Mr. Kent Pelt, G-1
Ms. Mary Matza, D-6
Mr. Michael Heihre, D-13
Mr. Gary Barnes, D-16
Mr. Bill Mossman, J-1
Mr. Scott Harlan, C-1
Ms. Lisa Barton, C-1

Mr. Sumner Howard, G-1
Ms. Denise Kaehu, G-1
Mr. Bruce Meyers, D-4
Mr. Phil Hauret, D-12
Mr. Mike Buck, D-13, C-1
Mr. Patrick Maloney, D-14
Mr. Don Bryan, C-1
Mr. Carl Masaki, C-1
Mr. Mike Robinson, C-1

Mr. Peter Simmons, C-1
Mr. Jim Quinn, C-1

Mr. Kent Unterman, C-1

{Note: language for deletion is [bracketed], new/added is underlined}

Item A-1: Minutes of July 22, 2005

Member Martyn and Member Schuman recused themselves.

Unanimously approved by the remaining Board members (Johns/Yamamura).

Item K-2: Conservation District Use Application (CDUA) HA-3229 for Subdivision of Land for Public Purpose.

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands announced that the subject property is located on the north coast of the island of Hawaii in north Kohala. The parcel is located in both the agricultural and conservation district. The conservation district runs along the coastline of the subject property. The applicants are proposing to subdivide the conservation district land into four lots with three lots partially located within the conservation district. To comply with Hawaii Administrative Rules §13-5-22 the applicant shall record with the deed a restrictive covenant prohibiting any type of land use within the conservation district. Mr. Lemmo recommended the Board approve this application to subdivide the subject parcel.

Greg Mooers the applicant was present.

Unanimously approved as submitted (DeMello/Johns).

Item G-1: Request for Authorization to proceed with implementing the recommendations outlined in the "Department of Land and Natural Resource, Bureau of Conveyances, Operation Review Project, Findings and Recommendation Report, June 2005".

Carl Watanabe, Administrator of the Bureau of Conveyance (BOC) reminded the Board Section 61 of Act 200, Session Laws of Hawaii 2003 requested the Department look at streamlining the process at BOC to create more efficiency within the division. Hoike Consulting was contacted to address operational concerns at BOC based on an increase in recording activity. Hoike's findings were detailed in a "Findings and Recommendation Report" which detailed idea's of how to work together as a group, it identifies operational improvement areas, addresses recommended organizational structure, staff changes and performance level improvements. Mr. Watanabe recommended the Board authorize the Department to proceed with implementing the recommendations outlined in the "Department of Land and Natural Resources, Bureau of Conveyances, Operation Review Project, Findings and Recommendation Report, June 2005".

- Item M-1:** Consent to Place Domestic Commercial Fishing Village and Adjacent Areas under Condominium Property Regime and Amendment of Legal Descriptions of Lease Lots of Harbor Lease Nos. H-90-4 Issued to the Hawaii Stevedores, Inc., H-03-18 Issued to Pacific Ocean Producers, LLC, and H-03-17 Issued to United Fishing Agency, Ltd.
- Item M-2:** Issuance of Direct Lease to County of Kauai, Port Allen Airport.
- Item M-3:** Amendment to Prior Land Board Action of September 10, 2004, Under Agenda Item M-1, Regarding Issuance of a Lease by Direct Negotiation to Fresh Island Fish Company, Inc., Adjacent to Pier 38, Honolulu Harbor, Oahu.
- Item M-4:** Amendment Prior Land Board Action of February 11, 2005, Agenda Item M-1, Conveyance of Portion of Kamehameha Highway, FAP No. SN-FAP-9-D4, to the City and County of Honolulu, TMK: (1) 1-2-26: portion of Kamehameha Highway.

Unanimously approved as submitted (Johns/Yamamura).

- Item K-3:** Conservation District Use Application (CDUA) KA-3003 for Kikiaola Small Boat Harbor Project (Navigation Improvements and Beach Nourishment).

The Board amended the Recommendation Section

1. Recommendation 3)

“That the applicant shall initially and in concert with Phase II bypass 60,000 cubic yards of sand from East Kikiaola Beach to West Kikiaola Beach. ~~[Subsequent nourishment efforts shall be borne by the DOBOR or the USACOE; DOBOR shall either bypass 10,000 cubic yards of sand/year for three years, or provide 30,000 cubic yards of sand at once. On the third year,]~~ DOBOR, in concert with the Coastal Lands Program, shall investigate beach stability at both East Kikiaola and West Kikiaola Beaches to determine future sand bypassing needs. All future sand bypassing shall be coordinated and approved with Coastal Lands Program staff and approved by the Chairperson of the Board of Land and Natural Resources;”

2. Recommendation 24)

“The applicant shall conduct surveys for sea turtles prior to the start of construction. . . A turtle survey protocol shall be reviewed and approved by the ~~[Land Division, Planning Branch]~~ Office of Conservation and Coastal Lands, prior to approval of construction plans for the project;”

3. Renumber Recommendation Section

Unanimously approved as amended (Agor/Johns).

Item K-1: Amendment to Condition #4 of Enforcement File No. HA-03-49 Regarding an Unauthorized Wall Extension.

Unanimously approved as submitted (DeMello/Johns).

Item D-2: Forfeiture of General Lease No. 3157, Robert C. McKeen, Jr. and Margaret McKeen, Lessee, Waiakea, South Hilo, Hawaii, TMK: (3) 2-1-07:23.

Mr. Yada informed the Board that yesterday they received a letter from the wife of Robert McKean, Jr. asking for additional time (October) to come up with the rental payment.

Due to legal questions regarding this lease the Board deferred this item. The Board requested staff to verify the status of the estates of both Robert C. McKeen Jr. and Margaret McKeen.

Written testimony was received from Natalie McKeen.

Motion to defer

Unanimously approved to defer (DeMello/Martyn).

Item C-1: Default of Timber Land License No. H-101 held by Tradewinds LLC.

Paul Conry, Administrator of the Division of Forestry and Wildlife (DOFAW) went over the division's history with Tradewinds including their various appearances before the Board and the resulting actions. At present Tradewinds is asking the Board for 1) allow the letter of intent between Rockland Capital Energy Investments, LLC and Tradewinds to satisfy the Board's requirement to produce a binding subscription agreement; 2) an extension of the current Phase II construction funding deadline from October 31, 2005 to October 31, 2006; 3) to change the Domicile for Tradewinds from a Washington LLC to a Delaware LLC; 4) that the Department find the conditions of the Letter of Intent regarding Phase II funding favorable and 5) an extension on the fixed pricing under Section 4.1 of the Timber Land License. Mr. Conry also informed the Board he anticipates future requests by Tradewinds for future amendments to their Timber Land License, which will include a reduction in the scope of production to veneer peeling and export operation. Given the history of this timber land license, Mr. Conry feels it is in the best interest of the State to seek a new fair-market alternative for disposition of the timber resources in Waiakea Timber Management Area. Mr. Conry recommended the Board find that the Tradewinds business model does not meet the goals and intent of the Timber Land License and Waiakea Timber Management Plan, deny Tradewinds request to approve the assignment of interest in Tradewinds to the proposed Phase I investors, Deny

the request to extend the Phase II funding deadline and the request to cancel all other performance deadlines, Deny the request to approve the assignment of Timber Land License to Tradewinds, LLC a Delaware limited liability company, find Tradewinds in default of their Timber Land License by failing to secure Phase I financing by March 31, 2005, find Tradewinds in default of their Timber Land License for failure to provide signed legally binding subscription agreements for start-up funding of \$1,000,000 by July 1, 2005 and instruct the Division to issue a notice of default in which Tradewinds is informed that it must cure or remedy such defaults within 60 days.

Don Bryan, representing Tradewinds acknowledged it has taken six years to get to this point but confirmed his organizations is ready to move ahead with this project. Mr. Bryan went over his handout, which detailed the Current Project Description, Future Expansion Plans, Recent Developments, Significant Achievements, Value Proposition, Economic Impact, Timeline Moving Forward, Alternatives and Tradewinds Recommendations.

Scott Harlan, Managing Director and Chief Operating Officer at Rockland Capital Energy Investments, LLC (Rockland) testified in opposition to staff's recommendation. As background information on his company, Mr. Harlan pointed out Rockland is a small private equity firm that was formed in early 2003. Rockland's principle purpose and objective is to make investments in energy businesses. Mr. Harlan noted they have not invested in the timber or forestry business but he has some experience from seven years ago with wood fire power plants in the state of Maine. In 2004, Rockland made three investments, which were all in power plants. The investments in those companies ranged from 10 million to 80 million dollars. Mr. Harlan let it be known that they are looking to Mr. Bryan to continue managing the project. In terms of Rockland's funding for this subject project, Mr. Harlan confirmed their commitment is real and the only condition to their funding is approval by the Board. Upon Board approval, Rockland will make funding available within five business days. As far as Phase II funding, Rockland has negotiated an option to fund seventy percent of Phase II. Mr. Harlan feels the permitting deadline is the biggest difficulty at the moment. He believes at the point they reach the deadline (November 30) to acquire all of the necessary permits (17) they will have not have reached that goal. Mr. Harlan asked the Board to clarify exactly what will be needed at the November 30 deadline.

Carl Masaki a member of the task force that begun the subject forest initiative testified. Mr. Masaki told the Board he believes Tradewinds deserves another chance. Addressing the comment that the State has lost out on revenue as Tradewinds has not started production, Mr. Masaki feels the trees Tradewinds would have harvested have actually gotten bigger thereby increasing the compensation the State would receive.

Lisa Barton spoke on behalf of her community and their support for Tradewinds. She spoke of the much needed jobs in the community Tradewinds would provide. Ms. Barton respectfully asked the Board to allow Tradewinds to keep their timber land license.

Mike Robinson a professional forester with extensive background in Hawaii testified before the Board. Mr. Robinson believes the forest industry is currently on track to replace the sugar industry. He spoke of the efforts put forth by Mr. Bryan with the expectation of developing a timber industry in Hawaii. Mr. Robinson pointed out the timber industry can not be developed overnight (sugar industry took 25 years). He told the Board patience and perseverance is the key in accomplishing a timber industry in Waiakea.

Peter Simmons, representing Kamehameha Schools testified in support of Tradewinds holding on to their timber land license. Mr. Simmons emphasized it will take everyone working together for the timber industry to thrive. He also spoke of the jobs that will be generated from this industry. Mr. Simmons suggested that the Department hold a meeting bringing together all the principle players in the timber industry to sit down and redefine the rebirth of the timber industry.

The Board brought up the notion of assessing a penalty should Tradewinds miss any deadlines or request additional extensions. Mr. Bryan informed the Board the idea of assessing a penalty upon Tradewinds could pose a problem with his investors, as the term of his contract would change. Mr. Bryan believes if there was a penalty system implemented that amounted to a lot of money he does not believe he will be able to get investors to invest into Tradewinds.

Mike Buck, a retired State Forester gave the Board some background into Tradewinds and the Department's history with this lease. He let it be known at the beginning of the meeting he favored staff's recommendation but now he is unsure. As a supporter of the forest industry Mr. Buck conveyed that Tradewinds has had a no cost deal with the Department for the past six years and if the Department decides to continue this relationship with Tradewinds it should come at a cost. Addressing the notion that there are others interested in the acquiring a timber license, Mr. Buck suggested opening up lands in Hamakua for their use.

Kent Unterman, of Pictures Plus testified before the Board. He conveyed to the Board his business of picture framing is built primarily on a foundation of koa veneer. He scales 20,000 board feet of koa veneer a year. From a business perspective, Mr. Unterman voiced his support for staff's recommendation as Tradewinds has been unable to fulfill their end of the deal.

Jim Quinn indicated a possible reason Tradewinds might be having difficulty in raising capital is that investors don't want to invest in a place so far away on a resources that is limited and on this type of wood. Mr. Quinn believes the market for eucalyptus wood is strong but it is narrow. He feels we need to focus on products that are high value in order for the State to see some economic value.

Mr. Unterman added to his testimony by saying if Tradewinds has funding available to allow staff to put together a deadline for Tradewinds and to also sit down in a partnership arrangement to see if everyone can agree on new terms of the contract.

Written testimony was received from Fred C. Holschuh, Lorraine Inouye, David M. Robichaux, Stephen E.S. Smith, North Hilo Community Council, Agro Resources, Inc., Thomas B. Crabb, Hawaiian Electric Light Company, Inc.,

The Board noted their concerns on whether we had the right project or the right people.

The Board instructed staff to meet with representatives of Tradewinds and address the issues discussed today (i.e. compensation for the option period, reopening, penalties for missed deadlines) and to return to the Board at the September 23, 2005 meeting with their recommendations.

Motion to deny

Unanimously approved to deny (Johns/DeMello).

Item D-3: Request to Approve Subordination Agreement, General Lease No. S-4303, S-4379 and S-5656, David S. De Luz Sr. and Big Island Toyota, Inc., Lessee, Waiakea, South Hilo, Hawaii, TMK: (3) 2-2-58:15 & 17.

Member Schuman rescused herself

Unanimously approved by the remaining Board members (Johns/DeMello).

Item D-1: Rescind Prior Board Action of October 10, 1980 (Item F-12), Direct Grant of Easement to U.S. Department of Interior, Hanalei, Kauai, TMK: (4) 5-4-02:adjacent 38.

Item D-5: After-the-Fact, Consent to Assign General Lease No. S-5264, Lee Enterprise, Inc., Assignor, to Emmis Television Broadcasting, L.P., Assignee, Humuula, North Hilo, Hawaii, TMK: (3) 3-8-01:11.

Item D-7: Set Aside to Department of Land and Natural Resources, Division of State Parks; Issuance of Management and Construction Right-of-Entry for Park and Related Purposes, at Keopuka, Kaawaloa, Kealakekua, and Kiloa, South Kona, Hawaii, TMK: (3) 8-1-07:50; 8-1-10:01, 8-1-11:1, 3-10, 12-14 & 16; 8-2-02:42 & 44, and 8-2-04:1, 2, 8, 10 & 15.

Item D-8: Grant of Perpetual, Non-Exclusive Easement to John and Ritamarie Slover for Access and Utility Purposes, Makawao, Maui, TMK: (2) 2-9-03:pors. 16, 17, 20 and 39.

Item D-9: Rescind Prior Board Action of May 9, 1997 (Item D-2), Issuance of a Revocable Permit to DIA Pacific Development Corporation for Parking and Security Purposes, Honokowai, Lahaina, Maui, TMK: (2) 4-4-01:por. 106.

Item D-10: Cancellation of Governor's Executive Order No. 4080 and Reset Aside to the Department of Education for Repair and Maintenance Baseyard Purposes, Kapahulu, Oahu, TMK: (1) 3-1-42:39.

Item D-11: Grant of Term, Non-Exclusive Easement to Robert Wakefield Ward and Robin Elaine Ward for Seawall and Filled Land Purposes, Kuliouou, Honolulu, Oahu, TMK: (1) 3-8-02:04 seaward.

Item D-15: Grant of Term, Non-Exclusive Easement to Gwenette Higa for Landscaping and Filled Land Purposes, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-5-07:23 seaward.

Item D-17: Rescind Prior Board Action of June 9, 1988, Item F-6; Deletion of Encumbrances, Paumalu, Koolauloa, Oahu, TMK: (1) 5-9-06:23.

Item D-18: Results of the Public Auction Sale of a State of Hawaii Lease on the Island of Oahu, Held on June 28, 2005, Kapalama-Kai, Oahu, TMK: (1) 1-5-42:02.

Unanimously approved as submitted (Johns/DeMello).

Item E-3: Request Adoption of the Proposed Amendment and Compilation of Title 13, Chapter 223, Hawaii Administrative Rule (Chapter 13-223 HAR), "Urban Historic Preservation and Restoration Projects."

Written testimony was received from Frank O. Hay.

The Board amended the Recommendation Section

"That the Board of Land and Natural Resources: Approve the proposed Amendment and Compilation of Chapter 13-223, HAR, entitled "Historic Preservation and Restoration [Project] on Public Lands."

Unanimously approved as amended (Johns/Yamamura).

Item E-1: Request from the Good News Jail and Prison Ministry to use the Large Pavilion at the Wailoa River State Recreation Area in Hilo, Hawaii, for a Fundraiser.

Item E-2: Request from Hospice of Hilo to use the Large Pavilion at the Wailoa River State Recreation Area in Hilo, Hawaii for a Fundraiser Entitled, "Celebration of Life."

Unanimously approved as submitted (Johns/Agor).

Item L-1: Certification of Election and Appointment of Kona Soil and Water Conservation District Directors.

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

August 12, 2005

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

Land Board Members:

SUBJECT: Default of Timber Land License No. H-101 held by Tradewinds, LLC.

Background: At its May 13, 2005 meeting, the Board of Land and Natural Resources (Board) received a status report on Tradewinds, LLC (TW) efforts to implement Timber Land License H-101 (TLL). TW provided information that it had secured commitments for startup or "Phase One" funding, a request to transfer of 34% interest in TW to Al Jubitz, Michael Clark, Michael Haglund, Gayle Veber, Bob Hansen and Jack Schifferdecker, a proposal to amend the "Assignment" section of the TLL and plans to change the State of incorporation of the Company from Washington to Oregon. The Board approved an after-the-fact assignment of 50% ownership interest in the company from prior partners Gordon Boyd, James Wood, and David McRae to Mr. Don Bryan that occurred in November 2004 and the assignment of approximately 34% ownership interest to the six named investors. The Board approved an amendment to the "Assignment" section of the TLL that maintained the requirement for Board approval of any transfer of interest exceeding 20% but provided greater detail and guidance on the process of future assignments of ownership (Attachment 1). The Board also required TW to provide documentation in the form of signed legally binding subscription agreements for start-up funding commitments of \$1,000,000 by July 1, 2005.

In satisfaction of the Board's requirement for TW to produce binding subscription agreements by July 1, 2005, TW transmitted to the Department, sometime after July 1, 2005, documentation of its latest financing efforts in the form of a signed letter of intent (Attachment 2) and a proposed contribution agreement. The details of these documents and TW's current plans for this project are as follows:

1. The Letter of Intent (LOI) is between Rockland Capital Energy Investments, LLC (RCEI) and TW. In the LOI, RCEI agreed to contribute up to \$1,300,000 but not less than \$700,000 of the Phase I financing, subject to several conditions. These conditions included not only Board approval, it also included the completion of Equity Agreements between Phase I TW investors, completion of RCEI's due diligence, RCEI obtaining final investor approval with their investors and Board, BLNR approval of RCEI as an investor and BLNR extension of the Phase II funding deadline satisfactory to RCEI.

Analysis: At the time of submittal, TW has failed to produce to the Department binding subscription agreements for the investment commitments which TW represented it had as of March 31, 2005. Instead, TW has produced a LOI which is contingent on more factors than just the Board's approval. In addition, the investors represented in the LOI are different than those TW had indicated in the May 13, 2005 meeting. In addition, the Board has not approved the assignment of interest in TW to RCEI. The LOI does not represent a binding commitment for Phase I funding. Furthermore, the proposed criteria for closing of the Phase I equity agreements in the LOI is contingent upon too many factors other than mere Board approval. Through previous correspondence and Board action, it is the belief of Staff that the first three contingencies should have been concluded, documented and in the possession of the Department at this time – all are not. The only required item to facilitate the closing of Phase I funding at this time should be Board approval of any potential changes in assignment of TW investors, for which the Department has received insufficient documentation and no formal request.

2. An extension of the current Phase II construction funding deadline from October 31, 2005 to October 31, 2006, or April 30, 2007 (depending on the amount of time required to process all necessary permits), and a cancellation of all other deadlines in the amended TLL.

Analysis: Section 3 of the LOI states that RCEI, a non-approved potential investor in TW, requires an extension of the Phase II funding deadline of October 31, 2005. As TW has already received numerous deadline extensions, including a previous extension for Phase II funding, Staff does not support the request to extend this deadline further or the request to cancel all other deadlines. The purpose of progressive deadlines is to allow the Department to monitor the progress of the project. To date TW has failed to meet any of its deadlines. Staff does not feel that extension of the current deadline for commitment of equity investors for Phase II funding is prudent. RCEI should be willing to commit equity funding to demonstrate the certainty of their financing. Additionally, if TW had met any of its prior deadlines, it would have had time to initiate at least some permits using its existing cash assets. Instead it chose to minimize its own financial commitments and risk by waiting for final closing Phase I funding. At the same time TW has continuously asked the State to accept the risk and revenue losses associated with constant delays in their efforts to meet the obligations of their TLL.

3. Change of Domicile for TW from a Washington LLC to a Delaware LLC. Although TW characterizes the move as a "change of domicile", the transfer will actually involve yet another assignment of the TLL (as part of an overall asset transfer) to the TW Delaware LLC.

Analysis: TW informed the Board on May 13, 2005 that the corporation wished to change its domicile from Washington to Oregon. The new request to change domicile to Delaware reflects the dominance of RCEI as a potential new investor in TW and how much further away the TLL is getting from the original company that entered into the TLL with the DLNR. If such assignment was approved by the Board, RCEI would hold one seat of three on the TW Board of Directors, and would have veto voting powers on a number of issues as detailed in the LOI. The LOI further details how after any potential closing of Phase II funding, two additional RCEI members would be added to the TW Board, effectively giving RCEI a controlling interest in the corporation. Thus, within a

matter of approximately one year, Mr. Don Bryan would no longer have control of TW. Without more information on RCEI and their proposed new business model, it is not possible to provide a recommendation on whether this change would materially effect the agreement.

4. That the Department find that conditions of the LOI regarding Phase II funding favorable.

Analysis: Staff finds that the intent and commitment expressed by RCEI regarding Phase II funding is inadequate in that too many conditions and options have been proposed. LOI Section 9 details how RCEI reserves the option to invest in Phase II construction funding for a period of 30 days after TW has accomplished five milestones:

- a) Tradewinds has executed contracts to procure all of its' timber resources required to operate one shift five days per week;
- b) Tradewinds has executed contracts for the sale of at least 50% of the Project's output;
- c) Tradewinds has executed a Power Purchase Agreement with HELCO;
- d) Tradewinds has executed an Engineering, Procurement and Construction contract with a credit-worthy company; and
- e) Tradewinds, or its financial advisor, has prepared well-developed financial forecasts for inclusion in debt and/or equity offering memos and has delivered those forecasts to Rockland.

While the conceptual availability of funding is promising it is still heavily contingent on numerous third-party agreements and the associated performance milestones typical of such transactions, Staff believes that the possibility for lack of performance relating to the milestones on the part of TW is real and could once again stall the project. If such an agreement was approved by the Board and should TW meet all five criteria, RCEI would still have an option to withdraw. Although Staff is aware that the deadline for securing Phase II financing has not yet passed, Staff believes there is a significant degree of uncertainty in these funding arrangements that may not be resolved by the deadline for Phase II funding.

5. An extension on the fixed pricing under Section 4.1 of the TLL. The following quote was part of an email message from Mr. Jack Schifferdecker (council for TW) to Deputy Attorney General Ms. Linda Chow dated August 3, 2005:

"The investors are demanding that we obtain a five-year extension of the fixed pricing under Section 4.1 of the license [TLL] from 2011 to 2016. Again, they are fearful that without a 1—year fixed-price log supply contract it will be difficult to raise our Phase II funding. This extension will also be a condition of the Phase I funding."

Analysis: The fixed pricing refers to the terms of payment by TW to the Department for timber harvested (stumpage) from the WTMA on a dollar per cubic meter basis. The Department originally agreed to low stumpage values in exchange for commitments on the part of TW to follow harvesting operations with replanting operations, thereby ensuring the long-term productivity of this forest. It is not in the best interest of the State to agree to such extension.

The stumpage value of timber resources locally and internationally has risen during the last four years while the State has waited for TW to perform. According to the original

TLL terms, the TW mill was to have been completed no later than calendar year 2005. Through recent correspondence, TW has indicated that the earliest their mill can now be completed is November, 2008 – a minimum delay of three years. Despite the low stumpage values stipulated in the TLL, The Department expected to obtain more than \$550,000 in revenue from TW annually. The Department should not be penalized for the inability of TW to perform by subsidizing their startup efforts further.

Anticipated requests for future amendments:

Future reduction in scope of production: TW has indicated the TLL business model will be reduced from a veneer peeling and plywood manufacturing facility that favors maximum local processing of the timber resources to a veneer peeling and export operation without directly supplying local forest product markets.

Analysis: It is the opinion of Staff that the full concept and intent of Timber Land License H-101 (TLL) Section 3.0 “Value-Added Processing” as well as the multiple Guiding Principles enumerated in Section V of the associated Forest Management Plan for the Waiakea Timber Management Area (WTMA) are not being met with the proposed TW business model of peeling Hawaiian timber and shipping the veneer to the mainland for further processing. The concepts in the TLL and WTMA include maximizing local processing and employment opportunities, and encouraging the influx of resulting forest products directly into Hawaiian construction and small-business niche markets relating to the timber industry.

Staff believes that business models other than the one being proposed by TW should be considered to serve the best interests of the State and its people for employment and marketing opportunities relating to timber industry development in Hawaii. The Department has been approached by, or heard of at least four interests that wish to have access to State timber resources. These interests encompass all major categories of forest products – veneer, solid lumber, chips and biomass for energy - a desired condition. They represent operational scales that Staff feel are both appropriate for timber resources in the WTMA as well as start-up time lines that are competitive with those stated by TW, or could very well commence sooner. Finally, they represent business models that would be superior in feeding locally grown and processed timber products into the Hawaii market.

Staff notes that the current TW business model encompasses the establishment of one lathe operating on only one shift in a mill facility that has the potential to house two lathes with a total capacity of six shifts. TW has informed Staff that it has reached an apparent agreement to obtain approximately 80,000 cubic meters of peeler logs from a source in Hamakua. While TW cites this lumber source as essential for their one-shift model to be viable (the WTMA alone is insufficient), the Department has requested but not received any supporting documentation regarding this transaction. Because of the high capitalization costs of constructing a mill, associated investment obligations, and a perceived lack of significant additional timber resources or commitments to TW operations, the financial viability of this initial business model is questioned. With the introduction of RCEI as a major investor, with its background in investment capital for electric power projects, a question arises as to whether the emphasis of the project may shift from timber to electricity.

Staff's conclusion is that it is in the best interest of the State and people of Hawaii to seek new, fair-market alternatives for disposition of timber resources in the WTMA.

RECOMMENDATIONS

That the Board of Land and Natural Resources:

1. Find that the TW business model does not meet the goals and intent of the TLL and Waiakea Timber Management Plan, and that it is in the best interest of the State to seek new alternatives for the disposition of timber resources within the WTMA.
2. Deny TW's request to approve the assignment of interest in TW to the proposed Phase I investors.
3. Deny the request to extend the Phase II funding deadline and the request to cancel all other performance deadlines contained in the TLL.
4. Deny the request to approve the assignment of the TLL to Tradewinds, LLC, a Delaware limited liability company.
5. Finds TW in default of their TLL by TW's failure to secure Phase I financing by March 31, 2005.
6. Finds TW in default of their TLL by TW's failure to provide signed legally binding subscription agreements for start-up funding of \$1,000,000 by July 1, 2005.
7. Instruct the Division to issue a notice of default in which TW is informed that it must cure or remedy such defaults within 60 days.

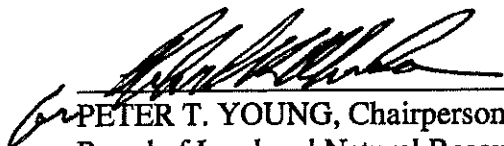
Respectfully submitted,



PAUL J. CONRY
Administrator

Attachments 1 & 2

APPROVED FOR SUBMITTAL:



PETER T. YOUNG, Chairperson
Board of Land and Natural Resources

SECOND AMENDMENT OF TIMBER LAND LICENSE NO. H-101

THIS AGREEMENT, made and entered into this 8th day of July, 2005, by and between the State of Hawaii, by its Board of Land and Natural Resources, hereinafter referred to as the "Licensor," and Tradewinds Forest Products, LLC, a Washington limited liability company, whose address is 2574 Northwest Thurman Street, Portland, Oregon 97210-2524, hereinafter referred to as the "Licensee";

WITNESSETH:

WHEREAS, Tradewinds Forest Products, LLC, a Washington corporation, is the present Licensee under Timber Land License No. H-101 ("TLL") dated August 8, 2001, covering timber harvest and replanting activities in the Waiakea area of the island of Hawaii; and

WHEREAS, the Licensee desires that the TLL be amended; and

WHEREAS, the Board of Land and Natural Resources, at its meeting held on May 13, 2005, has approved the amendment to allow for the continued partnership with Licensee;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree to amend the TLL as provided hereunder.

1. Section 10.4 of the TLL is deleted in its entirety and replaced with the following:

Section 10.4 **Assignment**. Licensee shall not assign this Agreement without the written consent of Licensor, which consent will not be unreasonably withheld. Licensee shall provide Licensor written notice of any requested assignment, along with such additional information or material as Licensor may reasonably request to evaluate the assignee (the "Information Notice"). For purposes of this Section 10.4, an "assignment" by Licensee shall include, without limitation, if Licensee is a corporation, partnership, limited liability company or other like entity, a change in the beneficial ownership of Licensee of greater than twenty percent (20%), whether

by merger, sale of all or substantially all of Licensee's assets, or the acquisition of voting securities of Licensee (whether in a single transaction or a series of transactions).

2. The name of Licensee in the first paragraph of the TLL, Tradewinds Forest Products LLC, shall be amended to reflect the correct name of Licensee, Tradewinds LLC.

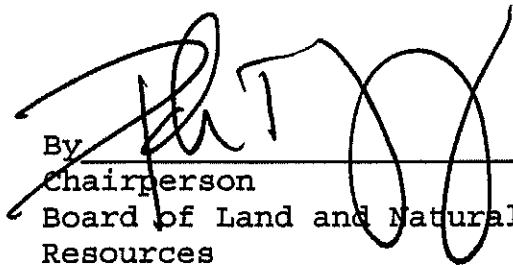
IN CONSIDERATION THEREOF, the Licensor and Licensee further agree that this Amendment is subject to all the covenants and conditions in the TLL, except as herein provided.

This Amendment, read in conjunction with the TLL sets forth the entire agreement between the Licensor and Licensee; and the TLL as amended and modified hereby shall not be altered or modified in any particular except by a memorandum in writing signed by the Licensor and Licensee.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month, and year first above written.

STATE OF HAWAII

Approved by the Board of
Land and Natural Resources
at its meeting(s) held on
May 13, 2005.

By 
Chairperson
Board of Land and Natural
Resources

LICENSOR

ROCKLAND CAPITAL ENERGY INVESTMENTS, LLC

2204 Timberloch Place
Suite 190
The Woodlands, TX 77380

Phone: 832-858-0035
Fax: 832-585-0104

Confidential

July 26, 2005 noon
Draft

Tradewinds, LLC
2574 Northwest Thurman Street
Portland, Oregon 97210

Attention: Don Bryan

Dear Don:

This letter sets forth the intent of Rockland Capital Energy Investments, LLC or an affiliate ("Rockland") to provide up to \$1,300,000 but not less than \$700,000 of equity capital to Tradewinds, LLC (or a newly-formed substituted entity) for development of the Tradewinds Veneer Mill and Cogeneration Facility located on the Island of Hawaii (the "Project"). As part of the arrangements, Tradewinds intends to execute fee and management arrangements with Don Bryan (the "Developer" or "Management"). The Parties acknowledge that Tradewinds is in discussions with other investors for the provision of up to \$600,000 of equity capital ("Other Phase I Investors").

The significant terms of this letter of intent are as follows:

1. Principal Terms. The principal terms of the proposed arrangements would be as set forth in Annex A.
2. Equity Agreements. The proposed arrangements would be completed in accordance with terms and conditions to be set forth in definitive agreements governing the arrangements which shall be satisfactory in form and substance to Rockland, Tradewinds, the Developer and the Other Phase I Investors (the "Equity Agreements").
3. Closing. The closing of the arrangements would be subject to (i) entering into the Equity Agreements, (ii) completion of Rockland's due diligence investigation with results satisfactory to Rockland, (iii) obtaining final investor approval with Rockland investors and Board, (iv) formal approval from the State of Hawaii acknowledging that the Waiakea Timber Contract is in full force and effect, including an extension of the Phase II funding deadline satisfactory to Rockland. The parties contemplate that the Equity Agreements would be executed after completion of (ii) and (iii) above which is expected prior to July 28th, and will close after Tradewinds receives formal State approval mentioned in (iv), which is expected on August 12.

4. Access and Cooperation. For the period commencing on the date of acceptance of this letter of intent by Tradewinds through the earlier of August 31, 2005 or the date the definitive documents are executed, Rockland and its representatives will have full access to Tradewinds and Management and their respective officers, employees, counsel, accountants and other experts, and full opportunity to investigate Tradewinds' businesses, properties, books, records and liabilities and to discuss Tradewinds' and Management's affairs with their respective officers, employees, counsel, accountants and customers, in each case upon reasonable notice and during normal business hours.

5. Additional Limitations. Except for the Other Phase I Investors, for the period commencing on the date of this letter of intent through August 31, 2005, none of Tradewinds, Management or any Person acting on behalf of Tradewinds or Management will (i) solicit, initiate, encourage, enter into or conduct any discussions, or enter into any agreement or understanding, with any other person or entity regarding the transfer, directly or indirectly, of any equity interest in, or a substantial part of the assets of, Tradewinds or the formation of any joint venture or strategic alliance involving Tradewinds, or (ii) disclose any information relating to Tradewinds or afford access to the properties, books or records of Tradewinds to any other person or entity that may be considering acquiring an interest in Tradewinds or entering into a joint venture or strategic alliance involving Tradewinds.

6. Confidentiality; Publicity. The parties agree to keep the existence of this letter and its terms confidential except as necessary in discussions with the Other Phase I Investors and the State of Hawaii, Board of Land and Natural Resources. Neither party to this letter shall make any public announcements about this letter or the proposed transaction without the consent of the other party.

7. Costs. Tradewinds and Rockland shall each bear their respective costs related to the proposed transaction, including fees and expenses of their respective lawyers and financial advisers. Upon a successful closing of the proposed transaction and effectiveness of the funding commitments, Tradewinds will pay all third party transaction related expenses, including reasonable legal fees and expenses of Rockland and Tradewinds, including fees due to Greg Retzlaff.

8. Letter of Intent Only. This document is an expression of the intent of the parties only, and nothing herein shall create any legally binding obligation on the part of any party (except as to those matters referred to in paragraphs 4, 5, 6 and 7 above, which shall be binding). Neither party shall have any obligation to pursue or complete any transaction or arrangement contemplated by this letter and, consequently, no such obligation shall arise unless and until mutually satisfactory definitive agreements concerning the proposed equity arrangements shall have been entered into by Tradewinds and Rockland.

9. Phase II Equity Funding. Rockland desires to contribute all the equity capital required to complete the development and construction of the Project through the date of commercial operations currently estimated at \$14 million ("Phase II Equity Needs"). However, Rockland has the irrevocable option to contribute 70% of the total Phase II Equity Needs in exchange for 70% of a new series of interest in Tradewinds which purchase shall represent 45.5% of the total equity interests in Tradewinds (the "Phase II Equity Option"). The Phase II

Equity Option expires 30 days after all milestones have been achieved allowing Tradewinds to present well-developed economic forecasts to potential Phase II equity and debt providers. These milestones include the following:

- a) Tradewinds has executed contracts to procure all of its timber resources required to operate one shift five days per week.
- b) Tradewinds has executed contracts for the sale of at least 50% of the Project's output;
- c) Tradewinds has executed a Power Purchase Agreement with HELCO;
- d) Tradewinds has executed an Engineering, Procurement and Construction contract with a credit-worthy company; and
- e) Tradewinds, or its financial advisor, has prepared well-developed financial forecasts for inclusion in debt and/or equity offering memos and has delivered those forecasts to Rockland.

If Rockland exercises this Phase II Equity Option, then, (i) after Rockland has contributed its 70% portion of such Phase II Equity Needs, Rockland shall have the right to appoint an additional two directors to the Board of Directors of Tradewinds (the "Board"), and (ii) upon completion of the funding of all of the Phase II Equity Needs, the Board will be expanded to five members: Three will be appointed by Rockland, one by the Developer and one by the other Phase II equity investors. Phase II equity will earn a preferred return of 12% prior to any distributions to common members.

10. Restructuring of the Veber Engagement Agreement. At or prior to closing of Phase I funding, Tradewinds will restructure the VEBER Engagement Agreement (i) to reduce by 50% the fees associated with Rockland's Phase II equity contribution, (ii) to limit the application of warrants to Phase II equity provided by parties other than Rockland

The terms of this letter and the definitive documentation shall be construed in accordance with and governed by the laws of the State of New York.

If the foregoing accurately summarizes our understanding with respect to the proposed equity arrangements, please date and execute the duplicate original of this letter that is enclosed and return the same to the undersigned by 5:00 p. m. on July 28, 2005, after which time if not so executed it shall be null and void.

Very truly yours,

ROCKLAND CAPITAL ENERGY
INVESTMENTS, LLC

By: [Signature]
Scott Harlan,
Managing Director

Agreed to this 28th day
of July, 2005

TRADEWINDS, LLC

By: [Signature]
Don Bryan
President