

D-14

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

July 13, 2012

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

PSF No: 08OD-110

OAHU

Amend Prior Board Action of August 8, 2008, Item D-10: Withdrawal from Governor's Executive Order No. 3867 to the Department of Agriculture for the Kahuku Agricultural Park, Approval, in Principle, of the Issuance of a Direct Lease to West Wind Works, LLC, for a Commercial Renewable Wind Energy Generation Facility, and Issuance of a Right-of-Entry Permit, Kahuku-Malaekahana, Koolauloa, Oahu, Tax Map Key: (1)5-6-08:6 and

Amendment: Consent to the Assignment, from West Wind Works, LLC, the Assignor, to Na Pua Makani Power Partners, LLC, the Assignee, of the Direct Lease Approved, in Principle, by the Board at its August 8, 2008, Meeting, and Extend Right-of-Entry Permit to Expire on the Commencement Date of the Lease.

BACKGROUND:

At its August 8, 2008, meeting, under agenda item D-10, attached as Exhibit A, the Board approved the withdrawal of land from Governor's Executive Order (GEO) 3867, a direct lease, in principle, of the withdrawn land for a commercial wind farm facility, and a right-of-entry (ROE) permit to conduct due diligence on wind conditions, environmental impact, and surveys of the site's flora, fauna, and archaeology.

The subject site, identified as Lot 1168, Map 137, Land Court Application 1095, consists of 232 acres located in the Department of Agriculture's (DOA) Kahuku Agricultural Park. The site is an elevated ridge surrounding most of the park. The ridge is not suitable for conventional farming practices because of its steep grade.

At its May 27, 2008, meeting, the Board of Agriculture voiced its support for the proposed use of Lot 1168 as a wind farm facility and approved the Department's request to withdraw lot 1168 from GEO 3867.

A draft environmental assessment for the proposed wind project was published in the OEQC Environmental Notice. The final environmental assessment is pending. Also pending is the Applicant's draft Habitat Conservation Plan

Up to ten (10) wind turbines producing a total of 25 MW, and supporting equipment will be constructed across the 232-acre agricultural zoned lot. The Applicant's commercial use of the agricultural zoned State land

requires the Applicant to obtain a conditional use permit from the City and County of Honolulu.

REMARKS:

West Wind Works, LLC (WWW), now a Hawaii limited liability company, recently entered into agreements with Champlin Hawaii Wind Holdings, LLC, (Champlin Hawaii), a Delaware limited liability company, and Champlin/GEI Wind Holdings, LLC (Champlin), a Delaware limited liability company, and financial partner for the development of WWW's Kahuku wind farm facility. Under the agreements the Kahuku wind farm facility would be the first phase of possibly a three phased wind farm facility with a cumulative power output of up to 90 MW.

A Champlin affiliate is working on securing rights covering certain privately owned land for its phase II wind farm facility.

Champlin formed Champlin Hawaii, its subsidiary, in connection with the development of its Hawaii renewable energy projects. Champlin also formed Na Pua Makani Power Partners, LLC, a Delaware limited liability company, as a wholly owned subsidiary of Champlin Hawaii, to develop, own, and operate the phase I and phase II projects.

WWW holds an interest in Champlin Hawaii with Champlin holding the majority interest.

Champlin, a southern California based wind energy development company has developed more than 1,300 MW of wind projects. It is owned by Champlin Windpower, LLC and Good Energies, Inc.

Champlin Windpower, LLC was formed to develop wind energy projects in the U.S. Champlin Windpower, LLC and its affiliates have in excess of 4,000 MW of wind energy sites and projects under development in the western U.S.

Good Energies, Inc. is the renewable energy subsidiary of the COFRA, a family owned company based in Europe. Over the past decade it has invested more than \$1 billion in renewable energy projects. Good Energies, Inc. has up to \$1.5 billion of development capital to invest in the U.S. renewable energy sector. Good Energies, Inc. formed Champlin as its U.S. based wind company in 2010.

Pursuant to Section 171-36(a)(5), Hawaii Revised Statutes (HRS), as amended, the Board has the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on a method described in the above said Section of the HRS.

At its June 13, 2003, meeting, under agenda item D-28, the Board established criteria for waivers of the assignment of lease premium evaluation policy as follows:

1. The lessee is required to make substantial capital improvements to the leased premises and the major source of income to the lessee is generated from these improvements, and
2. The market value of the lessee's improvements is primarily attributable to the operations conducted by the lessee on the leased premises and the cash flow generated by the operations, rather than the cost of the improvements, and
3. The lease includes provisions that ensure ground rents keep up with market rents.

The lessee (Assignor) meets criteria 1 and 2. The Department's standard lease form for renewable wind projects ensures number 3 is met. Accordingly, a waiver of the assignment of lease premium evaluation policy for the requested assignment would be in order.

WWW, the Applicant and Assignor, has not had a lease, permit, easement or other disposition of State land terminated within the last 5 years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of August 8, 2008, under agenda item D-10, by consenting to the Assignment and Assumption from West Wind Works, LLC, the Assignor, to Na Pua Makani Power Partners, LLC, the Assignee, of the Direct Lease Approved in Principle and Extending the Right-of-Entry to Expire on the Commencement Date of the Lease.
2. Except as amended herein, all other terms and conditions listed in its August 8, 2008, approval to remain the same.

Respectfully Submitted,



Gary Martin  
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

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

August 8, 2008

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

PSF: 08OD-110

OAHU

Withdrawal from Governor's Executive Order No. 3867 to the Department of Agriculture for the Kahuku Agricultural Park, Approval in Principle of the Issuance of a Direct Lease to West Wind Works, LLC, for a Commercial Renewable Wind Energy Generation Facility and Issuance of a Right-of-Entry Permit, Kahuku-Malaekahana, Koolauloa, Oahu, Tax Map Key: (1) 5-6-08: 6

APPLICANT:

West Wind Works, LLC, an Oregon limited liability company whose business and mailing address is 1800 Eagle Mill Road, Ashland, Oregon 97520.

LEGAL REFERENCE:

Section 171-95, Hawaii Revised Statutes, as amended.

LOCATION:

Lot 1168, Map 137, Land Court Application 1095, Kahuku-Malaekahana, Koolauloa, Oahu, identified by Tax Map Key: (1) 5-6-08: 6, as shown on the attached map labeled Exhibit A.

AREA:

232 acres, more or less.

ZONING:

State Land Use District: Agricultural  
City & County of Honolulu CZO: Agricultural 1 and 2

TRUST LAND STATUS:

Non-ceded. Government land acquired since statehood from the Estate of James Campbell, Deceased.

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON  
AUGUST 8, 2008

D-10

CURRENT USE STATUS:

Encumbered by Governor's Executive Order No. 3867 to the Department of Agriculture (DOA) for the Kahuku Agricultural Park.

The subject area is an elevated buffer zone surrounding most of the agricultural park. Its steep grades make it unsuitable for conventional farming practices. Accordingly, DOA never issued any leases covering the subject area.

CHARACTER OF USE:

The premises shall be used solely for the following purposes:

1. To conduct wind and weather monitoring activities including the erection, relocation, maintenance and operation of anemometers and other wind and weather monitoring equipment, steel towers, concrete slabs, fences and buildings to operate, house, protect and otherwise facilitate wind and weather monitoring activities.
2. The erection, relocation, maintenance and operation of large wind turbine generators and all related equipment and improvements necessary or useful for the conversion of wind energy into electricity including, but not limited to steel towers, foundations and concrete pads, footings, guy wires, anchors, fences and other fixtures and facilities, maintenance, security, office and/or guest facilities, staging areas for the assembly of equipment, required lines, and substation facilities to transfer power from the turbines to power transmission lines, energy storage devices, and other power production equipment.
3. The erection, relocation, maintenance and operation of power transmission lines, poles, anchors, support structures, underground cables, substations and interconnection facilities and associated roads for access and for installation and maintenance purposes, provided, however, that the Applicant shall obtain the approval of the DOA, by its Board of Agriculture, to use any roads in and around the agricultural park that are under its jurisdiction to access the premises.

LEASE TERM:

Twenty (20) years with an option to extend twenty (20) additional years, subject to mutual agreement on amending or adding provisions to the lease to keep up with current industry leasing standards for wind energy projects.

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL RENT:

Fair market annual rent, including percentage rents as may be applicable, to be determined by staff or independent appraiser, subject to review and approval by the Chairperson. The appraisal may include step-ups (in lieu of reopenings) as may be appropriate.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

The rental reopenings shall occur on the day after the tenth (10th) year of the term and at "repowering."

"Repowering" shall mean the following:

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.

The following shall not constitute "repowering":

1. Reuse of the project improvements, including roads, erosion control and access improvements, meteorological towers or transmission interconnection related to the premises.
2. Replacement of the wind project substation for any reason.
3. Replacement of wind turbines on the premises with substantially the same make and model in the same locations.
4. Replacement of any or all of the wind turbines and project improvements on the premises as a result of casualty or loss.

PERFORMANCE BOND:

The performance bond shall be due within seventy-five (75) days of the lease commencement date. The performance bond shall be in an amount to be determined as may be negotiated by the department and approved by the Board. The terms and conditions of the performance bond shall be consistent with that of other existing commercial wind energy facilities leasing State lands.

## IMPROVEMENTS

The Applicant is proposing to construct, operate and maintain a commercial wind energy generation facility comprised of up to ten (10) wind turbines and supporting equipment including, but not limited to meteorological towers, interconnection and substation equipment producing up to twenty-five (25) megawatts of electrical power.

## CHAPTER 343 – ENVIRONMENTAL REVIEW:

The Applicant's compliance with Chapter 343 requirements will be addressed through the Conditional Use Permit process and its Habitat Conservation Plan.

## DCCA VERIFICATION:

The Applicant is in the process of registering with DCCA, Business Registration Division.

## APPLICANT REQUIREMENTS:

1. Conduct due diligence including, but not limited to wind and weather monitoring activities.
2. Obtain a Conditional Use Permit from the City and County of Honolulu, Department of Planning and Permitting for the proposed use on the subject State land.
3. Prepare a Habitat Conservation Plan and obtain an Incidental Take License from the Department of Land and Natural Resources, Division of Forestry and Wildlife.
4. Compliance with Chapter 343, Hawaii Revised Statutes, as amended.
5. Secure a Power Purchase Agreement with Hawaiian Electric Company or other qualified electricity buyer.
6. Secure project-financing commitment(s).

## REMARKS:

The subject 232-acre site is a portion of the Kahuku Agricultural Park developed by DOA under the operation of Governor's Executive Order No. 3867. The site is an elevated area mauka and adjacent to the park.

The site is located in one of the few areas of Oahu with sufficient wind to be economically developed as a wind energy facility according to the Applicant.

The Applicant has had discussions with DOA on the use of the subject 232-acre portion of the Kahuku Agricultural Park for a wind energy facility. The Applicant has also met with the Department's Renewable Energy Rapid Response Team for input on the various Departmental requirements necessary to initiate and complete a wind energy project.

At its May 27, 2008 meeting the Board of Agriculture approved the Department's request to withdraw the subject 232 acres from the operation of Governor's Executive Order No. 3867.

Renewable energy projects such as the proposed are necessary in order to meet the mandates of Act 95 SLH 2004. Act 95 requires that 10% of the electrical output by Hawaii's electric utility companies come from renewable energy resources by 2010, increasing to 15% by 2015, and 20% by 2020 with penalties for not meeting the Renewable Portfolio Standard.

Given the large initial investment in time and money to plan the proposed facility and the possibility that other renewable wind energy producers may be or may become interested in the site for the same purpose, the Applicant is requesting that the Board authorize the Department to directly negotiate a lease with the Applicant covering the subject site.

The direct negotiations would commence upon the Applicant completing its due diligence, being issued a Conditional Use Permit, commencing negotiations of a Power Purchase Agreement with Hawaiian Electric Company, securing financing commitment(s) in an amount sufficient to complete the proposed facility and obtaining any other approvals as may be required by the Federal, State and County governments. The Applicant is willing to pay a fee for such an exclusive right.

The Applicant has been successfully developing wind energy projects in Hawaii for over twenty-five (25) years and was involved in the initial feasibility studies that determined the Kaheawa, Maui site could be developed as an economically viable commercial wind energy facility. General Lease No. S-5731 presently covers the Kaheawa, Maui site. The facility operates twenty (20) General Electric 1.5 megawatt turbines, which produced 125,000-megawatt hours of electricity in 2007 at a comparative savings of 40% over oil generated electricity. The Lessee is now studying the possibility of adding turbines that would increase its capability by another twenty-seven (27) megawatts.

The Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.

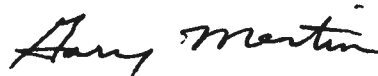
**RECOMMENDATION:** That the Board

- A. Subject to fulfilling the Applicant Requirements listed above, approve of and recommend to the governor the issuance of an executive order withdrawing Lot 1168, Map 137 of Land Court Application 1095, identified by TMK: (1) 5-6-08: 6, from Executive Order No. 3867 under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
  1. The standard terms and conditions of the most current executive order form, as may be amended from time to time.



2. Disapproval by the Legislature by two-thirds vote by either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the executive order.
  3. Review and approval by the Department of the Attorney General.
  4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- B. Approve in principle the issuance of a direct lease to the Applicant covering the proposed site with the understanding that the approval in principle shall not be deemed to be an approval of a lease to the Applicant as staff shall return to the Board at a later date for approval of the lease disclosing the negotiated terms and conditions.
- C. In keeping with what has become an industry practice, authorize the Department to negotiate exclusively with the Applicant for a direct lease covering the proposed site, subject to the payment of consideration in the amount of \$12,000 annually by the Applicant to the Department.
- D. Authorize the issuance of a right-of-entry permit to the Applicant to enter upon the State land identified by TMK: (1) 5-6-08: 6 for purposes of conducting due diligence including, but not limited to wind and weather monitoring activities, preparation of a Habitat Conservation Plan, and compliance with Chapter 343, Hawaii Revised Statutes, as amended, subject to the following:
1. The standard terms and conditions of the most current right-of-entry permit form as may be amended from time to time.
  2. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Gary Martin  
Land Agent

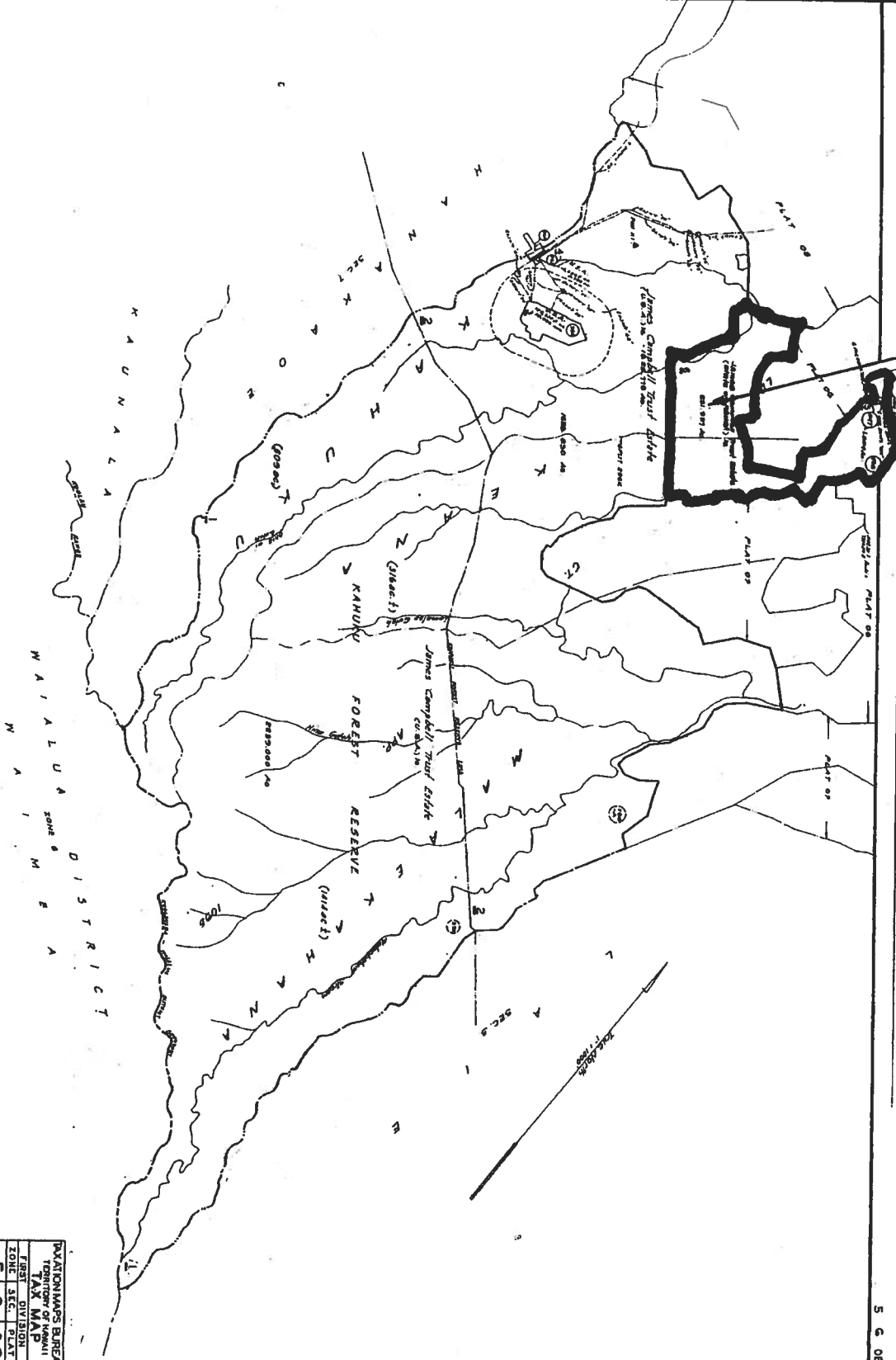
APPROVED FOR SUBMITTAL:



for LAURA H. THIELEN, Chairperson

Orig. No. 1211  
 Source: The Mahe Pinnacle of Ld. Ct. App. 1938  
 By: H.M. & L.H. Nov. 1937 Revised by EK Jan. 1939

FOR KAHUKU FOREST RESERVE, KAHUKU-MALAEKAHANA, KOOLAUPUA, OAHU.



Lot 1168

SUBJECT TO CHANGE

PUNAHONUA BUREAU	
TERRITORY OF HAWAII	
FIRST AX MAP	
ZONE	SEC. PLAT.
5	6 08
CONTAINING PARCELS	
SCALE 1 IN. = 1000 FT.	

5 6 08