

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

November 8, 2013

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

080D-110A

OAHU

Amend Prior Board Action of August 8, 2012, 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 Na Pua Makani Power Partners, LLC, for a Commercial Renewable Wind Energy Generation Facility; and Issuance of a Right-of-Entry Permit, Kahuku-Malaekahana, Koolauloa, Oahu, TMK: (1)5-5-08:6

Amendment: The Amendment Seeks the Board's Approval of a Negotiated Development Agreement Between the State and Na Pua Makani Power Partners, LLC, as an Interim Agreement Prior to Entering into a Formal Lease Agreement.

BACKGROUND:

The State is the fee simple owner of certain real property containing an area of approximately 232 acres, described as Lot 1168, Map 137, Land Court Application 1095, Kahuku-Malaekahana, Koolauloa, Oahu, and identified by Tax Map Key No. (1) 5-6-08: 6.

At its August 8, 2008 meeting, under agenda item D-10, the Board of Land and Natural Resources (i) approved the withdrawal of the premises from Governor's Executive Order 3867, (ii) approved in principle the issuance of a direct lease to West Wind Works, LLC (West Wind) covering the premises, (iii) authorized the Department of Land and Natural Resources to negotiate exclusively with West Wind for a direct lease of the premises, and (iv) authorized the issuance of a right-of-entry permit to West Wind to enter upon the premises to conduct due diligence, subject to certain terms and conditions.

At its July 13, 2012 meeting, under agenda item D-14, the Board approved an amendment to the August 8, 2008 Board action by consenting to the assignment and assumption from West Wind to Na Pua Makani Power Partners, LLC (Na Pua Makani) of the direct lease approved in principle, and extending the right-of-entry permit to expire on the commencement date of the lease. At its October 12, 2012 meeting,

under agenda item D-7, the Board approved an amendment to the July 13, 2012 Board action by deleting the assignment of lease and replacing West Wind with Na Pua Makani as the applicant. See Exhibit A attached hereto (which incorporates all of the Board's prior actions on this request).

REMARKS:

In the course of negotiating a lease with Na Pua Makani under the Board's authorization, Land Division and Na Pua Makani determined that the Development Agreement attached as Exhibit B would assist the parties in effectuating the Board's intent. The Development Agreement requires Na Pua Makani to pay consideration in the amount of \$12,000 annually for the option to enter into a lease for the premises with the State.¹ The Development Agreements sets forth the conditions Na Pua Makani must satisfy before exercising its option to lease the premises, and includes an outside deadline of March 31, 2015 to meet all conditions. Interim milestones include the execution of a power purchase agreement (PPA) with Hawaiian Electric Company, Inc. by December 15, 2013, and the Public Utilities Commission providing its approval of the PPA by June 30, 2015. See Exhibit B.

Staff believes the Development Agreement advances the State's renewable energy initiative and is in the best interests of the State.

RECOMMENDATION:

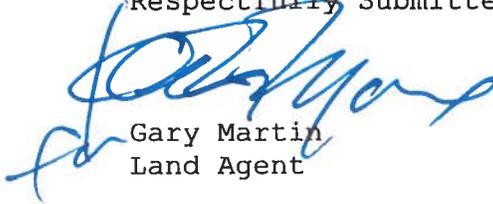
That the Board amend its prior action of August 8, 2012, under agenda item D-10, as previously amended, as follows:

1. Add a new paragraph E at the end of the Recommendation section to read as follows:
 - E. Approve the Development Agreement between the State of Hawaii and Na Pua Makani Power Partners, LLC, substantially in the form of Exhibit B attached hereto, and authorize the Chairperson to execute the Development Agreement on behalf of the Board.
2. Exhibit B attached to this submittal shall be deemed to be attached to the August 8, 2012 action under item D-10, as amended, also as Exhibit B.

¹ The prior Board action of August 8, 2012, Item D-10, likewise required the applicant to pay \$12,000 annually for the approval in principle of the lease. Staff reports that Na Pua Makani is current in its annual payments under the Board's approval.

3. Except as amended hereby, and by the Board's actions of July 13, 2012, item D-14, and October 12, 2012, item D-7, all terms and conditions listed in the Board's action of August 8, 2012 shall 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

October 12, 2012

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

080D-110A

OAHU

AMEND PRIOR BOARD ACTION OF JULY 13, 2012, ITEM D-14: 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, TMK: (1)5-5-08:6.

AMENDMENT: IN SUMMARY, THE RECOMMENDED ACTION WILL DELETE THE ASSIGNMENT OF LEASE, REPLACE WEST WIND WORKS, LLC, WITH NA PUA MAKANI POWER PARTNERS, LLC, AS THE APPLICANT; AND EXTEND THE APPLICANT'S RIGHT-OF-ENTRY PERMIT EXPIRATION DATE.

BACKGROUND:

At its July 13, 2012, meeting, under agenda item D-14 (Exhibit A), the Board consented to the assignment and assumption from West Wind Works, LLC, to Na Pua Makani Power Partners, LLC, of the direct lease it approved, in principle, at its August 8, 2008, meeting, under agenda item D-10, and extended the right-of-entry permit to expire on the commencement date of the lease.

REMARKS:

The Department of the Attorney General, Land/Transportation Division, has advised the Department to process this action as a substitution or replacement of the Applicant. This approach would simplify the process and also save time.

RECOMMENDATION:

That the Board amend its prior action of July 13, 2012, under agenda item D-14, as follows:

1. Delete the second paragraph in the title on page 1.
2. Delete last two paragraphs on page 2 and all above RECOMMENDATION on page 3, and replace with, "The Applicant has

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES *DN*
AT ITS MEETING HELD ON
October 12, 2012

EXHIBIT A

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."

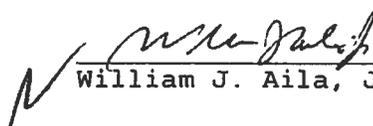
3. Delete RECOMMENDATION 1, and replace with, "Extend Right-of-entry, approved at the August 8, 2008, meeting, to expire on the commencement date of the lease."
4. Replace WWW, LLC, with Na Pua Makani Power Partners, LLC, as the Applicant, under agenda item D-10, of the Board's August 8, 2008, meeting.

Respectfully Submitted,



Gary Martin
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

12-4

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

APPROVED BY THE BOARD OF
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AT ITS MEETING HELD ON
July 13, 2012

EXHIBIT "A" D-14

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

EXHIBIT "A"

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.

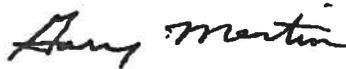
The Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.

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:



LAURA H. THIELEN, Chairperson



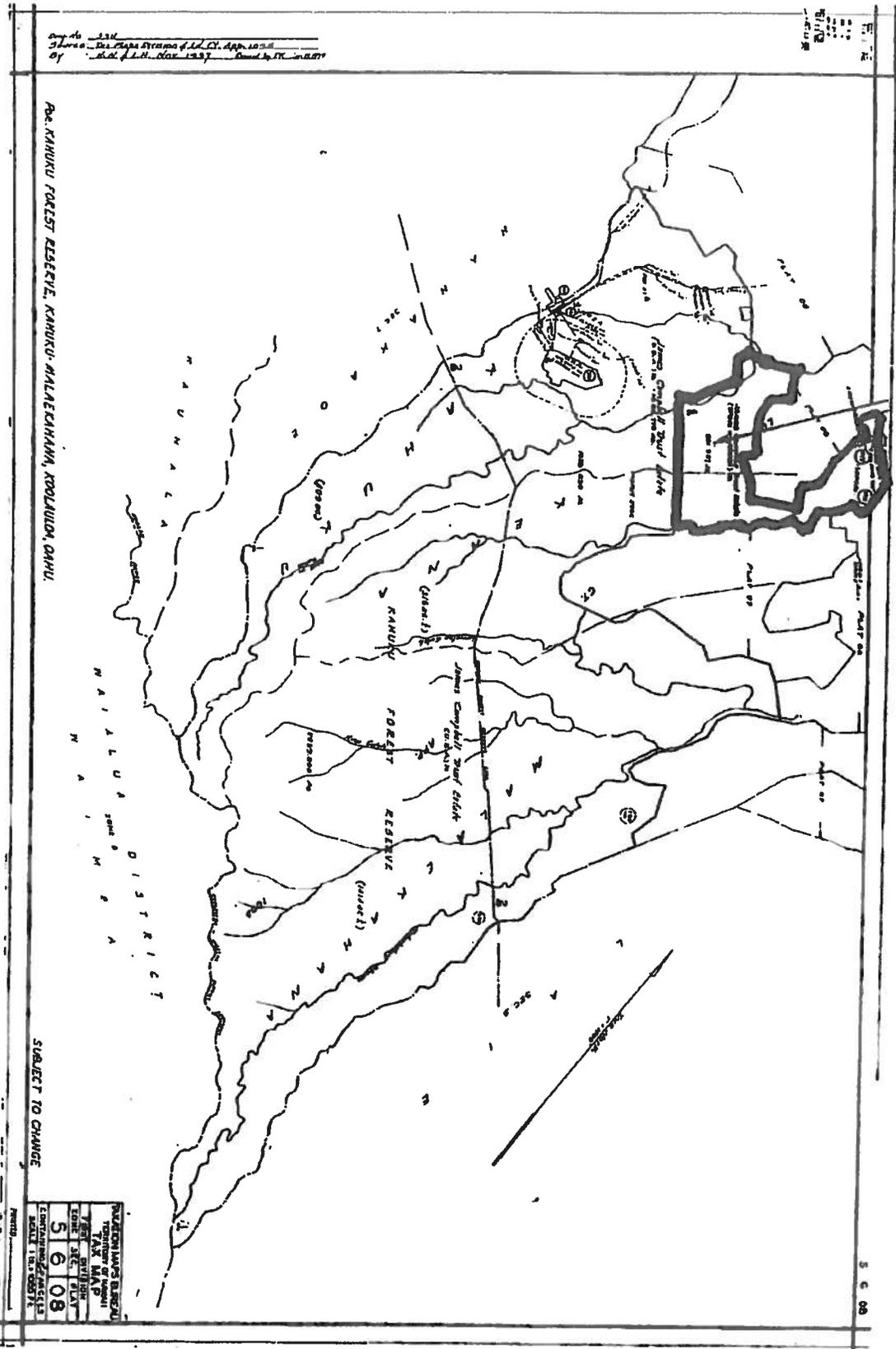


EXHIBIT A

DEVELOPMENT AGREEMENT

State of Hawaii
Department of Land and Natural Resources

and

Na Pua Makani Power Partners, LLC

Effective _____, 2013

EXHIBIT B

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and effective as of the _____ day of _____, 2013 (the "Effective Date"), by and between the **STATE OF HAWAII** (the "State"), by its Board of Land and Natural Resources (the "Board"), whose address is 1151 Punchbowl Street, Room 220, Honolulu, Hawaii 96813, and **NA PUA MAKANI POWER PARTNERS, LLC**, a Delaware limited liability company, whose address is 2020 Alameda Padre Serra, Suite 123, Santa Barbara, California 93103 (the "Developer").

RECITALS:

A. The State is the fee simple owner of certain real property containing an area of approximately 232 acres, described as Lot 1168, Map 137, Land Court Application 1095, Kahuku-Malaekahana, Koolauloa, Oahu, and identified by Tax Map Key No. (1) 5-6-08: 6, said property being more particularly described in Exhibit A attached hereto and made a part hereof (said property, together with any improvements thereon, are hereafter called, collectively, the "Premises").

B. At its August 8, 2008 meeting, under agenda item D-10, the Board (i) approved the withdrawal of the Premises from Governor's Executive Order 3867, (ii) approved in principle the issuance of a direct lease to West Wind Works, LLC ("West Wind") covering the Premises, (iii) authorized the Department of Land and Natural Resources (the "DLNR") to negotiate exclusively with West Wind for a direct lease of the Premises, and (iv) authorized the issuance of a right-of-entry permit to West Wind to enter upon the Premises to conduct due diligence, subject to certain terms and conditions (the "August 8, 2008 Board Action"). A copy of the August 8, 2008 Board Action is attached hereto as Exhibit B and made a part hereof.

C. At its July 13, 2012 meeting, under agenda item D-14, the Board approved an amendment to the August 8, 2008 Board Action by consenting to the assignment and assumption from West Wind to Developer of the direct lease approved in principle, and extending the right-of-entry permit to expire on the commencement date of the lease (the "July 13, 2012 Board Action").

D. At its October 12, 2012 meeting, under agenda item D-7, the Board approved an amendment to the July 13, 2012 Board Action by deleting the assignment of lease and replacing West Wind with Developer as the "Applicant".

E. While the parties finalize the definitive terms of the lease (the "Lease") and await certain approvals and satisfy certain conditions, the State and Developer desire to enter into this Agreement whereby the State will grant to Developer an option to lease the Premises for the purpose of developing, constructing, owning, operating and maintaining on the Premises a wind energy project consisting of up to 25 MW of installed capacity (the "Project"), upon the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals and the mutual covenants, obligations and conditions set forth in this Agreement, the State and Developer hereby mutually agree as follows:

1) Grant of Option. The State hereby gives and grants unto Developer an exclusive and irrevocable option (the "Option") to lease the Premises, subject to the terms and conditions of this Agreement.

2) Term. Unless earlier terminated as provided herein, the initial term of the Option shall commence as of the Effective Date and expire on (i) the date which is six (6) months following the date on which the last of the conditions set forth in Section 4 is satisfied, or (ii) March 31, 2015, whichever of (i) or (ii) occurs first (the "Option Term"). Developer shall have the right to extend the Option Term through March 31, 2016, provided that any power purchase agreement with Hawaiian Electric Company, Inc. ("HECO") for the purchase and sale of energy generated by the Project (the "PPA") has been fully executed and HECO has submitted an application for approval of the PPA with the Public Utilities Commission of the State of Hawaii (the "PUC"). Developer may exercise said right by providing written notice to the State on or prior to the expiration of the unextended Option Term. Upon Developer's exercise of such right, said extension shall be deemed to be a part of the "Option Term" as such term is used in this Agreement.

3) Consideration for Option. The parties agree that the consideration payable by Developer to the State in exchange for the Option granted hereunder is included in that certain amount payable by Developer to the State as stated in Section C on page 6 of the August 8, 2008 Board Action, such amount being Twelve Thousand and No/100 Dollars (\$12,000.00) annually, due on the first day of November of each year of the Option Term (the "Consideration").

4) Exercise of Option. In order to exercise the Option, Developer must fulfill all of the following conditions, each of which are deemed material to the exercise of the Option:

a) Developer shall have conducted appropriate due diligence on the Premises (as determined by Developer in its sole discretion), including but not limited to appropriate due diligence of wind and other weather conditions at the Premises;

b) If required for the construction of the Project, Developer shall have obtained a Conditional Use Permit from the City and County of Honolulu;

c) If required for the construction of the Project, Developer shall have prepared a Habitat Conservation Plan and obtained an Incidental Take License from Division of Forestry and Wildlife of DLNR for the Project;

d) Developer shall have prepared and processed all required environmental assessments, environmental impact statement preparation notices, and

environmental impact statements required under Chapter 343 of the Hawaii Revised Statutes (“HRS”) required for the construction of the Project;

e) Developer shall have entered into a PPA with HECO or another qualified electricity buyer for the purchase of electricity from the Project;

f) Developer shall have secured commitment(s) for financing for the Project;

g) Developer and the State shall have agreed on the form of the Lease, subject to the review and approval by the Department of the Attorney General;

h) Developer shall have delivered to the State a written notice (the “Exercise Notice”) notifying the State that Developer is exercising the Option in accordance with this Agreement; and

i) Developer shall have paid all portions of the Consideration due and payable as of the date of the Exercise Notice.

Within five (5) days of Developer’s delivery of the Exercise Notice to the State, Developer shall deliver to the State two (2) Developer-executed originals of the Lease. The parties understand and agree that should Developer properly exercise the Option, the resulting Lease shall be in a form mutually agreed to by the parties and shall contain the terms and conditions required by the August 8, 2008 Board Action.

5) Termination Upon Expiration of the Option Term. Unless otherwise earlier terminated in accordance with this Agreement, this Agreement shall terminate at the expiration of the Option Term¹, subject to the terms and conditions of this Agreement.

6) Developer’s Right to Terminate Agreement. Developer may at any time at its option and in its sole and absolute discretion by giving written notice thereof to the State, terminate this Agreement.

7) State’s Right to Terminate Agreement. The State may at its option and by giving written notice thereof to Developer, terminate this Agreement in the event of any of the following:

a) Developer fails to pay any amount due under this Agreement and such failure continues for a period of more than thirty (30) days after delivery by the State of a written notice of breach or default and demand for cure.

b) Developer fails to observe and perform any other material covenant contained in this Agreement and on its part to be observed and performed, and such failure continues for a period of more than sixty (60) days after delivery by the State of a

¹ Unless further extended or earlier terminated as noted in this Agreement, the Option Term shall automatically expire on (i) the date which is six (6) months following the date on which the last of the conditions set forth in Section 4 is satisfied, or (ii) March 31, 2015, whichever of (i) or (ii) occurs first.

written notice of breach or default and demand for cure (set forth in reasonable detail), by personal service, registered mail or certified mail to Developer.

c) Developer becomes bankrupt or insolvent, or seeks protection under any provision of any bankruptcy or insolvency law or any similar law providing for the relief of debtors, or abandons the project contemplated under this Agreement, or if any assignment is made of Assignor's rights hereunder for the benefit of creditors.

d) Developer is not in compliance with HRS section 171-36(4).

e) Any of the following conditions have not been satisfied: (i) the PPA with HECO being fully executed by December 15, 2013; (ii) HECO submitting an application for approval of the PPA with the PUC by March 31, 2014; or (iii) the PUC providing its approval of the PPA by June 30, 2015, and the State has provided notice to Developer of its exercise of its right to terminate under this Subsection within thirty (30) days of the respective date by which the applicable condition was not satisfied.

8) Upon Termination. Upon any termination pursuant to Sections 5, 6, or 7 of this Agreement, the Option shall terminate and this Agreement shall be null and void.

9) Recordation. This Agreement shall not be recorded. However, upon request by either the State or Developer, a short form memorandum of this Agreement shall be prepared by the State and shall be duly executed and acknowledged in proper form and may be placed of record so as to give public notice as to the existence of this Agreement.

10) Notices. Any notice or demand to the State or Developer provided for or permitted by this Agreement shall be given in writing and: (a) mailed as registered or certified U.S. mail, return receipt requested, postage prepaid, addressed to such party at its post office address herein specified or the last such address designated by such party in writing to the other; or (b) delivered personally within the City and County of Honolulu to the State or to any officer of Developer, or (c) sent by facsimile transmission (herein "Fax") to the Fax number, if any, of such party as specified herein or such other Fax number designated by such party in writing to the other. Any such written notice shall be deemed conclusively to have been received at the time of such personal delivery, or receipt of Fax, or at 4:00 p.m. on the third business day after being deposited with the United States mail as aforesaid, as follows:

If to the State: Board and Department of Land and Natural Resources
 1151 Punchbowl Street, Room 220
 Honolulu, Hawaii 96813
 Attention: Chairperson
 Fax no.: (808) 587-0390

And a copy to: Department of the Attorney General

Attention: Land/Transportation Division
Kekuanaoa Building
465 South King Street, Suite 300
Honolulu, Hawaii 96813
Fax no.: (808) 587-2999

If to Developer: Na Pua Makani Power Partners, LLC
Attention: Mike Cutbirth
2020 Alameda Padre Serra, Suite 123
Santa Barbara, California 93103
Fax no.: (805) 963-1054
Email: mcutbirth@champlinwind.com

And a copy to: Yamamoto Caliboso
Attn: Dean T. Yamamoto
1099 Alakea Street, Suite 2100
Honolulu, Hawaii 96813
Fax no.: (808) 540-4530
Email: dyamamoto@ychawaii.com

11) Construction and Amendment. This Agreement has been negotiated extensively by Developer and the State with and upon the advice of their respective counsel, all of whom have participated in the drafting hereof. Consequently, the usual rule of construction shall not be applicable, which provides that the document is to be interpreted against the interests of the party who has primarily drafted the language in an agreement. No amendment or modification of this Agreement or any Exhibit attached hereto shall be effective unless incorporated in a written instrument executed by the State and Developer. The State and Developer agree to execute such other documents and instruments as may be reasonably requested by the other party and as may be necessary to effectuate the terms of this Agreement.

12) Partial Invalidity. In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect which is not material to the transactions contemplated hereunder, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.

13) Assignment. Any and all rights hereunder granted to Developer may not be sold, assigned, conveyed or transferred in any manner by Developer to any other person or entity without the prior written consent of the State, such consent not to be unreasonably withheld, conditioned or delayed, and any such sale, assignment, conveyance or transfer in breach of this provision shall be null and void; provided, however, that the State may withhold consent if the State determines the potential purchaser, assignee, or transferee does not possess the experience, expertise or financial capacity to perform the Developer's obligations under this Agreement or that

the proposed sale, assignment, conveyance or transfer is inconsistent with the purpose, intent, qualification process, or selection process of the State's selection of Developer. Notwithstanding the foregoing, Developer may assign this entire Agreement and the development rights provided for herein to an institutional lender or lenders providing financing for the development of all or any portion of the Premises as security for the repayment of such loan or loans, with the prior written consent of the State.

14) State's Right to Assign. It is specifically understood and agreed that the State (through the Board) may convey or otherwise transfer the Premises subject to the terms and conditions of this Agreement, and assign this entire Agreement (including, but not limited to the assignment of any lease issued or to be issued under this Agreement) to any other department or agency of the State of Hawaii, subject to such department or agency affirmatively agreeing to accept such Premises subject to the terms and conditions of this Agreement and assuming all undertakings and obligations under this Agreement and/or the Lease issued or to be issued under this Agreement. Upon any such assignment, Developer agrees to attorn to the assignee on the terms and conditions of this Agreement, the Lease, or any other lease that is part of this Agreement.

15) Entire Agreement; Modification. The State and Developer further agree that this Agreement sets forth the entire agreement between the State and Developer; and the Agreement shall not be altered or modified except by a written agreement signed by the State and the Developer.

16) DLNR. Notwithstanding anything herein to the contrary, it is specifically understood and agreed by the parties that: (a) the "State" as used herein means the Department of Land and Natural Resources, State of Hawaii, and the "Chairperson" as used herein means the Chairperson of the Board of Land and Natural Resources; (b) whenever action is taken, or required to be taken by the "State" under this agreement (e.g., approve, disapprove, consent, or otherwise), it shall be deemed to be an act of only the Board of Land and Natural Resources, and shall not be construed to be the act of any other department or agency of the State of Hawaii. Developer acknowledges and accepts the responsibility for obtaining all entitlements and governmental approvals from the other applicable governing boards, agencies and departments of the State of Hawaii, City and County of Honolulu, and the United States of America.

17) No Third Party Beneficiaries. No third party beneficiaries are intended by this Agreement, and the terms and provisions of this Agreement shall not give rise to any right in third parties to enforce the provisions of this Agreement.

18) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

19) Time is of the essence. Time is of the essence in all provisions of this Agreement.

20) Exhibits. The following exhibits are attached hereto and made a part of this Agreement:

Exhibit A - Description of the Premises.

Exhibit B - August 8, 2008 Board Action.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

STATE OF HAWAII

Approved and Executed by the Chairperson pursuant to authority granted by the Board of Land and Natural Resources at its meeting held on August 8, 2008.

By _____
WILLIAM J. AILA, JR.
Chairperson of the Board of Land and Natural Resources

State

APPROVED AS TO FORM:

Deputy Attorney General

Dated: _____

NA PUA MAKANI POWER PARTNERS, LLC, a Delaware limited liability company

By _____
Name: Michael D. Cutbirth
Title: Manager

Developer