

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

February 26, 2016

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

08OD-110A (NPM)
15OD-215 (DOFAW)
OAHU

Amendment of Development Agreement between the Board of Land and Natural Resources and Na Pua Makani Power Partners, LLC (NPM) Regarding Kahuku Wind Project, Kahuku-Malaekahana, Koolauloa, Oahu, TMK: (1) 5-6-008:006; Set-Aside to Division of Forestry and Wildlife (DOFAW) of Approximately Five Acres for Mitigation and Recovery of *Abutilon menziesii* Purposes; Issuance of Right-of-Entry Permit to DOFAW over Approximately 5 Acres for Mitigation and Recovery of *Abutilon menziesii* Purposes, Kahuku-Malaekahana, Koolauloa, Oahu, TMK: (1) 5-6-008:006 por.

The proposed amendments to the Development Agreement are to reference Governor's Executive Order No. 4482 issued on March 23, 2015, include two additional one-year options to extend the Development Agreement up to March 31, 2018, require the Habitat Conservation Plan and Incidental Take License to be secured after the Board acts on the request for issuance of a lease to NPM, allow the conditions of obtaining a Conditional Use Permit and providing evidence of financial ability to construct the project to be satisfied within two years after execution of the lease or by March 31, 2018, whichever shall first occur, and provide for the subdivision of approximately five acres of the subject lands from the larger parcel for use by DOFAW in *Abutilon menziesii* mitigation and recovery.

APPLICANTS:

Na Pua Makani Power Partners, LLC (NPM), with respect to requested amendments to development agreement.

Division of Forestry and Wildlife (DOFAW) with respect to set-aside and right-of-entry permit.

LEGAL REFERENCE:

Sections 171-6, -11, -13 and -55, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portions of Government lands situated at Kahuku-Malaekahana, Koolauloa, Oahu, identified by Tax Map Key: (1) 5-6-008:006, as shown on the attached maps labeled Exhibit I.

AREA:

Total Parcel Area:	232 acres
Area Covered by Development Agreement:	232 acres
Area Requested for Set-Aside and Right-of-Entry:	5 acres

ZONING:

State Land Use District: Agricultural
City and County of Honolulu LUO: 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

CURRENT USE STATUS:

Unencumbered.

PURPOSE OF SET-ASIDE AND RIGHT-OF-ENTRY:

DOFAW intends to use approximately five acres of the subject lands for mitigation and recovery of *Abutilon menziesii*.

RIGHT-OF-ENTRY TERM:

The right-of-entry permit shall be effective until the issuance of an executive order setting aside the area to DOFAW.

RIGHT-OF-ENTRY COMMENCEMENT DATE:

To be determined by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The draft Environmental Impact Statement (EIS) for the wind project was published in the Office of Environmental Quality Control's The Environmental Notice on June 8, 2015. The final EIS is anticipated to be published in the first half of 2016.

With respect to the set-aside of approximately five acres of the subject lands to DOFAW for endangered species mitigation and recovery, in accordance with the Exemption List for the Department of Land and Natural Resources, approved by the Environmental Council on June 5, 2015 (Exemption List), the requested set-aside is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, item 43 that states "transfer of management authority over state-owned land, such as setting aside for state lands to or from other government agencies through a Governor's executive order". See Exhibit II.

With the respect to the requested right-of-entry permit to DOFAW covering the *Abutilon menziesii* mitigation and recovery area, the proposed action is exempt from the preparation of an environmental assessment pursuant to the Exemption List, Exemption Class No. 1, "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing," item 5 that states "Rescue of threatened or endangered species" and item 51 that states "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing"; and Exemption Class No. 3, "Construction and location of single new, small facilities . . .," item 1 that states "Fences around or to manage rare, threatened or endangered plants" See Exhibit II.

APPLICANT REQUIREMENTS:

DOFAW shall be required to:

1. Prepare at its own expense a survey map and description of the five-acre area to be set aside to DOFAW for *Abutilon menziesii* mitigation and recovery purposes;
2. Pay for and process the subdivision of the area from the larger parcel; and
3. Pay for and process any Land Court petitions and maps that may be required for the subdivision.

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.

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 (NPM) 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 NPM as the applicant.

At its meeting of December 13, 2013, Item D-31, the Board amended its prior action of August 8, 2008, Item D-10, to authorize the Chairperson to negotiate and enter into a development agreement with NPM for the wind project as an interim agreement prior to the Board entering into a lease agreement with NPM. Subsequently, a Development Agreement between the Board and NPM was executed on December 26, 2013. A copy of the Development Agreement is attached as Exhibit III.

REMARKS:

Amendment of Development Agreement

After the execution of the Development Agreement, Governor's Executive Order No. (EO) 4482 was signed on March 23, 2015. EO 4482 withdrew the subject lands from EO 3867 issued to the Department of Agriculture. As a result, the subject 232-acre parcel became unencumbered lands. NPM is requesting that the Development Agreement be amended to reference EO 4482 in the recitals. A copy of the proposed Amendment to Development Agreement is attached as Exhibit IV.

Staff is proposing that the Development Agreement further be amended to include a provision relating to the subdivision of five acres out of the subject lands for set-aside to DOFAW. Staff has discussed this disposition with NPM's representatives. NPM has no objection to the disposition as long as it does not materially or adversely affect NPM, its plans or operations, the project or the premises. NPM does not intend to utilize the five-acre area for its project. The location of the five-acre area is depicted in Exhibit V attached.

The Development Agreement sets forth the conditions NPM must satisfy before exercising an option to lease the premises, and includes an outside deadline of March 31, 2016 to meet all conditions.¹ These conditions include completing the EIS process,

¹ The Development Agreement actually provided for a deadline of March 31, 2015, but gave NPM the right to extend the deadline by one year if certain milestones were met, including execution of a power purchase agreement (PPA) with Hawaiian Electric Company, Inc. by December 15, 2013, and obtaining the Public Utilities Commission's approval of the PPA by June 30, 2015. NPM timely satisfied those

preparing a Habitat Conservation Plan (HCP) and obtaining an Incidental Take License (ITL). See Exhibit III, section 4 at pp. 2-3.

By letter dated December 7, 2015, NPM wrote to the Chairperson advising that the EIS process was taking longer than expected. NPM anticipates completing the EIS in the first half of 2016. The final EIS will be brought back to the Board for approval, and if the Board acts favorably on it, NPM will seek final approval for the issuance of the lease. With respect to the HCP, the matter was on the agenda of the Endangered Species Recovery Committee (ESRC) at its meeting of December 17, 2015. The chair of the committee requested several changes to the HCP, which NPM agreed to make. NPM intends to present the revised HCP to the ESRC at its February 2016 meeting. Accordingly, NPM has requested an amendment to the Development Agreement that provides it with two additional one-year options to extend the Development Agreement up to March 31, 2018.² See Exhibit IV.

As noted above, the Development Agreement provides that securing the HCP is a condition to issuance of the lease. However, since the execution of the Development Agreement, staff has learned that NPM will need to acquire an interest in the subject premises prior to the Department of the Attorney General allowing the Board to consider the approval of the HCP for NPM, and prior to the issuance of the ITL. Accordingly, the Development Agreement needs to be amended to provide that Board approval of the HCP will be secured, and the ITL will be issued, after the execution of the lease. The proposed Amendment to Development Agreement provides that if NPM is not able to secure Board approval of the HCP and issuance of the ITL within one year after execution of the lease, or by March 31, 2017, whichever occurs first, the lease will be subject to termination.

NPM further requested that the deadline for the satisfaction of two additional conditions of the Development Agreement be revised. These two conditions are (i) obtaining a Conditional Use Permit from the City and County of Honolulu and (ii) providing evidence of financial ability to construct the project. The Development Agreement originally provided for these conditions to be satisfied prior to issuance of the lease. But now that NPM is required to secure the lease prior to obtaining the HCP and ITL, NPM is requesting that it be allowed to satisfy the Conditional Use Permit and financial ability requirements after issuance of the lease. Staff has no objection to the request. If the conditions are not satisfied by March 31, 2018, the lease will be subject to termination.

Set-Aside and Right-of-Entry Permit to DOFAW

After the Board approved the Development Agreement with NPM, DOFAW requested that five acres of the potential lease site be carved out for protection of the endangered plant species *Abutilon menziesii* (*A. menziesii*) and set aside to DOFAW. A copy of DOFAW's submission to the ESRC dated October 2014 is attached as Exhibit VI.

interim milestones.

² The annual consideration of \$12,000 will be due and payable for the extension periods.

To effectuate the set-aside, DOFAW will be required to pay for the survey map and description, subdivision, and any necessary Land Court petitions required for the disposition. However, DOFAW is requesting to assume management of the *A. menziesii* mitigation and recovery area immediately. Accordingly, staff is recommending that the Board approve the issuance of an immediate management right-of-entry permit to DOFAW for the mitigation and recovery of this plant species.

RECOMMENDATION:

That the Board:

1. Authorize the amendment of the Development Agreement dated December 26, 2013 by and between the State and Na Pua Makani Power Partners, LLC, with the amendment to be substantially in the form of Exhibit IV attached hereto (alternatively, an amended and restated Development Agreement can be prepared incorporating the revisions set forth in Exhibit IV), subject to the terms and conditions listed above and further subject to the following:
 - a. Review and approval by the Department of the Attorney General; and
 - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Declare that, after considering the potential effects of the proposed dispositions to the Division of Forestry and Wildlife as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
3. Approve of and recommend to the Governor the issuance of an executive order setting aside five acres of the subject lands to the Division of Forestry and Wildlife under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - a. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - b. Disapproval by the Legislature by two-thirds vote of 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 setting aside;
 - c. Review and approval by the Department of the Attorney General; and
 - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

4. Authorize the issuance of an immediate management right-of-entry permit to the Division of Forestry and Wildlife covering five acres of the subject area indicated on Exhibit V attached under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
 - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

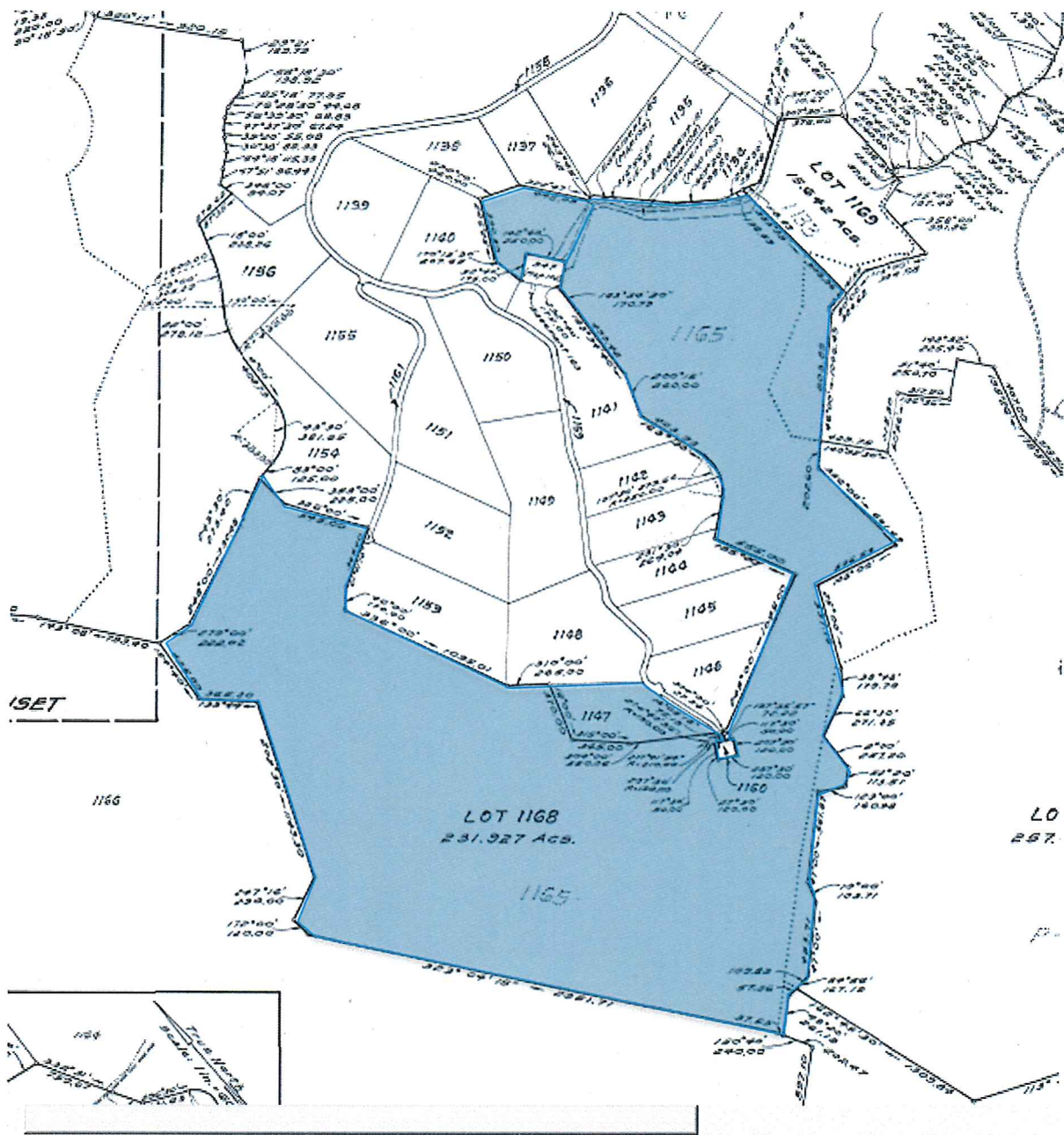


Kevin E. Moore
Assistant Administrator

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



Lot 1168 of Map 137 of Land Court Application No. 1095

EXHIBIT I

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Set-Aside to Division of Forestry and Wildlife (DOFAW) of Approximately Five Acres for Mitigation and Recovery of *Abutilon menziesii* Purposes; Issuance of Right-of-Entry Permit to DOFAW over Approximately 5 Acres for Mitigation and Recovery of *Abutilon menziesii* Purposes

Project / Reference No.: 08OD-110A (NPM) and 15OD-215 (DOFAW)

Project Location: Kahuku-Malaekahana, Koolauloa, Oahu, TMK: (1) 5-6-008:006 por.

Project Description: DOFAW requests the set-aside of and a right-of-entry over five acres of the subject lands for the mitigation and recovery of the endangered species, *Abutilon menziesii*.

Chap. 343 Trigger(s): Use of State Land

Consulted Parties: Department of Agriculture; Division of Forestry and Wildlife

Exemption Class No.: With respect to the set-aside of approximately five acres of the subject lands to DOFAW for *Abutilon menziesii* mitigation and recovery, in accordance with the Exemption List for the Department of Land and Natural Resources, approved by the Environmental Council on June 5, 2015 (Exemption List), the requested set-aside is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, item 43 that states "transfer of management authority over state-owned land, such as setting aside for state lands to or from other government agencies through a Governor's executive order".

In accordance with the Exemption List, the proposed right-of-entry is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or

EXHIBIT II

change of use beyond that previously existing,” item 5 that states, “Rescue of threatened or endangered species” and item 51 that states “Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing”; and Exemption Class No. 3, “Construction and location of single new, small facilities . . . ,” item 1 that states “Fences around or to manage rare, threatened or endangered plants”


DOFAW plans to enter the area for the purposes of out-planting *Abutilon menziesii* for mitigation and recovery of this endangered species. No improvements will be constructed, other than fencing.


Consulted Parties

Endangered Species Recovery Committee

Recommendation:

That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



Suzanne D. Case, Chairperson
Date 2/12/16 

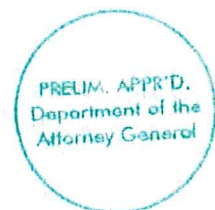
DEVELOPMENT AGREEMENT

State of Hawaii
Department of Land and Natural Resources

and

Na Pua Makani Power Partners, LLC

Effective Dec. 26, 2013



DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and effective as of the 26th day of December, 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, Transfer Certificate of Title No. 533031, Kahuku-Malaekahana, Koolauloa, Oahu, and identified by Tax Map Key No. (1) 5-6-008:006, said property being more particularly delineated in Exhibit A attached hereto and made a part hereof (said property, together with any improvements thereon, and subject to any encumbrances recorded or unrecorded, and Executive Order No. 3867, 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 extending the right-of-entry to expire on the commencement date of the lease.

D. At its October 12, 2012 meeting, under agenda item D-7, the Board approved replacing West Wind with Developer as the "Applicant" in the August 8, 2008 Board Action.

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.

F. At its December 13, 2013 meeting, under agenda item D.31, the Board approved a development agreement between the State and Developer and authorized the Chairperson to negotiate the terms and conditions of the development agreement

(the "December 13, 2013 Board Action"). A copy of the December 13, 2013 Board Action is attached hereto as Exhibit C and made a part hereof.

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, and subject to approval by the Board of the issuance of the Lease, and also subject to the terms, conditions, and recommendations of the Board. Where there is a conflict between terms of this Agreement and the terms, conditions, and recommendations of the Board, the Board's terms, conditions, and recommendations shall prevail.

The State makes no representations regarding the condition of the Premises or the suitability of the Premises for Developer's Project. Developer bears the sole risk of development, if any. Developer agrees and admits that Developer is solely at risk with respect to the profitability or financial success of the proposed Project.

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"). Consideration shall be paid together with any interest and late fees, if any. This provision shall survive the termination of this Agreement.

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;

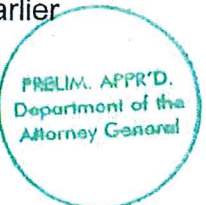
i) Developer shall have obtained the approval of the Department of Agriculture, State of Hawaii, to use any roads in and around the agricultural park that are under the jurisdiction of the Department of Agriculture if necessary to access the Premises;

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

k) Final approval by the Board for the State to enter into the Lease.

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 and notarized 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 Board.

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 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, except for those that survive termination.

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

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.

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. 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) BLNR. 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) Hawaii Law; Venue; Jurisdiction. This Agreement shall be construed, interpreted, and governed by the laws of the State of Hawaii. The venue for any judicial action with respect to this Agreement shall be in the city and county in which the Premises is situated. All parties to this Agreement shall submit to the jurisdiction of the State Courts of the State of Hawaii for all purposes relating to this Agreement.

21) 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.


Exhibit C - December 13, 2013 Board Action.

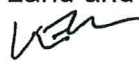
[Remainder of this page intentionally left blank]

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

Approved by the Board of Land and Natural Resources at its meetings held on August 8, 2008, July 13, 2012, October 12, 2012, and December 13, 2013.

STATE OF HAWAII

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




State

APPROVED AS TO FORM:


CINDY Y. YOUNG
Deputy Attorney General

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

By 
Name: Michael D. Cutbirth
Title: Manager

Developer



STATE OF California)
) SS.
COUNTY OF Santa Barbara)

On this 23 day of December, 2013, before me personally appeared Michael D. Cutbirth, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

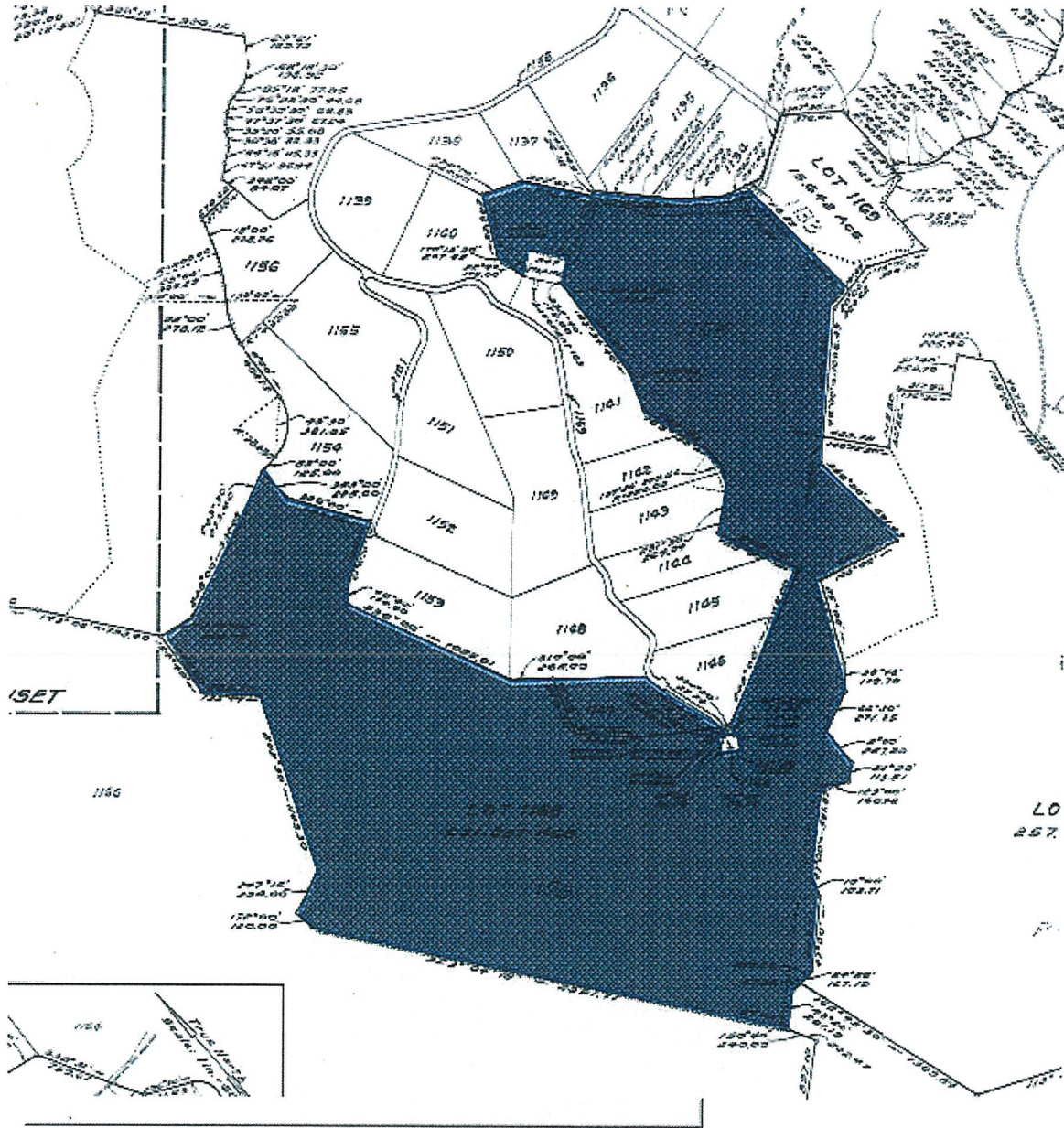


Lisa Velez
Notary Public, State of CALIFORNIA

Lisa Velez

My commission expires: March 26, 2017





Lot 1168 of Map 137 of Land Court Application No. 1095

EXHIBIT A

PRELIM. APP'R'D.
 Department of the
 Attorney General

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

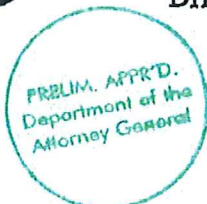


EXHIBIT B

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

DR 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:

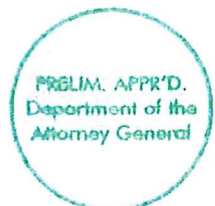
1. The renewal or replacement of the majority (more than 80%) of the wind turbines as evidenced by, but not limited to, contemporaneous replacement of the wind turbines with different models, or
2. A significant modification to that portion of the wind project located on the premises such that a significant 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.

PRELIM. APPR'D.
Department of the
Attorney General

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



Lot 1168

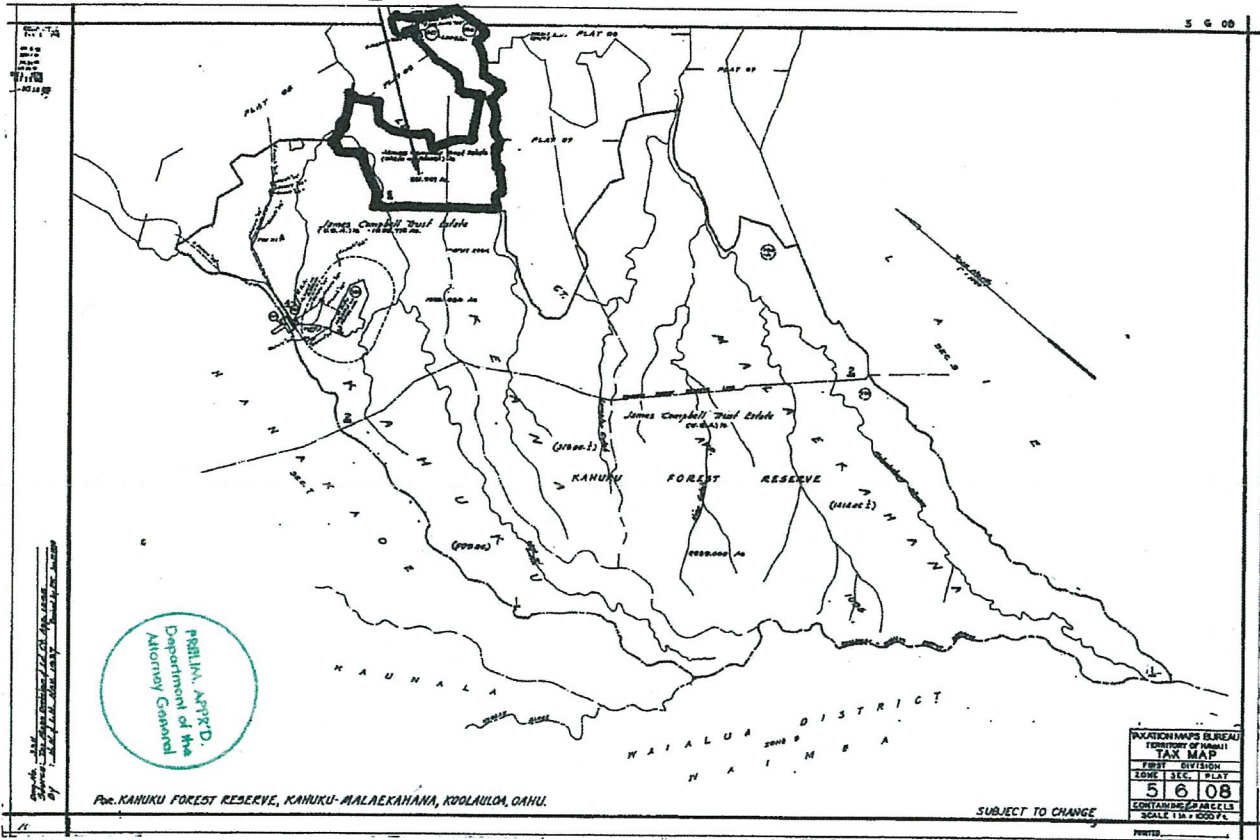


EXHIBIT A

AMENDED

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

December 13, 2013

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

080D-110A

OAHU

Amend Prior Board Actions of August 8, 2008, Item D-10, and October 12, 2012, Item D-7: 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)5-6-08:6 And

Amendments: The Amendment of the August 8, 2008 Action 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; the Amendment of the October 12, 2012 Action Seeks the Correction of the Tax Map Key Number for the Parcel Stated in the Prior Action.

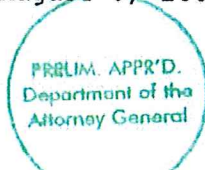
as amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
December 13, 2013

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



D-31

EXHIBIT "C"

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-1 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.² 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.

Additionally, the parties discovered that the Tax Map Key reference for the subject parcel given in the Board submittal of October 12, 2012, item D-7, is incorrect. The Tax Map Key is inadvertently stated as (1) 5-5-08:6 when it should be (1) 5-6-08:6. See Exhibit A-1. Staff is including a recommendation below to correct this error.

RECOMMENDATION:

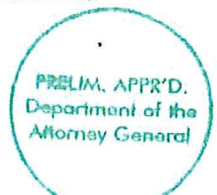
A. That the Board amend its prior action of August 8, 2008, under agenda item D-10, as previously amended, as follows:

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,

¹ The prior Board action of August 8, 2008, 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.

² Na Pua Makani has a right to extend the Option Term to March 31, 2016 under certain circumstances.



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, 2008 action under item D-10, as amended, also as Exhibit B.

- B. That the Board amend its prior action of October 12, 2012, under agenda item D-7, by correcting the Tax Map Key for the parcel provided in the submittal to (1) 5-6-08:6.

- C. Except as amended hereby, and by the Board's actions of July 13, 2012, item D-14, and October 12, 2012, item D-7 (as amended herein), all terms and conditions listed in the Board's action of August 8, 2008 shall remain the same.

Respectfully Submitted,



Gary Martin
Land Agent

APPROVED FOR SUBMITTAL:

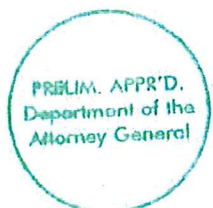


William J. Aila, Jr., Chairperson

WJA
Land Board Meeting: December 13, 2013; D-31: Approved as amended.

Approved as amended. The Board amended Recommendation A.1.E. to read as follows:

- E. Approve the Development Agreement between the State of Hawaii and Na Pua Makani Power Partners, LLC, generally in the form of Exhibit B attached hereto, and authorize the Chairperson to negotiate the specific terms and conditions of the Development Agreement with advice of the Department of the Attorney General, and to execute the negotiated Development Agreement on behalf of the Board.



D-7

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, KOOLAULO, 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-1

D-7

BLNR/Amend Prior Action of
July 13, 2012

2

October 12, 2012

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

Gary Martin
Land Agent

APPROVED FOR SUBMITTAL:

William J. Aila, Jr.

William J. Aila, Jr., Chairperson

PRELIM. APPR'D.
Department of the
Attorney General

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
LAND AND NATURAL RESOURCES
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.

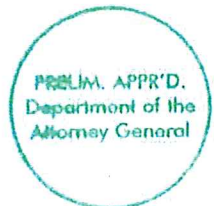
Champlin, a southern California based wind energy development company has developed more than 1,300 MW of wind projects. It is owned by Champlin Windpower, LLC and Good Energies, Inc.

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:

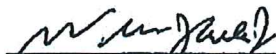
1. Amend its prior Board action of August 8, 2008, under agenda item D 10, by consenting to the Assignment and Assumption from West Wind Works, LLC, the Assignor, to Na Pua Makani Power Partners, LLC, the Assignee, of the Direct Lease Approved in Principle and Extending the Right of-Entry to Expire on 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.

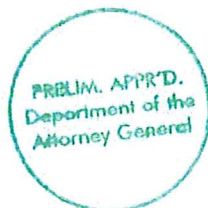
ZONING:

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.

PRELIM. APPR'D.
Department of the
Attorney General

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.

PRELIM. APPR'D.
Department of the
Attorney General

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.

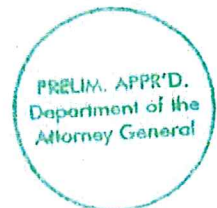
APPLICANT REQUIREMENTS:

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.

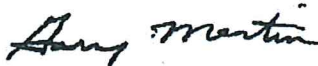
RECOMMENDATION: That the Board

- 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.

PRELIM. APPR'D.
Department of the
Attorney General

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. THIEL, Chairperson



PRELIM. APPR'D.
Department of the
Attorney General

YC 10/15/13

DEVELOPMENT AGREEMENT

State of Hawaii
Department of Land and Natural Resources

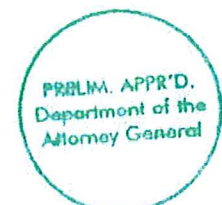
and

Na Pua Makani Power Partners, LLC

Effective _____, 2013

{00205024 8}

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.

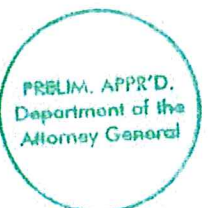
6) Developer’s Right to Terminate Agreement. Developer may at any time at its option and in its sole and absolute discretion by giving written notice thereof to the State, terminate this Agreement.

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.

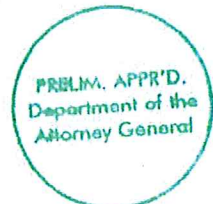
15) Entire Agreement; Modification. The State and Developer further agree that this Agreement sets forth the entire agreement between the State and Developer; and the Agreement shall not be altered or modified except by a written agreement signed by the State and the Developer.

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

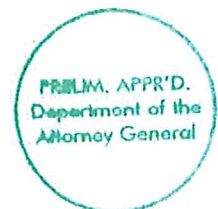


Exhibit A

Description of the Premises

[TO BE ATTACHED]

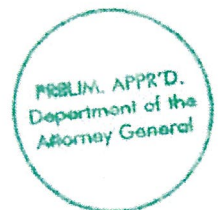
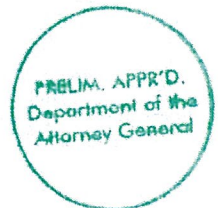


Exhibit B

August 8, 2008 Board Action

[TO BE ATTACHED]



AMENDMENT OF DEVELOPMENT AGREEMENT

THIS AMENDMENT OF DEVELOPMENT AGREEMENT (hereafter called this "Amendment") is made and effective as of the ____ day of _____, 20____, by and between the **STATE OF HAWAII** (the "State"), by its Board of Land and Natural Resources (the "Board"), and **NA PUA MAKANI POWER PARTNERS, LLC**, a Delaware limited liability company (the "Developer").

W I T N E S S E T H:

WHEREAS, the State and Developer entered into that certain unrecorded Development Agreement made and effective as of December 26, 2013 (the "Original Agreement"), whereby the State granted to Developer an exclusive and irrevocable option (the "Option") to lease that certain real property containing an area of approximately 232 acres, described as Lot 1168, Map 137, Land Court Application 1095, Transfer Certificate of Title No. 533031, Kahuku-Malaekahana, Koolauloa, Oahu, and identified by Tax Map Key No. (1) 5-6-008:006, said property being more particularly delineated in Exhibit A attached to the Original Agreement and described in the Original Agreement (the "Property"), for the purpose of developing, constructing, owning, operating and maintaining on the Property a wind energy project consisting of up to 25 MW of installed capacity (the "Project"), upon and subject to the terms and conditions set forth in the Original Agreement.

WHEREAS, the Original Agreement was evidenced by that certain Short Form Memorandum of Development Agreement Effective December 26, 2013, dated June 4, 2014, and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. T-8926324 on June 10, 2014 (the "Memorandum").

WHEREAS, via letter dated March 9, 2015, Developer exercised its right to extend the Option Term (as defined in the Original Agreement), through March 31, 2016, in accordance with the terms of the Original Agreement (the Original Agreement, as extended by said letter, is herein called the "Agreement").

WHEREAS, the Property was withdrawn from the Operation of Governor's Executive Order No. 3867 dated April 26, 2001, by Executive Order No. 4482, dated March 23 2015.

WHEREAS, to permit Developer to have adequate time to satisfy all of the conditions required for Developer to exercise the Option, the State and Developer have agreed to extend the Option Term, and to otherwise amend the Agreement, as provided in this Amendment.

EXHIBIT IV

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and in the Agreement, and intending to be bound legally hereby, the State and Developer hereby amend the Agreement as follows:

1. Unless otherwise defined herein, all capitalized terms used in this Amendment shall have the meanings as ascribed to them in the Agreement.

2. The Agreement is hereby amended by replacing the definition of the capitalized term, "Premises", as used in the Agreement, as amended herein, with the following definition: the Property, together with any improvements thereon, and subject to any encumbrances recorded or unrecorded which were in existence prior to June 10, 2014, and Executive Order No. 4482.

3. Section 1 (Grant of Option) of the Agreement is hereby amended by adding a paragraph at the end of the section to read as follows:

The State shall have the right to withdraw a portion of the Premises (the "Withdrawn Land"), as shown on the map attached hereto as Exhibit "D", from the Premises and/or from any Lease issued pursuant to this Agreement, at any time during the term of this Agreement or the Lease upon giving reasonable written notice to the Developer, and without compensation, except as otherwise provided in this Agreement or the Lease, for the sole purpose of permitting the Withdrawn Land to be used by the State of Hawaii Division of Forestry and Wildlife for the mitigation and recovery of abutlon. It shall be State's responsibility, at its sole cost, to take all necessary actions, to effectuate such withdrawal of the Withdrawn Land, and to do so in accordance with all applicable federal, state and local laws, statutes, codes, ordinances, rules and regulations, and in a manner that does not materially or adversely affect the Developer, Developer's plans or operations, the Project or the Premises. The Developer shall not construct any Project improvements on the Withdrawn Land at any time. The State will not require any additional rights, privileges or requirements (e.g., access rights over the Premises) under this Agreement or the Lease, or pertaining to the Premises due to the Withdrawn Land or the exercise of the State's rights under this section.

4. Section 2 (Term) of the Agreement is hereby deleted in its entirety and the following Section 2 shall be substituted in place thereof:

2) Term. Unless earlier terminated as provided herein, the term of the Option shall commence on the Effective Date and expire on March 31, 2016 (the "Option Term"). Developer shall have two (2) options to extend the Option Term, each option being for an extension period of one (1) year. Developer may exercise

each option by providing written notice to the State on or prior to the expiration of the then existing Option Term. Upon Developer's exercise of any such option, the applicable extension period shall be deemed to be a part of the "Option Term" as such term is used in this Agreement.

5. Section 4 (Exercise of Option) of the Agreement, condition (b) is hereby deleted in its entirety and the following Section 4, condition (b) shall be substituted in place thereof:

b) If required for the construction of the Project, Developer shall obtain a Conditional Use Permit from the City and County of Honolulu no later than two (2) years after execution of the Lease of the Premises by the Board and Developer, or by March 31, 2018, whichever shall first occur;

6. Section 4 (Exercise of Option) of the Agreement, condition (c) is hereby deleted in its entirety and the following Section 4, condition (c) shall be substituted in place thereof:

c) Developer shall obtain Board approval of a Habitat Conservation Plan and secure an Incidental Take License from Division of Forestry and Wildlife of DLNR for the Project no later than one (1) year after execution of the Lease of the Premises by the Board and Developer, or by March 31, 2017, whichever shall first occur;

7. Section 4 (Exercise of Option) of the Agreement, condition (f) is hereby deleted in its entirety and the following Section 4, condition (f) shall be substituted in place thereof:

f) Developer shall provide evidence to the State of reasonable financial ability to construct the Project on the Premises (e.g., balance sheets of an affiliate of Developer or commitment (even if based on reasonable conditions, such as those provided in this Section 4) for financing) no later than two (2) years after execution of the Lease of the Premises by the Board and Developer, or by March 31, 2018, whichever shall first occur;

8. The parties acknowledge and agree that conditions (e) and (i) of Section 4 have been satisfied as of the date of this Amendment. Section 4 is further amended by deleting the last two sentences of Section 4, and substituting the following language in place thereof:

The parties agree that, even if conditions (b), (c) and/or (f) of this Section 4 remain outstanding, if all other conditions of this

Section 4 have been satisfied, Developer may exercise the Option prior to conditions (b), (c) and/or (f) being satisfied, but subject to the right to terminate the Lease as provided below. 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, provided that, if conditions (b), (c) and/or (f) of this Section 4 remain outstanding at the time of the exercise of the Option then such remaining conditions shall be added as conditions to be satisfied under the Lease, and if any of such conditions are not satisfied within the time allowed therefor, then the State and Developer shall each have the right to terminate the Lease by providing written notice of such termination to the other party. Two (2) originals of said resulting Lease, if approved by the Board and the Department of the Attorney General (as indicated by its green approval stamp), shall be executed and notarized by Developer and delivered to the State for execution. The State shall deliver one (1) fully-executed original of said Lease to Developer within a reasonable time after receipt of the executed and notarized originals from Developer.

If requested by Developer, the State shall present both the Final Environmental Impact Statement (FEIS) for the Project and a Lease to the Board for approval at a public meeting within a reasonable time after Developer provides written notice to the State that the FEIS is complete (the Board's approval of the FEIS shall be evidence that condition (d) of this Section 4 has been satisfied), provided that, if Developer prefers to have a Lease form presented to the Board at a separate public meeting, then Developer may elect in writing to the State to have only the FEIS presented to the Board as provided above, in which case the State shall present a Lease to the Board for approval at a separate public meeting within a reasonable time after Developer requests that a Lease be presented to the Board for approval. The State shall present the Habitat Conservation Plan to the Board for approval at a public meeting within a reasonable time after the later to occur of (i) the Endangered Species Recovery Committee recommending approval; or (ii) Developer requesting the presentation of the Habitat Conservation Plan to the Board for approval.

9. Section 5 of the Agreement is hereby amended by deleting the footnote 1 which is appended to Section 5.

10. Section 5 of the Agreement is hereby amended by adding the following sentences at the end of Section 5:

This Agreement shall be deemed automatically terminated upon the proper exercise of the Option by Developer and the full execution of the Lease by the State and Developer, in accordance with the terms and conditions of this Agreement, which termination shall be effective upon the date of the Lease.

11. Section 7 of the Agreement is hereby amended by deleting subsection (e) of Section 7 in its entirety and substituting in place thereof the following:

e) Developer shall have failed to obtain the Conditional Use Permit, approval of the Habitat Conservation Plan, or an Incidental Take License, or to provide evidence of reasonable financial ability to construct the Project, within the time allowed for each of these items under Section 4 above.

12. Section 8 of the Agreement (Upon Termination) is hereby amended by adding the following at the end of the section:

In addition, the Lease, regardless of whether it has been issued or executed, shall be deemed to be null and void ab initio.

13. Section 10 of the Agreement is hereby amended by deleting the Developer's contact information in Section 10 and substituting the following contact information for Developer in place thereof:

If to Developer: Na Pua Makani Power Partners, LLC
Attention: Mike Cutbirth
2020 Alameda Padre Serra, Suite 105
Santa Barbara, California 93103
Fax No.: (805) 963-1054
Email: mcutbirth@champlinwind.com

14. After the full execution and delivery of this Amendment, upon request by either the State or Developer, an amendment of the Memorandum shall be prepared by the State, in such form and content as reasonably agreed to by the parties, 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 Amendment.

15. The Agreement is hereby amended by adding the Exhibit D attached to this Amendment as Exhibit D to the Agreement.

16. The Agreement, as herein amended, is hereby ratified and confirmed and shall continue in full force and effect.

17. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument

binding on all the parties hereto, notwithstanding that all the parties are not signatory to the original or the same counterpart.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, this Amendment has been executed as of the day and year first above written.

Approved by the Board
of Land and Natural Resources
at its meeting held on

STATE OF HAWAII

By _____
SUZANNE CASE
Chairperson of the Board of Land and
Natural Resources

State

APPROVED AS TO FORM:

CINDY Y. YOUNG
Deputy Attorney General

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

By _____
Name: Michael D. Cutbirth
Title: Manager

Developer

STATE OF _____)
) SS.
COUNTY OF _____)

On this _____ day of _____, 201__, before me personally appeared MICHAEL D. CUTBIRTH, to me personally known, who, being by me duly sworn or affirmed did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of _____

Printed Name: _____

My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or Description:

Doc. Date: _____ or Undated at time of notarization.

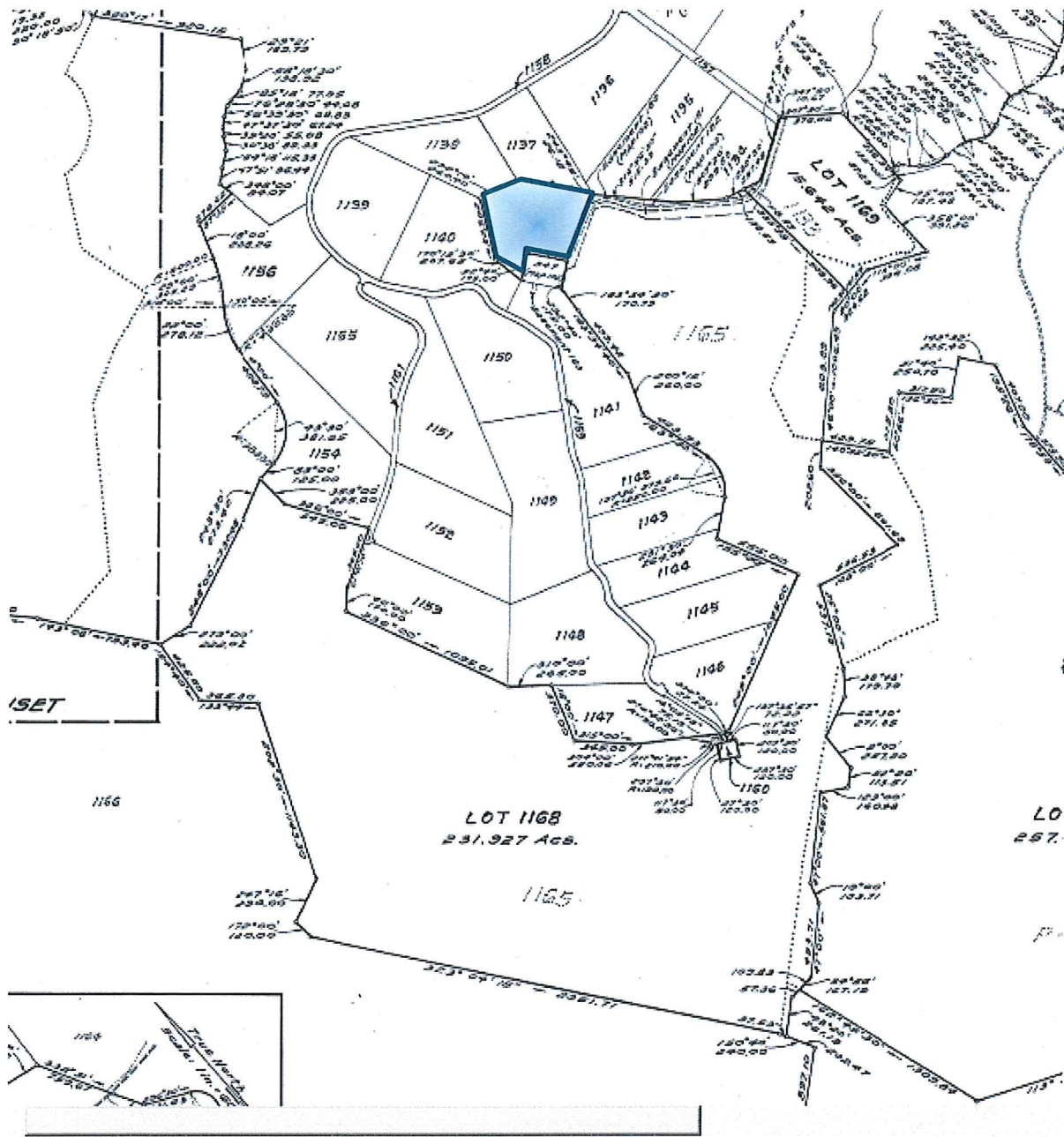
No. of Pages: _____

Jurisdiction: _____ Circuit
(in which notarial act is performed)

Signature of Notary

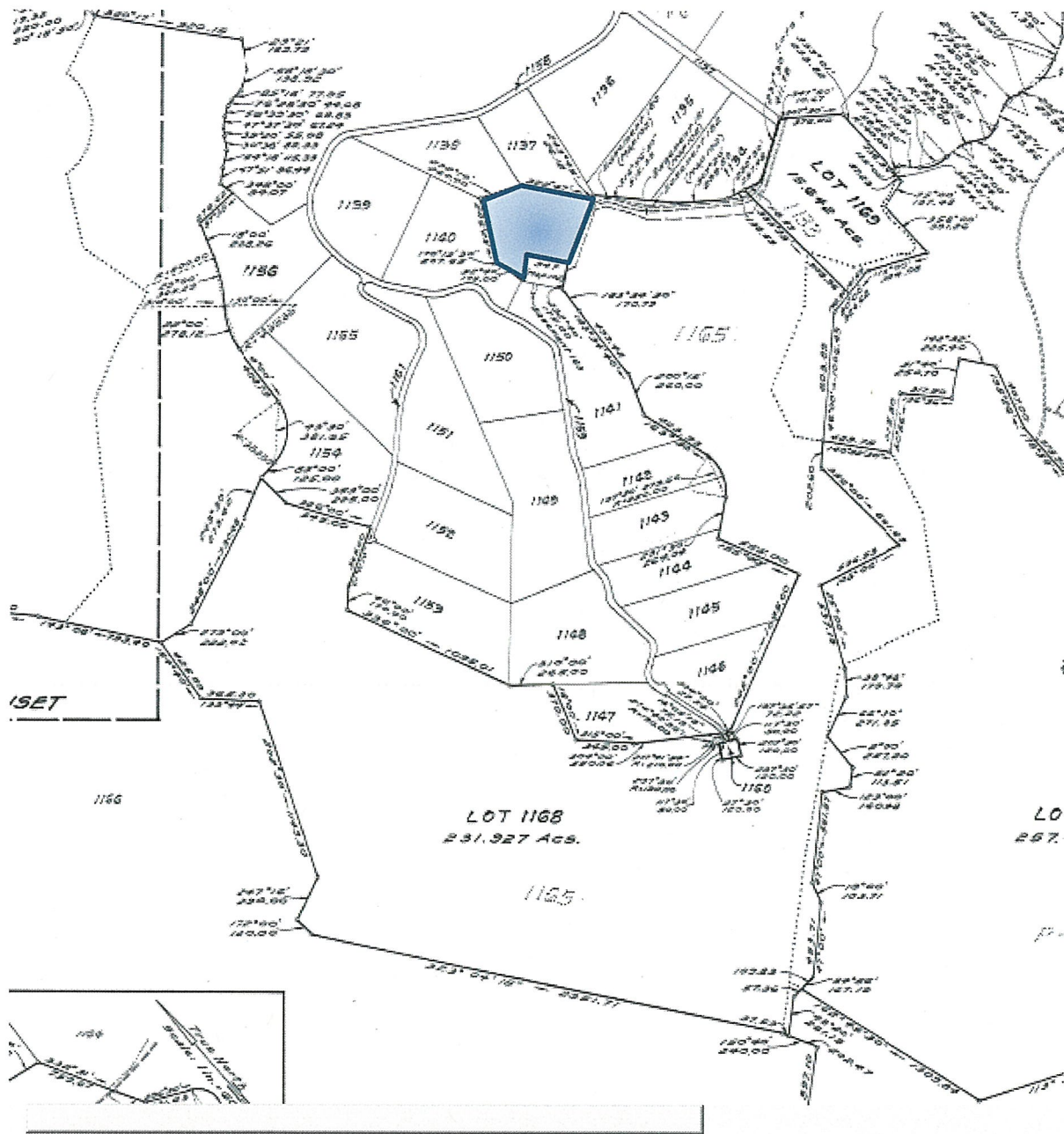
Date of Notarization and
Certification Statement

Printed Name of Notary



Lot 1168 of Map 137 of Land Court Application No. 1095
 Proposed *Abutilon menziesii* mitigation and recovery area

EXHIBIT D



Lot 1168 of Map 137 of Land Court Application No. 1095

Proposed *Abutilon menziesii* mitigation and recovery area

EXHIBIT V

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife (DOFAW)
Honolulu, Hawaii 96813

October 23 and 24, 2014

Endangered Species Recovery Committee
State of Hawaii
Honolulu, Hawaii

Committee Members:

SUBJECT: Request for comments from the Endangered Species Recovery Committee on mitigation and success targets outlined in the Habitat Conservation Plan for *Abutilon menziesii* at Kapolei, Island of O'ahu

BACKGROUND

On April 8, 2004 the Board of Land and Natural Resources approved the Incidental Take License (ITL) and Habitat Conservation Plan for *Abutilon menziesii* (HCP) at Kapolei, O'ahu to the Hawai'i Department of Transportation (DOT). The DOT project under the HCP included the development of a 1,300-acre East Kapolei Master Plan project and construction of the North-South Road arterial highway planned to bisect the 1,300-acre property. The project area contained the endangered plant species *Abutilon menziesii* and take coverage for all plant individuals of *A. menziesii* within the 1,381-acre project area was approved per conditions described in the HCP and ITL.

The HCP outlines a strategy to maintain genetic representation of the original on-site population and to establish three new populations in protected areas on O'ahu. Additionally, an 18-acre Contingency Reserve Area (CRA) was identified on the project site to be undisturbed until at least one of the three outplanting sites meets established short-term success criteria described in the HCP.

Measurable success criteria for the three new populations are clearly described in the HCP and include short-term, long-term, and overall success criteria of the mitigation actions. The short-term success criteria include that at least 25% of the full complement of lineages outplanted in a population must survive for two years without irrigation and that during the first five years recruitment of seedlings that survive through the dry season and seed production by at least 25% of the full complement of outplanted lineages without irrigation must be observed.

The long-term success criteria include that over a five-year period in the absence of irrigation at least 80 reproducing adult plants shall be present in each population and that the number of seedlings recruiting into the mature age class must be greater than the mortality rate of existing adult plants. If the long-term success criteria are met, the overall success will be met if there are more than 120 reproducing adult plants present as a site at the end of a five year period (including at least 40 plants recruited from the seed bank on site). Then no additional management action will be required for that site and only monitoring needs to be continued over the next five year period.

EXHIBIT VI

The Division of Forestry and Wildlife (DOFAW) is working to implement mitigation measures outlined in the HCP. To date Populations of *A. menziesii* have been successfully established at the following sites: 1) Diamond Head State Park; 2) Koko Crater Botanical Garden; 3) Honouliuli Refuge part of the U.S. Fish and Wildlife Service (USFWS) O'ahu National Wildlife Refuge Complex; 4) Pouhala Marsh on City and County property in Waipahu; and 5) Ewa Villages Golf Course in close proximity to the project site. From an original founder population of 93 plants on the project site in 2002, outplanting efforts have resulted in establishment of 348 mature *A. menziesii* plant individuals throughout the five off-site mitigation areas and an additional 64 mature *A. menziesii* plant individuals on the on-site contingency reserve area. Current monitoring data indicate that a total of 41 seedlings from outplanted individuals have survived beyond four years.

Although important progress has been made, significant set-backs and challenges have occurred since the implementation of the mitigation under the HCP. These include:

- Lack of suitable habitat for Department of Land and Natural Resources/State use for Abutilon population establishment;
- Minimal interest and cooperation from private landowners;
- Most suitable habitat is managed by the Navy and currently not willing to partner;
- Plant is not a generalist as once assumed, it has specific soil requirements (deep, fertile, lowland soils, preferably alluvial); Land classification for the best/most suitable habitat is often Agriculture, further limiting the options for new population establishment.
- Fire destroyed one of the first established new Abutilon populations at Kaena Point;
- There are increased stressors on the plants due to the highly altered state of their suitable habitat (i.e. previously cultivated or urban);
- Highly altered state of the habitat makes management of new populations labor intensive, requiring regular weeding and outplanting/growing of common native plants;
- Plants have low seed germination rates due to an unknown cause. The germination is highly variable, even in a good year; and
- A non-native insect has been selectively targeting Abutilon seeds.

ANALYSIS

The short-term and long-term goals under the HCP are included in Table 13 and measurable success criteria and goals under Table 14 of the HCP are the following:

	Goals
Short-Term Goals	<ol style="list-style-type: none">1) Propagate the full complement of lineages of the in situ Kapolei population of <i>Abutilon menziesii</i>.2) Establish a cultivated repository of the full complement of lineages of Kapolei <i>A. menziesii</i> at Koko Crater Botanical Garden.3) Establish two test outplantings of <i>A. menziesii</i> at appropriate sites.4) Represent the full complement of lineages of the in situ Kapolei population at all sites.5) Establish and maintain an 18-acre contingency reserve area within the Kapolei population until the short-term success criteria are met at one wild outplant site.
Long-Term Goals	<ol style="list-style-type: none">1) Maintain three new stable wild populations of <i>A. menziesii</i> by out-planting at several (more than three) appropriate sites.2) For each wild population maintain an effective population of 120 flowering and seed producing plants (minimum of 100 mature individuals) over the term of the HCP. This number will assure an approximate 75 to 100 percent increase of the original population in each location and is five times that recommended by the Hawaii and Pacific Plants Recovery Coordinating Committee (as cited in USFWS 1998).3) Monitoring of the outplanted populations will be conducted to determine progress toward attaining population stability.

	Success criteria
Measurable Short-Term success criteria	<p>1) At least 25% of the full complement of lineages outplanted in a population must survive for 2 years after irrigation is ceased.</p> <p>2) During the first 5 years after each wild population is established there must be (a) recruitment of seedlings that survive through the dry season. and. (b) seed production by at least 25 % of the full complement of outplanted</p>
Measurable Long-Term Success Criteria	<p>1) At least 80 reproducing adult plants will be present in each population, averaged over a five-year period after irrigation is ceased.</p> <p>2) The number of seedlings recruiting into the mature age class must be greater than the mortality rate of existing adult plants, averaged over a five-year period after irrigation is ceased.</p>
Overall Success Criteria	<p>If both Long-Term Success Criteria are met and there are more than 120 reproducing adult plants present at the end of a 5-year period at a site (including at least 40 plants recruited from the seed bank on site) then no additional management action will be required for that site as part of the HCP and only monitoring need continue over the following 5-year period.</p>

DOFAW wants to ensure that success of mitigation and recovery of *A. menziesii* occurs on the island of O'ahu. Due to the significant challenges mentioned above, DOFAW would like to consider incorporating three additional out-planting sites in addition to the three required under the HCP and consider amending the long-term goals and measurable long-term success criteria.

The following (underlined) are proposed changes to the long-term goals item 1 and 2:

- 1) Maintain six new stable wild populations of 50 mature individuals each of *A. menziesii* by out-planting at appropriate sites.
- 2) For each of the six wild populations, maintain an effective population number of 50 mature, flowering and seed producing plants over the term of the HCP. This number is twice the number of individuals recommended per population for stabilization of the species in the 1995 USFWS Recovery Plan for the Lanai Plant Cluster. Also, Oahu Army Natural Resources Program (OANRP) often uses the stabilization goal of three populations of 50 mature, reproducing plants per population for long-lived perennials such as the *Gardenia manii*. OANRP also manages *Abutilon sandwicense* and has set their stabilization goal as 4 populations of 50 reproducing plants for that species.

The following (underlined) are proposed changes to measurable long-term success criteria item 1:

1) At least 50 reproducing adult plants will be present in each of six populations, averaged over a five-year period after irrigation is ceased.

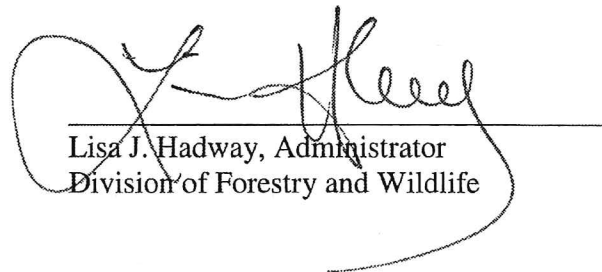
With the additional populations sites, DOFAW believes that the genetic representation of all plants at the project site will be preserved and additional populations will provide further assurances that the species will persist on O'ahu.

DOFAW is currently in discussion and working with the Department of Transportation (DOT), license holder, regarding the proposed changes mentioned above.

RECOMMENDATION

That the ESRC provide comments on the abovementioned proposed changes to the existing *A. menziesii* HCP to include new success criteria that still meet the required net benefit criteria under HRS Chapter 195D-4.

Respectfully Submitted,



Lisa J. Hadway, Administrator
Division of Forestry and Wildlife