

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

March 10, 2017

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

08OD-110A

OAHU

Second 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

The proposed second amendment to the Development Agreement is to extend the deadline for NPM to obtain approval of a Habitat Conservation Plan and secure an Incidental Take License for its proposed wind energy project on the above-referenced lands.

BACKGROUND:

Pursuant to the Board of Land and Natural Resources' approval of December 13, 2013, Item D-31, which amended its prior action of August 8, 2008, Item D-10, the Board authorized the Chairperson to negotiate and enter into a development agreement with Na Pua Makani Power Partners, LLC (NPM) for a wind project on the subject lands 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 (less its Exhibits B and C) is attached as Exhibit 1.

At its meeting of February 26, 2016, Item D-14, the Board approved a first amendment of the Development Agreement. The requested changes to the Development Agreement included: referencing Governor's Executive Order No. 4482 issued on March 23, 2015; including two additional one-year options to extend the Development Agreement up to March 31, 2018; requiring the Habitat Conservation Plan (HCP) and Incidental Take License (ITL) to be secured after the Board acts on the request for issuance of a lease to NPM; allowing the conditions of obtaining a City 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 providing for the subdivision of approximately five acres of the subject lands from the larger parcel

for use by the Division of Forestry and Wildlife (DOFAW) in *Abutilon menziesii* mitigation and recovery. The State and NPM executed a First Amendment of Development Agreement dated March 30, 2016 incorporating these changes, a copy of which is attached hereto as Exhibit 2. The Development Agreement, as amended by the Amendment of Development Agreement, is hereinafter referred to as the Amended Development Agreement.

At its meeting of October 14, 2016, under agenda item D-12, the Board of Land and Natural Resources approved the issuance of a direct lease to NPM. A contested case hearing on the granting of the lease was requested by Kent Fonoimoana on the same date, but denied by the Board.

At the Board's meeting of October 28, 2016, Item C-2, DOFAW submitted the HCP and ITL for the project to the Board for approval. The Board deferred action on the item after several parties requested contested case hearings. At the Board's meeting of November 10, 2016, Item C-1, NPM's request for approval of the HCP and ITL was again on the Board's agenda, but the Board deferred once again due to contested case petitions. At its meeting of December 9, 2016, Item C-2, the Board approved a request for a contested case hearing on the HCP and ITL. At its meeting of January 13, 2017, Item C-9, the Board approved the consolidation of contested cases filed by four petitioners into one contested case hearing. The contested case proceeding is ongoing.

REMARKS:

The Amended Development Agreement and proposed lease form currently provide that NPM is required to secure the HCP and ITL for the wind project by March 31, 2017. NPM is unable to meet that deadline due to the filing of the contested case petitions and other delays. By letter dated February 8, 2017, NPM notified the Board of the exercise of NPM's right under the Amended Development Agreement to extend the option period for NPM to obtain a lease of the subject lands to March 31, 2018. See Exhibit 3 attached.

By letter dated February 13, 2017, NPM requested that the March 31, 2017 deadline in the Amended Development Agreement for HCP/ITL approval be extended to March 31, 2018. To account for possible additional delays due to the contested case hearing or appeals thereof or if any Board decision is subject to further challenge or court action, NPM requested that language be included in the Amended Development Agreement to allow 90 days from the later of: (i) the conclusion of the contested case hearing or appeals thereof; or (ii) the deadline by which an appeal must be filed regarding the Board's decision in the contested case for NPM to secure the HCP and ITL. Staff has no objection to the request. In a separate submittal before the Board today regarding the form of lease to NPM, staff is making the recommendation to extend the lease deadline for HCP/ITL approval to March 18, 2018 (with possible further extensions due to delays related to the contested case proceedings). The Amended Development Agreement and lease should have the same deadlines.

Staff is therefore recommending that section 4(c) of the Amended Development

Agreement be amended to read as follows:

Developer shall obtain Board approval of a Habitat Conservation Plan (“HCP”) and secure an Incidental Take License (“ITL”) 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~~ 2018, whichever shall first occur, (the “Initial HCP/ITL Deadline”), provided that, if, at the time of the Initial HCP/ITL Deadline, any contested case hearing pertaining to the HCP/ITL has not been concluded or is appealed or is subject to appeal, or if a decision of the Board on the HCP/ITL is subject to any further challenge or court action or such a challenge or court action is then occurring, then the Initial HCP/ITL Deadline shall be extended to a date that is ninety (90) days after the later to occur of (A) the conclusion of the contested case hearing or any appeals thereof; or (B) the deadline by which an appeal must be filed regarding the Board’s decision in the contested case;

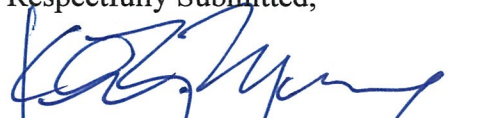
(Deletion indicated by strikethrough; new material underscored.)

RECOMMENDATION:

That the Board:

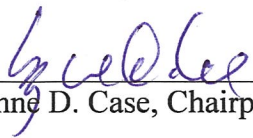
1. Authorize the amendment of the Development Agreement dated December 26, 2013, by and between the Board of Land and Natural Resources and Na Pua Makani Power Partners, LLC, as amended by the Amendment of Development Agreement dated March 30, 2016, subject to the terms and conditions listed above and further subject to the following:
 - a. The most current amendment of development agreement form, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General; and
 - c. 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

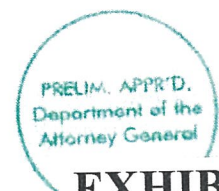
DEVELOPMENT AGREEMENT

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.

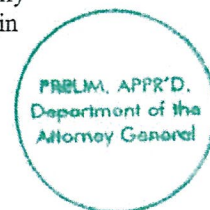
d) Developer is not in compliance with HRS section 171-36(4).

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

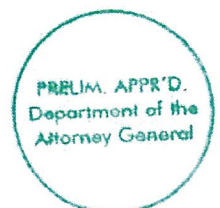
APPROVED AS TO FORM:


CINDY Y. YOUNG
Deputy Attorney General

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

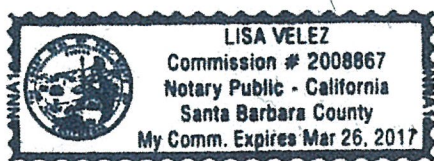
By 
Name: Michael D. Cutbirth
Title: Manager

Developer



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

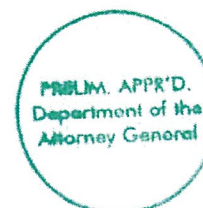
On this 23 day of December, 2013, before me personally appeared Michael D. Cutbirth, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been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

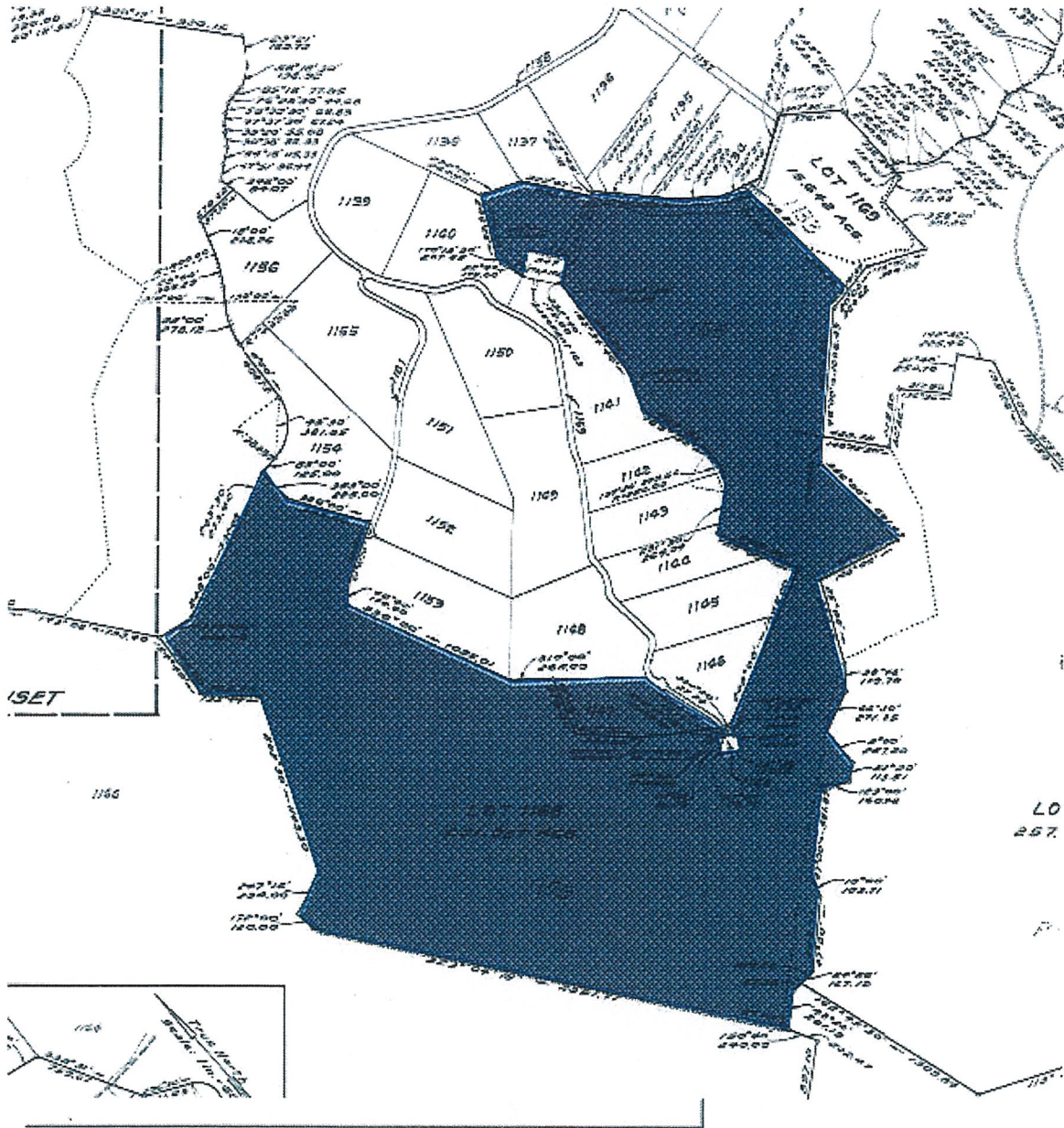


Lisa Velez
Notary Public, State of CALIFORNIA

Lisa Velez

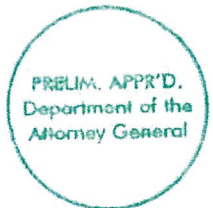
My commission expires: March 26, 2017





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

EXHIBIT A



AMENDMENT OF DEVELOPMENT AGREEMENT

THIS AMENDMENT OF DEVELOPMENT AGREEMENT (hereafter called this "Amendment") is made and effective as of the 30th day of March, 2016, 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").

WITNESSETH:

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.

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. For purposes of this provision, 30 days after the later to occur of (i) the Endangered Species Recovery Committee recommending approval; or (ii) execution of the lease, or longer for good reason, shall be deemed reasonable.

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
February 26, 2016


STATE OF HAWAII

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

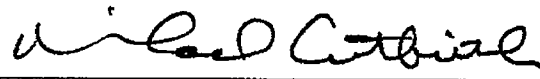


State

APPROVED AS TO FORM:


CINDY Y. YOUNG
Deputy Attorney General

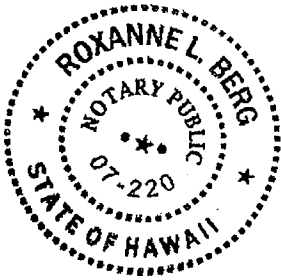
NA PUA MAKANI POWER PARTNERS,
LLC, a Delaware limited liability company

By 
Name: Michael D. Cutbirth
Title: Manager

Developer

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

On this 30th day of March, 2016, 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.



Roxanne L. Berg

Notary Public, State of Hawaii

Printed Name: Roxanne L. Berg

My commission expires: 05/20/2019

NOTARY CERTIFICATION STATEMENT

Document Identification or Description:

Amendment of Development Agreement

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

No. of Pages: Nine (9)

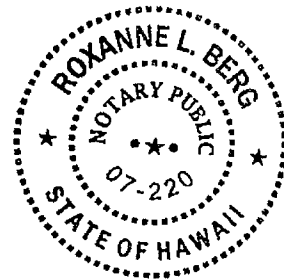
Jurisdiction: First Circuit
(in which notarial act is performed)

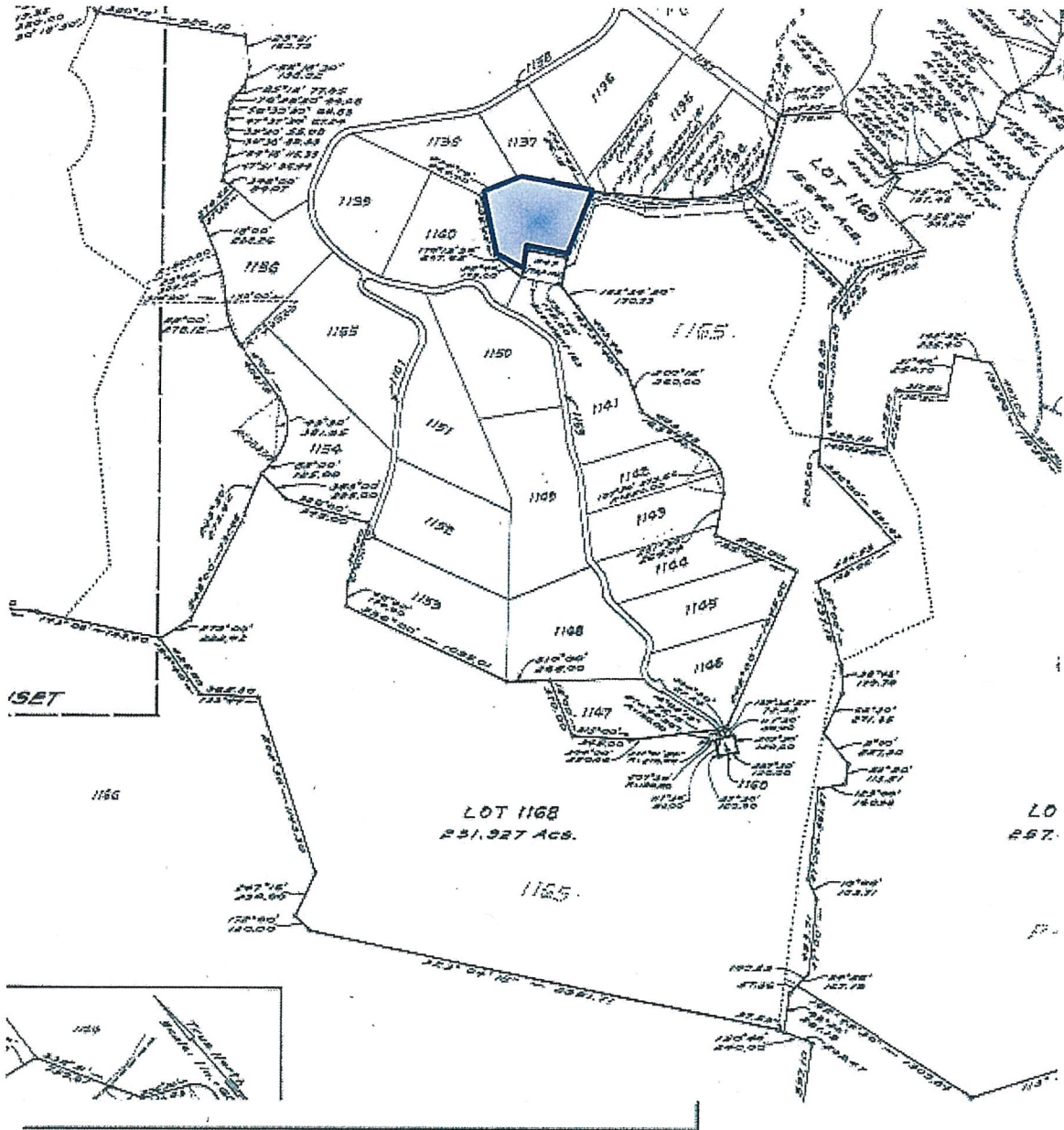
Roxanne L. Berg
Signature of Notary

MAR 30 2016

Date of Notarization and Certification Statement

Roxanne L. Berg
Printed Name of Notary





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

EXHIBIT D

NA PUA MAKANI POWER PARTNERS, LLC

PO Box 540
Santa Barbara, CA 93102

February 8, 2017

Via Fax & Overnight Mail
(808) 587-0390

Board and Department of Land and Natural Resources
1151 Punchbowl Street, Room 220
Honolulu, Hawaii 96813
Attention: Ms. Suzanne Case, Chairperson

**Re: Development Agreement with Na Pua Makani
Power Partners, LLC – Notice Extending Option Term**

Dear Suzanne:

I am writing to you in connection with that certain *Development Agreement* dated December 26, 2013, as amended by that certain *Amendment of Development Agreement* dated March 30, 2016, between the State of Hawaii (the "State"), by its Board of Land and Natural Resources, and Na Pua Makani Power Partners, LLC ("Developer") (said Development Agreement, as amended, is herein called the "Agreement"), pursuant to which the State granted to Developer an exclusive and irrevocable option (the "Option") to lease that certain real property described as Lot 1168, Map 137, Land Court Application 1095, and identified by Tax Map Key No. (1) 5-6-008:006, and as further described in the Agreement, upon and subject to the terms and conditions as provided in the Agreement.

The term of the Option is set to expire on March 31, 2017. Pursuant to its rights under the Agreement, Developer hereby provides the State with notice of the Developer's exercise of its right to extend the term of the Option through March 31, 2018.

If you have any questions regarding this notice, please contact our Hawaii counsel, Dean Yamamoto or Adrienne Elkind, at (808) 540-4500.

Very truly yours,

NA PUA MAKANI POWER PARTNERS, LLC



Michael Cutbirth
Manager

cc: Department of the Attorney General