

4/2016

- Can we get a better result

AGREEMENT
BETWEEN THE DEPARTMENT OF DEFENSE, THE DEPARTMENT OF THE ARMY
AND NA PUA MAKANI POWER PARTNERS, LLC

This is an agreement between the Department of Defense (DoD), acting through the DoD Siting Clearinghouse, the Department of the Army, (collectively the "DoD Parties"), and Na Pua Makani Power Partners, LLC, a Delaware limited liability company ("Developer"). Together, these entities are referred to as "parties" and individually as a "party". Any reference to the DoD Parties means both parties and does not indicate that one party acts for or on behalf of the other.

This agreement is to mitigate the impacts upon the national defense from the development of a wind turbine energy project in the vicinity of the Kahuku Training Area (KTA) located in Honolulu County, Oahu, Hawaii, hereinafter referred to as the "Wind Project". The Wind Project previously consisted of 13 proposed wind turbines identified on Attachment A as FAA ASN 2014-WTW-635-OE thru 2014-WTW-647-OE and pursuant to this agreement shall now consist of 9 proposed wind turbines listed on Attachment A-2.

This agreement is entered into pursuant to section 358 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, as amended, and Part 211 of title 32, Code of Federal Regulations (CFR).

Attachments A, *Site Plan, A-1, Revised Site Plan, A-2, Revised Site Plan, B, Federal Aviation Administration Filings, and C, Possible Permits/Approvals/Submissions for Wind Project*, are attached to this agreement and made a part hereof. The initial / original site plan map dated December 10, 2013 (obsolete) was revised and refiled in 2014 to the current site plan dated December 9, 2015.

For good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

Section 1. Purpose.

A. Objectives. Pursuant to section 358, it is an objective of the DoD to ensure that the robust development of renewable energy sources and the increased resiliency of the commercial electrical grid may move forward in the United States, while minimizing or mitigating any adverse impacts on military operations and readiness. The parties have worked cooperatively to meet the desired goals of supporting military operations and readiness simultaneously with the production of renewable energy.

B. De-Confliction. Analysis suggests that a potential conflict may exist between the Army's operation of the Kahuku Training Area (KTA) and spinning wind turbines associated with the Wind Project. Mitigation was desired by the Army and the other DoD Parties concerning the siting of the physical obstacles, visibility under all training conditions to aircraft, and downwind turbulence potential. The Parties have focused on de-conflicting these activities and agree that the terms below will allow the mutual goals of the parties to be met.

Section 2. Specific Terms and Conditions.

A. **In General.** This agreement is structured to enable Developer to proceed immediately with the construction and operation of the Wind Project. Developer agrees to restrict the construction of the Wind Project turbines to the specific geographic coordinates, to an accuracy of +/- 300 feet for turbines 1 – 4 and 6 – 9 and 350 feet for turbine 5, listed in Attachment A-2. For sake of clarity, Developer may move the location of any of the turbines up to a total of 300 feet for turbines 1 – 4 and 6 – 9 and 350 feet for turbine 5 feet in any direction from the location of such turbine as set forth in Attachment A-2 (Micro-Siting Relocation).

1. The Wind Project: The Nine (9) Turbines Listed in Attachment A-2

a. Within five (5) days of the Effective Date of this agreement, the DoD Parties agree to transmit “No Objections” to the aeronautical study numbers corresponding to the wind turbine locations listed on Attachment A-2. Provided that Developer carries out the terms of this agreement, the DoD Parties agree not to posit any objection (including not objecting to any of the possible permits, approvals or submissions, and not submitting objections) to the construction and operation of the Wind Project under or with the Federal Aviation Administration (FAA) Obstruction Evaluation/Airport Airspace Analysis (OE/AAA) system or other federal, state, or local regulatory entities with jurisdiction over the Wind Project. Such other entities and possible permits, approvals, and submissions are listed in Attachment C. This clause does not apply to or limit the regulatory authority of the U.S. Army Corps of Engineers to issue, condition, or deny a permit for the Wind Project pursuant to the Federal Water Pollution Control Act or the Rivers and Harbors Act of 1899.

b. The layout of the Wind Project with respect to turbine locations is final and Developer agrees to limit the placement of the Wind Project turbines to only those locations listed in Attachment A-2, subject to Micro-Siting Relocation.

c. No changes greater than 300 feet for turbines 1 – 4 and 6 – 9 and 350 feet for turbine 5 feet in any direction are permitted to the location of the wind turbines listed in Attachment A-2 without prior written agreement from the DoD Parties.

2. **Turbine Marking Requirements.** Developer agrees to marking of turbine blade tips and tower hubs to ensure visibility for aviation activities. These markings must be observable while aircrews are flying with Night Vision Devices. Current proposed solution is to use “Glint” (3M proprietary product) based adhesive tape to mark the blade tips and infrared capable lighting in addition to standard FAA lighting requirements for unaided flight to be placed on the tower hubs.

3. **Underground Transmission Lines.** Developer agrees to install underground transmission lines on the site with the exception of the transmission line(s) located on the Kamehameha Highway and running between said Highway and the Wind Project's substation to eliminate non-turbine physical obstacles as a hazard to aviation.

4. **Elimination of Four (4) Wind Turbines.** Developer has agreed to reduce the total number of turbines from 13 to 9. Accordingly, agreed upon locations are those listed in Attachment A-2.

5. Developer shall install infrared capable lighting on the permanent met tower identified in Attachment B.

B. Amendment of Applications. Developer agrees to amend its applications before the FAA, listed on Attachment B, by incorporating this agreement into each of those applications.

C. Withdrawal of Objections. Within 5 calendar days of Developer amending all of its applications before the FAA pursuant to paragraph B immediately above, DoD and Army shall enter non-objections in the FAA's Obstruction Evaluation system.

Section 3. Assignment.

A. This agreement shall be binding upon Developer and its successors and assigns (collectively, "Assignors"). Each of the Assignors shall have the right to sell, convey, mortgage, assign, or otherwise transfer all or any part of its interests and obligations in the assets comprising the Wind Project (Assignment) to any third party (Assignee), without the prior consent of the DoD or Army, provided that such Assignment expressly acknowledges the existence of this agreement and a copy of this agreement is provided to the Assignee.

B. If the prospective Assignee is a foreign national or foreign owned or controlled business entity, Developer and the proposed Assignee shall jointly provide notice of the proposed transaction to the Committee on Foreign Investment in the United States (CFIUS) in accordance with the applicable regulations (Subpart D of 31 CFR Part 800) and provide a copy of the notice to the Army. Nothing in this agreement shall prohibit or limit DoD, on behalf of and in consultation with the Army, from objecting to the transaction before CFIUS, nor limit communications with CFIUS during national security reviews and investigations, and, should mitigation result, during mitigation, tracking, and post-consummation monitoring and enforcement, pursuant to 50 U.S.C. § 2170. Moreover, this agreement shall not prevent or limit the DoD or any of its components, to include the Army, from communicating in any form with any other regulatory body or agency with jurisdiction or possible jurisdiction over matters impacting Kahuku Training Area.

C. Upon any such Assignment, the respective Assignor shall be relieved of any obligations or liabilities under this agreement to the extent that its Assignee has assumed in

writing such obligations or liabilities and provided that such Assignor has given written notice of its Assignment to the DoD Parties.

Section 4. Effective Date and Expiration.

A. This agreement becomes effective on the last date that all parties have signed it (Effective Date).

B. This agreement shall expire and have no further force and effect upon the occurrence of the earliest of the following:

1. Construction of the Wind Project has not commenced within the time prescribed under 14 CFR §§ 77.33 and 77.35;
2. The Wind Project is permanently decommissioned;
3. The Kahuku Training Area ceases operations; or
4. Termination of the agreement by written mutual agreement of the parties.

Section 5. Points of Contact and Notification. The following persons shall be the primary points of contact (POC) for the parties for purposes of this agreement. Any party may change its POC provided that written notification of any such change is provided to the other parties at least thirty (30) days in advance of the change taking effect or sooner if the receiving parties acknowledge receipt of the change notice.

A. DoD – Executive Director, DoD Siting Clearinghouse, 3400 Defense Pentagon, Room 5C646, Washington, DC 20301-3400

B. Army - Office of the Secretary of the Army (Energy, Installations & Environment) Energy and Sustainability, 110 Army Pentagon, Room 3D453, Washington, DC 20310

C. Na Pua Makani Power Partners, LLC, 2020 Alameda Padre Serra - Suite 105, Santa Barbara, CA 93103; Attn: Michael D. Cutbirth; Fax (805) 963-1054; e-mail: mcutbirth@champlinwind.com

Section 6. Breach. If a party believes that another party has breached this agreement, it must provide written notice of the breach to the breaching party and provide that party an opportunity to cure the breach. If there is a dispute between the involved parties as to whether a breach occurred, the involved parties agree to attempt to resolve the dispute beginning with a meeting between a representative of Developer and representatives of the Army at Kahuku Training Area. Disputes may be elevated, on the part of the DoD/Army, to the Office of the Secretary of the

Army (Installations, Energy & Environment) and then to the Executive Director of the DoD Siting Clearinghouse. If the breach is not cured or resolved after this initial dispute resolution process, any party may seek to enforce this agreement. Each party specifically reserves any and all rights or causes of action it may have both at law and in equity to require compliance with any provision of this agreement. Each party reserves the right to enforce or refrain from enforcing against another party the terms of this agreement as it sees fit under applicable state or federal law.

Section 7. General Provisions.

A. Amendments. Any party to this agreement may request that it be amended, whereupon the parties agree to consult to consider such amendments. Any amendment to this agreement shall become effective only when signed by all parties and the effective date of such amendment shall be the last date that it is signed by all of the parties unless its terms provide for a different effective date.

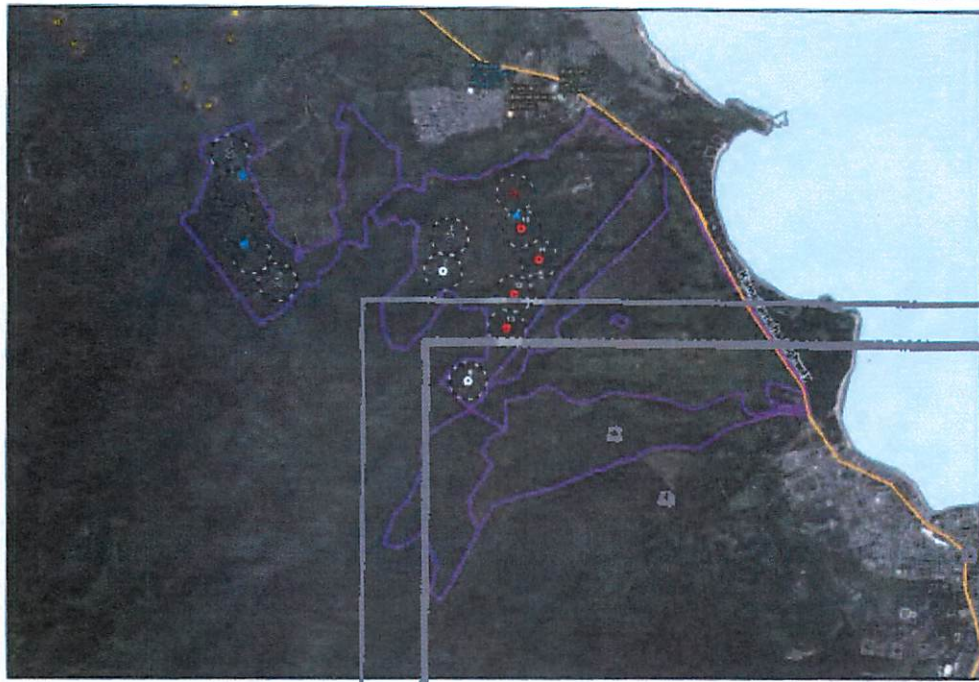
B. Integration. This agreement contains the entire agreement and understanding between the parties with respect to all of the subject matter contained herein, thereby merging and superseding all prior agreements and representations by the parties with respect to such subject matter.

C. Interpretation. In the event an ambiguity or question of intent or interpretation arises, this agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this agreement. Any reference to any federal, state, interstate, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. This agreement shall be governed under and construed in accordance with the laws of the United States and of the State of Hawaii.

D. Headings and Titles. The headings or section titles contained in this agreement are inserted solely for convenience and do not constitute a part of this agreement between the parties, nor should they be used to aid in any manner in the construction of this agreement.

E. Severability. If any term, provision, or condition of this agreement is held to be invalid, void, or unenforceable by a governmental authority and such holding is subject to no further appeal or judicial review, then such invalid, void, or unenforceable term, provision, or condition shall be deemed severed from this agreement and all remaining terms, provisions, and conditions of this agreement shall continue in full force and effect. The parties shall endeavor in good faith to replace such invalid, void, or unenforceable provisions with valid and enforceable provisions which achieve the purpose intended by the parties to the greatest extent permitted by law.

F. Waivers; Remedies Cumulative. No failure or delay on the part of a party in exercising any of its rights under this agreement or in insisting upon strict performance of provisions of this agreement, no partial exercise by any party of any of its rights under this



Project Facilities
Phase 1 - 2011

Legend

- Project Facilities
- Phase 1 - 2011
- Phase 2 - 2012
- Phase 3 - 2013
- Phase 4 - 2014
- Phase 5 - 2015
- Phase 6 - 2016
- Phase 7 - 2017
- Phase 8 - 2018
- Phase 9 - 2019
- Phase 10 - 2020
- Phase 11 - 2021
- Phase 12 - 2022
- Phase 13 - 2023
- Phase 14 - 2024
- Phase 15 - 2025
- Phase 16 - 2026
- Phase 17 - 2027
- Phase 18 - 2028
- Phase 19 - 2029
- Phase 20 - 2030

Map of the project area showing the location of the project facilities.

Number 2013 Character Map/Validation Document 14-1 30121210-000 1001 Series 12/10/2013



agreement, and no course of dealing between the parties shall constitute a waiver of the rights of any party under this agreement. Any waiver shall be effective only by a written instrument signed by the party granting such waiver, and such shall not operate as a waiver of, or estoppel with respect to, the rights of any party as to any subsequent failure by another party to comply therewith. The remedies provided in this agreement are cumulative and not exclusive of any remedies provided by law or in equity.

G. CFIUS. Notwithstanding paragraph 3.b, nothing in this agreement shall relieve Developer or its successors or assigns from complying with 31 CFR Part 800 (Mergers, Acquisitions, and Takeovers By Foreign Persons) nor prevent or limit the parties from communicating in any form with the Committee on Foreign Investment in the United States (CFIUS).

H. Anti-Deficiency. This agreement is subject to the availability of appropriated funds and sufficient resources. No provision in this agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

I. Disclosure. After removing all references to the model of turbines which Developer regards as business proprietary information, the parties may freely share redacted copies of this agreement with any person or entity. The Developer asserts that any data provided pursuant to this agreement, including but not limited to wind turbine data provided by Developer, is information that concerns business trade secrets and other confidential commercial information and is to be treated as such.

J. Full and Complete Satisfaction. The completion of the obligations of each of the parties under this agreement constitute the full and complete satisfaction of those obligations.

K. Authorization. Each party represents and warrants for itself that it has all requisite power and authority to execute this agreement and to consummate the transactions contemplated hereby, and that the execution and delivery of this agreement by the person signing on its behalf has been duly authorized by all necessary action, and all consents and approvals needed for it to enter into this agreement have been obtained by such party. This agreement constitutes the legal and binding obligations of the parties, enforceable in accordance with its terms.


Section 8. Signature/Counterparts. This agreement may be executed in several counterparts, each of which shall be deemed an original, all of which shall constitute but one and the same instrument. The following signatures pages are part of this agreement.

**[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK:
SIGNATURE PAGES FOLLOW]**

**AGREEMENT
BETWEEN THE DEPARTMENT OF DEFENSE, THE DEPARTMENT OF THE ARMY,
AND NA PUA MAKANI POWER PARTNERS, LLC**

IN WITNESS WHEREOF, the parties have executed and delivered this agreement.

**FOR THE DEPARTMENT OF DEFENSE,
Acting through the DoD Siting Clearinghouse**



Peter J. Potochney
Deputy Assistant Secretary of Defense (Basing)
Performing the Duties of the Assistant Secretary
of Defense (Energy, Installations & Environment)

11 FEB 2016

Date

AGREEMENT
BETWEEN THE DEPARTMENT OF ENERGY AND THE DEPARTMENT OF THE ARMY
FOR THE USE OF THE ARMY FOR ENERGY USE

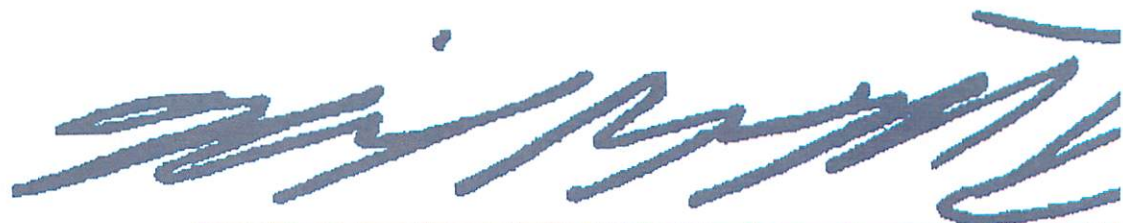
WITNESSETH WHEREBY the undersigned, being duly authorized
by the DEPARTMENT OF THE ARMY

[Signature]
RICHARD G. KIDD IV
Deputy Assistant Secretary
Energy and Sustainability

**BETWEEN THE DEPA
AND**

IN WITNESS WHEREOF

FOR THE DEPARTMENT



**Richard G. Kidd IV
Deputy Assistant Secretary
Energy and Sustainability**

**AGREEMENT
BETWEEN THE DEPARTMENT OF DEFENSE, THE DEPARTMENT OF THE ARMY,
AND NA PUA MAKANI POWER PARTNERS, L.L.C.**

IN WITNESS WHEREOF, the parties have executed and delivered this agreement.

FOR NA PUA MAKANI POWER PARTNERS, L.L.C.
a Delaware limited liability company



Michael D. Cutbirth, Manager

JANUARY 11, 2016
Date

**ATTACHMENT A
TO
AGREEMENT
BETWEEN THE DEPARTMENT OF DEFENSE, THE DEPARTMENT OF THE ARMY,
AND NA PUA MAKANI POWER PARTNERS, LLC**

SITE PLAN

[ATTACHED HERETO]

**ATTACHMENT A-1
TO
AGREEMENT
BETWEEN THE DEPARTMENT OF DEFENSE, THE DEPARTMENT OF THE ARMY,
AND NA PUA MAKANI POWER PARTNERS, LLC**

REVISED SITE PLAN

[ATTACHED HERETO]



**ATTACHMENT B
TO
AGREEMENT
BETWEEN THE DEPARTMENT OF DEFENSE, THE DEPARTMENT OF THE ARMY,
AND NA PUA MAKANI POWER PARTNERS, LLC**

FEDERAL AVIATION ADMINISTRATIVE FILINGS

Turbine	FAA Study No.	Previous FAA Study No.	Coordinates	Site Elev. (ft)
1	2016-WTW-8-OE	2014-WTW-7799-OE	21° 40' 18.86" N, 157° 58' 13.83" W	214
2	2016-WTW-9-OE	2015-WTW-10486-OE	21° 40' 09.61" N, 157° 58' 13.25" W	283
3	2016-WTW-10-OE	2015-WTW-10487-OE	21° 40' 01.44" N, 157° 58' 12.95" W	361
4	2016-WTW-11-OE	2015-WTW-10488-OE	21° 39' 54.24" N, 157° 58' 07.44" W	414
5	2016-WTW-12-OE	2015-WTW-10489-OE	21° 39' 46.03" N, 157° 58' 05.14" W	305
6	2016-WTW-13-OE	2015-WTW-10490-OE	21° 39' 42.44" N, 157° 57' 04.08" W	120
7	2016-WTW-16-OE	2015-WTW-10491-OE	21° 39' 52.73" N, 157° 56' 59.14" W	103
8	2016-WTW-14-OE	2015-WTW-10492-OE	21° 40' 01.13" N, 157° 56' 59.90" W	78
9	2016-WTW-15-OE	2015-WTW-10493-OE	21° 40' 09.52" N, 157° 57' 00.67" W	91

Met Twr	FAA Study No.	Previous FAA Study No.	Coordinates	Site Elev. (ft)
Perm	2015-WTW-7229-OE	2014-WTW-1453-OE	21° 40' 16.14" N, 157° 57' 40.32" W	361

**ATTACHMENT C
TO
AGREEMENT
BETWEEN THE DEPARTMENT OF DEFENSE, THE DEPARTMENT OF THE ARMY,
AND NA PUA MAKANI POWER PARTNERS, LLC**

POSSIBLE PERMITS/APPROVALS/SUBMISSIONS FOR WIND PROJECT

Agency	Permit/Approval
Federal	
USFWS	National Environmental Policy Act (NEPA) Compliance
USFWS	Incidental Take Permit and Habitat Conservation Plan (Endangered Species Act, Section 10(a)(1)(B))
Federal Aviation Administration (FAA)	49 U.S.C. § 44718; 14 CFR Part 77; Objects Affecting Navigable Airspace; Determination of No Hazard and Notice of Proposed Construction or Alteration
Hawai'i State Historic Preservation Division	National Historic Preservation Act Section 106 Compliance
State	
State of Hawaii, DLNR	Chapter 343/Hawaii Environmental Policy Act (HEPA) Compliance
State of Hawaii, Department of Health, Clean Water	Clean Water Act Compliance (Sections 401 / 402 / 404)
State of Hawaii, Commission on Water Resource Management	Stream Channel Alteration Permit (SCAP)
State of Hawaii, DLNR DOFAW	Incidental Take License/Habitat Conservation Plan (HRS Chapter 195-D)
State of Hawaii, Department of Transportation	Use and Occupancy Agreement
State of Hawaii, Department of Transportation	Lane Use Permit for Construction Work
State of Hawaii, Department of Transportation	Parking Permit
State of Hawaii, Department of Transportation and City & County of Honolulu, Department of Transportation Services	Oversized and Overweight Moving Permits
State of Hawaii, Department of Health	Noise Permit
State of Hawaii, Department of Health	Air Quality Permit
Hawaii Public Utility Commission	Purchase Power Agreement
City & County of Honolulu	Conditional Use Permit Minor and Joint Development Permit
Various Agencies	Construction-related Permits

**ATTACHMENT A-2
TO
AGREEMENT
BETWEEN THE DEPARTMENT OF DEFENSE, THE DEPARTMENT OF THE ARMY,
AND NA PUA MAKANI POWER PARTNERS, LLC**

REVISED SITE PLAN

Turbine	Coordinates	Site Elev. (ft)
1	21° 40' 18.86" N, 157° 58' 13.83" W	214
2	21° 40' 09.61" N, 157° 58' 13.25" W	283
3	21° 40' 01.44" N, 157° 58' 12.95" W	361
4	21° 39' 54.24" N, 157° 58' 07.44" W	414
5	21° 39' 46.03" N, 157° 58' 05.14" W	305
6	21° 39' 42.44" N, 157° 57' 04.08" W	120
7	21° 39' 52.73" N, 157° 56' 59.14" W	103
8	21° 40' 01.13" N, 157° 56' 59.90" W	78
9	21° 40' 09.52" N, 157° 57' 00.67" W	91

Met Twr	Coordinates	Site Elev. (ft)
Perm	21° 40' 16.14" N, 157° 57' 40.32" W	361