

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

February 24, 2017

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

PSF No.: 08KD-163

Kauai

Cancellation of Revocable Permit No. S-5983 to Syngenta Seeds, LLC and Issuance of New Revocable Permit to Syngenta Hawaii, LLC, Kekaha, Waimea (Kona), Kauai, Tax Map Key: (4) 1-2-002:040 por.

APPLICANTS:

Syngenta Seeds, LLC, a Delaware limited liability company.

Syngenta Hawaii, LLC, a Hawaii limited liability company.

LEGAL REFERENCE:

Sections 171-13 and -55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waimea, situated at Kekaha, Waimea (Kona), Kauai, identified by Tax Map Key: (4) 1-2-002:040 por. as shown on the attached maps labeled Exhibit A.

AREA:

61.2 acres, more or less.

ZONING:

State Land Use District:	Conservation
County of Kauai CZO:	Agriculture

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CURRENT USE STATUS:

Encumbered by Revocable Permit No. S-5983, Syngenta Seeds, LLC, permittee, for agriculture purposes.

CHARACTER OF USE:

Agriculture purposes.

COMMENCEMENT DATE:

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

MONTHLY RENTAL:

\$1,319.47 per month. On a per-acre basis, this is the rent current for Revocable Permit No. S-5983, which was increased effective January 1, 2017 by the Board's action of October 14, 2016, Item D-1, (annual renewal of revocable permits for the Island of Kauai).

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources concurred by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1. See Exemption Declaration attached as Exhibit B.

Additionally, Conservation District Use Application No. KA-11/9/81-1380 to Kekaha Sugar Company, Ltd. and Pride Company, Inc. was approved by the Board of Land and Natural Resources at its meeting on April 8, 1982, Item H-4.

DCCA VERIFICATION:

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Applicant in good standing confirmed:	YES

JUSTIFICATION FOR REVOCABLE PERMIT:

There is already a revocable permit covering the subject property. The purpose of this action is to change the permittee to an affiliate of the current permit holder, and correct the land area covered by the permit. Additionally, the subject revocable permit area is pending transfer to the Department of Agriculture (DOA). The Board approved the transfer of the land under Revocable Permit No. S-5983 to DOA at its meeting of October 14, 2016, Item D-17.

REMARKS:

The Board of Land and Natural Resources at its meeting on December 3, 1982, Item F-1-b, approved the issuance of Revocable Permit No. S-5983 (RP5983) to Pride Company, Inc. on Tax Map Key: (4) 1-2-002:040 por. for agricultural purposes.

At its meeting on July 22, 1983, Item F-16, the Board approved the sale of a lease at public auction for the parcel for a term of fifteen years for diversified agricultural purposes. However, the auction was not conducted because only a portion of the parcel is used for agriculture. See Exhibit A attached. Staff believed the preferred approach would have been to subdivide the portion of the parcel used for agriculture and lease only that portion at auction.

At its meeting on April 8, 1993, the Board consented to the assignment of RP5983 from Pride Company, Inc. to Northrup King Co. (NKC). NKC later changed its name to Norvartis Seeds, Inc. (NSI) on December 10, 1997. At its meeting of December 15, 2000, Item D-4, the Board approved another name change of the permittee from NSI to Syngenta Seeds, Inc. (SSI). On December 31, 2015, SSI converted from a Delaware corporation to a Delaware limited liability company called Syngenta Seeds, LLC.

Syngenta Seeds, LLC (SSL¹) formed Syngenta Hawaii, LLC (SHL) as a wholly-owned subsidiary of SSL for the purpose of consolidating its Hawaii operations and assets in a Hawaii limited liability company. This will allow SSL/SHL to facilitate various management, tax and other business objectives.

There will be no change in operations, use, or personnel following the cancellation and reissuance of the revocable permit. Permittee is currently in the market for a buyer for its Hawaii operations. Under the Board's current practice, revocable permits are not assignable by the permittee. Accordingly, if SSL or SHL sells its operations to a third party, the buyer will need to apply for a new revocable permit from the Board, unless the transaction is consummated as an equity transfer.²

1 The acronym "SSL" is used hereinafter to refer to both Syngenta Seeds, Inc. and Syngenta Seeds, LLC.

2 Under the language of the revocable permit form, Board consent is not expressly required for stock or membership interest transfers of a permittee.

As mentioned above, the Board approved the transfer of the RP5983 to DOA at its meeting of October 14, 2016, Item D-17. The Department of the Attorney General was not able to prepare the executive order for the set-aside because the permit covers only a portion of a larger parcel and has no survey map or description and is not subdivided. As a result, Land Division will need to obtain the required map and description for the land and process a subdivision through the Office of Conservation and Coastal Lands.

SSL is compliant with the terms and conditions of the permit (rent, insurance, and conservation plan). However, in preparing this submittal, staff realized that SSL has been using a larger area of Tax Map Key: (4) 1-2-002:040 (Parcel 40) than is indicated on RP5983. The permit authorizes the use of 43.6 acres. However, since December 4, 2007, SSL has utilized a total of 61.2 acres. Attached as Exhibit C is a copy of CDUP KA-11/9/81-1380 which explains that Pride Company, Inc. was planning to use 43.6 acres, and Kekaha Sugar Company, Limited (KSCL) was intending to use 17.6 acres of the parcel. In fact, a separate Revocable Permit No. S-5966 was issued to KSCL for the 17.6-acre portion on January 1, 1983. KSCL surrendered the permit as of February 28, 2001. Thereafter, the Agribusiness Development Corporation (ADC), who thought it had control over the 17.6 acres pursuant to Executive Order No. 4007 dated September 16, 2003, entered into the license with SSL for agricultural purposes. ADC believes but has yet to verify that SSL has paid approximately \$16,991 in rent for the 17.6 acres from December 2007 through January 2017, or approximately \$8.77/acre per month.³

To rectify this situation, ADC will amend its license to SSL to remove the 17.6 acres therefrom. Additionally, SSL/SHL volunteered to hire a licensed surveyor to prepare a survey map and description of the 61.2 acres to facilitate the transfer of the lands to DOA.⁴ Staff is recommending below that a revocable permit be issued SHL for the entire 61.2 acres because SSL has been using the entire area since December 2007 and the CDUP allowed for cultivation of the larger area. The rent will be increased \$1,319.47 per month to cover the full 61.2 acres. Because SSL has been paying rent to the State, albeit to ADC and not to DLNR, staff is not recommending any fine, administrative fee or reimbursement from or against ADC or SSL under the circumstances. Staff is including a recommendation below that the revocable permit require SHL to provide the survey map and description for the 61.2-acre area.

Once the new revocable permit to SHL is issued, staff will need to return to the Board to amend the prior action of October 14, 2016, Item D-17, to provide for the set-aside of the

3 By comparison, the rent under RP5983 during this period was \$740 per month for 43.6 acres, or \$16.97/acre. The rent for the 17.6 acres can therefore be calculated as $17.6 \times \$16.97 = \298.67 per month. For the period from December 2007 through December 31, 2016, the rent for the additional 17.6-acre area totals \$32,853.70. On January 1, 2017, the rent for the 43.6 acres under RP5983 increased to \$939.80 per month, which translates to \$21.56/acre per month. For the months that RP5983 remains in effect in 2017, the differential to account for the use of the additional 17.6 acres is \$379.46 per month.

4 ADC confirms that it has no objection to the set-aside of the entire 61.2-acre area to DOA. ADC and SHL are additionally discussing the possibility of SHL receiving a credit for rents due from SHL on other ADC lands to defray the cost of the survey of the 61.2 acres.

larger acreage to DOA. Once the set-aside is complete, DOA will collect the rent from the permittee.

SHL has not had a lease, permit, easement or other disposition of State lands terminated within the last five years.

Comments were solicited from the following:

State Agencies:

DHHL	No response by suspense date
DOA	No objections
ADC	No objections
OHA	Concern over protection of native and endemic species that may be affected by the HMO corn.

County Agencies:

County Planning	No response by suspense date
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Federal Agencies:

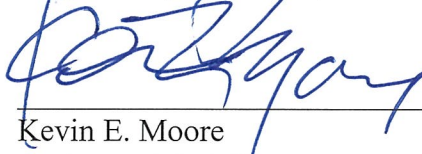
NRCS	No response by suspense date
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RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition 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.
2. Authorize the cancellation of Revocable Permit No. S-5983 to Syngenta Seeds, LLC and the issuance of a new revocable permit to Syngenta Hawaii, LLC covering the subject area for agricultural purposes 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 revocable permit form, as may be amended from time to time, except that the permit shall include a requirement that Syngenta Hawaii, LLC provide a survey map and description of the approximately 62.2-acre area covered by the revocable permit according to State DAGS standards and at applicants' own cost;
 - b. Review and approval by the Department of the Attorney General; and

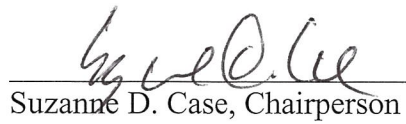
- c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Kevin E. Moore
Assistant Administrator

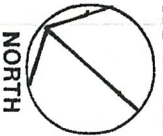
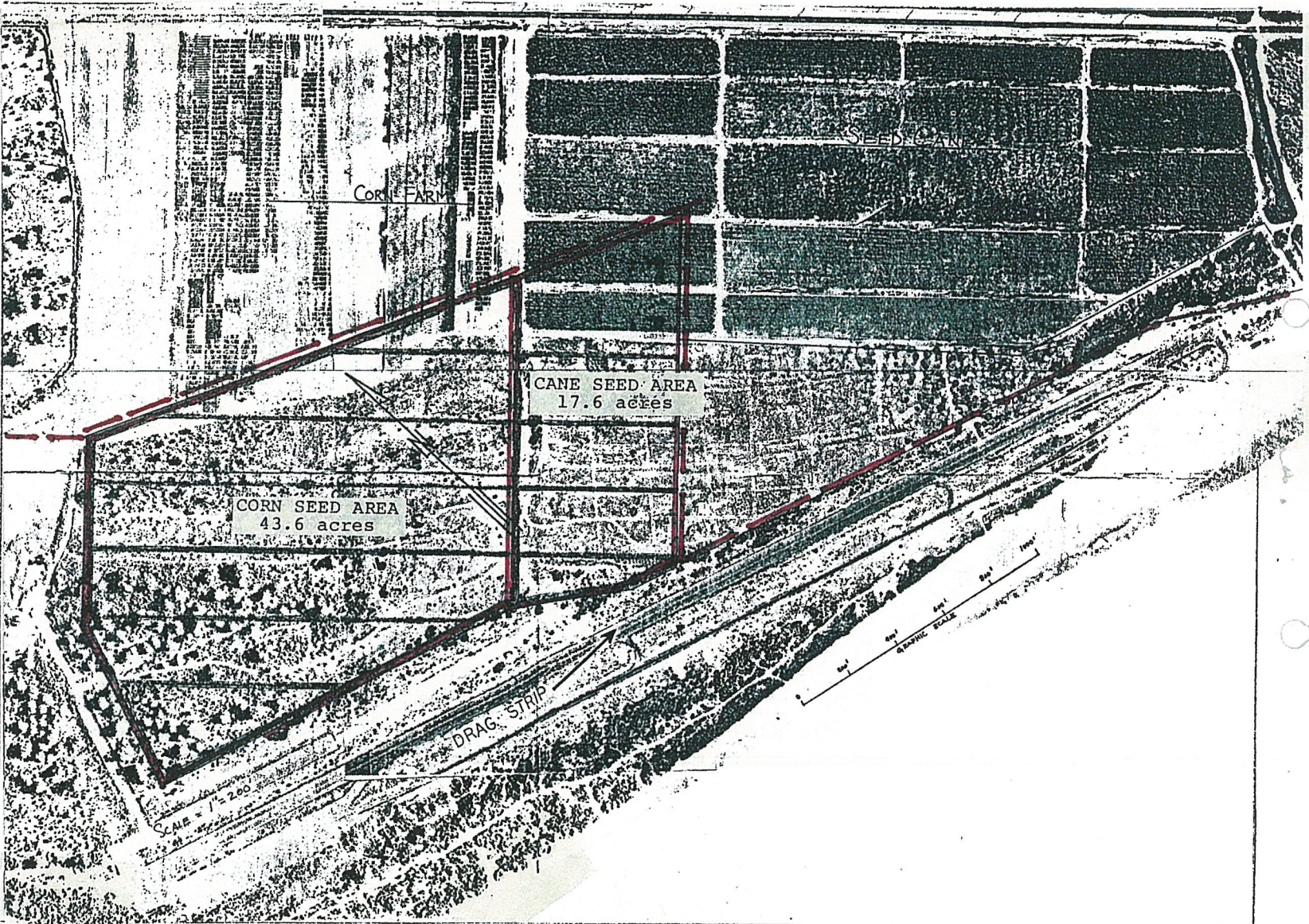
APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson



Tax Map Key: (4) 1-2-002:040

EXHIBIT A



CDUA no. KA-1380 Exclud. D.
 APPLICANT Kekaha Sugar Co./Pride Company, Inc.
 AGENT none
 TMK 1-2-02:40
 SCALE see Graphic Scale.

SUBZONE
☐ PROTECTIVE
☐ RESOURCE
☒ LIMITED
☐ GENERAL

☒ PROJECT AREA
☐ Conservation Dist

Map from CDUP Showing Both 43.6-acre Area and 17.6-acre Area

EXEMPTION NOTIFICATION

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

Project Title: Cancellation of Revocable Permit No. S-5983 to Syngenta Seeds, LLC and Issuance of New Revocable Permit to Syngenta Hawaii, LLC

Project / Reference No.: PSF 08KD-163

Project Location: Kekaha, Waimea (Kona), Kauai, Tax Map Key: (4) 1-2-02: por. 40.

Project Description: Issuance of revocable permit for agricultural purposes to Syngenta Hawaii, LLC

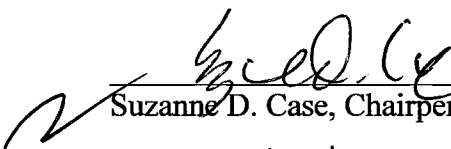
Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources concurred with by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 51, which states the "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing".

The subject lands have been in agricultural use for many decades, which has resulted in no known significant impacts to the natural and environmental resources in the area. As such staff believes that the proposed issuance of a revocable permit for the same use to a new entity would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties: Agencies identified in submittal.

Recommendation: It is recommended that the Board find that this disposition 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

2/16/17

Exhibit B



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
P. O. BOX 621
HONOLULU, HAWAII 96809

SUSUMU ONO, CHAIRMAN
BOARD OF LAND & NATURAL RESOURCES

EDGAR A. HAMASU
DEPUTY TO THE CHAIRMAN

DIVISIONS:
AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

MAY 11 1982

REF. NO.: CPO-5009
FILE NO.: KA-11/9/81-1380
Expiration Date: 5-8-82

Mr. L. A. Faye, Jr.
President and Manager
Kekaha Sugar Company, Ltd.
P. O. Box AA
Kekaha, Kauai, Hawaii 96752

Dear Mr. Faye:

Conservation District Use Application for
Commercial Agricultural Use at Kekaha, Kauai at
TMK: 1-2-02: 40

We are pleased to inform you that the Board of Land and Natural Resources, at its meeting of April 8, 1982, approved your application subject to the following conditions:

1. That the applicant comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and City and County governments, and applicable parts of Section 13-2-21 of Title 13, Chapter 2, Departmental Administrative Rules, as amended;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. Other terms and conditions as prescribed by the Chairman;

EXHIBIT C

MAY 11 1982

4. In that this approval is for use of conservation lands only, the applicant shall obtain appropriate authorization through the Division of Land Management, State Department of Land and Natural Resources for the occupancy of State lands;
5. In the event any unanticipated sites or remains such as shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are encountered during construction, the applicant shall stop work and contact the Historic Preservation Office at 548-7460 or 548-6408;
6. That the applicant comply with all applicable Public Health Regulations;
7. A fire contingency plan, acceptable to the Division of Forestry and Wildlife shall be implemented during the clearing of the land, and removal of refuse, and continuous agricultural operations which follow;
8. That sitework in preparing the 61.2 acres for agricultural use should be scheduled for periods of minimal rainfall;
9. That substances such as plant debris, petroleum products, eroded soils, herbicides, fertilizers, and pesticides will not be permitted to excessively blow, fall, flow or leach into the ocean;
10. That public access to the shoreline shall be maintained;
11. That when initial grading, grubbing and other ground disturbing activities are scheduled to begin, the applicant shall notify the Department of Land and Natural Resources, Historic Sites section of State Parks (548-7460) in Honolulu, and provide that section the opportunity to make a field inspection of the project site at that time;

Mr. L. A. Faye, Jr.
Page 3

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12. That the applicant be aware of the State Department of Defense's intermittent use of adjacent small arms firing range facilities throughout the year, such that the agricultural area shall not be used during these periods due to the possible danger of stray rounds.

Should you have any questions on any of these conditions, please contact Mr. Roger C. Evans of our Planning Office at 548-7837.

Very truly yours,

/s/ SUSUMU ONO

SUSUMU ONO, Chairman
Board of Land and Natural Resources

xc: Pride Company, Inc. (co-applicant)
Kauai County Board Member
Kauai County Land Agent
Kauai County Planning Dept.

bxc: Land Management
DOWALD
Fish & Game
Historic Sites
Forestry
State Parks
OEQC
Dept. of Health
DPED

SS:tpb
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GEORGE R. ARIYOSHI
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

P. O. BOX 521
HONOLULU, HAWAII 96809

FILE NO.: KA-11/9/81-1380
180-Day Exp. Date: 5/3/82

DIVISIONS:
CONVEYANCES
FISH AND GAME
FORESTRY
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

April 8, 1982

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

Gentlemen:

Conservation District Use Application for
Commercial Agricultural Use
at Kekaha, Kauai

APPLICANT: Mr. L. A. Faye, Jr.
President and Manager
Kekaha Sugar Company, Ltd.
P. O. Box AA
Kekaha, Kauai, Hawaii 96752

and

Pride Company, Inc.
a division of
Northrup King Company
Research Center
P. O. Box 237
Waimea, Kauai, Hawaii 96796

LANDOWNERSHIP: State-owned

LOCATION: TMK: 1-2-02: 40

AREA OF PARCEL/USE: 132.579 acres/61.2 acres

SUBZONE: Limited

DESCRIPTION OF AREA:

The subject parcel is described as a flat, sandy area located approximately 400 yards from the shoreline between Mana Drag Strip (makai) and a farming plot (mauka) at Kekaha, Kauai.

CURRENT USE:

Land is presently unused, and contains weeds, red top grass, and kiawe trees. There are no structures or utility lines present. Area is subject to random dumping of trash.

PROPOSED USE:

The applicant intends to clear brush, and improve the sandy soil for raising sugar cane by incorporating mud press, settling basin mud, and cane trash. When planted in cane, the area will be irrigated by either an overhead drip irrigation system, and will be incorporated into the adjacent cane fields.

ITEM H-4

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It should be noted that following the Public Hearing on this matter the applicant Kekaha Sugar Company, Ltd., requested that Pride Company, Inc. be included as co-applicant, since Pride Company and Kekaha Sugar have a cooperative relationship and propose to share a portion of the parcel use with Kekaha Sugar Company, Ltd. Pride Company proposes to use 43.6 acres of the area requested for growing of research seed stock fields, primarily corn, sunflowers, and soybeans.

Kekaha Sugar Company proposes to use the balance of the 61.2 acres, 17.6 acres for growing seed cane for use in more productive sugar cane growing areas.

SUMMARY OF COMMENTS:

Review and comments were requested from the following agencies:

The County of Kauai Planning Department, Department of Public Works, Department of Water Supply; the State Department of Health; Department of Agriculture; Office of Environmental Quality Control; Environmental Quality Commission and the following Department of Land and Natural Resources' Divisions: Aquatic Resources, Forestry and Wildlife, State Parks, Land Management, Water and Land Development, Historic Sites, the Natural Area Reserves System and the Division of Conservation and Resources Enforcement. Their comments follow:

The County of Kauai comments:

In response to your telephone conversation with staff planner Bryan Mamacay on January 25, 1982, please be informed that although the site considered is within the Special Management Area, the proposed activity is exempt from SMA permit requirements.

They further comment:

We have no objections to the subject request and are in full support of sugar cane cultivation on the subject property.

The County Public Works comments as follows:

The following comments are offered relative to subject application:

1. The drag strip occupies a good portion of Parcel 40.
2. Under our on-going sanitary landfill study, Parcel 40 is one of the two most viable sites on Kauai to locate the County's central or regional landfill. Should the County require the site for extension of

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its present landfill, we trust the State will withdraw the land from Kekaha Sugar Co. and allow the County the use of it.

Please be advised that we should know the need for the area within the next six months.

The County of Kauai Department of Water Supply has no objections to the proposed use.

The State Department of Health comments:

The subject parcel adjoins the Kekaha landfill operated by the County of Kauai. There has been heavy unauthorized dumping on the parcel of refuse including junked cars, household refuse, grub material and construction wastes. Verbal warnings have been given to the State Kauai Land Agent and the County Public Works Department for failure to control access to the area and for failure to direct depositors to the adjoining County landfill/dump.

The County in its quest to locate an island-wide landfill site has identified this parcel as one of those for consideration as the County's main disposal site or for expansion to serve the westside if multiple sites are developed. The Kekaha-Makai site, comprised of this parcel and the adjoining seed corn fields, was ranked number 1 of 4 potential sites at the end of Phase II of the Kauai Central Sanitary Landfill study. This site has also been endorsed by the Kauai District Health Office as having the least environmental factors, and, of providing the greatest likelihood of being operated satisfactorily due to favorable operating conditions and lack of operational constraints.

Due to the current problems with controlled dumping of refuse on this parcel and the unpredictable outcome of the County's studies, we, at this time, endorse the Conservation District Use Application of Kekaha Sugar Company for the productive use of the now vacant parcel and as a means of controlling dumping on the site. However, in the future if the County should decide to locate the island-wide landfill at this site, the subject property should be made available for landfill use.

The State Department of Agriculture comments:

The Department of Agriculture has reviewed the subject application and recommends its approval by the Board of Land and Natural Resources. This recommendation is based on the applicant's stated intention to improve the soils of the subject site, provide irrigation, and incorporate it into the adjacent cane field system. We consider this a desirable improvement to the subject parcel.

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The Department of Land and Natural Resources Aquatic Resource
Division comments:

This request for comments is made pursuant to the Chairman's issuance of a "Notice of Acceptance and Environmental Determination" on the proposed project; since no new information is provided, our previous comments of July 10, 1981 on the subject application remain relevant.

Previous comments:

The proposed project appears not likely to adversely impact aquatic resources along the Kekaha shoreline, provided that: 1) sitework (in preparing the parcel for agricultural use be scheduled for periods of minimal rainfall; and 2) substances such as plant debris, petroleum products, eroded soils, herbicides, fertilizers, and pesticides are not permitted to excessively blow, fall, flow, or leach into the ocean.

The Division of Forestry and Wildlife provide the following comment:

This request for comments concerns the area of our previous reply dated July 13, 1981 with your July 17, 1981 endorsement.

My current comments and recommendations remains unchanged.

The Division's previous reply is as follows:

The area is a portion of an area that was legislatively funded for recreational development called "The Governor Burns' Recreation Area." A drag strip surface was installed, but the project bogged down due to no master plan or designated, responsible agency for development and maintenance of the project. An expansive beach fronting the "recreational area" is a very desirable recreation site for fishing, sunbathing, and swimming.

This overall project site has excellent potential for park development. A county or state, or combined state and county intensively-managed overnight campground located in this area could provide for the camping needs of coastal southwest Kauai. This would provide for better utilization and controls at parks, such as Polihale State Park, Lucy Wright County Park, and Salt Pond Beach Park, as they could be designated day use parks and have specified evening closing times.

A serious problem of dumping in the area is the result of a CDDA permit to the County (KA-6/24/77-967) that apparently reached its capacity for dumping grounds.

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The Division recommends consideration of sugar cane production if the development activity will not conflict with the future use of the prior designated parks development use. (Note that the State Recreation Plan states of this area that:... "The long beaches west of Kekaha should be reserved wherever feasible for public shoreline recreation on a regional basis. Where there is enough space behind these beaches, camping should be considered.")

The conversion of this land to sugar cane should not be considered a solution to the lack of control over illegal and obnoxious dumping. Consideration to solving the dumping problem would be better enforcement, controls; and if the County site has reached its capacity, the cancellation of CDUA KA-6/24/77-967, with appropriate clean-up measures. An alternate dump fill site could be mauka of Kekaha in one of the valleys above the cane water settling ponds.

The Division of Water and Land Development comments they have no objections specific to Division of Water and Land Development programs.

The Division of State Parks comments:

The subject application involves land adjacent to Mana Beach, a wide, white sand beach extending 9 miles from Kekaha to Polihale. Polihale State Park is located at the north end of the beach but no further park development is currently being proposed along this beach. The beach adjacent to the subject land has park development potential for camping, picnicking and limited seasonal swimming.

The applicant's commercial agricultural use is not expected to affect the recreation value of the shoreline as long as public access is maintained.

The Historic Sites section comments:

A review of our records indicates that this project does not occur on historic properties that are listed on the Hawaii Register and/or the National Register of Historic Places, or that have been determined eligible for inclusion on the National Register of Historic Places. However, this does not confirm the absence of historical, cultural, architectural and/or archaeological resources on the property.

In the event that any unanticipated sites or remains such as artifacts, shell, bone, or charcoal deposits; human burials; rock or coral alignments, pavings, or

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walls are encountered, please inform the applicant to stop work and contact this office at 548-7460 immediately.

In addition, our office would like to be notified when the initial grading, grubbing, and other ground-disturbing activities are scheduled to begin, and that we be given the opportunity to make a field inspection of the project site at that time.

The Natural Area Reserves System comments:

The proposed land use or boundary amendment in land use will have no effect on the existing Natural Area Reserves Program.

SUMMARY OF PUBLIC HEARING:

A public hearing is authorized by the Board of Land and Natural Resources in that the proposed use is a commercial use.

The Board of Land and Natural Resources held a public hearing on this matter on December 3, 1981 at 7:00 p.m. at the State Office Building in Lihue, Kauai, Hawaii.

Concerns were expressed relating to the following items:

1. County of Kauai requirements for additional land-fill.
2. Proximity of subject site to National Guard Rifle Range and their continued use of their rifle range.
3. Use of the subject site for recreation and camping by either the State or the County.
4. Present problems of uncontrolled dumping of refuse on the subject site.
5. Access to shoreline for fishermen.

SUMMARY OF PUBLIC HEARING RESPONSES:

The following responses were received from adjacent landowners.

The U.S. Department of the Navy, Pacific Division, Naval Facilities Engineering Command comments:

In response to your letter of November 10, 1981, which requested testimony for or against a Conservation District Use Application, the Department of the Navy has no objections to commercial agricultural use at TMK: 1-2-02: 40, Kekaha, Kauai, Hawaii.

The Navy has transmitter facilities near the southern boundary of the Pacific Missile Range, Barking Sands. Commercial agriculture is compatible with the Navy's

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recommendation to control land use within a one-mile radius of such transmitter facilities in order to preclude electromagnetic radiation interference problems. Because of such potential problems, urban uses within this area would not be considered compatible.

The Commanding Officer, Pacific Missile Range Facility at Barking Sands comments as follows:

Management personnel at Kekaha Sugar Company have recently inquired as to the compatibility of future military plans and their proposed agricultural development of land adjacent to the Kekaha Refuse Disposal Site and Drag Strip. This letter is to advise you that such a plan would be most compatible for the foreseeable future from a military point of view. I believe this plan would also be most appropriate for the community and I will lend it my strongest support.

The State of Hawaii, Department of Defense, Office of the Adjutant General comments:

We have no objection to the proposed CDUA by Kekaha Sugar to upgrade the parcel TMK: 1-2-02: 40 adjacent to our property from conservation to agricultural (sugar cane).

The applicant should be advised that this department utilizes our Kekaha Weekend Training Site as a firing range for small arms on a number of weekends throughout the year. During the periods of firing, which usually occur on weekends and do not exceed one weekend a month, the adjacent lands should not be actively worked, due to the possible danger of stray rounds. We presently notify adjacent active landowners seven (7) days in advance of any firing and can do the same for Kekaha Sugar Company, Ltd.

ANALYSIS:

Following review and acceptance of the application, for processing, the applicant, by letter dated November 13, 1981, was notified that:

1. The proposed use is a conditional use in the Limited Subzone of the Conservation District, according to Title 13, Chapter 2, Departmental Administrative Rules, as amended;
2. A public hearing pursuant to Chapter 183-41, Hawaii Revised Statutes, as amended will be required; and
3. A negative declaration, in conformance with Section 1:30 of the EIS Regulations has been determined for the proposed use and written clearance from the County of Kauai regarding SMA requirements has been obtained.

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The proposed activity is exempt from SMA requirements.

The objective of the Limited Subzone is to limit uses where natural conditions suggest constraints on human activities.

Subchapter 21 relating to standards requires all applications be reviewed in such a manner that the objective of the subzone is given primary consideration.

Several points should be clarified:

1. Kekaha Sugar Company, Ltd. and Pride Sugar Company, Inc. are now co-applicants in the subject CDUA for use of TMK: 1-2-02: 40.
2. Kekaha Sugar Company originally planned to utilize approximately 62 acres of the 132.579 acres contained in Parcel 40 for growing seed cane.

Pride Company, upon joining Kekaha Sugar as co-applicant proposes to use 43.6 acres of the 62 acres originally requested for growing of research seed stock, such as corn seed, sunflower and soybean seed. The requested areas and Conservation District boundary are shown on Exhibit D.

Several alternative uses have been suggested for the subject site. The County of Kauai, Department of Public Works indicates the need to use the site for an expansion of the adjacent sanitary landfill.

Parcel 40 contains a total of 132.579 acres. The Division of Land Management indicates that if the subject 61.2 acres are utilized for commercial agricultural use, there remains approximately 71 acres which are presently unencumbered.

They further suggest that landfill operations may be accommodated within the unencumbered 71 acres, as required. It is also noted that sanitary landfill, when properly managed can be returned to agricultural uses within 5 years.

Our Division of Forestry and Wildlife notes that the area is a portion of an area that was legislatively funded for recreational development and known as "The Governor John A. Burns' Recreation Area." Staff has conferred with the Division of State Parks, who has indicated that the recreation area in question was proposed to be a County of Kauai development rather than a state park. Our Division of Land Management concurs and has indicated that in the past, the State has attempted to set the area aside for the County and they have been unwilling to accept it for that use. In addition, Staff notes that camping is presently accommodated at Polihale State Park, north of the subject site and at Kokee State Park.

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The proposed use, growing of sugar cane seed, corn, soybean, sunflower and other seed stock is considered desirable for several pertinent reasons.

Use of the site for the commercial agricultural use specified will result in 1) the removal of the debris dumped on the site; 2) control of unauthorized dumping by putting the land to agricultural use, thereby limiting opportunities for unauthorized dumping; 3) improvement of the sandy soil by incorporating mud press, settling basin mud and cane trash.

The proposed use of growing seed cane on marginal, agricultural lands also frees other prime agricultural lands for sugar cane production.

Staff notes that it has been reported that Kekaha Sugar is one of the most successful sugar operations in the State and as such, their efforts should be encouraged.

Furthermore, the growing of other seedstock by the co-applicant is considered to be consistent with the State's overall goal of encouraging agricultural diversification.

Staff therefore, finds that the proposed use is consistent with the objectives of the Conservation District in that debris will be cleared, the land use will be managed i.e., unauthorized dumping prevented, and the soil improved by the proposed use. Such activities are considered by Staff to good conservation practices. The applicant has also indicated that the proposed use will not interfere with public right-of-way to the shoreline.

Furthermore, as no structures nor human habitation is proposed, the proposed use is considered to be consistent with the objectives of the Limited Subzone.

As such, Staff recommends as follows:

RECOMMENDATION:

That this application for commercial agricultural use of TMK: 1-2-02: 40 at Kekaha, Kauai, be approved to the following conditions:

1. That the applicant comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and City and County governments, and applicable parts of Section 13-2-21 of Title 13, Chapter 2, Departmental Administrative Rules, as amended;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors,

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assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;

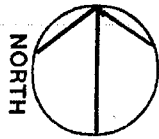
3. Other terms and conditions as prescribed by the Chairman;
4. In that this approval is for use of conservation lands only, the applicant shall obtain appropriate authorization through the Division of Land Management, State Department of Land and Natural Resources for the occupancy of State lands;
5. In the event any unanticipated sites or remains such as shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are encountered during construction, the applicant shall stop work and contact the Historic Preservation Office at 548-7460 or 548-6408;
6. That the applicant comply with all applicable Public Health Regulations;
7. A fire contingency plan, acceptable to the Division of Forestry and Wildlife shall be implemented during the clearing of the land, and removal of refuse, and continuous agricultural operations which follow;
8. That sitework in preparing the 61.2 acres for agricultural use should be scheduled for periods of minimal rainfall;
9. That substances such as plant debris, petroleum products, eroded soils, herbicides, fertilizers, and pesticides will not be permitted to excessively blow, fall, flow or leach into the ocean;
10. That public access to the shoreline shall be maintained.
11. That when initial grading, grubbing and other ground-disturbing activities are scheduled to begin, the applicant shall notify the Department of Land and Natural Resources, Historic Sites section of State Parks (548-7460) in Honolulu, and provide that section the opportunity to make a field inspection of the project site at that time;
12. That the applicant be aware of the State Department of Defense's intermittent use of adjacent small arms firing range facilities throughout the year, such that the agricultural area shall not be used during these periods due to the possible danger of stray rounds.

Respectfully submitted,

Sherrie Samuels

SHERRIE SAMUELS
Staff Planner

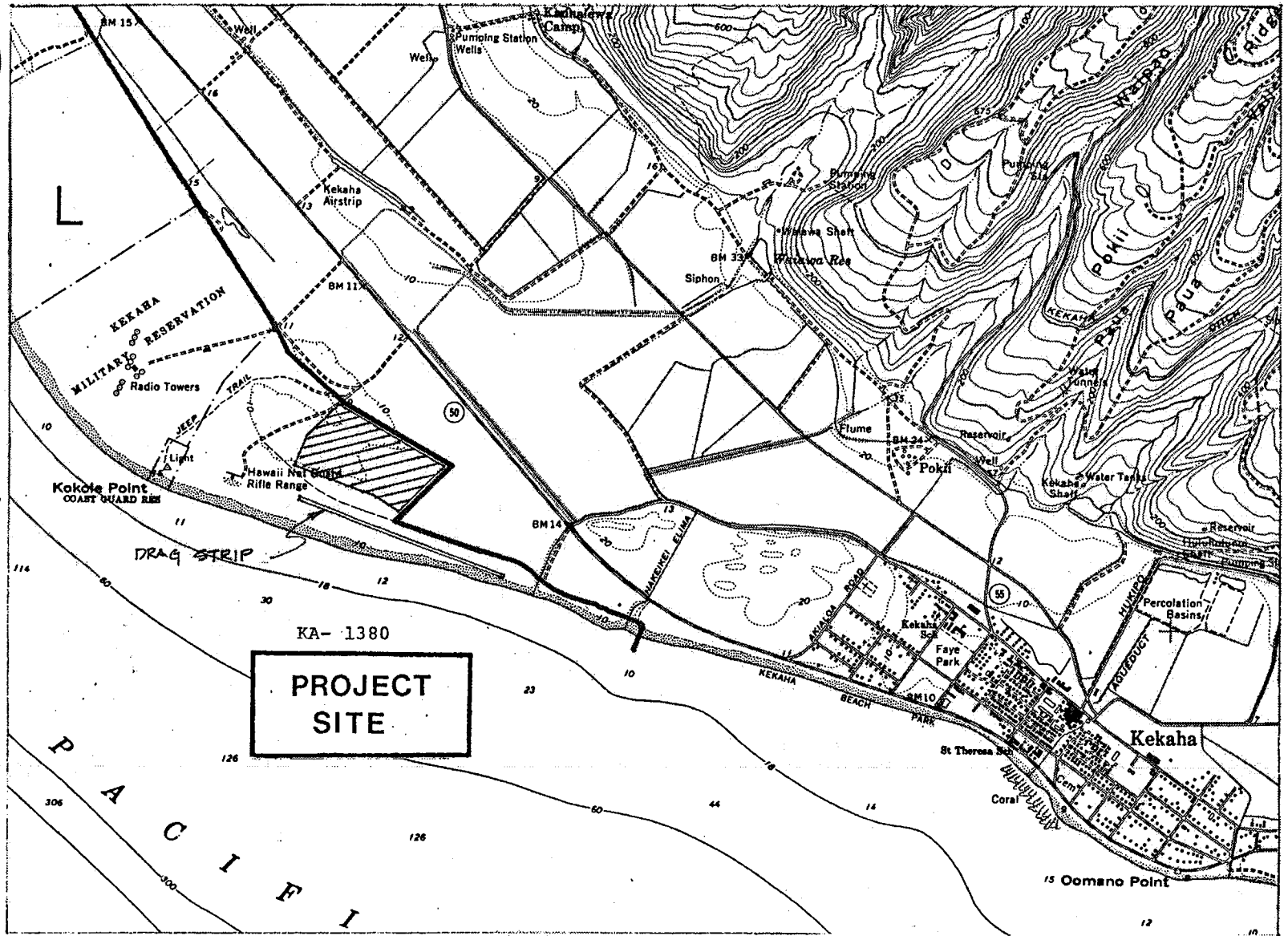
S. Cmo



CDUA no. KA-1380 Exhibit A.
APPLICANT Kekaha Sugar Co./Price Company, Inc.
AGENT none
TMK 1-2-02:40
SCALE 1"=2000'

SUBZONE

PROTECTIVE
RESOURCES
LIMITED
GENERAL
PROJECT AREA





SCALE

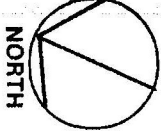
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**PROTECT
RESOURC
LIMITED
GENERAL**



DEPT OF THE TAX COMMISSIONER		
TAXATION MAPS BRANCH		
STATE OF HAWAII		
TAX MAP		
FOURTH DISTRICT		
ZONE	SEC	PLAT
1	2	02
CONTAINING PARCELS		
SCALE: 1 IN = 2000 FT		

MAR 9 1981

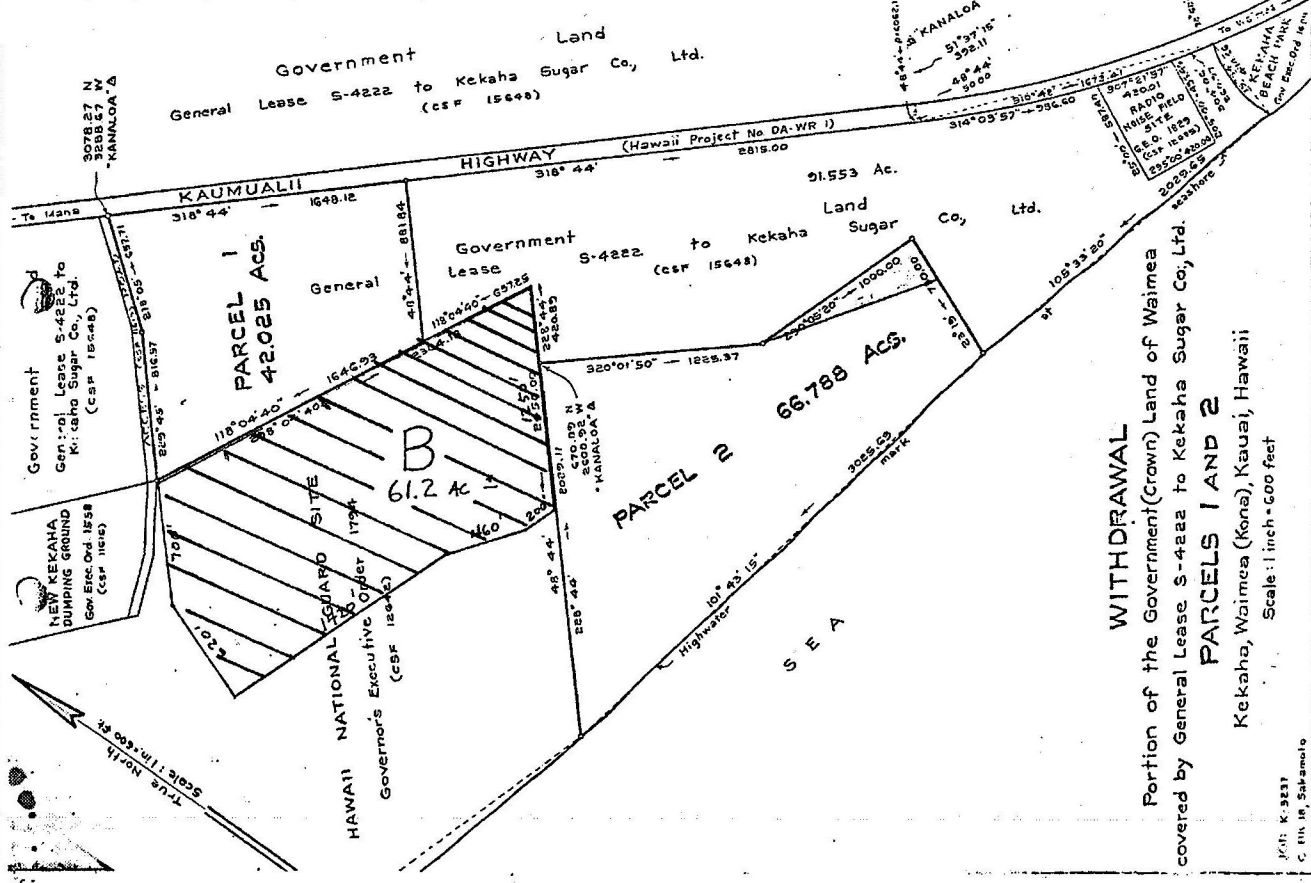


NORTH

CDUA no. KA-1380 Exhibit C
 APPLICANT Kekaha Sugar Co./Prude Company, Inc.
 AGENT none
 TMK 1-2-02:40
 SCALE _____



PROJECT AREA
 GENERAL
 LIMITED
 RESOURCE
 PROTECTIVE



WITHDRAWAL
 Portion of the Government (Crown) Land of Waimea
 covered by General Lease S-4222 to Kekaha Sugar Co., Ltd.

PARCELS 1 AND 2

Kekaha, Waimea (Kona), Kauai, Hawaii

File: K-3237
 C. R. H. Sakamoto

SURVEY DIVISION
 DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
 STATE OF HAWAII

TAX MAP 1-E 04
 U. S. No. 10,411

15 Aug. 11, 1971

