

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
AIRPORTS DIVISION
400 RODGERS BOULEVARD, SUITE 700
HONOLULU, HAWAII 96819-1880

FORD N. FUCHIGAMI
DIRECTOR

Deputy Directors
JADE T. BUTAY
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:

Board of Land and
Natural Resources
State of Hawai'i
Honolulu, Hawai'i

CONSENT TO AN ASSIGNMENT OF STATE LEASE NO. DOT-A-09-0001
FROM SMOKY MOUNTAIN HELICOPTERS, INC. TO ALEXAIR, INC.
BY WAY OF A TRANSFER OF ALL OF THE OUTSTANDING
CAPITAL STOCK THROUGH A STOCK PURCHASE AGREEMENT
PORT ALLEN AIRPORT
TAX MAP KEY: (4) 1-8-08: PORTION OF 4 KAUA'I

REQUEST:

Consent to an Assignment of State Lease DOT-A-09-0001 ("the Lease") dated January 20, 2009, through a Stock Purchase Agreement transferring all of the outstanding capital stock of Smoky Mountain Helicopters, Inc. owned by Mr. Kenneth D'Attilio to its Buyer, AlexAir, Inc.

LEGAL REFERENCE:

Subsection 171-36(a) (5), Hawai'i Revised Statutes, as amended.

APPLICANTS:

LESSEE/ASSIGNOR: Smoky Mountain Helicopters, Inc. ("SMK"), a Delaware corporation, having a mailing address of P. O. Box 156, Hanapepe, Hawai'i 96716.

ASSIGNEE: AlexAir, Inc. ("AAI"), a Hawai'i corporation, having a mailing address of 1620 Jet Stream Drive, Henderson, Nevada 89052.

LOCATION AND TAX MAP KEY:

Portion of Port Allen Airport ("PAK"), Island of Kaua'i, identified by Tax Map Key: 4th Division, 1-8-08: Portion of 4.

ITEM M-10

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LEASE AREAS:

Area/Space Nos. 001-102, -111, -112, and -113, containing land areas of approximately 3,934, 25,600, 16,000, and 9,107 square feet, respectively, of improved/unpaved land, as shown and delineated on the attached Exhibit B dated August 2008.

ZONING:

State Land Use District:	Urban
County of Kaua‘i:	Open

LAND TITLE STATUS:

Section 5(a) lands of the Hawai‘i Admissions Act: Ceded
DHHL 30% entitlement lands pursuant to the Hawai‘i State Constitution: No

CURRENT USE STATUS:

Aeronautical purposes.

CHARACTER OF USE:

Operation, use and maintenance of a fixed-base facility for commercial helicopter operations.

TERM OF LEASE:

Twenty-five (25) years: January 1, 2009 through December 31, 2033.

CONSIDERATION:

The assignment of this lease constitutes the transfer of all of the outstanding capital stock (“Stock Transfer”) held by Mr. Kenneth D’Attilio to AAI under a Stock Purchase Agreement (“SPA”) for a consideration of Nine Hundred Eighty-Five Thousand and No/100 dollars (\$985,000.00) minus the amount of indebtedness of SMK, its business or its premises as described in the SPA.

RECOMMENDED PREMIUM:

None

CHAPTER 343, HRS – ENVIRONMENTAL ASSESSMENT:

Pursuant to Section 11-200-8(a), Environmental Impact Statement Rules of the Department of Health, State of Hawai‘i, this disposition is exempt from requirements regarding preparation of an environmental assessment, negative declaration, or environmental impact statement as required by Chapter 343, Hawai‘i Revised Statutes, as amended, relating to Environmental Impact Statements, because the proposed action falls within Exemption Class #1, Comprehensive Exemption List for the State of Hawai‘i, Department of Transportation, dated November 15, 2000, as approved by the Environmental Quality Council. Exemption Class #1 covers operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features involving negligible or no expansion or change of use beyond that previously existing.

The DOTA consulted with the U.S. Federal Aviation Administration as to the appropriateness of the citation of the Environmental Exemption Class from the Comprehensive list for the Department of Transportation dated November 15, 2000. The FAA concurred on the appropriateness.

DCCA VERIFICATION:

LESSEE / ASSIGNOR:

Place of business registration confirmed: YES X
Registered business name confirmed: YES X
Good standing confirmed: YES X

ASSIGNEE:

Place of business registration confirmed: YES X
Registered business name confirmed: YES X
Good standing confirmed: YES X

REMARKS:

By way of a letter dated March 10, 2017, Mr. Kenneth D’Attilio, President and Owner of all of the outstanding capital stock of SMK, requested the DOTA consent to an assignment of the Lease by way of a Stock Transfer through a SPA from Mr. Kenneth D’Attilio to AAI. As evidence of the commitment to the transaction, a proposed SPA has been executed by the parties.

In conformity with Chapter 171-36(a) (5), Hawai‘i Revised Statutes, the DOTA recommends no premium on this transfer because the consideration for this assignment does not exceed the depreciated cost of improvements and trade fixtures transferred to

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AAI. Also, the consideration does not exceed the values of inventory of merchandise and any other tangible assets in the sale of a business.

In accordance with the Assignment provision of the Lease, the sale or transfer of a controlling percentage of the capital stock or membership interests of SMK, shall be deemed an assignment and require an evaluation to determine if the DOTA is due an assignment premium. The Lease states the phrase “controlling percentage” means the ownership of, and the right to vote stock, or interests possessing at least twenty percent (20%) of the total combined voting power of all classes of SMK’s capital stock or interests issued, outstanding, and entitled to vote for the election of the directors. In this specific transaction, there is no assignment premium because SMK and AAI plan to enter into a stock purchase agreement, where AAI shall purchase for \$985,000.00 all of the outstanding capital stock of SMK from Kenneth D’Attilio for one hundred percent (100%) of the ownership (hereinafter referred to as the “Assignment”) of SMK. In the SPA, SMK and AAI mutually agree that this transaction is a stock purchase only.

RECOMMENDATION:

That the Board approves of and gives its consent to the assignment involving Lease No. DOT-A-09-0001 as herein outlined, subject to: (1) such terms and conditions as may be prescribed by the Director of Transportation to best serve the interests of the State; and (2) review and approval of the Department of the Attorney General as to the form and content of the Lessor’s Consent to the Assignment.

Respectfully submitted,

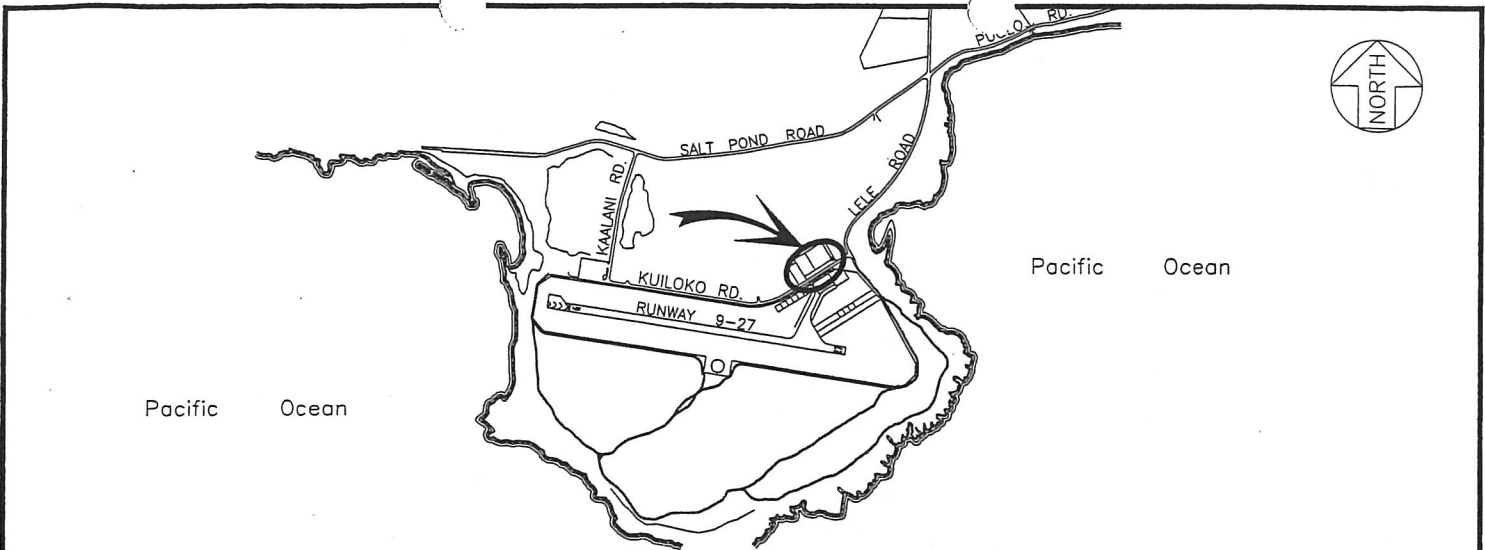


FORD N. FUCHIGAMI
Director of Transportation

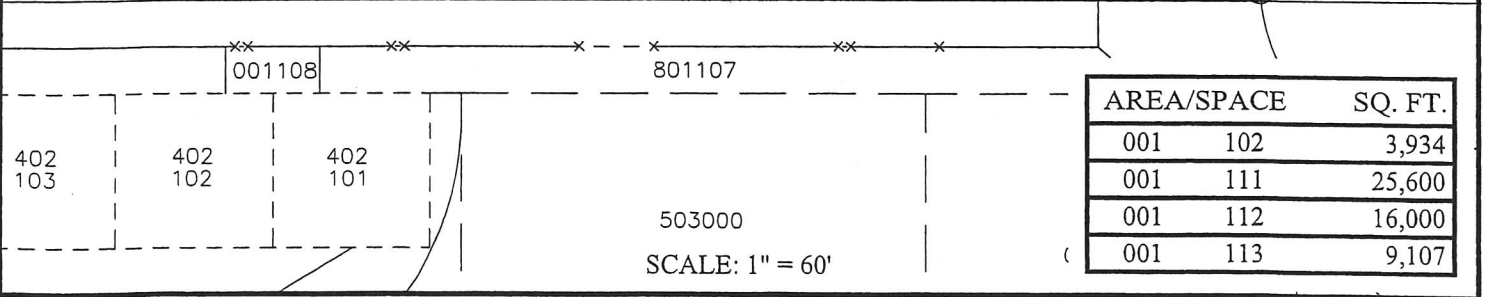
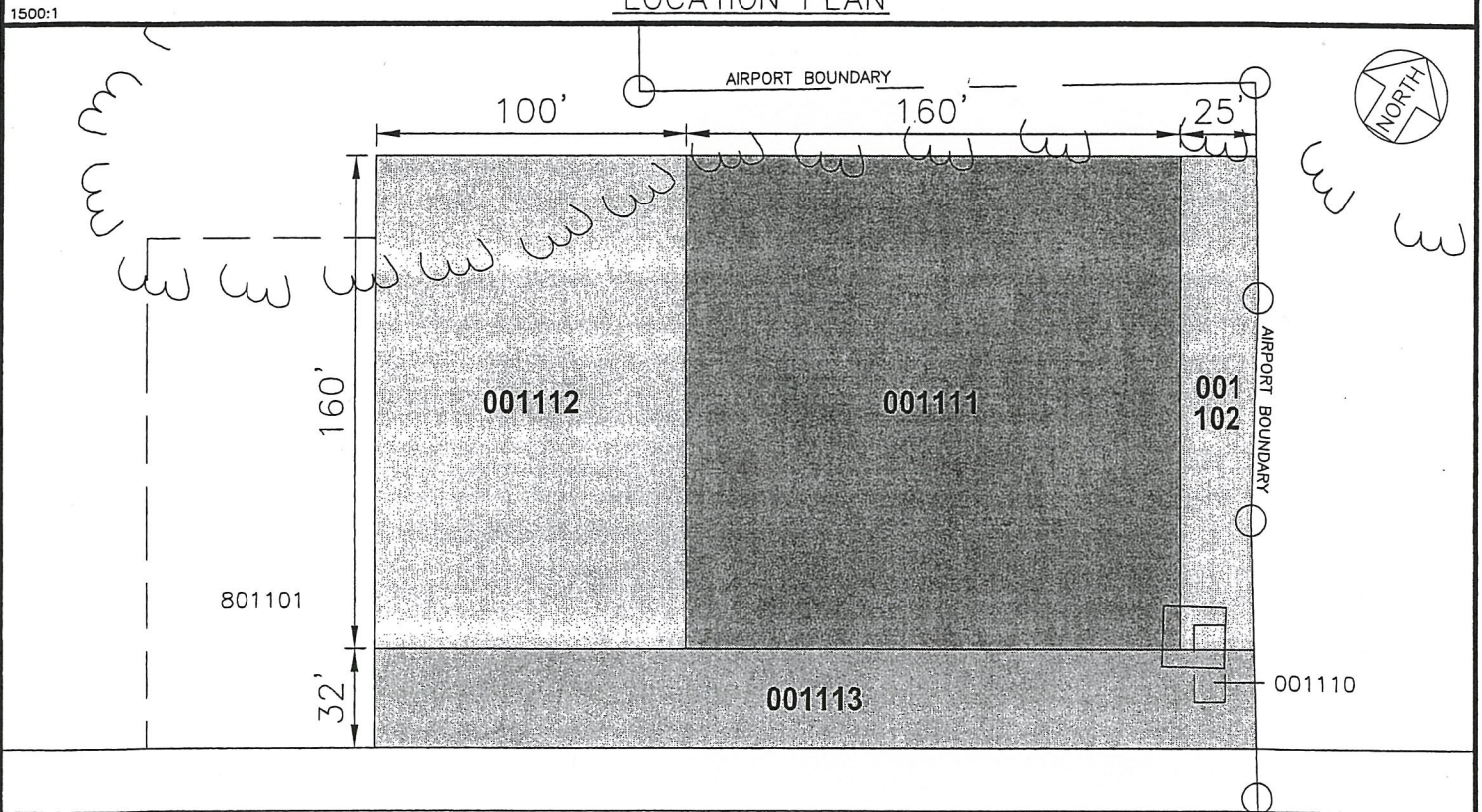
APPROVED FOR SUBMITTAL:



SUZANNE D. CASE
Chairperson and Member



LOCATION PLAN



AREA/SPACE	SQ. FT.
001 102	3,934
001 111	25,600
001 112	16,000
001 113	9,107

LEASE NO. DOT-A-09-0001 DATE : AUGUST 2008 EXHIBIT: **B**



SMOKY MOUNTAIN
HELICOPTERS, INC.

LOTS

001102
001111-113
PLATS A1, 32

PORT ALLEN AIRPORT

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