

STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawai'i 96813

September 10, 2021

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

KAUA'I

Request to:

- (1) Approve and delegate to the Chairperson the authority to execute a Settlement Agreement with O. Thronas, Inc. to resolve *O. Thronas, Inc. v. Board of Land and Natural Resources, State of Hawaii*, Civil No. 19-1-0029 in the Circuit Court of the Fifth Circuit, State of Hawai'i;
- (2) Approve the issuance of a right-of-entry ("ROE") to O.Thronas, Inc. for removal of sand from Mānā Plains Forest Reserve for wetland restoration at Mānā, Waimea, Kaua'i, Tax Map Key: (4) 1-2-002: Portion 001.
- (3) Determine that no additional environmental review under Hawai'i Revised Statutes ("HRS") Chapter 343 is required.

Pursuant to HRS § 92-5(a)(4) the Board may go into Executive Session in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.

APPLICANT:

O. Thronas, Inc. a domestic profit corporation (hereinafter, "O. Thronas" or "Applicant")

LEGAL REFERENCES:

Sections 171-13 and -55, and 183-1.5(3), Hawaii Revised Statutes, as amended
Hawaii Administrative Rules 13-104-4(5), as amended.

LOCATION:

Portion of Government lands designated as Mānā Plains Forest Reserve, situated in Waimea, Kaua'i identified by tax map key (4) 1-2-002: por 001 (*see* property descriptions attached to Exhibits "1" and "2" as their respective Exhibits A). The lands which would be covered by the proposed right-of-entry include about 3 acres.

ITEM C-1

ZONING:

State Land Use District: Agriculture

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: Yes

CHARACTER OF USE:

Excavation and removal of sand for commercial purposes and for the restoration of wetland habitat in the Kawai‘ele waterbird sanctuary, located in the Mānā Plains Forest Reserves, to enhance the Division and Forestry and Wildlife’s (“DOFAW’s”) conservation and recovery efforts for four species of endangered endemic Hawaiian waterbirds.

DCCA VERIFICATION:

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

TERM OF RIGHT-OF-ENTRY:

The right-of-entry will issue for a one year period, expected to commence on the date of its final execution. The Board shall be authorized to extend the effective period of right-of-entry for a maximum of two months for good cause such as delays due to the COVID pandemic, inclement weather, or any other cause beyond the reasonable control of the Applicant.

CONSIDERATION:

The consideration for the right-of-entry is two-fold. First, consideration includes the resolution of the claims in the lawsuit, *O. Thronas, Inc. v. Board of Land and Natural Resources, State of Hawaii*, Civil No. 19-1-0029 (hereinafter, the “lawsuit”). Second, consideration also includes a \$1,576,400.00 royalty fee which was paid by Applicant’s predecessor in interest, Goodfellow Bros., Inc. in 2011.

BACKGROUND:

Applicant claims an interest in two land licenses for sand removal at Mānā Plains Forest Reserve which were originally sold at a public auction on July 6, 2009 to Goodfellow Bros., Inc. (“GBI”). According to Applicant, on or around July 9, 2018, GBI assigned “any and all claims for damages and all other causes of action” that GBI had against the State under the land licenses to Applicant.

The land licenses permitted GBI to remove sand for commercial purposes from “Parcel 4” and

“Parcel 5” of State lands situated at Mana, Waimea, Kauai, Hawaii, Tax Map Key No. (4) 1-2-02: Por. 1. (“Parcel 4” and “Parcel 5” respectively, collectively the “Parcels” and individually a “Parcel”). The Parcels are collectively about 3 acres, and are located in the Mānā Plains Forest Reserves, in an area set aside for the further development of the Kawai‘ele waterbird sanctuary. The two land licenses numbered FW-2010-K-01 (for Parcel 4) and FW-2010-K-02 (for Parcel 5) were issued and the two-year term for both licenses initiated on March 1, 2011. The land licenses are attached hereto as Exhibit “1” and “2”. Both land licenses provide that “The term of the License shall be for two (2) years, to begin March 1, 2011 and shall expire February 28, 2013[.]” Exhibit “1” at 3, ¶3; Exhibit “2” at 3, ¶3.

The overall goal of issuing the land licenses was to remove the sand to restore the wetland and provide additional waterbird habitat in the Kawai‘ele waterbird sanctuary. This would directly enhance the Division and Forestry and Wildlife’s (“DOFAW”) conservation and recovery efforts for four species of endangered endemic Hawaiian waterbirds: the Hawaiian stilt (*ae‘o*), the Hawaiian coot (*‘alae kea*), the Hawaiian gallinule (*‘alae ‘ula*), and the Hawaiian duck (*koloa*). The revenue generated from the sand mining activities was to be used to support wetland restoration and management activities.

Under items 1 and 2 of the terms and conditions of the land licenses, GBI was required to remove and pay for a cumulative minimum of 2,500 cubic yards of material per quarter from each Parcel, a total of 40,000 cubic yards for both license agreements, at a royalty rate of \$39.41 per cubic yard. Exhibit “1” at 2, ¶1-2; Exhibit “2” at 2, ¶1-2. The maximum volume of sand that could be removed from each Parcel was 23,211 cubic yards from Parcel 4 and 23,600 cubic yards from Parcel 5, for a total of 46,811 cubic yards. *Id.*

GBI did make all of the required minimum effective royalty payments totaling \$1,576,400.00 for both licenses but did not remove the required minimum 40,000 cubic yards of sand. During the two-year license term, GBI removed a total of 13,286 cubic yards of sand (33% of the required minimum) leaving a remaining balance of 26,714 cubic yards of sand that they have paid for but did not remove from the site. The reason GBI provided for its failure to remove the minimum amount of sand was that Kaua‘i experienced a significant downturn in construction activity, which was the intended use for the sand.

As mentioned, Applicant claims that on or about July 9, 2018, GBI assigned its claims against the State to the Applicant. Applicant initiated the lawsuit by filing a Complaint against the Board on February 28, 2019. *See* Complaint, attached hereto as Exhibit “3”. The Complaint alleged that the Board committed breach of contract (Count I) and unjust enrichment (Count II), prayed for a declaratory judgment that Applicant was either entitled to the return of the advanced payment plus interest or to a reasonable amount of time to remove the remaining sand (Count III), and prayed for an injunction prohibiting the Board from allowing other parties to bid to remove the remaining sand (Count IV).

The Board’s attorneys moved to dismiss the Complaint on the grounds that Applicant did not have standing, that its claims were barred by sovereign immunity, and that it failed to state a valid claim for relief. However, while the Court granted the motion to dismiss as to Count II (unjust enrichment), it denied the motion in all other respects and allowed the case to proceed on

the other counts.

Counsel for both the Board and the Applicant stipulated to stay the trial in the lawsuit while they pursued a resolution. The lawsuit has been stayed since September 18, 2019.

DISCUSSION:

It is in the interest of both the Board and Applicant to settle the lawsuit on terms that will allow the Applicant a reasonable amount of time to remove the remaining minimum amount of sand allowed under the license (i.e. 26,714 cubic yards). Approximately 22 acres of previous wasteland in the area has already been successfully developed into wetlands through sandmining, creating the Kawai‘ele bird sanctuary. DOFAW wishes to expand the habitable wetland area using the same methods. If the remaining sand is not removed by Applicant, then DOFAW would have to undergo another public auction to relicense the area to another entity to accomplish its wetland restoration goals, and if there are no entities interested in bidding for such licenses, DOFAW will have to pay a contractor to complete the wetland restoration. This is assuming that the Board prevails in the lawsuit. If Applicant prevails, then DOFAW will not be able to issue a license to another entity.

To facilitate settlement discussions, the parties agreed that Applicant would first obtain a current market value appraisal for the remaining sand, and would compensate the State for any increase in the value of the remaining sand between the proportionate prepaid amount for the remaining sand (i.e. \$39.41 per cubic yard) and its current market value. On March 18, 2021, Applicant obtained an appraisal by Karen Char of John Child & Company, opining that as of October 16, 2020, the value of the remaining sand was *less than* \$39.41 per cubic yard. The appraisal is attached hereto as Exhibit “4”. Thus, DOFAW recommends that Applicant should not be required to pay the State any additional monies for the remaining sand.

The proposed Compromise and Settlement Agreement (“Settlement Agreement”) attached hereto as Exhibit “5” is the result of the settlement negotiations between DOFAW and the Applicant. Under the Settlement Agreement, DOFAW will give Applicant a one-year right-of-entry (“ROE”) to remove the remaining 26,714 cubic yards of sand from Parcels 4 and 5. The ROE will be attached as an exhibit to the Settlement Agreement and is attached to this submittal as Exhibit “6”. The Applicant will not be required to pay any additional monetary consideration. In exchange, the Applicant will dismiss the lawsuit and release all claims against the State arising out of the land licenses.

As a condition of the ROE, Applicant will also be required to finish, fill, clear, and/or smooth harvested areas to the conditions and contours previously delineated in the land licenses. Other protective measures are included in the ROE. For instance, Applicant will be responsible for the cleaning and remediation of any spill or release of toxic substances that occur as a result of or in connection with the sand mining and shall at all times have clean up kits available to address any spills or releases that may occur. If nēnē goose or endangered Hawaiian waterbird nests are found anywhere on the premises, all sand mining within a 100-foot radius of the nest must cease until DOFAW determines that the birds have fledged. The ROE also requires that Applicant post a \$50,000.00 performance bond to insure faithful compliance with the ROE terms and

conditions.

The Settlement Agreement and the ROE have been reviewed and approved by the Applicant's attorney as well as the Department of the Attorney General. DOFAW recommends that the Board approve the Settlement Agreement and ROE so that DOFAW can complete its wetland restoration project without expending additional costs, and the risk of an adverse ruling in the lawsuit can be eliminated.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment ("FEA") for developing the first of two 15 acre increments of a potentially 30 acre commercial sand mine to create a waterbird sanctuary was issued in May 1988, and a finding of no significant impact ("FONSI") was published in the Office of Environmental Quality Control ("OEQC's") Environmental Notice on May 8, 1988. The FEA is attached hereto as Exhibit "7" and the published FONSI can be found on page 4 of the attached Exhibit "8". Special permits were received from the Kauai County Planning Commission for sand mine use and from the State Land Use Commission for establishment of a sand mine and creation of a waterbird sanctuary.

As mentioned, since the May 1988 FONSI was published, an estimated 22 acres of the Kawai'ele bird sanctuary has already been developed through sandmining. The proposed action under the ROE is merely to develop a portion of the second increment of the overall 30 acre sand mine area described in the FEA using similar methods. Staff recommends that the Board determine that the prior FONSI satisfies HRS chapter 343 for the proposed action, and therefore, no additional environmental review is required.

Pursuant to Hawai'i Administrative Rule ("HAR") § 11-200.1-11(a):

(a) When an agency is considering whether a prior exemption, FONSI, or an accepted EIS satisfies chapter 343, HRS, for a proposed action, the agency may determine that additional environmental review is not required because:

- (1) The proposed action was a component of, or is substantially similar to, an action that received an exemption, FONSI, or an accepted EIS (for example, a project that was analyzed in a program EIS);
- (2) The proposed action is anticipated to have direct, indirect, and cumulative effects similar to those analyzed in a prior exemption, final EA, or accepted EIS; and
- (3) In the case of a final EA or an accepted EIS, the proposed action was analyzed within the range of alternatives.

HAR § 11-200.1-11(b) & (d) further state:

(b) When an agency determines that a prior exemption, FONSI, or an

accepted EIS satisfies chapter 343, HRS, for a proposed action, the agency may submit a brief written determination explaining its rationale to the office for publication pursuant to section 11-200.1-4 and the proposed action may proceed without further chapter 343, HRS, environmental review.

....

(d) Agencies shall not, without careful examination and comparison, use past determinations and previous EISs to apply to the action at hand. The action for which a determination is sought shall be thoroughly reviewed prior to the use of previous determinations and previously accepted EISs. Further, when previous determinations and previous EISs are considered or incorporated by reference, they shall be substantially relevant to the action being considered.

Here, the Settlement Agreement and the ROE do nothing more than authorize the same action that was analyzed in the prior FEA: commercial sandmining for the purpose of creating endangered waterbird nesting habitat in the Kawai‘ele waterbird sanctuary. The area which will be developed is located in the second 15 acre increment of the overall 30 acre potential sand mine area described in the FEA. As described in the FEA, the excavation of sand would only extend to a prescribed depth below the mean water table, and the exposed water area bottom contours will be finished to specifications set forth by DOFAW to create optimal endangered waterbird nesting habitat.

Although the FEA was published in 1988, there have been no significant changes to the project environment described in the FEA. The vegetation and wildlife described in the FEA still exist in the project area, and there have been no new discoveries of archaeological or historic sites or endangered native plants. The summary of environmental effects is also substantially the same as what would be anticipated if the proposed action took place today, except that sugar cane harvesting no longer occurs in the area. However, the FEA only describes sugar cane harvesting in the context of noise and disturbance. The area where the sand mining will take place is in an agricultural zone with no nearby residences. Thus, staff does not anticipate that noise and disturbance from the sand mining will adversely affect any nearby properties.

The alternative actions described in the FEA – either the development of an alternative site or taking no action – continue to be the only alternatives to the proposed action. Staff does not consider the development of an alternative site to be a preferable option, as the project area is still the best site for waterbird sanctuary development based on the factors described in the FEA. Further, the existing Kawai‘ele waterbird sanctuary has proved to be very successful in providing habitat for the targeted endangered waterbird species. The restored wetlands also provide ecological benefits such as providing natural flood control and water filtration. The proven success of the already-developed portions of the wetlands bolsters the FEA’s conclusion that the proposed action will not have a significant negative effect on the environment.

Thus, DOFAW recommends that the Board determine that the prior FONSI satisfies chapter 343, HRS, for the proposed action, and authorize the Chairperson to submit the attached written determination (Exhibit “9”) to the Environmental Advisory Council (formerly the OEQC) for

publication pursuant to HAR § 11-200.1-11(b).

RECOMMENDATIONS:

That the Board of Land and Natural Resources:

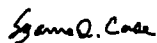
1. Approve and delegate to the Chairperson the authority to execute the Settlement Agreement substantially in the form attached hereto as Exhibit "5", subject to such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State, and final review and approval by the Department of the Attorney General.
2. Approve the issuance of a right-of-entry to Applicant substantially in the form attached hereto as Exhibit "6", subject to such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State, and final review and approval by the Department of the Attorney General.
3. Authorize the Chairperson, pursuant to the terms of the right-of-entry, to extend the effective period of the right-of-entry for a maximum of two months for good cause such as delays due to the COVID pandemic, inclement weather, or any other cause beyond the reasonable control of the Applicant.
4. Authorize the Chairperson to take all action and execute any documents necessary for the dismissal of the lawsuit, pursuant to the Settlement Agreement.
5. Determine that no additional environmental review under HRS chapter 343 is required because the prior 1988 FEA and FONSI satisfies chapter 343, HRS for this proposed action, and authorize the Chairperson to submit a brief written determination, in the form attached hereto as Exhibit "9", to the Environmental Advisory Council for publication pursuant to HAR § 11-200.1-11(b).

Respectfully submitted,



DAVID SMITH, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE, Chairperson
Board of Land and Natural Resources

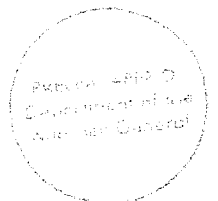
Attachments

Exhibit 1 – Land License No. FW-2010-K-01

- Exhibit 2 – Land License No. FW-2010-K-02
- Exhibit 3 – Complaint in *O. Thronas v. Board of Land and Natural Resources, State of Hawai‘i*, Civil No. 19-1-0029, Circuit Court of the Fifth Circuit
- Exhibit 4 – John Child & Company appraisal
- Exhibit 5 – Compromise and Settlement Agreement
- Exhibit 6 – Right-of-Entry
- Exhibit 7 – May 1988 Final Environmental Assessment
- Exhibit 8 – May 8, 1988 OEQC Bulletin
- Exhibit 9 – Proposed written determination that prior FONSI satisfies HRS chapter 343

EXHIBIT 1

Total Number of Pages:
Tax Map Key No. (4) 1-2-02:Por. 1



and encumbered by Executive Order No. 4209 to the Department of Land and Natural Resources, Division of Forestry and Wildlife, ("DOFAW") for Mana Plans Forest Reserve Purposes, Tax Map Key No.(4)1-2-02:Por. 1, consisting of Parcel 4, more particularly delineated on Exhibit "A" attached hereto and made a part hereof, and hereinafter referred to as the "License Area."

The terms and conditions under which this License is issued are as follows:

1. The Licensee shall pay in legal tender of the United States of America, at the Department of Land and Natural Resources, Honolulu, Hawaii, or at the Office of the DOFAW Branch Manager on the Island of Kauai, the amount of THIRTY NINE AND 41/100 Dollars (\$39.41) per cubic yard, (the "royalty rate"), applied to the amount of material removed under this License ("effective royalty"). The effective royalty shall be paid to the Licensor in monthly installments. Delinquent payments due to Licensor shall be subject to an interest charge of twelve percent (12%) per annum, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each month of delinquency. Payment shall be made at the same time that verified reports are turned in to the Kauai DOFAW Branch Manager.

Verified reports shall be in the form of weight slips from a vehicle weigh station of the quantity of material removed from the License Area for the preceding month. Each verified report shall be signed by the Licensee and include a verification that the amounts of sand removed, as indicated in the report, is true and correct to the best of their knowledge. The verified reports shall be due at the end of each month that the License is in effect, and prior to the tenth (10th) day of the succeeding month.

2. The Licensee shall remove and pay for a cumulative minimum of 2,500 cubic yards of material from Parcel 4 per quarter. The maximum cubic yards of material that may be removed during the License term shall be 23,211 cubic yards.

The Licensee, as the successful bidder, shall place a deposit with the Licensor within twenty-four (24) hours of the close of bidding of TWENTY THOUSAND AND NO/100 DOLLARS (\$20,000.00) or two percent (2%) of the effective royalty, whichever is less ("Deposit"). For purposes of the Deposit, the effective royalty shall be determined by applying the royalty rate to the maximum amount of sand that may be removed during the License term. The Deposit shall not be considered interest bearing. The amount due the Licensor monthly shall be deducted

from the Deposit until the Deposit is depleted, after which monthly payments to the Licensor will commence.

3. The term of the License shall be for two (2) years, to begin MARCH 1, 2011 and shall expire FEBRUARY 28, 2013; providing that any party may terminate this License at any time during the term of the License by providing the other party thirty (30) calendar days prior written notice of the intent to cancel.

Upon termination, abandonment, or expiration, the Licensee shall not be relieved of any and all claims or demands accrued, including claims for property damage, personal injury or death, caused by any act or omission of the Licensee, or for any breach of the terms and conditions of this License.

The Licensee shall remove from the License Area all equipment, machinery, and improvements of every kind and nature within ten (10) calendar days after receiving notice of termination or upon abandonment of this License.

The Licensee shall, at its sole cost and expense, restore the License Area to a condition satisfactory to the Chairperson upon early termination or abandonment of this License.

4. The Licensee shall confine operations strictly to the License Area and shall take all necessary precautions to protect adjoining property from damage or injury. Any interference with or damage to property under the control of the State of Hawaii and/or under Executive Order 4209 incident to the exercise of the privilege granted shall be promptly corrected and/or repaired by the Licensee at its own expense to the satisfaction of the Chairperson of the Board of Land and Natural Resources.

5. The Licensee shall meet with the Kauai DOFAW Branch Manager in advance of any removal of material to discuss removal plans and safety requirements for the removal activity. The removal of the material shall be under the supervision of the Licensor and DOFAW and shall be taken from only those areas so designated by the Licensor and DOFAW. No removal shall occur without such designation.

The Licensee shall give the Kauai DOFAW Branch Manager prior notice of at least 48 hours before entering the License Area or removing any material; and prior notice of at least 48 hours before leaving the License Area, when the allotted cubic

yards are removed.

6. This License is non-transferable. If the Licensee is a partnership, joint venture or corporation, the sale or transfer of 20% or more of ownership interest or stocks by dissolution, merger or any other means shall be deemed a transfer for purposes of this paragraph and subject to the right of the Licensor to terminate this License effective of the date of sale or transfer.

7. The Licensor reserves on to itself the right to sell or grant to others similar rights or privileges; PROVIDED, HOWEVER, that the rights herein reserved shall not be exercised by the Licensor, or by any other licensee(s) of the Licensor in such a manner as to interfere unreasonably with the herein Licensee in the free use of said License Area for the purpose herein specified.

8. The use and enjoyment of the License Area shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

9. The Licensee shall procure, at its own cost and expense and keep in full force and effect throughout the term of this License, commercial general liability insurance with an insurance company or companies acceptable to the Board and licensed to do business in the State of Hawaii, in an amount of at least \$300,000.00 for each occurrence and \$500,000.00 aggregate. The policy or policies of insurance shall name the State of Hawaii as additional insured. The insurance shall cover the entire License Area. The Licensee, prior to entry and use of the License Area or within fifteen (15) calendar days from the effective date of this Land License, whichever is sooner, shall furnish the Licensor with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire License term, and furnish a like certificate(s) upon each renewal of the policy(s). The insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) calendar days written notice has been given to the Licensor.

The Licensor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this License. If, in the opinion of the Licensor, the insurance provisions in this License do not provide adequate



protection for the Licensor, the Licensor may require Licensee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Licensor's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Licensor shall notify Licensee in writing of changes in the insurance requirements and Licensee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Licensor incorporating the changes within thirty (30) calendar days of receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Licensee's liability under this License nor to release or relieve the Licensee of the indemnification provisions and requirements of this License. Notwithstanding the policy(s) of insurance, Licensee shall be obligated for the full and total amount of any damage, injury, or loss caused by the Licensee's negligence or neglect connected with this License.

It is agreed that any insurance maintained by the Licensor will apply in excess of, and not contribute with, insurance provided by Licensee's policy(s).

10. The Licensee shall observe and comply with all laws, ordinances, rules and regulations of the federal, state, municipal or county governments now in force or which may hereinafter be in force, affecting the License Area.

11. The Licensee shall not do, commit, permit or suffer to be done any willful or voluntary waste, spoil, or destruction in and upon the License Area or any part thereof; nor shall the Licensee cut down, permit or suffer to be cut down, any trees growing or being grown, or which shall hereafter grow, in and upon the License Area or any part thereof, except special permission for the same may be given by the Department of Land and Natural Resources.

12. All work incident to the removal of material shall be accomplished without cost to the Licensor.

13. No stockpiling of material shall occur in the License Area. The removal of material shall be restricted to weekdays and holidays.

14. The Licensee shall indemnify, defend, and hold Licensor harmless from and against any claim or demand for loss,



liability or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of Licensee relating to Licensee's use, occupancy, maintenance, or enjoyment of the License Area; 2) any failure on the part of the Licensee to maintain the License Area, and including any accident, fire or nuisance growing out of or caused by any failure on the part of Licensee to maintain any of Licensee's equipment within the License Area in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Licensee's non-observance or non-performance of any of the terms, covenants, and conditions of this License or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

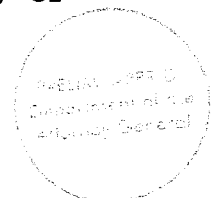
15. In case the Licensors shall, without any fault on its part, be made a party to any litigation commenced by or against the Licensee (other than condemnation proceedings), the Licensee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the Licensors; furthermore, the Licensee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the Licensors in enforcing the terms and conditions of this License, in recovering possession of the License Area, or in the collection of delinquent royalty, taxes, and any and all other charges.

16. The Licensee shall post a \$50,000.00 performance bond with the Department of Land and Natural Resources, State of Hawaii, to insure faithful compliance with the terms and conditions of the License.

17. The Licensee shall pay all cost and expense incurred by the issuance of this License.

18. Any and all disputes and/or questions arising under this License shall be referred to the Chairperson of the Board of Land and Natural Resources and his determination of these disputes or questions shall be final and binding on the parties.

19. The Licensors, its agents and employees, shall at any reasonable time upon twenty-four (24) hours notice to the Licensee, have access to all books, accounts, records, and reports of the Licensee relating to the material removed from the License Area herein described for the purpose of inspection, examination or audit. If the audit by Licensors shall disclose that the royalty rate has been underpaid by five percent (5%) or



more for the period under examination, the Licensor shall have the right to terminate this License.

20. The Licensee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Licensee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the License Area any such materials except to use in the ordinary course of Licensee's business, and then only after written notice is given to Licensor of the identity of such materials and upon Licensor's consent which consent may be withheld at Licensor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Licensee, then the Licensee shall be responsible for the reasonable costs thereof. In addition, Licensee shall execute affidavits, representations and the like from time to time at Licensor's request concerning Licensee's best knowledge and belief regarding the presence of hazardous materials on the License Area placed or released by Licensee.

The Licensee agrees to indemnify, defend, and hold Licensor harmless, from any damages and claims resulting from the release of hazardous materials on the License Area occurring while Licensee is in possession, or elsewhere if caused by Licensee or persons acting under Licensee. These covenants shall survive the expiration or earlier termination of this License.

For the purpose of this License "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

21. Time is of the essence in this License and if the Licensee shall fail to pay the effective royalty, or any part thereof, at the times and in the manner provided within thirty (30) days after delivery by the Licensor of a written notice of breach or default, or if the Licensee shall become bankrupt, or shall abandon the License Area, or if this License and License Area shall be attached or taken by operation of law, or if Licensee shall fail to observe and perform any of the covenants,



terms, and conditions contained in this License and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Licensor of a written notice of breach or default, by personal service, registered mail or certified mail to the Licensee at its last known address and to each mortgagee or holder of record having a security interest in the License Area, the Licensor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the License Area, or any part, and upon or without the entry, at its option, terminate this License without prejudice to any other remedy or right of action for arrears of royalty or for any preceding or other breach of contract; furthermore Licensor shall retain all royalty paid in advance to be applied to any damages.

22. The Licensee shall be solely responsible for securing the License Area against trespass and unauthorized and unlawful activity by others.

23. The Licensee shall meet with DOFAW representatives for site review, prior to surface vegetation removal and sand removal within the License Area.

24. This License is encumbered under Governor's Executive Order No. 4209 and therefore, is subject to Governor's concurrence.

25. The Licensor does not warrant the conditions of the License Area, as the same are being licensed as is. The Licensor makes no representation regarding the exact quantity or quality of the materials or any other condition applicable to the License Area.

26. The Licensee shall comply with all standards of safety required by the federal, state, and county governments for operation and utilization of the Licensed Area.


27. In the event any prehistoric, historic or archaeological sites or remains are discovered during the removal of material, the Licensee shall stop all work immediately and notify the Kauai Office of DOFAW and the Historic Preservation Division of the Department of Land and Natural Resources on Oahu and shall obtain the approval of the State of Hawaii prior to recommencing any work within, on, or involving the License Area.

28. At the end of the license term, the Licensee shall finish, fill, clear, and/or smooth the License Area to the condition and contours delineated on Exhibit "A."



IN WITNESS WHEREOF, the STATE OF HAWAII, the Licensor herein, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be duly executed this 24TH day of FEBRUARY, 2011, the Licensee herein, has caused these presents to be duly executed this 10TH day of FEBRUARY, 2011.

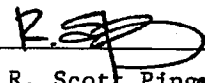
STATE OF HAWAII

By 
Chairperson
Board of Land and
Natural Resources

LICENSOR

Approved by the Board of
Land and Natural Resources
at its meetings held on
May 14, 2004, January 14, 2005,
February 22, 2008, and
September 12, 2008.

GOODFELLOW BROS., INC., a
Washington corporation

By 
R. Scott Pingrey
Its Chief Engineer

And By _____

Its _____

APPROVED AS TO FORM:


Deputy Attorney General

Dated: Nov. 5, 2009

LICENSEE



STATE OF HAWAII

COUNTY OF Kauai

SS.

On this 11th day of February, 2011, before me appeared R. Scott Pingree and at his as the Chief Engineer and respectively, of GOODFELLOW BROS., INC., a Washington corporation, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and the said Chief Engineer and acknowledged said instrument to be the free act and deed of said corporation.

L.S.

Audrey M. Bonilla
Notary Public, State of

Audrey M. Bonilla

My Commission Expires: 3/26/2012

Date of the Notarized Document: 2/11/11

Number of Pages: 10

Identification or Description of the Document being Notarized:

SOH DLNR LAND LICENSE

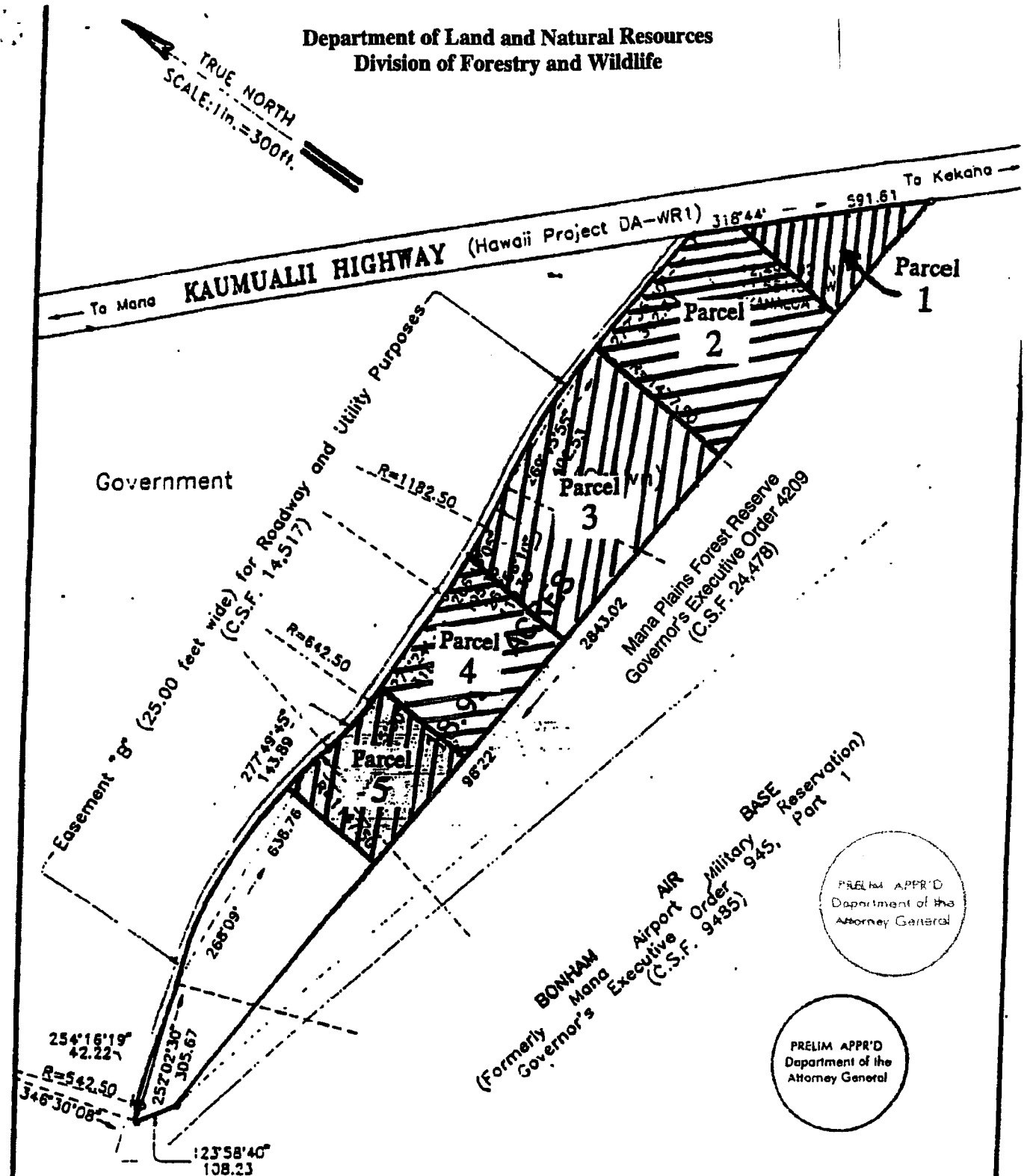
Printed Name of Notary: Audrey M. Bonilla 5th Circuit

Audrey M. Bonilla 2/11/11
Notary's Signature and Notary's Official Stamp or Seal Date

L.S.



Department of Land and Natural Resources
Division of Forestry and Wildlife

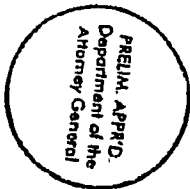


**Phase II Mana Plains Sand Mine / Forest Reserve
Sand Mining Parcel Location Map**

Mana, Waimea, Kauai, Hawaii
Scale: 1 inch = 300 feet

EXHIBIT "A"

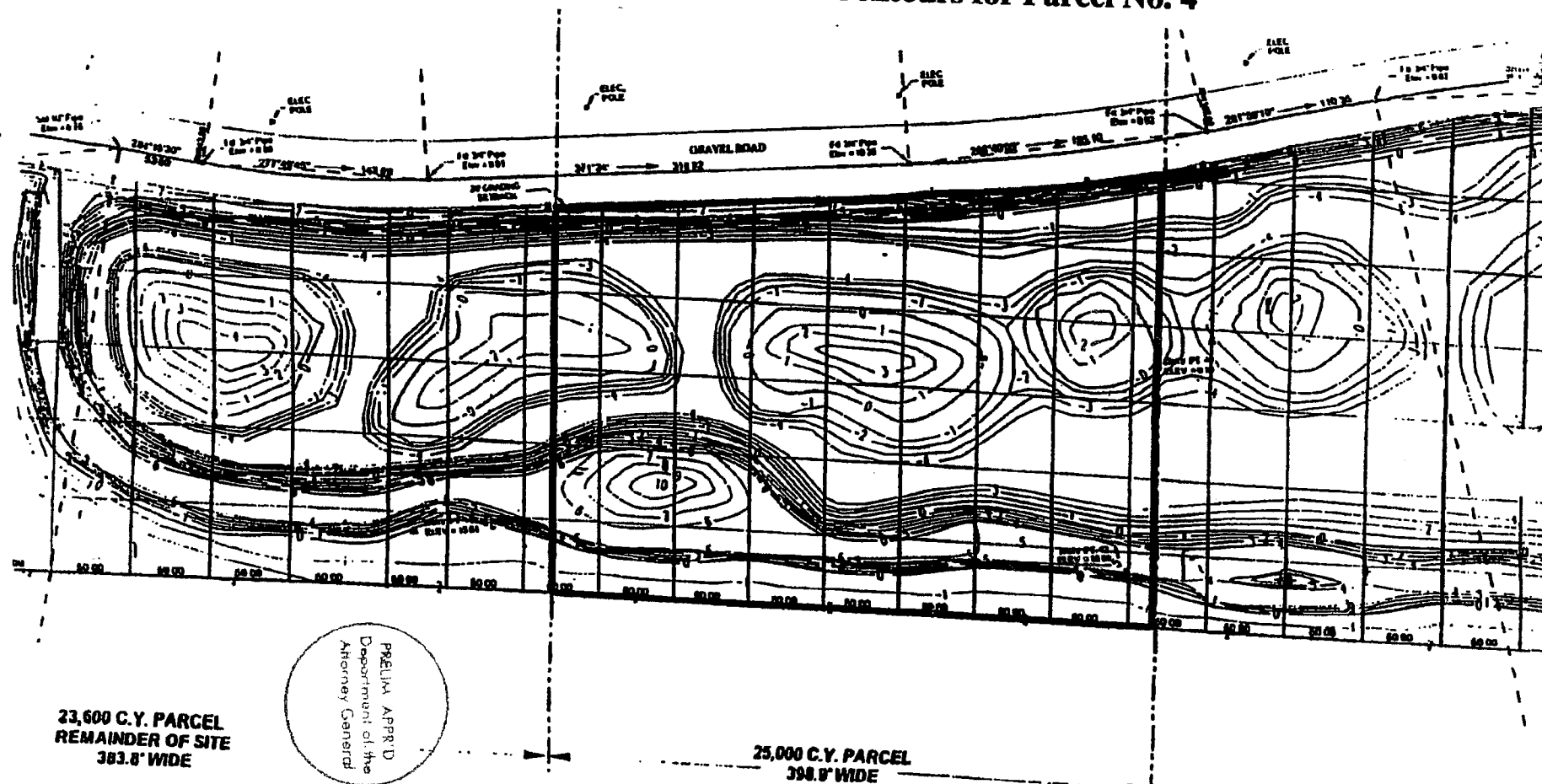
EXHIBIT "A"



Department of Land and Natural Resources
Division of Forestry and Wildlife

ERNMENT (CROWN) I

Phase II Mana Plains Sand Mine / Forest Reserve
Final Surface and Bottom Contours for Parcel No. 4



25,000

EXHIBIT 2

and encumbered by Executive Order No. 4209 to the Department of Land and Natural Resources, Division of Forestry and Wildlife, ("DOFAW") for Mana Plans Forest Reserve Purposes, Tax Map Key No.(4)1-2-02:Por. 1, consisting of Parcel 5, more particularly delineated on Exhibit "A" attached hereto and made a part hereof, and hereinafter referred to as the "License Area."

The terms and conditions under which this License is issued are as follows:

1. The Licensee shall pay in legal tender of the United States of America, at the Department of Land and Natural Resources, Honolulu, Hawaii, or at the Office of the DOFAW Branch Manager on the Island of Kauai, the amount of THIRTY NINE AND 41/100 Dollars (\$39.41) per cubic yard, (the "royalty rate"), applied to the amount of material removed under this License ("effective royalty"). The effective royalty shall be paid to the Licensor in monthly installments. Delinquent payments due to Licensor shall be subject to an interest charge of twelve percent (12%) per annum, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each month of delinquency. Payment shall be made at the same time that verified reports are turned in to the Kauai DOFAW Branch Manager.

Verified reports shall be in the form of weight slips from a vehicle weigh station of the quantity of material removed from the License Area for the preceding month. Each verified report shall be signed by the Licensee and include a verification that the amounts of sand removed, as indicated in the report, is true and correct to the best of their knowledge. The verified reports shall be due at the end of each month that the License is in effect, and prior to the tenth (10th) day of the succeeding month.

2. The Licensee shall remove and pay for a cumulative minimum of 2,500 cubic yards of material from Parcel 5 per quarter. The maximum cubic yards of material that may be removed during the License term shall be 23,600 cubic yards.

The Licensee, as the successful bidder, shall place a deposit with the Licensor within twenty-four (24) hours of the close of bidding of TWENTY THOUSAND AND NO/100 DOLLARS (\$20,000.00) or two percent (2%) of the effective royalty, whichever is less ("Deposit"). For purposes of the Deposit, the effective royalty shall be determined by applying the royalty rate to the maximum amount of sand that may be removed during the License term. The Deposit shall not be considered interest bearing. The amount due the Licensor monthly shall be deducted

from the Deposit until the Deposit is depleted, after which monthly payments to the Licensors will commence.

3. The term of the License shall be for two (2) years, to begin MARCH 1, 2011 and shall expire FEBRUARY 28, 2013; providing that any party may terminate this License at any time during the term of the License by providing the other party thirty (30) calendar days prior written notice of the intent to cancel.

Upon termination, abandonment, or expiration, the Licensee shall not be relieved of any and all claims or demands accrued, including claims for property damage, personal injury or death, caused by any act or omission of the Licensee, or for any breach of the terms and conditions of this License.

The Licensee shall remove from the License Area all equipment, machinery, and improvements of every kind and nature within ten (10) calendar days after receiving notice of termination or upon abandonment of this License.

The Licensee shall, at its sole cost and expense, restore the License Area to a condition satisfactory to the Chairperson upon early termination or abandonment of this License.

4. The Licensee shall confine operations strictly to the License Area and shall take all necessary precautions to protect adjoining property from damage or injury. Any interference with or damage to property under the control of the State of Hawaii and/or under Executive Order 4209 incident to the exercise of the privilege granted shall be promptly corrected and/or repaired by the Licensee at its own expense to the satisfaction of the Chairperson of the Board of Land and Natural Resources.

5. The Licensee shall meet with the Kauai DOFAW Branch Manager in advance of any removal of material to discuss removal plans and safety requirements for the removal activity. The removal of the material shall be under the supervision of the Licensors and DOFAW and shall be taken from only those areas so designated by the Licensors and DOFAW. No removal shall occur without such designation.

The Licensee shall give the Kauai DOFAW Branch Manager prior notice of at least 48 hours before entering the License Area or removing any material; and prior notice of at least 48 hours before leaving the License Area, when the allotted cubic

yards are removed.

6. This License is non-transferable. If the Licensee is a partnership, joint venture or corporation, the sale or transfer of 20% or more of ownership interest or stocks by dissolution, merger or any other means shall be deemed a transfer for purposes of this paragraph and subject to the right of the Licensor to terminate this License effective of the date of sale or transfer.

7. The Licensor reserves on to itself the right to sell or grant to others similar rights or privileges; PROVIDED, HOWEVER, that the rights herein reserved shall not be exercised by the Licensor, or by any other licensee(s) of the Licensor in such a manner as to interfere unreasonably with the herein Licensee in the free use of said License Area for the purpose herein specified.

8. The use and enjoyment of the License Area shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

9. The Licensee shall procure, at its own cost and expense and keep in full force and effect throughout the term of this License, commercial general liability insurance with an insurance company or companies acceptable to the Board and licensed to do business in the State of Hawaii, in an amount of at least \$300,000.00 for each occurrence and \$500,000.00 aggregate. The policy or policies of insurance shall name the State of Hawaii as additional insured. The insurance shall cover the entire License Area. The Licensee, prior to entry and use of the License Area or within fifteen (15) calendar days from the effective date of this Land License, whichever is sooner, shall furnish the Licensor with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire License term, and furnish a like certificate(s) upon each renewal of the policy(s). The insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) calendar days written notice has been given to the Licensor.

The Licensor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this License. If, in the opinion of the Licensor, the insurance provisions in this License do not provide adequate

protection for the Licensor, the Licensor may require Licensee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Licensor's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Licensor shall notify Licensee in writing of changes in the insurance requirements and Licensee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Licensor incorporating the changes within thirty (30) calendar days of receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Licensee's liability under this License nor to release or relieve the Licensee of the indemnification provisions and requirements of this License. Notwithstanding the policy(s) of insurance, Licensee shall be obligated for the full and total amount of any damage, injury, or loss caused by the Licensee's negligence or neglect connected with this License.

It is agreed that any insurance maintained by the Licensor will apply in excess of, and not contribute with, insurance provided by Licensee's policy(s).

10. The Licensee shall observe and comply with all laws, ordinances, rules and regulations of the federal, state, municipal or county governments now in force or which may hereinafter be in force, affecting the License Area.

11. The Licensee shall not do, commit, permit or suffer to be done any willful or voluntary waste, spoil, or destruction in and upon the License Area or any part thereof; nor shall the Licensee cut down, permit or suffer to be cut down, any trees growing or being grown, or which shall hereafter grow, in and upon the License Area or any part thereof, except special permission for the same may be given by the Department of Land and Natural Resources.

12. All work incident to the removal of material shall be accomplished without cost to the Licensor.

13. No stockpiling of material shall occur in the License Area. The removal of material shall be restricted to weekdays and holidays.

14. The Licensee shall indemnify, defend, and hold Licensor harmless from and against any claim or demand for loss,

liability or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of Licensee relating to Licensee's use, occupancy, maintenance, or enjoyment of the License Area; 2) any failure on the part of the Licensee to maintain the License Area, and including any accident, fire or nuisance growing out of or caused by any failure on the part of Licensee to maintain any of Licensee's equipment within the License Area in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Licensee's non-observance or non-performance of any of the terms, covenants, and conditions of this License or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

15. In case the Licensors shall, without any fault on its part, be made a party to any litigation commenced by or against the Licensee (other than condemnation proceedings), the Licensee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the Licensors; furthermore, the Licensee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the Licensors in enforcing the terms and conditions of this License, in recovering possession of the License Area, or in the collection of delinquent royalty, taxes, and any and all other charges.

16. The Licensee shall post a \$50,000.00 performance bond with the Department of Land and Natural Resources, State of Hawaii, to insure faithful compliance with the terms and conditions of the License.

17. The Licensee shall pay all cost and expense incurred by the issuance of this License.

18. Any and all disputes and/or questions arising under this License shall be referred to the Chairperson of the Board of Land and Natural Resources and his determination of these disputes or questions shall be final and binding on the parties.

19. The Licensors, its agents and employees, shall at any reasonable time upon twenty-four (24) hours notice to the Licensee, have access to all books, accounts, records, and reports of the Licensee relating to the material removed from the License Area herein described for the purpose of inspection, examination or audit. If the audit by Licensors shall disclose that the royalty rate has been underpaid by five percent (5%) or

more for the period under examination, the Licensor shall have the right to terminate this License.

20. The Licensee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Licensee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the License Area any such materials except to use in the ordinary course of Licensee's business, and then only after written notice is given to Licensor of the identity of such materials and upon Licensor's consent which consent may be withheld at Licensor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Licensee, then the Licensee shall be responsible for the reasonable costs thereof. In addition, Licensee shall execute affidavits, representations and the like from time to time at Licensor's request concerning Licensee's best knowledge and belief regarding the presence of hazardous materials on the License Area placed or released by Licensee.

The Licensee agrees to indemnify, defend, and hold Licensor harmless, from any damages and claims resulting from the release of hazardous materials on the License Area occurring while Licensee is in possession, or elsewhere if caused by Licensee or persons acting under Licensee. These covenants shall survive the expiration or earlier termination of this License.

For the purpose of this License "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

21. Time is of the essence in this License and if the Licensee shall fail to pay the effective royalty, or any part thereof, at the times and in the manner provided within thirty (30) days after delivery by the Licensor of a written notice of breach or default, or if the Licensee shall become bankrupt, or shall abandon the License Area, or if this License and License Area shall be attached or taken by operation of law, or if Licensee shall fail to observe and perform any of the covenants,

terms, and conditions contained in this License and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Licensor of a written notice of breach or default, by personal service, registered mail or certified mail to the Licensee at its last known address and to each mortgagee or holder of record having a security interest in the License Area, the Licensor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the License Area, or any part, and upon or without the entry, at its option, terminate this License without prejudice to any other remedy or right of action for arrears of royalty or for any preceding or other breach of contract; furthermore Licensor shall retain all royalty paid in advance to be applied to any damages.

22. The Licensee shall be solely responsible for securing the License Area against trespass and unauthorized and unlawful activity by others.

23. The Licensee shall meet with DOFAW representatives for site review, prior to surface vegetation removal and sand removal within the License Area.

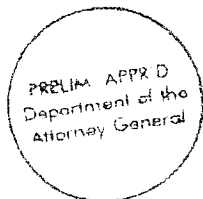
24. This License is encumbered under Governor's Executive Order No. 4209 and therefore, is subject to Governor's concurrence.

25. The Licensor does not warrant the conditions of the License Area, as the same are being licensed as is. The Licensor makes no representation regarding the exact quantity or quality of the materials or any other condition applicable to the License Area.

26. The Licensee shall comply with all standards of safety required by the federal, state, and county governments for operation and utilization of the Licensed Area.

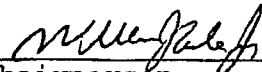
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28. At the end of the license term, the Licensee shall finish, fill, clear, and/or smooth the License Area to the condition and contours delineated on Exhibit "A."



IN WITNESS WHEREOF, the STATE OF HAWAII, the Licensors herein, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be duly executed this 24TH day of FEBRUARY, 2011, the Licensee herein, has caused these presents to be duly executed this 10TH day of FEBRUARY, 2011.

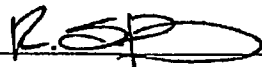
STATE OF HAWAII

By 
Chairperson
Board of Land and
Natural Resources

LICENSOR

Approved by the Board of
Land and Natural Resources
at its meetings held on
May 14, 2004, January 14, 2005,
February 22, 2008, and
September 12, 2008.

GOODFELLOW BROS., INC., a
Washington corporation

By 
R. Scott Pingrey
Its Chief Engineer

And By _____

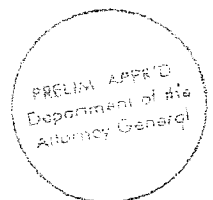
Its _____

APPROVED AS TO FORM:


Deputy Attorney General

Dated: Nov. 5, 2009

LICENSEE



STATE OF HAWAII)
COUNTY OF Kauai) SS.

On this 11th day of February, 2011, before me appeared R. Scott Pingree and at the 215 to me personally known, who being by me duly sworn did say that they are the Chief Engineer and _____, respectively, of GOODFELLOW BROS., INC., a Washington corporation, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and the said Chief Engineer and _____ acknowledged said instrument to be the free act and deed of said corporation.

Audrey M. Bonilla
Notary Public, State of

L.S.

Audrey M. Bonilla
My Commission Expires: 3/24/2012

Date of the Notarized Document: 2/11/11

Number of Pages: 10

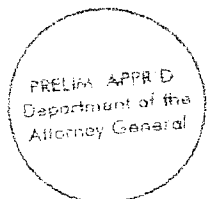
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STATE OF Hawaii DLNR LAND LICENSE

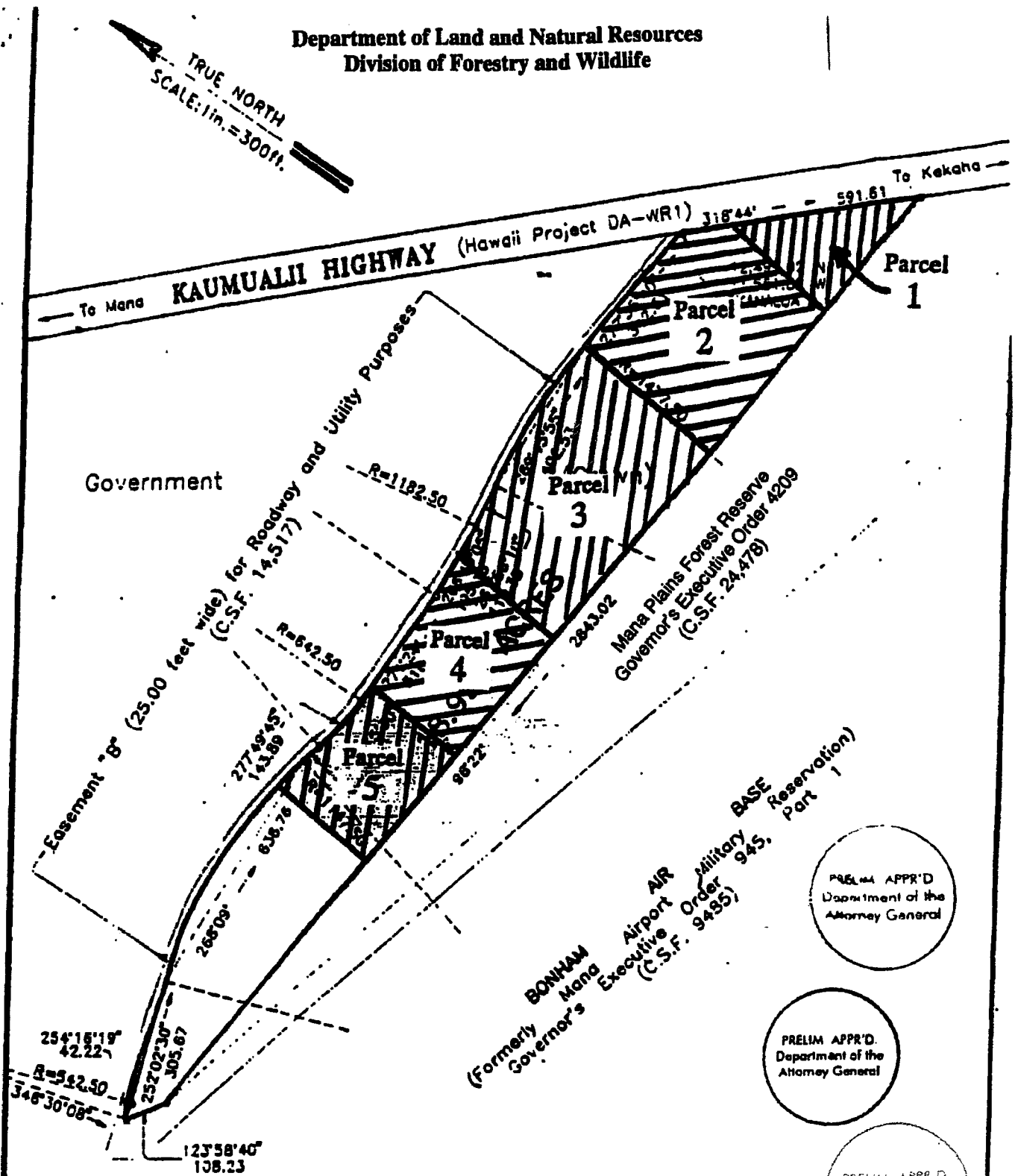
Printed Name of Notary: Audrey M. Bonilla 5th Circuit

Audrey M. Bonilla 2/11/11
Notary's Signature and Notary's Official Stamp or Seal Date

L.S.



Department of Land and Natural Resources
Division of Forestry and Wildlife



**Phase II Mana Plains Sand Mine / Forest Reserve
Sand Mining Parcel Location Map**

Mana, Waimea, Kauai, Hawaii

Scale: 1 inch = 300 feet

EXHIBIT "A"

PRELIM APPR'D
Department of the
Attorney General

PRELIM APPR'D
Department of the
Attorney General

PRELIM APPR'D
Department of the
Attorney General

Department of Land and Natural Resources
Division of Forestry and Wildlife

GOVERNMENT (CROWN) LAND OF WAIMEA

Phase II Mana Plains Sand Mine / Forest Reserve
Final Surface and Bottom Contours for Parcel No. 5

MENT "B" FOR ROADWAY
AND UTILITY PURPOSES

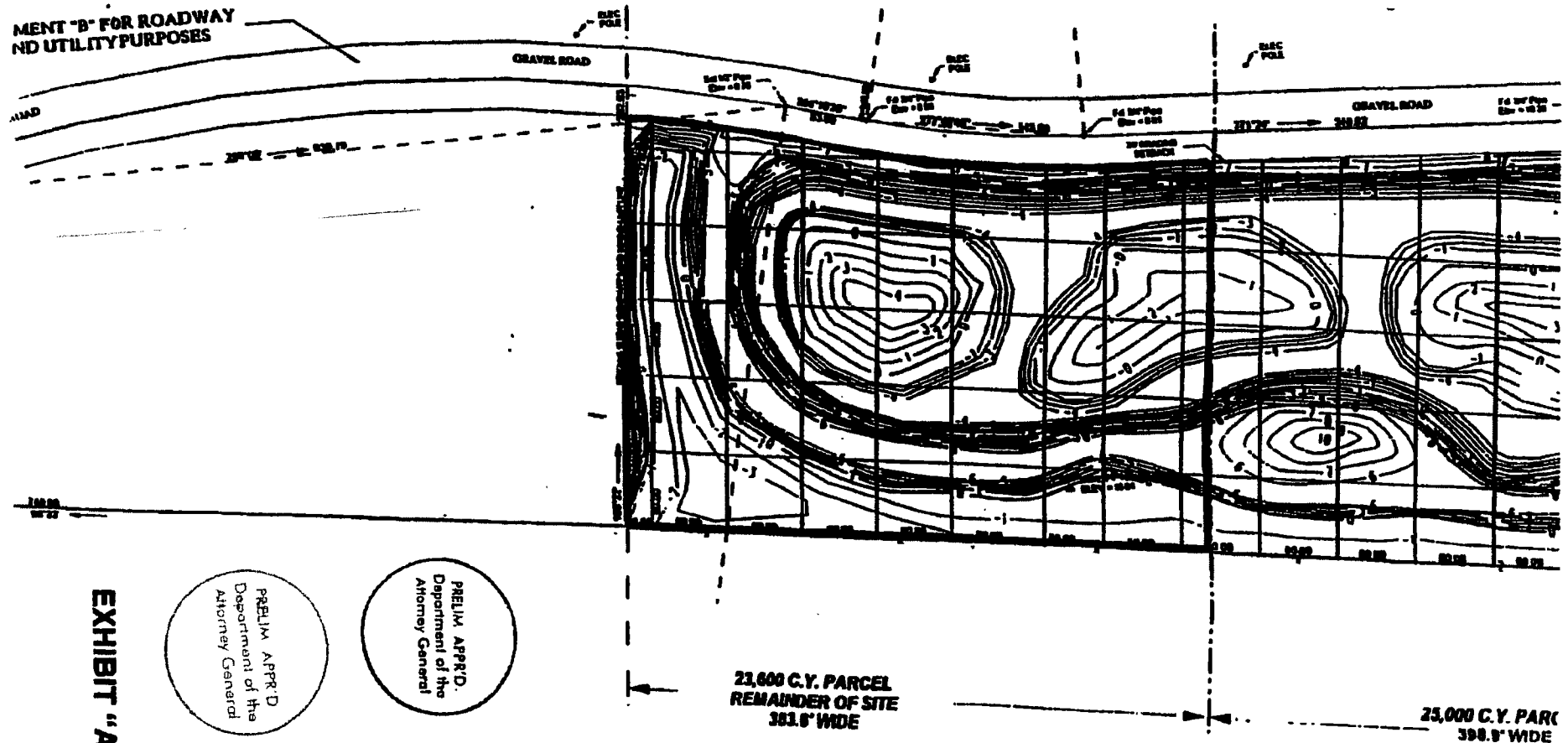


EXHIBIT "A"

PRELIM. APPR'D.
Department of the
Attorney General

PRELIM. APPR'D.
Department of the
Attorney General

EXHIBIT 3

KOBAYASHI SUGITA & GODA, LLP
 DAVID M. LOUIE, 2162
 JESSE W. SCHIEL, 7995
 GABRIELE V. PROVENZA, 10261
 First Hawaiian Center
 999 Bishop Street, Suite 2600
 Honolulu, Hawaii 96813
 Telephone No.: (808) 535-5700
 Facsimile No.: (808) 535-5799
 Email: dml@ksglaw.com; jws@ksglaw.com;
gvp@ksglaw.com

Attorneys for Plaintiff
 O. THRONAS, INC.

FIRST CIRCUIT COURT
 STATE OF HAWAII
 FILED

2019 FEB 28 AM 10:53

EX OFFICIO

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAII

19-1-0029

O. THRONAS, INC.,

Plaintiff,

vs.

BOARD OF LAND AND NATURAL
 RESOURCES, STATE OF HAWAII; JOHN
 DOES 1-20; JANE DOES 1-20; DOE
 PARTNERSHIPS 1-20; DOE
 CORPORATIONS 1-20; DOE
 ASSOCIATIONS 1-5; DOE
 GOVERNMENTAL ENTITIES 1-5; DOE
 TRUSTS 1-10; AND DOE ENTITIES 1-10,

Defendants.

Civil No. _____
 (Breach of Contract)

COMPLAINT; SUMMONS

RECEIVED
 2019 MAR -6 PM 2:50
 DEPT. OF LAND
 & NATURAL RESOURCES
 STATE OF HAWAII

COMPLAINT

O. THRONAS, INC., by and through its attorneys, Kobayashi Sugita & Goda, LLP, for
 its complaint and causes of action against Defendant BOARD OF LAND AND NATURAL
 RESOURCES, STATE OF HAWAII; JOHN DOES 1-20; JANE DOES 1-20; DOE
 PARTNERSHIPS 1-20; DOE CORPORATIONS 1-20; DOE ASSOCIATIONS 1-5; DOE

I do hereby certify that this is a full, true
 and correct copy of the original.

Ex Officio Clerk
 Hawaii State Judiciary

GOVERNMENTAL ENTITIES 1-5; DOE TRUSTS 1-10; AND DOE ENTITIES 1-10, hereby alleges and avers as follows:

PARTIES

1. Plaintiff O. THRONAS, INC. (“**Thronas**”) is, and at all times relevant was, a corporation created under the laws of the State of Hawaii that is registered with the State of Hawaii Department of Commerce and Consumer Affairs (“**DCCA**”) and doing business in the State of Hawaii.

2. Defendant Board of Land and Natural Resources, State of Hawaii (the “**BLNR**”) heads the Department of Land and Natural Resources pursuant to HRS § 26-15 and is an agency of the State of Hawaii (“**State**”).

3. John Does 1-20; Jane Does 1-20; Doe Partnerships 1-20; Doe Corporations 1-20; Doe Associations 1-5; Doe Governmental Entities 1-5; Doe Trusts 1-10; and Doe Entities 1-10, are persons, partnerships, corporations, associations, governmental entities, trusts or entities whose names, identities, capacities, activities and/or responsibilities are presently unknown to Plaintiff and its attorneys despite diligent and good faith efforts to ascertain their true names, identities and capacities, who have or may have an interest in the properties at issue in this lawsuit, or may be responsible or liable for the acts and omissions complained of in this lawsuit (individually or collectively). Accordingly, Plaintiff has sued the unidentified Doe Defendants herein with fictitious names pursuant to Rule 17(d) of the Hawai‘i Rules of Civil Procedure. Plaintiff will seek leave of Court to amend this Complaint to allege the true names of the Doe Defendants and describe their activities, responsibilities and/or capacities when the same is ascertained.

JURISDICTION AND VENUE

4. This complaint is initiated pursuant to HRS § 661-1

5. The amount in controversy at issue in this case exceeds the minimum jurisdictional amount necessary to bring a case in the Fifth Circuit Court of the State of Hawaii.

6. Venue is proper in the Fifth Circuit because the property at issue is located within this judicial circuit, and a substantial part of the events or omissions giving rise to the claims herein occurred in this judicial circuit.

FACTS

7. In 2009, the State of Hawaii Department of Land and Natural Resources Division of Forestry and Wildlife advertised two sand mining contracts for public bidding to occur on July 6, 2009 in Lihue, Kauai. One of the contracts covered "Parcel 4" and the other contract covered "Parcel 5" of State lands situated at Mana, Waimea, Kauai, Hawaii, Tax Map Key No. (4) 1-2-02: Por. 1. ("Parcel 4" and "Parcel 5" respectively, collectively the "Parcels" and individually a "Parcel").

8. Each contract offered the highest bidders the right to remove sand "for commercial purposes" from the Parcels on a price-per-cubic-yard basis, with a minimum upset royalty rate of \$39.41 per cubic yard over a two-year period.

9. The "commercial purpose" of the offered contracts was to have adequate amounts of sand removed from the Parcels in order to allow the BLNR or related government agencies to build a sanctuary for water birds.

10. The contract for Parcel 4 prohibited removing more than 23,211 cubic yards of sand from Parcel 4, and the contract for Parcel 5 prohibited removing more than 23,600 cubic yards of sand from Parcel 5.

11. Goodfellow Bros., Inc., a Washington corporation ("**GBI**") and Thronas submitted bids for the two sand mining contracts as a joint venture offering the minimum price per cubic yard. Their joint bids were the only bids, and as a result, they were awarded the two public contracts

12. On or about the middle of February 2011, GBI signed two substantively identical contracts with the BLNR, one covering the removal of sand from Parcel 4 and the other covering the removal of sand from Parcel 5 (the "**Parcel 4 Contract**" and "**Parcel 5 Contract**", respectively, and collectively the "**Contracts**").

13. Although GBI signed the Contracts, all parties, including the BLNR, understood that Thronas, as GBI's joint venturer, would pay for and remove the sand pursuant to the Contracts.

14. Under Section 1 of the Contracts, payments for the sand were to be made monthly based on the "amount of material removed" at a rate of \$39.41 per cubic yard.

15. Section 2 of the Contracts required that GBI remove and pay for a cumulative minimum of 2,500 cubic yards of sand per quarter from each Parcel between March 1, 2011 and February 28, 2013 (the "**Contract Term**").

16. The procedures under Section 1 of the Contracts for the removal and payment of the sand were not strictly followed by the parties, and the BLNR generally did not monitor, inquire about, or require removal of the cumulative minimum amounts of sand under the Contracts.

17. Over the Contract Term, GBI¹ paid the BLNR a total of \$1,576,400.00 for the removal of the minimum 40,000 cubic yards of sand under the Contracts.

18. As a result of a sudden and significant downturn in the construction industry on Kauai, GBI was only able to remove 13,286 cubic yards of the 40,000 cubic yards of sand that it paid the BLNR for under the Contracts.

19. Consequently, GBI overpaid the BLNR \$1,052,798.74 for 26,714 cubic yards of unremoved sand, which money and sand remain in the BLNR's possession.

20. Given the unfairness in the BLNR having been overpaid \$1,052,798.74 for the unremoved sand, towards the end of the Contract Term, BLNR and/or staff of the of Department of Land and Natural Resources on Kauai discussed extending the Contract Term with GBI and/or Thronas.

21. At the end of February 2013, GBI stopped removing sand from the Parcels, with an understanding that a right of entry would be granted within a couple of months to allow GBI to remove the remaining 26,714 cubic yards of sand from the Parcels that it had already paid for.

22. In the fall of 2013, the BLNR set a meeting agenda item to approve a right of entry consistent with the parties' prior discussions, which would allow GBI to reenter and remove the sand which it had already paid for. However, the item was unexpectedly pulled from the agenda the day before the hearing date, and the BLNR has since refused to place the issue back on the BLNR hearing agenda.

23. Section 21 of the Contracts required the BLNR to give written notice of any breach or default, and to provide at least 60 days from the date of such notice to cure any breach

¹ Thronas generally performed GBI's obligations under the Contracts, with the BLNR's knowledge and consent. However, as Thronas's performance was on GBI's behalf under the Contracts, GBI is used in the Complaint for ease of reference and consistency.

or default, and only after said notice and opportunity to cure, the BLNR could “retain all royalty paid in advance to be applied to any damages.”

24. Neither Thronas nor GBI received any written notice from the BLNR of an asserted breach or default under the Contracts, much less an asserted default relating to a failure to remove the minimum amounts of sand.

25. Without the required notice and opportunity to cure, any right of the BLNR to retain any advanced payments under the Contracts was never triggered.

26. Further, even had the BLNR sent a written notice of default to GBI or Thronas, Section 21 of the Contracts limits the BLNR’s right to retain royalties paid in advance towards damages actually suffered by the BLNR.

27. The BLNR has never asserted to GBI or Thronas that it suffered \$1,052,798.74 in damages due to Thronas’s inability to remove the entire 40,000 cubic yards of sand during the Contract Term.

28. Upon information and belief, the BLNR is contemplating offering new bids for sand mining licenses on the Parcels.

29. Thronas, as a joint-venturer with GBI with respect to the Contracts, who was known and accepted as such by the BLNR, had and has all rights and interests granted to it under the Contracts.

30. In addition, by written agreement, GBI assigned to Thronas any and all rights and interests of GBI to any claims for damages or other causes of action that GBI had, has or may have against the State and/or the BLNR under the Contracts.

31. Accordingly, Thronas has standing to assert the claims herein against the BLNR under the Contracts.

COUNT I: BREACH OF CONTRACT

32. Thronas realleges and incorporates by reference the allegations of the preceding paragraphs as if fully set forth herein.

33. The Contracts are binding written contracts and are enforceable against the BLNR.

34. Thronas paid the BLNR \$1,576,400.00 under the Contracts for the right to remove 40,000 cubic yards of sand from the Parcels.

35. Thronas has only been allowed to remove 13,286 cubic yards of sand from the Parcels.

36. As a result, Thronas overpaid the BLNR \$1,052,799.00 for the removal of 26,714 cubic yards of sand from the Parcels which has not been removed under the Contracts.

37. The Contracts required the BLNR to provide notice of an asserted default or breach, including for an asserted failure to timely remove sand, and an opportunity to cure, which notice GBI and Thronas did not receive from the BLNR.

38. Section 21 of the Contracts limits the BLNR's right to retain any advanced payments, including the \$1,052,799.00 in advanced payments made to the BLNR under the Contracts, to the extent of the BLNR's actual damages resulting from an alleged default or breach.

39. The BLNR breached the Contracts by wrongfully retaining \$1,052,799.00 in advanced payments in excess of the BLNR's damages in violation of Section 21 of the Contracts.

40. As a result of BLNR's breach of the Contracts, Thronas is entitled to damages against the BLNR in the amount of no less than \$1,052,799.00, plus interest thereon, and such other additional amounts to be proven at trial.

COUNT II: UNJUST ENRICHMENT

41. Thronas realleges and incorporates by reference the allegations of the preceding paragraphs as if fully set forth herein.

42. The BLNR received an unfair benefit under the Contracts through advanced payments totaling \$1,052,799.00 for the right to extract 26,714 cubic yards of sand on the Parcels that was never removed.

43. It would be unjust for BLNR to retain the benefit conferred upon it due to the BLNR's continued possession of both the \$1,052,799.00 advanced payment plus the 26,714 cubic yards of unremoved sand on the Parcels, which injustice is further amplified by BLNR's threat to offer the same sand for sale via further public bidding.

44. Thronas is entitled to judgment against BLNR in an amount no less than \$1,052,799.00, plus interest thereon, and such additional amounts which will be proven at trial.

COUNT III: DECLARATORY JUDGMENT

45. Thronas realleges and incorporates by reference the allegations of the preceding paragraphs as if fully set forth herein.

46. Thronas seeks a declaration from this Court that (a) Section 21 of the Contracts does not allow the BLNR to retain any advanced payments under the Contracts that are in excess of the BLNR's actual damages resulting from a noticed breach thereunder, and (b) to the extent Section 21 is not so construed and declared by this Court, that the foregoing remedial language in Section 21 otherwise be declared void and unenforceable as an unlawful forfeiture precluded under Hawaii law.

47. Thronas further seeks a declaration from this Court that Thronas is therefore entitled to either (a) the return of its advanced payments totaling \$1,052,799.00, plus interest

thereon, or (b) a reasonable amount of time to remove the remaining 26,714 cubic yards of sand from Parcel 4 and Parcel 5 that was already prepaid for.

COUNT IV: INJUNCTION

48. Thronas realleges and incorporates by reference the allegations of the preceding paragraphs as if fully set forth herein.

49. Thronas overpaid the BLNR \$1,052,799.00 for the right to remove 26,714 cubic yards of sand under the Contracts.

50. The BLNR has refused to either refund the \$1,052,799.00 advanced payment to Thronas or GBI, or allow Thronas to remove the remaining 26,714 cubic yards of sand from the Parcels.

51. It would irreparably damage and compromise Thronas's rights if the BLNR follows through with its threat and allows new bids from third parties to remove the remaining 26,714 cubic yards of sand from the Parcels that were already prepaid for under the Contracts.

52. This Court should therefore issue an order enjoining the BLNR from allowing any new bids for the removal of the remaining 26,714 of sand from the Parcels that was already prepaid for under the Contracts.


PRAYER FOR RELIEF

WHEREFORE, Thronas prays for judgment on the Complaint as follows:

- A. That judgment be entered in favor of Thronas against the BLNR on all claims;
- B. That this Court award Thronas special, compensatory, and consequential damages and/or restitution in an amount to be proven at trial;
- C. That this Court award Thronas pre-judgment and post-judgment interest to the extent allowed by contract or law;

- D. That this Court enter the declaratory judgment requested above.
- E. That this Court order the injunction requested above.
- F. That this Court award Thronas its attorneys' fees and costs of suit to the extent allowed by contract or law; and
- G. That this Court award Thronas such other relief as the Court deems just, reasonable, and fair.

DATED: Honolulu, Hawaii, February 28, 2019.



DAVID M. LOUIE
JESSE W. SCHIEL
GABRIELE V. PROVENZA
Attorneys for Plaintiff
O. THRONAS, INC.

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAII

O. THRONAS, INC.,

Plaintiff,

vs.

BOARD OF LAND AND NATURAL
RESOURCES, STATE OF HAWAII; JOHN
DOES 1-20; JANE DOES 1-20; DOE
PARTNERSHIPS 1-20; DOE
CORPORATIONS 1-20; DOE
ASSOCIATIONS 1-5; DOE
GOVERNMENTAL ENTITIES 1-5; DOE
TRUSTS 1-10; AND DOE ENTITIES 1-10,

Defendants.

Civil No. _____
(Breach of Contract)

SUMMONS

SUMMONS

STATE OF HAWAII
TO THE ABOVE NAMED DEFENDANT(S):

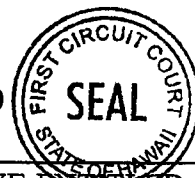
You are hereby summoned and required to file with the Court and serve upon Kobayashi Sugita & Goda, LLP, Plaintiff's attorneys, whose address is 999 Bishop Street, Suite 2600, Honolulu, Hawaii 96813, an Answer to the Complaint which is herewith served upon you, within 20 days after service of this Summons upon you, exclusive of the day of service.

This Summons shall not be personally served between the hours of 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled Court permits, in writing on this Summons, personal delivery during those hours.

If you fail to obey this Summons, judgment by default will be taken against you for the relief demanded in the Complaint. **FEB 28 2019**

DATED: Lihue, Hawaii, _____.

J. KUBO



EX OFFICIO

CLERK OF THE ABOVE-ENTITLED COURT

EXHIBIT 4

Report to

O. Thronas, Inc.

Covering the

**MARKET ROYALTY RATE FOR DLNR
SAND LICENSES – PARCELS 4 AND 5 IN
THE KAWAI'ELE WATERBIRD
SANCTUARY**

Kauai, Hawaii

As of October 16, 2020



JOHN CHILD & COMPANY
APPRAISERS & CONSULTANTS



JOHN CHILD & COMPANY
APPRAISERS & CONSULTANTS

March 18, 2021

Karen Char, MAI, CRE
Paul D. Cool, MAI, CRE
Shelly H. Tanaka, MAI, AI-GRS
Masayo Allen, MAI, Esq.

Mr. Scott Pingrey
President
O. Thronas, Inc.
P.O. Box 269
Lawai, Hawaii 96765

Dear Mr. Pingrey:

Re: Market Royalty Rate for DLNR Sand Licenses – Parcels 4 and 5 in the Kawai’ele Waterbird Sanctuary

At your request, John Child & Company and Oceanit have evaluated the remaining sand under DLNR License No. FW-2010-K-01 and FW-2010-K-02 and estimated whether the current Market Royalty Rate for the right to extract the existing sand resource in Parcels 4 and 5 is more than \$39.41 per cubic yard, the contract rate in the Licenses. This letter summarizes the study background, objective, intended use and users, effective date of appraisal, definition of market royalty rate, scope of work, valuation method, Kauai market for commercial sand, Oceanit’s Mana Sand Engineering Assessment, current costs to acquire sand on Kauai, and conclusion.

STUDY BACKGROUND

You are the President of O. Thronas, Inc. (Thronas). Thronas has an agreement to assist Goodfellow Bros., Inc. who is the licensee of DLNR License No. FW-2010-K-01 and FW-2010-K-02 (DLNR Sand Licenses or Licenses). [1]

In 2004, DLNR - Division of Forestry and Wildlife began its plan to expand the existing Kawai’ele Waterbird Sanctuary for the purpose of enhancing, protecting, conserving, and managing the wetlands for native waterbirds including the Hawaiian duck, Hawaiian stilt, Hawaiian moorhen, and Hawaiian coot.

The plan included extracting sand from Parcels 4 and 5 and grading the parcels to specified contours that would restore the wetlands and attract endangered Hawaiian waterbirds to the sanctuary.

[1] The DLNR Sand Licenses cover Parcels 4 and 5 within DLNR’s Phase II Mana Plains Sand Mine/Forest Reserve in Mana, Waimea, Kauai (Parcels 4 and 5 in Mana Plains Sand Mine). The parcels are a portion of tax map key (4) 1-2-2: 01.



The DLNR Sand Licenses were offered in a public auction on July 6, 2009. The minimum upset royalty rate was \$39.41 per cubic yard. The Public Auction Bid Packet is attached as Addendum 1.

To create the optimal conditions appealing to waterbirds, the Notice of Sale and signed Licenses specify the finish grade and minimum and maximum volume of sand that must be extracted. The Licenses permit the minimum quarterly and maximum sand removal as follows:

Parcel	Permitted Sand Removal (CY)	
	Minimum/ quarter	Maximum
4	2,500	23,211
5	2,500	23,600
Total	<u>5,000</u>	<u>46,811</u>

Goodfellow Bros. submitted its bid at the upset royalty rate of \$39.41 per cubic yard. It was the only bidder. The original term of the Licenses was two years beginning March 1, 2011 and terminating February 28, 2013. The licenses required minimum quarterly payments. Royalties totaling \$1,576,400 (5,000 CY x \$39.41/CY/quarter x 8 quarters) were prepaid. The required royalty payments and grading are shown in the Licenses that are attached in Addenda 2 and 3.

However, the maximum volume of the sand was not extracted during the term of the Licenses. DLNR provided topographic survey data from 2013 showing that about 11,637 CY was extracted between October 18, 2011 and June 20, 2013. The remaining sand available for extraction under the terms of the Licenses is estimated as follows:

Maximum Available Sand (CY)	
Maximum permitted sand removal:	
Parcel 4	23,211
Parcel 5	<u>23,600</u>
Total	46,811
Less extracted sand as of 6/20/2013	<u>(11,637)</u>
Maximum available sand	<u><u>35,174</u></u>

Thronas prepaid the full contract royalty fee in the Licenses and proposes to retain the right to extract the maximum available sand from Parcels 4 and 5.

You and your attorney, Jesse Schiel, Esq. with Kobayashi Sugita & Goda LLP, are negotiating the license agreements with DLNR. DLNR is represented by the State Attorney General. In this regard, you have asked us to assist you and the State Attorney General.



STUDY OBJECTIVE

The objective of our assistance is to estimate if the current Market Royalty Rate for the right to extract the existing sand resource in Parcels 4 and 5 is more than \$39.41 per cubic yard, the contract rate in the Licenses.

INTENDED USE AND USERS

The intended use of our assistance is to provide market data to determine whether a higher royalty rate should be used to negotiate for the extraction of the remaining sand in Parcels 4 and 5.

As a result, our assistance is intended for the sole and exclusive use of O. Thronas, Inc. (Client) and its attorney, Kobayashi Sugita & Goda, LLP to negotiate the royalty rate with the State Attorney General. In accepting this report, the Client specifically agrees that our assistance is not intended for any other purpose or users and is not to be relied upon by any third parties for any purpose, whatsoever.

EFFECTIVE DATE OF APPRAISAL

The effective date of appraisal is October 16, 2020, the date the Kawai'ele Waterbird Sanctuary was visited and soil samples taken.

NO ASSUMPTION OF ANY EXTRAORDINARY ASSUMPTIONS

Extraordinary assumption means "an assignment specific assumption as of the effective date regarding uncertain information used in an analysis which, if found to be false, could alter the appraiser's opinions or conclusions." [1]

No extraordinary assumptions were used in the analyses of this assignment by Oceanit or John Child & Company.

DEFINITION OF MARKET ROYALTY RATE

For this assignment, the Market Royalty Rate for extracting sand is adapted from the definition of "market rent" as defined in **The Dictionary of Real Estate Appraisal** as follows:

[1] The Appraisal Foundation, Uniform Standards of Professional Appraisal Practice, 2020-2021, page 4.



Market Royalty Rate means the most probable rate that the right to extract sand should bring in a competitive and open market reflecting the conditions and restrictions of a specified license agreement, including the permitted uses, use restrictions, expense obligations, term, concessions, and required finish grading, if any. [1]

SCOPE OF WORK

The assignment was proposed in two phases as follows:

Phase I. Preliminary Analysis: Is the Market Royalty Rate for the remaining sand in Parcels 4 and 5 in the Kawai'ele Waterbird Sanctuary (Parcels 4 and 5) more than \$39.41/cubic yard?

Phase II. Refine Assessments and Analysis to estimate the Market Royalty Rate, if it is estimated to be more than \$39.41 per cubic yard.

This report covers Phase I. The scope of work for Phase I is outlined as follows:

1. Proposal

John Child & Company and Oceanit prepared proposals that were presented for the approval of the Client, its attorney Kobayashi Sugita & Goda, LLP, and the State Attorney General representing DLNR. The proposals were approved.

2. Site Visit

Parcels 4 and 5 in the Kawai'ele Waterbird Sanctuary (Kawai'ele) managed by DLNR and Pohaku O Kauai Quarry (POKQ) managed by Kekaha Agricultural Association were visited on October 16, 2020 by the consultants:

- Karen Char, MAI, CRE, ASA, President, John Child & Company
- Michael Foley, Ph.D., P.E., Coastal Engineer, Oceanit
- Jordan Moniuszko, P.E., Civil Engineer, Oceanit.

[1] Original definition of "Market Rent" shown in **The Dictionary of Real Estate Appraisal**, edited to define "Market Royalty Rate." The edits are shown in track changes as follows:

Market-~~rent~~ **Royalty Rate** means the most probable ~~rent rate~~ that ~~a property~~ **the right to extract sand** should bring in a competitive and open market reflecting the conditions and restrictions of a specified ~~lease license~~ agreement, including the ~~rental adjustment and revaluation~~, permitted uses, use restrictions, expense obligations, term, concessions, and required finish grading, if any.



The consultants were met at their respective sites by:

- Jason Vercelli, Wildlife Biologist, DLNR and two staff members
- Michael Faye, Manager, Kekaha Agriculture Association.

3. Engineering Assessment (Oceanit)

To complete the engineering assessment, Oceanit:

- a. Researched the demand for commercial sand on Kauai for use in concrete production and for beach-nourishment projects in shoreline erosion control
- b. Identified the characteristics and uses of the commercial sand on Kauai that are in:
 - 1) Parcels 4 and 5 of Kawai'ele Waterbird Sanctuary (Kawai'ele)
 - 2) Pohaku O Kauai Quarry (POKQ)
- c. Identified Thronas as the major producer of concrete on Kauai
- d. Estimated and compared the costs to acquire and transport concrete grade sand on Kauai to Thronas' processing plant in Lawai
- e. Evaluated alternative sources and cost of concrete grade sand including manufactured sand and imported sand
- f. Compared concrete and sand standards with Hawaii beach sand guidelines
- g. Estimated the annual demand for and supply of concrete sand and beach sand on Kauai.

4. Valuation Analysis (John Child & Company)

Based on the Oceanit Engineering Assessment, John Child & Company:

- a. Compared the available sand resources and costs to acquire and transport 35,174 CY of concrete grade sand to Thronas' processing plant in Lawai
- b. Estimated whether or not the current Market Royalty Rate for the right to extract the existing sand resource in Parcels 4 and 5 is more than \$39.41 per cubic yard, the contract rate in the Licenses
- c. Prepared this appraisal report.



APPRAISAL REPORT

This appraisal assignment is presented in an Appraisal Report that is intended to comply with the reporting requirements set forth under Standards Rule 2-2(a) of the Uniform Standards of Professional Appraisal Practice for an Appraisal Report.

This appraisal report contains summary discussions of the data, reasoning, and analyses used to estimate the market value of the property. Any data, reasoning, and analyses not presented in the Appraisal Report are available in our workfile.

VALUATION METHOD

The valuation analysis to estimate the current Market Royalty Rate for unmined sand is a cost comparison method. This approach assumes that the cost of acquiring extraction rights (royalty rate) relates directly to the cost of mining, handling, moving, and screening the sand. It assumes that the cost to mine and deliver the sand tends to be set by the cost that would be paid to mine and deliver substitute sand of equal utility and desirability.

The method evaluates the cost per unit to extract and deliver the Kawai'ele sand and the costs to acquire comparable sand. The cost comparison method is appropriate because the cost for mining and delivering the screened sand can be consistently and reliably compared.

KAUAI MARKET FOR COMMERCIAL SAND

The cost to transport sand between the Hawaiian Islands is significant. Therefore, the market for commercial sand is typically confined to the supply and demand on each island. However, in times of steeply rising real estate prices and construction booms, that have been rare on Kauai, sand could be imported from Oahu.

Market Demand

The Kauai market for commercial sand is primarily for concrete infrastructure. Thronas is the major producer of concrete on Kauai. Its processing plant is in Lawai. According to Thronas, their annual demand for concrete is 36,000 CY. Based on the demand, Thronas needs about 9,000 CY annually for its concrete production alone. The sand from Kawai'ele would satisfy about four years of its concrete production.

By comparison, Oceanit estimates Kauai's annual demand for sand for beach nourishment projects (beach sand) to be about 1,000 CY annually. [1] Assuming some of the sand in Kawai'ele could be considered for beach nourishment, the sand may not be compatible for specific projects because the existing sand on Kauai's beaches are not uniform. To be suitable for a specific beach nourishment project, "Compatibility of the existing and proposed fill beach sands shall be demonstrated by the grain size distribution of the fill sand and

[1] Oceanit, Mana Sand Engineering Assessment, March 2021, page 14.



shall fall within 20% of the existing sand, as measured by a percent finer than or percent coarser than value.” [1] The demand for beach sand is limited, and the utility of the Kawai’ele sand for beach nourishment is limited by its suitability to each project.

The actual demand for sand on Kauai is for concrete and other construction uses.

Market Supply

Pohaku O’Kauai (POK) is the major commercial sand supplier on Kauai. It mines its sand from the Pohaku O’Kauai Quarry (POKQ) that is 1-1/2 miles from Kawai’ele.

POKQ is in the former Kekaha Sugar Company lands that are owned by the State of Hawaii. Agribusiness Development Corporation (ADC), formed by the State of Hawaii Department of Agriculture, gave a license to the Kekaha Agriculture Association (KAA) to control and manage the Kekaha Lands.

KAA granted licenses to use portions of the Kekaha Lands to several agricultural tenants and granted a license to extract sand to Pohaku O Kauai.

The POK license to quarry sand is non-exclusive. Because the license is non-exclusive others can apply to mine sand. The current total royalty rate for unmined sand is \$5.00/CY that is allocated \$2.50/CY to the State of Hawaii and \$2.50/CY to KAA, as shown in the Right-of-Entry and License Agreement in Addendum 4.

Thronas’ Purchases from POK

Thronas currently purchases its sand from POK. Thronas knows that the POK license is non-exclusive and that it could negotiate its own license to mine sand. Instead, Thronas choose not to compete and has been purchasing its sand from POK. Thronas pays \$28.00/ton (\$37.84/CY) for concrete grade sand and an average of \$6.32/ton (\$8.53/CY) for hauling. The total cost of sand delivered to the Lawai plant averages \$34.32/ton (\$46.38/CY) to purchase from POK.

Alternative Sources of Concrete Sand

Oceanit reported that manufactured and imported sand are alternative sources of concrete grade sand.

Manufactured Sand

In an interview with Oceanit, Mr. Pingrey supposed that Thronas could manufacture sand by paying a royalty to its landlord to quarry stone. The process would entail crushing, screening, and sorting the stone. The royalty rate would probably be about \$3.00/ton or about \$4.05/CY. He estimated the manufacturing process

[1] Ibid, page 12.



would cost about \$18/ton - \$22/ton or about \$24.32/CY - \$29.73/CY. The total cost to manufacture sand could be about \$28.37/CY - \$33.78/CY. However, the manufacturing process has higher risks than mined sand.

Manufactured sand can be used for concrete. However, the State explicitly prohibits it for use as beach sand.

Imported Sand

Imported concrete grade sand could be purchased from Oahu. The retail price on Oahu ranges from about \$82/ton - \$96/ton or about \$111/CY - \$130/CY delivered to Nawiliwili Harbor. It would then be trucked to the Lawai plant at an additional cost.

ENGINEERING ASSESSMENT (OCEANIT)

Oceanit tested and analyzed sand samples from Kawai'ele and POKQ. Both are suitable for concrete grade sand. Additional testing and appropriate approvals would be required to determine if some of the sands in Kawai'ele could be suitable for beach nourishment.

Based on its research, testing and analysis, Oceanit concluded that "the value of current royalty rate for the DLNR's sand should not exceed \$39.41 per cubic yard."

Concrete Grade Sand

Thronas has been purchasing its sand for concrete from POK. It pays an average of \$28/ton for the mined, screened sand.

Oceanit identified and estimated the cost per cubic yard for Thronas to mine and transport sand from Kawai'ele and POKQ to its processing plant in Lawai. In addition, it estimated the relative cost to manufacture and import concrete grade sand.

The costs to deliver concrete grade sand to the processing plant in Lawai are summarized as follows:

	Total cost delivered to <u>Lawai processing plant</u>
Thronas' cost to mine and haul sand from:	
Kawai'ele Waterbird Sanctuary	\$52.84/CY
Pohaku O Kauai Quarry	\$46.38/CY
Cost to purchase sand from POK	\$46.38/CY
Thronas' estimated cost to manufacture sand at its processing plant	\$24.32/CY- \$29.73CY
Minimum cost to import concrete grade sand from Oahu	\$111/CY - \$130/CY



Beach-Nourishment Grade Sand (Beach Sand)

Assuming it is suitable, Kawai'ele sand may qualify for beach nourishment projects. However, it has never been tested. Manufactured and concrete grade sand do not qualify.

Oceanit Engineering Assessment

The Oceanit Engineering Assessment is included in Addendum 5.

CURRENT ROYALTY RATES FOR AGGREGATES ON KAUAI

Thronas currently pays its landlord, A& B Properties, a royalty rate of \$3.00/ton to extract stone. POK pays a royalty rate of \$2.50/ton to the State of Hawaii and \$2.50/ton to KAA to extract sand from POKQ. The Kawai'ele sand is functionally comparable to the sand in the POKQ. The contracted royalty rate is \$39.41/CY, about \$29.19/ton for Kawai'ele sand.

CURRENT COSTS TO ACQUIRE SAND ON KAUAI

Based on Oceanit's Engineering Assessment, the realistic sources of concrete-grade and beach sand on Kauai are from POKQ and Kawai'ele. The cost to extract, haul and screen about 35,174 CY of Kawai'ele sand is about \$52.84/CY including the royalty fee of \$39.41/CY. By comparison, sand is available for purchase from POK at an average of \$46.33/CY including hauling. The comparative process and unit costs are summarized in Exhibit A.

The total cost to acquire the sand from Kawai'ele is highest because of the royalty rate. To be comparable to the cost of acquiring sand from POK, the maximum Market Royalty Rate before profit is estimated to be \$32.90/CY, shown as follows:

	Maximum Royalty Rate before profit (per CY)
Cost to acquire sand from POK	\$46.33
Cost to mine sand from Kawai'ele	\$ 52.84
Less contract royalty rate	(39.41)
Cost before contract royalty rate and profit	\$ 13.43
Maximum Market Royalty Rate for Kawai'ele sand before profit	<u>\$32.90</u>

Mr. Scott Pingrey
March 18, 2021
Page 10



CONCLUSION

The Market Royalty Rate for the right to extract the existing sand resource in Parcels 4 and 5 is not more than \$39.41 per cubic yard, the contract rate in the Licenses.

STUDY CONDITIONS

The complete study conditions are presented in Addendum 6.

* * * * *

We appreciate the opportunity to assist you on this interesting and challenging assignment. Please contact us if you have any questions.

Sincerely,

JOHN CHILD & COMPANY, INC.

Karen Char, MAI, CRE
President
Certified General Appraiser License No. 184
State of Hawaii
Expires December 31, 2021

Market Royalty Rate for DLNR Sand Licenses
**COMPARISON OF ESTIMATED COSTS TO ACQUIRE AND DELIVER
 SAND ON KAUAI**
 Exhibit A

Oceanit Table 2

Cost to buy sand from POK [1]			
Qty	Units	Unit price	Subtotal
47,485	Tons	\$5.00	\$237,425
47,485	Tons	23.00	1,092,153
47,485	Tons	6.32	300,022
			<u>\$1,629,599 [3]</u>
			<u>\$34.32</u>
			<u>\$46.33</u>

Oceanit Table 1

Cost to extract sand from Kawai'eie Waterbird Sanctuary			
Qty	Units	Unit price	Subtotal
35,174	CY	\$39.41	\$1,386,207
1	EA	1,000.00	1,000
1	LS	5,000.00	5,000
35,174	CY	3.50	123,109
-	-	-	0
35,174	CY	8.53	300,022
1	EA	1,000	1,000
35,174	CY	1.20	42,209
			<u>\$1,858,547 [2]</u>
			<u>\$39.14</u>
			<u>\$52.84</u>

Purchase from POK

Royalty fee

Provision of screened sand

Equipment mobilization

Final grading

Loading of sand

On-site sand screening and loading

Hauling sand from Kawai'eie to Lawai

Hauling sand from Mana to Lawai

Equipment demobilization

Sand screening and sorting

Total

Cost per ton

Cost per CY

[1] Allocation of purchase price per ton.

[2] Excluding profit.

[3] Including profit.

Source: Oceanit, Mana Sands Engineering Assessment, March 2021. Inconsistencies result from rounding differences.

CERTIFICATION



We certify, to the best of our knowledge and belief:

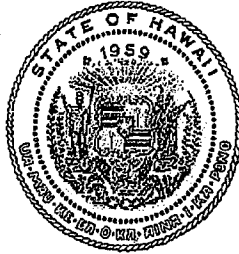
- Reported statements of fact are true and correct.
- Reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are our unbiased professional analyses, opinions, and conclusions.
- We have no present or prospective interest in the property that is the subject of this report, and we have no personal interest or bias with respect to the parties involved.
- Within the past three years, we have not provided real estate appraisal and/or appraisal review services relating to an ownership interest in the property that is the subject of this report and have informed the client prior to acceptance of this assignment.
- Our engagement was not contingent upon developing or reporting predetermined results.
- Our compensation is not contingent on the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event and is not contingent on an action or event resulting from the analyses, opinions or conclusions in, or use of, this report.
- The reported analysis, opinions, and conclusions were developed, and the report has been prepared, in conformity with the requirements of the Code of Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute, and the Appraisal Foundation's Uniform Standards of Professional Appraisal Practice (USPAP).
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives, and to the requirements relating to review by duly authorized representatives of the State of Hawaii, Counselors of Real Estate, and the American Society of Appraisers.
- As of the date of this report, Karen Char, MAI completed the continuing education program for Designated Members of the Appraisal Institute.
- ASA has a mandatory recertification program. Karen Char, ASA is currently certified under this program.
- The undersigned personally visited the real estate that is the subject of this report.
- No one other than the undersigned prepared the analysis, opinions, and conclusions in this report.

JOHN CHILD & COMPANY, INC.

Karen Char, MAI, CRE, ASA
President
Certified General Appraiser License No. 184
State of Hawaii
Expires December 31, 2021



NOTICE OF SALE: PUBLIC AUCTION OF PARCELS 4 AND 5



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE

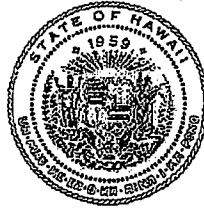
PUBLIC AUCTION BID PACKET

FOR

STATE LAND LICENSE

AUCTION DATE: July 6, 2009

ISLAND OF KAUAI



PUBLIC AUCTION BID PACKET

FOR

STATE LAND LICENSE

ISLAND OF KAUAI

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NOTICE OF SALE

PUBLIC AUCTION SALE OF STATE OF HAWAII LAND LICENSES
ON THE ISLAND OF KAUAI

The Department of Land and Natural Resources (DLNR), Division of Forestry and Wildlife (DOFAW) will be conducting a public auction sale of Land Licenses for State lands at the following date and location:

ISLAND OF KAUAI

DATE & TIME: Monday, July 6, 2009 at 10:00 am

PLACE: State Office Building, 3060 Eiwa Street, Conference Room 209 A-C,
Lihue, Kauai 96766.

Note: Any person who has failed to submit an Application and all required attachments by 4:00 p.m., on Wednesday, June 17, 2009 will not be allowed to bid.

The licenses intended to be auctioned on the above date and the subject parcels are as follows:

ITEM 1:

LOCATION: Parcel 4, Mana, Waimea, Kauai, as shown and described on Government Survey Map Job: K-165(95); TAX MAP KEY: (4) 1-2-02: portion 1; AREA: 18.995 acres, more or less; SPECIFIC USE: License for excavation and removal of sand for commercial purposes; TERM: 2 years; MINIMUM UPSET ROYALTY RATE: \$39.41 per cubic yard; EFFECTIVE ROYALTY: The successful bid at auction applied to the amount of sand to be removed; DEPOSIT: \$20,000 or 2% of the Effective Royalty, whichever is less, payable within 24 hours of the close of bidding; SPECIAL CONDITION: Licensee shall not under any condition, remove more than 23,211 cubic yards of material from Parcel 4.

ITEM 2:

LOCATION: Parcel 5, Mana, Waimea, Kauai, as shown and described on Government Survey Map Job: K-165(95); TAX MAP KEY: (4) 1-2-02: portion 1; AREA: 18.995 acres, more or less; SPECIFIC USE: License for excavation and removal of sand for commercial purposes; TERM: 2 years; MINIMUM UPSET ROYALTY RATE: \$39.41 per cubic yard; EFFECTIVE ROYALTY: The successful bid at auction applied to the amount of sand to be removed; DEPOSIT: \$20,000 or 2% of the Effective Royalty, whichever is less, payable within 24 hours of the close of bidding; SPECIAL CONDITION: Licensee shall not under any condition, remove more than 23,600 cubic yards of material from Parcel 5.

Applications by prospective bidders for the above listed items must be received by the DLNR no later than 4:00 p.m., on Wednesday, June 17, 2009 at the Kauai Branch DOFAW Office listed below. **Any person who has failed to submit an Application and all required attachments by this date and time will not be allowed to bid.** Each applicant shall be informed in writing in advance of the auction date as to his/her eligibility to bid at the public auction. See Public Auction Bid Packet for further instructions.

Any person wishing to bid and purchase a land license for any of the items listed above must first qualify to bid under the general qualifying criteria and the pre-qualifying criteria as described in the Public Auction Bid Packet. Eligibility to bid shall be determined by the information supplied by prospective bidders in the Application and Qualification Questionnaire form.

The Public Auction Bid Packet describing the auction sale procedures, qualification requirements and other requirements, the draft land license document describing the terms and conditions of the license, survey maps, and descriptions of the items listed above may be examined and obtained at the DOFAW Offices listed below.

Kauai Branch DOFAW Office
3060 Eiwa Street, Room 306
Lihue, Kauai 96766

Tel. 274-3433

DOFAW Administration Office
Kalanimoku Building
1151 Punchbowl Street, Room 325
Honolulu, Oahu 96813

Tel. 587-0166

Oahu Branch DOFAW Office
2135 Makiki Heights Drive
Honolulu, Oahu 96822

Tel. 973-9778

Maui Branch DOFAW Office
54 South High Street
Wailuku, Maui 96793

Tel. 984-8100

Hawaii Branch DOFAW Office
19 E. Kawaiili Street
Hilo, Hawaii 96720

Tel. 974-4221

You may also visit our website to download and review the draft land license document and the Public Auction Bid Packet, which includes the general pre-qualifying and qualifying criteria at:

www.hawaii.gov/dlnr/dofaw

Prospective bidders are responsible to thoroughly read and understand the covenants, terms, reservations, and conditions contained in the Public Auction Bid Packet and draft land license document. Furthermore, prospective bidders are responsible to inspect premises of items to be bid on (Parcels 4 and/or 5 as described above, Mana, Waimea District, Kauai).

All bidders or authorized representatives must be present in person at the auction. The DLNR reserves the right to cancel or postpone the public auction, to reject any and all Applications and to waive any defects when, in the opinion of the Chairperson of the Board of Land and Natural Resources, such action will be in the best interest of the State.

Alternate award clause if highest bidder fails to provide required deposit within 24 hours – DLNR reserves the right to award Land License to the next highest bidder.

Any persons requiring special accommodations (e.g. large print materials, sign language interpreters, etc.) are to contact Thomas Kaiakapu at 808-274-3433.

INSTRUCTIONS TO BIDDERS

1. PURPOSE

This Public Auction Bid Packet provides information, instructions, documents and forms related to the sale of State of Hawaii land licenses scheduled for public auction on **Monday, July 6, 2009 at 10:00 a.m.** or as soon thereafter as practicable, at the State Office Building, 3060 Eiwa Street, Conference Room 209 A-C, Lihue, Kauai 96766 for the items as listed in the Notice of Sale. This auction may be cancelled, postponed, or continued by order of the Chairperson of the Board of Land and Natural Resources.

2. SIGNIFICANT DATES

Advertisement of Auction and Application Pick-up	<u>Friday, May 29, 2009</u>
Applications Due: 4:00 p.m.	<u>Wednesday, June 17, 2009</u>
Compliance Review of Applications*	<u>June 19, 2009</u>
Substantive Review and Qualification of Applications*	<u>June 19, 2009</u>
Notice of Auction Qualification/ Disqualification*	<u>June 22, 2009</u>
Public Auction Held	<u>10:00 a.m. Monday, July 6, 2009</u>
All Required Auction Documents Signed	<u>10:00 a.m. Monday, July 6, 2009</u>

3. GENERAL QUALIFYING CRITERIA TO BE MET BY ALL BIDDERS

Any person shall be entitled to bid and purchase a land license at this auction, except a person who:

- a. Is in arrears in the payment of taxes, rents or other obligations owing to the State of Hawaii or to any of its political subdivisions;
- b. Is a minor;
- c. Has had during the five (5) years preceding the date of the public auction, a previous sale, lease, license, permit or easement covering public lands cancelled for failure to satisfy the terms, conditions and covenants thereof;

d. Fails to show upon demand of the Chairperson of the Board of Land and Natural Resources or his agent at the public auction, in cash, certified check, or cashier's check, the following sum: **\$20,000 or 2% of the Effective Royalty, whichever is less.**

e. Fails to meet the pre-qualifying criteria as outlined in section 4.

4. PRE-QUALIFYING CRITERIA TO BE MET BY ALL BIDDERS FOR A STATE OF HAWAII LAND LICENSE

In addition to meeting the general qualifying criteria in section 3, any person wishing to bid and purchase a State land license described in the Notice of Sale must first qualify to bid according to the following evaluation criteria:

a. QUALIFICATIONS AND EXPERIENCE

- * Type and duration of business experience
- * Expertise in particular field of business
- * Contractor registration number(s)
- * Certificate of Compliance
- * Certificate of Good Standing

b. FINANCIAL CAPACITY TO FUND OPERATIONS

- * Ability to fund operations

c. CONVICTIONS FOR VIOLATION OF LAW

If the following criterion is met, the applicant shall be deemed to have met the pre-qualifying criteria of this section:

- * Is registered with the U.S. Securities and Exchange Commission and has been publicly traded for at least the last three years.

5. APPLICATION PROCEDURES

Eligibility to bid on a State land license shall be determined by the information supplied by prospective bidders in the Application and Qualification Questionnaire form ("Application"), Appendix A. Any person who has not completed and submitted an Application by the date and time indicated below will not be allowed to bid for the State

land license at the public auction.

One (1) original and four (4) copies of the completed Application with all required attachments must be received no later than **4:00 p.m., Wednesday, June 17, 2009** by the Department of Land and Natural Resources at the Kauai Branch DOFAW Office listed in section 14. Facsimile copies shall not be accepted. The official time shall be that recorded on the receiving Kauai Branch DOFAW Office's time stamp clock. These conditions apply regardless of whether an Application is mailed or hand-delivered. The State assumes no responsibility for lateness due to mail or other delivery service.

A prospective bidder, at the time an Application is submitted, must be capable of performing all of the terms and conditions of the Land License that may be awarded.

A prospective bidder, at the time an Application is submitted, shall have inspected the subject parcels to be leased and understands the parcels shall be leased in an "AS IS" condition, without any representations or warranties made by the State of the Department of Land and Natural Resources as to the condition of the land or suitability of the land for the use permitted in the applicable land license.

Each applicant shall be informed in writing in advance of the date of the auction as to his/her eligibility or non-eligibility to bid at the public auction.

All information provided in the Application and Qualification Questionnaire shall remain confidential until the conclusion of the public auction. Thereafter, any information which is protected under Chapter 92F, Hawaii Revised Statutes, including an individual's financial information, will continue to be held confidential.

6. REVIEW OF APPLICATIONS

A screening committee will review all Applications. The screening committee will be guided by the general qualifying and pre-qualifying criteria in sections 3 and 4.

An Application may be rejected for any of the following reasons:

- (a) If the Application is late, conditional, incomplete or does not adhere to the format and instructions;
- (b) If it is shown that inaccurate statements are made in the Application;
- (c) If the Application fails to meet any of the general qualifying or pre-qualifying criteria in sections 3 and 4; or
- (d) If it is in the best interests of the State.

7. MODIFICATION OF THE APPLICATION

Modifications to a submitted Application may be made prior to the Application due date. One (1) original and five (5) copies of the modified sheets or replacement Application shall be submitted to the Kauai Branch DOFAW Office by the Application due date.

8. RECONSIDERATION OF DISQUALIFICATION

An applicant may request a reconsideration of his/her disqualification. Any such request shall be in writing and received by the Department of Land and Natural Resources, Kauai Branch DOFAW Office, 3060 Eiwa Street, Room 306, Lihue, Kauai 96766, within seven (7) calendar days from the day the Department mailed the notice of disqualification to the applicant. The applicant shall state the reasons why he/she believes the disqualification was improper and refer to evidence in his/her application to support such reasons. The Chairperson's decision on any reconsideration shall be final.

9. AUCTION PROCEDURE

- a. All prospective bidders shall be qualified pursuant to sections 3 and 4.
- b. All qualified bidders or authorized corporate representatives must be present in person at the auction.
- c. All qualified bidders must bring a picture ID and funds pursuant to section 3.d. above.
- d. Bidding shall commence at the upset minimum annual license fee as stated in the Notice of Sale document and the qualified bidder making the highest bid at the fall of the hammer shall be the successful buyer of the license.

10. DUTIES OF SUCCESSFUL BIDDER

The successful bidder shall, upon the fall of the hammer:

1. Execute a Memorandum of Land License for his/her purchase;
2. Execute an Affidavit of Non-Arrears stating that he or she is not in arrears in the payment of taxes, rents or other obligations owing to the State of Hawaii or any of its political subdivisions;
3. Pay in cash, certified, or cashier's check, the amount set forth in section 3.d. above; and
4. Within one (1) working day from the date of sale:
 - a. Pay all charges required by law, including the cost of survey maps and

descriptions, documents, conveyance tax and advertising costs related to the Notice of Sale document.

- b. Pay the difference between the minimum amount required to be paid at the fall of the hammer and fifty per cent (50%) of the annual rent bid.

Failure to execute the Memorandum of Land License, Affidavit of Non-Arrears, and make such payments within the stated time periods shall, at the option of the State of Hawaii, terminate any and all rights which such defaulting bidder may have been acquired at said public auction sale, and the State of Hawaii may, at its option, cancel the sale and retain as damages, the sums, or any portions thereof, previously paid by the successful bidder.

11. COMMENCEMENT DATE FOR LICENSE

The first day of the month following the date of sale; provided that the Chairperson may amend the commencement date for good cause.

12. EFFECTIVE RENTAL

The amount bid at public auction.

13. CONDITION OF THE PROPERTY

The property shall be leased in an "AS IS" condition, without any representations or warranties made by the State or the Department of Land and Natural Resources as to the condition of the land or suitability of land for the use permitted in the license.

14. LAND LICENSE DOCUMENT

Proposed draft of the land license document setting forth fully the terms and conditions to be observed and performed by the licensee together with survey map and description of the lands to be leased may be examined at the following offices:

Kauai Branch DOFAW Office
3060 Elwa Street, Room 306
Lihue, Kauai 96766

Tel. 274-3433

DOFAW Administration Office
Kalanimoku Building
1151 Punchbowl Street, Room 325
Honolulu, Oahu 96813

Tel. 587-0166

Oahu Branch DOFAW Office
2135 Makiki Heights Drive

Tel. 973-9778

Honolulu, Oahu 96822

Maui Branch DOFAW Office
54 South High Street
Wailuku, Maui 96793

Tel. 984-8100

Hawaii Branch DOFAW Office
19 E. Kawaili Street
Hilo, Hawaii 96720

Tel. 974-4221

15. ADDITIONAL REQUIREMENTS

Refer to the draft land license documents for bond requirements, insurance requirements, land development and utilization plan requirements, utilizations and clearing requirements, improvement requirements, reservations and other terms and conditions.

Each prospective bidder shall carefully examine all documents. Failure on the part of any prospective bidder to make such an examination shall not be grounds for any claim that the prospective bidder did not understand the conditions of the lease or auction. Each prospective bidder shall notify the Division of Forestry and Wildlife, Kauai Branch DOFAW Office at 3060 Eiwa Street, Room 306 Lihue, Kauai 96766, Attn: Thomas Kaiakapu, in writing, of any ambiguity, inconsistency, or conflict in the documents.

16. EFFECT OF SALE

Following the public auction sale, a land license document in conformance with the purchase shall be sent to the successful bidder for execution. In the event that the successful bidder shall fail to execute said license document within thirty (30) calendar days after receipt, the State of Hawaii may, at its option, cancel the sale and retain the sums or any portion or portions thereof, previously paid by the successful bidder as liquidated damages. The retention of said sums shall be in addition to any other rights or remedies to which the State of Hawaii may be entitled.

DONE at the Office of the Department of Land and Natural Resources, State of Hawaii
this 29th day of May, 2009.

BOARD OF LAND AND NATURAL RESOURCES

By: 
Laura H. Thielen, Chairperson



LAND LICENSE NO. FW-2010-K-01

Total Number of Pages:
Tax Map Key No. (4) 1-2-02:Por. 1



and encumbered by Executive Order No. 4209 to the Department of Land and Natural Resources, Division of Forestry and Wildlife, ("DOFAW") for Mana Plans Forest Reserve Purposes, Tax Map Key No.(4)1-2-02:Por. 1, consisting of Parcel 4, more particularly delineated on Exhibit "A" attached hereto and made a part hereof, and hereinafter referred to as the "License Area."

The terms and conditions under which this License is issued are as follows:

1. The Licensee shall pay in legal tender of the United States of America, at the Department of Land and Natural Resources, Honolulu, Hawaii, or at the Office of the DOFAW Branch Manager on the Island of Kauai, the amount of THIRTY NINE AND 41/100 Dollars (\$39.41) per cubic yard, (the "royalty rate"), applied to the amount of material removed under this License ("effective royalty"). The effective royalty shall be paid to the Licensor in monthly installments. Delinquent payments due to Licensor shall be subject to an interest charge of twelve percent (12%) per annum, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each month of delinquency. Payment shall be made at the same time that verified reports are turned in to the Kauai DOFAW Branch Manager.

Verified reports shall be in the form of weight slips from a vehicle weigh station of the quantity of material removed from the License Area for the preceding month. Each verified report shall be signed by the Licensee and include a verification that the amounts of sand removed, as indicated in the report, is true and correct to the best of their knowledge. The verified reports shall be due at the end of each month that the License is in effect, and prior to the tenth (10th) day of the succeeding month.

2. The Licensee shall remove and pay for a cumulative minimum of 2,500 cubic yards of material from Parcel 4 per quarter. The maximum cubic yards of material that may be removed during the License term shall be 23,211 cubic yards.

The Licensee, as the successful bidder, shall place a deposit with the Licensor within twenty-four (24) hours of the close of bidding of TWENTY THOUSAND AND NO/100 DOLLARS (\$20,000.00) or two percent (2%) of the effective royalty, whichever is less ("Deposit"). For purposes of the Deposit, the effective royalty shall be determined by applying the royalty rate to the maximum amount of sand that may be removed during the License term. The Deposit shall not be considered interest bearing. The amount due the Licensor monthly shall be deducted

from the Deposit until the Deposit is depleted, after which monthly payments to the Licenser will commence.

3. The term of the License shall be for two (2) years, to begin MARCH 1, 2011 and shall expire FEBRUARY 28, 2013; providing that any party may terminate this License at any time during the term of the License by providing the other party thirty (30) calendar days prior written notice of the intent to cancel.

Upon termination, abandonment, or expiration, the Licensee shall not be relieved of any and all claims or demands accrued, including claims for property damage, personal injury or death, caused by any act or omission of the Licensee, or for any breach of the terms and conditions of this License.

The Licensee shall remove from the License Area all equipment, machinery, and improvements of every kind and nature within ten (10) calendar days after receiving notice of termination or upon abandonment of this License.

The Licensee shall, at its sole cost and expense, restore the License Area to a condition satisfactory to the Chairperson upon early termination or abandonment of this License.

4. The Licensee shall confine operations strictly to the License Area and shall take all necessary precautions to protect adjoining property from damage or injury. Any interference with or damage to property under the control of the State of Hawaii and/or under Executive Order 4209 incident to the exercise of the privilege granted shall be promptly corrected and/or repaired by the Licensee at its own expense to the satisfaction of the Chairperson of the Board of Land and Natural Resources.

5. The Licensee shall meet with the Kauai DOFAW Branch Manager in advance of any removal of material to discuss removal plans and safety requirements for the removal activity. The removal of the material shall be under the supervision of the Licenser and DOFAW and shall be taken from only those areas so designated by the Licenser and DOFAW. No removal shall occur without such designation.

The Licensee shall give the Kauai DOFAW Branch Manager prior notice of at least 48 hours before entering the License Area or removing any material; and prior notice of at least 48 hours before leaving the License Area, when the allotted cubic

yards are removed.

6. This License is non-transferable. If the Licensee is a partnership, joint venture or corporation, the sale or transfer of 20% or more of ownership interest or stocks by dissolution, merger or any other means shall be deemed a transfer for purposes of this paragraph and subject to the right of the Licensor to terminate this License effective of the date of sale or transfer.

7. The Licensor reserves on to itself the right to sell or grant to others similar rights or privileges; PROVIDED, HOWEVER, that the rights herein reserved shall not be exercised by the Licensor, or by any other licensee(s) of the Licensor in such a manner as to interfere unreasonably with the herein Licensee in the free use of said License Area for the purpose herein specified.

8. The use and enjoyment of the License Area shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

9. The Licensee shall procure, at its own cost and expense and keep in full force and effect throughout the term of this License, commercial general liability insurance with an insurance company or companies acceptable to the Board and licensed to do business in the State of Hawaii, in an amount of at least \$300,000.00 for each occurrence and \$500,000.00 aggregate. The policy or policies of insurance shall name the State of Hawaii as additional insured. The insurance shall cover the entire License Area. The Licensee, prior to entry and use of the License Area or within fifteen (15) calendar days from the effective date of this Land License, whichever is sooner, shall furnish the Licensor with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire License term, and furnish a like certificate(s) upon each renewal of the policy(s). The insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) calendar days written notice has been given to the Licensor.

The Licensor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this License. If, in the opinion of the Licensor, the insurance provisions in this License do not provide adequate

protection for the Licensor, the Licensor may require Licensee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Licensor's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Licensor shall notify Licensee in writing of changes in the insurance requirements and Licensee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Licensor incorporating the changes within thirty (30) calendar days of receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Licensee's liability under this License nor to release or relieve the Licensee of the indemnification provisions and requirements of this License. Notwithstanding the policy(s) of insurance, Licensee shall be obligated for the full and total amount of any damage, injury, or loss caused by the Licensee's negligence or neglect connected with this License.

It is agreed that any insurance maintained by the Licensor will apply in excess of, and not contribute with, insurance provided by Licensee's policy(s).

10. The Licensee shall observe and comply with all laws, ordinances, rules and regulations of the federal, state, municipal or county governments now in force or which may hereinafter be in force, affecting the License Area.

11. The Licensee shall not do, commit, permit or suffer to be done any willful or voluntary waste, spoil, or destruction in and upon the License Area or any part thereof; nor shall the Licensee cut down, permit or suffer to be cut down, any trees growing or being grown, or which shall hereafter grow, in and upon the License Area or any part thereof, except special permission for the same may be given by the Department of Land and Natural Resources.

12. All work incident to the removal of material shall be accomplished without cost to the Licensor.

13. No stockpiling of material shall occur in the License Area. The removal of material shall be restricted to weekdays and holidays.

14. The Licensee shall indemnify, defend, and hold Licensor harmless from and against any claim or demand for loss,

liability or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of Licensee relating to Licensee's use, occupancy, maintenance, or enjoyment of the License Area; 2) any failure on the part of the Licensee to maintain the License Area, and including any accident, fire or nuisance growing out of or caused by any failure on the part of Licensee to maintain any of Licensee's equipment within the License Area in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Licensee's non-observance or non-performance of any of the terms, covenants, and conditions of this License or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

15. In case the Licensors shall, without any fault on its part, be made a party to any litigation commenced by or against the Licensee (other than condemnation proceedings), the Licensee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the Licensors; furthermore, the Licensee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the Licensors in enforcing the terms and conditions of this License, in recovering possession of the License Area, or in the collection of delinquent royalty, taxes, and any and all other charges.

16. The Licensee shall post a \$50,000.00 performance bond with the Department of Land and Natural Resources, State of Hawaii, to insure faithful compliance with the terms and conditions of the License.

17. The Licensee shall pay all cost and expense incurred by the issuance of this License.

18. Any and all disputes and/or questions arising under this License shall be referred to the Chairperson of the Board of Land and Natural Resources and his determination of these disputes or questions shall be final and binding on the parties.

19. The Licensors, its agents and employees, shall at any reasonable time upon twenty-four (24) hours notice to the Licensee, have access to all books, accounts, records, and reports of the Licensee relating to the material removed from the License Area herein described for the purpose of inspection, examination or audit. If the audit by Licensors shall disclose that the royalty rate has been underpaid by five percent (5%) or

more for the period under examination, the Licensor shall have the right to terminate this License.

20. The Licensee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Licensee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the License Area any such materials except to use in the ordinary course of Licensee's business, and then only after written notice is given to Licensor of the identity of such materials and upon Licensor's consent which consent may be withheld at Licensor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Licensee, then the Licensee shall be responsible for the reasonable costs thereof. In addition, Licensee shall execute affidavits, representations and the like from time to time at Licensor's request concerning Licensee's best knowledge and belief regarding the presence of hazardous materials on the License Area placed or released by Licensee.

The Licensee agrees to indemnify, defend, and hold Licensor harmless, from any damages and claims resulting from the release of hazardous materials on the License Area occurring while Licensee is in possession, or elsewhere if caused by Licensee or persons acting under Licensee. These covenants shall survive the expiration or earlier termination of this License.

For the purpose of this License "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

21. Time is of the essence in this License and if the Licensee shall fail to pay the effective royalty, or any part thereof, at the times and in the manner provided within thirty (30) days after delivery by the Licensor of a written notice of breach or default, or if the Licensee shall become bankrupt, or shall abandon the License Area, or if this License and License Area shall be attached or taken by operation of law, or if Licensee shall fail to observe and perform any of the covenants,

terms, and conditions contained in this License and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Licensor of a written notice of breach or default, by personal service, registered mail or certified mail to the Licensee at its last known address and to each mortgagee or holder of record having a security interest in the License Area, the Licensor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the License Area, or any part, and upon or without the entry, at its option, terminate this License without prejudice to any other remedy or right of action for arrears of royalty or for any preceding or other breach of contract; furthermore Licensor shall retain all royalty paid in advance to be applied to any damages.

22. The Licensee shall be solely responsible for securing the License Area against trespass and unauthorized and unlawful activity by others.

23. The Licensee shall meet with DOFAW representatives for site review, prior to surface vegetation removal and sand removal within the License Area.

24. This License is encumbered under Governor's Executive Order No. 4209 and therefore, is subject to Governor's concurrence.

25. The Licensor does not warrant the conditions of the License Area, as the same are being licensed as is. The Licensor makes no representation regarding the exact quantity or quality of the materials or any other condition applicable to the License Area.

26. The Licensee shall comply with all standards of safety required by the federal, state, and county governments for operation and utilization of the Licensed Area.

27. In the event any prehistoric, historic or archaeological sites or remains are discovered during the removal of material, the Licensee shall stop all work immediately and notify the Kauai Office of DOFAW and the Historic Preservation Division of the Department of Land and Natural Resources on Oahu and shall obtain the approval of the State of Hawaii prior to recommencing any work within, on, or involving the License Area.

28. At the end of the license term, the Licensee shall finish, fill, clear, and/or smooth the License Area to the condition and contours delineated on Exhibit "A."

IN WITNESS WHEREOF, the STATE OF HAWAII, the Licensor herein, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these present to be duly executed this 24TH day of FEBRUARY, 2011, the Licensee herein, has caused these presents to be duly executed this 10TH day of FEBRUARY, 2011.


STATE OF HAWAII

By 
Chairperson
Board of Land and
Natural Resources

LICENSOR

Approved by the Board of
Land and Natural Resources
at its meetings held on
May 14, 2004, January 14, 2005,
February 22, 2008, and
September 12, 2008.

GOODFELLOW BROS., INC., a
Washington corporation

By 
R. Scott Pingrey
Its Chief Engineer

And By _____

Its _____

APPROVED AS TO FORM:


Deputy Attorney General

Dated: Nov. 5, 2009

LICENSEE



STATE OF HAWAII)
) SS.
COUNTY OF Kauai)

On this 11th day of February, 2011, before me appeared R. Scott Pingree and at the time they are the Chief Engineer and at respectively, of GOODFELLOW BROS., INC., a Washington corporation, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and the said Chief Engineer and at acknowledged said instrument to be the free act and deed of said corporation.

L.S.

Audrey M. Bonilla
Notary Public, State of

Audrey M. Bonilla

My Commission Expires: 3/24/2012

Date of the Notarized Document: 2/11/11

Number of Pages: 10

Identification or Description of the Document being Notarized:

SOH DLNR LAND LICENSE

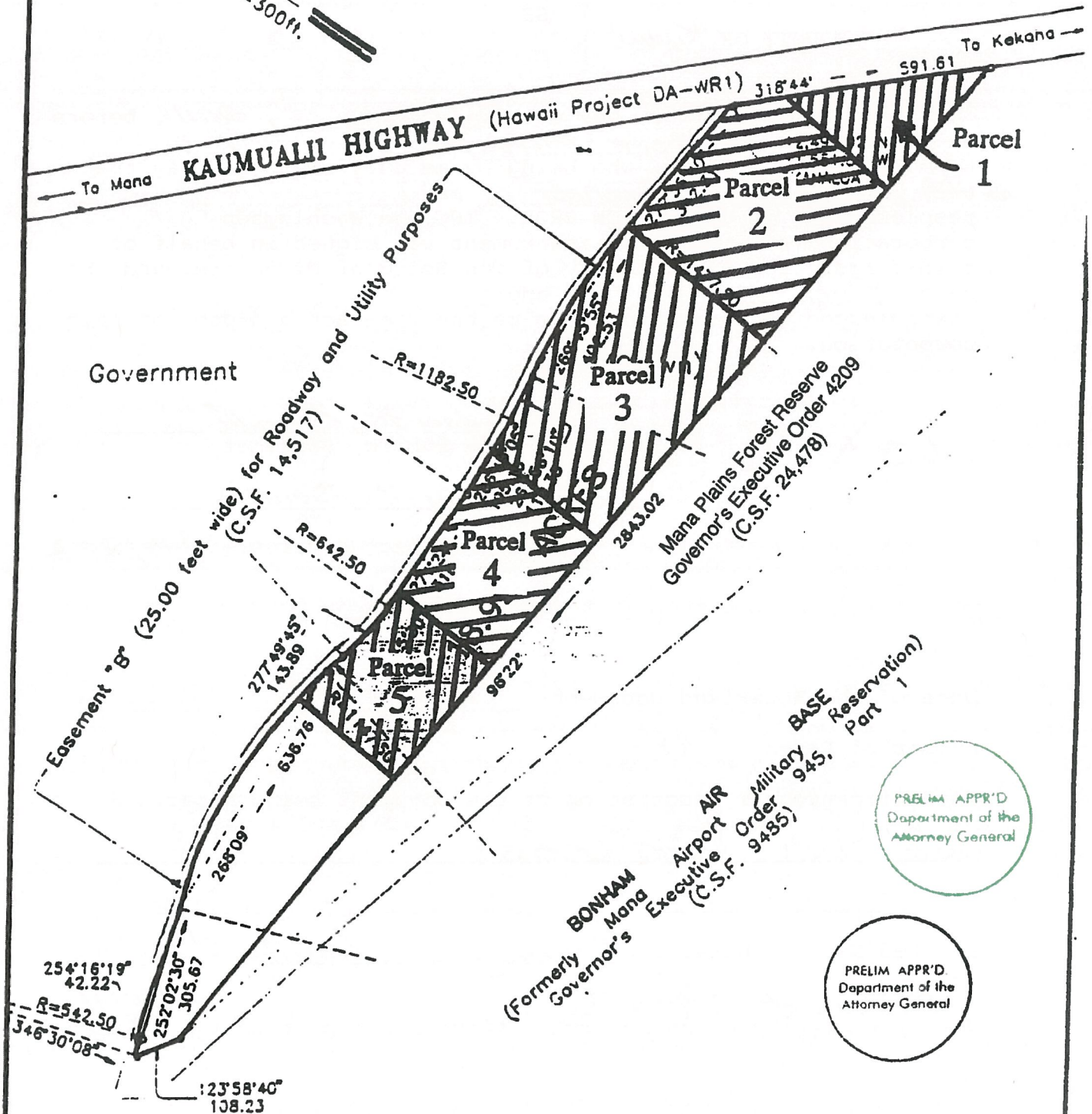
Printed Name of Notary: Audrey M. Bonilla 5th Circuit

Audrey M. Bonilla 2/11/11
Notary's Signature and Notary's Official Stamp or Seal Date

L.S.

Department of Land and Natural Resources
Division of Forestry and Wildlife

TRUE NORTH
SCALE: 1 in. = 300 ft.



Phase II Mana Plains Sand Mine / Forest Reserve
Sand Mining Parcel Location Map

Mana, Waimea, Kauai, Hawaii

Scale: 1 inch = 300 feet

EXHIBIT "A"

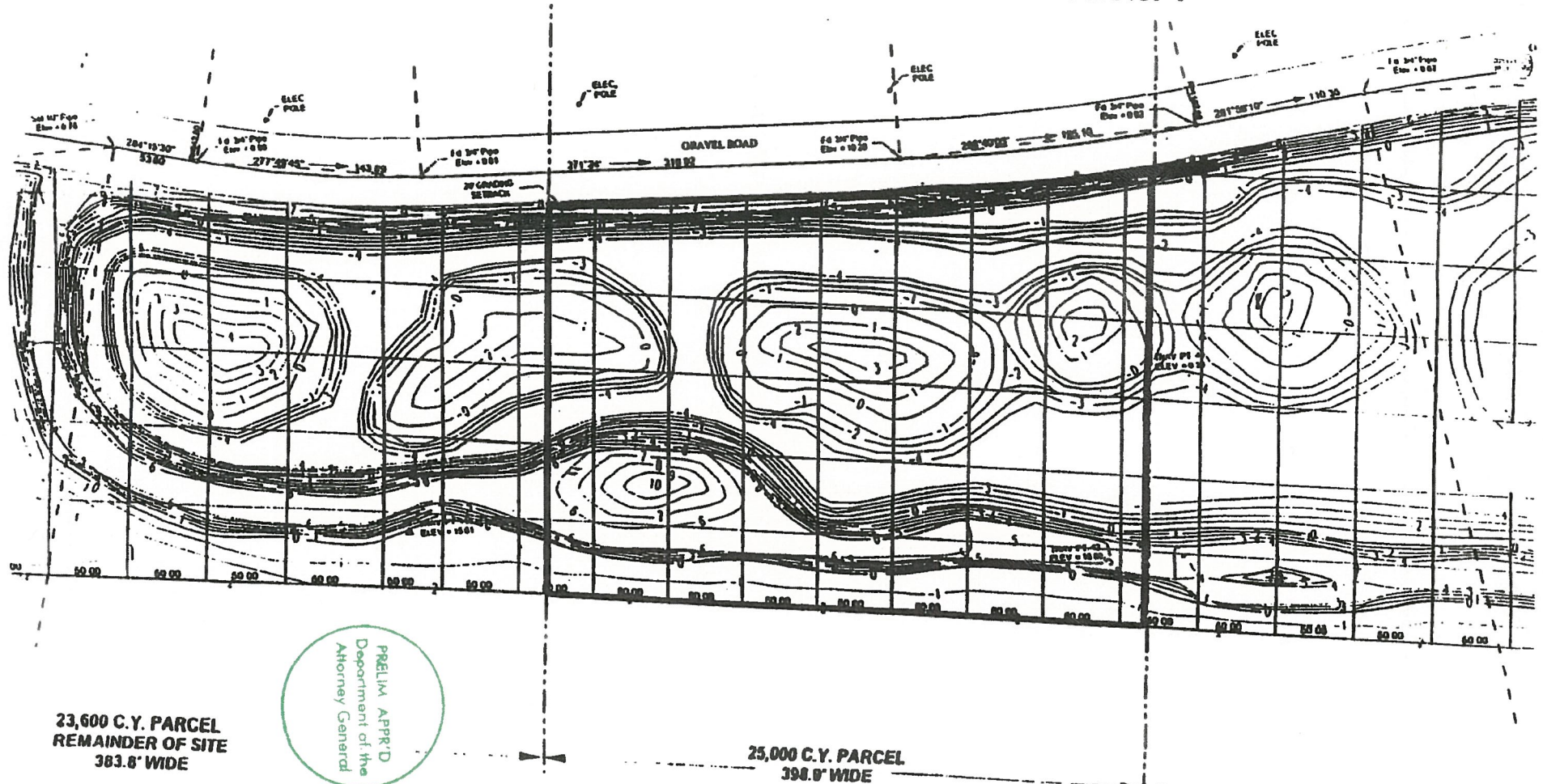
EXHIBIT "A"

PRELIM. APPR'D.
Department of the
Attorney General

Department of Land and Natural Resources
Division of Forestry and Wildlife

ERNMENT (CROWN) I

Phase II Mana Plains Sand Mine / Forest Reserve
Final Surface and Bottom Contours for Parcel No. 4





LAND LICENSE NO. FW-2010-K-02

Total Number of Pages:
Tax Map Key No. (4) 1-2-02:Por. 1



and encumbered by Executive Order No. 4209 to the Department of Land and Natural Resources, Division of Forestry and Wildlife, ("DOFAW") for Mana Plans Forest Reserve Purposes, Tax Map Key No.(4)1-2-02:Por. 1, consisting of Parcel 5, more particularly delineated on Exhibit "A" attached hereto and made a part hereof, and hereinafter referred to as the "License Area."

The terms and conditions under which this License is issued are as follows:

1. The Licensee shall pay in legal tender of the United States of America, at the Department of Land and Natural Resources, Honolulu, Hawaii, or at the Office of the DOFAW Branch Manager on the Island of Kauai, the amount of THIRTY NINE AND 41/100 Dollars (\$39.41) per cubic yard, (the "royalty rate"), applied to the amount of material removed under this License ("effective royalty"). The effective royalty shall be paid to the Licensor in monthly installments. Delinquent payments due to Licensor shall be subject to an interest charge of twelve percent (12%) per annum, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each month of delinquency. Payment shall be made at the same time that verified reports are turned in to the Kauai DOFAW Branch Manager.

Verified reports shall be in the form of weight slips from a vehicle weigh station of the quantity of material removed from the License Area for the preceding month. Each verified report shall be signed by the Licensee and include a verification that the amounts of sand removed, as indicated in the report, is true and correct to the best of their knowledge. The verified reports shall be due at the end of each month that the License is in effect, and prior to the tenth (10th) day of the succeeding month.

2. The Licensee shall remove and pay for a cumulative minimum of 2,500 cubic yards of material from Parcel 5 per quarter. The maximum cubic yards of material that may be removed during the License term shall be 23,600 cubic yards.

The Licensee, as the successful bidder, shall place a deposit with the Licensor within twenty-four (24) hours of the close of bidding of TWENTY THOUSAND AND NO/100 DOLLARS (\$20,000.00) or two percent (2%) of the effective royalty, whichever is less ("Deposit"). For purposes of the Deposit, the effective royalty shall be determined by applying the royalty rate to the maximum amount of sand that may be removed during the License term. The Deposit shall not be considered interest bearing. The amount due the Licensor monthly shall be deducted

from the Deposit until the Deposit is depleted, after which monthly payments to the Licensor will commence.

3. The term of the License shall be for two (2) years, to begin MARCH 1, 2011 and shall expire FEBRUARY 28, 2013; providing that any party may terminate this License at any time during the term of the License by providing the other party thirty (30) calendar days prior written notice of the intent to cancel.

Upon termination, abandonment, or expiration, the Licensee shall not be relieved of any and all claims or demands accrued, including claims for property damage, personal injury or death, caused by any act or omission of the Licensee, or for any breach of the terms and conditions of this License.

The Licensee shall remove from the License Area all equipment, machinery, and improvements of every kind and nature within ten (10) calendar days after receiving notice of termination or upon abandonment of this License.

The Licensee shall, at its sole cost and expense, restore the License Area to a condition satisfactory to the Chairperson upon early termination or abandonment of this License.

4. The Licensee shall confine operations strictly to the License Area and shall take all necessary precautions to protect adjoining property from damage or injury. Any interference with or damage to property under the control of the State of Hawaii and/or under Executive Order 4209 incident to the exercise of the privilege granted shall be promptly corrected and/or repaired by the Licensee at its own expense to the satisfaction of the Chairperson of the Board of Land and Natural Resources.

5. The Licensee shall meet with the Kauai DOFAW Branch Manager in advance of any removal of material to discuss removal plans and safety requirements for the removal activity. The removal of the material shall be under the supervision of the Licensor and DOFAW and shall be taken from only those areas so designated by the Licensor and DOFAW. No removal shall occur without such designation.

The Licensee shall give the Kauai DOFAW Branch Manager prior notice of at least 48 hours before entering the License Area or removing any material; and prior notice of at least 48 hours before leaving the License Area, when the allotted cubic

yards are removed.

6. This License is non-transferable. If the Licensee is a partnership, joint venture or corporation, the sale or transfer of 20% or more of ownership interest or stocks by dissolution, merger or any other means shall be deemed a transfer for purposes of this paragraph and subject to the right of the Licensor to terminate this License effective of the date of sale or transfer.

7. The Licensor reserves on to itself the right to sell or grant to others similar rights or privileges; PROVIDED, HOWEVER, that the rights herein reserved shall not be exercised by the Licensor, or by any other licensee(s) of the Licensor in such a manner as to interfere unreasonably with the herein Licensee in the free use of said License Area for the purpose herein specified.

8. The use and enjoyment of the License Area shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

9. The Licensee shall procure, at its own cost and expense and keep in full force and effect throughout the term of this License, commercial general liability insurance with an insurance company or companies acceptable to the Board and licensed to do business in the State of Hawaii, in an amount of at least \$300,000.00 for each occurrence and \$500,000.00 aggregate. The policy or policies of insurance shall name the State of Hawaii as additional insured. The insurance shall cover the entire License Area. The Licensee, prior to entry and use of the License Area or within fifteen (15) calendar days from the effective date of this Land License, whichever is sooner, shall furnish the Licensor with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire License term, and furnish a like certificate(s) upon each renewal of the policy(s). The insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) calendar days written notice has been given to the Licensor.

The Licensor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this License. If, in the opinion of the Licensor, the insurance provisions in this License do not provide adequate

protection for the Licensor, the Licensor may require Licensee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Licensor's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Licensor shall notify Licensee in writing of changes in the insurance requirements and Licensee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Licensor incorporating the changes within thirty (30) calendar days of receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Licensee's liability under this License nor to release or relieve the Licensee of the indemnification provisions and requirements of this License. Notwithstanding the policy(s) of insurance, Licensee shall be obligated for the full and total amount of any damage, injury, or loss caused by the Licensee's negligence or neglect connected with this License.

It is agreed that any insurance maintained by the Licensor will apply in excess of, and not contribute with, insurance provided by Licensee's policy(s).

10. The Licensee shall observe and comply with all laws, ordinances, rules and regulations of the federal, state, municipal or county governments now in force or which may hereinafter be in force, affecting the License Area.

11. The Licensee shall not do, commit, permit or suffer to be done any willful or voluntary waste, spoil, or destruction in and upon the License Area or any part thereof; nor shall the Licensee cut down, permit or suffer to be cut down, any trees growing or being grown, or which shall hereafter grow, in and upon the License Area or any part thereof, except special permission for the same may be given by the Department of Land and Natural Resources.

12. All work incident to the removal of material shall be accomplished without cost to the Licensor.

13. No stockpiling of material shall occur in the License Area. The removal of material shall be restricted to weekdays and holidays.

14. The Licensee shall indemnify, defend, and hold Licensor harmless from and against any claim or demand for loss,

liability or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of Licensee relating to Licensee's use, occupancy, maintenance, or enjoyment of the License Area; 2) any failure on the part of the Licensee to maintain the License Area, and including any accident, fire or nuisance growing out of or caused by any failure on the part of Licensee to maintain any of Licensee's equipment within the License Area in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Licensee's non-observance or non-performance of any of the terms, covenants, and conditions of this License or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

15. In case the Licensors shall, without any fault on its part, be made a party to any litigation commenced by or against the Licensee (other than condemnation proceedings), the Licensee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the Licensors; furthermore, the Licensee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the Licensors in enforcing the terms and conditions of this License, in recovering possession of the License Area, or in the collection of delinquent royalty, taxes, and any and all other charges.

16. The Licensee shall post a \$50,000.00 performance bond with the Department of Land and Natural Resources, State of Hawaii, to insure faithful compliance with the terms and conditions of the License.

17. The Licensee shall pay all cost and expense incurred by the issuance of this License.

18. Any and all disputes and/or questions arising under this License shall be referred to the Chairperson of the Board of Land and Natural Resources and his determination of these disputes or questions shall be final and binding on the parties.

19. The Licensors, its agents and employees, shall at any reasonable time upon twenty-four (24) hours notice to the Licensee, have access to all books, accounts, records, and reports of the Licensee relating to the material removed from the License Area herein described for the purpose of inspection, examination or audit. If the audit by Licensors shall disclose that the royalty rate has been underpaid by five percent (5%) or

more for the period under examination, the Licensor shall have the right to terminate this License.

20. The Licensee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Licensee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the License Area any such materials except to use in the ordinary course of Licensee's business, and then only after written notice is given to Licensor of the identity of such materials and upon Licensor's consent which consent may be withheld at Licensor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Licensee, then the Licensee shall be responsible for the reasonable costs thereof. In addition, Licensee shall execute affidavits, representations and the like from time to time at Licensor's request concerning Licensee's best knowledge and belief regarding the presence of hazardous materials on the License Area placed or released by Licensee.

The Licensee agrees to indemnify, defend, and hold Licensor harmless, from any damages and claims resulting from the release of hazardous materials on the License Area occurring while Licensee is in possession, or elsewhere if caused by Licensee or persons acting under Licensee. These covenants shall survive the expiration or earlier termination of this License.

For the purpose of this License "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

21. Time is of the essence in this License and if the Licensee shall fail to pay the effective royalty, or any part thereof, at the times and in the manner provided within thirty (30) days after delivery by the Licensor of a written notice of breach or default, or if the Licensee shall become bankrupt, or shall abandon the License Area, or if this License and License Area shall be attached or taken by operation of law, or if Licensee shall fail to observe and perform any of the covenants,

terms, and conditions contained in this License and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Licensors of a written notice of breach or default, by personal service, registered mail or certified mail to the Licensee at its last known address and to each mortgagee or holder of record having a security interest in the License Area, the Licensors may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the License Area, or any part, and upon or without the entry, at its option, terminate this License without prejudice to any other remedy or right of action for arrears of royalty or for any preceding or other breach of contract; furthermore Licensors shall retain all royalty paid in advance to be applied to any damages.

22. The Licensee shall be solely responsible for securing the License Area against trespass and unauthorized and unlawful activity by others.

23. The Licensee shall meet with DOFAW representatives for site review, prior to surface vegetation removal and sand removal within the License Area.

24. This License is encumbered under Governor's Executive Order No. 4209 and therefore, is subject to Governor's concurrence.

25. The Licensors do not warrant the conditions of the License Area, as the same are being licensed as is. The Licensors make no representation regarding the exact quantity or quality of the materials or any other condition applicable to the License Area.

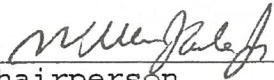
26. The Licensee shall comply with all standards of safety required by the federal, state, and county governments for operation and utilization of the Licensed Area.

27. In the event any prehistoric, historic or archaeological sites or remains are discovered during the removal of material, the Licensee shall stop all work immediately and notify the Kauai Office of DOFAW and the Historic Preservation Division of the Department of Land and Natural Resources on Oahu and shall obtain the approval of the State of Hawaii prior to recommencing any work within, on, or involving the License Area.

28. At the end of the license term, the Licensee shall finish, fill, clear, and/or smooth the License Area to the condition and contours delineated on Exhibit "A."

IN WITNESS WHEREOF, the STATE OF HAWAII, the Licensor herein, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be duly executed this 24TH day of FEBRUARY, 20 11, the Licensee herein, has caused these presents to be duly executed this 10TH day of FEBRUARY, 20 11.


STATE OF HAWAII

By 
Chairperson
Board of Land and
Natural Resources

LICENSOR

Approved by the Board of
Land and Natural Resources
at its meetings held on
May 14, 2004, January 14, 2005,
February 22, 2008, and
September 12, 2008.

GOODFELLOW BROS., INC., a
Washington corporation

By 
R. Scott Pingrey
Its Chief Engineer

And By _____
Its _____

APPROVED AS TO FORM:


Deputy Attorney General

Dated: Nov. 5, 2009

LICENSEE

STATE OF HAWAII)

COUNTY OF Kauai) SS.

On this 11th day of February, 2011, before me appeared R. Scott Pingree and _____ to me personally known, who being by me duly sworn did say that ~~they are~~ ^{he is} the Chief Engineer and _____, respectively, of GOODFELLOW BROS., INC., a Washington corporation, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and the said Chief Engineer and _____ acknowledged said instrument to be the free act and deed of said corporation.

Audrey M. Bonilla
Notary Public, State of

L.S.

Audrey M. Bonilla

My Commission Expires: 3/24/2012

Date of the Notarized Document: 2/11/11

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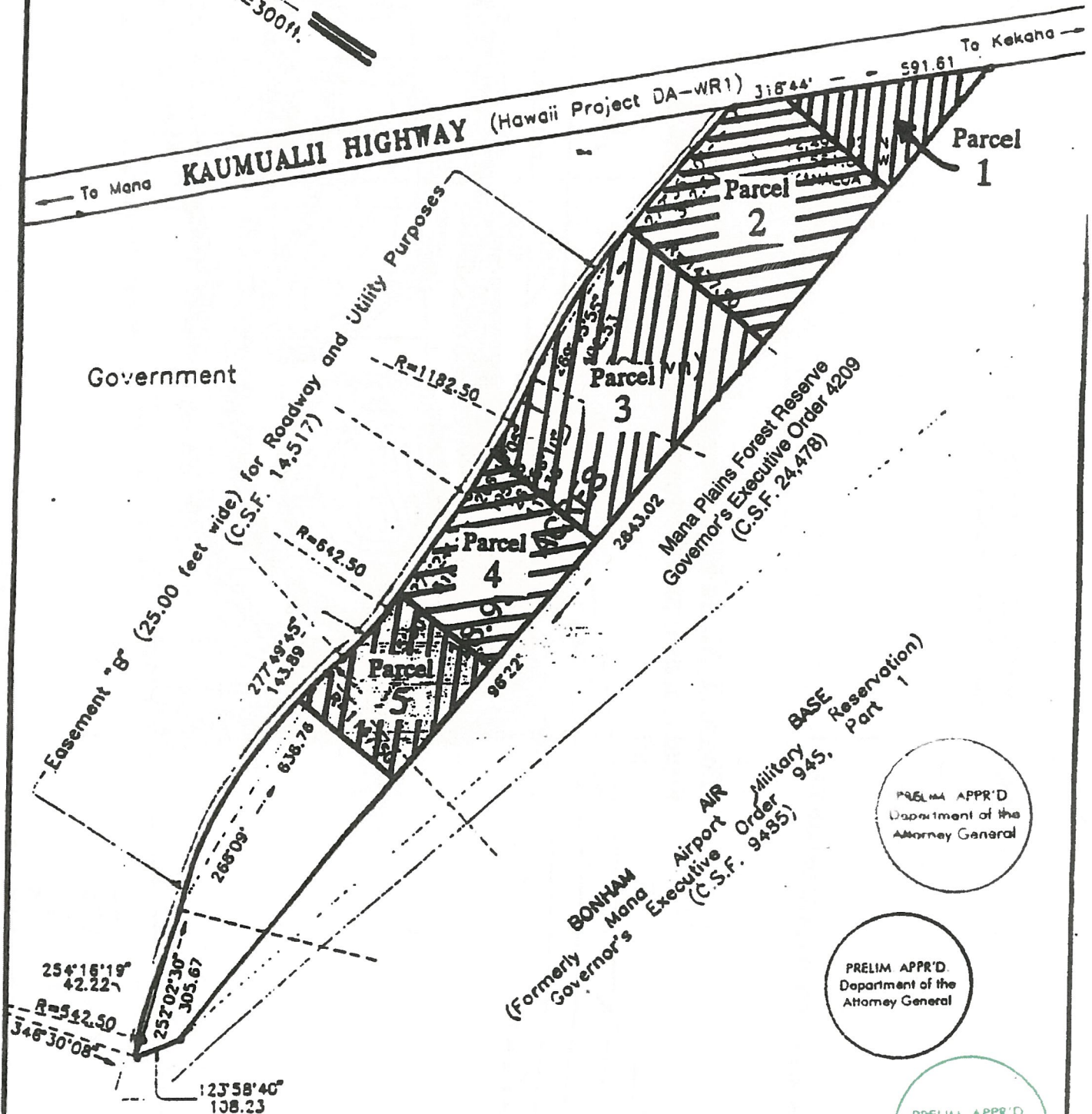
Printed Name of Notary: Audrey M. Bonilla 5TH Circuit

Audrey M. Bonilla 2/11/11
Notary's Signature and Notary's Official Stamp or Seal Date

L.S.

Department of Land and Natural Resources
Division of Forestry and Wildlife

TRUE NORTH
SCALE: 1 in. = 300 ft.



**Phase II Mana Plains Sand Mine / Forest Reserve
Sand Mining Parcel Location Map**

Mana, Waimea, Kauai, Hawaii

Scale: 1 inch = 300 feet

EXHIBIT "A"

Department of Land and Natural Resources
Division of Forestry and Wildlife

GOVERNMENT (CROWN) LAND OF WAIMEA

Phase II Mana Plains Sand Mine / Forest Reserve
Final Surface and Bottom Contours for Parcel No. 5

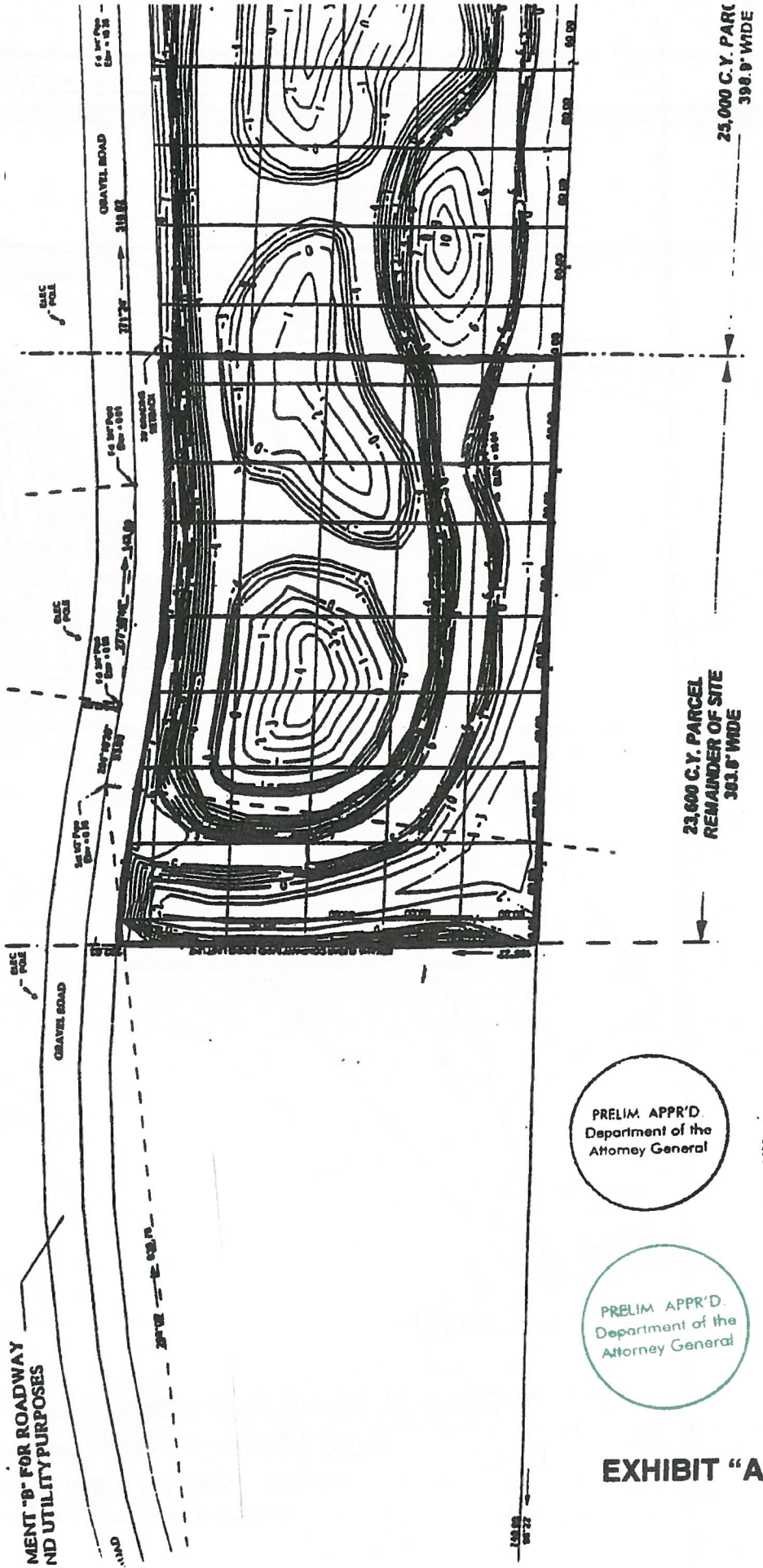


EXHIBIT "A"



**RIGHT-OF-ENTRY AND LICENSE AGREEMENT FOR
POHAKU O' KAUAI QUARRY**

**RIGHT-OF-ENTRY
AND
LICENSE AGREEMENT**

THIS AGREEMENT is hereby made and entered into by and between the STATE OF HAWAII through its AGRIBUSINESS DEVELOPMENT CORPORATION, KEKAHA AGRICULTURE ASSOCIATION, BASF PLANT SCIENCE LP, PIONEER HI-BRED INTERNATIONAL, INC., and SYNGENTA SEEDS, INC. (referred to herein collectively as "GRANTORS" and individually as "GRANTOR") and POHAKU O' KAUAI MATERIALS, LLC, a Hawaii limited liability company, ("GRANTEE").

WITNESSETH:

WHEREAS, pursuant to Governor's Executive Order No. 4007, as modified by Governor's Executive Order Nos. 4034 and 4165, the Agribusiness Development Corporation ("ADC") has been granted responsibility to control and manage those certain lands which were formerly under the jurisdiction of the Department of Land and Natural Resources, State of Hawai'i, containing a gross area of approximately 12,800 acres in Kekaha ("Kekaha Lands"), on the Island of Kaua'i, State of Hawai'i;

WHEREAS, Kekaha Agriculture Association ("KAA") is an association incorporated in the State of Hawaii for the purposes of engaging in cooperative activity for producers of agricultural products that has entered into a Memorandum of Agreement with ADC originally dated April 1, 2007, and revised and restated effective August 29, 2008 (the "MOA") whereby KAA has agreed to assume control over and responsibility for the management of the common infrastructure improvements, including irrigation, drainage, roadway, and electrical power generation systems located on or serving the Kekaha Lands as defined in the MOA, which responsibility includes the removal of sand, gravel, soil and fill products from the Kekaha Lands as may be necessary for the maintenance and operation of the common infrastructure improvements;

WHEREAS, ADC also issued an exclusive license to KAA for the common infrastructure improvements and a right of entry onto the Kekaha Lands for KAA to enjoy free and unfettered access to all such infrastructure improvements for the purposes of operating, managing, and maintaining the same in accordance with the MOA;

WHEREAS, ADC also issued an exclusive license to BASF Plant Science LP (f/k/a BASF Plant Science LLC) ("BASF") for field numbers 101, 116, and 121 (por.) of the Kekaha Lands (the "BASF Fields"), to Pioneer Hi-Bred International, Inc. ("Pioneer") for field numbers 102-103, 105-108, 110-113 and 115 of the Kekaha Lands (the "Pioneer Fields"), and to Syngenta Seeds, Inc. ("Syngenta") for field numbers 117, 119, 121 (por.), 221, and 321 of the Kekaha Lands (the "Syngenta Fields"), all as depicted on

the maps attached to this Agreement as Exhibits "A" and "B" (fields 101-103, 105-108, 110-113, 115-117, 119, 121, 221, and 321, collectively, "Premises");

WHEREAS, in furtherance of its obligations under the MOA, KAA has reached an agreement with GRANTEE whereby GRANTEE shall undertake the removal of rocks and sand from the Premises for KAA in furtherance of KAA's obligations under the MOA, subject to the consent and approval of ADC of such arrangement; and

WHEREAS, GRANTEE also requires a right of entry onto the Kekaha Lands and portions of the Premises, as well as a license to remove rock and sand, specifically (i) rocks from field numbers 101-103, 105-108, 110-113, 115-117, 119, and 121, as depicted on the map attached to this Agreement as Exhibit "A" (hereinafter referred to, collectively, as "Boulder Fields Sites") and made a part hereof, and (ii) sand from field numbers 221 and 321, as depicted on the map attached to this Agreement as Exhibit "B" (hereinafter referred to, collectively, as "Sand Sites").

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, and other good and valuable consideration given, GRANTORS hereby grant to GRANTEE, its members, officers, employees, and directors a non-exclusive right to enter upon the Premises, on the terms and conditions below, and for the use of the common roadway infrastructure on the Kekaha Lands further described below:

1. **Term and Duration.** The term of this Agreement granted hereby shall be applicable from 12:00 a.m. on January 13, 2014, ~~2013~~ ("Commencement Date") through the Termination Date as established and defined in this Agreement ("Termination Date"). The Termination Date shall be the earlier of either (i) substantial completion of the activities to be undertaken by GRANTEE on the Kekaha Lands, it being understood and acknowledged the completion of which may require approximately two or more years, or (ii) termination of this Agreement otherwise by GRANTORS as set forth in Paragraph 17 below. GRANTEE agrees to be bound by the terms and conditions of this Agreement and to any amendments of this Agreement.

2. **Notice of Entry.** GRANTEE shall provide GRANTORS with notice of its intent to enter upon the Premises and Kekaha Lands not less than two (2) weeks prior to its anticipated entry in accordance with the notice provision contained in paragraph 18, below. GRANTEE shall also notify KAA, BASF, Pioneer and/or Syngenta, as the case may be, and arrange entry no less than twenty-four (24) hours prior to entry pursuant to Paragraph 18 below.

3. **Permitted Uses; Terms and Conditions.** GRANTEE shall not be allowed to use the Premises or the Kekaha Lands for any purpose except the following:

a. GRANTEE shall remove rocks from the Boulder Fields Sites ("Removed Rocks") and sand from the Sand Sites ("Removed Sand") and transport the

Removed Rocks and Removed Sand off the Kekaha Lands for stockpiling. GRANTEE understands and acknowledges that no mining, excavating, stripping, drilling, blasting, stockpiling, scalping, crushing, rolling, surging, or any other aggregate processing of Removed Rocks and Removed Sand shall be allowed anywhere on the Kekaha Lands, except that minimal screening and grading of Removed Sand may be conducted on the Sand Sites. GRANTEE shall employ erosion control best management practices, including but not limited to the installation of temporary perimeter berms, screen fencing, and any other necessary measures, to minimize excessive runoff or discharge of sand or sediment caused by a storm-level event during the time and from the area in which GRANTEE conducts screening and grading of the Removed Sand.

b. GRANTEE shall utilize a certified truck scale to weigh and record the quantity of Removed Rocks and/or Removed Sand for each truckload removed, and shall regularly report directly to KAA the amount of Removed Rocks and Removed Sand removed by GRANTEE within thirty (30) calendar days following any calendar month during which GRANTEE has removed any quantity of the Removed Rocks and/or Removed Sand. GRANTEE shall have no independent obligation to report the amounts directly to all GRANTORS unless and until a separate GRANTOR makes a request to GRANTEE for any such report. Requests for reports by any separate GRANTOR shall be made in accordance with paragraph 18, below.

(i) GRANTEE shall make good faith efforts to sell the Removed Rocks and Removed Sand, except that GRANTEE need not sell such amounts as is reasonably necessary for use on the Roadway Maintenance Activities as described in this Agreement. Within thirty (30) calendar days following any calendar month during which GRANTEE has sold any quantity of the Removed Rocks and/or Removed Sand, GRANTEE shall (i) prepare and submit to KAA a report stating the total amount of Removed Rocks and/or Removed Sand sold by GRANTEE during the immediately preceding calendar month, as measured by means of a certified truck scale, and in full ton(s), and calculating the total payment owed to KAA based upon the royalty fee payment rate of \$2.50 per ton of Removed Rocks and Removed Sand, or any combination thereof, sold ("Payment Rate"), and (ii) make appropriate payment to KAA of the amount identified in the report. Based upon the foregoing terms and conditions, and in addition to and simultaneously with the payment by GRANTEE to KAA, GRANTEE shall also pay to ADC a separate royalty fee payment, for sale of the same Removed Rocks and/or Removed Sand, or any combination thereof, at the royalty fee payment rate of \$2.50 per ton.

(ii) ADC, KAA and GRANTEE agree to undertake good faith negotiations with regard to potential modifications to the Payment Rate, no later than July 1, 2015, and on every second year thereafter, based on commercially reasonable rates and other factors. All negotiations shall include any amended Payment Rate, and all terms and conditions of payments.

(iii) GRANTEE acknowledges that the process of screening the Removed Rock is likely to result in a quantity of high grade lime rock ("Lime Rock"),

which GRANTEE shall provide to KAA free of charge; provided that, if at such time that the Parties by mutual agreement determine a reasonable market exists for said Lime Rock, the Parties shall engage in good faith negotiations to establish a reasonable charge to be paid by KAA to GRANTEE for any Lime Rock that KAA may choose to purchase, KAA having no obligation to purchase said Lime Rock.

c. GRANTEE agrees to assist KAA or KAA's designated contractor(s), with annual roadway maintenance to (i) the main improved roadway leading from the Kekaha Fuel Station to the Mana Government Road, as shown on Exhibit "A," and (ii) any other roadway as deemed necessary by KAA in its discretion ("Annual Roadway Maintenance"). The Annual Roadway Maintenance shall be performed during the months of June through October, weather permitting.

(i) GRANTEE agrees that the Annual Roadway Maintenance shall include, but not necessarily be limited to, the hauling and delivery by GRANTEE of necessary amounts of asphalt cold patch or other roadway materials to the Kekaha Lands, and the placement or dumping of the asphalt cold patch or other materials onto the identified roadway sections. It is understood that KAA may opt to purchase from GRANTEE, at reasonable market rates, the necessary asphalt cold patch or other roadway materials required for purposes of the Annual Road Maintenance, provided that the Parties understand and agree that the quantity of purchased cold patch material shall not exceed 400 tons per year.

(ii) In addition to the foregoing, GRANTEE also agrees to perform necessary routine maintenance to the main improved roadway, as identified as Exhibit "A," and/or any other roadway, improved or unimproved, that GRANTEE deems necessary for its use of the Kekaha Lands or the Premises, at GRANTEE's sole expense. Such maintenance work may include, but not necessarily be limited to, roadway washing, patching (with asphalt or lime rock), compacting, and/or grading. GRANTEE further agrees to assist KAA, at no charge, in securing additional roadway repair materials, such as asphalt cold plane, gravel, and other such materials, that may become available from time to time.

d. GRANTEE shall grade the Boulder Field Sites and Sand Sites, particularly the Sand Sites waste portion of the area referred to as Mana Camp, to conform to and blend with the surrounding land elevations, for the purpose of agricultural use and as determined by KAA at its discretion. Upon establishment of the final grade, GRANTEE shall haul, spread, and level approximately six inches of topsoil on the Sand Sites, with KAA to supply the topsoil to GRANTEE at no charge. KAA understands and acknowledges that it shall make good faith efforts to make available to GRANTEE for transport topsoil from locations that are in relatively close proximity to the Sand Sites.

4. **Acknowledgement of Use by Other Persons.** GRANTEE acknowledges that other persons or entities have the right to enter and/or use the Kekaha Lands with the approval of ADC and KAA, the BASF Fields with the approval of

BASF, the Pioneer Fields with the approval of Pioneer, and the Syngenta Fields with the approval of Syngenta.

5. **Due Care and Diligence.** GRANTEE will exercise due care and diligence in entering upon the Kekaha Lands and the Premises and will not disrupt or disturb in any way or in any manner whatsoever the activities customary to the operations of KAA, KAA Members (as defined below), or its or their agents, or any existing land licensee of any portion of the Kekaha Lands, and GRANTEE shall exercise due care for public safety. At all times during the term of this Agreement and upon the termination of this Agreement, GRANTEE shall be responsible for: (a) removing any debris or trash deposited by GRANTEE on the Premises or the Kekaha Lands; (b) repairing any damage to the Premises or Kekaha Lands caused by GRANTEE; and (c) restoring the Premises or Kekaha Lands to its original or better than original condition, subject to GRANTEE's rights pursuant to Paragraph 3(a) above and its obligations pursuant to Paragraphs 3(c) and 3(d) above. This provision shall survive the termination of this Agreement.

6. **Historic Preservation.** In the event of any unanticipated sites or remains such as bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls are encountered, GRANTEE, its consultants, contractors and/or persons acting for or on its behalf pursuant to this Agreement shall stop work and contact the Kauai Police Department and the State Historic Preservation Division in Kapolei at (808) 692-8015 immediately, and further notify GRANTORS as soon as practicable thereafter as governed by paragraph 18, below. In no event shall any rocks or sand be removed from any Hawaiian cultural sites on the Kekaha Lands or the Premises, whether known or discovered.

7. **Indemnity.** GRANTEE agrees to indemnify, defend, release and hold harmless ADC, KAA, BASF, Pioneer, Syngenta, and KAA Members (BASF, Pioneer, Syngenta, Sunrise Capital, Inc., and Wines of Kauai, L.L.C., collectively referred to herein as, "KAA Members") from and against any and all costs, claims, suits, fines, damages, or causes of action of any kind for injury of any kind to any person, or damage to any property of any kind occasioned, in whole or in part, by GRANTEE's actions or omissions arising out of its presence on the Kekaha Lands and/or the Premises or the exercise of any rights or performance of any obligations under this Agreement. Further, GRANTEE agrees that neither ADC nor KAA nor KAA Members shall be liable to GRANTEE or its agents or representatives, should GRANTEE or its agents or representatives suffer any injury to their persons or property as a result of work conducted on the Kekaha Lands and/or the Premises pursuant to this Agreement.

8. **Insurance.** GRANTEE shall obtain on an occurrence basis and maintain at all times at its own expense insurance coverage of the kinds and in amounts greater than or equal to those set forth below:

(a) **Insurance Coverage: Minimum Policy Limits**

Commercial General Liability: \$1,000,000 General Aggregate Limit (other than Completed Operations)

\$1,000,000 Completed Operations Aggregate Limit
\$1,000,000 Each Occurrence Limit
\$1,000,000 Personal & Advertising Limit

Umbrella (Excess) Liability: \$2,000,000 Aggregate (or Equivalent Coverage under CGL)

Worker's Compensation: Coverage A: As required by Hawaii Laws

Coverage B: Employer's Liability
\$1,000,000 Bodily Injury by Accident Each Accident
\$1,000,000 Bodily Injury by Disease
\$1,000,000 Policy Limit and \$1,000,000 Each Employee

Automobile: \$500,000 per occurrence and \$1,000,000 in aggregate; auto pollution liability coverage

(b) Prior to first entry onto the Kekaha Lands or the Premises, GRANTEE shall provide to ADC, KAA, BASF, Pioneer, Syngenta, and KAA Members an insurance binder to show compliance with subsection (a) above and subsection (c) below.

(c) GRANTEE shall name ADC, KAA, BASF, Pioneer, Syngenta, and each of the KAA Members and their respective officials, directors, officers, members, employees and agents as additional insureds.

(d) ADC, KAA, BASF, Pioneer, Syngenta, and KAA Members shall be notified at least fifteen (15) days prior to the termination, cancellation or material change in GRANTEE's insurance coverage.

(e) GRANTEE shall cover injuries, losses or damages arising from, growing out of or caused by any acts or omissions of GRANTEE in connection with GRANTEE's and/or the general public's use or occupancy of the Kekaha Lands or the Premises.

(f) The procuring of such required policy or policies of insurance shall not be construed to limit GRANTEE's liability under this Agreement or to fulfill the indemnification provisions and requirements of this Agreement. Notwithstanding said policy or policies of insurance, GRANTEE shall be obligated for the full and total amount of any damage, injury, or loss for which GRANTEE is obligated to provide indemnification pursuant to Paragraph 7 above.

(g) GRANTEE shall keep such insurance in effect and the certificate(s) on deposit with ADC, KAA, BASF, Pioneer, Syngenta, and KAA Members during the entire term of this Agreement. Upon request by ADC, KAA, BASF, Pioneer, Syngenta, or any KAA Member, GRANTEE shall furnish a copy of the policy or policies.

(h) Failure of GRANTEE to provide and keep in force such insurance shall be regarded as a material default under this Agreement and GRANTORS shall be entitled to exercise any or all of the remedies provided in this Agreement for default of GRANTEE.

(i) GRANTEE acknowledges and agrees that GRANTEE's insurance shall be primary. Any insurance maintained by ADC, KAA, BASF, Pioneer, Syngenta, or KAA Members shall apply in excess of, and shall not contribute with insurance provided by GRANTEE.

9. **Condition /Assumption of Risk.** GRANTEE hereby agrees and acknowledges that neither ADC nor KAA nor KAA Members have made any representation or warranty, implied or otherwise, with respect to the condition of the Kekaha Lands or Premises, including any dangerous or defective conditions existing thereon, whether or not such conditions are known to ADC, KAA or KAA Members or reasonably discoverable by GRANTEE. GRANTEE agrees that neither ADC nor KAA nor any of the KAA Members shall be held responsible for any injury or damage to GRANTEE due to the presence of hazardous materials on or in the Kekaha Lands and/or the Premises. GRANTEE further agrees that any property left on the Kekaha Lands and/or the Premises during the term of this Agreement shall be left there at the sole risk of GRANTEE.

10. **Compliance with Laws and Regulations.** GRANTEE shall, at all times during the term of this Agreement, observe and comply with all applicable laws, rules and regulations, whether County, State or federal, including but not limited to, the laws applicable to the use of the Kekaha Lands and Premises and the securing of any and all necessary governmental and other approvals and permits for use of the Kekaha Lands and Premises.

11. **Prohibited Use.** Any use of the Kekaha Lands or the Premises not authorized by this Agreement, including but not limited to Paragraph 3 above, shall constitute a material breach of this Agreement and upon such breach ADC and/or KAA may terminate this Agreement with respect to some or all of the Kekaha Lands or the Premises forthwith without notice and pursue any other remedies to which they are entitled to by law or under this Agreement. To the extent GRANTEE performs any unauthorized activity on the BASF Fields, the Pioneer Fields or the Syngenta Fields, then BASF, Pioneer or Syngenta may order the suspension of any and all activities on their respective fields by GRANTEE, pending resolution of GRANTEE's unauthorized activity.

12. **Improvements.** GRANTEE shall not construct any improvements of any kind or nature upon the Kekaha Lands or the Premises without the express prior written consent of GRANTORS, which consent may be granted or withheld in any GRANTOR's sole discretion. Any improvements, including but not limited to structures, erected on or moved onto the Kekaha Lands or the Premises by GRANTEE shall remain the property of GRANTEE and GRANTEE shall have the right, prior to the termination or revocation of this Agreement, to remove the improvements from the Kekaha Lands or the Premises; provided, however, that in the event the GRANTEE shall fail to remove the improvements prior to the termination or revocation of this Agreement GRANTORS may, in their sole discretion, elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to GRANTEE. This provision shall survive the termination of this Agreement.

13. **No Lien.** GRANTEE shall not: (a) create, incur, or assume any attachment, judgment, lien, charge, or other encumbrance on the Kekaha Lands or the Premises or any improvements thereon without ADC's express prior written consent, which consent may be granted or withheld in ADC's sole discretion; or (b) suffer to exist any such encumbrance other than one created, incurred, or assumed by ADC.

14. **Non-transferrable.** This Agreement or any rights hereunder shall not be sold, assigned, conveyed, or otherwise transferred or disposed of without the express prior written consent of the GRANTORS.

15. **Additional Terms and Conditions.**

(a) No one may reside on the Kekaha Lands or the Premises, which may not be accessed for any other purpose except as authorized.

(b) Animals, plants, rocks, dirt and other materials that are on or part of the Kekaha Lands or the Premises shall not be harmed or removed from the Premises, except as may be authorized under this Agreement.

(c) If GRANTEE continues to enter or remain on the Kekaha Lands after the Termination Date, or leaves its physical property on the Kekaha Lands after the Termination Date, GRANTEE shall pay ADC and KAA as liquidated damages \$500.00 each for each calendar day (or part thereof) that such unlawful entrance and occupation of the Premises continues beyond the Termination Date. If GRANTEE continues to enter or remain on the BASF Fields, the Pioneer Fields, and/or the Syngenta Fields after the Termination Date, or leaves its physical property on the BASF Fields, the Pioneer Fields, and/or the Syngenta Fields, after the Termination Date, GRANTEE shall pay ADC and, respectively, BASF, Pioneer, and/or Syngenta \$500.00 each as liquidated damages for each calendar day, or part thereof, that such unlawful entrance and occupation continues. GRANTEE understands and agrees that such damages are not a penalty, but rather are reasonable estimates of the losses that the relevant GRANTORS would suffer and that the Parties acknowledge would be difficult to ascertain under the circumstances triggering the damages and are the GRANTORS' exclusive remedy, other than equitable relief (such as an injunction barring GRANTEE

from entering and remaining on the Kekaha Lands and/or the Premises) or legal relief (in the form of eviction of GRANTEE from the Kekaha Lands and/or the Premises or similar legal relief, but not damages) for such entrance or use.

(d) GRANTORS reserve the right to impose additional terms and conditions, if deemed necessary.

16. Hazardous Materials. In no event shall GRANTORS be liable for any damages due to the presence of Hazardous Materials, as defined in this Agreement, on, under or within the Kekaha Lands and/or the Premises. GRANTEE shall not cause or permit any Hazardous Material to be used, stored, generated, or disposed of on or in any portion of the Kekaha Lands or the Premises by GRANTEE, its agents, employees, contractors or anyone acting by, through or for GRANTEE. If in violation of the foregoing sentence Hazardous Materials are used, stored, generated, or disposed of on or in the Kekaha Lands or the Premises by GRANTEE, its agents, employees, contractors, or invitees, GRANTEE shall indemnify and hold harmless GRANTORS and their owners, managers, partners, subsidiaries, affiliates, successors and assigns, and any officer, member, director, employee and agent thereof, from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, a decrease in value of the Kekaha Lands or the Premises, damages caused by loss or restriction of usable area, or any damages caused by adverse impact on marketing of the Kekaha Lands or the Premises, and any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees) arising on or after the date of this Agreement and arising as a result of that contamination. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any clean-up, removal, or restoration mandated by a federal, state, or local agency or political subdivision. Without limitation of the foregoing, if GRANTEE, its agents, employees, contractors or anyone acting by, through or for GRANTEE, causes the presence of any Hazardous Material on the Kekaha Lands and/or the Premises and that results in contamination, GRANTEE at its sole expense, promptly shall take any and all necessary actions to return the affected portions of the Kekaha Lands or the Premises to the condition existing prior to the presence of any such Hazardous Material on the Kekaha Lands and/or the Premises. GRANTEE shall first obtain ADC's and KAA's written approval for any such remedial action. As used herein, the term "Hazardous Material" means and includes, without limitation, inflammable explosives, radioactive materials, asbestos, organic compounds (including polychlorinated biphenyls), pollutants, contaminants, hazardous wastes, toxic substances or related materials and any substances defined as or included in the definitions for "hazardous substances", "Hazardous wastes" "extremely hazardous wastes", Hazardous materials, or "toxic substances" under the following laws, ordinances and regulations ("Hazardous Materials Laws"): Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Resource Conservation and Recovery Act, the Hazardous Materials Control Act, the Safe Drinking Water Act, the Clean Water Act, the Clean Air Act, the Toxic Substance Control Act, Emergency Planning and Right-to-Know Act, as the same may be amended from time to time, and similar Hawaii State and local laws and ordinances,

and regulations now or hereafter adopted, accomplished and promulgated pursuant thereto applying to the Kekaha Lands and/or the Premises.

17. **Termination.** Notwithstanding any other provision contained herein, this Agreement is revocable at the will of ADC and KAA, and can be canceled or terminated at any time and for any reasons, including any breach of default hereunder, upon two (2) weeks written notice in accordance with Paragraph 18 below. In the event this Agreement is terminated as provided herein, GRANTEE shall immediately remove any and all of GRANTEE's property physically located on the Kekaha Lands and the Premises any such property not timely removed shall be deemed abandoned by GRANTEE, and GRANTOR shall have the right to dispose of the property in any commercially reasonable manner.

18. **Notices.** Any notice, request, demand, or other communication required or permitted to be given or made under this Agreement by either party hereto shall be in writing and shall be deemed to have been duly given or served if: (a) personally delivered; (b) sent by mail, postage prepaid and certified with return receipt requested; (c) transmitted by facsimile, or (d) sent by e-mail with request for delivery confirmation, at the address, facsimile number, or e-mail address given below:

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
Attn: James Nakatani, Executive Director
State Office Tower
235 South Beretania St., Rm. 205
Honolulu, Hawaii 96813
Tel: (808) 586-0186
Facsimile: (808) 586-0189
E-mail:

KEKAHA AGRICULTURE ASSOCIATION
Attn.: Landis Ignacio
Telephone: (808) 639-1982
Facsimile: (808) 639-1982
E-mail: ignacio@hawaii.rr.com

BASF PLANT SCIENCE LP
Attn.: Steven J. Lupkes
Telephone: (808) 337-2065
Facsimile: (808) 337-2065
E-mail: steven.lupkes@basf.com

PIONEER HI-BRED INTERNATIONAL, INC.
Attn.: John Petersen
Telephone: (808) 338-8300

Facsimile: (808) 338-8300
E-mail: jon.petersen@pioneer.com

SYNGENTA SEEDS, INC.
Attn.: Mark Phillipson
Telephone: (808) 621-2925
Facsimile: (808) 621-2925
E-mail: mark.phillipson@syngenta.com

POHAKU O' KAUAI, LLC
3-1480 Kaumualii Highway
Lihue, Kauai, Hawaii 96766
Attn.: Stanley Morinaka
Telephone:
Facsimile:
E-mail:

19. **Modification of Agreement.** This Agreement represents the entire Agreement between the parties hereto and may not be modified or terminated, in whole or in part, except by another Agreement in writing, duly executed by GRANTORS and GRANTEE.

20. **Headings, Captions.** The headings and captions of paragraphs or other parts hereof are for convenience of reference only and are not to be used to construe, interpret, define, or limit the paragraphs to which the respective headings and captions may pertain.

21. **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Hawaii.

22. **Counterparts.** This Agreement may be executed in several duplicate counterparts and such counterparts, when executed, shall constitute a single Agreement.

23. **Time of Essence.** Time is of the essence of this Agreement. No provisions relating to the timeliness may be waived, extended or modified except by the written Agreement of all of the parties.

24. **Attorney's Fees.** In the event of any controversy, claim or dispute among the parties arising out of or relating to this Agreement or the breach hereof, all parties shall bear their own fees and costs.

25. **Invalidity, Severability.** If any term or provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement


shall not be affected thereby, provided that the essential provisions of this Agreement and the position of the parties hereto are not materially changed thereby.

26. **Consents, Approvals.** Where consents or approvals are required by any of the Parties, unless specifically provided to the contrary, the parties shall not arbitrarily withhold such consent or approval or require the payment of any monies therefore.

IN WITNESS WHEREOF, GRANTORS and GRANTEE have caused this Agreement to be executed as of the day and year first above written.

**"GRANTORS":
AGRIBUSINESS
DEVELOPMENT CORPORATION:**

**"GRANTEE":
POHAKU O' KAUAI MATERIALS, LLC:**

By: 
Its: Executive Director

By: _____
Its: _____

KEKAHA AGRICULTURE ASSOCIATION:

By: _____
Its: _____

PIONEER HI-BRED INTERNATIONAL, INC.:

By: _____
Its: _____

SYNGENTA SEEDS, INC.:

By: _____
Its: _____

BASF PLANT SCIENCE LP:

By: _____
Its: _____

IN WITNESS WHEREOF, GRANTORS and GRANTEE have caused this Agreement to be executed as of the day and year first above written.

**"GRANTORS":
AGRIBUSINESS
DEVELOPMENT CORPORATION:**

**"GRANTEE":
POHAKU O' KAUAI MATERIALS, LLC:**

By: _____
Its: _____

By: _____
Its: _____

KEKAHA AGRICULTURE ASSOCIATION:

By: Joe Menechika
Its: _____

PIONEER HI-BRED INTERNATIONAL, INC.:

By: _____
Its: _____

SYNGENTA SEEDS, INC.:

By: _____
Its: _____

BASF PLANT SCIENCE LP:

By: _____
Its: _____

IN WITNESS WHEREOF, GRANTORS and GRANTEE have caused this Agreement to be executed as of the day and year first above written.

"GRANTORS":
**AGRIBUSINESS
DEVELOPMENT CORPORATION:**

"GRANTEE":
POHAKU O' KAUAI MATERIALS, LLC:


By: _____
Its: _____

By: _____
Its: _____

KEKAHA AGRICULTURE ASSOCIATION:

By: _____
Its: _____

PIONEER HI-BRED INTERNATIONAL, INC.:

By:  Mark Takemoto
Its: Facility + Real Estate Mgr

SYNGENTA SEEDS, INC.:

By: _____
Its: _____

BASF PLANT SCIENCE LP:

By: _____
Its: _____

IN WITNESS WHEREOF, GRANTORS and GRANTEE have caused this Agreement to be executed as of the day and year first above written.

"GRANTORS":
**AGRIBUSINESS
DEVELOPMENT CORPORATION:**

"GRANTEE":
POHAKU O' KAUAI MATERIALS, LLC:

By: _____
Its: _____

By: _____
Its: _____

KEKAHA AGRICULTURE ASSOCIATION:

By: _____
Its: _____

PIONEER HI-BRED INTERNATIONAL, INC.:

By: _____
Its: _____

SYNGENTA SEEDS, INC.:

By: Mark A. Lushin
Its: Station Manager

BASF PLANT SCIENCE LP:

By: _____
Its: _____

IN WITNESS WHEREOF, GRANTORS and GRANTEE have caused this Agreement to be executed as of the day and year first above written.

"GRANTORS":
**AGRIBUSINESS
DEVELOPMENT CORPORATION:**

"GRANTEE":
POHAKU O' KAUAI MATERIALS, LLC:

By: _____
Its: _____

By: _____
Its: _____

KEKAHA AGRICULTURE ASSOCIATION:

By: _____
Its: _____

PIONEER HI-BRED INTERNATIONAL, INC.:

By: _____
Its: _____

SYNGENTA SEEDS, INC.:

By: _____
Its: _____

BASF PLANT SCIENCE LP:


By: 
Its: Research Station Manager

IN WITNESS WHEREOF, GRANTORS and GRANTEE have caused this Agreement to be executed as of the day and year first above written.

**"GRANTORS":
AGRIBUSINESS
DEVELOPMENT CORPORATION:**

**"GRANTEE":
POHAKU O' KAUAI MATERIALS, LLC:**

By: _____
Its: _____

By: 
Its: _____

KEKAHA AGRICULTURE ASSOCIATION:

By: _____
Its: _____

PIONEER HI-BRED INTERNATIONAL, INC.:

By: _____
Its: _____

SYNGENTA SEEDS, INC.:

By: _____
Its: _____

BASF PLANT SCIENCE LP:

By: _____
Its: _____

Boulder Sites

Fields: 121,119,117,116,115,113,
112,111,110,108,107,106,105,104,
103, 102, 101

Sand Site

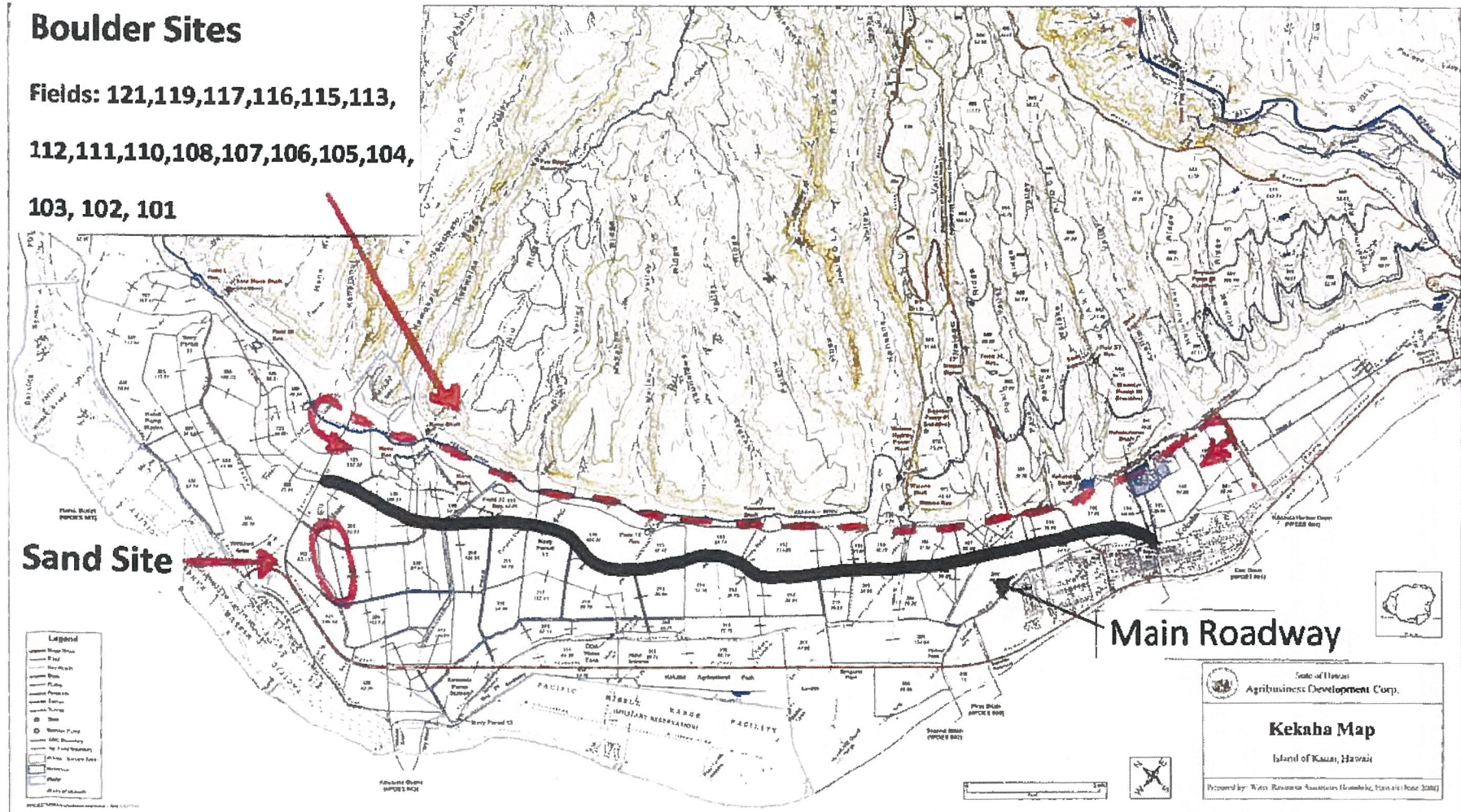
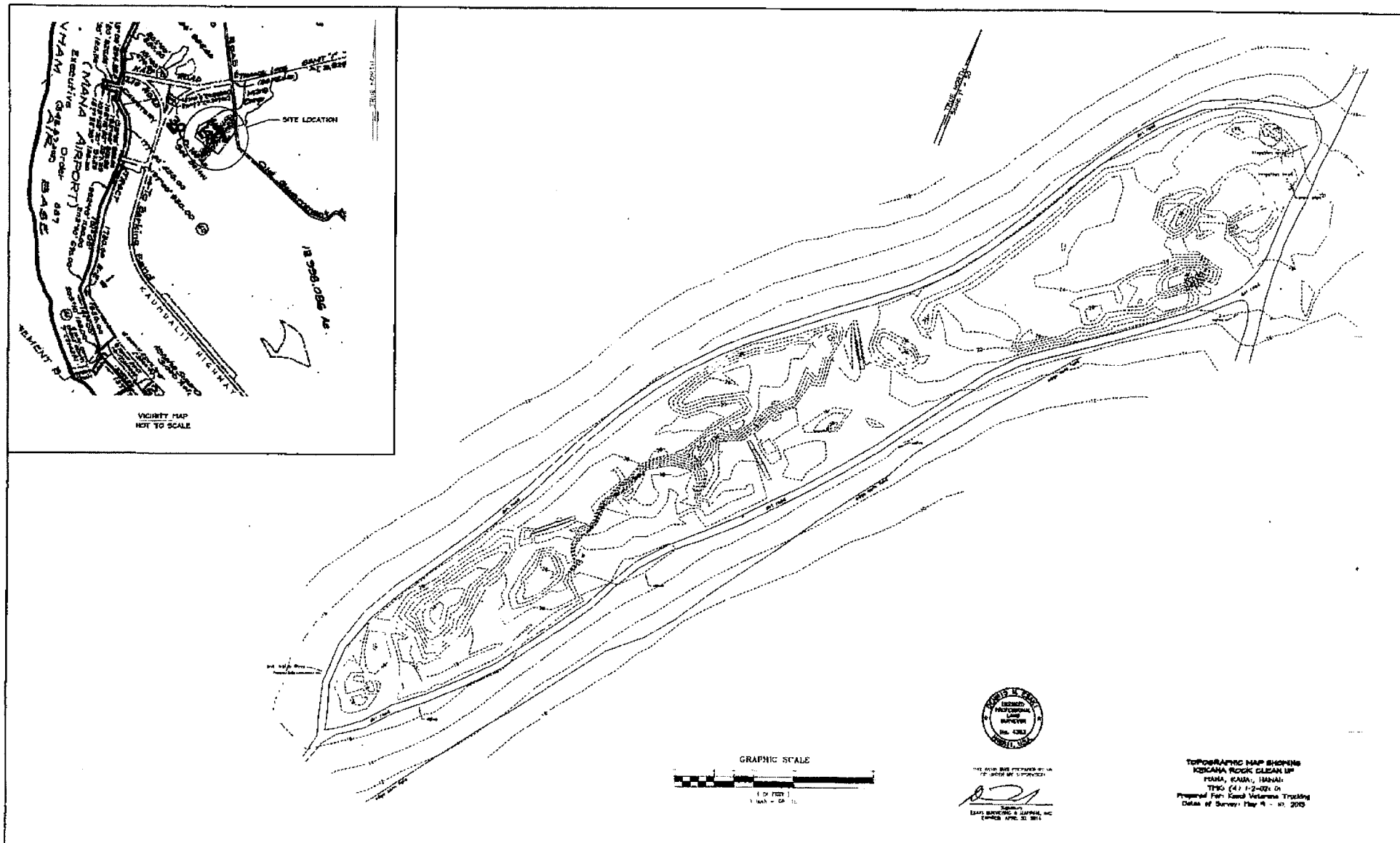


Exhibit B





OCEANIT ENGINEERING ASSESSMENT

Mānā Sands Engineering Assessment



Prepared for:

O Thronas, Inc.
P.O. Box 366
Lawai, Hawaii 96765

Prepared by:

Oceanit Laboratories, Inc.
828 Fort Street Mall, Suite 600
Honolulu, HI 96813



March 2021

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ACRONYMS AND ABBREVIATIONS

ADC	State of Hawaii Agribusiness Development Corporation
ASTM	American Society for Testing and Materials
CY	Cubic Yard
DHHL	State of Hawaii Department of Hawaiian Home Lands
DLNR	State of Hawaii Department of Land and Natural Resources
DOFAW	State of Hawaii Division of Forestry and Wildlife
EA	Each
FOB	Free On Board
KAA	Kauai Agriculture Association
KA	Kauai Aggregates
LS	Lump Sum
OCCL	Office of Conservation of Coastal Lands [of DLNR]
OHA	State of Hawaii Office of Hawaiian Affairs
POK	Pohaku O' Kauai
POKQ	Pohaku O' Kauai Quarry
TMK	Tax Map Key
TPH	Tons Per Hour

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1. INTRODUCTION

The State of Hawaii Department of Land and Natural Resources (DLNR) has granted a license to Goodfellow Bros., Inc. for the removal of sand for commercial purposes from the Kawai’ele Bird Sanctuary at TMK: (4) 1-2-002: 001, Parcels 4 and 5, in Mānā, Kauai. Under the 2011 licenses with the State, Goodfellow Bros., Inc. is authorized to take ownership of the extracted sand at a royalty rate of \$39.41 per cubic yard. The sand removal is part of DLNR Division of Forestry and Wildlife’s (DOFAW) plan for the maintenance and operation of the bird sanctuary. O Thronas, Inc. has an agreement to assist Goodfellow Bros., Inc. with the sand extraction and use the material for commercial purposes.

Oceanit was contracted by O Thronas, Inc. (“Kauai Aggregates”) to conduct an evaluation regarding the current condition of the sand resource at the property. The goal of this effort is to determine if the current market royalty rate is more than the contract rate of \$39.41 per cubic yard. This report provides information on Oceanit’s engineering estimate of the costs implicit in the purchase, harvesting, transport, and preparation of sand in Kauai, specifically for use by Kauai Aggregates. Concrete grade sand is a limited resource with limited availability, not only on the island of Kauai and in the State of Hawaii, but globally. Two sources of sand were compared in our evaluation: Kawai’ele Bird Sanctuary and Pohaku O’ Kauai quarry.

The Kawai’ele Bird Sanctuary is located approximately ½ mile southeast of the Barking Sands Airport runway and is owned by the State of Hawaii and managed by the DLNR DOFAW. The Pohaku O’ Kauai (POK) quarry is located approximately ½ mile east of the Barking Sands Airport runway and is owned by the State of Hawaii and managed by the Hawaii Agribusiness Development Corporation. Both sand deposits are shallow (near surface) and sedimentary (deposited by water) in nature. As shown in Figure 1, the two sites are within two miles of each other.



Figure 1: Map showing the relative locations of the Kawai’ele Waterbird Sanctuary and the Pohaku O’ Kauai (POK) quarry.

1.1 Site Descriptions

1.1.1 Kawai’ele Bird Sanctuary

The Kawai’ele Bird Sanctuary consists of a series of shallow manmade ponds separated by low lying berms. Each pond has several mounds within to provide protection to nests from predators. The ponds were created by excavating the sandy soil to expose groundwater. The excavated sands were removed by the contractor. As shown in Figure 2 through 4, as the site was developed over time, sands were graded to create berms that separate ponds. Currently, the site has several ponds that are functioning as wildlife habitat. The original site plan for Ponds 4 and 5 have been merged such that they now constitute a single body of water. There are mounds of sand on either side of this pond (Figure 5), which are staged to be excavated and removed by the contractor.



Figure 2: Aerial photograph taken prior to July 2006 (exact date unknown) showing that Pond 1 already existed on the South side of the Kawai'ele Bird Sanctuary.



Figure 3: Aerial photograph taken in November 2014 showing that Ponds 2 & 3 were added on the northeast side of the sanctuary.



Figure 4: Recent aerial photograph of Kawai'ele Bird Sanctuary showing the layout of the site and how Ponds 4 & 5 have been created and merged at the northwest side of the property.



Figure 5: Photograph of the Kawai'ele Bird Sanctuary showing Ponds 4 & 5, taken on October 16, 2020 while facing east.

In its agreement with the DLNR, Goodfellow Bros., Inc. has agreed to excavate and remove sand from the site of Ponds 4 and 5ⁱ. O Thronas, Inc., or “Kauai Aggregates”, has an agreement with Goodfellow Bros., Inc. to do this work on their behalf. The agreement calls for Goodfellow Bros., Inc. to pay a royalty rate of \$39.41 per cubic yard (CY) to the State for the right to the commercial use of 46,811 CY of sand. In conversations with DOFAW and Kauai Aggregates, performing final grading of the area surrounding Ponds 4 and 5 is also a verbal condition of the sand harvesting.

Oceanit staff visited the site on October 16, 2020, to inspect existing site conditions, meet with key stakeholders, review site plans, and collect representative sand samples. A topographic survey from 2013 provided by DOFAW shows that approximately 11,637 CY have been borrowed between October 18, 2011 and June 20, 2013 from the site of Ponds 4 and 5ⁱⁱ.

1.1.2 Pohaku O’ Kauai Quarry

A deposit of near surface sand is actively being mined at the POK site (Figure 6) approximately 1½ miles north of Kawai’ele Bird Sanctuary. The land is owned by the Hawaii Agribusiness Development Corporation which has standing agreements with local businesses to utilize the land in return for a portion of revenues generated.



Figure 6: Photograph of the Pohaku O’ Kauai sand quarry taken on October 16, 2020.

2. METHODS

The following sections describe the methods Oceanit used for this evaluation.

2.1 Kawai'ele Bird Sanctuary Sand Characterization

Grab sand samples were collected from the ground surface at each of the five locations shown in Figure 7. These samples were collected to form a representative sample of the surface sands to be removed as part of the agreement. At the time of this report, however, no information is available on the condition of the material below surface to the depth of the planned excavation.

Each grab sample was taken from between 6-12" below ground surface. Sample 1 was taken from an area that has yet to be excavated and represents the surface condition of borrow sand in an undisturbed state. Sample 2 was taken from just below the top of the pile on the south side of Ponds 4 and 5. The pile sits at an elevation of approximately 15 feet above the water surface. Samples 3, 4 and 5 were taken from the now vegetated mound on the north side of Ponds 4 and 5.



Figure 7: Map showing the grab sand sample collection locations.

Photographs of the collected sand samples are shown in Figure 8. Samples consist of tan, medium grained carbonate sand and loosely packed chunks of sandstone. Sample 1 includes clumps of sandstone that are easily friable in the hand. Sample 2 consists of slightly finer sands with fragments of fossilized plants. Sample 3 consists of medium grained sand with small clumps of sandstone, also easily friable in the hand. Samples 4 and 5 are similar to Sample 3, but darker in color and mixed with organics. Sample 5 contains more organics than Sample 4, which darkens its color.

Samples 1 thru 5 were composited and provided to AECOS, Inc. for laboratory analyses of the grain size and calcium carbonate content. The samples were not screened, sorted, or treated prior to the laboratory evaluation. The grain size distribution was analyzed by AECOS using Methods described by Carter in “Soil sampling and Methods of Analysis” (1993). Calcium carbonate was analyzed using the method described by Carver in “Procedure in Sedimentary Petrology” (1971).

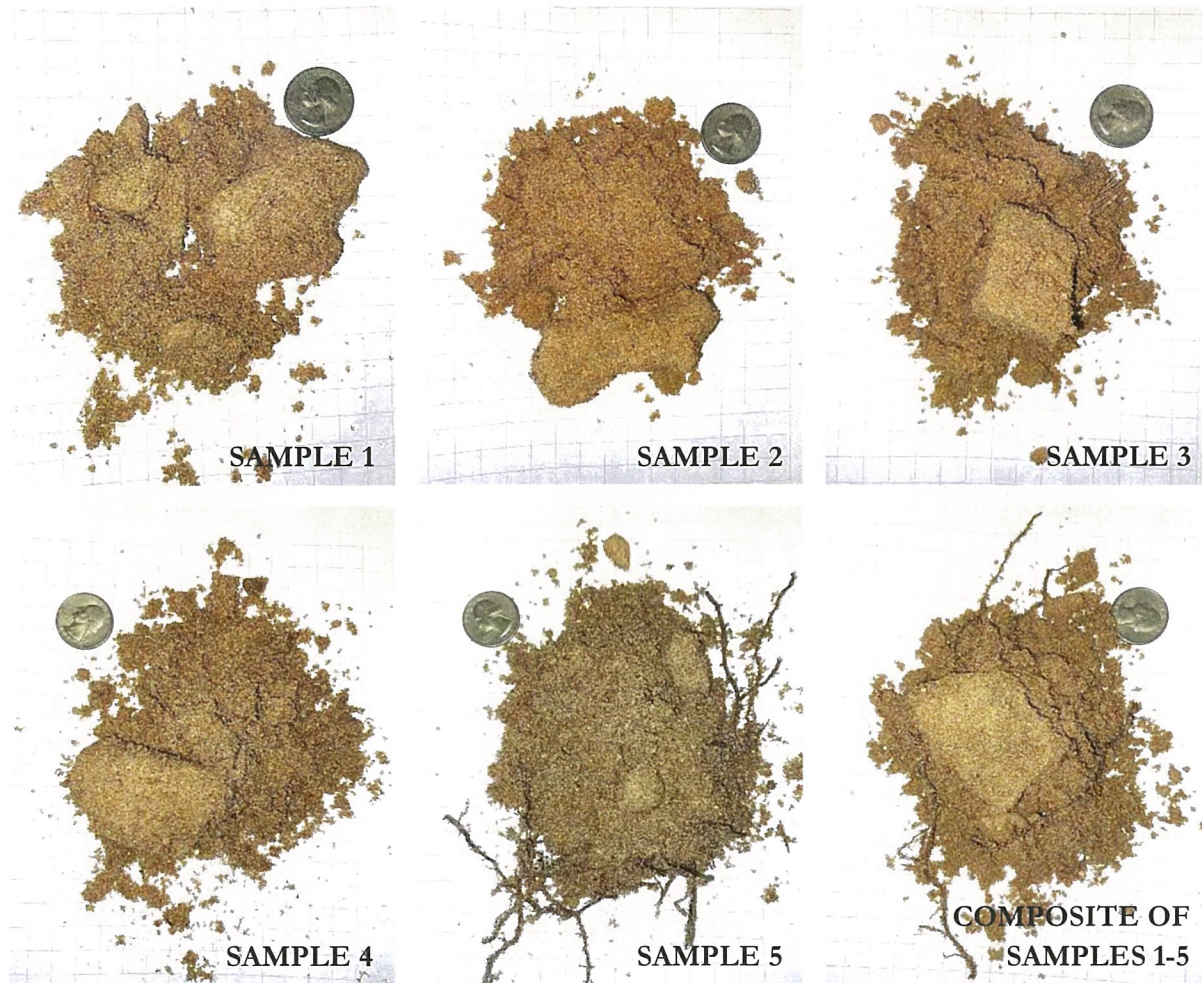


Figure 8: Photographs of the grab sand samples collected at the Kawai’ele Bird Sanctuary on October 16, 2020.

2.2 Kawai’ele Bird Sanctuary Sand Handling and Cost Implications

The process for Kauai Aggregates to get the sand from Kawai’ele Bird Sanctuary to their concrete batch plant in Lawai, Kauai consists of the following:

1. Earth moving equipment is mobilized to Kawai’ele Bird Sanctuary;
2. Grading or excavation is performed to conform to the wetland habitat plan;
3. Sand is loaded into trucks at Kawai’ele Bird Sanctuary to make the trip to the batch plant;

4. Sand is hauled from Kawai'ele Bird Sanctuary to the concrete batch plant in Lawai;
5. Earth moving equipment is demobilized from Kawai'ele Bird Sanctuary; and
6. Sand is screened and sorted for specific uses.

This process is repeated as necessary based on demand, stockpiling capabilities at the batch plant, and logistical issues. As of October 2020, operators had estimated that approximately 13,000 CY of sand had been removed from the Ponds 4 and 5 site in this manner. The 2013 topographic survey (Figure 9) shows 11,637 CY exported to date and the referenced DLNR agreement allows for a maximum of 46,811 CY to be exported, leaving 35,174 CY of sand remaining for extraction. The estimated costs associated with sand extraction and processing are detailed in Table 1.

Table 1: Cost Estimate for Kawai'ele Bird Sanctuary

Item	Description	Qty	Units	Unit Price	Sub Total
1	Kauai Aggregates Sand Royalty	35,174	CY	\$39.41	\$1,386,207
2	Equipment Mobilization	1	EA	\$1,000.00	\$1,000
3	Final Grading	1	LS	\$5,000.00	\$5,000
4	Loading of Sand	35,174	CY	\$3.50	\$123,109
5	Hauling Sand from Kawai'ele to Lawai	35,174	CY	\$8.53	\$300,022
6	Equipment Demobilization	1	EA	\$1,000.00	\$1,000
7	Sand Screening and Sorting	35,174	CY	\$1.20	\$42,209
Total Sum Items 1-7					\$1,858,547
Cost per CY					\$52.84
Cost per Ton					\$39.14

Unit pricing was developed assuming eight-hour workdays, for-hire trucking, no prevailing wages, no overtime pay, and labor and material market rates comparable to State project rates. Items 2 and 6 assume one day of work requiring one truck, excavator, and laborer. Item 3 assumes two days of work requiring one excavator and laborer. Item 4 assumes 300 CY/day of material can be offloaded using one excavator and laborer. Item 5 accounts for approximately four loads per day to deliver sand from Kawai'ele to Lawai per dump truck. Item 7 assumes two days of work requiring a 300 tons per hour (TPH) conveyor, two loaders and laborers, and includes costs for conveying/sorting equipment. With these assumptions, Oceanit estimated that the cost to extract, screen and sort the remaining 35,174 CY of material is about \$1.8 million. The cost is about \$52.84/CY or \$39.14/ton. Oceanit assumed a conversion factor of 1.35 tons per cubic yard for the sand materials in this evaluation.

2.3 Pohaku O' Kauai Quarry Sand Characterization

One grab sample was collected at the POK source from the mining pit. A photograph of this sample is shown in Figure 10, below. The material consists of fine-grained sandstone, with large clumps that are easily friable in the hand. The sample is darker in color than the sand sampled at the Kawai'ele Bird Sanctuary because of its basalt mineral content. Oceanit had previously provided AECOS, Inc. with a sample of the screened and sorted Pohaku O' Kauai sand material collected by Kauai Aggregates in June of 2020 for laboratory evaluation. This sand source and the associated results of the analyses are assumed to be representative of the source, therefore, a new evaluation was not conducted.

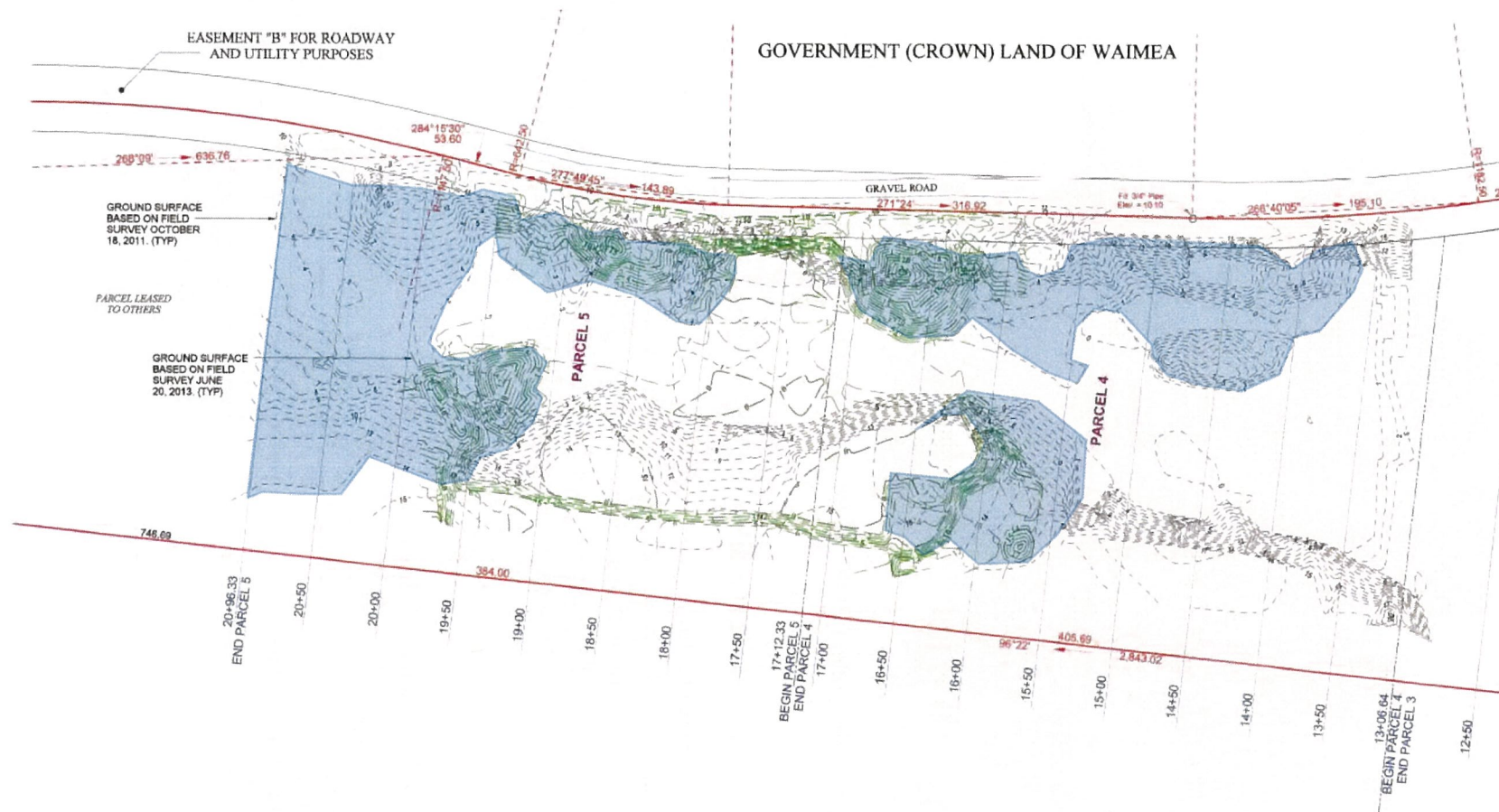


Figure 9: Topographic map of the Kawai'ele Bird Sanctuary Parcels 4 and 5 with the expected area of sand volumes remaining to be excavated by Kauai Aggregates shaded in shown in blue.



Figure 10: Photograph of the collect POK sand source sample.

2.4 Pohaku O' Kauai Quarry Sand Handling and Cost Implications

According to the Kauai Aggregates, the process to get sand from Pohaku O' Kauai quarry in Mānā Plains to the concrete batch plant in Lawai consists of purchasing and hauling sand. Table 2 provides a breakdown of the cost of the material. According to the right-of-entry and license agreement with the State^{iv}, POK leases the land at the quarry and provides a \$5 per ton royalty for the sand it extracts. Kauai Aggregates pays POK about \$28 per ton for the screened sand at the site and pays an additional \$6.32 per ton for hauling.

Table 2: Cost Estimate for Pohaku O' Kauai Quarry

Item	Description	Qty	Units	Unit Price	Sub Total
1	POK Sand Royalty	47,485	Tons	\$5.00	\$237,425
2	Provision of Screened Sand	47,485	Tons	\$23.00	\$1,092,153
3	Hauling Sand from Mānā to Lawai	47,485	Tons	\$6.32	\$300,022
Total Sum Items 1-3					\$1,629,599
Cost per CY					\$46.33
Cost per Ton					\$34.32

3. RESULTS

The following sections describe the results of Oceanit's evaluation.

3.1 Comparison with Concrete Sand Standards

Kauai Aggregates is one of a limited number of concrete producers on Kauai. According to Kauai Aggregates, their market demand for concrete is approximately 36,000 cubic yards per year. Since fine aggregate is approximately one-quarter the volume of concrete, about 9,000 CY of sand is required by the company to serve this market.

Sand is used as fine aggregate for use in cement products. ASTM C33 specifies gradation requirements for sand to be used in cement products^v. The gradation is summarized in Table 3.

Table 3: ASTM C33 Standard Specification for Concrete Aggregates, Fine Aggregate

Standard Sieve Size Percent of Material Smaller (%) Than:

	Low High	
3/8 inch (9.5 mm)	100	
#4 (4.75 mm)	95	100
#8 (2.36 mm)	80	100
#16 (1.18 mm)	50	85
#30 (0.60 mm)	25	60
#50 (0.30 mm)	10	30
#100 (0.15 mm)	2	10

3.2 Hawaii Beach Sand Guidelines

Sand is used as beach compatible material for beach restoration or erosion control projects in the State of Hawaii. The DLNR Office of Conservation of Coastal Lands (OCCL) specifies that grain size distribution and compatibility of sediment used for these purposes should be determined as follows^{vi}:

- I. Grain size distribution of at least one typical sample of the beach fill and existing sand shall be analyzed by a standard laboratory wet sieve technique (ASTM standard D-1140-92). Washing of the sand sample shall be carried out, the collected wash water filtered with a #200 filter and the silt and clay portions dried, weighed and expressed as a percentage of the total mass of sediment (ASTM Standard D-22-17-93). At least six sieves will be employed incorporating the U.S. Standard #4 to #200 sieves. Shaking the oven dried sand through a "nest" of these six sieves, the final distribution of mass of each sieve sediment size is expressed as a percentage of the total mass of sediment. See section 8.c.

- II. The proposed fill sand shall not contain more than 6% fines, defined as the #200 sieve (0.074 mm). This may be adjusted by the PTE or the Chairperson based on the analysis of the existing beach sand.
- III. The proposed beach fill sand shall not contain more than 10% coarse sediment, defined as the #4 sieve (4.76 mm). This may be adjusted by the PTE or the DLNR Chairperson based on the analysis of existing beach sand.
- IV. Compatibility of the existing and proposed fill beach sands shall be demonstrated by the grain size distribution of the fill sand and shall fall within 20% of the existing sand, as measured by a percent finer than or percent coarser than value. For example, if the existing sand has a 45% grain size finer than the #100 sieve, the proposed fill sand must contain between 25% and 65% grain size finer than the #100 sieve.

Alternatively, and for cases where the beach fill grain size distribution curve is uniformly finer than the existing beach, the overall fill ratio of the fill sand to existing sand shall not exceed 1.5. Overfill factor shall be calculated using the U.S. Army Corps of Engineers method of overfill factor, RA, determined by comparing mean sediment diameter and sorting values of the existing beach and borrow sediments (in phi, ϕ , units). See Coastal Engineering Manual V-4.1.e.3 Sections h and I on sediment suitability and overfill factor.
<http://www.wes.army.mil/export/home/http/htdocs/chlc/PartV-Chap4.pdf>

- V. No more than 50% of the fill sand shall have a grain diameter less than 0.125 mm as measured by #120 Standard Sieve Mesh.
- VI. Beach fill shall be dominantly composed of naturally occurring carbonate beach or dune sand. Crushed limestone or other man made or non-carbonate sands are not allowable under this permit.
- VII. The applicant shall demonstrate that the proposed beach fill sand was obtained from an approved source and has been reviewed and authorized by the appropriate authority including but not limited to the Historic Preservation Division.
- VIII. All placed material shall be free of contaminants of any kind including: excessive silt, sludge, anoxic or decaying organic matter, turbidity, temperature or abnormal water chemistry, clay, dirt, organic material, oil, floating debris, grease or foam or any other pollutant that would produce an undesirable condition to the beach or water quality. Should the DLNR determine the sand quality inferior, the applicant may be asked to provide better quality sand or screen the existing sand for contaminants at their own expense.

3.3 Beach Sand Analyses

The laboratory results on the Kawai’ele Bird Sanctuary and the Pohaku O’ Kauai sand gradation is summarized in Table 4. As seen in the chart in Figure 11, the two sands are similarly graded. Where they differ greatly is in their calcium carbonate content. The Kawai’ele Bird Sanctuary sand is 94% CaCO_3 , while the POK sand contains only 36% of the mineral. The laboratory reports are attached to this document.

Table 4: Summary of the Laboratory Results of Sand Grain Size Distributions

Percent of Material Finer by Weight (%) than:

	4.00 mm	2.00 mm	1.00 mm	0.500 mm	0.355 mm	0.250 mm	0.125 mm	0.075 mm	0.063 mm
POK Sample	98.02	96.78	95.41	88.94	72.88	47.32	5.83	2.81	2.67
Kawai’ele Bird Sanctuary Composite Sample	93.56	91.42	88.52	79.13	72.17	59.81	5.29	1.87	1.49

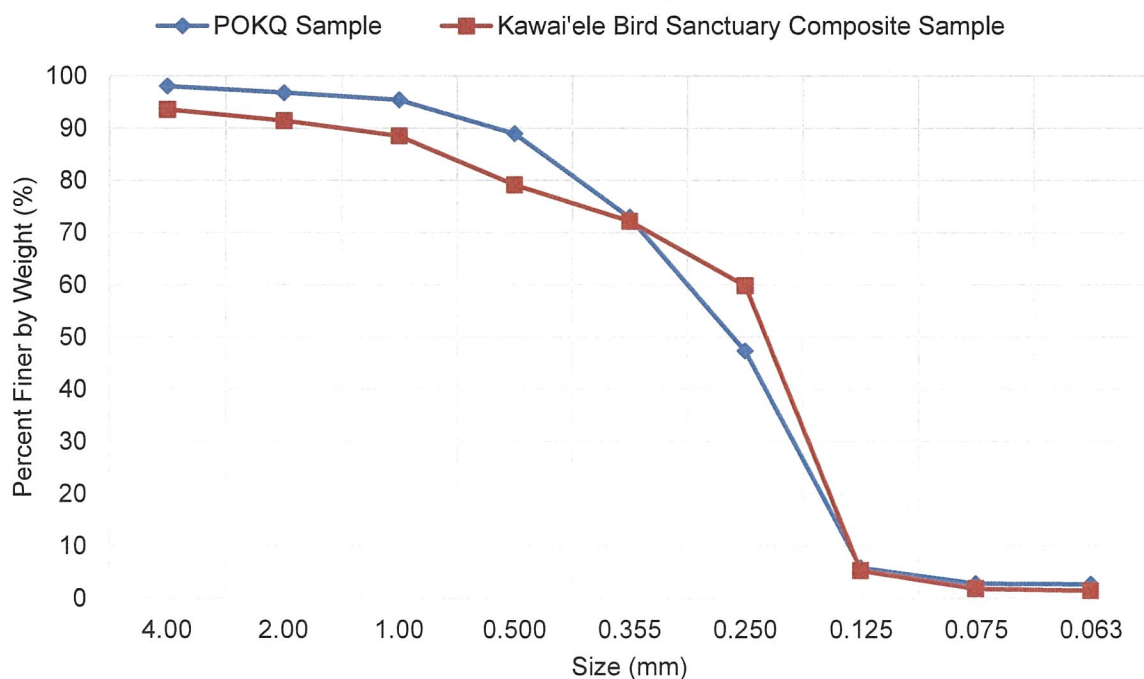


Figure 11: Chart showing a comparison of the Kawai’ele Bird Sanctuary and the Pohaku O’ Kauai Quarry sand sample grain size distributions.

In general, the value of sand is contingent on its compliance with the standards and guidelines discussed in sections 3.1 and 3.2 above. If these specifications are not met, the material may require treatments to refine it to an acceptable condition. Samples could be evaluated pre- and post-treatment to determine acceptable methods.

Upon review, the sediment size distribution data for both sand sources show that they may be generally compatible with Hawaii beach sand guidelines. 1.87% of the Kawai'ele Bird Sanctuary sample and 2.81% of the POK sample have a grain diameter less than 0.075 mm, so the sands do not contain more than 6% fines. 93.56% of the Kawai'ele Bird Sanctuary sample and 98.02% of the POK sample have a grain diameter greater than 4 mm, meaning the sands do not contain more than 10% coarse sediment. 5.29% of the Kawai'ele Bird Sanctuary sample and 5.83% of the POK sample, both less than 50%, have a grain diameter less than 0.125 mm. Each sand source could be further evaluated and the results submitted to DLNR OCCL for consideration for beach fill projects. Projects that involve utilizing sand to mitigate for coastal erosion and beach loss may include installation of emergency shoreline erosion controls, beach restorations, dune or vegetated berm enhancements, etc. Oceanit estimates that the current demand on Kauai for beach sand is roughly about 1,000 CY per year.

Compared to the POK sand, the Kawai'ele Bird Sanctuary material is likely preferable for most beach projects since the fine content in the tested samplers is lower for this source. Additional sampling and testing should be conducted to further evaluate the material should it be considered for beach use. Since the POK quarry sand is low in carbonate content, it may not be suitable for most beach projects in Hawaii.

It is important to note that the collected samples have not been compared to other potential sources of beach compatible material, or to the existing beach sand at potential nourishment sites. Nor have the samples been tested for potential contaminants. To Oceanit's knowledge, the Kawai'ele Bird Sanctuary sand has not been recently reviewed and approved as a source of beach compatible sand by the DLNR OCCL.

3.4 Alternative Sources of Concrete Grade Sand

There are two readily identifiable alternative means to source concrete grade sand: manufacturing and importing. The following sections briefly describe each alternative.

3.4.1 Manufactured Sand

The process of manufacturing sand involves buying the rights to, quarrying, crushing, screening, and sorting dense stone. The process is tricky to produce a product with the proper sand gradation and requires more extensive sorting, mixing, and process refinement to perform economically.

According to information provided by the operator, Kauai Aggregates pays a royalty of \$3 per ton to the landowner for basalt mined from the quarry they operate in Wahiawa^{vii}. Kauai Aggregates may be able to crush, screen and sort quarried rock into a manufactured stone product for between \$18-22 per ton^{vi}. Manufactured sand can be of acceptable quality for use in concrete mixes, however, it is currently prohibited by State rules for use as beach fill.

3.4.2 Imported Sand

Importing sand to Kauai would be done via small barge loads from Oahu. Due to the relatively small quantities of sand in demand on Kauai, this sand would be imported from Oahu. The majority of sand currently in use on Oahu for concrete mixes is imported from British Columbia. Sand could be

purchased free on board (FOB) at Nawiliwili Harbor and trucked to the batch plant in Lawai for use. This sand is currently sold retail on Oahu for \$81.95 and \$95.65 per ton^{viii}.

4. CONCLUSION

Oceanit conducted an evaluation on the current condition of the DLNR's sand resource at the Kawai'ele Bird Sanctuary at TMK: (4) 1-2-002: 001, Parcels 4 and 5, in Mānā, Kauai, with the goal of determining if the current market royalty rate for the material is more than \$39.41 per cubic yard. Oceanit has studied the available background information on sand resources in the area, made assumptions on the quantity and quality of the existing sand resource within the subject property using data provided by others, and researched the existing commercial market for sand on Kauai for use in concrete production and beach maintenance.

Oceanit has estimated that the total cost for the extraction and processing of concrete grade sand from the Kawai'ele Bird Sanctuary source is about \$52.84 per cubic yard. As a point of reference, the cost of sand from the nearby POK quarry source is about \$46.33 per cubic yard. The \$39.41 royalty rate charged by the State under the 2011 license is, therefore, higher than the current value of comparable material on the local market.

Due to the high calcium carbonate content, the Kawai'ele Bird Sanctuary sand is better suited for typical beach nourishment projects, as compared to the POK quarry sand, which contains much less carbonate. The market demand for beach sand on Kauai, however, is smaller than the demand for concrete mix sand. Due to the infrequent nature of beach maintenance projects, no market data is currently available for the price of beach quality sand on Kauai.

Since the Kawai'ele Bird Sanctuary sand is suitable to manufacture concrete and the market for concrete production is more established than beach maintenance, it is reasonable that Kauai Aggregates will likely use the sand source as an ingredient in concrete production. Since an alternative concrete sand source is available for a lower price, Oceanit finds that the value of current royalty rate for the DLNR's sand should not exceed \$39.41 per cubic yard.

5. REFERENCES

- ⁱ “Land License No. FW-2010-K-01.” State of Hawaii Department of Land and Natural Resources, 11 Feb. 2011.
- ⁱⁱ “Addition to Kawai’ele Wild Bird Sanctuary, Portion of Government (Crown) Land of Waimea, Mānā, Waimea, Kauai, Hawaii.” [Map]. CLS Hawaii Land Surveying & Mapping, 20 June 2013.
- ^{iv} Right-of-Entry and License Agreement (between State of Hawaii and Pohaku O’ Kauai Materials LLC), 13 Jan. 2014.
- ^v ASTM Standard C33, 2003, "Specification for Concrete Aggregates," ASTM International, West Conshohocken, PA, 2003.
- ^{vi} “Instructions for General Application: Category I Small-Scale Beach Nourishment Projects (SSBN).” SSBN Category I Guide, Department of Land and Natural Resources, May 2005, dlnr.hawaii.gov/occl/files/2013/07/SSBN-Guide-Cat-I.doc.
- ^{vii} Kauai Aggregates. Personal communication, 16 Oct. 2020.
- ^{viii} “Contractor Price Schedule.” HC&D LLC, 1 Feb. 2020.



AECOS, Inc.

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ATTN: Jordan Moniuszko jmoniuszko@oceanit.com

AECOS Job No.: 631

REPORT DATE:

2/12/2021

GRAIN SIZE ANALYSIS RESULTS

Date Sampled: 2/3/2021

Analyzed by: rk, dc

AECOS Log No.: 41849

Date Received: 2/4/2021

Sample Type: sediment

Fraction dry weight (g)											
size (mm)	>4.00	4.00 - 2.00	2.00 - 1.00	1.00 - 0.500	0.500 - 0.355	0.355 - 0.250	0.250 - 0.125	0.125 - 0.075	0.075 - 0.063	<0.063	TOTAL
phi	-2	-1	0	1						pan	
Mana1	8.87	2.95	3.99	12.94	9.58	17.02	75.09	4.72	0.52	2.05	137.73

Fraction Percent (%) - calculated											
size (mm)	>4.00	4.00 - 2.00	2.00 - 1.00	1.00 - 0.500	0.500 - 0.355	0.355 - 0.250	0.250 - 0.125	0.125 - 0.075	0.075 - 0.063	<0.063	TOTAL
phi	-2	-1	0	1	0	0	0	0	0	pan	
Mana1	6.44	2.14	2.90	9.40	6.96	12.36	54.52	3.43	0.38	1.49	100.0

Percent Finer by Weight (%)									
size (mm)	4.00	2.00	1.00	0.500	0.355	0.250	0.125	0.075	0.063
Mana1	93.56	91.42	88.52	79.13	72.17	59.81	5.29	1.87	1.49


Calcium Carbonate (%)

Mana1

94%

Grain size analyzed by Method 47.4; Carter 1993. Soil sampling and Methods of Analysis. CRC Press. 823pp.

CaCO₃ analyzed by method described in Carver, 1971. Procedures in sedimentary petrology. Wiley Interscience. 653 pp.


J. Mello, Laboratory Director



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ATTN: Jordan Moniuszko jmoniuszko@oceanit.com

AECOS Job No.:

631

REPORT DATE:

2/12/2021

GRAIN SIZE ANALYSIS RESULTS

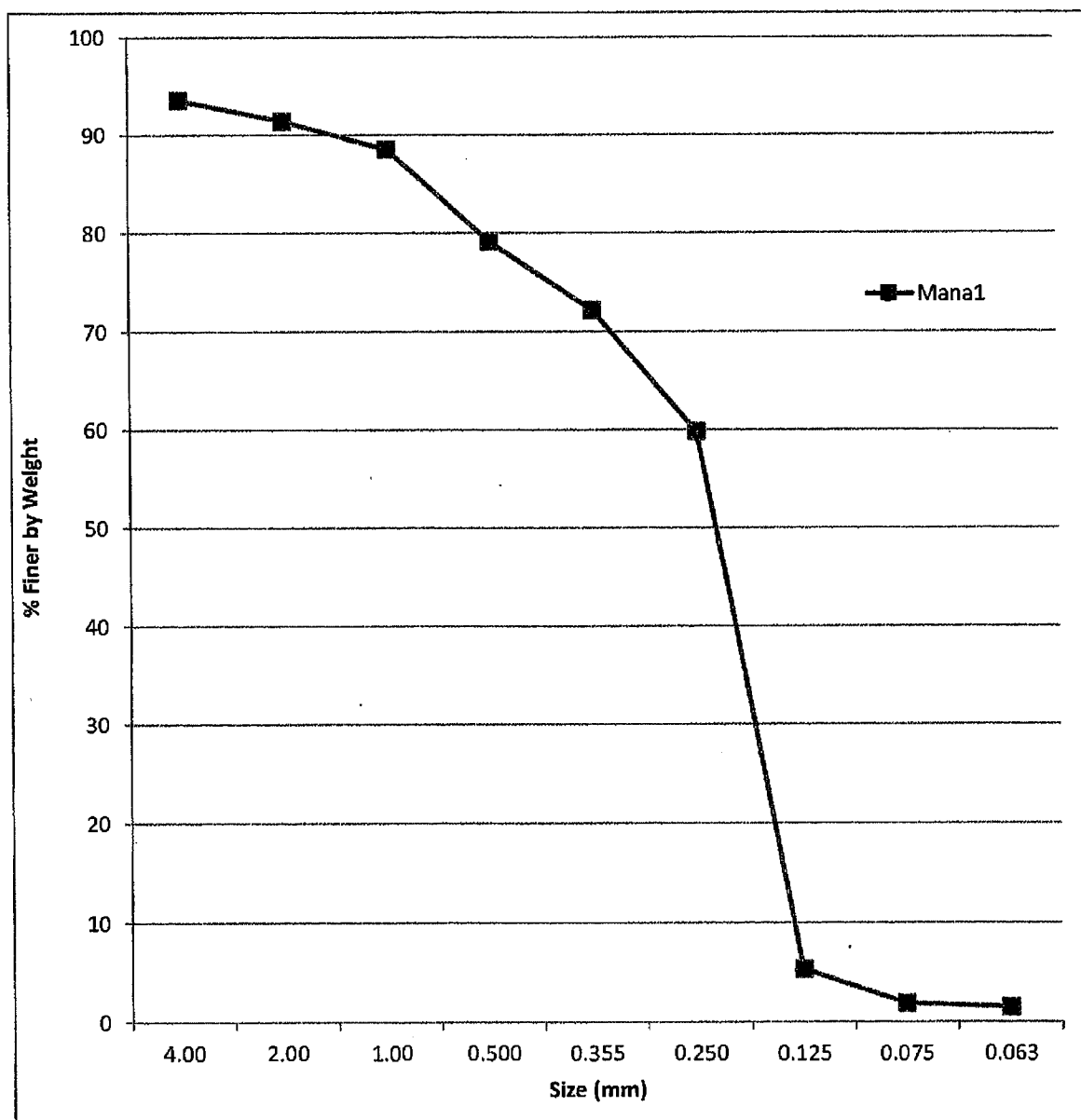
Date Sampled: 2/3/2021

Analyzed by: rk, dc

AECOS Log No.: **41849**

Date Received: 2/4/2021

Sample Type: sediment





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Honolulu HI 96813
ATTN: Taylor Chock tchock@oceanit.com

AECOS Job No.: 631
REPORT DATE: 7/28/2020

GRAIN SIZE ANALYSIS RESULTS

Date Sampled: 6/12/2020
Date Received: 6/24/2020

Analyzed by: rk, dc
Sample Type: sediment

AECOS Log No.: 40214

Fraction dry weight (g)											
size (mm)	>4.00	4.00 - 2.00	2.00 - 1.00	1.00 - 0.500	0.500 - 0.355	0.355 - 0.250	0.250 - 0.125	0.125 - 0.075	0.075 - 0.063	<0.063	TOTAL
phi	-2	-1	0	1						pan	
KA-001	2.05	1.29	1.42	6.71	16.66	26.51	43.03	3.14	0.14	2.77	103.72

Fraction Percent (%) - calculated											
size (mm)	>4.00	4.00 - 2.00	2.00 - 1.00	1.00 - 0.500	0.500 - 0.355	0.355 - 0.250	0.250 - 0.125	0.125 - 0.075	0.075 - 0.063	<0.063	TOTAL
phi	-2	-1	0	1	0	0	0	0	0	pan	
KA-001	1.98	1.24	1.37	6.47	16.06	25.56	41.49	3.03	0.13	2.67	100.0


Percent Finer by Weight (%)									
size (mm)	4.00	2.00	1.00	0.500	0.355	0.250	0.125	0.075	0.063
KA-001	98.02	96.78	95.41	88.94	72.88	47.32	5.83	2.81	2.67

Calcium Carbonate (%)
KA-001

36%

Grain size analyzed by Method 47.4; Carter 1993. Soil sampling and Methods of Analysis. CRC Press. 823pp.

CaCO₃ analyzed by method described in Carver, 1971. Procedures in sedimentary petrology. Wiley Interscience. 653 pp.


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ATTN: Taylor Chock tchock@oceanit.com

AECOS Job No.:

631

REPORT DATE:

7/28/2020

GRAIN SIZE ANALYSIS RESULTS

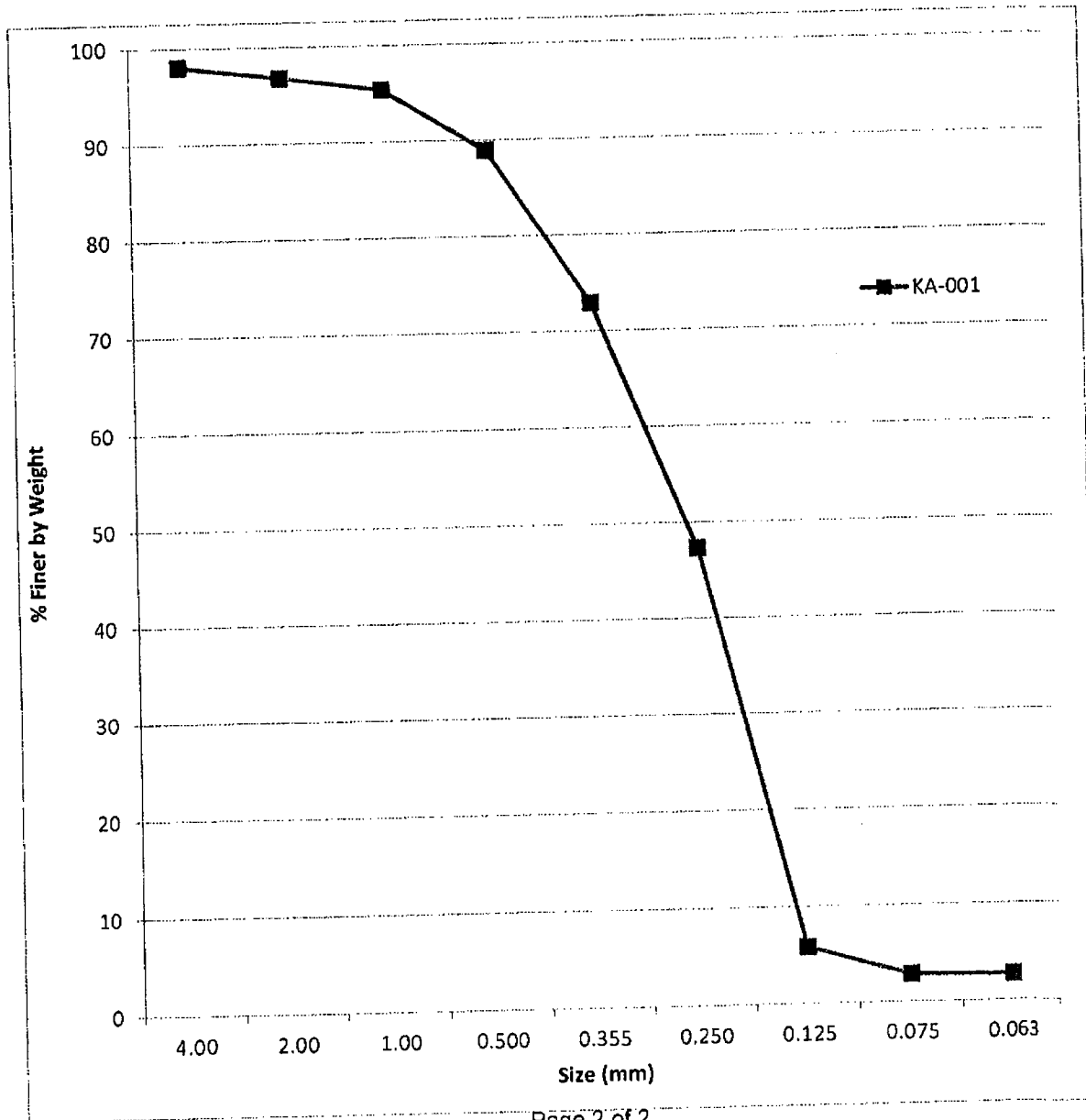
Date Sampled: 6/12/2020

Analyzed by: rk, dc

AECOS Log No.: **40214**

Date Received: 6/24/2020

Sample Type: sediment





STUDY CONDITIONS

The study conditions that are the basis of the analyses, opinions, and conclusions of this report are as follows:

Assumption of Hypothetical Conditions or Extraordinary Assumptions

The reported analyses, opinions and conclusion are not based on any hypothetical condition or extraordinary assumption.

Conversion of Tons to Cubic Yards

For the purpose of this analysis, a conversion factor of 1.35 tons per cubic yard is used for consistency in comparisons.

Property Description

Legal descriptions were not reviewed.

Site Description

The site description is based on:

- Survey Map “Sand Removal Topography for Parcels 4 and 5 Plan” provided by DLNR
- Property visit.

Prior Assignment Disclosure

Within the past three years, we have not provided real estate appraisal and/or appraisal review services relating to an ownership interest in the property that is the subject of this report and have informed the client prior to acceptance of this assignment.

Report Format

This report is an Appraisal Report as described in the “Uniform Standards of Professional Appraisal Practice” (USPAP). The detailed analysis and supporting documentation are available in the workfile of John Child & Company.

The opinions and conclusions in this report may not be understood properly without additional information contained in the workfile of John Child & Company.

**Basis of Analyses,
Opinions, and Conclusions**

The analyses, opinions, and conclusions of this report rely on data and information provided by others. The information is believed to be reliable; however, no responsibility is assumed for the accuracy of information provided by others.

The analyses, opinions, and conclusions assume:

1. No hidden or unapparent surface or subsurface conditions of the property, structures, soils, subsoils, geological formations, ground water, or drainage conditions exist that would render the property more or less valuable.
2. Existing improvements comply with all applicable public and private zoning codes, regulations and covenants, unless stated otherwise.
3. The client has provided us with all significant, relevant information covering the property that is the subject of this report.

No responsibility is assumed for matters legal in nature affecting the property or its title, which is assumed to be good and merchantable.

Properties in Hawaii typically include a reservation in favor of the State of Hawaii of all mineral and metallic mines. Our analyses, opinions, and conclusions assume these reservations do not have an impact on the value or use of the property.

Any drawings, maps, photographs, and similar exhibits accompanying this report are included to assist the reader in visualizing the property. No responsibility is assumed for the accuracy of these exhibits.

Hazardous Substances

Unless otherwise stated, the existence of hazardous substances (actual, alleged or threatened discharge, disposal, seepage, migration, release, growth, infestation, spread or escape of molds, mildews, fungi and/or spores, or any materials, goods or products containing, harboring or nurturing these substances) that could be present on the property, or other environmental conditions that could impact the property, were not brought to the attention of the appraisers nor observed during the site visit.

The appraisers are not trained or qualified to detect hazardous substances or conditions even if these hazards, or evidence of potential presence of these hazards, are visible on the property.

Therefore, this report assumes no hazardous substance or condition exists that would impact the analyses, opinions or conclusions. If a hazardous substance or condition exists, it could have a negative effect on the value of the property.

Archaeological or Historically Significant Conditions

The appraisers are not trained or qualified to recognize archaeological or historically significant conditions, even if these conditions are visible on the property.

Unless otherwise stated, archaeological or historically significant conditions that could be present on the property were not identified nor observed during the site visit. The report assumes no archaeological or historically significant condition exists that would impact the analyses, opinions or conclusions of this report. If an archaeological or historically significant condition exists, it could impact the use or value of the property and affect the results of this assignment.

Endangered Species

The appraisers are not trained or qualified to recognize endangered flora or fauna qualified for protection under the Endangered Species Act of 1973, even if visible on the property.

Unless otherwise stated, the presence of endangered flora or fauna was not identified, and the report assumes no endangered species are present on the property. The presence of endangered species could impact the value of the property.

Americans With Disabilities Act (ADA)

The Americans with Disabilities Act (ADA) became effective January 26, 1992. Unless otherwise stated, this report was not based on any specific compliance survey and analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the ADA. A survey of the property together with a detailed analysis of the requirements of the ADA could reveal that the property is not in compliance with one or more of the requirements of the ADA. If so, it could have a negative effect on the value of the property.

Terms of Assignment

We have no obligation to update our report because of events and transactions occurring subsequent to the effective date of the report.

Neither our fees nor payment were contingent upon the results of the report.

Use of Report

This report is valid only if presented in whole, with the letter of transmittal and signed certification.

This report or any portion of this report may not be reproduced or published without the prior written consent of John Child & Company, and then only with proper qualification.

The contents of this report or portions of this report, the identity of the appraisers or any reference to John Child & Company, the Appraisal Institute, the Counselors of Real Estate, or the American Society of Appraisers, or to their respective designations may not be disseminated to the public through advertising media, public relations media, news media, sales media, or any other public means of communication.

Limitation on Liability

John Child & Company shall not be liable to Client or to any third party (including without limitation lenders and other persons to whom Client may show this report for the purposes of obtaining credit, insurance or any other benefit or promise) in the event that the use or value of the subject property is or becomes different from the use or value estimates, analyses, opinions or conclusions in this report unless it is established by clear and convincing evidence that John Child & Company acted in bad faith or willfully and recklessly failed to exercise an appropriate standard of care in the community while performing this assignment. In any event, John Child & Company's liability to Client or to any third party shall be limited to the amount of the fees to complete this assignment.

This report may not be shown to any third party without our consent and without receiving a written acknowledgement from any person to whom it is shown that such person has read, understands and agrees to be bound by the limitation of liability in this paragraph.



SCOPE OF PROFESSIONAL SERVICES

Background

John Child & Company is a professional corporation that specializes in real estate appraisal and consulting and business valuation. It is the only company in Hawaii with expertise and professional designations in both real estate appraisals and business valuations.

John Child & Company was established by John F. Child, Jr. in 1937. The Company was the first firm to specialize in market research in Hawaii. Since 1937, the Company has provided critical knowledge of real estate market conditions and trends gained from the strength of its market research. As a result, its clients have confidence that John Child & Company real estate appraisal and business valuation assignments are based on competent analysis and careful documentation, and its consulting assignments focus on the key issues and provide sound alternatives.

The Company's professional team members' past and current local, regional, and national leadership positions in their professional organizations help to establish and promote the highest standards of professional practice and ethics for the industry.

Real Estate Appraisal and Consulting

The Company's real estate consulting and appraisal practice includes a range of specialized services covering real estate in Hawaii and the Pacific area. Professional services include:

- Valuation of real estate
- Litigation support
- Arbitration
- Market rent analysis
- Highest and best use studies
- Market and financial feasibility analyses
- Economic and fiscal impact assessments
- Purchase price allocation.

Its assignments include all types of real estate interests such as fee simple, leasehold, leased fee, and other partial rights and fractional interests. Its assignments cover a variety of land uses and property types such as:

- Office buildings and commercial property
- Industrial property
- Telecommunications facilities
- Hotels and resort properties
- Agricultural, conservation, and vacant land
- Conservation easements
- Shopping centers and retail facilities
- Residential developments (single family, multifamily, and condominium)



- Master-planned and mixed-use projects
- Golf courses
- Healthcare facilities
- Redevelopment projects
- Special-purpose property
- Timeshare properties.

Business Valuation

The Company's business valuation practice focuses on the valuation of closely-held businesses, including controlling and minority interests in corporations, partnerships, limited liability companies, and family limited partnerships. Its business valuation practice provides assistance in:

- Estate planning
- Tax reporting
- Mergers, acquisitions, and sales
- Stock transfers and redemptions
- Financial reporting
- Internal accounting
- Litigation support.

REPRESENTATIVE ASSIGNMENTS

The Company has provided real estate appraisal and consulting and business valuations for more than 80 years.

Real Estate Appraisal and Consulting

The Company's real estate appraisal and consulting practice covers a variety of properties and property interests. Real estate interests include fee simple, leasehold, leased fee, and other partial rights and fractional interests. Representative projects are listed as follows:

Redevelopment

Aloha Tower
Honolulu Waterfront
Master Development
Plan

Kakaako Redevelopment Plan
Kakaako Waterfront Park
Kapalama Development
Complex

Pawaa Redevelopment
Masterplan
Puck's Alley/Moiliili Gateway

Resorts

Hualalai
Ka'anapali North Beach
Kapalua
Kauai Lagoons
Ka'upulehu

Kiahuna Plantation
Ko Olina
Makena
Manini'owali
Mauna Kea

Princeville
Turtle Bay
Waikoloa Beach Resort
Wailea Resort



Hotels

Embassy Suites
Ka'anapali
Four Seasons Resort
Hualalai
Halekulani Hotel
Hilton Hawaiian Village
Hotel Hana Maui
Hyatt Regency Maui

Hyatt Regency Waikiki
Kahala Hilton
Kea Lani Hotel
Koa Kea Hotel
King Kamehameha Kona
Beach Hotel
Kona Village
Maui Marriott

Maui Prince
Princeville Hotel
Sheraton Kauai Resort
Sheraton Waikiki
W Hotel
Wailea Beach Resort
Waikiki Resort Hotel

Shopping Centers

Ala Moana
Aloha Tower
Marketplace
Coconut Grove
Downtown Kihei
(proposed)
Ewa Pointe Marketplace
Hawaii Kai Shopping
Center
Hawaii Kai Towne
Center

Kahala Mall Center
Kamehameha Shopping
Center
Keauhou Shopping Center
Keeaumoku Shopping Center
King's Village
Koko Marina
Kukui Mall
Lanikai Center
Mililani
Nimitz Business Center

Pearl City
Pearl City Shops
Pearl Kai Center
Piilani Shopping Center
Princeville
Royal Hawaiian
Wailea Shopping Village
Windward City
Windward Mall

Golf Courses

Asahi Kanko Olomana
Course
Dunes at Maui Lani
Hawaii Country Club
Hawaii Kai Golf Course
Ka'anapali
Kauai Lagoons (Kiele
and Lagoons)

Ko Olina
Mid-Pac Country Club
Pearl Country Club
Princeville (Makai and
Prince)
Sandalwood Golf Course
Sworders Golf Course
Waikapu Country Club

Waialeale Golf Course
Waikoloa (Kings)
Waikoloa Village (two
proposed)
Wailea (Blue, Emerald, and
Gold)

Office Buildings

1164 Bishop
Aina Haina Professional
Building
Ala Moana Building
Ala Moana Pacific Center
Amfac Towers
ANA Kalakaua Center
Arcade Building
C. Brewer Building

Castle Professional Center
Commerce Tower
Davies Pacific Center
Financial Plaza of the Pacific
Grosvenor Center
Harbor Court
Hawaii National Bank
Hawaiian Life Building
HMSA Building

James Campbell Building
Kailua Professional
Center I and II
Leilehua Building
Pan Am Building
Waialae Building
Waikiki Bank of Hawaii
Building
Waikiki Trade Center

**Industrial Properties**

Airport Industrial
Subdivision
Airport Trade Center
Barbers Point
Bougainville
Bougainville Commercial
Center
Campbell Industrial Park
Ewa Drum & Varona
Village
Halawa Center

Halawa Industrial Subdivision
Hawaii Business Center
Honokohau Harbor
Iwilei & Iwilei Business Center
Kalaeloa
Kapolei Business Park
Kona Industrial Subdivision
La Tour Plaza
Lihue Industrial Park
Makalapua Business Center
Manana

Mapunapuna
Mill Town
Panasonic/Technics Center
Pier 38 Domestic Commercial
Fishing Village
Sand Island Business Park
Waiau
Waialeke Storage Park
Waipahu
Waipio Business Center

Residential

Discovery Bay
Ewa by Gentry
Harbor Court
Honolulu Park Place
Imperial Plaza
Kalele Kai
Kamaole Heights
Kamehame Ridge
Ko Olina Fairways
Lahaina Residential

Makakilo
Maui Eldorado
Mawaena Kai
Mililani
Napili Kai
Nauru Tower
One Archer Lane
Royal Capitol Plaza
Royal Kuhio
The Kahala Beach

The Kalia, Inc.
Uplands at Mauna Kea
Victoria Tower
Village Park
Vineyard Court
Wailea Golf Vistas
Wailea Pualani Estate
Yacht Harbor Tower

Healthcare

Adventist Health
Arcadia Retirement
Residence
Castle Medical Center
Clinical Laboratories of
Hawaii
Diagnostic Laboratories
Services
Hale Mahaolu

Hawaii Health Care
Systems Corporation
Kahuku Medical Center
Kapiolani Medical Center for
Women and Children
Kauai Care Center
Pali Momi Medical Center
Palolo Chinese Home

Ponds at Punalu'u
Queen's Health Systems
Regency at Hualalai
Roselani Place
St. Francis Healthcare
Systems
Straub Hospital & Clinic
Wilcox

Agricultural, Conservation, and Conservation Easements

Campbell Palehua and
Kahe Ranch
Dunbar Ranch
Galbraith Trust Lands
Hana Ranch
Honouliuli Forest
Reserve
Kainalu Ranch
Kalauao Valley
Kanepuu Conservation
Easement
Kaupo Ranch Wai'u and
Nu'u Lands

Kealia Pond
Kona Forest Unit Access
Kuamo'o Point
Kukaiau Ranch Conservation
Easement
Lipoa Point
Maka'alae Conservation
Easement
May's Landing
McCandless Ranch
Conservation Easement
Moanalua Valley
Palmyra Atoll

Paradise Park
Ponoholo Ranch
Pupukea Property Conservation
Easement
Pu'u O Hoku Ranch
Turtle Bay
Ulupalakua Ranch
Conservation Easements
Waikapuna
Waimea Valley
Wao Kele O Puna



Special Purpose

Cemeteries/Memorial Parks	Hawaii Newspaper Agency Building	Outrigger Canoe Club Quarries
Chinese Cultural Plaza	Hawaiian Home Land Claims	Schools
Churches	Kapaa Land Fill	State of Hawaii Airports
Convents	Kaunalapau Harbor	Telecommunications sites
Condominium and Residential	NAS Barbers Point Electrical Distribution System	Tokai University
Lease-to-Fee Conversions	Oahu Club	Visitor attractions
		Wedding chapels

Business Valuation

The Company's business valuation practice focuses on closely-held businesses in Hawaii. Business valuation assignments typically estimate the market value of controlling and minority interests in closely-held corporations, limited liability companies, and partnerships.

These assignments are prepared to assist in estate planning and estate and gift tax reporting to the Internal Revenue Service, litigation, mergers, stock repurchase/redemptions, and acquisitions.

Valuations of closely-held businesses include:

Corporations

Aala Produce, Inc.	Loyalty Development Company, Inc.
Advanced Fresh Concepts Food Service	Loyalty Enterprises, Ltd.
Dowling Company, Inc.	Palani Ranch Company, Inc.
Finance Investment, Ltd.	Ponoholo Ranch Limited
Gay & Robinson, Inc.	Royal Phoenix Corporation
Industrial Investors, Inc.	Sen Plex Corporation
Jas W. Glover Holding Company, Ltd.	SSFM Engineers
K. Inouye Properties, Inc.	

Limited Partnerships and Limited Liability Companies

Aaron Properties Partners of Hilo	Leong Brothers
Baruch Bakar and Beth-El	Livingston Family Limited Partnership
BFFP Incorporated	Loyalty Associates
Caroline J. Robinson LLC	Loyalty Investments
CGB Partners	Maui Quest, LLC
Fernandez Properties	MLB Inc.
Hawaii Aina Management	Pawaa Court LLC
Honolulu Open Medical Imaging, LLC	Pohaku Koloa
J.L.P. Robinson LLC	Robinson Kunia Land LLC
K.J.L. Associates	Royal Phoenix
KSM Associates LLC	SCF Limited Partnership
KVH Partners	Second City
Kaha Kai LLC	Taihook Associates
Kamali'i Family Limited Partnership	Taira Family Limited Partnership
Lanihau Properties LLC	The Mark A. Robinson Trusts



CLIENTS

The Company provides professional services to a range of clients representing private, non-profit, and public interests. Selected clients in private industry, non-profit organizations, and public agencies are listed.

PRIVATE INDUSTRY

Attorneys

Alston Hunt Floyd & Ing
Ashford & Wriston
Bays Lung Rose & Holma
Bendet Fidell
Cades Schutte
Carsmith Ball
Case & Lynch
Case Lombardi & Pettit
Chun Kerr LLP
Cox Wooten Lerner
Crockett & Nakamura
Damon Key Leong Kupchack Hastert
Ekimoto & Morris
Goodsill Anderson Quinn & Stifel
Huilin Dong, Attorney at Law
Imanaka & Asato
Ing Horikawa, Jorgensen & Endo
Joy Miyasaki

Kobayashi Sugita & Goda
Law Offices of Thomas Watts
MacDonald Rudy O'Neill & Yamauchi
McCorriston Miller Mukai McKinnon
Ning, Lily & Jones
Oshia Chuh Fong & Chung
Price Okamoto Himeno & Lum
Rush Moore
Schneider Tanaka Radovich Andrew & Tanaka
Settle Law
Starn O'Toole Marcus & Fisher
Tom Petrus & Miller, LLC
Torkildson Katz Moore Hetherington & Harris
Tsugawa Biehl Lau & Muzzi
Van Buren & Shimizu, LP
Wagner Choi Verbrugge
Watanabe Ing LLP

Banks/Lenders

American Savings Bank
Bank of Hawaii
Central Pacific Bank
Citibank, N.A.
First Hawaiian Bank

Hawaii National Bank
The Chuo Mitsui Trust & Banking Co., Ltd.
The Industrial Bank of Japan, Ltd.
The Long-Term Credit Bank of Japan, Ltd.
Wells Fargo Bank

Closely Held Corporations/Limited Partnerships/Family Trusts

Baruch Bakar and Beth-el Associate
BFFP Incorporated
Caroline J. Robinson LLC
Gay & Robinson
Hawaii Aina Management Co. LL
Jas. W. Glover Holding Company, Ltd.
J.L.P. Robinson LLC
Kaha Kai LLC
Kamalii Family Limited Partnership
K.J.L. Associates
KVH Partners and CGB Partners
Knudsen Trusts

Lanihau Properties, LLC
Leong Brothers
Livingston Family Limited Partnership
Loyalty Development
Loyalty Investments
Maui Quest LLC
MLB, Inc.
Norman & Amy Hirohata-Goto LLC
Nua Family Limited Partnership
Palani Ranch
Pawaa Court LLC
Pohaku Koloa LLC



Closely Held Corporations/Limited Partnerships/Family Trusts, Continued

Ponoholo Ranch, Limited
Royal Phoenix Corporation
SCF Limited Partnership
Second City Property Management Inc.
Sen Plex Corp.

Sheridan Ing Marital Trust
Taira Family Limited Partnership
The Mark A. Robinson Trusts
WBL, Inc.

Developers/Landowners

A&B Properties, Inc.
Aloha Tower Associates
Bedford Properties, Inc.
(fka Kaiser National Housing
Corporation Development Company)
Cuzco Development U.S.A. LLC
Dowling Company, Inc.
Elleair Hawaii, Inc.
Finance Realty
Gentry Companies
Hana Ranch Partners
Hanalei Land Company
Haseko (Hawaii), Inc.

Hemmeter/Tokyu Waterfront Joint Venture
James Campbell Company
Kaneohe Ranch
Kapolei Property Development, LLC
Krausz Properties
McCandless Land & Cattle Company
MW Group, Ltd.
Niu Pia Farms
Pauahi Management Corp.
Queen Emma Land Company
Sam Koo Pacific, LLC
Tesoro Hawaii Corporation
Ulupalakua Ranch Inc.

Resort Operators/Owners

Alpha U.S.A., Inc.
Kapalua Land Company, Ltd.
Kaupulehu Makai Venture (Hualalai
Resort)
Namalu LLC (Makena Resort)

Princeville Development Company
Shinwa International
Turtle Bay Resort
Wailea Resort Company, Inc.

Retailers

7-Eleven (Hawaii), Inc.
Kyotaru International
McDonald's Restaurants of Hawaii

Safeway, Inc.
Sears Holding Corporation

Trust Companies and Trusts

Bank of Hawaii Trust Department
First Hawaiian Trust
Hawaiian Trust Co., Ltd.

Knudsen Trusts
Lili'uokalani Trust
Mark A. Robinson Trusts

NON-PROFIT ORGANIZATIONS

Adventist Health
Bobby Benson Center
Castle Medical Center
Chaminade College
Hawaii Health Systems Corporation
Hawaii Opera Theatre

Hawaii Pacific Health
Hawaii Pacific University
Honolulu Community Action Program,
Inc. (HCAP)
Iolani School
Japan Association of Real Estate Appraisers



NON-PROFIT ORGANIZATIONS, Continued

Kahuku Medical Center
Kamehameha Schools
KCAA Pre-Schools of Hawaii
Manoa Valley Theatre
Maui Coastal Land Trust
National Tropical Botanical Garden
Pacific Buddhist Academy
Punahou School
Queen's Health Systems

Segull Schools, Inc.
The Fathers of the Sacred Hearts
The Sisters of the Sacred Hearts
St. Francis Healthcare Systems of Hawaii
The Nature Conservancy
The Trust for Public Land
Young Women's Christian Association
(YWCA)

PUBLIC AGENCIES

Bank Regulatory Agencies

Federal Depository Insurance Corporation
(FDIC)

Federal Home Loan Bank Board (FHLBB)

City & County of Honolulu

Honolulu Authority for Rapid Transportation
Honolulu Public Transit Authority
Department of Housing and Community
Development

Department of Design and Construction
Department of the Corporation Counsel

County of Hawaii

Department of Finance

Department of Public Works

County of Kauai

Department of Water

Federal Agencies

Internal Revenue Service
National Business Center, Appraisal Services
Directorate
U.S. Attorney General
U.S. Department of Agriculture, Forest
Service

U.S. Department of Agriculture, Natural Resource
Conservation Service
U.S. Department of the Army
U.S. Department of the Navy
U.S. Department of Interior, Fish & Wildlife
Service

Utilities

Aloha Solar Energy Fund
Citizens Utilities Company - Kauai Electric
D.R. Fortress

Eurus Energy America Corporation
Hawaiian Electric Industries (HEI, Inc.)
Pacific Resources, Inc.



State of Hawaii

Attorney General
Department of Hawaiian Home Lands
Department of Land & Natural Resources
Department of Transportation

Hawaii Community Development Authority
Hawaii Housing Finance and Development
Corporation
Office of Hawaiian Affairs

PROFESSIONAL TEAM QUALIFICATIONS

The professional team has a wide range of real estate experience gained through a variety of field experience, professional accomplishments, training, and education. Team members have earned their reputation for quality work and professional service.

Professional Designations

Team members hold designations earned from the major professional organizations. Team members have earned the MAI designation from the Appraisal Institute, the CRE (Counselor of Real Estate) from The Counselors of Real Estate, and ASA (Accredited Senior Appraiser) from the American Society of Appraisers.

State Certification

Members of the professional team are Certified General Appraisers under the State of Hawaii license and certification program.

Other Qualifications and Training

Professional team members are qualified as expert witnesses in the courts of Hawaii; actively participate in and serve as arbitrators and review appraisers; and continue to attend courses, seminars and workshops to strengthen their own specialized appraisal skills and education.

Professional Team Members

Professional team members include:

- Karen Char, MAI, CRE, ASA, President
- Paul D. Cool, MAI, CRE, Vice President
- Shelly H. Tanaka, MAI, AI-GRS, Vice President
- Masayo K. Allen, MAI, Esq.

The education and professional experiences of team members are outlined in their accompanying resumes.

QUALIFICATIONS OF JOHN CHILD & COMPANY

KAREN CHAR, MAI, CRE, ASA

President



As President of John Child & Company, Karen is responsible for developing and managing the Company's professional practice that includes real estate appraisal and consulting and business valuation. She specializes in complex real estate and business valuation assignments.

Karen originally joined the Company in 1973 and has over 40 years of professional experience. She has served in elected and appointed national and international leadership positions in the Counselors of Real Estate and the Appraisal Institute. In 2010 she received the prestigious James Felt Creative Counseling Award from The Counselors of Real Estate.

Education

- Master of Business Administration, University of Hawaii, 1972
- Bachelor of Business Administration, University of Hawaii, 1970
- Punahou School, 1967
- Successfully completed various courses, workshops, and seminars sponsored by the Appraisal Institute and The Counselors of Real Estate

Professional Associations

- Member, The Counselors of Real Estate (CRE designation)
 - 2010 James Felt Creative Counseling Award
 - Chief Delegate to the Pan Pacific Congress of Real Estate Appraisers, Valuers, and Counselors: New Zealand, 2000; Singapore, 1998; Sydney, 1996; Yokohama, 1994; Speaker: New Zealand, 1988 and Korea, 1990
 - Member, National Board of Governors, 1995 - 2000
 - National Vice President, 1997
 - Vice Chair, National Ethics & Professional Practice Committee, 1995; Member, 1993 - 1998 and 2000 - 2002
 - Member, National Finance Committee, 1995 - 1997
 - Member, International Task Force (fka International Activities Committee), 1992 - 1999
 - Member, National Communications Committee, 1993 - 1995, 2001; National Public Relations, 1998 - 2001, Technology Committee, 2001
 - Chair, Honolulu Convention Committee, 1992
 - Member, Appraisal Institute (MAI designation)
 - Member (representing Region VII, Arizona, Hawaii, Southern California, and Southern Nevada), National Appellate Division (serves as National Ethics Appeal Board), 1997 - 1999
 - Vice Chair, National Admissions Committee of the General Appraisal Board, 1991
 - Governing Councilor, 1986 - 1988
 - Vice Chair, National Bylaws Committee, 1986 - 1989
 - Vice Chair, Organizing Committee, Pan Pacific Congress of Real Estate Appraisers, Valuers and Counselors, Honolulu, 1986
 - Member, National Bylaws Committee, 1985
 - Member, National Admissions Committee, 1982 - 1990
 - Chairman, National Evaluation Report Subcommittee, 1982
-

QUALIFICATIONS OF JOHN CHILD & COMPANY

KAREN CHAR, MAI, CRE, ASA
President

Page 2



- Member, Appraisal Institute, (continued)
 - President, 1986; Vice President, 1985; Secretary, 1984; Honolulu Chapter No. 15
 - Grader, National Board of Examiners, 1982 - 1983
 - Admissions Chairman, Southwest Region, 1983
- Accredited Senior Appraiser, American Society of Appraisers, (ASA designation, specializing in business valuation)
- Member, Aloha Chapter of Lambda Alpha International, an Honorary Land Economics Society

Other Real Estate and Charitable Associations and Community Activities

- Director, Board of Directors, Hawaii Women's Legal Foundation, 2002 to present
- Vice President and Director, Board of Directors, Hawaii Opera Theatre, 2004 to 2020.
- Nonlawyer Member, Magistrate Judge Merit Selection Panel, District of Hawaii, 2018
- Author, "Creative Counseling: Preserving the Hawaii Opera Theatre" *Real Estate Issues*, Volume 36, November 1, 2011; 41-45
- President, Hawaii Chapter of the National Association of Office and Industrial Properties (NAIOP Hawaii), 1998
 - Member, Board of Directors, 1996 - 1998
 - Chair, Leasehold Issues Committee, 1996 - 1997
 - Responsible for writing NAIOP's reports as follows:
 - *Ground Lease Renegotiation Issues and Practical Alternatives*, September, 1996
 - *Lease Rent Arbitration and USPAP*, January, 1997

Professional Experience

- President and Chief Executive Officer, John Child & Company, Inc., 1984 to present
- Senior Manager, Peat, Marwick, Mitchell & Co. (now known as KPMG Peat Marwick), 1979 - 1984
- Appraiser, John Child & Company, Inc., 1973 - 1978

Professional Designations

- The Appraisal Institute conducts a voluntary program of continuing education for its designated members. Members who meet the standards of this program are awarded periodic educational certification. Karen Char, MAI is certified under this program.
- The American Society of Appraisers conducts a mandatory program of recertification through continuing education and/or participation in professional activities every five years. Karen Char, ASA, is certified under this program.

State Certification

- Certified General Appraiser, State of Hawaii, License Number CGA-184, expiring December 31, 2021.

Court Testimony

- Qualified as an expert witness in the valuation of real property and closely-held businesses in the Courts of the State of Hawaii.
-

E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT

(Complete one Section E for each key person.)

12. NAME Michael J. Foley, PhD, P.E.	13. ROLE IN SERVICE CATEGORY Coastal and Ocean Engineer	14. YEARS EXPERIENCE <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; border-bottom: 1px solid black;">a. TOTAL</td> <td style="width: 50%; border-bottom: 1px solid black;">b. WITH CURRENT FIRM</td> </tr> <tr> <td style="text-align: center;">12</td> <td style="text-align: center;">12</td> </tr> </table>		a. TOTAL	b. WITH CURRENT FIRM	12	12
a. TOTAL	b. WITH CURRENT FIRM						
12	12						
15. FIRM NAME AND LOCATION (City and State) Oceanit, Honolulu, Hawai'i							
16. EDUCATION (DEGREE AND SPECIALIZATION) PhD Civil Engineering / 2015 MS Civil and Environmental Engineering / 2011 BA Environmental Science and Physics / 2006		17. CURRENT PROFESSIONAL REGISTRATION (STATE AND DISCIPLINE) Civil Engineer, Hawai'i, No. 17342, Exp. 4/30/2020					
18. OTHER PROFESSIONAL QUALIFICATIONS (Publications, Organizations, Training, Awards, etc.) Certifications: Scientific Diver, American Academy of Underwater Sciences Awards: Dennis R. Washington Achievement Scholar, The Horatio Alger Association of Distinguished Americans (2012) Organizations: Hawai'i Shore and Beach Preservation Association Board Member							

19. RELEVANT PROJECTS

	(1) TITLE AND LOCATION (City and State)	(2) YEAR COMPLETED	
	Camp Mokuleia Coastal Research project with National Disaster Preparedness Training Center (NDPTC). Mokuleia, Oahu, Hawai'i	PROFESSIONAL SERVICES ongoing	CONSTRUCTION (if applicable)
a.	(3) BRIEF DESCRIPTION (Brief scope size, cost, etc.) AND SPECIFIC ROLE <input checked="" type="checkbox"/> Check if project performed with current firm Project Manager. Camp Mokuleia is a north shore site that historically suffers erosion and winter wave damage. Oceanit provided coastal monitoring services using image processing technology to monitor shoreline position and beach width. A data management platform was used that has the capability to collect and integrate crowd-sourced shoreline imagery from Camp Mokuleia staff to verify collected data. Innovative coastal adaptation methods were researched, including living shoreline techniques and emergency shoreline protection integrating natural elements. Shoreline protection prototypes were developed for installation, testing and monitoring at Camp Mokuleia and reports were produced to document the findings. Oceanit also will assist NDPTC in the development of coastal hazard and planning tools. Design fee: \$10,000.		
	Napili Sunset Condominiums, Association of Apartment Owners (AOAO) Lahaina, Maui, Hawai'i	PROFESSIONAL SERVICES Ongoing	CONSTRUCTION (if applicable)
b.	(3) BRIEF DESCRIPTION (Brief scope size, cost, etc.) AND SPECIFIC ROLE <input checked="" type="checkbox"/> Check if project performed with current firm Project Manager. Provided an engineering evaluation regarding the repair of a shoreline protection structure within this Lahaina property and recommended a shoreline stabilization method to reduce the risk. Design fee: \$15,700.		
	Erosion at the Argyropoulos Residence Pa'ia, Maui, Hawai'i	PROFESSIONAL SERVICES Ongoing	CONSTRUCTION (if applicable)
c.	(3) BRIEF DESCRIPTION (Brief scope size, cost, etc.) AND SPECIFIC ROLE <input checked="" type="checkbox"/> Check if project performed with current firm Project Manager. Assisted the client in reviewing engineering designs prepared to protect a residential lot. This involved reviewing existing site conditions and historical shoreline erosion data, estimating erosion rates, assessing potential impacts on adjacent properties and providing input to the design engineer. Oceanit also provided regulatory permit (SMA) support, helped determine the limits of a coastal dune and provided conceptual engineering design drawings for the purpose of discussion with regulators and construction contractors. Design fee: \$22,900.		
	Engineering Evaluation of shoreline at TMK (2) 4-3-15:03 Alaeloa, Kaanapali, Lahaina, Maui, Hawai'i	PROFESSIONAL SERVICES Ongoing	CONSTRUCTION (if applicable)
d.	(3) BRIEF DESCRIPTION (Brief scope size, cost, etc.) AND SPECIFIC ROLE <input checked="" type="checkbox"/> Check if project performed with current firm Project Manager. Provided an engineering evaluation regarding the condition of the shoreline at this property, assessed the immediate risks from erosion. Oceanit contacted the Office of Conservation Lands (OCCL) and prepared a letter report documenting the current situation and recommended further action to be taken to stabilize the escarpment and shoreline protection. Design fee: \$15,700.		
	Chang Property Shoreline Protection Waimanalo, Oahu, Hawai'i	PROFESSIONAL SERVICES Ongoing	CONSTRUCTION (if applicable)
e.	(3) BRIEF DESCRIPTION (Brief scope size, cost, etc.) AND SPECIFIC ROLE <input checked="" type="checkbox"/> Check if project performed with current firm Project Manager. Provided an emergency, temporary repair design to stabilize the shoreline and reduce the risk to the property. An engineering assessment that used background information provided by the client and historical shoreline erosion data was done to develop options for a longer-term shoreline erosion control. This assessment report was the basis for discussions with DLNR – Office of Conservation and Coastal Lands and other agencies to discuss shoreline protection options. Design fee: \$19,000.		

E. RESUMES OF KEY PERSONNEL PROPOSED WHO WILL PROVIDE SERVICES FOR THIS PROJECT CATEGORY

(Complete one Section E for each key person.)

12. NAME Jordan Moniuszko, P.E.	13. ROLE IN THIS CONTRACT Coastal and Environmental Engineer	14. YEARS EXPERIENCE	
		a. TOTAL 6	b. WITH CURRENT FIRM 1
15. FIRM NAME AND LOCATION (City and State) Oceanit Laboratories, Inc, Honolulu, HI			
16. EDUCATION (DEGREE AND SPECIALIZATION) B.S. / 2009 / Mechanical Engineering B.S. / 2009 / Environmental Science		17. CURRENT PROFESSIONAL REGISTRATION (STATE AND DISCIPLINE)	
18. OTHER PROFESSIONAL QUALIFICATIONS (Publications, Organizations, Training, Awards, etc.) 2009 / SCUBA Open Water; 2009 / Environmental Compliance Training and Tracking System; 2010 / OSHA 30 Hour Construction Safety & Health; 2010 / National Pollutant Discharge Elimination System Awareness; 2013 / Engineer in Training; 2013 / CPR & First Aid; 2013 / OSHA 24 Hour Confined Space Competent Person; 2014 / Hawaii DOBOR Safe Boating			

19. RELEVANT PROJECTS

	(1) TITLE AND LOCATION (City and State)	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION (If Applicable)
a.	(1) Dredging, Beach Replenishment, Coastal Erosion Control, Coral Transplantation projects	2014	
	(3) BRIEF DESCRIPTION (Brief scope, size, cost, etc.) AND SPECIFIC ROLE Project Engineer. Performed hydrographic surveys, land surveys and volume calculations for dredging and beach replenishment projects throughout Hawaii. Designed and implemented site specific best management practice (BMP) plans. Obtained permits and supporting documentation for the dewatering, stockpiling, and beneficial reuse of dredge material. Drafted dredging and disposal and beach replenishment work plans. Installed and operated real time kinematic global positioning systems (RTK GPS) for vessel, dredge, and dump scow tracking. Coordinated offshore dredged material disposal with EPA and involved parties. Managed projects to install shoreline erosion control measures including articulated concrete block mats, sandbag groins, armor stone groins and breakwaters, and reinforced concrete dolo breakwaters. Managed projects involving coral surveys, harvesting, and transplantation. Developed and coordinated approval of coral transplantation plans with regulatory agencies.		
b.	(1) Kawainui Stream Flow Restoration Kailua, Hawai'i	2015	
	(3) BRIEF DESCRIPTION (Brief scope, size, cost, etc.) AND SPECIFIC ROLE Project Engineer for this levee project currently in progress. Designed and installed a temporary levee overflow siphon to return flow to the Kawainui Stream and Hāmākua Marsh from the Kawainui Marsh. Water quality data from before and after the temporary siphon installation will be summarized. The design of a permanent siphon constructed through the levee will follow.		
c.	(1) Honolulu Harbor Molasses Spill Response Honolulu, Hawai'i	2013	2013
	(3) BRIEF DESCRIPTION (Brief scope, size, cost, etc.) AND SPECIFIC ROLE Project Engineer at American Marine Service Group for this marine spill response project. Pipelines within Honolulu Harbor were inspected for further leakage along with government representatives. Daily response logs were created and submitted to document the response effort.		
d.	(1) Tohoku Tsunami Response at Ke'ehi Lagoon Honolulu, Hawai'i	2011	2011
	(3) BRIEF DESCRIPTION (Brief scope, size, cost, etc.) AND SPECIFIC ROLE Project Engineer at American Marine Services Group for this marine survey and salvage project. Performed hydrographic side scan sonar and bathymetric surveys within Ke'ehi Lagoon to locate sunken vessels and obstructions to navigation following the magnitude 9.0 earthquake in Japan and ensuing tsunami. Survey data was provided to Lagoon stakeholders and several obstructions to navigation were removed from the Lagoon and taken for disposal.		
e.	(1) Deepwater Horizon Oil Spill Response New Iberia, Louisiana	2010	2010
	(3) BRIEF DESCRIPTION (Brief scope, size, cost, etc.) AND SPECIFIC ROLE Project Engineer at American Marine Services Group for this marine spill response project. Oil skimmers were operated aboard the MSRC Lightning following the Deepwater Horizon oil spill in the Gulf of Mexico. Daily response logs were created and submitted to document the response effort.		

E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT

(Complete one Section E for each key person.)

12. NAME Catherine Hanna, E.I.T.	13. ROLE IN SERVICE CATEGORY Civil Engineer	14. YEARS EXPERIENCE <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; border-bottom: 1px solid black; text-align: center;">a. TOTAL</td> <td style="width: 50%; border-bottom: 1px solid black; text-align: center;">b. WITH CURRENT FIRM</td> </tr> <tr> <td style="text-align: center;">6</td> <td style="text-align: center;">0</td> </tr> </table>		a. TOTAL	b. WITH CURRENT FIRM	6	0
a. TOTAL	b. WITH CURRENT FIRM						
6	0						
15. FIRM NAME AND LOCATION (City and State) Oceanit, Honolulu, Hawai'i							
16. EDUCATION (DEGREE AND SPECIALIZATION) MS Civil and Environmental Engineering / 2012 BS Civil Engineering / 2011		17. CURRENT PROFESSIONAL REGISTRATION (STATE AND DISCIPLINE) Engineer in Training, New York, No. 088183					
18. OTHER PROFESSIONAL QUALIFICATIONS (Publications, Organizations, Training, Awards, etc.) Certifications: OSHA 10-Hour Training #36-005323436 Awards: Charles Lee Crandall Award Winner (2010 & 2011), Margaret Arronet Corbin Award Winner (2011), Intel Foundation Research Grant Recipient (2011)							

19. RELEVANT PROJECTS

	(1) TITLE AND LOCATION (City and State)	(2) YEAR COMPLETED	
	Skyline Point HOA Riprap Revetment & Retaining Wall Staten Island, City of New York, New York	PROFESSIONAL SERVICES 2020	CONSTRUCTION (if applicable) 2020
a.	(3) BRIEF DESCRIPTION (Brief scope size, cost, etc.) AND SPECIFIC ROLE <input type="checkbox"/> Check if project performed with current firm Project Manager. Designed riprap revetment for shoreline rehabilitation. Performed coastal engineering analysis of the lower New York Harbor using CEDAS ACES software, in consideration of NYS Coastal Erosion Management regulations, including compilation of local environmental data inputs, irregular wave development and wave progression modeling, nearshore wave refraction, wave breaking and run-up calculations. Designed upland retaining wall repairs. Prepared environmental and building permit application packages for submission to the following agencies: USACE, NYSDEC, NYSDOS, NYCDP, NYCSBS, NYDOB and NYCDPR. Provided support during the bidding phase. Performed bi-monthly observations followed by a report to observe the condition of retaining structures and confirm the global stability of the primary building structures. Provided construction administration and oversight as well as permitting closeout. Engineering services fee: \$150k. Construction cost: \$700k.		
	Design of a Sustainable Shorelines Demonstration Project Nutten Hook, Town of Stuyvesant, New York	PROFESSIONAL SERVICES 2019	CONSTRUCTION (if applicable) 2020
b.	(3) BRIEF DESCRIPTION (Brief scope size, cost, etc.) AND SPECIFIC ROLE <input type="checkbox"/> Check if project performed with current firm Project Manager. Prepared shoreline stabilization reports, provided design strategy assessment for shoreline restoration and hardening to prevent erosion along the site's shoreline, prepared construction cost estimates and reviewed permitting implications and technical concerns for assessed strategies. Developed permit-ready construction drawings for ecologically-enhanced, engineered shoreline treatments that resist erosion, enhance the site's recreational use, improve the site's habitat value and account for increases in frequency of extreme storm and sea level rise. Project was performed for NYSDEC through a grant administered by NEIWPCC. Design fee: \$50k.		
	USCG Station Honolulu Honolulu, Oahu, Hawai'i	PROFESSIONAL SERVICES 2019	CONSTRUCTION (if applicable) 2018
c.	(3) BRIEF DESCRIPTION (Brief scope size, cost, etc.) AND SPECIFIC ROLE <input type="checkbox"/> Check if project performed with current firm Project Engineer. Provided internal QA/QC review of new fendering and mooring infrastructure design and related submittals to support homeporting of new National Security Cutter vessels. Provided custom stanchion and gangway detailing. Performed as consultant to the prime design-build contractor, Haskell.		
	Paragon Paint Bulkhead Queens, City of New York, New York	PROFESSIONAL SERVICES 2017	CONSTRUCTION (if applicable) N/A
d.	(3) BRIEF DESCRIPTION (Brief scope size, cost, etc.) AND SPECIFIC ROLE <input type="checkbox"/> Check if project performed with current firm Project Manager. Designed 117 lft of new sheet-pile bulkhead with helical anchor tiebacks and developed drawings in coordination with the architect, SHoP Architects, and landscape architect, SCAPE. Integrated design with proposed environmental enhancements and groundwater containment requirements of environmental permits.		
	Nyack Municipal Marina Dredging Village of Nyack, New York	PROFESSIONAL SERVICES 2017	CONSTRUCTION (if applicable) 2016
e.	(3) BRIEF DESCRIPTION (Brief scope size, cost, etc.) AND SPECIFIC ROLE <input type="checkbox"/> Check if project performed with current firm Project Manager. Developed dredging plans for the removal of 2,500 cuyd of sediment over an approximate 55,500 sqft area. Coordinated environmental permitting with environmental consultant, AKRF. Acted as point-of-contact for scheduling design work and surveys that could impact marina operations. Developed cost estimates and progress reports for FEMA reimbursement. Provided construction administration, including reviewing contractor bids and submittals, responding to RFIs, site visits followed by brief field reports, calculating final dredge volume for contractor payment and environmental permit closeout.		

EXHIBIT 5

COMPROMISE AND SETTLEMENT AGREEMENT

This Compromise and Settlement Agreement (the “**Agreement**”) is entered into by and between O. Thronas, Inc. (“**Thronas**”), and the State of Hawaii, by and through the Board of Land and Natural Resources (the “**State**”), effective as of this ____ day of _____, 2021. Thronas and the State are from time to time referred to jointly as the “**Parties**”.

RECITALS

WHEREAS, on or about the middle of February 2011, the Board of Land and Natural Resources (“**Board**”) granted Goodfellow Bros., Inc. (“**GBI**”) two land licenses (“**Land Licenses**”) pursuant to Hawaii Revised Statutes (“**HRS**”) 171-54. The Land Licenses permitted GBI to remove sand for commercial purposes from "Parcel 4" and "Parcel 5" of State lands situated at Mana, Waimea, Kauai, Hawaii, Tax Map Key No. (4) 1-2- 02: Por. 1. (“**Parcel 4**” and “**Parcel 5**” respectively, collectively the “**Parcels**” and individually a “**Parcel**”).

WHEREAS, the Land Licenses are substantively identical contracts with the State, one covering the removal of sand from Parcel 4, and the other covering the removal of sand from Parcel 5.

WHEREAS, the original term of the Land Licenses was two years beginning March 1, 2011 and terminating February 28, 2013 (the “**Term**”).

WHEREAS, the Land Licenses required GBI to remove and pay for a cumulative minimum of 2,500 cubic yards of material from each parcel per quarter. The royalty rate was \$39.11 per cubic yard.

WHEREAS, the maximum cubic yards of material that could be removed from the two parcels was 46,811 cubic yards.

WHEREAS, Thronas/GBI prepaid the BLNR the full royalty fee in the Licenses, in the amount of \$1,576,400.00 (the “**Prepaid Amount**”), for the removal of the minimum amount of 40,000 cubic yards of sand during the Term of the Contracts, but the minimum volume of the sand was not extracted during the Term.

WHEREAS, GBI removed 13,286 cubic yards of sand during the original term of the Land Licenses.

WHEREAS, the remaining sand allegedly paid for is 26,714 cubic yards of sand (the “**Remaining Sand**”).

WHEREAS, by written agreement, GBI assigned to Thronas any and all rights and interests of GBI to any claims for damages or other causes of action that GBI had, has or may have had against the State and/or the BLNR under the Contracts.

WHEREAS, after the Parties could not initially come to agreement on Thronas’s right to remove the Remaining Sand, Thronas filed a lawsuit against the State, Civil No. 19-1-0029, seeking the right to either remove the Remaining Sand or to recoup monies paid for the Remaining Sand, and related remedies (the “**Lawsuit**”).

WHEREAS, the parties thereafter tentatively agreed in concept for Thronas to remove the Remaining Sand, provided that Thronas would first obtain a current market value appraisal for the Remaining Sand, and would compensate the State for any increase in the value of the Remaining Sand between the proportionate Prepaid Amount for the Remaining Sand and its current market value.

WHEREAS, pursuant to a March 18, 2021 appraisal by Karen Char of John Child & Company, Ms. Char opined that the value of the Remaining Sand is presently less than the proportionate Prepaid Amount paid by Thronas and/or GBI to the BLNR; and, therefore, the

Parties agree as part of and in consideration of full settlement that Thronas is not required to pay the State any additional monies for the Remaining Sand.

WHEREAS, the Parties now desire for Thronas to remove the Remaining Sand from the Parcels within one (1) year, pursuant to the terms and further agreements set forth hereinbelow.

WHEREAS, the State has the authority to carry out the foregoing terms pursuant to Hawaii Revised Statutes Section 171-3(a).

NOW THEREFORE, in consideration of the mutual promises contained herein, the Parties have agreed and do hereby agree as follows:

A. CONSIDERATION. The Consideration for this settlement is the mutual promises contained herein which the Parties agree is mutual, adequate, and fair.

B. SETTLEMENT TERMS

1. Right of Entry Agreement. The Parties agree that the State will grant Thronas a 1-year right of entry to enter onto the Parcels for the purpose of removing the Remaining Sand. The terms and conditions of the right of entry from the State in favor of Thronas are set forth in further detail in the Right of Entry Agreement attached hereto and incorporated herein as "Exhibit "A" (the "**ROE Agreement**"). Thronas shall remove up to but not to exceed the Remaining Sand during that one year period and any extensions of that period as permitted pursuant to the ROE Agreement. As long as the State does not unreasonably delay or prevent Thronas from removing the Remaining Sand during the period of time permitted under the ROE Agreement, at the end of the period, Thronas shall have no remaining claims or rights of any nature and kind, including any claim or right to sand or return of royalties.

2. Dismissal of Lawsuit: The parties shall promptly dismiss the Lawsuit with prejudice.

3. Mutual Release of Claims. Each Party, on behalf of itself and its respective past, present, and future heirs and assigns, hereby releases and forever discharges the other party, its successors, and assigns, and its past, present, and future affiliates, subsidiaries, parent(s) or related companies, joint venturers, sureties, partners, partnerships, assigns, officers, directors, shareholders, employees, agents, staff, accountants, consultants, insurers, attorneys, administrators, nominees, and representatives from any and all disputes, damages, actions, liabilities, fees, losses, costs, expenses, attorneys' fees, and any other claims, known or unknown, suspected or unsuspected, arising out of, in connection with or relating in any way to (i) the Lawsuit and (ii) the Land Licenses. This release shall not apply to any obligations arising under this Agreement, the ROE Agreement, and/or any asserted breach of this Agreement or ROE Agreement.

4. Cooperation. The Parties agree to take such further actions and execute and deliver such other documents as may be reasonably necessary to effectuate the provisions of this Agreement.

C. LEGAL FEES AND COSTS. The Parties are to bear their own legal fees and costs incurred in connection with this Agreement.

D. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Hawaii. The Parties hereby agree that all actions or proceedings in any way, manner or respect, arising out of or from or related to this Agreement may be litigated in state courts, as allowed by law, or arbitrated in Hawaii upon further agreement of the parties. Should any provision of this Agreement require interpretation, it is agreed that the party interpreting or considering same shall not apply the presumption that the term hereof shall be more strictly construed against a party by reason of the rule or conclusion

that a document should be construed more strictly against the party who itself or through its agent prepared the same. It is agreed and stipulated that all parties hereto have participated equally in the preparation of this Agreement and that legal counsel was consulted by each party before the execution of this Agreement.

E. SEVERABILITY OF PROVISIONS. If any provision of this Agreement is declared invalid or unenforceable, the remaining portions of the Agreement shall not be affected thereby and shall be fully enforced.

F. INCORPORATION OF RECITALS, EXHIBITS. All recitals, exhibits and schedules attached hereto or referred to herein are incorporated in this Agreement as though fully set forth herein.

G. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and shall inure to the benefit of each of the Parties hereto and their respective successors and permitted assigns.

H. SECTION HEADINGS. The section headings in this Agreement are inserted only as a matter of convenience and for reference and in no way limit the scope or intent of any provision of the Agreement.

I. COUNTERPARTS. The Parties agree that this Agreement may be executed in counterparts and by facsimile, each of which shall be deemed an original, and said counterparts shall together constitute one and the same instrument, binding all the Parties thereto, notwithstanding that all the Parties are not signatories to the original or the same counterpart.

K. ENTIRE AGREEMENT. This Agreement contains the entire Agreement between the Parties with respect to the settlement of the Lawsuit. This Agreement supersedes

and replaces any and all prior or contemporaneous agreements or understandings, written or oral, with regard to the disposition of the Lawsuit.

L. MODIFICATION PROVISION. This Agreement may only be modified by a writing executed by the Parties.

M. DUE AUTHORITY. Thronas and the State warrant and represent that they have read this Agreement, understand it, have consulted with their respective counsel regarding its legal effect, and have all necessary authority to execute and deliver this Agreement.

[Signature Page Follows]

AGREED AND ACCEPTED:

O. THRONAS, INC.

By:

Its:

APPROVED AS TO FORM:

JESSE W. SCHIEL, ESQ.
Attorney for O. THRONAS, INC.

AGREED AND ACCEPTED:

STATE OF HAWAII

By: SUZANE D. CASE
Its: Chairperson, Board of Land and Natural
Resources

APPROVED AS TO FORM:

Deputy Attorney General
STATE OF HAWAII

EXHIBIT "A"

(ROE Agreement)

EXHIBIT 6

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE

RIGHT-OF-ENTRY FOR REMOVAL OF SAND FROM MANA PLAINS FOREST
RESERVE FOR WETLAND RESTORATION AT MANA, WAIMEA, KAUA'I, TAX MAP
KEY: (4) 1-2-002: PORTION 001.

This RIGHT-OF-ENTRY ("ROE") is made this _____ day of _____, 2021 (the "**Effective Date**") by and between the State of Hawaii, DEPARTMENT OF LAND AND NATURAL RESOURCES, DIVISION OF FORESTRY AND WILDLIFE, whose place of business is 1151 Punchbowl Street, Room 325, Honolulu, Hawaii 96813, ("**PERMITTOR**" or "**DLNR**"), and O THRONAS, INC., a Hawaii corporation, whose mailing address is P O BOX 269, LAWAI, Hawaii 96765 ("**Thronas**" or "**PERMITTEE**"). PERMITTOR AND PERMITTEE are sometimes collectively referred to hereinafter as the "Parties". This ROE is entered into pursuant to a Settlement and Compromise Agreement (the "**Settlement Agreement**"), and is itself attached as **Exhibit "A"** to the Settlement Agreement.

1. **RIGHT OF ENTRY.** PERMITTOR hereby grants to PERMITTEE and its employees, agents, representatives, contractors, and subcontractors (collectively, "**Permittee Representatives**"), a non-revocable, exclusive right to enter upon the portion of that certain parcel of State of Hawaii lands, designated as Mana Plains Forest Reserves, situated in Waimea, Kaua'i identified by Tax Map Key (4) 1-2-002: por 001 (the "**Property**"), as further described in **Exhibit "1"** attached hereto and made a part hereof, only during weekdays during regular business hours and only for the Permitted Uses (defined below) during the term hereof, and in connection with the Settlement Agreement. For the avoidance of doubt, during the term of this ROE, PERMITTOR agrees that it shall not grant to any other person or entity the rights granted to PERMITTEE herein. PERMITTOR agrees to work in good faith with PERMITTEE in scheduling and allowing PERMITTEE'S reasonable access to the Remaining Sand at reasonable times during the term hereof in order to help ensure that PERMITTEE is able to remove the Remaining Sand within the term of this ROE Agreement.

2. **TERM.** The initial term of this ROE shall be for one (1) year, commencing on the Effective Date and expiring on _____, 2022 unless extended as provided herein. Subject to the terms of this ROE, upon notice to, and approval from, the PERMITTOR prior to the expiration of this ROE, the term of this ROE may be extended for up to a maximum of two months only for good cause such as delays due to the COVID pandemic, inclement weather, or any other cause beyond the reasonable control of PERMITTEE.

3. **PERMITTED USE.** PERMITTEE'S excavation and removal of 26,714 cubic yards of sand from the Property ("**Remaining Sand**") for commercial purposes and for the restoration of wetland habitat to enhance the Division and Forestry and Wildlife's (DOFAW) conservation and recovery efforts for four species of endangered endemic Hawaiian waterbirds, as further explained in the Settlement Agreement and the Contracts referenced therein.

4. FEES. The Parties agree that PERMITTEE shall not be required to pay any additional consideration for the Permitted Use beyond the Payment in Full already made by PERMITTEE to PERMITTOR, as further explained hereinabove and in the Settlement Agreement.

5. CONSTRUCTION AND MAINTENANCE. During the term of this ROE, PERMITTEE shall be entitled to use the Property for the Permitted Use, i.e. the removal of the Remaining Sand. PERMITTEE will finish, fill, clear and/or smooth harvested areas to the conditions and contours agreed to between PERMITTOR and PERMITTEE in land licenses FW 2010 K1 and FW 2010 2010 K2 and as shown in Exhibit "2" attached hereto. PERMITTEE will otherwise keep the Premises in good and orderly condition consistent with good industry practice but in no case less than reasonable practice. PERMITTEE shall not make or allow any waste, spoil, nuisance, or unlawful, improper or offensive use of the Premises during the term, and is responsible for the cleaning and remediation of any spill or release of toxic substances that occur as a result of or in connection with the Permitted Use. PERMITTEE shall at all times have clean up kits available to address any spills or releases that may occur. PERMITTEE and Permittee Representatives shall comply with all rules, regulations, ordinances and/or laws of the State of Hawaii and any other municipal and/or federal rule, regulation, or authority applicable to the Premises.

6. RIGHT TO ENTER. PERMITTOR, the State of Hawaii, and the employees, agents, and representatives thereof (collectively, "Permittee Representatives") may access and inspect the Premises at all reasonable times to determine whether the covenants herein are being fully observed and performed and for the performance of any public or official duties, including but not limited to the monitoring and protection of native plants and animals; provided, however, that in the exercise of such rights, PERMITTOR and Permittee Representatives shall not unreasonably interfere with PERMITTEE's use of the Premises.

7. BREACH. PERMITTOR or PERMITTEE, as applicable, may terminate this ROE in addition to any additional rights and remedies available to either of them under the Settlement Agreement, and applicable law, following written notice to the other party of its failure to comply with the specified term(s) of the ROE and the other party's failure to cure such breach within thirty (30) days of receipt of the notice of breach; provided that if such breach, by its nature, is curable, but is not reasonably curable within thirty (30) days, the non-breaching party shall provide the breaching party with a reasonable time to cure such breach so long as such party has commenced to cure the breach within the initial 30-day period and diligently prosecutes the same to completion.

8. NO TRANSFER, MORTGAGE, OR SUBLEASE. This ROE is personal to PERMITTEE and PERMITTEE may not assign, sublease, sublicense, transfer, mortgage, pledge, or devise any of its rights or interests under this ROE, except to another wholly-owned subsidiary of PERMITTEE, its parent company, or an entity acquiring all of PERMITTEE's assets.

9. TERMINATION/ABANDONMENT. Upon cancellation, termination, or expiration of this ROE, PERMITTEE, at its sole cost and expense, shall have thirty (30) days after such cancellation, termination, or expiration to remove from the Property all of PERMITTEE's equipment.

10. DEFENSE AND INDEMNITY. PERMITTEE shall, defend, indemnify and hold harmless PERMITTOR, its officers, and employees, from and against all liability, loss, damage, cost, and expense, including all reasonable attorneys' fees, and all claims, suits, and demands therefore, directly arising out of or resulting from personal injury or death of persons and property damage to the extent arising from the acts or omissions of PERMITTEE and/or PERMITTEE's officers, employees, agents, or contractors and occurring during or in connection with the exercise of this ROE. PERMITTEE's liability to PERMITTOR, and PERMITTOR's liability to PERMITTEE, shall be limited to direct damages and shall exclude any other liability, including, without limitation, liability for special, indirect, punitive or consequential damages in contract, tort, warranty, strict liability or otherwise. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this ROE.

11. MISCELLANEOUS.

A. Legal Authority. All applicable requirements of Hawaii Revised Statutes Chapter 171 have been met, and Hawaii Administrative Rules 13-104-4(5), as amended.

B. Chapter 343 Environmental Assessment: The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice in May 1988 with a finding of no significant impact (FONSI). Special permits were received from the Kauai County Planning Commission for sand mine use and from the State Land Use Commission for establishment of a sand mine and creation of a waterbird sanctuary.

C. Verifications: PERMITTEE shall submit the following documents to PERMITTOR:

- i. A certified copy of PERMITTEE's articles or certificate of organization (or similar instrument) certified by the jurisdiction where PERMITTEE is organized.
- ii. A certificate of good standing (or similar instrument) issued by the jurisdictions under which Permittee is organized, which certificate is dated no more than 6 months before the effective date of the General Lease.

D. Bond: PERMITTEE will post a \$50,000.00 performance bond to insure faithful compliance with the terms and conditions of the ROE.

E. PERMITTEE accepts the Premises as-is, where-is, with all faults. PERMITTEE understands and acknowledges that there are no existing utility services to the Premises. PERMITTEE is solely responsible for obtaining and paying for any and all utility services required by PERMITTEE to use or make use of the Premises as contemplated under this ROE.

F. PERMITTEE may grub and clear the existing vegetation on the Premises only to the extent needed for the Permitted Uses, provided further that PERMITTEE has obtained all necessary permits or approvals to conduct such activities.

G. If nēnē goose or endangered Hawaiian waterbird nests are found anywhere on the Premises, all Permitted Use within a 100 foot radius of the nest must cease until the PERMITTOR determines that the birds have fledged.

H. All associated construction costs under this ROE shall be borne solely by the PERMITTEE and shall not, in any case, be reimbursable by PERMITTOR.

I. Except as otherwise required by Chapter 171, Hawaii Revised Statutes, any notice, request, offer, approval, consent or other communication required or permitted to be given by or on behalf of either party to the other shall be given or communicated in writing by personal delivery, reputable overnight courier service which keeps receipts of deliveries (i.e., Federal Express), or United States certified mail (return receipt requested with postage fully prepaid) or express mail service addressed to the other party as follows:

If to PERMITTEE: O. Thronas, Inc.
P O BOX 269,
LAWAI, Hawaii 96765
Attention: Scott Pingrey

With a copy to: Kobayashi Sugita & Goda
c/o Jesse Schiel, Esq.
999 Bishop Street, Suite 2600
Honolulu, HI 96813

If to PERMITTOR: Department of Land and Natural Resources
Division of Forestry and Wildlife, Kauai Branch
3060 Eiwa Street, Rm. 306, Lihue, HI 96766
Attention: Branch Manager

And a copy to: Department of the Attorney General
425 Queen Street
Honolulu, HI 96813
Attention: Linda Chow

J. This ROE may be executed in any number of counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one agreement. Any counterpart may be delivered by any party by transmission of signature pages to the other parties at the addresses and in the manner set forth herein, whether in hardcopy or electronic format, by PDF, email, or facsimile.

K. This ROE is binding upon, and inures to the benefit of, the parties and their respective successors and permitted assigns.

L. Neither Party will be liable for any reasonable delay or failure in performance under this ROE Agreement deemed as a result, directly or indirectly, of any act of God, acts of civil or military authority, pandemics, acts of public enemy, terrorism, war, accidents, fires, explosions,

earthquakes, floods, failure of public transportation, or any other cause beyond the reasonable control of either Party.

M. This ROE shall be construed in accordance with the laws of the State of Hawaii, without regard or application to its principles of conflicts of laws. PERMITTEE submits to the jurisdiction of the State of Hawaii. Any dispute arising under or in connection with this ROE shall be filed and adjudicated in the Circuit Court of the First Circuit of the State of Hawaii, and PERMITTEE irrevocably waives any objection now or hereafter respecting choice of law, jurisdiction, or venue and consents to the service of process by means of registered or certified mail, return receipt requested, to the address(es) set forth above or as PERMITTEE shall furnish to PERMITTOR in writing.

[REMAINDER OF PAGE BLANK -- SIGNATURE PAGE(S) FOLLOW]

IN WITNESS WHEREOF, PERMITTOR and PERMITTEE have caused this ROE to be executed by the duly authorized officers/individuals as of the day and year first above written.

APPROVED AS TO FORM:

STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL
RESOURCES

Deputy Attorney General
State of Hawai'i

By _____
Suzanne D. Case, Chairperson
Department of Land and Natural Resources

PERMITTOR

O THRONAS, INC., a Hawaii limited liability
company

By _____
Name:
Its:

PERMITTEE

STATE OF _____)
) SS.
COUNTY OF _____)

On this _____ day of _____, _____, before me appeared _____, to me personally known, who, being by me duly sworn, did say that ____ is the person who executed the foregoing instrument and acknowledged to me that ____ executed the same freely and voluntarily for the use and purposes therein set forth.

Notary Public, State of _____

Printed Name: _____

My commission expires: _____

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

On this _____ day of _____, 20____, before me appeared _____, to me personally known, who, being by me duly sworn, did say that _____ is the Chairperson of the Board of Land and Natural Resources and the person who executed the foregoing instrument and acknowledged to me that _____ executed the same freely and voluntarily for the use and purposes therein set forth.

Notary Public, State of Hawaii

Printed Name of Notary Public _____
My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: _____

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

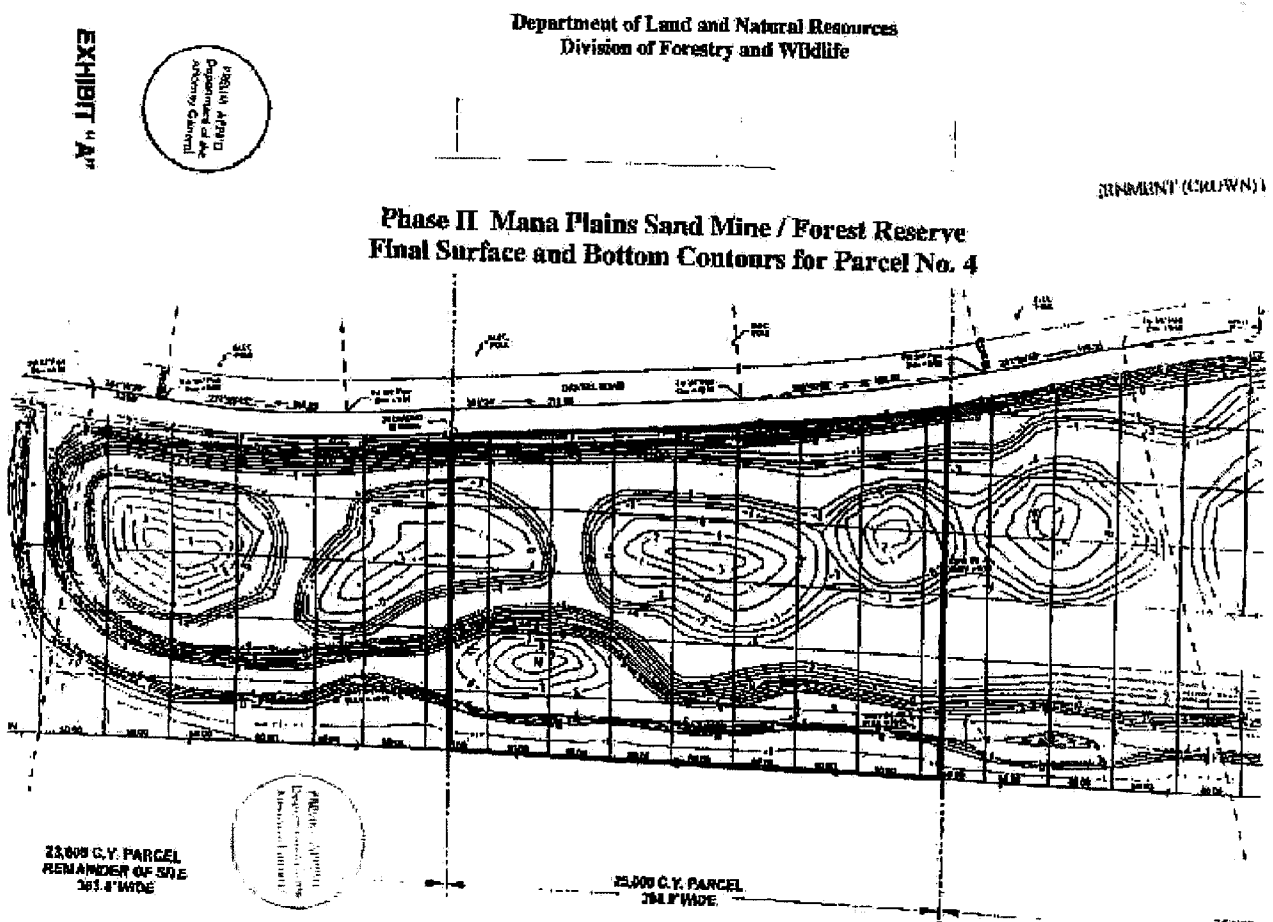
No. of Pages: _____ Jurisdiction: First Circuit
(in which notarial act is performed)

Signature of Notary	Date of Notarization and Certification Statement
---------------------	--

Printed Name of Notary

EXHIBIT "2"

[Final Surface Contours as agreed in Land Licenses FW 2010 K1 and FW 2010 2010 K2]



Department of Land and Natural Resources
Division of Forestry and Wildlife

GOVERNMENT (CROWN) LAND OF WAIMEA

Phase II Mana Plains Sand Mine / Forest Reserve
Final Surface and Bottom Contours for Parcel No. 5

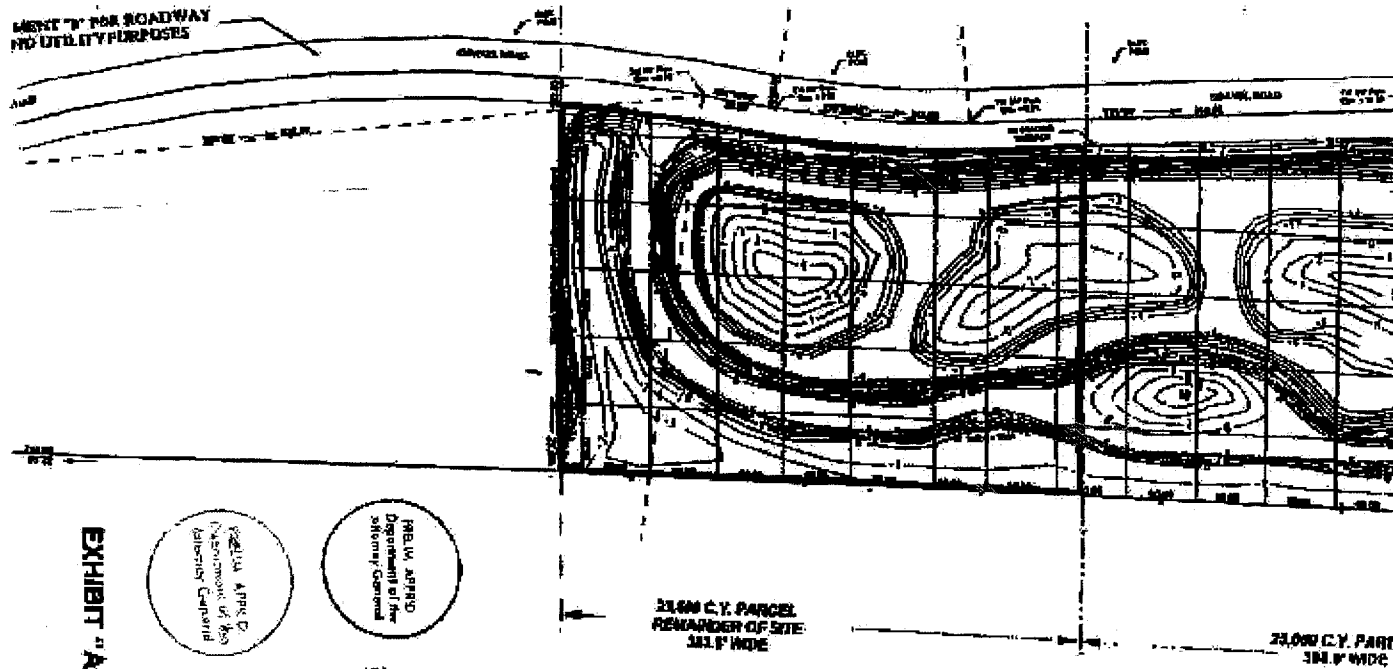


EXHIBIT "A"

WILLIAM A. PYLE, C.
Surveyor of the
State of Hawaii

PAUL M. AYOUB
Department of the
Interior, General
Survey Division

EXHIBIT 7

HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES

DIVISION OF FORESTRY AND WILDLIFE

KAUAI DISTRICT

MAY 1988

AGENCY ACTION

NEGATIVE DECLARATION

Commercial Sand Mine to Create Wildlife Sanctuary,
Kawaielele, Kauai

CIP Project Act 2/6/87, Item D40

DLNR
DOFAW
Kauai District

DETERMINATION NOTICE OF NEGATIVE DECLARATION
FOR
SAND MINING OPERATION AND WATERBIRD SANCTUARY DEVELOPMENT
AT KAWAIELE, KAUAI

- I. Proposing Agency: Department of Land and Natural Resources, Division of Forestry and Wildlife, Kauai District
- II. Approving Agency: Department of Land and Natural Resources, Division of Forestry and Wildlife
- III. Summary of Proposed Action

The Division of Forestry and Wildlife proposes to designate and operate the first 15 acre increment of potential 30 acre commercial sand mine at Kawaieles, Kauai for the purpose of creating endangered waterbird nesting habitat. Sand will be sold to private contractors by license agreement through the Board of Land and Natural Resources and excavated to a prescribed depth below the mean water table. The exposed water area and bottom contours will be designed and finished to specifications set forth by the Division of Forestry and Wildlife to create optimal endangered waterbird nesting habitat, including nesting islets, shallow water feeding areas, and predator resisting moats. (See attached location map.)

Project Environment:

The Kawaieles waterbird sanctuary development site is located 5 miles NW of Kekaha Town on State Highway 50. It is a low-lying, relatively flat waste area of fine to medium grain Catano coral sand, overgrown with weedy dryland vegetation. Dominant plants include Koa haole, bristly foxtail grass, Indian fleabane, kiawe, and sisal. Annual rainfall is less than 20 inches.

Existing wildlife includes introduced song birds, such as the red cardinal, linnet, house sparrow, Indian mynah, mockingbird, and game birds, such as the ring-necked pheasant, lack-necked dove, and barred dove. Common introduced reptiles found in the vicinity include the snake-eyed skink and stump-toed gecko. The marine toad and bullfrog are found in and near the ditches and cane

fields nearby. Native birds utilize these adjacent ditches, and include the Hawaiian duck, Hawaii moorhen, Hawaiian coot, and Hawaiian stilt (all endangered waterbird species). The black-crowned night heron, an indigenous species, is also common in ditches, as well as occasional migratory waterfowl, such as pintail and shoveler ducks.

There are no known archaeological, historical sites, or endangered native plants that will be affected by this project.

IV. Summary of Environmental Effects:

Environmental effects would include the removal of surface vegetation with a bulldozer to expose the clean sandy substrate. Removed vegetation would be piled, crushed, and composted at one corner of the site. Dust problems would be minimal since the sand substrate is clean and the project site is more than a half mile from the nearest human habitation. Noise and disturbance would be confined to the use of heavy equipment already typical of sugar cane harvesting in adjacent fields. Long-term potential adverse effects after open water area is established, such as the creation of mosquito breeding habitat, can be as effectively controlled as all of the surrounding ditches, drains, and reservoirs by the introduction of mosquito fish. The ponds are not likely to attract nuisance birds since they will essentially be the same as those already existing at Mana, favoring particularly the endangered Hawaiian waterbirds.

V. Assessment and Alternatives

The purpose of this project is to satisfy some of the goals of the Hawaiian Waterbirds Recovery Plan, the State Wildlife Plan, and the State Division of Forestry and Wildlife Threatened and Endangered Species Plan. No unacceptable adverse impacts can be identified. The only alternatives available are to: (1) look for, obtain land tenure, and develop an alternative site, or (2) take no action. The first alternative has already been considered early in the planning process. The Kawaiiele site was determined to be the best site for waterbird sanctuary development because it is already State land, is large enough to develop into first class endangered waterbird habitat by proven methods, is currently designated as wasteland, and can be developed at minimal cost to the State while serving as a source of badly needed commercial sand. The second alternative, "no action," would be in opposition to the stated goals and plans of the Department of Land and Natural Resources.

VI. Proposed Mitigation

None; no mitigation measures are deemed necessary.

VII. Determination

That a negative declaration is appropriate for this project.

VIII. Determination Support

The reasons for support of the negative declaration are stated in the above.

Division of Forestry and Wildlife
April 28, 1988

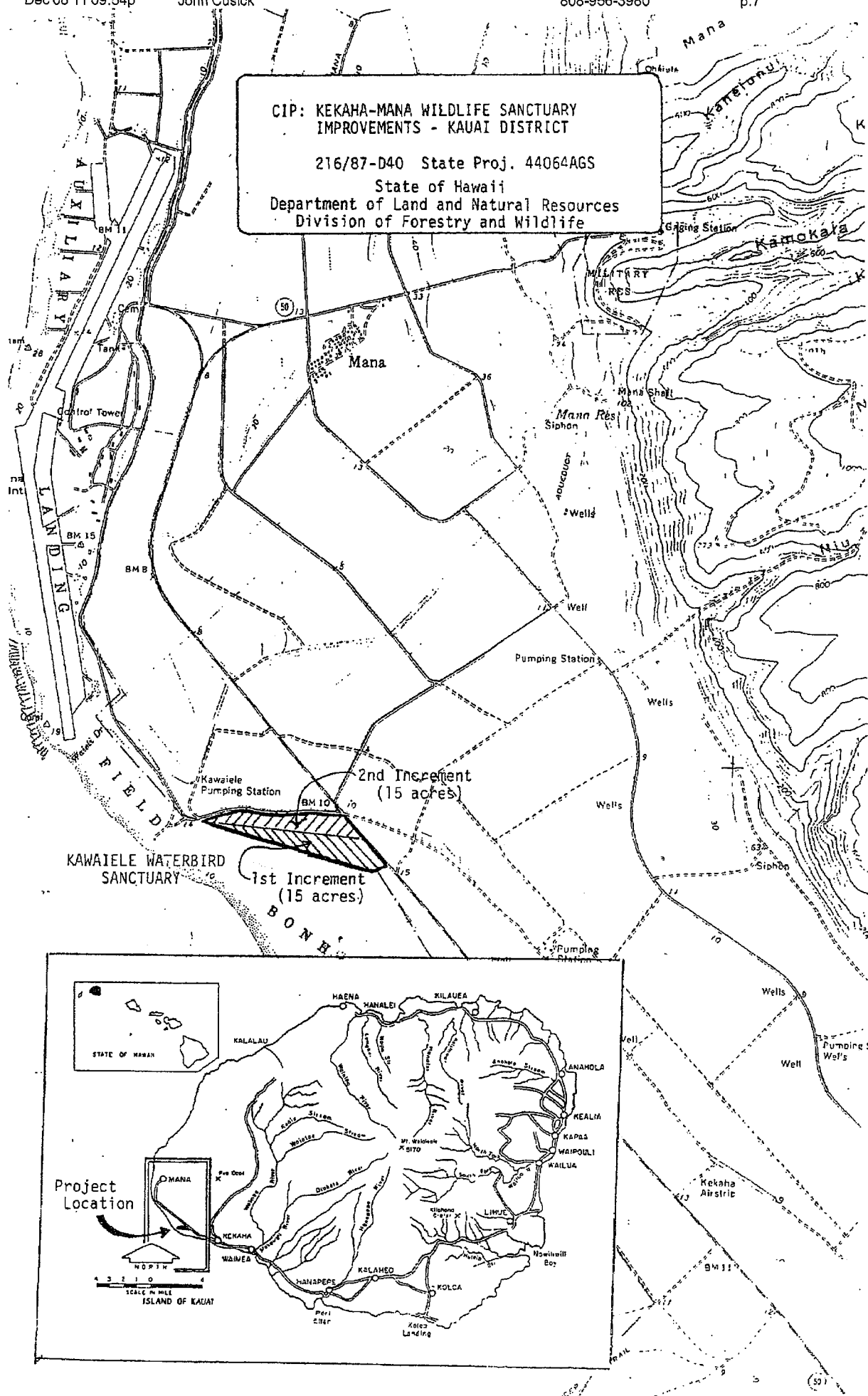


EXHIBIT 8

OEOC BULLETIN



JOHN WAIHEE
GOVERNOR

MARVIN T. MIURA, Ph.D.
DIRECTOR

Volume 5

May 8, 1988

Number 9

REGISTER OF CHAPTER 343, HRS DOCUMENTS

All Chapter 343, HRS documents submitted for publication in the OEOC Bulletin must be addressed to the Office of Environmental Quality Control, 465 South King Street, Room 104, Honolulu, Hawaii 96813. Documents addressed otherwise will not be considered for publication.

EIS PREPARATION NOTICES

The following proposed actions have been determined to require an environmental impact statement. Anyone can be consulted in the preparation of the EIS by writing to the listed contacts. 30 days are allowed for requests to be a consulted party.

WEST HAWAII SANITARY LANDFILL, NORTH KONA, HAWAII, County of Hawaii, Dept. of Public Works

Previously published April 23, 1988.

Contact: Colette Sakoda, Senior Planner
R.M. Towill Corporation
420 Waiakamilo Road, Suite 411
Honolulu, Hawaii 96817

Deadline: May 23, 1988

KUIULA PLANNED COMMUNITY, KUKUIULA, MAUI, Alexander & Baldwin

Properties/Office of Environmental Quality Control

Previously published April 8, 1988.

Contact: Mr. Bruce T. Tsuchida, Manager
Dept. of Planning and Land Development
R.M. Towill Corp.
420 Waiakamilo Rd., Suite 411
Honolulu, HI 96817-4941

Deadline: May 23, 1988

KULA WATER SYSTEM IMPROVEMENTS, KULA, MAUI, Dept. of Land & Natural Resources, Division of Water and Land Development

Previously published April 23, 1988.

Contact: Gordon Akita
Dept. of Land & Natural Resources
P.O. Box 373
Honolulu, HI 96809

Deadline: May 23, 1988

NEGATIVE DECLARATIONS

The following are Negative Declarations or determinations made by proposing or approving agencies that certain proposed actions will not have significant effects on the environment and therefore do not require EISs (EIS Rules 11-200-11). Publication in the Bulletin of a Negative Declaration initiates a 60-day period during which litigation measures may be instituted. Copies are available at 25 cents per page upon request to the Office. Parties wishing to comment may submit written comments to the agency responsible for the determination (indicated in project title). The Office would appreciate a copy of your comments.

OAHU

CONSERVATION DISTRICT USE APPLICATION FOR A TELECOMMUNICATIONS FACILITY AT KAMEHAMEHA RIDGE, OAHU, General Telecourier, Inc./Dept. of Land & Natural Resources

The applicant proposes to construct and operate a telecommunications facility on a 30' X 50' site for a mobile paging and telecommunications system on Oahu. The project site is located atop the Koolau Range at Kamehameha Ridge in East Oahu, Hawaii (TMK: 3-9-9:1). The proposed facility will include a tower antenna and equipment storage facility. The tower will be of steel frame construction and be up to approximately 101 feet in height. The storage unit will be an 8' X 20' X 8' steel storage shipping container laid permanently in place on a concrete pad. It will be painted an earth-tone color to blend with the surrounding environment. The telecommunications antenna will be powered by electricity available from overhead lines at the site. A backup battery unit will be provided inside the container storage which will kick in automatically in the event of power outage. As an alternative, a backup system consisting of a small generator and propane tank is also being considered. Landscaping will

be provided around the facility and an 8' high chain link fence with three strands of barbed wire fixed atop will encompass the site. Access to the property will be from an existing paved road presently serving other communications and Federal/County facilities on the ridge. The proposed facility is an unmanned operation that will require periodic maintenance at least once a month. Parking for one or two vehicles will be provided along the side of the road or inside of the secured area. The proposed facility will require electrical power and possibly telephone service for its operation. Plumbing services for water and sewage collection will not be required. Installation of the proposed facility will take about three to four weeks to complete at an estimated cost of about \$20,000.

CONSTRUCTION OF SITE IMPROVEMENTS AT ONEULA BEACH PARK, EWA, OAHU, City & County of Honolulu, Dept. of Parks & Recreation

The proposed action involves construction of site improvements including clearing, grubbing, installation of irrigation system, picnic facilities, a ballfield, chain barriers and landscaping. These improvements will affect approximately eight acres of the existing 30-acre park. The total cost of these improvements is \$350,000. Oneula Beach Park is located in the Ewa District, along the South Shore of Oahu (TMK: 9-1-12:25). Existing land uses surrounding the project site are sugar cultivation, non-intensive agricultural uses, residential and vacant lands.

TO LEASE AIRSPACE PARCEL P-1, INTERSTATE HIGHWAY, FAP No. I-H1-1(39), WAIMANO TO WAI'AU, OAHU, Hawaiian Electric Company, Inc./Dept of Transportation

The applicant proposes to construct a secured paved materials and equipment storage and employee parking area. As stipulated in the Lease Agreement no highly flammable nor hazardous materials and equipment will be stored under the viaduct open storage area. The project

site, which is 3.245 acres in area, is situated under the H1 Viaduct between Kamehameha Highway and the 40-foot Navy Right-of-Way, Honolulu, Oahu, designated as FAP No. I-H1-1 (39) Parcel P1. With the construction of the storage and employee parking area under the viaduct, Hawaiian Electric Co. proposes the productive utilization of State-owned land managed by the Department of Transportation that is presently not being utilized and is void of plant life. The action proposed by Hawaiian Electric is not categorically exempt from Chapter 343, Hawaii Revised Statutes. The land is presently zoned R-5 by the City Department of Land Utilization. Hawaiian Electric Co. is securing a Conditional Use "Joint Development" Permit from the Department of Land Utilization. The subject highway project was completed on August 29, 1969 and has been in use ever since.

CHAIN LINK FENCE WITH GATES AT AIEA INTERMEDIATE SCHOOL, OAHU, Dept. of Accounting & General Services

The purpose of this project is to construct a 6-foot high chain link fence with gates along the south side of Aiea Intermediate School (TMK: 9-9-05: P1) to keep the students on campus and help deter the students from using the hillside to hide. The project will provide the school with a security fence that will help the school maintain better control of the students on campus and also help the school's maintenance crew in defining their area of work. The estimated cost of construction is \$25,000.

CONSTRUCTION OF KALIHI-PALAMA BUS FACILITY, HONOLULU, OAHU, City & County of Honolulu, Department of Transportation Services

The proposed action includes the demolition of the existing concrete batching plant and the construction of the administrative headquarters for MTL, Inc. and a storage and light maintenance facility for 250 buses. It also includes remodeling an existing two-story office

building, constructing a new two-story office building, constructing a new two-story maintenance building with maintenance offices, constructing fuel lanes, constructing a flammable storage shed, installing 12 underground storage tanks, providing 295 employee parking spaces (170 of these spaces are used by 43 buses for parking spaces during the night), and providing an additional 207 bus parking spaces. The estimated cost of planning and engineering for this facility is \$1.5 million. In addition, a total of \$17.5 million is programmed in the Fiscal Year 1987 budget to construct and equip the facility.

MILILANI-UKA ELEMENTARY SCHOOL CLASSROOM BUILDING, MILILANI, OAHU, Dept. of Accounting & General Services

The project consists of the design and construction of a two-story eight-classroom building and walkways. The reinforced concrete and masonry structure will have an area of 9,300 square feet. The estimated cost of construction is \$1,630,000. The construction will be within the existing Mililani-Uka Elementary School site (TMK: 9-4-05:47) adjacent to the Library and Building 'F'.

HAWAII

DIRECT SALE OF ACCESS EASEMENTS OVER AND ACROSS STATE LANDS SITUATE AT PIIHONUA AND KUKUAU 2nd, SOUTH HILO, HAWAII, GTE Hawaiian Telephone Co./ Dept. of Land & Natural Resources

The applicant is requesting a direct sale of two perpetual, non-exclusive utility easements for remote telephone circuit facilities consisting of approximately 100 square feet each. The remote telephone circuit facilities are necessary to upgrade telephone transmission capabilities in the service area. One of these easements will affect a vacant unencumbered 1.886 acre parcel adjacent to Waianuenue Avenue just mauka

of the First United Protestant Church of Hilo and Hilo Medical Group facilities (TMK: 2-3-27: 04). The other easement will affect a 28.668 acre parcel adjacent to Makana Loop in upper Piihonua that is in the process of being encumbered by the Hawaii Housing Authority for a state housing project (TMK: 2-5-10: 01). The remote telephone circuit network will be placed on a concrete slab and shielded by a metal outdoor housing measuring 58"L X 40"H X 28"D.

DIRECT SALE OF UTILITY EASEMENTS OVER AND ACROSS STATE LANDS SITUATE AT KUKUAU 2nd, SOUTH HILO, HAWAII, GTE Hawaiian Telephone Co./Dept. of Land & Natural Resources

The proposed action is the direct sale of a perpetual, non-exclusive utility easement for remote telephone circuit facilities consisting of approximately 9,100 square feet. The subject easement will affect a vacant and unencumbered 72.95 acre parcel of State land adjacent to Kaumana Drive, approximately 3.7 miles from Hilo in Kukuau 2nd, South Hilo, Hawaii (TMK: 2-5-06:141). An access easement over a portion of the parcel has been granted to the subdivider of an adjacent parcel through Edita Street. Edita Street also will serve as the primary access to a proposed subdivision on adjacent lands, the Pacific Plantation Subdivision. This subdivision will consist of 66 one-acre lots; 1 six-acre lot; and 9 eleven- to forty-acre lots in the first increment. The applicant is requesting the subject easement for the construction of a remote telephone circuit facility necessary to upgrade telephone transmission capabilities in the service area. The structure consists of a multiple circuit network placed on a concrete slab and shielded by a metal outdoor housing measuring 58"L X 40"H X 28"D.

MAUI

HAWAII INTERACTIVE TELEVISION SYSTEM,

HALEAKALA COMMUNICATION FACILITY, HALEAKALA, MAUI, Dept. of Accounting & General Services

The Department of Accounting and General Services proposes to construct a Hawaii Interactive Television System (HITS) remote repeater and broadcast facility on Haleakala. The facility will consist of two towers, each approximately 80' high, for several microwave dish antennae and a one-story equipment building, approximately 18' X 48'. HITS is a closed circuit television system consisting of a network of transmission sites which will link the major populations areas of the State. The system will allow educational program viewing, participation and interaction statewide by program transmission between islands and broadcasting to standard TV receivers. The project will provide the Hawaii Public Broadcasting Authority with a vital link to connect Oahu, Maui, and Hawaii with interactive television for educational programs. The project will be located on a portion on T.M.K. 2nd Div. 2-2-07:5. The proposed facility will be constructed in proximity to the Hawaii Telephone Company facilities at about 9,755 ft. level. The estimated cost of construction is \$400,000.

KAUAI

SAND MINING OPERATION AND WATERBIRD SANCTUARY DEVELOPMENT AT KAWAIELE, KAUAI
Dept. of Land & Natural Resources

The Division of Forestry and Wildlife proposes to designate and operate the first 15 acre increment of a potential 30 acre commercial sand mine at Kawaieles, Kauai for the purpose of creating a endangered waterbird nesting habitat. Sand will be sold to private contractors by license agreement through the Board of Land and Natural Resources and excavated to a prescribed depth below the mean water table. The exposed water area and bottom contours will be designed and finished to specifications set forth by the Division of Forestry and Wildlife to create optimal endangered waterbird

nesting habitat, including nesting islets, shallow water feeding areas, and predator resisting moats. The purpose of this project is to satisfy some of the goals of the Hawaiian Waterbirds Recovery Plan, the State Wildlife Plan, and the State Division of Forestry and Wildlife Threatened and Endangered Species Plan. The Kawaiiele waterbird sanctuary development site is located 5 miles NW of Kekaha Town on State Highway 50 (TMK: 1-2-02:1).

ENVIRONMENTAL IMPACT STATEMENTS

EISs listed in this section are available for review at the following public depositories: Office of Environmental Quality Control; Legislative Reference Bureau; Municipal Reference and Records Center (Oahu EISs); Hamilton Library; State Main Library and the Kaimuki, Kaneohe, Pearl City, Hilo, Wailuku and Lihue Regional Libraries. Statements are also available at State Branch Libraries that are in proximity to the site of a proposed action (indicated by project description).

Comments on the following EISs may be sent to: 1) the accepting authority; and 2) the proposing agency. Please note the deadline date for submitting written comments on the EIS.

ISEMOTO/SJA/TAYLOR SUBDIVISION,
HONOKOHAU, NORTH KONA, HAWAII,
Isemoto/SJA/Taylor Partnership/Land Use
Commission

The petitioners propose to reclassify their 9.9 acre site from state conservation to urban district. The project area is located directly east of the Honokohau Small Boat Harbor adjacent to the Queen Kaahumanu Highway (TMK: 7-4-08:33). The mauka or upper third of the project site will become the construction baseyard for Isemoto Contracting Co., Ltd., a Hawaii general contractor. The middle third of the project site will become the baseyard for the Kona Transportation Co., a family-operated West Hawaii trucking,

hauling and storage company owned by SJA Partnership. The makai or seaward third of the project site will be occupied by an auto service center to be developed by March E. Taylor. In order to use the property, a 12KV electrical power and telephone line will have to be brought in from a utility pole located approximately 300 ft. south of the project site. The power line will cross a portion of state-owned land, which will require an easement.

This EIS is also available for review at the Honokaa, Kailua-Kona, and Kealahou Libraries.

Deadline: June 23, 1988

SITE SELECTION FOR THE NEW KONAWAENA
ELEMENTARY SCHOOL, KONA, HAWAII, Dept. of
Accounting & General Services

Previously published: April 8, 1988

This EIS is also available for review at the Honokaa, Kailua-Kona, and Kealahou Libraries.

Deadline: May 23, 1988

SAND ISLAND SHORE PROTECTION, HONOLULU,
KAHULU, U.S. Army Corps of Engineers, Dept.
of Land & Natural Resources

Previously published: April 8, 1988

Deadline: May 23, 1988

EIS'S SUBMITTED FOR ACCEPTANCE. The following EISs have been submitted for acceptance and contain comments and responses made during the review and response period.

PUNALU'U RESORT, PUNALU'U, KA'U, HAWAII,
C. Brewer Properties/County of Hawaii
Planning Dept.

Previously published April 8, 1988.

This EIS is also available for review at the UH-Hilo Campus, Kailua-Kona, Keaau Community School, Mountain View Community School, Pahala Community School, and Pahoa Community School Libraries.

Status: Currently being processed by the City & County of Honolulu, Dept. of Public Works

KAPOLEI KNOLLS, HONOULIULI, EWA, OAHU,
The Lusk Co./City & County of Honolulu,
Dept. of General Planning

Previously published March 23, 1988.

This EIS is also available for review at the Ewa Beach Community School Library.

Status: Currently being processed by the City & County of Honolulu, Dept. of General Planning.

MAUI INTAKE SERVICE CENTER/COMMUNITY CORRECTIONAL CENTER EXPANSION AND RENOVATION, WAILUKU, MAUI, Dept. of Accounting and General Services

Previously published March 8, 1988.

This EIS is also available for review at the Maui Community College and Kahului Libraries.

Status: Currently being processed by the Office of Environmental Quality Control.

UPPER MAKALEHA SPRINGS WATER RESOURCE DEVELOPMENT, KAPAA, KAUAI, Dept. of Land and Natural Resources, Div. of Water & Land Development

Previously published December 8, 1987.

This EIS is also available for review at the Kauai Community College and Kapaa Libraries.

Status: Currently being processed by the Office of Environmental Quality Control.

KAPOLEI VILLAGE, EWA, OAHU, Housing Finance & Development Corp.

Previously published February 8, 1988.

This EIS is also available for review at the Ewa Beach Community School Library.

Status: Accepted by the governor on May 4, 1988.

MAILI KAI PROPERTY, MAILI, WAIANAE, OAHU,
Kaiser Cement Corp./City & County of Honolulu, Dept. of General Planning

Status: Accepted by the City & County of Honolulu, Dept. of General Planning on May 2, 1988.

EWA GENTRY, EWA, OAHU, The Gentry Companies/City & County of Honolulu, Dept. of General Planning

Previously published April 23, 1988.

Status: Accepted by the City & County of Honolulu, Dept. of General Planning on April 29, 1988.

KAPAA REFUSE TRANSFER STATION, KAILUA, KOOLAUPOKO DISTRICT, OAHU, City & County of Honolulu, Dept. of Public Works

Previously published April 8, 1988.

Status: Accepted by the City & County of Honolulu, Dept. of Land Utilization on April 27, 1988.

PROPOSED GOLF COURSE AT KUNIA, OAHU,
Nihonkai Lease Company, Ltd./City & County of Honolulu, Dept. of General Planning

Previously published April 8, 1988.

Status: Accepted by the City & County of Honolulu, Dept. of General Planning on April 21, 1988.

WAIALUA GOLF COURSE, WAIALUA, OAHU,
Oceanic Properties Inc./City & County of
Honolulu, Dept. of General Planning

Previously published April 23, 1988.

Status: Accepted by the City & County
of Honolulu, Dept. of General
Planning on April 20, 1988.

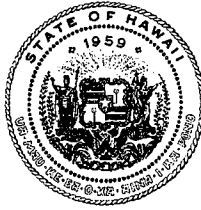
NOTICES

PETITION FOR DECLARATORY RULING

The Environmental Council has received a revised petition for declaratory ruling from Glen M. Winterbottom. The petitioner contends that the proposed Hawaiian Riviera Resort, accepted by the County of Hawaii Planning Director on February 19, 1988, is not in compliance with certain provisions of the Department of Health's Title 11, Chapter 200, Environmental Impact Statement Rules. The Environmental Council will take this issue up at their next meeting on May 18, 1988, 5:00 p.m. at the Public Utilities Commission Hearing Room at 465 South King St.

EXHIBIT 9

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE
1151 PUNCHBOWL STREET, ROOM 325
HONOLULU, HAWAII 96813

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

September 10, 2021

TO: Mary Alice Evans
Director
Office of Planning and Sustainable Development
State of Hawai'i

FROM: Suzanne D. Case
Chairperson
Board of Land and Natural Resources
State of Hawai'i

SUBJECT: Determination that a prior finding of no significant impact satisfies chapter 343, Hawai'i Revised Statutes, for proposed sandmining and waterbird sanctuary development at Mānā Plains Forest Reserve, Waimea, Kaua'i, tax map key (4) 1-2-002: por 001.

This memorandum serves as a written determination pursuant to Hawai'i Administrative Rule ("HAR") § 11-200.1-11(b), that the Board of Land and Natural Resources of the Department of Land and Natural Resource ("DLNR") has determined that a prior finding of no significant impact ("FONSI") satisfies chapter 343 of the Hawai'i Revised Statutes ("HRS") for a proposal to mine sand and develop a waterbird sanctuary at Mānā Plains Forest Reserves, Waimea, Kaua'i such that no additional HRS chapter 343 environmental review is required. The DLNR requests that notification of this determination be published in the next issue of The Environmental Notice in accordance with HAR § 11-200.1-4(b)(1).

The Final Environmental Assessment ("FEA") for a "Commercial Sand Mine to Create Wildlife Sanctuary, Kawai'ele, Kauai" was published in the Office of Environmental Quality Control ("OEQC's") Environmental Notice in May 1988 with a finding of no significant impact ("FONSI"). The FEA analyzed the effects of developing the first of two 15 acre increments of a potentially 30 acre commercial sand mine to create a waterbird sanctuary.

Since the FONSI was published, the Kawai'ele waterbird sanctuary has indeed been successfully developed within a portion of the overall 30 acre sand mine area. The DLNR now proposes to issue a right-of-entry to allow commercial sandmining to create additional waterbird habitat on 3 acres within the second 15 acre increment of the overall 30 acre sand mind area

described in the FEA. Specifically, the proposed sandmining project will take place on Parcels 4 and 5 of the attached "Phase II Mana Plains Sand Mine/Forest Reserve Sand Mining Parcel Location Map."

Although the FEA was published in 1988, there have been no significant changes to the project environment described in the FEA. The vegetation and wildlife described in the FEA still exist in the project area, and there have been no new discoveries of archaeological or historic sites or endangered native plants. The summary of environmental effects is also substantially the same as what would be anticipated if the proposed action took place today, except that sugar cane harvesting no longer occurs in the area. However, the FEA only describes sugar cane harvesting in the context of noise and disturbance. The area where the sand mining will take place is in an agricultural zone with no nearby residences. Thus, DLNR does not anticipate that noise and disturbance from the sand mining will adversely affect any nearby properties.

The alternative actions described in the FEA – either the development of an alternative site or taking no action – continue to be the only alternatives to the proposed action. DLNR does not consider the development of an alternative site to be a preferable option, as the project area is still the best site for waterbird sanctuary development based on the factors described in the FEA. Further, the existing Kawai‘ele waterbird sanctuary has proved to very successful in providing habitat for the targeted endangered waterbird species. The restored wetlands also provide ecological benefits such as providing natural flood control and water filtration. The proven success of the already-developed portions of the wetlands bolsters the FEA’s conclusion that the proposed action will not have a significant negative effect on the environment.

Therefore, DLNR has determined that the proposed sand mining and waterbird habitat development project is substantially similar to the action described in the May 1988 FEA that received a FONSI on May 8, 1988 and will have effects similar to those analyzed in the prior FEA. Thus, the DLNR has determined that the prior May 8, 1988 FONSI satisfies HRS chapter 343 for the proposed project, and no further environmental review is required.

Should you have further questions, please contact Jason Vercelli, Wildlife Biologist with the Division of Forestry and Wildlife, DLNR, at (808) 241-3768.

Respectfully submitted,

SUZANNE D. CASE, Chairperson
Board of Land and Natural
Resources

Enclosures:

May 1988 Final Environmental Assessment
May 8, 1988 OEQC Bulletin
"Phase II Mana Plains Sand Mine/Forest Reserve Sand Mining Parcel Location Map"

