

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

November 10, 2022

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

PSF No.: 22HD-026

Hawai'i

Mutual Cancellation of General Lease No. S-4662 (GL4662) and Reissuance of Direct Lease to Meadow Gold Dairies Hawaii, LLC, for Dairy Processing Purposes with Clarification that Mutual Cancellation of GL4662 shall not Vest of Ownership of Existing Improvements on Premises of GL4662 in State, Waiakea, South Hilo, Hawaii Tax Map Keys: (3) 2-1-012:004, 005, and 025.

Cancellation of Executive Order Nos. 2283 and 3825 and Reset Aside to the County of Hawaii, Department of Parks and Recreation for Base Yard Purposes, Waiakea, South Hilo, Hawaii Tax Map Keys: (3) 2-1-012:004 and 005.

APPLICANTS:

- Meadow Gold Dairies Hawaii, LLC, a Hawaii limited liability company
- County of Hawaii, Department of Parks and Recreation

LEGAL REFERENCE:

Sections 171-11, 16, 41, 59, 134, 136, 137, and 141 Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kanoelehua Industrial Lots, situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Keys: (3) 21-012:004, 005, and 025, as shown on the attached map labeled Exhibit A.

AREA:

- Meadow Gold Dairies Hawaii, LLC – 3.064 acres, more or less.
- County of Hawaii DPR – 5.684 acres, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: MG-1a General Industrial Use

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

- General Lease No. S-4662 to Meadow Gold Dairies Hawaii, LLC, Lessee, for general industrial purposes. Current lease set to expire August 27, 2035.
- Executive Order Nos. 2283 and 3825 County of Hawaii, Department of Parks and Recreation, for base yard purposes.

CHARACTER OF USE FOR LEASE:

Dairy processing purposes.

PURPOSE OF SET-ASIDE FOR EXECUTIVE ORDER:

Base yard purposes.

LEASE TERM:

Thirty-five (35) years

LEASE CANCELLATION DATE FOR GL4662:

To be determined by the Chairperson, but in any event shall be the date immediately preceding the commencement date of the new lease.

LEASE COMMENCEMENT DATE:

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

ANNUAL RENT:

- Meadow Gold Dairies Hawaii, LLC – Fair market rent to be determined by an independent appraiser and paid for by the applicant.
- County of Hawaii – Gratis.

METHOD OF LEASE PAYMENT:

Semi-annual payments, in advance.

LEASE RENTAL REOPENINGS:

At the 10th, 20th, and 30th years of the lease term, by independent appraisal.

LEASE PERFORMANCE BOND:

Twice the annual rental amount.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the Meadow Gold Dairies Hawaii, LLC project was published in the Environmental Review Program's The Environmental Notice on March 8, 2022 with a finding of no significant impact (FONSI).

APPLICANT REQUIREMENTS:

Applicant Meadow Gold Dairies Hawaii, LLC shall be required to:

- 1) Pay for an appraisal to determine initial rent;
- 2) Pay for the costs of public notice pursuant to section 171-16;
- 3) Process and obtain subdivision at Applicant's own cost;
- 4) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

Applicant County of Hawaii, Department of Parks and Recreation, shall be required to:

- 1) Process and obtain subdivision at Applicant's own cost;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

DCCA VERIFICATION:

Meadow Gold Dairies Hawaii, LLC

Place of business registration confirmed:	YES <u>X</u>	NO <u>__</u>
Registered business name confirmed:	YES <u>X</u>	NO <u>__</u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u>__</u>

BACKGROUND:

General Lease No. S-4662

The lease was awarded at public auction in 1980 to James C. Wo and was, by mesne assignments, assigned to Southern Foods Group, L.P. by unrecorded Assignment of Lease dated September 4, 1997.

The lessee, Southern Foods Group, LLC, filed a voluntary petition for relief under chapter 11 of title 11 of the United States code (bankruptcy code) in the United States Bankruptcy Court for the Southern District of Texas on November 12, 2019.

On April 22, 2020, with bankruptcy court approval, MGD Acquisition, LLC and ARS Holding, LLC (the Assignees) entered into an asset purchase agreement with the lessee for General Lease No. S-4662 located in the Waiakea Industrial Lots, South Hilo, Island of Hawaii. A hearing was conducted in the bankruptcy proceeding on April 28, 2020 authorizing the sale of General Lease No. S-4662. The manager of the companies listed as Assignees, Bahman Sadeghi, has an extensive background in the dairy business. Mr. Sadeghi was previously the owner/operator of Island Dairy, Inc. along the Hamakua coast on the Island of Hawaii.

Lessee Meadow Gold Dairies Hawaii, LLC (fka MGD Acquisition, LLC) has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions. The proposed use is allowable in the county zoning. Lessee is in compliance with all the current lease terms and conditions.

Executive Order Nos. 2283 and 3825

In 1966, the County of Hawaii, Department of Parks and Recreation's Central Base Yard was relocated from the Waiakea peninsula to its current location on Railroad Avenue resulting in Executive Order No. 2283 (EO2283) with an effective date of August 1, 1966 and comprising a total area of just under 2 acres.

In 1999, the County of Hawaii requested additional space for the Parks Maintenance Base Yard. The Board, at its meeting of November 19, 1999, under agenda item D-33, approved the withdrawal of 0.8662 acre from the Jas. W. Glover, Ltd. land license and set aside to the County of Hawaii as an addition to the existing base yard under Executive Order No. 3825 (EO3825).

DISCUSSION:

The County of Hawaii (COH), Meadow Gold Dairies Hawaii, LLC (Meadow Gold), and Jas. W. Glover, Ltd. (Glover) have jointly approached the Department of Land and Natural Resources (Department) with a proposal to consolidate and re-subdivide three parcels of public industrial lands (zoned MG-1a) in South Hilo adjacent to the airport.

With the larger land area, Meadow Gold explains it will construct a new cold storage warehouse using existing infrastructure with no additional cooling capacity as the existing cooler will be moved into this new space and operate as it is currently. A new dry storage warehouse will also be constructed with additional lighting and pallet racking. The project will also incorporate additional trailer and truck parking within the reconfigured lot.

While reconfiguring the expanded area, the surveyor contracted by Meadow Gold observed two previously unidentified overhead communication utility lines (Exhibit A, Lot-1) within the property boundaries. “Easement U-2” shown on Exhibit A is for a communication line traversing the existing premises of General Lease No. S-4662 (GL4662) while “Easement U-1” is for a communication line traversing a portion of the area being added to the lease premises. The Board has not approved either of these “easements” and they are therefore encroachments.¹ Meadow Gold acknowledges the encroachments and agrees to accept a new lease of the reconfigured premises with these encroachments. Should the utility company who uses the communication lines desire to continue to utilize them, it will need to apply to the Board for a term easement with concurrence from Meadow Gold.²

Meadow Gold completed an environmental assessment (EA) for the consolidation and re-subdivision of the subject lands and for its expanded operations on new Lot 2 and published a FONSI in The Environmental Notice on March 8, 2022 as noted above. Although the original lease was sold by public auction in 1980 for industrial purposes, it has been in use as a milk processing facility since 1988.

Section 171-136, HRS, authorizes the Board to issue leases within an industrial park in accordance Chapter 171, HRS. Section 171-59(b), HRS, authorizes the Board to issue a lease with a maximum term of 35 years for specified uses including “agricultural processing purposes,” which “means the processing of agricultural products, including dairying, grown, raised, or produced in Hawaii.” A disposition under subsection (a) of Section 171-59, HRS, requires a finding that the public interest demands the issuance of the lease while a disposition under subsection (b) must encourage competition within agricultural operations. Staff believes both requirements are satisfied here.

As the only dairy processing facility in the State of Hawaii, Meadow Gold intends to continue operations on the premises, pasteurizing both mainland bulk milk and locally produced milk. Meadow Gold’s operations in Honolulu were closed down and relocated to the Hilo facility. Meadow Gold needs to expand its Hilo facilities to sustain the continued local production of milk and other diversified dairy products that are distributed statewide, while supporting on-island dairy farms with this increased processing capacity. Meadow Gold’s long-term plans include establishing a new dairy farm on Hawaii Island and Meadow Gold has already begun acquiring private lands for this purpose. Staff has confirmed that

¹ The communications lines apparently do not provide service to Meadow Gold.

² The utility company may also be subject to fines, administrative costs and payment of other costs and damages as provided by Section 171-6, HRS.

dairy processing is an allowed industrial use under applicable County zoning. The Board may therefore enter into direct negotiations with Meadow Gold for a new lease of the expanded area. Staff believes the issuance of this lease will promote competition by encouraging the establishment of other local dairies who will now have a facility for processing the milk they produce. Additionally, local dairies with lower costs should encourage competition by pressuring mainland producers and their local distributors to lower the cost of the products they sell in Hawaii. Further, the public interest demands the issuance of the lease so that locally produced and processed milk will be available to consumers.

The mutual cancellation of GL4662 raises an issue about the ownership of existing improvements on the premises. The lease provides as follows:

31. Surrender. That the Lessee shall, at the end of said term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the demised premises, together with all improvements existing or constructed thereon unless provided otherwise.

Under this provision, the early mutual cancellation of GL4662 could result in the vesting of ownership of the existing improvements in the State. In contrast, the standard provision on ownership of improvements in the current lease form used by the Department of the Attorney General gives the State the option of accepting ownership of improvements upon expiration or earlier termination of the lease or requiring lessee to remove the improvements at its cost. In this case, the request is for the mutual cancellation of GL4662 (presently scheduled to expire August 27, 2035) for the purpose of issuing a new 35-year lease to the current lessee for continued and upgraded operations. Staff is therefore including a recommendation below that the Board determine that the early cancellation of GL4662 shall not vest ownership of existing improvements in the State, but that ownership of such improvements shall instead remain with Meadow Gold under the terms and conditions of the new direct lease to be issued.

The lease to Meadow Gold will include a condition that if an association of lessees in MIP is formed in the future, Meadow Gold will be required to pay its pro rata share for the maintenance of the common areas of the industrial park, such as roads and other infrastructure, in accordance with any assessments by the association.

Meadow Gold has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

The County of Hawaii, Parks and Recreation Department, in cooperation with Meadow Gold and Glover agreed to the reconfiguration of its maintenance base yard. This action will result in the cancellation, consolidation and reconfiguration of the two existing EO's into one new parcel to be set aside to the County.

RECOMMENDATION: That the Board:

1. Find that the public interest demands the issuance of a direct lease to Meadow Gold Dairies Hawaii, LLC pursuant to Sections 171-59 and 171-136, HRS, and that the issuance of a direct lease will encourage competition within agricultural operations.
2. Find that the area to be included in the new lease premises to Meadow Gold Dairies Hawaii, LLC is an economic unit in terms of the intended use.
3. Find that the area to be included in the new lease premises to Meadow Gold Dairies Hawaii, LLC is not suitable for hunting, nor will it become so during the term of the lease.
4. Subject to Applicant Meadow Gold Dairies Hawaii, LLC fulfilling all of the Applicant requirements listed above, authorize the mutual cancellation of General Lease No. S-4662 and approve the issuance of a direct lease to Meadow Gold Dairies Hawaii, LLC covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current cancellation and new commercial/industrial lease document forms, as may be amended from time to time; provided, however, that the early cancellation of GL4662 shall not vest ownership of existing improvements on the lease premises in the State and instead ownership of such improvements shall remain with Meadow Gold under the terms and conditions of the new direct lease to be issued; and provided further that the lease shall be issued with existing encroachments for overhead utility lines as shown in Exhibit A;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
5. Approve of and recommend to the Governor issuance of an executive order canceling Governor's Executive Order Nos. 2283 and 3825 and subject to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and

- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- 6. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to County of Hawaii, Department of Parks and Recreation under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Gordon C. Heit

for

Gordon C. Heit
District Land Agent

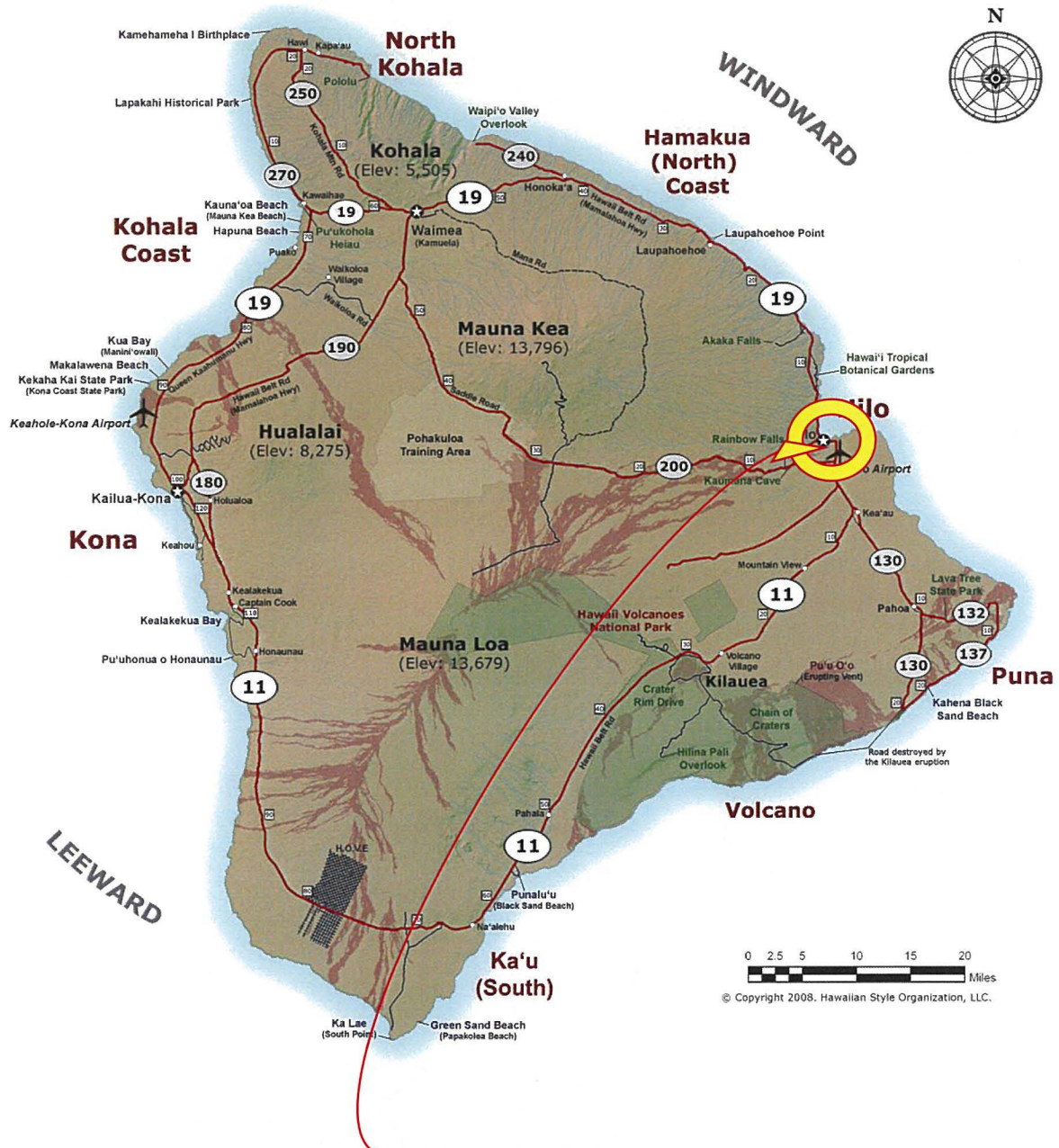
APPROVED FOR SUBMITTAL:

Suzanne D. Case

RT

Suzanne D. Case, Chairperson

EXHIBIT A



Meadow Gold Dairies Lease Request
South Hilo, Hawaii

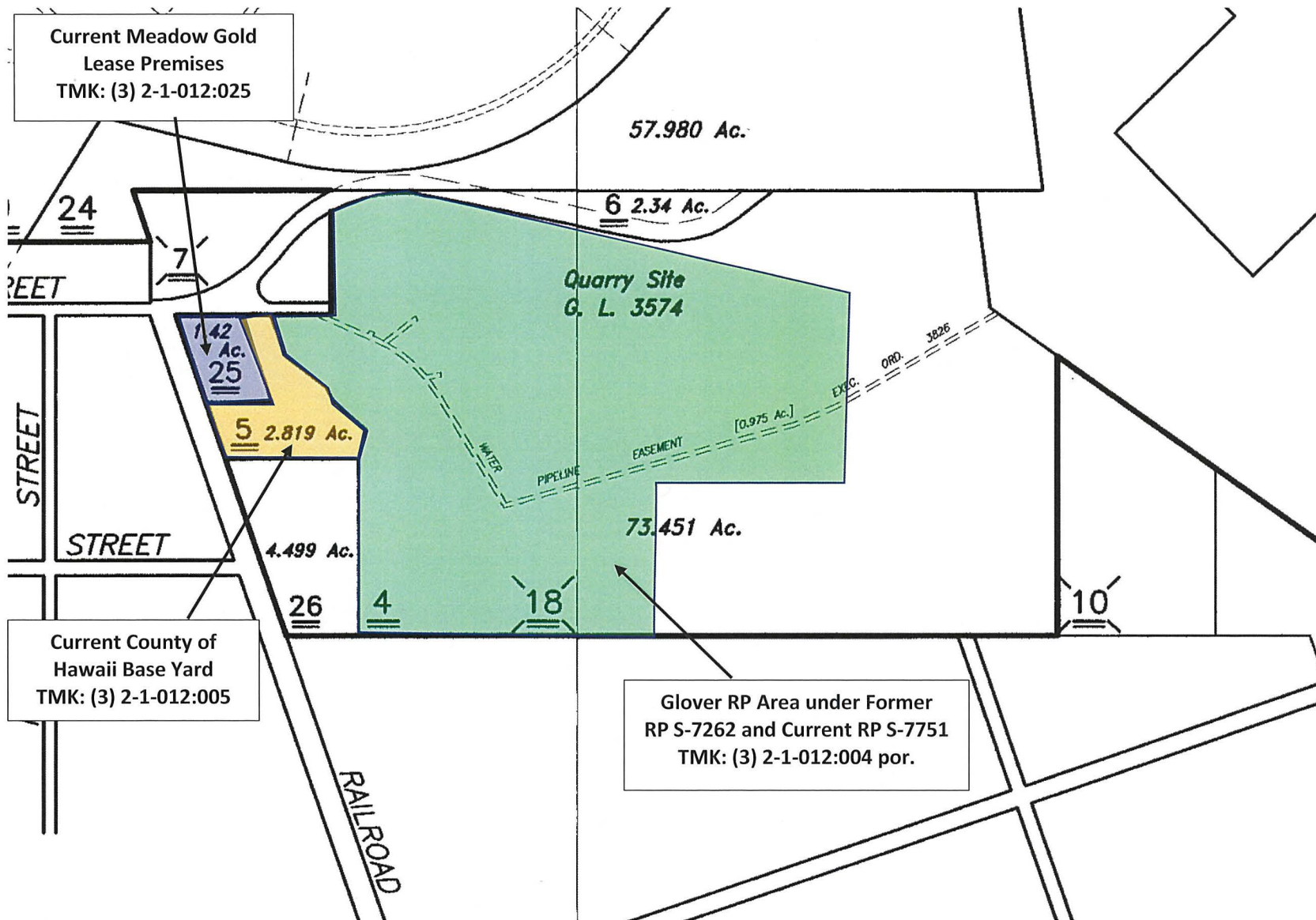
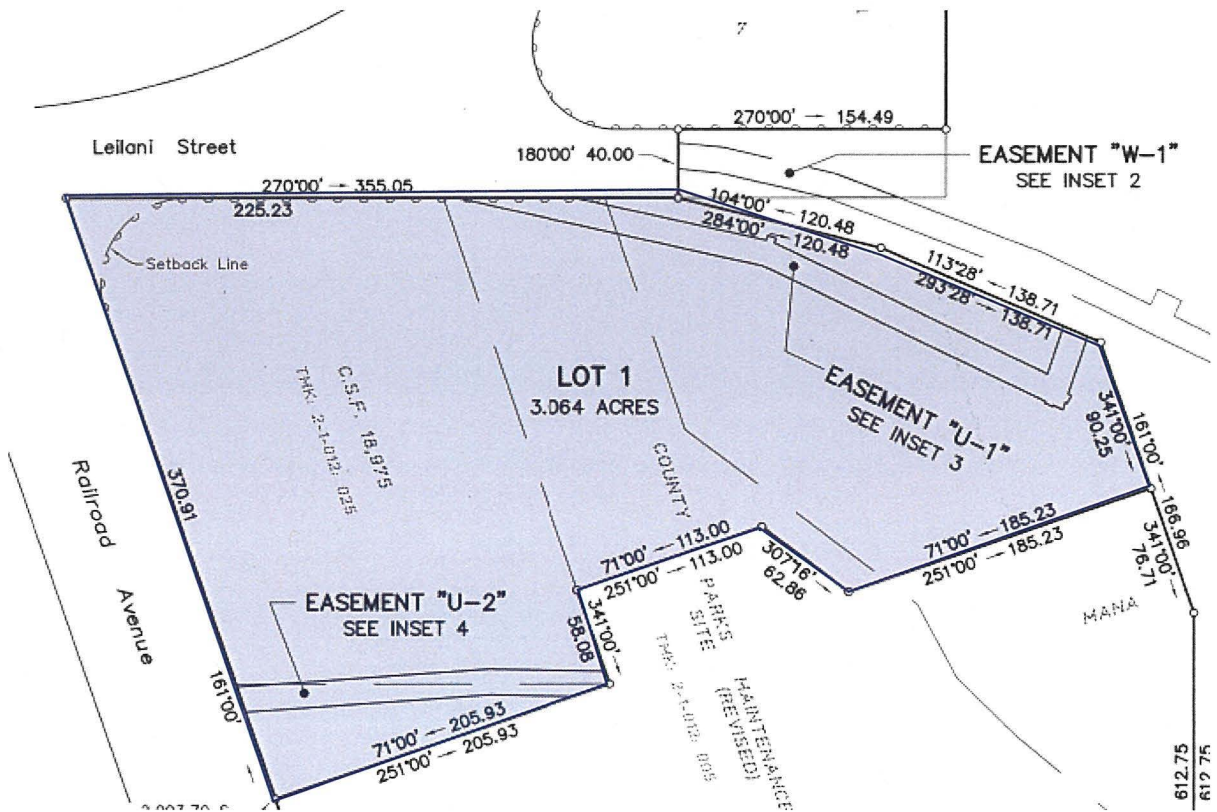


EXHIBIT A

Reconfigured lot for Meadow Gold Dairies Hawaii, LLC



Easements U-1 and U-2 are previously existing overhead communication lines identified by surveyor contracted by the applicant.

EXHIBIT A Lot-1

Reconfigured lot for County of Hawaii – Dept. of Parks & Recreation

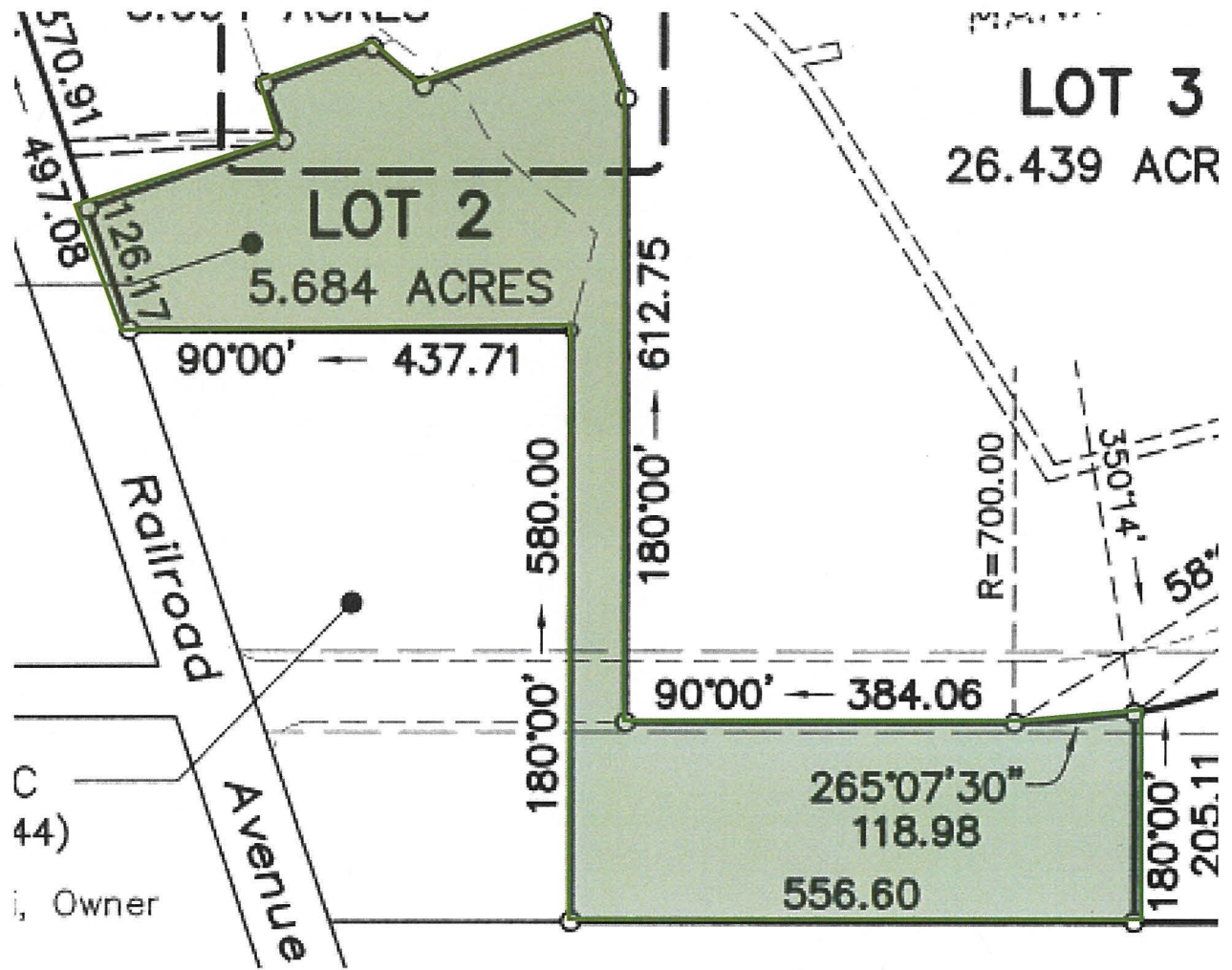


EXHIBIT A Lot-2