

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

LPP No. 216

MAUI

Approve: Assignment of License of Private Property No. 216 (LPP No. 216), As Is, Where Is With All Faults to the County of Maui, But If Not Accepted Within 180 Days then the Department is Authorized to Immediately Enter into a Mutual Termination of LPP No. 216 with the Owner, Lanai Resorts, LLC dba Pulama Lanai; Lanai, Hawaii, Tax Map Key: (2) 4-9-002:001 portion.

APPLICANT:

County of Maui, State of Hawaii

LEGAL REFERENCE:

Sections 166-3, 171-6, 11, 30, 36(a)(5) and 112, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of private lands situated at Lanai, Hawaii, identified by Tax Map Key: (2) 4-9-002:001 portion, as shown on the map attached as **Exhibit A**.

AREA:

100 acres, more or less.

ZONING:

State Land Use Commission:	Agricultural
County of Maui:	Agricultural

TRUST LAND STATUS:

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

CURRENT USE STATUS:

The subject lands are currently encumbered by License of Private Property No. 216 (LPP No. 216) issued by Dole Food Company, Inc. (Lessor) to The State of Hawaii (Lessee), by and through the Board of Land and Natural Resources (Board) for the State Department of Agriculture for the development and operation of an agricultural park by the Department of Agriculture (DOA). The Board entered into LPP No. 216 solely because it has exclusive responsibility for acquisitions of land pursuant to Hawaii Revised Statutes § 171-30, and DOA requested the Board to enter into the lease. LPP No. 216 and the Amendment of LPP No. 216 are attached as **Exhibit B** and **Exhibit C**, respectively.

ANNUAL RENT:

\$100.00

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (“HAR”) § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type No. 1, “Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing,” under Part 1, item No. 44, which states the “Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing”. The request is a de minimis action that will probably have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17, HAR. The Exemption List is attached as **Exhibit D**.

REMARKS:

On November 29, 1989, Lanai Resort Partners filed a petition with the State of Hawaii Land Use Commission (LUC) to amend the land use classification of 28.334 acres of lands situated at Manele, Lanai. On April 16, 1991, the LUC granted the petition, reclassifying the Manele land from Rural and Agricultural Districts to Urban District. The reclassification was made subject to several conditions. The LUC Order states, in part:

Petitioner shall make available 100 acres of land, with an adequate supply of water, to the State Department of Agriculture and or the County of Maui, for their establishment and operation of an agricultural park for Lanai residents, at nominal rents for a 55-year term, at site(s) agreeable to the State Department of Agriculture and the County of Maui. The LUC Order is attached as **Exhibit E**.

Thereafter, Department of Agriculture (DOA) staff went to Lanai and inspected several potential sites with the then landowner's representatives and other interested parties. DOA selected the subject area as the best suited for an agricultural park. The selected site is near the island power plant and Miki reservoir. Additionally, the site is adjacent to the main plantation road and water lines.

On December 18, 1992, agenda item F-9, the Board of Land and Natural Resources (Board) authorized the acquisition of the subject 100-acre site for the DOA agricultural park. The Board recommended that upon issuance of the lease, the site immediately be set aside for the control and management by the DOA. See, recommendation C. The Board submittal is attached as **Exhibit F**.

Pursuant to Hawaii Revised Statutes §171-30, the Board is the State agency responsible for acquisitions of real property for all State agencies. Based on the statutory requirement and the Board submittal, License of Private Property No. 216 (LPP No. 216) was issued by then owner Dole Food Company, Inc. to the State of Hawaii, by its Board of Land and Natural Resources.

The Board authorized and executed LPP No. 216 specifically for DOA to develop an agricultural park on Lanai. DOA is the only agency with the authority to plan, develop, and manage agricultural parks pursuant to Hawaii Revised Statutes §116-3. At the Board meeting of December 19, 1992, the Board specifically approved the set aside the subject agriculture lands for the "control and management of the Department of Agriculture." See, **Exhibit F**, recommendation C.

However, the Executive Order setting aside the private agricultural lands to DOA was not consummated probably because the subject lands are privately owned, and not public lands as defined in HRS §171-2 or as provided for in HRS §171-11 [set asides by executive order]. As far as the Department is aware, DOA never took possession of the land, and an agricultural park was never built or established. A recent inquiry from Land Division staff with DOA staff indicated DOA did not have any interest in establishing an agricultural park at the site or anywhere else on Lanai, and DOA staff denied any responsibility for LPP No. 216.<sup>1</sup>

In 2021, Maui County Council ("Council") expressed interest in acquiring LPP No. 216 to develop an agricultural park on Lanai. Council's Letter and Resolution are attached as **Exhibit G**.

LPP No. 216 specifically prohibits the transfer or assignment of the demised land or any portion thereof. See, **Exhibit B**, section 35. At the Council's urging, staff with Department of Land and Natural Resources, Land Division (Division) worked with the current fee owner, Lanai Resorts, LLC dba Pulama Lanai (Pulama Lanai) to facilitate the transfer of LPP No. 216 to the County of Maui (County). To assist with the transfer, the Division contacted Pulama Lanai to discuss the requirements for an assignment and expressed its support of the assignment to the County.

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1. Staff also understands a prior Director of DOA/Chair of BOA visited Lanai with the owner but indicated he could not justify the investment needed to establish and build an agricultural park at the site or on Lanai.

More than a year passed, and the County provided no substantive updates on its acquisition of LPP No. 216. On April 21, 2022, the Division wrote County of Maui, Mayor, Michael P. Victorino (Mayor Victorino) inquiring about the status of the County's acquisition. The April 21, 2022 letter is attached as **Exhibit H**. The letter also notified the County that the Division reached out to the current fee owner, Pulama Lanai, and that Pulama Lanai would be directly contacting the County to discuss an assignment to the County.

On June 29, 2022, the Division received a letter from Mayor Victorino affirming the County was still interested in acquiring LPP No. 216. However, the letter noted the acquisition was contingent upon "satisfactory resolution of some concerns." On July 5, 2022, the Division sent a follow up letter seeking clarification of the County's concerns. On August 3, 2022, Mayor Victorino shared that a new Department of Agriculture was established for the County of Maui, but did not clarify the County's concerns. The letters are attached as **Exhibit I**.

Notwithstanding the August 3, 2022 letter indicating the creation of a DOA for the County of Maui, the County's concerns have not been communicated and the acquisition of the proposed agriculture park at Miki Basin on Lanai has not made substantive progress. The Division is aware the site for the proposed agriculture park faces many development challenges.<sup>2</sup> In addition, LPP No. 216 contains numerous obligations and requirements<sup>3</sup> that are time sensitive and costly. Accordingly, the many challenges of developing an agriculture park on Lanai, while not insurmountable, are substantial.

Whatever concerns or conditions the County may have with respect to LPP No. 216, a renegotiation of the terms of that lease is not an option. Accordingly, staff recommends below that the Board approve an assignment of LPP No. 216 to the County only if the County agrees to accept an assignment of the lease as is, where is, with all faults, subject to its existing terms and conditions within 180 days of today's Board meeting.

LPP No. 216 was created for the benefit of DOA. Unfortunately, over the years the lease was never accepted by DOA and the lease remains with DLNR. As such, DLNR is potentially liable for the lease obligations. The County has had ample time to consummate its acquisition of LPP No. 216. Should the assignment not be finalized within 180 days of the Board meeting, then the Division requests the authority to immediately enter a mutual termination of LPP No. 216 with the owner, Lanai Resorts, LLC dba Pulama Lanai

The applicant 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.

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<sup>2</sup> The site is remote, lacks needed infrastructure, and has a limited water supply.

<sup>3</sup> LPP No. 216 requires construction of infrastructure, implementation of erosion control measures, ongoing road maintenance, drainage control measures, and water development.



RECOMMENDATION: That the Board:

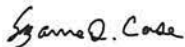
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1-15, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment as a de minimis action.
2. Consent to the assignment of License of Private Property No. 216 (LPP No. 216) from Lanai Resorts, LLC dba Pulama Lanai to the County of Maui, as is, where is with all faults, subject to the following:
  - a. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
  - 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.
3. If License of Private Property No. 216 is not accepted by the County as is, where is, with all faults within 180 days of the Board meeting on November 10, 2022, the Division is authorized to enter a mutual termination of LPP No. 216 with the owner, Lanai Resorts, LLC dba Pulama Lanai, subject to the following:
  - a. The standard terms and conditions of the most current termination of lease form, as may be amended from time to time;
  - b. Review and approval by the Department of the Attorney General; and
  - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.


Respectfully Submitted,



\_\_\_\_\_  
Andrew Tellio  
Appraisal and Real Estate Specialist

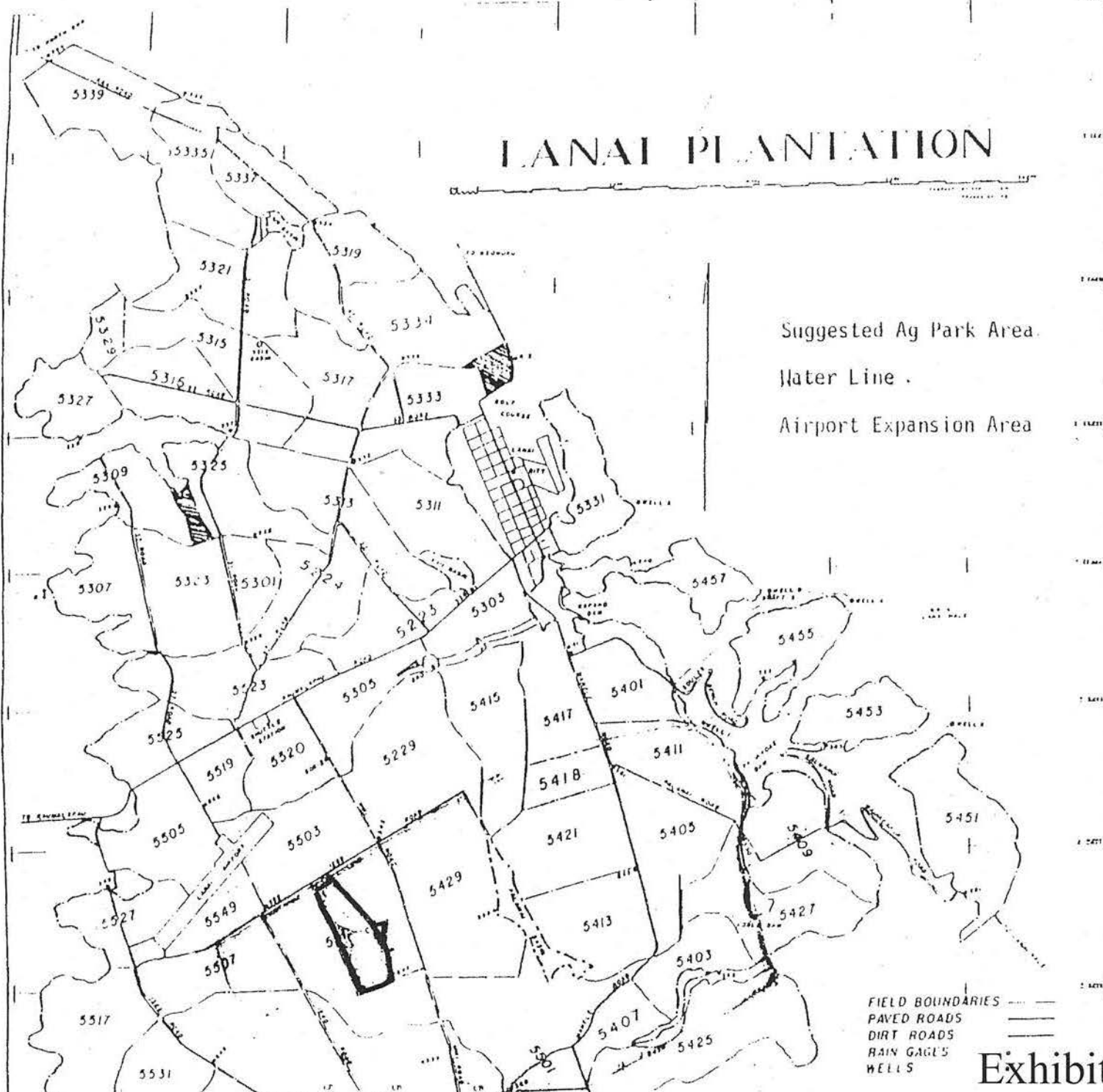
APPROVED FOR SUBMITTAL:



 \_\_\_\_\_  
Suzanne D. Case, Chairperson

# EXHIBIT A

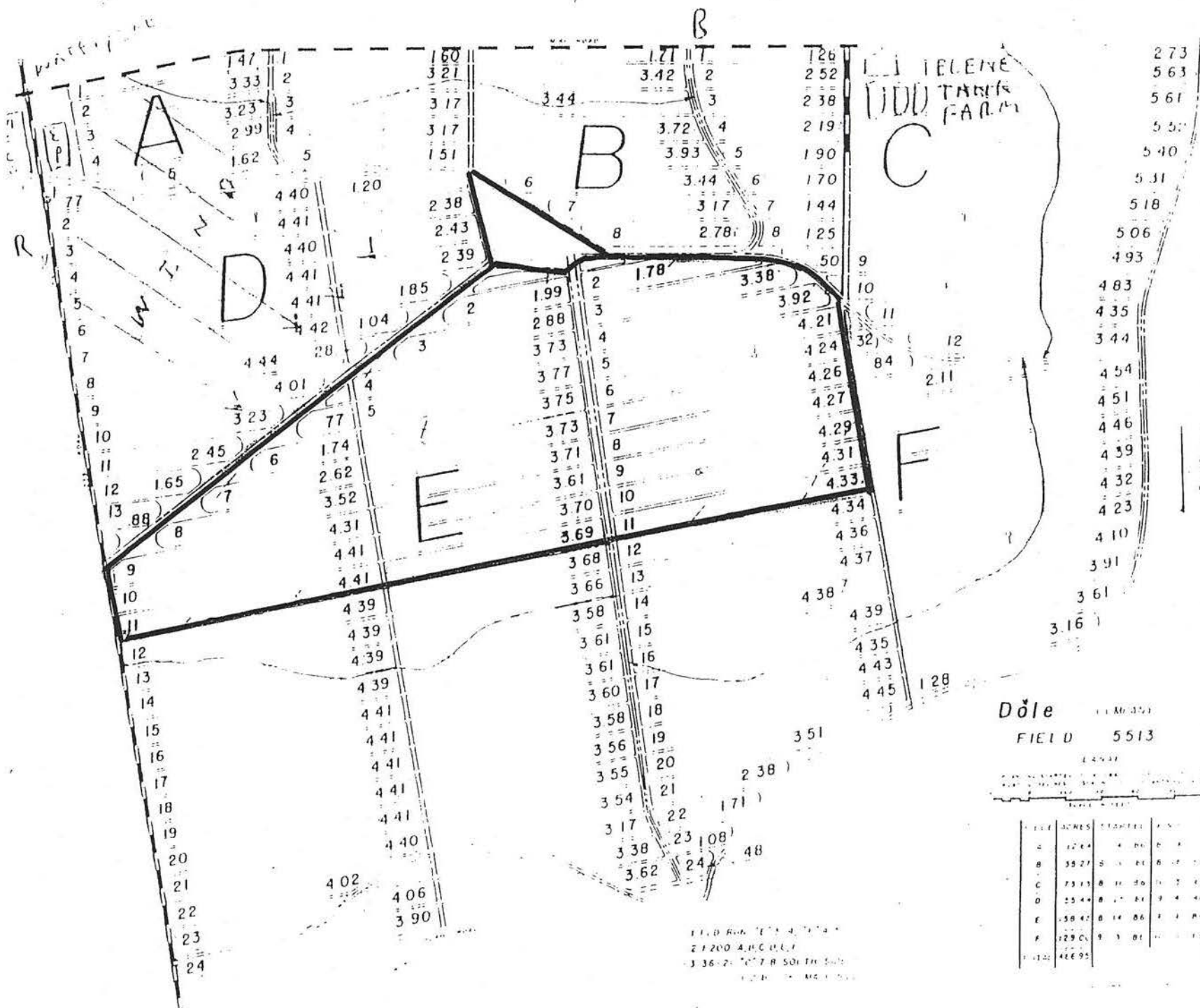
# LANAI PLANTATION



Suggested Ag Park Area  
Water Line  
Airport Expansion Area

FIELD BOUNDARIES  
PAVED ROADS  
DIRT ROADS  
RAIN GAGE  
WELLS

Exhibit A



# EXHIBIT B



NC

L-390 STATE OF HAWAII  
OFFICE OF ASSISTANT REGISTRAR  
RECORDED

JUL 21, 1994 01:54 PM

Doc No(s) 2165943

on Cert(s) 324,345

/s/ S. FURUKAWA  
ASSISTANT REGISTRAR

*[Signature]*

Af

CONVEYANCE TAX: \$0.00

) Pickup (X) To:

DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF LAND MANAGEMENT

GENERAL LEASE NO. \_\_\_\_\_

between

DOLE FOOD COMPANY, INC.

as LESSOR

and

STATE OF HAWAII

By Its

BOARD OF LAND AND NATURAL RESOURCES

as LESSEE

Covering Lot No. \_\_\_\_\_

Tax Map Key: \_\_\_\_\_

LANAI AGRICULTURAL PARK

LANAI, STATE OF HAWAII

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G. EXHIBIT "A"  
EXHIBIT "B"

THIS INDENTURE OF LEASE, made this 15<sup>TH</sup> day of July, 1994 by and between DOLE FOOD COMPANY, INC., whose mailing address is 650 Iwilei Road, Honolulu, Hawaii 96813, hereinafter referred to as the "LESSOR", and THE STATE OF HAWAII, hereinafter referred to as the "LESSEE", by its Board of Land and Natural Resources, whose business and mailing address is 1151 Punchbowl Street, Honolulu, Hawaii 96813.

W I T N E S S E T H :

A. DEMISED PREMISES

THAT, the LESSOR for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the LESSEE to be kept, observed and performed, does hereby demise, lease and assign unto the LESSEE, and the LESSEE does hereby lease and hire from the LESSOR, the premises described in Exhibit "A" and shown outlined in red on Exhibit "B" attached hereto, for purposes of an agricultural park, consisting of approximately 100.0 acres, more or less.

B. TERM

TO HAVE AND TO HOLD the demised premises unto the LESSEE for the term of fifty-five (55) years, commencing on the 1<sup>ST</sup> day of August, 1994, up to and including the 31<sup>st</sup> day of July, 2049, unless sooner terminated as hereinafter provided.



LESSEE shall have the right to cancel this lease at any time after the first year of the term hereof should LESSEE's public funding be substantially cut, subject to the following conditions:

1. LESSEE must give LESSOR written notice of its intent to cancel no later than ninety (90) days prior to the effective date of cancellation;

2. LESSEE shall provide LESSOR with proof of such funding cut at the time it exercises its right to cancel.

It is further understood that once the LESSEE has exercised its right to cancel, said notice is irrevocable.

C. RIGHTS OF LESSEE

TOGETHER WITH the following rights on the part of the LESSEE in or appurtenant to the demised premises:

1. The right to cut any trees on said premises only for purposes of clearing the land for cultivation or contributory use; provided, however, that in so doing LESSEE (a) will not expose the soil to risk of erosion; (b) will not remove trees that serve as wind barriers or screens to conceal unsightly operations; and (c) will observe the principles of good forestry and soil conservation.

2. The right of a nonexclusive easement for ingress and egress over lands owned by the LESSOR to said premises from both Kaumalapau Highway and Manele Road, over roadways that now exist, as designated by LESSOR from time to time or as may hereafter be substituted by the LESSOR at its cost and expense

to provide an equally functional substitute means of access; subject, however, to the right of the LESSOR, their agents, tenants, and designees, at all reasonable times and in all reasonable ways, to use in common with the LESSEE the roads now or hereafter existing between Kaumalapau Highway and Manele Road to the demised premises; provided, however, that the LESSEE may from time to time, at its own expense, relocate any part or parts of said roads to such place as the LESSEE shall determine with the prior written consent of the LESSOR; and provided, also, that with the exception of tenants who, at the date of execution of the Indenture, have the right to use any such roads without the liability of bearing a share of such costs (which tenants shall continue not to be required to bear any such share), LESSOR shall use its best efforts to require any of its tenants who use such roads to bear a reasonable share of the cost of maintaining and repairing the same based on their use thereof. LESSOR may, at its expense, designate an access easement on Land Court maps and, subject to being an equally functional substitute access, LESSEE's access shall be confined to such designated access.

D. ENCUMBRANCES

SUBJECT, HOWEVER, to all encumbrances affecting any part of the above-described premises which are noted on Transfer Certificate of Title No. 324,345 and affect the land described in Exhibit "A" and to the following:

All pole and wire lines, underground cables, water lines and appurtenances and rights therefor now existing over and across the demised premises.

E. EXCEPTIONS AND RESERVATIONS

EXCEPTING AND RESERVING from the demised premises:

1. The right of the LESSOR, its agents, tenants, and designees at all reasonable times and in all reasonable ways, to use in common with the LESSEE the roads now or hereafter existing on the demised premises.

2. In addition to the right of withdrawal provided for herein, the right from time to time to withdraw from the premises hereby demised such land and rights-of-way as are required by LESSOR or appropriate governmental authority for roads, trails, ditches, flumes, pipelines, pole and wire lines, well sites, pump sites, conservation and flood control areas, or other similar service purposes for the benefit of the LESSOR, the public, or any other lands of the LESSOR, and the right to enter said premises for the installation, maintenance, repair and replacement of any such facilities and to convey such rights, or any of them, to others; provided, further, that the foregoing rights shall be exercised in such a manner and to such a degree as to cause the least possible interference with the use and enjoyment of the demised premises by the LESSEE.

Upon any such withdrawal or any such taking, which causes any portion of the land demised to become unusable for the specific use or uses for which it was demised, the rent

shall be reduced and the LESSOR shall make payment to the LESSEE as provided in paragraph 27.

3. The right of the LESSOR, their agents, employees, tenants and designees, to use and enjoy all easement areas now or hereafter existing within the above-described premises.

4. The right of the LESSOR and their agents to enter upon the demised premises at all reasonable times to make land and topographic surveys, to explore and investigate the natural resources of the LESSOR's lands, to make test borings and install recording instruments, and to take such other measures as may be necessary or desirable in studying and determining facts concerning the area, topography, natural resources and development potential of the LESSOR's lands; provided, however, that the LESSEE shall be compensated for any damage caused by the exercise of such right by the LESSOR. The LESSOR shall coordinate entry and activities with the LESSEE in writing before exercise of the LESSOR's right of entry as provided for herein.

5. The right of the LESSOR and their agents to enter upon the demised premises at any time and from time to time to remove water, minerals, coral, rock, and fill material for use by LESSOR, its tenants, or assignees and widen or deepen storm drains, ditches and channels, create reservoirs, and maintain water lines which benefit lands of the LESSOR outside of this demise; provided, however, that the LESSEE shall be compensated for any damage caused by the exercise of such right by the

LESSOR; provided, further, that the foregoing rights shall not be exercised in such manner or degree as to unreasonably or materially interfere with or adversely affect the use and enjoyment of the demised premises by the LESSEE. The LESSOR shall coordinate entry and activities with the LESSEE before exercise of the right of entry provided for herein.

F. CONDITIONS

THE PARTIES FURTHER AGREE:

1. CHARACTER OF USE. The premises hereby demised shall be used for diversified agriculture, excluding residential uses, livestock and aquacultural operations; however, including all processing and distribution activities, and agriculture-related buildings excluding dwellings. The location of the proposed uses are shown on Exhibit "B," attached hereto, and hereinafter referred to as the Land Use Plan.

2. SURVEY. LESSEE shall conduct on-site surveys to map and measure the exact location and size of the arable, contributory and waste lands, as defined in paragraph 48, and shall provide such information to the LESSOR within two (2) years of the effective date of this Lease.

3. PAYMENT OF RENT. LESSEE shall pay rent to the LESSOR, in advance, without notice or demand, in semi-annual installments on the first day of January and June of each and every year during said term, at the office of the LESSOR in Honolulu, or at such other place as the LESSOR may from time to



time designate, using legal tender of the United States of America, and in the amounts hereinafter specified.

4.. ANNUAL RENT. The annual rent for the premises within this demise shall be:

Net Basic Annual Rent. Commencing on the date of this lease and continuing during the term of this Lease for premises outlined in red on Exhibit "B," LESSEE shall pay to LESSOR an annual nominal rent of one hundred dollars (\$100.00).

5. TAXES AND ASSESSMENTS. LESSEE shall pay to the LESSOR an additional rent, at least ten (10) days before same becomes delinquent, all taxes and assessments of every description to which said premises or any part thereof or any improvement thereon, or the LESSOR or LESSEE, in respect thereof, are now or may during said term be assessed or become liable for whether assessed to or payable by the LESSOR or LESSEE, including all real property taxes, both on land and improvements, and all general excise taxes measured by and payable with respect to the LESSOR's receipt of gross revenues pursuant to this Lease, but excluding LESSOR's net income taxes; PROVIDED, HOWEVER, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, the LESSEE shall be required to pay only such installments of principal together with interest on unpaid balances thereof as shall become due and payable during said term or for any part thereof, and that real property taxes and

such annual installments of assessments, irrespective of when assessed, relating to the calendar year in which said term commences or expires shall be prorated between the LESSOR and LESSEE as of the dates of commencement and expiration, respectively, of said term and shall be payable at the time and in the manner above set forth, notwithstanding the expiration of this Lease prior to payment.

The LESSEE may obtain an exemption from real property taxes under Hawaii Revised Statutes Section 246-36(2), and upon the granting of the exemption the LESSOR's real property taxes will be reduced by the LESSEE's pro rata share. Accordingly, after the effective date of the LESSEE's tax exemption, neither the pro rata share nor real property taxes of others shall be actually assessed to or collected against the LESSEE in any form.

The LESSEE shall pay to the LESSOR as additional rent, together with each payment of rent or any other payment required hereunder which is subject to the State of Hawaii general excise tax on gross income, as the same may be amended, and all other similar taxes imposed on the LESSOR on the rent or other payments in the nature of a gross receipts tax, sales tax, privilege tax or the like (excluding Federal or State of Hawaii net income taxes), whether imposed by the United States of America, the State of Hawaii, the City and County of Honolulu, or any other duly authorized taxing body, an amount which, when added to the rent or other payment shall yield to the LESSOR, after deduction of all taxes payable by the LESSOR with respect

to all payments, a net amount equal to that which the LESSOR would have realized from the payments had no taxes been imposed.

6. UTILITY SERVICES. The LESSEE shall pay or cause to be paid, when due, all charges, duties, and rates of every description, including electricity, water, sewer, gas, refuse collection or any other charges, attributable to the LESSEE's use of the demised premises, or any part thereof, or any improvements thereon, or the LESSOR or LESSEE in respect thereof may during said term become liable, whether assessed to or payable by the LESSOR or LESSEE.

7. REPORTS. Within 90 days of each anniversary date of this Lease, LESSEE will furnish LESSOR:

- a. One (1) copy of the Land Use Plan, attached as Exhibit "B," updated to show any and all revisions approved by LESSOR as provided in paragraph 13 herein.
- b. A schedule of improvements with cost estimates that the LESSEE intends to undertake in the following year.
- c. Any data, maps, or reports in LESSEE's possession that LESSOR may request to substantiate that the operations and activities of the LESSEE are being conducted in the manner required by this Lease.

If any material error is discovered in any of the submitted material, an appropriate, retroactive adjustment will

be made. If there is any dispute between the LESSOR and LESSEE as to whether a material error exists, the dispute shall be resolved by arbitration as provided in Chapter 658, Hawaii Revised Statutes.

8. RECORDS. The LESSEE will at all times keep and maintain full, true, correct and current books of accounts and records in accordance with accepted accounting practices and permit the LESSOR or their authorized agents to have free access during normal office hours to books of account, contracts, sub-leases, maps and papers related to the demised premises, and permit LESSOR to examine and make copies of the same, and generally to take and use such means as the LESSOR deems fit for ascertaining that the reports furnished by the LESSEE are full and accurate and that the LESSEE is otherwise faithfully carrying out the terms, covenants and conditions herein contained and on its part to be observed and performed; provided, however, that all information obtained by reason of the right of access herein given shall in all respects be held confidential, except in case of enforcing the performance by the LESSEE of its obligations under this Lease.

9. LESSOR'S LIEN. Subject to the rights of any mortgagee as provided for herein, the LESSOR shall have a lien on all the buildings and improvements placed on the demised premises, on all property kept or used on the demised premises, whether the same is exempt from execution or not, and on the rents of all improvements and buildings situated on the demised

premises for all costs, taxes, and assessments paid by the LESSOR on behalf of the LESSEE, and for the payment of all money as provided in this Lease to be paid by the LESSEE, and such lien shall continue until the amounts due are paid.

10. CONSTRUCTION OF IMPROVEMENTS.

a. Capital Improvements. LESSEE will complete construction of the infrastructure improvements within the designated development period. This condition shall be subject to LESSEE receiving Legislative authorization and appropriate funding for the financing of such infrastructure. Failure to complete construction of infrastructure improvements within the development period will be considered a default by LESSEE under this Lease and entitle LESSOR to exercise all the remedies available to it upon a default by the LESSEE pursuant to paragraph 42; provided, however, an extension may be granted upon mutual agreement between parties. Such extension shall not be unreasonably withheld. All infrastructure improvements shall require the prior written approval of the LESSOR. Such approval may be indicated when LESSOR is a signatory to the construction plans and specifications.

b. Accessory Buildings/Residential Prohibited.

It is understood, however, that LESSEE shall allow accessory buildings only ancillary to agricultural uses, as provided in paragraph 1, subject to the prior approval of the LESSOR with respect to accessory buildings, it is recognized that the express intent of the parties is that residential use and



residential dwellings are not to be permitted on the premises. Accordingly, accessory buildings will be strictly limited and controlled by the LESSOR and LESSEE to provide only that which is necessary and essential for the protection and security of sublessee's agricultural operations and major capital improvements constructed on the premises.

Throughout the term the LESSEE will, at its own expense, or cause to be made, installed, and maintained all ditches, drains, culverts, bridges, access or other roads, sidewalks, fences, curbs, parking areas, filling, landscaping and improvements or structures required by law.

11. REPAIR, MAINTENANCE AND REPLACEMENT OF IMPROVEMENTS. The LESSEE will, except as may hereafter otherwise specifically be provided, at LESSEE's own expense, during the whole of the said term, repair, maintain, amend and keep all buildings, equipment, fences, gates, reservoirs, ditches, drains, culverts, bridges, roads, curbs, sidewalks, sewers, parking areas, fillings, tunnels, flumes of a permanent nature, pipelines, water courses, pumps, and all other improvements, works and structures, including without limitation, all boundary markers and monuments suitable to sufficiently and properly determine boundary lines, now or hereafter built, constructed, erected or made on the lands hereby demised, with all necessary reparations and amendments whatsoever and, where necessary, with all replacements of equal or greater value and suitability, in good order and condition,

reasonable wear and tear or damage by unavoidable casualty, not herein required to insured against excepted, and will share with others in the overall costs of maintenance and operation of equipment and facilities benefitting the demised premises, and other land as well, in a fair and equitable manner; furthermore, the LESSEE will keep the demised premises in a suitably neat and attractive condition, considering the use to which they are required to be put, and will promptly remove any vehicles and any other abandoned property on the premises, and indemnify the LESSOR with respect thereto, for reasonable costs incurred in enforcing such removal of vehicles.

12. LIENS. The LESSEE will not commit or suffer any act or neglect whereby the demised premises or any portion thereof or any improvement thereon shall become subject to any attachment, lien, charge or encumbrance whatsoever, except as otherwise herein provided, and shall indemnify and hold harmless the LESSOR from and against all attachments, liens, charges and encumbrances and all expenses resulting therefrom.

13. RESTRICTION ON CHANGES IN CLASSIFICATION OF LANDS. The LESSEE shall not, without the prior written consent of the LESSOR, change the land use classification or use any of the demised premises from that specified in the Land Use Plan.

14. FULL UTILIZATION OF THE LAND. The LESSEE shall, during the full term of the Lease, make every reasonable effort to sublease and utilize the arable lands shown on Exhibit B.

15. EROSION CONTROL. The LESSEE shall undertake or cause to be undertaken conservation measures to minimize the possibility of soil loss, in accordance with a conservation plan prepared in consultation with the U.S.D.A. Soil Conservation Service, approved by the LESSOR. Also, the LESSEE shall tend or cause to be tended, at its own cost and expense, during the full term of this Lease, the premises in such manner that will not increase the danger of erosion or other waste.

16. HUSBANDRY AND CONSERVATION PRACTICE. The LESSEE shall at all times cause any sublessee to practice conservation and good husbandry, eliminate noxious weeds, and shall require any sublessee to have cooperative status with the Molokai-Lanai Soil and Water Conservation District.

17. DE-SILTING BASINS. The LESSEE shall conform with all County, State and Federal statutes and regulations regarding pollution and will construct de-silting basins, if necessary, in order to comply with the applicable statutes and regulations.

18. DRAINAGE MAINTENANCE. The parties have agreed that LESSEE is responsible for any existing drainage ways and water courses situated within the demised lands unless such drainage ways or water courses are withdrawn by the LESSOR, in which event the LESSOR shall be responsible for maintaining them. LESSEE will cause to be cleared any existing drains and water courses with reasonable frequency as determined by a representative of the U.S.D.A. Soil Conservation Service mutually agreeable to the LESSOR and LESSEE, or if they cannot

so mutually agree, by arbitration as herein provided. Should the LESSEE fail to clear the drains and water courses as required, the LESSOR shall have the right, sixty (60) calendar days after giving written notice to the LESSEE, to have the work done and bill the LESSEE for the reasonable costs of the work. LESSEE shall pay such bill upon receipt.

The LESSEE shall take all reasonable steps to avoid flooding the adjoining lands of the LESSOR lying outside of the demised premises, except in locations and in accordance with plans approved in writing by the LESSOR and all applicable governmental authorities. To the extent that any pump is operated to drain the LESSOR's adjacent lands flooded due to LESSEE's negligence, the LESSEE shall pay its share of the costs of such pumping (operation, maintenance, labor, personnel, overhead, etc.) in accordance with the proportional benefit to the demised premises derived from such pumping.

19. WATER DEVELOPMENT. Since the ground water basin within the demised premises is critical to the island, any agricultural operation on the premises and the LESSOR's development of its lands, it is agreed that for the purposes of this Lease, there shall be no drilling of wells and no development of water sources, except storm surface runoff, on the premises by the LESSEE. It is further agreed that the LESSEE shall have the right to purchase from the public utility and to use up to, but not more than 0.20 MGD on the average annual basis.

20. UNCOMPOSTED MANURE. LESSEE shall at all times comply with Chapter 322, Hawaii Revised Statutes, "Nuisances; Sanitary Regulations," in the storage and use of uncomposted manure.

21. CONTROL AND MAINTENANCE OF ACCESS. LESSEE shall erect and maintain an adequate number of gates to control access to the interior of the demised land and the LESSOR's lands lying beyond and shall permit access by the LESSOR, its designees and assignees, and others permitted under this Lease to pass over the roads controlled by said gates.

22. ROAD MAINTENANCE AND CLOSURE. LESSEE shall cause to be maintained in good and usable condition all roads now or hereafter existing and used by the LESSEE for access to and on the demised premises.

23. HUNTING. LESSEE shall not permit hunting on the demised premises, except that for control of destruction to growing crops from overpopulation of birds and small mammals, wild deer and pigs.

24. WASTE AND UNLAWFUL, IMPROPER OR OFFENSIVE USE. The LESSEE shall not commit, suffer or permit to be committed, any waste, nuisance, stripping or unlawful, improper or offensive use of the demised premises, or any part thereof, nor, without the prior written consent of the LESSOR, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on said premises except as earlier provided for herein. LESSEE shall not permit quarrying

of any kind on the demised premises, and will not permit removal of any rock, coral, or soil therefrom except to clear for planting of crops; provided, the LESSEE may with the prior written consent of the LESSOR, grade and remove and relocate rock, coral and soil from one part of the demised premises to another for the construction or repair and maintenance of roads and irrigation/drainage systems within the demised premises pursuant to the requirements of good husbandry.

25. OBSERVANCE OF LAWS. The LESSEE will at all times during said term keep said premises in good order and in a strictly clean and sanitary condition and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to said premises or any improvement thereon or use thereof, including without limitation to the generality of the foregoing all laws, ordinances, rules and regulations concerning air, land, water, noise and other forms of pollution, and will indemnify the LESSOR against all actions, suits, damages and claims by whomsoever brought or made by reason of nonobservance or nonperformance of said laws, ordinances, rules and regulations by the LESSEE.

26. INSPECTION OF PREMISES. The LESSEE will permit the LESSOR and its agents, at all reasonable times during the said term, to enter the demised premises and examine the state of repair and condition thereof.



27. WITHDRAWAL. The LESSOR reserves the right at any time to withdraw all or any portion of the premises on which capital improvements have not been constructed pursuant to paragraph 10 or which are not being actively used after the initial ten year development period. LESSOR will give LESSEE at least six (6) months prior written notice before withdrawing any portion of such premises. In the event of withdrawal, annual rent and taxes will be reduced and prorated to the effective date of the withdrawal, and further, LESSOR shall compensate LESSEE for any growing crops which cannot be harvested within the six (6) month notice period and for improvements as called for in paragraph 28. LESSEE understands that LESSOR wants to be assured that this Lease and the fact that the LESSOR has leased the demised premises to the State of Hawaii for an agricultural park will not jeopardize any attempt by LESSOR to withdraw for a compatible use within an Agricultural District; and accordingly, the Department of Agriculture agrees insofar as allowed by existing law that it will make no objection and will support attempts by the LESSOR to withdraw land for such compatible use.

28. PAYMENT FOR IMPROVEMENTS. As to any area withdrawn by the LESSOR, LESSOR shall pay the LESSEE for the unamortized value of any approved improvements made by the LESSEE computed as follows: LESSOR shall pay that portion of the cost of such improvement which the then remaining term of this Lease bears to the unexpired term as of the date when such improvement was made. For example: Assume that when the area

is withdrawn the remaining term is forty-five (45) years and that when the approved improvement was made the then unexpired term was fifty-five (55) years: the LESSOR in such case will pay 45/55ths of the cost of such approved improvement.

29. SUBDIVISION. Subdivision of the premises into smaller parcel lots by LESSEE shall be permitted with the prior written consent by the LESSOR, which shall not be unreasonably withheld, and shall be accomplished only in a manner approved by the LESSOR, and LESSOR will cooperate with and agree to permit subdivision, provided that all costs and expenses in connection therewith shall be paid by LESSEE.

30. REPRESENTATIONS. The LESSEE does hereby covenant, agree and affirm that it has entered into this Lease after an inspection and examination of the demised premises; that no statements or representations have been made by the LESSOR to the LESSEE and none has been relied upon by the LESSEE; and that this Lease states and includes the entire agreement between the parties.

31. NONDISCRIMINATION. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, or physical handicap.

32. LIABILITY INSURANCE. For those lands subleased by the LESSEE, the LESSEE shall require each sublessee to procure, at its own cost and expense, and maintain during the entire period of the sublease, a policy or policies of

comprehensive public liability insurance, with an insurance company or companies licensed to do business in the State, in an amount acceptable to the LESSOR, insuring the LESSOR and LESSEE against all claims for personal injury, death and property damage; that said policy or policies shall cover the entire premises subleased by LESSEE, including all buildings, improvements, grounds, and roadways. The LESSEE shall furnish to the LESSOR a certificate showing such policy to be in force and shall furnish a certificate upon each renewal of such policy. Each such certificate is to contain or be accompanied by an assurance of the insurer to notify the LESSOR of any intention to cancel such policy prior to actual cancellation. The procuring of this policy shall not release or relieve the LESSEE of its responsibility under this Lease or limit the amount of its liability. The notice to cancel shall be sent to the LESSOR sixty (60) days prior to the date of cancellation.

LESSEE, as an agency of the State of Hawaii, is self-insured and, therefore, LESSEE shall not be required to procure and maintain a policy or policies of comprehensive public liability insurance.

33. INDEMNITY. The LESSEE, to the extent permitted by law, will, and shall also require each sublessee for acts or omissions of sublessee on subleased property for the situations set forth herein, indemnify, defend and hold the LESSOR harmless, (1) from and against any claim or demand for loss, liability or damage, including claims for property damage,

personal injury or death, arising out of any accident on the demised premises and sidewalks and roadways adjacent thereto or occasioned by any act or omission of the LESSEE or any nuisance made or suffered on the premises, or by any fire thereon, or growing out of or caused by any failure on the part of the LESSEE to maintain the premises in a safe condition, or by any act or omission of the LESSEE, and (2) from and against all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.

34. COSTS OF LITIGATION. In case the LESSOR shall, without any fault on its part, be made a party to any litigation commenced by or against the LESSEE (other than condemnation proceedings), the LESSEE shall and will pay all costs and expenses incurred by or imposed on the LESSOR. Furthermore, the LESSEE shall pay all costs and expenses which may be incurred by or paid by the LESSOR in enforcing the covenants and agreements of this Lease, in recovering possession of the demised premises or in the collection of the delinquent rental, taxes and any and all other charges.

35. ASSIGNMENT. The LESSEE, shall not transfer, assign or permit any other person to occupy or use the premises or any portion thereof, or transfer or assign this Lease or any

interest therein, either voluntarily or by operation of law, and any transfer or assignment so made shall be null and void.

36. SUBLETTING. The LESSEE shall rent or sublet the whole or any portion of the demised premises only to residents of Lanai or to partnerships or corporations of which a majority of the general partners or officers and shareholders are residents of Lanai with the prior written approval of the LESSOR, but since it is the intention of the parties that the LESSEE will sublet the premises from time to time according to the intent, purposes, and conditions of this Lease, the LESSOR shall not unreasonably disapprove of any such subleases or assignment of subleases which LESSEE shall make subject to, and in the event of conflict shall be preempted by the terms and conditions of this Lease. Any such subletting shall be made in accordance with the Land Use Plan, which has been approved by the LESSOR. "Residents of Lanai" shall be determined in accordance with Section 11-13, Hawaii Revised Statutes, and for the purpose of this paragraph.

37. FEE SIMPLE CONDEMNATION. If at any time during the term the fee simple title to the demised premises or any part thereof shall be taken or condemned by any authority having the power of eminent domain, then and in every such case the LESSOR and interest of the LESSEE in the premises so taken or condemned shall at once cease, and the LESSEE shall not by reason thereof be entitled to any claim against the LESSOR or others for compensation or indemnity for leasehold interest, and

all compensation and damages payable for or on account of any land or improvements thereon, except improvements and growing crops on the demised land during said term, shall be payable to and be the sole property of LESSOR, and all compensation and damages payable for and on the account of any improvements erected on the demised land during said term by LESSEE, or its sublessees, shall be payable to LESSEE; provided, however, that in case only part of the demised premises shall be taken or condemned, annual rent and taxes will be prorated to the date of loss of possession. The LESSEE may, in the alternative, remove and relocate its improvements to the remainder of the premises occupied by the LESSEE. If more than one-third (1/3) of the total area of the demised premises shall be taken or condemned, and the LESSEE may elect to deem it unprofitable to continue its cultivation of crops on the remaining demised premises and shall submit to the LESSOR evidence of such unprofitability, the LESSEE may terminate this Lease by giving at least six (6) months written notice thereof to the LESSOR, said notice to be given within three (3) months from the date of taking and in any event in time to permit the LESSOR to make a claim against condemning authority by reason of such termination. The LESSEE shall have the right to claim and recover from the condemning authority, but not from the LESSOR, such compensation as may be separately awarded to or recoverable by the LESSEE in its own right on account of the loss of use of any buildings or improvements, the value of any grown crops, and any other loss



and damage the LESSEE may claim, so long as such claim and any recovery shall not affect or diminish the compensation and damages payable to the LESSOR upon condemnation as provided herein. It is hereby agreed that with respect to any such condemnation or taking, just compensation and damages to the LESSOR shall be determined by a jury or non-jury eminent domain trial as though this Lease never existed and the lease rents do not reflect the fair market value of the land.

38. MORTGAGE. Except as provided herein, the LESSEE shall not mortgage, hypothecate or pledge the said premises or any portion thereof or this Lease or any interest therein without the prior written consent of the LESSOR and any such mortgage, hypothecation or pledge without such approval shall be null and void.

39. CONSENT TO MORTGAGE. The LESSEE and any of its sublessees may from time to time without further consent of the LESSOR assign this Lease by way of mortgage to any bank, insurance company or other established lending institution licensed to do business in this state as mortgagee for funds for capital improvements on the demised premises and/or operating costs, and will promptly upon the execution of such mortgage deliver a true copy thereof to the LESSOR. Any authorized mortgagee and its assigns may enforce such mortgage and acquire title to the leasehold estate in any lawful way, and pending foreclosure of such mortgage may without further consent of the LESSOR sell and assign the leasehold estate by assignment in

which the assignee shall expressly assume and agree to observe and perform all the covenants of the LESSEE herein contained, and such assignee may make a purchase money mortgage of this Lease to the assignor thereof, PROVIDED that upon execution of such assignment or mortgage a true copy thereof shall be delivered promptly to the LESSOR. Nothing contained in such mortgage shall release or be deemed to relieve the LESSEE, its sublessees, and permittees from full and faithful observance and performance of its covenants herein contained or from any liability for the non-observance or non-performance thereof, nor be deemed to constitute a waiver of rights of the LESSOR hereunder, and the terms, covenants and conditions of this Lease shall control in case of any conflict between this Lease and such mortgage. The mortgagee or its assigns of such mortgage shall be liable to perform the obligations herein imposed by the LESSEE only during the period such person has possession or ownership of the leasehold estate, but any other assignee of this Lease shall be liable therefor during the remainder of said term unless expressly released in writing by the LESSOR.

40. PROTECTION OF MORTGAGE. So long as there shall be in existence a mortgage of this Lease, which was authorized to be made by the terms hereof and a copy of which was furnished the LESSOR, the LESSOR will not terminate this Lease because of any default by the LESSEE hereunder if within forty (40) days from receipt of written notice of default, the mortgagee shall pay to the LESSOR and continue to pay to the LESSOR all rent and

other charges and items of payment required to be paid by the LESSEE under this Lease and shall cure all defaults, if the same can be cured by the payment of money, or, if such is not the case, undertake in writing within one hundred twenty (120) days from the receipt of written notice of default to perform and thereafter perform all covenants of said Lease capable of performance by the mortgagee until such time as this Lease shall be sold upon foreclosure pursuant to such mortgage; provided, however, that the mortgagee shall have such further time after the expiration of said one hundred twenty (120) day period that is required by the mortgagee to complete its remedies under such mortgage, and if the mortgagee has proceeded promptly and with due diligence with such remedies and thereafter completes the same with due diligence and provided that the mortgagee pays and continues to pay such rent and other charges and items of payment required to be paid by the LESSEE under this Lease and which shall have accrued and which shall become due and payable during said period of time.

41. APPRAISAL. In the event of failure to agree on a fair market rental of the additional term, forty-five (45) days prior to the commencement of the term, or in the event of any dispute under this lease, either party hereto shall give the other written notice of a desire to have an arbitration by two (2) appraisers to determine the fair rental value and shall name one of the appraisers in the written notice; whereupon the other party shall, within ten (10) days after receipt of the notice,

name a second appraiser and in case of failure to do so, the party who has already named an appraiser may have the second appraiser selected or appointed as provided in Chapter 658, Hawaii Revised Statutes, and the two appraisers appointed shall thereupon proceed to determine the rental on the basis above set forth; in the event they cannot agree, a third appraiser will be selected or appointed as provided in Chapter 658, and the three appraisers shall then determine the rental by a majority decision; and the decision and award of the appraisers shall be final, conclusive and binding upon all parties. In all cases of arbitration, the parties hereto shall each pay the expense of its own attorney's and witnesses' fees and all other expenses of the arbitration shall be divided equally between them. If LESSOR and LESSEE are unable to execute the extension of the lease by the end of the lease period, the LESSEE shall continue to pay the same rental which LESSEE has been paying during the preceding rental period but shall promptly pay the deficiency, if any, when the new rental is determined in the extension of the lease agreement.

42. DEFAULT AND FORFEITURE. This demise is upon the express condition that (a) if the LESSEE shall fail to pay the rent or any part thereof within thirty (30) days after the same becomes due, whether the same shall or shall not have been legally demanded, or (b) if the LESSEE shall fail to observe or perform any of the other covenants by the LESSEE herein contained, and such default shall continue for sixty (60) days

after written notice of any such breach or default by personal service, registered mail or certified mail thereof given to the LESSEE, or (c) if any materialmen's lien shall attach to the premises or the LESSEE's estate or interest therein and shall not be discharged or released within reasonable time after the entry of any judgment or order by a court of competent jurisdiction for the foreclosure or other enforcement of such lien, the LESSOR may in any such event at once re-enter the premises or any part thereof in the name of the whole and, upon or without such entry, at its option terminate this Lease, and may expel and remove from said premises the LESSEE and any persons claiming under the LESSEE and their effects without being deemed guilty of any trespass or becoming liable for any loss or damage (other than deliberate, unnecessary damage) occasioned thereby, and LESSOR may store, remove and dispose of any of LESSEE's improvements or personal property at LESSEE's expense, all without service of notice or legal process and without prejudice to any other remedy or faith of action including summary possession which the LESSOR may have for arrears of rent or for the same or any preceding or other breach of contract, provided, however, that if the nature of the default, other than non-payment of rent is such that the same cannot be reasonably cured within a thirty (30) day period, LESSEE shall not be deemed to be in default if LESSEE, within the period, commences a cure and thereafter diligently prosecutes the same to completion. If this Lease is filed in

the Office of the Assistant Registrar of the Land Court of Hawaii, such termination may, but need not necessarily, be made effective by filing in said Office an affidavit thereof by the LESSOR or an order of the Land Court canceling this Lease, which order may be issued on the LESSOR's petition ex parte without service of notice or summons.

43. NONWAIVER. Acceptance of rent by the LESSOR shall not be deemed to be a waiver by it of any breach by the LESSEE of any covenant herein contained or of the LESSOR's right to re-enter for breach of condition. Waiver by the LESSOR of any breach by the LESSEE shall not operate to extinguish the term, covenant or condition the breach whereof has been waived nor be deemed to be a waiver of the LESSOR's right to declare a forfeiture for any other breach thereof.

44. SURRENDER. LESSEE shall, at the end of the term or sooner termination of this Lease, peaceably deliver to the LESSOR, possession of the entire demised premises. If the LESSEE shall have faithfully observed and performed all of the terms, covenants and conditions herein, it may elect to remove at its own expense, all improvements and growing crops from the premises by LESSEE or belonging to it, except as otherwise provided herein, removing all debris resulting therefrom and restoring the premises to good order and a condition satisfactory to the LESSOR, prior to the end of the term or sooner termination thereof, or within such additional period after the expiration of the term or soon termination thereof as



the LESSOR may in writing allow; provided, however, that LESSEE shall surrender in place all boundary fences, water lines, reservoirs, irrigation systems, roads, bridges, culverts, gates, and trees.

45. ENVIRONMENTAL LAWS.

a. Compliance with Laws. With respect to LESSEE's use of the demised premises, LESSEE shall at all times, at its own cost and expense, comply with all federal, state and local laws, ordinances, regulations and standards relating to Storage Tanks, above and underground, and the use, analysis, production, storage, sale, disposal or transportation of any Hazardous Substance, including oil or petroleum products or their derivatives, solvents, PCB's, explosive substances, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, contaminating or polluting materials which are now or in the future subject to any governmental regulation, except that the LESSEE shall not be responsible to mitigate pollution or contamination and is exempt from any prior existing conditions, which occurred, existed, resulted or were deleted prior to this Lease.

b. Notices to LESSOR. LESSEE shall give written notice to LESSOR within three (3) business days after the date on which LESSEE learns or first has reason to believe that:

(1) Any release, discharge or emission of any hazardous substance has occurred on or about the demised premises.

(2) (a) Any enforcement, cleanup, removal or other governmental or regulatory action has been threatened or commenced against LESSEE or with respect to the demised premises made or threatened by any person or entity against LESSEE or the demised premise on account of any alleged loss or injury claimed to result from the alleged presence or release on the demised premises of any Hazardous Substance; or (b) any report or notice has been made or filed with any governmental agency concerning the presence, use or disposal of any Hazardous Substances on the demised premises. Any such notice shall be accompanied by copies of any such claim, report, complaint, notice, warning or other communication that is in the possession of or is reasonably available to the LESSEE. Should such notice or action be the result of an existing condition occurring from a preexisting condition, LESSEE shall be exempted from this section.

Any notice required under this Section shall be accompanied by (i) a copy of all permits, licenses, proofs of disclosure to governmental agencies pertaining to hazardous substances that have not previously been furnished to LESSOR; and (ii) copies of any Material Safety Data Sheets pertaining to such substances that are required by applicable law.

c. Environmental Audits. LESSOR may, but shall not be required to, engage such independent contractors as LESSOR determines to be appropriate to perform from time to time an audit, including environmental sampling and testing, of (1) the demised premises, the surrounding soil and any adjacent areas, and any ground water located under or adjacent to the demised premises and/or any adjoining property, and (2) LESSEE's compliance with all Environmental Laws and the provisions made by LESSEE for carrying out any remedial action that may be required by reason of the nature of LESSEE's business and its operations on the demised premises (collectively an "Environmental Audit").

d. Costs and Expenses. All costs and expenses incurred by LESSOR in connection with any such Environmental Audit shall be paid by LESSEE.

e. Conduct of Audit. Each Environmental Audit shall be conducted (1) only after advance notice thereof has been provided to LESSEE at least twenty-four (24) hours prior to the date of such audit, and (2) in a manner reasonably designed to minimize the interruption of LESSEE's operations and use of the demised premises. LESSOR shall repair any damages to the demised premises or to LESSEE's property which is caused by an Environmental Audit.

f. Notice to Agency. If any Environmental Audit of the demised premises shall recommend the repair, closure, detoxification, decontamination, or other clean-up

(collectively the "Clean-up") of the demised premises recommended or required as the result of the presence or effects of any Hazardous Substances (collectively "Contamination") found on or about the demised premises and if LESSOR determines that the LESSEE is responsible for such Clean-up, then:

(1) LESSOR shall provide LESSEE with a copy of such Environmental Audit and with a written explanation of the reasons why it is believed that LESSEE is responsible for conducting the Clean-up indemnified in such audit. Any presence or effects of such hazardous substances causing contamination, pollution or toxification which existed prior to this lease shall exempt LESSEE from provision of this paragraph.

(2) If, within thirty (30) days after receiving a copy of such Environmental Audit and such written statement, LESSEE fails either (a) to complete such Clean-up, or (b) with respect to any Clean-up which cannot be completed within such thirty-day period, fails to proceed with reasonable diligence to complete such Clean-up as promptly as practicable, then the LESSOR shall be entitled to provide a copy of the Environmental Audit to any cognizant federal, state, or local government agency having jurisdiction over the Premise or hazardous substances.

(3) Notwithstanding any other provision of the Lease to the contrary, if the Environmental Audit reveals a situation which, in LESSOR's sole discretion, constitutes an emergency, then LESSOR shall have the right, but not the

obligation, to carry out any remedial action recommended by the Environmental Audit or required by any cognizant federal, state, or local government agency having jurisdiction over the demised premises, and to recover all of the costs and expenses thereof from LESSEE as Additional Rent together with interest at the Prime Rate plus 3% per annum which shall be due thirty days after LESSEE has been notified in writing of any such costs and expenses.

(4) Notwithstanding any of the provisions of this Lease to the contrary, to the extent required by law, LESSOR shall be entitled to submit the results of any Environmental Audit to any federal, state or local governmental agency having jurisdiction over the demised premises or hazardous substances.

g. Remedial Action. If LESSEE is responsible for the Clean-up of Contamination, LESSEE shall:

(1) Carry out and complete, at its own cost and expense, any repair, closure, detoxification, decontamination, or other Clean-up of the demised premises recommended by the Environmental Audit. Should LESSEE fail to implement and diligently pursue any such Clean-up promptly upon receipt of notice thereof, then LESSOR shall have the right, but not the obligation, to carry out such Clean-up, and to recover all of the costs and expenses thereof from LESSEE as Additional Rent, together with interest at the Prime Rate plus three percent (3%) per annum which shall be due thirty days after



LESSEE has been notified by LESSOR in writing of any such costs and expenses; and

(2) Be required to implement and complete all of the Clean-up recommended by the Environmental Audit submitted to Lessee in accordance with Section f.(2)(a) above.

h. Payment. LESSEE shall promptly reimburse the LESSOR for all costs and expenses incurred by the LESSOR in performing the LESSEE's obligation to Clean-up Contamination pursuant to this Section 2, and any amounts not so reimbursed within thirty (30) days after the LESSEE's receipt of an itemized statement therefor shall bear interest at the Prime Rate plus three percent (3%) per annum.

i. Clean-up. Should any such Clean-up for which LESSEE is responsible not be completed prior to the expiration or sooner termination of the Lease, including any extensions thereof, then:

(1) LESSEE shall deposit, to the extent as allowed by law, into an interest-bearing escrow account with interest to be credited and payable to LESSEE and used for the purposes herein, an amount of money equal to the balance of the estimated costs of the Clean-up, together with instructions for the disbursement of such amount in payment of the costs of any remaining Clean-up as it is completed; and

(2) If the nature of the Contamination or the Clean-up required of LESSEE is of such a nature as to make the demised premises untenable or unleaseable, then LESSEE shall



be liable to LESSOR as a holdover lessee until the Clean-up has been sufficiently completed to make the demised premises suitable for lease to third parties.

j. Termination of Lease. Upon the expiration of the term of the Lease, LESSOR shall (1) cause all hazardous substances previously owned, stored or used by LESSEE to be removed from the demised premises and disposed of in accordance with applicable provisions; (2) remove or deactivate according to government regulations or laws any above ground or underground storage tanks or other containers installed or used by LESSEE to store any hazardous substances on the demised premises, and repair any damage to the demised premises caused by such removal; (3) cause any soil or other portion of the demised premises which has become contaminated by any hazardous substances stored or used by LESSEE on the demised premises to be decontaminated, detoxified or otherwise cleaned up in accordance with the requirements of cognizant governmental authorities; and (4) surrender possession of the demised premises to LESSOR free of Contamination attributable to toxic materials or hazardous substances generated or used by LESSEE or stored or disposed of by any party other than LESSOR in or on the demised premises during the term of this Lease.

k. Indemnification by LESSEE. LESSEE shall indemnify to the extent allowed by law, defend with counsel reasonably acceptable to LESSOR, and hold LESSOR free and harmless from any and all liabilities, damages, claims,

penalties, fines, settlements, causes of action, costs or expense, including reasonable attorneys' fees, environmental consultant and laboratory fees and the costs and expense of investigating and defending any claims or proceedings, resulting from or attributable to (1) the presence, disposal, reliance or threatened release of any hazardous substance that is on, from or affecting the demised premises including the soil, water, vegetation, buildings, personal property, persons, animals, or otherwise; (2) any personal injury (including wrongful death) or property damage (real or personal) arising out of or relating to the hazardous substance; (3) any lawsuits or administrative actions brought or threatened, settlement reached, or government order relating to the hazardous substance; or any violation of any laws applicable to the hazardous substance, for which LESSEE is responsible under Section 2 above.

1. Survival. LESSEE's indemnification obligations under this Section 8 shall survive the expiration or sooner termination of the term of the Lease.

46. QUIET ENJOYMENT. The LESSOR hereby covenants and agrees with the LESSEE that upon payment of said rent at the times and in the manner aforesaid and the observance and performance of the covenants, terms and conditions thereof on the part of the LESSEE to be observed and performed, the LESSEE shall and may have, hold, possess and enjoy the demised premises for the term hereby demised, without hindrance or interruption

by the LESSOR or any other person or persons lawfully claiming by, through or under it.

47. NOTICES. Any notice or demand to the LESSOR or LESSEE provided for or permitted by the Lease may be given sufficiently for all purposes in writing, delivered or mailed as registered or certified mail addressed to such party at its address herein specified or the last such address specified by such party in writing to the other.

48. DEFINITIONS. As used herein, unless clearly repugnant to the context:

a. "Arable and contributory lands" shall mean those lands other than waste lands as defined herein.

b. "Development period" shall be the initial ten-year period from the date of commencement of the term of this lease.

c. "Environmental laws" means all present and future federal, state or local laws, statutes, ordinances, rules or regulations and other requirements of governmental authorities relating to the environment, as may be amended from time to time, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq., as now or hereafter amended, the Clean Air Act, 42 U.S.C. §7401 et seq., as now or hereafter amended, the Toxic Substances Control Act, 15 U.S.C. §2601-2629, as now or hereafter amended, the Safe Drinking Water Act, 42 U.S.C. §300f-300j, Underground Storage Tanks 40 CFR parts 280, 281, and

any similar Hawaii State and local laws, ordinances and regulations now or hereafter adopted, published and/or promulgated pursuant thereto.

d. "Hazardous substance activity" means any actual, proposed or threatened storage, holding, existence, use, release, migration, emission, discharge, generation, processing, abatement, removal, repair, clean-up, detoxification, disposition, handling or transportation of any hazardous substance from, under, into or on the property or any other activity occurs or causes or would cause such event to exist.

e. "Noxious weed" shall mean any plant species which is injurious, harmful or deleterious or which may be likely to become so to the agricultural, horticultural and livestock industries of the State, as determined and so designated by the Department of Agriculture of the State of Hawaii from time to time, by rules and regulations.

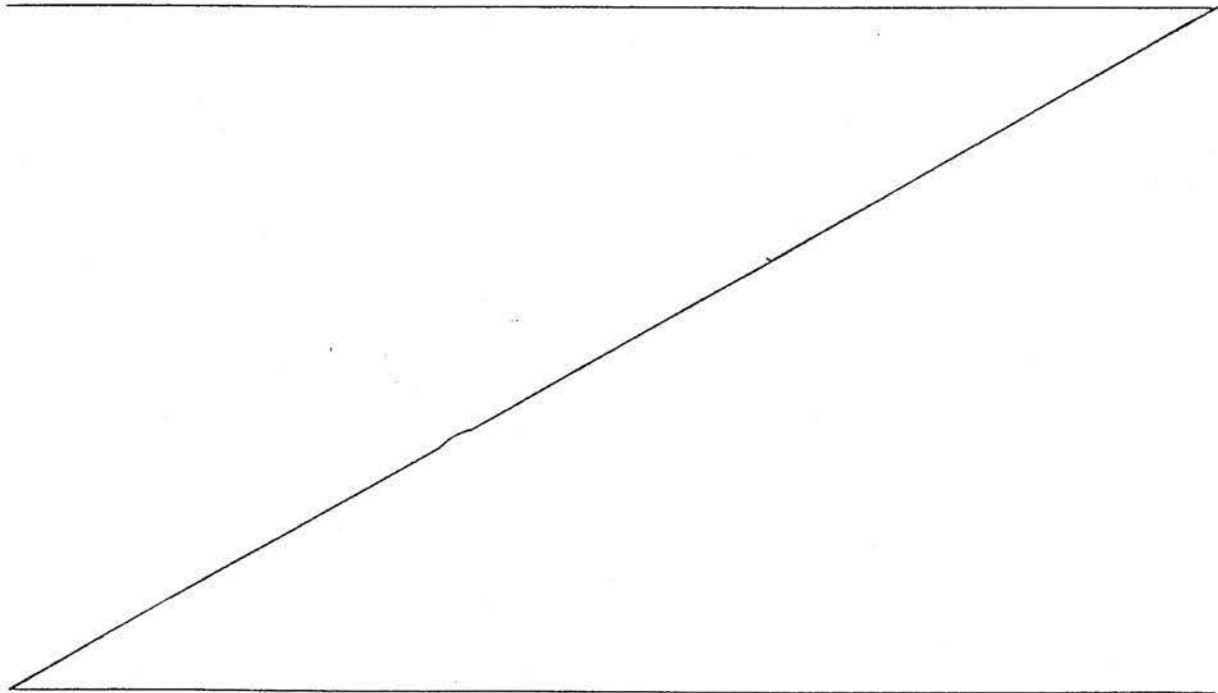
f. "Practice of good husbandry" shall mean good husbandry as practiced generally by the agricultural industry in the State of Hawaii and shall, without being restricted thereto, including the prevention or elimination of waste; the employment of soil conservation practices to prevent overgrazing or arrest loss of soil by erosion; the fertilization of areas subject to cultivation with organic and inorganic fertilizers; the control of "noxious weeds" as defined herein; the use of efficient milling and manufacturing processes; the taking of reasonably necessary action to assure against damage to water and other

natural resources and to persons, animals and crops; and compliance with the highest applicable standards made or adopted pursuant to law in prevention of environmental pollution.

g. "Residents of Lanai" shall be determined by the rules for determining residency, Section 11-13, HRS, for the purposes of paragraph 36 herein.

h. "Waste" shall be deemed to include, but not limited to (1) permitting the premises or any portion thereof to become unduly eroded and/or failure to take proper precautions or make reasonable effort to prevent or correct same; and (2) permitting any material increase in noxious weeds in uncultivated portions thereof;

i. "Waste lands" shall mean those lands that support roadways, drainage structures and utility facilities.



IN WITNESS WHEREOF, the LESSOR and LESSEE have executed these presents on the day and year first above written.

APPROVED:

LESSEE:

DEPARTMENT OF LAND AND  
NATURAL RESOURCES  
STATE OF HAWAII

By Kirk W. Shue  
Chairman and Member  
Board of Land and Natural  
Resources

By Michael Nehale  
Member  
Board of Land and Natural  
Resources *7W*

DEPARTMENT OF AGRICULTURE  
STATE OF HAWAII

By Yukeo Satagawa  
Chairperson  
Board of Agriculture

APPROVED AS TO FORM:

R. J. Young  
Deputy Attorney General

Dated: May 13, 1994

APPROVED AS TO FORM

[Signature]  
Deputy Attorney General, State of Hawaii

MAY 17 1994

LESSOR:

DOLE FOOD COMPANY, INC.

By [Signature]  
Its Vice President THOMAS C. LEPPERT

By [Signature]  
Its Assistant Secretary KEVIN R. SHANEY





EXHIBIT "A"

All those certain parcels of land situated on Lanai, Hawaii, shown outlined in red on the map attached hereto as Exhibit "B" and hereby made a part hereof, and consisting of:

<u>Lot No.</u>	<u>Acreage</u>	<u>Map No.</u>	<u>Tax Map Key</u>
13 - A	100.00±	6, Land Court Cons. 170	4-9-02-01 (por)

Said Lot being described in Transfer Certificate of Title No. 324,345, issued to the LESSOR. Further being portion of Sections E & F of Dole Field 5513.

Upon final subdivision of the property subject to this lease, this Exhibit A shall be replaced with the legal description for the subdivided property in the following form:

Lot No. \_\_\_\_\_, as shown on Map \_\_\_\_\_ of Land Court Consolidation 170.

Water Line .

### Airport Expansion Area

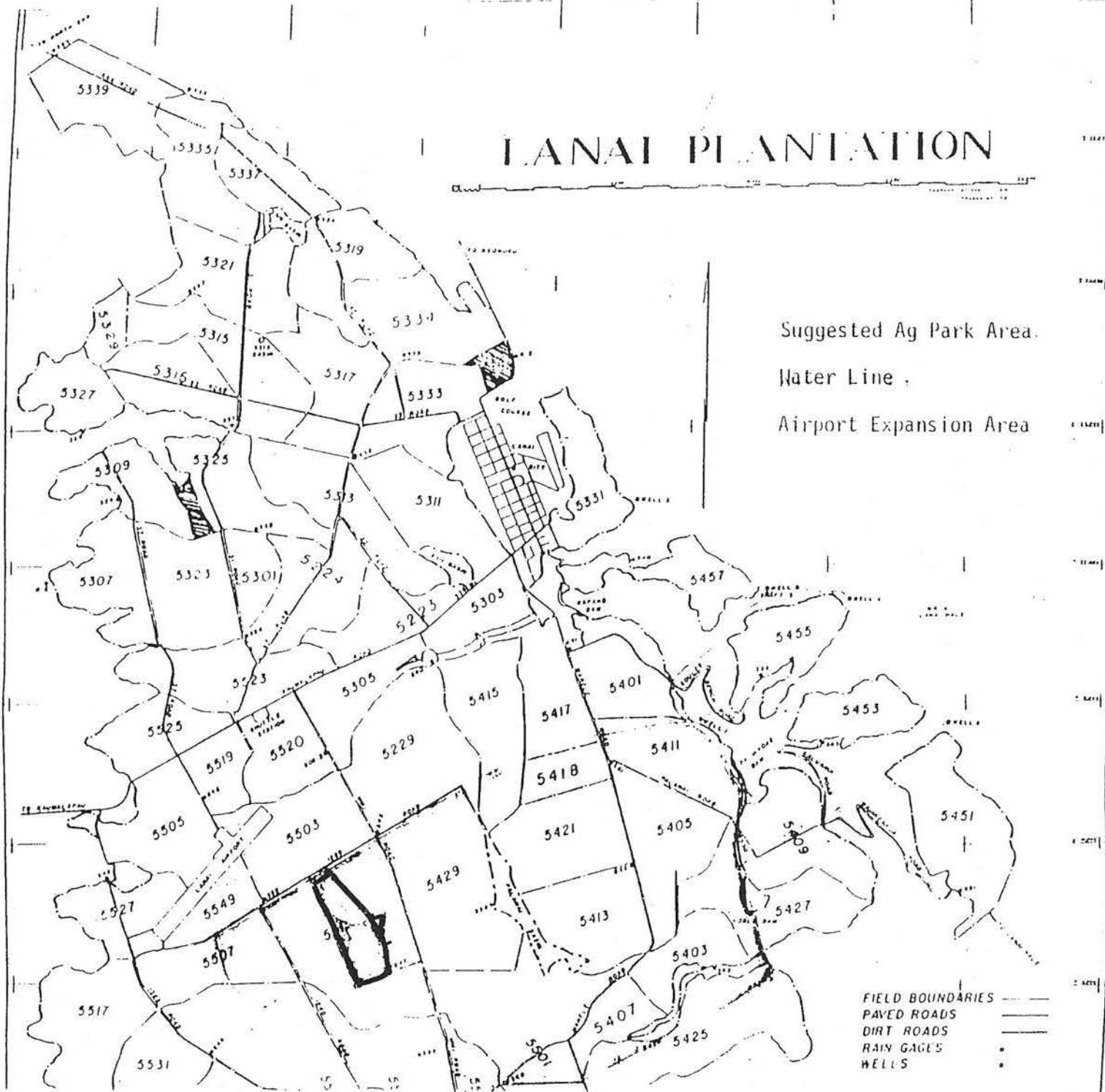


EXHIBIT "B" - Pg. 1



# EXHIBIT C



L-247

STATE OF HAWAII  
OFFICE OF ASSISTANT REGISTRAR  
RECORDED

**DOUBLE SYSTEM**

R-847

NOV 28, 1994 08:35 AM

Doc No(s) 2199103

on Cert(s) 324,345

*Watanabe*  
/s/ CARL T. WATANABE  
ASSISTANT REGISTRAR

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

OCT 21, 1994 10:32 AM

Doc No(s) 94-173248

/s/ S. FURUKAWA  
REGISTRAR OF CONVEYANCES

AFTER RECORDATION, RETURN BY MAIL ( ) PICK-UP (X):

DEPT. OF LAND AND NATURAL RESOURCES  
LAND MANAGEMENT DIVISION

AMENDMENT OF LEASE

This Amendment of Lease is made this 19th day of August, 1994, by and between Dole Food Company, Inc., whose mailing address is 650 Iwilei Road, Honolulu, Hawaii 96817 (the "Lessor"), and the State of Hawaii (the "Lessee"), by its Board of Land and Natural Resources, whose business and mailing address is 1151 Punchbowl Street, Honolulu, Hawaii 96813.

WHEREAS, the parties entered into a lease dated July 15, 1994, providing for the lease of approximately 100 acres on Lanai for an agricultural park (the "Lease"); and

WHEREAS, the parties desire to amend the Lease to clarify the circumstances under which additional water will be allocated to the agricultural park.

NOW, THEREFORE, in consideration of the above recitals and the covenants and agreements contained herein, the parties agree as follows:

1. Section 19 of the Lease dealing with "Water Development" is amended by adding the following sentence at the end of the section:

"Notwithstanding the preceding sentence, the parties further agree that additional water will be allocated to the agricultural park on the property in the future,

J:CC1026  
08/18/94

Exhibit C



but that the need for such additional water will be the Lessee's responsibility to justify and that any costs incurred for this additional water will be borne by Lessee."

2. All other provisions of the Lease remain in full force and effect.

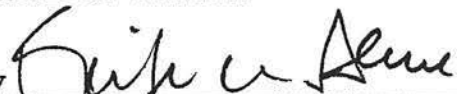
IN WITNESS WHEREOF, the parties have executed this Amendment of Lease as of the day and year first above written.

APPROVED:

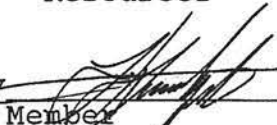
LESSEE:

DEPARTMENT OF LAND AND  
NATURAL RESOURCES  
STATE OF HAWAII

By

  
Chairman and Member  
Board of Land and Natural  
Resources *rw*

By


  
Member  
Board of Land and Natural  
Resources

DEPARTMENT OF AGRICULTURE  
STATE OF HAWAII

By

  
Chairperson  
Board of Agriculture

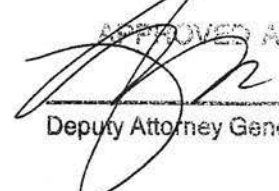
APPROVED AS TO FORM:

  
Deputy Attorney General

Dated:

*8/31/00*

APPROVED AS TO FORM

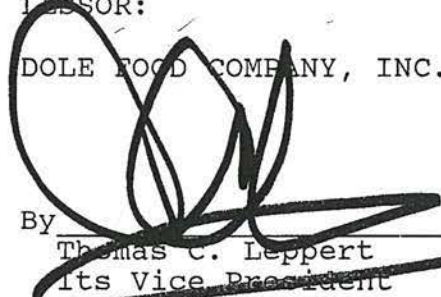
  
Deputy Attorney General, State of Hawaii

AUG 31 1994


LESSOR:

DOLE FOOD COMPANY, INC.

By

  
Thomas C. Leppert  
Its Vice President

By

  
Kevin R. Shaney  
Its Assistant Secretary

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS.

On this 19th day of August, 1994, before me appeared THOMAS C. LEPPERT and KEVIN R. SHANEY, to me personally known, who being by me duly sworn, did say that they are the VICE PRESIDENT and ASSISTANT SECRETARY, respectively, of DOLE FOOD COMPANY, INC., a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors; and said officers acknowledged the instrument to be the free act and deed of said corporation.

Lease 2165943✓

TMK:

(2)-4-9-02-01

TCT No. 324,345

*Eyadette Kadeleau*  
Notary Public, State of Hawaii  
My commission expires: 3/22/98

- 3 -

# EXHIBIT D

## EXEMPTION LIST FOR THE DEPARTMENT OF LAND AND NATURAL RESOURCES

Concurred on by the Environmental Council on November 10, 2020

### GENERAL NOTES

This exemption list for the Department of Land and Natural Resources ("Department" or "DLNR") is a technical, non-substantive revision of the version reviewed and concurred on by the Environmental Council on March 3, 2020. The revision from the March 3, 2020 version is to rename the categories to be consistent with 2019 revisions to Hawaii Administrative Rules ("HAR") §11-200.1-15.

The March 3, 2020 list was prepared to comply with 2019 revisions to the Hawaii Administrative Rules ("HAR") §11-200.1. This revision separates exemption lists into categories listed in §11-200.1-16 (a)(1) and (2). Activities categorized as "Part 1" will fall under §11-200.1-16 (a) (1). Activities categorized as "Part 2" will require an exemption notice and fall under §11-200.1-16 (a) (2). Additionally, the qualifiers limiting the actions to state lands or Department facilities were removed to cover the activities being permitted in the Conservation District as well as Department-initiated actions occurring on partner lands. This list supersedes all previous exemption lists of the DLNR and its Divisions, including the following: (1) December 4, 1991 DLNR Department-wide list (2) January 19, 1976 DLNR Division of Fish and Game list (3) September 19, 1984 DLNR Division of Water and Land Development list (4) April 28, 1986 DLNR Division of Land Management list (5) December 4, 1991 DLNR State Parks list (6) March, 1995 DLNR Division of Boating and Ocean Recreation list (7) June 12, 2008 DLNR Division of Forestry and Wildlife list (8) July 13, 2011 DLNR additions to Department-wide list (9) May 17, 2012 DLNR addition to Department-wide list, and (10) June 5, 2015 DLNR Department-wide list.

Hawaii Revised Statutes ("Haw. Rev. Stat.") Chapter 343 authorizes the Environmental Council to establish procedures to exempt specific types of action from the preparation of an environmental assessment because the action will have minimal or no significant effect on the environment. The Department, through time and experience, developed the following exemption list identifying particular activities that fall within the exempt classes described in Hawaii Administrative Rules ("HAR") §11-200.1 subchapter 8. All exemptions under subchapter 8 are inapplicable when the cumulative impact of planned successive actions in the same place, over time, is significant, or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment.

### General Exemption Type 1

*Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing.*

#### PART 1

1. Removal of boulders, rocks, hazardous trees, marine debris, and other similar hazards necessary to maintain lands and waters in a safe condition.
2. Rescue of threatened or endangered species.
3. Maintenance dredging of small quantities of material from existing launching ramps, navigation channels, and berthing areas, not to exceed their originally designed depths and as permitted by the U.S. Army Corps of Engineers, Honolulu District, under a Nationwide Permit 35 (Maintenance Dredging

of Basins), with disposal of dredged material at approved landfill sites or the placement of sand on adjacent areas in accordance with Haw. Rev. Stat. § 205A-44.

4. Operation, repair and maintenance, of existing structures and facilities, including baseyards, offices, cabins, sheds, and fencing.
5. Repair or maintenance of existing signs, buoys, markers, and aids to navigation.
6. Operation, repair and maintenance of existing fisheries facilities, involving capture, containment, sustaining, experimentation, and husbandry of various freshwater, estuarine, and marine fishes, invertebrates, and other aquatic organisms.
7. Operation, repair and maintenance of existing fish aggregating devices and artificial reefs.
8. Operation, repair and maintenance of existing nurseries, arboreta, and captive propagation facilities.
9. Operation, repair and maintenance of existing loading docks, piers, piles, boat launch ramps, offshore mooring facilities, and other similar support structures, as permitted by the U.S. Army Corps of Engineers, Honolulu District, under a Nationwide Permit.<sup>1</sup>
10. Operation, repair and maintenance of existing recreational facilities, such as campsites, cabins, shelters, and other similar structures, and the appurtenant support facilities and structures.
11. Operation, repair or maintenance of existing fire tool caches, fuel breaks, and helispots.
12. Repair and maintenance of existing bollards, walls, gates, fences, lighting, and other similar items necessary for the security or continued operation of a facility or structure.
13. Repair and maintenance of existing utilities and drainage systems.
14. Repairs to existing ground water, surface water, or climatological monitoring equipment, and other similar monitoring and data collection equipment, and the structures that house or protect them.
15. Repairs necessary to maintain existing electrical, telemetry or communications systems and the structures that house or protect them.
16. Repair and maintenance of existing bridges and flumes.
17. Repair and maintenance of existing water diversions and intake structures, including valves, gates, intake boxes, and lines, in order to collect or improve the collection at the location of the existing water source diversion works.
18. Repair and maintenance of existing water tanks, water catchment basins, water units, pumps and controls, pipes, channels, dikes, and moats.
19. Repair and maintenance of existing dam or reservoir structures and appurtenant features, including outlet works repair, gate replacements, ditch clearing, replacement of catwalk and access ways, spillway

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<sup>1</sup> The previous exemption list limited this action to permit #3 "Maintenance," which was removed in this version to be consistent with the other categorical permits issued that would fall under this type of activity.



modifications to safely pass anticipated flood waters, and spillway reconstruction to mitigate possible failures.

20. Repair, maintenance, or relining of conveyance structures associated with existing dam or reservoir structures.

21. Repair and maintenance work on or the breaching of existing dam or reservoir structures of an emergency nature due to storm, earthquake, or other natural disaster or other forms of damage, latent defects in construction, and conditions not previously observed during routine inspections that results in a condition that poses a significant hazard to public safety and the environment. The work necessary to mitigate the danger posed to the environment and public safety includes emergency clearing and grading for breaching or stabilization work, installation and operation of siphons and pumping systems to discharge water from the reservoir, construction of seepage drains, and the construction of seepage monitoring berms.

22. Repair and maintenance of historic and archaeological sites to maintain the integrity of historic structures, archaeological features and sites in compliance with Chapter 13-275, Hawaii Administrative Rules, "Rules Governing Procedures for Historic Preservation Review for Governmental Projects Covered Under Section 6E-7 and 6E-8, Hawaii Revised Statutes" which requires review by the State Historic Preservation Division for agency actions that may affect historic properties.

23. Maintenance of existing boardwalks, trails and unpaved roads.

24. Maintenance of rights-of-way other than public rights-of-ways.

25. Repair and maintenance of existing roadways, roadway shoulders, road structures and signage, parking areas, walkways, bikeways, multi-use pathways, driveways, and boat launch ramps (includes grading, resurfacing, infilling, sealing, grooving, cleaning, chipping, painting and patching).

26. Maintenance of existing landscaping, including planting, trimming, mowing, and irrigation.

27. Maintenance of lands and waters to remove weeds, brushes, grass and other unwanted vegetation.

28. Routine pruning, trimming, thinning, and removal of trees, excluding commercial logging.

29. Termite and pest control treatment using Environmental Protection Agency and State Department of Agriculture approved pesticides under the supervision of certified applicators provided that treatment is limited to existing structures, facilities, or equipment.

30. Repair and maintenance of existing machinery, equipment, vessels, and vehicles used to support Departmental operations.

31. Removal and disposal of rubbish and debris from lands and waters.

32. Removal of silt, debris, sand and limu from above high water mark, from river and stream mouths, and from boat launching ramps.

33. Clearing of shoreline areas and submerged lands of non-natural hazardous objects and materials such as sunken/derelict craft remnants, oil spill residues, etc.



34. Storage of construction equipment and materials for a limited period of time as necessary to support planned or existing construction or repair.
35. Law enforcement, regulation compliance, resources and environmental monitoring, debris or property removal, and other administrative measures.
36. Transfer of management authority over state-owned land, such as setting aside of state lands to or from other government agencies through a Governor's executive order.
37. Transfer of title to land.
38. Acquisition of land or interests in land.
39. Creation or termination of easement, covenants, or other rights in structures or land.
40. Leases of state land involving negligible or no expansion or change of use beyond that previously existing.
41. Subdivision or consolidation of lots not previously subdivided.
42. The award of grants under Haw. Rev. Stat. Chapter 173A provided that the grant does not fund an activity that causes any material change of use of land or resources beyond that previously existing.
43. Conduct public meetings and hearings for the purpose of the collection and dissemination of public information, to discuss matters under the jurisdiction of the Department, to develop administrative rules, guidelines or other public policy, and other similar purposes.
44. Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing.
45. Use of lands and waters by those exercising traditional and customary practices for minor non-commercial purposes or for the gaining of traditional ecological knowledge.
46. Granting to a person the privilege to conduct operations involving the provision of goods, wares, merchandise, or services to the general public including, but not limited to, tours, food and beverage operations, retail operations, rental operations, or communications and telecommunications services in or on an existing building, facility, or area.

## **PART 2**

1. Mitigation of any hazardous conditions that present imminent danger as determined by the Department Director and that are necessary to protect public health, safety, welfare, or public trust resources.
2. Upon determination by the Department Director that an emergency exists, emergency mitigation and restoration work to prevent damage from continuing to occur and to restore the topographical features and biological resources.

## **General Exemption Type 2**

*Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced.*

#### PART 1

1. Replacement or reconstruction of existing structures and facilities, including baseyards, offices, cabins, sheds, and fencing.
2. Replacement or reconstruction of existing signs, markers, buoys, or aids to navigation.
3. Replacement or reconstruction of existing fisheries facilities.
4. Replacement or reconstruction of existing recreational facilities, such as campsites, cabins, shelters, and other similar structures, and the appurtenant support facilities and structures.
5. Replacement or reconstruction of existing bollards, walls, gates, fences, lighting and other similar items necessary for the security or continued operation of a facility or structure.
6. Minor upgrades or replacement of existing utilities and drainage systems. Drainage improvements will generally consist of the installation of culverts, pipes, and construction of gutters or other similar infrastructure where minor flooding occurs.
7. Replacement of cesspools with individual wastewater systems located generally on the same site with substantially the same purpose and capacity.
8. Replacement or reconstruction of existing sewage and water pumping stations and treatment facilities to maintain established codes and standards, provided that reconstructions that expand the capacity or geographical service area of existing facilities shall not be exempt.
9. Replacement or reconstruction of existing ground water, surface water, or climatological monitoring equipment, and other similar monitoring and data collection equipment, and the structures that house or protect them.
10. Replacement or reconstruction of existing electrical, telemetry, or communications systems and the structures that house or protect them.
11. Replacement or reconstruction of existing bridges and flumes.
12. Replacement or reconstruction of existing water diversions and intake structures, including valves, gates, intake boxes, and lines, in order to collect or improve the collection at the location of the existing water source diversion works.
13. Replacement or reconstruction of existing water tanks, water catchment basins, water units, pumps and controls, pipes, channels, dikes, and moats, in a size commensurate with existing system and source capacities and requirements to provide service in existing water systems.
14. Replacement or reconstruction of existing drainageways and waterways.

15. Replacement or reconstruction of existing dam or reservoir structures and appurtenant features, including outlet works repair, gate replacements, ditch clearing, replacement of catwalk and access ways, spillway expansion or improvements, and spillway reconstruction to mitigate possible failures.
16. Rehabilitation and restoration of existing structures and features at historic and archaeological sites in compliance with Chapter 13-275, Hawaii Administrative Rules, "Rules Governing Procedures for Historic Preservation Review for Governmental Projects Covered Under Section 6E-7 and 6E-8, Hawaii Revised Statutes" which requires review by the State Historic Preservation Division for agency actions that may affect historic properties.
17. Replacement or reconstruction of existing boardwalks, trails, and unpaved roads.
18. Replacement or reconstruction of existing roadways, roadway shoulders, road structures and signage, parking areas, walkways, bikeways, multi-use pathways, driveways, and boat launch ramps.
19. Replacement or renovation of existing landscaping or vegetation.
20. Re-vegetate burned or eroded areas to encourage the succession of selected plant species to prevent soil erosion and promote the goals of the Department.
21. Replacement or reconstruction of existing machinery, equipment, vessels, or vehicles used to support Departmental operations.
22. Minor alterations and repairs required to bring existing buildings, structures, facilities, and equipment into compliance with current building codes and applicable federal and state regulations.
23. Replacement or reconstruction of existing nurseries, arboreta, and captive propagation facilities.
24. Repairs and modifications to existing sewage and water pumping stations and treatment facilities to maintain established codes and standards, provided that modifications that expand the capacity or geographical service area of existing facilities shall not be exempt.

## PART 2

1. Replacement or reconstruction of fish aggregating devices or artificial reefs.
2. Replacement or reconstruction of existing loading docks, piers, piles, boat launch ramps, offshore mooring facilities, and other similar support structures, not to exceed the footprint of the existing facility, as permitted by the U.S. Army Corps of Engineers, Honolulu District, under a Nationwide Permit.<sup>2</sup>

### General Exemption Type 3

*Construction and location of single new, small facilities or structures and the alteration and modification of the facilities or structures and installation of new, small, equipment and facilities and the alteration and modification of the equipment or facilities, including but not limited to: (A) Single family residences less than 3,500 square feet, as measured by the controlling law under which the proposed action is being considered, if not in conjunction with the building of two or more such units; (B) Multi-unit structures*

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<sup>2</sup> The previous exemption list limited this action to permit #3 "Maintenance," which was removed in this version to be consistent with the other categorical permits issued that would fall under this type of activity.

*designed for not more than four dwelling units if not in conjunction with the building of two or more such structures; (C) Stores, offices and restaurants designed for total occupant load of twenty individuals or fewer per structure, if not in conjunction with the building of two or more such structures; and (D) Water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities; accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences; and acquisition of utility easements.*

#### PART 1

1. Improvement of existing trails and construction or improvement of boardwalks on existing trails for recreation, education, and management.
2. Construction of security features, including fencing, gates, cameras, and other similar items.
3. Installation of weatherports and radio repeaters and other similar communications equipment and related infrastructure for natural resource management purposes or for emergency response.
4. Construction of drainage swales and structures and other similar surface runoff management techniques with minimal or no effect on the environment.
5. Re-burial of previously identified or inadvertently discovered remains over fifty (50) years old, with Department and landowner approval and according to guidelines provided in HAR Chapter 13-300.
6. Installation and removal of irrigation systems.
7. Utility service connection and installation.
8. Construction and location of new, small facilities or structures necessary to support or enhance safe and effective management of lands and waters, such as utility sheds, storage buildings, nurseries, trash containers, fire caches, tollbooths, gates, safety enhancements (e.g., handrails, guard rails, ramps), covered or open areas for endangered species, game birds and mammals, auxiliary buildings for food or equipment storage, incubators and brooders, open-top breeding and release pens, field aviaries, and hacking boxes, and for watershed and native forest management and restoration, and other similar structures.
9. Construction and location of new, small facilities or structures necessary to support or enhance public recreational use of lands and waters, such as outdoor showers, signage, interpretive kiosks, viewing platforms, tables, grills, lifeguard stations, improvements necessary for compliance with the Americans with Disabilities Act, and other similar structures.
10. Construction, placement or installation of signage, pavement markings, buoys, or other similar structures.
11. Placement of aerators for increasing the dissolved oxygen content for fish populations in reservoirs, nurseries, ponds.
12. Installation and operation of automatic feeding devices in reservoirs, ponds or other impoundments.
13. Installation of glare screens, bollards, guard rails, vehicular access barriers, and other similar appurtenances designed to protect the public.

14. Construction or placement of utilities (telecommunications, electrical, solar panels, drainage, waterlines, sewers) and related equipment (such as transformers, poles, cables, wires, pipes) accessory to existing facilities.
15. Installation of alarm systems, camera systems, and similar surveillance items for security and safety purposes.
16. Construction of walls, fencing, or screens around buildings, structures, facilities, or equipment.
17. Construction of water tanks with less than 20,000 gallon capacity.
18. Installation of water catchment systems, lines, and faucets.
19. Placement or construction of gas tanks for fueling cooking stoves installed in or near existing structures.
20. Placement or construction of accessory structures such as office trailers, trash enclosures, bus shelters, picnic shelters, parking and fee collection facilities, checking stations, dock boxes, mooring cleats, bumpers, and mooring buoys, blocks and piles, and other similar structures accessory to existing facilities.
21. Installation of hurricane or wind protection devices and other minor structural accessories that will facilitate resistance to damaging effects of natural hazards.
22. Interior alterations and renovations to offices, buildings or structures that do not increase the floor area or change the maximum occupancy to include: a. installation of office partitions, utility outlets or connections, air conditioning, lighting, and security systems; b. renovations required to bring existing structures into compliance with current building codes and applicable health, safety, and access regulations; c. renovations that will result in energy or other operational/cost savings; or d. other similar interior alterations.
23. Expand utilities as need dictates in existing structures.
24. Construction required to maintain or upgrade existing utilities.

## PART 2

1. Natural resource management actions that the Department declares are designed specifically to monitor, conserve, or enhance the status of native species or native species' habitats, such as fences around or to manage rare, threatened or endangered plants. Fences shall contain step-overs or other features that permit pedestrian access for cultural and recreational use.
2. Construction and location of new, small facilities or structures necessary to support or enhance safe and effective management of lands and waters, such as baseyards, caretaker's residences, work cabins and shelters, sanitation facilities, and other similar structures.
3. Construction and location of new, small facilities or structures necessary to support or enhance public recreational use of lands and waters, such as comfort stations and related individual wastewater

disposal systems, sanitation facilities, pavilions, shelters, cabins, campgrounds, and other similar structures.

4. Construction of roadways with distances less than 1,000 yards (excluding access roads) and walkways.
5. Construction of off-street parking facilities having capacities of up to 25 passenger vehicle stalls.
6. Installation of automatic fish feeding devices in reservoirs, ponds, or other impoundments and fish aggregating devices within pre-approved sites.
7. Installation of marine vessel sewage pump out stations and supporting facilities.
8. Construction of irrigation ditches, flumes and structures having less than 200 gpm.
9. Construction of Civil Defense emergency system facilities.
10. Installation of rearing pens for cage culture of fishes and aquatic organisms.
11. Construction or placement of lighting systems for street lights, and outdoor security lighting.
12. Construction of interior roadways, driveways, parking areas, sidewalks, pathways, aisles, curbs, gutters, and other similar items.
13. Rearing pens for cage culture of various freshwater, estuarine, and marine fishes, invertebrates, and other aquatic organisms.

#### **General Exemption Type 4**

*Minor alterations in the conditions of land, water, or vegetation.*

##### **PART 1**

1. Improvements of previously existing graded parking and storage yard areas, including paving, infilling, grading and compacting.
2. Minor vegetation clearing and management, including mowing, pruning, trimming, and application of federal and state approved herbicides in conformance with label instructions.
3. Removal of invasive vegetation utilizing cutting, mowing, application of federal and state approved herbicides in conformance with label instructions, distribution of biocontrol agents already approved and permitted by the State of Hawaii, and other approved methods. This exemption would not apply to issuing permits for initial releases of biocontrol of invasive species which are regulated and permitted by the Department of Agriculture or commercial logging.
4. Vegetation clearing and removal work to mitigate rockfall or on or near the embankment, spillway, or outlet works of a dam facility of vegetation that could pose a threat to the embankment or impede inspection of the facility.
5. Establish temporary or permanent vegetative cover including trees, shrubs, grasses, and sod for landscaping, reforestation, soil stabilization, watershed protection, native wildlife habitat, native ecosystem restoration, and rare plant preservation; provided, however, that this exemption shall not



apply to vegetation that is likely to be invasive or for tree plantings for which harvesting is planned or is reasonably foreseeable.

6. Gathering plant seed, cuttings, or other vegetative matter for propagation.
7. Minor ground adjustments (e.g., grading, grubbing, cutting, clearing, or filling) that do not require grading permits.
8. Minor alterations in waters, including restoration of native species and control of invasive weeds, algae, invertebrates, fishes or other invasive aquatic organisms.
9. Control of pests utilizing federal and state approved pesticides, herbicides, fungicides, and toxicants in conformance with label instructions; traps, snares, lures, and repellents; and other approved methods.
10. Management of surface water runoff, including installation of minor drainage ditches and implementation of other stormwater best management practices and low impact development techniques (e.g., bioretention areas, permeable pavers, etc.).
11. Minor alteration of retaining walls, excluding seawalls.
12. Removal or filling of unused or unusable cesspools pursuant to federal and state regulations.
13. Construction, in accordance with established state standards, required to seal production, monitoring, and geothermal wells, that have been permanently discontinued, that are unsealed, leaking, polluting, deteriorating in quality, uncontrollable, buried, or that are in such a state of disrepair that continued use is impractical or unsafe.
14. Fire management activities, including prevention and restoration measures, when conducted in accordance with Departmental and Division procedures.
15. Captive propagation of birds, mammals, invertebrates, or aquatic organisms; cultivation of plants. Housing, care, feeding, veterinarian examination, breeding (pairing, hatching, brooding, fledgling, rearing), cross fostering, double clutching nests, and experimental studies of native species (including those which are rare, threatened or endangered), game birds and game mammals.
16. The reintroduction or supplementation (e.g., stocking) of native, formerly native, or established species into suitable habitat within their historic or established range, where no or negligible environmental disturbances are anticipated.
17. Establishment of helispots for fire control, natural resource management, and rescue.
18. Repair, modify, and clear existing drainageways and waterways to maintain in safe working condition.

## PART 2

1. Upon determination by the Department Director that an emergency exists, emergency mitigation and restoration work to prevent further damage from occurring and to restore the topographical features and biological resources.

2. Clearing of new fuel breaks and other similar fire pre-suppression actions to reduce fire potential and minimize fire severity.
3. Controlled burning of vegetation less than ten (10) acres in size to improve wildlife habitat where non-native vegetative cover constitutes greater than 75% of the area.
4. Beach restoration, sand dune restoration, and sand pushing activities of less than 10,000 cubic yards of beach quality sand.
5. Conduct removal of unexploded ordnance.
6. Grading work to stabilize existing slopes and mitigate rockfall, including work required to mobilize equipment.
7. Construction of walkways and pathways and other similar items.

#### **General Exemption Type 5**

*Basic data collection, research, experimental management, and resource and infrastructure testing and evaluation activities that do not result in a serious or major disturbance to an environmental resource.*

##### **PART 1**

1. Conduct surveys or collect data on existing environmental conditions (e.g, noise, air quality, water flow, water quality, etc.).
2. Non-destructive data collection and inventory, including field, aerial and satellite surveying and mapping.
3. Conduct topographic, sounding, wave, littoral transport, bathymetric, and location surveys.
4. Periodic collection of data by the State Office of Conservation and Coastal Lands ("OCCL") for the purpose of monitoring existing beaches to include identification, mapping, and analysis of offshore sand deposits, bathymetry mapping, sub-bottom profiling (to measure the thickness of existing sand deposits), vibracore sampling (to conduct grain size analysis to determine suitability of a sand source for beach restoration), deposit depth probing (jet probing of sand depths), and marine biological and water quality surveys to identify sensitive resources or areas of concern.
5. Installation of new, small groundwater, surface water, or climatological monitoring and data collection equipment, structures that house or protect this equipment, and installation of electrical, telemetry, or communications systems to service this equipment.
6. Construct or rehabilitate groundwater monitoring stations in accordance with established state standards, install groundwater monitoring equipment, and collect data.
7. Conduct subsurface investigations (borings) provided the average surface area disturbed is less than one square foot and the implementing division consults with the State Historic Preservation Division on exempting such borings or investigations.
9. Installation of staff gages, water monitoring and reporting equipment at dam facilities and appurtenant works to include trenching work and construction of supporting features such as

equipment sheds, transmitting devices, solar panels, and minimal site grading and improvements for the safe operations and installation of these features.

10. Phase II Investigation work on a dam or reservoir, including soil sampling and drilling, water monitoring, and/or test pit excavations. This may include clearing or construction of site improvements needed to mobilize equipment or personnel to accomplish the task.

11. Conduct geothermal exploration activity that involves non-invasive geophysical operations for testing and analysis. Activities conducted under this exemption shall comply with all applicable federal, state and county laws, rules, regulations, guidelines and standards. This exemption would not apply in Urban or Conservation land use districts or in sensitive environments.

12. Conduct terrestrial and marine archaeological surveys.

13. Research that the Department declares is designed specifically to monitor, conserve, or enhance native species or native species' habitat.

14. Implanting transponders and affixing tags, transmitters, markers, or other similar devices to birds, mammals, invertebrates, or aquatic organisms to record movement, longevity, growth, distribution, behavior, and other activities; taking disease or blood samples from birds, mammals, invertebrates, or aquatic organisms; and placing remote monitoring devices (to determine animal movement), cameras, equipment and feeders.

15. Game and non-game wildlife surveys, vegetation and rare plant surveys, aquatic life surveys, inventory studies, new transect lines, photographing, recording, sampling, collection, culture, and captive propagation.

16. Research to identify, monitor, control, or eradicate introduced species.

17. Conduct assessment and survey of unexploded ordnance.

18. Appraisal of real property for land exchange proposals, determination of acquisition/sales price, rental establishment or the establishment of royalties.

19. Conduct planning and feasibility studies.

20. Permission to enter lands for the purpose of conducting those activities listed above.

## PART 2

1. Construction of test wells with casing diameter of not more than 12 inches to provide ground truth for water resources investigations, the suggested size will enable the aquifer to be tested for its physical, chemical, biological qualities, as well as providing a pumping test to determine the specific capacity of the aquifer. Test wells shall not be developed to serve water unless an EIS or negative declaration is prepared.

2. Research or experimental wildlife and plant management actions, including controlled grazing or burning as a management tool.

3. Experimental management actions to identify, monitor, control, or eradicate introduced species.

4. Experimental management actions that the Department declares are designed specifically to monitor, conserve, or enhance native species or native species' habitat.

#### **General Exemption Type 6**

*Demolition of structures, except those structures that are listed on the National Register or Hawaii Register of Historic Places.*

##### **PART 1**

1. Construction, in accordance with established state standards, required to seal wells, that have been permanently discontinued, that are unsealed, leaking, polluting, deteriorating in quality, uncontrollable, buried, or that are in such a state of disrepair that continued use is impractical or unsafe.
2. Demolition and removal of existing structures, facilities, utilities, and other improvements, except those structures located on any historic site as designated in the National Register or Hawaii Register as provided for in the National Historic Preservation Act of 1966, 16 U.S.C §§470 et. seq., as amended, or Haw. Rev. Stat. Chapter 6E.
3. Demolition and removal of experimental devices or other equipment, when such devices or equipment are no longer used or needed.
4. Demolition and removal of abandoned private property.
5. Demolition and removal of unauthorized improvements.

#### **General Exemption Type 7**

*Zoning variances except shoreline setback variances.*

##### **PART 1**

1. Application for zoning variance for use of state lands disposed to private parties or to governmental agencies, except shoreline setback variances.

#### **General Exemption Type 8**

*Continuing administrative activities.*

##### **PART 1**

1. Purchase of supplies, equipment, materials, motor vehicles, boats, and services.
2. Contracts for small purchases, professional services, competitive sealed proposals, competitive sealed bidding, or purchase of goods and services which are exempt from Haw. Rev. Stat. Chapter 103D.
3. Requests for federal, state, county or private assistance grants to support ongoing operations or implement programs of the Department.
4. Personnel-related actions.
5. Training, environmental interpretation, public safety efforts and other educational activities.

# EXHIBIT E

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	Docket No. A89-649
	)	
LANAI RESORT PARTNERS	)	LANAI RESORT PARTNERS
	)	
To Amend the Rural Land Use	)	
District Boundary into the Urban	)	
Land Use District for Approximately	)	
110.243 acres and the Agricultural	)	
Land Use District Boundary into	)	
the Urban Land Use District for	)	
Approximately 28.334 acres at	)	
Manele, Lanai, Hawaii, Tax Map	)	
Key No. 4-9-02: portion 1	)	
	)	

APR 15 10 42 AM '91  
LAND USE COMMISSION  
HONOLULU, HAWAII

FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND DECISION AND ORDER

Exhibit E



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	Docket No. A89-649
	)	
LANAI RESORT PARTNERS	)	LANAI RESORT PARTNERS
	)	
To Amend the Rural Land Use	)	
District Boundary into the Urban	)	
Land Use District for Approximately	)	
110.243 acres and the Agricultural	)	
Land Use District Boundary into	)	
the Urban Land Use District for	)	
Approximately 28.334 acres at	)	
Manele, Lanai, Hawaii, Tax Map	)	
Key No. 4-9-02: portion 1	)	
	)	

FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND DECISION AND ORDER

Lanai Resort Partners (hereinafter "Petitioner"), a California general partnership registered to do business in the State of Hawaii, whose partners are MK Development, Inc., a Hawaii corporation, and Lanai Company, Inc., a Hawaii corporation, filed this petition on November 29, 1989, which was amended pursuant to §15-15-43 of the Hawaii Land Use Commission Rules on February 26, 27 and 28, 1990 and pursuant also to §15-15-70 of the Commission Rules on November 30, 1990 (hereinafter collectively referred to as "Petition"). The petition, as amended, was filed pursuant to Chapter 205, Hawaii Revised Statutes, and Title 15, Subtitle 3, Chapter 15, Hawaii Administrative Rules ("Commission Rules") as amended, to amend the land use district boundary of certain land at Manele, Lanai, Hawaii, Tax Map Key No. 4-9-02: portion of 1, covering

approximately 110.243 acres of land from the Rural District to the Urban District and approximately 28.334 acres of land from the Agricultural District to the Urban District situated at Manele, Lanai, Hawaii, Tax Map Key No. 4-9-02: portion of 1 (hereinafter the "Property") in order to develop a golf course, clubhouse and accessory uses. The Land Use Commission of the State of Hawaii (hereinafter the "Commission") having heard and examined the testimony, evidence and argument of counsel presented during the hearings, the proposed findings of fact and conclusions of law, and the proposed decision and order, hereby makes the following findings of fact, conclusions of law and decision and order:

#### FINDINGS OF FACT

##### PROCEDURAL MATTERS

1. On February 9, 1990, the Commission received an untimely Petition To Intervene in this proceeding filed by the Office of Hawaiian Affairs, Lanaians for Sensible Growth, Solomon Kaopuiki, John D. Gray and Martha Evans, who, on February 13, 1990, filed with the Commission a Motion To Extend Period Of Time To File Petition To Intervene. By Order dated March 9, 1990, the Commission, after having heard and considered both Motions on February 23, 1990, allowed the Office of Hawaiian Affairs and Lanaians for Sensible Growth to intervene in this proceeding and denied the requests of Solomon Kaopuiki, John D. Gray and Martha Evans to intervene in this proceeding.

2. On February 20, 1990, the Commission received a Motion To Continue Contested Case Hearing and for Production Of Documents filed by the Office of Hawaiian Affairs, Lanaians for Sensible Growth, Solomon Kaopuiki, John D. Gray and Martha Evans. By Order dated March 9, 1990, the Commission, after having heard and considered the Motion on February 23, 1990, denied the Motion.

3. On February 20, 1990, a prehearing conference was conducted at the Commission's office at which time the lists of exhibits and lists of witnesses of the parties were reviewed by all parties and the then proposed intervenors.

4. The Commission conducted hearings on this petition on March 8 and 9, July 12 and 13, August 30, 1990 and January 10, 1991, pursuant to notices published on January 24, 1990 in the Maui News and the Honolulu Advertiser. The Commission also, after due notices, heard, considered and acted on various motions of record on February 23, June 28 and October 29, 1990.

5. The following persons appeared and testified as public witnesses and/or submitted written comments:

Ron McOmber  
John D. Gray  
Lynn Kahooalahala  
Martha Evans  
Carol Ah Toong  
Kay Okamoto  
Elaine Kaopuiki  
Fairfax Reilly  
George Lidicker

Thad Hyland  
Al Delos Reyes  
Don Edelberg  
Edwin Magaoay  
Lindy Valentine  
Cheryl Ono  
Jerry Rabano  
Steve Snow  
Tom Mitsunaga  
Jennifer Tamashiro  
Sally Raisbeck  
Loorie Lavai  
Elizabeth Ann Stone  
Florentino and Marvelina Hera

6. On March 9, 1990, Office of Hawaiian Affairs and Lanaians for Sensible Growth (hereinafter "Intervenor") orally moved for the preparation of an environmental assessment pursuant to Chapter 343 of the Hawaii Revised Statutes. On June 11, 1990, Intervenor filed Motion To Continue Hearing. After having heard and considered argument and memoranda of Petitioner and Intervenor on both motions on June 28, 1990, the Commission denied both motions on June 28, 1990 by Order filed on July 12, 1990.

7. On July 24, 1990, Petitioner filed a Motion To File Amended Petition For Amendment Of District Boundaries to effect reclassification of the Property into the Agricultural District. At a hearing on August 30, 1990, the Petitioner moved to withdraw its motion, and the Commission, by Order dated October 17, 1990, granted Petitioner's motion to withdraw its Motion To File Amended Petition For Amendment Of District Boundaries.

8. An untimely Petition for Intervention was filed by Elizabeth Ann Stone on August 21, 1990. After having considered the Petition To Intervene on August 30, 1990, the Commission denied the Petition To Intervene by Order dated October 4, 1990.

9. On October 11, 1990, Petitioner filed Motion To File Amended Petition For Amendment To District Boundaries to effect reclassification of approximately 120 acres of the Property in the Rural District into the Urban District and approximately 40 acres of the Property in the Agricultural District into the Urban District for golf course and accessory uses. The Commission, by Order dated November 30, 1990, granted Petitioner's said motion to file amended petition and required Petitioner to provide descriptions, maps, or surveys which accurately describe the Property.

10. On January 10, 1991 the Commission received a Metes & Bounds map under signature of a licensed registered surveyor accurately describing the amended Petition area.

#### DESCRIPTION OF PROPERTY

11. The Property consists of approximately 138.577 acres of land located west of and adjacent to the land within the existing Lanai Project District 1 (Manele) (hereinafter "Manele Project District") which is situated immediately north of and adjacent to Hulopoe Bay. The Property is located about nine miles southeast of Lanai Airport and about six miles southeast of Lanai City.

12. Approximately 110.243 acres of the Property are located within the State Land Use Rural District and approximately 28.334 acres of the Property are located within the Agricultural District.

13. The Property and its surrounding areas are not classified under the Agricultural Lands Of Importance to the State of Hawaii (ALISH) classification system. The USDA Soil Conservation Service, Soil Survey of Islands of Kauai, Oahu, Maui, Molokai and Lanai identifies the soils in the area of the Property as Very Stoney Land (rVS). The Soil Survey indicates that on Lanai, this land type consists of stones and boulders underlain by soft, weathered rock and bedrock. A shallow, clayey soil occurs among the stones and boulders in a few places. The soil capability classification is VIIIs (soils having very severe soil limitations because of unfavorable texture or because they are extremely rocky or stoney). In the gulches, the rock outcrops and stones cover 60 to 90 percent of the surface.

14. The Property has Land Study Bureau Overall Productivity Ratings of E19 and E22. By this method of classification, the Property has very poor productivity potential for most agricultural uses.

15. Elevations within the area of the Property range from approximately 200 feet along the coastline to approximately 620 feet. Slopes range from 10% to 20%.



16. The climate of the Manele region is dry and arid. Average annual rainfall is about 15 inches. The pan evaporation rate for Manele is estimated to be 90 inches per year. The monthly pan evaporation data shows variation with the summer and winter seasons: 5 inches during the winter months and 10 inches during the summer months. Rainfall is seasonal. Most of the rain occurs in the winter months, November to March. Rainfall in this period can almost account for the entire annual rainfall.

17. Castle & Cooke, Inc., a Hawaii corporation, is the owner of the fee simple interest in the Property. Petitioner is the owner of a right to purchase the Property pursuant to an agreement between Castle & Cooke, Inc. and Petitioner. Castle & Cooke, Inc. has authorized Petitioner to submit this petition.

#### PROPOSAL FOR DEVELOPMENT

18. Petitioner proposes to develop an 18-hole golf course of which most of the holes and related uses will be located on the Property and a few holes will be located on the adjoining land within the existing urban Manele Project District.

19. No part of the Property is proposed for residential use.

20. Petitioner proposes to develop a "target" golf course. The term "target" comes from the idea that the only turf in the golf course will be for the tees, the fairways and

the greens with intervening areas between some of the tees, fairways and greens which intervening areas are left undeveloped in their natural states. The target golf course reduces the turf area to be irrigated and requires less irrigation.

21. The alignment of the golf course is being designed in a manner to avoid intrusion into areas containing significant archaeological sites. Petitioner has entered into an agreement with the Lanai community which provides a process for the determination and protection of archaeological sites.

22. The 18-hole golf course on the Property at Manele is proposed as an amenity of the proposed Manele Bay Hotel within the Manele Project District. Although primarily for hotel guest use, the course will be made available for Lanai residents at Kamaaina rates.

23. Total projected cost of the golf course and accessory uses is 28.5 million (in 1989 dollars) for cost items, as follows:

	<u>Cost (\$ million)</u>
Golf course construction	19.4
Clubhouse	1.5
Equipment and furniture	1.5
Site work	2.5
Other	<u>3.6</u>
	28.5

24. Assuming avoidance of undue delay after all State and County land use approvals are timely obtained, Petitioner anticipates to complete construction of the proposed 18-hole golf course in the Spring of 1992.

PETITIONER'S FINANCIAL CAPABILITY  
TO UNDERTAKE THE PROPOSED PROJECT

25. a. Petitioner's Unaudited Statements of Income and Partners' Capital for the six months ending June 30, 1989, and the two months ending June 30, 1988 reflect total revenues at \$1,894,000 and \$50,000, respectively. Total costs and expenses for these periods were \$1,861,000 and -0-, respectively, leaving partnership earnings for the period at \$33,000 and \$50,000, respectively. Partners' capital at the beginning of the period was \$66,181,000 and -0-, respectively, and capital contribution during the period was \$38,050,000 and \$33,524,000, respectively, leaving partners' capital at the end of the period at \$104,264,000 and \$33,574,000, respectively.

b. Petitioner's Unaudited Statements of Cash Flow for the six months ending June 30, 1989 and the two months ending June 30, 1988 show cash at beginning of period at \$2,670,000 and -0-, respectively; net cash flow from operating activities at (\$13,235,000) and (\$5,233,000), respectively; cash flows from investing activities at (\$28,401,000) and (\$26,211,000), respectively; and cash flows from financing activities at \$38,050,000 and \$33,524,000, respectively. Cash at the end of the period is listed at (\$916,000) and \$2,080,000, respectively.

c. Petitioner's Unaudited Balance Sheets as of June 30, 1989 and 1988 reflect total assets of \$112,290,000 and

\$35,390,000, respectively. Total liabilities and partners' equity are listed as \$120,271,000 and \$37,206,000, respectively.

STATE AND COUNTY PLANS AND PROGRAMS

26. Approximately 110.243 acres of the Property are located within the State Land Use Rural District, and approximately 28.334 acres of the Property are located within the Agricultural District as reflected on the Land Use District Boundary Map of Lanai.

27. The Lanai Community Plan designates approximately 395 acres in the Manele area for the Manele Project District development. The Property is located adjacent and to the west and northwest of the project district.

28. The Lanai Community Plan designates the 110.243-acre parcel of the Property for Open Space use and the 28.334-acre parcel of the Property for Agricultural use.

29. Currently pending before the County of Maui are applications by the Petitioner for the amendments of the Lanai Community Plan and the Manele Project District to include the Property in the district.

NEED FOR PROPOSED DEVELOPMENT

30. At the present time, there is no 18-hole golf course on the island of Lanai. There is one existing 9-hole Cavendish golf course which has been provided by Castle & Cooke, Inc. for the Lanai residents at no cost to the community for many years.

31. The first 18-hole golf course on Lanai is now under construction at Koele as an amenity of the Koele Lodge, a 102-room luxury high-personal service hotel.

32. The proposed golf course at Manele, portion of which will be located on the Property, will be the second 18-hole golf course on Lanai as a vital amenity to support the success of the Manele Bay Hotel, a 248-room luxury high-personal service hotel.

33. A market assessment of the proposed golf course developments on Lanai--one 18-hole golf course at Koele and one 18-hole golf course at Manele--was prepared by Petitioner's consultant KPMG Peat Marwick.

34. According to the market assessment dated March 1989, affluent guests who are expected at Koele Lodge and Manele Bay Hotel have a higher propensity to golf at luxury high-personal service hotels than at resorts which attract budget or group visitors.

35. The market assessment indicates that the demand for golf at the two 18-hole golf courses is based upon the projected daily overnight resort population, which is estimated to range from 340 in the year 1991 to 1,438 in the year 2000. The total on-resort population would consist of hotel guests, and visitors and residents of the multi-family units and single-family residences planned at the two resorts at Manele and Koele. Occupancy rates for the two luxury hotels were projected to range from 45% in 1990 to 70% in 1996 at Koele

Lodge, and from 50% in 1991 to 80% in 1996 at the Manele Bay Hotel. The average occupancy rate for the multi-family and single-family units at both resorts is estimated at 50% by the market assessment.

36. According to the market assessment, luxury resort hotel guests play an average of 15 rounds per day per 100 guests. Based upon rounds of golf played at comparable resorts, the market assessment projects rounds of golf per 100 population for the two 18-hole golf courses on Lanai as follows:

- Resort hotel guests - The rate of play is estimated at 18 rounds per day per 100 guests at the Koele Lodge, and at 23 rounds per day per 100 guests at the Manele Bay Hotel (based on Manele Bay Hotel being expanded to 400 rooms).
- Resort multi-family guests and residents - The rate of play is expected to stabilize at 14 rounds per day per 100 guests.
- Resort single-family guests and residents - The rate of play is expected to stabilize at 11 rounds per day per 100 guests.
- Nonpaying guests - Complimentary rounds are expected to remain constant at about 4% of the total rounds played.

37. Based on the assumptions made above in paragraph 36, the market assessment estimates that demand for golf rounds would range from 70 rounds per day in 1991 to 260 rounds per day in 2000 as compared to average daily rounds on representative courses in this State which range from 85 to 225, with an average of 147 rounds per day.

38. The market assessment states that the supply of golf rounds at the two 18-hole golf courses proposed for Koele



and Manele are anticipated to grow from 100 rounds in 1991 (when the Koele course is scheduled to open) to 220 rounds in 1992 (when the Manele course is scheduled to open). Golf rounds are expected to stabilize to 260 rounds by 1999, meeting the demand for 260 rounds in 2000.

39. Based on the analysis as set forth in the market assessment, it is the opinion of Petitioner's consultant that an 18-hole golf course at Manele and an 18-hole golf course at Koele can be supported by the market.

#### IMPACT UPON RESOURCES OF THE AREA

##### Agricultural Resources

40. Of the Property, only 28.334 acres are within the Agricultural District.

41. The Property is rocky. The Soil Survey Interpretations (Lanai USDA Report 44) classify the soil in this area as very stoney land-rock association. The top soil layer is 6 to 30 inches thick and composed of dark, reddish-brown soil material containing many stones and boulders.

42. The Property is not classified under the Agricultural Lands of Importance to the State of Hawaii (ALISH). The Land Study Bureau rates the overall productivity of the petition area as E19 and E22. By these methods of classifications, the Property is not considered as agricultural lands of importance and has very poor productivity potential for most agricultural uses.

43. No agricultural activity exists on the Property. The State Department of Agriculture does not foresee significant impacts on the agricultural resources of the area should this petition be approved.

44. Based on the physical conditions of the Property and the current economic conditions of pineapple production on Lanai, the Property does not appear to be suitable or essential as an agricultural resource.

#### Water Resources

45. Lanai draws its domestic water and pineapple irrigation supply from the high level aquifer which has a sustainable yield of 6 mgd.

46. The proposed golf course at Manele of which the Property is to be a part, will be irrigated with nonpotable water from sources other than potable water from the high level aquifer.

47. Petitioner's golf course design consultant, Jack Nicklaus Golf Services, is projecting that 624,000 gpd will be required for irrigation of a "target" golf course, but Petitioner is conservatively projecting 800,000 gpd for irrigation of the golf course.

48. Petitioner proposes to provide alternate sources of water for golf course irrigation by developing the brackish water supply. According to Petitioner, Well Nos. 9 and 12 which have capacities of about 300,000 gpd and 200,000 gpd, respectively, have been tested but are not yet operational.

Well No. 10 which has a capacity of approximately 100,000 gpd with a possible potential of 150,000 gpd has also been tested and will be available. Currently available also is brackish water from Well No. 1 which is operational and which has a capacity of about 600,000 gpd.

49. Petitioner's civil, sanitary and environmental engineering consultant, James Kumagai, stated that it is only a matter of cost to develop wells for brackish water sources that are already there. The consultant also states that the brackish water sources necessary to supply enough water for golf course irrigation could be developed and be operational within a year.

#### Historical/Archaeological Resources

50. Archaeological survey of approximately 284 acres of land at Manele including 110.243 acres of the Property located within the Rural District was conducted by Petitioner's consultant, Hallett H. Hammatt, Ph.D. The survey indicated 22 sites with 75 individual features on the Property. Dr. Hammatt stated that ultimately a total of 27 sites and 78 individual features were found and while performing field work for the data recovery effort within the Rural District an additional 35 features were also found.

51. The survey identified 22 archaeological sites, including 75 individual features. The majority of the sites are concentrated in the eastern, makai portion of the study area, along both sides of a gulch which empties into Kapihaa

Bay. According to the survey, the entire complex of sites represents a well-preserved, permanent coastal village dating back to prehistoric times. The features identified include permanent habitation features, heiaus, fishing shrines, evidence of basalt extraction, numerous small fishing cave shelters, ground terraces, and burial platforms. The tightly clustered prehistoric coastal community was supported by basalt quarrying for exportation, fishing and limited farming of such dry crops as sweet potato. It appears that the community was abandoned at or before 1778, and only a few coastal shelters have been used by fishermen since that time.

52. The survey indicates that of the 75 features identified within the Rural-designated area, 6 were no longer significant, leaving 69 significant sites, based on the criteria established for the National and State Registers of Historic Places. The survey recommends preservation of the dense cluster of habitation sites, the heiau, and fishing shrines with testing and excavation of sites which cannot be preserved.

53. The Department of Land and Natural Resources, Historic Preservation Division ("DLNR-HPD") has identified an additional site, and two features in identified sites, that had been missed during the survey. As the historic preservation law requires evaluation by site, rather than by feature, DLNR-HPD has combined the feature evaluations of each site into

a site evaluation, resulting in 21 significant sites and 2 sites as no longer significant.

54. Pursuant to procedures and standards of DLNR-HPD, Petitioner's consultant submitted the survey and proposed mitigation measures for the sites. Thereafter a Data Recovery and Preservation Plan was filed to update the proposed mitigation measures which provided for:

Preservation of Sites:

- 1 (the best example of an adz quarry found in the study)
- 12 and 13 (complex of fishing shrine and associated structures)
- 14 (possible heiau and associated features)
- 18 (habitation and religious complex)
- 19 (complex of shelters, burials, cave, ahu and terraces), and
- 20 (occupation complex).

Recommendation of a viewplan with minimal land modifications from the heiau to the gulch sites and to the coast.

Data Recovery of all other sites (3, 4, 5, 6, 7, 8, 9, 10, 11, 11A, 12C, 19C, 21, 22A, 22B and 22C), plus the agricultural features areas by Sites 4, 5 and 14.

55. DLNR-HPD approved the Data Recovery and Mitigation Plan with the following amendments to provide for:

Preservation at additional sites:

- 17 (habitation and religious features), and
- 21 (petroglyph, to be relocated to one of the proposed preserve areas).

Data Recovery to include Sites 15 and 16.

Subsurface testing of certain sites, to collect information that would be useful for future interpretation of the sites.

56. Based on the data recovery plan as amended and approved by DLNR-HPD, Petitioner's consultant conducted field work for all sites that required further research and filed a post field work summary report. Upon review of the post field work report, DLNR-HPD found that the report has adequately addressed all the items raised by DLNR.

57. Most of the archaeological sites reported are not located within the Property. The few archaeological sites actually on the Property or which may potentially be affected by the use of the Property will be protected from intrusion either by the design of the golf course or by buffer zones. Petitioner has agreed to preserve the archaeological sites as recommended by Petitioner's archaeological consultant and DLNR-HPD. These archaeological sites are to be preserved within preserve areas with appropriate buffer zones agreeable to DLNR-HPD.

58. Archaeological survey of approximately 173 acres of land at Manele including 28.334 acres of the Property located within the Agricultural district was also conducted by Petitioner's archaeological consultant.

59. The survey of the 173 acre-parcel found only two sites. Site 1 was categorized as a temporary habitation



feature and Site 2 as a historic wall/fenceline associated with livestock management.

60. According to the Petitioner's consultant, the wall and fenceline (Site 2) utilized for livestock control would have no significance under the National and State Registers of Historic Places criteria, but Site 1 would fall in a category which indicates that the site may be likely to yield information important in prehistory or history.

61. Petitioner intends to preserve Site 1.

62. Site 1 and Site 2 are not located on the Property and by their distant locations in relation to the Property do not appear to be affected by the uses intended on the Property.

#### Flora and Fauna

63. Two biological surveys were conducted by Petitioner's biology consultant, Kenneth M. Nagata. The first survey covered land which included the 110.243 acres of the Property within the Rural District. The second survey covered land which included the 28.334 acres of the Property within the Agricultural District.

64. According to the Petitioner's consultant, the vegetation in the lands covered by both surveys were very similar. It generally consists of scattered, scrubby kiawe trees and a well-developed shrub layer of native ilima, hoary abutilon and uhaloa. Several grasses, including feather fingergrass, buffel-grass and the native pili grass, are also present. In addition, two panicums, Panicum torridum and an

unidentified specie, are found in moderate numbers. Forty-four species were found in the area. Fourteen are native, four of which--ilima, hoary abutilon, uhaloa and pili grass--constitute a significant portion of the total vegetation cover.

65. A native specie Canavalia lanaiensis was once considered to be rare and endangered, but is no longer as rare as originally thought. Petitioner's consultant stated that the specie is identical to those found on Kauai, Niihau and East Maui, and should rightfully be called C. pubescens.

Petitioner's consultant also stated that he was not aware of any other areas on Lanai where C. pubescens exist.

Consequently, the U.S. Fish and Wildlife Service has re-evaluated the status of the specie and in the next Federal Register, C. pubescens (including what we are presently calling C. lanaiensis) will be downgraded to Category II status, a class covering species for which the U.S. Fish and Wildlife does not have sufficient information to warrant listing as an Endangered Specie.

66. Although Canavalia lanaiensis is no longer as rare as once thought and no longer essential to be preserved, the consultant stated that it would be a good gesture if the two largest populations of Canavalia lanaiensis in the Manele gulch and near the cluster of archaeological sites were to be protected. The Manele gulch area and almost all of the archaeological sites are outside of the area of the Property.

67. The consultant believes that the population of Canavalia lanaiensis in the Manele gulch will adequately be protected if the gulch remains undisturbed without development. He also believes that the population near the archaeological sites will be protected with the preservation of the archaeological sites.

68. The biological surveys indicate that the faunal composition of the two study areas was found to be similar. No endangered animal specie was found. The urban and field birds common to the Manele-Hulopoe area include the Kentucky cardinal, barred dove, Japanese white-eyes, lace-necked dove, common mynah, ricebird, and house sparrow. Two game birds--Indian gray francolin and turkey--have been observed in this region. Two seabirds--red-tailed tropicbird and Bulwer's petrel--were also observed. In addition, the biological surveys indicate that axis deer are abundant throughout the region.

69. It is the opinion of Petitioner's biological consultant that there would be no significant effect upon the flora and fauna in the area of the Property by the proposed golf course development.

#### ENVIRONMENTAL QUALITY

##### Water Quality

70. The State Department of Health (DOH) classifies the waters off of Hulopoe-Manele Bay as class AA waters. DOH's Water Quality Standards, §11-54-03, states that "it is the

objective of class AA waters that these waters remain in their natural pristine state as nearly as possible with an absolute minimum of pollution or alteration of water quality from any human-caused source or actions."

71. Surface and subsurface water quality impacts may be generated from (i) application of fertilizers and pesticides on the golf course and (ii) potential movement of these chemicals as a component of surface water runoff into the coastal waters and or infiltration into the ground.

72. Petitioner's consultant, M & E Pacific, Inc., conducted an assessment of the uses of fertilizers and biocides on the project site and determined that there would be no negative environmental impacts based on the findings as follows:

a. Among the fertilizer elements, only nitrogen could possibly diminish water quality, but given the type of chemicals typically used for golf course maintenance, the irrigation water rates, leaching potential, the application rate of fertilizers and hydrogeologic processes, the impact of nitrogen from fertilizer would be insignificant.

b. The studies of Chang and Young (1977) and Dollar and Smith (1988) specifically investigated the coastal water impact of existing golf course maintenance and operation and found no measurable dissolved inorganic nitrogen concentrations attributable to golf course leachates to the open coast regime.

c. Even a seemingly severe situation with sugarcane cultivation in the Pearl Harbor Basin where two tons per day of fertilizer nitrogen have been applied over decades of time led to the finding that the affected groundwaters had concentrations of only 1.4 mg/l compared to the acceptable limit of 10 mg/l.

d. For the pesticides to be used, Petitioner's consultant states that, given the rate of application, transport factors, degradation processes, and hydrogeologic processes, the chemicals listed as being typical for golf course use will be immobilized and will not have an impact on the groundwater and coastal water. Although runoff from storm flows can carry pesticides to the coastal waters with the sediments, Petitioner's consultant concludes that the impact would also be negligible because the waters are in the open coast regime where sediments would be dispersed and the pesticides to be used are degradable and are not expected to persist in the environment.

73. Groundwater underlying the proposed golf course at Manele is too brackish for drinking water so that impact on the groundwater quality for drinking purposes is not a consideration in this instance.

74. Petitioner's consultant on marine ecology and fisheries biology, Richard Brock, Ph.D., stated that he has conducted studies for the University of Hawaii to monitor any change in coastal water quality and impact to the aquatic fauna

from the Waikoloa development which includes golf courses. From his studies, he found that:

a. While there has been increase in concentrations of inorganic nutrients attributable to golf course maintenance and operation, the increased levels fall within ranges of natural variability measured at other Kona Coast sites that have absolutely no development.

b. As the high nutrient water moves toward the sea, the nutrient concentration decreases due to mixing as well as biological up-take, and no elevation can be detected at the shoreline.

c. There is no evidence of negative impact to the aquatic community exposed to this high nutrient water as it moves to the sea.

75. In his study of the marine communities and water quality of the Hulopoe-Manele coastal waters, Petitioner's consultant, Richard Brock, stated that, presently, considerable debris and sediment reach the sea following heavy rains. Despite this occasional happening, the marine communities which he studied appear to be diverse and show no outward signs of negative impacts. He believes that the golf course development will improve vegetation resulting in less sediment runoff.

76. Petitioner states that it will comply with the Department of Health's eight conditions applicable to new golf course development.



### Air Quality

77. The use of pesticides are routinely required in the maintenance of golf courses.

78. Source of air pollutants arising out of the development of a golf course on the Property will be from pesticides spray in the maintenance of the golf course.

79. Petitioner's agronomy and turf management consultant, Kent Alkire, states that there is a potential for pesticide spray to drift beyond the target areas. The consultant states that the use of drift control devices and modern spray equipment will substantially reduce or eliminate the amount of wind drift which could enter into nontarget areas or nearby surface waters.

80. The consultant states that all pesticides will be applied by Hawaii State certified applicators using the most modern equipment to deliver the chemicals.

### Noise

81. Construction activity on the Property may generate noise temporarily during the construction period. Noise regulations under Chapter 43, Administrative Rules of the State Department of Health would govern such activity.

### Visual Impacts

82. No residential units are proposed to be developed on the Property. Except for the support facilities of the golf clubhouse and accessory improvements, the Property will have the open space character of a golf course.

83. The "target" course concept will blend the environment in its natural state with the golf course.

#### Recreational Resources

84. Portions of the development on the Property bordering the ocean front will be in golf course fairways but will not limit pedestrian access along the coastline to fishing areas and scenic spots.

#### ADEQUACY OF PUBLIC SERVICES AND FACILITIES

##### Transportation Facilities

85. A traffic impact assessment report for the proposed Manele golf course project was prepared by Petitioner's consultant, Pacific Planning & Engineering, Inc. The traffic impact assessment included traffic forecasts from all known major land uses on Lanai until 2003, including the developments at Manele, Koele and Lanai City.

86. The traffic impact assessment focused on the impacts at the four intersections of Kaunalapau Highway with Lanai Airport Road, Manele Road, Fraser Avenue and Lanai Avenue. These intersections provide vehicular access/egress from all major uses on Lanai.

87. The traffic impact assessment reported findings and conclusions as follows:

a. The traffic forecasted for Manele Road will increase two-way peak hour traffic from the present 53 vehicles per hour to 388 vehicles per hour in the year 2003. The

forecasted total traffic is below the present reduced capacity of Manele Road (540 vehicles per hour) during the afternoon peak hour.

b. All study intersections in 1988 operated at Level of Service (LOS) A which indicates little or no traffic delays. In 2003 without the project, the level of service remains at A for all study intersections. With the Manele development, including the golf course, in 2003, all of the study intersections will continue to operate at LOS A for all turning movements except at the intersection of Kaumalapau Highway with Manele Road where the dirt road to the pineapple fields experiences a decrease of LOS from A to B.

c. The proposed Manele golf course will not significantly impact traffic flow on the study intersections.

88. Petitioner's consultant states that the traffic forecast volumes do not warrant the improvement of Kaumalapau Highway and Manele Road to full State standards. He states that the existing roads will accommodate the forecasted traffic. The consultant reports that the State will be providing shoulders and guardrail improvements for Kaumalapau Highway and resurfacing Manele Road in the near future with appropriated funds.

#### Water Service

89. Petitioner is now in the process of developing the brackish water supply for irrigation of the proposed golf

course. According to Petitioner, Well No. 1, which is operational and available, and Well Nos. 9, 10 and 12, which have been subjected to full testing, have aggregate brackish source capacity in excess of the projected requirements of 624,000 gpd to 800,000 gpd for the Manele golf course.

90. Maui Planning Department recommends that any use of potable groundwater for golf course irrigation should be limited and terminated within five years.

91. Petitioner intends to irrigate the golf course with nonpotable water, leaving only the clubhouse which will use potable water, the requirement for which should be insignificant.

#### Sewage Treatment and Disposal

92. As there will be no residential development on the Property, the limited wastewater anticipated from the Property is the domestic sewage from the golf clubhouse activities.

93. The golf clubhouse development can be sewerred to the wastewater system for the Manele Project District. The wastewater system includes three pump stations and a treatment plant which have been constructed.

94. The wastewater system is intended to accommodate the wastewater generated from the uses and densities permitted within the Manele Project District, including the Manele Bay Hotel and 416-unit residential development. The Manele Project

District is proposed to be enlarged to include the Property, and other lands, as recommended by Maui Planning Department.

Drainage

95. Petitioner's consultant, M & E Pacific, Inc., states that storm runoff from extreme storms would drain naturally through six major gulches and drainage ways that traverse the Property in a north to south direction. Under natural conditions, storm runoff is estimated to be a total of 3,360 cubic feet per second (cfs) from a drainage area of approximately 1,392 acres. The largest single discharge occurs through the gulch most distant from Hulopoe Beach at a rate of 1,320 cfs.

96. According to Petitioner's consultant, the drainage system that will be implemented for the development of the Property follows as closely as possible to the natural drainageways; that is, all the sheet flows will be directed toward gulches. Under the consultant's design of the drainage system, rainfall on the golf course itself, however, is to be retained as much as possible on the golf course.

97. The drainage design of the golf course to retain the storm waters not only provides irrigation but also reduces fertilizer and pesticide elements to be carried by water runoff to areas adjoining the golf course. Collection sumps will be installed throughout the golf course to collect surface runoff, thus, preventing most of the water containing applied pesticides from reaching nearby surface waters.

98. From its findings, Petitioner's consultant does not anticipate any negative impacts from the drainage and drainage system for the Property.

a. Given the topography of the Property in the order of 10 to 20 percent slopes, flooding on the Property is unlikely.

b. Rain induced erosion is small. The analysis made for the Manele project district area gave a severity rating number of 4,200 compared to the allowable rating of 50,000.

c. Coastal water bordering the Property are in the open coastal regime such that impact from discharges would be mitigated by the rapid mixing and dispersement of storm runoff and long periods between extreme storm events on the order of decades.

#### Solid Waste Management

99. It is anticipated by Petitioner's consultant, M & E Pacific, Inc., that the solid waste on the order of five pounds of refuse per capita per day will be generated from the area. Solid waste will be hauled away by private contractors to the County disposal area.

#### Schools

100. The Department of Education had commented, in its review of the original proposed golf course development on the Property and a proposed 425-unit residential development on



adjoining lands, that the effect of the subject residential development alone will not greatly impact the school.

101. The current proposal for development of the Property is for a golf course and accessory uses and not for residential uses; therefore, it would not impact the school.

#### Electrical and Telephone Services

102. Power requirement for the golf course development on the Property and a proposed 425-unit residential development on adjoining lands was estimated at 2,800 KW. Maui Electric Company has stated to Petitioner's consultant, M & E Pacific, Inc., that the power requirement can be readily supplied.

#### Other Public Services

103. Public services such as fire and police protection, medical services, parks and recreation are not expected to be significantly affected because the Property is to be developed as a golf course and no residential units are to be developed on the Property.

104. Petitioner has donated land to the County of Maui for the fire station and has committed to donate the land for the police station. Petitioner has also donated about 93,000 square feet of land for hospital purposes and is committed to donate land to the State for the airport.

#### SOCIO-ECONOMIC IMPACTS

105. An agreement has been reached by and between Castle & Cooke, Inc. and Lanaians For Sensible Growth and the

Office Of Hawaiian Affairs covering a variety of issues including socio-economic issues and specific issues related to the development on the Property.

106. The maintenance of the golf course will require a labor force of about 25 to 30 employees, over half of whom will be nonprofessional employees. The golf course development will include a clubhouse which would involve additional employees for food services.

107. According to a study by Jon K. Masuoka, Ph.D., and Wes J. Shera, Ph.D., when Lanai residents were asked in general how they felt about resorts coming to Lanai, 57% were positive, 28% had mixed feelings, 10% were negative, and 5% had no opinion. Most residents (77%) felt positive towards the economic impacts of resort development primarily because it would provide more jobs.

108. The study reported that the positive aspects of resort development were identified as more and better jobs and increased tax revenues while the negative aspects were identified as changes in the community, anticipated high cost of living, and strain on services and facilities.

109. Petitioner estimated a housing demand of 350 units from the hotel employment and community. This housing demand will be met by the following projects developed or being developed by Petitioner:

a. Lalakoa III: 144 single-family units for Lanai residents at significantly below cost.

b. Lanai City Apartments: 24 studio and one-bedroom units with rent subsidy, 19 of which units are under HUD rental guidelines.

c. Wailua Single-Family: 120 single-family homes to be sold at cost below affordable ceiling.

d. Wailua Multi-Family: 128 1-, 2-, 3-bedroom affordable apartments with rent subsidy.

110. Petitioner states that Castle & Cooke, Inc. has offered to donate land to the County of Maui for a County housing project, and the County has accepted on a preliminary basis. If the County develops the land, it is expected to produce 110 to 130 units.

111. Petitioner also states that Castle & Cooke, Inc. has offered to donate land to the State for a State housing project.

#### CONFORMANCE WITH THE HAWAII STATE PLAN

112. The reclassification of the Property to allow the development of the proposed Manele golf course conforms to the Hawaii State Plan, Chapter 226, HRS, as amended, including the following objectives, policies and guidelines:

§226-5(b)(2)      Encourage an increase in economic activities and employment opportunities on the Neighbor Islands consistent with community needs and desires.

- §226-5(b)(3) Promote increased opportunities for Hawaii's people to pursue their socio-economic aspirations throughout the islands.
- §226-6(a)(1) Increased and diversified employment opportunities to achieve full employment, increased income and job choice, and improved living standards for Hawaii's people.
- §226-8(b)(2) Ensure that visitor industry activities are keeping with the social, economic, and physical needs and aspirations of Hawaii's people.
- §226-8(b)(3) Improve the quality of existing visitor destination areas.
- §226-12(b)(1) Promote the preservation and restoration of significant natural and historic resources.
- §226-13(b)(2) Promote the proper management of Hawaii's land and water resources.
- §226-13(b)(3) Promote effective measures to achieve desired quality in Hawaii's surface, ground and coastal waters.
- §226-104(b)(2) Make available marginal or nonessential agricultural lands for appropriate urban uses while maintaining agricultural lands of importance in the agricultural district.

113. The Manele golf course is proposed to be made part of the Manele Project District by amendment to the Lanai Community Plan. The Manele Project District and the Koele

Project District are the products of the Maui County approval processes with community participation toward well-planned developments consistent with community needs and desires. The Manele golf course will complement the hotel and other uses permitted in the Manele Project District and thereby serve to promote increased opportunities for Lanai residents to choose and pursue their socio-economic aspirations.

114. Pineapple has been the primary economic base of Lanai. With the phase-out of pineapple production, new employment opportunities must be created. The golf course will provide a varied range of employment choices from food services to course maintenance and management. The golf course development will add to and help diversify the economic opportunities in Lanai, an area especially lacking in convenient job choices for its residents.

115. Lanai has one nine-hole golf course called the "Cavendish Course." The second course on Lanai is the 18-hole course at Koele now under construction. Petitioner states that the Manele golf course is a vital amenity to support the success of the Manele Bay Hotel and the visitor industry on Lanai.

116. The Manele golf course has been designed to avoid intrusion onto the archaeological sites which are to be preserved. The golf course is to be constructed as a "target" course which incorporates the natural environment by leaving

areas between tees and fairways in their natural states. The "target" course concept also reduces and limits the total area to be irrigated and thereby serves to conserve water.

117. Petitioner has stated that the Manele golf course will be irrigated with nonpotable water from sources other than the potable water from the high level aquifer.

118. Petitioner states that the Manele golf course will be developed and managed according to an Integrated Pest Management Program prepared by Petitioner's consultant, Jack Nicklaus Golf Services. The goal of this program is to produce a high quality turf which can sustain the use for which it is intended and prevent environmental degradation.

119. The Property has not been used for agricultural purposes. The Property is not classified as agricultural lands of importance under the ALISH system and is designated with E19 and E22 overall productivity ratings under the Land Study Bureau classification system indicating very poor productivity potentials for agricultural uses. Such marginal or nonessential lands may be made available for appropriate urban uses.

#### CONFORMANCE TO STATE LAND USE URBAN DISTRICT STANDARDS

120. The Property is contiguous to the Manele Project District which is in the State Urban District.

121. The Property, with other lands, is intended to be made part of the Manele Project District by amendments to the Lanai Community Plan and the project district. The



Petitioner's applications for the amendments are now pending before the County of Maui.

122. The Property is proposed to be developed as a golf course to serve as an amenity of the Manele Bay Hotel.

123. Lanai City is located approximately six miles northwest of the Property. Sewage from the golf course activities will be disposed of through the wastewater system for the Manele Project District. The domestic water supply will be tapped off from the water distribution system constructed for the Manele Project District. Power requirements can be supplied by Maui Electric Company. Police and fire protection will be provided by the units at Lanai City.

124. The topography of the Property is satisfactory with slopes of 10% to 20%. The natural drainage pattern toward the gulches will be retained, and given the topography of the area of the Property, flooding is unlikely.

#### CONFORMANCE TO COASTAL ZONE POLICIES AND OBJECTIVES

125. The proposed reclassification of the Property for the development of the project conforms to the policies and objectives of the Coastal Zone Management Program Chapter 205A, HRS, as amended. If the reclassification is approved by the Land Use Commission and Community Plan amendments approved by the County of Maui, the Petitioner will need to apply for a Special Management Area Use Permit and Shoreline Setback Variance from the County of Maui.

#### RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by the Petitioner or the other parties not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

#### CONCLUSIONS OF LAW

Pursuant to Chapter 205 of the Hawaii Revised Statutes and the Hawaii Land Use Commission Rules, the Commission finds upon a preponderance of the evidence that the reclassification of the Property consisting of approximately 110.243 acres of land within the Rural District and 28.334 acres of land in the Agricultural District, situate at Manele, Island of Lanai, State of Hawaii, Tax Map Key: 4-9-02: portion of 1, to the Urban District, subject to the conditions in the Order, for a golf course, clubhouse and accessory uses, is reasonable, nonviolative of Section 205-2, Hawaii Revised Statutes, as amended, and is consistent with the Hawaii State Plan as set forth in Chapter 226, Hawaii Revised Statutes, as amended, and conforms to the Hawaii Land Use Commission Rules.

ORDER

IT IS HEREBY ORDERED that the Property, consisting of approximately 138.577 acres of land situate at Manele, Island of Lanai, State of Hawaii, Tax Map Key No. 4-9-02: portion of 1, and approximately shown on Exhibit "A", attached hereto and incorporated herein by reference, for reclassification from the Rural Land Use District to the Urban Land Use District as to 110.243 acres thereof and for reclassification from the Agricultural Land Use District to the Urban Land Use District as to 28.334 acres thereof, shall be and is hereby approved, and the District Boundaries are amended accordingly, subject to the following conditions:

1. Petitioner shall make available to the State at no cost, on a fee simple basis, 25 acres of land with no restrictions. Of these 25 acres, 10 acres shall be in the vicinity of Lanai City and 15 acres may be located at another site both agreeable to the Office of State Planning. Development on these sites shall be at a density comparable to existing developments in Lanai City. Prior to development of any improvement on the land, the State shall gain approval of Petitioner as to the conformity and harmony of the exterior design of the proposed improvements with neighboring sites and development of Lanai by Petitioner pursuant to its master plan. Should Petitioner withhold approval, the State may submit the matter to binding arbitration. If the land or so

much thereof is not utilized within a ten-year period, the unutilized portion shall revert back to Petitioner.

2. Petitioner shall make available 100 acres of land, with an adequate supply of water, to the State Department of Agriculture and or the County of Maui, for their establishment and operation of an agricultural park for Lanai residents, at nominal rents for a 55-year term, at site(s) agreeable to the State Department of Agriculture and the County of Maui.

3. Petitioner shall make the golf course on the Property available to Hawaii residents at percentage discounts comparable to percentage discounts available at other private courses open to the general public in the State as reviewed and approved by the Office of State Planning.

4. The Petitioner shall work with the State Department of Land and Natural Resources and the County of Maui to incorporate mauka pathways which may be tied to the golf course and residential area pathways which will provide alternate access routes to the accessible cliff coastline area.

5. In developing and operating the golf course and any future residential development in the Manele project district, petitioner shall protect public access along the accessible cliff coastline.

a. Petitioner shall dedicate a public easement along the accessible cliff coastline from Hulopoe Bay to the intersection of the coastline with the westernmost boundary of

the project area, which will allow public pedestrian access in perpetuity without obstruction or interference with such use, subject to reasonable rules and regulations for public safety, provided that access shall be maintained.

b. Petitioner shall cause to be established a setback zone of 50 feet from the edge of the cliff along the accessible cliff coastline from Hulopoe Bay to the intersection of the coastline with the westernmost boundary of the project area within which there shall be no improvements of any kind, other than improvements which may be reasonably necessary for purposes of public safety, and where the property will be left in its natural state; provided that the setback for the proposed 16th hole may have a setback of less than 50 feet subject to mutual agreement between the petitioner and LSG.

c. Petitioner shall cause the area within 75 feet of the edge of the cliff along the accessible cliff coastline from Hulopoe Bay to the intersection of the coastline with the westernmost boundary of the property area to remain in its natural state without improvements, except with respect to the three proposed signature holes of the golf course.

d. Petitioner shall prohibit any vertical improvements, other than landscaping and improvements allowed by county variances, to be constructed or erected within 150 feet of the edge of the cliff along the accessible cliff coastline from Hulopoe Bay to the intersection of the coastline with the westernmost boundary of the project area.

e. Petitioner shall work with Lanaians for Sensible Growth to incorporate mauka pathways which may be tied to golf course and residential area pathways which will provide alternative access routes to the accessible cliff coastline area.

f. Petitioner shall adopt golf course rules and provide mutually agreeable and appropriate signage which will protect the access along the public access areas and pathways.

g. Petitioner shall provide Lanaians for Sensible Growth with plans for the golf course layout, location of holes, access pathways, and signage in advance of any final approval of such plans by the appropriate governmental agencies.

h. Petitioner shall record with the appropriate governmental agency all necessary and appropriate instruments to accomplish the purposes of this paragraph.

6. Petitioner shall archaeologically data recover the significant historic sites identified as 3, 4, 5, 8, 9, 11 and CS1, and shall preserve the significant historic sites identified as 1, 6, portion of 7, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 27 and at least a portion of CS2.

Petitioner shall submit a revised mitigation plan to the State Historic Preservation Division for review and approval. Full execution of the mitigation plan shall be verified by the State Historic Preservation Division prior to the start of any ground-disturbing activities. Petitioner shall preserve the historic sites identified for preservation, in perpetuity, by



establishing historical sites preserve area(s), with appropriate buffer zones as approved by the State Historic Preservation Division protected by a conservation easement pursuant to Chapter 198, HRS, as amended, or such other means as shall be reviewed and approved by the State Historic Preservation Division.

In addition, Petitioner shall immediately stop work and contact the State Historic Preservation Division should any previously unidentified archaeological resources such as artifacts, shell, bone or charcoal deposits, human burial, rock or coral alignments, pavings or walls be encountered during the project's development.

7. Petitioner shall preserve the colony of Canavalia pubescens, which occur near the cluster of historic sites to be preserved, if deemed necessary by the Department of Land and Natural Resources, Division of Forestry and Wildlife (DLNR, DOFAW). Petitioner shall submit a mitigation plan (which shall include measures to ensure that these native species are not physically impacted, or their microclimate altered, including the incorporation of appropriate buffer zones) to DLNR, DOFAW for review and approval. Full execution of the mitigation plan shall be verified by DLNR, DOFAW prior to the start of any ground-disturbing activities.

8. Petitioner shall only develop, construct, operate, and maintain the proposed golf course and any subsequent residential development in the Manele project

district and take appropriate preventative measures so that it will not cause any deterioration in the Class AA water quality standards currently in existence for Hulopoe Bay and the coastal waters adjacent to the Manele Bay Hotel and the golf course, or any comparable standards as may be established by law in the future, taking into account, temporary perturbations from natural occurrences.

a. The petitioner shall fully mitigate any condition caused by its development activities which results in deterioration of the standards referred to in paragraph 3.

b. The petitioner shall retain an environmental monitor, as may be mutually agreed between it and Lanaians for Sensible Growth for the purpose of monitoring the water quality standards referred to in paragraph 3. The monitor shall promptly make its results available to the State Department of Health. The monitoring program shall include baseline studies of such coastal waters and ongoing water quality monitoring on not less than a quarterly basis. The monitoring program will be conducted with a frequency and in a manner so as to be at least as effective, in the opinion of the monitor, as any other coastal water quality monitoring program for similar waters implemented in the State of Hawaii.

9. Petitioner shall comply with "The Eight (8) Conditions Applicable to This Golf Course Development", prepared by the State Department of Health dated April 7, 1989, introduced as the Office of State Planning's Exhibit Number 2.

10. Petitioner shall not utilize the potable water from the high-level groundwater aquifer for golf course irrigation use, and shall instead develop and utilize only alternative non-potable sources of water (e.g., brackish water, reclaimed sewage effluent) for golf course irrigation requirements.

In addition, Petitioner shall comply with the requirements imposed upon the Petitioner by the State Commission on Water Resource Management as outlined in the State Commission on Water Resource Management's Resubmittal - Petition for Designating the Island of Lanai as a Water Management Area, dated March 29, 1990.

11. Petitioner shall fund the design and construction of all necessary water facility improvements, including source development and transmission, to provide adequate quantities of potable and non-potable water to service the subject property.

12. Petitioner shall fund the design and construction of all necessary drainage improvements to the satisfaction of the State Department of Transportation and the County of Maui.

13. Petitioner shall upgrade Manele Road to State standards and/or construct a new access road for easier access to the Manele Project District and Manele Boat Harbor.

14. Petitioner shall undertake periodic monitoring of the traffic conditions within and adjacent to the Property throughout the project's development period as required by the State Department of Transportation.

15. Petitioner shall fund the design and construction of the appropriate wastewater treatment and disposal methods to the satisfaction of the State Department of Health and the County of Maui.

16. None of the land area reclassified may be utilized for anything but a golf course and improvements directly related to golf course operations.

17. Appropriate measures shall be taken to mitigate the short-term impact of the project relative to soil erosion from wind and rain; and ambient noise levels.

18. Nonpotable water sources shall be used towards all nonconsumptive uses during construction of the project.

19. The Property shall be included in the Lanai Community Plan as part of the Manele Project District.

20. Petitioner shall develop the property in substantial compliance with representations made to the Land Use Commission in obtaining reclassification of the property. Failure to so develop may result in reclassification of the property to its former land use classification.

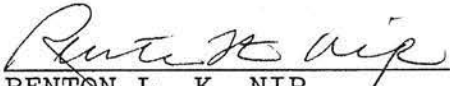
21. Petitioner shall provide annual reports to the Land Use Commission, the Office of State Planning, and the County of Maui Planning Department in connection with the status of the project and Petitioner's progress in complying with the conditions imposed.

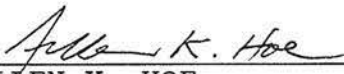
22. Petitioner shall give notice to the Land Use Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest or development interest in the Property covered by the approved Petition prior to visible commencement of construction on the Property.

23. The Commission may fully or partially release these conditions as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by the Petitioner. Adequate assurance of satisfaction may be evidenced by execution of a certificate of satisfaction in recordable form stating that such condition has been satisfied, in whole or in part. The Office of State Planning will certify for itself and all state departments and agencies, and the County of Maui Planning Department will certify for itself and all county departments and agencies. Any other party to the boundary amendment proceeding may be asked to indicate whether they concur in the certification of satisfaction.

Done at Honolulu, Hawaii, this 16th day of April 1991,  
per motion on April 11, 1991.

LAND USE COMMISSION  
STATE OF HAWAII

By   
RENTON L. K. NIP  
Chairman and Commissioner


By   
ALLEN K. HOE  
Vice Chairman and Commissioner

By (conflict)  
ALLEN Y. KAJIOKA  
Vice Chairman and Commissioner

By   
KAREN S. AHN  
Commissioner

By (absent)  
EUSEBIO LAPENIA, JR.  
Commissioner

By   
JOANN N. MATTSON  
Commissioner

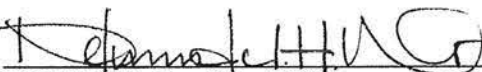
By   
JAMES M. SHINNO  
Commissioner

Filed and effective on  
April 16, 1991

Certified by:

  
Executive Officer

By   
ELTON WADA  
Commissioner

By   
DELMOND J. H. WON  
Commissioner







BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	Docket No. A89-649
	)	
LANAI RESORT PARTNERS	)	LANAI RESORT PARTNERS
	)	
To Amend the Rural Land Use	)	
District Boundary into the Urban	)	
Land Use District for approximately	)	
110.243 acres and the Agricultural	)	
Land Use District Boundary into	)	
the Urban Land Use District for	)	
approximately 28.334 acres at	)	
Manele, Lanai, Hawaii, Tax Map	)	
Key No. 4-9-02: portion 1	)	
_____	)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings of Fact, Conclusions of Law, and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

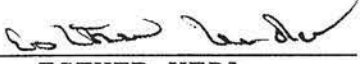
	HAROLD S. MASUMOTO, Director Office of State Planning State Capitol, Room 410 Honolulu, Hawaii 96813
CERT.	BRIAN MISKAE, Planning Director Planning Department, County of Maui 200 South High Street Wailuku, Hawaii 96793
CERT.	CYRUS CHAN, ESQ. Corporation Counsel Office of the Corporation Counsel County of Maui 200 South High Street Wailuku, Hawaii 96793
CERT.	JAMES T. FUNAKI, ESQ., Attorney for Petitioner Takushi Funaki Wong & Stone Grosvenor Center, Suite 1400 733 Bishop Street Honolulu, Hawaii 96813

CERT. ALAN T. MURAKAMI, ESQ., Attorney for Intervenor  
Native Hawaiian Legal Corporation  
1270 Queen Emma Street, Suite 1004  
Honolulu, Hawaii 96813

CERT. ARNOLD L. LUM, ESQ., Attorney for Intervenor  
Sierra Club Legal Defense Fund  
212 Merchant Street, Suite 202  
Honolulu, Hawaii 96813

CERT. ISAAC D. HALL, ESQ., Attorney for Intervenor  
Lanaians for Sensible Growth  
2087 Wells Street  
Wailuku, Hawaii 96793

DATED: Honolulu, Hawaii, this 16th day of April 1991.

  
\_\_\_\_\_  
ESTHER UEDA  
Executive Officer

# EXHIBIT F

JOHN WAIHEE  
GOVERNOR OF HAWAII



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

AQUACULTURE DEVELOPMENT  
PROGRAM  
AQUATIC RESOURCES  
CONSERVATION AND  
ENVIRONMENTAL AFFAIRS  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
LAND MANAGEMENT  
STATE PARKS  
WATER AND LAND DEVELOPMENT  
DN 0806F  
Refer to:  
ACQ-92 .315

December 18, 1992

Board of Land and  
Natural Resources  
Honolulu, Hawaii

LANAI

SUBJECT: Request for Authorization to Acquire Land  
By Way of a Lease for Proposed Lanai  
Agricultural Park, Lanai, Hawaii, TMK:  
4-9-02: por 1

STATUTE: Sections 171-30, 171-11, 171-112 and  
107-10, Hawaii Revised Statutes

FOR: Lease of portion of land situate Easterly  
of Lanai Airport within Lanai Plantation  
Field No. 5513, together with necessary  
access rights over and across existing  
plantation field roads to the nearest  
government road; being also portion of  
TMK: 4-9-02:01 as shown shaded in yellow  
on map labeled Land Board Exhibit "A"  
appended to the basic file.

APPLICANT: DEPARTMENT OF LAND AND NATURAL RESOURCES  
FOR DEPARTMENT OF AGRICULTURE (DOA).

LANDOWNER & LESSOR: Dole Food Company, Inc., fka Castle &  
Cooke, Inc.

AREA: Approximately 100 acres more or less  
subject to confirmation by Department of  
Accounting and General Services (DAGS),  
Survey Division.

TERM: Fifty Five (55) years.

CONSIDERATION: Nominal Rent.

PURPOSE: Development and Operation of an  
Agricultural Park by the Department of  
Agriculture (DOA).

Board of Land and  
Natural Resources  
Page Two

ZONING: State Land Use Commission: Agriculture  
County of Maui: Agriculture

STATUS: Currently fallow but formerly under  
pineapple cultivation.

WATER: Available from landowners private water  
system.

ELEVATION: Approximately 1,200 ft.

RAINFALL: 20 inches per year approximate

SOIL TYPE: Molokai silty clay loam, Waikapu silty  
clam loam and Uwala silty clay loam.

REMARKS: By Decision and Order rendered by the  
State Land Use Commission under Docket No.  
A89-649, the landowner was granted certain  
changes in the land use classification of  
some 138.577 acres of land situated at  
Manele, Lanai subject to certain  
conditions: One of the conditions imposed  
by the Commission requires the landowner  
to make available 100 acres of land on  
Lanai with an adequate supply of water to  
the DOA and or to the County of Maui for  
the establishment and operation of an  
agricultural park for Lanai residents, at  
nominal rents for a period of 55 years at  
site(s) agreeable to the DOA and the  
County of Maui.

The DOA staff inspected several potential  
sites with the landowners representatives  
and other interested parties and have  
selected the subject area as best suited  
for an agricultural park. This site is  
near the island power plant and Miki  
reservoir and is also adjacent to the main  
plantation road and water lines. The  
Board is authorized under Section 171-112  
Hawaii Revised Statutes, to acquire by  
lease, exchange, direct purchase, or  
eminent domain private property for  
disposition for agricultural purposes  
including agricultural parks.

Board of Land and  
Natural Resources  
Page Three

RECOMMENDATION: That the Board:

- A. Approve of and authorize the acquisition of the subject 100 acre site upon the terms and conditions listed herein and subject to the following additional terms and conditions:
  - 1. Concurrence by the County of Maui
  - 2. Such other terms and conditions as may be mutually agreeable to the State and the landowner.
  - 3. Approval of the lease agreement form by the Office of the Attorney General.
- B. Pending issuance of the lease by the landowner, authorize securing of a right-of-entry to the subject site for planning, engineering and topographic survey purposes.
- C. Upon issuance of the lease, approve of and recommend to the Governor issuance of an executive order setting aside the subject area under the control and management of the Department of Agriculture for Lanai Agricultural Park purposes subject to disapproval by the Legislative in any regular or special session next following the date of the executive order.

Respectfully submitted,



W. MASON YOUNG  
Land Management Administrator

85

APPROVED FOR SUBMITTAL:



WILLIAM W. PATY, Chairperson



# EXHIBIT G

Council Chair  
Alice L. Lee

Vice-Chair  
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore  
Tasha Kama

Councilmembers  
Gabe Johnson  
Kelly Takaya King  
Michael J. Molina  
Tamara Paltin  
Shane M. Sinenci  
Yuki Lei K. Sugimura



**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.MauiCounty.us](http://www.MauiCounty.us)

April 6, 2021

Director of Council Services  
Traci N. T. Fujita, Esq.

2021 APR 12 PM 1:16

RECEIVED  
MAUI DISTRICT  
COUNCIL  
JON

Mr. Daniel Ornellas, District Land Agent  
Department of Land and Natural Resources – Maui District Land Office  
130 Mahalani Street  
Wailuku, Hawaii 96793

Mr. Ornellas:

SUBJECT: **LĀNAʻI AGRICULTURAL PARK LEASE** (PAF 21-084)

I am writing to express the County's interest in accepting the Lānaʻi Agricultural Park lease from the State Department of Land and Natural Resources for the 100-acre agricultural park at Miki Basin. It is in the best interests of County residents that we work collaboratively with the State to take advantage of agricultural opportunities like these. A copy of Resolution 21-54, adopted on March 19, 2021, is attached for your reference.

May I please request you transmit this correspondence to the Board of Land and Natural Resources for their consideration.

To ensure efficient processing, please include the relevant PAF number in the subject line of any response.

Thank you for your consideration. Should you have any questions, please contact me or Legislative Analyst Wilton Leauanae at (808) 270-7761, or Legislative Analyst Kasie Apo Takayama at (808) 270-7665.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alice L. Lee".

ALICE L. LEE  
Council Chair

paf:wal:21-084a  
Attachment

cc: Mayor Michael Victorino

Handwritten initials "MV" and the date "4/22/21".

Exhibit G

---

# Resolution

No. 21-54

## EXPRESSING INTEREST IN ACCEPTING THE LĀNAʻI AGRICULTURAL PARK LEASE

WHEREAS, the Dole Food Company, Inc.—then the predominant landowner on the Island of Lānaʻi—in 1994 granted a 55-year lease to the State of Hawaiʻi for a 100-acre agricultural park at Miki Basin, consistent with a condition imposed by the Land Use Commission for development of the Manele Golf Course; and

WHEREAS, the Lānaʻi Agricultural Park condition is included in a Decision and Order, dated April 16, 1991, available on the Land Use Commission’s website under “A89-649 LĀNAI RESORTS”; and

WHEREAS, the Lānaʻi Agricultural Park condition reads: “Petitioner shall make available 100 acres of land, with an adequate supply of water, to the State Department of Agriculture and or the County of Maui, for their establishment and operation of an agricultural park for Lānai residents, at nominal rents for a 55-year term, at site(s) agreeable to the State Department of Agriculture and the County of Maui”; and

WHEREAS, in an article dated April 3, 2017, *Pacific Business News* reported that the “agricultural park has not made any major moves in the past two decades,” and

WHEREAS, in 2021, with the lease term approximately half over, the Lānaʻi Agricultural Park remains undeveloped; and

WHEREAS, on November 3, 2020, Maui County voters approved a Charter amendment to establish a County Department of Agriculture, effective July 1, 2022, to develop a sustainable regional agricultural system for Maui County, build economic resiliency by increasing opportunities in the agricultural sector, and boost resident health and food security through ensuring access to locally grown food; and

WHEREAS, if the State conveyed the lease to the County, the Lānaʻi Agricultural Park could finally be developed, furthering the objectives of both the 1991 Land Use Commission condition and the 2020 Charter amendment; and

---

**Resolution No. 21-54**

WHEREAS, a letter of interest, notifying the State of the County's interest in accepting the Lānaʻi Agricultural Park, could facilitate negotiations, allowing the County to confirm acceptance would be in the best interests of County residents; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it authorizes the Council Chair write to the State Department of Land and Natural Resources expressing the County's interest in accepting the Lānaʻi Agricultural Park lease;
2. That it urges the Mayor to write to the State Department of Land and Natural Resources expressing the County's interest in accepting the Lānaʻi Agricultural Park lease; and
3. That certified copies of this resolution be transmitted to the Honorable Michael P. Victorino, Mayor, County of Maui.

## COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

### CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that RESOLUTION NO. 21-54, was adopted by the Council of the County of Maui, State of Hawaii, on the 19th day of March, 2021, by the following vote:

MEMBERS	Alice L. LEE Chair	Keani N. W. RAWLINS- FERNANDEZ Vice-Chair	Gabriel JOHNSON	Natalie A. KAMA	Kelly T. KING	Michael J. MOLINA	Tamara A. M. PALTIN	Shane M. SINENCI	Yuki Lei K. SUGIMURA
ROLL CALL	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye



COUNTY CLERK



# EXHIBIT H



DAVID Y. IGE  
GOVERNOR OF HAWAII



SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

April 21, 2022

Mayor Michael P. Victorino  
200 S. High St.  
Kalana O Maui Bldg. 9<sup>th</sup> Floor  
Wailuku, Hawaii 96793

Subject: Lanai Agricultural Park, LOPP No. 216;  
Located at Miki Basin, Island of Lanai, Hawaii;  
TMK: (2) 4-9-002:001 portion

Dear Mayor Victorino:

On March 19, 2021, the Maui County Council unanimously adopted Resolution No. 21-54, expressing interest in acquiring the Lanai agricultural park lease ("Lease"). However, the Lease specifically prohibits the transfer or assignment of the demised land or any portion thereof.

We reached out to Pulama Lanai (the current fee owner hereafter "Pulama") to discuss the Council's interest in acquiring the Lease. Pulama indicated that it may be amenable to amending the lease to allow for an assignment to the County upon certain conditions, and that it would reach out to you to discuss those conditions. We understand a meeting was held but you indicated you needed time to consult with your administration.

We are writing to follow up with you to determine whether the County will be pursuing the acquisition of the Lanai agricultural park lease as aforesaid so that we may plan accordingly.

Very truly yours,

A handwritten signature in cursive script that reads "Suzanne D. Case".

SUZANNE D. CASE <sup>RT</sup>  
Chairperson

cc: District Branch  
Central Files  
Pulama Lanai  
Traci Fujita, Esq. Director, Office of Council Services, Maui County

Exhibit H

# EXHIBIT I

**MICHAEL P. VICTORINO**  
Mayor

**SANDY K. BAZ**  
Managing Director



**OFFICE OF THE MAYOR**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.mauicounty.gov](http://www.mauicounty.gov)

June 29, 2022

Suzanne Case, Chairperson  
Department of Land and Natural  
Resources, State of Hawaii  
Office of the Chairperson  
1151 Punchbowl Street, Room 130  
Honolulu, Hawaii 96813

Dear Ms. Case:

**SUBJECT: Lanai Agricultural Park, Located at Miki Basin, Island of  
Lanai, Hawaii**

This correspondence is to affirm that the County of Maui is interested in acquiring the lease from the State of Hawaii, Department of Land and Natural Resources ("DLNR") regarding the property identified above for the purpose of the County establishing and operating an agricultural park for Lanai residents, pending satisfactory resolution of some concerns.

Should you require any additional information on this matter, please do not hesitate to contact my office at (808) 270-7855. We look forward to working with you in completing this transfer of assets that will benefit the people of the County of Maui and the State of Hawaii.

Sincerely,

A handwritten signature in black ink that reads "Michael P. Victorino".

**MICHAEL P. VICTORINO**  
Mayor, County of Maui

cc: Scott K. Teruya, Director of Finance  
Keiki-Pua Dancil, Pulama Lanai  
Gabe Johnson, Councilmember  
Mimi Desjardins, Deputy Corporation Counsel  
Sandy Baz, Managing Director

**Exhibit I**



DAVID Y. IGE  
GOVERNOR OF HAWAII



RECEIVED  
SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT

22 JUL -8 P2:46

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

OFFICE OF THE MAYOR

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

July 5, 2022

Mayor Michael P. Victorino  
200 S. High St.  
Kalana O Maui Bldg. 9<sup>th</sup> Floor  
Wailuku, Hawaii 96793

Subject: Lanai Agricultural Park, LOPP No. 216;  
Located at Miki Basin, Island of Lanai, Hawaii;  
TMK: (2) 4-9-002:001 portion

Dear Mayor Victorino:

On June 29, 2022, we received your letter affirming the County of Maui is interested in acquiring the Lanai agricultural park lease (Lease) from the State of Hawaii, Department of Land and Natural Resources, "pending satisfactory resolution of some concerns." Please elaborate on what specifically those concerns are.

As previously communicated, the Lease is for private property, not State-owned lands. Therefore, we are bound by the terms of the Lease and cannot freely amend or assign the Lease to the County. We must work with the lessor, Pulama Lanai, to complete the transfer. Accordingly, we ask whether Maui County is currently prepared to accept the lease of the private Lanai lands, "as is, where is"? If yes, we will work expeditiously with Pulama Lanai and our Land Board to obtain the necessary approvals to effectuate the transfer to Maui County.

We would appreciate your attention and timely response to the above questions. If you have any questions or would like to discuss this matter further, you may contact Russell Y. Tsuji of our Land Division at 587-0419.

Very truly yours,

*Suzanne D. Case*

SUZANNE D. CASE <sup>RT</sup>  
Chairperson

cc: District Branch  
Central Files  
Pulama Lanai  
Russell Y. Tsuji

**MICHAEL P. VICTORINO**  
Mayor

**SANDY K. BAZ**  
Managing Director



**OFFICE OF THE MAYOR**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.mauicounty.gov](http://www.mauicounty.gov)

August 3, 2022

Suzanne Case, Chairperson  
Department of Land and Natural  
Resources, State of Hawaii  
Office of the Chairperson  
1151 Punchbowl Street, Room 130  
Honolulu, Hawaii 96813

Dear Ms. Case:

**SUBJECT: Lanai Agricultural Park, LOPP No. 216; Located at Miki Basin,  
Island of Lanai, Hawaii; TMK: (2) 4-9-002:001 portion**

This correspondence is in response to your letter dated July 5, 2022 requesting that the County of Maui ("County") indicate the concerns regarding the agricultural park lease ("Lease") acquisition from the State of Hawaii.

A new Department of Agriculture was established in July 2022 for the County of Maui. This new department is tasked with the establishment of the Lanai Agricultural Park. Our new Director Rogerene "Kali" Arce and new Deputy Director Weston Yap connected with Pulama Lanai and a site visit to Lanai is currently scheduled for August 29, 2022, where our department heads will be able to specifically discuss the aforementioned concerns. Director Arce will be your point of contact moving forward. She can be reached by email at [rogerene.arce@mauicounty.gov](mailto:rogerene.arce@mauicounty.gov) or by phone to (808) 270-8276.

We do not anticipate these challenges to be insurmountable, and we appreciate the continued efforts of completing this transfer of assets. These actions will continue to help us set a baseline for Maui's agriculture communities and will help us to further align our initiatives and resources. Should you require any additional information on this matter, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in black ink that reads "Michael P. Victorino".

MICHAEL P. VICTORINO  
Mayor, County of Maui

cc: Sandy Baz, Managing Director  
Scott K. Teruya, Director of Finance  
Mimi Desjardins, Deputy Corporation Counsel  
Rogerene Arce, Director of Agriculture  
Pulama Lanai  
Gabe Johnson, Councilmember