

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

March 24, 2023

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

Ref: EO 4584

OAHU

Report on Board of Land and Natural Resources' Questions to the Department of Agriculture and Hawaii Land & Livestock LLC Relating to the Cancellation of Governor's Executive Order No. 4584 to the Department of Agriculture for Agriculture Purposes, Honouliuli, Ewa, Oahu, Tax Map Key (1) 9-1-031:001.

BACKGROUND:

This matter was originally deferred by the Board of Land and Natural Resources (Board) at its meeting of December 9, 2022 under agenda item D-11 for 60 days. A copy of the submittal is attached as **Exhibit 1**. The deferral was to allow Mr. Farias of Hawaii Land & Livestock, LCC (HLL) to report on (1) a schedule for the removal of the industrial equipment and objects from the subject 110-acre parcel; and (2) HLL's plan for use of the subject 110-acre parcel.

On December 27, 2022, staff sent an email to the Department of Agriculture (DOA) reiterating the Board's directives and requesting a copy of the same information be copied to the Division prior to the meeting. DOA acknowledged receipt of the email.

On January 23, 2023, the DOA Chairperson advised the Department of Land and Natural Resources (DLNR) that:

HDOA requests that the matter of an amendment to the lease to Bobby Farias/Hawaii Meats and HDOA be postponed. This was subject to an item being submitted by February 1, 2023 for the February 10, 2023 Land Board Meeting for the Board to consider returning some of the "air rights" to DLNR so long as agriculture production can continue. This return of the land's air rights was due to a DLNR inspection of the Kalaeloa property, where it was noted that the lessee was using the property for other than agriculture production use and the land was being used as a trucking equipment storage area. Since then, the trucking company (All American) has agreed to vacate by March 31, 2023, requiring his relocation from the property by April 1, 2023. This would be for other than specific equipment

necessary to conduct the business of trucking on behalf of Hawaii Meats, such as trucking equipment for hauling containers of cattle and equipment directly related to clearing the property and hauling debris.

Staff notes that the December 9, 2022 submittal actually recommended a cancellation of the Executive Order (“EO”) due to the activities observed on the subject parcel, which were not consistent with the public purposes stated in the EO. Under the EO itself, the Board has already reserved the “air rights” to issue leases for renewable energy project on the parcel¹ and the above-mentioned submittal was not related to any “returning of some of the air rights...” as suggested by DOA’s email.

While the above email is responsive to the first item required by the Board as to the schedule for the removal of industrial equipment from the subject parcel, it does not discuss the planned use of the parcel. By email dated December 27, 2022, DLNR requested DOA to provide a non-action informational update to the Board on HLL’s plan for use of the subject 110-acre parcel at today’s meeting.

As requested by the Board at its December 9, 2022, meeting, staff returned to provide a report to the Board on HLL’s plans for removal of the industrial equipment and future agricultural usage of the subject parcel at the Board’s meeting of February 10, 2023, under agenda Item D-4. While DOA Deputy Director Morris Atta attended, Mr. Farias was not present at this meeting and Deputy Atta was not able to answer the Board’s questions which were largely specific to HLL’s progress and plans for the parcel. The Board requested the written questions be sent to Mr. Farias and that Mr. Farias respond to these questions in writing prior to returning to the Board. The Board also requested Mr. Farias’ presence in person.

On February 16, 2023, staff sent a memorandum to DOA enclosing the Board’s questions, this memorandum is attached as **Exhibit 2**. On February 28, 2023, Mr. Farias of HLL and Mr. Eddington of Hawaii Meats LLC (HM) sent written responses to DOA which DOA then forwarded to staff, these responses are attached as **Exhibit 3**. Staff reviewed these responses and provides the following comments in response:

1. Board Member Smith Question:

Does DOA have the ability to manage this lease based on their statements at the last meeting? Does DOA have expertise to manage this lease?

HLL/HM Response:

We have been pleased to cooperate with DOA staff throughout the duration of the lease and believe we have been able to work together effectively to answer questions and resolve issues. While we do not feel it is appropriate here to give

¹ The reservation in the EO is more accurately stated as, “RESERVING to the State of Hawaii, Board of Land and Natural Resources the right to issue leases for renewable energy projects on the land to the extent such leases will not unreasonably interfere with the State of Hawaii, Department of Agriculture’s use of the land”

our opinion on the effectiveness or capability of either the DOA or the DLNR, we respectfully request ongoing communication and coordination between the two government agencies so that we can effectively carry out our commercial operations with certainty and a clear understanding of expectations to the benefit of agriculture and food sustainability across the state.

DLNR Comment:

No Comments.

2. Board Member Smith Question:

Do you know the last time Mr. Farias was physically on the property as he doesn't live here anymore? Confirm that lessee is at least periodically present at the property.

HLL/HM Response:

Mr. Farias is part of a third generation Kauai ranching family, born a kama'aina and an ongoing resident of Hawaii. Unfortunately, personal family concerns have necessitated Mr. Farias spending more time in Texas. However, he travels regularly to Hawaii, including to the "feed lot" property. In fact, at the time of DLNR's February 10, 2023 board meeting, Mr. Farias was in Honolulu and would have been pleased to attend in person if we had understood his presence to be required.

By way of background, Mr. Farias, through his company Hawaii Land and Livestock LLC, is in a commercial partnership with Hawaii Meats LLC and its owner, which fund and operate the beef harvest plant located on the neighboring property. The two entities coordinate and cooperate in the active and ongoing management of both Lease S-8500 (the harvest facility) and Lease S-3138 (the "feedlot").

DLNR Comment:

This only answers half the question and does not answer Member Smith's question of when Mr. Farias was last physically on the property.

3. Board Member Smith Question:

DLNR has the right to use some of the property. Please confirm with tenant before returning that he understands the reservation in the lease in favor of DLNR.

HLL/HM Response:

We are of course happy to confirm that we understand the terms of the Executive Order No. 4584, in particular the 3rd paragraph of that order, "reserving to the State of Hawaii, Board of Land and Natural Resources the right to issue leases for renewable energy projects on the land to the extent such leases will not unreasonably interfere with the State of Hawaii, Department of

Agriculture's use of the land." See attached Exhibit A.

However, please note that the term "air rights" has been used repeatedly by many parties including in writing by members of the BLNR in reference to the above reservation. We are unable to find any contractual or legal basis for the use of this term. We believe the proper understanding of the reservation in favor of the State, is more accurately stated exactly as the language of the executive order specifies, namely, "leases for renewable energy projects" that do not "unreasonably interfere" with the DOA's use of the land.

This proper understanding of the nature of the reservation is exactly on point to understanding our interactions with the Eurus Energy Project. Eurus was first introduced by a member of the Board of the DLNR pursuant to an email on April 4th, 2020 stating that the DLNR was interested in a project that could "benefit both Bobby and DLNR". See attached Exhibit B. Numerous meetings were held by the lessee with representatives of the Eurus Energy Project. Eurus made it clear early in the process that it required an outright lease of 90 acres of the feedlot and was unwilling to consider options such as elevating the solar panels in order to attempt to not "unreasonably interfere" with the use of the property. As a result, the lessee opposed further access to the property by Eurus which ultimately led to a hearing by DLNR requiring a right of entry for Eurus. We have cooperated fully with subsequent access by Eurus.

DLNR Comment:

The EO expressly reserves "land" for renewable energy, not just "air rights." Under our statute and rules, land includes subsurface (e.g., steam for geothermal energy), submerged lands, water column, in addition to air space over the land. Eurus Energy is still exploring the possibility of elevating the solar panels for its proposed renewable energy project so as not to unreasonably interfere with DOA's and HLL's use of the land.

4. Board Member Smith Question:

Mr. Farias' February 6 letter talks about the important factor of 20,000 gallons per day (GPD) of water for the slaughter facility. The Board of Water Supply (BWS) does not typically consent to allow water from one parcel to go to another parcel. If tenant relies on that, it is not a good statement to put in a document. If Mr. Farias is saying it is critical to his operation, then he needs to confirm with BWS that the arrangement is permissible, Member Smith does not think it is.

HLL/HM Response:

The need for additional water beyond the 800 gallon per acre per day allocation has been recognized, documented and approved by each of the governmental entities involved in the lease of the feedlot parcel.

In 2016, a request was sent from the Chairperson of the DOA to the DLNR requesting an additional water allocation for the benefit of the plant lessee which was, at the time, Hawaii Livestock Cooperative. See attached Exhibit C. The 2016 letter notes that the Campbell Industrial Park restricts water usage to 800 gallons per acre per day and explains that this water allocation is “short of the 32,000 gallons per day required” by the tenant at the time based on the size of their operations. Please note that based on the more than \$20 million dollars that Hawaii Meats has invested in the equipment and operation of the facility, the capacity has significantly increased. This activity is prior to either Hawaii Land and Livestock or Hawaii Meat having any part of the lease on the property.

In 2018, the need for additional water to be allocated from the feedlot parcel to the plant was again expressly contemplated and approved at a DLNR Board meeting where the DLNR Board recommended the issuance of the Executive Order transferring the feedlot property to the jurisdiction DOA. The meeting minutes specifically reference “the needed water allocation for an adjacent property,” meaning the plant. The meeting minutes note that the DLNR consulted with various government agencies including the Board of Water Supply which had “no objections”. See Exhibit D.

Finally, the plant lease itself, Lease S-8500, states in Special Condition 15 that the Lessor will provide “approximately 20,000 gallons per day above the amount allocated to the Lessee” and that “Lessor shall request such additional amount of domestic water from the bulk allocation of water available for State of Hawaii projects, but until such time that the Lessor is able to procure such additional amount of domestic water the Lessor shall procure such additional amount of domestic water from the Department of Land and Natural Resources.” See Exhibit E.

Finally, as a matter of simple practicality, we are aware of only one water meter. The water meter is located on the plant parcel, and not on the feedlot property. The Board of Water Resources has been billing, and the tenant has been paying, the water usage bill on a combined allocation basis.

DLNR Comment:

This explanation makes sense and seems to address most of Member Smith’s questions. However, HLL/HM do not outright say that BWS is fine with water from one parcel being used on another. If the assertion that there is only one meter for the two parcels and that it is located on slaughterhouse parcel is correct and HLL/HM have been paying the full bill for water for usage across both parcels, then it seems BWS may not be concerned. That said, when Mr. Farias is referring to 20,000 gpd of water, he is referring to DOA and the slaughterhouse lease, if any, and not the lease to the subject parcel for which DOA issued a separate lease with no reference to right to water in the amount of 20,000 gpd.

5. Board Member Ono Question:

Before issuing the lease, did DOA inspect the property to verify that there was no scrap metal on the parcel already or was it cleared? Lessee should be involved in these hearings.

HLL/HM Response:

To the best of our knowledge, neither DLNR nor DOA cleared, inspected, documented or inventoried the condition of the property to identify trash, squatters, deteriorating concrete and metal improvements from the prior feedlot tenants etc. prior to the handover of the property from the DLNR to the DOA or the execution of the feedlot lease. On March 16, 2022 we were notified that a Phase II Environmental Survey was conducted in 2008 which identified possible areas of contamination on a part of the property.

In addition to rent and common area charges for a property not yet suitable for use, we have spent over \$150,000 to clear the property of rusted metal and extraneous concrete. Kiawe trees and other plant materials have been cleared, mulched and spread over the area to promote future grass growth. Where possible, rock and concrete have been crushed and are being used as a base for roadways.

DLNR Comment

Staff visited the subject land regarding a homeless encampment sometime in the lead-up to the handover to DOA. HLL/HM's comment about already spending over \$150,000 to clear the property does not seem relevant. HLL/HM should have been aware of the work required to make the site usable prior to entering an agreement with DOA. Spending money to clear land is just the nature of any project at the feedlot and not relevant to the question. It was Mr. Farias' responsibility to do his due diligence and inspect the property before signing this lease. He is fortunate to have a directly negotiated lease from DOA at a very low rental rate, especially considering the actual use of the site. HRS Chapter 171, which governs public lands, requires an auction² for commercial uses, including cattle holding or feedlot leases. However, renewable energy projects are eligible for directly negotiated leases under Section 171-95, HRS. The legislature expressed its desire for the State to prioritize renewable energy projects and Governors in recent history (e.g., at least since Linda Lingle) expressed their support of renewable energy projects on State lands.

6. Board Member Yoon Question:

Where is American Hauling going to relocate to?

HLL/HM Response:

As explained in our prior letter of February 6, 2023, American Hauling, Inc.

² The upset rent for a public auction would be established by appraisal at fair market value. HRS171-17(a).

existed on the plant site prior to Kunoa obtaining the lease. They were relocated to the adjacent feedlot in order for the slaughterhouse to proceed with its renovations. The DOA inspected the properties and via a letter dated September 17, 2020 approved the use of the feedlot for this purpose. The DOA revoked this approval on November 15, 2022 and as a result of that action we have sent a multiple written demands to American Hauling to relocate from the premises. Although we were willing to file an eviction action against American Hauling, after discussions with the DOA, we have asked American Hauling to execute an Agreement to Vacate that requires their relocation by April 1, 2023. A small area will be allowed to house equipment directly related to their work supporting the harvest facility including hauling cattle, and clearing the feedlot site.

As noted above, American Hauling was on the premises before we arrived. We have no agreement with American Hauling regarding their occupancy, we do not receive rent from American Hauling and we are willing to take all legal remedies at our disposal to remove American Hauling from the premises.

We do not have any knowledge of where American Hauling intends to relocate.

DLNR Comment:

HLL/HM say that they have asked American Hauling to execute an agreement to vacate by April 1, 2023 implying that they will be off the property by that point. At the December 9, 2022 Board meeting, Mr. Farias said that it would probably take a year to relocate American Hauling's materials and that American Hauling had just begun the process of trying to find/secure an alternate base yard site. April 1 seems unrealistically ambitious and raises the question of whether American Hauling has actually executed the agreement to vacate. There is abundant open space on the slaughterhouse parcel, including the derelict old building site. What HLL/HM describe as equipment directly related to their work supporting the harvest facility and clearing the feedlot site could probably be situated there and not at all on the feedlot. There is no fencing between the two parcels and any vehicles that would need to access the feedlot for clearance purposes could just drive over. Staff is surprised by Mr. Farias' recent claim that he had nothing to do with allowing American Hauling to use the leased premises for a "boneyard" (a term used earlier by Mr. Farias to describe the industrial use and heavy equipment on the site). Staff wonders who else would have allowed American Hauling to use the site as a "boneyard" rent-free?

7. Board Member Yoon Question:
Will Mr. Farias be available next meeting?

HLL/HM Response:

The undersigned representatives of both Hawaii Land & Livestock and Hawaii

Meats would be pleased to attend the next meeting. We would be grateful for notice in advance of the time and place such meeting.

DLNR Comment:

No comments.

8. Board Member Canto Question:

Mr. Farias' letter mentions 20,000 GPD water which is a very precise amount. Please provide an explanation of that amount.

HLL/HM Response:

Please see our answer to question (4) above and the relevant provisions of the plant lease agreement referenced both there and in our prior letter dated February 6, 2023.

DLNR Comment:

No additional comments beyond #4 above.

9. Board Member Canto Question:

Mr. Farias mentioned potential partnerships with other farms, more info please?

HLL/HM Response:

Please see our response to question 11 below.

DLNR Comment:

No comments.

10. Board Member Canto Question:

Mr. Farias says that he is considering Suma Farms as a potential partner. Next time around Member Canto wants more information on whether partnerships are in place and how stable they are.

HLL/HM Response:

Please see our response to question 11 below.

DLNR Comment:

HLL/HM discuss a potential partnership with Suma Farms and mention the hog farmers but offer no information on progress of discussions toward a partnership or how stable they may be. Staff is skeptical about Suma farms coming in and growing 40+ acres of grass. At prior meetings Mr. Farias has repeatedly said that the feedlot is not capable of growing much due to the coral being right below the surface. HLL/HM mention potential soil building but for an area of that acreage, it could be many years before growing anything

productive is feasible.

11. Board Member Char Question:

Member Char wants Mr. Farias to provide details as to what he intends to use the property for, not just assure that it will be cleared of the noncompliant trucking company material. Mr. Farias needs to explain the agricultural use as he said at the last meeting that it was no longer suitable for a feedlot.

HLL/HM Response:

We are committed to the mission of creating a viable sustainable beef industry in Hawaii. We strongly believe this will benefit not only cattle ranchers and consumers but also result in even better stewardship of the land. We have approached this mission with prioritized investment focusing on the immediate challenges. In a short period of time we have significantly invested in and improved the quality and capacity of the harvest facility. Notwithstanding the challenging environment of the pandemic, we were able to source parts and equipment, hire staff and continuously operate the harvest facility. At the same time, we have cleared and improved the condition of the feedlot property in anticipation of being able to use the property for not only the additional water allocation discussed above, but also for complementary agricultural purposes. Some of these agricultural purposes include the following:

- Feedlot: the property is suitable for a feedlot but the challenge of operating a feedlot in Hawaii is sourcing economical feed. Currently, there is no commercially available feed for cattle and the site is not able to grow the amount of grass/feed needed to support a continuous feeding operation. Part of the restoration will be to develop that opportunity with soil building and potential irrigation.
- Hog Farmers: The hog farmers have approached the state for an appropriation to construct and manage a small animal slaughterhouse. It would require 3-5 acres. A bill/appropriation is currently being considered by the legislature.
- Suma Farms: Suma Farms is working to develop a Hawaii grown feed source for cattle that would support better weight gain and finishing operations. They are also proposing a bio digester that would assist with harvest facility waste disposal. This would require approximate 40 acres.
- Harvest Facility: the plant itself needs an overflow area capable of holding cattle awaiting processing. This would require a minimum of 10 acres.

These partnerships are in process, but we are aware that any sublease arrangement requires approval by the DOA.

DLNR Comment:

As with #10 above, HLL/HM talk about potential partnerships at some point in the future but provide no concrete explanation of how they intend to physically use the land which seemed to be the direction of the Board's questions, rather than asking for vague contemplations of future partnerships. Mr. Farias will have to show how these other uses he talks about are allowed under the use restrictions in the EO and the DOA lease. The "harvest facility" is not on the feedlot parcel but Mr. Farias is referring to the slaughterhouse, which is under a separate DOA lease. To the extent Mr. Farias is thinking about renewable energy, under the EO, it will be limited to energy only for the feedlot parcel. DLNR has the reservation to do renewable energy projects, whether to sell power directly back to the grid (requiring a PPA with HECO) or not (e.g., what Eurus is contemplating with Hawaii Gas).

12. Russell Tsuji Question:

Asked Mr. Atta about the 3-year deadline in the lease requiring the lessee to utilize at least 50% of the land for agriculture and earn at least 50% of its income from agricultural operations on the parcel.

HLL/HM Response:

We believe that we can achieve this agricultural use objective without difficulty, but we will require additional time to finalize the agricultural partnerships described above. It is our understanding that the DOA has the discretion to grant time extensions as they deem appropriate. We intend to seek the approval of the Board of the DOA to receive an extension of time based on their evaluation of our proposed use of the property.

DLNR Comment:

HLL/HM have had the land for over 3 years and unless the hauling company is paying them rent, they do not appear to directly generate any income from the feedlot parcel, much less 50% of their revenue from agricultural activity on the parcel. They do not appear to currently be using any of the land for agriculture. When it comes down to it, if DOA is going to give them an extension every time they want more time, this lease provision seems kind of pointless. Mr. Farias also seems to miss the point. The 3-year deadline came and went already. It is unclear why anyone would sign a lease years ago knowing they would not be able to utilize the site without later finding others to form partnerships to help use the land, unless that person who signed the lease did not need (or had only a minimal need) the land for its operations and signed the lease for another purpose (e.g., water?).

13. Russell Tsuji Question:

Where in the DOA lease is the guarantee of 20,000 GPD, or any water at all?

HLL/HM Response:

Please see our answer to question (4) above and the relevant provisions of the plant lease agreement referenced both there and in our prior letter dated February 6, 2022.

DLNR Comment:

No additional comments beyond #4 above.

Finally, staff has been informed that DOA intends to seek an amendment to General Lease No. S-3138 to HLL for use of the feedlot parcel at the next meeting of the Board of Agriculture. Staff inquired with DOA on March 8, 2023, as to the intent of the proposed amendment but as of March 14, 2023, have not received a response.

Respectfully Submitted,

Luke Sarvis

Luke J. Sarvis
Project Development Specialist

APPROVED FOR SUBMITTAL:



RT

Dawn N. S. Chang, Chairperson

EXHIBIT 1

DEFERRED

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

December 9, 2022

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

OAHU

Cancellation of Governor's Executive Order No. 4584 to the Department of Agriculture for Agriculture Purposes, Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-1-031:001.

APPLICANT:

Department of Agriculture.

LEGAL REFERENCE:

Sections 171-6 and 11, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-1-031: 001, as shown on the attached map labeled **Exhibit A**.

AREA:

110 acres, more or less.

ZONING:

State Land Use District: Urban
County Zoning: I-2 Intensive Industrial District

TRUST LAND STATUS:

Acquired after 8/59, i.e., non-ceded.

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

CURRENT USE STATUS:

Deferred
~~APPROVED~~ BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
December 8-9, 2022 *Go.*

Governor's Executive Order No. 4584 setting aside to the Department of Agriculture (DOA) for agriculture purposes. DOA subsequently leased the land to Hawaii Land & Livestock, LLC (HLL) under DOA General Lease No. S-3138 for diversified agriculture¹ including animal feedlot purposes for finishing prior to slaughter of livestock.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-16 and the Exemption List for the Department of Land and Natural Resources (Department) 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 1 that states, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features involving minor expansion or minor change of use beyond that previously existing" and Part 1, Item 36 that states, "Transfer of management authority over state-owned land, such as setting aside of state lands to or from other government agency through a Governor's Executive Order".

The proposed disposition 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.

REMARKS:

At its meeting of November 9, 2018, the Board of Land and Natural Resources (Board) approved the set aside of the subject parcel to DOA for agricultural purposes. The subject parcel was formally set aside via Executive Order No. 4584 on May 15, 2019, subject to a reservation to the Board of the right to issue leases for renewable energy projects on the land provided that the projects do not unreasonably interfere with DOA's or its lessee's use of the land for agricultural purposes.²

On December 26, 2019, DOA executed General Lease No. S-3138 with HLL for a term of 35 years. The lease was solely for Diversified Agriculture including animal feedlot purposes for finishing prior to slaughter of livestock and the lease specified that DOA

¹ "Diversified agriculture" as defined in the lease means the conduct of activities concerned with the production and marketing of nursery products and horticultural crops such as vegetables, melons, orchards, flowers, foliage, and others, including activities related thereto, and shall include aquaculture, livestock feedlot operations for temporary holding of cattle, sheep, goats, hogs and any approved animals.

² The Department reserved rights for developing renewable energy projects on the land because the land was once designated as income-producing as a prime site for renewable energy projects with its location in Campbell Industrial Park across a Hawaiian Electric Company, Inc. (HECO) facility and close to the west side energy corridor. The land was previously under a Board-approved development agreement for a renewable energy project, but the developer was not able to secure the HECO power purchase agreement for its project and the development agreement terminated. Soon thereafter, DOA requested the land be transferred to it.

maintained the right to withdraw any portion of the premises for leasing to renewable energy producers and/or for the creation of photovoltaic projects and supporting infrastructure.

At its meeting of April 8, 2022, under agenda item D-4,³ the Board authorized the issuance of a right-of-entry permit to Eurus Energy America LLC (Eurus) for due diligence purpose regarding a proposed renewable energy project planned on the subject parcel.

As reported in the April 2022 submittal:

staff visited the subject parcel on January 21 and February 22, 2022. On these visits staff observed that a significant portion of the parcel is being used for purposes other than those prescribed in the lease and executive order. There is what appears to be an extensive industrial base yard running along the makai portion of the parcel parallel to Olai Road. Staff documented numerous excavators and other heavy equipment, shipping containers and rusting trailers stacked and strewn throughout the parcel, large piles of what appear to be construction fill and rubble, abandoned and wrecked vehicles ranging from cars to construction equipment to semi-trucks, large vehicle repair bays and support structures, stacks of concrete girders and barriers, and other industrial and construction materials. Aside from a small corral situated behind the HLL office, staff did not observe any cattle or other agricultural activity taking place on the subject parcel.

HLL employees explained that the vehicles and materials located on the subject parcel are the property of a hauling company that provides hauling services in support of HLL's slaughterhouse business, and that its use of the subject parcel was with the permission of HLL.

At the April 8, 2022 Board meeting, representatives from both DOA and its tenant disagreed with the division's position and responded that the presence of the heavy equipment and vehicles observed was not abnormal for a large farm operation. DOA and its tenant explained that the equipment and vehicles were meant to be utilized for the agricultural use as permitted under DOA's lease. Since the April 2022 meeting was for the issuance of a right-of-entry to Eurus, staff did not pursue any remedy for the discrepancy noted between the public purposes in EO 4584 and the actual use Land Division staff observed on the ground.

Another site visit to the subject property was conducted on November 1, 2022, this time led by Chairperson Case. The site inspection team observed the same use being made of the land as Land Division staff had noted during its inspections of January and February 2022. Heavy construction equipment and vehicles were still present and there was no sign of any active agricultural use on the property. The best description of the use observed by the Department on November 1, 2022 is base yard for industrial activities. Multiple photos taken during the latest site visit are attached as **Exhibits B-1 to B-3** for the Board's reference.

³ Submittal can be downloaded from <https://dlnr.hawaii.gov/wp-content/uploads/2022/04/D-4.pdf>

Staff notes that the ongoing use of subject parcel as an industrial base yard is not compliant with the terms of Executive Order No. 4584. Staff believes proper utilization of State land following the permitted uses is the key as a steward of the natural resources. Therefore, staff recommends the Board authorize the cancellation of Executive Order No. 4584. Upon approval, Land Division will assume the ongoing management of the subject parcel as the Lessor under DOA General Lease No. S-3138.

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, 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. Approve of and recommend to the Governor issuance of an executive order cancelling Governor's Executive Order No. 4584, subject to:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Barry Cheung

Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:

Suzanne D. Case

Suzanne D. Case, Chairperson

Land Board Meeting: December 8-9, 2022;
D-11: Deferred for sixty (60) days.

Deferred for sixty (60) days.¹ *for* *RT* Mr. Farias of Hawaii Land & Livestock, LLC to report on (1) a schedule for the removal of the industrial equipment and objects from the subject 110-acre parcel; and (2) its plans for use of the subject 110-acre parcel.

¹ To be scheduled on the first Board meeting in February; February 10, 2023.



TMK: (1) 9-1-031:001

EXHIBIT A



EXHIBIT B-1

Industrial Uses



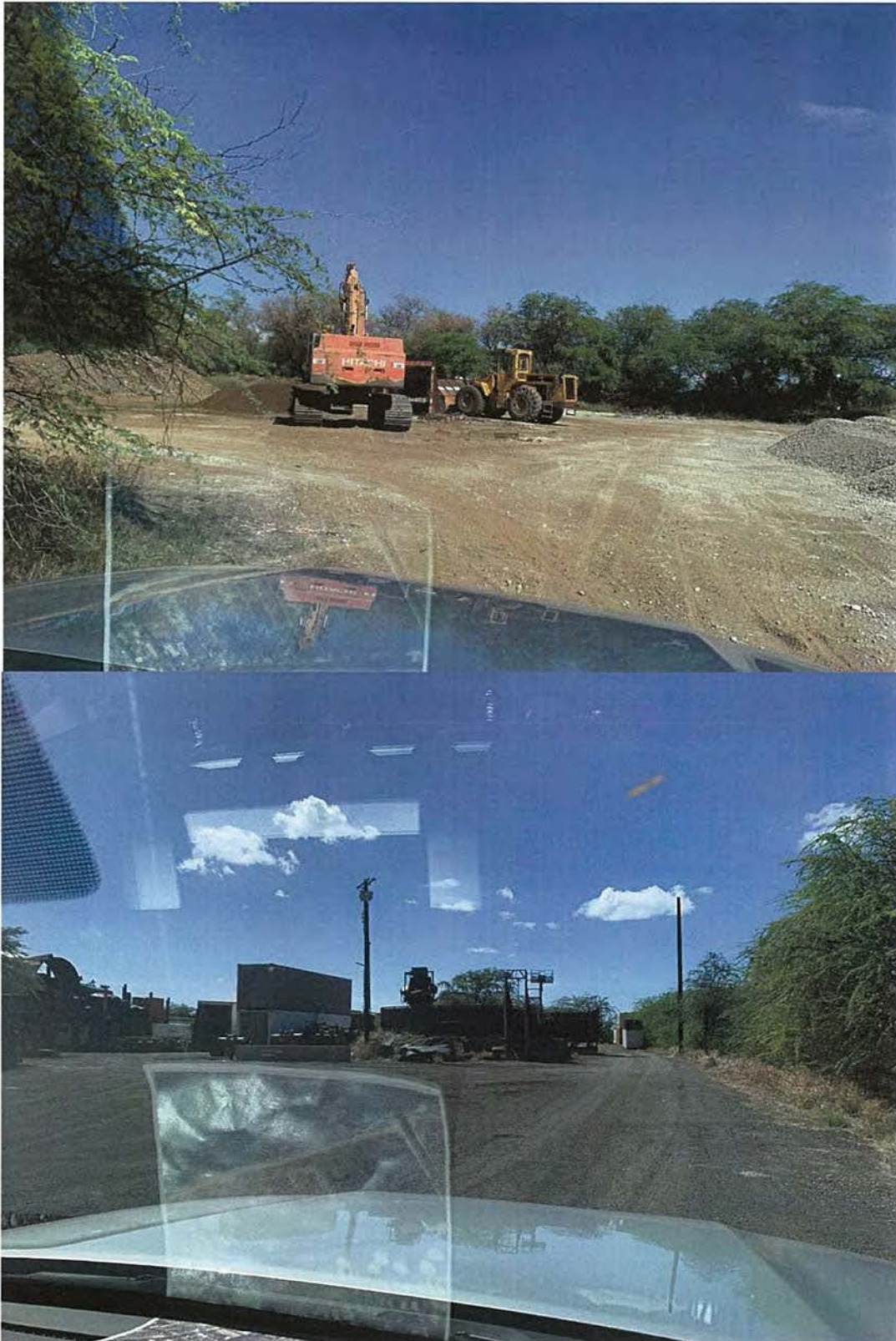












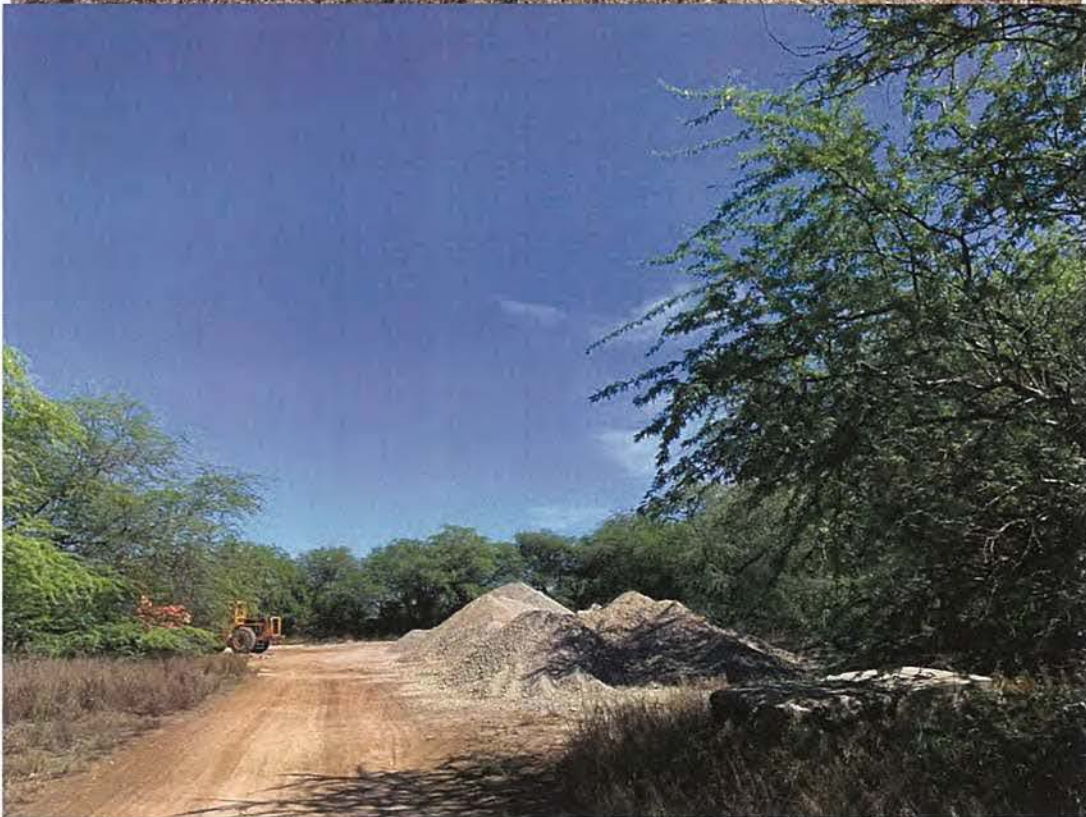






EXHIBIT B-2

Unused land, recently cleared, no known permit







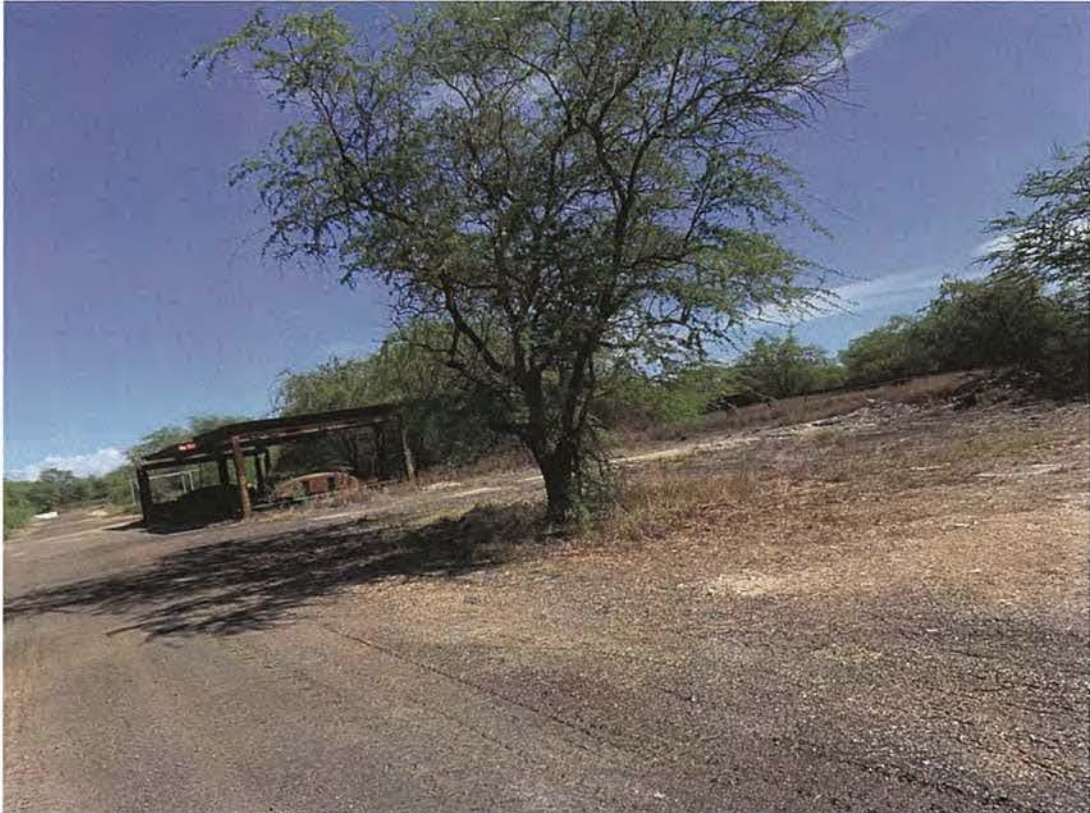










EXHIBIT B-3
Holding pen, on the adjacent slaughterhouse

EXHIBIT 2

EXHIBIT 2

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621
HONOLULU, HAWAII 96809

February 16, 2023

DAWN N. S. CHANG

CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

LAURA H.E. KAKUA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

TO: Sharon Hurd
Chairperson, Department of Agriculture

Morris Atta
Deputy Chairperson, Department of Agriculture

FROM: *RT* Dawn N. S. Chang, Chairperson
Board of Land and Natural Resources

A handwritten signature in black ink, appearing to be "D", is written over the name "Dawn N. S. Chang".

SUBJECT: Board of Land and Natural Resources Questions for Department of Agriculture and Bobby Farias Regarding Plans for Agricultural Usage of the Feedlot Located at Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-1-031:001.

Dear Chairperson Hurd and Deputy Chairperson Atta,

Thank you, Mr. Atta, for your attendance at the February 10, 2023, Board of Land and Natural Resources (Board) on behalf of your lessee, Hawaii Land & Livestock, LLC (HLL). Mr. Atta assured the Board that he would be present along with Mr. Bobby Farias, principal of HLL, at a future meeting to provide HLL's plan for the use of the subject 110-acre parcel and answer the questions raised at the February 10, 2023, meeting. Board members and Land Division Administrator Russell Tsuji would appreciate Mr. Atta's and Mr. Farias' written answers to the following questions prior to returning to the Board at its meeting of March 10th or 24th. Please share this letter with Mr. Farias and confirm with Land Division staff which Board meeting Department of Agriculture (DOA) staff and Mr. Farias intend to attend.

Member Smith:

Does DOA have the ability to manage this lease based on their statements at the last meeting?
Does DOA have expertise to manage this lease?

Do you know the last time Mr. Farias was physically on the property as he doesn't live here anymore? Confirm that lessee is at least periodically present at the property.

The Department of Land and Natural Resources (DLNR) has the right to use some of the property. Please confirm with tenant before returning that he understands the reservation in the lease in favor of DLNR.

Mr. Farias' February 6 letter talks about the important factor of 20,000 gallons per day (GPD) of water for the slaughter facility. The Board of Water Supply (BWS) does not typically consent to allow water from one parcel to go to another parcel. If tenant relies on that, it is not a good statement to put in a document. If Mr. Farias is saying it is critical to his operation, then he needs to confirm with BWS that the arrangement is permissible, Member Smith does not think it is.

Member Ono:

Before issuing the lease, did DOA inspect the property to verify that there was no scrap metal on the parcel already or was it cleared? Lessee should be involved in these hearings.

Member Yoon:

Where is American Hauling going to relocate to? Will Mr. Farias be available next meeting?

Member Canto:

Mr. Farias' letter mentions 20,000 GPD water which is a very precise amount. Please provide an explanation of that amount.

Mr. Farias mentioned potential partnerships with other farms, more info please?

Mr. Farias says that he is considering Suma Farms as a potential partner. Next time around Member Canto wants more information on whether partnerships are in place and how stable they are.

Member Char:

Wants Mr. Farias to provide details as to what he intends to use the property for, not just assure that it will be cleared of the noncompliant trucking company material. Mr. Farias needs to explain the agricultural use as he said at the last meeting that it was no longer suitable for a feedlot.

Russell Tsuji:

Asked Mr. Atta about the 3-year deadline in the lease requiring the lessee to utilize at least 50% of the land for agriculture and earn at least 50% of its income from agricultural operations on the parcel.

Where in the DOA lease is the guarantee of 20,000 GPD, or any water at all?

If you have any questions, please feel free to contact Land Division Administrator Russell Tsuji at [REDACTED] Thank you for your attention to this matter.

EXHIBIT 3

EXHIBIT 3

Hawaii Land & Livestock LLC | Hawaii Meats LLC

February 28, 2023

Chair Sharon Hurd
Department of Agriculture
1428 South King Street
Honolulu, Hawaii 96814

Re: Response to February 16, 2023 Letter from the Board of Land and Natural Resources to the Department of Agriculture.

Dear Chair Hurd,

This letter is in response to the questions in the Board of Land and Natural Resources letter forwarded to us on February 17, 2023. As always, we are happy to cooperate and provide your office with any additional information that the DOA requires for itself or in connection with the discussions between the DLNR and the DOA.

Our responses to the Board of Land and Natural Resources' questions in their letter are, in order, as follows:

(1) "Does the DOA have the ability to manage this lease..."

We have been pleased to cooperate with DOA staff throughout the duration of the lease and believe we have been able to work together effectively to answer questions and resolve issues. While we do not feel it is appropriate here to give our opinion on the effectiveness or capability of either the DOA or the DLNR, we respectfully request ongoing communication and coordination between the two government agencies so that we can effectively carry out our commercial operations with certainty and a clear understanding of expectations to the benefit of agriculture and food sustainability across the state.

(2) "Confirm that lessee is at least periodically present at the property."

Mr. Farias is part of a third generation Kauai ranching family, born a kama'aina and an ongoing resident of Hawaii. Unfortunately, personal family concerns have necessitated Mr. Farias spending more time in Texas. However, he travels regularly to Hawaii, including to the "feed lot" property. In fact, at the time of DLNR's February 10, 2023 board meeting, Mr. Farias was in Honolulu and would have been pleased to attend in person if we had understood his presence to be required.

By way of background, Mr. Farias, through his company Hawaii Land and Livestock LLC, is in a commercial partnership with Hawaii Meats LLC and its owner, which fund and operate the beef harvest plant located on the neighboring property. The two entities coordinate and cooperate in the active and ongoing management of both Lease S-8500 (the harvest facility) and Lease S-3138 (the “feedlot”).

(3) “Confirm with tenant...that he understand the reservation ...in favor of DLNR.”

We are of course happy to confirm that we understand the terms of Executive Order No. 4584, in particular the 3rd paragraph of that Order, “reserving to the State of Hawaii, Board of Land and Natural Resources the right to issue leases for renewable energy projects on the land to the extent such leases will not unreasonably interfere with the State of Hawaii, Department of Agriculture’s use of land.” See attached Exhibit A.

However, please note that the term “air rights” has been used repeatedly by many parties including in writing by members of the BLNR in reference to the above reservation. We are unable to find any contractual or legal basis for the use of this term. We believe the proper understanding of the reservation in favor of the State, is more accurately stated exactly as the language of the Executive Order specifies, namely, “leases for renewable energy projects” that do not “unreasonably interfere” with the DOA’s use of the land.

This proper understanding of the nature of the reservation is exactly on point to understanding our interactions with the Eurus Energy Project. Eurus was first introduced by a member of the Board of the DLNR pursuant to an email on April 4th 2020 stating that that DLNR was interested in a project that could “benefit both Bobby and DLNR”. See attached Exhibit B. Numerous meetings were held by the lessee with representatives of the Eurus Energy Project. Eurus made it clear early in the process that it required an outright lease of 90 acres of the feedlot and was unwilling to consider options such as elevating the solar panels in order to attempt to not “unreasonably interfere” with the use of the property. As a result, the lessee opposed further access to the property by Eurus which ultimately led to a hearing by DLNR requiring a right of entry for Eurus. We have cooperated fully with subsequent access by Eurus.

(4) “Confirm [water allocation] is permissible, Member Smith does not think it is [and it] is not a good statement to put in a document.”

The need for additional water beyond the 800 gallon per acre per day allocation has been recognized, documented and approved by each of the governmental entities involved in the lease of the feedlot parcel.

In 2016, a request was sent from the Chairperson of the DOA to the DLNR requesting an additional water allocation for the benefit of the plant lessee which was, at the time,

Hawaii Livestock Cooperative. See attached Exhibit C. The 2016 letter notes that the Campbell Industrial Park restricts water usage to 800 gallons per acre per day and explains that this water allocation is “short of the 32,000 gallons per day required” by the tenant at the time based on the size of their operations. Please note that based on the more than \$20 million dollars that Hawaii Meats has invested in the equipment and operation of the facility, the capacity has significantly increased. This activity is prior to either Hawaii Land and Livestock or Hawaii Meat having any part of the lease on the property.

In 2018, the need for additional water to be allocated from the feedlot parcel to the plant was again expressly contemplated and approved at a DLNR Board meeting where the DLNR Board recommended the issuance of the Executive Order transferring the feedlot property to the jurisdiction DOA. The meeting minutes specifically reference “the needed water allocation for an adjacent property,” meaning the plant. The meeting minutes note that the DLNR consulted with various government agencies including the Board of Water Supply which had “no objections”. See Exhibit D.

Finally, the plant lease itself, Lease S-8500, states in Special Condition 15 that the Lessor will provide “approximately 20,000 gallons per day above the amount allocated to the Lessee” and that “Lessor shall request such additional amount of domestic water from the bulk allocation of water available for State of Hawaii projects, but until such time that the Lessor is able to procure such additional amount of domestic water the Lessor shall procure such additional amount of domestic water from the Department of Land and Natural Resources.” See Exhibit E.

Finally, as a matter of simple practicality, we are aware of only one water meter. The water meter is located on the plant parcel, and not on the feedlot property. The Board of Water Resources has been billing, and the tenant has been paying, the water usage bill on a combined allocation basis.

- (5) “Did DOA inspect the property to verify that there was no scrap metal on the parcel already or was it cleared? Lessee should be involved in these hearings.”

To the best of our knowledge, neither DLNR nor DOA cleared, inspected, documented or inventoried the condition of the property to identify trash, squatters, deteriorating concrete and metal improvements from the prior feedlot tenants etc. prior to the handover of the property from the DLNR to the DOA or the execution of the feedlot lease. On March 16, 2022 we were notified that a Phase II Environmental Survey was conducted in 2008 which identified possible areas of contamination on a part of the property.

In addition to rent and common area charges for a property not yet suitable for use, we have spent over \$150,000 to clear the property of rusted metal and extraneous concrete. Kiawe trees and other plant materials have been cleared, mulched and spread

over the area to promote future grass growth. Where possible, rock and concrete have been crushed and are being used as a base for roadways.

(6) “Where is American Hauling going to relocate to?”

As explained in our prior letter of February 6, 2023, American Hauling, Inc. existed on the plant site prior to Kunoa obtaining the lease. They were relocated to the adjacent feedlot in order for the slaughterhouse to proceed with its renovations. The DOA inspected the properties and via a letter dated September 17, 2020 approved the use of the feedlot for this purpose. The DOA revoked this approval on November 15, 2022 and as a result of that action we have sent a multiple written demands to American Hauling to relocate from the premises. Although we were willing to file an eviction action against American Hauling, after discussions with the DOA, we have asked American Hauling to execute an Agreement to Vacate that requires their relocation by April 1, 2023. A small area will be allowed to house equipment directly related to their work supporting the harvest facility including hauling cattle, and clearing the feedlot site.

As noted above, American Hauling was on the premises before we arrived. We have no agreement with American Hauling regarding their occupancy, we do not receive rent from American Hauling and we are willing to take all legal remedies at our disposal to remove American Hauling from the premises.

We do not have any knowledge of where American Hauling intends to relocate.

(7) “Will Mr. Farias be available next meeting?”

The undersigned representatives of both Hawaii Land & Livestock and Hawaii Meats would be pleased to attend the next meeting. We would be grateful for notice in advance of the time and place such meeting.

(8) “20,000 GPD water is a very precise amount. Please provide an explanation of that amount.”

Please see our answer to question (4) above and the relevant provisions of the plant lease agreement referenced both there and in our prior letter dated February 6, 2023.

(9) “Mr. Farias mentioned potential partnerships with other farms, more info please?”

Please see our response to question 11 below.

(10) [Please provide] “more information on whether partnerships are in place and how stable they are.”

Please see our response to question 11 below.

(11) [Please provide] “details as to what he intends to use the property for [and] explain agricultural use.”

We are committed to the mission of creating a viable sustainable beef industry in Hawaii. We strongly believe this will benefit not only cattle ranchers and consumers but also result in even better stewardship of the land. We have approached this mission with prioritized investment focusing on the immediate challenges. In a short period of time we have significantly invested in and improved the quality and capacity of the harvest facility. Notwithstanding the challenging environment of the pandemic, we were able to source parts and equipment, hire staff and continuously operate the harvest facility. At the same time, we have cleared and improved the condition of the feedlot property in anticipation of being able to use the property for not only the additional water allocation discussed above, but also for complementary agricultural purposes. Some of these agricultural purposes include the following:

- Feedlot: the property is suitable for a feedlot but the challenge of operating a feedlot in Hawaii is sourcing economical feed. Currently, there is no commercially available feed for cattle and the site is not able to grow the amount of grass/feed needed to support a continuous feeding operation. Part of the restoration will be to develop that opportunity with soil building and potential irrigation.
- Hog Farmers: The hog farmers have approached the state for an appropriation to construct and manage a small animal slaughterhouse. It would require 3-5 acres. A bill/appropriation is currently being considered by the legislature.
- Suma Farms: Suma Farms is working to develop a Hawaii grown feed source for cattle that would support better weight gain and finishing operations. They are also proposing a bio digester that would assist with harvest facility waste disposal. This would require approximate 40 acres.
- Harvest Facility: the plant itself needs an overflow area capable of holding cattle awaiting processing. This would require a minimum of 10 acres.

These partnerships are in process but we are aware that any sublease arrangement requires approval by the DOA.

(12) [Please comment] on the “3-year deadline...to utilize at least 50% of the land for agriculture and earn at least 50% of its income from agricultural operations.”

We believe that we can achieve this agricultural use objective without difficulty, but we will require additional time to finalize the agricultural partnerships described above. It is our understanding that the DOA has the discretion to grant time extensions as they deem appropriate. We intend to seek the approval of the Board of the DOA to receive an extension of time based on their evaluation of our proposed use of the property.

(13) "Where in the DOA lease is the guarantee of 20,000 GPD, or any water at all?"

Please see our answer to question (4) above and the relevant provisions of the plant lease agreement referenced both there and in our prior letter dated February 6, 2022.

We look forward to working with you to continue to support agriculture and food sustainability in the State of Hawaii.

Sincerely,



Bobby Farias
Hawaii Land & Livestock LLC



Aaron Eddington
Hawaii Meats, LLC

[illegible]

Return by Mail () Pickup () To:

Tax Map Key No. (1) 9-1-031:001

EXECUTIVE ORDER NO.

4584

FOR AGRICULTURAL PURPOSES, to be under the control and management of the State of Hawaii, Department of Agriculture, being that parcel of land situate at Honouliuli, Ewa, Oahu, Hawaii, and identified as "Agricultural Purposes Site," being all of Lot 12022 as shown on Map 888 of Land Court Application 1069 filed in the Office of the Assistant Registrar of the Land Court

of the State of Hawaii covered by Transfer Certificate of Title 498504 issued to the State of Hawaii, containing an area of 110.106 acres (Land Office Deed S-28204, more particularly described in Exhibit "A" and delineated on Exhibit "B," both of which are attached hereto and made parts hereof, Exhibit "A" being respectively a survey description prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, designated C.S.F. No. 25,720 and dated March 8, 2019, and Exhibit "B" being a copy of Land Court Map 888 of Land Court Application 1069. TOGETHER WITH the above-described parcel of land, all of the submerged lands seaward of the Highwater Mark (Vegetation Line) as shown on Map 888 to the Mean Lower Low Water Mark at seashore, and SUBJECT, HOWEVER, to any and all encumbrances that may be noted on Transfer Certificate of Title 498504. Lot 12022 shall have access across Lots 3163 and 3164 as shown on Map 325 as set forth by Land Court Order 127022.

RESERVING to the State of Hawaii, Board of Land and Natural Resources the right to issue leases for renewable energy projects on the land to the extent such leases will not unreasonably interfere with the State of Hawaii, Department of Agriculture's use of the land, provided that the State of Hawaii, Department of Agriculture and its tenants shall not be prohibited from installing photovoltaic arrays or locating other renewable energy projects on the land as long as the power generated thereby is wholly consumed on the land; and provided further that the State of Hawaii, Department of Agriculture and its tenants shall obtain the prior written consent of the Chairperson of the Board of Land and Natural Resources before installing photovoltaic arrays or locating any other renewable projects on the land.

SUBJECT, HOWEVER, to the condition that upon cancellation of this executive order or in the event of non-use or abandonment of the premises or any portion thereof for a continuous period of one (1) year, or for any reason whatsoever, the State of Hawaii, Department of Agriculture shall, within a reasonable time, restore the premises to a condition satisfactory and acceptable to the Department of Land and Natural Resources, State of Hawaii.

SUBJECT, FURTHER, to disapproval by the Legislature by two-thirds vote of either the Senate or the House of Representatives or by majority vote of both, in any regular or special session next following the date of this Executive Order.

This executive order does not authorize the recipient of the set aside to sell or exchange or otherwise relinquish the



State of Hawaii's title to the subject public land.

IN WITNESS WHEREOF, I have hereunto set my hand and
caused the Great Seal of the State of Hawaii to be affixed.
Done at the Capitol at Honolulu this 15th day of
May, 2019.

David Y. Ige

DAVID Y. IGE

Governor of the State of Hawaii

APPROVED AS TO FORM:

Daniel A. Morris

DANIEL A. MORRIS
Deputy Attorney General

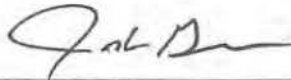
Dated: MAR 20 2019

STATE OF HAWAII

Office of the Lieutenant Governor

THIS IS TO CERTIFY That the within is a true copy of
Executive Order No. 4584 setting aside land for public
purposes, the original of which is on file in this office.

IN TESTIMONY WHEREOF, the Lieutenant
Governor of the State of Hawaii, has
hereunto subscribed his name and caused
the Great Seal of the State to be affixed.



JOSH GREEN

Lieutenant Governor of the State of Hawaii

DONE in Honolulu, this 21st day of
May, A.D. 2019



STATE OF HAWAII
SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

C.S.F. No. 25,720

March 8, 2019

AGRICULTURAL PURPOSES SITE

Honouliuli, Ewa, Oahu, Hawaii

Being all of Lot 12022 as shown on Map 888 of Land Court Application 1069 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii covered by Transfer Certificate of Title 498504 issued to the State of Hawaii and containing an AREA OF 110.106 ACRES (Land Office Deed S-28204).

Lot 12022 shall have access across Lots 3163 and 3164 as shown on Map 325 as set forth by Land Court Order 127022.

TOGETHER WITH the above-described parcel of land, all of the submerged lands seaward of the Highwater Mark (Vegetation Line) as shown on Map 888 to the Mean Lower Low Water Mark at seashore.

SUBJECT, HOWEVER, to any and all encumbrances that may be noted on Transfer Certificate of Title 498504.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: *Gerald Z. Yonashiro*
Gerald Z. Yonashiro
Land Surveyor rk

Compiled from Land Court
Records.



EXHIBIT "A"

LAND COURT
STATE OF HAWAII
LAND COURT APPLICATION 1069

CONSOLIDATION OF LOT 3805-A
AS SHOWN ON MAP 378
LOTS 1136-B AND 1136-C
AS SHOWN ON MAP 165
LOT 1909-B
AS SHOWN ON MAP 410
AND RESUBDIVISION OF SAID CONSOLIDATION
INTO LOTS 12019, 12020, 12021 AND 12022,
CANCELLATION OF EASEMENT 488
AS SHOWN ON MAP 165,
CANCELLATION OF PORTIONS OF EASEMENT 5
AS SHOWN ON MAP 1
AND DESIGNATION OF EASEMENT 6138
HONOLULU, EWA, OAHU, HAWAII

Kalansopu Building
1151 Punchbowl St.
Room 210
Honolulu, Hawaii
July 17, 1998



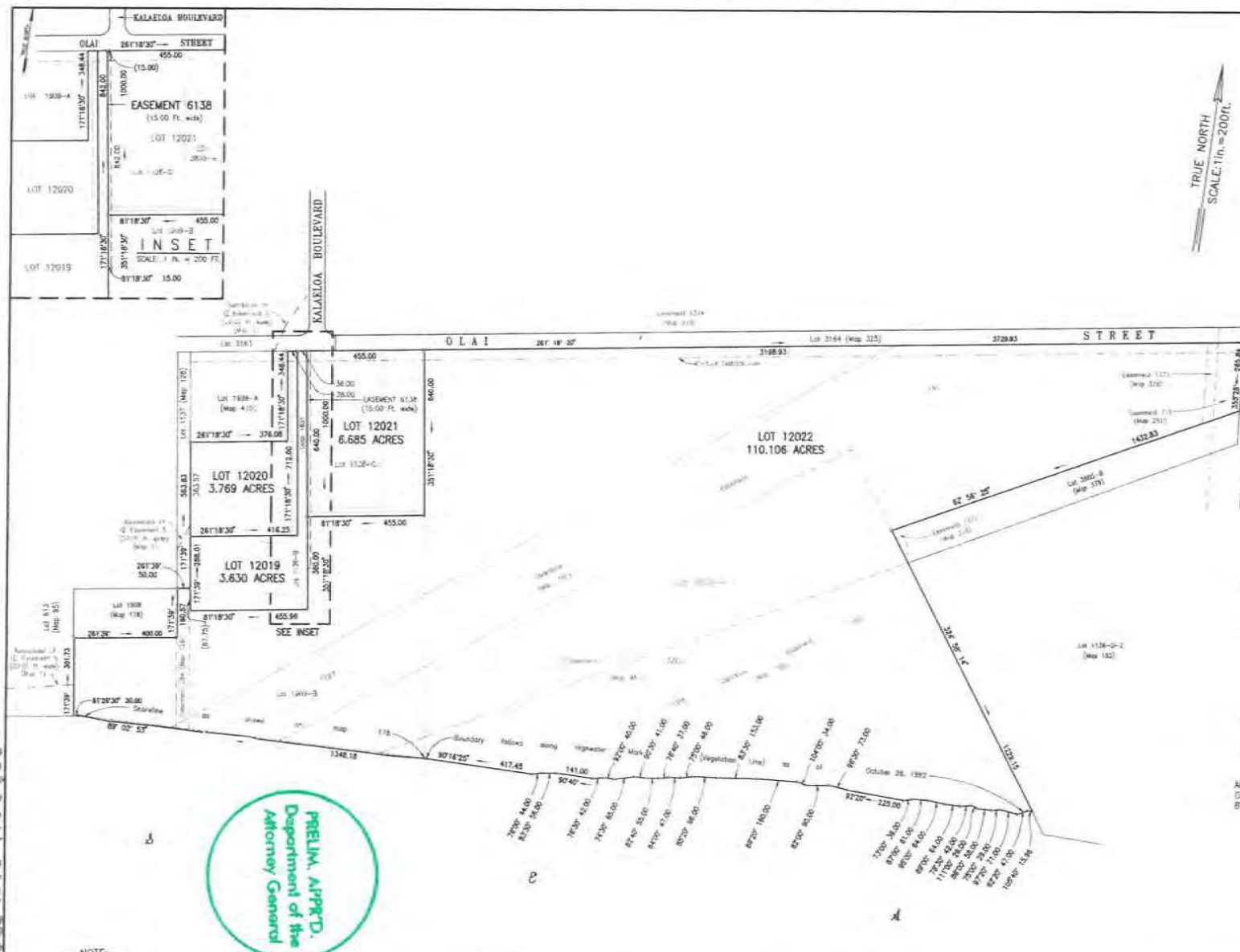
Randall M. Hahn
Licensed Professional Land Surveyor
Certificate No. 7548
Registered Land Court Surveyor
Certificate No. 225

OWNER: TRUSTEES UNDER THE WILL AND OF THE
ESTATE OF JAMES CAMPBELL, DECEASED
TRANSFER CERTIFICATE OF TITLE: 410,853

AUTHORIZED AND APPROVED BY ORDER OF THE JUDGE
OF THE LAND COURT DATED FEBRUARY 10, 1997
BY ORDER OF THE COURT

Richard S. Sauer
Acting REGISTRAR OF THE LAND COURT

TRUE NORTH
SCALE: 1 in. = 200 ft.



PRELIM. APP'D.
Department of the
Attorney General

NOTE:
EASEMENT 6138 = 12,630 Sq. Ft. for Waterline and Electric Purposes affecting Lots 12021 and 12022

REDUCED NOT TO SCALE

EXHIBIT "B"

Filed July 30, 1997
C. C. F. 261

EXHIBIT B

Begin forwarded message:

From: "Tsuji, Russell Y" [REDACTED]
Subject: RE: [EXTERNAL] pv proposal
Date: April 20, 2021 at 8:55:37 PM CDT
To: Gary Kurokawa <[REDACTED]>
Cc: [REDACTED]

Ok, thanks Gary. I briefly spoke with Chair and she is interested in listening to a proposal for a form of renewable energy project that could benefit both Bobby and DLNR.

Russell

From: Gary Kurokawa <[REDACTED]>
Sent: Tuesday, April 20, 2021 3:20 PM
To: Tsuji, Russell Y <[REDACTED]>
Cc: [REDACTED]
Subject: [EXTERNAL] pv proposal

Russell,

Thanks for your patience, I'm working with Milton and haven't received a proposal yet. I will be checking in with him this week and will update you.

Thank you

--

Gary Kurokawa
Onipa'a Consulting Group

EXHIBIT C

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lt. Governor



SCOTT E. ENRIGHT
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

April 12, 2016

Suzanne Case, Chairperson
Board of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street
Honolulu, HI 96813

Dear Ms. Case:

SUBJECT: GENERAL LEASE NO. S-8500
LESSEE: HAWAII LIVESTOCK COOPERATIVE
TERM: FEBRUARY 1, 2000 – JANUARY 31, 2035
TMK: 1st Div/9-1-031:025; AREA: 5.585 ACRES
CAMPBELL INDUSTRIAL PARK, KAPOLEI, ISLAND OF OAHU, HAWAII
REQUEST FOR ADDITIONAL WATER ALLOCATION

The Department of Agriculture (DOA) respectfully requests from the Department of Land and Natural Resources (DLNR), an additional water allocation amount for the benefit of the lessee that holds General Lease No. S-8500. The lessee, Hawaii Livestock Cooperative (HLC), is a slaughterhouse operation located at Campbell Industrial Park, Kapolei, Hawaii. The Campbell Industrial Park covenant regarding water consumption restricts usage to 800 gallons per acre per day, therefore, HLC's water allocation is approximately 4000 gallons of water per day which falls short of the 32,000 gallons per day required for their operations. Therefore, HLC requires an additional 28,000 gallons per day for their operations. It is crucial for HLC to have an adequate amount of water to fully utilize the slaughterhouse facility.

Water Allocation Background

The Campbell Industrial Park DECLARATION OF COVENANTS REGARDING WATER CONSUMPTION AND DEVELOPMENT, JAMES CAMPBELL INDUSTRIAL PARK, dated January 21, 1997, filed as Land Court Document No. 2361779 (Attachment "A"), restricts the allocation of water consumption by its property owners to 800 gallons per acre per day. The referenced lot is owned by the State of Hawaii and was transferred for management to the Hawaii Department of Agriculture by Governor's Executive Order No. 3801 in 1999.

The lessee, Hawaii Livestock Cooperative (HLC) requires an estimated additional 28,000 gallons of water per day or the equivalent of approximately 35 acres for its livestock slaughter operation.

DLNR owns and manages the adjacent vacant lot identified as TMK: 1st Div/9-1-031:001, Lot 1 of approximately 110 acres (see Attachment "B" - yellow highlight). From this vacant lot, DOA requests



3

that 28,000 gallons of water per day be set aside to the DOA for water allocation purposes only. This additional water allocation is to benefit General Lease No. S-8500 until the expiration of the lease or for as long as the character of "use" is for livestock slaughter and related purposes, whichever is longer.

Background Information

The HLC lot is owned by the State of Hawaii and was transferred from DLNR to DOA by Governor's Executive Order No. 3801 in 1999 for management purposes.

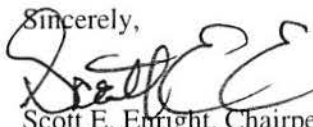
The Hawaii Livestock Cooperative is Oahu's only USDA certified slaughterhouse. Loans in excess of \$1 million were made by HLC to build the facility, and there are current outstanding balances due of more than \$650,000. HLC has been under difficult economic hardship for many years because of the closing of dairy businesses on Oahu and the decreased number of cattle for slaughter.

Due to economic hardships of declining business operations and decreased revenue, HLC is negotiating a purchase contract to assign General Lease No. S-8500 to Hawaii Land & Livestock, LLC (HLL). The agreement includes HLL assuming the outstanding loan balances as well. For more information on the assignee, HLL, attached is the approved Hawaii Board of Agriculture submittal dated November 24, 2015 (see Attachment "C") request for approval of the assignment of General Lease No. S-8500 from Hawaii Livestock Cooperative to Hawaii Land & Livestock, LLC. Allocating adequate water resources for operational use is essential to consummating this assignment agreement to assure HLL the capacity to increase operations and maintain profitability.

Summary

The slaughterhouse operation requires approximately 28,000 gallons of water per day more water than the 800 gallons per acre per day allowed by the Campbell Industrial Park water consumption covenant. To accommodate this need, DOA requests that DLNR set aside 28,000 gallons of water per day from DLNR's Lot 1 to DOA. This will ensure the continued operation of Oahu's only USDA certified slaughterhouse, which is a local service critical to Hawaii's sustainability for the future.

Should there be any questions regarding this request, please do not hesitate to have your staff contact Linda Murai via email at Linda.H.Murai@hawaii.gov or call 808-973-9471.

Sincerely,

Scott E. Enright, Chairperson
Board of Agriculture

Attachments

L-220 STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
RECORDED

JAN 23, 1997 09:45 AM

Doc No(s) 2361779

on Cert(s) 410,853

/s/ CARL T. WATANABE
ASSISTANT REGISTRAR

112

AFTER RECORDATION, RETURN BY Mail () Pickup ()
Ashford & Wriston
Douglas W. MacDougal
P. O. Box 131
Honolulu, Hawaii 96810
539-0400

REGULAR SYSTEM

Agreement No. 401063500 TMK: (1) 9-1-031:001, 025, 026 and 037

DECLARATION OF COVENANTS REGARDING
WATER CONSUMPTION AND DEVELOPMENT
JAMES CAMPBELL INDUSTRIAL PARK

THIS DECLARATION, made this 23rd day of January,
1997, by P. R. CASSIDAY, C. D. PRATT, JR., C. R. CHURCHILL and
D. A. HEENAN, the duly appointed, qualified and acting TRUSTEES
UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED,
acting in their fiduciary and not in their individual capacities
(the "Declarant");

ARTICLE I

RECITALS

- 1.01 The Property. Declarant is the owner of those certain
parcels of real property in the City and County of Honolulu,
State of Hawaii, described as:

Lot 3805-A, area 93.895 acres, as shown on Map 378
Lot 1136-B, area 1.947 acres, as shown on Map 165
Lot 1136-C, area 4.184 acres, as shown on Map 165,
and
Lot 1909-B, area 24.164 acres as shown on Map 410

ARTICLE II

COVENANTS

- 2.01 Water Consumption and Development. Property Owner shall consume no more than eight hundred (800) gallons per acre per day of domestic water. Said average shall be calculated yearly and based upon annual usage commencing on the first day of the calendar year following execution of this Declaration. Property Owner, in addition, shall at no time install or have installed a domestic water meter of larger than four (4) inches for water services to the Property, or install or have installed more than one such meter. Water facilities including, but not limited to, water source, treatment, and storage facilities, wells and transmission lines (the "Facilities"), have been or may be developed and constructed for the use and benefit of consumers in the Benefited Property by the Board of Water Supply of the City and County of Honolulu, or for the Board of Water Supply by other governmental agencies or private companies, persons or other legal entities, including Declarant. Property Owner agrees (i) to pay his, her or its pro rata share of the cost of such Facilities (defined in Section 2.02) through payment of Board of Water Supply facilities charges, improvement district assessments, facilities charges imposed by Declarant to pass through any costs of such Facilities incurred by Declarant, and to comply with such other methods as may be devised to recover said costs from the property owners in the Benefited Property and (ii) to support Declarant in any and all procedures and proceedings necessary or convenient to the implementation of the means selected.

Property Owner agrees to supply to Declarant whatever water consumption data is kept by Property Owner upon written request of Declarant. By his, her or its execution hereof, Property Owner authorizes Declarant to obtain water consumption records pertaining to the Property from the Board of Water Supply and agrees to provide any written authorization to do so if so required.

Property owner shall, whenever non-potable water is reasonably available, use its best efforts to use such non-potable water for all uses for which the use of such water is feasible. Any development of non-potable water resources and facilities undertaken by Property Owner shall be in accordance with plans and specifications approved in advance by Declarant. Without limiting the generality of the foregoing, Declarant expresses its intention to refuse its approval to a plan for development of non-potable water sources which would adversely affect the quality, quantity

(or to whom Declarant directs such payment to be made) within thirty (30) days of receipt of the notice of assessment by the Property Owner.

(b) If Declarant so elects, Property Owner shall pay the estimated cost of Facilities before the same are constructed or developed.

In such case, Declarant shall provide to Property Owner a pro forma budget setting forth the total estimated expenses for the Facilities. Property Owner shall pay or cause to be paid to Declarant one-quarter of its pro rata share of such expenses on the first day of January, April, July and October, or in such other manner as Declarant may designate. Declarant reserves the right at any time to revise the pro forma budget as the circumstances may require and upon notification of such revision, Property Owner shall pay or cause to be paid to Declarant its pro rata share quarterly of said revised budget. Declarant shall notify Property Owner of any adjustments in the pro forma budget resulting from actual expenses and, upon notification of such adjustment, Property Owner shall immediately pay or cause to be paid to Declarant its pro rata share of said adjustment. If Property Owner has overpaid, the amount of such overpayment will be credited against the Property Owner's pro rata share next coming due or, at Declarant's option, refunded in cash.

2.06 Lien for Unpaid Charges.

(a) If Property Owner fails to pay any portion of the Property Owner's Obligation to Declarant (or to whom Declarant directs such payment to be made), pursuant to Section 2.05 above, then Declarant may pay such monies for the account of Property Owner, and all expenses of Declarant so incurred on account of such non-payment shall be payable by Property Owner to Declarant together with interest at the maximum rate then permitted by law, or if no maximum rate is specified, at twelve percent (12%) per annum, accruing from the date of expenditure by Declarant until paid in full. The amount of the Property Owner's Obligation, together with all expenses of Declarant incurred as set forth immediately above, as well as all other sums hereunder required to be paid by Property Owner to Declarant and not paid when due, including without limitation attorneys' fees and all costs of collection shall constitute and be a lien in favor of Declarant on the Property upon filing of a notice of lien in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

Rata Share (Section 2.05), and Lien for Unpaid Charges (Section 2.06). As to all other matters contained herein, this Declaration shall continue to control notwithstanding such election. In such case, where the provisions of Sections 2.02 through 2.06 above conflict with the manner in which Common Facilities are treated in the Master Declaration, the terms of the Master Declaration shall control. (For example, among other things the pro rata share and Property Owner's Obligation under Section 2.02 would not under the Master Declaration be computed on the basis of water use, but on the basis of lot size; the reduction formula in Section 2.03 above would not be applicable under the Master Declaration; and the owners of other lots have certain non-exclusive rights to use Common Facilities under the Master Declaration which are not given in Section 2.04 above.) Notwithstanding any election to designate any Facilities as "Common Facilities", however, nothing herein or under any application of the Master Declaration shall be deemed or construed to impose any duty upon Declarant or any other person or entity to provide or allocate water to the Property or to Property Owner, or to construct or develop Facilities, or plan for same, now or at any future time.

ARTICLE III

TERM, TERMINATION, MODIFICATION AND ASSIGNMENTS OF DECLARANT'S RIGHTS AND DUTIES

- 3.01 Term. This Declaration, and every provision hereof, shall continue in full force and effect for a period of fifty (50) years from the date hereof unless Declarant terminates or changes this Declaration as provided in Section 3.02 hereof.
- 3.02 Termination and Modification. This Declaration, or any provision hereof, may be terminated, extended, modified, amended or waived in whole or in part, as to the whole of the Property or any portion thereof, only by Declarant, as Declarant deems necessary or appropriate in its sole judgment to alleviate undue hardship or otherwise to fulfill the intent of this Declaration. No such termination, extension, modification, amendment or waiver shall be effective until a proper instrument has been executed, acknowledged and filed with the Assistant Registrar of the Land Court of the State of Hawaii.
- 3.03 Assignments of Declarant's Rights and Duties. Any and all of the rights, powers and reservations of Declarant herein

and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person or persons, corporation or corporations, or other legal entity or entities acquired an interest in the Property.

- 4.02 Declaration Runs with Land. All provisions contained herein shall burden each and every part of the parcel of the Property for the benefit of the Benefited Property; and shall operate as covenants running with the land, and shall apply to and bind the heirs, devisees, personal representatives, assignees and successors in interest of the Property Owner, and all lessees and sublessees or vendees of all or any portion of the Property, and shall be enforceable as such in accordance with the terms and provisions of this Declaration; provided, however, the right to enforce this Declaration is reserved to Declarant, its successors in trust and assigns, and to no one else.
- 4.03 Failure to Enforce Not a Waiver of Rights. Each remedy provided for in this Declaration is cumulative and non-exclusive. The failure of Declarant in any case to enforce any of the provisions of the restrictions herein contained shall in no event be deemed to be a waiver of the right to enforce any such provision or to do so thereafter, nor of the right to enforce any other provisions of this Declaration.
- 4.04 Paragraph Headings. Paragraph headings are utilized for convenience only and are not intended to be a part of this Declaration or in any way to define, limit or describe the scope and intent of the particular paragraphs to which they refer.
- 4.05 Effect of Invalidation. If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

indemnifying the Grantee from and against any and all damages, claims or suits that may arise as a result of the exercise of said reserved right, and provided, also, that Grantors will restore the setback areas promptly after exercising such reserved rights. Grantee's right to the property shall at all times be subject to such easement or grants to others, within said setback areas, as now exist or may be granted in the future by the Grantors. If and when any grant of easement is made by the Grantors and if Grantors request the joinder therein by Grantee, Grantee covenants, for itself and its successors and assigns, that it will join in any such grant of easement".

D. LEASE NO. 929 dated January 9, 1964, filed as Land Court Document No. 363289, by and between the Trustees Under the Will and of the Estate of James Campbell, Deceased, as Lessor and Hawaii Meat Co., Ltd., as Lessee; leasing and demising the land described herein for a term of 50 years, commencing October 1, 1963. Said Lease was amended by instrument dated June 5, 1967, effective April 1, 1967, filed as Land Court Document No. 420962; and further amended by unrecorded supplement to Lease dated June 28, 1983, effective October 1, 1979, and by Partial Surrender of Lease dated April 4, 1987 filed as Land Court Document No. 1456023.

E. Restrictions contained in that certain unrecorded Option Agreement dated October 16, 1959 by and between the Trustees Under the Will and of the Estate of James Campbell, Deceased and Hawaiian Cement Corporation, a Hawaii corporation, as said Option Agreement has been amended and clarified by unrecorded agreements dated February 12, 1960, March 31, 1961, November 7, 1962, February 17, 1965, April 7, 1966, July 1, 1981, February 17, 1984, November 28, 1984 and November 29, 1984, and assigned to Lone Star Hawaii, a Hawaii general partnership, by unrecorded instrument dated May 7, 1985. By Partnership Change of Name Statement filed with the Department of Commerce and Consumer Affairs of the State of Hawaii on June 27, 1985, the name Lone Star Hawaii was changed to Hawaiian Cement.

F. Restrictions, encumbrances and obligations contained in that certain Agreement Between State of Hawaii and the Estate of James Campbell Re Condemnation of Golden Triangle, Feedlot and Hawaii Raceway Park Properties dated November 29, 1991, and in documents implementing said Agreement.

G. Declaration of Covenants, Conditions and Restrictions dated January 21, 1997, filed in said Office as Land Court Document No. X 2361778.

B. Easement "1373" (area 12,275 square feet, 40 feet wide) for access purpose, as shown on Map 378, as set forth by Land Court Order No. 72794, filed February 20, 1985.

C. Perpetual (unless dedicated for public use) Grant in favor of the United States of America, dated August 23, 1985, filed as Land Court Document No. 1320615, for access over Easement "1373" besides other land.

D. Reservation to the Trustees Under the Will and of the Estate of James Campbell, Deceased of the right to grant easements in favor of the City and County of Honolulu for flowage purposes over Easement "771".

E. Lot 3805-A will have access over Olai Street (Lot 3164, as shown on Map 325) and then to Kalaeloa Boulevard, as set forth by Land Court Order No. 72794, filed February 20, 1985.

4. As to Lot 1136-B:

A. Easement "488", as shown on Map 165, as set forth by Land Court Order No. 24293, filed June 1, 1965.

B. Sublease dated January 1, 1965, filed as Land Court Document No. 364165; entered into by and between Hawaii Meat Company, Ltd., as Sublessor, and Hawaii Meat Products Corp., a Hawaii corporation, as Sublessee; subleasing and demising said Lot 1136-B for a term of 48-3/4 years commencing January 1, 1965. Consent thereto given by the Trustees under the Will and of the Estate of James Campbell, Deceased, by instrument dated June 25, 1965, filed as Land Court Document No. 364166. Said Sublease is subject to the following:

Mortgage dated July 9, 1965, filed as Land Court Document No. 365237, recorded in Liber 5084 at Page 437, made by Hawaii Meat Products Corp., a Hawaii corporation in favor of Bank of Hawaii, a Hawaii corporation, to secure the repayment of the sum of \$225,000.00. Consent thereto given by the Trustees Under the Will and of the Estate of James Campbell, Deceased, by instrument dated July 22, 1965, filed as Land Court Document No. 367868, recorded in Liber 5110 at Page 448.

By instrument dated January 24, 1967, recorded in Liber 5567 at Page 78, the name of Hawaii Meat Products Corp., a Hawaii corporation, was changed to Island Commodities Corp.

Judgment in favor of Plaintiffs dated January 11, 1985, was filed in the Circuit Court of the First Circuit,

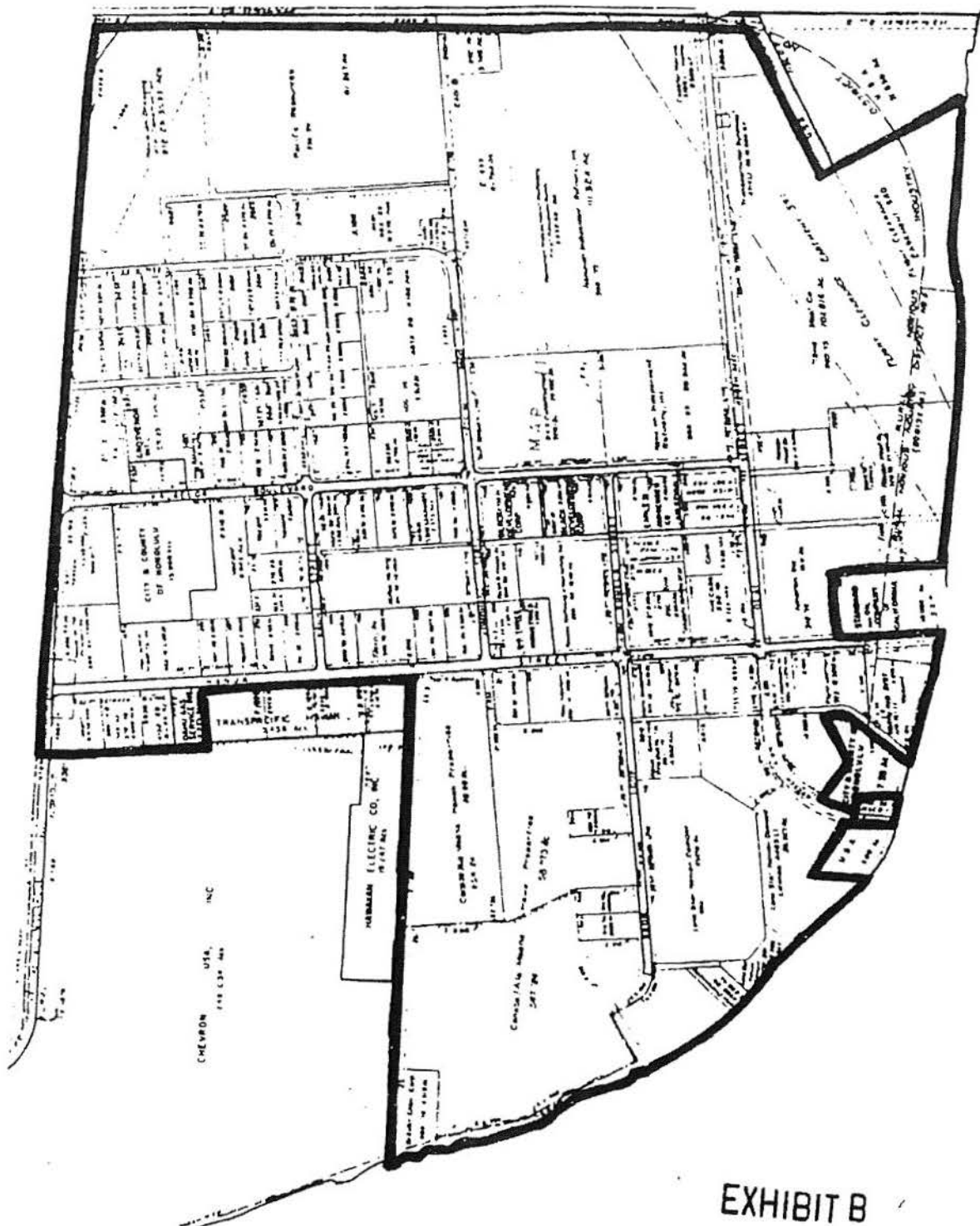
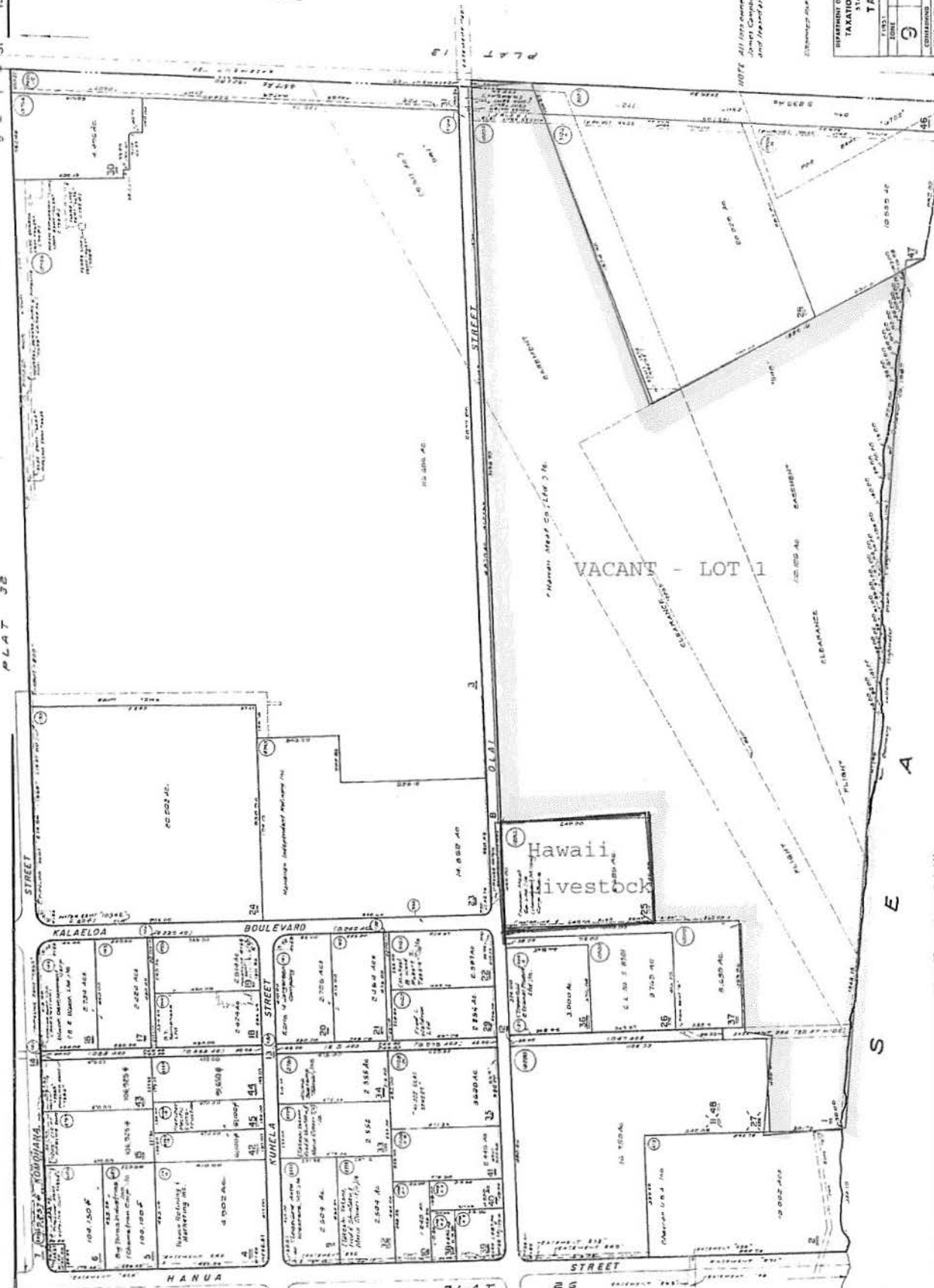


EXHIBIT B

Attachment "B"

NOTE: All lots owned by
James Campbell, Inc.
and related parties

DEPARTMENT OF THE TAX COMMISSIONER			
TAXATION MAPS BUREAU			
STATE OF HAWAII			
TAX MAP			
FILE NO.	ZONE	SHEET	PLAT
91	31	31	31
DATE: JAN. 2007		PAGE: 13	



POR LO CT APP 1059, POR HONOLULU LEWA, OAHU, HAWAII (Formerly por 9-1 14)

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESOURCE MANAGEMENT DIVISION
HONOLULU, HAWAII

November 24, 2015

Board of Agriculture
Honolulu, Hawaii

Subject: REQUEST FOR CONSENT TO ASSIGNMENT OF GENERAL LEASE
NO. S-8500; HAWAII LIVESTOCK COOPERATIVE; TMK: 1st Div/9-
1-031:025; HONOULIULI, DISTRICT OF EWA, ISLAND OF OAHU,
HAWAII

Authority: Sections 166-6 and 9, Hawaii Revised Statutes, as amended, and
Sections 4-153-33(a)(5) and (6), Hawaii Administrative Rules, as
amended

Assignor: Hawaii Livestock Cooperative

Assignee: Hawaii Land & Livestock, LLC

Land Area: 6.685 acres

Tax Map Key: 1st Div/9-1-031:025 – Exhibit "A"

Land Status: Encumbered by Governor's Executive Order No. 3801 to the
Department of Agriculture for agricultural park purposes as of
August 15, 1999

Rental: \$6,685.00 per year, until the rental reopening at the expiration of
January 31, 2020

Character of Use: Animal livestock slaughtering and processing

Lease Term: 35 years, February 1, 2000 to January 31, 2035

REMARKS:

By Governor's Executive Order No. 3801, the Kalaeloa Agricultural Park lands were transferred from the Department of Land and Natural Resources to the Department of Agriculture for agricultural park lands purposes in 1999.

CONCLUSIONS:

1. The Lessee has been under economic hardship for many years, unable to make needed improvements to the facility to increase efficiency and profitability and considered closing the operation eliminating slaughter and processing services on Oahu.
2. An agreement to assign General Lease No. S-8500 has been reached between Hawaii Livestock Cooperative, Assignor, and Hawaii Land & Livestock, LLC, (Robert Farias, Member) Assignee; and staff has determined that Robert Farias qualifies as a Bona Fide Farmer/Rancher as defined by program rules.
3. Lessee is in compliance with the terms of the Lease.

RECOMMENDATION:

That the Board of Agriculture:

1. Finds that by approving the assignment of this Lease from the Hawaii Livestock Cooperative to Hawaii Land & Livestock, LLC, the State will benefit as it will ensure the continued operation of the only USDA certified slaughterhouse on Oahu. Upon assignment of the leasehold interest, the Assignee can take over operations of the slaughterhouse and proceed with repairs and installation of the necessary equipment to improve and expand operation capabilities and services. This is, therefore, in the public interest.
2. Approve the assignment of General Lease No. S-8500 from Hawaii Livestock Cooperative, Assignor, to Hawaii Land & Livestock, LLC, Assignee, pursuant to Section 4-153-33 Hawaii Administrative Rules.

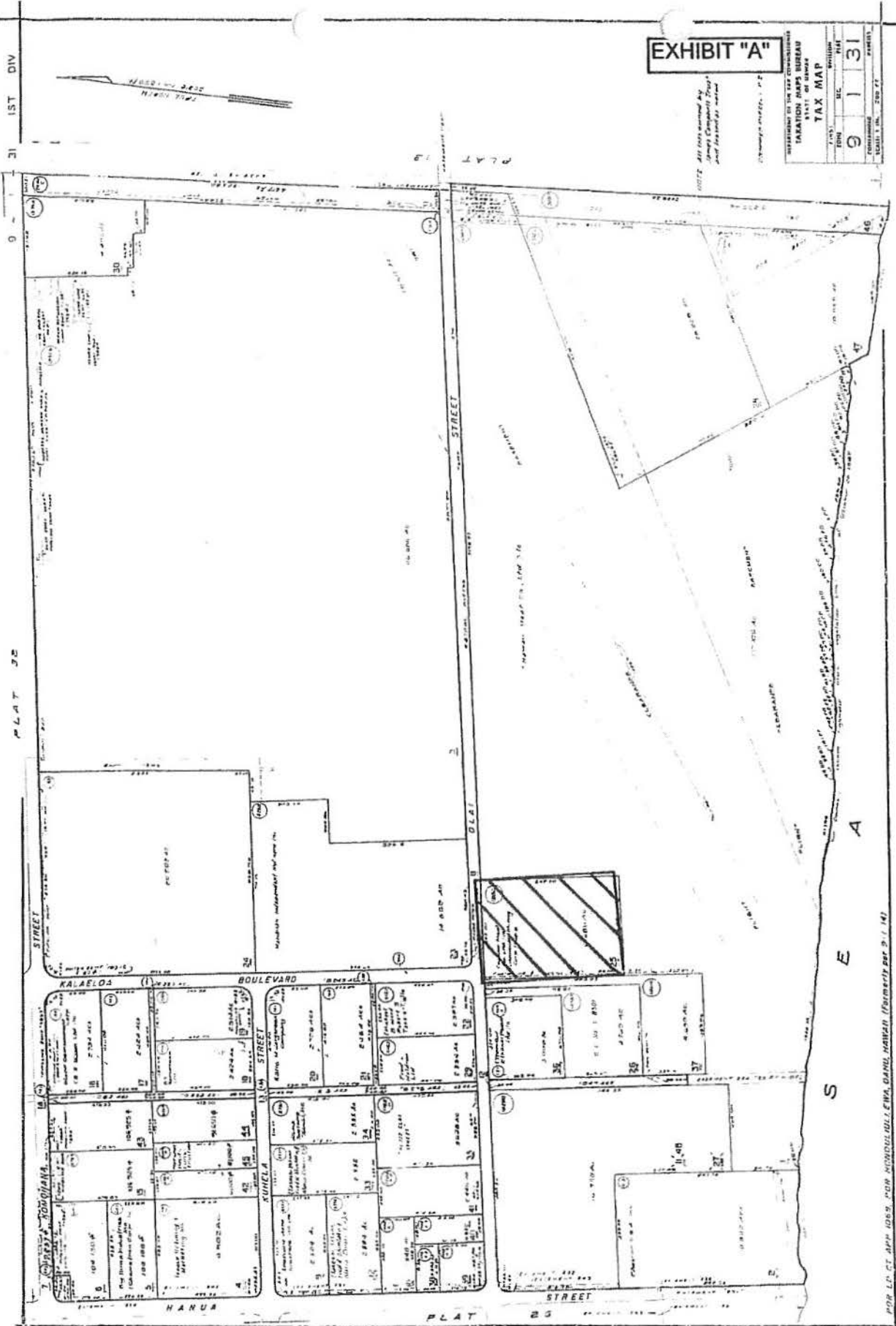


EXHIBIT "A"

NOTE: All lots owned by
HAWAIIAN TRUST CO.
and recorded here.

RECORDED IN THE
OFFICE OF THE
COUNTY CLERK.

TAXATION MAPS BUREAU	
STATE OF HAWAII	
TAX MAP	
FILE NO.	9131
DATE	1931
BY	WILLIAM H. HARRIS
REVISION	1931

FOR L.T. MAP 1069 FOR HONOLULU, HAWAII, HAWAII (HAWAII) REF. 2-1-141

EXHIBIT D

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

November 9, 2018

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

PSF No.: 17OD-074

Oahu

Set Aside to Department of Agriculture for Agricultural Purposes; Issuance of Immediate Management Right-of-Entry to Department of Agriculture, Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-1-031:001.

APPLICANT:

Department of Agriculture

LEGAL REFERENCE:

Sections 171-11 and -55, Hawaii Revised Statutes (HRS), as amended, and Act 90 Session Laws of Hawaii 2003, now codified at Chapter 166E, HRS.

LOCATION:

Portion of Government lands situated at Honouliuli, Ewa, Oahu, identified by Tax Map Key: (1) 9-1-031:001, as shown on the maps attached as **Exhibits A1** and **A2**.

AREA:

110.106 acres, more or less.

ZONING:

State Land Use District: Urban
County of Honolulu CZO: I-2 Intensive Industrial District

TRUST LAND STATUS:

Acquired after Statehood, i.e. non-ceded land.
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
November 9, 2018 Go

CURRENT USE STATUS:

Vacant and unencumbered.

PURPOSE:

Agricultural purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred by the Environmental Council on June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class 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," Item 43, which states the "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," and Item 51, "Permits, licenses, registrations, and rights-of-entry issued by the department that are routine in nature, involving negligible impacts beyond that previously existing." (See **Exhibit B**)

BACKGROUND:

At its meeting of August 25, 2006, under agenda item D-12, the Board of Land and Natural Resources Board found that the public interest demanded that a lease for the property be disposed of through negotiation pursuant to Section 171-59(a) of the Hawaii Revised Statutes, as amended, and delegated the authority to the Chairperson to issue a Request for Qualifications/Request for Proposals (RFQ/RFP).

On November 8, 2009, DLNR issued an RFQ/RFP to select a developer for the Subject Property. As a result of the RFQ/RFP process, the State of Hawaii, by its Chairperson of the Board of Land and Natural Resources (Chairperson) entered into a Development Agreement with West Wind Works, LLC (3W) made effective November 24, 2011 for the development of the Oahu Renewable Energy Park and terminating on December 31, 2013 or sooner.

Following 3W's default on its monetary and non-monetary obligations, staff requested the Board cancel the Development Agreement at its meeting on May 25, 2012, Item D-16. After deferring action on the cancellation, the Board approved the assignment of the Development Agreement to International Electric Power, LLC.

Through subsequent assignments of and amendments to the Development Agreement, PSP III, LLC assumed the role of developer, and the termination date of the Development Agreement was amended to December 31, 2016 or sooner.

Unable to negotiate a power purchase agreement with Hawaiian Electric Co., Inc. (HECO),

PSP III, LLC exercised its option to cancel the Development Agreement in a letter dated December 5, 2016.

REMARKS:

The Subject Property is located at Honouliuli, Ewa, Oahu within the Campbell Industrial Park. The Subject Property was acquired by the State by condemnation in 1997 for the purposes of “land banking, protection and preservation of agricultural land, and for providing for various public uses.” Prior to condemnation, the Subject Property was used as a livestock feedlot. Since termination of feedlot operations, the property has remained vacant and underutilized, in large part due to the lack of roadways and utility infrastructure.

In a letter dated April 12, 2016, the Department of Agriculture (DOA) inquired about the possibility of setting aside approximately 35 acres of the subject parcel to the DOA for water credits. The Chairperson responded in a letter dated May 20, 2016 that a set aside was not possible at that time, as the property was encumbered through December 31, 2016.

Following the Developer’s cancellation of the Development Agreement, the DOA has again requested this property be set aside to it pursuant to Act 90, Session Laws of Hawaii 2003, which provides for the transfer of non-agricultural park lands to DOA from the Department of Land and Natural Resources. The DOA seeks to return the use of this parcel to its original purpose as a cattle feed lot, which is permitted under the zoning, and to provide DOA the needed water allocation for an adjacent property. The set-aside furthers the State’s goals of greater food security by increasing local food production, which is one of the Governor’s initiatives.

In the event staff receives proposals in the future to lease portions of this property for renewable energy projects, staff is recommending that the Board reserve the right to withdraw appropriate acreage or use rights from the set-aside for leasing to renewable energy producers, provided such leases will not unreasonably interfere with DOA’s use of the land. In response, DOA expressed concerns that its prospective tenants may want to install photovoltaic arrays on the land to generate power in support their operations, and DOA has therefore requested that the Board’s reserved right not prohibit renewable energy projects by DOA or its tenants.

In staff’s view, the parcel is large enough to accommodate small-scale photovoltaic projects providing energy only to the tenants on site, as well as larger scale projects that would generate power for consumption off-site under a power purchase agreement with HECO. Accordingly, staff is agreeable to the Board’s reserved right being qualified as DOA suggests, provided that DOA and its tenants obtain the prior written approval of the Chairperson before installing any photovoltaic arrays or other renewable energy projects on the land.¹

¹ If a renewable energy project by DOA or its tenants involves a lease, sublease, license, easement or permit to a third party, DOA would additionally need to obtain the Board’s consent thereto under Section 171-11, HRS.

Staff consulted the agencies listed below on the submittal and proposed exemption from an environmental assessment with the results indicated:

Agency	Comments
State Historic Preservation Division	SHPD has no objections to this Board submittal at this time, however SHPD requests the opportunity to review and comment on any future permit application involving ground disturbing activities.
Division of Forestry and Wildlife	No comments received by suspense date.
Division of Aquatic Resources	DAR has no objections to this Board submittal at this time, however DAR requests the opportunity to review and comment on any future development other than stated in this Board submittal.
Office of Conservation and Coastal Lands	No comments received by suspense date.
Department of Agriculture	DOA has no objection to the set aside, and has subsequently been made aware of the 2008 Phase II Environmental Assessment findings of elevated levels of Contaminants of Concern in both soil and groundwater and has no comments or concerns with this Board submittal at this time. Future development of the land may trigger reevaluation, investigation and/or remediation of the site.
Office of Hawaiian Affairs	No comments received by suspense date.
Board of Water Supply	BWS has no objections to this Board submittal at this time. BWS plans to obtain a Grant of Pipeline Easement along Olai Street in the future.
C&C Department of Facility Maintenance	DFM has no objections to this Board submittal at this time, however they pointed out a 50-foot drainage easement on the west side of the parcel that must be maintained by the owner as shown on Exhibit A1.

Although the parcel is located next to the ocean, staff has determined that there is existing lateral public access to the beach in the vicinity of the parcel 0.26 miles away, from Barbers Point Beach Park to the west and that there is no need to reserve additional rights-of-way to the beach over the subject industrial land.

Staff proposes to establish the seaward boundary in the executive order setting aside the property at the mean lower low water line. This will give the DOA management

jurisdiction over the entire area instead of leaving DLNR with management responsibility for a strip of land seaward of the shoreline. The executive order will provide that no agricultural activity will be permitted seaward of the shoreline, and that the public will continue to have lateral access to the shoreline from Barbers Point Beach Park.

Staff believes this is an equitable arrangement given that Board is setting aside scarce and valuable industrial land. This arrangement will also allow staff to focus on other higher priority items such as converting certain revocable permits to other types of appropriate dispositions and working on the various complex shoreline issues. This set aside of the makai boundary at the mean low water line is modeled after other set asides to County Parks (e.g., Kuhio Beach, Waialeale Beach and Black Pots on Kauai) where the makai boundary of the set aside are located at the mean lower low water line. This approach allows for a single management agency over the subject land and simplifies enforcement in the area. The DOA is agreeable to accepting the set aside to the mean low water line.²

Due to its location within the Campbell Industrial Park, this property is subject to the Conditions, Covenants and Restrictions (CC&Rs) made by the Trustees Under the Will and of the Estate of James Campbell, Deceased and assigned to MMGD LLC (MMGD). Pursuant to Section 2.04c of the CC&Rs, MMGD invoices the property owners within the industrial park annually for their pro rata share of common area costs. This expense has already been paid by DLNR for 2018, and will be DOA's responsibility once the Executive Order is executed. In the event the Executive Order is executed prior to MMGD's next billing cycle, DOA agrees to pay its prorated share of the common area costs for that year.

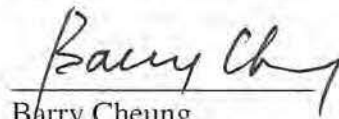
RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject land to the Department of Agriculture under the terms and conditions cited above, including the establishment of the seaward boundary of the subject land at the mean lower low water line, which are by this reference incorporated herein and subject further to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time; provided, however, that the set-aside shall reserve to the Board the right to issue leases for renewable energy projects on the land to the extent such leases will not unreasonably interfere with DOA's use of the land; provided further that DOA and its tenants shall

² In addition, in the past the Department set aside the prime usable and developable lands to other requesting agencies while retaining hazardous mountainsides thereby leaving mitigation responsibility and liability (e.g., Ko Road and Menehune Road hazard mitigation projects) with the Department. This set aside seeks to avoid such result.

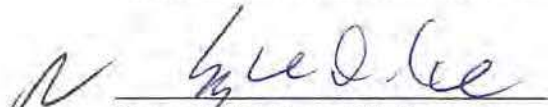
- not be prohibited from installing photovoltaic arrays or locating other renewable energy projects on the land as long the power generated thereby is wholly consumed on the land; and provided further that DOA and its tenants shall obtain the prior written consent of the Chairperson of the Board of Land and Natural Resources before installing photovoltaic arrays or locating any other renewable projects on the land;
- B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Grant an immediate management right-of-entry to the Department of Agriculture over the subject lands, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
- A. The standard terms and conditions of the most current management and construction right-of-entry form, as may be amended from time to time;
 - B. The right-of-entry shall be effective upon acceptance and shall terminate upon issuance of the executive order; and
 - C. The Department of Land and Natural Resources reserves the right to impose additional terms and conditions at any time if it deems necessary while this right-of-entry is in force.

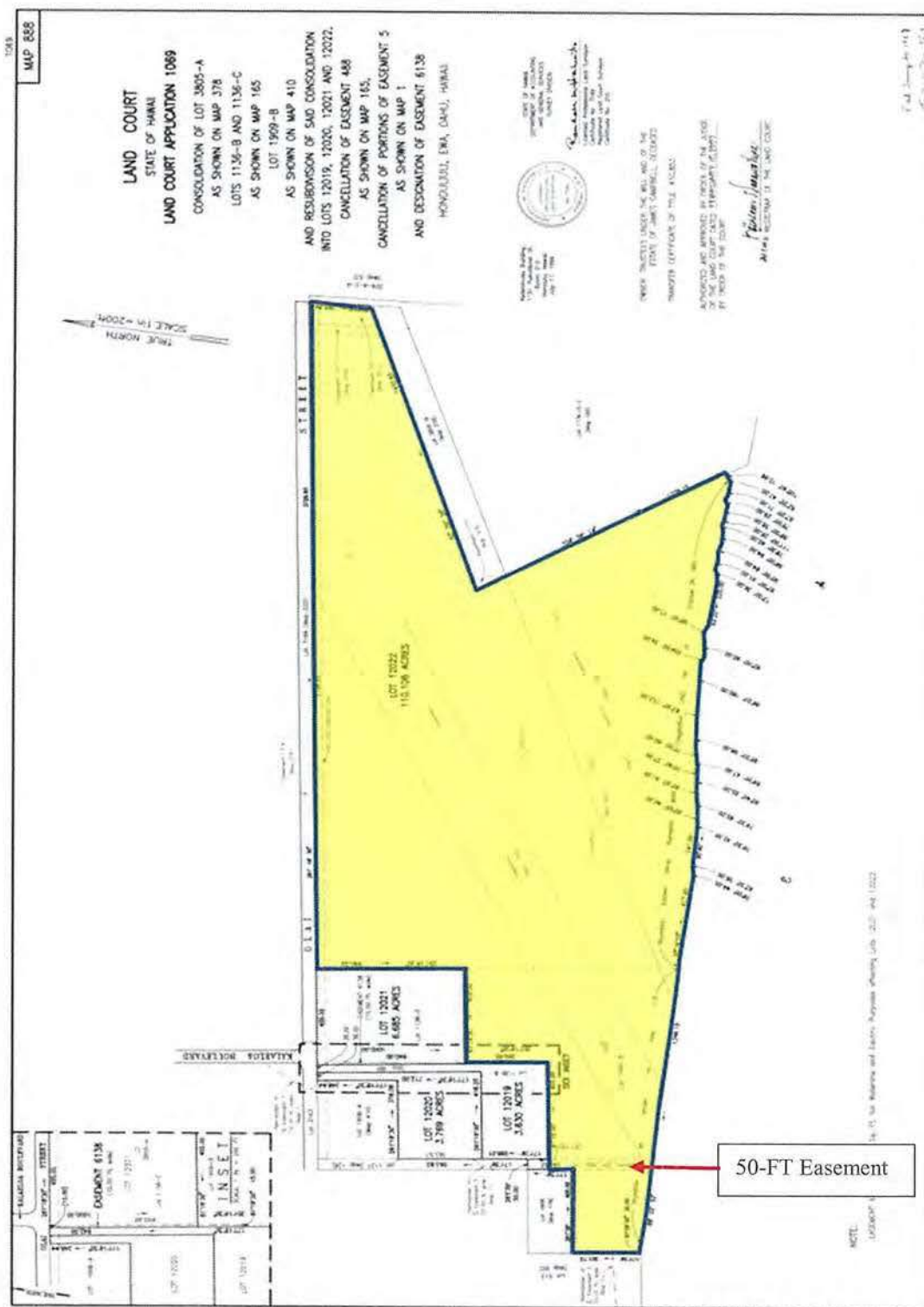
Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson



TMK (1) 9-1-031:001

EXHIBIT A1



TMK (1) 9-1-031:001

EXHIBIT A2

EXEMPTION NOTIFICATION

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

Project Title: Set aside of State lands to Department of Agriculture (DOA) and issuance of immediate management right-of-entry.

Project / Reference No.: PSF 17OD-074

Project Location: Honouliuli, Ewa, Oahu, identified by Tax Map Key: (1) 9-1-031:001

Project Description: Set aside to DOA for agricultural purposes and issuance of immediate management right-of-entry.

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

Exemption Class No. and Description: In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred by the Environmental Council on June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class 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," Item 43, which states the "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," and Item 51, "Permits, licenses, registrations, and rights-of-entry issued by the department that are routine in nature, involving negligible impacts beyond that previously existing."

Cumulative Impact of Planned Successive Actions in Same Place Significant? No. The proposed action involves a one-time set aside of land in the area to DOA for agricultural use. Staff believes there are no cumulative impacts involved.

Action May Have Significant Impact on Particularly Sensitive Environment? No. There are no particular sensitive environmental issues involved with the proposed use of the property.

Analysis: The proposed action involves the transfer of management jurisdiction over the subject land from the Board of Land and Natural Resources to DOA. DOA will be responsible for

EXHIBIT B

compliance with Chapter 343, HRS, in the event it proposes any development of the land that is not exempt from Chapter 343. As such, staff believes that transfer of management jurisdiction to DOA involves negligible or no expansion or change of use beyond that previously existing, and should therefore be found exempt from the preparation of an environmental assessment under Chapter 343, HRS.

Consulted Parties:

Historic Preservation Division, Division of Forestry and Wildlife, Division of Aquatic Resources, Office of Conservation and Coastal Lands, Department of Agriculture, Office of Hawaiian Affairs, Board of Water Supply, City and County Department of Facility Maintenance. See agency comments in attached submittal.

Recommendation:

That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

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I-232 STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
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Doc No(s) 2610096

on Cert(s) 498,504

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/s/ CARL T. WATANABE
ASSISTANT REGISTRAR

CONVEYANCE TAX: \$96.90

REGULAR SYSTEM

Return by Mail () Pickup (✓) To:

Dept. of Agriculture - ARMD

STATE OF HAWAII

DEPARTMENT OF AGRICULTURE

GENERAL LEASE NO. S- 8500

between

STATE OF HAWAII

and

HAWAII LIVESTOCK COOPERATIVE

covering

Kalaeloa
Slaughterhouse

Kalaeloa Agricultural Park

situate at

Honouliuli, District of Ewa, Oahu,
containing an area of approximately 6.685 acres

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STATE OF HAWAII
DEPARTMENT OF AGRICULTURE

GENERAL LEASE NO. S- 8500

THIS LEASE, made this 31st day of January, 2000, is by and between the STATE OF HAWAII, hereinafter referred to as the "Lessor", by its Board of Agriculture, hereinafter referred to as the "Board", whose business address is 1428 South King Street, Honolulu, Hawaii 96814, and whose mailing address is P. O. Box 22159, Honolulu, Hawaii 96823-2159, and HAWAII LIVESTOCK COOPERATIVE, a Hawaii agricultural cooperative association, as tenant in severalty, whose business and mailing address is 94-403 Ukee Street, Waipahu, Hawaii 96797, hereinafter referred to as the "Lessee".

DEFINITIONS:

As used in this lease, unless clearly repugnant to the context:

"Chairperson" means the Chairperson of the Board of Agriculture of the State of Hawaii or his successor.

"Hazardous discharge" means any event involving the use, deposit, disposal, spill, release, or discharge of any hazardous materials on, within, or under the premises.

"Hazardous materials" means and includes any and all flammable explosives, radioactive materials, asbestos, petroleum and oil and their products, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, and any and all other substances or materials defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," and/or "toxic substances" under or for the purposes of the hazardous materials laws.

"Hazardous materials claims" means and includes: (i) any and all enforcement, clean-up, removal, mitigation, or other governmental or regulatory actions instituted or, to the best of the Lessee's knowledge, contemplated or threatened, with respect to the premises pursuant to any hazardous materials laws, and (ii) any and all claims made or, to the best of the Lessee's knowledge, contemplated or threatened by any third party against the Lessee or the premises seeking damages, contribution, cost recovery, compensation, injunctive relief, or other relief resulting from any hazardous discharge or from the existence of any hazardous materials on, within, or under the premises.

"Hazardous materials laws" means and includes all federal, state, and local laws, ordinances, and regulations now or hereafter in effect relating to environmental conditions, industrial hygiene and/or hazardous materials on, within, under, or about the premises, including, without limitation, the

Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq., the Hazardous Materials Transportation Act 49 U.S.C. §1801, et seq., the Clean Water Act, 33 U.S.C. §1251, et seq., the Clean Air Act, 42 U.S.C. §7401, et seq., the Toxic Substances Control Act, 15 U.S.C. §§2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. §§300f through 300j, the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§11011 through 11050, the Environmental Response Law, Chapter 128D, Hawaii Revised Statutes, and any similar state or local laws, ordinances, and the regulations now or hereafter adopted, published, and/or promulgated pursuant thereto.

"Holder of a record of a security interest" means a person who is the owner or possessor of a security interest in the leased premises and who has filed a copy of this interest with the Department of Agriculture and with the Bureau of Conveyances of the State of Hawaii.

"Lessee" means and includes the Lessee, its heirs, executors, administrators, successors or permitted assigns.

"Noxious weed" means any plant species which is injurious, harmful, or deleterious or which may be likely to become so to the agricultural industries of the State of Hawaii, as determined and so designated from time to time by rule of the Department of Agriculture.

"Premises" or "leased premises" means the land leased

and all buildings and improvements now or hereinafter constructed and installed on the land leased.

"Processing" means operating a processing facility for the grinding of meat products to make hamburgers, the cutting of meat for stew or stroganoff meats, steaks, roasts and other food service items for sale as such, and smoking, curing or cooking of meat products, including making sausage; and treating the hog carcasses into value added items, e.g. laulau, kalua pork, char siu, etc., or by using other agricultural products such as taro, ti-leaf, milk, long rice, etc.

"Rendering" means the processing of livestock offals, skins, blood, bones, fat/oils, and other related products resulting from the slaughter operation into another by-product or solid waste which may be used in value added manufacturing.

"Slaughtering" means operating slaughterhouse, rendering, wastewater recycling, composting and any ancillary facilities.

"Waste" includes, but is not limited to, (1) permitting the premises, or any portion, to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct the erosion; (2) permitting a substantial increase in noxious weeds in any portions of the premises; and (3) abandonment of the premises.

WITNESSETH:

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 lease unto the Lessee, and the Lessee does lease from the Lessor the following property:

That certain parcel of land together with all improvements located thereupon, situate at Honouliuli, District of Ewa, Oahu, being TMK: 9-1-31:25, as is, and as more particularly described in Exhibit "A" attached hereto and by reference made a part hereof, containing an approximate area of 6.685 acres;

TO HAVE AND TO HOLD the leased premises unto the Lessee for the term of thirty-five (35) years, commencing on the 1st day of February, 2000, up to and including the 31st day of January, 2035, unless sooner terminated as hereinafter provided, the Lessor reserving and the Lessee yielding and paying to the Lessor at the Office of the Department of Agriculture, Honolulu, Oahu, State of Hawaii, a net annual rental as provided herein, payable in advance, without notice or demand, in monthly installments on the first day of each and every month during the term, except as otherwise provided in this lease, as follows:

- A. Base annual rental. For the first ten (10) years from the earlier of (i) June 30, 2002, unless the Board allows additional time beyond such date as provided by this lease, or (ii) receipt of a certificate of substantial completion issued by the architect for the

slaughterhouse facilities to be constructed on the premises, the base annual rental shall be the sum of SIX THOUSAND SIX HUNDRED EIGHTY-FIVE AND NO/100 DOLLARS (\$6,685.00); except that the Board may permit the Lessee to offset the cost of land clearance and leasehold improvements against not more than two years of base annual and additional rental.

- B. Facilities capital recovery fee. The facilities capital recovery fee (hereinafter "FCR fee") commences on the date Lessor installs improvements in support of the Lessee's operations or the commencement of the term of this lease, whichever is later. The FCR fee is based on the Lessor's expenditures to install the improvements and is based on one-tenth of one per cent of Lessor's expenditures and will be applied as an addition to the base annual rental. Capital Improvement Projects, as may be authorized by the Legislature, which are constructed to repair or remedy defects to the agricultural park's infrastructure and physical facility shall be included as a Lessor's expenditure upon which the FCR fee is based. The Lessor, as of the commencement date of this lease, does not plan to install any improvements which would result in a FCR fee being charged to the Lessee at this time.

- C. Additional rental (Slaughter). The additional rental

on slaughter use shall be determined by taking the sum totals as follows: rent of 0% of up to the first \$1,000,000 of gross revenue, 2% of \$1,000,000 to \$1,500,000 of gross revenue, and 1.75% of \$1,500,000 or more of gross revenue. The additional rental shall be payable on or before the last day of March of each year during the term of this lease by submitting to the Lessor an annual report disclosing the gross proceeds from slaughter operations during the year immediately preceding and submitting remittance to the Lessor if any additional amount is due as described below:

From the annual report calculate the amount based on the percentage outlined above, then any excess of the amounts so calculated over the sum of the base annual rent plus FCR fee (if any) constitutes the additional rental.

For the purposes of determining gross revenues from slaughter operations, only gross revenues generated from slaughter fees shall be included. Revenues from sales of hides, blood, offals, hog valves, or any other animal parts shall not be included as part of gross revenues from slaughter.

- D. Additional rental (Processing). The Lessor reserves the right to establish in accordance with generally accepted appraisal methods the additional rental on

processing use at such time as the Lessee uses or allows the premises to be used for processing purposes.

E. Reopening of annual rental. The base annual rental shall be reopened and redetermined at the expiration of the 10th, 20th, and 30th years after the imposition of base annual rent commences under this lease. Any additional rental shall be reopened and redetermined at the expiration of the 20th and 30th years after the imposition of base annual rental under this lease.

F. Determination of annual rental upon reopening. The base annual rental and additional rental for any ensuing period shall be the fair market rental at the time of reopening. At least six months prior to the time of reopening, the fair market rental of the land in the specific use or uses for which the disposition was made shall be determined by an appraiser whose services shall be contracted for by the Lessor, and the Lessee shall be notified promptly of the determination; provided that should the Lessee disagree with the fair market rental as determined by the Lessor's appraiser, the Lessee may appoint its own appraiser, within fourteen days after written notice of the fair market rental, to prepare an independent appraisal report. The two appraisers shall review each other's reports and make every effort to resolve whatever differences they may have. Should

differences still exist fourteen days after the exchange, the two appraisers, within seven days thereafter, shall appoint a third appraiser who shall also prepare an independent appraisal report and shall furnish copies thereof to the first two appraisers within forty-five days of the appointment. Within twenty days after receiving the third appraisal report, all three appraisers shall meet to determine the fair market rental. The fair market rental as determined by a majority of the appraisers shall be final and binding upon both the Lessor and the Lessee, subject to chapter 658, Hawaii Revised Statutes ("HRS"). The Lessee shall pay for its own appraiser and the cost of services of the third appraiser shall be borne equally by the Lessor and the Lessee. All appraisal reports shall become part of the public record of the Lessor. In the event that the appraisers are unable to determine the fair market rental before the reopening date, the Lessee shall continue to pay the rent at the rate effective for the previous rental period, but the Lessee or the Lessor shall make up any differences, as appropriate, within thirty days after the new rental has been determined. The Lessee or its appraiser's failure to comply with the procedures set forth herein shall constitute a waiver of the Lessee's right to contest the new fair

market rental, and the Lessee shall pay the rental as determined by the Lessor's appraiser without adjustment. Alternatively, the Board may treat the failure as a breach of the lease and terminate this lease.

- G. Interest on delinquent rent. The interest rate on any and all unpaid or delinquent rental shall be at one per cent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each month of delinquency.

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove the mineral and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining shall be reserved to the State of Hawaii. "Minerals", as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum, and all other mineral substances and ore deposits, whether solid, gaseous, or liquid, including all geothermal resources, in, on, or under the land fast or submerged; provided, that "minerals"

shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Lessee's permitted activities on the premises and not for sale to others.

(b) All surface and ground waters appurtenant to the premises and the right on its own behalf or through persons authorized by it, to capture, divert, or impound the same and to occupy and use so much of the premises required in the exercise of this right shall be reserved to the State of Hawaii; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of Lessee's improvements taken.

2. Prehistoric and historic remains. All prehistoric and historic remains found in, on or under the premises shall be reserved to the State of Hawaii.

3. Ownership of improvements. The ownership of all improvements of whatever kind or nature, including but not limited to fences and structures located on the land prior to or on the commencement date of this lease, excluding those improvements constructed during the term of this lease unless provided otherwise, shall be reserved to the State of Hawaii.

4. Withdrawal. The Lessor shall have the right to withdraw the premises, or any portion, at any time during the term of this lease upon giving reasonable notice, and without compensation except as provided in this lease, for public uses

or purposes, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights-of-way and easements of all kinds, and the premises shall be subject to the right of the Lessor to remove soil, rock or gravel as may be necessary for the construction of roads and rights-of-way within or without the premises; provided, that upon the withdrawal, or upon the taking which causes any portion of the land originally leased to become unusable for the specific use or uses for which it was leased, the base annual rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the Lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value shall be paid based upon the unexpired term of the lease; provided, further, that no withdrawal or taking shall be had of those portions of the land which are then under cultivation with crops until the crops are harvested, unless the Board pays to the Lessee the value of those crops; and provided further that upon withdrawal any Lessee shall be compensated for the present value of all permanent improvements in place at the time of withdrawal that were legally constructed upon the land by the Lessee.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Payment of rent. The Lessee shall pay the rent to the Lessor at the times, in the manner and form provided in this lease and at the place specified above, or at any other

place the Lessor may from time to time designate, in legal tender of the United States of America.

2. Taxes, assessments, etc. The Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, and assessments of every description as to which the premises or any part, or any improvements, or the Lessor or Lessee, are now or may be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under betterment or improvement law which may be payable in installments, Lessee shall be required to pay only those installments, together with interest, which becomes due and payable during the term.

3. Utility services. The Lessee shall pay when due all charges, duties and rates of every description, including, but not limited to, water, sewer, gas, refuse collection or any other utility charges, as to which the premises or any part, or any improvements, or the Lessor or Lessee may become liable for during the term, whether assessed to or payable by the Lessor or Lessee.

4. Covenant against discrimination. 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 a physical handicap.

5. Utilization and development of the demised premises. The development of the demised premises shall be in accordance with a plan of utilization and development which

shall be prepared by the Lessee and approved by the Lessor before execution of this lease. Approval by the Lessor shall not be unreasonably withheld. Any modification or deviation from the plan, without the prior written approval of the Lessor, may constitute a breach of this lease and cause for the termination thereof.

6. Major portion of income. Within five (5) years following the commencement date of this lease, the Lessee shall attain and maintain throughout the remainder of the lease term a level of slaughter and livestock processing operation that generates more than fifty percent (50%) of the Lessee's total annual income; except, that this requirement shall not apply if failure to meet this requirement results from mental or physical disability or the loss of a spouse, or if the premises are fully utilized in the production, slaughtering, processing, marketing, and sale of animal livestock, crops, or products for which this lease was granted. Each year on or before April 30th following the fifth year of the lease term, the Lessee shall submit a copy of its federal or state income tax return for the year immediately preceding. The submitted tax return shall be subject to audit and verification by the Lessor, who may impose additional requirements to carry out the requirements of this section.

7. Sanitation. The Lessee shall keep the premises and improvements in a strictly clean, sanitary and orderly condition.

8. Waste and unlawful, improper or offensive use of premises. The Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the premises or any part, 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 the premises.

9. Compliance with laws. The Lessee shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the premises, now in force or which may be in force.

10. Inspection of premises. The Lessee shall permit the Lessor and its agents, at all reasonable times during the lease term, to enter the premises and examine the state of its repair and condition.

11. Improvements. The Lessee may construct on the premises a slaughterhouse; provided, however, Lessee shall not commence construction thereof except upon all of the following conditions: (a) that a construction contract, evidence of financing, and all permits, licenses, and environmental approvals shall be obtained prior to the commencement of such work; (b) that Lessee shall cause a licensed architect to prepare plans and specifications for all improvements to be made; (c) that such construction shall be performed at Lessee's sole cost and expense; (d) where the cost of construction

exceeds \$25,000.00, Lessee will obtain and furnish to Lessor, or cause to be obtained and furnished by the contractor(s) performing the work, a 100% performance bond and a 100% labor and material payment bond, naming the Lessor and the Lessee as co-obligees, in form and amount and with surety or sureties satisfactory to Lessor, guaranteeing the full and faithful performance of the construction contract(s) and completion of the work in accordance with the plans and specifications, free and clear of all mechanic's and material men's liens; and (e) that all plans and specifications for all such construction shall be subject to the prior written approval of the Lessor; provided, however, Lessor shall not unreasonably withhold such consent nor require the payment of money or other consideration for such consent. Notwithstanding any provisions herein to the contrary, the Lessor will cooperate with Lessee in the execution and delivery of any instruments required in connection with any applications made by Lessee for permits, easements, licenses, or other forms of government approvals as maybe required for the construction of such improvements. Provided, further, except as provided herein, the Lessee shall not at any time during the term construct, place, maintain or install on the premises any building, structure or improvement of any kind and description except with the prior written approval of the Lessor and upon those conditions the Lessor may impose, including any adjustment of rent. The Lessee shall own these improvements until the expiration or termination pursuant to a breach of this lease, at

which time the ownership shall, at the option of Lessor, remain and become the property of the Lessor or shall be removed by Lessee at Lessee's sole cost and expense.

12. Repairs to improvements. The Lessee shall, at its own expense, keep, repair, and maintain all buildings, structures, and improvements now existing or hereafter constructed or installed on the premises in good order, condition and repair, reasonable wear and tear excepted.

13. Right of first refusal. An agricultural park lease or any interest therein, including stock of a corporation holding the lease or an interest in a partnership or association holding the lease, shall not be transferred or assigned unless the lease and improvements, or any interest therein, are first surrendered to the Board, as follows:

(a) The Board shall have the option to repurchase the lease for the price paid by the current lessee, including closing costs, or the fair market value, less appreciated value, at the time of the repurchase, as determined in paragraph (c), whichever is the lower but not less than zero. For the purposes of this section, "price paid by the current lessee" means the consideration paid for the lease exclusive of improvements and "appreciated value" means the replacement cost for developing the leased premises.

(b) Any improvements affixed to the realty, including

trade fixtures and growing crops, shall be re-purchased at their fair market value.

(c) At the time of the repurchase, the fair market value of the lease less appreciated value and the fair market value of any improvements shall be determined by a qualified appraiser whose services shall be contracted for by the Lessor; provided that should the Lessee disagree with the values, the Lessee may appoint the Lessee's own appraiser who together with the Lessor's appraiser shall appoint a third appraiser, and the fair market value shall be determined by arbitration as provided in chapter 658, HRS. In this event, the Lessee shall pay for its appraiser, the Lessor shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by the Lessee and the Lessor.

(d) The Board may repurchase the lease and improvements with funds from the agricultural park special fund or may accept a surrender of the lease subject to the offer by a qualified applicant to purchase the lease and improvements, including any encumbrances, for not less than the amount to be paid therefor by the Board; provided that the purchase by a qualified applicant shall

be subject to sections 4-153-19 and 4-153-22, Hawaii Administrative Rules ("HAR").

(e) Notwithstanding the conditions herein, the consideration for the applicant's purchase of the lease as provided in paragraph (d) shall not be less than the total of all encumbrances that have been approved by the Lessor at the time of the repurchase.

(f) This section shall not apply to a holder of record having a security interest upon foreclosure pursuant to section 4-153-35, HAR.

14. Changes in Lessee's membership. The provisions of paragraph 13, Right of first refusal, and paragraph 17, Assignments of lease, lease interest, etc., shall not apply to the ordinary conduct of the Lessee as a cooperative in admitting new members and the resignation of existing members as called for under the Hawaii and Federal Cooperative Laws and by the directors of the Lessee in their functions and activities for the Lessee.

15. Liens. The Lessee shall not commit or suffer any act or neglect which results in the premises, any improvement, or the leasehold estate of the Lessee becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this lease, and shall indemnify, defend, and hold harmless the Lessor from and against all attachments, liens, charges and encumbrances and all resulting expenses.

16. Character of use. The Lessee shall use or allow the premises leased to be used solely for animal livestock slaughtering and processing purposes as defined herein and for the distribution of resulting value-added food products, subject to the covenants, conditions, and restrictions of any and all encumbrances on the premises existing as of the date of this lease. No other use shall be permitted except as provided in section 4-153-33, HAR.

17. Assignments of lease, lease interest, etc. (a) Any transferee, assignee, or sublessee of an agricultural park lease shall satisfy applicant qualification requirements. No lease or any interest therein, including corporate stock or an interest in a partnership or association, shall be transferred or assigned without the consent of the Board, except by devise, bequest, or intestate succession and upon the further condition that there is a dwelling on the property in which the devisee or heir resides or that more than fifty per cent (50%) of the devisee's or heir's income is derived from the productive use of the property. In the absence of or upon cessation of these conditions, the devisee or heir shall surrender this lease and improvements, or any interest therein, to the Board pursuant to its right of first refusal.

(b) With the approval of the Board, and subject to its right of first refusal, the assignment and transfer of a lease or any interest therein, including stock of a corporation holding the lease or an interest in a partnership or association

holding the lease, may be made if:

- (1) The lease contains the principal residence of the Lessee;
- (2) The Lessee becomes mentally or physically disabled;
- (3) Extreme economic hardship is demonstrated to the satisfaction of the Board; or
- (4) The assignment is to the corporate successor of the Lessee;

provided that prior to the approval of any assignment of lease, the Board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the Lessee of a premium based on the amount by which the consideration for assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee; provided further that in the event of foreclosure or sale, any premium shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid; and provided further that the Lessor may adjust the base annual and percentage (additional) rental pursuant to section 4-153-18, HAR.

18. Subletting. The Lessee shall not rent or sublet the whole or any portion of the premises, without the prior written approval of the Board; provided, however, that prior to this approval, the Board shall have the right to review and approve the rent to be charged to the proposed sublessee and

that in the case where the Lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee or any subsequent sublessees shall be included as part of the Lessee's gross receipts, and the Board shall have the right to revise the rent of the premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided, further, that the rent may not be revised downward.

19. Indemnity. The Lessee shall indemnify, defend, and hold harmless the Lessor from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: (1) any act or omission on the part of the Lessee relating to Lessee's use, occupancy, maintenance, or enjoyment of the premises; (2) any failure on the part of the Lessee to maintain the premises and sidewalks, roadways and parking areas adjacent thereto in Lessee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition; and (3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Lessee's non-observance or non-performance of any of the terms, covenants, and conditions of this lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments as they apply to the leased premises. The provisions of this paragraph shall survive

the expiration or earlier termination of this lease.

20. 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 pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall pay all costs, including reasonable attorney's fees, 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 premises, or in the collection of delinquent rental, taxes, and any and all other charges.

21. Liability insurance. The Lessee shall procure and maintain, at its cost and expense and acceptable to the Lessor, in full force and effect throughout the term of this lease, commercial general liability insurance, in an amount of at least \$500,000.00 for each occurrence and \$1,000,000.00 aggregate, with an insurance company or companies licensed to do business in the State of Hawaii. The policy or policies of insurance shall name the State of Hawaii as an additional insured. The insurance shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of the Lessee. The Lessee, prior to entry and use of the premises or within fifteen (15) days from the effective date of this lease, whichever is sooner, shall furnish the Lessor

with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire lease term, and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be canceled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the Lessor. The Lessor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this lease. If, in the opinion of the Lessor, the insurance provisions in this lease do not provide adequate protection for the Lessor, the Lessor may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Lessor's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Lessor shall notify Lessee in writing of changes in the insurance requirements and Lessee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Lessor incorporating the changes within thirty (30) days of receipt of the notice. The procuring of the required policy(s) of insurance shall not be construed to limit Lessee's liability under this lease nor to release or relieve the Lessee of the indemnification provisions and requirements of this lease. Notwithstanding the policy(s) of insurance, Lessee shall be obligated for the full and total amount of any damage, injury or loss caused by Lessee's negligence or neglect connected with

this lease. It is agreed that any insurance maintained by the Lessor will apply in excess of, and not contribute with, insurance provided by Lessee's policy.

22. Performance bond. The Lessee shall procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease, a performance bond in an amount equal to two times the base annual rental as a surety for the satisfactory compliance of lease terms, conditions, and covenants. The bond shall provide that in case of a breach or default of any of the terms, conditions, and covenants contained herein, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty. The Lessor may waive or suspend the performance bond requirement at its discretion; provided that the Lessee has substantially complied with the terms, conditions, and covenants of this lease; provided that the Lessor reserves the right to reinstate the waived bond at any time throughout the term of this lease. Notwithstanding any provisions herein to the contrary, if Lessee shall have a credit and/or reimbursement due it as provided herein in an amount which is more than twice the base annual rental, then Lessee shall not be required to procure the performance bond described herein; provided, however, if such credit is less than twice the base annual rental, then Lessee shall procure the performance bond as required herein.

23. Justification of sureties. The bonds that are required herein shall be supported by the obligation of a

corporate surety organized for the purpose of being a surety and qualified to do business as a surety in the State of Hawaii, or by no less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in section 78-20, HRS; provided that the Lessee may furnish a written bond in the same amount and with the same conditions, executed by it alone as obligor, if, in lieu of any surety or sureties, the Lessee shall furnish and at all times thereafter keep and maintain any of the forms of financial guarantee of performance that is approved by the Lessor.

24. Lessor's lien. The Lessor shall have a lien on all the buildings and improvements placed on the premises by the Lessee, on all property kept or used on the premises, whether the same is exempt from execution or not and on the rents of all improvements and buildings located on the premises for all Lessor's costs, attorney's fees, rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee, and for the payment of all money provided in this lease to be paid by the Lessee, and this lien shall continue until the amounts due are paid.

25. Mortgage. Except as provided in this lease, the Lessee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this lease without the prior written approval of the Chairperson, on behalf of the Lessor, and any mortgage, hypothecation, or pledge without the approval shall be void. That upon application and with the written

consent of the Lessor, the Lessee may mortgage this lease or any interest therein, or create a security interest in the leasehold of the public land demised. If the mortgage or security interest is to a recognized lending institution authorized to do business in the State of Hawaii, the consent may extend to foreclosure and sale of the Lessee's interest at the foreclosure to any purchaser, provided that the purchaser is qualified to lease and hold the land or any interest therein.

26. Breach. Except as otherwise provided, in the event of a breach or default of any term, covenant, restriction, or condition of the lease, the Lessor shall deliver a written notice of the breach or default by personal service or by registered or certified mail to the Lessee and to each holder of record having any security interest in the land covered by or subject to the lease, making demand upon the Lessee to cure or remedy the breach or default within sixty days from the date of receipt of the notice; provided that where the breach involves a failure to make timely rental payments, including payment of any additional rent, the written notice shall include a demand upon the Lessee to cure the breach within thirty days after the receipt of the notice. Upon failure of the Lessee to cure or remedy the breach or default within the time period provided, or within such additional period as the Board may allow for good cause, the Board may exercise the rights it may have, subject to the rights of holder of security interest. The Board, after due notice of default shall terminate the lease or tenancy and take

possession of the leased land together with all improvements placed thereon, without demand or previous entry and without legal process, and shall retain all rent paid in advance as damages for the violations. The retention of advance rent as liquidated damages shall be in addition to any other rights and remedies available to the Lessor.

27. Rights of holder of record of security interest.

(a) Whenever any notice of breach or default is given to any party under section 4-153-34, HAR, or under the terms of this lease, a copy of the notice shall be delivered by the Lessor to all holders of record having a security interest in any land or interest covered by the lease or other instrument whose security interest has been recorded with the Department of Agriculture and the Bureau of Conveyances. In the event the Board seeks to forfeit the privilege, interest, or estate created by this lease, each recorded holder of a security interest may cure or remedy the default or breach of rent payment within thirty days or any other default or breach within sixty days, from the date of receipt of the notice set forth herein, or within such additional period as the Board may allow for good cause, and add the cost thereof to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Board may:

- (1) Pay to the holder from any moneys at its disposal the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt

and mortgage from the holder; or if ownership of the interest or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, the Board shall be entitled to the conveyance of the interest or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or

- (2) If the property cannot be reasonably reassigned without loss to the State, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default and use its best efforts to redispense of the affected land to a qualified and responsible person free and clear of the mortgage and the debt thereby secured; provided that a reasonable delay by the Board in instituting or prosecuting any right or remedy it may have shall not operate as a waiver of the right or to deprive it of the remedy when the delay serves to assist the Board in resolving the problems created by the breach or default involved.

(b) The proceeds of any disposition effected shall be applied: first, to reimburse the Lessor for costs and expenses in connection with the disposition; second, to discharge in full any unpaid lease rental or other indebtedness owing the Lessor in connection with the privilege, interest, or estate terminated, and any balance to the owner of the privilege, interest, or estate.

28. Condemnation. If at any time, during the term of this lease, any portion of the premises should be condemned, or required for public purposes by the State of Hawaii, or any county, the base annual rental shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which Lessee is not permitted to harvest and (b) the proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of this lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the premises occupied by the Lessee. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor for compensation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor except as provided herein. The foregoing rights of the Lessee shall not be exclusive of any other to which

Lessee may be entitled by law. Where the portion taken renders the remainder unsuitable for the use or uses for which the premises were leased, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability; provided, that Lessee may remove the permanent improvements constructed, erected and placed by it within any reasonable period allowed by the Lessor.

29. Right to enter. The Lessor or the City and County of Honolulu or their agents or representatives shall have the right to enter and cross any portion of the premises for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, the Lessor or the City and County of Honolulu or their representatives or agents shall not interfere unreasonably with the Lessee or Lessee's use and enjoyment of the premises.

30. Acceptance of rent not a waiver. The acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant, or condition of this lease, of the Lessor's right of re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any breach, and the failure of the Lessor to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option.

31. Extension of time. Notwithstanding any provision

contained in this lease, when applicable, the Board may for good cause shown, allow additional time beyond the time or times specified in this lease for the Lessee to comply, observe, and perform any of the lease terms, conditions, and covenants.

32. Quiet enjoyment. The Lessor covenants and agrees with the Lessee that upon payment of the rent at the times and in the manner provided and the observance and performance of these covenants, terms, and conditions on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess, and enjoy the premises for the term of the lease, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under it.

33. Surrender. The Lessee shall, at the end of the term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the premises, together with all improvements existing or constructed thereon or Lessee shall remove such improvements, at the option of the Lessor. Furthermore, upon the expiration, termination, or revocation of this lease, should the Lessee fail to remove any and all of Lessee's personal property from the premises, after notice thereof, the Lessor may remove any and all personal property from the premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Lessee, and the Lessee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination

of the lease.

34. Non-warranty. The Lessor does not warrant the conditions of the premises, as the same is being leased "as is".

35. Hazardous materials. (a) The Lessee shall not use, generate, manufacture, treat, handle, refine, produce, process, store, discharge, release, dispose of, or allow to exist on, within, under, or about the premises any hazardous materials, except in full compliance with all applicable hazardous materials laws. If the Lessee at any time becomes aware of any past, present, or contemplated hazardous discharge or of any hazardous materials claims with respect to the premises which could subject the Lessor, the Lessee, any mortgagee, or the premises to any liability or restrictions on ownership, occupancy, transferability, or use of the premises under any hazardous materials laws, the Lessee shall immediately advise the Lessor thereof in writing and provide to the Lessor such detailed reports thereof as may be reasonably requested by the Lessor. The Lessor shall have the right, in its sole discretion, to join and participate in, any settlements, remedial actions, or legal proceedings or actions initiated with respect to any hazardous materials claims.

(b) The Lessee shall be responsible for and shall indemnify, defend, and hold harmless the Lessor and its employees, agents, successors, and assigns from and against any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to the past, present, or future

use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence of hazardous materials on, under, or about the premises, including, without limitation:

(1) all foreseeable and unforeseeable consequential damages; (2) the costs of any required or necessary repair, clean-up, or detoxification of the premises and of the preparation and implementation of any closure, remedial, or other required plans; (3) the costs of the Lessor's investigation and handling of any hazardous materials claims, whether or not any lawsuit or other formal legal proceeding shall have been commenced with respect thereto; (4) the costs of the Lessor's enforcement of this covenant, whether or not a lawsuit is brought therefor; and (5) all reasonable costs and expenses incurred by the Lessor in connection with clauses (1), (2), (3), and (4) including, without limitation, reasonable attorney's fees.

(c) The provisions of this paragraph shall survive the expiration or earlier termination of this lease.

36. Hawaii law. This lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

37. Exhibits - Incorporation in lease. All exhibits referred to are attached to this lease and hereby are deemed incorporated by reference.

38. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any

provision of this lease.

39. Partial invalidity. If any term, provision, covenant or condition of this lease should be held to be invalid, void or unenforceable, the remainder of this lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

40. Interpretation. The use of any gender shall include all genders, and if there is more than one lessee, then all words used in the singular shall extend to and include the plural.

SPECIAL CONDITIONS:

1. Boundary fences. The cost of installing and maintaining the boundary fences shall be in accordance with Part II of Chapter 664, Hawaii Revised Statutes, which provides generally for the sharing equally of the costs by adjacent landowners or lessees unless the adjacent land is owned and not leased by the government.

2. Clearances. The Lessee shall be responsible for obtaining all necessary federal, state or county clearances.

3. Hunting. No hunting shall be allowed on the premises during the term of this lease.

4. Insurance. At all times during the term of the lease, the Lessee shall keep insured all buildings and improvements erected on the demised premises in the joint names of the Lessor, Lessee, and any mortgagee, as their interests may

appear, against loss or damage by fire, including perils specified in the extended coverage endorsement for the maximum insurable value amount and shall pay the premiums thereon at the time and place the same are payable; provided that the policy or policies of insurance shall be made payable in case of loss to the Lessor, Lessee, and any mortgagee, as their interests may appear, and shall be deposited with the mortgagee; and that any proceeds derived therefrom in the event of total or partial loss shall be immediately available, and as soon as reasonably possible, to be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings or improvements in a good and substantial manner according to the plans and specifications approved in writing by the Board; except, that with the approval of the Lessor, the Lessee may surrender the lease and pay the balance owing on any mortgage and the Lessee shall receive that portion of the proceeds which the unexpired term of the lease at the time of the loss or damage bears to the whole of the term, the Lessor to retain the balance of the proceeds.

5. Setback requirements. Building setback lines shall be as applicable to the county in which the property is situated.

6. Building construction. All building construction shall be in full compliance with all applicable federal, state, and county government laws, rules and regulations, and in accordance with plans and specifications submitted by the Lessee

to and approved by the Chairperson prior to construction.

7. Audit and examination of books, etc. The Lessee shall at all times maintain full and accurate records relating to Lessee's operations and activities upon and in connection with the leased premises. The Lessor reserves the right to audit, examine, and to make copies of all the Lessee's books, accounts, records, and receipts, during regular working hours upon reasonable notice given by the Lessor. All financial information provided by the Lessee to the Lessor shall be kept confidential to the extent allowable by law.

8. Slaughter for fee services. Upon request by a rancher, reputable livestock broker, or any citizen possessing a properly completed Certificate of Livestock Ownership/Movement, the Lessee may provide slaughter for fee services which may include grading. The Lessee is free to decline providing services for animals which may be diseased or otherwise create a hazard to the on-going operations of the slaughterhouse.

"Slaughter for fee" is defined as slaughter of animals (up to six animals) where the carcass is returned to the requestor for personal use, purchase by the Lessee, or for sale to a third party designee. A slaughter fee shall be assessed against the requestor. The Lessee shall determine necessary scheduling and establish operating procedures to accommodate individual requestor needs. Carcasses may be graded by a federal inspector upon request, and requestor shall pay all costs and expenses incurred for the grading service. If a purchase is by the

Lessee or a third party designee, then the graded carcass shall be the basis for determining the price to be paid to the requestor. The Lessee shall make the graded carcass price list available on a weekly basis. The price list shall be derived, to the extent available, from the National Provisioner Yellow Sheet or the U.S. Department of Agriculture National Carlot Meat Report.

9. Existing hazardous conditions. Notwithstanding anything to the contrary contained in this lease, the Lessor shall be responsible for and the Lessee shall not be responsible for hazardous conditions existing as of the commencement date of this lease, provided, however, the Lessee shall have the burden of establishing that a specific hazardous condition existed as of the commencement date of this lease.

10. Construction obligation with early termination provision. Notwithstanding anything to the contrary contained herein, the Lessee shall be obligated to achieve substantial construction of slaughterhouse facilities upon the premises on or before January 1, 2003. Substantial construction will be evidenced by a certificate of substantial completion issued by the architect for the slaughterhouse facilities.

11. Third party management. Lessee's Board of Directors shall hire a qualified independent general manager to oversee the day-to-day- operations of the slaughterhouse. The general manager shall not be an officer or director of Lessee nor hold any other office with Lessee.

12. Legislative disapproval. The Lessee acknowledges and agrees that the premises demised herein have been set aside by the governor to the Lessor pursuant to and subject to the provisions of section 171-11, Hawaii Revised Statutes, which provides, among other things, that the power granted to the governor under such section shall be exercised subject to disapproval by the legislature as more specifically provided therein.

13. Treated Wastewater Effluent Disposal Site Lease. The Lessor and the Lessee acknowledge that the effectiveness of this lease shall be conditioned and contingent upon the effectiveness of an additional lease to be entered into by and between the Lessor, as lessor, and the Lessee, as lessee, upon such terms and conditions as the Lessor and the Lessee shall agree to, for the disposal by irrigation of the treated wastewater effluent generated by such animal livestock slaughtering and processing (the "Second Lease"), demising that certain parcel of real property, being a portion of Lot 12022, located makai of the SMA line, being approximately 39 acres, as shown on Land Court Application 1069, Map 888, to be set aside to the Lessor by Governor's Executive Order pursuant to section 171-11 of the Hawaii Revised Statutes; provided, however, that if the Second Lease is not entered into on or before January 28, 2002, then unless otherwise agreed to by the parties in writing, this lease shall automatically terminate and no longer be of any force or effect. In the event

this lease is terminated pursuant to the terms contained in this paragraph, such termination shall not constitute a breach or default by either party of any of the terms, conditions, or covenants contained in this lease.

14. Cross Default. The Lessor and the Lessee acknowledge that upon the commencement of the Second Lease, an event of breach or default of any term, covenant, restriction, or condition of the Second Lease shall constitute an event of breach or default of this lease, and that an event of breach or default of any term, covenant, restriction, or condition of this lease shall constitute an event of breach or default of the Second Lease, and the Lessee hereby waives and shall waive any and all right to oppose or object to a consolidation of any such actions taken pursuant hereto.

15. Additional Domestic Water. The Lessor and the Lessee acknowledge that the effectiveness of this lease shall be conditioned and contingent upon the Lessor providing the Lessee with the daily additional amount of domestic water essential to the Lessee's use of the leased premises for animal livestock slaughtering and processing, which daily additional amount of domestic water shall be approximately 20,000 gallons per day above the amount allocated to the Lessee for this lease and the Second Lease pursuant to the Declaration of Covenants Regarding Water Consumption and Development James Campbell Industrial Park dated January 21, 1997, filed as Land Court Document No. 2361779.

The Lessor and the Lessee further acknowledge that the

Lessor shall request such additional amount of domestic water from the bulk allocation of water available for State of Hawaii projects, but that until such time that the Lessor is able to procure such additional amount of domestic water the Lessor shall procure such additional amount of domestic water from the Department of Land and Natural Resources; provided, however, that in the event the Lessor is unable to procure any such additional amount of domestic water upon a date satisfactory to the Lessee, then the Lessee shall have a period of thirty (30) days thereafter to terminate this lease, otherwise this lease shall remain in full force and effect. In the event this lease is terminated pursuant to the terms contained in this paragraph, such termination shall not constitute a breach or default by either party of any of the terms, conditions, or covenants contained in this lease.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Agriculture, has caused the seal of the Department of Agriculture to be hereunto affixed and the parties hereto have

caused these presents to be executed the day, month and year first above written.

STATE OF HAWAII

APPROVED AS TO FORM:

Candace J. D.
Deputy Attorney General
Dated: 1.18.2000

By [Signature]
Its: Chairperson
Board of Agriculture

LESSOR

HAWAII LIVESTOCK COOPERATIVE

By [Signature]
Its: PRESIDENT
By [Signature]
Its: TREASURER

LESSEE

STATE OF HAWAII)
) SS.
COUNTY OF)

On this _____ day of _____, 19____, before
me personally appeared _____
and _____, to me known to
be the person(s) described in and who executed the foregoing
instrument and acknowledged that _____ executed the same
as _____ free act and deed.

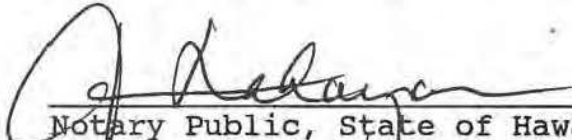
Notary Public, State of Hawaii

My commission expires:_____

STATE OF HAWAII)
) SS.
COUNTY OF)

On this 31st day of January, 192000, before
me appeared Calvin Wong and
Norman Oshiro, to me personally
known, who, being by me duly sworn, did say that they are
the President and Treasurer
respectively, of Hawaii Livestock Cooperative,
a Hawaii corporation, and that the seal affixed to the foregoing
instrument is the corporate seal of said corporation and that
said instrument was signed and sealed in behalf of said
corporation by authority of its Board of Directors, and the said
President and Treasurer
acknowledged said instrument to be the free act and deed of said
corporation.

W.S.



Notary Public, State of Hawaii

Charlotte Nakayama

My commission expires: 9/18/2002

EXHIBIT "A"

KALAELOA AGRICULTURAL PARK
Honouliuli, Ewa, Oahu, Hawaii

Being all of Lot 12021 as shown on Map 888 of Land Court Application 1069, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, containing an AREA OF 6.685 ACRES, covered by Transfer Certificate of Title 498,504 issued to the State of Hawaii (Land Office Deed S-28204).

Lot 12021 shall have access across Lots 3163 and 3164 as provided by Land Court Order 127022.

Lot 12021 is subject, however, to the following encumbrances:

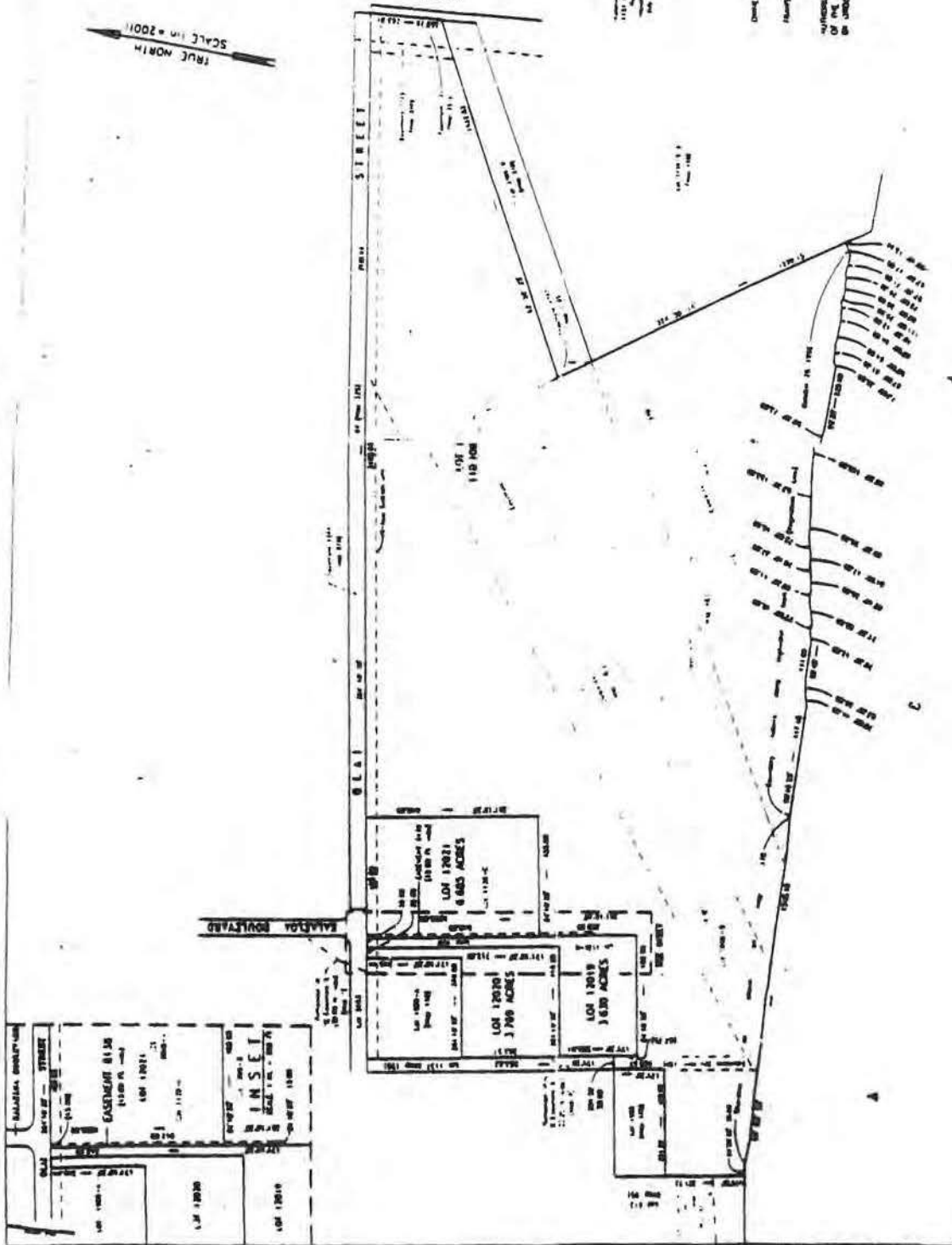
1. A 40-foot setback line as shown on Map 95 as set forth by Land Court Order 17311, filed July 14, 1959.
2. Grant of Easement dated January 17, 1963 in favor of Hawaiian Electric Co., Ltd. and Hawaiian Telephone Company filed as Land Court Document No. 324075, subject to assignment for security purposes filed as Land Court Document Nos. 324076 and 324077.
3. Declaration of Conditions, Covenants and Restrictions dated January 21, 1997, filed as Land Court Document No. 2361778.
4. Declaration of Covenants Regarding Water Consumption and Development, James Campbell Industrial Park, dated January 21, 1997, filed as Land Court Document No. 2361779.
5. Declaration of Restrictions on Use and Covenants, Conditions and Reservations dated January 23, 1997, filed as Land Court Document No. 2362047.
6. Easement 6138, as shown on Map 888 for Waterline and Electric purposes as set forth by Land Court Order 127022.

Lot 12021 is subject, also, to any other encumbrances that may be noted on Transfer Certificate of Title 498,504.

LAND COURT
STATE OF HAWAII
LAND COURT APPLICATION 1069

CONSOLIDATION OF LOT 3805-A
AS SHOWN ON MAP 378
LOTS 1136-B AND 1136-C
AS SHOWN ON MAP 165
LOT 1909-B
AS SHOWN ON MAP 410
AND RESUBDIVISION OF SAID CONSOLIDATION
WHO LOTS 12019, 12020, 12021 AND 12022
CANCELLATION OF EASEMENT 400
AS SHOWN ON MAP 165
CANCELLATION OF PORTIONS OF EASEMENT 5
AS SHOWN ON MAP 1
AND DESIGNATION OF EASEMENT 6130
HONOLULU EWA OAHU HAWAII

SCALE 1" = 200'
TRUE NORTH



2. Two land parcels, one of which is a portion of the land shown on Map 378, are being consolidated and the resulting land is being designated as Easement 6130.

ORDER GRANTING UNDER THE SEAL AND BY THE
COURT OF JUSTICE CAMPBELL, DECEMBER 20
HONOLULU (COURT OF HALL 11081)

APPROVED AND FORWARDED BY JURY OF THE JUDGE
OF THE LAND COURT AND BY THE CLERK OF THE COURT
ON UNDER OF THE COURT

Heavenly Bodies
Attorney, Plaintiff of the Land Court

NOTE
Consolidated 6130 = 11.630 sq. ft. for the purposes and Easement purposes relating to Lots 12021 and 12022