

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

August 23, 2024

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

KAUAI

Cancellation of Revocable Permit No. S-7088, Jeffrey S. Lindner, Permittee, for the Operation and Maintenance of the Moloaa Well and Transmission Facilities, Papaa, Moloaa, Kawaihau, Kauai, Tax Map Key: (4) 4-9-001:001 (por.).

LEGAL REFERENCE:

Section 171-55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of government land of Moloaa, being a portion of the Moloaa Forest Reserve, Papaa, Moloaa, Kawaihau, Kauai identified by Tax Map Key: (1) 4-9-001:001 (por.), as shown on the attached maps labeled **Exhibit A**.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: Yes

CHARACTER OF USE:

Operation and maintenance of the Moloaa well site and transmission facilities until such time the County of Kauai's Department of Water can conduct an approximate 6-month feasibility study to determine the appropriateness of creating a new water system.

COMMENCEMENT DATE OF PERMIT:

Commenced on October 1, 1996.

MONTHLY RENTAL:

\$388.71

REMARKS:

On August 5, 2024, Permittee Jeffrey L. Lindner (Permittee) emailed the Department requesting the cancellation of Revocable Permit S-7088. A copy of the email is attached as **Exhibit B**. Permittee's operations have resulted in the Permittee being classified as public water system by the State Department of Health Safe Drinking Water Branch. Permittee states that he is no longer willing to operate the system due to the high maintenance costs and liabilities. Permittee also notes in his email his concerns about not being able to obtain a water license from the Board. Permittee raised the same issues when testifying before the Board when the revocable permit was considered for renewal by the Board at its meeting on December 8, 2023. After the Board meeting, staff met with the Permittee's legal counsel and explained the water leasing process as outlined in Section 171-58, Hawaii Revised Statutes (HRS) and all requirements such as a reservation for the Department of Hawaiian Home Lands, development and implementation of a watershed management plan with the DLNR Division of Forestry and Wildlife (DOFAW) and compliance with Chapter 343, HRS. Staff understood that the Permittee was working on fulfilling the requirements, as an example starting discussions with DOFAW regarding the watershed management plan.

Staff also notes that condition B.15. of the permit states that the "Permittee shall assume the obligations of Amfac to provide water to the County of Kauai's Department of Water, Meadow Gold Dairies, Inc. and the Moloaa Farmers Cooperative." A copy of the revocable permit is attached as **Exhibit C**. As a result, the Permittee currently serves users that would otherwise be served by the County of Kauai Department of Water (DOW) and the Moloaa Irrigation Cooperative (MIC)¹. Upon cancellation of the permit, the Permittee would be under no further obligation to continue this service. Staff understands the burden this may cause to those parties but also acknowledges that the Permittee cannot be forced to keep a revocable permit, maintain and operate a public water system, or obtain a water license if the Permittee has no further need for the water. Furthermore, the Department has no water agreement with either the DOW or the MIC and will not assume the Permittee's role as a water service provider as it lacks the requisite resources and expertise. Staff believes that it is the respective parties' responsibility to enforce any agreement they may have with the Permittee for water service. In addition, the access to the well site and a significant portion of the water transmission system are located on the Permittee's privately owned land.

The Board initially approved RP S-7088 on August 9, 1997, under agenda item D-11. The staff submittal noted that the DOW also had expressed interest in the well site and intended to conduct a study to determine the feasibility of creating a new water system for the area, which was incorporated into the permit's character of use. A copy of the submittal is attached as **Exhibit D**. Apparently, the DOW did not take further action to integrate the well site into its water system. Recently, the DOW has indicated interest in assuming

¹ Staff understands that the system provides water to 74 service connections, including the DOW and MIC users.

management of the well site rather than a disposition to the Permittee. Staff has communicated to DOW that while the well site could potentially be transferred to the DOW, the State does not own the transmission system which is mostly located on private land. In the event DOW requests the well site be transferred, staff requested that DOW confirm it has secured access and control over the transmission system.

Although the Permittee initially stated that he wanted to relinquish the permit effective August 5, 2024, with 30 days' notice to discontinue to the water distribution, the Permittee has subsequently requested that he be allowed 90 days to ensure that the improvements constructed by the Permittee on the revocable permit can be removed, as well as provide sufficient notice to the system users. Staff is supportive of this request and recommends that the permit be cancelled effective October 31, 2024. Additionally, staff recommends that the Board require the permittee to cover and secure the well itself to address public health and safety.

Condition B.14 requires the Permittee to conduct a "Level One Hazardous Waste Evaluation" as well as complete abatement and disposal, if necessary, satisfactory to the standards of the Environmental Protection Agency and the Department. Staff requests that the Board condition the approval of the cancellation of the revocable permit on the Permittee's compliance with this provision.

Finally, Permittee is compliant with the terms and conditions of the permit, so the cancellation of this revocable permit will not disqualify the Permittee from obtaining another revocable permit or water license in the next five years in the event he elects to do so.

RECOMMENDATION: That the Board:

1. Authorize the cancellation of Revocable Permit No. S-7088 in the manner specified by law and further subject to the following conditions;
 - a. Require the Permittee to conduct a "Level One Hazardous Waste Evaluation" as well as complete abatement and disposal, if necessary, satisfactory to the standards of the Environmental Protection Agency and the Department pursuant to condition B.14 of the revocable permit; and
 - b. Require the Permittee to remove all improvements constructed by the Permittee on the revocable permit premises; cover and secure the well site; and provide sufficient notice to all affected water system users.
2. Authorize the retention of all sums heretofore paid or pledged under Revocable Permit No. S-7088 to be applied to any past due amounts;
3. Terminate the permit and all rights of Permittee and all obligations of the Permitter effective as of October 31, 2024, provided that any and all obligations of the Permittee which have accrued up to said effective date or which are stated in the

lease to survive termination shall endure past such termination date until duly fulfilled, and further provided that Permitter reserves all other rights and claims allowed by law; and

4. Authorize the Department of the Attorney General, the Department of Land and Natural Resources, or their agents to collect all monies due the State of Hawaii under Revocable Permit No. S-7088.

Respectfully Submitted,



Ian Hirokawa
Special Projects Coordinator

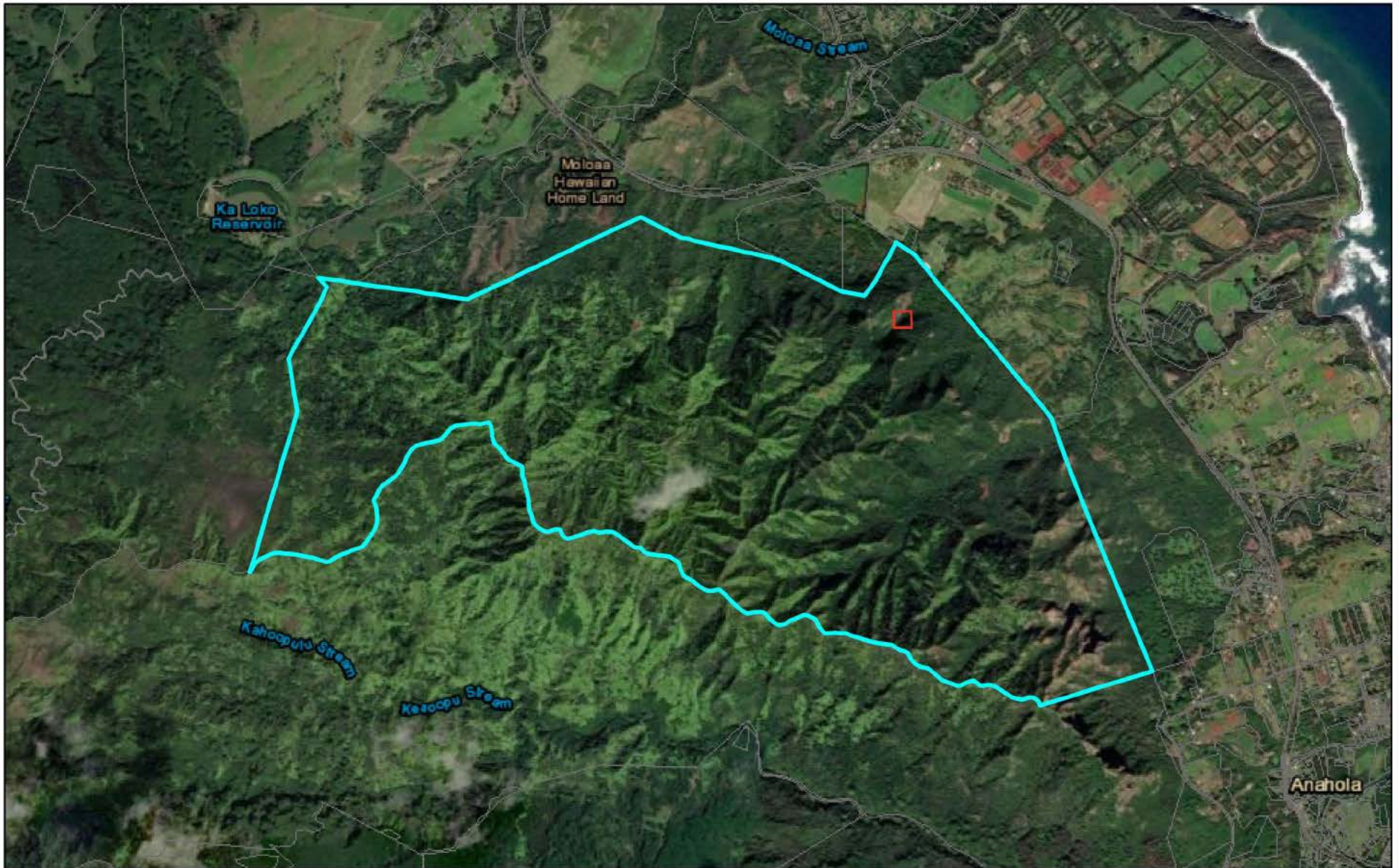
APPROVED FOR SUBMITTAL:



Dawn N.S. Chang, Chairperson

RT

Public Land Trust Information System



August 7, 2024

EXHIBIT A

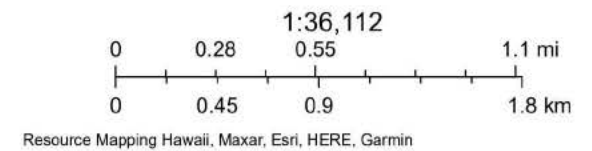




EXHIBIT A

From: lindnerji [REDACTED]
Sent: Monday, August 5, 2024 1:15 PM
To: Chang, Dawn [REDACTED]; Neustein, Alison <alison.neustein@hawaii.gov>
Cc: Joseph Tait <jtait@kauaiwater.org>; Paul Alston <paul.alston@dentons.com>; Chee, Kikaha <kikaha.chee@dentons.com>
Subject: [EXTERNAL] Fwd:

Dawn NS Chang,
Director, Hawaii State Department of Land and Natural Resources.

Alison Neustein,
Land Division Agent, Kauai
Hawaii State Department of Land and Natural Resources.

Aloha Director Chang,

For over 27 years, I have been the holder of Revocable Permit No S-7088, Moloaa. In that capacity, I have provided water to Moloaa farmers, as well as, KDOW. The water required and permitted was Ag water. Thereafter, however, the Hawaii State Department of Health required, in 2015, that I become a public water system responsible for the delivery of potable water to Moloaa farmers, even though the delivery of domestic water was not permitted under the RP. I have been in good standing under the RP and have provided the water requested, and including the expenditure necessary for the delivery of potable water. Throughout the duration of the RP, I have complied with all State requests. From the beginning of the RP, 1996, I requested conversion of the RP to a Lease. The Kauai DLNR staff, at that time, also recommended granting me a long term lease.

The water lines in place were steel, and had been installed in 1962. They would obviously need expensive maintenance over time, and it was not financially prudent to make a large capital investment required to maintain the water delivery system when I was only legally entitled to a 30 day Revocable Use Permit.

In addition to RP S-7088, I also hold RP S-7095 for the land proximate to the well, covered by RP S-7088. For more than 27 years, I have tried to obtain a long term lease for RPs S-7088 and S-7095. Despite my many trips to testify before the Land Board to renew the RPs annually, making known my requests for long term leases, no offer of a lease was forthcoming from the Hawaii State Department of Land and Natural Resources.

I cannot in good conscience continue to operate a system that is in grave need of very expensive maintenance, and more important, exposes the community to very real health hazards. DOH

EXHIBIT B

recently inspected the water system and pointed out how essential the backflow preventer was in order to protect the potable water from any contamination flowing back from outside sources. I pointed out to them there are many leaks in the main pipeline. They did not say I should fix them all but was made aware by someone else that each of those leaks are potential sources of contamination. After having an attorney look over the RP's, it was pointed out I have major liability in failing to maintain and create a safe water system. I hereby tender my notice that I resign and relinquish my RP rights effective August 5, 2024, and give 30 days notice to discontinue the water distribution. The exposure to me and my estate far outweighs any benefit derived as I am not able to prevent contamination of water that may be consumed and I am not willing to deplete my assets, which likely exceed \$1.5 million for the necessary mainmtenace and repair, with no more than a 30 day contract for these RPs.

Mahalo nui,

Jeffrey Lindner,
Moloaa Water Distribution Company

3. Upon execution of this Permit, deposit with the Board of Land and Natural Resources, hereinafter called the "Board", the sum of \$402.34 as security for the faithful performance of all of these terms and conditions. The whole or portion of the deposit will be returned to the Permittee upon termination of this Permit, but only after all of the terms and conditions of this Permit have been observed and performed to the satisfaction of the representatives of the Department of Land and Natural Resources.
4. ~~At the Permittee's own cost and expense, keep the government-owned improvements located on the Premises insured against loss by fire and other hazards, casualties and contingencies, for the full insurable value of those improvements. The policies shall name the State of Hawaii as an additional insured and shall be filed with the Board. In the event of loss, damage, or destruction of those improvements, the Board shall retain from the proceeds of the policies those amounts it deems necessary to cover the loss, damage, or destruction of the government-owned improvements and the balance of those proceeds, if any, shall be delivered to the Permittee.~~
5. Give the Board twenty-five (25) calendar days notice, in writing, before vacating the Premises.
6. If a holdover Permittee or licensee, pay all real property taxes, which shall be assessed against the Premises from the date of this Permit. In addition, a Permittee, not a holdover Permittee or licensee, who has occupied the Premises for commercial purposes for a continued period of one year or more, shall pay the real property taxes assessed against the Premises after the first year of the Permit as provided in Section 246-36(1)(D), Hawaii Revised Statutes.
7. Observe and comply with all laws, ordinances, rules, and regulations of the Federal, State, Municipal, or County governments affecting the Premises or improvements.
8. Repair and maintain all buildings or other improvements now or hereafter on the Premises.
9. Obtain the prior written consent of the Board before making any major improvements.
10. Keep the Premises and improvements in a clean, sanitary, and orderly condition.
11. Pay, when due, all payments for water and other utilities, and whatever charges for the collection of garbage that may be levied.

JK
ALO



12. Not make, permit, or suffer, any waste, strip, spoil, nuisance or unlawful, improper or offensive use of the Premises.
13. At all times with respect to the Premises, use due care for public safety and agrees to indemnify, defend, and hold harmless the State of Hawaii, its officers, agents, and employees from and against all claims or demands for damage, including claims for property damage, personal injury or death, arising on or about the Premises, or by any fire or explosion thereon, or growing out of, or caused by any failure on the part of the Permittee to maintain the Premises in accordance with the terms and conditions of this Permit.
14. Procure, at its own cost and expense, and maintain during the entire period of this Permit, a policy or policies of commercial general liability insurance, in an amount acceptable to the Chairperson, insuring the State of Hawaii and the Permittee against all claims for personal injury, death and property damage. The policy or policies shall cover the entire Premises, including all buildings, improvements and grounds and all roadways or sidewalks on or adjacent to the Premises in the control or use of the Permittee. The Permittee shall furnish the State with a certificate showing the policy to be initially in force and shall furnish a like certificate upon each renewal of the policy, each certificate to contain or be accompanied by an assurance of the insurer to notify the State of any intention to cancel any policy sixty (60) calendar days prior to actual cancellation. The procuring of this policy shall not release or relieve the Permittee of its responsibility under this Permit as set forth herein or limit the amount of its liability under this Permit.
15. In case the State shall, without any fault on its part, be made a party to any litigation commenced by or against the Permittee (other than condemnation proceedings), the Permittee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the State; furthermore, the Permittee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the State in enforcing the covenants and agreements of the Permit, in recovering possession of the Premises, or in the collection of delinquent rental, taxes, and any and all other charges.

B. Additional conditions:

1. The Board may revoke this Permit for any reason whatsoever, upon written notice to the Permittee at least thirty (30) calendar days prior to the revocation; provided, however, that in the event payment of rental is

delinquent for a period of ten (10) calendar days or more, this Permit may be revoked upon written notice to the Permittee at least five (5) business days prior to the revocation.

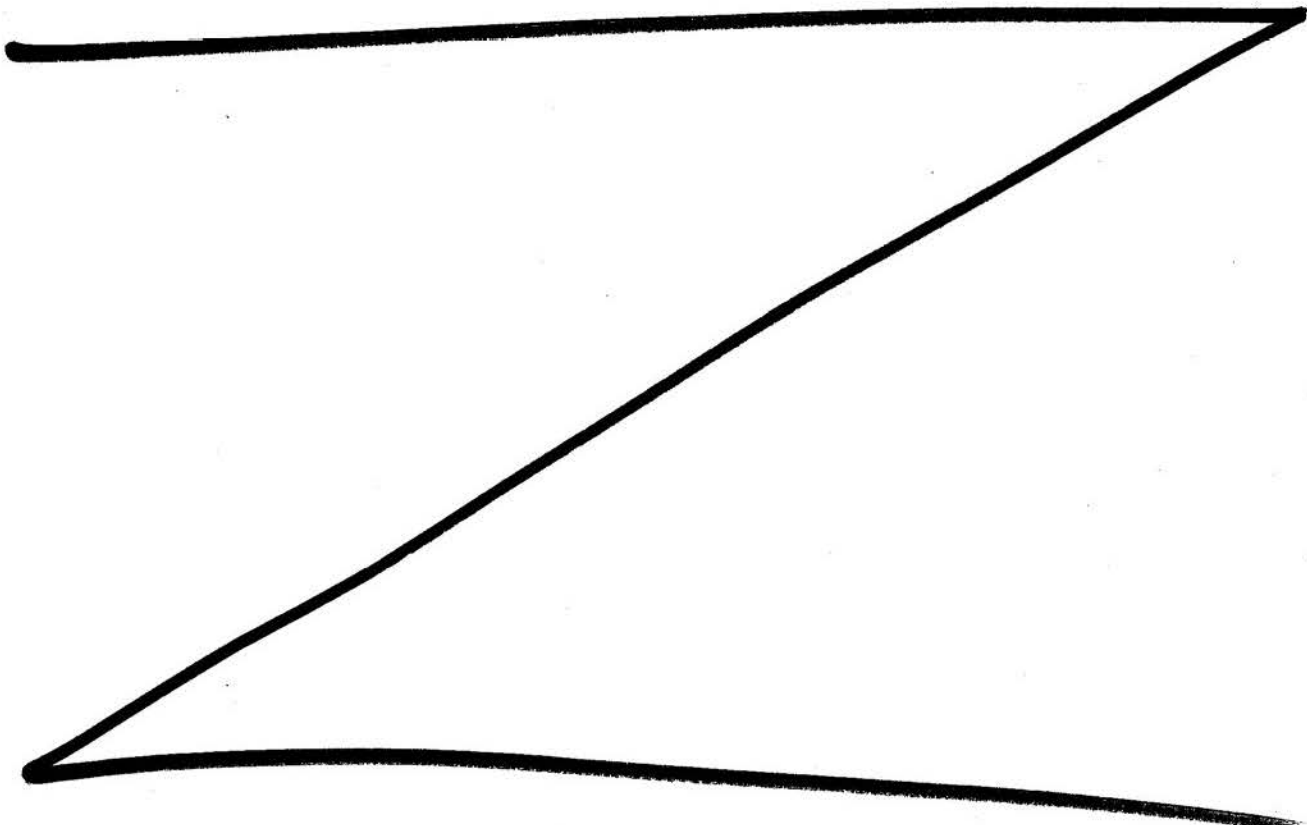
2. If the Permittee does not vacate the Premises upon the revocation of the Permit by the Board, the Permittee shall pay to the State Liquidated Damages at the daily rate of \$40.23 for each day, or portion thereof, the Permittee remains on the Premises over the date of revocation. The payment is in addition to any other rights or remedies the Board may be entitled to pursue for breach of contract, or for illegal occupancy, including the right to evict the Permittee without court action, and the cost thereof to be paid by the Permittee.
3. If the Permittee fails to vacate the Premises upon the revocation of the Permit, the Board, its agents and/or representatives may enter upon the Premises and remove and dispose of at Permittee's cost and expense, all vehicles, equipment, materials, and/or any personal property remaining on the Premises, and the Permittee agrees to pay for all costs and expenses of removal and disposition.
4. The Board may at any time increase or decrease the monthly rental by written notice at least 30 business days prior to the date of change of rent.
5. Any major improvements, including but not limited to buildings and fences, erected on or moved onto the Premises by the Permittee shall remain the property of the Permittee and the Permittee shall have the right, prior to the termination of this Permit, or within an additional period the Board in its discretion may allow, to remove the improvements from the Premises; provided, however, that in the event the Permittee shall fail to remove the improvements within 30 calendar days, after written notice to remove has been sent, the Board may elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to the Permittee.
6. The Board reserves the right for itself, its agents, and/or representatives to enter or cross any portion of the premises at any time in the performance of its duties.
7. This Permit or any rights hereunder shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of.
8. It is understood that the Permittee has inspected the Premises and knows the conditions thereof and fully assumes all risks incident to its use.

9. The acceptance of rent by the Board shall not be deemed a waiver of any breach by the Permittee of any term, covenant or condition of this Permit nor of the Board's right to declare and enforce a forfeiture for any breach, and the failure of the Board to insist upon strict performance of any term, covenant or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition or option.
10. The term of this month-to-month permit beyond one year from date of issuance is subject to the prior approval of the Board.
11. The use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon race, creed, color, sex, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.
12. Any and all disputes and/or questions arising under this Permit shall be referred to the Chairperson of the Board and his determination of these disputes or questions shall be final and binding on the parties.
13. Permittee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Permittee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the premises any such materials except to use in the ordinary course of Permittee's business, and then only after written notice is given to the Board of the identity of such materials and upon the Board's consent, which consent may be withheld at the Board's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Permittee, then the Permittee shall be responsible for the reasonable costs thereof. In addition, Permittee shall execute affidavits, representations and the like from time to time at the Board's request concerning Permittee's best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by Permittee.

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

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

14. Prior to the termination of the subject permit, Permittee shall conduct a Level One (1) Hazardous Waste Evaluation and conduct a complete abatement and disposal, **if necessary**, satisfactory to the standards required by the Federal Environmental Protection Agency and the Department of Land and Natural Resources. The termination will not be approved by the Board of Land and Natural Resources unless this evaluation and abatement provision has been executed.
15. Permittee shall assume the obligations of Amfac to provide water to the County of Kauai's Department of Water, Meadow Gold Dairies, Inc. And the Moloaa Farmers Cooperative.



Unless the text indicates otherwise, the use of any gender shall include all genders and, if the Permittee includes more than one person, the singular shall signify the plural and this Permit shall bind the persons, and each of them jointly and severally.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

DATED: December 16, 1997.

STATE OF HAWAII

By *Wanda A. Colman-Cagan*
Chairperson and Member
Board of Land and Natural Resources

Approved by the Board of Land and Natural Resources at its meeting held on August 8, 1997 (D-11)

PERMITTEE:

Jeffrey S. Lindner
JEFFREY S. LINDNER

APPROVED AS TO FORM:

Ray J. J. Grew
Deputy Attorney General
Dated: December 1, 1997

STATE OF HAWAII)
) SS.
COUNTY OF Kauai)

On this 11th day of November, 1997, before me personally appeared
Jeffrey S. Lindner
to me known to be the person(s) described in and who executed the foregoing
instrument and acknowledged to me that he executed the same as his free act and
deed.

L.S.

O. Maile S. Janiguchi
Notary Public, State of Hawaii

My Commission expires: 2/18/2000

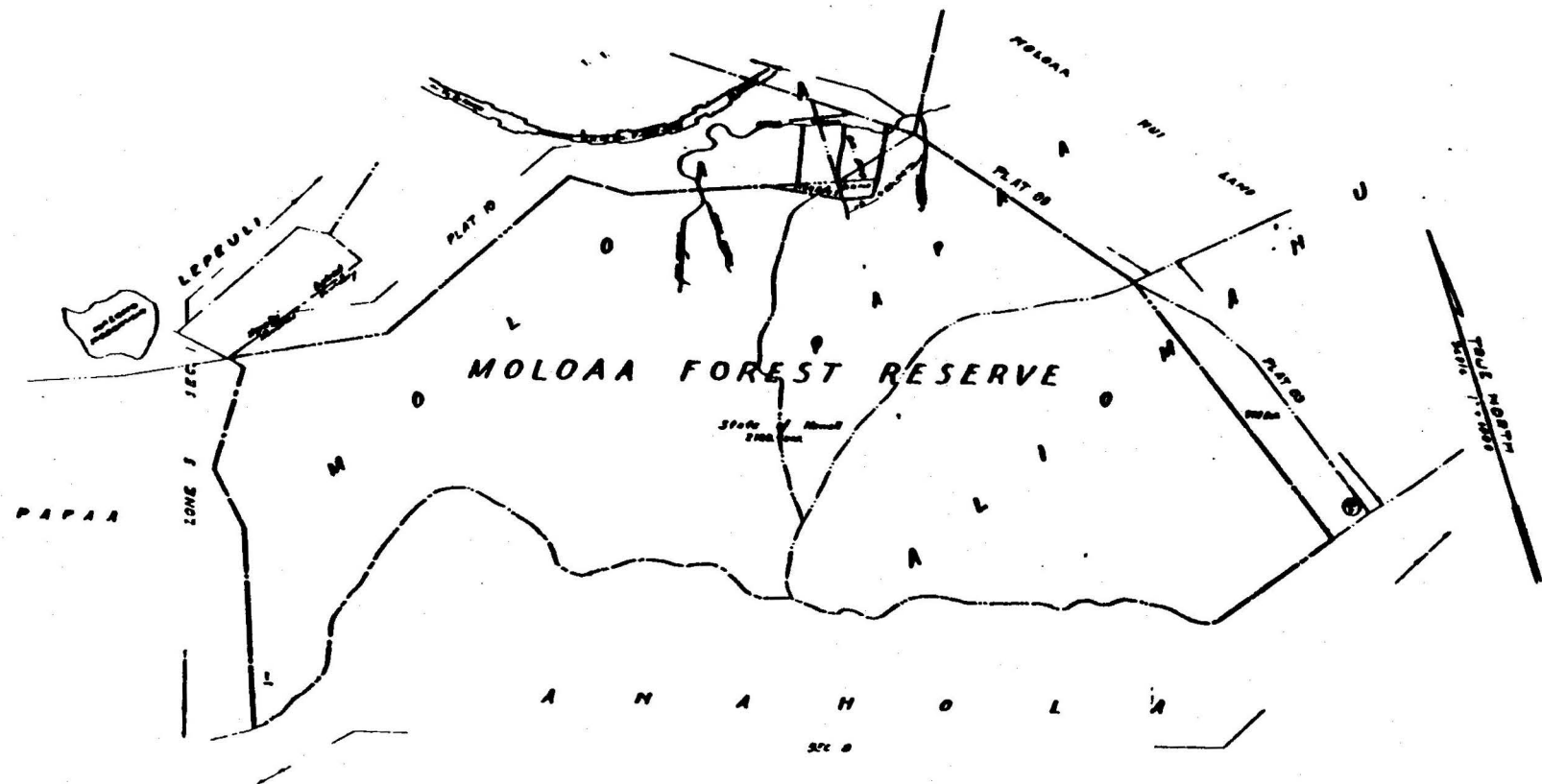
STATE OF HAWAII)
) SS.
COUNTY OF)

On this ____ day of _____, 19__, before me appeared _____ and
_____, to me personally known, who being
by me duly sworn, did say that they are the _____
and _____, respectively of _____
_____, 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 on behalf of said corporation by authority of
its Board of Directors, and the said _____ and
_____ acknowledged said instrument to be the free act
and deed of said corporation.

Notary Public, State of Hawaii

My Commission expires: _____

LAND BY
EXHIBIT A



Info provided to State's Attorney. All site papers/contracts taken from system. Not being printed. - Mike Watanabe (PUC)

JSL

- Call or Post & number of submitted & working dates - 6 weeks to 101 public auction.

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Land Management Branch
Honolulu, Hawaii 96813

August 8, 1997

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

KAUAI

Subject: Cancellation of Revocable Permit No. S-6825 to Lihue Plantation Co., Ltd., and Issuance of Temporary Revocable Permit and Immediate Right of Entry to Jeffrey S. Lindner For Operation and Maintenance of Molooa Well Site and Transmission Facilities, Molooa, Kauai, TMK 4-9-1: por. 1

STATUTE: Section 171-13 and other applicable sections, Hawaii Revised Statutes, as amended

APPLICANT: JEFFREY S. LINDNER

FOR: Temporary Revocable Permit for operation and maintenance of Molooa Well Site and Transmission Facilities, portion of the government land of Molooa, same being a portion of the Molooa forest Reserve, Papaa, Molooa, Kawaihau, Kauai, Tax Map Key 4-9-1: por. 1 as shown on attached map labeled Land Board Exhibit "A".

LAND TITLE STATUS: Subsection 5(b) lands

STATUS: Unencumbered

ZONING: State Land Use Commission: Agriculture

AREA: Approximately 125 acres, more or less

PURPOSE:

- a. Right, privilege and authority to operate and maintain the existing Molooa Well site and its water transmission facilities until such time the County of Kauai's Department of Water can conduct an approximate 6-month feasibility study to determine the appropriateness of creating a new water system in the area; and

EXHIBIT D

ITEM D-11

- b. Immediate right of entry for maintenance and site control purposes.

**COMMENCEMENT
DATE:**

Retroactive to October 1, 1996

MONTHLY RENT:

As determined by a Staff appraisal dated June 23, 1995, \$201.17 per month, same subject to Chairperson approval.

**COLLATERAL
SECURITY
DEPOSIT:**

Twice the monthly rent

**LIQUIDATED
DAMAGES:**

\$3.00 or twenty percent (20%) of the monthly rent, whichever is greater, per day.

**OTHER TERMS &
CONDITIONS:**

Authorize the Board Chairperson to impose additional terms and conditions which may best serve the interest of the State.

**CHAPTER 343,
ENVIRONMENTAL
ASSESSMENT:**

The proposal does not intensify nor change the past use of the subject land. Therefore, pursuant to Section 11-200-8 (1), Exempt Classes of Action, of the Environmental Impact Statement Rules, the action is exempt from obtaining a negative declaration.

REMARKS:

Background. The subject site was previously encumbered by General Lease No. S-3828 to Lihue Plantation Co., Ltd., for water license purposes, and which expired on May 10, 1994. Replacement Revocable Permit No. S-6825 was approved by the Land Board on June 23, 1995, retroactive to the date the lease expired. The annual rent for the permit, as determined by staff appraisal on June 23, 1995 (see attached), was \$2,412 per annum, or \$201 per month.

The permit documents were processed to the permittee promptly by KDLO. However, the permit documents were never executed by the permittee due

to the permits technical relationship with other expired leases Statewide, coupled with their downsizing strategies. The permittee was current with the monthly rent, and insurance requirements.

By letter dated September 16, 1996 the permittee notified the State of its intentions to cancel this holdover permit, effective October 1, 1996.

Jeffery Lindner. Mr. Lindner has purchased approximately 4 properties mauka of Kuhio Highway in Moloaa totalling 598.045 acres, from Amfac Property Development Corp. As part of this transaction, Amfac agreed to transfer to Mr. Lindner all of its rights to, and equipment and facilities associated with, the State's Moloaa Well Site, together with the well located on adjacent property owned by the Marian R. Keat Revocable Living Trust.

Mr. Lindner agreed to assume the obligations of Amfac to provide water to the County of Kauai's Department of Water, Meadow Gold Dairies, Inc. and the Moloaa Farmers Cooperative. (SEE Land Board Exhibit B)

Mr. Lindner eventually intends to develop his property as an agricultural subdivision. In order to provide water for this development, as well as for the water users previously described, he will need to use and, in some instances, upgrade the existing pump, storage and transmission facilities in this area. Mr. Lindner is presently discussing this matter with the Marian R. Keat Trust concerning the use of, and improvements to, the Keat Well, which is not presently in operation.

County of Kauai Department of Water. By letter dated October 14, 1996 the County of Kauai Department of Water has expressed interest in the State's Moloaa Well Site, as well as the other well site. The DOW will be conducting a study to determine the feasibility of creating a new water system in this area, and anticipates approximately 6 months for this study. The DOW has met with Mr. Lindner regarding his plans for the area. Mr. Lindner appears willing to work with the DOW to explore different options for the Moloaa area.

Temporary Revocable Permit. KDLO is recommending the issuance of this temporary permit to Mr. Lindner to maintain and operate the existing system until such time the DOW can complete their feasibility study regarding a new water system in the area. Due to the retroactive nature of this permit, and the need for expediting, KDLO is utilizing the previous rent recommendation established by staff appraisal for the previous permittee.

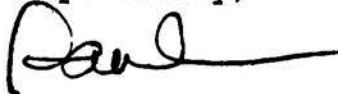
RECOMMENDATION: That the Board:

Authorize the issuance of a revocable permit to Jeffrey S. Lindner for operation and maintenance of the Molooa well site under the terms and conditions listed previously which are by this reference incorporated herein, in addition to the following terms and conditions:

1. Terms and conditions of the standard revocable permit document.
2. Standard hold-harmless clause.
3. Standard liability insurance requirement clause.
4. Approval as to the form of Revocable Permit document by the Department of the Attorney General.
5. Permittee shall comply with all applicable rules, ordinances and statutes of the County, State and Federal governments relative to the use of the subject property.
6. Upon termination of the permit, the Chairperson may require that a Level One hazard waste evaluation be conducted of the demised area, and if necessary, the permittee shall conduct a complete clean-up and abatement of the designated areas.

7. Other terms and conditions as may be prescribed by the Chairperson.

Respectfully,



SAM LEE
Kauai District Land Agent

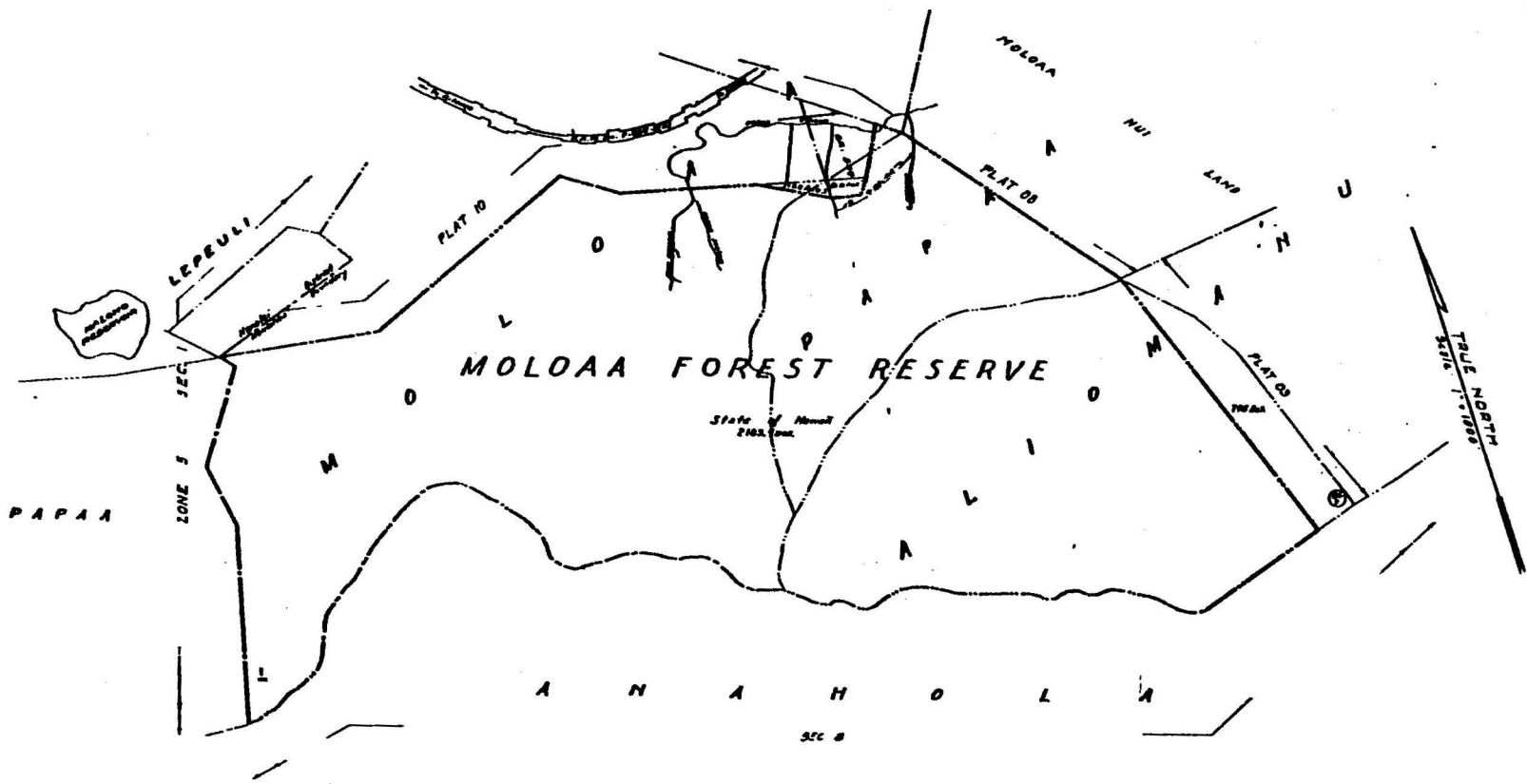


APPROVED FOR SUBMITTAL:

~~Michael D. Wilson~~
for MICHAEL D. WILSON, Chairperson

LAND BOARD
EXHIBIT A

4 9 01



4 44

TAXATION MAPS BUREAU		
TERRITORY OF HAWAII		
TAX MAP		
FOURTH	DIVISION	
ZONE	SEC.	PLA.
4	9	0
CONTAINING		PARCELS
SCALE 1:10000		

SUBJECT TO CHANGE

1. Because the lease expired and Amfac refused to sign the Revocable Permit, does the State now own the well and infrastructure located on State lands? As part of his purchase agreement with Amfac for the nearby lands, Amfac/Lihue Plantation Company, Ltd. assigned to Mr. Lindner its rights to the State Well (Moloaa Well No. 1) and the equipment it had installed to operate the State Well. I have enclosed a copy of the Assignment of Lease/License for your review. As a result, it is Mr. Lindner's position that he owns the equipment associated with the State Well, including the pump, the pipelines, the electrical facilities, and other related facilities. Obviously, the State owns the State Well, and has the ultimate right to issue leases or Revocable Permits for the use of the State Well to Mr. Lindner or any other person or entity it deems appropriate. Because of the difficulty or impossibility of removing the casing that has been installed within the State Well, it seems as though the State will retain ownership of the casing. However, Mr. Lindner believes he has the right to remove any and all other equipment and facilities should the State determine not to grant him a Revocable Permit for the State Well.

2. What is Mr. Lindner's understanding of what he purchased? As indicated in the answer to the first question, Mr. Lindner believes he purchased the facilities and infrastructure associated with the State Well. He understands that Amfac had no right to sell the State Well (which is obviously owned by the State) and had no right to require the State to assign the original lease or issue a new lease or a Revocable Permit for the State Well to Mr. Lindner.

b. Map 2 shows the general location of the transmission system for the State Well and the Keat Well.

c. Map 3 (Tax Map 4-9) shows the general area, including the Lindner Property and the Moloaa Hui Lands, Inc. Property.

d. Map 4 (Tax Map 4-9-09) shows the Moloaa Hui Lands, Inc. Property (Parcels 1-26) and a portion of the Lindner Property (Parcel 7).

e. Map 5 (Tax Map 4-9-03) shows a portion of the Lindner Property (Parcel 2).

f. Map 6 (Tax Map 4-9-08) shows a portion of the Lindner Property (Parcels 1 and 3), together with the general location of the Meadow Gold lease area within the Lindner Property.

3. How much water is coming from the State Well and how much is coming from the Keat Well? All of the water currently being used to supply the Moloaa Hui Lands, Inc. (the successors to the Moloaa Farmers Coop), the Department of Water of the County of Kauai, and Meadow Gold Dairies, Inc. is being produced by the State Well. The Keat Well is not currently in operation. Mr. Lindner would need to get the permission of the Keat Trust in order to operate the Keat Well. Even with such permission, he would need to install a new pump, new electrical equipment, and repair the existing pipeline. At this point, the Keat Trust has not indicated whether it would be willing to allow Mr. Lindner to operate the Keat Well. Apparently, the Keat Trust may want to retain the exclusive use of the Keat Well for the development of its own lands.

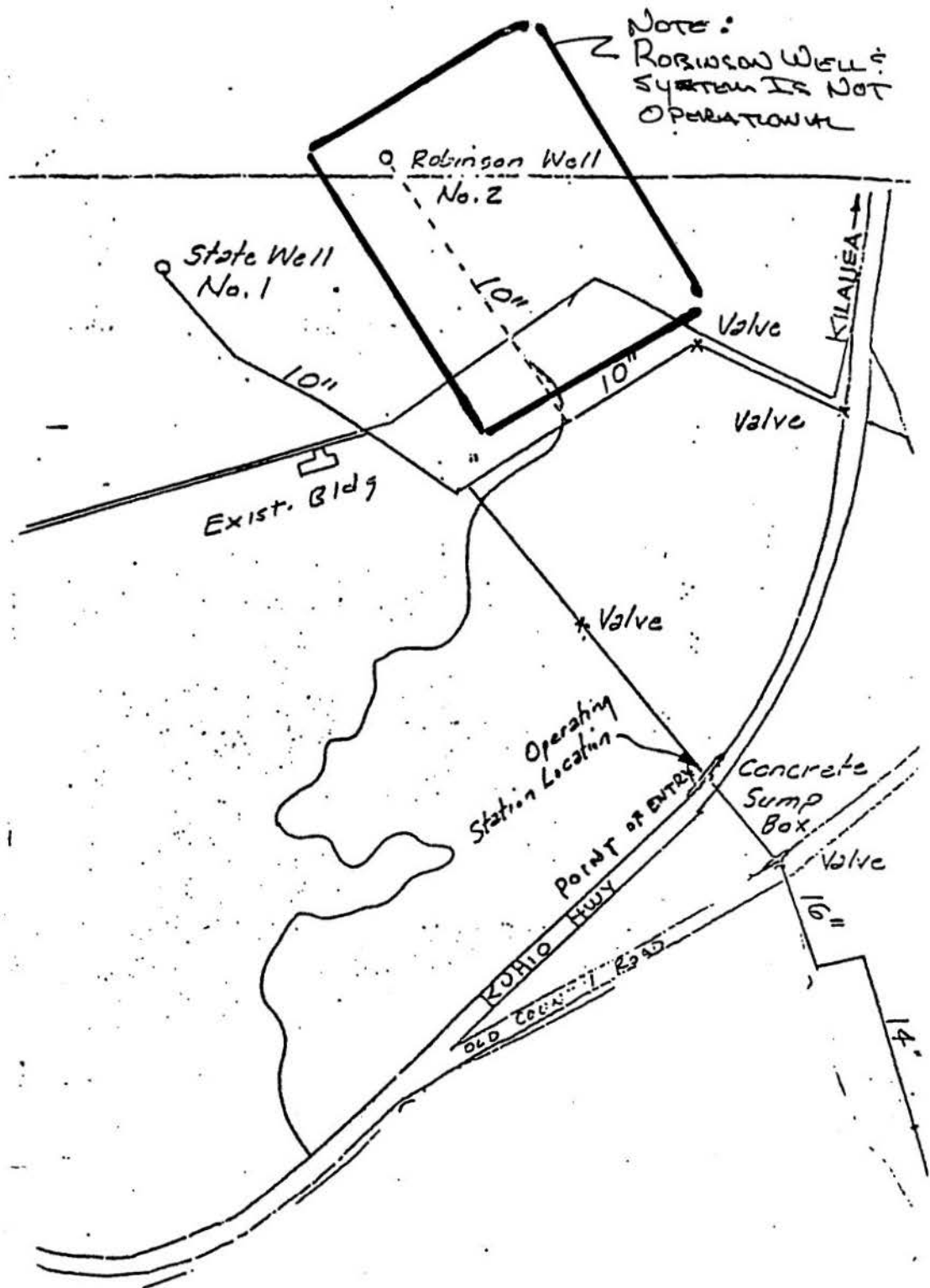
Mr. Lindner has assumed the obligations that Amfac formerly owed to the following entities to provide the following amounts of water:

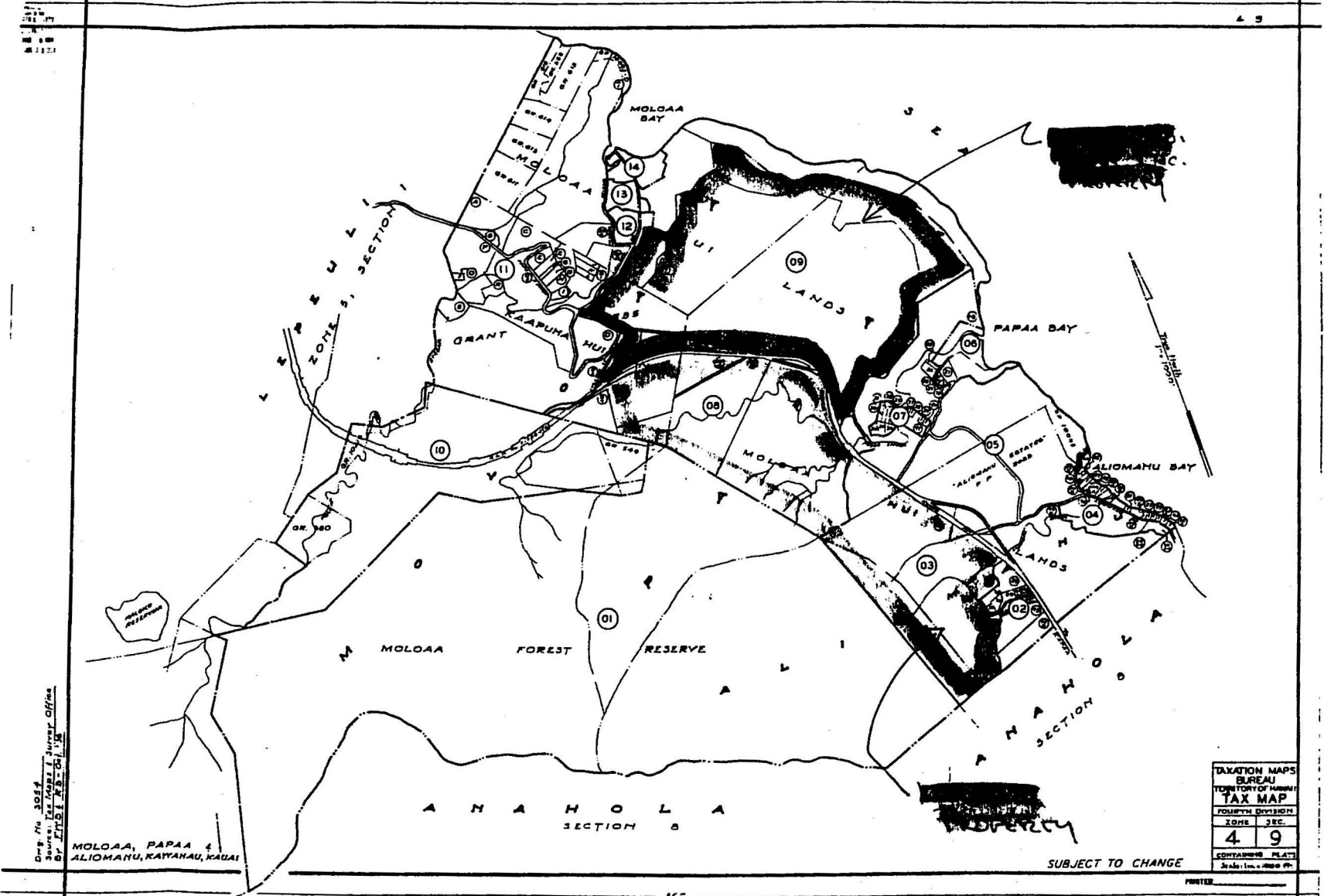
- a. Moloaa Farmers Coop - 930,000 gallons per day.
- b. Meadow Gold Dairies, Inc. - 40,000 gallons per day.
- c. Department of Water, County of Kauai - 5,000 gallons per day.

4. Is Lindner the lessor to both Meadow Gold Dairies, Inc. and the Moloaa Farmers Coop? Mr. Lindner has assumed Amfac's position as the lessor of lands to the Meadow Gold Dairies, Inc. As part of the lease with Meadow Gold Dairies, Inc., Mr. Lindner is obligated to provide water from the State Well as provided in Paragraph 3 above. Mr. Lindner does not lease lands to the Moloaa Farmers Coop. These lands were formerly leased by Amfac (through the Lihue Plantation Company, Ltd.) to the Moloaa Farmers Coop ("Coop"). Amfac in turn entered into an agreement with the Coop to provide water in the amounts noted above in Paragraph 3 above to the Coop. Amfac has since sold the lands that were formerly leased to the Coop to Moloaa Hui Lands, Inc., which is composed of some of the farmers who formerly were part of the Coop. Moloaa Hui Lands, Inc. intends to continue farming on these same lands. The obligation under the initial water agreement between Amfac and the Coop were transferred to Mr. Lindner, and the benefits have since been transferred by the Coop to Moloaa Hui Lands, Inc. As a result, Mr. Lindner has agreed to provide the amounts of water set forth in Paragraph 3 above to the Moloaa Hui Lands, Inc.

5. Please provide maps showing the location of the various lands, lease areas, wells and transmission systems. In response to this request, I have enclosed the following maps:

- a. Map 1 shows the location of the State Well and the Keat Well.





1:25,000
 1954
 H. S. G. S.

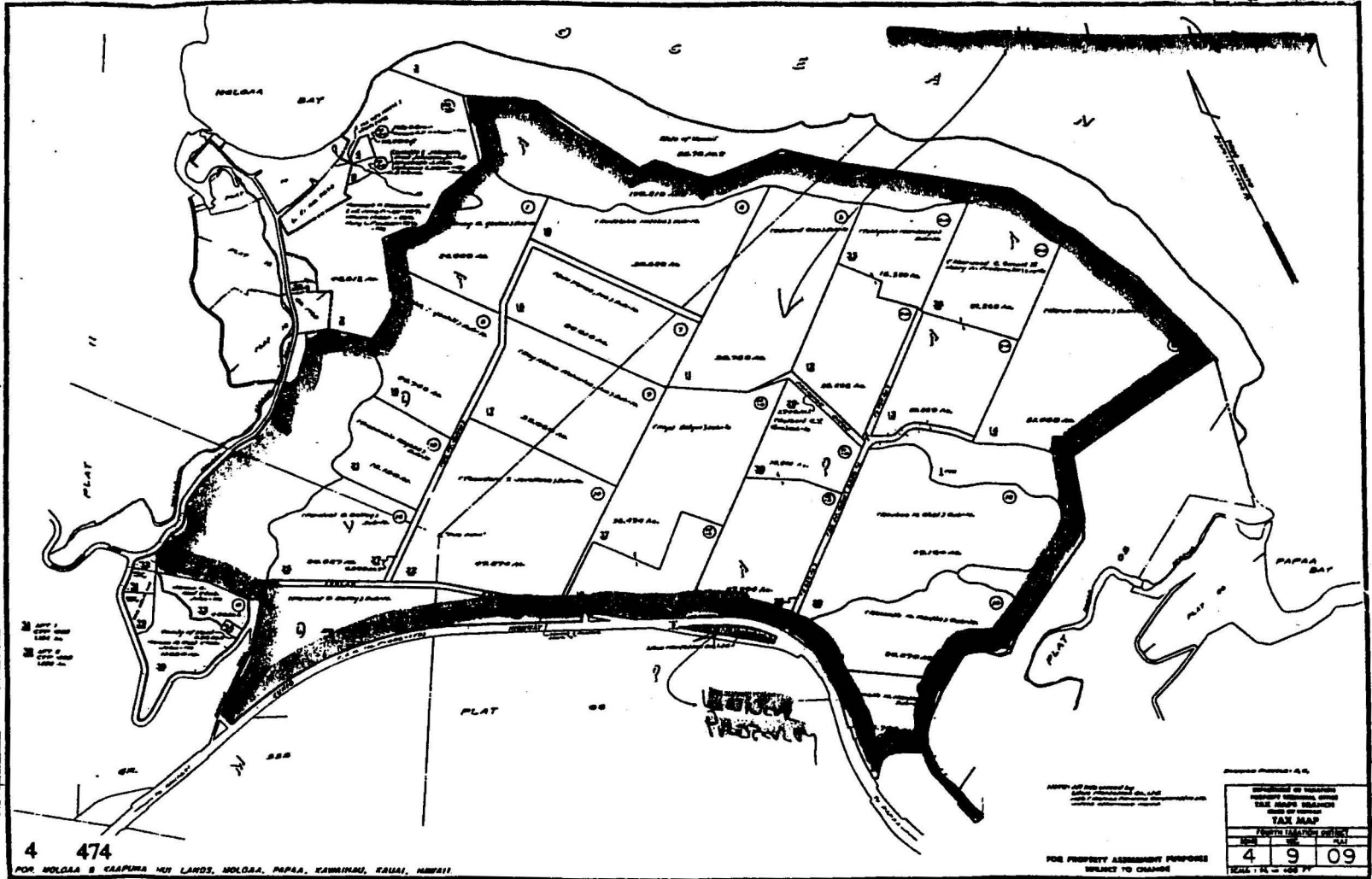
Orig. No. 1024
 Title: MOLOAA, PAPAA & ALIOMANU, KAWAII
 Date: 11-15-54
 Office: Survey Office

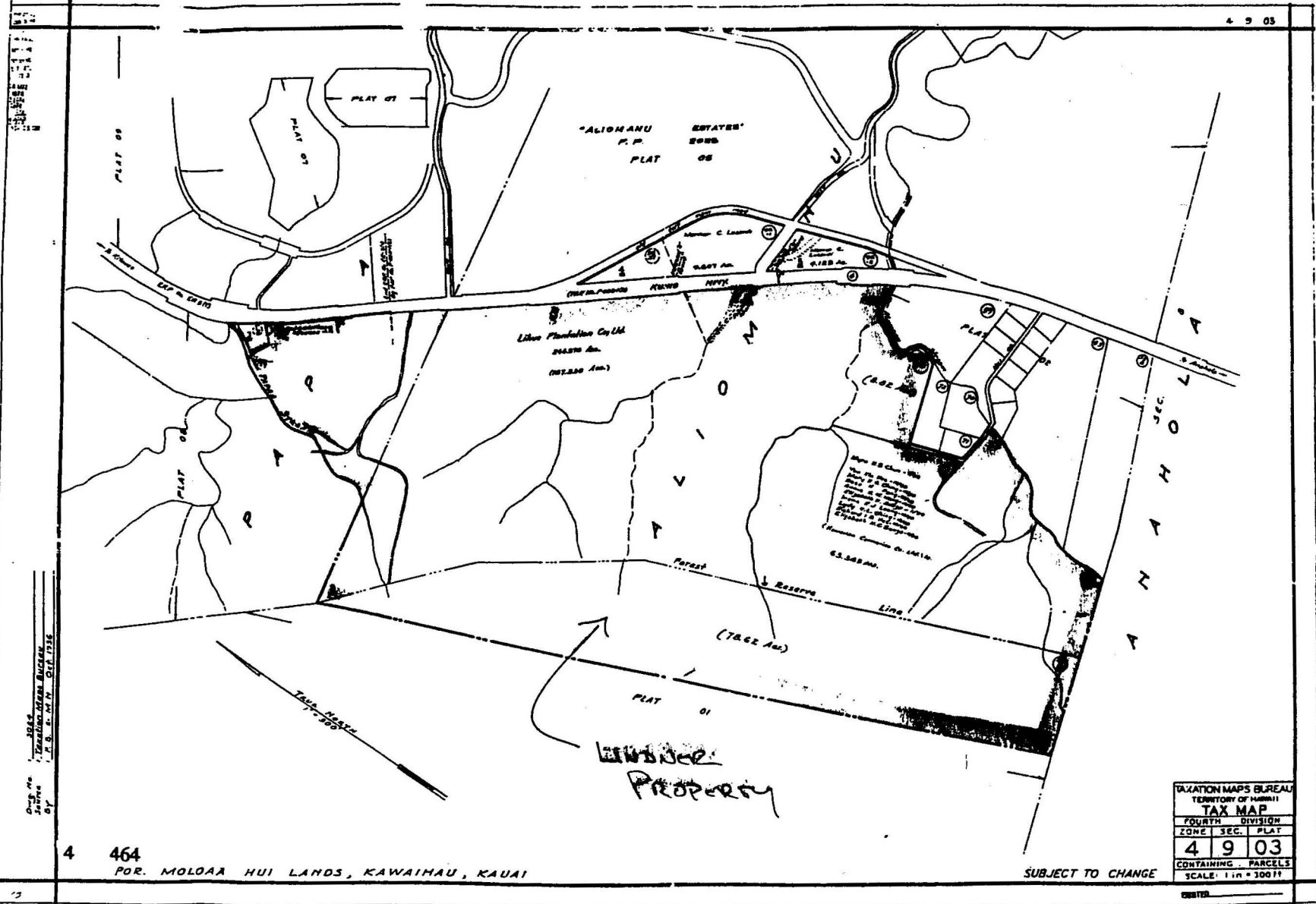
MOLOAA, PAPAA & ALIOMANU, KAWAII

TAXATION MAPS BUREAU	
TERRITORY OF HAWAII	
TAX MAP	
FOURTH DIVISION	
ZONE	SEC.
4	9
CONTAINING PLAT	
Scale: 1 in. = 2000 ft.	

SUBJECT TO CHANGE

PRINTED





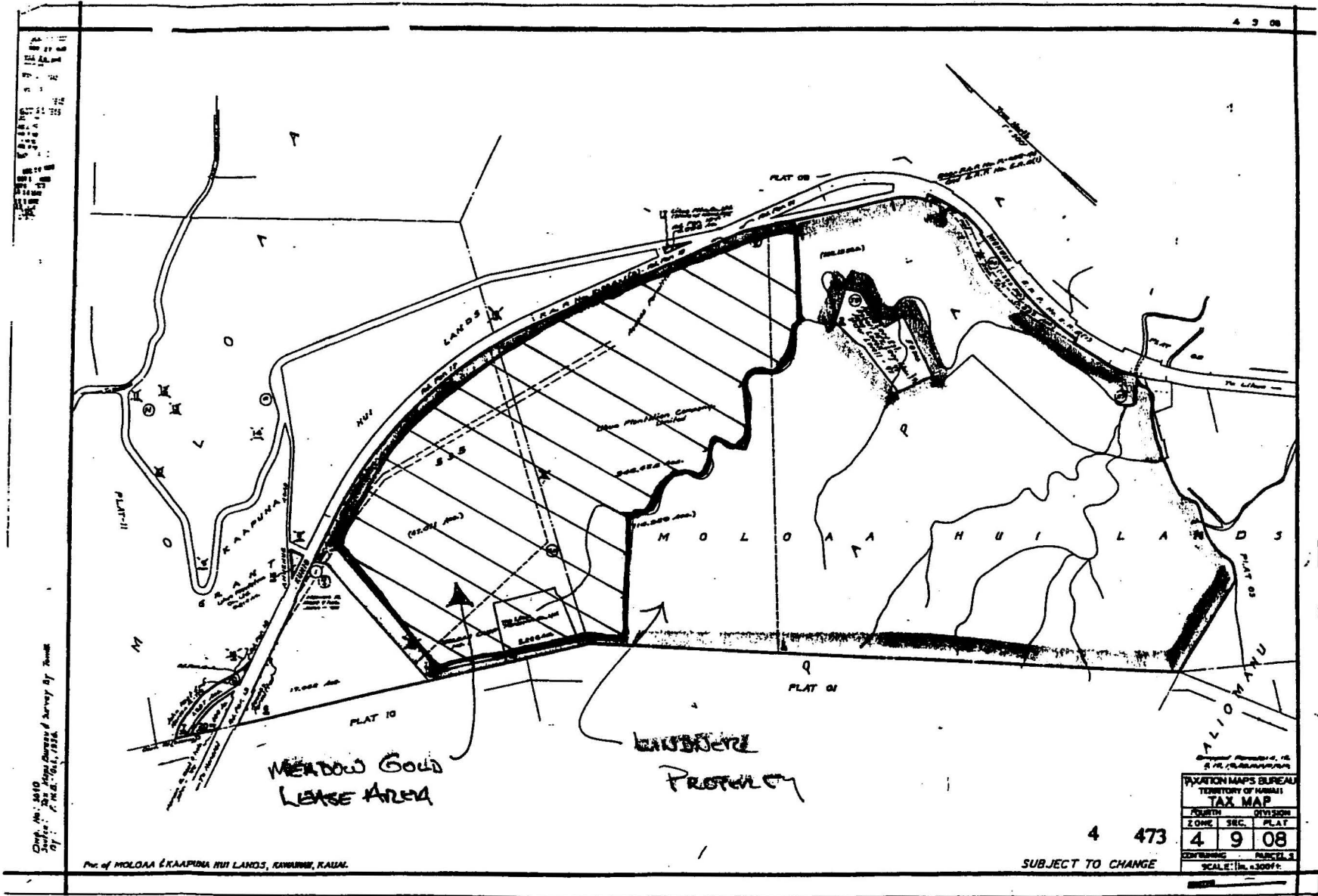
3064
 Taxation Maps Bureau
 J. B. S. M. N. Oct. 1956
 Drawn by

4 464
 POR. MOLOAA HUI LANDS, KAWAIHAU, KAUAI

LINDNER
 PROPERTY

TAXATION MAPS BUREAU		
TERRITORY OF HAWAII		
TAX MAP		
FOURTH	DIVISION	
ZONE	SEC.	PLAT
4	9	03
CONTAINING PARCELS		
SCALE: 1 in = 300 ft		

SUBJECT TO CHANGE



Cont. No. 4410
 Survey of the
 Moloaa Hui Lands, Kawaiwi, Kauai, 1886.

Part of MOLOAA EKAAPUNA HUI LANDS, KAWAIWI, KAUAI.

OFFICIAL RECORDS, 16
 & 17, KAWAIWI, KAUAI

TAXATION MAPS BUREAU		
TERRITORY OF HAWAII		
TAX MAP		
FOURTH	DIVISION	
4	9	08
ZONE	SEC.	PLAT
DRAWING		PARTIAL
		3
SCALE: 1" = 300 FT.		

4 473

SUBJECT TO CHANGE

MAP 6

**BELLES GRAHAM
PROUDFOOT & WILSON**

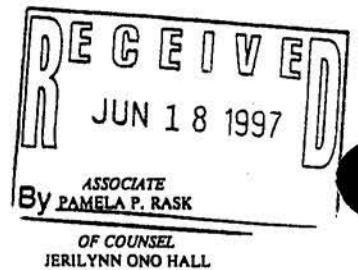
ATTORNEYS AT LAW

WATUMULL PLAZA
4334 RICE STREET, SUITE 202
LIHUE, KAUAI, HAWAII 96766-1388

TELEPHONE NO: (808) 245-4705
FACSIMILE NO: (808) 245-3277
E-MAIL: mail@kauai-law.com

MICHAEL J. BELLES
MAX W.J. GRAHAM, JR.
DAVID W. PROUDFOOT
DONALD H. WILSON

Federal I.D. No. 99-0317663



June 13, 1997

Mr. Sam Lee
Kauai District Land Agent
State of Hawaii
Department of Land and Natural Resources
Division of Land Management
3060 Eiwa Street, Room 306
Lihue, Kauai, Hawaii 96766

RE: **Jeffrey S. Lindner Application for Revocable Permit
Moloaa Well No. 1, Moloaa, Kauai, Hawaii**

Dear Mr. Lee:

I understand that the Department of Land and Natural Resources ("Department") has suggested that the State may own the water facilities installed by the Lihue Plantation Company, Ltd. for the Moloaa Well No. 1 ("State Well"). The State Well was formerly the subject of General Lease No. S-3828 between the State and the Lihue Plantation Company, Ltd. ("Lihue Plantation"). When the Lease expired, Lihue Plantation and the State began negotiations for the issuance of a Revocable Permit for the State Well. Thereafter, Lihue Plantation and Amfac Property Development Corp. ("Amfac") sold certain nearby lands in Moloaa to Mr. Jeffrey S. Lindner. As part of the transaction, Amfac and Lihue Plantation assigned all of their rights to the State Well, the well facilities, and all of their rights to continue negotiations for the Revocable Permit, to Mr. Lindner. I have enclosed a copy of the Assignment of Lease/License between the parties for your records. Since then, Mr. Lindner has continued to negotiate in good faith with the State for the issuance of a Revocable Permit for the State Well.

As you know, it is in the interest not only of Mr. Lindner, but other users in the area (the County of Kauai, Department of Water/Meadow Gold Dairies, Inc./Moloaa Farmers Coop/Moloaa Hui Lands, Inc.) that the State Well continue to be used to provide water for this

Mr. Sam Lee
June 13, 1997
Page 2

area. Mr. Lindner has in fact continued to operate the water system for the benefit of these water users.

The General Lease provided at Paragraph 26 that upon the conclusion of the lease, ". . . the lessee . . . may, on or before the termination of this lease by elapse of time, or within such further reasonable time as the Lessor may allow, remove any improvements, including pumps, power and telephone lines and all appurtenances thereto which have been or will have been constructed, erected and maintained by the Lessee upon or across the Lease Area . . .". Mr. Lindner, and to the best of my knowledge, Lihue Plantation, understood that there would be no requirement to remove this equipment from the State Lease Area pending the resolution of the issuance of a Revocable Permit. I believe this was the understanding of all parties in view of the fact that no one wished to interrupt the supply of water to the users in this area, since at the present time the only source of such water is the State Well (the Keat Well not being operational).

I therefore would appreciate it if you would clarify to me whether the State intends to take the position that the State is the owner of the pumps, electrical facilities and other related facilities which are presently being used to extract water from the State Well. Obviously, Mr. Lindner's position is that he is the owner of such facilities, and that before the State can make a claim of ownership it must first give him prior notice and a reasonable amount of time to remove such equipment.

Thank you for your consideration of this matter.

Sincerely yours,

BELLES GRAHAM
PROUDFOOT & WILSON



Max W. J. Graham, Jr.

Need to clarify
Ownership in R.P.

MWJG:jlj
Enclosure

cc: Mr. Jeffrey S. Lindner

ASSIGNMENT OF LEASE/LICENSE

THIS INDENTURE made this 25th day of July, 1996, but effective as of June 21, 1996, by and between THE LIHUE PLANTATION COMPANY, LIMITED, a Hawaii corporation, whose principal place of business and mailing address is 700 Bishop Street, 21st Floor, Honolulu, Hawaii 96813, hereinafter called the "Assignor," and JEFFREY S. LINDNER, unmarried, whose post office address is [REDACTED], Anahola, Hawaii, hereinafter called the "Assignee,"

W I T N E S S E T H :

That for valuable consideration paid by the Assignee, the receipt of which is hereby acknowledged, and in consideration of the covenants and agreements of the Assignee hereinafter expressed, the Assignor does hereby sell, assign, transfer, set over and deliver unto Assignee, as Tenant in Severalty, the following:

"All of the estate, right, title and interest of the Assignor in and to the leases and licenses described in Exhibit "A", attached hereto and by reference made a part hereof, subject to the encumbrances noted therein."

And all of the estate, right, title and interest of the Assignor in and to the land thereby demised or licensed, and all buildings, improvements, rights, easements, privileges and appurtenances situated on or built on or used, occupied and enjoyed in connection with said lease and license (hereinafter sometimes collectively referred to as "lease") and the land thereby demised or licensed, including but not limited to, all water well facilities and improvements for the procuring, pumping, delivery and use of water, and any registrations of wells and declarations of water use.

TO HAVE AND TO HOLD the same unto the Assignee according to the tenancy set forth herein, for and during the remaining portion of the term of said lease and license.

SUBJECT, HOWEVER, to the consent of the lessor and licensor, as the case may be, under the leases and licenses described in Exhibit "A" (hereinafter sometimes collectively referred to as the "Lessor") and the payment of the rents reserved by said lease and license and subject also to the observance and performance by the Assignee of all of the covenants and conditions in said lease and license contained which, according to the terms and provisions of said lease and license, are or ought to be observed and performed by the lessee and licensee, as the case may be, therein named;

AND, in consideration of the premises, the Assignor does hereby covenant with the Assignee that the Assignor is the lawful owner of the lease and license described in Exhibit "A";

AND, in consideration of the foregoing, the Assignee does hereby promise, covenant and agree to and with the Assignor and to and with said Lessor, that the Assignee will as of and from the effective date hereof and during the residue of the term of said lease and license, pay the rents thereby reserved as and when the same become due and payable pursuant to the provisions of said lease and license, and will also faithfully observe and perform all of the covenants and conditions contained in said lease and license which from and after the effective date hereof are or ought to be observed and performed by the lessee and licensee therein named, and will at all times after the effective date hereof indemnify and hold Assignor harmless from any and all liability arising out of the lease(s) and license(s) described in Exhibit "A", or arising from any breach thereof by Assignee.

AND, in consideration of the foregoing, the Assignee further covenants and agrees, for the benefit of Assignor, its successors and assigns, that he has inspected the Property assigned hereby and that he accepts the Property "as is", in its present state and condition, without representation or warranty.

The rights and obligations of the Assignor and the Assignee shall be binding upon and inure to the benefit of their respective estates, heirs, personal representatives, successors, successors in trust and permitted assigns. All obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention shall be clearly expressed elsewhere herein.

The assignment herein set forth and the warranties of the Assignor concerning the same are expressly declared to be in favor of the Assignee, his heirs, personal representatives and permitted assigns.

The terms "Assignor" and "Assignee," as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, the singular or plural number, individuals or corporation and their and each of their respective successors, heirs, personal representatives and assigns, according to the context thereof. If these presents shall be signed by two or more Assignors or by two or more Assignees, all covenants of such parties shall for all purposes be joint or several.

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

THE LIHUE PLANTATION COMPANY, LIMITED

Approved as to Form^s BY Chun Chun Lo Shing
By Chun ITS Assistant Vice President

"Assignor"

JEFFREY S. LINDNER

Max W. J. Graham, Jr.
By Max W. J. Graham, Jr., his
Attorney-in-Fact

"Assignee"

STATE OF HAWAII)
 : ss.
CITY AND COUNTY OF HONOLULU)

On this 25th day of July, 1996, before me appeared ANNE TO-SHIMAZU, to me personally known, who, being by me duly sworn, did say that he is the Assistant Vice President of THE LIHUE PLANTATION COMPANY, LIMITED, a Hawaii corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and said officer acknowledged said instrument to be the free act and deed of said corporation.

Tammy P. L. S.
Notary Public, State of Hawaii

My commission expires: JUNE 16, 1998

STATE OF HAWAII)
 : ss.
COUNTY OF KAUAI)

On this 17th day of July, 1996, before me personally appeared MAX W. J. GRAHAM, JR., to me known to be the person described in and who executed the foregoing instrument as Attorney-in-Fact for said JEFFREY S. LINDNER, and acknowledged that he executed the same as the free act and deed of said JEFFREY S. LINDNER.

O. Thane S. Janiguchi
Notary Public, State of Hawaii

L.S.

My commission expires: 2/18/2000

EXHIBIT "A"

1. Unrecorded General Lease No. S-3828 executed on July 10, 1964, by and between the State of Hawaii through its Board of Land and Natural Resources and the Lihue Plantation Company, Limited, and also referred to as the Moloaa Forest Reserve Water Lease, demising premises situated at Papaa, Moloaa, Koolau (Kawaihau), Kauai, Hawaii, bearing tax map key number (4) 4-9-01:001.

2. Unrecorded License Agreement made and entered into on July 15, 1988, effective December 5, 1987, by and between Marion Keat, Trustee of the Marion R. Keat Revocable Living Trust dated September 16, 1982, and the Lihue Plantation Company, Limited, covering premises situated in Heke, Moloaa-Papaa, Kauai, Hawaii, bearing tax map key number (4) 4-9-010:001.

Item D-11

Revocable Permit - MOWA Deal Site

Applicant - TERENCE S. LINDNER

ADD THE FOLLOWING QUESTIONS:

8. Provided that the Temporary Revocable Permit has been renewed for a period of one year after its initial issuance, prior to or by the one year anniversary of the initial issuance of the Revocable Permit the Applicant shall submit a written report ("Report") concerning the following matters:
 - a. The identity of users of the water system serviced by the State well?
 - b. The amount of water distributed as of the date of the Report to the various users?
 - c. The costs of operating the water system and the revenues paid by users as of the date of the Report?
 - d. A description of the water system any changes made as of the date of the Report?
 - e. A feasibility study of the conditions and terms under which Applicant might establish a private water company, regulated by the Public Utilities Commission of the State of Hawaii, to provide water

from the State Well to users in the Moloaa area. This study shall include a description of the capital improvements which the proposed water company will need to maintain and construct in the first five-year period after its creation;

f. The manner in which the State might issue a long term lease for the State Well for the supply of water to the users in the Moloaa area, the terms and conditions of such a lease, and the qualifications for bidders if such a lease must be offered at public auction;

g. The role, if any, of the County of Kawai in the future use and operation of the water system; and

h. Any other matters as prescribed by the Chairperson.