

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

November 14, 2025

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

PSF 25HD-094

Hawai'i

Pursuant to Act 90, Session Laws of Hawaii 2003 (Act 90), as mutually agreed upon between the Department of Land and Natural Resources and the Department of Agriculture and Biosecurity, the Board is Requested to Approve the Following:

1. Withdrawal of Approximately 4,850.75 Acres from General Lease No. S-4478, Boteilho Hawaii Enterprises, Inc., Lessee, and Authorize a Pro Rata Rent Reduction, Portion of Parcel 3, Ka'ohē II, Hamakua, Hawaii, TMK: (3) 4-3-010:002 (por.); and
2. Issuance of a Revocable Permit to Boteilho Hawaii Enterprises, Inc. for Pasture Purposes (with Alternate Agriculture Use Allowed on 10% of the Land) over the Withdrawn Area of Approximately 4,837.42 Acres, Portion of Parcel 3, Ka'ohē II, Hamakua, Hawaii, TMK: (3) 4-3-010:002 (por.); and
3. Set Aside Via Governor's Executive Order the Withdrawn Area of Approximately 4,837.42 Acres to the Department of Agriculture & Biosecurity for Pasture Purposes (with Alternate Agriculture Use Allowed on 10% of the Land), Portion Parcel 3, Ka'ohē II, Hamakua, Hawaii, TMK: (3) 4-3-010:002 (por.)

APPLICANTS:

Department of Land and Natural Resources (DLNR), Division of Forestry and Wildlife (DOFAW), as to the requested withdrawal of approximately 4,850.75 acres from General Lease No. S-4478 (GLS-4478), and more specifically, the retention of approximately 854.93 acres under GLS-4478 to be managed by DLNR.

Boteilho Hawaii Enterprises, Inc. as to the requested issuance of a revocable permit covering the withdrawn area of approximately 4,837.42 acres for pasture purposes (with alternate agriculture use allowed on 10% of the land).

Department of Agriculture and Biosecurity (DAB), as to the set-aside of the withdrawn area of approximately 4,837.42 acres to DAB.

LEGAL REFERENCE:

Sections 171-11, -55 and 166E-3, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Parcel 3, Government Lands of Ka'ohe II, Hamakua, Hawaii, identified by Tax Map Key: (3) 4-3-010:002 (pors.), as shown on the attached map labeled Exhibit A.

AREA:

Description	Acres (More or Less)
Original lease area	7,932.36
Area withdrawn for Palila Critical Habitat Mitigation	2,226.683
Current lease area	5,705.677
Area to be withdrawn from lease	~4,850.75*
Area to be set-aside to DAB	~4,837.42*
Area to be retained by DLNR	~854.93*
Remaining Area as Mana (Keanakolu) Road	~13.33*

*All areas are subject to survey and final subdivision approval.

ZONING:

State Land Use District: Agriculture
County of Hawaii CZO: A-40a

TRUST LAND STATUS:

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

CURRENT USE STATUS:

Encumbered by General Lease No. S-4478 (GLS-4478), Boteilho Hawaii

Enterprises, Inc., Lessee, for pasture purposes (with alternate agriculture use allowed on 10% of the land).¹

TERM OF LEASE:

Original term of 35 years, commencing on March 1, 1976, and expiring on February 28, 2011. At its meeting of January 9, 2004, the Board of Land and Natural Resources approved an extension of 20 years commencing on March 1, 2011, and expiring on February 28, 2031.

The aggregate term of the lease is 55 years, with the last rental reopening occurring on March 1, 2024, which increased the annual rent to \$41,000.00.

ISSUANCE OF REVOCABLE PERMIT (RP):

RP Commencement Date:

To be determined by the Chairperson.

RP Character of Use:

Pasture purposes (with alternate agriculture use allowed on 10% of the land).

RP Rent:

Monthly rent to be calculated on a pro rata basis after final subdivision approval and withdrawal of the approximate 4,850.75 acres, from GLS-4478 as follows:

$$\begin{aligned} \$41,000.00 \div 5,705.677 \text{ acres} &= \$7.19 \text{ per acre}^* \\ \$7.19 \times \sim 4,837.42 \text{ acres} \div 12 \text{ months} &= \sim \$2,896.73 \text{ monthly rent}^* \end{aligned}$$

*All adjusted rent figures are estimates only. The final figures will depend on the areas of the withdrawn and retained lands as determined by survey and final subdivision approval.

RP Security Deposit:

Two times the monthly rent.

Justification for Issuance of RP:

The proposed permittee, Boteilho Hawaii Enterprises, Inc. (BHEI),

¹ Lease amendment dated February 10, 2003 authorized 10% of the leased land not affected by what at that time was an easement for Palila Critical Habitat ("PCH") mitigation to be utilized instead for alternative agricultural use at no increase in lease rent. The area covered by the PCH mitigation easement was later withdrawn from the lease by the BLNR action dated December 9, 2010, and an amendment of lease dated March 3, 2020.

currently holds GLS-4478 for the same premises and purposes. The withdrawal of acreage from the lease, issuance of an RP to BHEI, and set-aside of the withdrawn area (to be encumbered by the RP) to DAB are intended to facilitate the transfer of ~4,837.42 acres to DAB pursuant to Act 90, Session Laws of Hawaii 2003 (Act 90). Once the acreage is transferred to DAB, it intends to convert the RP to a new long-term lease. The alternative of transferring the acreage to DAB encumbered by GLS-4478, would result in BHEI having two landlords for different portions of the same lease and could potentially lead to conflicts in management. Accordingly, the RP is an interim disposition only.

PURPOSE OF SET-ASIDE:

For pasture purposes (with alternate agriculture use allowed on 10% of the land).

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1 that states, "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," 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 agencies through a Governor's executive order," and Item 44 that states, "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing." The proposed withdrawal of lands from the lease premises, issuance of a revocable permit to Boteilho Hawaii Enterprises, Inc., and set-aside to the Department of Agriculture and Biosecurity are de minimis actions that will probably have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17, HAR.

The proposed actions would not result in any changes to the current use of the land. The land has been in long term use for pasture purposes and those uses will continue under the withdrawal, revocable permit and set aside. There are no known impacts to the land that have resulted from the pasture use, therefore no such impacts are expected to occur as a result of the withdrawal revocable permit and set aside. Furthermore, since this is a pasture area, it is not a sensitive environment.

APPLICANT REQUIREMENTS:

DOFAW shall be required to:

1. Process and obtain subdivision approval at DOFAW's own cost to create three parcels under GLS-4478 as shown on Exhibit B.
2. Provide survey maps and descriptions according to State DAGS standards and at DOFAW's own cost for: (a) processing the subdivision of the lands into three parcels; (b) identifying any roads, trails and other rights-of-way that DOFAW desires the Board of Land and Natural Resources to expressly designate as exceptions and reservations from the executive order setting aside the subject lands to DAB (with the understanding that the inclusion of metes and bounds descriptions and maps for these exceptions/reservations in the executive order will not be exclusive of any other road or trail required for public purposes that may presently exist on the ground or be designated in the future); and (c) any easements requiring survey.

PUBLIC TRUST ANALYSIS

The proposed actions require the Board to balance competing public trust uses. If the lease area withdrawal and set aside were not approved, then the Department would allow the lease to expire and upon the lands becoming vacant, use the land for forest reserve purposes. This would provide for public use, access and recreation on the land consistent with the provision of land for public use, a public trust purpose specified in Section 5(f) of the Admissions Act. Additionally, designating the land for forest reserve would also allow for watershed management to conserve water resources for public trust uses such as domestic use. These activities would also be in support of a clean, healthful environment.

However, the Board also has a duty to promote diversified agriculture pursuant to Article XI, Section 3 of the Hawaii State Constitution:

The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands.

Additionally, the use of public lands for the development of farm and home ownership on as widespread a basis as possible is also a public trust purpose under Section 5(f) of the Admissions Act. The proposed actions support the long-term viability and security of local agricultural operations. It also allows for the local production of food, supporting the goal of food sustainability and food security for Hawai'i. It may also translate into lower prices for consumers when produce does not have to be shipped to Hawai'i from outside of the state.

Ultimately, staff defers to the Board to determine which public trust use should be prioritized in this instance, which is noted in the Recommendations section.

REMARKS:

Request:

The Department of Agriculture and Biosecurity (DAB) has identified General Lease No. S-4478 (GLS-4478) as being suitable for transfer from the Department of Land and Natural Resources (DLNR) inventory. GLS-4478 is currently encumbered to Boteilho Hawaii Enterprises, Inc. (BHEI), Lessee, for pasture purposes (with alternate agriculture use allowed on 10% of the land).

Background:

The set-aside of agriculture lands to DAB is pursuant to Act 90, Session Laws of Hawaii 2003 (Act 90), later codified at Chapter 166E, HRS. The purpose of Act 90 is to ensure the long-term productive use of public lands leased or available to be leased by DLNR for agricultural purposes by allowing those lands to be transferred to and managed by DAB.

DLNR has transferred approximately 26,000 acres to DAB over the years but, prior to 2023, retained large pasture leases adjacent to forest reserves, such as the subject lands, due to the important natural resource value these lands have. DLNR has reconsidered its position and is now recommending the transfer of certain pasture lease lands to DAB, including a portion of the land under GLS-4478.

GLS-4478, covering 7,932.36 acres, was issued for pasture purposes for 35 years from March 1, 1976 to February 28, 2011. By letter dated May 28, 1976, the lessee was informed that 239 acres of Bluegum Eucalyptus tree stands would be restricted from the lease pursuant to the lease terms (refer to Exhibit C). The Bluegum Eucalyptus stand is located on the portion of the lease premises to be transferred to DAB (refer to Exhibit D attached). Staff has confirmed with DOFAW that the restriction placed on the lease regarding the Bluegum Eucalyptus tree stands is no longer needed. The restriction will be released upon withdrawal of the ~4,837.42 acres from the lease as recommended in this submittal.

At its meetings of December 14, 2001, agenda Item D-37, and November 15, 2002, agenda Item D-19, the Board of Land and Natural Resources (BLNR) approved, as amended, the grant of a 10-year term, non-exclusive easement to the State Department of Transportation, Highways Division (SDOT), in connection with the Saddle Road improvement project for Palila Critical Habitat (PCH) mitigation purposes. As a condition to granting the PCH mitigation

easement, the BLNR agreed to amend GLS-4478 and other affected leases to reduce the rent payable thereunder and further agreed in principle to extend the leases in accordance with the provisions of Section 171-36(b), HRS, as amended, to assist in compensating the lessees for the loss of use of the lands impacted by the easement.

The BLNR and the SDOT thereafter executed Grant of Non-Exclusive Easement No. S-5665 with an effective date of November 27, 2002 (the PCH Mitigation Easement). The PCH Mitigation Easement restricted BHEI's grazing rights and use of 2,226.683 acres of mauka pasturelands leased under the lease (refer to Exhibit D). The easement area was fenced using United States Department of Transportation, Federal Highways Administration (FHWA) and/or United States Department of Defense funds, and domestic and feral ungulates, including cattle and sheep, were removed from the area.

In accordance with the BLNR actions of December 14, 2001, Item D-37, and November 15, 2002, Item D-19, a lease amendment dated March 19, 2003 reduced the rent under the subject lease from \$32,640.00 to \$23,470.77 per year effective as of November 27, 2002 as a result of the PCH Mitigation Easement (a rental reopening in 2004 increased the annual rent to \$24,300.00 effective January 9, 2004). Additionally, the amendment expanded the permitted use of the remaining lands under the lease consistent with HRS Section 171-36(c) to allow Lessee to use 10% of the leased area not affected by the easement for alternate agricultural use.

Before the PCH Mitigation Easement went into effect, SDOT contacted the affected lessees and advised them of their right to make a claim under the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Relocation Assistance Act). Under the provisions of this Act, the lessees would have been entitled to compensation for actual, reasonable moving expenses, and for permanent improvements made to the leased land affected by the easement in accordance with the leases. Staff understands from SDOT that BHEI did not submit a claim for assistance under the Act.

In 2004, in accordance with the BLNR approval of January 9, 2004, under agenda Item D-21, GLS-4478 was extended for twenty years from March 1, 2011 up to and including February 28, 2031, and set the reopening dates of March 1, 2014 and March 1, 2024.

At its meeting of December 9, 2010, under agenda item D-2, the BLNR approved the withdrawal of 2,226.683 acres (area of the PCH Mitigation Easement) to be set aside to the DOFAW for addition to the Mauna Kea Forest Reserve.

Withdrawal of Acreage and Issuance of RP to BHEI Prior to Set-Aside to DAB:

DOFAW is proposing the subdivision of the lease premises into three parcels so

that certain high natural resource value acreage can be retained under DLNR management, subject to GLS-4478, with the remaining area withdrawn from the lease. The two parcels to be retained by DLNR would be lands mauka of Mana Road, also known as Keanakolu Road, while the land makai of Mana Road and an approximate 22.52-acre portion mauka of Mana Road would be transferred to DAB. After subdivision approval by the County of Hawaii and withdrawal are complete, an RP would be issued to BHEI over the withdrawn area so that it is assured a continued tenancy on the land. Next, the withdrawn acreage would be set aside to DAB subject to the RP. As to the area retained under GLS-4478, DLNR would continue to lease the retained lands to BHEI until the scheduled expiration of the lease in 2031. The area to be retained by DLNR comprises approximately 854.93 acres, while the area to be withdrawn from the lease is approximately 4,850.75 acres. Approximately 4,837.42 acres of the area so withdrawn would be set aside to DAB, subject to the RP. The remaining approximately 13.33 acres requires no disposition since this area is occupied by Mana (Keanakolu) Road, which is a County of Hawaii road pursuant to the Highways Act, Chapter 264, HRS. Refer to Exhibit B attached.

DOFAW explains that the lands leased to BHEI were all originally native koa and mamane forests, interspersed with native shrublands. The long history of cattle ranching and has led to widespread deforestation. As noted above, the BLNR approved the withdrawal of the PCH Mitigation Easement area from the pasture lease at its meetings of December 14, 2001, agenda Item D-37, and November 15, 2002, agenda Item D-19. Note that the PCH Mitigation was initiated by DOT (not DLNR), and while DOFAW was the recipient of the PCH Mitigation Easement areas, DOFAW needed to find funding for the on-the-ground restoration. The area was fenced from cattle in the early 2000s and native tree growth has recovered in the withdrawn area with restoration efforts continuing. There have been over 400 acres in active restoration and 146,000 plants planted in the Pu'u Mali restoration area since 2007. Over 1,500 volunteers have contributed to reforest this area, including school groups, retirees, community businesses, and organizations. DOFAW and partners continue to seek grant funding and are also using State funds to continue the reforestation efforts.

DOFAW has funded restoration projects with nearby ranchers in the region and seeks to partner with the lessee on similar reforestation projects. While the Department supports the continuation of the lease, this portion of the lease remains a strategic location for restoration in the future, and DLNR believes it is the most appropriate agency to manage it. The leased lands *mauka* of Mana Road are particularly important for conservation as they are adjacent to the Palila Critical Habitat restoration area and potential forest bird habitat. The only way to prevent the extinction of these species is to expand habitat in high-elevation areas where mosquitoes do not breed and/or avian disease is not transmissible. These lands are at higher elevations where native birds and insects can also distribute seeds and are far enough away from invasive plants and koa diseases that plague restoration sites to make restoration possible.

Reforestation of portions of this lease is also critical for agriculture because forests significantly increase groundwater recharge. Hamakua is in a severe drought and future climate models predict that this drought will worsen with hotter temperatures and less reliable rainfall. This is a significant threat to the many agricultural users in the region. Even without rain, Hawai'i's native forests can absorb moisture from passing clouds that condense on the thick vegetation. The areas *mauka* of Mana Road are within the "fog zone" and are most strategic as watersheds. Intercepting cloud drip increases water capture by as much as 30% of rainfall and increases groundwater re-supply by 10-15%. West of Keanakolu, the native forest abruptly ends, as it was eliminated by fires and grazing. The end of the forest corresponds closely to where the gulches begin to run dry. This relationship is consistent with many historical and recent accounts, such as in the late 1800s, where widespread clearing and enormous herds of wild cattle, goats, sheep, and pigs eliminated vast tracts of forest. After forest loss, there were accounts of rivers and springs drying up, followed by water shortages, devastating droughts, and fires. In the early 1900s, agricultural interests lobbied for a massive effort to plant trees, construct fences, remove thousands of wild hoofed animals, and establish forest reserves for water supply.

On February 16, 2024, Ms. Whitney Boteilho sent DLNR an email requesting that the subject lease be transferred to the DAB. DLNR sent the lessee a letter on May 12, 2024 indicating that the Department was supportive of transferring the lands *makai* of Mana Road, but sought to retain the *mauka* lands. On July 13, 2024, Mr. Bahman Sadeghi, who identified as a majority owner of the lessee's parent company, responded accepting DLNR's proposal and subsequently met with the DLNR to discuss potential reforestation options. On January 13, 2025, Mr. Sadeghi sent the DLNR an email requesting that an approximately 20 acre area *mauka* of Mana Road be included in the transfer to the DAB as it contained the lessee's corral and other ranch infrastructure. DLNR responded on February 3, 2025, accepting this revised boundary, and corresponded with Mr. Sadeghi, as well as, Ms. Boteilho and the ranch staff to identify the areas to be transferred *mauka* of Mana Road. The DAB indicated that they would be able to fund the survey of these areas required for subdivision, and its contracted surveyor communicated with the lessee's representative to prepare the survey, which will be provided to the DLNR.

With respect to the withdrawal, GLS-4478 provides at pages 3 to 3a, paragraph 3, as follows:

RESERVING UNTO THE LESSOR THE FOLLOWING: . . .

Withdrawal. The right to withdraw all or any portion of the demised land for any public purpose, (including but not limited to agricultural park development), and also reserves the right to withdraw any portion of the demised land for other than a public use, which land

shall, at the time, of withdrawal, constitute an economic unit, provided, that, the portion not withdrawn shall also be an economic unit.

The Lessee will be entitled to compensation for those improvements made by the Lessee which have been approved by the Lessor, on any land withdrawn, in an amount equal to the fair market value thereof, less any credits which are to be or have been applied to the lease rental pursuant to paragraph 25 herein. The Board will give reasonable notice to the Lessee prior to any withdrawal. If only a portion of the demised land is withdrawn, the rental for the remaining portion will be reduced in proportion to the rental value of the land withdrawn.

In this case, the withdrawal is being effectuated to facilitate the public purpose of transferring lands to DAB in accordance with the Legislature's intent under Act 90. The alternative of transferring the acreage to DAB subject to GLS-4478 would result in BHEI having two landlords for different portions of the same lease and could lead to potential conflicts in the dual-management model. For example, if the lessee were to default in rent under the DLNR portion of the lease but not the DAB portion, what would the BLNR's remedy be if the lessee were unable or unwilling to cure the default? Could the BLNR cancel the DLNR portion of the lease but leave the DAB portion undisturbed? GLS-4478 does not address these matters and because it was issued by public auction, the lease cannot be amended to incorporate provisions to deal with bifurcated management.

Similar to the lease language quoted above, pursuant to Section 171-37.5, HRS, when lands are withdrawn from a pasture lease, "the lease rent shall be reduced in proportion to the value of the land withdrawn or made unusable" In this case, the withdrawn acreage will continue to be used by BHEI under a revocable permit immediately after withdrawal. Staff is therefore proposing that the current rent payable by BHEI for its use of the lands not be affected by the withdrawal. The current annual rent payable under GLS-4478 is \$41,000.00/year. Upon subdivision and withdrawal of the 4,837.42 acres from the lease, the annual rent charged under GLS-4478 will be reduced to about \$6,143.38. The rent for the new RP to BHEI will be about \$2,896.74 per month, which is \$34,760.88 annually. Accordingly, the rent for the reduced lease area plus the rent payable for the RP will be close to the same as the current lease rent on an annual basis ($\$6,143.38 + \$34,760.88 = \$40,904.26$).²

Further, staff is including a recommendation below that the withdrawal is not effectuated until immediately prior to issuance of the RP and the set-aside to

² All adjusted rent figures are estimates only. The final figures will depend on the areas of the withdrawn and retained lands as determined by survey and final subdivision approval. The loss of a small portion of the revenue is due to the area of Mana Road which will not be included in either the lease or the RP.

DAB so that BHEI retains the benefit of the tenancy under GLS-4478 as long as practical under the plan proposed in this submittal.

Section 171-37.5, HRS, additionally provides that the lessee shall be compensated for any improvements owned by lessee that are taken as a result of the withdrawal and for any impacts to breeding livestock. In this case, upon withdrawal of the 4,850.75 acres from GLS-4478, any improvements on the land such as stock watering systems, fences and corrals, will technically be owned by the State, but BHEI will continue to have use of them without any change in rent as noted above. There will also be no impact to BHEI's breeding livestock on DLNR retained lease land or the new RP.

Additionally, once the RP is transferred to DAB, staff understands that DAB will seek Board of Agriculture and Biosecurity (BAB) approval for the conversion of the RP to a long-term lease with a possible rent reduction as to the 4,837.42 acres set aside to DAB since DAB is not bound by the same statutory requirements to charge fair market rents to lessees that DLNR follows.

DLNR'S Proposed Conditions for Set-Aside to DAB Are Consistent with the Existing Lease Conditions:

As a condition to the withdrawal of the 4,850.75 acres from GLS-4478 and the set-aside of 4,837.42 acres of the withdrawn area to DAB, DLNR is recommending that certain exceptions and reservations contained in the lease be included as exceptions and reservations in favor of the BLNR/DLNR in the executive order transferring the lands to DAB. The CSF map of the lease premises includes the following language after the metes and bounds description of the land:

Also, excepting and reserving therefrom all existing roads, trails and other such rights-of-way within this tract of land and all other roads, trails and rights-of-way that may be required for public purposes.

There is another reservation referenced on page 2 the property description (refer to Exhibit E) for access in favor of a private landowner with an inholding within the lease area:

Excepting and reserving therefrom a road right-of-way 40-feet wide for ingress and egress in favor of the owners of said Grant 2046³ to E. Van Houten as shown on map [refer to Exhibit E].

This access, which is shown as a red line in Exhibit D, will also need to be reserved in the set-aside to the DAB.

³ Grant 2046, which is a privately owned inholding surrounded by the lease premises, is highlighted in yellow in Exhibit D.

DLNR also seeks to reserve all hunting and fishing rights in the event the BLNR should declare the whole or any portion of the demised premises as public shooting or fishing grounds as set forth at pages 3a to 3b, paragraph 4 of GL4478. The reservation of the road right-of-way in favor of Grant 2046 to E. Van Houten is repeated in the lease at page 9d, paragraph 27(d) (refer to Exhibit E).⁴

Staff is including a recommendation below that the executive order setting aside the withdrawn acreage to DAB be subject to the exceptions and reservations noted above and further provide that any amendment or extension of the RP to be issued, or any new lease that DAB may issue over the lease premises or any portion of the lands, shall be required to include these same exceptions and reservations noting that they are in favor of BLNR/DLNR and/or the owners of Grant 2046, as applicable. Once the withdrawn lands and the new RP to BHEI are set aside to DAB, DLNR will reduce the rent on the retained portion of the lease premises remaining under its jurisdiction on a pro rata basis as discussed above.

Reverter Clause:

DAB will assume management responsibilities for the approximately 4,837.42 acres under the new RP to BHEI upon the Governor's execution of the executive orders effecting the set-aside. Once lands are set-aside to the DAB, Chapter 166E, HRS, provides that the DAB is not required to seek BLNR approval under Chapter 171, HRS, for any disposition of the land the DAB makes thereafter.⁵ Notwithstanding Chapter 166E, HRS, DAB and BHEI agree, that should the land no longer be used for pasture purposes, the land will revert to the BLNR/DLNR, except with prior BLNR approval. This is to ensure that any future use of these public trust lands remains consistent with the set-aside.

RECOMMENDATIONS:

That the BLNR, subject to DOFAW fulfilling the Applicant Requirements above:

1. Determine whether the proposed withdrawal, revocable permit and set-aside are consistent with the public trust. If the Board determines that these actions are consistent with the public trust, then the Board is recommended to approve the following:
2. Declare that, after considering the potential effects of the proposed

⁴ There are additional reservations and exceptions contained in the lease, but they pertain to parcels not included in the lease premises and do not need to be carried over to the set-aside to the DAB. These include the easements referenced at lease paragraphs 27(a), (b), and (c), and 28. Paragraph 29 referenced a timber license in favor of Capitol Chip Company, but staff has confirmed with DOFAW that this timber license is no longer in effect.

⁵ See Sections 166E-8 and -12, HRS.

disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, the proposed action 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.

3. Approve the withdrawal of approximately 4,850.75 acres from General Lease No. S-4478, Boteilho Hawaii Enterprises, Inc., lessee, 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 lease withdrawal form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorneys General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.
4. Authorize a pro rata rent reduction under General Lease No. S-4478, Boteilho Hawaii Enterprises, Inc., lessee, reflecting the withdrawal of approximately 4,850.75 acres from the lease.
5. Based on staff's testimony and the facts presented, find that the approval of the revocable permit, under the conditions and rent set forth above, serve the best interests of the State.
6. Authorize the issuance of a month-to-month revocable permit to Boteilho Hawaii Enterprises, Inc., covering approximately 4,837.42 acres of the 4,850.75 acres withdrawn from General Lease No. S-4478, 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 revocable permit form, as may be amended from time to time; provided, further, that the revocable permit shall expressly include the following exceptions and reservations in favor of the BLNR:
 - i. The exception and reservation of all existing roads, trails and other such rights-of-way that may be required for public purposes;
 - ii. The exception and reservation of a road right-of-way, 40-feet wide for ingress and egress in favor of the owners of Grant 2046 to E. Van Houten, which is described at lease page 9d, paragraph 27(d), and in the property description attached to

- the lease; and
 - iii. The reservation of all hunting and fishing rights in the event the BLNR should declare the whole or any portion of the demised premises as public shooting or fishing grounds as set forth at pages 3a to 3b, paragraph 4 of General Lease No. S-4478
 - B. Review and approval by the Department of the Attorneys General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
7. Approve of and recommend to the Governor issuance of an executive order setting aside approximately 4,837.42 acres withdrawn from General Lease No. S-4478 and made subject to the revocable permit issued to Boteilho Hawaii Enterprises, Inc. in accordance with Recommendation 4 above, to the Department of Agriculture and Biosecurity under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
- A. The standard terms and conditions of the most current executive order form, as may be amended from time to time; provided, however, that the executive order shall be subject to the following exceptions and reservations and shall additionally provide that any new lease, permit or other disposition that the Department of Agriculture and Biosecurity may issue over the land or portion of it set-aside under this executive order, shall expressly include the following exceptions and reservations in favor of the BLNR:
 - i. The exception and reservation of all existing roads, trails and other such rights-of-way that may be required for public purposes;
 - ii. The exception and reservation of a road right-of-way, 40-feet wide for ingress and egress in favor of the owners of Grant 2046 to E. Van Houten, which is described at lease page 9d, paragraph 27(d), and in the property description attached to the lease;
 - iii. The reservation of all hunting and fishing rights in the event the BLNR should declare the whole or any portion of the demised premises as public shooting or fishing grounds as set forth at pages 3a to 3b, paragraph 4 of GLS-4478;

- iv. Additionally, in the event DAB ever seeks to change the allowed use of the subject lands from pasture (with alternate agriculture use allowed on 10% of the land) to a different agricultural or non-agricultural use, DAB shall be required to seek prior BLNR approval for the change notwithstanding the provisions of Chapter 166E, HRS; and
 - v. In the event the land is no longer needed for pasture purposes, the executive order setting aside the lands to DAB shall be canceled and the lands returned to the inventory of the DLNR, except with prior approval of BLNR.
- 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 set-aside;
 - C. Review and approval by the Department of the Attorneys 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,

Candace Martin

lx

Candace Martin
Acting District Land Agent

APPROVED FOR SUBMITTAL:



Dawn N. S. Chang, Chairperson

EXHIBIT A

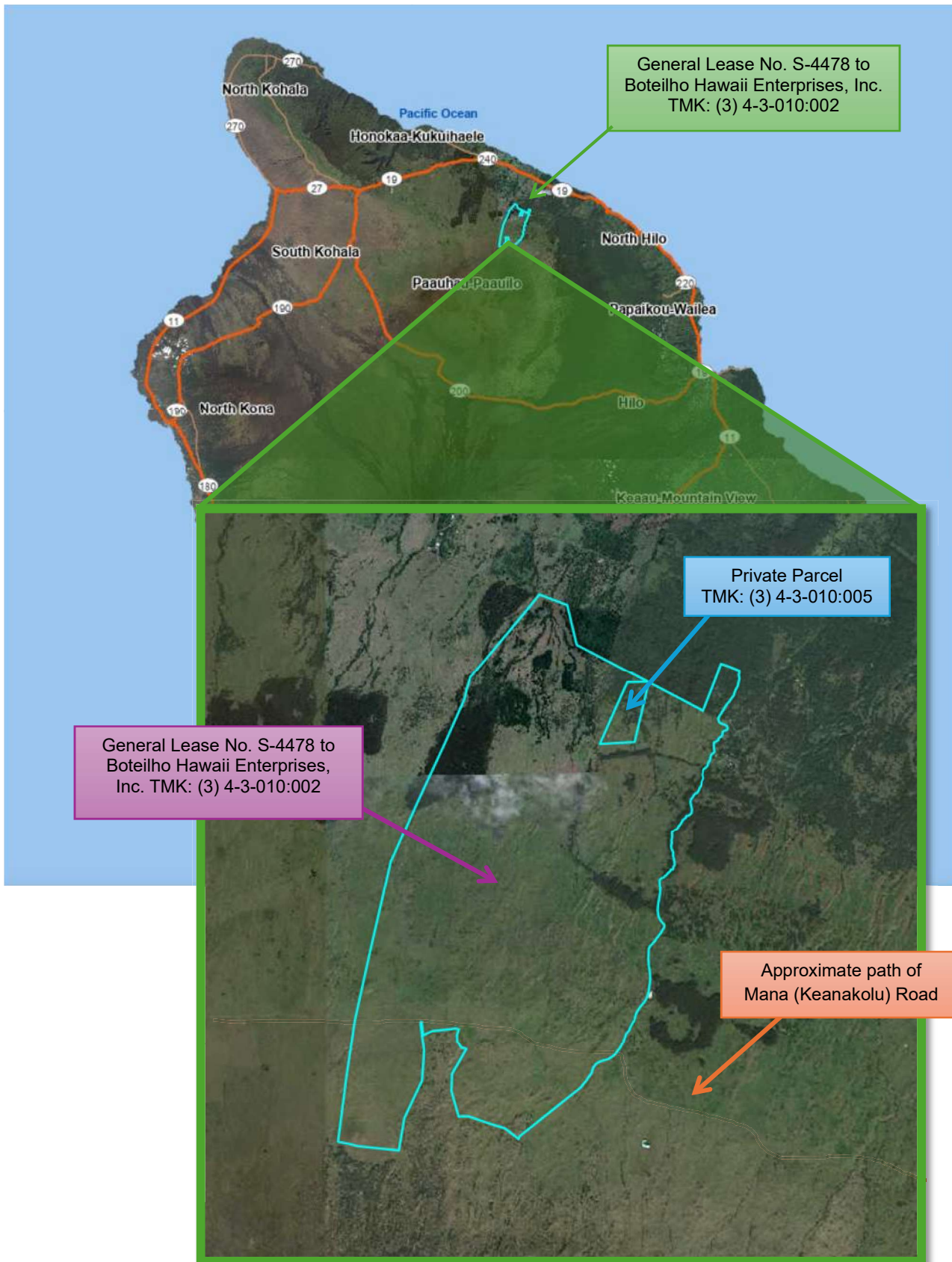


EXHIBIT B

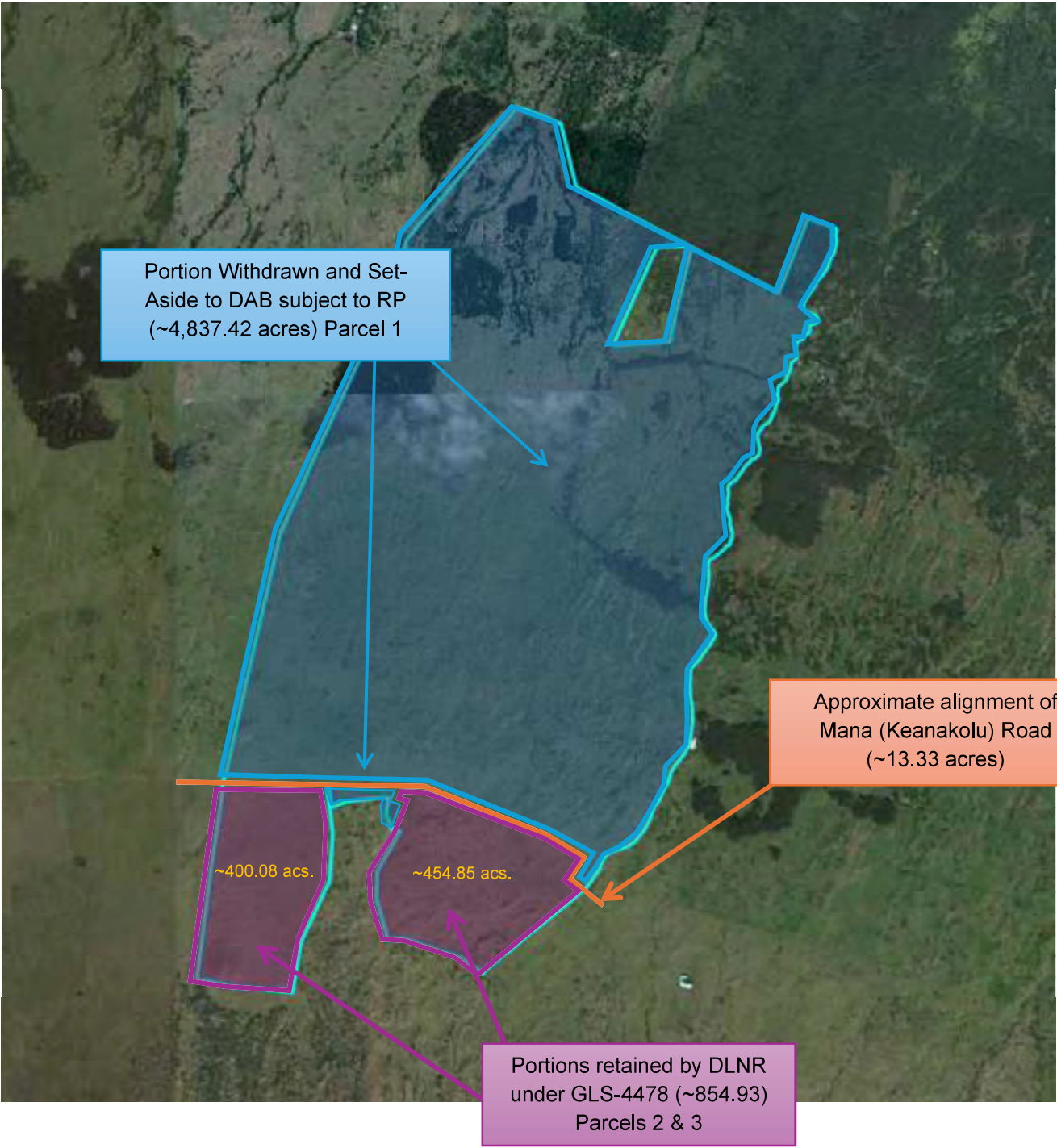


EXHIBIT C

GEORGE R. ARIYOSHI
GOVERNOR OF HAWAII

**STATE OF HAWAII****DEPARTMENT OF LAND AND NATURAL RESOURCES**

DIVISION OF LAND MANAGEMENT

P. O. BOX 621

HONOLULU, HAWAII 96809

DIVISIONS:
CONVEYANCES
FISH AND GAME
FORESTRY
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

May 28, 1976

Mr. Edward Boteilho
Botéilho Hawaii Enterprises, Inc.
P. O. Box 73
Honokaa, Hawaii 96727

Dear Mr. Boteilho:

Re: General Lease No. S-4478

Pursuant to paragraphs 5, page 3b, 29 and 32, page 9d, of the subject lease document, I hereby designate as timber areas the following:

1. The stands of Bluegum Eucalyptus encompassing two hundred thirty-nine (239) acres, more or less, with its approximate boundaries as shown shaded in green on the attached map.
2. The stands of koa (Acacia koa), the approximate boundaries for which to be delineated at a later date in cooperation with the Lessee.

Although the State (Lessor) has not as yet initiated development of a woodland management program, it is planned that the Bluegum areas be utilized strictly for timber production and the koa areas for both grazing and perpetuation of the koa stands.

It should be clarified and emphasized that the stands of Bluegum Eucalyptus, although included within the boundaries of your lease, were not intended for grazing use during the term of the lease. In essence, these areas should be regarded similarly with waste land such as lava land and gulches in terms of grazing use.

Mr. Edward Boteilho

-2-

May 28, 1976

As you know, these plantations of Bluegum Eucalyptus have existed on the land for a long time. Our records show that the required plantings were made by the lessee, Kukaiau Plantation Co., Ltd., under General Lease No. 623 between the years 1908 and 1928. And, all through the years, the lands on which the Bluegum Eucalyptus stood, although included in the lease, were never used for grazing purposes.

It is our hope that a woodland management program mutually beneficial to you and the State can be worked out. If you have any questions on this matter, please let us know.

Very truly yours,

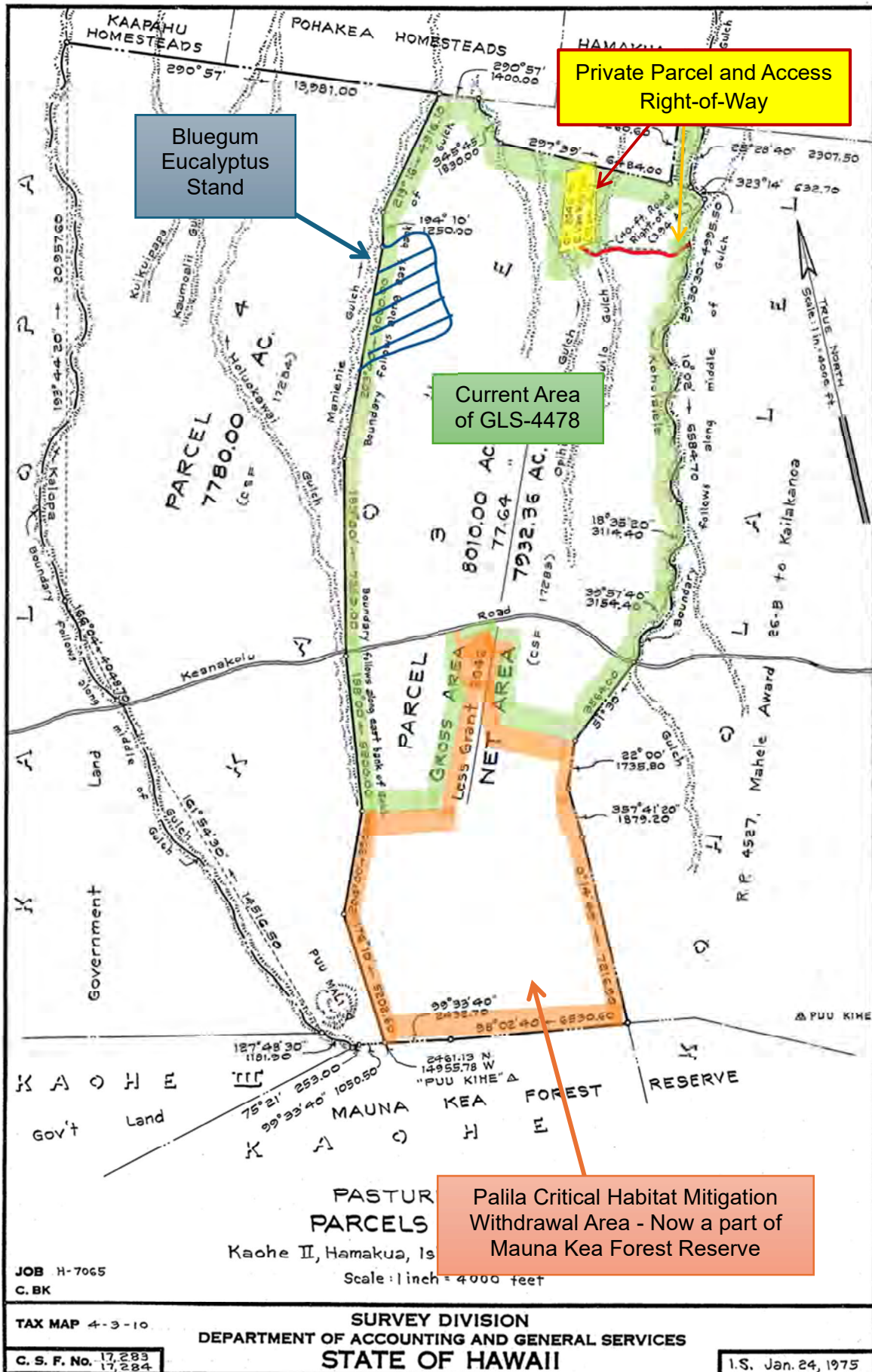


CHRISTOPHER COBB
Chairman of the Board

Encl.

cc: Mr. Larry Mehau
/ Mrs. Mildred K. Yamamoto
Mr. Tom Tagawa

6/1/76
WKS



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-4478

between

STATE OF HAWAII

and

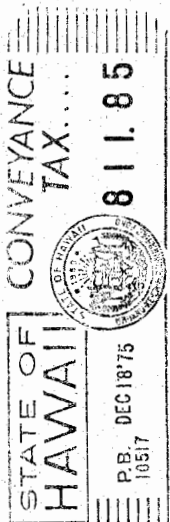
BOTEILHO HAWAII ENTERPRISES, INC.

covering

Parcel 3,

Government land of

Kaohe-2, Hamakua, Hawaii



2 3 9 6 7 0
CERTIFICATE FILED

TERM OF LEASE	1
ANNUAL RENTAL	2
REOPENING OF ANNUAL RENTAL	2

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2. Prehistoric and historic remains	3
3. Withdrawal	3a
4. Hunting and fishing rights.	3a, 3b
5. Timber stands	3b
6. Ownership of fixed improvements	3b

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27. Roadway easements	9c
28. Parcel 7-A subject to revocable permit in favor of U. S. Forest Reserve	9d
29. Parcels 3, 4 and 6 subject to timber license to Capitol Chip Company	9d
30. Exclusion of animals from forest lands	9d
31. Firetree control	9d
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THIS INDENTURE OF LEASE, made this 28th day of August, 1975, by and between the STATE OF HAWAII, hereinafter referred to as the "LESSOR", by its Board of Land and Natural Resources, called the "BOARD", and _____

BOTEILHO HAWAII ENTERPRISES, INC.,
whose residence and post office address is P. O. Box 73,
Honokaa, Hawaii 96727,
hereinafter referred to as the "LESSEE";

WITNESSETH:

THAT, the Lessor for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the Lessee to be kept, observed and performed, does hereby demise and lease unto the Lessee, and the Lessee does hereby lease and hire from the Lessor the premises known as Parcel 3, Government land of Kaohe-2, Hamakua, Hawaii,
more particularly described in Exhibit "A" and shown on the map marked Exhibit "B", hereto attached and made parts hereof.

TO HAVE AND TO HOLD the demised premises unto the Lessee for the term of thirty-five (35) years, commencing on the 1st day of March, 1976, up to and including the 28th day of February, 2011, 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 Land and Natural Resources, Honolulu, Oahu, State of Hawaii, a net annual rental as provided hereinbelow,

March 1
June 1, September 1, December 1 and / of each and every year
during said term as follows:

A. For the first ten (10) years, the sum
of ONE HUNDRED TWELVE THOUSAND and 00/100 DOLLARS
(\$112,000.00) per annum.

B. The annual rental hereinabove reserved shall be
reopened and redetermined at the expiration of the 10th,
20th and 30th years of said term.

C. Determination of rental upon reopening of the
annual rental. The rental and fees for any ensuing period
shall be the rental for the immediately preceding period
or the fair market rental at the time of reopening, whichever
is higher. At the time of reopening, the fair market rental
shall be determined by an appraiser whose services shall be
contracted for by the Lessor; provided, that should the Lessee
fail to agree upon the fair market rental as determined by Lessor's
appraiser, the Lessee may appoint his own appraiser who shall
prepare an appraisal report and the two appraisers shall then
exchange their reports for review. The two appraisers shall
make every effort to resolve whatever difference they may
have. However, should difference still exist 14 days after
the exchange, the two appraisers shall then appoint a third
appraiser who shall also prepare an appraisal report and
furnish copies thereof to the first two appraisers. After
review, all three shall meet to determine the fair market
rental in issue. The fair market rental as determined by a
majority of the appraisers shall be final and binding upon
both Lessor and Lessee. The Lessee shall pay for his own
appraiser and the cost of the services of the third appraiser

market rental shall be determined by arbitration pursuant to Chapter 658, Hawaii Revised Statutes. All appraisal reports shall become part of the public record of the Lessor.

If the rental for any ensuing period has not been determined prior to the expiration of the preceding rental period, the Lessee shall continue to pay the rent effective for the previous rental period, but the Lessee shall, within thirty (30) days after the new rental has been so determined, make up the deficiency, if any.

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the demised premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove such minerals 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 such minerals by any means whatsoever, including strip mining. "Minerals", as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, in, on, or under the land; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and when used in road construction in furtherance of the Lessee's permitted activities on the demised premises and not for sale to others. (b) All surface and ground waters appurtenant to the demised land and the right on its own behalf or through persons authorized by it, to capture, divert or

reserved; 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 on said demised premises.

3. Withdrawal. The right to withdraw all or any portion of the demised land for any public purpose, (including but not limited to agricultural park development), and also reserves the right to withdraw any portion of the demised land for other than a public use, which land shall, at the time, of withdrawal, constitute an economic unit, provided, that, the portion not withdrawn shall also be an economic unit.

The Lessee will be entitled to compensation for those improvements made by the Lessee which have been approved by the Lessor, on any land withdrawn, in an amount equal to the fair market value thereof, less any credits which are to be or have been applied to the lease rental pursuant to paragraph 25 herein. The Board will give reasonable notice to the Lessee prior to any withdrawal. If only a portion of the demised land is withdrawn, the rental for the remaining portion will be reduced in proportion to the rental value of the land withdrawn.

4. Hunting and fishing rights. All hunting and fishing rights and, in the event the Board should declare the whole or any portion of the demised premises as a public shooting or fishing grounds, the right and privilege to issue

on the demised lands, subject to rules and regulations issued by the Board; provided, however, that open seasons shall be coordinated with the activities of the Lessee on the demised premises.

5. Timber stands. The right to designate areas of timber stand on the premises to include all trees standing within said designated areas; and the right to enter upon said areas, or to authorize others to do so, for the purpose of performing woodland management activities, and the right to issue license for the harvest of said timber; provided, however, that said activities shall be in accordance with a woodland management plan developed by the Lessor in cooperation with the Lessee, and provided, that all such activities shall be coordinated with the activities of the Lessee on the demised premises.

6. Ownership of fixed improvements. The ownership of all fixed improvements including fences and stockwater system(s) located on the land on the commencement date of this lease as recorded by an agent of the Board in an inventory to be made within a reasonable period following said lease commencement date.

1. Payment of rent. That the Lessee shall pay said rent to the Lessor at the times, in the manner and form aforesaid and at the place specified above, or at such other place as the Lessor may from time to time designate, in legal tender of the United States of America.

2. Taxes, assessments, etc. That the Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, assessments and other outgoings of every description as to which said demised premises or any part thereof, or any improvements thereon, or the Lessor or Lessee in respect thereof, 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 any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only such installments, together with interest, as shall become due and payable during said term.

3. Utility services. That the Lessee shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as to which said demised premises, or any part thereof, or any improvements thereon or the Lessor or Lessee in respect thereof may during said term become liable, whether assessed to or payable by the Lessor or Lessee.

4. Covenant against discrimination. That 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 or national origin.

5. Sanitation, etc. That the Lessee shall keep the demised premises and improvements in a strictly clean, sanitary and orderly condition.

6. Waste and unlawful, improper or offensive use of premises. That the Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the demised premises, or any part thereof, nor, without the prior written consent of the Lessor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on said premises.

7. Compliance with laws. That the Lessee shall comply with all of the requirements of all municipal, state and federal authorities and observe all municipal ordinances and state and federal statutes, pertaining to the said premises, now in force or which may hereinafter be in force.

8. Inspection of premises. That the lessee will permit the Lessor and its agents, at all reasonable times during the said term, to enter the demised premises and examine the state of repair and condition thereof.

9. Improvements. That the Lessee shall not at any time during said term construct, place, maintain and install on said premises any building, structure or improvement of any kind and description whatsoever except with the prior approval of the Board and upon such conditions as the Board may impose, including any adjustment of rent, unless otherwise provided herein.

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

suffer any act or neglect whereby the demised premises or any improvement thereon or the estate of the Lessee in the same shall become subject to any attachment, lien, charge or encumbrance whatsoever, except as hereinafter provided, and shall indemnify and hold harmless the Lessor from and against all attachments, liens, charges and encumbrances and all expenses resulting therefrom.

12. Character of use. That the Lessee shall use the premises hereby demised solely for pasture purposes and the construction of any residential structure shall not be permitted.

13. Assignments, etc. That the Lessee shall not transfer, assign or permit any other person to occupy or use the said premises or any portion thereof, or transfer or assign this lease or any interest therein, either voluntarily or by operation of law, except by way of devise, bequest or intestate succession, and any transfer or assignment so made shall be null and void; provided, that with the prior written approval of the Board the assignment and transfer of this lease or unit thereof may be made if (1) the Lessee becomes mentally or physically disabled; (2) extreme economic hardship is demonstrated to the satisfaction of the Lessor; or (3) it is to the corporate successor of the Lessee.

14. Subletting. That the Lessee shall not rent or sublet the whole or any portion of the demised premises, without the prior written approval of the Board; provided, however,

review and approve the rent to be charged to the proposed sublessee and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the said sublessee; provided, further, that the rent may not be revised downward.

15. Mortgage. That, except as provided herein, the Lessee shall not mortgage, hypothecate or pledge the said premises or any portion thereof of this lease or any interest therein without the prior written approval of the Board and any such mortgage, hypothecation or pledge without such approval shall be null and void.

16. Indemnity. That the Lessee will indemnify, defend and hold the Lessor harmless (1) from and against any claim or demand for loss, liability or damage, including claims for property damage, personal injury or death, arising out of any accident on the demised premises and sidewalks and roadways adjacent thereto or occasioned by any act or omission of the Lessee, or any nuisance made or suffered on the premises, or by any fire thereon, or growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition, or by any act or omission of the Lessee, and (2) from and against all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.

shall, without any fault on its part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall and will pay all costs and expenses incurred by or imposed on the Lessor, furthermore, the Lessee shall and will pay all costs and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the demised premises or in the collection of delinquent rental, taxes and any and all other charges.

18. Liability insurance. That the Lessee shall procure, at its own cost and expense, and maintain during the entire period of this lease, a policy or policies of comprehensive public liability insurance, with an insurance company or companies licensed to do business in the State, in an amount acceptable to the Chairman, insuring the Lessor and Lessee against all claims for personal injury, death and property damage; that said policy or policies shall cover the entire premises, including all buildings, improvements and grounds and all roadways or sidewalks on or adjacent to the demised premises in the control or use of the Lessee. The Lessee shall furnish the Lessor with a certificate showing such policy to be initially in force and shall furnish a like certificate upon each renewal of such policy, each such certificate to contain or be accompanied by an assurance of the insurer to notify the Lessor of any intention to cancel any such policy prior to actual cancellation. The procuring of this policy shall not release or relieve the Lessee of its responsibility under this lease as

this lease. The notice to cancel shall be sent to the Lessor sixty (60) days prior to the date of cancellation.

19. Bond, performance. That the Lessee shall, at its own cost and expense, within thirty (30) days after the date of receipt of this lease document, procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by said Lessee of all of the terms, conditions and covenants of this lease, in an amount equal to two times the annual rental then payable. Said bond shall provide that in case of a breach or default of any of the terms, covenants, conditions and agreements contained herein, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty.

20. Lessor's lien. That the Lessor shall have a lien on all the buildings and improvements placed on the said premises by the Lessee, on all property kept or used on the demised premises, whether the same is exempt from execution or not and on the rents of all improvements and buildings situated on said premises for all such 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 as provided in this lease to be paid by the Lessee, and such lien shall continue until the amounts due are paid.

years of the lease term, clear the demised premises of noxious weeds, establish suitable pasture and forage plants, tend the premises in such manner as to reduce to a reasonable minimum the danger of erosion or other waste and utilize the land within practical limits for the purposes for which this lease is sold, all in accordance with a plan of development and utilization which shall be submitted to the Chairman within three (3) months after the date of receipt of this document and approved by him.

22. Good husbandry and conservation program. That the Lessee shall at all times practice good husbandry with regard to the use of the demised premises for the use herein permitted and shall carry out a program of conservation in accordance with standards set by the appropriate Soil and Water Conservation District, with which District the Lessee shall apply for and attain cooperative status. Said conservation program shall be developed and a copy of the plan submitted to the Chairman for his approval within six (6) months following the commencement of the lease. Said approval should not be unreasonably withheld; and that the Lessee may appeal to the Board upon disagreement with the Chairman's findings. The conservation program shall apply to the overall use and protection of the premises and shall include, where applicable but not limited to, such practices as clearing of land, establishing forage plants, tree planting, fertilizing, stockwater development, noxious weed control, grazing management, fencing and such other actions as are required to conserve and promote the improvement of the natural resources on the premises, and further, to prevent pollution of the environment. Said conservation plan shall also include a schedule for the implementation thereof within five (5) years of approval of the plan by the

Lessee shall, submit the detailed plans for the following: reservoirs and tanks, catchments, roads, diversions, tree planting and cutting, pasture planting and well developments to the Chairman for his approval; provided, however, that should the Chairman fail to render a decision either for or against the Lessee's proposed action within sixty (60) days following receipt of said plans, the Lessee may proceed with the work.

23. Report of conservation and improvement work. That the Lessee shall, each year during the month of January, submit to the Chairman a report detailing the cost, kind, location and extent of conservation and improvement work performed during the calendar year immediately preceding. Said report shall be subject to verification by the Lessor through on-site inspection.

24. Required improvements. That the Lessee shall, within FIVE (5) years from the commencement of the lease, install the minimum required improvements consisting of stockwater system(s) and fencing to the satisfaction of the Chairman and that such installation shall be in accordance with Paragraph 22, Good husbandry and conservation program, above.

25. Cost of improvement and credit. The cost of all improvements required and approved by the Lessor, and incurred by the Lessee during the first five (5) years of the lease, when duly verified, shall be credited to the annual rental of the following year; provided, that the total amount of such credits for the costs incurred during this five-year period shall in no event exceed the amount of one (1) year lease rental. For Parcels (3, 4 and 6, the cost of all improvements required and approved by the Lessor and incurred by the Lessee, including the cost of firetree control, during the first five (5) years of the lease shall be credited to the rental for the following year in which it is incurred; provided, that

bid rental, i.e., the amount of the bid rental for two years.

✓ 26. Boundary fences. That the Lessee shall, install stockproof fence along the entire outside perimeter of the land encompassed under this lease where such fencing does not now exist, regardless of whether the Lessee has an interest or ownership in adjoining lands, and shall maintain in good order and condition throughout the term of this lease the fences so constructed and those now existing on the demised premises. The Lessee shall, wholly at its own cost and expense, stake out the boundaries wherever necessary in conformance with the legal descriptions provided herein. The cost of installing and maintaining such boundary fences shall be in accordance with Part II of Chapter 664, Hawaii Revised Statutes which provides generally for the sharing of such costs by adjacent land owners or lessees for the purpose of confining animals of each adjacent owner or lessee unless the adjacent land is owned and not leased by the government.

27. Roadway easements.

(a) Parcel 11 shall be subject to a 40-ft. roadway in favor of Parcels 9 and 10, Parcel 2 shall be subject to a 40-ft. roadway in favor of Parcel 6. Both roadway easements are described in the descriptions attached to the lease for Parcels 11 and 2 and may deviate, based on the actual ground conditions.

(b) The Lessee(s) of Parcels 9, 10 and 6 shall be responsible for the cost of constructing and maintaining their respective roadways as well as the cost of fencing in the roadways when deemed necessary by the Lessor. The Lessee(s) of Parcels 9 and 10 are to share equally in such costs for the roadways leading to their parcels of land and any necessary fencing of said roadway.

and delineated on the exhibits attached to the lease for said Parcel 1.

(d) A 40-ft. roadway in favor of Grant 2046 to E. Van Houten is excluded from Parcel 3. Said exclusion is described and delineated on the exhibits attached to the lease of Parcel 3.

28. Parcel 7-A is subject to a revocable permit in favor of the U. S. Forest Service for forestry research purposes.

29. Parcels ③ 4 and 6 are subject to a timber license to Capitol Chip Company.

30. Exclusion of animals from forest lands. That the Lessee shall at all times during the term hereof keep its cattle, horses and other grazing animals out of any forest reserve land adjacent to the demised premises and shall take all reasonable precautions to prevent forest fires thereon, and in the event such fires shall occur, it shall use all reasonable means at its command or under its control to have such fires speedily extinguished.

31. Firetree control. That as to Parcels ③ 4 and 6, the Lessee shall reduce, to the satisfaction of the Chairman, the stand of Myrica faya, firetree, within FIVE (5) years from the commencement of the lease. Satisfactory control shall have been attained when the infested area has been reduced to less than one hundred (100) acres, excluding gulches and streams.

32. Woodland management. That as to Parcels 1, 2, ③ 4 and 6, the Lessee shall cooperate with the Lessor in the development and implementation of a management plan for the protection of koa (*Acacia koa*) and other timber species.

33. Termination. That at the end of or earlier termination of this lease, the Lessee shall, peaceably deliver unto the

system, sewers, drains, roads and bridges; it being understood that if the Lessee shall have faithfully observed and performed all of the terms, covenants and conditions herein, he shall have the right to remove from the demised land all other improvements thereon erected, placed by or belonging to him, including buildings, sheds, feed pens, and mechanical equipment. Said removal shall be made by the Lessee upon the termination of the lease or within such additional period as the Lessor may allow. Lessee shall also remove all the debris therefrom and restore said premises to good order and condition satisfactory to the Lessor. Any improvements remaining on the demised premises after the expiration or earlier termination of the lease, shall become the property of the Lessor; provided, however, that the Lessor, at its option, may require the Lessee to remove such improvements and restore the premises as provided herein.

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

35. Incorporation by reference. References to various parcels of land herein are in accordance with those designated in the Notice of Sale and the Conduct of Sale which, together with the Special Notice to Bidders are incorporated herein and made a part hereof. The terms of this lease shall govern where there is any inconsistency between the terms thereof and the terms contained in the Special Notice to Bidders.

1. Mortgage. That upon due 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 public land hereby demised. If the mortgage or security interest is to a recognized lending institution in either the State of Hawaii or elsewhere in the United States, such consent may extend to foreclosure and sale of Lessee's interest at such foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified to lease, own or otherwise acquire and hold the land or any interest therein. The interest of the mortgagee or holder shall be freely assignable. The term "holder" shall include an insurer or guarantor of the obligation or condition of such mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other Federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of the aforementioned Federal agencies.

2. Breach. That time is of the essence of this agreement and if the Lessee shall fail to yield to pay such rent or any part thereof at the times and in the manner aforesaid, or shall become bankrupt, or shall abandon the said premises, or if this lease and said premises shall be attached or otherwise be taken by operation of law, or if any assignment be made of the Lessee's property for the benefit of creditors, or shall fail to observe and perform any of the covenants, terms and conditions

herein contained and on its part to be observed and performed, and such failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of such breach or default by personal service, registered mail or certified mail to the Lessee at its last known address and to each mortgagee or holder of record having a security interest in the demised premises, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter such premises or any part thereof, and upon or without such entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of such termination, all buildings and improvements thereon shall remain and become the property of the Lessor.

3. Right of holder of record of a security interest.

In the event the Lessor seeks to forfeit the interest created by this lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach within sixty (60) days from the date of receipt of the notice hereinabove set forth, or within such additional period as the Lessor 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 Lessor may: (a) pay to the holder from any monies at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of said debt and mortgage from said holder or if ownership of such interest or estate shall have vested in such holder by way of foreclosure, or action in lieu thereof, the Lessor shall be

ment to said holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with such foreclosure and preservation of its security interest, less appropriate credits, including income received from said interest or estate subsequent to such foreclosure; or (b) terminate the outstanding interest or estate subject to the lien of such mortgage, without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default and thereupon use its best efforts to dispose of the land affected thereby to a qualified and responsible person who will assume the obligation of the mortgage and the debt thereby secured; provided, that a reasonable delay by the Lessor in instituting or prosecuting any right or remedy it may have hereunder shall not operate as a waiver of such right or to deprive it of such remedy when it may still hope otherwise to resolve the problems created by the breach or default. The proceeds of any disposition effected hereunder shall be applied first, to reimburse the Lessor for costs and expenses in connection with such disposition, second, to discharge in full any unpaid purchase price or other indebtedness owing the Lessor in connection with such interest or estate terminated as aforesaid, and the balance, if any, shall be paid to the owner of such interest or estate.

4. Condemnation. That, if at any time, during the term of this lease, or any portion of the demised premises should be condemned, or required for public purposes by any county or city and county, the rental shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall

of growing crops, if any, which he 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 the lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the lands occupied by the Lessee. The Lessee shall not by reason of such condemnation be entitled to any claim against the Lessor for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of said leasehold interest by reason of such condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion so taken renders the remainder unsuitable for the use or uses for which the land was demised, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability therefor; provided, that Lessee may remove the permanent improvements constructed, erected and placed by it within such reasonable period as may be allowed by the Lessor.

5. Right to enter. The Lessor or the County and the agents or representatives thereof shall have the right to enter and cross any portion of said demised land for the purpose of performing any public or official duties; provided, however, in the exercise of such rights, the Lessor or the County shall not interfere unreasonably with the Lessee or Lessee's use and enjoyment of the premises.

6. Inspection by prospective bidders. The Lessor shall have the right to authorize any person or persons to enter upon and inspect the demised premises at all reasonable times

same for purposes of informing and apprising such person or persons of the condition of said land prior to such proposed disposition; provided, however, that any such entry and inspection shall be conducted during reasonable hours after notice to enter is first given to the Lessee, and shall, if the Lessee so requires, be made in the company of the Lessee or designated agents of the Lessee; provided, further, that no such authorization shall be given more than two years before the expiration or termination of this lease.

7. Acceptance of rent not a waiver. That 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, nor of the Lessor's right to re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any such breach, and the failure of the Lessor to insist upon strict performance of any such 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 such term, covenant, condition or option.

8. Extension of time. That notwithstanding any provision contained herein to the contrary, wherever applicable, the Board may for good cause shown, allow additional time beyond the time or times specified herein to the Lessee, in which to comply, observe and perform any of the terms, conditions and covenants contained herein.

9. Justification of sureties. Such bonds as may be required herein shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and

not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, the Lessee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Lessor security in certified checks, certificates of deposit (payable on demand or after such period as the Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to said Lessor a deed or deeds of trust of real property, all of such character as shall be satisfactory to said Lessor and valued in the aggregate at not less than the principal amount of said bond. It is agreed that the value at which any securities may be accepted and at any time thereafter held by the Lessor under the foregoing proviso shall be determined by the Lessor, and that the Lessee may, with the approval of the Lessor, exchange other securities or money for any of the deposited securities if in the judgment of the Lessor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Lessee, but only upon the written consent of the Lessor and that until such consent be granted, which shall be discretionary with the Lessor, no surety shall be released or relieved from any obligation hereunder.

10. Waiver, modification, reimposition of bond provision. Upon substantial compliance by the Lessee of the

to be observed or performed, the Lessor at its discretion may waive or suspend the performance bond and/or improvement bond requirements or modify the same by reducing the amount thereof; provided, however, that the Lessor reserves the right to reactivate or reimpose said bond and/or bonds in and to their original tenor and form at any time throughout the term of this lease.

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

(a) "Chairman" shall mean the Chairman of the Board of Land and Natural Resources of the State of Hawaii or his successor;

(b) "Lessee" shall mean and include the Lessee herein, its heirs, executors, administrators, successors or permitted assigns, according to the context hereof;

(c) "Holder of a record of a security interest" is a person who is the owner or possessor of a security interest in the land demised and who has filed with the Department of Land and Natural Resources and with the Bureau of Conveyances of the State of Hawaii a copy of such interest;

(d) "Premises" shall be deemed to include the land hereby demised and all buildings and improvements now or hereinafter constructed and installed thereon;

(e) The use of any gender shall include all genders, and if there be more than one lessee, then all words used in the singular shall extend to and include the plural;

(f) The paragraph headings throughout this lease are for the convenience of the Lessor and the Lessee and are not intended to construe the intent or meaning of any of the provisions thereof.

(g) "Waste" shall be deemed to include, but not limited to, (1) permitting the premises or any portion thereof to become unduly eroded and/or failure to take proper precautions or make reasonable effort to prevent or correct same; (2) permitting any material increase in noxious weeds in uncultivated portions thereof and (3) failure to employ all of the usable portions of the demised premises.

which is injurious, harmful or deleterious or which may be likely to become so to the agricultural, horticultural and livestock industries of the State, as determined and so designated by the Department of Agriculture of the State of Hawaii from time to time, by rules and regulations.

(i) "Pasture" shall mean the conduct of livestock operation consisting of the keeping primarily of cattle, and others, in a minor role, such as horses and sheep wherein the animals graze the land for feed produced thereon. Permitted use shall include such compatible uses as woodland management, wildlife management and the cultivation of feed crops to be used strictly within the premises. Excluded will be the operation of commercial activities such as feedlots (excepting a private feedlot designed to feed the Lessee's own cattle), dairy milking parlors, or boarding of horses.

(j) "Timber" shall mean any tree standing within designated areas of the demised land which are covered by a woodland management plan.

1 November, 19 75.

STATE OF HAWAII

By

C. C. Ch.

Chairman and Member
Board of Land and
Natural Resources

And By

Lirao M. M. M.

Member
Board of Land and
Natural Resources

LESSOR

Edna B. B.

BOTEILHO HAWAII ENTERPRISES, INC.

Pres.

LESSEE

APPROVED AS TO FORM
AND LEGALITY:

Johnson H. Long
Deputy Attorney General
Dated: SEP 22 1975

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

Notary Public, _____ Judicial
Circuit, State of Hawaii.

My Commission expires: _____

STATE OF HAWAII

COUNTY OF Hawaii)
SS

On this 3rd day of November, 1975,
before me appeared Edward Botelho and
_____, to me personally known,
who, being by me duly sworn, did say that they are the
President and _____,
respectively, of Botelho Hawaii Enterprises, Inc.,
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 au-
thority of its Board of Directors, and the said Edward
Botelho and _____ acknowledged
that they executed said instrument as the free act and deed of
said corporation.

[Signature]
Notary Public, _____ Judicial
Circuit, State of Hawaii.

My Commission expires: Sept. 13, 1979

STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES

HONOLULU

C.S.F. No. 17,283

January 24, 1975

PASTURE LEASE

PARCEL 3

Kaohe II, Hamakua, Island of Hawaii, Hawaii

Being portion of the Government Land of Kaohe.

Beginning at the southwest corner of this parcel of land, the south-east corner of Parcel 4 of Pasture Lease and on the north boundary of Mauna Kea Forest Reserve, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU KIHE" being 2461.13 feet North and 14955.78 feet West, thence running by azimuths measured clockwise from True South:-

1. 176° 10' 5202.60 feet along Parcel 4 of Pasture Lease;
2. 204° 00' 3900.00 feet along Parcel 4 of Pasture Lease;
3. 188° 00' 5800.00 feet along Parcel 4 of Pasture Lease, along the east bank of Holuokawa Gulch;
4. 193° 00' 7250.00 feet along Parcel 4 of Pasture Lease, leaving the east bank of Holuokawa Gulch and running to and along the east bank of Manienie Gulch;
5. 203° 40' 8000.00 feet along Parcel 4 of Pasture Lease, along the east bank of Manienie Gulch;
6. 194° 10' 1250.00 feet along Parcel 4 of Pasture Lease, along the east bank of Manienie Gulch;
7. 219° 16' 4916.10 feet along Parcel 4 of Pasture Lease, along the east bank of Manienie Gulch;
8. 290° 57' 1400.00 feet along Pohakea Homesteads to the middle of a small gulch;
9. Thence along the middle of the small gulch, along Hamakua Forest Reserve, the direct azimuth and distance being: 345° 45' 1830.00 feet;
10. 297° 39' 6484.00 feet along Hamakua Forest Reserve;
11. 201° 13' 2260.60 feet along Hamakua Forest Reserve;

EXHIBIT "A"

middle of Laleha Gulch;
13. Thence along the middle of Laleha Gulch, along R.P. 4527, Mahele Award 26-B to Kailakanoa to Umikoa Hill, the direct azimuth and distance being: 25° 28' 40" 2307.50 feet;

14. 323° 14' 632.70 feet along R.P. 4527, Mahele Award 26-B to Kailakanoa to the middle of Koholalele Gulch;

Thence along the middle of Koholalele Gulch, along R.P. 4527, Mahele Award 26-B to Kailakanoa for the next four (4) courses, the direct azimuths and distances between points in the middle of said gulch being:

15. 29° 30' 30" 4995.50 feet;

16. 10° 02' 6584.70 feet;

17. 18° 35' 20" 3114.40 feet;

18. 39° 57' 40" 3154.40 feet;

19. 51° 30' 3564.00 feet along R.P. 4527, Mahele Award 26-B to Kailakanoa;

20. 22° 00' 1735.80 feet along R.P. 4527, Mahele Award 26-B to Kailakanoa;

21. 357° 41' 20" 1879.20 feet along R.P. 4527, Mahele Award 26-B to Kailakanoa;

22. 0° 14' 49" 7216.90 feet along R.P. 4527, Mahele Award 26-B to Kailakanoa;

23. 98° 02' 40" 6530.60 feet along Mauna Kea Forest Reserve;

24. 99° 33' 40" 2432.70 feet along Mauna Kea Forest Reserve to the point of beginning and containing a GROSS AREA OF 8010.00 ACRES, excepting and excluding therefrom Grant 2046 to E. Van Houten (77.64 Acres) leaving a NET AREA OF 7932.36 ACRES.

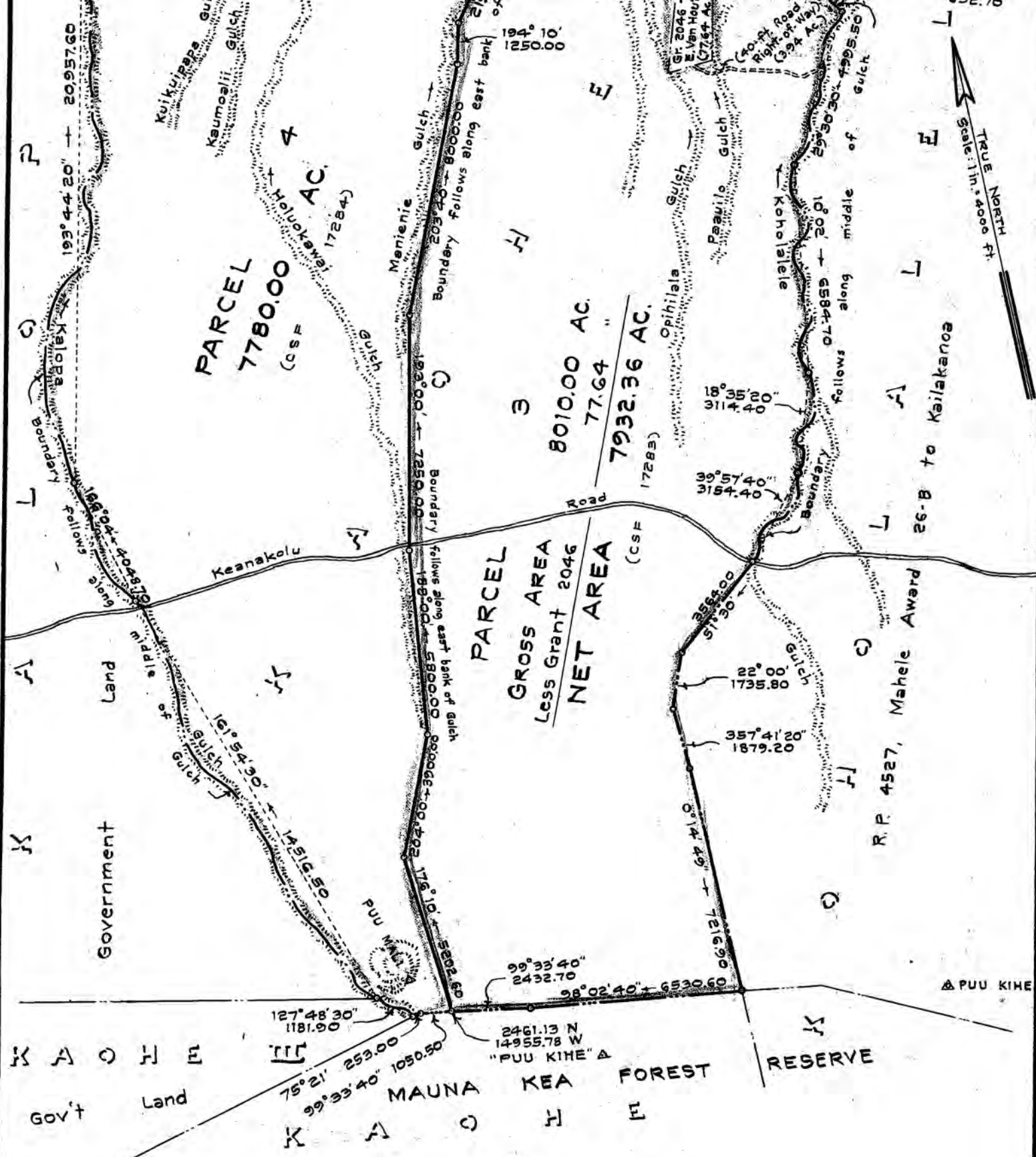
Excepting and reserving therefrom a road right-of-way 40-feet wide for ingress and egress in favor of the owners of said Grant 2046 to E. Van Houten as shown on map.

Also, excepting and reserving therefrom all roads, trails and such other rights-of-way that may be required for public purposes.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Ichiro Sakamoto
Ichiro Sakamoto
Land Surveyor

cm



**PASTURE LEASE
 PARCELS 3 AND 4**

Kahohe II, Hamakua, Island of Hawaii, Hawaii

Scale: 1 inch = 4000 feet

EXHIBIT "B"

JOB H-7065
 C. BK

TAX MAP 4-3-10

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

C. S. F. No. 17,283
 17,284

1.S. Jan. 24, 1975