

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

February 22, 2008

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

Land Board Members:

SUBJECT: Request to amend Prior Board Actions of May 14, 2004 Under Item D-7 and January 14, 2005 under Item D-23, Sale of Land License at Public Auction for Removal of Sand from Kawaiele Wild Bird Sanctuary, Covered by Executive Order No. 3685 Kawaiele, Mana, Waimea, Kauai, Tax Map Key: (4) 1-2-002: Portion 001.

Change of Location Name from Kawaiele Wild Bird Sanctuary to Mana Plains Forest Reserve

Background: On May 14, 2004 under item D-7 (Exhibit A), the Board approved as amended, the sale of a Land License at public auction for removal of sand from the Kawaiele Wild Bird Sanctuary, Mana, Waimea, Kauai, Tax Map Key: (4) 1-2-002: Portion 001, covered by Governor's Executive Order (GEO) No. 3685. On January 14, 2005 under item D-23 (Exhibit B), the Board amended the license terms and conditions cited in item D-7 by 1) deleting the "minimum Upset Royalty" clause and replacing it with a "Minimum Upset Annual License Fee clause; 2) adding a "Royalty Rate" clause; and 3) adding an "Effective Royalty" clause.

Kawaiele Bird Sanctuary was established via GEO Nos. 3437 and 3685. At its meeting of September 28, 2007, under item C-1, the Board approved the cancellation of GEO Nos. 3437 and 3685 and set aside these lands along with approximately 105 adjacent acres to the Division of Forestry and Wildlife for Mana Plains Forest Reserve. On November 14, 2007, GEO No. 3437 was cancelled by GEO No. 4207 (Exhibit C) and GEO No. 3685 was cancelled by GEO No. 4208 (Exhibit D). Mana Plains Forest Reserve was subsequently established by GEO No. 4209 (Exhibit E), also on November 14, 2007, incorporating lands from the two cancellations as well as additional adjacent lands.

Discussion: Board agenda items D-7 on May 14, 2004 and D-23 on January 14, 2005 specified that the Land License would be for removal of sand at Kawaiele Wild Bird Sanctuary, which no longer exists. Staff recommends amending the name of the area designated for the proposed Land License in those previous Board items from “Kawaiele Wild Bird Sanctuary” to “Mana Plains Forest Reserve.” Revenues from sand mining activities will be divided between entitlements to the Office of Hawaiian Affairs, the Department of Hawaiian Home Lands and the Department’s Forest Stewardship Special Fund – the latter revenues to subsequently support management of the Mana Plains Forest Reserve.

RECOMMENDATIONS:

That the Board:

1. Amend the location name of the sale of a Land License at public auction for removal of sand from “Kawaiele Wild Bird Sanctuary” to “Mana Plains Forest Reserve.”
2. All other terms and conditions listed in its May 14, 2004 approval as amended (item D-7) and its January 14, 2005 approval (item D-23) to remain the same.
3. Authorize the Chairperson to update terms of the previous draft sand mining Land License subject to approval of the Department of the Attorney General.

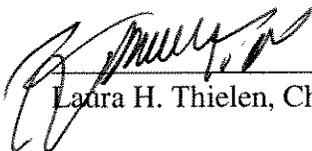
Respectfully submitted,



PAUL J. CONRY, Administrator

Attachments

APPROVED FOR SUBMITTAL:



Laira H. Thielen, Chairperson

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

May 14, 2004

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

PSF No.: 04KD-042

Kauai

Sale of Land License at Public Auction for Removal of Sand From
Kawaiele Wild Bird Sanctuary, Covered by Executive Order No. S-
3685 Kawaiele, Mana, Waimea, Kauai, Tax Map Key: (4) 1-2-02:
Portion 01.

REQUEST:

Sale of land license at public auction for removal of Sand From
Kawaiele Wild Bird Sanctuary Covered by Executive Order No. S-
3685.

LEGAL REFERENCE:

Section 171-54, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government (Crown) lands of Waimea situated at Mana,
Waimea, Kauai, identified by Tax Map Key: (4) 1-2-02: portion 01,
as shown on the attached map labeled Exhibit A.

AREA:

18.995 acres

ZONING:

State Land Use District: AG/OPEN
County of Kauai CZO: AG

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CURRENT USE STATUS:

Encumbered by Executive Order No. 3685 to Department of Land and

as amended

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

May 14, 2004 *[Signature]*

ITEM D-7

Natural Resources-Division of Forestry and Wildlife for Wild Bird
Sanctuary purposes.

CHARACTER OF USE:

Excavation and removal of sand for commercial purposes

LIMITS ON REMOVAL

Maximum of 45,311 cubic yards

LICENSE TERM:

Two (2) Years *one year*

COMMENCEMENT DATE:

The first day of the month following the date of sale; provided
that the Chairperson may amend the commencement date for good
cause.

MINIMUM UPSET ROYALTY:

To be determined by independent or staff appraiser, subject to
review and approval by the Chairperson.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

PERFORMANCE BOND:

Twice the annual license fee.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was
published in the OEQC's Environmental Notice in May 1988 with a
finding of no significant impact (FONSI). Special Permits were
also received from the Kauai County Planning Commission for sand
mine use and from the State Land Use Commission for establishment
of a sand mine and creation of a waterbird sanctuary.

REMARKS:

The subject lands are set aside via Governor Executive Order No.
S-3685 to the Division of Forestry and Wildlife for Addition to
Kawaiiele Wild Bird Sanctuary, containing an area of 38.995 acres.

On August 28, 1993, under Item D-11, the Land Board authorized
the public auction sale of four land licenses allowing the
removal of 85,000 cubic yards of sand.

On February 12, 1999, under Item D-13, the Land Board amended the prior action by adding a fifth parcel containing 23,600 cubic yards to the existing four parcels increasing the total amount of sand to 108,600 cubic yards.

On February 24, 2000, Land Licenses S-343 (parcel 1) and S-344 (parcel 2) were issued to Doreen L. Sanchez-Rego Contractor, Inc. and Land Licenses S-345 (parcel 4) and S-346 (parcel 5) were granted to Jas W. Grover, Ltd. All four land licenses expired on February 23, 2002.

The new public auction sale of a land license will be for parcel 4 (23,211 cubic yards), previously under expired Land License S-345, and parcel 5 (23,600 cubic yards), previously under expired Land License S-346. When Land Licenses S-345 and S-346 expired on February 23, 2002, a total of 1,790 cubic yards of sand was removed from parcel 4 only. The estimated sand remaining from both parcel is 46,311± cubic yards.

In recent months, the Division of Forestry and Wildlife has received numerous calls from contractors requesting removal of the Kawaiiele Wild Bird Sanctuary sand for construction projects throughout the island. The projects vary from golf courses, concrete mix and beach replenishment. Staff has inquired with contractors on Kauai and most of the responses indicate that there is a shortage of sand on Kauai.

Request for review and comment was circulated to the various State and County agencies.

Kauai Historic Preservation commented as follow:

We believe there are no historic properties present because previous grubbing/grading has altered the land for the existing sand mining.

This project has already gone through the historic preservation review process and mitigation has been completed.

Because human remains have been found in the area. In the event human remains are found procedures outlined in Chapter 6E 443 shall be followed.

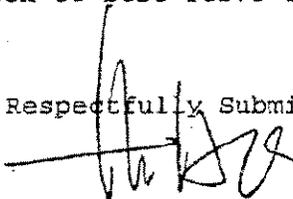
There were no comments from other State and County Agencies.

The benefits from the sale of this land license would be the completion of DOFAW Phase II of the Kawaiiele Wild Bird Sanctuary and the State could receive approximately \$235,000.00 in royalties for the sand.

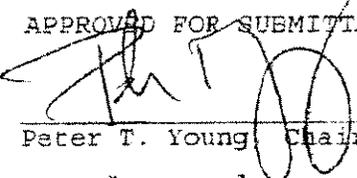
RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the sale of a land license at public auction covering the subject area for removal of sand from Kawaiiele Wild Bird Sanctuary covered by Executive Order No. S-3685, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current land license document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Thomas H. Oi
District Land Agent

APPROVED FOR SUBMITTAL:


Peter T. Young, Chairperson

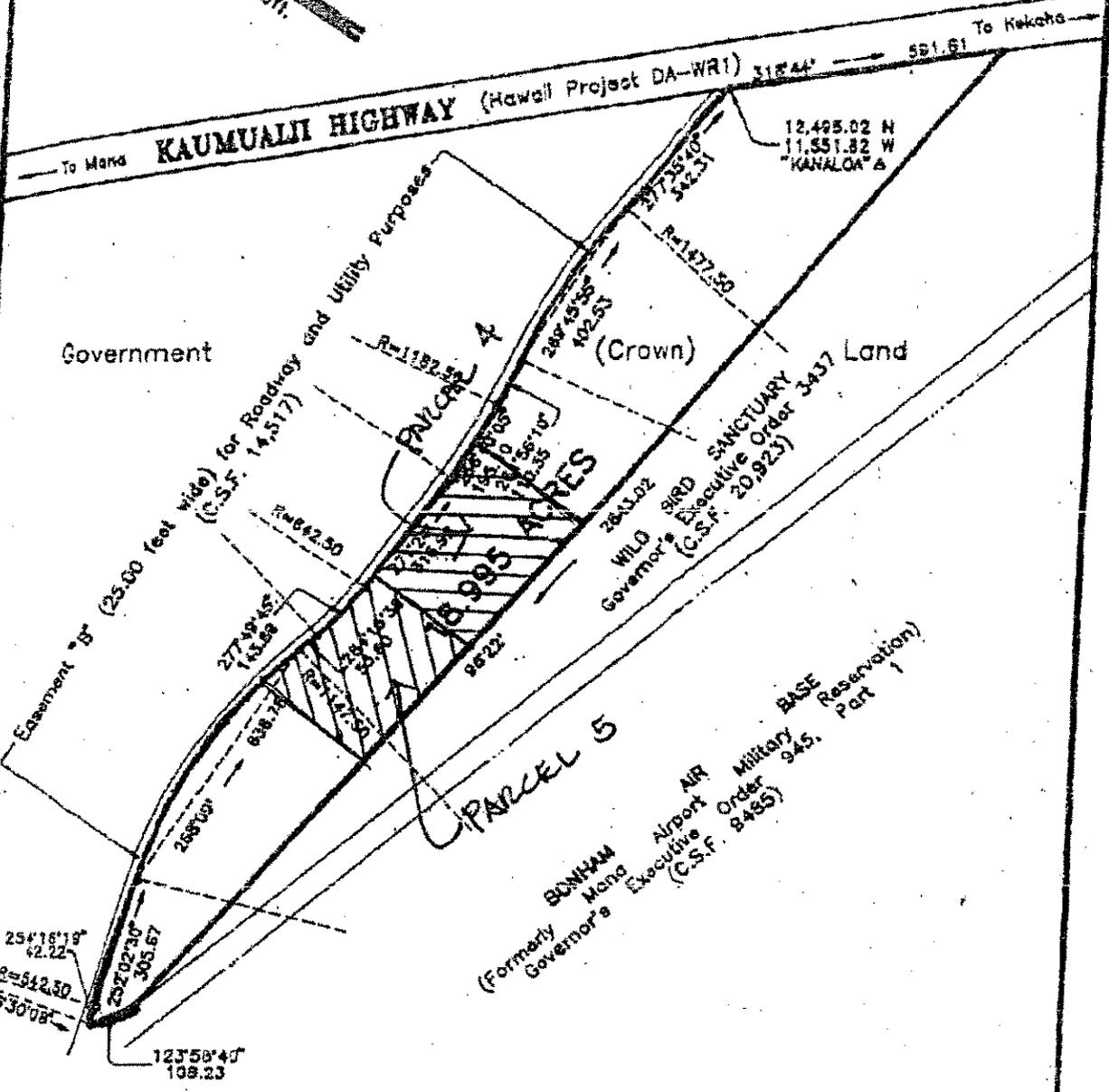
Approved as amended. The Board amended the Recommendation Section by:

- 1) Deleting paragraph 1) in its entirety; and
- 2) Amending paragraph 2) to read as follows:

"~~2~~1) Authorize the sale of land license at public auction covering the subject area for removal of sand from Kawaiiele Wild Bird Sanctuary covered by Executive Order No. S-3685, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- A) The standard terms and conditions of the most current land license document form, as may be amended from time to time;
- B. Review and approval by the Department of the Attorney General; ~~and~~
- C. Such other terms and conditions as may be prescribed by the Chairperson to serve the best interests of the State~~(7)~~;

TRUE NORTH
SCALE: 1 in. = 300 ft.



ADDITION TO WILD BIRD SANCTUARY
 Manā, Waimea, Kauai, Hawaii
 Scale: 1 inch = 300 feet

EXHIBIT "A"

JOB:K-165(95)
 C. BK. I, Nakomitsu

TAX MAP:1-2-02:par.01
 SURVEY DIVISION
 DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
 STATE OF HAWAII

C.S.F. NO. 22,376

A.T.N. Oct. 31, 1995

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

January 14, 2005

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

PSF No.: 04KD-042

Kauai

Amend Prior Board Action of May 14, 2004 under Item D-7, Sale of Land License at Public Auction for Removal of Sand From Kawaiele Wild Bird Sanctuary, Covered by Executive Order No. S-3685 Kawaiele, Mana, Waimea, Kauai, Tax Map Key:(4) 1-2-02: Portion 01.

Background

On May 14, 2004, under Item D-7, the Board approved as amended, the sale of a land license at public auction for removal of sand from the Kawaiele Wild Bird Sanctuary, covered by Executive Order No. 3685.

The submittal included a "Minimum Upset Royalty" to be determined by staff or independent appraisal. Staff would like to clarify that there should be two components: a minimum annual license fee (which will be bid upon) and the royalty rate (which will be applied to the cubic yards removed. The effective rental shall be the higher of the two.

RECOMMENDATION:

That the Board amend its prior action of May 14, 2004, Item D-7, by:

- 1) Deleting the "Minimum Upset Royalty" section in its entirety; and
- 2) Adding the following three sections:

"MINIMUM UPSET ANNUAL LICENSE FEE:

To be determined by staff or independent appraisal, subject to review and approval by the Chairperson.

ROYALTY RATE:

To be determined by staff or independent appraisal, subject to approval by the Chairperson.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

January 14, 2005 *Kek*

BLNR - Amend Prior Board Action
Sale of Land License
at Kawaiale Bird Sanctuary

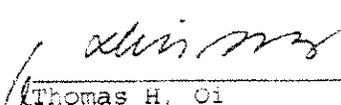
Page 2

January 14, 2005

EFFECTIVE ROYALTY:

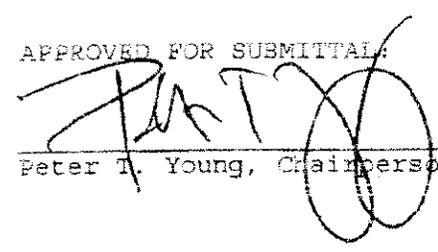
The successful bid at public auction on the annual license fee or the royalty rate applied to the amount removed, whichever is higher."

Respectfully Submitted,



Thomas H. O'i
District Land Agent

APPROVED FOR SUBMITTAL:



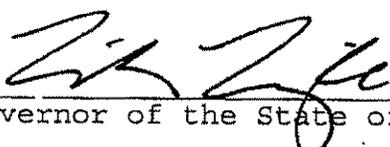
Peter T. Young, Chairperson

WHEREAS, the Board of Land and Natural Resources at its meeting held on September 28, 2007 approved the cancellation of Governor's Executive Order No. 3437 dated November 24, 1989.

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, by virtue of the authority vested in me under Section 171-11, Hawaii Revised Statutes, do hereby order that Governor's Executive Order No. 3437 dated November 24, 1989, be and the same is hereby cancelled and declared of no force and effect.

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

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Hawaii to be affixed. Done at the Capitol at Honolulu this 14th day of November, 2007.



Governor of the State of Hawaii

APPROVED AS TO FORM:



Deputy Attorney General

Dated: Oct. 30, 2007

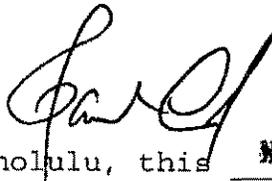
PRELIM. APPR'D.
Department of the
Attorney General

STATE OF HAWAII

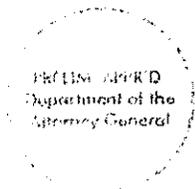
Office of the Lieutenant Governor

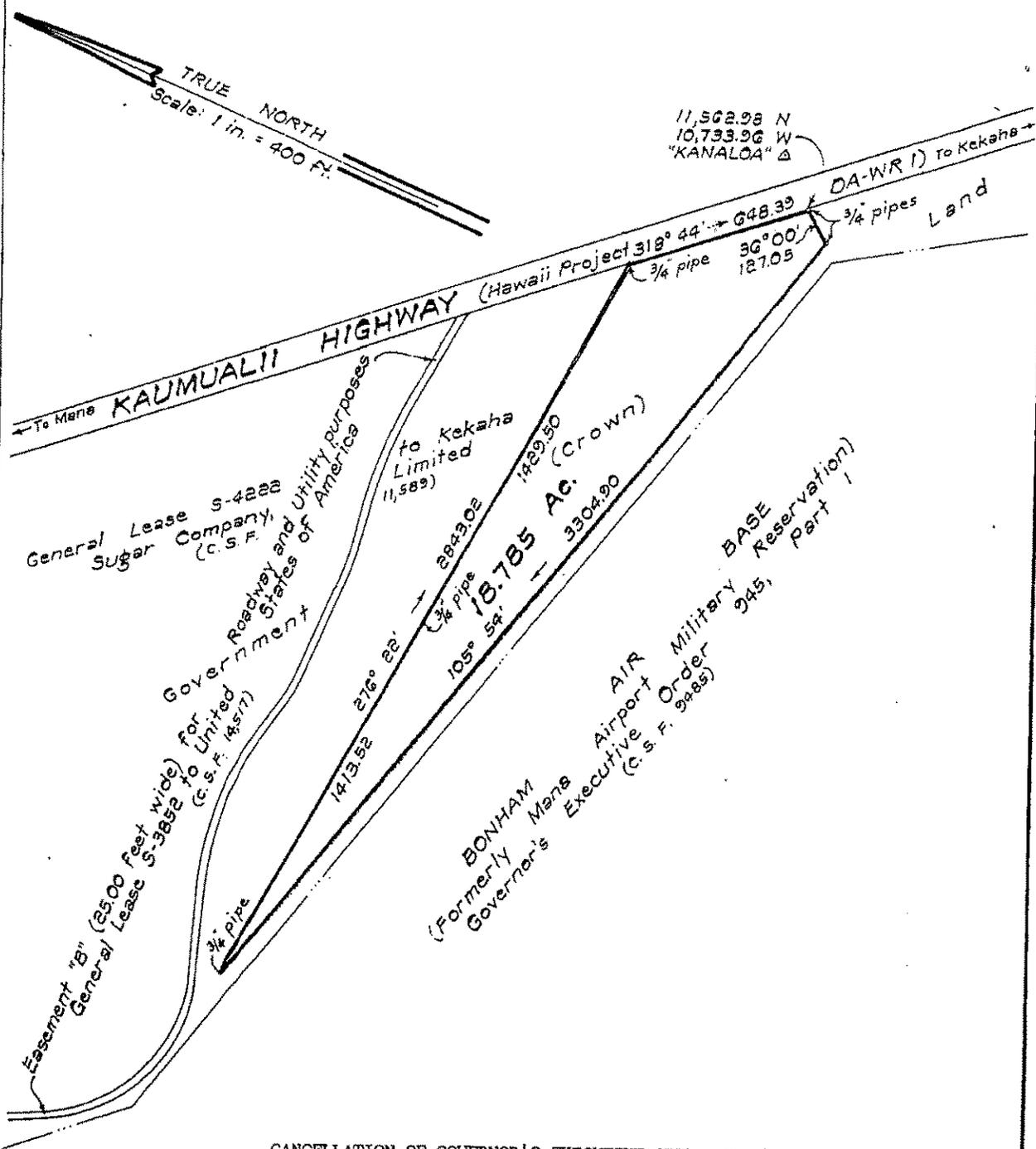
THIS IS TO CERTIFY That the within is a true copy of
Executive Order No. 4207 cancelling land from the
operation of Executive Order No. 3437, the original of which is
on file in this office.

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



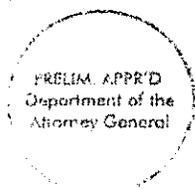
DONE in Honolulu, this NOV 15 2007 day of
_____, A.D. 2007





CANCELLATION OF GOVERNOR'S EXECUTIVE ORDER NO. 3437

WILD BIRD SANCTUARY
Mana, Waimea, Kauai, Hawaii
Scale: 1 inch = 400 feet



REDUCED
NOT TO SCALE

EXHIBIT "A"

JOB K-131(85)
C.B.K. 5, pg. 87; D. Oyama

WHEREAS, the Board of Land and Natural Resources at its meeting held on September 28, 2007, approved the cancellation of Governor's Executive Order No. 3685 dated March 29, 1996.

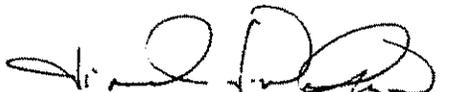
NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, by virtue of the authority vested in me under Section 171-11, Hawaii Revised Statutes, do hereby order that Governor's Executive Order No. 3685 dated March 29, 1996, be and the same is hereby cancelled and declared of no force and effect.

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

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Hawaii to be affixed. Done at the Capitol at Honolulu this 14th day of November, 2007.


Governor of the State of Hawaii

APPROVED AS TO FORM:


Deputy Attorney General

Dated: Oct. 30, 2007

FREEMAN AUSTIN
Department of the
Attorney General

STATE OF HAWAII

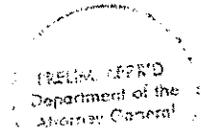
Office of the Lieutenant Governor

THIS IS TO CERTIFY That the within is a true copy of Executive Order No. 4208 cancelling land from the operation of Executive Order No. 3685, the original of which is on file in this office.

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

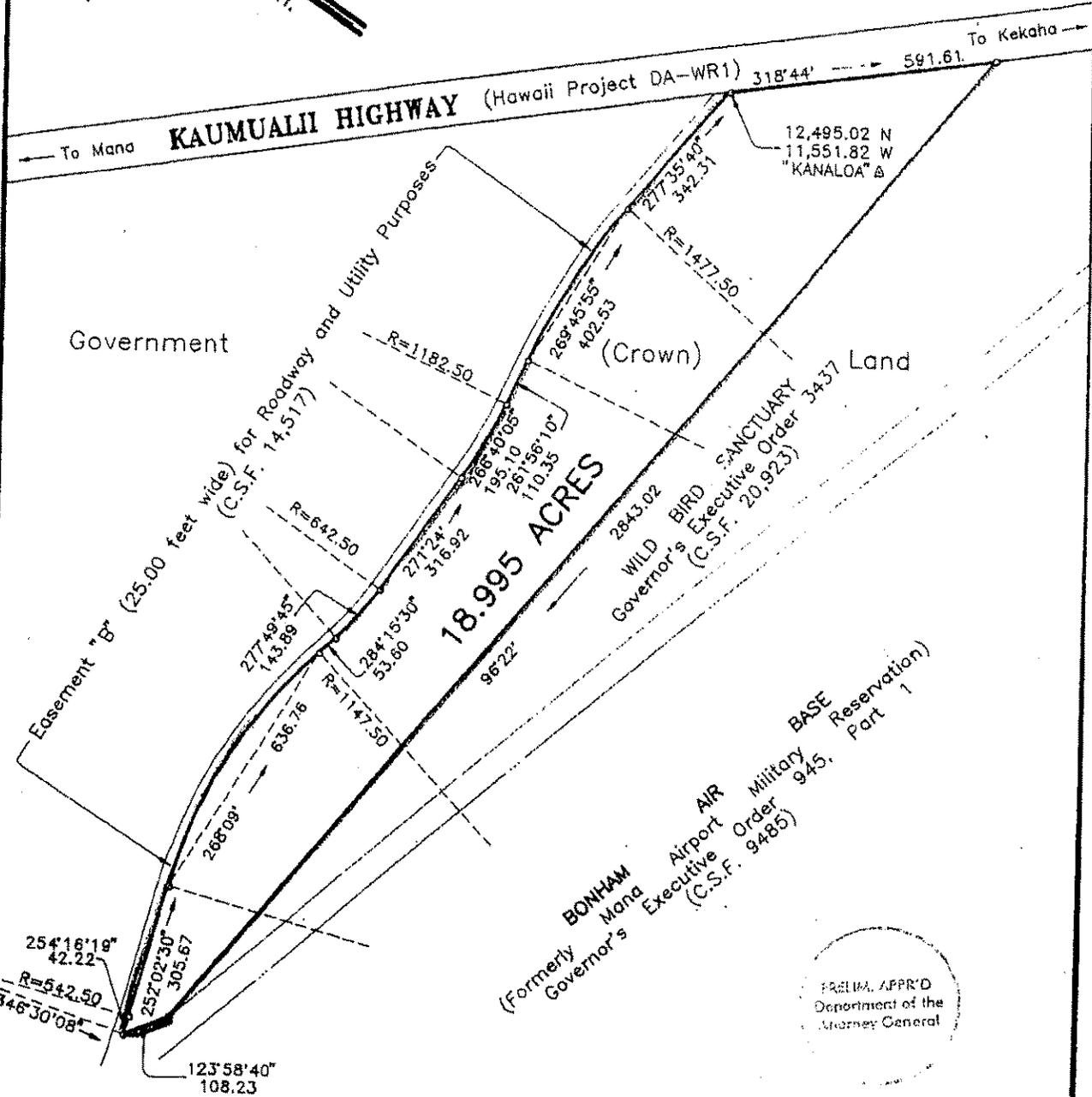


DONE in Honolulu, this NOV 15 2007 day of _____, A.D. 2007



PRELIM APPROV'D
Department of the
Attorney General

TRUE NORTH
SCALE: 1 in. = 300 ft.



BONHAM Air Military Base
 (Formerly Mana Airport)
 Governor's Executive Order 945, Part 1
 (C.S.F. 9485)

WILD BIRD Sanctuary
 Governor's Executive Order 3437
 (C.S.F. 20,923)

PRELIM. APPR'D
 Department of the
 Attorney General

CANCELLATION OF GOVERNOR'S EXECUTIVE ORDER NO. 3685

ADDITION TO WILD BIRD SANCTUARY
 Mana, Waimea, Kauai, Hawaii
 Scale: 1 inch = 300 feet

JOB:K-165(95)
 C. BK. 1, Nakomitsu

REDUCED
 NOT TO SCALE

EXHIBIT "A"

TAX MAP:1-2-02:par.01

SURVEY DIVISION
 DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
 STATE OF HAWAII

C.S.F. NO. 22,376

A.T.N. Oct.31,1995

FOR ADDITION TO THE MANA PLAINS FOREST RESERVE, to be under the control and management of the State of Hawaii, Department of Land and Natural Resources, Division of Forestry and Wildlife, being those parcels of land situate at Kekaha, Waimea, Kauai, Hawaii, identified as "Mana Plains Forest Reserve, Parts 1 and 2," Part 1 containing an area of 105.032 acres, and Part 2 containing an area of 37.780 acres, more particularly described in Exhibit "A" and delineated on Exhibit "B," both of which are attached hereto and made parts hereof, said exhibits being respectively, a survey description and survey map prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, both being designated C.S.F. No. 24,478 and dated June 27, 2007.

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Hawaii to be affixed. Done at the Capitol at Honolulu this 14th day of November, 2007.



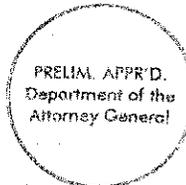
Governor of the State of Hawaii

APPROVED AS TO FORM:



Deputy Attorney General

Dated: Oct. 30, 2007





STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

June 27, 2007

C.S.F. No. 24,478

MANA PLAINS FOREST RESERVE

PARTS 1 AND 2

Kekaha, Waimea, Kauai, Hawaii

Being portions of the Government (Crown) Land of Waimea.

PART 1: Being also Lot A-2 of the Government (Crown) Land of Waimea.

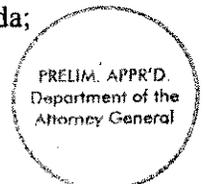
Beginning at the north corner of this parcel of land, at the east corner of Lot A-1 of the Government (Crown) Land of Waimea and on the westerly side of Kaumualii Highway (Hawaii Project No. DA-WR-1), the coordinates of said point of beginning referred to Government Survey Triangulation Station "TRANSIT OF VENUS" being 23,286.05 feet North and 37,633.56 feet West, thence running by azimuths measured clockwise from True South:-

- | | |
|----------------|---|
| 1. 318° 44' | 4831.08 feet along the westerly side of Kaumualii Highway (Hawaii Project No. DA-WR-1); |
| 2. 97° 35' 40" | 313.69 feet along Lot 14 of the Government (Crown) Land of Waimea; |



EXHIBIT "A"

3. Thence along Lot 14 of the Government (Crown) Land of Waimea on a curve to the left with a radius of 1502.50 feet, the chord azimuth and distance being:
89° 45' 55" 409.34 feet;
4. 81° 56' 10" 110.35 feet along Lot 14 of the Government (Crown) Land of Waimea;
5. Thence along Lot 14 of the Government (Crown) Land of Waimea on a curve to the right with a radius of 1157.50 feet, the chord azimuth and distance being:
86° 40' 05" 190.97 feet;
6. 91° 24' 316.92 feet along Lot 14 of the Government (Crown) Land of Waimea;
7. Thence along Lot 14 of the Government (Crown) Land of Waimea on a curve to the right with a radius of 617.50 feet, the chord azimuth and distance being:
97° 49' 45" 138.29 feet;
8. 104° 15' 30" 53.60 feet along Lot 14 of the Government (Crown) Land of Waimea;
9. Thence along Lot 14 of the Government (Crown) Land of Waimea on a curve to the left with a radius of 1172.50 feet, the chord azimuth and distance being:
88° 09' 650.63 feet;
10. 72° 02' 30" 305.67 feet along Lot 14 of the Government (Crown) Land of Waimea;
11. 97° 55' 15" 234.87 feet along Lot A-1 of the Government (Crown) Land of Waimea;
12. 211° 38' 154.90 feet along Grant 8891 to Rokuichiro Gotanda;
13. 121° 38' 120.00 feet along Grant 8891 to Rokuichiro Gotanda;
14. 211° 38' 160.00 feet along Grant 8891 to Rokuichiro Gotanda;
15. 124° 58' 71.49 feet along Grant 8891 to Rokuichiro Gotanda;



4. Thence along Lot 13 of the Government (Crown) Land of Waimea on a curve to the left with a radius of 542.50 feet, the chord azimuth and distance being:
254° 16' 19" 42.22 feet;
5. 252° 02' 30" 305.67 feet along Lot 14 of the Government (Crown) Land of Waimea;
6. Thence along Lot 14 of the Government (Crown) Land of Waimea on a curve to the right with a radius of 1147.50 feet, the chord azimuth and distance being:
268° 09' 636.76 feet;
7. 284° 15' 30" 53.60 feet along Lot 14 of the Government (Crown) Land of Waimea;
8. Thence along Lot 14 of the Government (Crown) Land of Waimea on a curve to the left with a radius of 642.50 feet, the chord azimuth and distance being:
277° 49' 45" 143.89 feet;
9. 271° 24' 316.92 feet along Lot 14 of the Government (Crown) Land of Waimea;
10. Thence along Lot 14 of the Government (Crown) Land of Waimea on a curve to the left with a radius of 1182.50 feet, the chord azimuth and distance being:
266° 40' 05" 195.10 feet;
11. 261° 56' 10" 110.35 feet along Lot 14 of the Government (Crown) Land of Waimea;
12. Thence along Lot 14 of the Government (Crown) Land of Waimea on a curve to the right with a radius of 1477.50 feet, the chord azimuth and distance being:
269° 45' 55" 402.53 feet;
13. 277° 35' 40" 342.31 feet along Lot 14 of the Government (Crown) Land of Waimea;



C.S.F. No. 24,478

June 27, 2007

14. 318° 44'

1240.00 feet along the westerly side of Kaunualii Highway (Hawaii Project No. DA-WR-1) to the point of beginning and containing an AREA OF 37.780 ACRES.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Glenn J. Kodani
Glenn J. Kodani
Land Surveyor ml

Compiled from map and desc. furn.
by ControlPoint Surveying, Inc.
Said map and desc. have been
examined and checked as to form
and mathematical correctness but
not on the ground by the Survey
Division.



