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

February 27, 2009

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

Land Board Members:

SUBJECT: ISSUANCE OF SPECIAL USE PERMIT NO. FW-2009-01 TO PALANI RANCH COMPANY, INC., KAILUA-KONA, NORTH KONA, HAWAII, TMK (3)-7-4-002:007 and (3)-7-4-001: por. 003.

BACKGROUND:

The subject parcels comprise portions of lands set-aside to the Division as an addition to Honuaula Forest Reserve through Governor's Executive Order No. 4,166 dated July 20, 2006. Among a variety of actions, the Board previously authorized the Division to employ livestock grazing for the purposes of wildfire prevention on portions of these public lands at its May 26, 2006 meeting (Item D-2). At its meetings of February 9, 2007 (Item C-2) and February 22, 2008 (Item C-4), the Board of Land and Natural Resources authorized the issuance of one-year revocable permits to Palani Ranch Company, Inc., covering the subject area for pasture purposes under specified terms and conditions.

Palani Ranch Company, Inc. (PRC) seeks continued grazing access to the previously permitted areas pursuant to the terms outlined in the May 26, 2006, February 9, 2007 and February 22, 2008 Board actions. The Division supports this interest as projected forest reserve management actions for these pasture areas are still largely in planning or preliminary (e.g. feral cattle removal) phases. Continued control of fuel loads will provide beneficial protection for portions of the grazed area until active ecosystem management work is initiated.

The Division seeks to change the permit title from "Revocable Permit" to "Special Use Permit" in order that the permit be more consistent with the statutory and administrative rule authorities applicable to the Forest Reserve System. Otherwise, the new Special Use Permit terms will essentially remain the same (Exhibit A), and the month-to-month permit would be valid for one (1) year.

RECOMMENDATION:

That the Board:

1. Authorize the issuance a Special Use Permit to Palani Ranch Company, Inc., covering the subject area for pasture purposes under the terms and conditions cited in the attached draft permit (Exhibit A), which are by this reference incorporated herein and further subject to the following:

    a. Review and approval by the Department of the Attorney General; and

    b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,

PAUL J. CONRY, Administrator

APPROVED FOR SUBMITTAL:

LAURA H. THIELEN, Chairperson

Attachment (Exhibits A & B)

EXHIBIT A

LINDA LINGLE
GOVERNOR OF HAWAII

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

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

SPECIAL USE PERMIT
FOREST RESERVE SYSTEM

DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE
1151 PUNCHBOWL STREET # 325, HONOLULU, HI 96813

Special Use Permit No. FW-2009-01

EFFECTIVE: **March 1, 2009**

EXPIRATION: **February 28, 2010**

RESERVE: **Portion of Honuaula Forest Reserve, North Kona, Hawaii**

TO: Mr. James S. Greenwell
Palani Ranch Company, Inc.
3465 Waialae Ave., Suite 260
Honolulu, HI 96816
Tel. (808) 732-2622
Fax. (808) 732-2788

At its May 26, 2006 meeting (Item D-2), the Board of Land and Natural Resources ("BLNR") amended terms of its previous action of March 14, 1997, detailing proposed additions of public lands to Honuaula Forest Reserve, North Kona, Hawaii. The BLNR also authorized the Division of Forestry and Wildlife ("DOFAW") to employ livestock grazing for the purposes of wildfire prevention on public lands comprising TMK (3)-7-4-002:007 and (3)-7-4-001:por. 003. The proposed land set-asides were formally added to Honuaula Forest Reserve through Governor's Executive Order No. 4,166 on July 20, 2006.

Palani Ranch Company, Inc. (PRC) seeks continued grazing access to portions of the subject lands pursuant to terms outlined in the May 26, 2006 BLNR action. This Special Use Permit results from the continuing interest between PRC and DOFAW for utilization of the following paddocks for pasture proposes: Honuaula 1, Kealakehe 1, Kealakehe 2 and Kealakehe 3 paddocks (Exhibit A).

Pursuant to the authority granted by the Board of Land and Natural Resources at its February 9, 2007, February 22, 2008 and February 27, 2009 meetings and to Chapter 183 Hawaii Revised

Statues and Section 13-104-20, Hawaii Administrative Rules, PRC is hereby granted a Special Use Permit to enter and occupy, on a month-to-month basis the above-stated paddocks within TMK (3)-7-4-002: por. 007 and (3)-7-4-001: por. 003 consisting of approximately 1,500.00 acres in the area shown on the attached map labeled Exhibit A (the "Property").

THIS SPECIAL USE PERMIT IS GRANTED SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS

SPECIAL CONDITIONS:

1. PRC shall maintain perimeter fencing for all paddocks rented and actively grazed under this permit, in stock-proof condition at it's own expense, regardless of whether or not PRC has an interest or ownership in adjoining lands, throughout the term of this Permit except for repairs required due to trees growing on DOFAW-managed lands that PRC is not grazing and that fall on or damage the boundary fence, said repairs being the responsibility of DOFAW. PRC is responsible for any trees that fall on fences from lands that they own or control by lease or are permitted to graze by this Revocable Permit. For purposes of this provision, Honuaula 2 and Sheep Station are considered "DOFAW-managed lands" notwithstanding the trapping efforts by Palani in or abutting those paddocks.

2. PRC may trap and remove escaped cattle in Honuaula 2 and Sheep Station paddocks by obtaining permits from the Division's Hilo Branch office. PRC shall not be charged rent for Honuaula 2 and Sheep Station paddocks as the intended use is only for the removal of escaped cattle. Pursuant to Title 12, Chapter 183-19, Hawaii Revised Statutes, and after providing due public notice as required, DOFAW may initiate cattle control efforts in:

    a. Honuaula 2 and Sheep Station paddocks after March 16, 2009.
    b. Honuaula 1 and Kealakehe 1 paddocks only if these paddocks have been removed from the area covered by this revocable permit and returned to direct DOFAW management.
    c. Kealakehe 2 and Kalalakehe 3 paddocks on May 1, 2016 or thereafter.

    Cattle control in Honuaula Forest Reserve will be limited to aerial and ground hunts by DOFAW staff. Aerial hunting shall be conducted pursuant to DOFAW's current "Aerial Shooting Policy for feral Animals dated August 2006." For public safety purposes, all ground hunting shall be conducted as per current hunting safety regulations. DOFAW will refrain from such control efforts in specific paddocks in accordance with the minimum time frames detailed above or longer at DOFAW's option.

3. So long as PRC remains a Permittee of DOFAW with respect to Kealakehe 2 and Kealakehe 3 Paddocks, and subject to the General Conditions below, and subject as well to DOFAW's eradication efforts being implemented in full compliance with the agreed protocols detailed in Special Condition No. 2 above, PRC shall grant DOFAW access to (a) Honuaula Tract II (Sheep Station and Honuaula 1 paddocks) from Kaloko Drive via PRC's fee lands of Honokohau. PRC will grant such access subject to reasonable rules and conditions as it has

in the past. Such access is specifically for the purpose of conducting official DOFAW business and activities and not for recreational use or hunting or any other purpose.

GENERAL CONDITIONS:

1. PRC is authorized to occupy and use the land units comprising paddocks Honuaula 1, Kealakehe 1, Kealakehe 2 and Kealakehe 3 (Exhibit A) for pasture purposes only.

2. PRC shall pay, at the DOFAW office, P.O. Box 4849, Hilo, Hawaii 96720, annual rent in the sum of FOUR THOUSAND TWENTY DOLLARS AND NO/CENTS ($4,020.00) payable semi-annually in advance. Should PRC chose to notify DOFAW in writing that it will no longer actively graze a given paddock(s) after a specified date, DOFAW may apply a rental credit to a future PRC rental payment, the credit to be determined by pro-rating the rental cost for that paddock(s) by months and acreage out of active grazing.

3. PRC previously deposited with DOFAW SIX HUNDRED SEVENTY DOLLARS AND NO/CENTS ($670.00) as security for the faithful performance of all of these terms and conditions. The deposit will be returned to PRC upon termination or revocation of this Permit, if and only if all of the terms and conditions of this Permit have been observed and performed to the satisfaction of an authorized representative of DOFAW. Otherwise, the deposit may, at the option of an authorized representative of the DOFAW be applied toward payment of any amounts owed hereunder, without waiving any of the Board's other rights hereunder.

4. PRC, at its own cost and expense, shall keep the government-owned improvements located on the Premises insured against loss by fire and other hazards, casualties, and contingencies, for the full insurable value of those improvements. The policies shall name the State of Hawaii as an additional insured and shall be filed with the Board. In the event of loss, damage, or destruction of those improvements, the Board shall retain from the proceeds of the policies those amounts it deems necessary to cover the loss, damage, or destruction of the government-owned improvements and the balance of those proceeds, if any, shall be delivered to PRC.

5. PRC shall be entitled to terminate this agreement at any time by giving DOFAW twenty-five (25) calendar days notice in writing before vacating the premises if vacating prior to the end of the Revocable Permit.

6. PRC shall pay all real property taxes assessed against the Premises from the commencement date of this Permit.

7. PRC shall at its own cost and expense, observe, perform and comply with all laws, ordinances, rules and regulations of all governmental authorities now or at any future time during the term of this Permit applicable to the Premises, and, indemnify the State of Hawaii against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of said laws, ordinances, rules and regulations or of this covenant.

8. PRC shall repair and maintain all buildings or other improvements now or hereafter on the Premises.

9. PRC shall obtain the prior written consent of DOFAW before making any improvements or changes of use.

10. PRC shall keep the Premises and improvements in a clean, sanitary, and orderly condition.

11. PRC shall pay all charges, assessments, or payments for water, other utilities, and the collection of garbage as may be levied, charged, or be payable with respect to the Premises.

12. PRC shall not make, permit, or suffer, any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the Premises.

13. PRC shall at all times with respect to the Premises, use due care for public safety.

14. PRC shall procure and maintain, at its own cost and expense, in full force and effect throughout the term of this Permit, commercial general liability insurance, in an amount acceptable to the Department ($1,000,000 per incident/$2,000,000 aggregate) with an insurance company or companies licensed to do business in the State of Hawaii. The policy or policies of insurance shall name the State of Hawaii as an additional insured. The insurance shall cover the entire Premises, including all grounds and all roadways or sidewalks on or adjacent to the Premises in the use or control of PRC.

    Prior to entry and use of the premises or within fifteen (15) days after the commencement date of this Permit, whichever is sooner, furnish the State with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire Permit term, and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or non-renewed until after sixty (60) days written notice has been given to the State.

    The State shall retain the right at any time to review the coverage, form, and amount of the insurance required by this Permit. If, in the opinion of the State, the insurance provisions in this Permit do not provide adequate protection for the State, the State may require PRC to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The State's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The State shall notify PRC in writing of changes in the insurance requirements and PRC shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the State incorporating the changes within thirty (30) days after receipt of the notice.

    The procuring of the required policy(s) of insurance shall not be construed to limit PRC's liability under this Permit nor to release or relieve PRC of the indemnification provisions and requirements of this Permit. Notwithstanding the policy(s) of insurance, PRC shall be obligated for the full and total amount of any damage, injury, or loss caused by PRC's negligence or neglect connected with this Permit. It is agreed that any insurance maintained by the State will apply in excess of, and not contribute with, insurance provided by PRC's policy.

The insurance certificate(s) shall be mailed to:

Forestry Program Manager
Department of Land and Natural Resources
Division of Forestry and Wildlife
1151 Punchbowl St., Room 325
Honolulu, Hawaii 96813

16. PRC shall indemnify, defend, and hold harmless the State of Hawaii, its officers, agents, and employees from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of PRC or PRC's employees, agents, or officers under this Permit. The provisions of this paragraph shall remain in full force and effect notwithstanding the revocation, expiration, or termination of this Permit. The purchase of liability insurance shall not relieve PRC of the obligations described herein.

17. PRC shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the State in enforcing the covenants and agreements of this Permit, in recovering possession of the Premises, or in the collection of delinquent rental, taxes, and any and all other charges.

18. This Permit is issued and effective on a month-to-month basis. The Permit shall automatically terminate one year from the commencement date, unless earlier revoked as provided below, provided further that the Board may allow the Permit to continue on a month-to-month basis for additional one year periods. Any such extension shall have the same terms and conditions as this Permit, except for the commencement date and any amendments to the terms, as reflected in the Board minutes of the meeting at which the Board acts. PRC agrees to be bound by the terms and conditions of this Permit and any amendments to this Permit so long as PRC continues to hold a permit for the Premises or continues to occupy or use the Premises.

19. The Board may revoke this Permit for any reason whatsoever, upon written notice to PRC at least thirty (30) calendar days prior to the revocation; provided, however, that in the event payment of rental is delinquent for a period of ten (10) calendar days or more, this Permit may be revoked upon written notice to PRC at least five (5) calendar days prior to the revocation.

20. If PRC fails to vacate the Premises upon revocation or termination of the Permit, PRC shall be liable for and shall pay the previously applicable monthly rent, computed and prorated on a daily basis, for each day PRC remains in possession.

21. If PRC fails to vacate the Premises upon revocation or termination of the Permit, the Board, by its agents, or representatives, may enter upon the Premises, without notice, and at PRC's cost and expense remove and dispose of all vehicles, equipment, materials, or any personal property remaining on the Premises, and PRC agrees to pay for all costs and expenses of removal, disposition, or storage.

22. The Board may at any time increase or decrease the monthly rental by written notice at least thirty (30) business days prior to the date of change of rent. Upon such notice, PRC shall deposit with the Board any additional monies required to maintain an amount equal to two times the new monthly rental as security for the faithful performance of all of these terms and conditions.

23. Any major improvements, including but not limited to buildings and fences, erected on or moved onto the Premises by PRC shall remain the property of PRC and PRC shall have the right, prior to the termination or revocation of this Permit, or within an additional period the Board in its discretion may allow, to remove the improvements from the Premises; provided, however, that in the event PRC shall fail to remove the improvements prior to the termination or revocation of this Permit or within an additional period the Board in its discretion may allow, the Board may, in its sole discretion, elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to the Permittee.

24. The Board reserves the right for its agents or representatives to enter or cross any portion of the Premises at any time.

25. This Permit or any rights hereunder shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of.

26. PRC has inspected the Premises and knows the conditions thereof and fully assumes all risks incident to its use.

27. The acceptance of rent by the Board shall not be deemed a waiver of any breach by PRC of any term, covenant, or condition of this Permit nor of the Board's right to declare and enforce a forfeiture for any breach, and the failure of the Board to insist upon strict performance of any term, covenant, or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option of this Permit.

28. The use and enjoyment of the Premises shall not be in support of any policy which discriminates upon any basis or in any manner that is prohibited by any applicable federal, state, or county law.

29. Any and all disputes or questions arising under this Permit shall be referred to the Chairperson of the Board and his determination of these disputes or questions shall be final and binding on the parties.

30. PRC shall not cause or permit the escape, disposal, or release of any hazardous materials except as permitted by law. PRC shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the premises any such materials except to use in the ordinary course of PRC's business, and then only after written notice is given to the Board of the identity of such materials and upon the Board's consent, which consent may be withheld at the Board's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there

has been any release of hazardous materials by PRC, then PRC shall be responsible for the costs thereof. In addition, PRC shall execute affidavits, representations and the like from time to time at the Board's request concerning PRC's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by PRC.

PRC agrees to indemnify, defend, and hold the State of Hawaii, the Board, and their officers, employees, and agents harmless from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the use or release of hazardous materials on the premises occurring while PRC is in possession, or elsewhere if caused by PRC or persons acting under PRC. These covenants shall survive the expiration, revocation, or termination of the permit.

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

31. Prior to termination or revocation of the subject permit, DOFAW may require PRC to conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the DLNR. Failure to comply with the provisions of this paragraph shall not extend the term of this Permit or automatically prevent termination or revocation of the Permit. The Board, at its sole option, may refuse to approve termination or revocation unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Board may, at its sole option if PRC does not do so, arrange for performance of the provisions of this paragraph, all costs and expenses of such performance to be charged to and paid by PRC.

32. Unless otherwise agreed by the Board in its sole discretion, payments received will be applied first to attorneys' fees, costs, assessments, real property taxes, or other costs incurred or paid by the Board with respect to the Premises, next to service charges or interest, next to any other charges due or owing under the Permit, next to delinquent monthly rent, and next to current rent.

33. Any notice required or permitted to be given hereunder shall be in writing, given by personal delivery or by first class mail, postage prepaid. Notice to PRC shall be delivered or addressed to the address stated above. Notice to State of Hawaii shall be delivered or addressed to the DOFAW Administrator 1151 Punchbowl Street, Room 325, Honolulu, Hawaii 96813. Mailed notices shall be deemed given upon actual receipt, or two business days following deposit in the mail, postage prepaid, whichever occurs first. Either party may by notice to the other specify a different address for notice purposes, provided that PRC's mailing address shall at all times be the same for both billing and notice. In the event there are multiple PRC's hereunder, notice to one PRC shall be deemed notice to all PRC's.

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

35. PRC shall be responsible for cleaning the area to its original condition by removing all trash and debris upon completion or cancellation of the Permit.

36. In the event any unanticipated sites or remains such as bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls are encountered, PRC and its consultants, contractors and/or persons acting for or on its behalf in the exercise of this Permit shall stop all activity and contact the State Historic Preservation Division in Kapolei at (808) 692-8015 immediately.

37. The premises, or any portion thereof, shall not be utilized for residential purpose. The construction or placement of any structure on the premises for residential purposes is strictly prohibited.

38. The premises, or any portion thereof, shall not be utilized for the boarding of horses.

39. The Department of Land and Natural Resources reserves the right to impose additional, but responsible terms and conditions as it deems necessary while this Permit is in force.

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

STATE OF HAWAII

By _____
Chairperson of the Board of
Land and Natural Resources

Approved by the Board of
Land and Natural Resources
at its meeting held on _____

APPROVED AS TO FORM:

_____
Deputy Attorney General

Dated: _____

ACCEPTED:

_____
Palani Ranch Company, Inc.

By Its: _____
Date: _____, 2009

STATE OF HAWAII)
) SS.
COUNTY OF)

On this _____ day of _____, 20___, before me personally appeared _____ and _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Notary Public, State of Hawaii

_____

My commission expires:_____

cc: Land Board Member
OCCL
Mr. Roger Imoto, DOFAW
Mr. Michael Constantinides, DOFAW
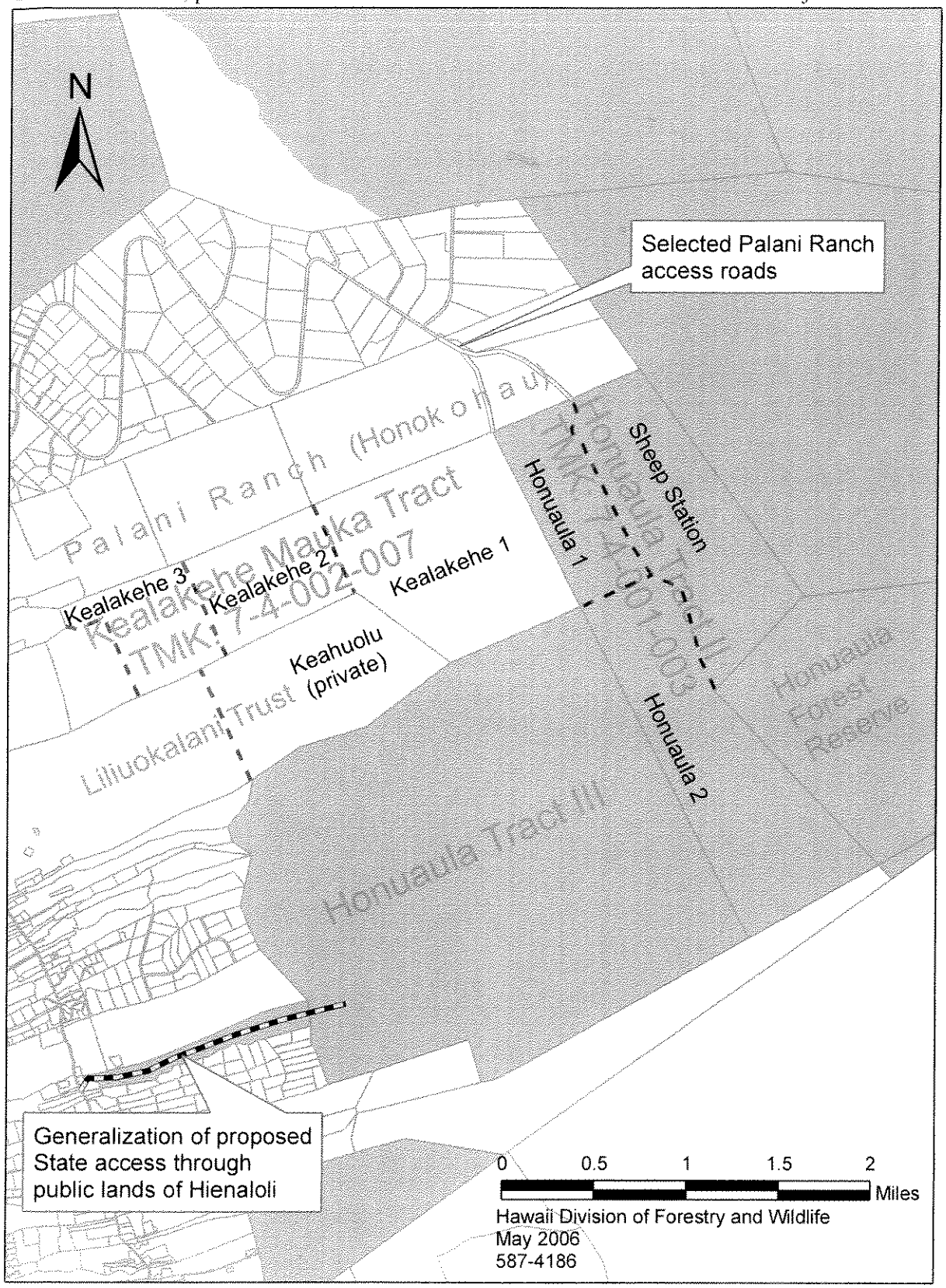
Exhibit B. Parcels, paddocks and road information - Honuaula Forest Reserve and adjacent lands.