

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

June 23, 2011

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

PSF No.: 10HD-156

HAWAII

Issuance of Direct Lease to Boteilho Hawaii Enterprises, Inc. for Dairy Purposes,
 Opihipau-Hukiaa, Kokoiki, North Kohala, Hawaii, Tax Map Key: 3rd/ 5-5-003: 004, 005
 & 006, 5-5-005: 001, and 5-5-006: 002, 003, 004 & 015.

APPLICANT:

Boteilho Hawaii Enterprises, Inc., a Hawaii corporation.

LEGAL REFERENCE:

Section 171-59(b), Hawaii Revised Statutes, as amended.

Disposition by Negotiation. Includes agricultural processing as defined, "the processing
 of agricultural products, including dairying, grown, raised or produced in Hawaii."

TMK/ DISTRICT/ ZONING/ ENCUMBRANCE/ AREA:

TAX MAP KEY	DISTRICT	ZONING		ENCUMBRANCE	AREA (Acres)
		LUC	CZO		
3 rd / 5-5-003: 004	Opihipau, Hukiaa N. Kohala	Ag	Ag-20	General Lease No. S-5572; Boteilho Hawaii Enterprises, Inc.	136.94
3 rd / 5-5-003: 005	Opihipau, Hukiaa N. Kohala	Ag	Ag-20	General Lease No. S-5572; Boteilho Hawaii Enterprises, Inc.	31.78
3 rd / 5-5-003: 006	Opihipau, Hukiaa N. Kohala	Ag	Ag-20	General Lease No. S-5572; Boteilho Hawaii Enterprises, Inc.	39.10
3 rd / 5-5-005: 001	Kokoiki, N. Kohala	Ag	Ag-20	General Lease No. S-5574; Boteilho Hawaii Enterprises, Inc.	74.323
3 rd / 5-5-006: 002	Opihipau, Hukiaa N. Kohala	Ag	Ag-20	General Lease No. S-4950; Boteilho Hawaii Enterprises, Inc.	39.28
3 rd / 5-5-006: 003	Opihipau, Hukiaa N. Kohala	Ag	Ag-20	General Lease No. S-4950; Boteilho Hawaii Enterprises, Inc.	397.239
3 rd / 5-5-006: 004	Opihipau, Hukiaa N. Kohala	Ag	Ag-20	General Lease No. S-4950; Boteilho Hawaii Enterprises, Inc.	144.827

3 rd / 5-5-006: 015	Opihipau, Hukiaa N. Kohala	Ag	Ag-20	General Lease No. S-4950; Boteilho Hawaii Enterprises, Inc.	16.06
				TOTAL:	879.549

LOCATION:

Portion of Government lands situated at Opihipau-Hukiaa and Kokoiki, North Kohala, Hawaii, identified by Tax Map Key: 3rd/ 5-5-003: 004, 005 & 006, 5-5-005:001, and 5-5-006: 002, 003, 004 & 015, as shown on the attached map labeled Exhibit A.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

YES ___ NO x

CURRENT USE STATUS:

Encumbered by General Lease No. S-4950, Boteilho Hawaii Enterprises, Inc., Lessee, for dairying purposes. Lease to expire on March 31, 2020. Annual rent is \$16,800.

Encumbered by General Lease No. S-5572, Boteilho Hawaii Enterprises, Inc., Lessee, for pasture purposes. Lease to expire on February 7, 2019. Annual rent is \$8,520.

Encumbered by General Lease No. S-5574, Boteilho Hawaii Enterprises, Inc., Lessee, for pasture purposes. Lease to expire on February 7, 2019. Annual rent is \$2,760.

CHARACTER OF USE:

Dairying purposes.

LEASE TERM:

Thirty (30) years

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL RENT:

Fair market annual rent to be determined by independent appraiser, subject to review and approval by the Chairperson.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

At the 10th and 20th years of the lease term, by staff or independent appraisal.

PERFORMANCE BOND:

Twice the annual rental amount.

PROPERTY CHARACTERISTICS:

Utilities – All utilities are available.

Slope – slight gentle mauka-makai 4.8% slope.

Elevation – 10 to 600 feet.

Legal access to property – Staff has verified that there are legal accesses to the State properties off Lincoln Avenue, Maliu Road, and Upolu Point Airport Road, onto the Akoni Pule Highway/Niulii-Hawi Road.

Subdivision – Staff has verified that the subject property is a legally subdivided lot.

Encumbrances – Staff has verified that the following encumbrances exist on the property:

General Lease No. S-4950, Boteilho Hawaii Enterprises, Inc.

General Lease No. S-5572, Boteilho Hawaii Enterprises, Inc.

General Lease No. S-5574, Boteilho Hawaii Enterprises, Inc.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject property was published in the OEQC's Environmental Notice on April 23, 2011, with a finding of no significant impact (FONSI). (Exhibit B)

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u> x </u>	NO <u> </u>
Registered business name confirmed:	YES <u> x </u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u> x </u>	NO <u> </u>

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine initial rent;
- 2) Pay for the cost of public notice pursuant to section 171-16;
- 3) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost; and
- 4) Obtain a title report to ascertain ownership, where necessary, at Applicant's own cost and subject to review and approval by the Department.

BACKGROUND:

At its meeting of December 16, 1983, Item F-5, the Board of Land and Natural Resources approved a direct (35-year) lease (GLS-4950) to Boteilho Hawaii Enterprises, Inc., for dairying, cattle feeding and pasturing purposes. The lease expires on March 31, 2020. The lease covers 597.406 acres, identified by Tax Map Key: 3rd/ 5-5-006: 002, 003, 004 & 015.

At a public auction held on December 9, 1998, General Lease S-5572, a 20-year lease was awarded to Boteilho Hawaii Enterprises, Inc., as the successful bidder. The lease expires on February 7, 2019. The lease covers 207.820 acres, identified by Tax Map Key: 3rd/ 5-5-003: 004, 005 & 006.

At a public auction held on December 9, 1998, Boteilho Hawaii Enterprises was the successful bidder for GLS-5574, a 20-year pasture lease under General Lease No. S-5574. The lease expires on February 7, 2019. The lease covers 74.323 acres, identified by Tax Map Key: 3rd/ 5-5-005:001.

REMARKS:

The subject parcels are currently under lease to Boteilho Hawaii Enterprises, Inc. for dairying and pasture purposes. The current leases are the highest and best use allowable that is consistent with county zoning, which is agriculture. Boteilho Hawaii Enterprises, Inc. initially requested a 25-year extension of its leases, but later decided to instead request a cancellation and the re-issuance of a new 30-year direct lease over the same parcels for agricultural processing (dairy) purposes. The longer lease term would justify additional investment of monies for the replacement of old machinery and other major improvements.

Boteilho Hawaii Enterprises, Inc., qualifies for a direct lease pursuant to Hawaii Revised Statutes, 171-59(b) as the direct lease is for agricultural processing purposes, which involves the processing of agricultural products, including dairying, grown, raised or produced in

Hawaii. Boteilho Hawaii Enterprises, Inc, has been in the dairying business for over 26 years. A disposition of a direct lease to Boteilho Hawaii Enterprises, Inc., encourages competition in the agricultural milk production industry as it will allow Boteilho Hawaii Enterprises to acquire much needed newer equipment so it can maintain its milk production quotas. Currently there are only two dairies left on the Big Island and in the state.

Boteilho Hawaii Enterprises, Inc., has not had a lease, permit, easement or other disposition of the State lands terminated within the last five years due to non-compliance with such terms and conditions.

At its meeting of September 9, 2010, under agenda item D-4, the Board of Land and Natural Resources approved in concept, the issuance of a direct lease to Boteilho Hawaii Enterprises, Inc., for dairy purposes pending applicant's submission of an Environmental Assessment (EA) with a finding of no significant impact (FONSI). Such finding was recently published in the Office of Environmental Quality Control's Environmental Notice on April 23, 2011. As a result, staff is now recommending Land Board approval for the issuance of a direct lease to Boteilho Hawaii Enterprises, Inc., for dairy purposes.

In processing the EA, Geometrician Associates, LLC (GA LLC), requested comments from various governmental agencies and interest groups. All respondents had no objections to the request. The deadline for comments for the draft EA was March 8, 2011, however, the Department of Transportation's (DOT) response to the draft EA was postmarked March 21, 2011. A supplemental letter from DOT followed and was received on May 3, 2011. Both letters from DOT were received well after the comment period; therefore the responses could not be included in the Final EA. DOT was notified that although their responses were not received in time to be included in the Final EA, DLNR would consider the comments received.

The following are DOT's concerns, with GA LLC's responses:

1. DOT: Because of the close proximity of the project to Upolu Airport, DOT recommends that if any structures are built in the future, the applicant needs to file Federal Aviation Administration (FAA) Form 7460-1; Notice of Proposed Construction or Alteration for aeronautical review.

GA LLC: **FAA Form 7460.** No new structures are proposed as part of the lease, which covers an existing dairy operation. Mr. Boteilho and the DLNR have been made aware of the requirement to file the aeronautical review form if future management of the dairy involves new structures.

2. DOT: DOT is extremely concerned that the Cow Washwater Treatment and Manure

Separation (CWTMS) area could easily become a wildlife attractant. FAA Advisory Circular 150/5200-33B, Section 1-2, dated 8/28/07, recommends a separation distance of 5,000 feet from any potential wildlife attractant area and any part of the runway.

GA LLC: **Cow Washwater Treatment and Manure Separation area.** The letter appears to be the first ever indication from the DOT that the facilities for the dairy, which has been in operation at this exact location for 25 years, pose a problem for the airport. We take it that there have been no incidents or adverse conditions noted by DOT in relation to the dairy in any of the airport reviews or master plan assessments that have been conducted over the last 25 years. The 1999 EA for the Upolu Airport Master Plan specifically mentions the dairy, but does not indicate that it poses any sort of problem. In the section on potential bird strikes, the dairy is not mentioned at all, possibly because the EA preparers judged that the washwater facilities are located sufficiently distant from the runway. In the discussion of socioeconomic impacts of the airport plan, there is no mention of foreclosing the dairy uses for what is one of the last dairies in the State, which would be a significant socioeconomic impact. The absence of such discussions in DOT's own evaluation of its airport master plan is evidence that careful analysis indicates that dairy operations are located at a sufficient distance from the airport to avoid problems. Possibly, it is also because there is so little traffic at Upolu Airport, which reported a total of 20 takeoffs and landings between 2006 and 2009, inclusive, according to DOT data: <http://hawaii.gov/dot/airports/library/publications-and-statistics/cysmallone.pdf>.

3. DOT: The applicant must take precautions to discourage birds, particularly threatened and endangered species, from establishing habitat on the project property. The CWTMS area should be required to prevent bird habitation, monitored or patrolled, with bird hazing measures implemented whenever necessary. The applicant must ensure that its CWTMS area will not be construed as or become a wetland. Wetlands are known bird attractants and extremely difficult/costly to alter or relocate.

GA LLC: **Discouraging birds from establishing habitat on the property.** Mr. Boteilho reports that he does take steps to avoid creating bird habitat and tries to keep bird populations from building up. To his knowledge, the dairy has no facilities that might attract birds near the airport runway.

4. DOT: DOT is concerned that hazardous materials and chemicals used by long-standing dairies could leach into the ground or be carried in surface run-off towards the airport and ocean. The applicant should take precautions to prevent this from occurring.

GA LLC: **Hazardous materials.** The dairy uses very few materials that would be listed as hazardous and controls its runoff properly in conformance with all applicable County, State and federal laws.

5. DOT: The applicant must maintain the pasture fence lines to prevent cattle from entering airport land.

GA LLC: **Pasture fences.** The dairy strives to ensure that its fences are maintained in order to keep its cows within the leased premises.

6. DOT: The gate along Akoni Pule Highway should be removed and replaced with fencing. DOT has no record of issuing a permit for such gated (driveway) access from the subject property to the highway.

GA LLC: **Gated access onto Akoni Pule Highway.** The applicant takes your concerns seriously and wishes to address your issues as the lease proposal goes to the Board of Land and Natural Resources. We have supplied a copy of your letter to the Land Division and Mr. Boteilho for their response and/or actions.

Staff has reviewed, researched and acknowledges that the subject access above-mentioned was not formally approved by the DOT for permitted vehicular accesses onto the Akoni Pule Highway as depicted on attached Exhibit C. As a result, Boteilho Hawaii Enterprises, Inc. is recommended to remove the gate in question and to fence off the area until proper approval is obtained from DOT for vehicle accesses onto the Akoni Pule Highway. For the time being, accesses onto the Akoni Pule Highway from the subject State property should be through the designated/ planned roadways in the area, which include, Lincoln Avenue and Maliu Road.

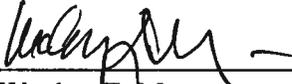
RECOMMENDATION: That the Board:

1. Find that the public interest demands the issuance of this direct lease to Boteilho Hawaii Enterprises, Inc. for dairy purposes;
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above,

authorize the issuance of a direct lease to Boteilho Hawaii Enterprises, Inc., covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

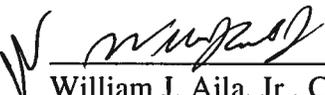
- A. The standard terms and conditions of the most current dairy lease document form, as may be amended from time to time;
 - B. All construction and use of the premises shall be in full compliance with all laws, rules and regulations of the Federal, State and County governments;
 - C. Standard full utilization of the land provision;
 - D. Standard good husbandry and conservation program provision;
 - E. Standard boundary fence provision;
 - F. Obtain approval for limited vehicle access rights onto the Akoni Pule Highway from the Department of Transportation, Highways Division;
 - 1) Boteilho Hawaii Enterprises, Inc., shall be responsible for all expenses, costs, fees and considerations relating to the acquisition of the vehicle access rights to the highway.
 - G. Review and approval by the Department of the Attorney General; and
 - H. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.
3. The Board of Land and Natural Resources, upon satisfactory review, shall accept the DOT Grant of Limited Vehicle Access Rights document for accessing the Akoni Pule Highway.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent 

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

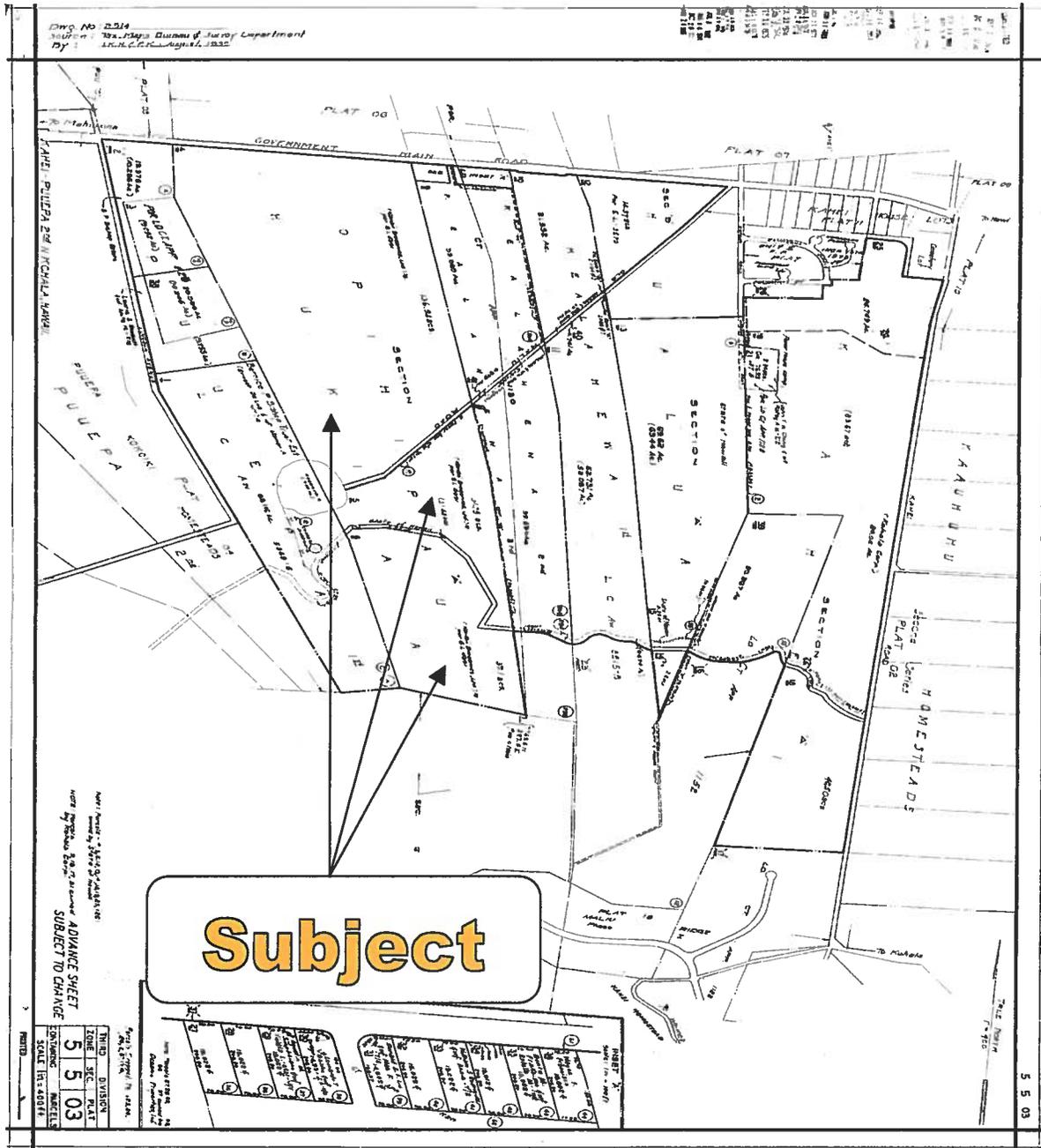


EXHIBIT A

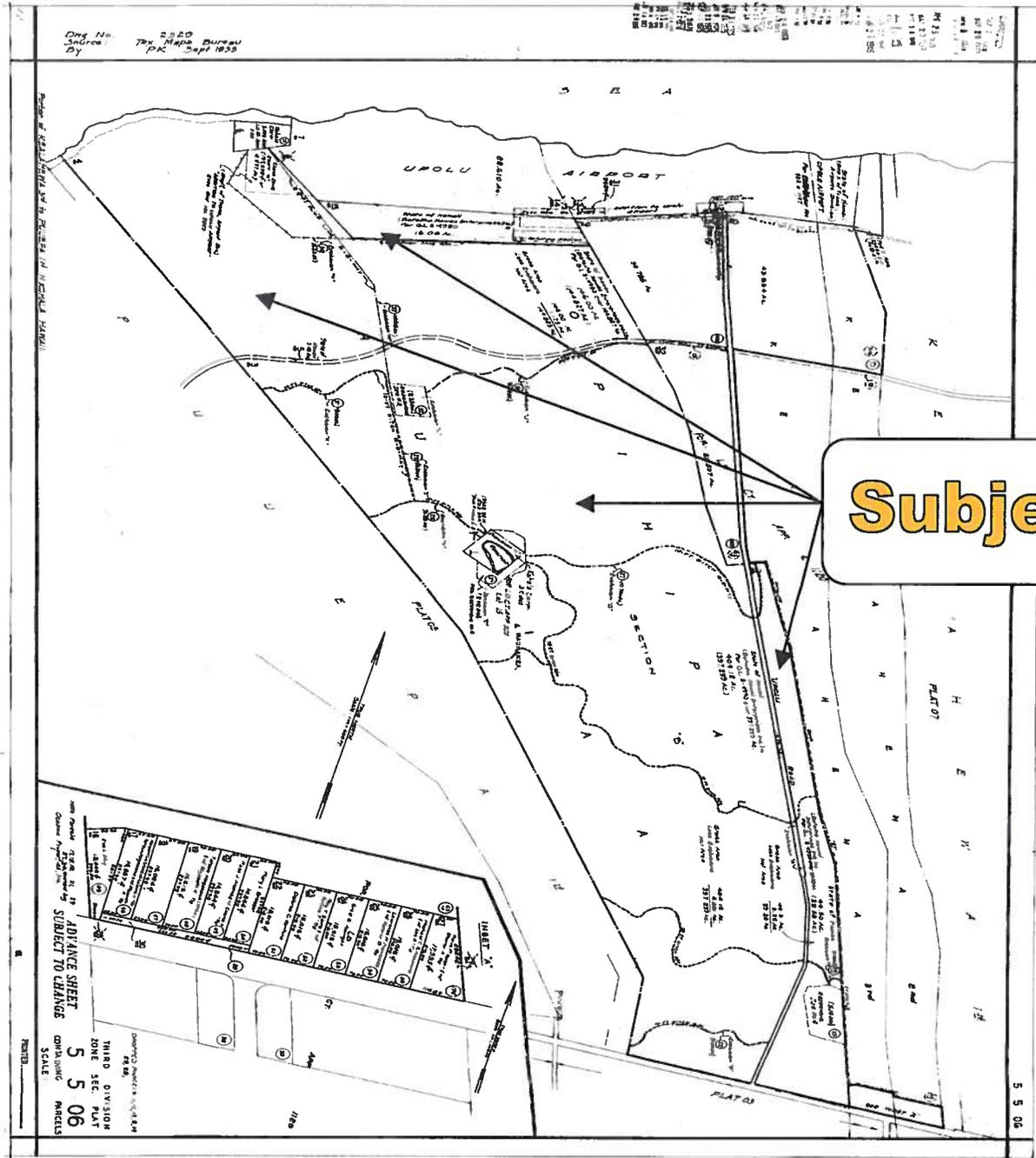


EXHIBIT A



The Environmental Notice

April 23, 2011

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Note: If you get a message saying that the file is damaged when you click on the links, then the file is too big to open within your web browser. To view the file, download directly to your hard drive by going to File and select Save As in your web browser.

The Environmental Notice informs the public of environmental assessments and other documents that are available for review and comment per HRS 343-3 and is issued on the 6th and 23rd of each month on the Office of Environmental Quality Control's website. If you would like to be notified when it is issued, send us your email address and we'll put you on our mailing list.

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EXHIBIT B

The Environmental Notice
Office of Environmental Quality Control
April 29, 2011

Approving Agency: Same
Consultant: Munekiyo & Hiraga, Inc., 305 High Street, Suite 104, Wailuku, HI 96793. Leilani Pulmano, Program Manager, 244-2015
Status: Anticipated Finding of No Significant Impact. Comments are due May 22, 2011. Send comments to the Approving Agency and Consultant

The County Department of Water Supply (DWS) plans to construct an exploratory well in Wailuku, Maui within the Iao Aquifer System to replace Shaft 33, an existing water source. The Proposed Wailuku Exploratory Well is being developed as part of DWS's continuing efforts to disperse the pumping within the aquifer. The proposed project is one of six water wells planned to replace Shaft 33. The six replacement wells will disperse pumping throughout the aquifer and positively impact the water quality and the sustainability of the aquifer. Approximately 12,000 square feet of land will be acquired for the well site. Pump and water quality tests will be performed to determine if the exploratory well will be suitable as a new potable water source. Should the tests confirm suitability, a separate Environmental Assessment will be prepared for a permanent well and pumping station.

The proposed project may result in short-term construction-related noise and air quality impacts. Such impacts will be mitigated by appropriate best management practices. In the long term, no substantial adverse impacts to existing resources are anticipated. Consequently, significant adverse secondary impacts are not anticipated. The project is not anticipated to cumulatively have a negative impact on the physical environment.

HAWAII (HRS 343)

5. Boteilho Lease of State Land for Dairy Purposes (FEA)

Island: Hawaii
District: North Kohala
TMK: (3rd) 5-5-03:04, 05 & 06; 5-5-06:01; 5-5-06:02, 03, 04 & 15
Permits: Direct Lease of State Lands
Applicant: Boteilho Hawaii Enterprises, PO Box 190, Hailo, HI 96719
Approving Agency: Dept of Land and Natural Resources, Land Division, 75 Aupuni Street, Room 204, Hilo, HI 96720. Wesley Matsunaga, 974-6203
Consultant: Geometrician Associates, PO Box 396, Hilo, HI 96721. Ron Terry, 969-7090
Status: Finding of No Significant Impact. There is no comment period

Boteilho Hawaii Enterprises proposes to lease eight state properties totaling approximately 880 acres for continued use as a dairy. The company is owned by kamaaina dairy farmer Ed Boteilho, Jr., who operates Clover Leaf Dairy, one of the three remaining dairies in the State. The dairy has been in operation at this location since 1985 and on the island since 1962. It currently has 800 cows, with about 650 giving milk at any given time. Although the dairy currently leases and fully utilizes all of the subject properties, Boteilho Hawaii Enterprises seeks to rationalize the terms and purposes of the lease to make the dairy more efficient and allow prudent acquisition of new equipment. The current leases are set to expire at various dates in 2019 and 2020. The new lease would have a common thirty-year term. All dairying uses would be allowed for the entire lease. No relocation of the main part of the dairy would occur and no major new facilities would be built. The main advantage would be to allow the growing and chopping of forage in areas where only pasture uses are currently allowed. At the present time, according to the Department of Agriculture, more than 80 percent of Hawaii's milk comes from California. Depending on the weather, it can take more than a week to arrive in Hawaii. This milk gets pasteurized before leaving the port and once again prior to being bottled in Hawaii. Clover Leaf Dairy trucks its milk

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April 23, 2011

each day for processing to Meadow Gold Dairy, which is located 97 miles away in Hilo, from which State residents can have access to fresh local milk. State agriculture officials are concerned that the loss of local dairies could leave the State's milk supply in a precarious position. The dairy has been in operation in this location since 1985, and no sensitive biological or archaeological resources are present and there are no traditional cultural uses on the agriculturally zoned property. Agricultural impacts are properly handled on the dairy, and continuing the dairy is compatible with uses on surrounding lands.

6. Kaoulana Agricultural Park (FEA)

Island: Hawaii
District: Hamakua
TMK: (3) 4-7-05:01, 02 & 03; 4-7-06:01, 05, 06, 07, 10, 18, 20
Proposing Agency: County of Hawaii, Dept of Finance, Kenneth Van Bergen, 25 Aupuni Street, Suite 2109, Hilo, HI 98720-4252
Approving Agency: Same
Consultant: PBR Hawaii & Associates, Inc., 1001 Bishop Street, Suite 850, Honolulu, HI 98734. 521-5631 or cfernandez@pbmuhawaii.com
Status: Finding of No Significant Impact. There is no comment period.

The Hawaii County Department of Finance proposes to permit or lease the subject property as an agricultural park. The purpose of the agricultural park is to: develop and demonstrate best practices for sustainable grazing operations to support the grass-fed beef industry; test alternative orchard crops for production; provide incubator opportunities for value-added products; and provide training in cultivation and business practices. The proposed activities may include: grazing; agricultural production; and possibly silviculture. In addition, educational activities are planned. Educational facilities will include shade, a shop, an office, and a clearing-house facility for processing produce.

Development may include: clearing existing cane roads and installing fencing to create paddocks; installation of pumping equipment to access water from the Lower Hamakua Ditch; water source development such as a well, reservoir or large-scale water catchment systems at higher elevations; and, construction of facilities to support the educational component of the park. All improvements are anticipated to occur onsite and the County will not permit any farm dwellings. The endangered Hawaiian hoary bat has been detected at this site. Measures to avoid impacts to the bat, as well as the Hawaiian hawk include limiting tree clearing to months outside these species' nesting season. One archaeological feature at this site is proposed to be avoided by any new activity.

DECLARATION OF EXEMPTION – County of Hawaii

Modification of an Existing Wall Within the Special Management Area and Shoreline Setback

Project No.: SAA-11-000834; SSV-11-000007
Description: The owners would like to demolish a damaged portion of an existing wall and stairs on the makai boundaries of the subject properties. The owners further wish to construct a new wall of the same height and width as the existing wall that would run on an angle to the County of Hawaii property from the north and the mauka-makai for a distance of approximately 30 feet on the southwestern edge of the Scharpf Trust property (TMK: 6-9-05:01). Another 30 feet in length would be built on the northwestern edge of the Sutton Trust property (TMK: 6-9-06:25) to separate it from the public access and to protect the properties from future erosion.

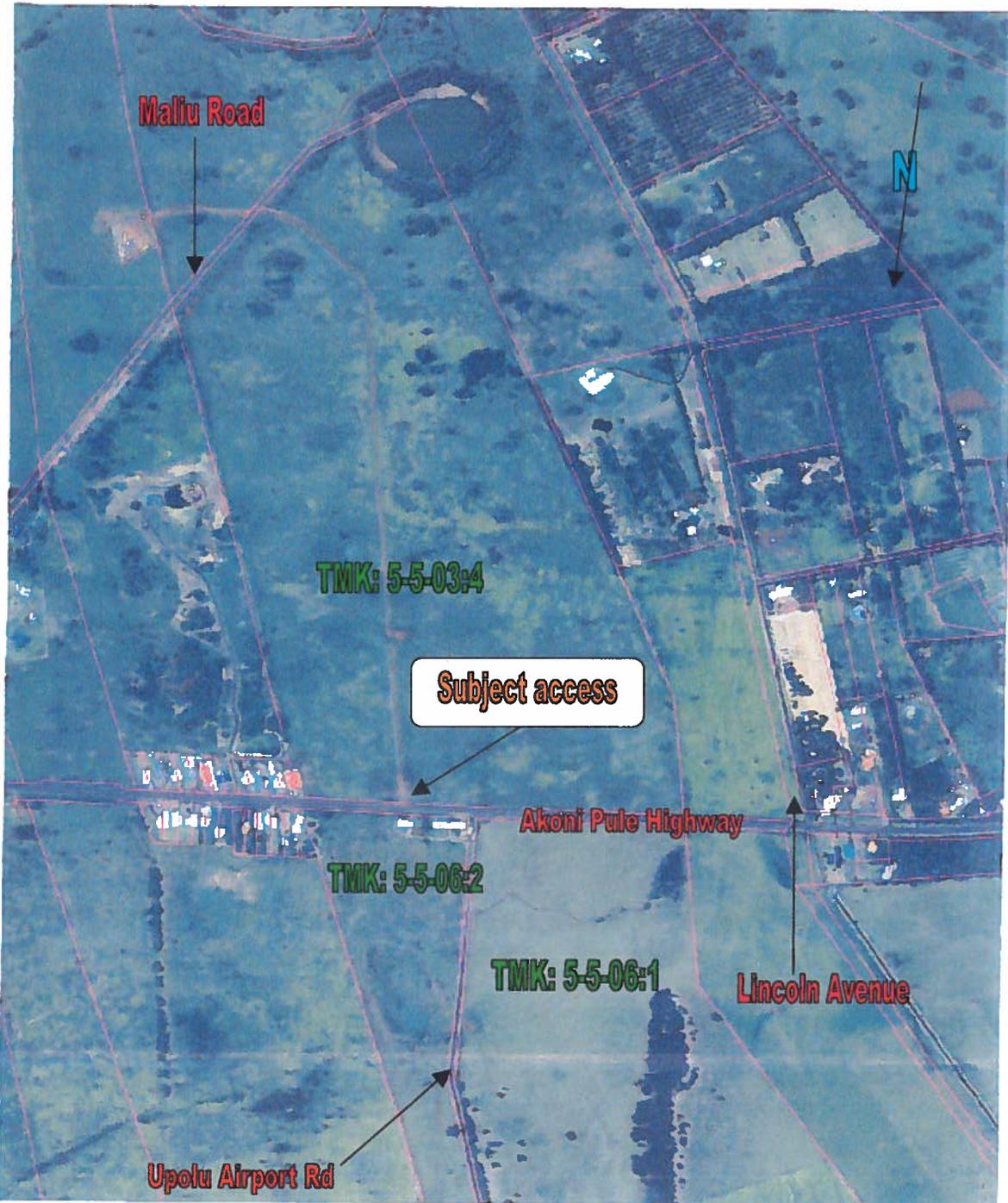


EXHIBIT C