

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

November 10, 2011

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

PSF No.: 11HD-125

HAWAII

Approval in Concept for Set Aside to the County of Hawaii for its Proposed Naalehu Wastewater Treatment Plant; Grant of Perpetual, Non-Exclusive Easement for a Buffer Around the Perimeter of the Lands Set Aside; Issuance of Management Right-of-Entry at Poupouwela, Kau, Hawaii, Tax Map Key: (3) 9-5-012: portion of 002.

APPLICANT:

County of Hawaii, whose business and mailing address is 25 Aupuni Street, Suite 2603, Hilo, Hawaii 96720.

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands situated at Poupouwela, Kau, Hawaii, identified by Tax Map Key: (3) 9-5-012: portion of 002, as shown on the attached map labeled **Exhibit A**.

AREA:

Set Aside: 20-acres, more or less.

Easement: 25-acres, more or less.

(Buffer) The County's plan is to include a buffer area around the perimeter of the wastewater treatment plant. The proposed buffer area shall be a minimum of 200-feet wide. Plans are to graze the buffer area to control and maintain the vegetation.

Exclusion of the proposed set-aside (20-acres) and easement area (25-acres) from the

subject State parcel (152-acres), would leave an approximate 112-acres still available for pasture use.

ZONING:

State Land Use District: Agriculture
County of Hawaii CZO: Ag-20A (20-acre Agriculture)

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 under Revocable Permit No. S-7765 to Richard E. Souza and Donna Lee Souza for pasture purposes.

PURPOSE:

For Wastewater Treatment Plant and Related purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Applicant will have an environmental assessment prepared and published in accordance with the requirements of Hawaii Revised Statutes (HRS) Chapter 343 and Chapter 11-200, Hawaii Administrative Rules (HAR).

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 2) Process and obtain subdivision at Applicant's own cost;
- 3) Applicant shall be responsible for Chapter 343, HRS compliance and all costs associated therewith;
- 4) Obtain a title report to ascertain ownership, where necessary, at Applicant's own cost and subject to review and approval by the Department.

REMARKS:

Subject property was formerly leased to Kau Agribusiness beginning 1975. At its meeting of January 30, 1998 (Item D-26), the Land Board cancelled the lease due to default in keeping current the required liability insurance.

While processing the cancellation of the Kau Agribusiness lease, staff was contacted by Ernest Souza of S&S Dairy. Mr. Souza explained that Kau Agribusiness allowed S&S Dairy to utilize a portion of the property for pasture purposes over the preceding 15 years. S&S Dairy expressed its interest to continue use of the property for pasture.

At its meeting of April 24, 1998, Item D-13, the Board of Land and Natural Resources approved, as amended, the sale of nine pasture leases at public auction. This property was one of the nine pasture leases approved.

Due to the length of time required to prepare the property for public auction, it was decided that in the interim S&S Dairy would be issued a month-to-month revocable permit. The intent was to generate revenue for the State and to secure the property from risk of brushfire and unauthorized dumping with S&S Dairy's presence on the property. As a result, at its meeting of June 19, 1998 (Item D-33), the Land Board approved Revocable Permit No. S-7156 to S&S Dairy for pasture purposes.

At its meeting of July 14, 2006, Item D-4, the Land Board approved the cancellation of Revocable Permit No. S-7156 to S&S Dairy and issued a new revocable permit to Richard E. Souza and Donna Lee Souza, dba R&D Farm, for pasture purposes.

By letter dated July 5, 2011, Mayor William Kenoi, County of Hawaii, requested a set aside of a portion of the subject State property, for its proposed Naalehu Wastewater Treatment Plant. Mandated by federal Environmental Protection Agency, the County Department of Environmental Management is responsible for the closing of large capacity cesspools in Naalehu. The cesspools are part of the existing sewer system that currently serves the Naalehu community. The county's goal is to replace the existing sewer system with new collection lines and to install a wastewater treatment plant for treatment and disposal of sewage. The County of Hawaii is currently in the process of acquiring an abutting private property owned by James and Elizabeth Weatherford, identified as TMK: (3) 9-5-012: 005.

As part of the development of the wastewater treatment plant, the County of Hawaii is also requesting an easement, to act as a buffer area around the perimeter of the lands set aside. To maintain and control the vegetative growth within the easement area, the county plans to allow the land to be grazed by the State's tenant occupying the remaining portion of the subject State parcel. The proposed easement/buffer area shall be a minimum of 225-feet wide, consisting of an area of approximately 25-acres. In excluding the areas for the set aside (20-acres) and the easement/buffer (25-acres), it is estimated that approximately 112-acres of the total 153 acres would still remain available for

pasture use.

The set aside and easement would be issued at gratis.

The County of Hawaii, Department of Environmental Management is the proper agency for managing and operating the proposed wastewater treatment plant. Currently, there are no alternatives for a higher and best use. The proposed use will fully utilize the requested lands. The remaining portion of the State property, which includes a buffer area around the wastewater treatment plant site, will continue to be used for pasturing.

Richard and Donna Souza of R& D Farm intend to continue utilizing the remaining portion of the subject State parcel for pasturing. In withdrawing lands for the proposed wastewater treatment plant from the permit area issued the Souzas, Revocable Permit No. S-7765 must first be cancelled. A new revocable permit would then be re-issued to R&D Farm over the remaining/reduced permit area over Parcel 2 of TMK: (3) 9-5-012.

On September 14, 2011, various government agencies and interest groups were solicited for comments.

AGENCIES	COMMENTS
County of Hawaii:	
Planning	* See comments below
Police Department	No objections/comments
Public Works	No response
Water Supply	No response
State of Hawaii:	
DLNR - DOFAW	No comments
DLNR - Historic Preservation	No response
DOT - Highways Division	No response
Other Agencies/ Interest Groups:	
Office of Hawaiian Affairs	No response
Souza, Richard & Donna	No objections

The County Planning Department had no objections, but provided the following comments on the above referenced request. The subject 152.16 acre parcel is zoned A-20a (Agricultural). It is located in the State Land Use Agriculture district. In addition, the parcel is designated Important Agricultural Land and Extensive Agriculture by the Hawaii County General Plan Land Use Pattern Allocation Guide (LUPAG) Map. The subject parcel is not located within the Special Management Area (SMA).

According to Hawaii County Code (Zoning), Section 25-4-11(c), "Public uses, structures and buildings and community buildings are permitted uses in any district, provided that the director has issued plan approval for such use." The wastewater treatment plant is considered a public use and as such is permitted in any district and will require plan

approval.

Richard and Donna Souza have been contacted by the County of Hawaii and have expressed their concurrence to the proposed project. There will be no compensation due the Souzas for the withdrawal of pasturelands from their existing revocable permit. The existing Revocable Permit No. S-7765 will be cancelled and a new revocable permit issued over the reduced area, with a reappraisal of the monthly rental rate.

RECOMMENDATION: That the Board:

1. Subject to Applicant fulfilling the Applicant Requirements above, approve in concept the issuance of an executive order setting aside the subject lands to the County of Hawaii for its proposed Naalehu Wastewater Treatment Plant. It is understood that the approval in concept shall not be deemed to be an approval of a set aside as staff shall return to the Land Board at a later date for approval of the set aside disclosing the Environmental Assessment with a Finding of No Significant Impact.
2. Authorize the issuance of an immediate management right-of-entry permit to the County of Hawaii covering the subject land 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 management right-of-entry permit form, as may be amended from time to time;
 - B. Prior to the commencement with any work activities, the County of Hawaii shall be responsible for compliance with Chapter 343, Hawaii Revised Statutes, as amended.
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Authorize the issuance of an easement to the County of Hawaii, for use as a buffer area around the perimeter of the lands set-aside for its proposed Naalehu Wastewater Treatment Plant, 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 grant of easement form, as may be amended from time to time;
 - B. The grant of easement shall reserve to the State of Hawaii, all rights to use the easement area, provided that the State shall not construct any improvements or structures designed for human habitation or occupancy within the easement area;

- C. Review and approval by the Department of the Attorney 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,



Wesley T. Matsunaga
Land Agent 

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

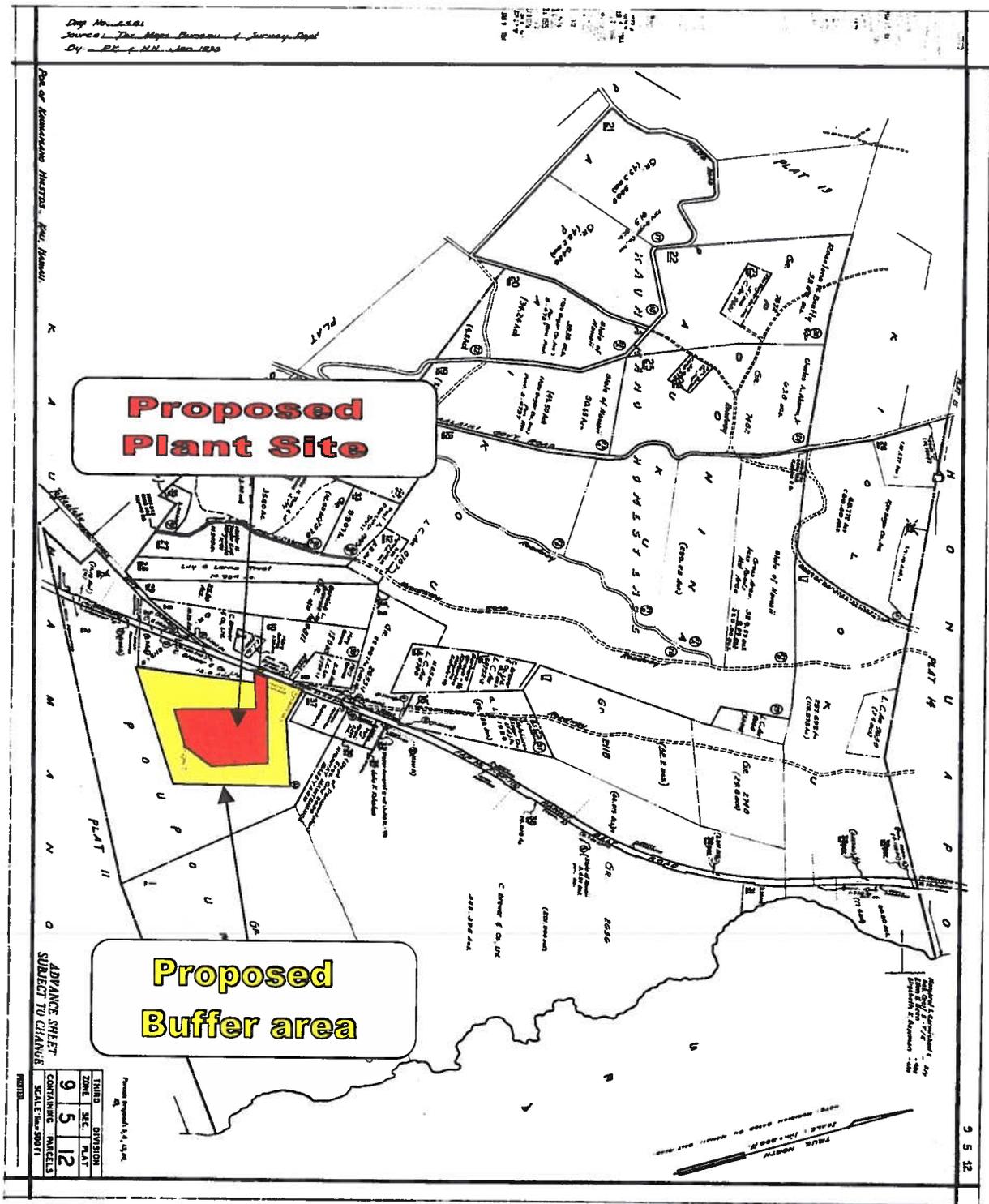



EXHIBIT A

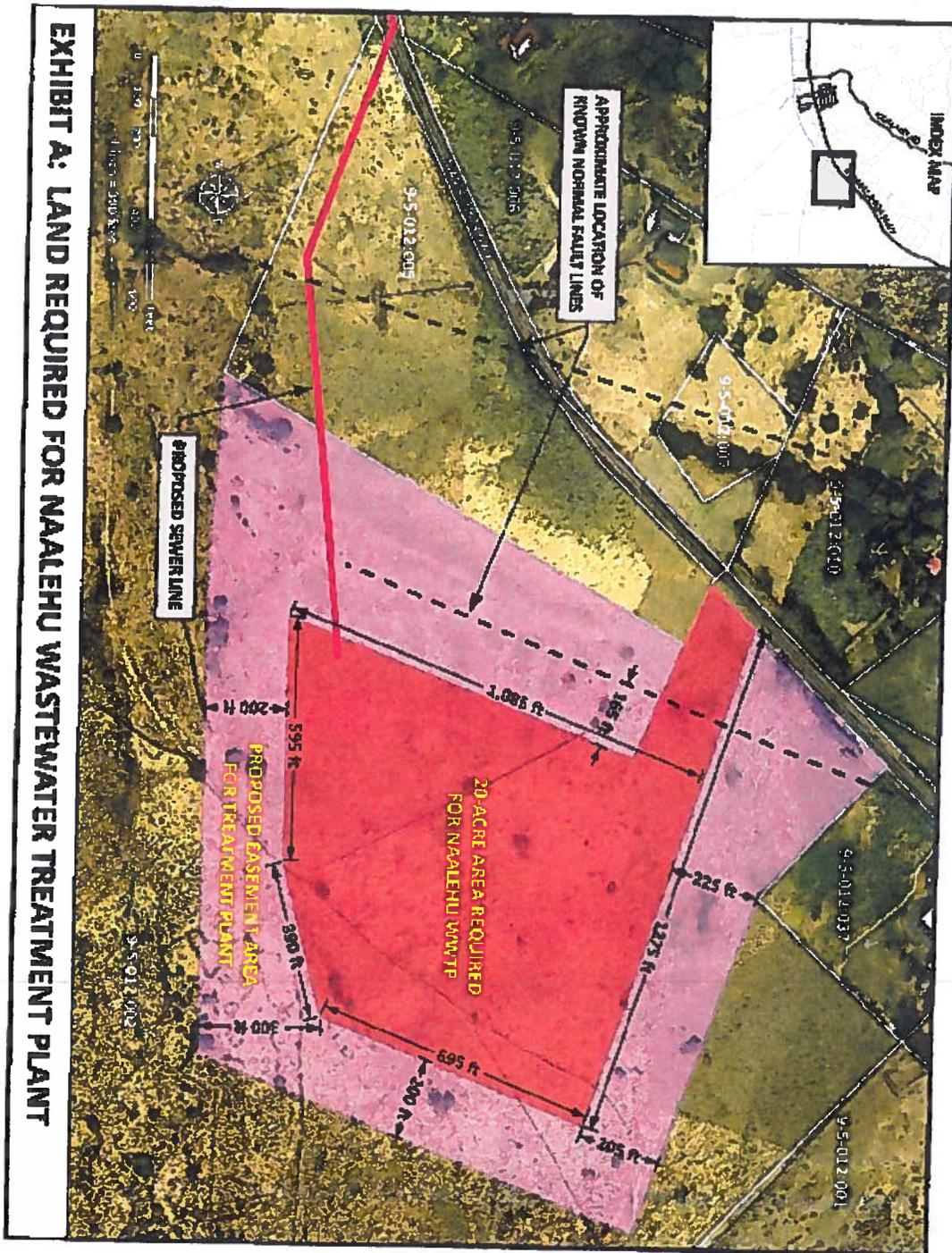


EXHIBIT A