

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

July 13, 2012

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

Ref: 12OD-073

OAHU

Amend General Lease No. 5620 by Allowing Two (2) Dwellings on the Premises;  
Heine W. Aruda and Gladys L. Aruda, Lessees, Waimanalo, Koolaupoko, Oahu, Tax  
Map Key: (1) 4-1-013:032

APPLICANT:

Heine W. Aruda and Gladys L. Aruda, husband and wife, as joint tenants

LEGAL REFERENCE:

Section 171-6, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waimanalo, Koolaupoko, Oahu, identified by Tax  
Map Key: (1) 4-1-013:032, as shown on the attached map labeled **Exhibit A**.

AREA:

16.02 acres, more or less.

ZONING:

State Land Use District: Urban  
City & County of Honolulu LUO: AG-2

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:

General Lease No. 5620.commencing from June 30, 2001.

CHARACTER OF USE:

Pasture and equestrian purposes.

LEASE TERM:

Thirty-five (35) years.

ANNUAL RENT:

\$11,500.00

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

At the 10th, 20th, and 30th years of the lease term. The last reopening was done on June 30, 2011.

PERFORMANCE BOND:

Twice the annual rental amount.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1) and (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 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 Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation." (**Exhibit B**)

DCCA VERIFICATION:

Not applicable.

**BACKGROUND:**

Act 237, SLH 1988 authorized the Board to enter into lease negotiation with qualified revocable permittees on State-owned agricultural-zoned land so that the permittee would be able to establish long-term land tenure. The Act, as extended by Act 257, SLH 1996 and Act 54, SLH 1999, expired on July 1, 2001.

On February 11, 2000, item D-2, the Board authorized the issuance of a 35-year lease (GL5620) for pasture and equestrian purposes to Heine & Gladys Aruda pursuant to the Acts noted above. Condition 46 of the lease states, "the premises, or any portion, shall not be utilized for residential purposes. The construction or placement of any structure on the premises for residential purposes is strictly prohibited." Staff notes this condition is not found in other leases issued under the same program. In addition, staff cannot locate any provision in the Acts, which prohibit residential purposes.

Mr. Aruda and his wife noted the impact of Condition 46 on their property a few years after the lease was issued, because they have houses on the subject property. The couple requests the Board amend the lease to allow residential uses.

By an undated letter attached from Mr., Aruda (**Exhibit C**) suggesting a land exchange<sup>1</sup> with the State, Mr. Aruda stated, "... I have two family dwellings and some major improvements which are situated on a State-owned revocable permit on Ag land ...". State's denial dated September 1988 (**Exhibit D**) to the proposal also reiterated the "two dwellings" on the subject property. The exchange of correspondence indicated there were two dwellings on the property before GL 5620 was issued in 2001.

The purpose of Act 237, SLH 1988 (**Exhibit E**)<sup>2</sup> was "...to negotiate long-term leases under specific terms, conditions, and restrictions imposed by this Act ... assist qualifying permittees who depend on farming the state land for a livelihood ...". There was no restriction prohibiting dwelling(s) on the leased premises as provided in Act 237 and subsequent Acts. Staff is not aware of any reason noted in the files pertaining to the current version of condition 46. Based on the intent of the Acts and the fact that the family had been living on the subject property before the lease was issued, staff believes it is reasonable to allow dwellings under GL 5620.

Staff has visited the property and notes the property is reasonably maintained. The lessees are current in rent, liability insurance and performance bond obligations. In short, the lessees are in compliance with the terms and conditions of the lease.

Staff has no objection to the request by the lessees asking the Board amend the lease by allowing two (2) dwellings on the premises.

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<sup>1</sup> Lessees own two private parcels in the vicinity as shown on Exhibit A.

<sup>2</sup> Act 257, SLH 1996 and Act 54, 1999 are also attached.

RECOMMENDATION: That the Board

- A. Amend General Lease No. 5620 by replacing Condition 46 with “No more than two (2) dwellings shall be placed on the premises.”
- 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.

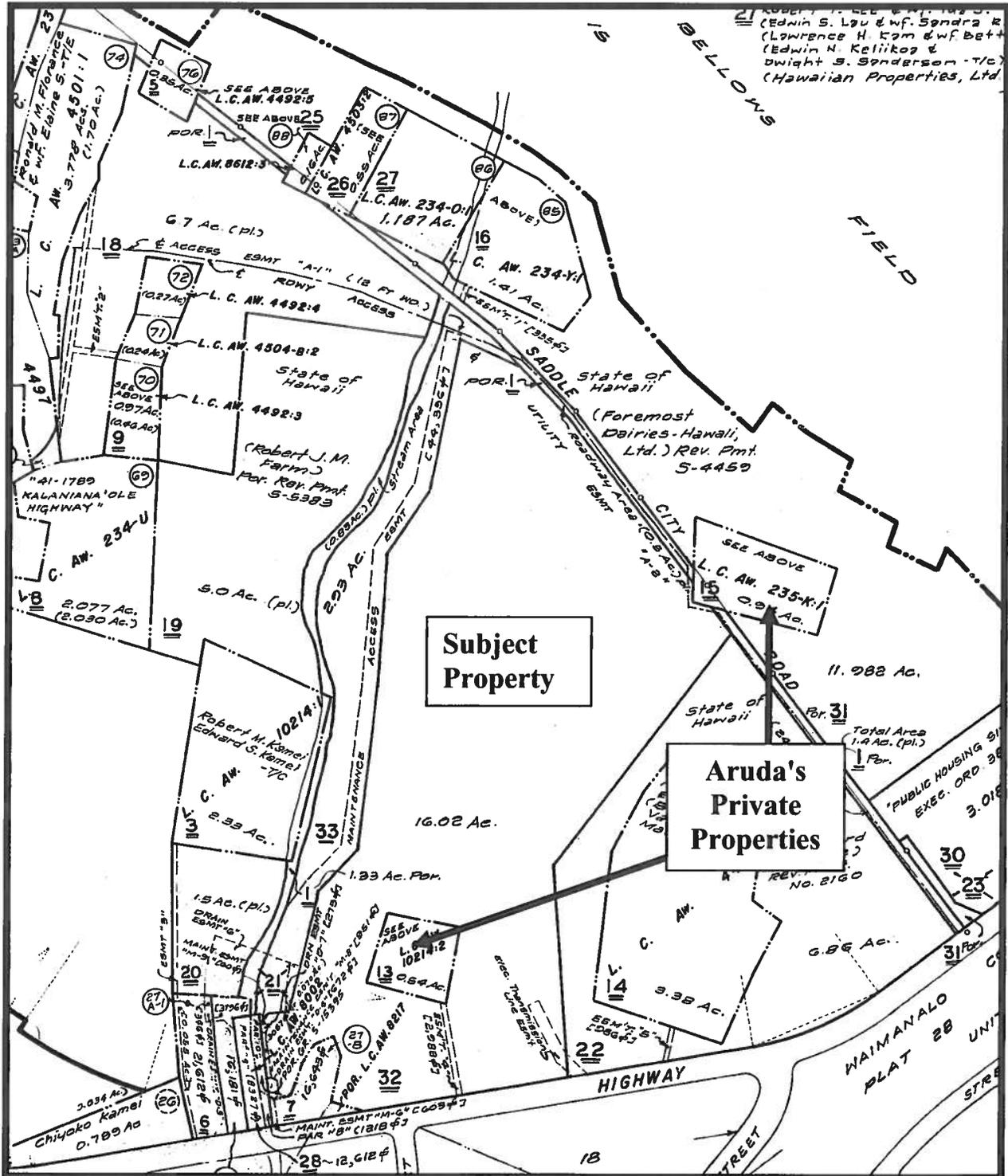
Respectfully Submitted,



Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:

  
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William J. Aila, Jr., Chairperson



TMK (1) 4-1-013:032

EXHIBIT A

## EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Amend Lease Condition to Allow Two (2) Dwellings  
Project / Reference No.: PSF  
Project Location: Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-013:032.  
Project Description: Amending lease condition to allow two (2) dwellings on the property  
Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1) and (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 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 Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

The lessees' family has been residing on the same property since late 1940s. The request is to rectify the lease conditions, which will allow two (2) existing dwellings on the premises. According to the research, the dwellings were placed on the premises a while ago. The lessees are not planning on conducting major change to the existing topographical and vegetation condition of the property. As such, staff believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties Not applicable

Recommendation: That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



William J. Aila Jr., Chairperson

Date

**EXHIBIT B**

Chairman  
Dept. of Land and Natural Resources

Dear Mr. Chairman:

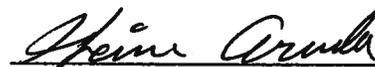
I would like to submit a proposal pertaining to two parcels of land in Waimanalo, revocable permit No. S-1159 State-owned, and Tax Map Key 4-1-13-15 owned in fee by Heine and Gladys Aruda. Attached are maps and descriptions.

The reasons we would like to propose an exchange are as follows: At the present time I have two family dwellings and some major improvements which are situated on a State-owned revocable permit on Ag land. I also reside there. My family has been living on and working this property since 1948.

The parcel that I would like to submit for an exchange is zoned Ag and is comparable land. It is located on what is known as old Saddle City Road. It is surrounded by approximately fifteen acres of State land. Only improvements are 1,000 feet of 1½ inch waterline from highway to property, fencing, and a one-bedroom cottage.

I feel it would be advantageous to both parties involved for me to relinquish my ownership in Tax Map Key 4-1-13-15 and consolidate to Tax Map Key 4-1-13-13 as indicated on proposed maps.

Respectfully yours,



Heine Aruda

Enclosure

EXHIBIT "C"

SEP 19 1988

Mr. Heine W. Aruda

waimanalo, HI 96795

Dear Mr. Aruda:

Subject: Proposed Land Exchange at Waimanalo, Oahu (TMK: 4-1-13:5 and 21)

Thank you for your letter of August 30, 1988, regarding a proposed land exchange.

According to your information, you propose to exchange your fee simple property, TMK: 4-1-13:15, comprised of .94 acres for an equal portion of State-owned land identified as TMK: 4-1-13:21. The proposed .94 acre portion of TMK: 4-1-13:21 would be located between Kalaniana'ole Highway and abut your other fee simple parcel TMK: 4-1-13:13. You currently occupy all of TMK: 4-1-13:21 under Revocable Permit No. S-1159 for pasture use.

You indicate that the reason for the exchange is because your family has occupied the State-owned parcel since 1948. Two dwellings and other major improvements have been placed on the State-owned parcel. In addition, you believe that the proposed portion of the State parcel and your parcel have comparable value and zoning.

Pursuant to Chapter 171-50, Hawaii Revised Statutes, "No exchange of public land for private land shall be made except for public purposes..." In this case, we find no public purpose being fulfilled as a part of your proposed exchange. Thus, after reviewing your proposal, we find that we are statutorily unable to accommodate your request for exchange.

Should you have any questions regarding this matter, please feel free to contact our Oahu District Land Agent, Mr. Dean Uchida, at 548-3262.

Very truly yours,

/s/ LIBERT K. LANDGRAF

WILLIAM W. PATY, Chairperson  
Board of Land and Natural Resources

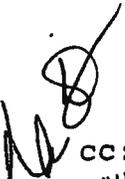
 cc: Mr. J. D. Ing

EXHIBIT "D"

**ACT 237**

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$664,000, or so much thereof as may be necessary for fiscal year 1988-1989, to carry out the purposes of this Act, including the hiring of necessary staff. The sum appropriated shall be expended by the department of land and natural resources.

SECTION 5. This Act shall take effect on July 1, 1988.

(Approved June 8, 1988.)

**ACT 237**

H.B. NO. 3137

A Bill for an Act Relating to Public Lands.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Widespread development of farm ownership is one of several stipulated uses for proceeds from the public land trust. The continued growth and development of diversified agriculture throughout the State is an objective of the Hawaii state plan as stated in chapter 226, Hawaii Revised Statutes.

Certain permittees of agricultural lands have occupied such state lands for long periods of time, but because their tenure is on a month-to-month basis, they do not have security in the assurance of continued tenure on the land and are not able to obtain financing for improving their farm because financing is not available due to the lack of long-term tenure. Farmers who depend on the state land for their livelihood are constrained by their uncertain tenure from developing the land and using it more productively.

Section 171-32, Hawaii Revised Statutes, provides that, unless otherwise specifically authorized by chapter 171 or by subsequent legislation, all dispositions of public lands shall be by lease only, disposed of by public auction. If the lands now occupied by certain permittees, who have been on the land for many years, are leased by public auction, there is a high probability that the permittees will not prevail as successful bidders on the land and would be displaced, thereby resulting in the relocation of farmers who may be forced to turn to public agencies for economic assistance.

The purpose of this Act is to authorize the department of land and natural resources to negotiate long-term leases under specific terms, conditions, and restrictions imposed by this Act with certain permittees of agricultural land. The legislature finds that it is in the public interest to assist qualifying permittees who depend on farming the state land for a livelihood, that the purpose of this Act is consistent with objectives of the Hawaii state plan, and further if the offer of assistance provided by this Act is accepted by qualifying permittees, the State would realize greater returns from the long-term disposition of lands now under permit.

It is the express intent of this Act that public lands under permit for purposes other than agricultural use be excluded from the coverage of this Act.

SECTION 2. The department of land and natural resources, hereinafter in this Act referred to as "the department", may negotiate and enter into leases of not less than fifteen years and not more than thirty-five years with any person who:

- (1) As of the effective date of this Act, holds a revocable permit for (a) agricultural, or (b) residential and home gardening purposes, issued in accordance with section 171-55; or

- (2) Has formerly held a state agricultural lease which expired within the last five years preceding the effective date of this Act and has continued to occupy the state land; and
- (3) Does not own agriculturally-zoned land of twenty five acres or more in the State, individually or jointly with spouse, or whose spouse does not own twenty five acres or more of agriculturally-zoned land in the State.

SECTION 3. The lands eligible for lease negotiation under section 2 of this Act are limited to those lands:

- (1) Not needed by any state or county agency for any other public purpose;
- (2) Zoned and used for agricultural purposes; and
- (3) Not used for sugarcane or pineapple cultivation.

SECTION 4. In negotiating and executing a lease as authorized by section 2, the board of land and natural resources shall:

- (1) Require appraisal of the parcel in accordance with section 171-17(b);
- (2) Impose such other lease provisions, restrictions, and conditions provided by sections 171-35, 171-36, and 171-37 as may be required to protect the State's interests;
- (3) Recover from the lessee the costs of surveying and subdividing the parcel incurred by the department; and
- (4) Require the payment of annual lease rent based on fair market value and a premium, computed at twenty-five per cent of annual lease rent, with the premium to be added to the annual lease rent for each year of the lease equal to the number of years that the lessee had occupied the land under revocable permit, as illustrated by the following example: if a lessee had occupied the land under revocable permit for ten continuous years, the twenty-five per cent premium shall be part of the annual lease rent for the first ten years of the lease.

SECTION 5. Within six months from the effective date of this Act, the department shall notify in writing the permittees of lands eligible for lease negotiations under this Act and shall inform the permittees of the terms, conditions, and restrictions provided by this Act. Any permittee may apply for a lease, provided that the application shall be submitted to the department in writing within thirty days from the date of receipt of notification; provided further that the department may require documentary proof of any applicant to determine that the applicant meets eligibility and qualification requirements for a lease as specified by this Act.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000, or so much thereof as may be necessary for fiscal year 1988-1989, to implement the purposes of this Act. The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act. The department of land and natural resources may hire temporary personnel and consultants without regard to the requirements of chapters 76 and 77, and section 78-1 to carry out duties and responsibilities necessary in implementing this Act.

SECTION 7. This Act shall take effect on July 1, 1988, and shall be repealed on July 1, 1991.

(Approved June 8, 1988.)

**ACT 257**

S.B. NO. 3170

A Bill for an Act Relating to Waimanalo.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that certain farmers in the Waimanalo area on the island of Oahu, through no fault of their own, conduct farming activities on nonagriculturally-zoned land. Other Waimanalo farms may have been deemed ineligible because of some confusion in providing information to qualify for a lease. As such, these farmers are only eligible to obtain a month-to-month revocable permit from the department of land and natural resources to conduct their farming activities.

These revocable permittees, some of whom have occupied these lands for long periods of time, are not able to obtain financing for improving their farm because financing is not available due to the lack of long-term tenure. Because their tenure is on a month-to-month basis, these farmers do not have the security of assured long-term land tenure. Hence, these farmers who depend on the state land for their livelihood are constrained by their uncertain tenure from developing the land and using it more productively.

The legislature also finds that in an effort to address the concerns of Waimanalo area farmers, Act 237, Session Laws of Hawaii 1988 (Act 237), was enacted to authorize the department of land and natural resources to enter into lease negotiations with revocable permittees on state-owned agricultural lands so that the permittees would be able to establish long-term land tenure, thereby allowing the permittees to secure financing for farm productivity enhancement. Unfortunately, because Act 237 limited the opportunity to obtain a long-term lease to only those qualified revocable permittees situated on agriculturally-zoned land, those revocable permittees farming on nonagriculturally-zoned lands or deemed ineligible for other reasons could not qualify for long-term lease agreements with the State.

The purpose of this Act is to authorize the department of land and natural resources to enter into long-term lease negotiations and execute long-term leases with those revocable permittees who are situated in the Waimanalo area, who are farming, and previously deemed ineligible to obtain a lease under Act 237.

SECTION 2. (a) The department of land and natural resources shall enter into long-term lease negotiations and execute long-term leases with qualified revo-

## ACT 257

cable permittees in the Waimanalo area who were deemed ineligible to obtain long-term leases under Act 237.

- (b) The department may negotiate and enter into leases with any person who:
- (1) As of July 1, 1988, held a revocable permit to conduct agricultural activities on nonagriculturally- or agriculturally-zoned lands; or
  - (2) Has formerly held an agricultural lease which expired within the last ten years preceding the effective date of this Act and has continued to occupy the state land; and
  - (3) Does not own agriculturally-zoned land of twenty-five acres or more in the State, individually or jointly with the person's spouse, or whose spouse does not own twenty-five acres or more of agriculturally-zoned land in the State.

SECTION 3. The land eligible for lease negotiations under this section are limited to those lands:

- (1) Nonagriculturally-zoned land used for agricultural purposes;
- (2) Agriculturally-zoned land used for agricultural purposes; and
- (3) Not needed by any state or county agency for any other public purpose.

SECTION 4. In negotiating and executing a lease as authorized, the board shall:

- (1) Require the appraisal of the parcel in accordance with section 171-17(b), Hawaii Revised Statutes;
- (2) Impose such other lease provisions, restrictions, and conditions as provided by sections 171-35, 171-36, and 171-37, Hawaii Revised Statutes, as may be required to protect the State's interests;
- (3) Require the payment of a premium, computed at twenty-five per cent of annual lease rent, with the premium to be added to the annual lease rent for each year of the lease equal to the number of years the lessee has occupied the land, except the premium period shall not exceed four years; and
- (4) Recover from the lessee the costs of expenditures required by the department to convert the parcel into leasehold.

SECTION 5. Within six months from the effective date of this Act, the department of land and natural resources shall notify in writing the permittees of lands eligible for lease negotiations under this Act and shall inform the permittees of the terms, conditions, and restrictions provided by this Act. Any permittee may apply for a lease; provided that the application shall be submitted to the department of land and natural resources in writing within thirty days from the date of receipt of notification; provided further that the department of land and natural resources may require documentary proof from any applicant to determine that the applicant meets eligibility and qualification requirements for a lease as specified by this Act.

SECTION 6. The department of land and natural resources shall cooperate with reclassification activities initiated by revocable permittees farming nonagriculturally-zoned lands in the Waimanalo area to have their lands reclassified from nonagricultural to agricultural use.

SECTION 7. This Act shall take effect upon its approval and shall be repealed on July 1, 1999.

(Approved June 18, 1996.)

**ACT 54**

H.B. NO. 1703

A Bill for an Act Relating to Waimanalo.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. In 1996, in an effort to address the concerns of Waimanalo area farmers who had previously been deemed ineligible to obtain a lease under Act 237, Session Laws of Hawaii (SLH) 1988, the legislature enacted Act 257, SLH 1996, to authorize the department of land and natural resources to enter into long-term lease negotiations and execute long-term leases with those revocable permittees who are situated in the Waimanalo area, who are farming. The legislature finds that Act 257, SLH 1996, has been successful and should be extended.

The purpose of this Act is to allow the department of land and natural resources to continue entering into long-term lease negotiations and to execute long-term leases with eligible Waimanalo farmers.

SECTION 2. Act 257, Session Laws of Hawaii 1996, is amended by amending section 7 to read as follows:

“SECTION 7. This Act shall take effect upon its approval and shall be repealed on [July 1, 1999.] July 1, 2001.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect on June 30, 1999.

(Approved April 26, 1999.)