

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESOURCE MANAGEMENT DIVISION
HONOLULU, HAWAII

September 22, 2020

Board of Agriculture
Honolulu, Hawaii

Subject: REQUEST TO APPROVE RENTAL OFFSET, GENERAL LEASE NOS. S-1002, S-1013, S-1016, S-1017; HAWAII GOLDEN FARM, LLC, LESSEE; TMK 1st DIV/8-5-034:002, 013, 016, AND 017, LOTS 2, 13, 16 AND 17, WAIANAE AGRICULTURAL PARK, WAIANAE, ISLAND OF OAHU, HAWAII

Authority: Section 166-9, Hawaii Revised Statutes (HRS), and Section 4-153-24(2), Hawaii Administrative Rules (HAR)

Lessee: Hawaii Golden Farm, LLC

Land Area: lot 2 – 10.240 acres, more or less
lot 13 – 8.164 acres, more or less
lot 16 – 6.429 acres, more or less
lot 17 – 9.489 acres, more or less

Tax Map Key: 1st Div/8-5-034:002, 013, 016 and 017 (see Exhibit “A”)

Land Status: Encumbered by Governor’s Executive Order No. 3481, dated October 10, 1990, to the Department of Agriculture for agricultural purposes

Lease Term: 45 years, 8/1/2019 through 7/31/2064

Annual Lease Rent: lot 2 – \$ 4,188.00
lot 13 – \$ 8,008.00
lot 16 – \$ 8,008.00
lot 17 – \$ 4,888.00
\$25,092.00 Total

Additional Rent: 1.5% of the gross proceeds from the sale of commodities produced on the demised premises which exceed the base annual rental

Character of Use: Diversified agriculture purposes

BACKGROUND:

The subject leases were awarded to Hawaii Golden Farm, LLC in 2019. The Lessee has submitted expense receipts for services, materials and supplies related to grubbing and clearing the land readying it for planting of potatoes, ginger, and herbs according to the Plan of Utilization and Development and Conservation Plan. The Lessee requests a rental offset of up to two years of annual lease rents of \$50,184.00 in accordance with 4-153-24(2), HAR. Total expenses exceed \$100,000.00.

RECOMMENDATION:

That the Board of Agriculture approve the Lessee's request for rental offsets of up to two years of annual lease rents from 2/1/2021 through 1/31/2023, in accordance with the terms and conditions of General Lease Nos. S-1002, 1013, 1016 and 1017 and Section 4-153-24(2), HAR, and subject to other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the state.

Respectfully submitted,



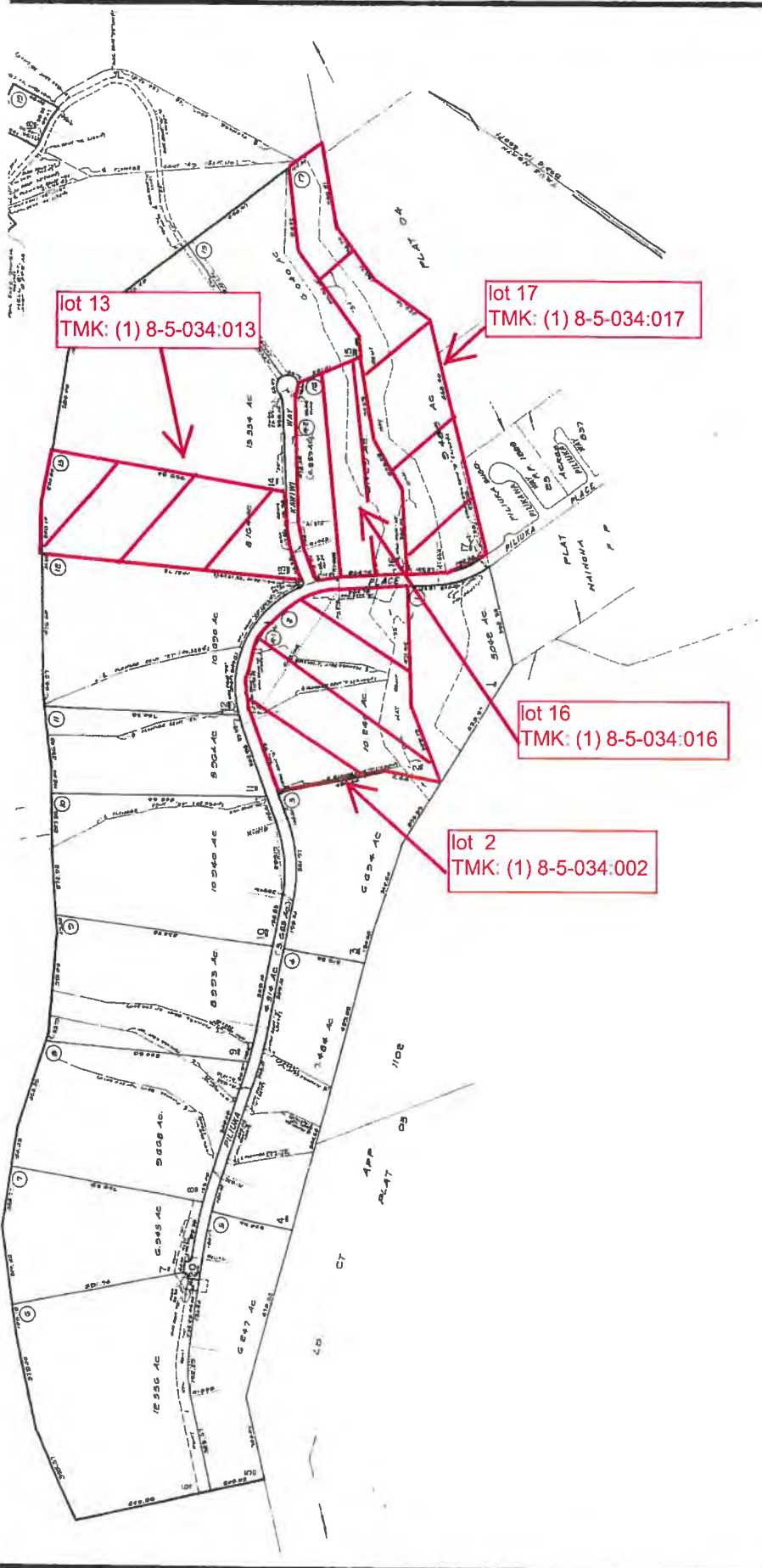
FOR BRIAN KAU, P.E.
Administrator, Agricultural
Resource Management Division

Attachment - Exhibit "A"

APPROVED FOR SUBMISSION:



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture



NOTE: Parcels have been outlined by
State of Hawaii, Department of
Land and Natural Resources

DEPARTMENT OF FINANCE PROPERTY ASSESSMENT DIVISION TAX MAP SECTION CITY & COUNTY OF HONOLULU STATE OF HAWAII			
TAX MAP			
ZONE	SFC	PLAT	
8	5	34	
SCALE: 1" = 200 FT			

FOR PROPERTY ASSESSMENT PURPOSES
SUBJECT TO CHANGE

"WAIANAE AGRICULTURAL PARK SUBD." WAIANAE, OAHU, HAWAII (Formerly par. 8-5-06) F.D. 1932

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESOURCE MANAGEMENT DIVISION
HONOLULU, HAWAII

September 22, 2020

Board of Agriculture
Honolulu, Hawaii

Subject: REQUEST FOR APPROVAL FOR FARM DWELLING;
GENERAL LEASE NO. S-3132; JOSHUA STAMM, LESSEE; LOT
14, TMK: 1ST DIV/4-1-010:046, KOOLAUPOKO, WAIMANALO,
ISLAND OF OAHU, HAWAII

Authority: Section 166E-6, Hawaii Revised Statutes (HRS), and
Section 4-158-20(c), Hawaii Administrative Rules (HAR)

Lessee: Joshua Stamm

Land Area: 5.137 gross acres, more or less

Tax Map Key: 1st Div/4-1-010:046 (see Exhibit "A")

Land Status: Encumbered by Governor's Executive Order No. 4253, dated
November 24, 2008, to the Department of Agriculture for
agricultural park purposes

Lease Term: 35 years, 2/1/2019 through 1/31/2054

Annual Lease Rent: \$16,980.00

Character of Use: Diversified agriculture purposes

BACKGROUND:

General Lease No. S-3132 was awarded to Joshua Stamm in 2019. Mr. Stamm is in the process of planting tomatoes, cucumbers, onions, garlic, avocados, peppers and herbs. He is also building relationships with local vendors, restaurants, and other marketing outlets.

The Lessee is requesting approval to construct a farm dwelling. Staff reviewed the construction plans for suitability of the improvement for appropriate agricultural use and recommends approval by the Board of Agriculture, pursuant to 4-158-20(c), HAR, and lease provision paragraph "14. Improvements." The dwelling will be occupied by the lessee to provide security for crops, supplies and equipment on the premises. There have been numerous

incidences of trespassing and theft of crops from the premises. Other lessees in the Waimanalo area have reported similar incidents of theft, vandalism and illegal trespassing.

CONCLUSIONS:

1. Lessee requests approval to construct a farm dwelling, for which Board approval is required. The dwelling will be occupied by the lessee to provide security for farm crops, supplies and equipment, and to prevent trespassing.
2. Construction of all improvements to the premises shall be in accordance with all federal, state, and county laws, ordinances and rules.
3. The Lessee is in compliance with the terms and conditions of General Lease No. S-3132.

RECOMMENDATION:

That the Board of Agriculture approve Lessee, Joshua Stamm's, request to construct a farm dwelling on the premises, subject to other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the state, and subject to the following condition: The Lessee shall indemnify, defend and hold harmless the Lessor from and against any claim or demand for loss, liability, or damage including claims for property damage, personal injury, or wrongful death, arising out of Lessee's use of said improvements and appurtenances.

Respectfully submitted,



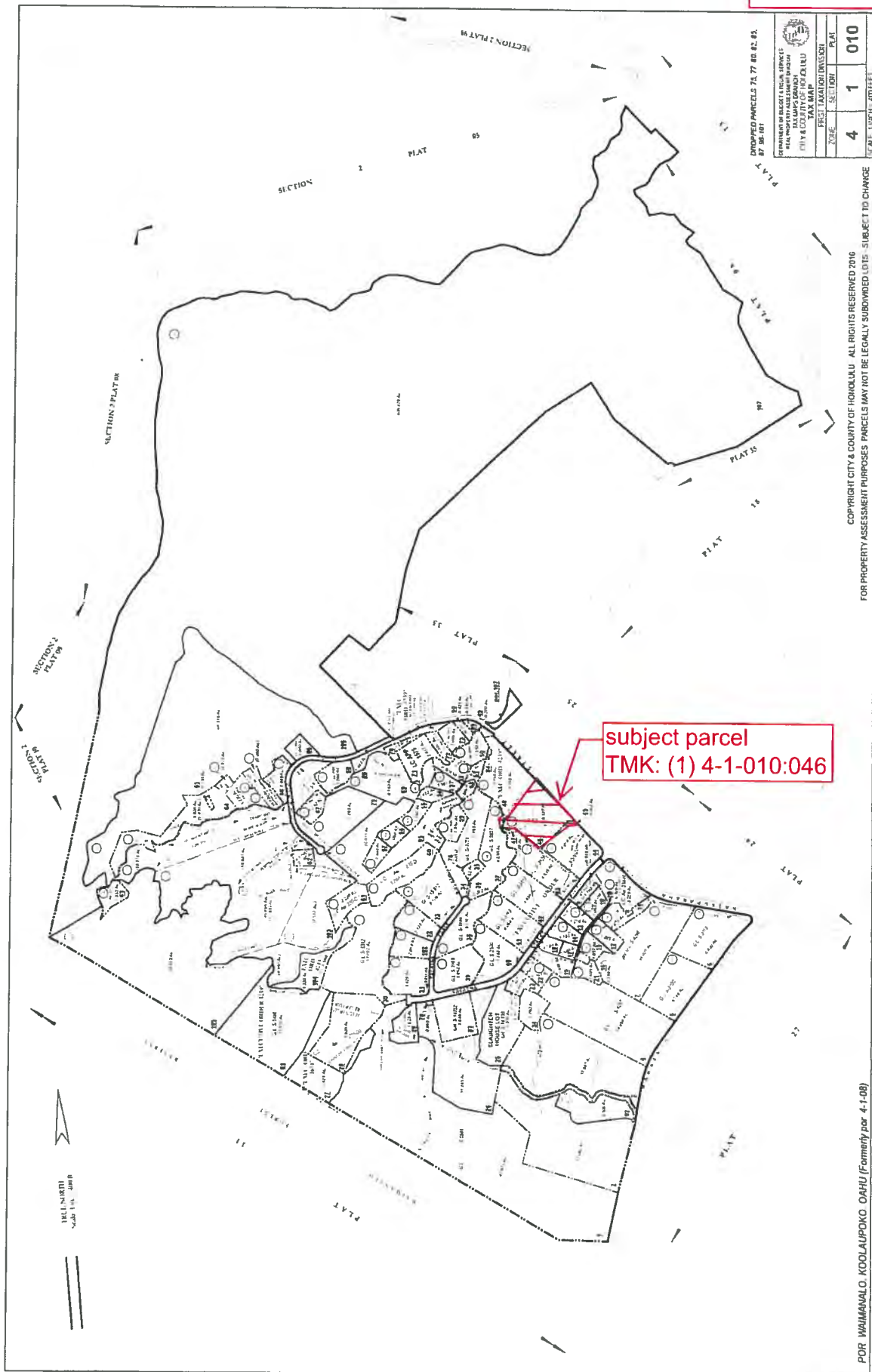
FOR BRIAN KAU, P.E.
Administrator and Chief Engineer
Agricultural Resource Management Division

Attachment - Exhibit "A"

APPROVED FOR SUBMISSION:



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture



STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESOURCE MANAGEMENT DIVISION
HONOLULU, HAWAII

September 22, 2020

Board of Agriculture
Honolulu, Hawaii

Subject:	REQUEST FOR CONSENT TO ASSIGNMENT OF GENERAL LEASE NO. S-3114, MICHAEL SHINSKY (DECEASED), LESSEE/ASSIGNOR; JULIA SHUMANN-SHINSKY, ASSIGNEE; TMK: 3 RD DIV/4-4-011:033, LOT NO. 33, KA'APAHU HOMESTEADS, HAMAKUA, ISLAND OF HAWAII
Authority:	Section 166E-3, Hawaii Revised Statutes (HRS), and Section 4-158-19(a)(4)(B), Hawaii Administrative Rules (HAR)
Lessee/Assignor:	Michael Shinsky (deceased)
Assignee:	Julia Shumann-Shinsky
Land Area:	5.424 acres
Tax Map Key:	3 rd Div/4-4-011:033 (see Exhibit "B")
Land Status:	Encumbered by Governor's Executive Order No. 4430 to the Department of Agriculture for non-agricultural park purposes in 2013
Rental:	\$3,570.00 per year, until November 30, 2025 rental reopening
Additional Rent	The amount by which 1.5% of the gross proceeds from the sale of commodities produced on the demised premises that exceeds the base rentals
Character of Use:	Diversified agriculture purposes
Consideration:	None
Lease Term:	35 years, December 1, 2015 through November 30, 2050

BACKGROUND:

David Pellani was issued a month-to-month Revocable Permit No. S-7740 effective May 1, 2005 by the Board of Land and Natural Resources. At its meeting held on May 27, 2014, the Board of Agriculture (BOA) approved his request to convert Revocable Permit No. S-7740 to a new Non-Agricultural Park Land lease, General Lease No. S-3114. The farm consisted of macadamia nuts, avocado and banana. Due to various setbacks, David Pellani requested the assignment of General Lease No. S-3114 to Michael Shinsky due to extreme economic hardship. At its meeting held on September 25, 2018, the Board of Agriculture approved the assignment from David Pellani to Michael Shinsky.

Mr. Shinsky lost his life on October 8, 2019 due to a tragic accident while working on his farm. Julia Shumann-Shinsky, as Personal Representative, is authorized to perform duties and to administer the estate according to law. Ms. Shumann-Shinsky wishes to assume General Lease No. S-3114 pursuant to section 4-158-19(a)(4)(B), HAR.


Julia Shumann-Shinsky qualifies as a bona fide farmer with more than two years of full-time farming experience and meets the three-year residency eligibility requirement commensurate with sections 4-158-1 and 27, HAR.

There is no consideration for the assignment of the lease.

RECOMMENDATION:

That the Board of Agriculture approve the assignment of General Lease No. S-3114 from Michael Shinsky, Lessee/Assignor, to Julia Shumann-Shinsky, Assignee, subject to the approval as to form of the assignment and consent documents by the Department of the Attorney General, and such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,

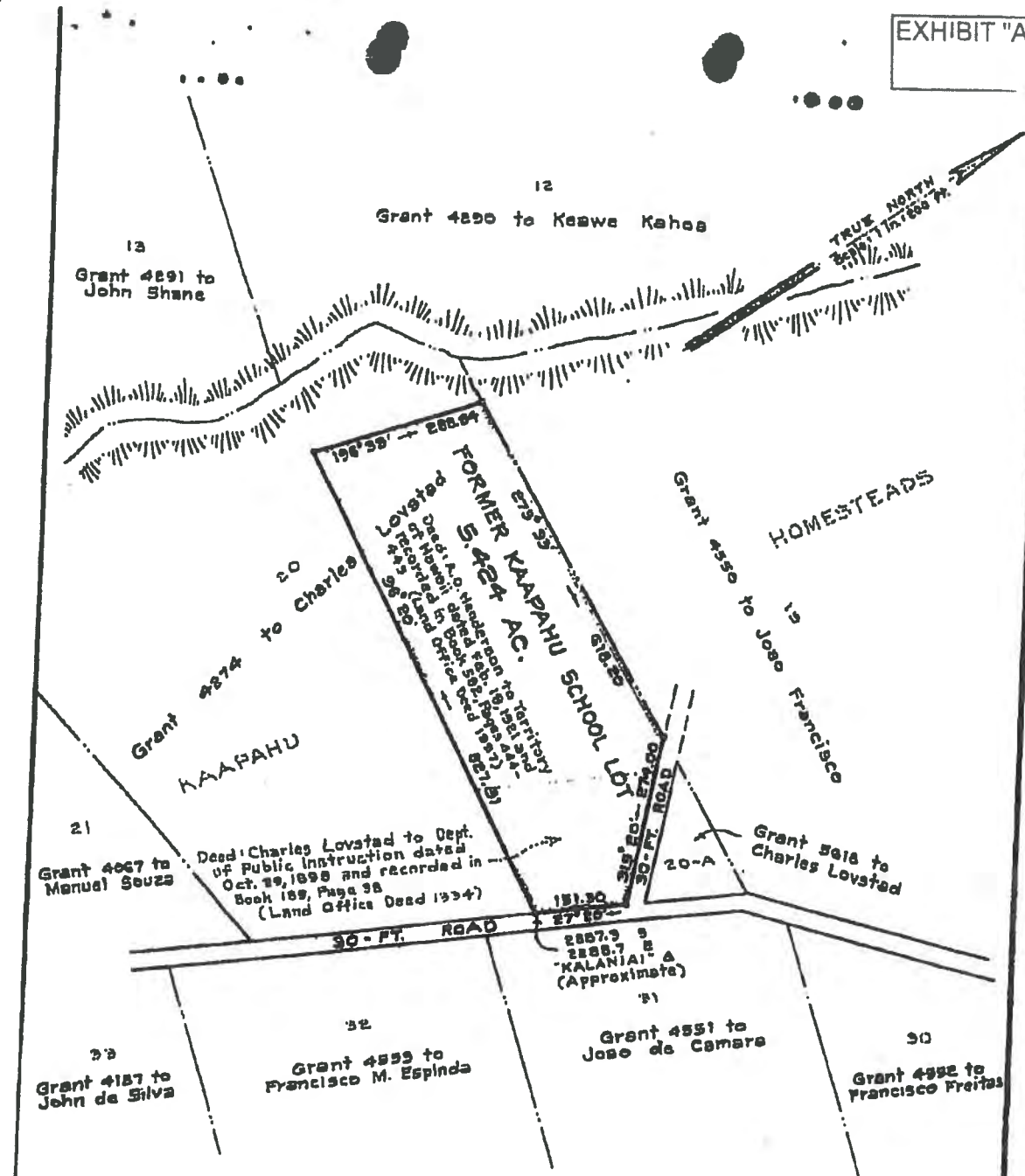

FOR BRIAN KAU, P.E.
Administrator and Chief Engineer
Agricultural Resource Management Division

ATTACHMENTS – EXHIBITS “A” and “B”

APPROVED FOR SUBMISSION:


PHYLLIS SHIMUBUKURO-GEISER
Chairperson, Board of Agriculture

EXHIBIT "A"



PRELIM. APPR'D.
Department of the
Attorney General

(REVISED FEBRUARY 1982)
FORMER KAAPAHU SCHOOL LOT
Kaapahu, Hamakua, Island of Hawaii, Hawaii

Scale : 1 inch = 200 feet

JOM H-7066
C. EK 21, Sakamoto

TAX MAP 4-4-11:33

No. 18,594

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

All boundary corners
marked with 1/2" pipe
Date of Stakeout Feb. 3, 1982

EXHIBIT 2

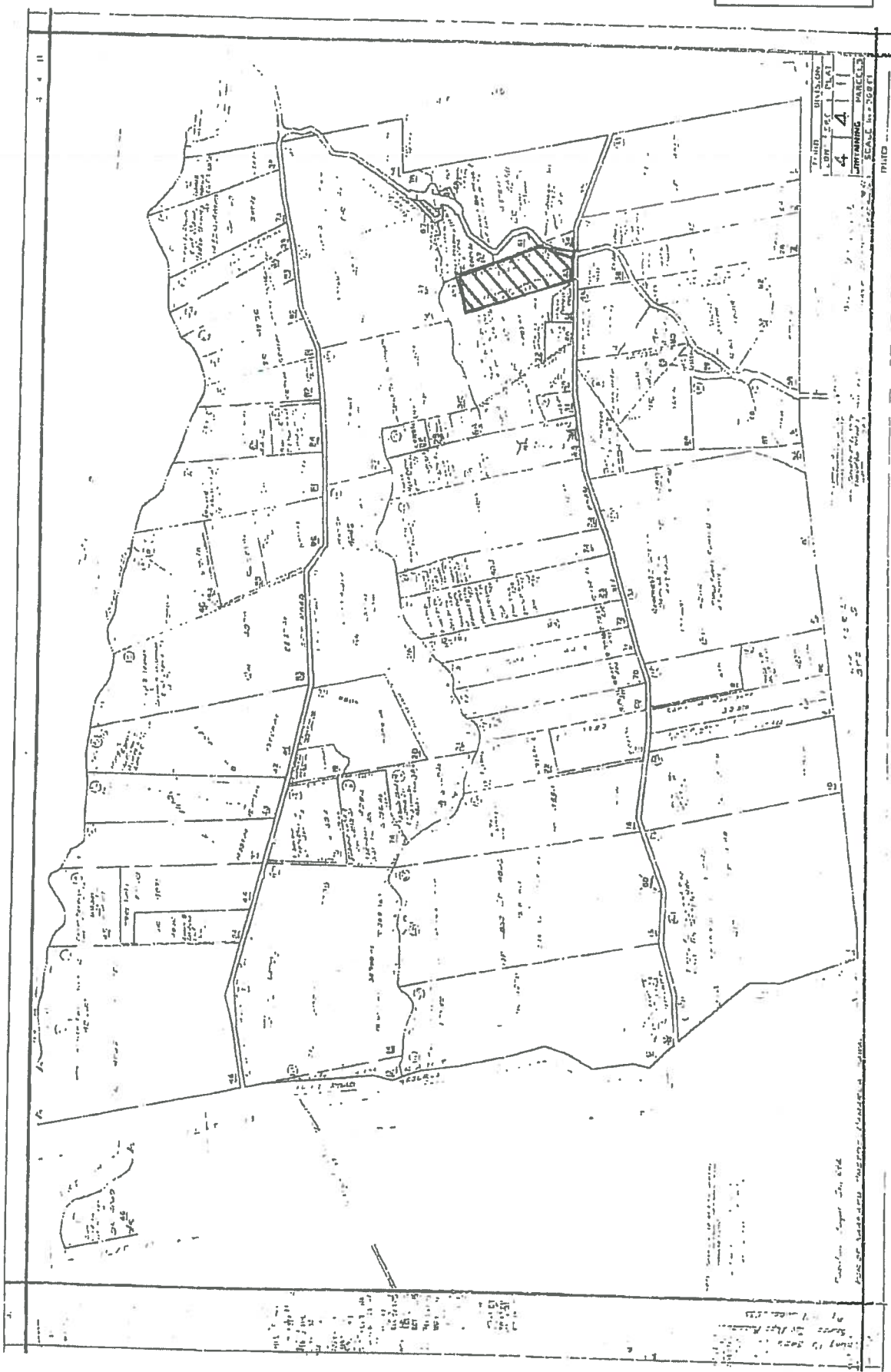
Feb. 17, 1982

1.5. Jan. 31, 1979

AG

A10

EXHIBIT "B"



STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESOURCE MANAGEMENT DIVISION
HONOLULU, HAWAII

September 22, 2020

Board of Agriculture
Honolulu, Hawaii

Subject: REQUEST FOR APPROVAL TO SUBLEASE BETWEEN THE
HAMAKUA AGRICULTURAL COOPERATIVE,
LESSEE/SUBLESSOR, AND WHITNEY VELEZ, SUBLESSEE;
GENERAL LEASE NO. S-5549, TMK: 3rd Div/ 4-4-001:001 (por),
LOT NO. 02, KAUNAMANO, HAMAKUA, ISLAND OF HAWAII

Authority: Section 166E-6, Hawaii Revised Statutes, (HRS), and Section 4-
158-19(a)(6), Hawaii Administrative Rules (HAR)

Lessee/Sublessor: Hamakua Agricultural Cooperative

Sublessee: Whitney Velez

Land Area: 2.750 acres

Tax Map Key: 3rd Div/ 4-4-001: 001 (por) (Exhibit "A")

Land Status: The Hamakua lands were transferred to the Department of
Agriculture by Governor's Executive Order No. 4250, dated
October 22, 2008

Lease Term: June 30, 1998 through June 29, 2033

Sublease Term: July 31, 2020 through June 29, 2033

Sublease Base
Annual Rental: \$404.44/year until June 29, 2029 (Reopening Date)

Character of Use: General Agriculture and pasture purposes in accordance with a
Plan of Utilization and Development approved by the Department

A11

A12

BACKGROUND:

Whitney Velez held a sublease with the Hamakua Agricultural Cooperative, General Lease No. S-5549, Lot No. 2, from April 1, 2016 to April 1, 2019, approved by the Board of Agriculture at its meeting held on May 31, 2016, for a three-year probationary period. Ms. Velez has satisfactorily completed the development of Lot. No. 2 in accordance with her business plan. She produces taro, sweet potato, pumpkin, daikon, okra, papaya, and lilikoi. Ms. Velez is requesting a sublease from July 31, 2020 to June 29, 2033.


Ms. Velez qualifies as a bona fide farmer with more than two years of full-time farming experience and meets application and eligibility requirements in accordance with sections 4-158-1 and 27, HAR.

RECOMMENDATION:

That the Board of Agriculture approve the Sublease between the Hamakua Agricultural Cooperative, Lessee/Sublessor, and Whitney Velez, Sublessee, for Lot No. 2 in Kalopa under General Lease No. S-5549, until the expiration date of June 29, 2033; and further subject to the review and approval as to form of the Sublease document by the Department of the Attorney General, and such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,



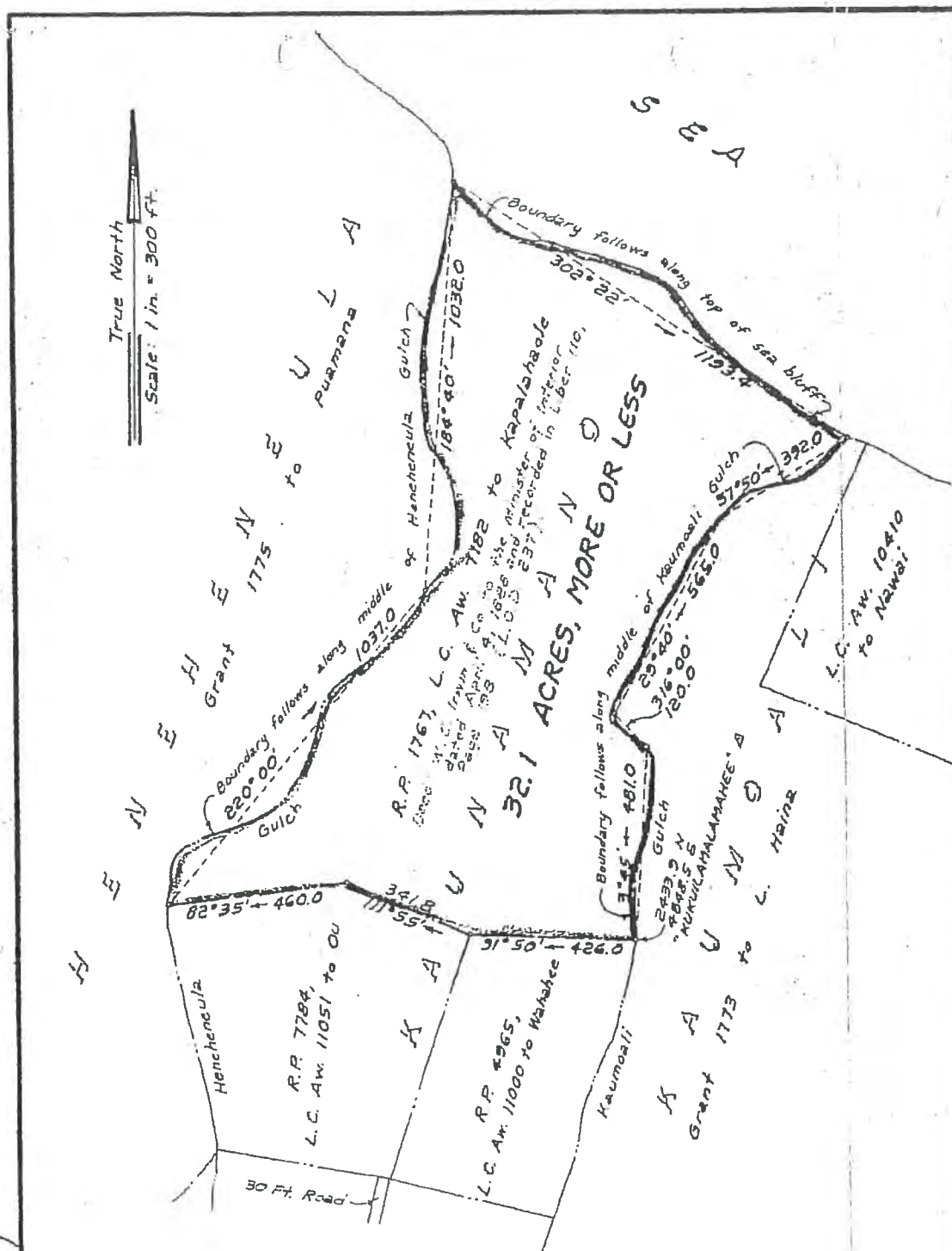
 BRIAN KAU, P.E.
Administrator and Chief Engineer
Agricultural Resource Management Division

Attachment – Exhibit “A”

APPROVED FOR SUBMISSION:



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture



KAUNAMANO GOVERNMENT REMAINDER
Kaunamano, Hamakua, Island of Hawaii
Scale: 1 inch = 300 feet

JOB H-308 (97)
C. BK.

REDUCED NOT TO SCALE

TAX MAP 4-4-01:1

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

EXHIBIT "A"

C.S.F. NO. 22,666

GJK Feb 13, 1998

A13

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESOURCE MANAGEMENT DIVISION
HONOLULU, HAWAII

September 22, 2020

Board of Agriculture
Honolulu, Hawaii

Subject: REQUEST FOR APPROVAL TO SUBLEASE BETWEEN THE
HAMAKUA AGRICULTURAL COOPERATIVE,
LESSEE/SUBLESSOR, AND AGEE, INC., SUBLESSEE;
GENERAL LEASE NOS. S-7009, TMK: 3RD DIV/4-3-005:014 (por),
LOT NO. 16, GENERAL LEASE NO. S-7010, TMK: 3RD DIV/4-3-
005:017 (por), LOT NOS. 06, 07, 09, GENERAL LEASE NO. S-
7012, TMK: 3RD DIV/4-3-005:019 (por), LOT NO. 08, GENERAL
LEASE NO. S-7013, TMK: 3RD DIV/4-3-005:020 (por), LOT NO.
2A, HAMAKUA POHAKUHAKU AND KEMAU 1ST,
HAMAKUA, ISLAND OF HAWAII

Authority: Section 166-6, Hawaii Revised Statutes, (HRS), and Section 4-
153-33(a)(7), Hawaii Administrative Rules, (HAR)

Lessee/Sublessor: Hamakua Agricultural Cooperative

Sublessee: AGEE, Inc.

Land Area: 49.534 gross acres
General Lease No. S-7009: Lot No. 16 – 9.000 acres,
General Lease No. S-7010: Lot No. 06 – 11.362 acres
Lot No. 07 – 5.545 acres
Lot No. 09 – 5.577 acres
General Lease No. S-7012: Lot No. 08 - 4.739 acres
General Lease No. S-7013: Lot No. 2A – 13.311 acres

Tax Map Key: 3rd Div/4-3-005:14, 017, 019 and 020(por) (see Exhibit “A”)

A15

Land Status: Hamakua Agricultural Park lands were acquired in fee by the Department of Agriculture (DOA) under foreclosure and Bankruptcy Settlement Agreement with Hamakua Sugar Company, Inc.

Lease Term: June 30, 1998 to June 29, 2033

Sublease Term: August 1, 2020 to June 29, 2033

Sublease Base Rental: \$5,188.02 per year
General Lease No. S-7009
\$938.61/year – Lot 16 until June 29, 2033
General Lease No. S-7010
\$1,184.73/year – Lot 06 until June 29, 2033
\$ 578.28/year – Lot 07 until June 29, 2033
\$ 602.17/year – Lot 09 until June 29, 2033
General Lease No. S-7012
\$ 494.23/year – Lot 08 until June 29, 2033
General Lease No. S-7013
\$1,390.00/year – Lot 2A until June 29, 2033

Character of Use: General Agriculture and pasture purposes in accordance with a Plan of Utilization and Development approved by the DOA

BACKGROUND:

AGEE, Inc. is an existing family owned ranch and pasture corporation that has been in operation for over 20 years. It is owned and operated by Phyllis Aguiar, along with her son, Shawn Aguiar and other family members. AGE E, Inc. currently leases Lot No. 19 consisting of 13.04 acres located in the Hamakua Agricultural Park where they operate a cattle ranch containing 20+ heifers and 20 calves. AGE E, Inc. products are sold to American Pacific Inc. and shipped overseas. The additional acres will be utilized to its full potential as grazing pasture for the herd.

AGE E, Inc. qualifies as an agricultural company with more than 75 percent of its members qualifying as bona fide farmers with more than two years of full-time farming/ranching experience and meeting eligibility of three years of residency requirements pursuant to Sections 4-153-1 and 13, HAR.

RECOMMENDATIONS:

That the Board of Agriculture approve the Sublease between the Hamakua Agricultural Cooperative, Lessee/Sublessor, and AGE E, Inc., Sublessee, for Lot Nos. 16,

under General Lease No. S-7009, Lot Nos. 06, 07, 09, under General Lease No. S-7010, Lot No. 089, under General Lease No. S-7012, and Lot No. 2A under General Lease No. S-7013, all located in the Hamakua Agricultural Park until the expiration date of June 29, 2033; and further subject to the review and approval as to form of the Sublease document by the Department of the Attorney General, and such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.

Respectfully submitted,



for BRIAN KAU, P.E.
Administrator and Chief Engineer
Agricultural Resource Management Division

Attachment – Exhibit “A”

APPROVED FOR SUBMISSION:



PHYLLIS SHIMABUKURU-GEISER
Chairperson, Board of Agriculture

A18

Sea

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HAWAII BEEF PRODUCERS, LLC
LOT #2, 45.911 ACRES, S-7014

HAWAII BEEF PRODUCERS, LLC
LOT #3, 54.348 ACRES, S-7015

HAWAII BEEF PRODUCERS
LOT #4, 44.656 ACRES,
S-7016

HAWAII BEEF PRODUCERS, LLC
HAMAKUA SLAUGHTERHOUSE
LOT #4, 7.0 ACRES, S-7008

COOP

COOP

⑤

W-07
COOP

M# 2911673

W-06
COOP

M# 2813442

W-2

W-03

W-04

W-05

W-08
R. MILLER

W-10
M. Brown

W-11
COOP

W-09

W-12

W-13

W-14

W-15

18

17
Dozier

16
COOP

14
M. BOWMAN

12
ED AGUSTIN

11
DICKINSON

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Uehara

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FEEDLOT S-7017
VIRGINIO AGUIAR, JR.
LOT #7, 55.716 ACRES

Aguiar #19

09

08

07

06

05

04
Susan Sanders

03
FARRELL

02

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#02A

COOP

STUDER

#02

M# 2911881

#01

CODIANNE

M# Meter Number
⊗ Meter Location
○ Riser Location 1 to Meter

DATE 09/15/2017

STATE OF HAWAII
Department of Agriculture

Hamakua Agricultural Park
Island of Hawaii

⑦ Agricultural Park Lot Number

Scale

0 250 500 1,000 1,500 2,000 Feet

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESOURCE MANAGEMENT DIVISION
HONOLULU, HAWAII

September 22, 2020

Board of Agriculture
Honolulu, Hawaii

Subject: REQUEST FOR CONSENT TO ASSIGNMENT OF GENERAL
LEASE NO. S-4636; RONALD T. OKAZAKI (DECEASED)
LESSEE/ASSIGNOR TO GREEN POINT NURSERIES, INC.,
ASSIGNEE; LOT NO. 8, TMK: 3RD DIV/2-4-049:022, WAIAKEA,
SOUTH HILO, ISLAND OF HAWAII

Authority: Section 166E-6, Hawaii Revised Statutes (HRS), and
Section 4-158-19(a)(4)(B), Hawaii Administrative
Rules (HAR)

Lessee/Assignor: Ronald T. Okazaki (Deceased)

Assignee: Green Point Nurseries, Inc.

Land Area: 10.243 acres

Tax Map Key: 3rd Div/2-2-049:022 (see Exhibit "A")

Land Status: Encumbered by Governor's Executive Order No.4300
to the Department of Agriculture for non-agricultural
park land purposes in 2009

Lease Term: 50 years, 5/1/1980 through 4/30/2030

Annual Base Rent: \$4,480.00 per year, until May 1, 2025 rental reopening

Additional Rent: 2% of the gross proceeds from the sale of commodities
produced on the demised premises which exceed the
base annual rental

Character of Use: Diversified agriculture purposes

Consideration: \$25,000.00

A19

BACKGROUND:

General Lease No. S-4636 was originally awarded to Jean Higaki by the Board of Land and Natural Resources. In 1991 the lease was assigned to Ronald T. Okazaki and he produced a variety of green foliage and landscape plants, a variety of flowers, including orchids, and palms on the premises. At its June 30, 2015 meeting, the Board of Agriculture extended General Lease No. S-4636 for fifteen years to expire on April 30, 2030. Mr. Okazaki passed away on February 17, 2020, and his son, Ronald Okazaki, who is the Personal Representative to his father's estate, is requesting that General Lease S-4636 be assigned to Green Point Nurseries, Inc. (GPN). Pursuant to the terms of General Lease No. S-4636 and Section 4-158-19(a)(4)(B), HAR, an assignment of lease is permitted due to extreme economic hardship, as business operations closed down upon Mr. Okazaki's passing.

GPN currently holds two leases with the Department of Agriculture: General Lease No. S-5905 and General Lease No. S-4445. Both leases are in the Panaewa Subdivision Farm Lots, operated by the Tanouye family who owns GPN. They cultivate a variety of tropical flowers, orchids and anthuriums.

There is a consideration of \$25,000.00 for the assignment of lease. The amount of lease premium due to the Lessor is \$0.00.

RECOMMENDATION:

That the Board of Agriculture consent to the assignment of General Lease No. S-4636 from Ronald T. Okazaki (deceased), Lessee/Assignor, to Green Point Nurseries, Inc., Assignee, subject to the approval as to form of the assignment and consent documents by the Department of the Attorney General, and such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,



FOR BRIAN KAU, P.E.

Administrator and Chief Engineer
Agricultural Resource Management Division

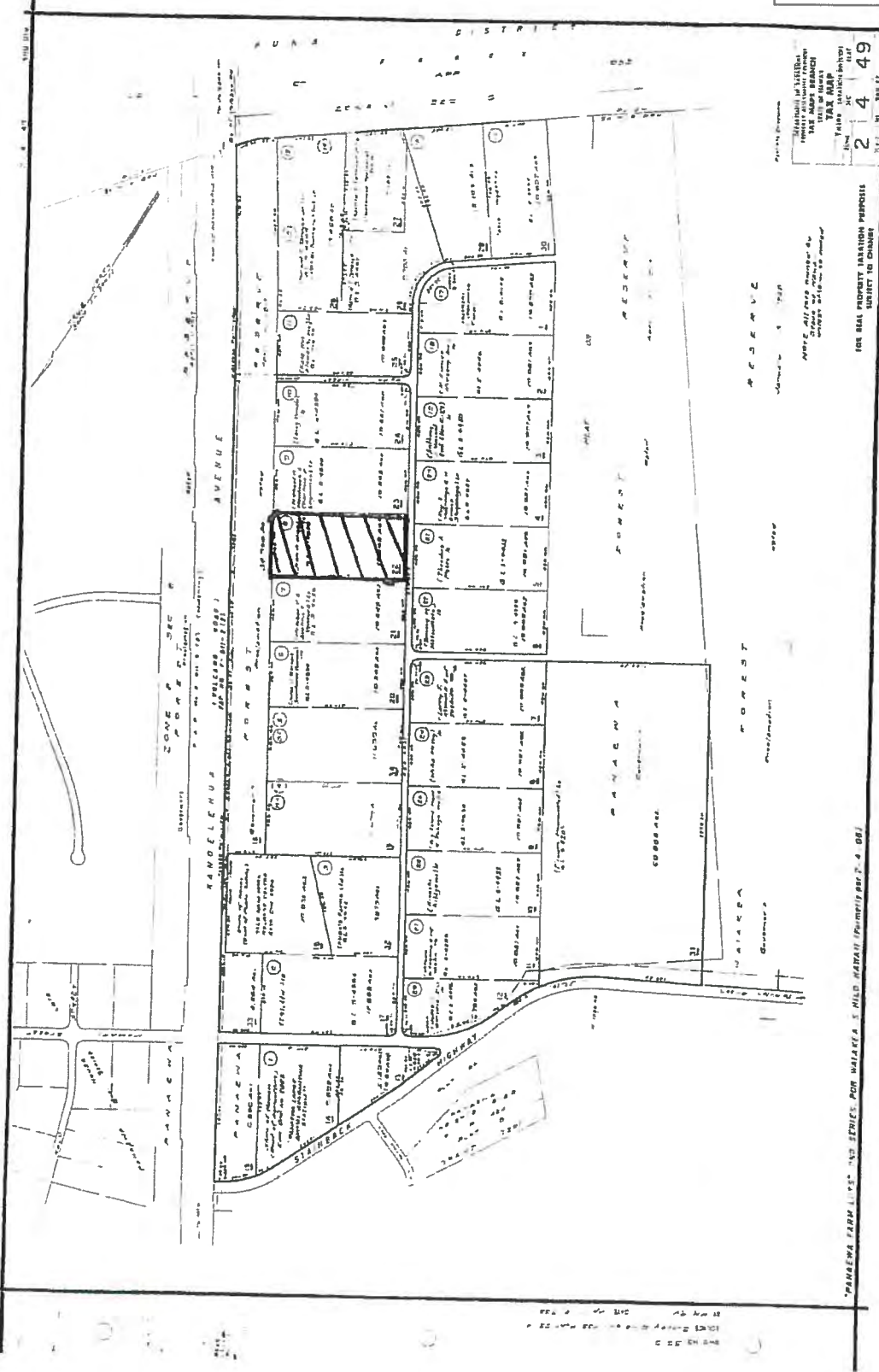
ATTACHMENT – EXHIBIT “A”

APPROVED FOR SUBMISSION:



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

EXHIBIT "A"



Division of Land
 HAWAIIAN ISLANDS
 TAX MAPS BRANCH
 HONOLULU
 TAX MAP
 No. 2449
 Date 10/10/1910
 Scale 1" = 100'

FOR REAL PROPERTY TAXATION PURPOSES
 PRINTED TO ORDER
 2449

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESOURCE MANAGEMENT DIVISION
HONOLULU, HAWAII

September 22, 2020

Board of Agriculture
Honolulu, Hawaii

Subject: REQUEST FOR APPROVAL TO PARTICIPATE IN THE UNITED STATES DEPARTMENT OF AGRICULTURE, CONSERVATION RESERVE PROGRAM; GENERAL LEASE NO. S-5655; PONOHOLO RANCH, LIMITED, LESSEE; TMK: 3RD DIV/5-9-002:006; MAKILOA, NORTH KOHALA, ISLAND OF HAWAII, HAWAII.

Authority: Section 166E-6, Hawaii Revised Statutes (HRS), and Section 4-158-2(a)(13), Hawaii Administrative Rules (HAR)

Lessee: Ponoholo Ranch, Limited

Land Area: 138.000 gross acres, more or less

Tax Map Key: 3rd Div/5-9-002:006 (see Exhibit "A")

Land Status: Encumbered by Governor's Executive Order No. 4579 to the Department of Agriculture for non-agricultural park land purposes in 2019

Lease Term: 62 years and 6 months, August 28, 2002 to February 22, 2065

Current Rent: \$1,630.00 per year

Character: Pasture Purposes
of Use

BACKGROUND:

General Lease No. S-5655 was previously encumbered under Revocable Permit No. S-6490 to Ponoholo Ranch, Ltd. (PRL) for pasture purposes. At its meeting held on March 12, 1999, the Board of Land and Natural Resources (BLNR) approved the sale at public auction of the pasture permit resulting in the approval of a direct lease to PRL.

At its meeting held on April 14, 2020, the Board of Agriculture approved the extension of General Lease S-5655, for 42 years and 6 months, to February 22, 2065.

A22

Ponoholo Ranch utilizes the subject property for pasture purposes on Kohala Mountain and are reported to have the second largest herd of cattle on the island – 6,000 to 8,000 head.

Ponoholo Ranch is requesting to participate in the United States Department of Agriculture (USDA), Conservation Reserve Program (CRP), a federally funded voluntary program that contracts with agricultural producers so that environmentally sensitive agricultural land is protected and used for conservation benefits. The CRP emphasizes support for grazing operations, plant and animal biodiversity and grassland and land containing shrubs and forbs under the greatest threat of conversion. As a participant of the CRP, PRL will receive annual payments in the amount of \$1,465.00 over a 15-year period to help with the maintenance and protection of their pastureland.

RECOMMENDATION:

That the Board of Agriculture approve the Lessee's request to participate in the USDA, Conservation Reserve Program, for the subject premises pursuant to the terms and conditions of General Lease No. S-5655, and Section 4-158-2(a)(13), Hawaii Administrative Rules.

All documents are subject to the approval as to form by the Department of the Attorney General, and such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,



for

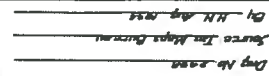
BRIAN KAU, P.E.
Administrator and Chief Engineer,
Agricultural Resource Management Division

Attachment - Exhibit "A"

APPROVED FOR SUBMISSION:



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

[illegible]

**ADVANCE SHEET
SUBJECT TO CHANGE**

THIRD	DIVISION	
ZONE	SEC	PLAT
5	9	02
CONTAINING 6 PARCELS		
SCALE 1/4" = 1000'		

PRINTED

Kahua Ranch
Box 97, Waianae & Kaneohe, Hawaii

A24

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESOURCE MANAGEMENT DIVISION
HONOLULU, HAWAII

September 22, 2020

Board of Agriculture
Honolulu, Hawaii

Subject:	REQUEST FOR APPROVAL FOR INSTALLATION OF A PREFABRICATED WAREHOUSE; GENERAL LEASE NO. S-3766; CONTEMPORARY LANDSCAPING LLC, LESSEE; LOT 10, TMK: 1 ST DIV/4-1-027:029, KOOLAUPOKO, WAIMANALO, ISLAND OF OAHU, HAWAII
Authority:	Section 166E-6, Hawaii Revised Statutes (HRS), and Section 4-158-20(e), Hawaii Administrative Rules (HAR)
Lessee:	Contemporary Landscaping LLC
Land Area:	7.001 gross acres, more or less
Tax Map Key:	1 st Div/4-1-027:029 (see Exhibit "A")
Land Status:	Encumbered by Governor's Executive Order No. 4239, dated September 17, 2008, to the Department of Agriculture
Lease Term:	35 years, 8/1/2011 through 7/31/2046
Annual Lease Rent:	\$8,540.00
Character of Use:	Diversified agriculture purposes

BACKGROUND:

General Lease No. S-3766 was awarded to Contemporary Landscaping LLC in 2011. Mark Fukui owns and operates this successful nursery business in Waimanalo, which supplies the industry with a variety of smaller and large trees for landscaping purposes.

The Lessee is requesting approval to construct a prefabricated warehouse structure in which to store and secure large equipment and supplies used for business operations. Staff reviewed the construction plans for suitability of the improvement for appropriate agricultural use and recommends approval by the Board of Agriculture, pursuant to 4-158-20(e), HAR, and

A25

lease provision paragraph "14. Improvements." This warehouse will replace an existing open structure and provide security for the nursery's heavy equipment and supplies.

CONCLUSIONS:

1. Lessee requests approval to construct a prefabricated warehouse on the premises, for which Board approval is required. The warehouse will be used to store large equipment and supplies and provide security for these items.
2. Construction of all improvements to the premises shall be in accordance with all federal, state, and county laws, ordinances and rules.
3. The Lessee is in compliance with the terms and conditions of General Lease No. S-3766.

RECOMMENDATION:

That the Board of Agriculture approve Lessee, Contemporary Landscaping LLC's request to construct a prefabricated warehouse on the premises, subject to other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the state, and subject to the following condition: The Lessee shall indemnify, defend and hold harmless the Lessor from and against any claim or demand for loss, liability, or damage including claims for property damage, personal injury, or wrongful death, arising out of Lessee's use of said improvements and appurtenances.

Respectfully submitted,



FOR

BRIAN KAU, P.E.
Administrator and Chief Engineer
Agricultural Resource Management Division

Attachment - Exhibit "A"

APPROVED FOR SUBMISSION:



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
QUALITY ASSURANCE DIVISION
1851 AUIKI STREET
HONOLULU, HAWAII 96819-3100

September 22, 2020

Board of Agriculture
Honolulu, Hawaii

Subject: Request for Adoption of Proposed Chapter 4-161, Hawaii Administrative Rules, entitled, "Hemp Production Interim Rules. "

I. BACKGROUND

Act 14, SLH 2020 ("Act") was signed into law by the Governor on August 27, 2020. The Act repeals the current Industrial Hemp Pilot Program ("Pilot Program") on October 31, 2020 and allows production of hemp in the state through a licensing program administered by the United States Department of Agriculture ("USDA").

The Act also allows the transportation of hemp within the state and for exportation. If hemp is transported within the state, it can only go from a licensed grow area to (1) another licensed grow area, or (2) an authorized hemp processor. If hemp is to be exported, it must comply with all laws relating to the exportation of hemp, including state and federal laws and the laws of the state or country of import. Any transportation must be authorized by the Hawaii department of agriculture, and the department may require movement reports, inspections, sampling, and testing of the hemp to be transported to ensure compliance with the law.

The Act contains certain restrictions on growing hemp in the state, including establishing buffer zones where hemp cannot be grown within 500 feet of (1) a pre-existing playground, childcare facility, or school, or (2) a pre-existing house, dwelling unit, residential apartment, or other residential structure that is not owned or controlled by the license holder. Pilot Program Licensees with an approved grow area within those buffer zones prior to the effective date of Act 14 (August 27, 2020) are exempt from the buffer zones.

The department is required to adopt interim rules to effectuate the Act by September 30, 2020. The interim rules are exempt from chapters 91 and 201M, Hawaii Revised Statutes ("HRS"), therefore public hearings are not required prior to their adoption. The interim rules will remain in effect through June 30, 2022, or until rules are adopted pursuant to chapter 91, HRS.

A copy of the proposed "Hemp Production Interim Rules" is attached and briefly summarized below. The department requests that the attached proposed interim rules be approved and adopted by the Board of Agriculture at its September 22, 2020 meeting.

II. PROPOSED RULES

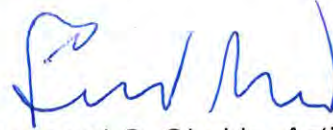
The proposed rules are summarized as follows:

1. §4-161-1 Definitions.
2. §4-161-2 Transportation. This section creates procedures and reporting requirements for the transportation of harvested hemp leaf and floral materials, and live hemp plants (1) between licensed producers, (2) between licensed producers and registered processors, or (3) for exportation.
3. §4-161-3 Nuisance. Act 14 created 500 foot buffer zones around certain areas and structures, but exempted pilot program licensees who were licensed prior to August 27, 2020 from the buffer zone requirements in the areas for which they were licensed at the time. This section creates additional penalties for the violation of any nuisance, environmental, or land use regulations by licensees exempt from the buffer zone.
4. §4-161-4 Inspection. Authorizes inspection and sampling by the department and law enforcement to ensure compliance with Act 14 and these rules.
5. §4-161-5 Violations/Penalties.

III. RECOMMENDATIONS

Based upon staff research, the Quality Assurance Division respectfully recommends that the Board approve the attached proposed interim rules chapter 4-161, Hawaii Administrative Rules entitled "Hemp Production Interim Rules." Following adoption by the Board, these rules shall take effect upon adoption and remain in effect through June 30, 2022, or until rules are adopted pursuant to chapter 91, HRS, whichever occurs sooner.

Respectfully submitted,



Leonard G. Obaldo, Acting Administrator
Quality Assurance Division

APPROVED FOR SUBMISSION:



Phyllis Shimabukuro-Geiser, Chairperson
Board of Agriculture

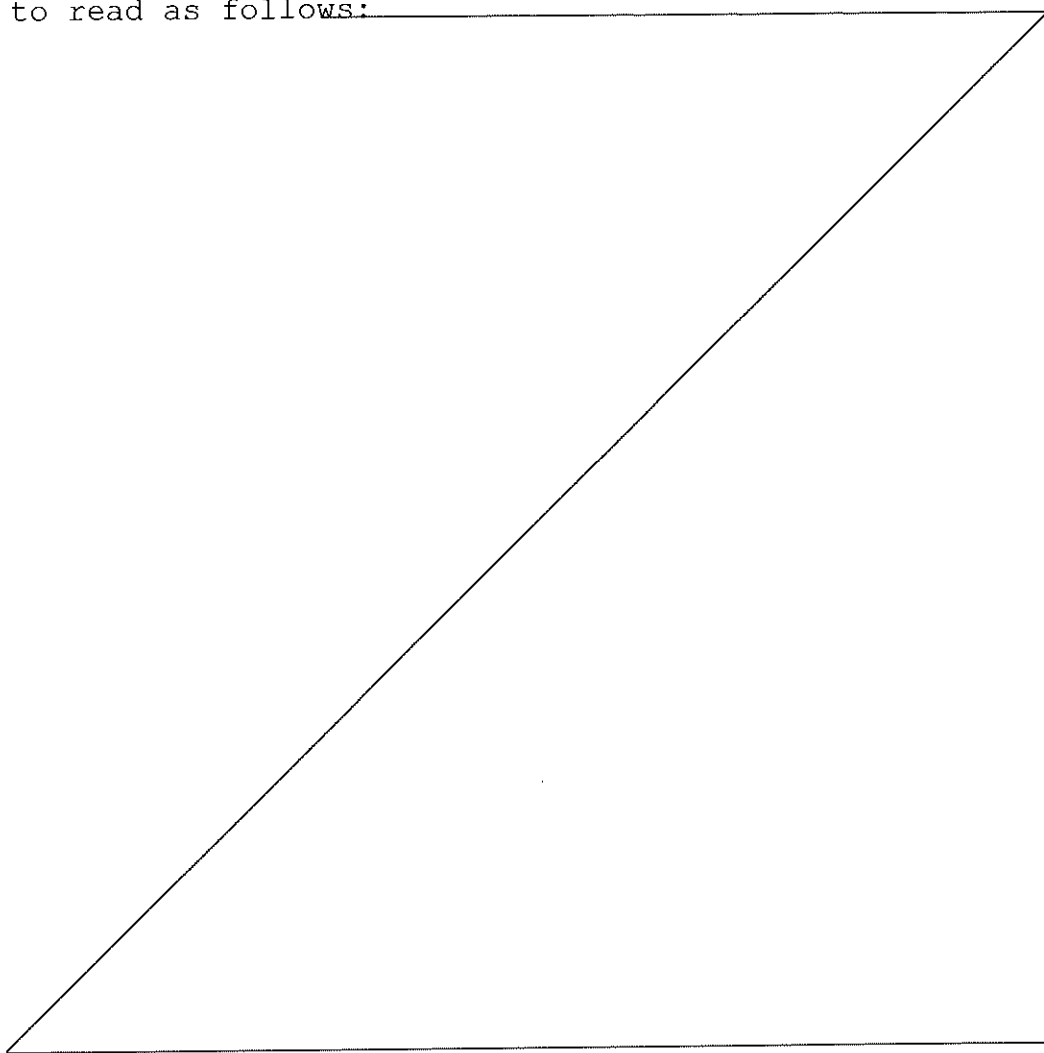
Attachment

DEPARTMENT OF AGRICULTURE

Adoption of Chapter 4-161
Hawaii Administrative Rules

September 22, 2020

1. Chapter 4-161, Hawaii Administrative Rules, entitled "HEMP PRODUCTION INTERIM RULES," is adopted to read as follows:



HAWAII ADMINISTRATIVE RULES

TITLE 4

DEPARTMENT OF AGRICULTURE

SUBTITLE 7

QUALITY ASSURANCE DIVISION

CHAPTER 161

HEMP PRODUCTION INTERIM RULES

§4-161-1	Definitions
§4-161-2	Transportation
§4-161-3	Nuisance
§4-161-4	Inspection
§4-161-5	Violations/Penalties

§4-161-1 Definitions. As used in this chapter:

"Board" means the board of agriculture or the board's designee.

"Cannabis" means the genus of flowering plants in the family Cannabaceae. For the purposes of this chapter, cannabis means any form of the plant where the delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.

"Chairperson" means the chairperson of the Hawaii Board of Agriculture.

"Decarboxylated" means the completion of the chemical reaction that converts delta-9 tetrahydrocannabinol's acids (THCA) into delta-9 tetrahydrocannabinol. The decarboxylated value may be calculated using a conversion formula that sums delta-9 tetrahydrocannabinol and eighty-seven and seven tenths (87.7) per cent of THCA.

"Delta-9 tetrahydrocannabinol" or "THC" is the primary psychoactive component of cannabis.

"Department" means the department of agriculture.

"Dry weight basis" means the method of determining the percentage of a chemical in a

substance after removing the moisture from the substance.

"Dwelling unit" means a structure which is intended to be used primarily as a place of residence, meets all applicable zoning and building code requirements, and which is one among several individual residences within a single larger structure which has a solid base, exterior walls that encircle the entire structure on all sides, and a roof that protects the interior units from the elements of the weather.

"Entity" means a firm, corporation, foundation, organization, business trust, estate, limited liability company, licensed corporation, trust, partnership, limited liability partnership, association, or other form of legal business entity, as well as a state or local government entity.

"Export" means shipment to any point outside of the State.

"Grow area" means the area authorized to be utilized for hemp production under a license issued by the Secretary of the United States Department of Agriculture pursuant to title 7 United States Code section 1639q.

"Harvest" means the termination of the cultivation process at a grow area for usage rather than disposal.

"Hemp" means cannabis and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol concentration of not more than 0.3 per cent on a dry weight basis, as measured post-decarboxylation or by other similarly reliable method. "Hemp" as used in this chapter does not include hemp products.

"Hemp product" shall have the same meaning as in chapter 328, Hawaii Revised Statutes.

"House" means a structure intended to be used primarily as a place of residence and which meets all applicable zoning and building code requirements. It must have a solid floor, rigid exterior walls that

encircle the entire structure on all sides, and a roof that protects the interior from the elements of the weather.

"Licensee" means a person or entity that has obtained a license to produce hemp in the state of Hawaii, issued by the Secretary of the United States Department of Agriculture pursuant to title 7 United States Code section 1639q.

"Law enforcement" means any federal, state, or local law enforcement agency or drug suppression unit.

"Person" means an individual.

"Playground" means any public outdoor facility, including any parking lot appurtenant thereto, that is intended for recreation, with any portion thereof containing three or more separate apparatus intended for the recreation of children, including but not limited to sliding boards, swing sets, and teeterboards.

"Post-decarboxylation" means testing methodologies for THC concentration levels in hemp, where the total potential delta-9-tetrahydrocannabinol content, derived from the sum of the THC and THCA content, is determined and reported on a dry weight basis.

"Processor" means a person or entity with a valid certificate of registration issued by the department of health allowing them to legally process hemp to manufacture a hemp product in the state.

"Produce" or "production" refers to the propagation or cultivation of hemp.

"Residential structure" means a structure that contains one or more individual dwelling units intended for usage as a residence, and which meets all applicable zoning and building code requirements. Residential apartment shall have the same meaning as residential structure.

"School" means any public or private preschool, kindergarten, elementary, intermediate, middle, secondary, high school, or university.

"State" means the State of Hawaii.

"USDA" means the United States Department of Agriculture.

§4-161-2 Transportation. (a) The reporting requirements of this section apply to:

- (1) Harvested hemp flowers and leaves in their raw botanical form, whether wet or dried, which were produced in state by a licensee; and
- (2) Living hemp plants or plant parts which can be used to propagate a new plant, and viable hemp seeds which were produced in state by a licensee.

(b) The reporting requirements of this section do not apply to:

- (1) Mature stalks or mature stalk material if the stalk material has been stripped of leaves and flowers with only a de minimus amount of leaves and floral material remaining attached;
- (2) Sterilized hemp seed incapable of germination;
- (3) Rhetted hemp fiber; or
- (4) Hemp products.

(c) Hemp in the forms specified in subsection (a) shall not be transported outside of a licensed grow area except by a person or entity that holds a license to produce hemp issued by the USDA.

(d) A person or entity that has a license to produce hemp issued by the USDA may transport hemp in the forms specified in subsection (a) outside of a licensed grow area, provided that:

- (1) The hemp is transported to an authorized processor within the state;
- (2) The hemp is transported to a licensed grow area within the state; or
- (3) The hemp is exported.

(e) Any hemp to be transported shall have passed all compliance testing required by the USDA and comply with all other applicable state or federal laws or regulations, including those found in chapter 4-72, Hawaii Administrative Rules.

(f) Any hemp to be exported shall comply with all applicable state or federal laws and regulations

relating to exportation, including the laws of the state or country that the hemp is being exported to.

(g) No hemp in the forms specified in subsection (a) shall be transported outside of a licensed grow area unless a licensee files a transportation report with the department at least three business days prior to the intended transportation date.

(h) The transportation report shall be in a form and submitted in a manner prescribed by the department and shall contain the following:

- (1) The licensee's name and USDA hemp producer license number;
- (2) Date of transportation;
- (3) Method of transportation;
- (4) Identification of the person transporting the hemp;
- (5) Address of the grow area that the hemp is to be removed from;
- (6) Address the hemp is to be transported to with contact information for recipient;
- (7) Kind and quantity of packages, or if in bulk the total quantity of hemp to be transported;
- (8) Documentation confirming the specific hemp to be transported has passed all compliance testing required by the USDA; and
- (9) Any additional information or documentation required by the department or law enforcement.

(i) During any transportation of hemp, the licensee or employee of the licensee shall carry with them a copy of the transportation report, the licensee's USDA hemp production license, and any other documentation required to be included with the transportation report by the department or law enforcement.

(j) Licensees shall complete and submit to the department all required reports and statements relative to the licensee's transportation of hemp at least three business days prior to the intended transportation date. A failure to timely complete and

submit any required report may result in the penalties set forth in section 4-161-5.

(k) Licensees shall allow the department or law enforcement to inspect and sample harvested hemp cargoes prior to and during transport, including at ports of origin or arrival.

(l) Licensees shall comply with any direction of the chairperson with respect to the transportation of hemp when the circumstances require. [Eff: Upon approval] (Auth: Act 014 SLH 2020)

§4-161-3 Nuisance. (a) Hemp shall not be grown within 500 feet of a preexisting playground, childcare facility, or school; provided that this restriction shall not apply to a person or entity:

- (1) That was licensed to grow hemp under the state industrial hemp pilot program prior to August 27, 2020;
- (2) Whose licensed area to grow hemp under the state industrial hemp pilot program is within 500 feet of a preexisting playground, childcare facility, or school; and
- (3) Who is growing hemp under a license to produce hemp issued by the USDA in the same area approved under their industrial hemp pilot program license that is within 500 feet of real property with a preexisting playground, childcare facility, or school.

(b) Hemp shall not be grown within 500 feet of any pre-existing house, dwelling unit, residential apartment, or other residential structure that is not owned or controlled by the licensee; provided that this restriction shall not apply to a person or entity:

- (1) That was licensed to grow hemp under the state industrial hemp pilot program prior to August 27, 2020;
- (2) Whose licensed area to grow hemp under the State industrial hemp pilot program is within 500 feet of any pre-existing house, dwelling unit, residential apartment, or

other residential structure that is not owned or controlled by the license; and

- (3) Who is growing hemp under a license to produce hemp issued by the USDA in the same area approved under their industrial hemp pilot program license that is within 500 feet of any pre-existing house, dwelling unit, residential apartment, or other residential structure that is not owned or controlled by the license.

(c) Hemp shall not be grown in any house, dwelling unit, residential apartment, or other residential structure.

(d) Hemp shall not be grown outside of a state agricultural district.

(e) Licensees shall comply with all applicable regulations, including nuisance regulations, environmental regulations, and county land usage ordinances.

(f) Upon notice from the regulatory agency with primary enforcement authority over nuisance, environmental, or land usage regulations, as applicable, that a licensee who was previously licensed to grow hemp under the state industrial hemp pilot program is not in compliance with nuisance, environmental, or land usage regulations, the department may issue a notice of violation and assess fines for the violation in accordance with section 4-161-5.[Eff: Upon approval] (Auth: Act 014 SLH 2020)

§4-161-4 Inspection. (a) All licensees shall allow federal, state, and county law enforcement authorities to inspect the records, growing area, equipment, facilities, and areas incident to the production or transportation of hemp to verify compliance with the requirements of this chapter.

(b) The department, law enforcement, and third party agents authorized by the department may enter during business hours upon any growing area or place of business associated with a licensee to inspect the records, growing area, equipment, facilities, and areas incident to the production and transportation of

hemp to ensure compliance with the requirements of this chapter.

(c) An authorized representative of the licensee or the licensee shall be present during the inspection.

(d) Licensees shall pay the department or third-parties authorized by the department a fee of \$50 an hour plus mileage for the performance of inspections to ensure compliance with section 3 of Act 14, Session Laws of Hawaii 2020, and the purposes of this chapter. [Eff: Upon approval] (Auth: Act 014 SLH 2020)

§4-161-5 Violations and Penalties. (a) For any violation of this chapter or section 3 of Act 14, Session Laws of Hawaii 2020, the department may impose civil penalties up to \$10,000.00 and disciplinary sanctions, including denying or suspending any transportation, and issuing cease and desist orders.

(b) In addition to other violations of this chapter or section 3 of Act 14, Session Laws of Hawaii 2020. The following acts and omissions by any licensee or authorized representative thereof constitute violations:

- (1) Refusal or failure by a licensee or authorized representative to fully cooperate with the department or law enforcement regarding any inspection or sampling;
- (2) Failure to provide any information required or requested by the department for the purposes of this chapter; or
- (3) Providing false, misleading, or incorrect information to the department by any means, including but not limited to information provided in any form, report, record, or inspection required or maintained pursuant to this chapter. [Eff: Upon approval] (Auth: Act 014 SLH 2020)

2. The adoption of chapter 4-161, Hawaii Administrative Rules, shall take effect upon board approval.

I certify that the foregoing are copies of the
rules, which were adopted on _____.

PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

APPROVED AS TO FORM:

Deputy Attorney General