

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESOURCE MANAGEMENT DIVISION
HONOLULU, HAWAII 96814

June 27, 2023

Board of Agriculture
Honolulu, Hawaii

Subject: REQUEST FOR APPROVAL FOR THE TRANSFER OF PUBLIC LANDS FROM THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO THE DEPARTMENT OF AGRICULTURE, PURSUANT TO ACT 90, SLH 2003, CODIFIED AS CHAPTER 166E, HAWAII REVISED STATUTES; TMK NOS.: (3) 9-8-001:003, 006, and 013; (3) 9-6-011:002; (3) 9-8-001:011 and 012; (3) 9-8-001:009, and 010; (3) 4-4-014:002, 003, and 011; ISLAND OF HAWAII

Authority: Section 166E-3, Hawaii Revised Statutes (“HRS”)

BACKGROUND:

Act 90, Sessions Laws of Hawaii (“SLH”) 2003 established the Non-Agricultural Park Lands Program within the Hawaii Department of Agriculture (“HDOA”), and was codified as Chapter 166E, HRS. Under this program, the Legislature found that certain public lands classified for agricultural use by the Department of Land and Natural Resources (“DLNR”) should be transferred to the HDOA for purposes and in a manner consistent with Article XI, Section 10, of the State Constitution.

The purpose of this chapter is to ensure the long-term productive use of public lands leased or available to be leased by the DLNR for agricultural purposes by allowing these lands to be transferred to the HDOA for leasing and management.

In accordance with provisions of Act 90, SLH 2003, the Board of Agriculture (BOA) must mutually approve of the selected encumbrances for transfer. On the Hawaii Island, staff verified compliance of four (4) encumbrances for approval by BOA as listed below.

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<u>Doc. No.</u>	<u>Lessee</u>	<u>Tax Map Key (TMK)</u>	<u>Character of Use</u>	<u>Leased Area (Acreage)</u>
rp7637	KAPAPALA RANCH	(3) 9-8-001:003, 006, and 013;	Pasture	7,273.08
rp7758	KAPAPALA RANCH	(3) 9-6-011:002, (3) 9-8-001:011 and 012	Pasture	942.00
gl5374	KAPAPALA RANCH	(3) 9-8-001:009 and 010	Pasture	22,684.17
gl4475	K.K. RANCH INC.	(3) 4-4-014:002, 003, and 011	Pasture	5,105.79

RECOMMENDATION:

Staff has reviewed the list of proposed encumbrances and performed its due diligence and recommends that the Board approve the transfer of the four (4) encumbrances on Hawaii Island as listed above.

Respectfully submitted,



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

APPROVED FOR SUBMISSION



SHARON HURD
Chairperson, Board of Agriculture

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

June 27, 2023

Board of Agriculture
Honolulu, Hawaii

Subject: REQUEST FOR APPROVAL TO AWARD LEASES TO VARIOUS AWARDEES AND BACK-UP POSITIONS; TMK NOS. (1) 4-1-035:014, (3) 1-5-116:003, 007, 062, AND (3) 2-2-056:033, ISLANDS OF OAHU AND HAWAII

Authority: Sections 166-6 and 7, Hawaii Revised Statutes (HRS), and Sections 4-153-19, Hawaii Administrative Rules (HAR)

Tax Map Key: (1) 4-1-035:014 (Waimanalo Agricultural Park, lot 14, Island of Oahu)
(3) 1-5-116:003 (Pahoa Agricultural Park, lot 3, Island of Hawaii)
(3) 1-5-116:007 (Pahoa Agricultural Park, lot 7, Island of Hawaii)
(3) 1-5-116:062 (Pahoa Agricultural Park, lot 62, Island of Hawaii)
(3) 2-2-056:033 (Panaewa Agricultural Park, lot 7, Island of Hawaii)

Land Area: (1) 4-1-035:014 4.665 gross acres
(3) 1-5-116:003 10.000 gross acres
(3) 1-5-116:007 10.000 gross acres
(3) 1-5-006:062 13.428 gross acres
(3) 2-2-056:033 10.170 gross acres

Land Status: Properties set aside to the Department of Agriculture (DOA) by various Governor's Executive Orders

Lease Term: 35 years each, commencing upon the completion of pre-requisite requirements

Base Annual Rental: Various - per qualified applicant bid

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

Character of Use: Diversified agriculture

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BACKGROUND:

The Agricultural Resource Management Division (ARMD) received the Panaewa Agricultural Park and Pahoia Agricultural Park from the Department of Land and Natural Resources (DLNR) via Governor's Executive Order Nos. 3378 and 3380, respectively, dated February 26, 1988. ARMD received the Waimanalo Agricultural Park from DLNR via Governor's Executive Order No. 3464 dated August 22, 1990.

In accordance with §166-6 and 7, HRS, and §4-153-22, HAR, a public notice of disposition was published on February 3, 2023, making available for lease twelve (12) parcels. The division received a total of thirteen (13) applications for the vacant parcels, of which eight (8) applicants qualified to submit bid proposals in accordance with the rules. Pursuant to §4-153-1 and 13, HAR, staff has determined that each applicant qualifies as a bona fide farmer with more than two years of years of farming experience and meets eligibility residency requirements of the Agricultural Park Program.

Six applicants submitted bids for the parcels, two applicants bid on multiple parcels, and two applicants did not submit a bid. Exhibit "A", attached hereto, lists the applicants, their status and respective bids, and Exhibit "B" reflects the locations of the parcels.

In addition to the highest bid proposal, staff identified two backup bid proposals for the Waimanalo Agricultural Park lot 14 and one backup bid proposal for the Panaewa Agricultural Park lot 7. At its meeting held on May 27, 2014, the Board of Agriculture approved that staff may identify backup bid proposals.

There were no bids received for the Pahoia Agricultural Park lot numbers 1, 12, 13, 15, 17 18, and 20. Therefore, staff will retain these vacant parcels until the next notice of lease dispositions.

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EXHIBIT "A"

AGRICULTURAL PARK LANDS DISPOSITION - 2023

	Waimanalo Agricultural Park lot 14
<u>Applicant Name</u>	<u>TMK: (1)4-1-035:014 bid amount</u>
OCR Inc.	\$36,000.00 highest bid
Greenspace Hawaii Inc.	\$21,709.00 1st backup
Dana Daody Kiat-A Nan	\$15,013.00 2nd backup
	Pahoa Agricultural Park lot 1
<u>Applicant Name</u>	<u>TMK: (3)1-5-116:001 bid amount</u>
no bids	
	Pahoa Agricultural Park lot 3
<u>Applicant Name</u>	<u>TMK: (3)1-5-116:003 bid amount</u>
Plant Genesis Hawaii, LLC	\$1,150.00
	Pahoa Agricultural Park lot 7
<u>Applicant Name</u>	<u>TMK: (3)1-5-116:007 bid amount</u>
Plant Genesis Hawaii, LLC	\$1,150.00
	Pahoa Agricultural Park lot 12
<u>Applicant Name</u>	<u>TMK: (3)1-5-116:012 bid amount</u>
no bids	
	Pahoa Agricultural Park lot 13
<u>Applicant Name</u>	<u>TMK: (3)1-5-116:013 bid amount</u>
no bids	
	Pahoa Agricultural Park lot 15
<u>Applicant Name</u>	<u>TMK: (3)1-5-116:015 bid amount</u>
no bids	
	Pahoa Agricultural Park lot 17
<u>Applicant Name</u>	<u>TMK: (3)1-5-116:017 bid amount</u>
no bids	
	Pahoa Agricultural Park lot 18
<u>Applicant Name</u>	<u>TMK: (3)1-5-116:018 bid amount</u>
no bids	
	Pahoa Agricultural Park lot 20
<u>Applicant Name</u>	<u>TMK: (3)1-5-116:020 bid amount</u>
no bids	
	Pahoa Agricultural Park lot 62
<u>Applicant Name</u>	<u>TMK: (3)1-5-116:062 bid amount</u>
Fu Ye Sun	\$1,340.00 highest bid
	Panaewa Agricultural Park lot 7
<u>Applicant Name</u>	<u>TMK: (3) 2-2-056:033 bid amount</u>
Fu Ye Sun	\$8,510.00 highest bid
Christian Robinson	\$5,076.00 1st backup

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RECOMMENDATIONS:

That the Board of Agriculture approve:

1. Issuance of the appropriate Right-of-Entry document to the successful bidders for the lots in accordance with §4-153-19, HAR, and subsequently issue the appropriate general leases subject to the completion of lease pre-requisites.
2. Backup bid proposals per lot as alternatives in the event the highest bidders fail to complete the lease pre-requisites.

All related documents are subject to the review and 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.

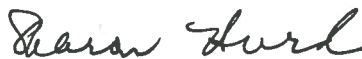
Respectfully submitted,



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

Attachments: Exhibits "A" and "B"

APPROVED FOR SUBMISSION:



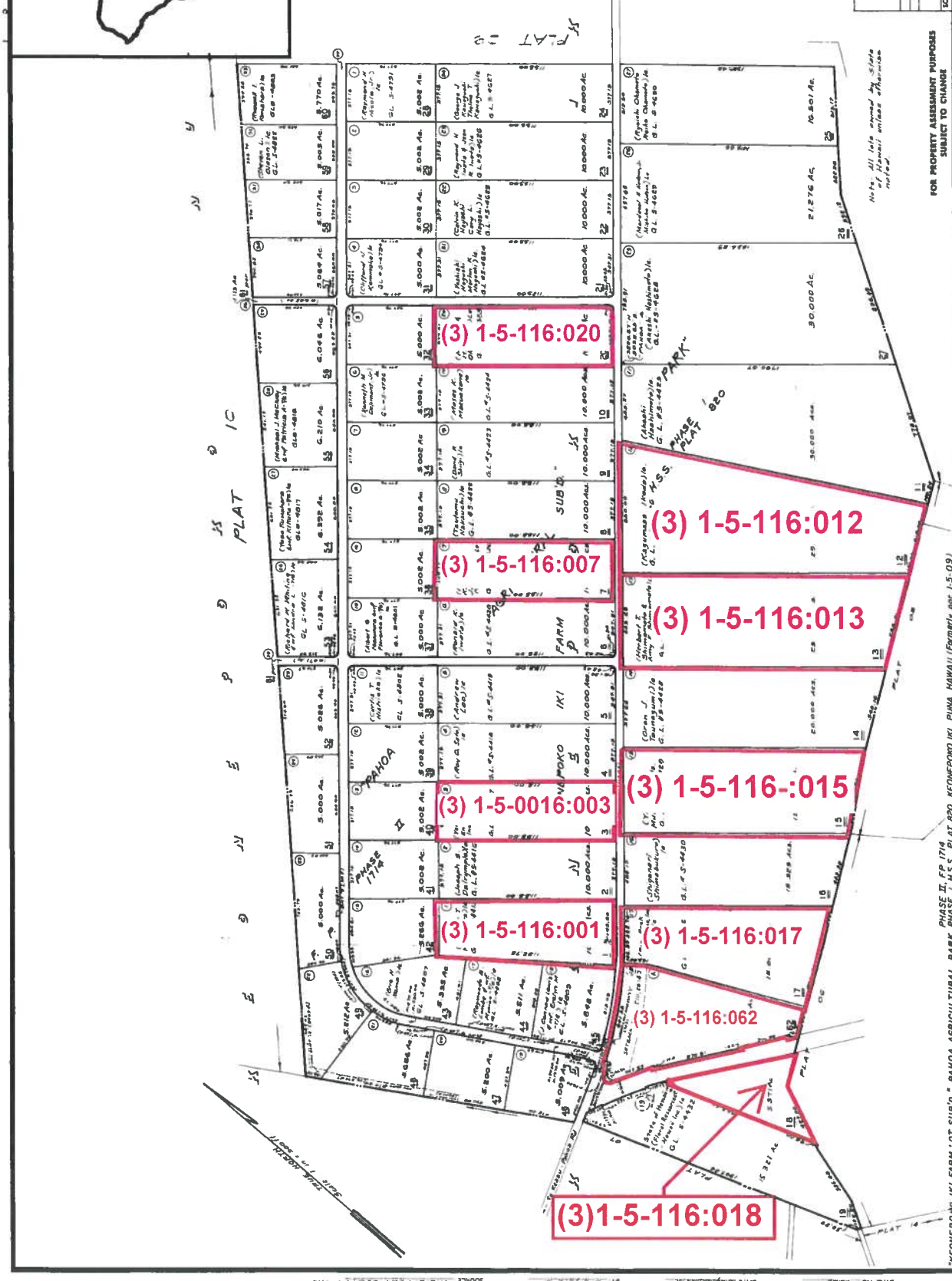
SHARON HURD
Chairperson, Board of Agriculture

AS

Pahoa Agricultural Park Island of Hawaii



DEPARTMENT OF TAXATION TAX MAPS BRANCH STATE OF HAWAII TAX MAP	
TERRITORY TAXATION DISTRICT	1 5 116
ZONE	SEC
SCALE 1 IN. = 300 FT.	



Note: All lots owned by State of Hawaii unless otherwise noted.

FOR PROPERTY ASSESSMENT PURPOSES
SUBJECT TO CHANGE

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

June 27, 2023

Board of Agriculture
Honolulu, Hawaii

Subject: REQUEST FOR CONVERSION OF GENERAL LEASE NO. S-5658 AND GENERAL LEASE NO. S-5168; AKAMAI LANDSCAPE & MAINTENANCE SERVICE, INC., LESSEE; TMK: (1) 4-1-027:011 and TMK: (1) 4-1-027:018, LOT 34 and LOT 32, WAIMANALO FARM LOTS, KOOLAUPOKO, WAIMANALO, ISLAND OF OAHU, HAWAII

Authority: Section 166E-4, Hawaii Revised Statutes (HRS), and Sections 4-158-8, Hawaii Administrative Rules (HAR)

Lessee: Akamai Landscape & Maintenance Service, Inc.

Land Area: S-5658: 9.565 gross acres
S-5168: 6.521 gross acres

Tax Map Key: S-5658: (1) 4-1-027:011 (see Exhibit "A")
S-5168: (1) 4-1-027:018 (see Exhibit "A")

Land Status: Encumbered by Governor's Executive Order No. 4239 to the Department of Agriculture (DOA) for non-agricultural park land purposes dated September 17, 2008

Lease Term: S-5658: 30 years; December 1, 2002 through December 30, 2032
S-5168: 35 years; April 14, 1998 through April 13, 2033

Annual Rental: S-5658: \$11,940 per year
S-5168: \$12,248 per year

Character of Use: S-5658: Intensive Agriculture
S-5168: Diversified Agriculture

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REMARKS:

General Lease No. S-5658 and General Lease No. S-5168 were awarded by the Board of Land and Natural Resources to Akamai Landscape & Maintenance Service, Inc. In 2008 the leases were transferred to the DOA via Governor's Executive Order for management purposes. The lessee has successfully provided high quality plants and trees for commercial landscape projects for sale primarily to landscape contractors.

The Lessee has requested a conversion of said leases in accordance with Section 4-158-8, HAR, to long-term leases of thirty-five (35) years for the initial lease terms for both leases, subject to the requirements of the administrative rules which are stated, in pertinent sections as follows:

The department shall:

- Require an appraisal of the parcels in accordance with Section 4-158-21, HAR;
- Impose other lease terms provisions, restrictions, and conditions as provided in this chapter as may be required to protect the State's interest; and
- Require the payment of annual lease rents by appraisal and a premium computed at twenty-five percent (25%) of the annual base rents for each year of the leases equal to the number of years that person occupied the land, but not to exceed seven (7) years

An appraisal will be ordered pursuant to Section 4-158-21, HAR, for the purpose of determining the fair market rental for the subject parcel. The new appraised annual rental for this lease shall be set for the first fifteen years of the term versus 1.5% of gross sales, whichever is greater. The appraised annual rental will be applied to the converted lease as of the date of commencement. Additionally, in accordance with the administrative rules, the Lessee will pay a premium equal to 25% of the rental for the new lease for a period of seven (7) years from the commencement of the converted term.

Further, the Board and Lessee mutually agree to cancel the existing General Lease Nos. S-5658 and S-5168 by executing Mutual Cancellations of existing General Lease Nos. S-5658 and S-5168 subject to execution of the converted general leases documenting the effective dates, so that only one lease is in full force and effect. Since the mutual cancellation of leases is agreed upon and executed by the parties and is not due to breach or default by Lessee, Lessee is eligible and qualified for the new general lease, in this respect only. All other eligibility terms must be met to the satisfaction of the Board.

RECOMMENDATION:

That the Board of Agriculture:

1. Approve Lessee's request to convert General Lease No. S-5658 and General Lease No. S-5168 to new Non-Agricultural Park Lands leases of thirty-five (35) years for the initial lease terms subject to the conversion provisions of Chapter 4-158-8, HAR.
2. Approve the Mutual Cancellations of General Leases No. S-5658 and General Lease No. S-5168, subject to the execution of the effective dates of the new general leases.

All documents are subject to review and 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,



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

Attachment – Exhibit “A” map
Exhibit “B” pictures

APPROVED FOR SUBMISSION

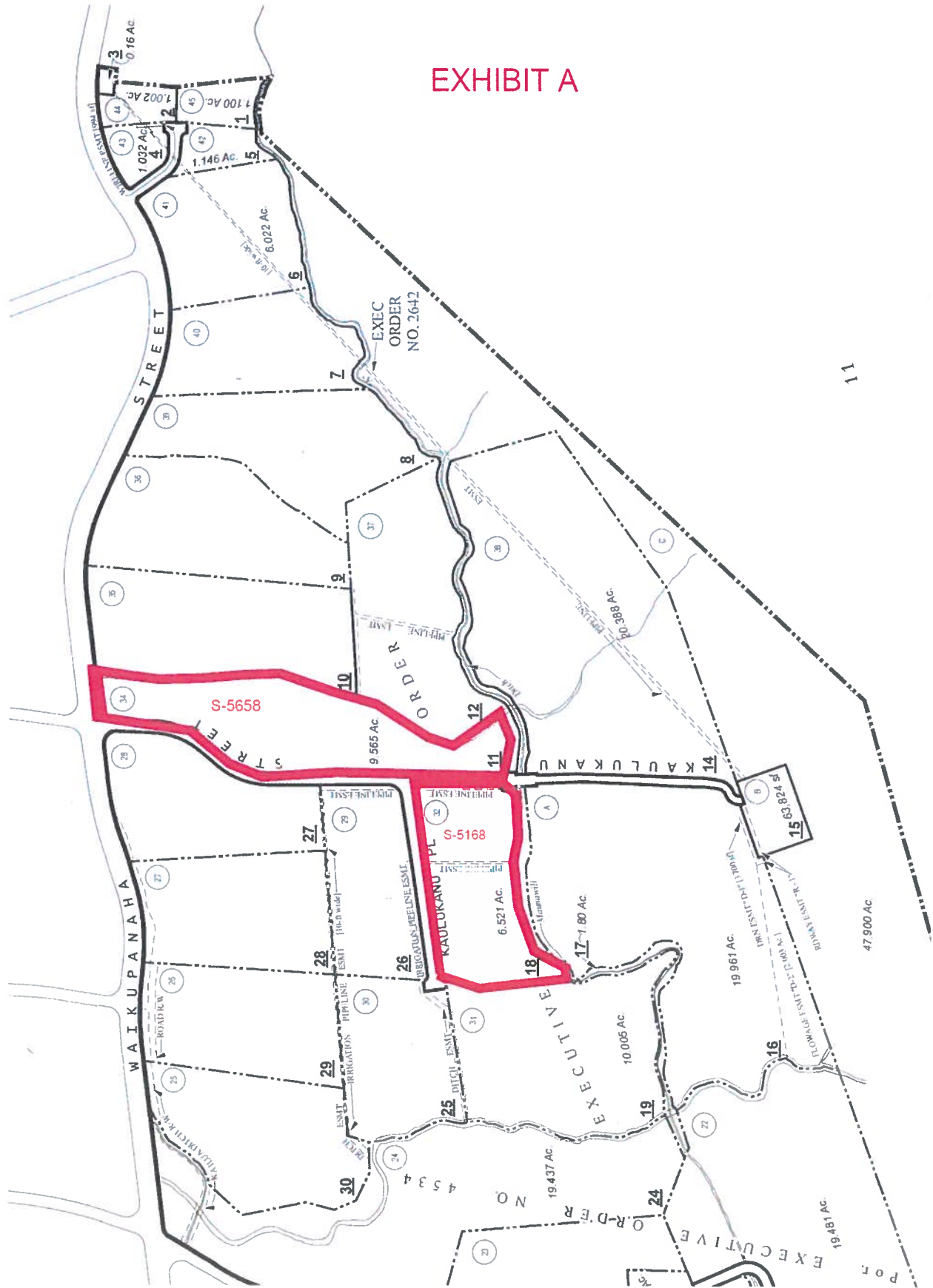


SHARON HURD
Chairperson, Board of Agriculture

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EXHIBIT A



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EXHIBIT B

S-5658



S-5168



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

June 27, 2023

Board of Agriculture
Honolulu, Hawaii

Subject: RESUBMITTAL - REQUEST FOR CONSENT TO AMEND
GENERAL LEASE NO. S-3138; HAWAII LAND &
LIVESTOCK, LLC, LESSEE; TMK: (1) 9-1-031:001,
HONOULIULI, EWA, ISLAND OF OAHU, HAWAII

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

Lessee: Hawaii Land & Livestock, LLC

Land Area: 110.016 acres

Tax Map Key: (1) 9-1-031:001 (see Exhibit "A")

Land Status: Encumbered by Governor's Executive Order No. 4584 to the
Department of Agriculture for agricultural park land purposes
dated May 15, 2019

Lease Term: January 1, 2020 through December 31, 2055

Current Rent: \$18,300.00 per year until the rental reopening on 1/1/2035

Permitted Use: Diversified Agriculture including feed lot purposes

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BACKGROUND:

General Lease No. S-3138 (the Lease) was awarded by direct negotiation to Hawaii Land & Livestock, LLC (HLL) commencing January 1, 2020 for diversified agricultural, which included feedlot use. The HLL parcels are located adjacent to each other and the feedlot parcel supports the harvest facility and is also crucial for water allocation purposes. The harvest facility is the only USDA certified facility on Oahu.

HLL is requesting an amendment to paragraph 7 of the Lease to provide an additional three years to complete development of the parcel pursuant to a revised Plan of Utilization (PUD) to be approved by the Department of Agriculture.

Approximately two months after the Lease was executed, the negative impacts of the COVID-19 pandemic drastically altered daily life activities worldwide. In the State of Hawaii, Federal and State government COVID-19 restrictions and regulations forced the closures of schools, restaurants, retail stores, other business establishments. These new government restrictions severely impacted businesses and forced owners to redirect their priorities to remain profitable. Many of the businesses who survived the several years of the pandemic shut down, used alternative business practices that aided in their financial survival.

Since the Lease commencement date of January 1, 2020, HLL also had to pivot and find resourceful ways to continue business endeavors to remain viable as a business entity. HLL encountered the following obstacles that have impeded their efforts in the development of the feedlot, in accordance with their current lease agreement.

1. Due to the impact of the COVID pandemic government restrictions, HLL had to redirect and reorganize business priorities away from the feedlot and postpone its development schedule. All HLL finances and efforts were then focused on (1) increasing the harvesting and processing operations located on the adjacent harvest facility lot, under General Lease No. S-8500, to benefit the public need for food and (2) keeping its employees safe. HLL believed that the development of its new project, the Feedlot, was not wise with all the uncertainty in the marketplace at that time. Ramping up the harvest facility operations were essential to the public food supply and supporting the ranching community in Hawaii. The Hawaii Cattle Industry, with guidance from Hawaii Cattlemen's Council, requested that HLL focus on the expansion of the harvest and processing build out area. During this pandemic period, the community voiced concerns on the shortage of critical food supply chains and it was imperative that Hawaii food producers needed to get local products out to the community, due to the high dependence of imported food products. The harvest facility doubled its harvest numbers to feed the public and help maintain income for the ranchers of the Hawaii cattle industry.

2. COVID-19 government restrictions on transportation and shipping limited the amount of available cattle feed to support a feeding operation for cattle. Hawaii is heavily dependent on imported livestock feed for its animals. Additionally, these restrictions halted the shipment of calves to the mainland which ranchers depend on as a primary source of income, therefore increasing the need for local slaughter of the mature animals. Due to these restrictions, HLL prioritized local slaughter initiatives to ensure the livelihood of the cattle industry.
3. When HLL was informed of DLNR's interest in developing an agreement with a solar energy company (Eurus Energy) to lease portions of the feedlot, HLL cautiously halted development in fears that the lease could be cancelled.

During this initial process, HLL has informed the DOA about the various obstacles that delayed the development of the feedlot.

In 2022, HLL felt confident to move forward with developing the feedlot with revised plans to bring the property back to a prosperous agricultural site. HLL had the property surveyed and commenced with clearing the premises of invasive vegetation, abandoned derelict vehicles and heavy equipment, rusting metal from the previous feedlot use, and various other debris that had accumulated during its many years of remaining vacant. Approximately 60% of the premises has been cleared. HLL has submitted an updated plan of utilization and development (PUD) to utilize the premises more efficiently for various agricultural activities, taking into consideration lessons learned as a result of the COVID-19 public health crisis.

During the COVID-19 public health crisis the harvest facility significantly increased its output capacity to meet the demand for local products. This increased activity by the harvest facility impacted and required revisions to the planned use for the feed lot. It was calculated that portions of the entire 110 acres could be used for agricultural activities other than feedlot purposes. Consequently, HLL has submitted a revised PUD. In addition to cattle holding corrals, alternative agricultural activities will be developed to include farming of feed for livestock (Bana Grass and layered sprouted grains) and development of a hog harvesting facility to assist the struggling hog industry in Hawaii. Should the hog harvesting facility not receive adequate support, however, the backup plan is to expand the farming of livestock feed areas. The proposed activities of farming feed for livestock and development of the hog harvesting facility would both be documented through subleases, subject to approval by the BOA in separate submittals and subject to approval of this request to amend the lease. Any change in use may not violate DLNR's right to utilize the parcel for solar power.

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The COVID-19 pandemic has severely impacted businesses in Hawaii, resulting in development setbacks and requiring revisions to operations to survive and move forward towards success. HLL has had to reorganize and redirect the focus of its business operations resulting in delays related to development of the feedlot as originally planned. Staff believes there have been reasons for the delay in development outside the control of HLL, that HLL has made good faith efforts to begin development, and that HLL has a practical plan to complete development within a reasonable period.

Since commencement of the Lease, routine site visits to monitor lease compliance issues were performed. On August 5, 2020, a written request from HLL was received to allow a portion of the premises on which to keep trucks, equipment, tools and parts needed to support the Harvesting Facility operations and ongoing renovations by the operator, American Hauling. This request is consistent with commercial agricultural businesses that require such support for their operations. DOA's smaller agricultural businesses of 3 to 10 acres have at least one or more heavy equipment vehicles and trucks to support their operations. DOA issued a conditional letter approval, dated September 17, 2020, for such use reserving the right to demand that the bone yard be removed from the premises. On February 11, 2022, a site visit was performed during which staff noted the operator had abused the agreement as the bone yard area had expanded beyond the originally agreed upon area, and staff issued a written warning to HLL to reduce the equipment and materials stored at the bone yard. Monthly site visits by staff revealed minimal reduction of the area, and DOA immediately issued written demand to HLL to remove the bone yard completely. HLL immediately issued written notice to the bone yard operator to vacate the premises. As of April 1, 2023, since the operator had not vacated the premises, HLL filed a legal complaint for Ejectment & Damages to the operator. HLL has made its best efforts by promptly, consistently, and appropriately responding to compliance issues raised by the Lessor, therefore, staff is comfortable recommending that the Board approve amending the Lease as requested.

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RECOMMENDATION:

That the Board of Agriculture approve amending General Lease No. S-3138, Hawaii Land & Livestock, LLC, Lessee, Paragraph 7. Utilization and development of the demised premises, due to extenuating circumstances that prevented the Lessee from performing in accordance with the original lease provisions, as follows:

7. Utilization and development of the demised premises. The development of the demised premises shall be completed within six years from the commencement date of this lease, in accordance with a Plan of Utilization and Development (P.U.D.) and schedule therein which shall be prepared by the Lessee and approved by the Department of Agriculture before the execution of this lease. Any modification or deviation from the plan or the schedule, without the prior written approval of the Department of Agriculture, may constitute a breach of this lease and cause for the termination thereof. Agricultural activity modifications and deviations from the plan may be made by the Lessee provided that such modifications and deviations are within the definition of Diversified Agriculture and in compliance with the provisions of the Lease.

All documents shall be subject to review and approval as to form by the Department of the Attorney General.

Respectfully submitted,



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

Attachment – Exhibit “A”

APPROVED FOR SUBMISSION

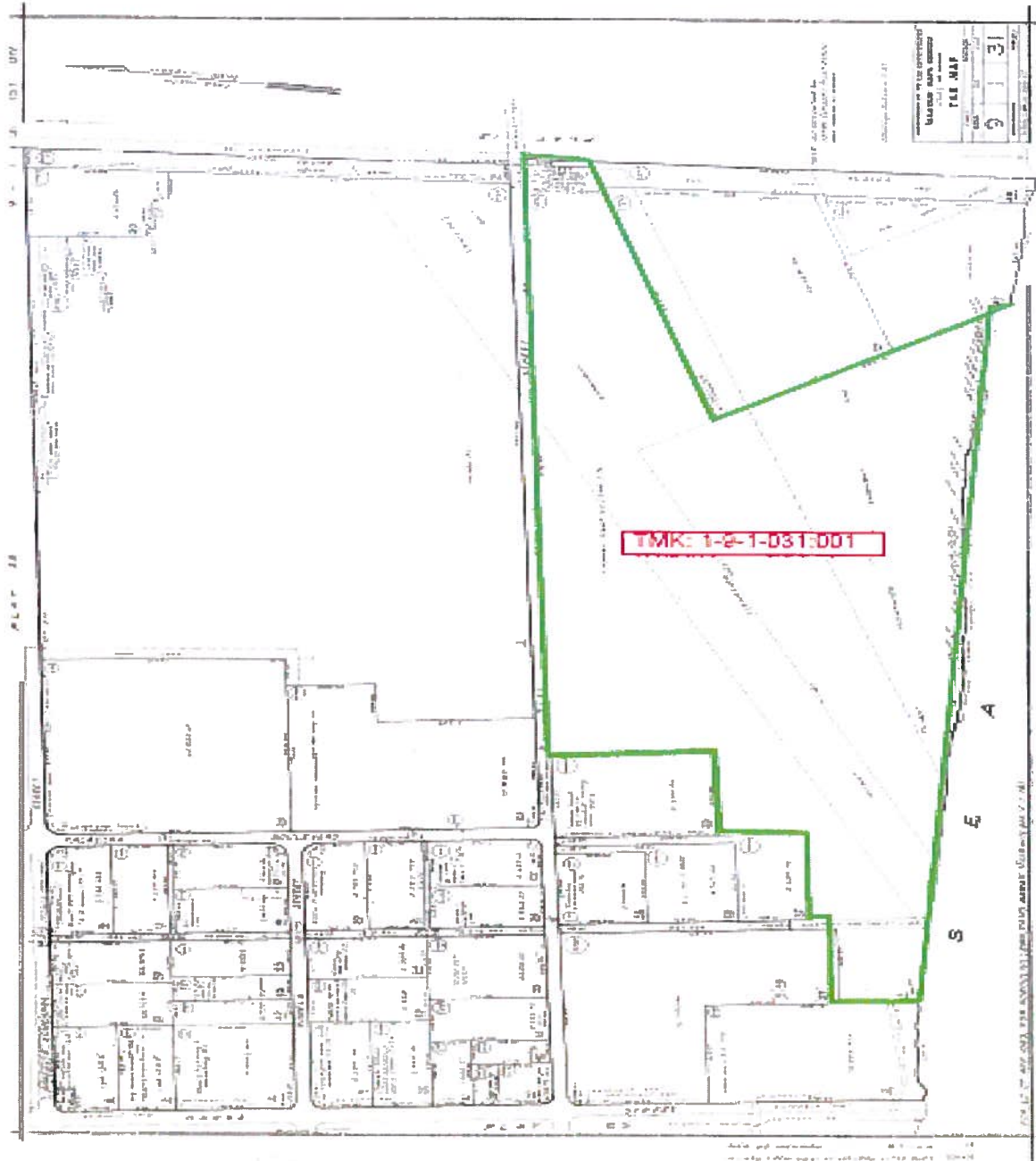


SHARON HURD
Chairperson, Board of Agriculture

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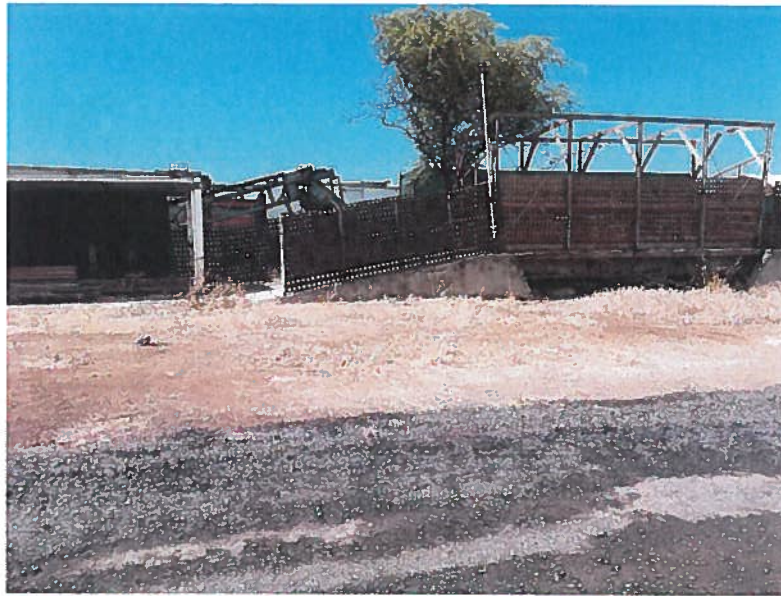
EXHIBIT "A"





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

June 27, 2023

Board of Agriculture
Honolulu, Hawaii

Subject: RESUBMITTAL - REQUEST TO 1) TERMINATE GENERAL LEASE NO. S-9001, JANE KELLY LAVOIE, LESSEE; ISSUE CANCELLATION DOCUMENT, AND DISPOSITION OF LOT; AND (2) RESCIND APPROVAL OF FARM DWELLING; TMK: (2) 5-2-001:011, LOT NO. 2, MOLOKAI AGRICULTURAL PARK, HOOLEHUA, ISLAND OF MOLOKAI, HAWAII

Authority: Section 166-6(b), Hawaii Revised Statutes (HRS), and Sections 4-153-3(b)(3) and 34, Hawaii Administrative Rules (HAR)

Lessee: Jane Kelly Lavoie

Land Area: Approximately 25.304 acres

Tax Map Key: (2) 5-2-001:011 (Exhibit "A")

Land Status: Encumbered by Governor's Executive Order No. 3696 to the Department of Agriculture for agricultural park land purposes in 1996

Lease Term: 35 years, October 1, 1998 to September 3, 2033

Current Rent: \$1,900.00 per year

Character of Use: Diversified Agriculture

BACKGROUND:

General Lease No. S-9001 (the Lease) was originally awarded to Jerome J. Kennedy aka Joe Kennedy in 1998. At a meeting held on August 27, 2019, the Board approved an assignment of lease to Jane Lavoie who planned to produce lilikoi and asparagus. Lilikoi is used in her value-added product called Passion Pudding for which she has a patent.

The Lessee currently is in default with a lease rent balance due of \$4,378.00, owing delinquent real property taxes of \$4,466.85, as of this date, and expired general liability insurance coverage. Numerous notices have been sent to the Lessee demanding payment to remedy the delinquencies including issuance of monthly lease rent invoices showing accumulating balances due with interest fees. Letters demanding remedy of various lease violations have been sent. All efforts to work with the Lessee have been exhausted and no lease rent payments have been received from Ms. LaVoie since January 2021.

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Staff deems the Lessee to be in breach and default of this lease due to numerous violations of the lease. The account is uneconomical and impractical to remedy and collect and recommends referral of the account to the Office of the AG to expedite resolution of the outstanding lease rent balance due.

Additionally, Staff recommends rescinding prior Board approval of a farm dwelling on the premises that was granted at a meeting held on August 12, 2020. The lessee was to repair and renovate an existing, County permitted farm dwelling on the premises. It was reported by the Lessee's representative that, over time, illegal trespassers stripped the dwelling of all its exterior and interior doors, all windows including any frames, kitchen and bathroom fixtures, plumbing, etc. and anything that could be removed from the dwelling rendering it a safety hazard. The lessee will be required to demolish the dwelling.

RECOMMENDATIONS:

That the Board of Agriculture:

1. Approve the cancellation of General Lease S-9001, pursuant to Sections 4-153-3(b)(3) and 34, HAR, and cancellation of all right, title, and interest granted to the Lessee therein effective as of the date of approval of this submittal.
2. Authorize issuance of a lease cancellation document to be executed by the chairperson and recorded at the Bureau of Conveyances;
3. Rescind the prior Board approval of the farm dwelling at a meeting held on August 12, 2020;
4. Authorize staff to prepare TMK: (2) 5-2-001:011 for disposition by public notice, pursuant to Sections 4-153-19 and 22, HAR; and
5. Approve the request to refer General Lease No. S-9001 as a delinquent account to the Office of the Attorney General for review and disposition in accordance with Section 40-82, Hawaii Revised Statutes.

All documents are subject to the approval as to form by the Office 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 - Exhibits "A" and "B"
APPROVED FOR SUBMISSION:



Sharon Hurd
Chairperson, Board of Agriculture

A27

Exhibit "B"



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

June 27, 2023

Board of Agriculture
Honolulu, Hawaii

Subject: REQUEST FOR CONSENT TO ASSIGNMENT OF GENERAL LEASE NO. S-6013; NANCY OUPRAXAY, ANOURITH OUPRAXAY, AND RATSAMY LA OUPRAXAY, LESSEE/ASSIGNOR, TO MO BROS FARMS INC., ASSIGNEE; TMK: (1) 5-6-006:041, KAHUKU AGRICULTURAL PARK, LOT 13, KOOLAULO, KAHUKU, ISLAND OF OAHU, HAWAII

Authority: Sections 166-7 and 166-9, Hawaii Revised Statutes (HRS), and Sections 4-153-33(a)(6)(B) and (C), Hawaii Administrative Rules (HAR)

Lessee/Assignor: Nancy Oupraxay, Anourith Oupraxay, and Ratsamy La Oupraxay

Assignee: Mo Bros Farms Inc.

Land Area: 7.509 gross acres

Tax Map Key: (1) 5-6-006:041 (see Exhibit "A")

Land Status: Encumbered by Governor's Executive Order No. 3867 to the Department of Agriculture for Agricultural Park purposes in 2001

Annual Rental: \$3,060.00 per year

Character of Use: Diversified Agriculture

Lease Term: 45 years, April 1, 1999 through March 31, 2044

Consideration: \$320,000.00

REMARKS:

In 1999, General Lease No. S-6013 was awarded to Fongsamouth Oupraxay and Nancy Oupraxay, husband and wife, by the Board of Agriculture. Mr. and Mrs. Oupraxay developed their lot into a successful farm that produces banana, mango, coconut, dragon fruit, and bitter leaf. In 2013, Mr. Oupraxay passed away. In 2015, the lease was assigned to Nancy Oupraxay, Anourith Oupraxay and Ratsamy La Oupraxay, the son and daughter of Mr. and Mrs. Oupraxay.

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Board of Agriculture
June 27, 2023
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Due to declining health, Mrs. Oupraxay is physically unable to farm, and her children are not able to maintain the farm. She requests to assign General Lease No. S-6013 to Mo Bros Farm Inc., owned and operated by Gabriel Monaghan, pursuant to Sections 4-153-33(a)(6)(B) and (C), HAR.

Gabriel Monaghan worked on vegetable farms since 1999 cultivating lettuce. From 2017 to present Mr. Monaghan owns and operates Hoolono Inc., where he grows and processes crops and herbs to market value added products. Mr. Monaghan would like to expand his operations by growing noni, ginger, chili pepper, kava, and aloe on the subject farm lot. Mo Bros Farms Inc. qualifies as an agricultural corporation with at least 75 percent of its corporate members who qualify as bona fide farmer with more than two years of full-time farming experience and meets the eligibility requirements for Agricultural Parks pursuant to Sections 4-153-1 and 13, HAR.

The Assignee has agreed to pay the Assignor a consideration of \$320,000.00 for the assignment of leasehold. The sale includes an approved farm dwelling and inventory of mature trees and plants. In accordance with Paragraph 17. Assignments of lease, lease interest, etc., any net proceeds are subject to a premium percentage charge benefitting the Lessor. In this case, calculations in accordance with this provision net \$0.00 to the Lessor (see attached Exhibit "B").

RECOMMENDATION:

That the Board of Agriculture consent to the assignment of General Lease No. S-6013 from Nancy Oupraxay, Anourith Oupraxay and Ratsamy La Oupraxay, Lessee/Assignor, to Mo Bros Farms Inc., Assignee. All documents shall be subject to review and 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,



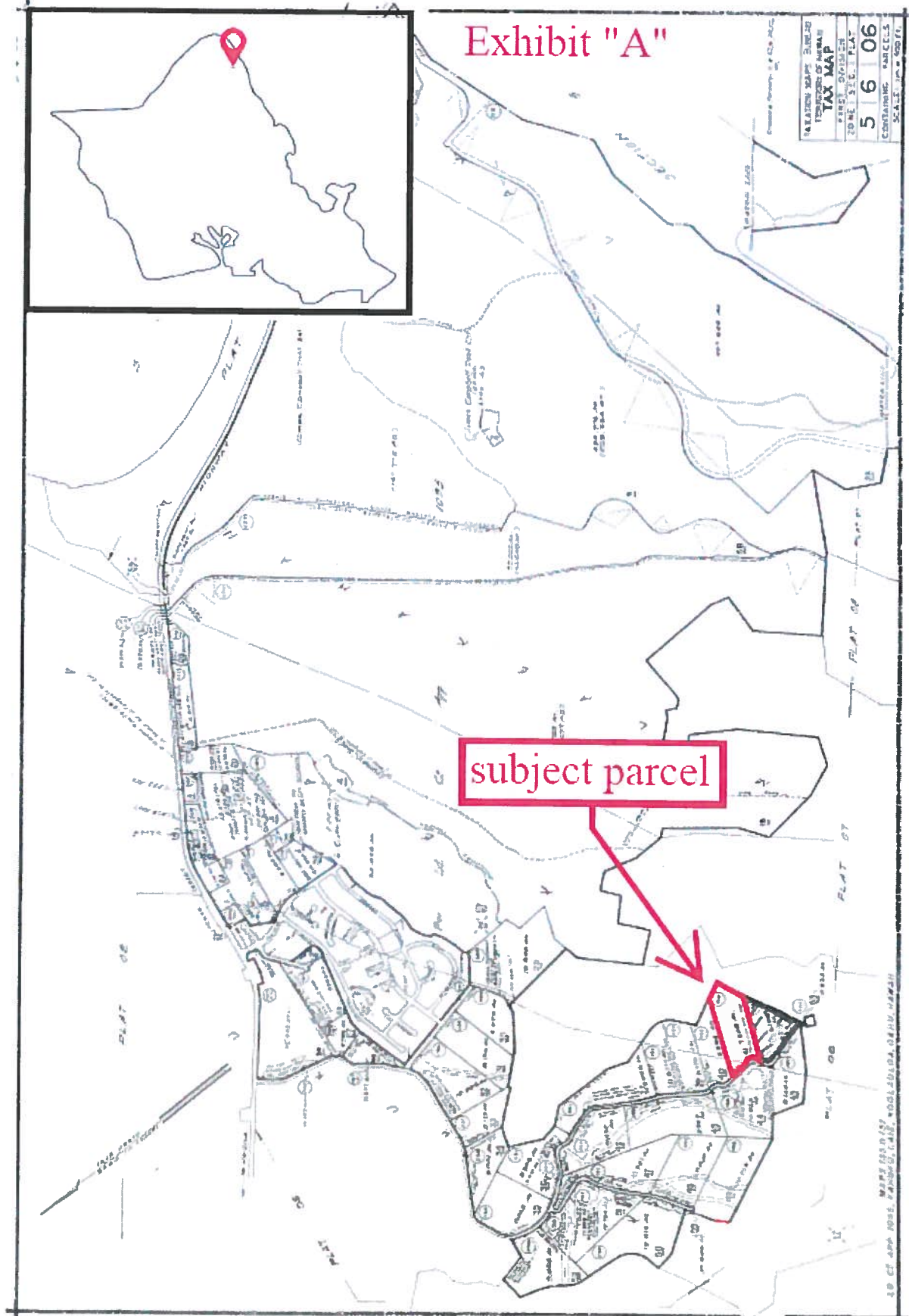
BRIAN KAU, P.E.
Administrator and Chief Engineer
Agricultural Resource Management Division

Attachments – Exhibits “A” and “B”

APPROVED FOR SUBMISSION:



SHARON HURD
Chairperson, Board of Agriculture



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EXHIBIT "B"
ASSIGNMENT OF LEASE CALCULATIONS FOR
GENERAL LEASE NO. S-6013

Adjusted Depreciation Cost of Improvements or Renovations

Actual Cost: \$275,000.00
CCI (most recent): 13288
CCI (base): 7308
Expired Term: 278
Whole Term: 540

1. Adjusted Cost of Improvements or Renovations:

Actual Cost x CCI (most recent)/CCI (Base)
CCI (recent) 13288
CCI (base) 7308
CCIR/CCIB 1.82

Actual Cost x CCI(R)/CCI(B) =
\$275,000.00 1.82 \$500,500.00

2. Depreciation:

Adjust. Cost Impr./Whole Term x Expired Term =
\$500,500.00 540 278 \$257,665.00

3. Adjusted Depreciated Cost of Improvements:

Adjust cost - Depreciated cost =
\$
500,500.00 \$ 257,665.00 \$ 242,835.00

1. TOTAL NET CONSIDERATION \$ 226,320.00
2. Adj Cost of Imp/Renov \$ 500,500.00
\$ 257,665.00 \$ 242,835.00
3. Adj. cost of Trade Fixtures \$ -
\$ -
4. Excess \$ (16,515.00)
5. Premium Percentage: 30% \$ (4,955.00)

Total \$
Consideration: 320,000.00
\$
Less: Inventory 93,680.00
\$
Net Consideration: 226,320.00

Photos



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Exhibit A – Honokaa-Paauilo, Acreage by Account FY2024

ACCT	ACRES	ACCT	ACRES	ACCT	ACRES	ACCT	ACRES
6801	7	6905	14	68680	4	7017	27
6803	10	6907	9	68690	5	7018	260
6804	7	6908	5	68790	3	7020	163
6810	2	6910	6	68910	15	7036	677
6812	2	6911	22	68930	16	7037	125
6813	5	6914	39	68990	3	7038	3
6822	11	6916	2	69311	3	7040	3
6823	20	6917	5	69331	10	7042	311
6824	5	6919	8	69341	5	7043	351
6830	14	6921	17	69360	4	7044	32
6832	6	6935	1	69371	7	7045	716
6833	5	6940	4	69380	2	7047	682
6835	3	6953	11	69410	2	7048	47
6837	4	6954	13	69581	11	7049	32
6841	3	6955	16	69640	13	7050	13
6845	7	6956	8	69650	8	7051	2
6851	5	6960	12	69661	10	7052	4
6853	5	6962	21	69760	10	7053	10
6855	5	6967	8	69830	8	7054	142
6857	5	6969	7	6821	14	7055	140
6859	5	6970	4	6818	9	7056	4
6861	2	6972	3	6819	9	7057	6
6862	4	6975	12	6909	9	7058	594
6863	5	6987	2	68091	5	7059	15
6864	5	6990	5	68381	6	7060	29
6865	5	6991	4	68461	12	7061	1
6867	5	6993	6	68981	6	7062	2
6868	3	6995	6	7000	15	7063	446
6870	5	6996	2	7001	141	7064	17
6871	4	6997	5	7002	625	7066	163
6873	5	6998	14	7005	60	7069	68
6874	5	6999	5	7006	21	7073	100

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Exhibit B – Kahuku, Acreage by Account FY2024

ACCT	ACRES
3501	15
3502	7
3503	7
3504	11
3505	4
3506	4
3507	9
3508	7
3509	9
3510	4
3511	4
3512	4
3513	6
3514	5
3515	2
3516	6
3517	8
3518	7
3519	8
3520	9
3521	6
3522	8
3523	8
3524	10
Total	168

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Exhibit C – Molokai, Acreage by Account FY2024

ACCT	ACRES	ACCT	ACRES	ACCT	ACRES	ACCT	ACRES
5000	3	5070	26	5148	16	5218	2
5001	3	5072	3	5150	2	5219	2
5002	9	5073	2	5151	3	5220	2
5003	5	5074	2	5152	25	5221	2
5004	4	5075	3	5153	30	5222	35
5005	2	5076	2	5155	2	5223	98
5006	110	5077	2	5156	2	5225	2
5007	92	5078	2	5157	2	5226	25
5010	4	5079	2	5159	2	5227	3
5011	2	5080	2	5161	5	5228	2
5012	35	5081	3	5162	2	5229	2
5013	3	5082	2	5163	2	5230	2
5014	2	5083	30	5164	4	5231	2
5015	2	5084	2	5165	28	5232	2
5016	2	5085	2	5166	3	5233	2
5017	2	5086	5	5167	2	5234	2
5018	2	5087	8	5168	2	5235	2
5020	2	5088	2	5169	35	5236	2
5021	2	5089	2	5170	10	5239	2
5022	5	5090	5	5171	27	5240	2
5023	2	5091	2	5172	3	5241	2
5024	26	5092	2	5174	45	5242	2
5025	2	5093	2	5175	2	5243	2
5026	2	5094	2	5177	3	5244	2
5027	2	5095	2	5178	148	5246	2
5028	3	5096	2	5179	2	5247	2
5029	2	5097	2	5180	4	5248	2
5030	2	5099	20	5181	5	5249	2
5031	2	5100	2	5182	2	5250	2
5032	4	5101	2	5183	3	5251	2
5033	2	5103	2	5184	2	5252	2
5034	2	5105	19	5185	2	5253	12

Exhibit C – Molokai, Acreage by Account FY2024

ACCT	ACRES	ACCT	ACRES	ACCT	ACRES	ACCT	ACRES
5035	7	5107	2	5186	8	5254	2
5036	2	5108	20	5187	7	5255	2
5038	10	5109	2	5188	30	5256	2
5039	2	5110	2	5189	50	5257	2
5040	5	5111	2	5190	90	5258	2
5041	15	5112	2	5192	314	5259	2
5043	3	5113	6	5193	2	5260	2
5044	30	5115	5	5194	2	5261	2
5045	11	5117	25	5195	2	5262	2
5047	2	5118	2	5196	2	5267	2
5048	3	5119	2	5197	2	5271	2
5049	95	5120	2	5198	3	5272	2
5050	46	5121	2	5199	2	5273	20
5051	30	5122	6	5200	2	5274	5
5052	2	5124	21	5201	2	5276	5
5053	2	5126	2	5202	2	5280	5
5055	3	5127	2	5203	377	5281	322
5056	2	5128	30	5204	2	5282	27
5057	23	5129	2	5205	2	5283	16
5058	2	5130	2	5206	2	5284	9
5059	29	5131	150	5207	2	5285	25
5060	39	5132	2	5208	2	5286	5
5061	30	5133	3	5209	2	5287	-
5062	30	5134	2	5210	2	5288	16
5063	2	5135	2	5211	25	51360	2
5064	5	5138	3	5212	2	51770	2
5065	2	5139	2	5213	2	52240	30
5066	3	5140	2	5214	2	Total	3,404
5067	2	5141	12	5215	2		
5068	3	5142	2	5216	2		
5069	22	5143	2	5217	2		

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Exhibit D – Waimanalo, Acreage by Account FY2024

ACCT	ACRES	ACCT	ACRES	ACCT	ACRES	ACCT	ACRES
2000	10	2054	9	2106	8	2162	2
2001	3	2055	4	2107	128	2163	3
2003	8	2057	3	2109	5	2164	5
2004	9	2058	6	2110	9	2165	3
2005	3	2060	5	2111	5	2167	2
2006	11	2061	2	2112	48	2170	0
2007	9	2062	2	2114	3	2171	0
2008	6	2064	9	2115	10	2172	2
2010	9	2065	5	2116	5	2173	3
2012	2	2068	9	2117	8	2180	9
2015	9	2069	2	2119	3	2182	8
2016	6	2070	4	2120	11	2183	9
2018	9	2072	2	2121	12	2184	4
2021	8	2073	3	2122	7	2186	6
2022	10	2074	8	2123	11	2187	2
2023	6	2075	9	2124	11	2188	3
2024	2	2076	2	2125	11	2189	7
2026	11	2079	9	2126	10	2190	10
2028	3	2081	5	2127	11	2192	3
2029	4	2082	14	2128	9	2193	2
2030	9	2083	4	2129	10	2196	2
2033	6	2084	4	2131	8	2198	2
2034	10	2085	11	2132	6	2199	2
2036	10	2088	6	2133	2	2200	10
2037	9	2089	7	2137	3	2201	2
2039	2	2090	8	2138	2	2203	2
2040	10	2091	9	2142	4	2204	3
2041	11	2092	9	2143	3	2205	5
2042	7	2093	5	2147	0	2207	2
2043	10	2094	2	2148	0	2208	3
2044	2	2095	4	2149	0	Total	975
2046	7	2096	3	2150	0		

Exhibit D – Waimanalo, Acreage by Account FY2024

ACCT	ACRES	ACCT	ACRES	ACCT	ACRES	ACCT	ACRES
2047	5	2097	5	2157	8		
2048	3	2098	10	2158	8		
2049	10	2102	5	2159	2		
2050	9	2104	2	2160	2		
2053	6	2105	4	2161	2		

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Exhibit E – Waimea, Acreage by Account FY2024

ACCT	ACRES	ACCT	ACRES	ACCT	ACRES	ACCT	ACRES
1000	8	1043	2	1090	2	1131	6
1002	11	1049	5	1092	2	1132	6
1003	4	1050	5	1093	3	1133	6
1004	2	1052	2	1094	2	1134	2
1005	17	1053	3	1095	2	1135	2
1006	0	1054	6	1096	2	1136	5
1007	10	1056	4	1097	2	1137	5
1008	10	1057	2	1098	2	1138	5
1009	10	1058	2	1099	2	1139	2
1011	21	1059	2	1100	2	1140	2
1012	8	1060	2	1101	2	1141	5
1013	10	1061	2	1102	2	1142	6
1014	23	1062	3	1104	2	1143	6
1015	11	1064	2	1105	2	1144	2
1016	9	1066	3	1106	2	1145	5
1017	9	1068	2	1107	2	1146	2
1018	9	1069	2	1108	2	1150	3
1019	9	1070	2	1109	2	1151	2
1020	10	1071	2	1111	2	1153	21
1021	2	1072	7	1112	2	1154	9
1023	7	1073	2	1113	2	1155	4
1024	3	1074	4	1114	2	1156	5
1026	10	1075	2	1115	5	1157	3
1027	2	1076	4	1116	2	1158	5
1028	9	1077	3	1117	4	1159	5
1029	2	1078	2	1118	5	1160	2
1030	9	1079	10	1119	5	1161	9
1031	11	1080	2	1120	2	1162	5
1032	10	1082	4	1121	4	1163	5
1033	9	1083	6	1122	2	1166	4
1034	9	1084	0	1124	6	10140	0
1036	2	1085	2	1126	5	10250	7

Exhibit E – Waimea, Acreage by Account FY2024

ACCT	ACRES	ACCT	ACRES	ACCT	ACRES	ACCT	ACRES
1037	12	1086	2	1127	2	10460	7
1040	6	1087	4	1128	5	10470	6
1041	12	1088	2	1129	10	Total	701
1042	4	1089	5	1130	6		

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State of Hawaii
Department of Agriculture
Plant Industry Division
Pesticides Branch
Honolulu, Hawaii

June 27, 2023

Board of Agriculture
Honolulu, Hawaii

SUBJECT: Request to Delegate to Chair the Authority to Refer Collections of Pesticide Violation Penalties to the Department of Attorney General

I. Summary Description of the Request

During the February 28th, 2023, Board of Agriculture meeting, the Pesticides Branch's submittals for requests to refer final orders, Docket No. 20-PE-025 and 22-PE-050, generated discussions by members of the board to delegate authority to the Chair for matters related to collections of pesticide violation penalties.

Hawaii Revised Statutes (HRS) 149A-41(b)(4) provides as follows:

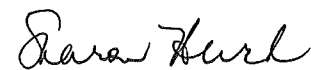
"In case of inability to collect the administrative penalty or failure of any person to pay all or such portion of the administrative penalty as the board may determine, the board shall refer the matter to the attorney general, who shall recover the amount by action in the appropriate court. ..."

Delegating to the Chair the authority to perform the ministerial action of referring to the attorney general the collections of pesticides violation penalties will expedite the collection of penalties owed to the Department, reduce the workload burden on the Department's staff, and reduce the time spent on ministerial actions by the Board (section 149A-41(b)(4) requires the Board to refer the matter to the attorney general). Board approval shall still be required to reduce the collection to a portion of the administrative penalty.

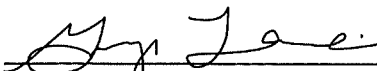
The Pesticides Branch humbly requests the Board authorize and delegate the duties assigned to the Board through HRS 149A-41(b)(4) to the Chairperson of the Hawaii Board of Agriculture.

Approved for Submission,

Respectfully Submitted,



SHARON HURD
Chairperson, Board of Agriculture



GREG TAKESHIMA
Acting Pesticides Program Manager, Pesticides Branch