

STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawai'i 96813

September 27, 2013

Chairperson and Members
Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

Land Board Members:

SUBJECT: ISSUANCE OF RIGHT-OF-ENTRY TO GOODFELLOW
BROS., INC., FOR REMOVAL OF SAND FROM MĀNĀ
PLAINS FOREST RESERVE FOR WETLAND RESTORATION
AT MĀNĀ, WAIMEA, KAUA'I, TAX MAP KEY: (4) 1-2-002:
PORTION 001.

APPLICANT:

Goodfellow Bros., Inc.

LEGAL REFERENCES:

Hawaii Administrative Rules 13-104-4(5), as amended.

LOCATION:

Portion of Government lands designated as Mānā Plains Forest Reserves, situated in Waimea, Kaua'i identified by Tax Map Key (4) 1-2-002: por 001 (Exhibit A).

ZONING:

State Land Use District: Agriculture

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: Yes

CHARACTER OF USE:

Excavation and removal of sand for commercial purposes and for the restoration of wetland habitat to enhance the Division and Forestry and Wildlife's (DOFAW) conservation and recovery efforts for four species of endangered endemic Hawaiian waterbirds.

DCCA VERIFICATION:

Place of business registration confirmed: YES
Registered business name confirmed: YES
Applicant in good standing confirmed: YES

TERM OF RIGHT-OF-ENTRY:

The right-of-entry (ROE) will issued for a one year period, expected to commence on November 1, 2013. The Chairperson shall be authorized to extend the effective period of right-of-entry for a maximum of two months for good cause such as delays due to inclement weather.

CONSIDERATION:

Gratis

BACKGROUND:

On May 14, 2004, under item D-7 (Exhibit B), the Board of Land and Natural Resources (Board) approved as amended the sale of a Land License at Public Auction for removal of sand at Kawai'ele Bird Sanctuary, covered by Executive Order (EO) No. 3437 and No. 3685. The intention was to remove the sand to restore wetland, providing additional habitat to enhance the Division of Forestry and Wildlife's (DOFAW) conservation and recovery efforts for four species of endangered endemic Hawaiian waterbirds. The revenue generated from the sand mining activities was to be used to support wetland restoration and management activities.

The following amendments to the May 14, 2004 item D-7 sale were made to address changes in terminology, changes in to the Executive Orders affecting the property and specific terms of the Land License. On January 14, 2005, under item D-23 (Exhibit C), the Board amended license terms and conditions, by deleting the "Minimum Upset Royalty" clause and replacing it with; 1) a "Minimum Upset Annual License Fee"; 2) a "Royalty Rate" clause; and 3) an "Effective Royalty" clause.

In cooperation with DOFAW, Land Division processed cancellation of EOs No. 3437 (cancelled by EO No. 4207) and No. 3685 (cancelled by EO No. 4208) for the Kawai'ele Wild Bird Sanctuary. Mānā Plains Forest Reserve was subsequently established by EO No. 4209, incorporating lands from the two cancellations as well as additional adjacent lands. Hence, the sand Land License process now applied to Mānā Plains Forest Reserve, rather than the Kawai'ele Wild Bird Sanctuary. On February 22, 2008, under Item C-3 (Exhibit D), the Board approved as

submitted amendments to the proposed sand Land License process to address changes in set-aside and name status of the subject lands. All other terms and conditions listed in the January 14, 2005 approval of item D-23 remained the same.

On September 12, 2008, under item C-6 (Exhibit E), the Board approved as amended additional changes to the proposed Land License. To simplify the License auction the "Minimum Upset Annual License Fee" and the "Royalty Rate" were deleted and a "Minimum Upset Royalty Rate" was added. The "Minimum Upset Royalty Rate" would be the starting price to be bid upon per cubic yard of sand to be removed and was determined by staff appraisal to be \$39.41 (Exhibit F). The "Effective Royalty" will then be the successful bid at auction on the royalty rate applied to the amount of sand removed. The Department also added an additional requirement stipulating that the lessee remove a minimum amount of sand to ensure that the licensee actively pursues removal of sand under the license. The successful bidder will also be required to deposit \$20,000 or 2% of the value of the Effective Royalty, whichever is less within 24 hours of the close of bidding. The Board also approved the sale of two Land Licenses at auction instead of one, allowing one License for Parcel 4 and one for Parcel 5 to provide opportunity for more than one successful bidder in the community.

DISCUSSION:

On July 6, 2009, two land licenses for sand removal at Mānā Plains Forest Reserve were sold at a public auction to Goodfellow Bros., Inc (Goodfellow). The two land licenses numbered FW-2010-K-01 and FW-2010-K-02 were issued and the two year term for both licenses initiated on March 1, 2011. Sand removal commenced on June 23, 2011.

Under items 1 and 2 of the terms and conditions of land licenses FW-2010-K-01 and FW-2010-K-02 (Exhibit G), the Licensee was required to remove and pay for a cumulative minimum of 2,500 cubic yards of material per quarter from each parcel (4 and 5), a total of 40,000 cubic yards for both license agreements at a royalty rate of \$39.41 per cubic yard. Goodfellow did make all of the required minimum effective royalty payments totaling \$1,576,400.00 for both licenses, but failed to remove the required minimum quantity of sand. During the two year license term, Goodfellow Bros. Inc. removed a total of 13,286 cubic yards of sand (33% of the required minimum) leaving a remaining balance of 26,714 cubic yards of sand that they have paid for but failed to remove from the site.

In a letter to the Division dated August 19, 2013 (Exhibit H), Goodfellow stated that from the time of the public auction, which occurred on July 6, 2009, to when work finally commenced in Spring 2011, Kaua'i experienced a significant downturn in construction activity. The demand for the material decreased by over two thirds during this time, therefore the sand was not completely harvested as originally planned. They are requesting a ROE for sand removal at Mānā Plains for the period one year to remove the remaining 26,714 cubic yards of material. They are optimistic that given the current state of the economy, they will be able to complete the excavation within the one year time frame.

The overall goal of this project was to remove the sand to restore the wetland, providing

additional habitat to enhance the Division and Forestry and Wildlife's (DOFAW) conservation and recovery efforts for four species of endangered endemic Hawaiian waterbirds. The revenue generated from the sand mining activities was to be used to support wetland restoration and management activities. If the remaining sand is not removed by Goodfellow to accomplish wetland restoration goals DOFAW would have undergo another public auction to relicense the area to another entity, and if there are no entities interested in bidding for such licenses, DOFAW will have to pay a contractor to complete the wetland restoration.

DOFAW is amenable to issuing an ROE to Goodfellow to remove the 26,714 cubic yards of sand, for a period of one year with the option to extend for a maximum of two months for good cause such as delays in mining activities due to inclement weather. At the expiration of the ROE the State will retain the \$1,576,400.00 in royalty payments made by Goodfellow and Goodfellow will forfeit all rights to harvest sand. They will also be required to finish, fill, clear, and/or smooth harvested areas to the conditions and contours delineated on (Exhibit A). DOFAW will require that Goodfellow post a \$100,000.00 performance bond to insure faithful compliance with the terms and conditions of the right-of-entry.

To ensure that wetland areas are completed as mining activities resume, Goodfellow will be required to mine from east to west starting from the eastern edge of parcel 4 and mining activity will not be allowed to extend more than 100 feet in front of areas that have been finished, filled, cleared, and/or smoothed to the conditions and contours delineated in Exhibit A.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice in May 1988 with a finding of no significant impact (FONSI). Special permits were received from the Kauai County Planning Commission for sand mine use and from the State Land Use Commission for establishment of a sand mine and creation of a waterbird sanctuary.

RECOMMENDATIONS:

That the Board of Land and Natural Resources:

1. Authorizes the issuance of a right-of-entry to Goodfellow Bros., Inc., for removal of 26,714 cubic yards of sand from Mānā Plains Forest Reserve for wetland restoration at Mānā, Waimea, Kaua'i, Tax Map Key: (4) 1-2-002: portion 001, under the terms and conditions discussed above, which are by this reference incorporated herein and further subject to the following:
 - a. Goodfellow Bros., Inc., will finish, fill, clear, and/or smooth harvested areas to the conditions and contours delineated on Exhibit A.
 - b. Goodfellow Bros., Inc will post a \$100,000.00 performance bond to insure faithful compliance with the terms and conditions of the right-of-entry.

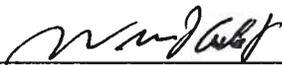
- c. The standard terms and conditions of the most current right-of-entry form, as may be amended from time to time;
 - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
 - e. Review and approval by the Department of the Attorney General.
2. Authorize the Chairperson extend the effective period of the right-of-entry for a maximum of two months for good cause such as delays in mining activities due to inclement weather.
3. At the expiration of the right-of-entry the State will retain the \$1,576,400.00 in royalty payments made by Goodfellow Bros., Inc., and Goodfellow Bros., Inc., will forfeit all rights to harvest sand.
4. The State will enter into a mutual release agreement upon expiration of the right-of-entry, under the terms and conditions cited above, which are by this reference incorporated herein, and further subject to the following:
- a. Review and approval by the Department of the Attorney General; and
 - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,



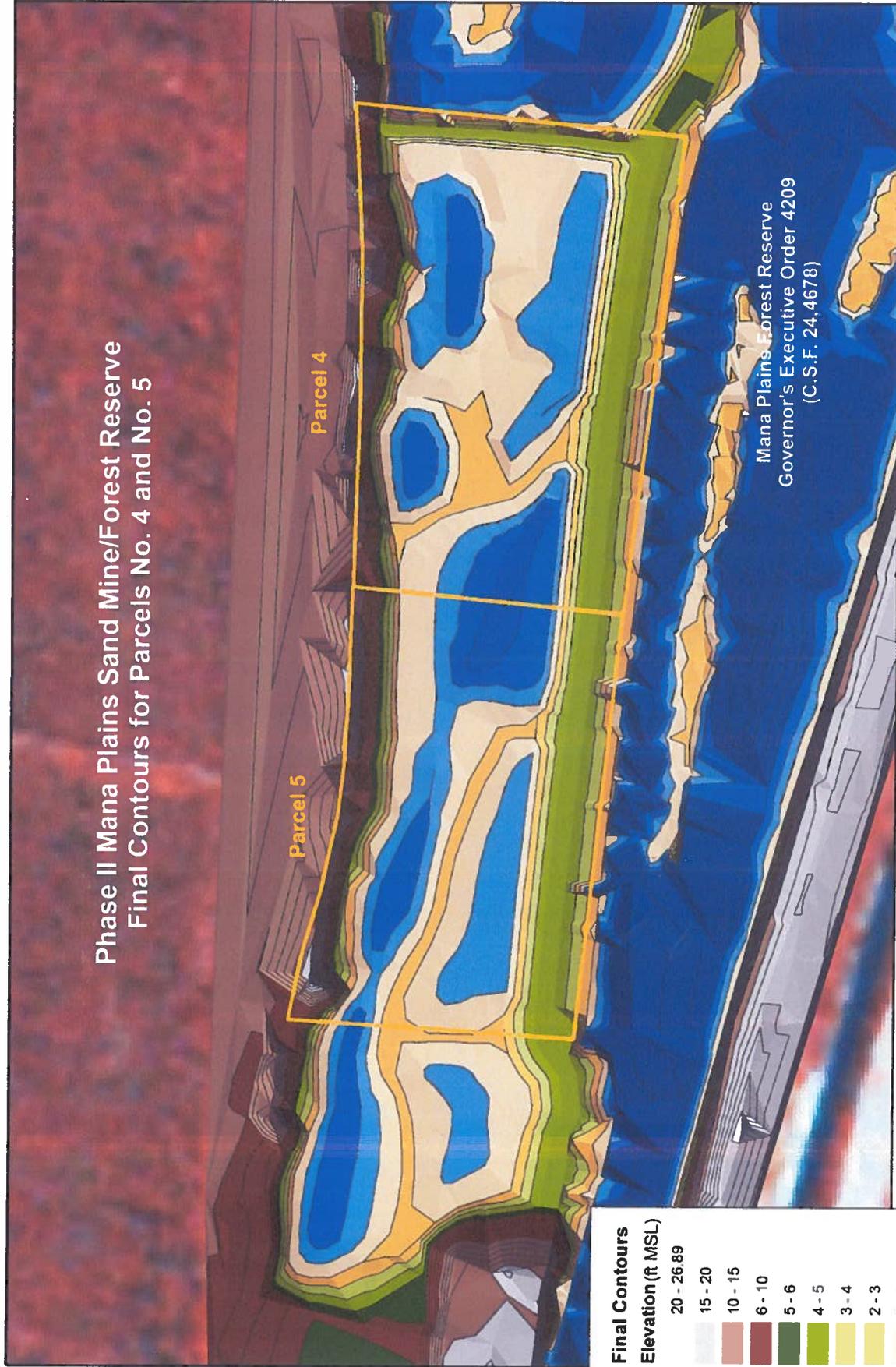
ROGER H. IMOTO, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR., Chairperson
Board of Land and Natural Resources

Phase II Mana Plains Sand Mine/Forest Reserve
Final Contours for Parcels No. 4 and No. 5



Mana Plains Forest Reserve
Governor's Executive Order 4209
(C.S.F. 24,4678)

Final Contours
Elevation (ft MSL)

20 - 26.89
15 - 20
10 - 15
6 - 10
5 - 6
4 - 5
3 - 4
2 - 3
1 - 2
0 - 1
-1 - 0
-6.5 --1



Department of Land and Natural Resources
Division of Forestry and Wildlife
EXHIBIT "A"

Exhibit B

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

May 14, 2004

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

PSF No.: 04KD-042

Kauai

Sale of Land License at Public Auction for Removal of Sand From
Kawaiele Wild Bird Sanctuary, Covered by Executive Order No. S-
3685 Kawaiele, Mana, Waimea, Kauai, Tax Map Key: (4) 1-2-02:
Portion 01..

REQUEST:

Sale of land license at public auction for removal of Sand From
Kawaiele Wild Bird Sanctuary Covered by Executive Order No. S-
3685.

LEGAL REFERENCE:

Section 171-54, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government (Crown) lands of Waimea situated at Mana,
Waimea, Kauai, identified by Tax Map Key: (4) 1-2-02: portion 01,
as shown on the attached map labeled Exhibit A.

AREA:

18.995 acres

ZONING:

State Land Use District: AG/OPEN
County of Kauai CZO: AG

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CURRENT USE STATUS:

Encumbered by Executive Order No. 3685 to Department of Land and
as amended

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

May 14, 2004

ITEM D-7

Natural Resources-Division of Forestry and Wildlife for Wild Bird Sanctuary purposes.

CHARACTER OF USE:

Excavation and removal of sand for commercial purposes

LIMITS ON REMOVAL

Maximum of 46,811 cubic yards

LICENSE TERM:

Two (2) Years

COMMENCEMENT DATE:

The first day of the month following the date of sale; provided that the Chairperson may amend the commencement date for good cause.

MINIMUM UPSET ROYALTY:

To be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

PERFORMANCE BOND:

Twice the annual license fee.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice in May 1988 with a finding of no significant impact (FONSI). Special Permits were also received from the Kauai County Planning Commission for sand mine use and from the State Land Use Commission for establishment of a sand mine and creation of a waterbird sanctuary.

REMARKS:

The subject lands are set aside via Governor Executive Order No. S-3685 to the Division of Forestry and Wildlife for Addition to Kawaiiele Wild Bird Sanctuary, containing an area of 38.995 acres.

On August 28, 1998, under Item D-11, the Land Board authorized the public auction sale of four land licenses allowing the removal of 85,000 cubic yards of sand.

On February 12, 1999, under Item D-13, the Land Board amended the prior action by adding a fifth parcel containing 23,600 cubic yards to the existing four parcels increasing the total amount of sand to 108,600 cubic yards.

On February 24, 2000, Land Licenses S-343 (parcel 1) and S-344 (parcel 2) were issued to Doreen L. Sanchez-Rego Contractor, Inc. and Land Licenses S-345 (parcel 4) and S-346 (parcel 5) were granted to Jas W. Grover, Ltd. All four land licenses expired on February 23, 2002.

The new public auction sale of a land license will be for parcel 4 (23,211 cubic yards), previously under expired Land License S-345, and parcel 5 (23,600 cubic yards), previously under expired Land License S-346. When Land Licenses S-345 and S-346 expired on February 23, 2002, a total of 1,790 cubic yards of sand was removed from parcel 4 only. The estimated sand remaining from both parcel is 46,811± cubic yards.

In recent months, the Division of Forestry and Wildlife has received numerous calls from contractors requesting removal of the Kawaiiele Wild Bird Sanctuary sand for construction projects throughout the island. The projects vary from golf courses, concrete mix and beach replenishment. Staff has inquired with contractors on Kauai and most of the responses indicate that there is a shortage of sand on Kauai.

Request for review and comment was circulated to the various State and County agencies.

Kauai Historic Preservation commented as follow:

We believe there are no historic properties present because previous grubbing/grading has altered the land for the existing sand mining.

This project has already gone through the historic preservation review process and mitigation has been completed.

Because human remains have been found in the area. In the event human remains are found procedures outlined in Chapter 6E 443 shall be followed.

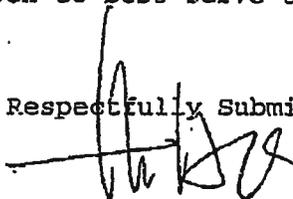
There were no comments from other State and County Agencies.

The benefits from the sale of this land license would be the completion of DOFAW Phase II of the Kawaiiele Wild Bird Sanctuary and the State could receive approximately \$235,000.00 in royalties for the sand.

RECOMMENDATION: That the Board:

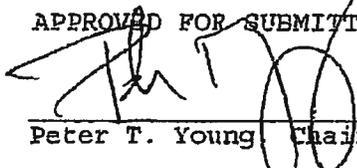
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the sale of a land license at public auction covering the subject area for removal of sand from Kawaiiele Wild Bird Sanctuary covered by Executive Order No. S-3685, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current land license document form, as may be amended from time to time;
 - 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,



Thomas H. Oi
District Land Agent

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

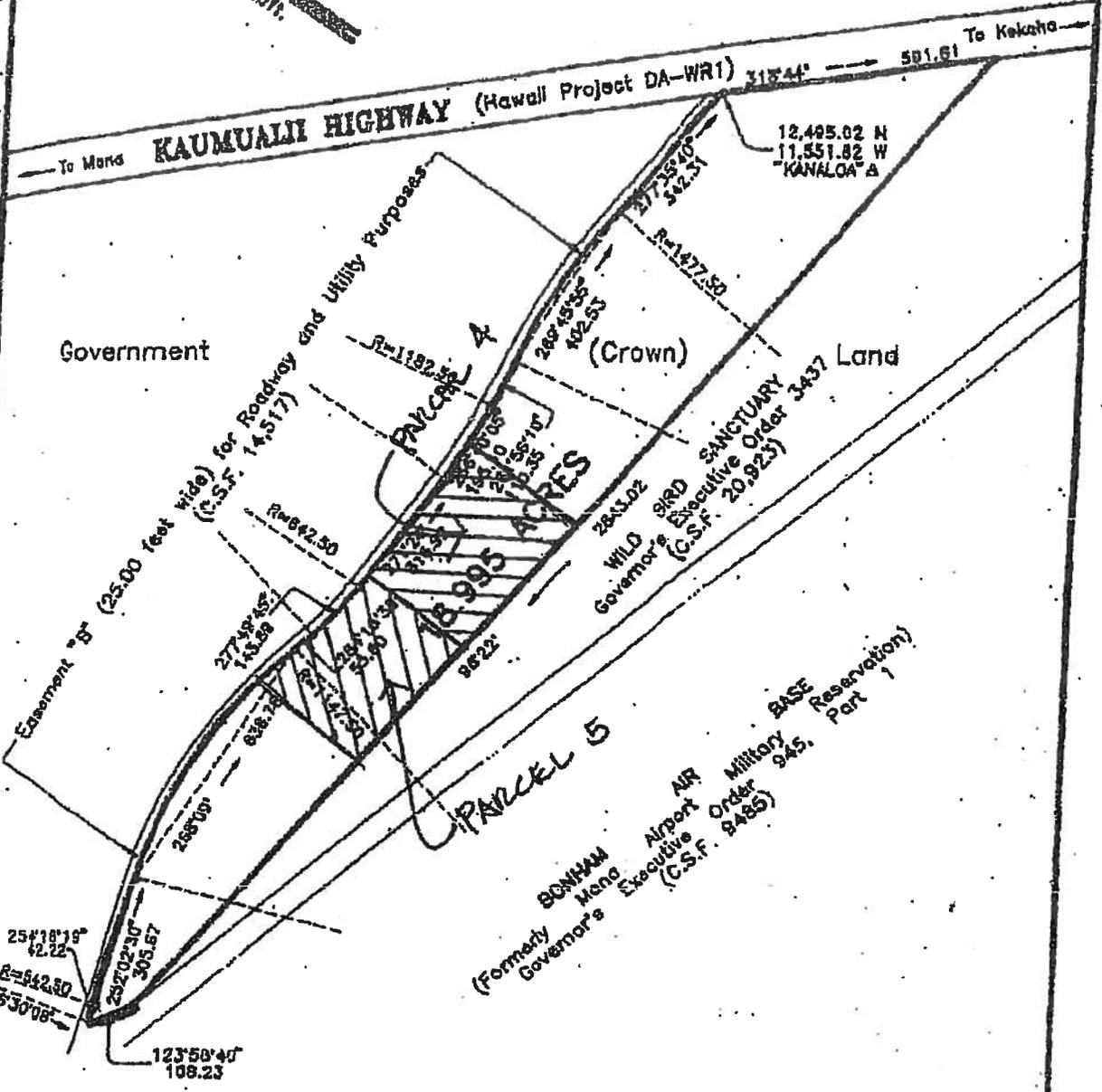
Approved as amended. The Board amended the Recommendation Section by:

- 1) Deleting paragraph 1) in its entirety; and
- 2) Amending paragraph 2) to read as follows:

"~~2~~1) Authorize the sale of land license at public auction covering the subject area for removal of sand from Kawaiiele Wild Bird Sanctuary covered by Executive Order No. S-3685, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

 - A) The standard terms and conditions of the most current land license document form, as may be amended from time to time;
 - 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 serve the best interests of the State~~(7)~~;

TRUE NORTH
SCALE: 1 in. = 300 ft.



ADDITION TO WILD BIRD SANCTUARY

Mana, Waimea, Kauai, Hawaii

Scale: 1 inch = 300 feet

EXHIBIT "A"

JOB:K-165(95)
C. BK. I, Nakomitsu

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

January 14, 2005

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

PSF No.: 04KD-042

Kauai

Amend Prior Board Action of May 14, 2004 under Item D-7, Sale of Land License at Public Auction for Removal of Sand From Kawaiele Wild Bird Sanctuary, Covered by Executive Order No. S-3685 Kawaiele, Mana, Waimea, Kauai, Tax Map Key: (4) 1-2-02: Portion 01.

Background

On May 14, 2004, under Item D-7, the Board approved as amended, the sale of a land license at public auction for removal of sand from the Kawaiele Wild Bird Sanctuary, covered by Executive Order No. 3685.

The submittal included a "Minimum Upset Royalty" to be determined by staff or independent appraisal. Staff would like to clarify that there should be two components: a minimum annual license fee (which will be bid upon) and the royalty rate (which will be applied to the cubic yards removed. The effective rental shall be the higher of the two.

RECOMMENDATION:

That the Board amend its prior action of May 14, 2004, Item D-7, by:

- 1) Deleting the "Minimum Upset Royalty" section in its entirety; and
- 2) Adding the following three sections:

"MINIMUM UPSET ANNUAL LICENSE FEE:

To be determined by staff or independent appraisal, subject to review and approval by the Chairperson.

ROYALTY RATE:

To be determined by staff or independent appraisal, subject to approval by the Chairperson.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
January 14, 2005

BLNR - Amend Prior Board Action
Sale of Land License
at Kawalele Bird Sanctuary

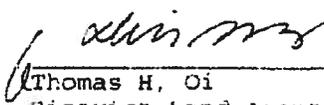
Page 2

January 14, 2005

EFFECTIVE ROYALTY:

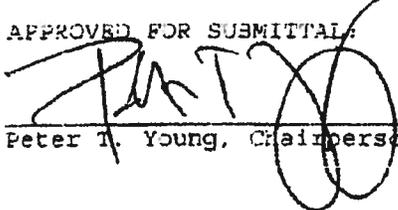
The successful bid at public auction on the annual license fee or the royalty rate applied to the amount removed, whichever is higher."

Respectfully Submitted,



Thomas H. Oi
District Land Agent

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

February 22, 2008

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

Land Board Members:

SUBJECT: Request to amend Prior Board Actions of May 14, 2004 Under Item D-7 and January 14, 2005 under Item D-23, Sale of Land License at Public Auction for Removal of Sand from Kawaiele Wild Bird Sanctuary, Covered by Executive Order No. 3685 Kawaiele, Mana, Waimea, Kauai, Tax Map Key: (4) 1-2-002: Portion 001.

Change of Location Name from Kawaiele Wild Bird Sanctuary to Mana Plains Forest Reserve

Background: On May 14, 2004 under item D-7 (Exhibit A), the Board approved as amended, the sale of a Land License at public auction for removal of sand from the Kawaiele Wild Bird Sanctuary, Mana, Waimea, Kauai, Tax Map Key: (4) 1-2-002: Portion 001, covered by Governor's Executive Order (GEO) No. 3685. On January 14, 2005 under item D-23 (Exhibit B), the Board amended the license terms and conditions cited in item D-7 by 1) deleting the "minimum Upset Royalty" clause and replacing it with a "Minimum Upset Annual License Fee clause; 2) adding a "Royalty Rate" clause; and 3) adding an "Effective Royalty" clause.

Kawaiele Bird Sanctuary was established via GEO Nos. 3437 and 3685. At its meeting of September 28, 2007, under item C-1, the Board approved the cancellation of GEO Nos. 3437 and 3685 and set aside these lands along with approximately 105 adjacent acres to the Division of Forestry and Wildlife for Mana Plains Forest Reserve. On November 14, 2007, GEO No. 3437 was cancelled by GEO No. 4207 (Exhibit C) and GEO No. 3685 was cancelled by GEO No. 4208 (Exhibit D). Mana Plains Forest Reserve was subsequently established by GEO No. 4209 (Exhibit E), also on November 14, 2007, incorporating lands from the two cancellations as well as additional adjacent lands.

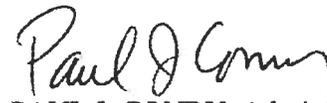
Discussion: Board agenda items D-7 on May 14, 2004 and D-23 on January 14, 2005 specified that the Land License would be for removal of sand at Kawaiele Wild Bird Sanctuary, which no longer exists. Staff recommends amending the name of the area designated for the proposed Land License in those previous Board items from "Kawaiele Wild Bird Sanctuary" to "Mana Plains Forest Reserve." Revenues from sand mining activities will be divided between entitlements to the Office of Hawaiian Affairs, the Department of Hawaiian Home Lands and the Department's Forest Stewardship Special Fund – the latter revenues to subsequently support management of the Mana Plains Forest Reserve.

RECOMMENDATIONS:

That the Board:

1. Amend the location name of the sale of a Land License at public auction for removal of sand from "Kawaiele Wild Bird Sanctuary" to "Mana Plains Forest Reserve."
2. All other terms and conditions listed in its May 14, 2004 approval as amended (item D-7) and its January 14, 2005 approval (item D-23) to remain the same.
3. Authorize the Chairperson to update terms of the previous draft sand mining Land License subject to approval of the Department of the Attorney General.

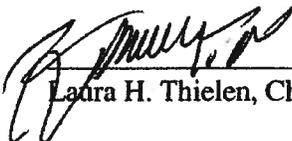
Respectfully submitted,



PAUL J. CONRY, Administrator

Attachments

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

September 12, 2008

as amended
Approved by the Board of
Land and Natural Resources
at its meeting held on

9/12/2008

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

Land Board Members:

SUBJECT: ~~REQUEST TO AMEND PRIOR BOARD ACTION OF~~
~~FEBRUARY 22, 2008 UNDER ITEM C-3: "REQUEST TO~~
~~AMEND PRIOR BOARD ACTIONS OF MAY 14, 2004 UNDER~~
~~ITEM D-7 AND JANUARY 14, 2005 UNDER ITEM D-23: SALE~~
~~OF LAND LICENSE AT PUBLIC AUCTION FOR REMOVAL~~
~~OF SAND FROM KAWAIELE WILD BIRD SANCTUARY,~~
~~COVERED BY EXECUTIVE ORDER NO. 3685 KAWAIELE,~~
~~MANA, WAIMEA, KAUAI, TAX MAP KEY: (4) 1-2-002:~~
~~PORTION 001."~~

BACKGROUND:

On May 14, 2004, under item D-7 (Exhibit A), the Board approved as amended the sale of a Land License at Public Auction for removal of sand at Kawaiiele Bird Sanctuary, covered by Executive Order (EO) No. 3685.

On January 14, 2005, under item D-3 (Exhibit B), the Board approved as amended, changes to pricing of the proposed Land License. The "Minimum Upset Royalty" section was deleted and 3 sections were added: (1) a "Minimum Upset Annual License Fee", (2) a "Royalty Rate", and (3) an "Effective Royalty", which was the amount to be paid to the State by the successful bidder, being the higher of the annual License Fee or the Royalty Rate applied to the amount of sand removed, whichever was higher.

On February 22, 2008, under Item C-3 (Exhibit C), the Board approved as submitted amendments to the proposed sand Land License process to address changes in set-aside and name status of the subject lands. In cooperation with the Division of Forestry and Wildlife, the Land Division processed cancellation of EOs No. 4207 and No. 4208 for the Kawaiiele Wild Bird Sanctuary. Mana Plains Forest Reserve was subsequently established by EO No. 4209, incorporating lands from the two cancellations as well as additional adjacent lands.

ITEM C-6

Approved as amended

*Note: Amendments on this page
were distributed to Board
on 9/12/2008*

Hence, the sand Land License process now applied to Mana Plains Forest Reserve, rather than the Kawaiele Wild Bird Sanctuary. There was an additional amendment to the "License Term" section to read: One (1) year with an option to renew for a further one (1) year. All other terms and conditions listed in the January 15, 2005 approval of item D-3 remained the same.

DISCUSSION:

Board agenda item D-3 on January 14, 2005 incorporated changes to the pricing structure for Land License auction. After further consultation with the Department of the Attorney General, staff would like to simplify the License auction process by deleting the "Minimum Upset Annual License Fee" and the "Royalty Rate" and adding a "Minimum Upset Royalty Rate", which would be the starting price to be bid upon per cubic yard of sand to be removed. This "Minimum Upset Royalty Rate" was determined to be \$39.41 by staff analysis (Exhibit D) and was subject to the Chairperson's approval. The "Effective Royalty Rate" will then be the successful bid at auction on the royalty rate applied to the amount of sand removed. The Department would also like to impose a condition requiring the lessee to remove a minimum amount of sand to ensure that the licensee actively pursues removal of sand under the license.

Staff would also like to include in the auction terms a requirement that the successful bidder deposit \$20,000 or 2% of the value of the Effective Royalty Rate, whichever is less. The Effective Royalty Rate, for purposes of this deposit, shall be determined based on the winning royalty rate bid and the maximum amount of sand that may be removed under the license. This deposit shall be due to the Department within 24 hours of the close of bidding, otherwise the License will be offered to next highest bidder. The amount due the Department each month shall be deducted from the deposit until the deposit is depleted, after which monthly payments to the Department will commence. This deposit is not intended to take the place of a performance bond, which will also be required.

The prior submittals also indicated a single Land License to be bid upon. Since the property contains two separate parcels that sand will be removed from (Exhibit E), Kaua'i District staff would like to auction two Land Licenses, in order to provide opportunity for more than one successful bidder in the community.

RECOMMENDATIONS:

That the Board:

1. Delete the "Minimum Upset Annual License Fee" and the "Royalty Rate" described in its action of ~~February 22, 2008, Item C-3~~ January 14, 2005, Item D-3.
2. Approve the "Minimum Upset Royalty Rate" of \$39.41 per cubic ^{yard} ~~foot~~ of sand.
3. Amend the "Effective Royalty Rate" section to read: "The successful bid at public auction applied to the amount removed;" described in its action of January 14, 2005, Item D-3.

4. Include a provision allowing the Department to impose a minimum amount of sand that must be removed by the licensee.
5. Include a provision requiring the successful bidder to place a deposit with the Department within 24 hours of the close of the bidding as described above.
6. Approve the sale of two Land Licenses at auction, one for Parcel 4 and one for Parcel 5, as shown in Exhibit E.
7. All other terms and conditions listed in its February 22, 2008, Item C-3 to remain the same.

Respectfully submitted,



PAUL J. CONRY, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



LAURA H. THIELEN, Chairperson
Board of Land and Natural Resources

Attachments

LINDA LINGUE
GOVERNOR OF HAWAII



LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

August 12, 2008

MEMORANDUM

TO: Laura H. Thielen, Chairperson

THROUGH: *for* Morris M. Atta, Land Division Administrator *Charlene E. Umitia*

FROM: Cyrus C. Chen, Real Estate Appraisal Manager *Cyrus Chen*

SUBJECT: In-House Valuation Recommendation – Land License for Removal of Sand Purposes

PSF No.: 04KD-042
Applicant: Division of Forestry & Wildlife
Location: Kawaiele Wild Bird Sanctuary, Kawaiele, Mana, Waimea, Kauai
Land Area: 18.995 acres
Tax Map Key: (4) 1-2-02: por. 1
Char. of Use: Removal of sand

On May 14, 2004, the Land Board, under agenda item no. D-7, approved the sale of a land license at public auction for removal of sand from Kawaiele Wild Bird Sanctuary. The Land Board amended this Board action on January 14, 2005, under agenda item D-23. The amended Board action deletes the "Minimum Upset Royalty" section and adds three sections to the Board action: 1) Minimum Upset Annual License Fee, 2) Royalty Rate, and 3) Effective Royalty. The minimum upset annual license fee and royalty rent were determined by staff and approved by the Department on February 11, 2005, which determined minimum upset annual license fee of \$1,140 and royalty rate of \$12 per cubic yard. An update was requested in April 2008 by DOFAW to update the royalty rate analysis since the last analysis was three years old. A royalty rate analysis dated May 2, 2008 was completed and approved which maintained a license fee of \$1,140 and royalty rate of \$39.41 per cubic yard of sand removed.

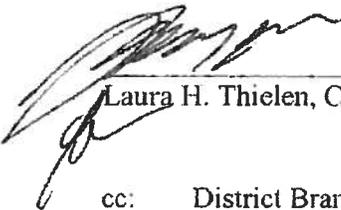
After recent consultation with the Department of the Attorney General, DOFAW would like to simplify the auction process by deleting the annual minimum license fee and replacing it with a minimum upset royalty rate. In this case, the effective royalty rate shall be the successful bid at auction on the royalty rate applied to the amount removed.

Information gained by the Kauai District Office from JAS Glover, Ltd. indicated sand currently commands a retail price of \$68 per ton. This equates to approximately \$78.20 per cubic yard. Attempts to update the costs of extraction, production, and hauling were unsuccessful due to production participants' unwillingness to release information. Therefore, as an adjustment for time, it is assumed the costs of production would increase by 5% per year. Minimum upset license fee is determined to be the same since no new sand licenses on Kauai have been issued since the last appraisal.

Average retail cost for sand:	\$78.20/cubic yard
Less extraction, production, & hauling cost	(\$23.15)
Less 20% for overhead & profit	(\$15.64)
Royalty rate:	\$39.41/cubic yard

Therefore, as of the date of this document, the minimum upset royalty rate for the land license to be sold at public auction is recommended to be \$39.41 per cubic yard. The effective royalty rate shall be the successful bid at public auction on the royalty rate applied to the amount of sand removed.

Approved/Disapproved:



Laura H. Thielen, Chairperson

8/13/02

Date

cc: District Branch Files
Central Files

and encumbered by Executive Order No. 4209 to the Department of Land and Natural Resources, Division of Forestry and Wildlife, ("DOFAW") for Mana Plans Forest Reserve Purposes, Tax Map Key No.(4)1-2-02:Por. 1, consisting of Parcel 4, more particularly delineated on Exhibit "A" attached hereto and made a part hereof, and hereinafter referred to as the "License Area."

The terms and conditions under which this License is issued are as follows:

1. The Licensee shall pay in legal tender of the United States of America, at the Department of Land and Natural Resources, Honolulu, Hawaii, or at the Office of the DOFAW Branch Manager on the Island of Kauai, the amount of THIRTY NINE AND 41/100 Dollars (\$39.41) per cubic yard, (the "royalty rate"), applied to the amount of material removed under this License ("effective royalty"). The effective royalty shall be paid to the Licensor in monthly installments. Delinquent payments due to Licensor shall be subject to an interest charge of twelve percent (12%) per annum, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each month of delinquency. Payment shall be made at the same time that verified reports are turned in to the Kauai DOFAW Branch Manager.

Verified reports shall be in the form of weight slips from a vehicle weigh station of the quantity of material removed from the License Area for the preceding month. Each verified report shall be signed by the Licensee and include a verification that the amounts of sand removed, as indicated in the report, is true and correct to the best of their knowledge. The verified reports shall be due at the end of each month that the License is in effect, and prior to the tenth (10th) day of the succeeding month.

2. The Licensee shall remove and pay for a cumulative minimum of 2,500 cubic yards of material from Parcel 4 per quarter. The maximum cubic yards of material that may be removed during the License term shall be 23,211 cubic yards.

The Licensee, as the successful bidder, shall place a deposit with the Licensor within twenty-four (24) hours of the close of bidding of TWENTY THOUSAND AND NO/100 DOLLARS (\$20,000.00) or two percent (2%) of the effective royalty, whichever is less ("Deposit"). For purposes of the Deposit, the effective royalty shall be determined by applying the royalty rate to the maximum amount of sand that may be removed during the License term. The Deposit shall not be considered interest bearing. The amount due the Licensor monthly shall be deducted

from the Deposit until the Deposit is depleted, after which monthly payments to the Licensor will commence.

3. The term of the License shall be for two (2) years, to begin MARCH 1, 2011 and shall expire FEBRUARY 28, 2013; providing that any party may terminate this License at any time during the term of the License by providing the other party thirty (30) calendar days prior written notice of the intent to cancel.

Upon termination, abandonment, or expiration, the Licensee shall not be relieved of any and all claims or demands accrued, including claims for property damage, personal injury or death, caused by any act or omission of the Licensee, or for any breach of the terms and conditions of this License.

The Licensee shall remove from the License Area all equipment, machinery, and improvements of every kind and nature within ten (10) calendar days after receiving notice of termination or upon abandonment of this License.

The Licensee shall, at its sole cost and expense, restore the License Area to a condition satisfactory to the Chairperson upon early termination or abandonment of this License.

4. The Licensee shall confine operations strictly to the License Area and shall take all necessary precautions to protect adjoining property from damage or injury. Any interference with or damage to property under the control of the State of Hawaii and/or under Executive Order 4209 incident to the exercise of the privilege granted shall be promptly corrected and/or repaired by the Licensee at its own expense to the satisfaction of the Chairperson of the Board of Land and Natural Resources.

5. The Licensee shall meet with the Kauai DOFAW Branch Manager in advance of any removal of material to discuss removal plans and safety requirements for the removal activity. The removal of the material shall be under the supervision of the Licensor and DOFAW and shall be taken from only those areas so designated by the Licensor and DOFAW. No removal shall occur without such designation.

The Licensee shall give the Kauai DOFAW Branch Manager prior notice of at least 48 hours before entering the License Area or removing any material; and prior notice of at least 48 hours before leaving the License Area, when the allotted cubic

yards are removed.

6. This License is non-transferable. If the Licensee is a partnership, joint venture or corporation, the sale or transfer of 20% or more of ownership interest or stocks by dissolution, merger or any other means shall be deemed a transfer for purposes of this paragraph and subject to the right of the Licensor to terminate this License effective of the date of sale or transfer.

7. The Licensor reserves on to itself the right to sell or grant to others similar rights or privileges; PROVIDED, HOWEVER, that the rights herein reserved shall not be exercised by the Licensor, or by any other licensee(s) of the Licensor in such a manner as to interfere unreasonably with the herein Licensee in the free use of said License Area for the purpose herein specified.

8. The use and enjoyment of the License Area shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

9. The Licensee shall procure, at its own cost and expense and keep in full force and effect throughout the term of this License, commercial general liability insurance with an insurance company or companies acceptable to the Board and licensed to do business in the State of Hawaii, in an amount of at least \$300,000.00 for each occurrence and \$500,000.00 aggregate. The policy or policies of insurance shall name the State of Hawaii as additional insured. The insurance shall cover the entire License Area. The Licensee, prior to entry and use of the License Area or within fifteen (15) calendar days from the effective date of this Land License, whichever is sooner, shall furnish the Licensor with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire License term, and furnish a like certificate(s) upon each renewal of the policy(s). The insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) calendar days written notice has been given to the Licensor.

The Licensor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this License. If, in the opinion of the Licensor, the insurance provisions in this License do not provide adequate

protection for the Licensor, the Licensor may require Licensee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Licensor's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Licensor shall notify Licensee in writing of changes in the insurance requirements and Licensee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Licensor incorporating the changes within thirty (30) calendar days of receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Licensee's liability under this License nor to release or relieve the Licensee of the indemnification provisions and requirements of this License. Notwithstanding the policy(s) of insurance, Licensee shall be obligated for the full and total amount of any damage, injury, or loss caused by the Licensee's negligence or neglect connected with this License.

It is agreed that any insurance maintained by the Licensor will apply in excess of, and not contribute with, insurance provided by Licensee's policy(s).

10. The Licensee shall observe and comply with all laws, ordinances, rules and regulations of the federal, state, municipal or county governments now in force or which may hereinafter be in force, affecting the License Area.

11. The Licensee shall not do, commit, permit or suffer to be done any willful or voluntary waste, spoil, or destruction in and upon the License Area or any part thereof; nor shall the Licensee cut down, permit or suffer to be cut down, any trees growing or being grown, or which shall hereafter grow, in and upon the License Area or any part thereof, except special permission for the same may be given by the Department of Land and Natural Resources.

12. All work incident to the removal of material shall be accomplished without cost to the Licensor.

13. No stockpiling of material shall occur in the License Area. The removal of material shall be restricted to weekdays and holidays.

14. The Licensee shall indemnify, defend, and hold Licensor harmless from and against any claim or demand for loss,

liability or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of Licensee relating to Licensee's use, occupancy, maintenance, or enjoyment of the License Area; 2) any failure on the part of the Licensee to maintain the License Area, and including any accident, fire or nuisance growing out of or caused by any failure on the part of Licensee to maintain any of Licensee's equipment within the License Area in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Licensee's non-observance or non-performance of any of the terms, covenants, and conditions of this License or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

15. In case the Licensor shall, without any fault on its part, be made a party to any litigation commenced by or against the Licensee (other than condemnation proceedings), the Licensee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the Licensor; furthermore, the Licensee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the Licensor in enforcing the terms and conditions of this License, in recovering possession of the License Area, or in the collection of delinquent royalty, taxes, and any and all other charges.

16. The Licensee shall post a \$50,000.00 performance bond with the Department of Land and Natural Resources, State of Hawaii, to insure faithful compliance with the terms and conditions of the License.

17. The Licensee shall pay all cost and expense incurred by the issuance of this License.

18. Any and all disputes and/or questions arising under this License shall be referred to the Chairperson of the Board of Land and Natural Resources and his determination of these disputes or questions shall be final and binding on the parties.

19. The Licensor, its agents and employees, shall at any reasonable time upon twenty-four (24) hours notice to the Licensee, have access to all books, accounts, records, and reports of the Licensee relating to the material removed from the License Area herein described for the purpose of inspection, examination or audit. If the audit by Licensor shall disclose that the royalty rate has been underpaid by five percent (5%) or

more for the period under examination, the Licensor shall have the right to terminate this License.

20. The Licensee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Licensee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the License Area any such materials except to use in the ordinary course of Licensee's business, and then only after written notice is given to Licensor of the identity of such materials and upon Licensor's consent which consent may be withheld at Licensor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Licensee, then the Licensee shall be responsible for the reasonable costs thereof. In addition, Licensee shall execute affidavits, representations and the like from time to time at Licensor's request concerning Licensee's best knowledge and belief regarding the presence of hazardous materials on the License Area placed or released by Licensee.

The Licensee agrees to indemnify, defend, and hold Licensor harmless, from any damages and claims resulting from the release of hazardous materials on the License Area occurring while Licensee is in possession, or elsewhere if caused by Licensee or persons acting under Licensee. These covenants shall survive the expiration or earlier termination of this License.

For the purpose of this License "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

21. Time is of the essence in this License and if the Licensee shall fail to pay the effective royalty, or any part thereof, at the times and in the manner provided within thirty (30) days after delivery by the Licensor of a written notice of breach or default, or if the Licensee shall become bankrupt, or shall abandon the License Area, or if this License and License Area shall be attached or taken by operation of law, or if Licensee shall fail to observe and perform any of the covenants,

terms, and conditions contained in this License and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Licensor of a written notice of breach or default, by personal service, registered mail or certified mail to the Licensee at its last known address and to each mortgagee or holder of record having a security interest in the License Area, the Licensor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the License Area, or any part, and upon or without the entry, at its option, terminate this License without prejudice to any other remedy or right of action for arrears of royalty or for any preceding or other breach of contract; furthermore Licensor shall retain all royalty paid in advance to be applied to any damages.

22. The Licensee shall be solely responsible for securing the License Area against trespass and unauthorized and unlawful activity by others.

23. The Licensee shall meet with DOFAW representatives for site review, prior to surface vegetation removal and sand removal within the License Area.

24. This License is encumbered under Governor's Executive Order No. 4209 and therefore, is subject to Governor's concurrence.

25. The Licensor does not warrant the conditions of the License Area, as the same are being licensed as is. The Licensor makes no representation regarding the exact quantity or quality of the materials or any other condition applicable to the License Area.

26. The Licensee shall comply with all standards of safety required by the federal, state, and county governments for operation and utilization of the Licensed Area.

27. In the event any prehistoric, historic or archaeological sites or remains are discovered during the removal of material, the Licensee shall stop all work immediately and notify the Kauai Office of DOFAW and the Historic Preservation Division of the Department of Land and Natural Resources on Oahu and shall obtain the approval of the State of Hawaii prior to recommencing any work within, on, or involving the License Area.

28. At the end of the license term, the Licensee shall finish, fill, clear, and/or smooth the License Area to the condition and contours delineated on Exhibit "A."

IN WITNESS WHEREOF, the STATE OF HAWAII, the Licensor herein, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these present to be duly executed this 24TH day of FEBRUARY, 2011, the Licensee herein, has caused these presents to be duly executed this 10TH day of FEBRUARY, 2011.

STATE OF HAWAII

By 
Chairperson
Board of Land and
Natural Resources

LICENSOR

Approved by the Board of
Land and Natural Resources
at its meetings held on
May 14, 2004, January 14, 2005,
February 22, 2008, and
September 12, 2008.

GOODFELLOW BROS., INC., a
Washington corporation

By 
R. Scott Pingrey
Its Chief Engineer

And By _____

Its _____

LICENSEE

APPROVED AS TO FORM:


Deputy Attorney General

Dated: Nov. 5, 2009

STATE OF HAWAII)
)
COUNTY OF Kauai) SS.

On this 11th day of February, 2011, before me appeared R. Scott Pingree and at the same time they are the Chief Engineer and _____, respectively, of GOODFELLOW BROS., INC., a Washington corporation, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and the said Chief Engineer and _____ acknowledged said instrument to be the free act and deed of said corporation.

L.S.

Audrey M. Bonilla
Notary Public, State of

Audrey M. Bonilla

My Commission Expires: 3/26/2012

Date of the Notarized Document: 2/11/11

Number of Pages: 10

Identification or Description of the Document being Notarized:

SOH DLNR LAND LICENSE

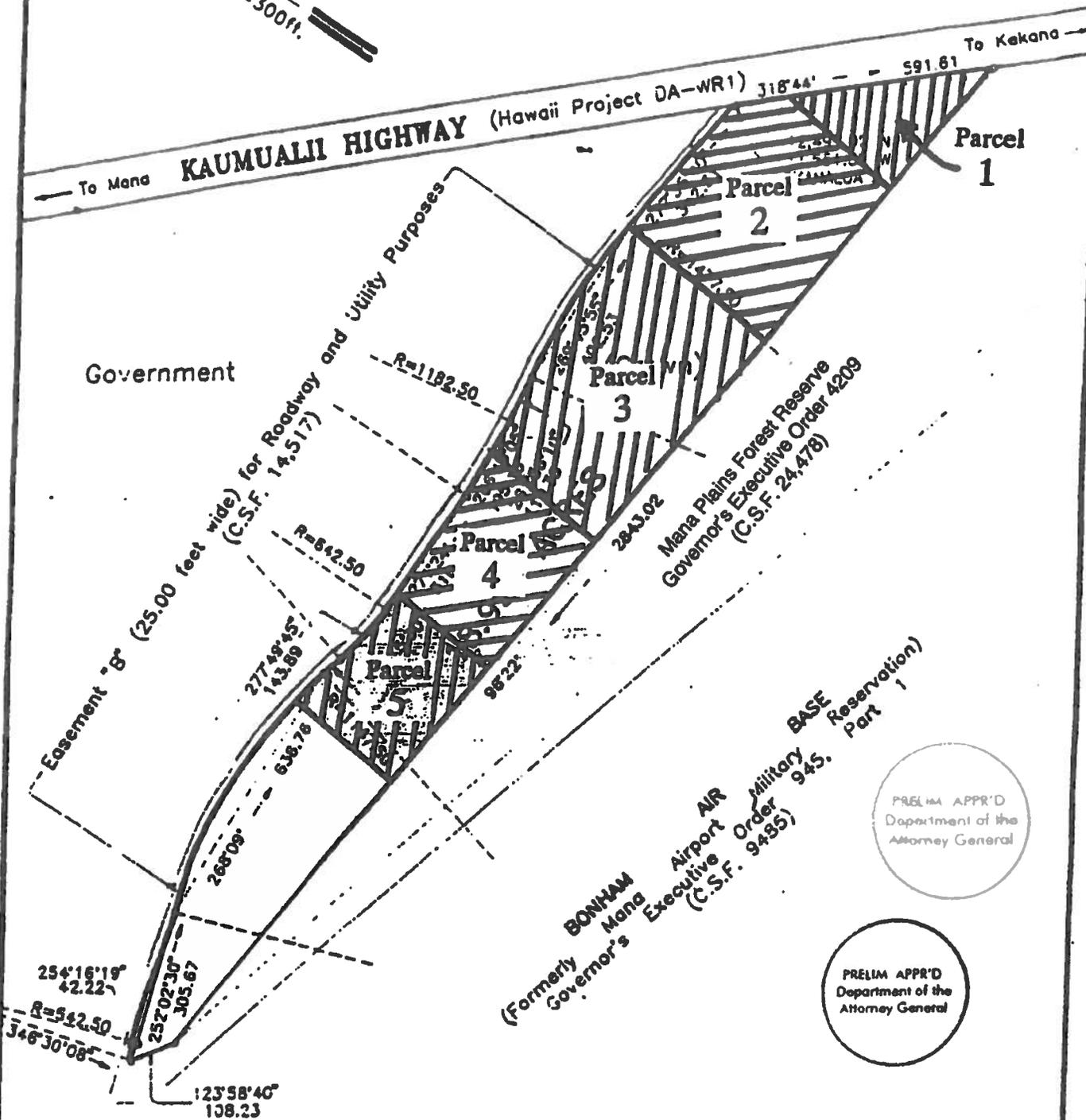
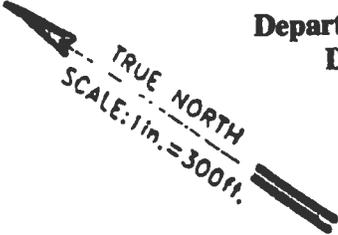
Printed Name of Notary: Audrey M. Bonilla 5th Circuit

Audrey M. Bonilla _____
Notary's signature and Notary's Official Stamp or Seal Date 2/11/11

L.S.



Department of Land and Natural Resources
Division of Forestry and Wildlife



**Phase II Mana Plains Sand Mine / Forest Reserve
Sand Mining Parcel Location Map**

Mana, Waimea, Kauai, Hawaii
Scale: 1 inch = 300 feet

EXHIBIT "A"

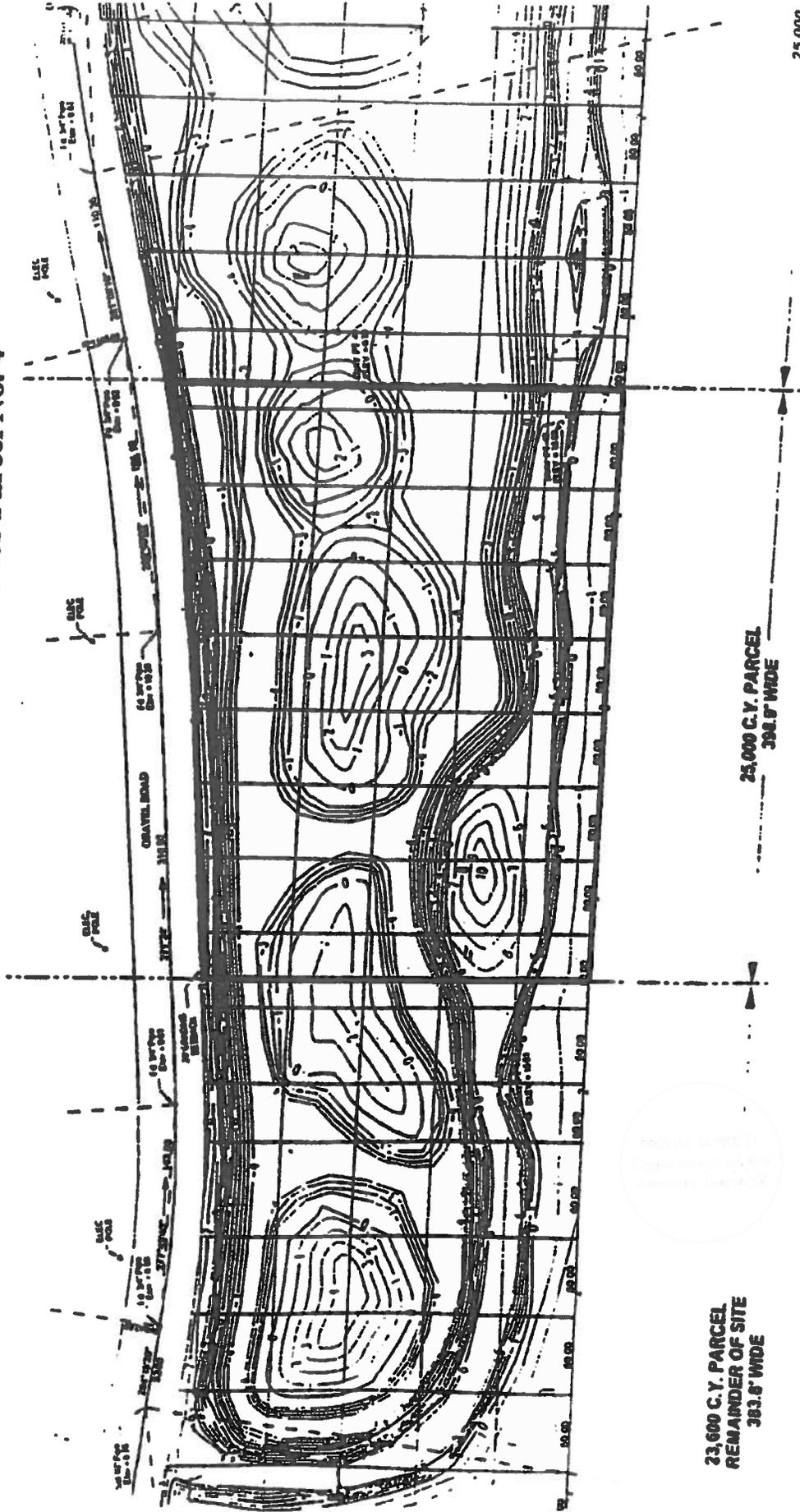
Department of Land and Natural Resources
Division of Forestry and Wildlife

EXHIBIT "A"

PRELIM. APPR'D.
Department of the
Attorney General

IRRMMENT (CROWN)

Phase II Mana Plains Sand Mine / Forest Reserve
Final Surface and Bottom Contours for Parcel No. 4



23,600 C.Y. PARCEL
REMAINDER OF SITE
383.8' WIDE

25,000 C.Y. PARCEL
398.8' WIDE

25,000

and encumbered by Executive Order No. 4209 to the Department of Land and Natural Resources, Division of Forestry and Wildlife, ("DOFAW") for Mana Plans Forest Reserve Purposes, Tax Map Key No.(4)1-2-02:Por. 1, consisting of Parcel 5, more particularly delineated on Exhibit "A" attached hereto and made a part hereof, and hereinafter referred to as the "License Area."

The terms and conditions under which this License is issued are as follows:

1. The Licensee shall pay in legal tender of the United States of America, at the Department of Land and Natural Resources, Honolulu, Hawaii, or at the Office of the DOFAW Branch Manager on the Island of Kauai, the amount of THIRTY NINE AND 41/100 Dollars (\$39.41) per cubic yard, (the "royalty rate"), applied to the amount of material removed under this License ("effective royalty"). The effective royalty shall be paid to the Licensor in monthly installments. Delinquent payments due to Licensor shall be subject to an interest charge of twelve percent (12%) per annum, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each month of delinquency. Payment shall be made at the same time that verified reports are turned in to the Kauai DOFAW Branch Manager.

Verified reports shall be in the form of weight slips from a vehicle weigh station of the quantity of material removed from the License Area for the preceding month. Each verified report shall be signed by the Licensee and include a verification that the amounts of sand removed, as indicated in the report, is true and correct to the best of their knowledge. The verified reports shall be due at the end of each month that the License is in effect, and prior to the tenth (10th) day of the succeeding month.

2. The Licensee shall remove and pay for a cumulative minimum of 2,500 cubic yards of material from Parcel 5 per quarter. The maximum cubic yards of material that may be removed during the License term shall be 23,600 cubic yards.

The Licensee, as the successful bidder, shall place a deposit with the Licensor within twenty-four (24) hours of the close of bidding of TWENTY THOUSAND AND NO/100 DOLLARS (\$20,000.00) or two percent (2%) of the effective royalty, whichever is less ("Deposit"). For purposes of the Deposit, the effective royalty shall be determined by applying the royalty rate to the maximum amount of sand that may be removed during the License term. The Deposit shall not be considered interest bearing. The amount due the Licensor monthly shall be deducted

from the Deposit until the Deposit is depleted, after which monthly payments to the Licensor will commence.

3. The term of the License shall be for two (2) years, to begin MARCH 1, 2011 and shall expire FEBRUARY 28, 2013; providing that any party may terminate this License at any time during the term of the License by providing the other party thirty (30) calendar days prior written notice of the intent to cancel.

Upon termination, abandonment, or expiration, the Licensee shall not be relieved of any and all claims or demands accrued, including claims for property damage, personal injury or death, caused by any act or omission of the Licensee, or for any breach of the terms and conditions of this License.

The Licensee shall remove from the License Area all equipment, machinery, and improvements of every kind and nature within ten (10) calendar days after receiving notice of termination or upon abandonment of this License.

The Licensee shall, at its sole cost and expense, restore the License Area to a condition satisfactory to the Chairperson upon early termination or abandonment of this License.

4. The Licensee shall confine operations strictly to the License Area and shall take all necessary precautions to protect adjoining property from damage or injury. Any interference with or damage to property under the control of the State of Hawaii and/or under Executive Order 4209 incident to the exercise of the privilege granted shall be promptly corrected and/or repaired by the Licensee at its own expense to the satisfaction of the Chairperson of the Board of Land and Natural Resources.

5. The Licensee shall meet with the Kauai DOFAW Branch Manager in advance of any removal of material to discuss removal plans and safety requirements for the removal activity. The removal of the material shall be under the supervision of the Licensor and DOFAW and shall be taken from only those areas so designated by the Licensor and DOFAW. No removal shall occur without such designation.

The Licensee shall give the Kauai DOFAW Branch Manager prior notice of at least 48 hours before entering the License Area or removing any material; and prior notice of at least 48 hours before leaving the License Area, when the allotted cubic

yards are removed.

6. This License is non-transferable. If the Licensee is a partnership, joint venture or corporation, the sale or transfer of 20% or more of ownership interest or stocks by dissolution, merger or any other means shall be deemed a transfer for purposes of this paragraph and subject to the right of the Licensor to terminate this License effective of the date of sale or transfer.

7. The Licensor reserves on to itself the right to sell or grant to others similar rights or privileges; PROVIDED, HOWEVER, that the rights herein reserved shall not be exercised by the Licensor, or by any other licensee(s) of the Licensor in such a manner as to interfere unreasonably with the herein Licensee in the free use of said License Area for the purpose herein specified.

8. The use and enjoyment of the License Area shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

9. The Licensee shall procure, at its own cost and expense and keep in full force and effect throughout the term of this License, commercial general liability insurance with an insurance company or companies acceptable to the Board and licensed to do business in the State of Hawaii, in an amount of at least \$300,000.00 for each occurrence and \$500,000.00 aggregate. The policy or policies of insurance shall name the State of Hawaii as additional insured. The insurance shall cover the entire License Area. The Licensee, prior to entry and use of the License Area or within fifteen (15) calendar days from the effective date of this Land License, whichever is sooner, shall furnish the Licensor with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire License term, and furnish a like certificate(s) upon each renewal of the policy(s). The insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) calendar days written notice has been given to the Licensor.

The Licensor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this License. If, in the opinion of the Licensor, the insurance provisions in this License do not provide adequate

protection for the Licensor, the Licensor may require Licensee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Licensor's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Licensor shall notify Licensee in writing of changes in the insurance requirements and Licensee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Licensor incorporating the changes within thirty (30) calendar days of receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Licensee's liability under this License nor to release or relieve the Licensee of the indemnification provisions and requirements of this License. Notwithstanding the policy(s) of insurance, Licensee shall be obligated for the full and total amount of any damage, injury, or loss caused by the Licensee's negligence or neglect connected with this License.

It is agreed that any insurance maintained by the Licensor will apply in excess of, and not contribute with, insurance provided by Licensee's policy(s).

10. The Licensee shall observe and comply with all laws, ordinances, rules and regulations of the federal, state, municipal or county governments now in force or which may hereinafter be in force, affecting the License Area.

11. The Licensee shall not do, commit, permit or suffer to be done any willful or voluntary waste, spoil, or destruction in and upon the License Area or any part thereof; nor shall the Licensee cut down, permit or suffer to be cut down, any trees growing or being grown, or which shall hereafter grow, in and upon the License Area or any part thereof, except special permission for the same may be given by the Department of Land and Natural Resources.

12. All work incident to the removal of material shall be accomplished without cost to the Licensor.

13. No stockpiling of material shall occur in the License Area. The removal of material shall be restricted to weekdays and holidays.

14. The Licensee shall indemnify, defend, and hold Licensor harmless from and against any claim or demand for loss,

liability or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of Licensee relating to Licensee's use, occupancy, maintenance, or enjoyment of the License Area; 2) any failure on the part of the Licensee to maintain the License Area, and including any accident, fire or nuisance growing out of or caused by any failure on the part of Licensee to maintain any of Licensee's equipment within the License Area in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Licensee's non-observance or non-performance of any of the terms, covenants, and conditions of this License or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

15. In case the Licensor shall, without any fault on its part, be made a party to any litigation commenced by or against the Licensee (other than condemnation proceedings), the Licensee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the Licensor; furthermore, the Licensee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the Licensor in enforcing the terms and conditions of this License, in recovering possession of the License Area, or in the collection of delinquent royalty, taxes, and any and all other charges.

16. The Licensee shall post a \$50,000.00 performance bond with the Department of Land and Natural Resources, State of Hawaii, to insure faithful compliance with the terms and conditions of the License.

17. The Licensee shall pay all cost and expense incurred by the issuance of this License.

18. Any and all disputes and/or questions arising under this License shall be referred to the Chairperson of the Board of Land and Natural Resources and his determination of these disputes or questions shall be final and binding on the parties.

19. The Licensor, its agents and employees, shall at any reasonable time upon twenty-four (24) hours notice to the Licensee, have access to all books, accounts, records, and reports of the Licensee relating to the material removed from the License Area herein described for the purpose of inspection, examination or audit. If the audit by Licensor shall disclose that the royalty rate has been underpaid by five percent (5%) or

more for the period under examination, the Licensor shall have the right to terminate this License.

20. The Licensee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Licensee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the License Area any such materials except to use in the ordinary course of Licensee's business, and then only after written notice is given to Licensor of the identity of such materials and upon Licensor's consent which consent may be withheld at Licensor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Licensee, then the Licensee shall be responsible for the reasonable costs thereof. In addition, Licensee shall execute affidavits, representations and the like from time to time at Licensor's request concerning Licensee's best knowledge and belief regarding the presence of hazardous materials on the License Area placed or released by Licensee.

The Licensee agrees to indemnify, defend, and hold Licensor harmless, from any damages and claims resulting from the release of hazardous materials on the License Area occurring while Licensee is in possession, or elsewhere if caused by Licensee or persons acting under Licensee. These covenants shall survive the expiration or earlier termination of this License.

For the purpose of this License "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

21. Time is of the essence in this License and if the Licensee shall fail to pay the effective royalty, or any part thereof, at the times and in the manner provided within thirty (30) days after delivery by the Licensor of a written notice of breach or default, or if the Licensee shall become bankrupt, or shall abandon the License Area, or if this License and License Area shall be attached or taken by operation of law, or if Licensee shall fail to observe and perform any of the covenants,

terms, and conditions contained in this License and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Licensor of a written notice of breach or default, by personal service, registered mail or certified mail to the Licensee at its last known address and to each mortgagee or holder of record having a security interest in the License Area, the Licensor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the License Area, or any part, and upon or without the entry, at its option, terminate this License without prejudice to any other remedy or right of action for arrears of royalty or for any preceding or other breach of contract; furthermore Licensor shall retain all royalty paid in advance to be applied to any damages.

22. The Licensee shall be solely responsible for securing the License Area against trespass and unauthorized and unlawful activity by others.

23. The Licensee shall meet with DOFAW representatives for site review, prior to surface vegetation removal and sand removal within the License Area.

24. This License is encumbered under Governor's Executive Order No. 4209 and therefore, is subject to Governor's concurrence.

25. The Licensor does not warrant the conditions of the License Area, as the same are being licensed as is. The Licensor makes no representation regarding the exact quantity or quality of the materials or any other condition applicable to the License Area.

26. The Licensee shall comply with all standards of safety required by the federal, state, and county governments for operation and utilization of the Licensed Area.

27. In the event any prehistoric, historic or archaeological sites or remains are discovered during the removal of material, the Licensee shall stop all work immediately and notify the Kauai Office of DOFAW and the Historic Preservation Division of the Department of Land and Natural Resources on Oahu and shall obtain the approval of the State of Hawaii prior to recommencing any work within, on, or involving the License Area.

28. At the end of the license term, the Licensee shall finish, fill, clear, and/or smooth the License Area to the condition and contours delineated on Exhibit "A."



IN WITNESS WHEREOF, the STATE OF HAWAII, the Licensor herein, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these present to be duly executed this 24TH day of FEBRUARY, 2011, the Licensee herein, has caused these presents to be duly executed this 10TH day of FEBRUARY, 2011.

STATE OF HAWAII

By 
Chairperson
Board of Land and
Natural Resources

LICENSOR

Approved by the Board of
Land and Natural Resources
at its meetings held on
May 14, 2004, January 14, 2005,
February 22, 2008, and
September 12, 2008.

GOODFELLOW BROS., INC., a
Washington corporation

By 
R. Scott Pingrey
Its Chief Engineer

And By _____

Its _____

APPROVED AS TO FORM:


Deputy Attorney General

Dated: Nov. 5, 2009

LICENSEE

STATE OF HAWAII)
COUNTY OF Kauai) SS.

On this 11th day of February, 2011, before me appeared R. Scott Pingrey and _____ to me personally known, who being by me duly sworn did say that ~~they~~ ^{at his L.S.} are the Chief Engineer and _____, respectively, of GOODFELLOW BROS., INC., a Washington corporation, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and the said Chief Engineer and _____ acknowledged said instrument to be the free act and deed of said corporation.

Audrey M. Bonilla
Notary Public, State of _____

L.S.

Audrey M. Bonilla

My Commission Expires: 3/24/2012

Date of the Notarized Document: 2/11/11

Number of Pages: 10

Identification or Description of the Document being Notarized:

STATE OF Hawaii DLNR LAND LICENSE

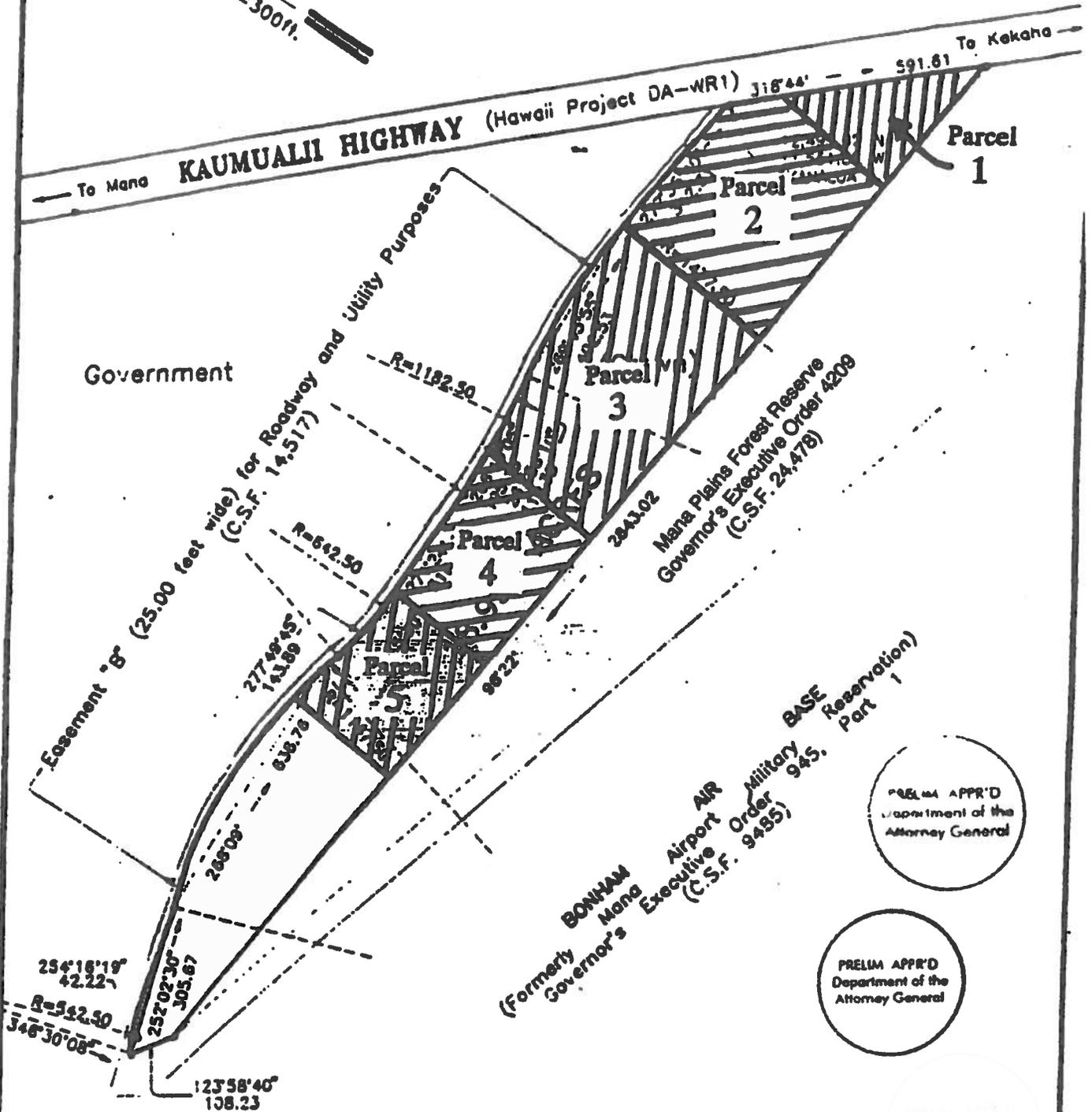
Printed Name of Notary: Audrey M. Bonilla 5th Circuit

Audrey M. Bonilla 2/11/11
Notary's Signature and Notary's Official Stamp or Seal Date

L.S.

Department of Land and Natural Resources
Division of Forestry and Wildlife

TRUE NORTH
SCALE: 1 in. = 300 ft.



**Phase II Mana Plains Sand Mine / Forest Reserve
Sand Mining Parcel Location Map**

Mana, Waimea, Kauai, Hawaii

Scale: 1 inch = 300 feet

EXHIBIT "A"

Department of Land and Natural Resources
Division of Forestry and Wildlife

GOVERNMENT (CROWN) LAND OF WAIMEA

Phase II Mana Plains Sand Mine / Forest Reserve
Final Surface and Bottom Contours for Parcel No. 5

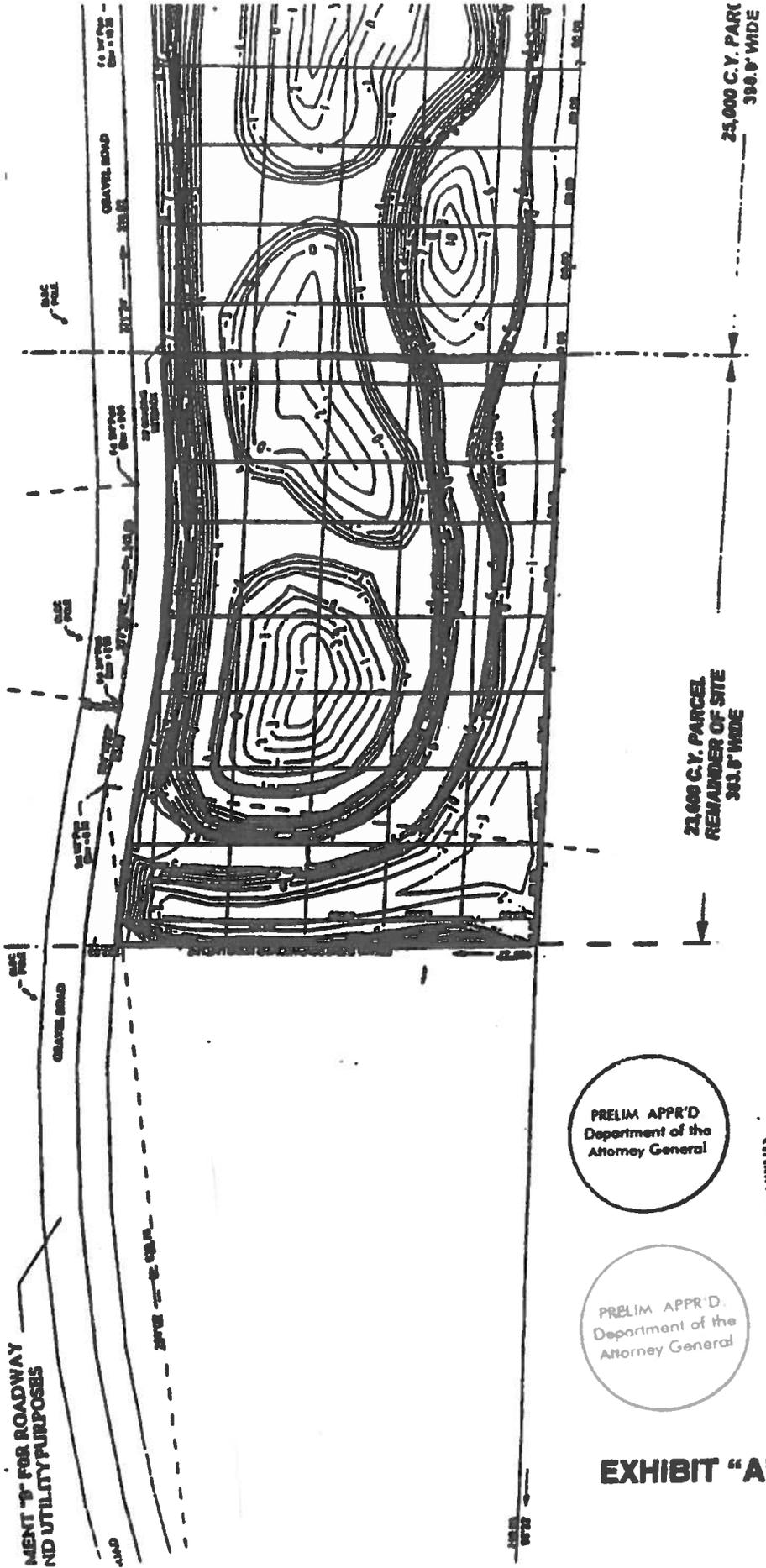


EXHIBIT "A"

**GOODFELLOW BROS., INC. GENERAL CONTRACTOR**

Monday, August 19, 2013

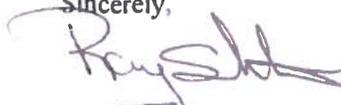
Galen Kawakami
Kauai Branch Manager
Division of Forestry and Wildlife, DLNR
3060 Eiwa Street, Room 306
Lihue, HI 96766

Re: Request for ROE
Mana Plains Forest Reserve, Waimea Kauai

Dear Mr. Kawakami.

Goodfellow Bros. would like to request a one year Right of Entry at Mana Plains Forest Reserve in Waimea Kauai, with a provision if there are unforeseen weather conditions the chairman could grant a 2 month extension. We have paid \$1,576,400 to remove 40,000 cubic yards of material. To date, we have removed 13,286 cubic yards as confirmed by an independent topographical survey. The public auction date for this license was July 6, 2009. When the license work finally commenced in Spring of 2011, Kauai experienced a significant downturn in construction. The demand for the material decreased by over two thirds during this time and therefore the material was not completely harvested as originally planned as circumstances had changed drastically. Also during this initial removal process the community was concerned with the amount of truck cycles. Since then the activity for which the material was contemplated has picked up, and we are pleased to have this opportunity to request a new ROE. We are requesting the ROE to remove the remaining quantity of 26,714 cubic yards of material. We are optimistic that the economy is on an upward path and we will be able to execute our request in the one year time frame. We thank the board for considering this request. Please feel free to call me at 808-879-8868 with any questions.

Sincerely,



Ray Skelton
Director of Operations-Maui County, Kauai, Crushing