

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

December 12, 2014

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

GL S-6054
Hawaii

Resubmittal: Amend Commencement and Termination Dates, Request for Waiver of Performance Bond Requirement, General Lease No. S-6054, Mauna Kea Moo, LLC, Lessee, Niupea-Kaala, Hamakua, Hawaii, Tax Map Key: 3rd/ 4-1-04:33 and Manowai kohau-Kekualele, Hamakua, Hawaii Tax Map Key: 3rd/4-2-07:02.

BACKGROUND:

At its meeting of March 24, 2011 (agenda item D-3), the Board of Land and Natural Resources approved the direct lease to Mauna Kea Moo, LLC for dairying and allied purpose. Said lease is for a term of 35 years and was to commence the first day of the month to be determined by the Chairperson. Lease rent for the first two (2) years of the lease term shall be waived in accordance with section 171-6 (7), Hawaii Revised Statutes¹.

REMARKS:

Commencement Date:

As a result of delays in establishing the annual lease rent², the lease documents were not drafted until March 2014. Further delays in executing the lease document resulted in a commencement date that is different from the effective date of the lease. On page one (paragraph 3) of the lease document, staff selected a commencement date of July 8, 2014. However, the Board approved submittal specifies the commencement date to be the first day of the month to be determined by the Chairperson. This is consistent with language further explained in paragraph 3 which states in part, "paying to the Lessor at the Office of the Department of Land and Natural Resources, an annual rental as provided hereinbelow, payable in advance, without notice or demand, in equal semi-annual installments on June 1st and December 1st of each and every year".

¹ §171-6 (7) HRS – Reduce or waive the lease rental at the beginning of the lease of public land to be used for any agricultural or pastoral use, or for resort, commercial, industrial, or other business use where the land being leased requires substantial improvements to be placed thereon; provided that such reduction or waiver shall not exceed two years for land to be used for any agricultural or pastoral use, or exceed one year for land to be used for resort, commercial, industrial, or other business use.

² Proposed Lease rent of \$34,800 was rejected by applicant. A prolonged arbitration process resulted in the annual lease rent of \$20,500.

Staff is recommending the Board amend paragraph 3, page 1 of GL S-6054 by adjusting the commencement date from July 8, 2014 to June 1, 2014 and change the expiration date from July 7, 2049 to May 31, 2049.

Waiver of Performance Bond Requirement:

In a letter dated August 26, 2014 (Exhibit 2), the Lessee has requested a waiver of the Performance Bond requirement in the lease. Paragraph 28 of the Lease provides for waiver or modification of the performance bond requirements upon substantial compliance by the Lessee of the terms, covenants and conditions of the Lease. It also reserves the right of the State to reactivate or reimpose the bond, if need be at any time throughout the Lease term.

In his letter, the Lessee explains that he has been unable to obtain the required performance bond through conventional means and the only alternative would be to hold the full amount (\$41,000) in a cash account, either as a secured line of credit or savings account.

The Lessee states that he has and will be investing a substantial amount of funds towards the development of the dairy operation and would like to have the amount required for the performance bond put into the development of the farm. Immediate expenses include land clearing and perimeter fencing of approximately 1,400 acres of land. He is requesting for the waiver of the bond to coincide with the waiver of the lease rent for the first two years.

Paragraph 40, page 16 of the lease requires the Lessee to complete the construction of the dairy operation within four (4) years from the commencement date³. The lease also provides for a surety bond (par. 41) in an amount equal to the cost of construction of the improvements but in no event shall the amount be less than nine hundred thousand dollars (\$900,000).

Staff feels the surety bond for the improvements is sufficient coverage for the initial term of the lease and recommends the Board consider the Lessee's request to waive the performance bond requirement for the first two years of the lease to coincide with the waiver of the lease rent.

RECOMMENDATION: That the Board:

1. Commencement Date:

- a. Amend the commencement date for General Lease No. S-6054 from July 8, 2014 to June 1, 2014;
- b. Amend the expiration date for General Lease No. S-6054 from July 7, 2049 to May

³ 40. **Improvements.** The Lessee shall at its own cost and expense, within four (4) years as of the date of the lease commencement, complete the construction of dairy or other accessory facilities, at a cost of not less than NINI HUNDRED THOUSAND DOLLARS (\$900,000) ("Building Requirement"), in accordance with plans and specifications submitted by the Lessee to and approved in writing by the Chairperson prior to its construction, and in full compliance with all applicable laws, ordinances, rules and regulations.

31, 2049;

- c. All terms and conditions for General Lease No. S-6054 shall remain the same.

2. Waiver of Performance Bond Requirement:

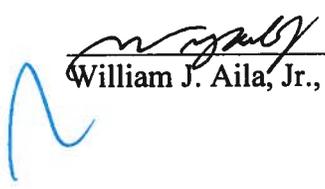
- a. Waive the performance bond requirement for the first two years of the lease. Said waiver shall be in effect from June 1, 2014 through May 31, 2016;
- b. In the event the Lessee violates any term or condition of the Lease in the future, then the Chairperson may, with thirty (30) days written notice, require that the full performance bond (two times the annual rent) be posted. The failure to timely post the required bond shall be deemed a material default and the State may terminate the Lease and pursue all other rights and remedies it may have.

Respectfully Submitted,



Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

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

March 24, 2011

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

PSF No.: 09HD-112

Hawaii

Issuance of Direct Lease to Mauna Kea Moo, LLC for Dairy Purposes, Niupea-Kaala, Hamakua, Hawaii, Tax Map Key: 3rd/4-1-04:33 and Manowaikohau-Kekualele, Hamakua, Hawaii Tax Map Key: 3rd/4-2-07:02.

APPLICANT:

Mauna Kea Moo, LLC, a Hawaii limited liability corporation whose business and mailing address is P.O. Box 461, Papaikou, Hawaii 96774.

LEGAL REFERENCE:

Section 171-59(b), Hawaii Revised Statutes, as amended.

Disposition by Negotiation. Includes agricultural processing as defined, "the processing of agricultural products, including dairying, grown, raised or produced in Hawaii."

LOCATION:

Portion of Government lands of Niupea-Kaala, Hamakua, Hawaii, identified by Tax Map Key: 3rd/4-1-04:33, and portion of Government lands of Manowaikohau-Kekualele, Hamakua, Hawaii Tax Map Key: 3rd/4-2-07:02, as shown on the attached maps labeled Exhibits A.

AREA:

Parcel 33	
3 rd /4-1-04:33	333.68 acres, more or less.
Parcel 02	
3 rd /4-2-07:02	<u>1,061.69</u> acres, more or less
Total area	1,395.37 acres, more or less

ZONING:

State Land Use District:	agriculture
County of Hawaii CZO:	40-acre agriculture

APPROVED FOR THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
March 24, 2011

EXHIBIT 1

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:

Vacant and unencumbered.

CHARACTER OF USE:

Dairying and allied purposes to include the pasturing of dairy-heifers, including a milking barn and accessory uses involved with operating a dairy.

LEASE TERM:

Thirty-five (35) years

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL RENT:

Fair market annual rent to be determined by independent appraiser, subject to review and approval by the Chairperson.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

At the 10th, 20th and 30th years of the lease term, by staff or independent appraisal.

PERFORMANCE BOND:

Twice the annual rental amount.

PROPERTY CHARACTERISTICS:

Tax Map Key: 3rd/ 4-1-04:33:

Utilities – None

Slope – moderate

Elevation – 1,000 feet to 1,800 feet

Rainfall – moderate to high

SCS Soil Series – Low humic latosol, moderately fine.

Land Study Bureau – University of Hawaii

Legal access to property – Staff has verified that there is legal access to the property off of Hawaii Belt Road.

Tax Map Key: 3rd/4-2-07:02:

Utilities – None

Slope – moderate

Elevation – 900 feet to 2,000 feet

Rainfall – moderate to high

SCS Soil Series – Low humic latosol, moderately fine.

Land Study Bureau – University of Hawaii

Legal access to property – Staff has verified that there is legal access to the property off of Hawaii Belt Road via Old Government Road.

Subdivision – Staff has verified that the subject properties to be auctioned are legally subdivided lots.

Encumbrances – Staff has verified that there are no encumbrances on the properties.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on March 8, 2011 with a finding of no significant impact (FONSI). (Exhibit B)

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u>__</u>
Registered business name confirmed:	YES <u>X</u>	NO <u>__</u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u>__</u>

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine initial rent;
- 2) Pay for the costs of public notice pursuant to HRS Section 171-16;
- 3) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 4) Obtain a title report to ascertain ownership, where necessary, at Applicant's own cost and subject to review and approval by the Department.

MINIMUM IMPROVEMENTS:

Within four (4) years from the commencement date of the lease, the Lessee shall have completed the construction of dairy or other accessory facilities having a value of not less than \$900,000.00. Said facilities shall be accordance with plans submitted to the Chairperson for approval prior to their construction.

REMARKS:

Tax Map Key: 3rd/ 4-1-04:33 (parcel 33) and Tax Map Key: 3rd/4-2-07:02 (parcel 2) were last leased to Hamakua Sugar Company, Inc. under General Lease No. S-3614 and General Lease No. S-3612, respectively, for agricultural purposes. Both leases terminated in 1991 and the land has been sitting fallow since that time.

Staff has received a number of inquiries from ranchers, alternative energy companies, dairy operators, and commercial forestry companies regarding the availability of these parcels for their various proposed uses. Hamakua Biomass Energy, LLC and Sunfuels Hawaii LLC identified the parcels as two of many parcels desired for their alternative energy operations.

At its meeting of November 14, 2008, Items D-5 & D-6, the Board authorized the Land Division to enter into negotiations for lease of up to 10,500 acres of State lands to Hamakua Biomass, and 10,000 acres to Sunfuels subject to a number of conditions. To date, the conditions have not been fulfilled, and no specific request has been brought to the Board for a lease of the subject parcel. Staff is seeking the Board's authorization to issue a direct lease of the parcels for dairy purposes rather than hold the land for alternative energy use.

Although water is not readily available on parcel 2, there is a county water line available for limited use on parcel 33.

As indicated in Exhibits A, Parcel 2 surrounds a landlocked parcel designated as TMK (3) 4-2-07:01 (parcel 1), area 4.7 acres, owned by Kamehameha Schools / Bishop Estate. Land Division's files contain no record of a legal easement over parcel 2 in favor of parcel 1. The applicant will be required to fence off parcel 1.

Utilities are not available. The applicant will need to arrange for water and electricity, if required. The Applicant will coordinate with the Department of Transportation, Highways Division to identify and construct access points where necessary to provide safe ingress and egress.

The Applicant will work with the Department of Land and Natural Resources, Division of Forestry and Wildlife in identifying any traditional trails or other means of accessing the forest reserves above the leased parcels. Staff has identified two paved, public roads on either side of the subject properties that access the forest reserves.

Currently, there are only two major operating dairies in the State of Hawaii and both are on the Island of Hawaii. According to the Applicant, there is a tremendous demand for locally produced milk and milk products and it is believed that this operation will significantly increase the supply of locally produced milk.

The owner of Mauna Kea Moo, LLC is Kees Kea. Mr. Kea grew up on a family dairy farm in the Netherlands gaining much experience and expertise in the operation and production of milk and dairy products. He has gained further experience as owner/manager of a dairy operation in Tillamook Oregon. In 2003, Kees came to Hawaii to assist in the operations of Island Dairies, Inc. where he became a partner. During his time at the dairy, he made many improvements in animal health and reproduction, increasing the amount of young stock. He also implemented improvements to the odor abatement program thereby reducing the number of complaints from adjacent neighbors.

Although the partnership did not work out, he realized that value-added products such as cheese, butter and yogurt in addition to milk would make a dairy flourish on the island.

The Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

At its meeting of August 12, 2010, agenda item D-7, the Board approved in concept, a direct lease to Mauna Kea Moo, LLC for dairy farming upon the applicant submitting an environmental assessment and the publication of a Finding of No Significant Impact (FONSI). Such findings were published in the Office of Environmental Quality Control (OEQC) bulletin on March 8, 2011.

RECOMMENDATION: That the Board:

- A. Find the area to be an economic unit in terms of the intended use.
- B. Find the disposition encourages competition within the agricultural industry:
- C. Authorize a direct lease, pursuant to section 171-59 (b), Hawaii Revised Statutes, to Mauna Kea Moo, LLC, covering the subject areas for dairying and allied purposes, subject to the terms and applicable conditions cited above, which are by this reference incorporated herein, and subject further to the following;
 1. Lease rental for the first two (2) years of the lease terms shall be waived.
 2. All construction and use of the premises shall be in full compliance with all laws, rules and regulations of the Federal, State and County governments.
 3. The subject lands shall be leased in an "as is" condition.
 4. Standard full utilization if the land provision.
 5. Standard good husbandry and conservation program provision.
 6. Standard boundary fence provision.
 7. The cost of utilities, if desired, shall be the responsibility of the Lessee.
 8. The Lessee shall be solely responsible for any survey and boundary stakeout of the demised premises.
 9. Employee residential use. The Lessee is allowed to have one dwelling for employee residence on the leasehold premises, at a cost of not more than \$70,000. The dwelling shall not exceed more than 1,200 square feet and shall be in accordance with plans and specifications submitted by the Lessee to and approved in writing by the Chairperson and in full compliance with all applicable laws, ordinances, rules and regulations.

10. Pest control. The Lessee shall implement pest control methods if wild animals as required for the maintenance of good health and husbandry standards.
11. Animal waste management. The Lessee shall implement a waste management system to handle solid wastes and wastewater generated from the dairy operation. It shall include waste collection system, treatment and storage facilities and adequate irrigation areas for application of the animal waste effluent. Submittals and designs of the waste management system shall all comply with the State Department of Health's Guidelines for Livestock Waste Management dated June 1996. The construction and operation of the waste management facilities shall be concurrent with the dairy's operation. Lessee shall contact the State Department of Health, Wastewater Branch at (808) 586-4294 for annual site inspection of the waste management system.
12. Such other terms and conditions as contained in the standard agricultural lease document.
13. Review and approval by the Department of the Attorney General; and
14. Such other terms and conditions as may be prescribed by the Chairperson to best protect the State's interest.

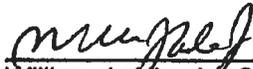
Respectfully Submitted,



Gordon C. Heit
Land Agent

KEM

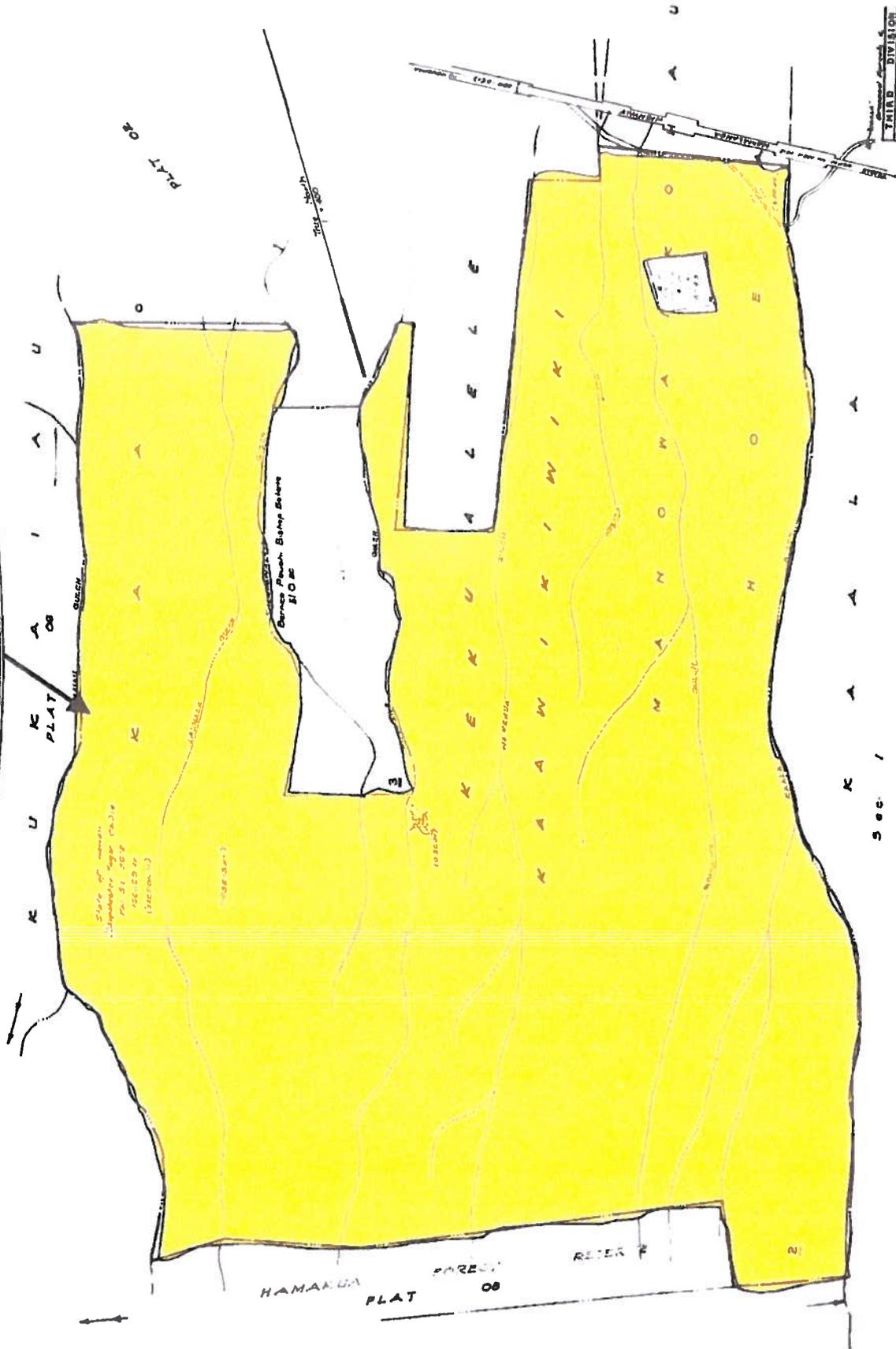
APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

TMK: 3RD/3-2-07:02

SUBJECT PROPERTY

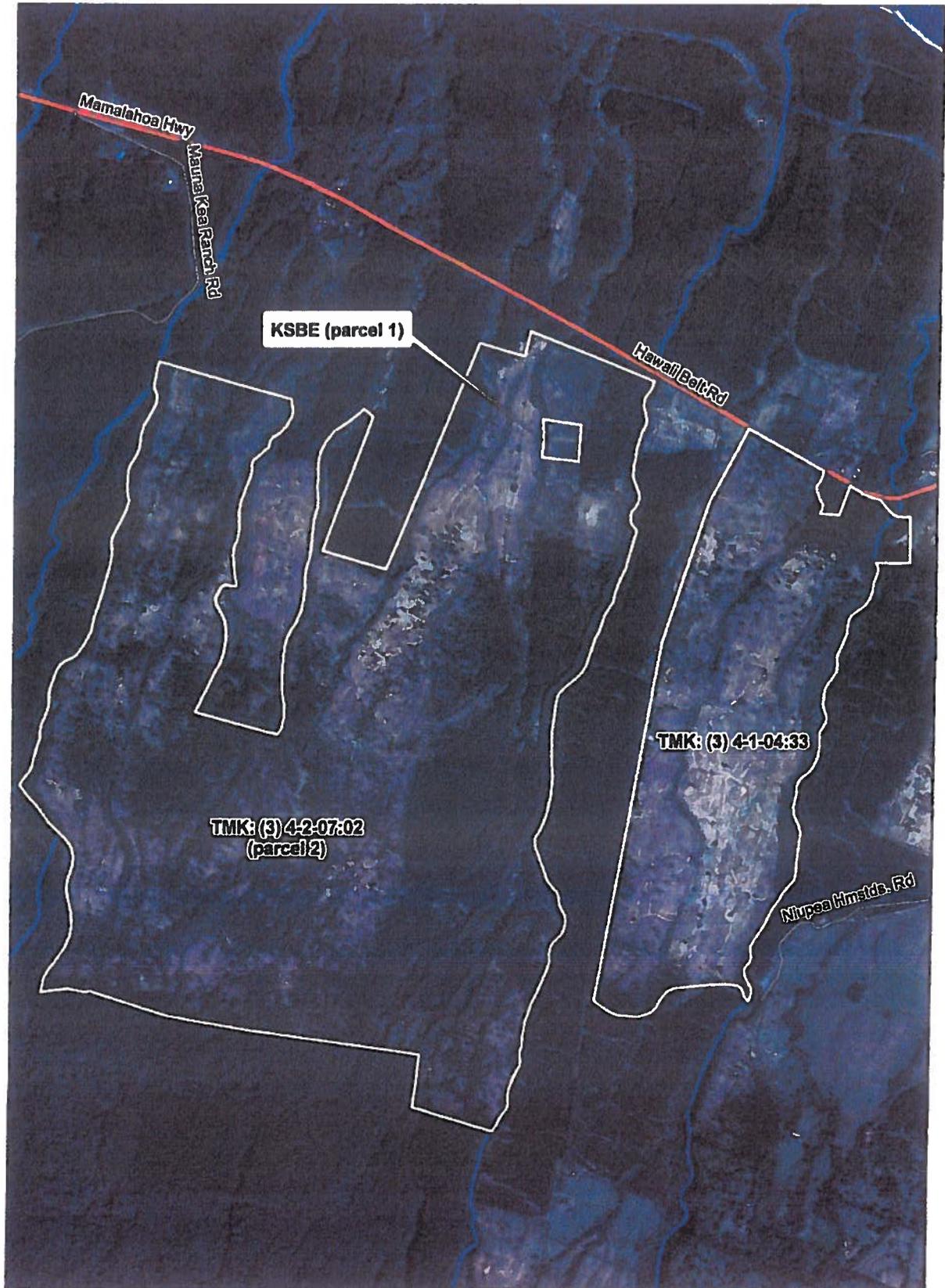


TRIM	4
DIVISION	2
SECTION	07
CONTAINING	BLKETS
SCALE	1 IN. = 400 FT.

ADVANCE SHEET
REF. TO U.S.G.L.

MOA - KAAO TRACT, MAHAKUA, HAWAII - (Hamakua Mill)

Mauna Kea Moo, LLC





The Environmental Notice

March 8, 2011

KAUAI (HRS 343)	
1. Secret Beach Properties (DEA)	2
2. Pohaku 'O Kauai Materials LLC (DEA)	2
OAHU (HRS 343)	
3. East Kapolei Fire Station (FEA)	3
4. Kalaheo Repeater Replacement Project (DEA)	3
5. Kalaeloa Energy Corridor (DEA)	4
6. In-Vessel Composting Facility (EISPN)	5
7. Moiiliili-Kapahulu Sewer Rehabilitation/Reconstruction (FEA)	5
MAUI (HRS 343)	
8. Issuance of an Incidental Take License and Proposed Conservation Measures Associated with the Advanced Technology Solar Telescope (FEA)	6
9. Mahinahina Exploratory Well (DEA)	7
10. Waiale Road Extension and East Waiko Road Improvements (DEA)	7
11. Auwahi Wind Farm (DEIS)	8
MOLOKAI (HRS 343)	
12. Kaunakakai Harbor Ferry System Improvements (FEA)	9
HAWAII (HRS 343)	
13. University of Hawaii at Hilo Acquisition of Student Housing Complex (DEA)	9
14. Mauna Kea Moo, LLC Dairy (FEA)	10
15. County of Hawaii Water Board Purchase of Land on Chin Chuck Road for Future Water Tank Reservoir and Well Site (DEA)	11
Conservation District Use Permits	
CDUA OA-3585, Hawaiian Electric Company, Inc., Kalaheo Repeater Project	11
Federal Consistency Reviews	
Ala Moana Wastewater Pump Station Force Mains #3 & #4 Crossing of Honolulu Harbor Entrance Channel, Oahu	12
U.S. Army Corps of Engineers Proposal to Reissue and Modify Nationwide Permits	12
Special Management Area Minor Permits	13
Shoreline - Certification Applications	14
Shoreline - Certifications and Rejections	14
Pollution Control Permits	15
Federal Notices	
Notice of Availability of Final Supplement to the Environmental Assessment for the Proposed Paina Hawaii, LLC Irradiator, Honolulu	15
Glossary	17

The Environmental Notice informs the public of environmental assessments and other documents that are available for review and comment per HRS §343-3 and is issued on the 8th and 23rd of each month on the Office of Environmental Quality Control's website. If you would like to be notified when it is issued, send us your email address and we'll put you on our mailing list

Gary Hooser, Director · Office of Environmental Quality Control · 235 South Beretania Street, Suite 702 · Honolulu, HI 96813
 Tel: 586-4185 · Fax: 586-4186 · Email: oeqc@doh.hawaii.gov · Website: <http://hawaii.gov/health/environmental/oeqc/index.html/>
 Toll Free Kauai: 274-3141 ext. 64185 · Maui: 984-2400 ext. 64185 · Molokai/Lanai: 1-800-468-4644 ext. 64185 · Hawaii: 974-4000 ext. 64185

Permits: Building, Grading, Driveway, Drainage Approval; Plan Approval, Landfill Disposal, Injection Well Permit

Proposing Agency: University of Hawaii at Hilo, 200 W. Kawili Street, Hilo, HI 96720. Harry Yada, 933-9911

Approving Agency: Same

Consultant: Geometrician Associates, PO Box 396, Hilo, HI 96721. Ron Terry, 969-7090

Status: Anticipated Finding of No Significant Impact. Comments are due April 6, 2011. Send comments to the Approving Agency and Consultant

The University of Hawaii at Hilo (UH Hilo) proposes to acquire the existing privately owned, 31-unit University Palms apartment complex and an adjacent single-family home and convert both properties to student housing. UH Hilo will renovate the University Palms to house 102 students and demolish the single-family home and then redevelop the property as multi-unit housing to accommodate an additional 34 students. The facilities are needed to reduce a shortage of on- or near-campus student housing, which inconveniences students and hampers the increase in enrollment critical to the orderly growth plans of UH Hilo. Acquisition of the facility will not significantly affect traffic. The University Palms is already fully occupied, and the traffic generated by the future facility next-door would not markedly degrade the level of service, parking availability or pedestrian for local streets and intersections, given the proposed improvements. The location is directly across the UH Hilo campus; given a parking shortage on campus, nearly all students would walk rather than drive to classes and other campus activities. Short-term noise, air, and water quality impacts associated with demolition, construction and renovation would be mitigated. Hazardous materials present in the buildings would be properly abated during demolition and renovation. No historic properties appear to be present at the site, a finding that is being confirmed in coordination with the State Historic Preservation Division (SHPD). However, if human skeletal remains or undocumented archaeological resources are encountered during land-altering activities associated with expansion or landscaping, work in the immediate area of the discovery will be halted and SHPD will be contacted.

14. Mauna Kea Moo, LLC Dairy (FEA)

Island: Hawaii

District: Hamakua

TMK: (3) 4-1-04:33, 4-2-07:02

Permits: Wastewater management plan, solid waste plan, building

Applicant: Mauna Kea Moo, LLC, PO Box 461, Papaikou, HI 96781. 937-4770 and 938-9249

Approving Agency: Dept of Land and Natural Resources, Land Division, PO Box 936, Hilo, HI 96720. Gordon Heit, gordon.c.heit@hawaii.gov

Consultant: Malena A. Kea, PO Box 461, Papaikou, HI 96781. 937-4770

Comments: Finding of No Significant Impact. There is no comment period

Mauna Kea Moo, LLC is applying for a long term lease for dairying purposes. The majority of the property will be for grazing of lactating and non-lactating dairy cattle and the facility to milk, and conduct activities of a dairy farm. The total number of cattle will be approximately 600 head including milking, dry heifers and baby calves. The proposed facility will be confined to approximately 10 acres located at the 1400 foot elevation. There will be a milking barn and a holding pen, milk loading bay, feed storage building, calf housing, free stalls, waste management system and ancillary infrastructure such as three phase power at the facility, improving and paving some of the existing roads, cross fencing of paddocks and water system, and housing. Alternative energy will be incorporated whenever possible. The processing building will be located lower in the parcels at about 920-ft elevation on about 4 acres.

EXHIBIT 2



RECEIVED
LAND DIVISION
HONOLULU, HAWAII

27 August 26, 2014

Ref no.: 09HD 112
Lease Number s 6054

Department of Land and Natural Resources
Land Division
P.O. Box 621
Honolulu HI 96809

Attn: Gordon Heit

Dear Mr. Gordon Heit:

In accordance with item number 29 Waiver, modification, reimposition of bond and liability insurance provisions of lease number s-6054; Mauna Kea Moo, LLC is asking for a Waiver item 18 Bond, performance Mauna Kea Moo, LLC has tried unsuccessful to obtain the required bond but feel we have shown compliance with every other stipulation of the lease. We have spent a substantial amount of money as well as time in obtaining this lease and will be putting much more into the building of the dairy and processing facility.

Our 2 year plan:

The next 2 years will see us fencing the perimeter of the land in its entirety. We will clear most of the 300 acre parcel of land and a substantial portion of the 1000 acre parcel as well. While clearing of the land is taking place we will also complete the construction of the Cheesery. Combined just this first stage of our project will cost well over \$2 million and after the Cheesery is completed we will begin construction of the Dairy.

We are very committed to our project and understand, per the lease, that it is within the Lessor's discretion and hope that you will consider our request so that we may continue with our plans for the future.

Thank you,

Kees and Malena Kea
Mauna Kea Moo., LLC

Kees and Malena Kea - Mauna Kea Moo, LLC
P.O. Box 461, Papaikou, HI 96781 808-938-9249 or 808-937-4770

EXHIBIT 2