

D-5

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

May 25, 2001

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

MAUI

Discussion on Long-term Dispositions of Water Licenses and Issuance of Interim Revocable Permits to Alexander & Baldwin, Inc. and East Maui Irrigation Company, Limited, for the Honomanu, Keanae, Huelo and Nahiku License Areas, Hana, Maui, Various Tax Map Keys.

APPLICANTS:

ALEXANDER & BALDWIN, INC., a Hawaii corporation whose business and mailing address is 822 Bishop Street, P.O. Box 3440, Honolulu, Hawaii 96801.

EAST MAUI IRRIGATION COMPANY, LIMITED, a Hawaii corporation whose business and mailing address is P.O. Box 48, Paia, Hawaii 96779.

LEGAL REFERENCE:

Section 171-13, 171-55, and 171-58 Hawaii Revised Statutes, as amended.

LOCATION:

"Honomanu License" - Ko'olau Forest Reserve, Honomanu, Hana, Maui, Tax Map Key: 1-1-01: 44, as shown on the map labeled Exhibit A.

"Huelo License" - Ko'olau Forest Reserve, Huelo, Hana, Maui, Tax Map Key: 1-1-01: 50 and 2-9-14: 01, 05, 11, 12, & 17, as shown on the map labeled Exhibits B and C.

"Keanae License" - Ko'olau Forest Reserve, Keanae, Hana, Maui, Tax Map Key: 1-1-02: Portion 02, as shown on the map labeled Exhibit D.

"Nahiku License" - Ko'olau Forest Reserve, Nahiku, Hana, Maui, Tax Map Key: 1-2-04: 05 & 07, as shown on the map labeled Exhibit E.

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AREA:

"Honomanu License" - 3,381.000 acres, more or less.

"Huelo License" - 8,752.690 acres, more or less.

"Kaanāe License" - 10,768.000 acres, more or less.

"Nāhiku License" - 10,111.220 acres, more or less.

ZONING:

State Land Use District:	Conservation District
County of Maui CZO:	Conservation

LAND TITLE STATUS:

Section 5(b) lands of the Hawaii Admission Act.

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

YES X NO

CURRENT USE STATUS:

"Honomanu License" - currently under water permit [RP S-7263] to Alexander & Baldwin, Inc., which will expire on June 30, 2001.

"Huelo License" - currently under water permit [RP S-7264] to Alexander & Baldwin, Inc., which will expire on June 30, 2001, and under Proclamation No. 00020 with the Division of Forestry and Wildlife.

"Kaanāe License" - currently under water permit [RP S-7265] to Alexander & Baldwin, Inc., which will expire on June 30, 2001.

"Nāhiku License" - currently under water permit [RP S-7266] to East Maui Irrigation Company, Ltd., which will expire on June 30, 2001.

CHARACTER OF USE:

Right, privilege, and authority for the development, diversion, and use of water purposes.

COMMENCEMENT DATE:

A maximum term of one (1) year, commencing on July 1, 2001 and terminating on June 30, 2002.

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MONTHLY RENT:

Honomanu License: \$1,698.32 per month, based on staff appraisal, dated 5/7/01.
Huelo License: \$6,588.40 per month, based on staff appraisal dated 5/7/01.
Keanae License: \$3,476.72 per month, based on staff appraisal dated 5/7/01.
Nahiku License: \$1,426.88 per month, based on staff appraisal dated 5/7/01.

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rent.

LIQUIDATED DAMAGES:

Twenty percent (20%) of the monthly rent per day or three dollars (\$3.00) per day, whichever is greater.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The use does not differ from its previous use, therefore, pursuant to Section 11-200-8 (a)(1), of the Environmental Impact Statement Rules, Exempt Classes of Action, the applicant is exempt from the preparation of an environmental assessment.

DCCA VERIFICATION:

Alexander & Baldwin, Inc.

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

East Maui Irrigation Company, Limited

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

REMARKS:

The applicants are now requesting for a long-term disposition via public auction on the subject East Maui Water License areas and the continued issuance of interim revocable permits on an annual basis, pending issuance of a long-term disposition. [see attached]

Background:

The license areas are in a very complex situation since the four (4) areas are affected and partly governed by the East Maui Water Agreement made in 1939 by the then Territory of Hawaii and East Maui Irrigation Company, Limited (EMI). This agreement provides for the joint use by the Territory and EMI of the aqueduct system and also grants a perpetual right and easement to the Territory and EMI over and across each others' lands for the purposes of operating and maintaining the aqueduct system. This agreement was necessary since the aqueduct system traverses partly through government land and partly

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through EMI lands. The agreement also enabled the State to dispose of the water license at public auction instead of restricting the sale only to EMI.

The four (4) license areas were originally issued for a term of twenty-one (21) years and on a five (5) year interval basis. The most recent 21-year term for the following license areas were: "Honomanu License" which expired on June 30, 1986 under General Lease No. S-3695; "Huelo License" which expired on June 30, 1982 under General Lease No. S-3578; "Keanae License" which expired on June 30, 1972 under General Lease No. S-3349; and "Nahiku License" which expired on June 30, 1977 under General Lease No. S-3505.

At its August 23, 1985 meeting, under Agenda Item F-5, the Board approved the public auction sale of a thirty (30) year water license for the right to develop, divert, transport and use Government owned waters from the East Maui Watershed Area, situate within the Ko'olau Forest Reserve and the Hanawi Natural Area Reserve in the Hana District. The approval also included the incorporation of the four (4) areas into a single water license encompassing more or less the same geographical limits of the present license areas. It was decided that it would be more desirable and advantageous to have all four (4) areas consolidated into a single license since they were all a part of the same collection and delivery system extending from Nahiku to Honopou, inclusive.

The issuance of the thirty (30) year license by public auction had been pending at the request of the Attorney General's Office due to their concern regarding the settlement of the McBryde water case. Therefore, the right to take water from Government owned lands has been covered under four (4) revocable permits involving the "Honomanu, Huelo, Keanae and Nahiku License" areas. Additionally, Section 171-58 (c), Hawaii Revised Statutes, as amended, restricts the disposition of temporary water rights at a maximum of one (1) year. Accordingly, the issuance of these water permits for the four (4) "license" areas are alternated annually between A&B, Inc. and East Maui Irrigation Company, Limited. These water permits have commenced on July 1 and expired on June 30 of the following year.

Now that the McBryde water case has been settled, the Land Division has initiated the reopening of the thirty (30) year water license process. But while researching this matter, it was found that there is a pending court case involving its environmental assessment. The Attorney General's Office is currently researching the status of this case and the next step to be taken.

At its regular meeting on May 26, 2000, under Agenda Item D-16, the Land Board approved, as amended, the issuance of Water Permits to Alexander & Baldwin, Inc., and East Maui Irrigation Company, Ltd., by adding a condition that the Department of the Attorney General issue an opinion regarding the compliance with Chapter 343, Hawaii Revised Statutes, as it relates to these water leases. The Attorney General has been reviewing the issue and will report on that review to the Land Board.

Further discussions on the matter resulted in the following: 1) That the Board and Department work towards a long-term resolution, clarifying all issues that have been raised concerning a long-term disposition; 2) That the Chairperson meet with interested parties to discuss instream and stream restoration issues; 3) That staff brief the Board about in-house appraisal process for Revocable Permits and that an independent appraisal of fair market value be required in the future when this issue is moved to a long-term

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disposition; 4) That staff initiate discussions with DHHL, A&B/EMI, County of Maui, Commission on Water Resource Management and other interested parties in developing a watershed management plan for the water lease areas. Following are staff responses:

- 1) The issues raised regarding long-term dispositions are those that are being discussed in this submittal;
- 2) The Former Chairperson met with taro farmers from the Keanae/Wailua area and the Native Hawaiian Legal Corporation, to inspect the water systems and streams to evaluate the current and future concerns. He then met with EMI and Maui Land Board Member to discuss the possibility of assisting with some stream maintenance/repair and the flow of water into the streams.
- 3) DLNR staff appraisers have or will be briefing the Land Board on the in-house appraisal process and have begun the process of contacting qualified independent appraisers to determine fair market value for long-term dispositions.
- 4) EMI prepared a preliminary East Maui Watershed Management Plan in 1993, after the East Maui Water Partnership was created in 1992. Members of the partnership then were EMI, State of Hawaii (DLNR-DOFAW), National Park Service, County of Maui, The Nature Conservancy, Keola Hana Maui, and Haleakala Ranch Co. The issues addressed were: 1) Watershed Resource Monitoring; 2) Animal Control; 3) Weed Control; 4) Management of Infrastructure; and 5) Public Education Awareness Program. Staff will continue to solicit comments from other agencies and interested parties, including the Department of Hawaiian Home Lands.

Further, the litigation and subsequent court ruling on the "Waiohole" case caused the staff appraiser to delay the appraisals for the current revocable permits, which is the reason why Revocable Permit Nos. S-7263 thru S-7266 inclusively, are currently being executed. There was an erroneous assumption that the "Waiohole" decision would have some impact on the valuations for the subject permits.

Based on the foregoing information, the current water permits for the four (4) "license" areas will expire on June 30, 2001 and new permits are being requested by the applicants for the period of July 1, 2001. Furthermore, as part of the approval, the subject permits shall cease and be void upon the issuance of a license for the rights to collect water from the subject lands by public auction.

Because the sale of the water license cannot be disposed prior to the expiration of these permits, the Board's authorization to issue separate water permits for the "Honomanu, Huelo, Keanae, and Nakiku License" areas is again being requested.

RECOMMENDATION:

That the Board authorize the issuance of separate water permits to East Maui Irrigation Company, Limited, for the "Honomanu, Huelo, and Keanae License" areas and

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Alexander & Baldwin, Inc. for the "Nabiku License" area covering the subject areas described above for the right, privilege and authority for the development, diversion and use of water from the respective "license" area purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

1. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
2. Review and approval by the Department of Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Compliance with all terms, covenants, conditions and agreements contained in each respective License's expired General Lease as described above.
5. The revocable permits shall cease and be void if the Board issues a lease pursuant to public auction for the right to collect water from the lands under Section 171-58, Hawaii Revised Statutes.
6. The State reserves the right to withdraw water from these revocable permits to meet the following requirements as the State in its sole discretion may determine:

Constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Home Lands rights under Section 221 of the Hawaiian Homes Commission Act, as well as other statutorily or judicially recognized interests relating to the right to withdraw water for the purposes of and in accordance with the provisions of Section 171-58 (d), Hawaii Revised Statutes.

7. The Permittee shall be fully responsible for the maintenance of roads used within the water license areas.
8. The State reserves all hunting rights. In the event the State should declare the whole or any portion of the Premises as a public shooting grounds, the State reserves the right and privilege to issue written permits to hunters, subject to rules and regulations issued by the Department of Land and Natural Resources; provided, however, that open season shall be coordinated with the activities of the Permittee on the Premises.
9. That the standard Level One Hazardous Materials condition shall be reworded as follows: "At any time during the term or upon termination of this permit, the Chairperson, for good cause, may require the Permittee to conduct at Permittee's own cost, a Level One (1) Hazardous Waste Evaluation and a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the Department of Land and Natural Resources. Termination of this permit will not be approved by the Board of Land and Natural Resources unless this evaluation and abatement provision has been executed where required".

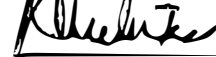
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10. Subject to any amended instream flow standard set by the Commission on Water Resource Management that affects the state waters under this revocable permit/lease.
11. The Permittee shall comply with all requirements of the State Water Code, section 174C, Hawaii Revised Statutes, and other laws governing water in Hawaii.

Respectfully submitted,



Louis Wada

Mani District Land Agent

APPROVED FOR SUBMITTAL:


GILBERT S. COLOMA-AGARAN, Chairperson

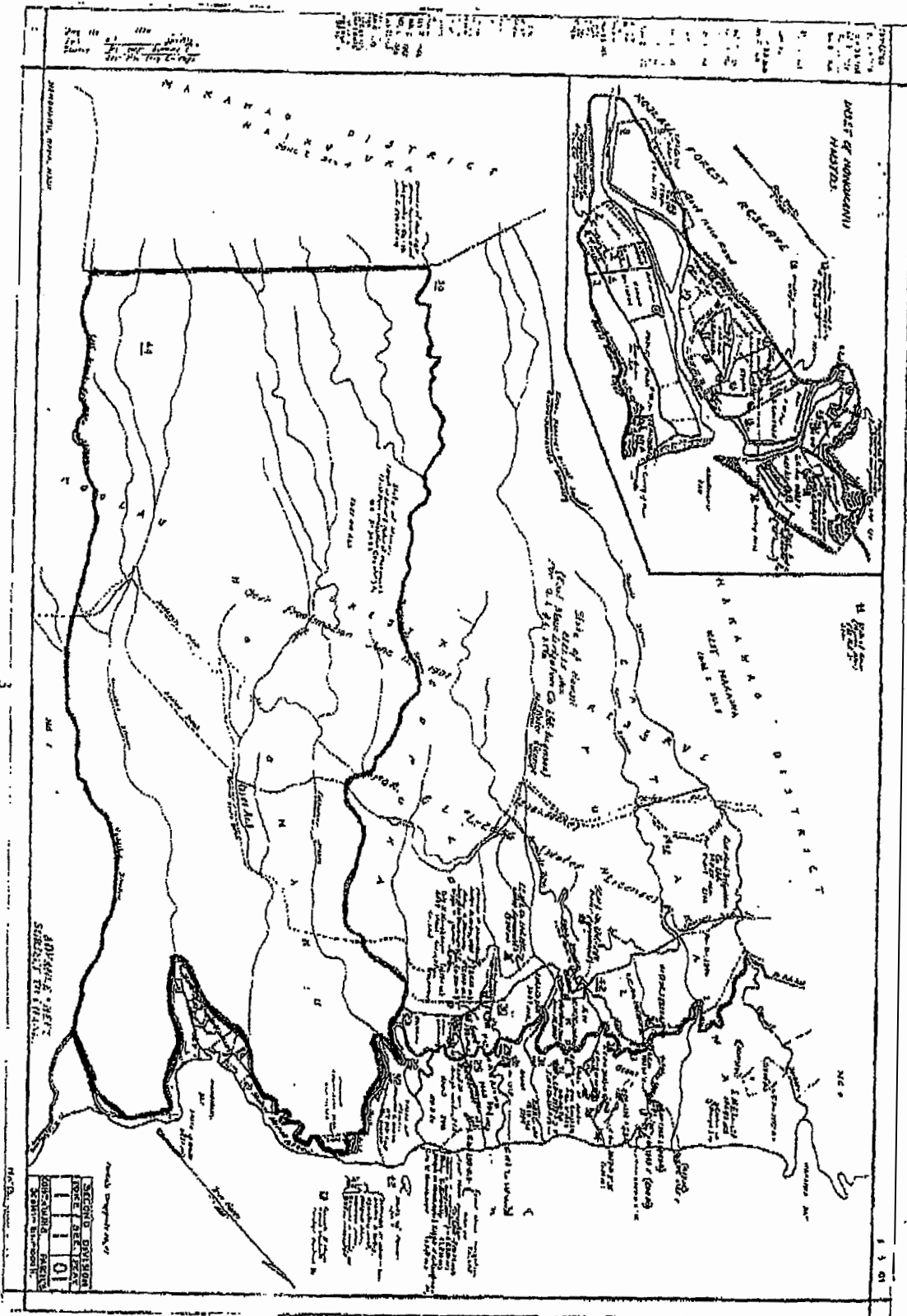


EXHIBIT A "HONOMANU LICENSE"

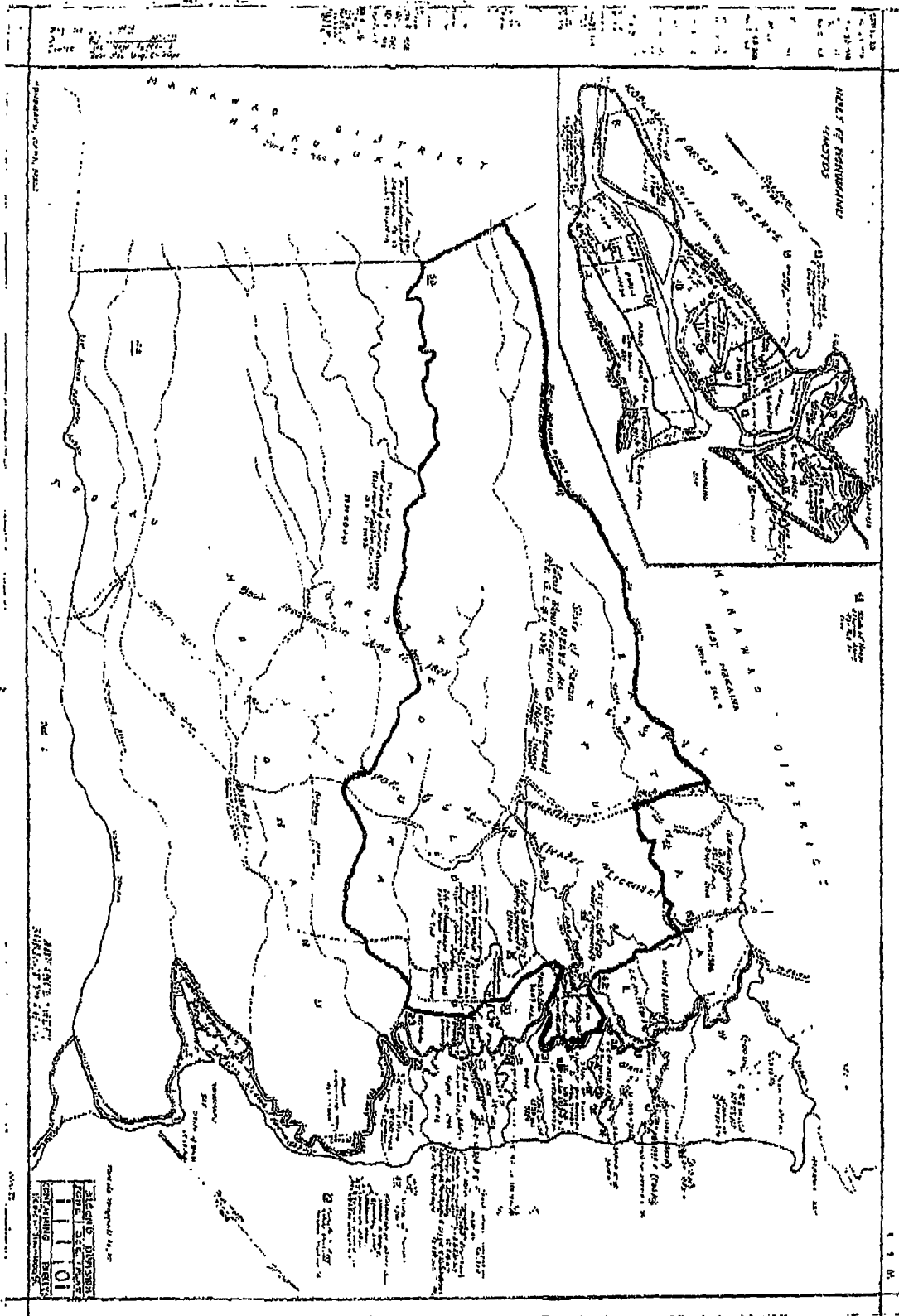


EXHIBIT B

"HUEL0 LICENSE"

320

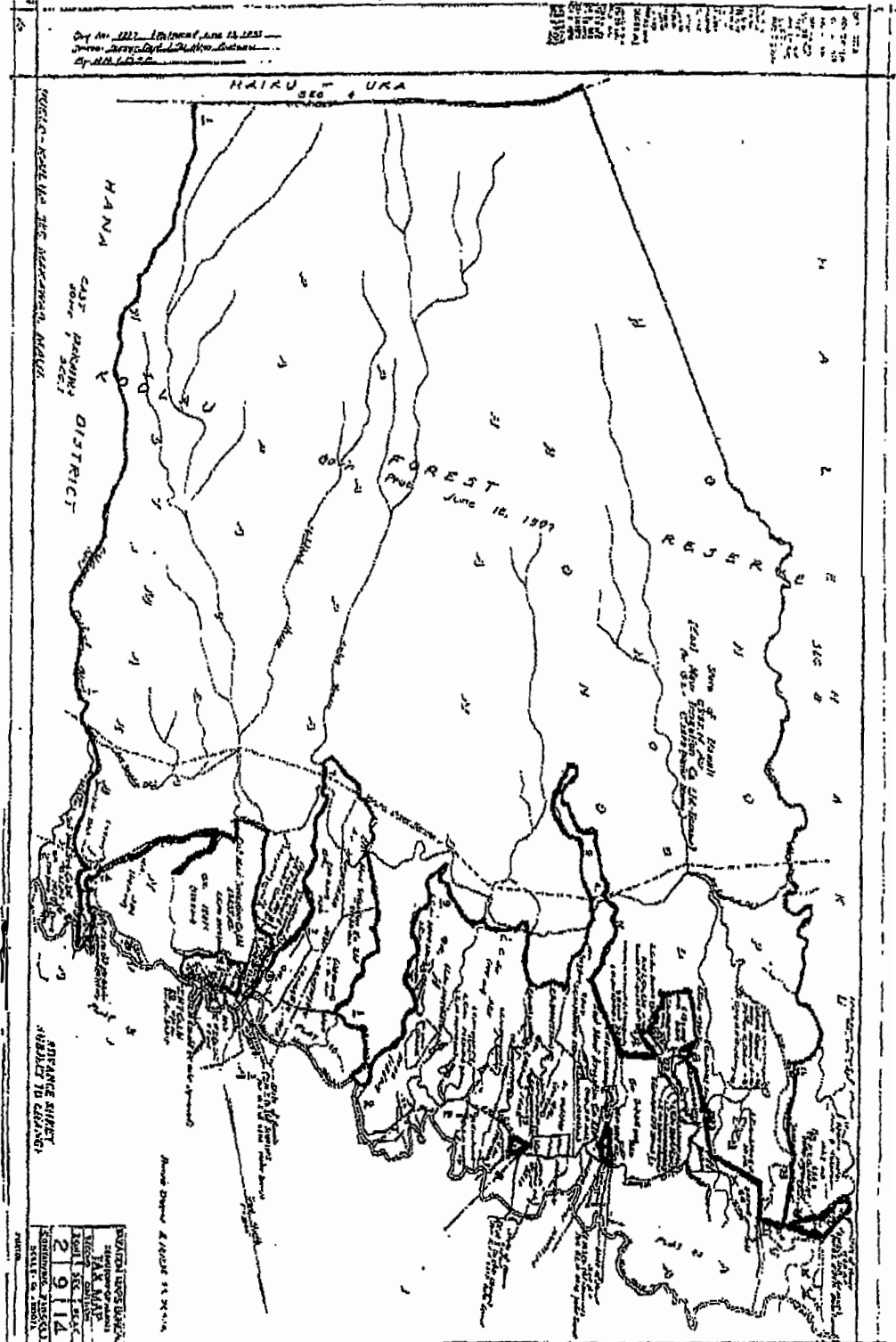
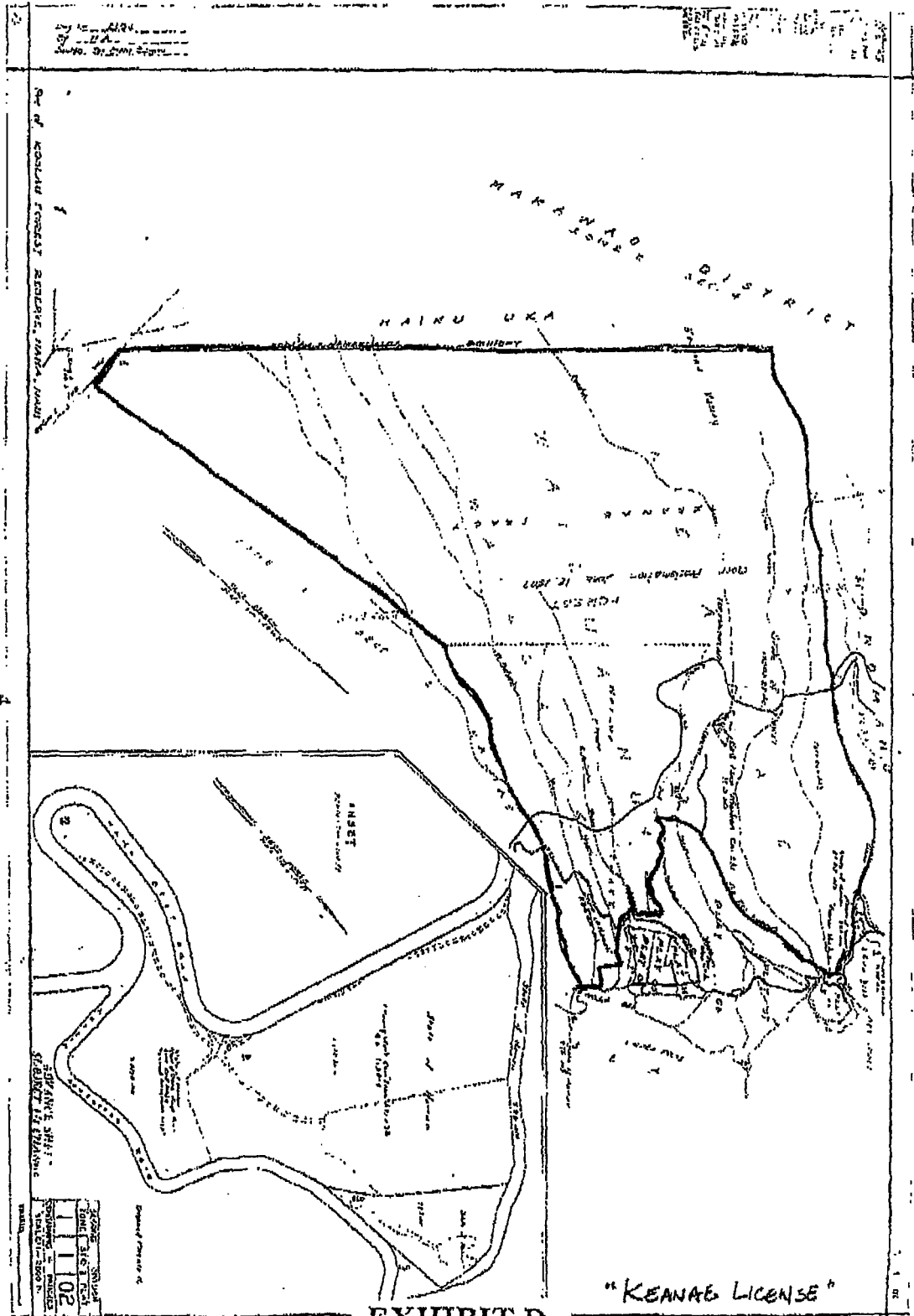
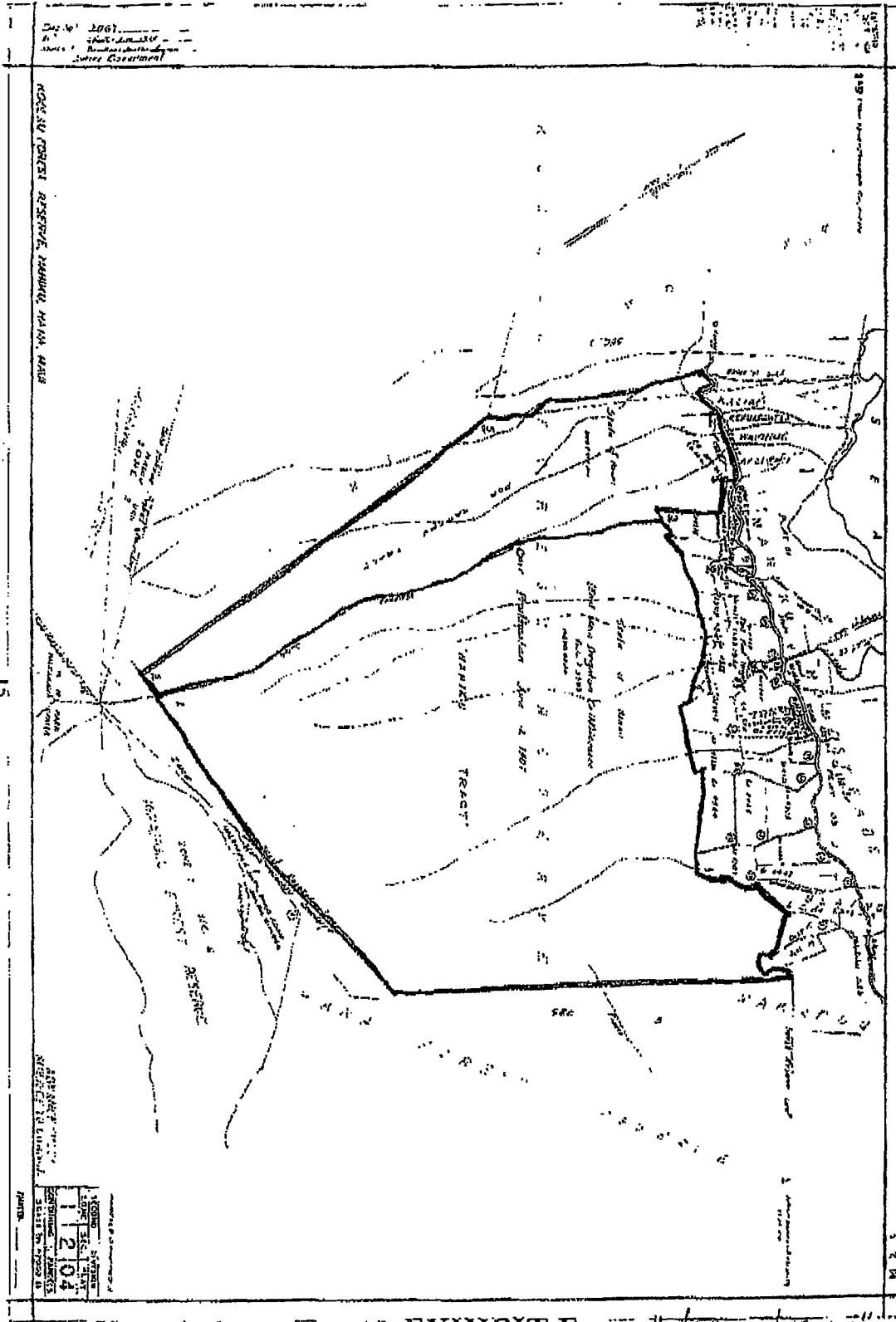


EXHIBIT C "HUGLO LICENSE"





May-18-2001 02:16pm From-DOFAW

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hb
ALEXANDER & BALDWIN, INC.

822 Bishop Street
Honolulu, Hawaii 96813
P.O. Box 3440
Honolulu, HI 96801-3440
www.alexanderbaldwin.com
Tel (808) 525-6611
Fax (808) 525-6652

May 14, 2001

BY HAND DELIVERY

Board of Land and Natural Resources
State of Hawaii
P.O. Box 621
Honolulu, Hawaii 96809

Re: Sale of Lease (Water License) at Public Auction, Koolau Forest Reserve and Hanawi Natural Area Reserve, Hana and Makawao, Maui

Ladies and Gentlemen:

Alexander & Baldwin, Inc. and its subsidiary, East Maui Irrigation Company, Limited, request sale of a lease at public auction of the Koolau Forest Reserve and Hanawi Natural Area Reserve, Hana and Makawao, Maui, in accordance with the following:

Statute: Chapter 171, HRS generally; Section 171-53(e), HRS.

Location: Portion of the government land within the Koolau Forest Reserve and the Hanawi Natural Area Reserve generally identified as the Nahiku, Keanae, Huelo and Honomanu License areas.

Tax Map Keys 1-1-01, 1-1-02, 1-2-04, 2-9-14

Area:	Nahiku	10,111.22 acres, more or less
	Keanae	10,768.00 acres, more or less
	Huelo	8,752.69 acres, more or less
	Honomanu	3,381.00 acres, more or less
	Total Lease Area	33,012.91 acres, more or less

(The total area shall be subject to review and confirmation by the Department of Accounting and General Services, Survey Division)

Status: Nahiku encumbered under Revocable Permit No. S-7266

Keanae encumbered under Revocable Permit No. S-7265

Huelo encumbered under Revocable Permit No. S-7263

Honomanu encumbered under Revocable Permit No. S-7264

EXHIBIT F

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- Land Title:** Subsection 5(b) of the Admissions Act
- Zoning:** State Land Use Commission: Conservation
- Purpose:** Right, privilege and authority to enter and go upon the above-described areas for the purpose of developing, diverting, transporting and using government-owned waters.
- Term:** Thirty (30) years, commencing sixty (60) days from public auction.
- Rental:** Minimum Rental to be determined by appraisal, subject to review and acceptance by Chairperson. Minimum Rental shall be subject to reopening and redetermination at the end of the tenth (10th) and twentieth (20th) years of the term; such redetermination to be made by appraisal.
- Bond:** A performance bond shall be posted to the extent required by statute.
- EIS:** All bidders shall prepare and file with the Office of Environmental Quality Commission an Environmental Impact Statement with respect to the proposed use. Disposition of the cost of the EIS shall be determined at a future date.
- Other:**
1. The lease shall be subject to that certain Indenture dated March 18, 1938, by and between the Territory of Hawaii and East Maui Irrigation Company, Limited, as amended by Correction Agreement dated March 24, 1938.
 2. Lessee shall maintain roads, trails and the water system.
 3. The State shall have limited rights, to be specified in the lease, to withdraw water for domestic purposes and for emergency purposes.
 4. Public hunting will be allowed, subject to reasonable restrictions to be contained in the lease and consistent with June 5, 1995 Vehicular Access Agreement.
 5. The lease shall be issued subject to Instream Flow Standards as subsequently determined by the Commission on Water Resource Management.
 6. Lessee shall continue to supply of water for domestic purposes to the Maui County Board of Water Supply pursuant to the April 13, 2000 Memorandum of Understanding between BWS and A&B.
 7. Other relevant terms as reflected in the existing revocable permits and expired license agreements shall be included.

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Summary: We request the Board to take the following action:

- A. Authorize the sale of a lease (water license) at public auction covering the area in question under the above-listed terms and conditions which are by reference incorporated herein and, in addition, under the following conditions:
- i. Provision for proper maintenance of the water system.
 - ii. Compliance with all applicable laws, rules and regulations.
 - iii. Disapproval by the State legislature following date of sale.
 - iv. Filing of an Environmental Impact Statement by all bidders.
 - v. Other terms and conditions as Chairperson may prescribe.
- B. Authorize temporary continuation of the year-to-year revocable permit for existing permittees (the Nahlku revocable permit to Alexander & Baldwin, Inc. and the Honomahu, Huelo and Keanae revocable permits to East Maui Irrigation Company, Limited for fiscal year 2001/2002) pending issuance of the lease.

Thank you for your consideration of this request.

Very truly yours,

Alexander & Baldwin, Inc.

By: 
Its Vice President

East Maui Irrigation Company, Limited

By: 
Its Vice President



Configuration Parameters

	PixiNet	Aloha.com	Hula Net
Oahu Access Number	566-6670 (K56Flex)	566-6670 (K56Flex)	566-6546 (K56Flex)
Oahu X2 (x2 modems only)	528-4359 (X2 only)	528-4359 (X2 only)	566-0737 (X2 only)
Kauai Access Number	240-4220 (K56Flex)	240-4220 (K56Flex)	240-4220 (K56Flex)
Maui Access Number	270-4220 (K56Flex)	270-4220 (K56Flex)	270-4220 (K56Flex)
Big Island Access Number	930-4220 (K56Flex)	930-4220 (K56Flex)	930-4220 (K56Flex)
Molokai Access Number	660-4220 (K56Flex)	660-4220 (K56Flex)	660-4220 (K56Flex)
Lanai Access Number	568-4220 (K56Flex)	568-4220 (K56Flex)	568-4220 (K56Flex)
Domain Name	pixi.com	aloha.com	hula.net
IP Address	Automatically assigned	Automatically assigned	Automatically assigned
Netmask	Not used	Not used	Not used
Gateway	Not used	Not used	Not used
Domain Name Servers (DNS)	206.127.224.3 (primary)	206.127.224.3 (primary)	206.127.224.3 (primary)
	206.127.224.6 (secondary)	206.127.224.6 (secondary)	206.127.224.6 (secondary)
Mail server (SMTP/POP3)	mail.pixi.com	mail.aloha.com	mail.hula.net
e-mail address	username@pixi.com	username@aloha.com	username@hula.net
	(where username is the username/login name (e.g. jsmith) from your Connection Request Form)		
News server (NNTP)	news.pixi.com	news.aloha.com	news.hula.net
Public FTP server	ftp.pixi.com	ftp.aloha.com	ftp.hula.net
Customer FTP server	userftp.pixi.com	ftp.aloha.com	ftp.hula.net
WWW server	www.pixi.com	www.aloha.com	www.hula.net
Shell server	none	leahi.aloha.com	shell.hula.net