

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
ANIMAL INDUSTRY DIVISION
99-941 HALAWA VALLEY STREET
AIEA, HAWAII 96701

September 26, 2023

Board of Agriculture
Honolulu, Hawaii

SUBJECT: Request for Approval of Use Occupancy Agreement ("UOA") in favor of the United States Navy to Install a Monitoring Well on the Animal Quarantine Station Property.

AUTHORITY: Sections 141-1 (3), Hawaii Revised Statutes.

TAX MAP KEY: (1) 9-9-010:058 (the "Property").

LAND STATUS: Encumbered by Governor's Executive Order No. 4396 for animal quarantine, animal welfare, and general commercial purposes.

TERM: The UOA shall remain in effect for five (5) years unless sooner terminated in accordance with Paragraph 16 of the UOA. The UOA shall automatically renew for successive terms of five (5) years unless either Party provides thirty days written notice to the other of its intent not to renew.

BASE RENTAL: None.

CHARACTER OF USE: Non-exclusive right to use and occupy property at the Animal Quarantine Station for the sole purpose of constructing, operating, monitoring, maintaining, and repairing a monitoring well, as well as for environmental investigations such as periodic soil and ground water sampling, from the sentinel well, and a large, long term project laydown area for the staging of vehicles and equipment.

I. Background

The United States Navy ("USN") has desires to occupy a portion of the Animal Quarantine Station property, as described under an UOA (refer to Exhibit 1), for the construction, operation, environmental investigation and monitoring work, maintenance, and repair of one (1) sentinel monitoring well project, and a large, long term project laydown area for the staging of vehicles and equipment.

II. Property and Site Location

The proposed site of the well, as shown in the attached Exhibit 1, is in an area at the far North East corner of the Animal Quarantine Station public parking lot. The location of a well at this site does not interfere with operations at the station or future relocation of the OCCC.

III. Recommendation

The Animal Industry Division recommends that the Board approve the request for the Division to execute a Use Occupancy Agreement in favor of the US Navy so that they may install, maintain, and monitor a test well at the Animal Quarantine Station located at 99-951 Halawa Valley Street, Aiea, HI 96701.



Isaac Maeda, DVM
Administrator, Animal Industry Division

APPROVED FOR SUBMISSION:



Sharon Hurd
Chairperson, Board of Agriculture

Attachments

EXHIBIT 1
USE AND OCCUPANCY AGREEMENT NO. AQS052023

THIS USE AND OCCUPANCY AGREEMENT NO. **AQS052023** (hereinafter referred to as "this Agreement") is made on September 11, 2023, but effective as of September 26, 2023, by and between the STATE OF HAWAII, DEPARTMENT OF AGRICULTURE, ANIMAL INDUSTRY DIVISION, by its Chairperson, Board of Agriculture (hereinafter referred to as the "GRANTOR"), and the UNITED STATES OF AMERICA DEPARTMENT OF THE NAVY, whose address is 400 Marshall Road, JBPHH, Hawaii 96860-3139 (hereinafter referred to as the "GRANTEE").

RECITALS:

WHEREAS, the GRANTOR is the owner or otherwise has jurisdiction over 99-951 Halawa Valley Street and 99-941 Halawa Valley Street, at Halawa and Aiea, Oahu, Hawaii (hereinafter referred to as the Hawaii Department of Agriculture (HDOA) Property) situated on certain real property designated as Tax Map Key Nos. (1) 9-9-010-004, (1) 9-9-010-057, and (1) 9-9-010-058 (hereinafter referred to as the "Property"); and

WHEREAS, the GRANTEE desires to occupy a portion of the Property, as described in Exhibit A and delineated on Exhibit B, both exhibits of which are attached hereto and incorporated herein by reference (hereinafter referred to as the "Premises"), for the construction, operation, environmental investigation and monitoring work, maintenance, and repair of one (1) sentinel monitoring well project, and a large, long term project laydown area for the staging of vehicles and equipment (said project, together with all improvements, equipment, facilities, components and appurtenances related thereto, is hereinafter referred to as the "Project"); and

WHEREAS, the GRANTOR does not object to granting the GRANTEE use and occupancy rights over the Premises provided the GRANTEE fully complies with the terms and conditions set forth below;

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, and the mutual covenants and promises herein made, and pursuant to Section 141-1, Hawaii Revised Statutes ("HRS"), the parties do hereby agree as follows:

AGREEMENT:

1. Grant of Use and Occupancy Rights. The GRANTOR hereby grants to

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the GRANTEE the non-exclusive right to use and occupy the Premises for the sole purpose of constructing, operating, monitoring, maintaining, and repairing the Project, as well as for environmental investigations such as periodic soil and ground water sampling, from the sentinel well, and a large, long term project laydown area for the staging of vehicles and equipment. The project laydown area will have a temporary security fencing around the perimeter and a portable toilet staged inside the fencing. The GRANTEE acknowledges and agrees that this Agreement is for a limited purpose and that the GRANTEE shall use the Premises only for the purpose of serving the Project. The GRANTEE may only access the Premises using the access route delineated on Exhibit C, which exhibit is attached hereto and incorporated herein by reference. Any intensification to include modification or expansion of the use of the Project from what is approved herein, including but not limited to, modifying the access route to the Premises specified in Exhibit C, increasing size of laydown and well area, installing additional wells, or connecting to utilities shall require the prior written approval of the GRANTOR, which approval may be withheld in the GRANTOR's reasonable discretion, and may require a new request and review and consideration of any user not covered by this Agreement.

2. Right to Construct the Project. The GRANTEE may construct, maintain, and repair the Project on, within, under, over, and across the Premises provided that the GRANTEE obtains the GRANTOR's prior written approval for the plans and specifications for construction of the Project and any subsequent alterations and repairs thereto. The GRANTEE shall be solely responsible for all costs and expenses incurred in connection with the Project and the maintenance of the Premises, including but not limited to all design, planning, engineering, construction, alteration, and maintenance costs and expenses. The GRANTEE shall access the Project during the normal business hours of operation of the Animal Quarantine Station: Mondays, Tuesdays, Thursdays, and Fridays 8:00 AM to 5:00 PM; Wednesdays 8:00 AM to 5:30 PM; Saturdays, Sundays, and State Holidays 7:00 AM to 4:00 PM. In addition, a security firm will provide trained security personnel onsite when GRANTEE's contractors are not performing work, including evening/night hours holidays, or any other times when GRANTEE's contractors are not onsite, to help protect against sabotage or vandalism to the vehicles or equipment.

3. Work Permit. The GRANTEE shall obtain GRANTOR's written consent for any construction, alteration, installation, maintenance, repair, removal, replacement, reconstruction, and upkeep work for or related to the Project on, within, under, over or across the Premises prior to commencing such work. Without limiting the foregoing or any other provision

contained herein, the GRANTEE shall comply with any and all other requirements of the GRANTOR, if any, relating to any construction, alteration, installation, maintenance, repair, removal, replacement, reconstruction, and upkeep work for or related to the Project, and any required permits, including, but not limited to, any permits and/or approvals that may be required by federal, state, county, local or other laws or rules applicable to the proposed construction, installation, maintenance, repair, removal, replacement, reconstruction and upkeep work for or related to the Project on, within, under, over or across the Premises prior to commencing such work except to perform emergency repair or maintenance (“Emergency Work”). The GRANTEE may enter the Premises to perform Emergency Work without first obtaining such permit(s), provided that GRANTEE notifies GRANTOR of the location and type of emergency not later than one (1) business day after the Emergency Work has commenced and provided that GRANTEE obtains any required permits as soon as reasonably possible thereafter. “Emergency work” shall mean immediate repair or maintenance work needed to protect public health, safety, welfare, or the environment as reasonably determined by GRANTOR. The parties acknowledge that determination of GRANTEE liability for damage to persons or property arising from its exercise of its rights granted under this agreement shall be in accordance with the procedures and limitations of the Federal Tort Claims Act, 28 U.S.C. 2671. Without limiting the foregoing or any other provision contained herein, GRANTEE shall comply with any and all GRANTOR requirements related to the Project provided before commencement of the Project.

4. Work Completion. Upon the completion of any work performed on, within, under, over, or across the Premises by the GRANTEE, the GRANTEE shall promptly remove therefrom all equipment and unused or surplus materials, if any, and shall restore the Premises and any other affected areas to substantially the same condition as existed prior to the Project. In addition, the GRANTEE shall provide all as-built drawings of all work completed, including metes and bounds documents of the Project, for general informational, non-reliance purposes only, for the GRANTOR’s acceptance within sixty (60) days of the GRANTEE’s final acceptance of the GRANTEE’s contractor’s work. The GRANTEE shall be responsible for the restoration work for a period of not less than two (2) years from the date of final inspection and acceptance by the GRANTOR. GRANTEE shall be responsible for any failure of the restoration work, including, but not limited to, any depressions occurring in and along the restoration area, except to the extent such failure arises from any event, circumstance, or condition unrelated to the Project.

5. Maintenance. The GRANTEE shall, at its sole cost and expense, keep the

Premises and the Project in a safe, clean, sanitary, and orderly condition, including, but not limited to, making all repairs to the Project, and shall not make, permit or suffer any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the Premises. Nothing in this Paragraph 5 is intended, or should be interpreted, to require an obligation or expenditure of funds in violation of the Anti-Deficiency Act, 31 U.S.C. 1341.

6. Repair. The GRANTEE shall not damage or destroy any portion of the HDOA Property and/or the Premises, including without limitation, any HDOA facilities or improvements or facilities of other HDOA Property tenants or other permitted users of the HDOA Property situated on or near the Premises or any equipment or appurtenances relating thereto, including, but not limited to, sidewalks, storm drains, drainage systems, underground utility systems, driveways, parking areas, and animal enclosures. The GRANTEE shall, at its sole cost and expense, repair, restore, and reconstruct that portion of said State property so damaged or destroyed, including any and all affected facilities, improvements, equipment, and appurtenances. All repairs, restoration, and reconstruction shall be completed by the GRANTEE immediately to substantially the same condition and shall be inspected and approved by the GRANTOR in its reasonable discretion. Nothing in Paragraph 6 is intended or should be interpreted, to require an obligation or expenditure of funds in violation of the Anti-Deficiency Act, 31 U.S.C. 1341.

7. No Obstruction. The GRANTEE shall not construct, replace, repair or maintain any landscaping or any portion of the Project (including any staging and/or temporary storing of equipment and materials) on, within, under, over or across the Premises in such a manner as to: (a) unnecessarily obstruct traffic; (b) obstruct, in any way whatsoever, the normal movement of visitors and employees of the State or tenants during the normal course of business; (c) otherwise constitute a hazard to users of the HDOA Property or animals confined therein, as determined by the GRANTOR in its reasonable discretion; (d) obstruct HDOA operations; and/or (e) obstruct operations of HDOA tenants or other permitted users of the HDOA Property or near the Premises.

8. Reservation of Rights. The GRANTOR reserves unto itself the full use and enjoyment of the Premises and the right to grant to others rights and privileges for any and all purposes affecting the Premises, all without charge by and without the consent of the GRANTEE, provided that such use by the GRANTOR and/or third parties does not unreasonably interfere with the GRANTEE's rights to use the Premises under this Agreement. The GRANTEE shall take steps necessary to ensure that the GRANTEE's exercise of the rights and privileges granted hereunder does not cause any substantial interference with the GRANTOR's operations in or near

the Premises.

9. GRANTOR Work Within or Affecting the Premises. If the GRANTOR decides to perform work of any kind, on, within, under, over, across, near, or affecting the Premises, the GRANTOR will coordinate such work with the GRANTEE. The GRANTEE shall not prevent the GRANTOR from performing such work, provided, however, that the GRANTOR will take certain protective measures to assure that such work does not unreasonably interfere with the GRANTEE's use of the Premises as described herein. At the GRANTOR's sole option, the GRANTEE, at the GRANTEE's sole cost, except as may otherwise be required by law, shall relocate the Project to the extent the Project conflicts with plans of a GRANTOR project. Nothing in this Paragraph 9 is intended, or should be interpreted, to require an obligation or expenditure of funds in violation of the Anti-Deficiency Act, 31 U.S.C. 1341.

10. Removal of Improvements. If the GRANTOR decides to perform work of any kind within, on, over, under, across, near, or affecting the Premises, the GRANTEE shall be responsible for the removal or relocation of all or any portion of the Project from the Premises deemed necessary by the GRANTOR, without cost and expense to the GRANTOR, within thirty (30) days from the date the GRANTOR requests such removal or such longer period of time as may be approved in writing by the GRANTOR, except as shall be otherwise required by applicable law. In the event it becomes necessary for the GRANTOR to destroy, remove or alter all or any portion of the Project, the GRANTOR shall not be obligated to replace or restore those portions of the Project so destroyed, removed or altered, and the GRANTEE waives any and all right to compensation therefore, except as shall be otherwise required by applicable law.

11. Indemnity. It is understood by the GRANTEE and the GRANTOR that all terms in this Agreement shall be in accordance with the Anti-Deficiency Act (hereinafter referred to as the "Act"). Pursuant to the Act, the GRANTEE is prohibited from entering into a contract which may require payments for a future contingent liability without specific statutory authority. It is understood by both the GRANTEE and the GRANTOR that such authority does not exist for this Agreement. However, nothing in the Act or in this Agreement shall prohibit or foreclose the GRANTEE from satisfying all terms of this Agreement where funding is available and it is not in violation of the Act. Furthermore, nothing in the Act or this Agreement shall prohibit or foreclose the GRANTOR from seeking relief under the Federal Tort Claims Act (28 U.S.C. §§ 1346(b) and 2671 et seq.) or under any other statutory remedy that may be available to the GRANTOR and applicable to the GRANTEE.

12. Abandonment. This Agreement and all of the GRANTEE’s rights hereunder shall terminate, without any action on the part of the GRANTOR, in the event of non- use or abandonment by the GRANTEE of the Premises or the Project, or any portion thereof, for a period of two (2) years; provided, however, that the GRANTEE’s obligations under Paragraph 11 (Indemnity), if any, shall survive with respect to any portion of the Project abandoned on the Premises.

13. Term. This Agreement shall remain in effect for five (5) years unless sooner terminated in accordance with Paragraph 16 of this Agreement. This Agreement shall automatically renew for successive terms of five (5) year unless either Party provides thirty days written notice to the other of its intent not to renew.

14. Hazardous Substances.

a. Definitions. For purposes of this Agreement, the GRANTEE acknowledges and agrees that the following terms shall have the following meanings:

“Environmental Laws” shall mean all applicable federal, state and local laws of every nature including statutes, ordinances, rules, regulations, codes, notices, standards, directives of every kind, guidelines, permits, licenses, authorizations, approvals, interpretations of the foregoing by any court, legislative body, agency or official, judicial decisions, judicial and administrative orders, rulings or judgments, or rules of common law which currently are in effect or which may come into effect through enactment, issuance, promulgation, adoption or otherwise, which in any way pertain to, relate to, or have any relevance to the environment, health or safety. These environmental laws include, but are not limited to, applicable regulations and orders of the federal Environmental Protection Agency and the State Department of Health. “Hazardous Substance” shall include any chemical, substance, radioactive materials, organic or inorganic material, controlled substance, object, condition, waste, living organism, or combination thereof which is, may in the future be, or has been determined by state or federal authority under any Environmental Law to be hazardous to human health or safety or detrimental to the environment. This term shall include, but not be limited to, petroleum hydrocarbons, asbestos, radon, polychlorinated biphenyls, methane, fuels of any kind, and other materials or substances that are or may in the future be, regulated by the state or federal authorities.

b. GRANTEE’s Activities and Duties.

b. 1. Compliance with Environmental Laws. The GRANTEE agrees, at its sole expense and cost, to comply with all Environmental Laws applicable to the Property and the

GRANTEE's occupancy, activities, operations, and use of the Project and the Premises, including giving all required notices, reporting to, and obtaining applicable permits from, all appropriate authorities. This duty shall survive the expiration or earlier termination of this Agreement, which means that the GRANTEE's duty to comply with Environmental Laws shall include complying with all Environmental Laws that may in the future apply, or be determined to apply, to the occupancy and activities of the GRANTEE on the Premises after the expiration or earlier termination of this Agreement. Failure of the GRANTEE to comply with any Environmental Law shall constitute a breach of this Agreement for which the GRANTOR may, in its reasonable discretion, terminate this Agreement, exercise its remedies under this Agreement, including, but not limited to, remediation of any condition on behalf of the GRANTEE at the GRANTEE's expense under subparagraph 14.b.5. below (Environmental Investigations and Assessments) and subparagraph 14.b.6. below (Remediation), and take any other action at law or in equity that the GRANTOR deems appropriate. Without limiting the foregoing, the GRANTEE shall comply with any National Pollutant Discharge Elimination System permits, or similar permits, which are applicable to the Premises or the Project.

b. 2. Hazardous Substances. The GRANTEE shall not use, store, treat, dispose, discharge, release, generate, create, or otherwise handle any Hazardous Substances, or allow the same by any of its officers, employees, agents, contractors, guests, invitees, or third persons, on the Premises without first obtaining the written consent of the GRANTOR (which consent may be withheld by the GRANTOR in its reasonable discretion).

b. 3. Notice to the GRANTOR. The GRANTEE shall keep the GRANTOR fully informed at all times regarding all matters related to any Environmental Laws affecting the GRANTEE, the Project, or the Premises. This duty shall include, but not be limited to, providing the GRANTOR with a current and complete list and accounting of all Hazardous Substances of every kind which are brought to the Premises by GRANTEE or are known to be present in, on or about the Premises by or as a result of the Project, together with evidence that the GRANTEE has in effect all required and appropriate permits, licenses, registrations, approvals, and other consents that may be required by any federal, state, or county authority, under any authority or Environmental Laws. The GRANTEE shall provide said list and accounting at the commencement of this Agreement and shall update said list and accounting whenever any Hazardous Substance not accounted for on said list is or becomes present in, on, or about the Premises by the GRANTEE or otherwise. GRANTEE shall provide GRANTOR with Safety Data Sheets for all hazardous

substances listed. The GRANTEE shall also provide immediate written notice to the GRANTOR of any spills, releases, and/or discharge of Hazardous Substances, investigation, enforcement action, compliance order, or order of any type, or any other legal action, initiated, issued, or any indication of an intent to do so, communicated in any way to the GRANTEE by any federal, state, or county authority or individual that relates in any way to any Environmental Law or any Hazardous Substance. This written notice to the GRANTOR shall include copies of all written communications from any federal, state, or county authority, including copies of all correspondence, claims, complaints, warnings, reports, technical data, and any other documents received or obtained by the GRANTEE, to the extent permitted by law. At least thirty (30) days prior to termination of this Agreement or termination of the use and occupancy of the Premises by the GRANTEE, whichever occurs first, the GRANTEE shall provide the GRANTOR with written evidence reasonably satisfactory to the GRANTOR that the GRANTEE has fully complied with all applicable Environmental Laws, including any orders issued by any governmental authority that relate to the Premises, and the results of all assessments and investigations that may be ordered by the GRANTOR pursuant to subparagraph 14.b.5. (Environmental Investigations and Assessments) of this provision, or by any governmental agency responsible for enforcement of the Environmental Laws.

b. 4. Disposal/Removal. Except as to the possession and handling of Hazardous Substances for which the GRANTEE is authorized by law, including those Hazardous Substances for which the GRANTEE has obtained all currently required permits to store or use certain Hazardous Substances on the Premises, including written permission from the GRANTOR, the GRANTEE shall cause any Hazardous Substances resulting from the GRANTEE's use to be removed and transported from the Premises for disposal solely by duly licensed hazardous substances transporters to duly licensed facilities for final disposal as required by all applicable Environmental Laws. Within ten (10) days of any such disposal, the GRANTEE shall provide the GRANTOR with copies of documentary proof including manifests, receipts, or bills of lading, which reflect that said Hazardous Substances have been properly removed and disposed of in accordance with all Environmental Laws. This provision shall survive the expiration or earlier termination of this Agreement.

b. 5. Environmental Investigations and Assessments. The GRANTEE, at its sole cost and expense, shall cause to be conducted such investigations and assessments of the Premises to determine the presence of any Hazardous Substance on, in, or under the Premises as

may be reasonably directed from time to time by the GRANTOR, or by any federal, state or county authority. The extent and number of any environmental investigations and assessments shall be determined by the GRANTOR or the federal, state or county authority directing said investigations and assessments to be conducted. The GRANTEE shall retain a competent and qualified person or entity that is reasonably satisfactory to the GRANTOR or other governmental authority, as the case may be, to conduct said investigations and assessments. The GRANTEE shall direct said person or entity to provide the GRANTOR or other governmental authority, if so requested, with testable portions of all samples of any soils, water, ground water or other material that may be obtained for testing and provide directly to the GRANTOR and the other governmental authority, at the sole expense of the GRANTEE, written results of all tests on said samples upon completion of said testing. In any event, the GRANTEE shall have the option to conduct environmental assessments as aforesaid prior to or at the time of termination of this Agreement in order to determine the condition of the Premises.

b. 6. Remediation. In the event that any Hazardous Substance is used, stored, treated, or disposed on the Premises, or any location off the Premises to which it is determined any Hazardous Substance has migrated, or handled, discharged or released by the GRANTEE, or determined to be present on the Premises, or any location off the Premises to which it is determined any Hazardous Substance has migrated, by or as a result of the GRANTEE's negligence, recklessness, or willful misconduct, the GRANTEE shall, at its sole expense and cost, remediate the Premises, or any location off the Premises to which it is determined any Hazardous Substance has migrated, of such Hazardous Substance, and dispose/remove said Hazardous Substance in accordance with subparagraph 14.b.4. (Disposal/Removal) of this provision. This duty to remediate includes strict compliance with all Environmental Laws, as well as any directives by the GRANTOR or other governmental authority to the GRANTEE to remediate such Hazardous Substance. This duty to remediate shall include replacement of any materials, such as soils, so removed with material that is reasonably satisfactory to the GRANTOR and governmental authority, as the case may be.

b. 7. Tanks, Pipelines; Inspections and Repairs. Unless the GRANTOR specifically agrees in writing otherwise prior to their installation, all pipes, pipelines, tanks, containers, or conduits of any kind that may at any time have contained, or may have been intended to contain, Hazardous Substances of any type (hereafter referred to as a "facility" or "facilities"), must be installed above ground level in such manner that allows for periodic inspection and

maintenance of the facility for purposes of determining the existence of leaks and discharges from, and deterioration of any kind to, and that allows repair of, the facility. The GRANTEE shall provide the GRANTOR with prior written notice of the GRANTEE's intent to install a facility to allow the GRANTOR ample time, as reasonably determined by the GRANTOR, to inspect the plan for installation of such a facility. Said facility shall not be installed unless and until the facility and its manner of installation are approved in writing by the GRANTOR. Within ninety (90) days of the commencement of this Agreement, or commencement of possession of the Premises by the GRANTEE, whichever first occurs, the GRANTEE shall submit a contingency plan covering the GRANTEE facilities if any, and as applicable, to control and remedy any spill, discharge, or leak from any GRANTEE facility on the Premises during the term of this Agreement, which plan shall include the cleanup of all Hazardous Substances that may be spilled, discharged, or leaked, to the satisfaction of the GRANTOR in its reasonable discretion. The GRANTEE shall also submit to the GRANTOR a plan for the GRANTEE to conduct, or have conducted, regular inspections of all facilities, if any, on the Premises for the purpose of prevention of any leak, discharge, or spill from said facilities. Said contingency plan and inspection plan are subject to the prior written approval of the GRANTOR. The GRANTEE shall timely obtain and maintain in effect all required permits, licenses, and approvals for such facilities from any governmental authority. Failure to submit said plans, to comply with said plans, or obtain and maintain any required permits, licenses, or approvals constitutes a breach of this Agreement, giving the GRANTOR the right to immediately terminate this Agreement, take possession of the Premises, and pursue any other remedy available to the GRANTOR.

b. 8. Protection of Waters. The GRANTEE shall maintain and employ reasonable debris, pollution and contamination control measures, safeguards and techniques on the Premises to prevent debris, pollution or contamination to ocean waters, streams or waterways, groundwater, including any storm drains within and about the Premises, resulting from the activities or operations of the GRANTEE on, within, over, through, across, under or connected with the Premises. The GRANTEE shall take prompt corrective action in the event of an unauthorized release of Hazardous Substances by the GRANTEE to promptly remove or correct the cause of such release, and shall promptly clean the Premises and affected areas and surrounding waters of such Hazardous Substances, pollutants or contaminants to levels satisfactory to the GRANTOR and/or other governmental authority in the GRANTOR's and governmental authority's respective reasonable discretion, all at the GRANTEE's own cost and expense.

b. 9 Pre-Existing Conditions. Nothing in this Agreement shall be construed or interpreted as requiring GRANTEE or GRANTEE's contractors to assume the status of, and GRANTOR acknowledges that GRANTEE and GRANTEE's contractors do not act in the capacity nor assume the status of, GRANTOR or others as a "generator," "owner," "operator," "transporter," "disposer," or "arranger" in the treatment, storage, disposal, or transportation of any hazardous substance or waste as those terms are understood within the meaning of the Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation and Liability Act, or any other Environmental Laws. GRANTOR further acknowledges that GRANTEE's contractors have neither created nor contributed to the creation or existence of any Hazardous Substances, whether latent or patent, at or on the Premises that occurred prior to the date on which the Project commenced ("Pre-Existing Conditions). GRANTEE and GRANTEE's contractors shall not be liable or responsible for any claims, demands, liabilities, suits, actions, judgments, costs and expenses (including reasonable attorneys' fees) arising from Pre-Existing Conditions, except to the extent exacerbated by the negligence, reckless, or willful misconduct of GRANTEE or GRANTEE's contractors.

15. GRANTOR's Right to Act. In the event the GRANTEE fails for any reason to comply with any of its duties under this Agreement, including, but not limited to, compliance with any Environmental Laws, upon ninety (90) days advance notice to GRANTEE, or within a reasonable time as determined by the GRANTOR, the GRANTOR shall have the right, but not the obligation, in its reasonable discretion, to perform those duties or cause them to be performed. The GRANTEE hereby grants access to the Premises and the Project at all reasonable hours to the GRANTOR, its agents and anyone designated by the GRANTOR, in order to perform said acts and duties. GRANTOR may seek relief for any loss or injury to persons relating to the construction, operation, maintenance, and other activities associated with the Project, in accordance with, and to the extent permitted under, the Federal Tort Claims Act. Nothing in this Paragraph 15 is intended, or should be interpreted, to require an obligation or expenditure of funds in violation of the Anti-Deficiency Act, 31 U.S.C. 1341.

16. Termination. If not otherwise terminated or cancelled, this Agreement may be cancelled in whole or in part at any time by the mutual written agreement of the parties hereto or by the GRANTOR, in its reasonable discretion, upon the GRANTOR's giving 180 days' prior written notice to the GRANTEE by hand delivery or first-class mail, return receipt requested.

17. Removal upon Termination. Upon any full or partial termination or

cancellation of this Agreement, the GRANTEE shall, at the GRANTEE's sole cost and expense, comply with the provisions of subparagraph 17.a. and, if applicable at the GRANTOR's reasonable option, subparagraph 17.b.

a. Remove and Restore. The GRANTEE shall surrender the Premises upon termination of this Agreement and, prior thereto, shall restore the Premises to substantially the same condition as the Premises existed at the commencement of this Agreement, as determined by the GRANTOR in its reasonable discretion, reasonable wear and tear excepted. Said surrender and restoration shall be at the sole cost and expense of the GRANTEE. This duty to restore the Premises includes remediation as described in the subparagraph 14.b.6. Subject to subparagraph 17.b. (GRANTOR's option), this duty also includes, but is not limited to, the removal of any and all of the GRANTEE's improvements, including, without limitation, pipes, pipelines, tanks, containers, equipment, and appurtenances of any kind that the GRANTEE has installed or erected on the Premises. In the event the GRANTEE does not timely restore the Premises to substantially the same condition as existed prior to the Project, as determined by the GRANTOR in its reasonable discretion, the GRANTEE understands and agrees that the GRANTOR may exercise its rights under this Agreement, including, but not limited to, paragraph 15 (GRANTOR's Right to Act), and until such time as the restoration is completed to the satisfaction of the GRANTOR in its reasonable discretion, the GRANTOR may seek relief for any loss or injury to persons relating to the construction, operation, maintenance, and other activities associated with the Project, in accordance with, and to the extent permitted under, the Federal Tort Claims Act. Without limiting the foregoing, if the GRANTEE fails to restore the Premises to a condition satisfactory to the GRANTOR, the GRANTOR shall have the right to seek relief for any and all costs and expenses incurred by the GRANTOR in completing and accomplishing such restoration, including but not limited to, any costs the GRANTOR incurs in removing and disposing of the GRANTEE's property in accordance with, and to the extent permitted under, the Federal Tort Claims Act. Nothing in this Paragraph 17a is intended, or should be interpreted, to require an obligation or expenditure of funds in violation of the Anti-Deficiency Act, 31 U.S.C. 1341.

b. GRANTOR's Option. At the GRANTOR's reasonable option, the GRANTEE may abandon in place the Project and any improvements, equipment, facilities, components and appurtenances relating thereto (a Memorandum of Agreement, in form and substance satisfactory to the GRANTOR, must be executed by the GRANTEE if the GRANTOR approves the abandonment in place).

18. Default.

a. Notice of Default. If the GRANTEE defaults on or otherwise fails to perform the GRANTEE's obligations under this Agreement, the GRANTOR will issue a written notice of default to the GRANTEE by hand-delivery or first-class mail.

b. GRANTEE to Cure Defaults. Any and all defaults or failures to perform contained in such notice of default must be resolved and remedied to the GRANTOR's sole satisfaction within ninety (90) calendar days of the date of the GRANTOR's written notice to the GRANTEE or such further time as may be authorized by the GRANTOR in writing. Without limiting the foregoing, the GRANTEE's failure to construct the Project in accordance with the plans and specifications approved by the GRANTOR shall be deemed a default under this Agreement. Without limiting the foregoing, the GRANTEE's failure to submit after-the-fact plans and specifications, as-built drawings, and applicable permits after any Emergency Work on the Project or the Premises shall be deemed a default under this Agreement.

c. GRANTOR Remedies for Failure to Cure. If the GRANTEE fails to cure said defaults or fails to perform within the required time period, the GRANTOR itself may, but shall not be obligated to, cure or remedy said defaults or failures to perform and charge any and all costs and expenses incurred in performing said cure or remedy to the GRANTEE, in accordance with, and to the extent permitted under, the Federal Tort Claims Act. Without limiting the foregoing, If the GRANTEE fails to cure said defaults or fails to perform within the required time period, the GRANTOR may terminate this Agreement and the GRANTEE's rights under this Agreement to use the Premises and the Project. Upon such termination and at the GRANTOR's option, the Project improvements shall be subject to Paragraph 17, Removal upon Termination. If the GRANTEE defaults or fails to perform as required under this Agreement, the GRANTOR shall be entitled to all remedies available under this Agreement and by law, which remedies shall be cumulative and not exclusive. This provision shall survive the expiration or earlier termination of this Agreement.

19. Assignment. The GRANTEE's right under this Agreement shall not be sold, assigned, conveyed, leased, subleased, mortgaged, or otherwise transferred or disposed of, directly or by operation of law, except with the prior written consent of the GRANTOR which consent may be withheld by the GRANTOR in its reasonable discretion. In giving any such consent, the GRANTOR need not release the GRANTEE from any liabilities or obligations hereunder.

20. GRANTEE's agents and contractors. The GRANTEE shall require or

otherwise cause its agents and contractors to include the GRANTOR as an additional insured on all insurance policies of such agents and contractors covering work on the Premises, and copies of such policies, or other documentation required by the GRANTOR, shall be filed with the GRANTOR. The GRANTEE shall require or otherwise cause the GRANTEE's agents and contractors to release, hold harmless, indemnify and defend, with counsel acceptable to the State of Hawaii in its reasonable discretion, the GRANTOR, and the State of Hawaii's directors, officers, agents, elected officials, boards, and employees, and their respective successors and assigns, from and against all claims, demands, liabilities, suits, actions, judgments, costs and expenses (including reasonable attorneys' fees) for loss, injury, death or damage, including, without limitation, claims for property damage, personal injury, or loss or death of persons, to the extent such, loss, injury, death or damage is caused by said agents' and contractors' negligence, recklessness, or willful misconduct; This provision shall survive the expiration or earlier termination of this Agreement.

21. Compliance with Laws. Without limiting any provision in this Agreement, the GRANTEE, at all times during the term of this Agreement, shall comply with all of the requirements of applicable federal, state, and county authorities and shall observe all federal, state and county laws, statutes, ordinances, rules and regulations, now in force or which may hereafter be in force, including, but not limited to, all laws and regulations applicable to the use of state lands.

22. Prehistoric and Historic Remains. Any and all prehistoric and historic remains found at, in, on, over, or under the Premises shall be and remain the property of the State, and shall not be disturbed or removed by the GRANTEE without the express written approval of the GRANTOR. Upon discovery of any prehistoric or historic remains, the GRANTEE shall immediately stop and cease any further disturbance of the remains and surrounding portion(s) of the Premises containing the remains, and promptly notify the GRANTOR of such discovery. The GRANTEE shall obtain the prior written consent of the GRANTOR prior to recommencing any work on, within, under, over, across, near or affecting the Premises.

23. GRANTOR and GRANTEE Terms. The term "GRANTOR" as and when used herein shall mean and include the GRANTOR named above and the GRANTOR's officers, employees, agents, successors, and assigns. The term "GRANTEE" as and when used herein shall mean and include the GRANTEE named above and the GRANTEE's officers, employees, agents, contractors, guests, invitees, successors, and permitted assigns.

24. Binding Effect. All provisions contained in this Agreement shall be binding

upon and inure to the benefit of the respective parties, their successors and permitted assigns.

25. Singular, Plural. All words used herein in the singular number shall extend to and include the plural. All words used in any gender shall extend to and include all genders.

26. Headings. The headings and captions herein are for convenience of reference only and are not intended to fully describe, define or limit the provisions of this Agreement to which they may pertain.

27. Counterparts. This instrument may be executed in two or more counterparts, and when all counterparts have been executed, each counterpart shall be considered an original but when assembled shall constitute one and the same instrument and shall have the same force and effect as though all the signatories had executed a single instrument. Any unexecuted duplicate pages may be omitted from the assembled original document.

28. No Drafter. The GRANTEE and the GRANTOR agree that no party shall be deemed to be the drafter of this Agreement and further that in the event that this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision of this Agreement against any party as the drafter of this Agreement.

29. Severability. In the event that any provision of this Agreement is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Agreement.

30. Waiver. The failure of the GRANTOR to insist upon strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the GRANTOR's right to enforce the same in accordance with this Agreement.

31. Governing Law. This Agreement shall be governed and construed in accordance with federal law, unless and to the extent state law naturally applies, in which case the laws of the State of Hawaii shall apply.

32. Nondiscrimination. The use and enjoyment of the Premises shall not be in support of any policy which discriminates upon any basis or in any manner that is prohibited by any applicable federal, state, or county law.

33. Notices. Except as otherwise specifically provided in this Agreement, any notice, consent, request, demand, or other correspondence given under this Agreement shall be in writing and given by delivering the notice in person or by commercial courier, or by sending it by first-class, certified mail, return receipt requested, with postage prepaid; or overnight courier,

return receipt requested, with postage prepaid; to: (a) the GRANTEE at the address as stated on page one herein; or (b) the GRANTOR at the following address: State of Hawaii, Department of Agriculture, Animal Industry Division, 99-941 Halawa Valley Street, Honolulu, Hawaii 96701, Attn: Administrator; or (c) such other address as either the GRANTEE or the GRANTOR may designate, in writing, as its new address for such purpose by notice given to the other in accordance with this section. Any notice hereunder shall be deemed to have been given and received and effective two (2) calendar days after the date when it is mailed if sent by first-class, certified mail, one (1) calendar day after the date when it is mailed if sent by overnight courier, or upon the date personal delivery is made.

34. No Recordation. This Agreement shall not be recorded.

35. No Real Property Interest. GRANTEE agrees that GRANTEE does not and shall not claim at any time any real property interest in the Property. THIS AGREEMENT IS NOT A LEASE OR A GRANT OF AN EASEMENT.

36. No Third Party Beneficiaries. No third party beneficiaries are intended by this Agreement, and the terms and provisions of this Agreement shall not give rise to any right in third parties to enforce the provisions of this Agreement.

37. Entire Agreement; Amendment. This Agreement constitutes the entire agreement of the parties with respect to the matters set forth in this Agreement, and, except as specifically provided otherwise herein, there are no agreements, understandings, warranties, or representations between the parties except as set forth herein. This Agreement cannot be amended or modified except by an instrument, in writing, signed by each of the parties. Any termination or cancellation of this Agreement, in whole or in part, shall not relieve the GRANTEE of its obligations to release, indemnify, defend and/or hold harmless the GRANTOR as provided herein.

[Signatures on Next Page.]

IN WITNESS WHEREOF, the undersigned have executed this Agreement the
day and year first above written.

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE

By Sharon Hurd
SHARON HURD
CHAIRPERSON, BOARD OF AGRICULTURE
GRANTOR

GRANTEE

[Provide appropriate signatory authority]

UNITED STATES NAVY

APPROVED AS TO FORM:

Print Name _____
Deputy Attorney General

Date: _____

AK

100

STATE OF HAWAII)
) SS.
COUNTY OF)

On this _____ day of _____, 20____, before me personally appeared _____
and _____, to me personally known, who, being by me duly sworn or affirmed,
did say that such person(s) executed the foregoing instrument as the free act and deed of such
person(s), and if applicable in the capacity shown, having been duly authorized to execute such
instrument in such capacity.

Notary Public, State of Hawaii

My commission _____

EXHIBIT A

Description of portion of the Property here:

Survey and Legal Description provided separately as pdfs.

EXHIBIT B

Project Delineated

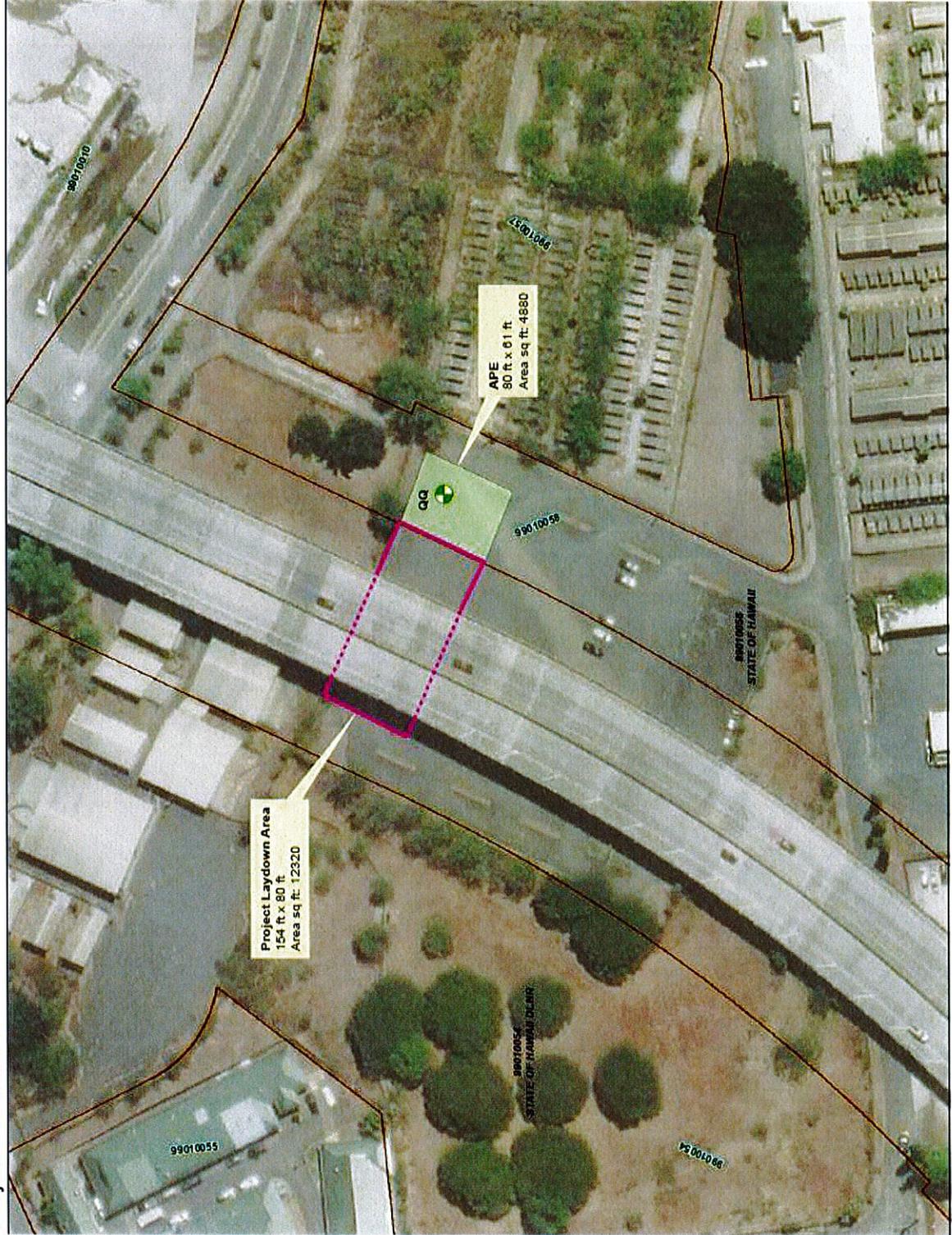
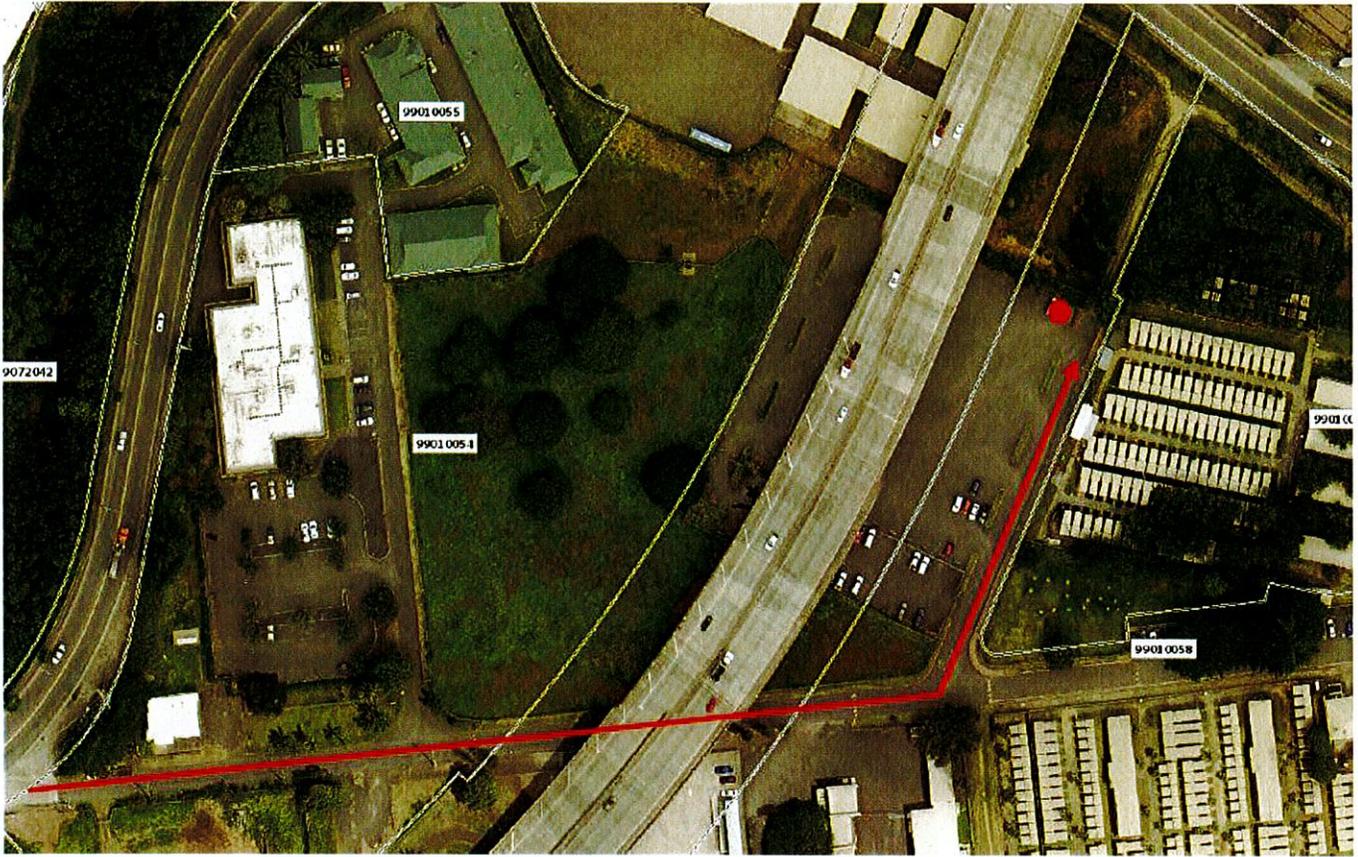


EXHIBIT C

Route To Access Premises



DM

V4 UOA BOA USN well_09.26.23

Final Audit Report

2023-09-12

Created:	2023-09-12 (Hawaii-Aleutian Standard Time)
By:	Amy Rivera (Amy.H.Rivera@hawaii.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAA9oPlaKxvJhCfMfjrN8hMrBSPb_NF6-N
Number of Documents:	1
Document page count:	23
Number of supporting files:	0
Supporting files page count:	0

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2023-09-12 - 4:13:17 PM HST
-  Document e-signed by Sharon Hurd (Sharon.K.Hurd@hawaii.gov)
Signature Date: 2023-09-12 - 4:14:42 PM HST - Time Source: server

✔ Agreement completed.

2023-09-12 - 4:14:42 PM HST

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
ANIMAL INDUSTRY DIVISION
99-941 HALAWA VALLEY STREET
AIEA, HAWAII 96701

September 26, 2023

Board of Agriculture
Honolulu, Hawaii

- SUBJECT: Request for Approval of a Right-of-Entry (ROE) in favor of GSI North America (GSI) to conduct a geophysical survey.
- AUTHORITY: Section 141-1 (3) and (5), Hawaii Revised Statutes.
- TAX MAP KEY: (1) 9-9-010:046, (1) 9-9-010:054, (1) 9-9-010:055, (1) 9-9-010:057, and (1) 9-9-010:058 (collectively, the "Property").
- LAND STATUS: Encumbered by Governor's Executive Order No. 4396 for animal quarantine, animal welfare, and general commercial purposes.
- TERM: Shall begin on a date mutually agreed to by HDOA and GSI in writing and terminate 120 hours thereafter at 4:30 p.m.
- BASE RENTAL: None.
- CHARACTER OF USE: GSI has requested permission from the Animal Industry Division ("Division") to enter the Property to conduct a geophysical survey described in ROE Exhibit A.

I. Background

The Contractor GSI is requesting access to conduct a geophysical survey (e.g., a gravity survey) as part of a scientific investigation being conducted by the University of Hawaii in support of Hawaii's Department of Health in their investigation of the recent fuel releases from the Red Hill Bulk Fuel Storage Facility.

The geophysical surveys will be used to help define the geologic structures in the area that determine the volume and direction of the flow of groundwater in the subsurface. Both surveys are non-intrusive and will do no damage to the ground surface or any underlying infrastructure.

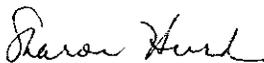
Board of Agriculture
September 26, 2023
Page 2 of 12

The Animal Industry Division recommends that the Board approve the request for the Division to execute the ROE in favor of GSI to conduct a geophysical survey at the Animal Industry Division Halawa property located at 99-941 and 99-951 Halawa Valley, Street, Aiea, Hawaii 96701.



Isaac Maeda, DVM
Administrator, Animal Industry Division

APPROVED FOR SUBMISSION:



Sharon Hurd
Chairperson, Board of Agriculture

Attachment

EXHIBIT A

RIGHT-OF-ENTRY AGREEMENT

1. Date of this Agreement: September 26, 2023

2. Parties to this Agreement:

Owner: State of Hawaii, Department of Agriculture,
Animal Industry Division

Contact: Issac Maeda, DVM
99-941 Halawa Valley Street
Aiea, Hawaii 96701

Entrant: GSI North America
181 South Kukui Street
Honolulu, HI 96813

3. Property TMK(s): (1) 9-9-010:046
(1) 9-9-010:054
(1) 9-9-010:055
(1) 9-9-010:057
(1) 9-9-010:058

4. Activities to be Conducted on the Property:

Entrant has requested permission from Owner to enter the Property to investigate and perform a geophysical survey described in Attachment A for the University of Hawaii ("UH"), in specific locations on the Property as described in Attachment A, which is attached hereto, and made a part hereof.

5. Term of this Agreement:

The term of this Agreement shall begin on a date mutually agreed to by HDOA and GSI in writing, and shall terminate 120 hours thereafter at 4:30 p.m., unless sooner terminated pursuant to the terms set forth in this paragraph 5 or in other provisions of this Agreement. Entrant or Owner may sooner terminate this Agreement, with or without cause, after furnishing to the other party twenty-four (24) hours prior written notice of such.

6. Permission to Enter Property:

Owner hereby gives Entrant permission to enter the Property to conduct the activities listed in paragraph 4 above, subject to the terms and conditions contained in this Agreement.

7. Conditions to Entry:

Entrant may enter the Property subject to the following conditions:

- a. Entrant shall conduct only those activities listed in paragraph 4 above and no other activities.
- b. Entrant's activities shall be conducted during normal hours of operation of the HDOA Animal Quarantine Station located on the Property (8:00 a.m. – 4:30 p.m.).
- c. Entrant's activities shall be strictly limited to the areas depicted in Attachment A.
- d. Entrant shall not interfere with or disrupt any of Owner's or Owner's lessees' or tenants' activities on the Property or adjacent properties.
- e. Entrant shall exercise due care for public and private safety on the Property.
- f. The activities conducted on the Property by Entrant shall be conducted in a manner that is unobtrusive and blends in with the surroundings to the extent possible.
- g. Upon expiration or earlier termination of this Agreement, Entrant shall remove all equipment and other items of Entrant's and shall restore the Property to the same condition existing prior to Entrant's entry on the Property or to the Owner's satisfaction.
- h. Prior to exercising the rights granted under this Agreement, the Entrant shall give the Owner at least forty-eight (48) hours prior written notice of the desire to exercise the rights granted under this Agreement, which notice shall indicate the dates of the intended access and use of the Property pursuant to the terms of this Agreement.
- i. Entrant's activities shall not involve construction, disruption of services, or damage to property and infrastructure.
- j. Entrant shall not damage the Property in any manner whatsoever or construct or place any improvements on the Property.
- k. Entrant's activities shall comply with all federal, state, and county laws, ordinances, rules, and regulations.
- l. Entrant shall comply with all provisions of this Agreement.

8. Indemnification and Defense:

Entrant agrees to defend, indemnify, and hold harmless Owner, its agents, and tenants occupying the Property, if any, against all loss damage, costs, expenses, charges, including all attorneys' fees and claims, demands, suits, and liability for injury to property or persons, including wrongful death, arising out of or caused by any accident on or in connection with activities as described above in paragraph four, or the entry or use by Entrant, of the Property and improvements thereon, or arising out of failure of Entrant to observe and perform any term, covenant or condition herein contained and on the part of Entrant to be observed and performed, or caused by Entrant in the exercise of the rights and duties granted hereunder. If Owner shall, without any fault on its part, be made a party to any litigation commenced by or against Entrant in connection with this Agreement, the Entrant shall pay all costs and expenses incurred by or imposed on the Owner, including attorneys' fees. The term "Entrant" as used in this paragraph shall mean and include the Entrant and its employees, agents, and contractors who enter the Property to exercise the rights granted under this Agreement. The provisions of this paragraph

Board of Agriculture
September 26, 2023
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shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

9. Preservation of Historic and Archaeological Sites:

Entrant shall take every reasonable precaution to preserve and leave unaltered all places, if any, of historic and/or archaeological interest, including without limitation structures and sites listed on the Hawaii State Register of Historic Places and/or the National Register of Historic Places, ponds, reservoirs, heiau, altars, agricultural terraces, lo'i, walls, auwai, house platforms, imu, petroglyph sites, cemeteries; and all objects, if any, of historic and/or archaeological interest, including without limitation antiquities and specimens of Hawaiian or other ancient art or handicraft which may be found in or on the Premises. Upon the discovery of such objects or of any human remains in or on the Premises, the Lessee will leave the same untouched and will immediately notify the Owner of the type and location of such discovery.

10. No Assignment:

Entrant shall not assign or transfer any right under this Agreement.

11. Termination of Agreement:

In the event that Owner, in Owner's sole judgment and discretion, determines that any of the terms or conditions contained in this Agreement have been breached, or upon the condemnation of the Property or any portion thereof, Owner shall have the right to terminate this Agreement without having to furnish Entrant prior notice.

12. No Real Property Interest:

Entrant agrees that Entrant does not and shall not claim at any time any real property interest in the Property. THIS AGREEMENT IS NOT A LEASE OR A GRANT OF AN EASEMENT.

13. Compliance with Law:

Entrant shall comply with all federal, state, and county laws, ordinances, rules, and regulations, including nondiscrimination, and conflicts of interest, associated with the exercise of Entrant's rights and activities under this Agreement, and shall indemnify, defend, and hold Owner harmless from and against any and all violations by Entrant of such laws, ordinances, and regulations.

14. Insurance:

Entrant shall procure and maintain throughout the term of this Agreement worker's compensation insurance on all of Entrant's employees, agents, and contractors and shall provide Owner with certificates of insurance evidencing such worker's compensation insurance. Entrant

shall secure for the term of this Agreement liability insurance for all operations directly or indirectly connected with Entrant's operations contemplated under this Agreement including, but not limited to, if applicable, the transportation of Entrant's employees, agents, or contractors to the Property with limits not less than \$1,000,000.00 each occurrence for bodily injury, and \$2,000,000.00 in the aggregate with \$100,000.00 for property damage. Before commencement of Entrant's operations under this Agreement, Entrant shall file with Owner certificates of insurance acceptable to Owner showing Owner as an additional insured. All certificates to be provided to Owner under this Agreement shall contain a provision that the coverage afforded under the policies will not be canceled or materially changed until at least ten (10) days prior written notice has been given to Owner.

15. No Offensive Use:

Entrant will not suffer, make, commit, or permit any waste or strip or unlawful or improper or offensive use of the Property or any part thereof. Entrant will ensure that any and all material such as, but not limited to, paper products, soda cans, etc., brought to the Property by Entrant or its employees, agents, or contractors shall be removed from the Property each day of Entrant's exercise of the rights granted under this Agreement.

16. Operation and Control.

Entrant shall be responsible for the actions and activities of its employees, agents, and contractors acting in the course of their employment and operations pursuant to this Agreement. Entrant's operations will be conducted in a professional, workmanlike and orderly manner.

17. No Warranties and Assumption of Risk:

Owner makes no representations as to the present or future condition of the Property. Entrant assumes all risks of personal injury or damage to Entrant, its employees, agents, and contractors in connection with the operations contemplated under this Agreement.

18. Pollution Control:

If during the performance of this Agreement, the Entrant encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance" "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the Entrant shall immediately notify the Owner and all other appropriate state, county, or federal agencies as required by law. The Entrant shall take all release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the Owner determines that this Agreement requires an adjustment of the time for performance, the Agreement shall be modified in writing accordingly.

Board of Agriculture
September 26, 2023
Page 7 of 12

19. Merger; Amendments:

This Agreement contains the entire agreement between the parties and the Agreement may not be amended or modified in any respect except by an instrument in writing executed by all parties.

20. Notices:

Any notice under this Agreement shall be sufficient if mailed by U.S. mail, first-class postage, prepaid, to any party at the address given below or such other address as either party may designate from time to time by notice similarly given:

To Owner: Department of Agriculture
Animal Industry Division
99-941 Halawa Valley Street
Aiea, Hawaii 96701
Attn: Issac Maeda, D.V.M.

To GSI: GSI North America
181 South Kukui Street,
Honolulu, Hawaii 96813
Attn: Zachary M. Payne

21. Counterparts:

This Agreement may be executed in one or more counterparts, and when so executed each counterpart shall be deemed to be an original and said counterparts together shall constitute one and the same instrument.

22. No Party Deemed Draftsperson:

Since all parties to this Agreement have had their respective legal counsel review this Agreement or have had an opportunity to have such legal counsel review the Agreement for purposes of construing the terms and conditions of this Agreement, no party shall be deemed the draftsperson of this Agreement.

23. Section Headings:

Headings at the beginning of each section of this Agreement are solely for the convenience of the parties and are not a part of this Agreement.

24. Authority:

Each person signing this Agreement represents and warrants that he or she has full and complete authority to enter into this Agreement on behalf of the party for which they are signing.

25. Entire Agreement:

This Agreement sets forth all of the agreements, conditions, understandings, warranties, and representations between the parties relative to this Agreement. This Agreement supersedes all prior agreements, conditions, understandings, warranties, and representations, oral or written, express or implied, between Owner and Entrant other than as set forth or referred to herein.

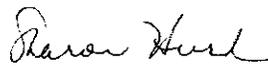
26. Governing Law:

This Agreement shall be governed by the laws of the State of Hawaii and any question arising hereunder shall be construed or determined according to such law.

APPROVED AS TO FORM

State of Hawaii Department of Agriculture

Deputy Attorney General



Sharon Hurd, Chairperson
Board of Agriculture

Sep 11, 2023

Date

GSI North America

Zachary M. Payne
Senior Project Manager

Date



ATTACHMENT A
**UNIVERSITY OF HAWAII ENGINEERING
SERVICES IN SUPPORT OF REMEDIATION
ACTIVITIES**
**JOINT BASE PEARL HARBOR-HICKAM (JBPHH), OAHU,
HAWAII**
Prime Contract No. N3943022C2438
Subcontract No. MA1829



Request for Access

Date: 6/7/2023

To whom it may concern,

University of Hawaii with GSI North America would like to request access to your facility (Animal Quarantine Station) to conduct a geophysical survey (e.g. a gravity survey) as part of a scientific investigation being conducted by the University of Hawaii in support of Hawaii's Department of Health in their investigation of the recent fuel releases from the Red Hill Bulk Fuel Storage Facility.

The geophysical surveys will be used to help define the geologic structures in the area that determine the volume and direction of the flow of groundwater in the subsurface. Both surveys are non-intrusive and will do no damage to the ground surface or any underlying infrastructure.

The gravity survey will be done with University of Hawaii-own equipment (similar to a metal detector also shown below in Figure 1). This instrument measures the gravity signals



Figure 1: Gravity Survey
Equipment

coming from subsurface geologic structures. It is sensitive to ground motion; therefore, we would like to request access at a time that is not busy so that the meter can provide more precise data. Each measurement will take approximately 10 minutes. The gravity survey parameters are designed and we can undertake this work at any time. As shown in Figure 2, we assume approximately 30 sample locations within your facility. These points are not fixed and can be moved as necessary.

Board of Agriculture
 September 26, 2023
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**UNIVERSITY OF HAWAII ENGINEERING
 SERVICES IN SUPPORT OF REMEDIATION
 ACTIVITIES
 JOINT BASE PEARL HARBOR-HICKAM (JBPHH), OAHU,
 HAWAII**



Prime Contract No. N3943022C2438
 Subcontract No. MA1829

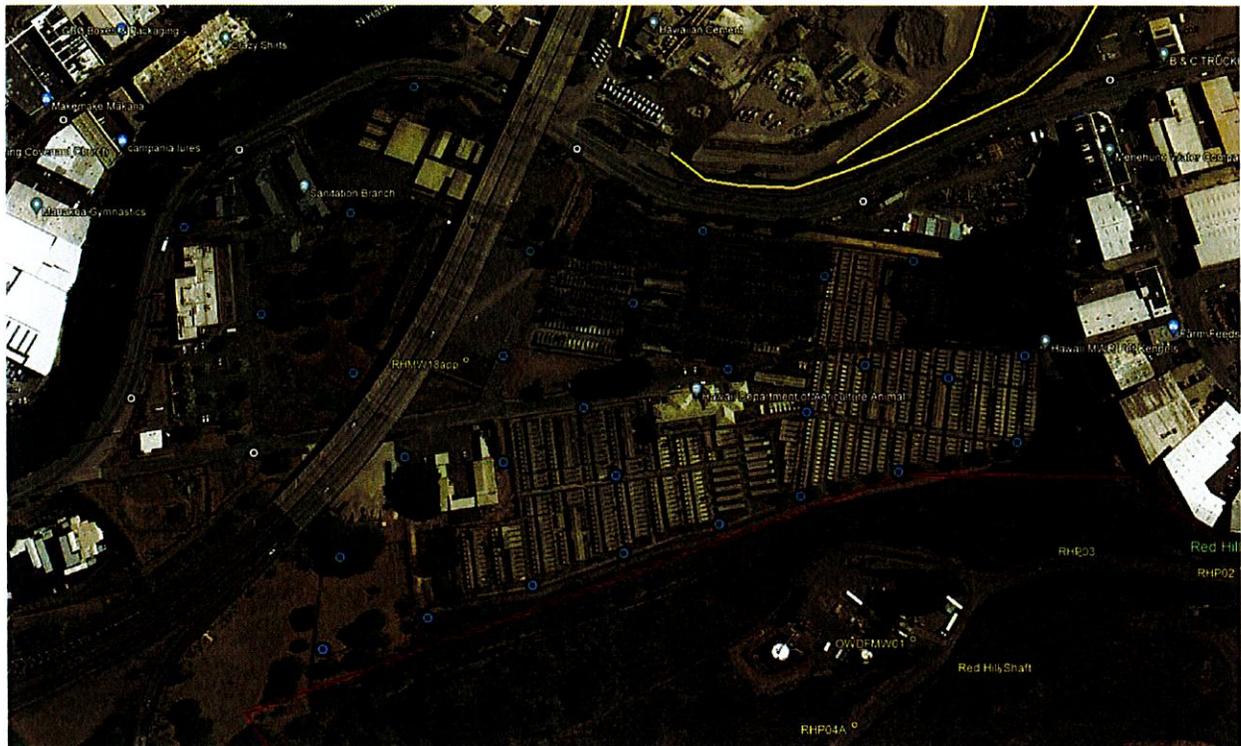


Figure 2: Approximate gravity location points are shown in blue.

We look forward to discussing the specifics of our project, facility access, and your requirements at a time that is convenient. If you have any initial questions or concerns, please contact our team using the contact information below.

University of Hawaii
 Donald Thomas: Principle Investigator
dthomas@soest.hawaii.edu
 (808) 895-6547
 Erin Wallin: Lead Geophysicist
ewallin@hawaii.edu
 (509) 713-4734.

GSI North America
 Mark Roberts: Project Manager
mroberts@gsisg.com
 (808) 342-5271
 Bryan Chinaka: Field Manager
bchinaka@gsisg.com
 (808) 551-2396

Board of Agriculture
September 26, 2023
Page 12 of 12

Thank you,

University of Hawaii and GSI North America

BOA_sub_GSI_09.26.23_Final

Final Audit Report

2023-09-11

Created:	2023-09-11 (Hawaii-Aleutian Standard Time)
By:	Amy Rivera (Amy.H.Rivera@hawaii.gov)
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STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESOURCE MANAGEMENT DIVISION
HONOLULU, HAWAII

September 26, 2023

Board of Agriculture
Honolulu, Hawaii

Subject: REQUEST FOR APPROVAL OF GRANT OF PERPETUAL ACCESS AND UTILITY EASEMENT TO THE COUNTY OF MAUI, TMK: (2) 2-2-004:066 POR., KEOKEA, KULA, ISLAND OF MAUI, HAWAII

Authority: 166E-6, Hawaii Revised Statutes (HRS); 4-158-2(a)(8), Hawaii Administrative Rules (HAR)

Grantor: STATE OF HAWAII

Grantee: COUNTY OF MAUI

Land Area: 2,236 square feet, more or less

Tax Map Key: (2) 2-2-004:066 (see Exhibit "A")

Land Status: Encumbered by Governor's Executive Order No. 4625 to the Department of Agriculture (DOA) for non-agricultural park land purposes dated March 6, 2020

Term: Perpetual

Character of Use: Right privilege and authority to construct, use, maintain and repair a right of way over, under and across State-owned land for access and utility purposes.

BACKGROUND

The Keokea Kai Subdivision is part of 33 acres in Keokea originally purchased in 1918 by Harry Fong. The Fong family have been working to develop a 13-lot family subdivision off Cross Road in Keokea. Before homes can be built on the lots, the County of Maui required improvements, such as roads and waterlines, to be constructed. Construction began in 2016 after the Fong's obtained financing and permits to commence work. Before the 1980's, when there were no homes in the area, the existing Maui County dead-end section of Cross Road, serviced only one cattle rancher with a pasture.

B1

B2

Construction of the mandatory 20-foot wide roadway for firetruck access on Cross Road requires a perpetual easement from the State of Hawaii in favor of the County of Maui for a 2,236 sq.ft. portion of the parcel (TMK: (2) 2-2-004:066) that is outside of the existing road right-of-way (ROW). Obtaining this easement will enable the fire trucks to navigate around the bend in the road (see Exhibit "A"). This specific easement area has a sharp 74-degree ROW angle that follows the adjacent private property lines and, because of this sharp turn, the existing road in this area has always crossed outside the ROW into State land.

The State agricultural parcel (2) 2-2-004:066 is currently vacant awaiting disposition of a lease resulting from a public auction awarding various Kula parcels to qualified ranching applicants.

RECOMMENDATION:

That the Board of Agriculture approve the request for a grant of perpetual non-exclusive access and utility easement to the County of Maui, TMK: (2) 2-2-004:066 Por., Keokea, Kula, Island of Maui, Hawaii. All documents are subject to review and approval as to form by the Department of the Attorney General, and such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,



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

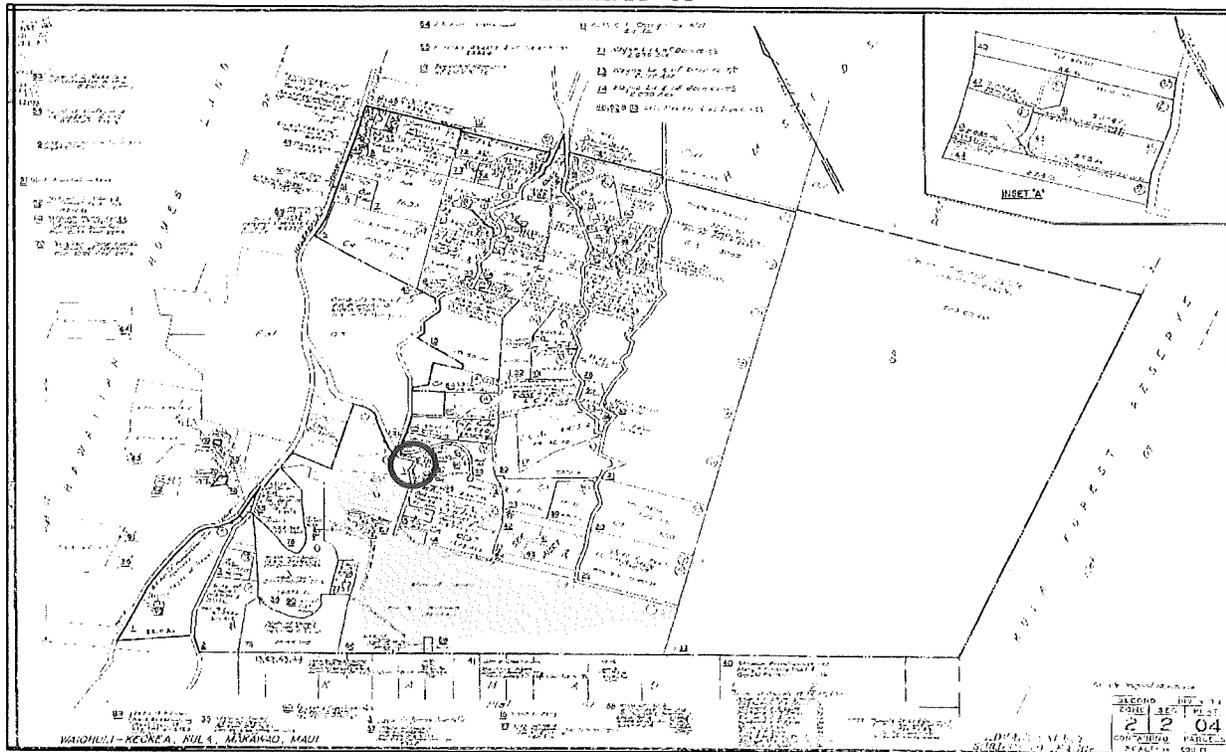
Attachment – Exhibit "A"

APPROVED FOR SUBMISSION



SHARON HURD
Chairperson, Board of Agriculture

EXHIBIT "A"



B3

B4



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

September 26, 2023

Board of Agriculture
Honolulu, Hawaii

Subject: REQUEST TO TERMINATE GENERAL LEASE NO. S-3109;
MILTON COLEMAN, JR., LESSEE; ISSUE CANCELLATION
DOCUMENT, AND DISPOSITION OF LOT; TMK: (1) 4-1-
018:048, KOOLAUPOKO, WAIMANALO, ISLAND OF OAHU,
HAWAII

Authority: Sections 166E-5 and 8, Hawaii Revised Statutes (HRS), and
Sections 4-158-2(a)(8) and 33, Hawaii Administrative Rules
(HAR)

Lessee: Milton Coleman, Jr.

Land Area: 1.4 acres

Tax Map Key: (1) 4-1-018:048 (see Exhibit "A")

Land Status: Encumbered by Governor's Executive Order No. 4408 to the
Department of Agriculture for non-agricultural park land purposes
in 2012

Lease Term: 35 years, 5/1/2014 to 4/30/2049

Current Rent: \$12,340.00 per year until reopening on 5/1/2024

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

Permitted Use: Diversified agriculture purposes

BS

BACKGROUND:

The subject lease was awarded to Milton Coleman, Jr. by the Board of Agriculture effective May 1, 2014, by way of a public auction. The lessee had planned to farm native Hawaiian crops and establish an aquaculture system.

Development of the farm never occurred, and delinquencies of financial obligations continued to increase. Agricultural Resource Management Division staff offered multiple repayment plan agreements. However, the agreements were rejected by the Lessee.

The Lessee is in default with a current lease rent balance of \$86,070.81 after applying the amount of \$19,600.00 in payments received in 2023. The Lessee is also in default for non-development of the premises. Numerous invoice notices have been sent to the Lessee demanding payment to remedy the delinquencies including issuance of monthly invoices showing accumulating balances due with interest fees. Letters demanding remedy of various lease violations have also been sent. The Lessee has failed to remedy the various violations of the lease within the given times, or such additional times in good cause, to correct the violations. All efforts to work with the Lessee to remedy defaults have been exhausted.

Request to terminate General Lease No. S-3109 was deferred at the Board of Agriculture meetings on August 27, 2019, April 14, 2020, and November 29, 2022.

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

INTENTIONALLY LEFT BLANK

RECOMMENDATION:

That the Board of Agriculture:

1. Approve the cancellation of General Lease No. S-3109 pursuant to section 4-158-2(a)(8), HAR, and terminate all right, title, and interest granted to the Lessee therein effective as of the date of approval of this submittal;
2. Authorize issuance of a lease cancellation document to be executed by the chairperson and recorded at the Bureau of Conveyances;
3. Authorize staff to prepare TMK: (1) 4-1-018:048 for disposition to the public, pursuant to Subchapter 4-158-24 and 29, HAR; and
4. Approve the request to refer General Lease No. S-3109 as a delinquent account to the Office of the Attorney General for review and disposition in accordance with Section 40-82, HRS.

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

Respectfully submitted,



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

Attachment – Exhibit “A”

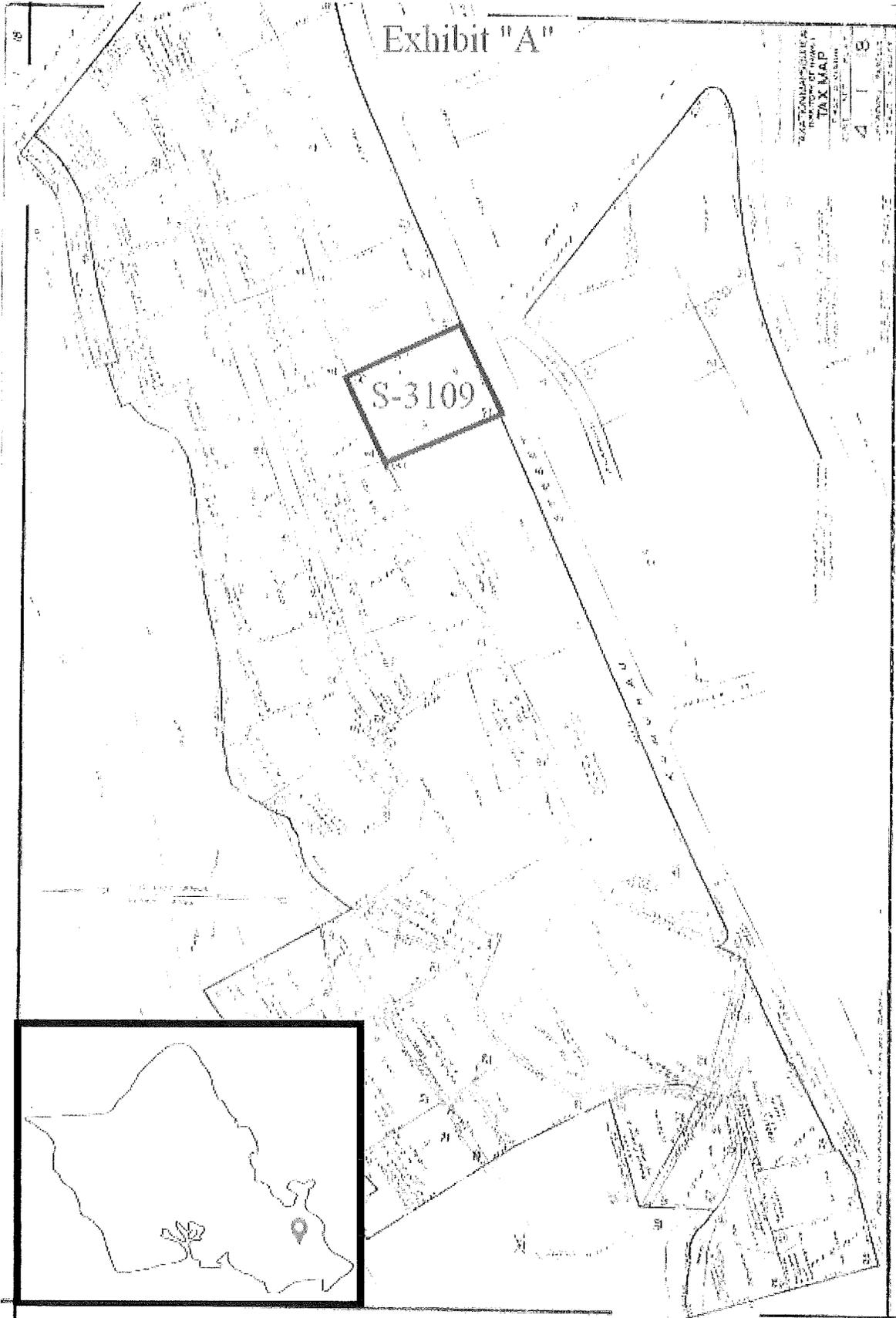
APPROVED FOR SUBMISSION:



SHARON HURD
Chairperson, Board of Agriculture

B7

B8



Photos of General Lease No. S-3109



B9

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

September 26, 2023

Board of Agriculture
Honolulu, Hawaii

Subject: REQUEST FOR APPROVAL OF WAIVER OF WAIMEA IRRIGATION SYSTEM WATER USED IN AUGUST 2023 FOR FIREFIGHTING PURPOSES OF CERTAIN LALAMILO FARM LOTS ON AUGUST 8, 2023, LALAMILO, WAIMEA, ISLAND OF HAWAII, HAWAII

Authority: Governor's sixth emergency proclamation relating to wildfires dated August 19, 2023, and 4-157-21(1)(B), Hawaii Administrative Rules

Irrigation User(s): Howard Hall (IR-1083), William Bergin (IR-1087)

Land Area(s): 13.9705 acres more or less, 5.999 acres more or less

Tax Map Key(s): (3) 6-6-005:038 and (3) 6-6-005:043 (see Exhibit "A")

BACKGROUND

On August 7 and 8, 2023, the National Weather Service issued a red flag warning as Hurricane Dora passed far south of the islands but was anticipated to still fuel powerful winds while the State was experiencing lower humidity and dangerous fuel loads. A red flag warning means that critical fire weather conditions are expected to occur within 24 hours. Regretfully, several wildfires were ignited with locations reported on the Big Island and Maui. Historic Lahaina town was destroyed and at least 115 people lost their lives.

Shortly after Dora left the area, and the fires were under control, the Department was contacted by Mr. Hall and Dr. Bergin to request consideration to waive the portion of his August irrigation system water use that was used to fight fires in and around their farms. Realizing that there is no way to determine fire flow from crop usage, Mr. Hall offered to pay the same amount he did for the previous month of July. Dr. Bergin sent a letter thanking the Department for the use of the irrigation water. Given the severity of the fires, probable water use of water for cleanup, the date of the fire early in the month, and in the interest of agricultural support, the department believes the waiver of Mr. Hall's and Dr. Bergin's irrigation water use for the month of August is warranted and they only be responsible for the monthly acreage assessment.

B10

RECOMMENDATION:

That the Board of Agriculture approve the request to waive Mr. Hall's and Dr. Bergin's August, 2023 irrigation water use. All documents are subject to review and approval as to form by the Department of the Attorney General.

Respectfully submitted,



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

Attachment – Exhibit “A”

APPROVED FOR SUBMISSION



SHARON HURD
Chairperson, Board of Agriculture

EXHIBIT "A"

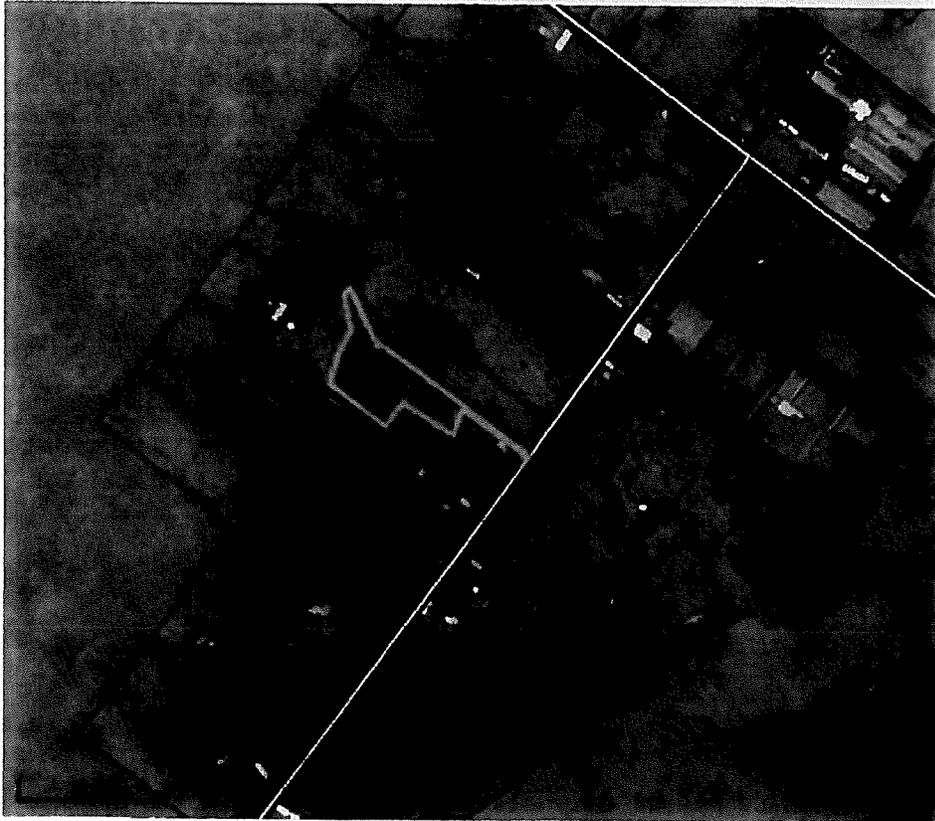


Overview

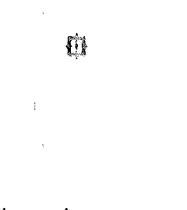


Legend

□ Parcels



Overview



Legend

□ Parcels

B12

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