

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

June 24, 2025

Board of Agriculture
Honolulu, Hawaii

Subject: REQUEST FOR APPROVAL TO SUBLEASE BETWEEN THE HĀMĀKUA AGRICULTURAL COOPERATIVE, LESSEE/SUBLESSOR, AND STANLEY CYPRIANO, SUBLESSEE; GENERAL LEASE NO. S-5551, TMK: 3rd DIV/4-6-003:001, LOT NOS. 13 AND 14, HONOKA‘IA, HĀMĀKUA, ISLAND OF HAWAII, HAWAII

Authority: Section 166E-6, Hawaii Revised Statutes (“HRS”), and
Section 4-158-19(a)(6), Hawaii Administrative Rules (“HAR”)

Lessee/Sublessor: Hāmākua Agricultural Cooperative

Sublessee: Stanley Cypriano

Land Area: Approximately 7.270 acres – Lot 13
Approximately 3.320 acres – Lot 14

Tax Map Key: 3rdDiv/4-6-003:001 (Exhibit “A”)

Land Status: The Hāmākua lands were transferred to the Department of Agriculture by Governor’s Executive Order No. 4250, dated October 22, 2008, pursuant to Act 90, SLH 2003

Lease Term: 35-years, June 30, 1998 through June 29, 2033

Sub-Lease Term: May 22, 2025 through June 29, 2033 – Lot 13
May 22, 2025 through June 29, 2033 – Lot 14

Annual Base Rent: \$798.61 /year – Lot 13
\$364.70 /year – Lot 14

Character of Use: General Agricultural Purposes in accordance with a Plan of Utilization and Development approved by the Department

BACKGROUND:

Stanley Cypriano is requesting to sublease lots 13 and 14, under General Lease S-5551, consisting of approximately 10.59 acres. Mr. Cypriano is a member of the Hāmākua Agricultural Cooperative and currently holds subleases under General Lease S-5551 for Lots 3, 5, 9, 10, 12A, 12B, 20 and 24 in Honoka‘ia, where he raises cattle. Lots 12 and 14 are contiguous to lots 12A and 12B, as well as property that he leases with Bishop Estate. Obtaining a sublease of these parcels will significantly enhance his ability to rotate his cattle and improve his pasture recovery and overall herd health.

Stanely Cypriano is a sublessee in good standing and qualifies as a bona fide farmer with more than 2 years of full-time farming experience and meets the application and eligibility requirements in accordance with sections 4-158-1 and 27, HAR.

RECOMMENDATION:

That the Board of Agriculture approve the Sublease between the Hāmākua Agricultural Cooperative, Lessee/Sublessor, and Stanley Cypriano, Sublessee, for Lot Nos. 13 and 14 in Honoka‘ia, under General Lease S-5551, through the expiration date of June 29, 2033, and further subject to the review and approval as to form of the consent document 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"

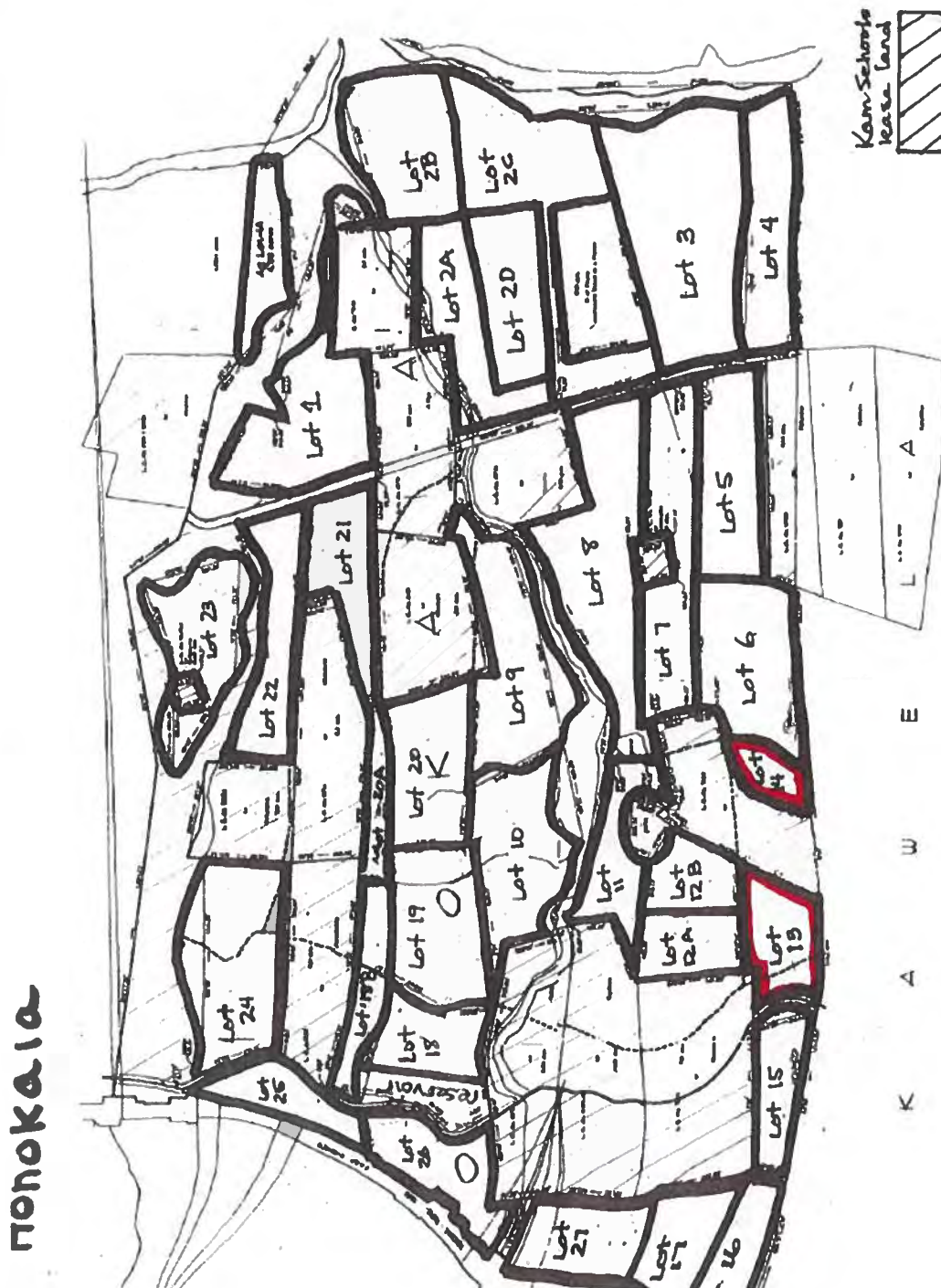


Photo of General Lease S-5551, Lot 13



Photo of General Lease S-5551, Lot 14



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

June 24, 2025

Board of Agriculture
Honolulu, Hawaii

Subject: REQUEST FOR AUTHORIZATION TO:

(1) CANCEL LAND COURT TRANSFER CERTIFICATE OF TITLE NO. 498,504 COVERING LOTS 12020, 12021, & 12022, MAP 888, LAND COURT APPLICATION NO. 1069, DESIGNATED AS TMKS: (1) 9-1-031:026, (1) 9-1-031:025, & (1) 9-1-031:001, RESPECTIVELY, AND ISSUE SEPARATE TRANSFER CERTIFICATES OF TITLE FOR EACH LOT; AND

(2) DEREGISTER FROM LAND COURT LOT 12022, LAND COURT APPLICATION NO. 1069, DESIGNATED AS TMK: (1) 9-1-031:001, HONO'ULI'ULI, 'EWA, O'AHU, HAWAII

Authority: Sections 166E-3 and 501-261.5, Hawaii Revised Statutes ("HRS"), and Sections 4-158-2(a)(13) and 4-158-2(c)(5), Hawaii Administrative Rules ("HAR")

Lessee: Lot 12020 - S-8501 to Hawaii Moi Fish, LLC
Lot 12021 - S-8500 to Hawaii Land & Livestock, LLC
Lot 12022 - S-3138 to Hawaii Land & Livestock, LLC

Land Area: Lot 12020 = 3.769 acres
Lot 12021 = 6.685 gross acres
Lot 12022 = 110.106 acres

Tax Map Keys: Lot 12020 - (1) 9-1-031:026
Lot 12021 - (1) 9-1-031:025
Lot 12022 - (1) 9-1-031:001
(see Exhibit "A")

Land Status: Lot 12020 - Encumbered by Governor's Executive Order No. 3801 to the Department of Agriculture for agricultural park purposes.

Lot 12021 - Encumbered by Governor's Executive Order No. 3801 to the Department of Agriculture for agricultural park purposes.

Lot 12022 - Encumbered by Governor's Executive Order No. 4584 to the Department of Agriculture for agricultural purposes on May 15, 2019.

Lease Terms: Lot 12020 - 45 years, January 1, 2006 – December 31, 2050
Lot 12021 - 35 years, February 1, 2000 – January 31, 2035
Lot 12022 - 35 years, January 1, 2020 – December 31, 2055

Current Rent: Lot 12020 - \$9,440.00 per year
Lot 12021 - \$16,320.00 per year
Lot 12022 - \$18,300.00 per year

Additional Rent: Lot 12020 - 2% of gross proceeds, which includes revenues from consignment sales and subletting.

Lot 12021 - 2% on \$1,000,000 to \$1,500,000 of gross revenue; 1.75% of \$1,500,000 or more of gross revenue.

Lot 12022 - 1.5% of the gross proceeds, which includes revenues from consignment sales and subletting.

Permitted Use: Lot 12020 - Aquaculture purposes.

Lot 12021 - Animal livestock slaughtering and processing purposes and for the distribution of resulting value-added food products.

Lot 12022 - Solely for diversified agriculture including animal feedlot purposes for finishing prior to slaughter of livestock.

BACKGROUND:

Pursuant to Section 171-11, HRS, as amended, Executive Order No. 4584 ("EO4585"), dated May 15, 2019, set aside 110.106 acres for agricultural purposes, and established a non-agricultural park parcel currently under the control and management of the Department of Agriculture ("HDOA"), Agricultural Resource Management Division ("ARMD"). EO4585 reserved to the Board of Land and Natural Resources ("BLNR") the right to issue leases for renewable energy projects on the land to the extent such leases will not unreasonably interfere with HDOA's use of the land.

The Board of Agriculture ("BOA") awarded General Lease No. S-3138 to HAWAII LAND & LIVESTOCK, LLC, ("HL&L") for a term of THIRTY-FIVE (35) years

commencing on January 1, 2020, with the permitted use of diversified agriculture including animal feedlot purposes for finishing prior to slaughter of livestock. Tracking the language of EO4585 regarding renewable energy projects, General Lease No. S-3138 reserves to HDOA the right to withdraw the leased premises, or a portion thereof, for leasing to renewable energy producers.

In August 2020, ARMD became aware that a trucking company called AMERICAN HAULING, INC. ("American Hauling") was using a portion of the lease premises to stage trucks, trailers and other equipment. When ARMD staff questioned HL&L about American Hauling's presence on the premises, HL&L explained that it used American Hauling trucks to transport products, that American Hauling fabricated cattle shipping containers for HL&L, and American Hauling also supplied large forklifts needed to load and unload containers. Initially ARMD accepted this explanation and raised no objection to American Hauling's presence, but when it became apparent from inspections that American Hauling was storing many more vehicles and pieces of equipment than needed for HL&L's operations, ARMD required HL&L to remove American Hauling from the premises.

On March 22, 2023, HL&L filed a Complaint for Ejectment and Damages in the First Circuit Court of the State of Hawai'i to evict American Hauling from the premises. HL&L received a Writ of Possession from the Court to eject American Hauling from the property. Staff understands that American Hauling has secured a lease with the Department of Hawaiian Home Lands and will vacate the premises by June 2025.

HDOA and the Department of Land and Natural Resources ("DLNR") have come to an agreement to remove a portion of the area set aside under EO4584 for the potential future development of a solar-to-hydrogen plant on a portion of a property. While certain details of the subdivision of the land remain to be worked out between DLNR, HDOA, HL&L and EURUS ENERGY AMERICA LLC, any path forward for the project will require the following to occur:

- 1) American Hauling must vacate the property, identified as TMK: (1) 9-1-031:001, also known as the Feedlot at Kalaeloa.
- 2) The entire parcel should be deregistered from the Land Court system.

The BLNR already approved the deregistration of the parcel from Land Court at its meeting of November 8, 2024, Item D-7. The staff submittal to the BLNR noted that the primary benefit of Land Court registration is that it precludes claims of adverse possession from being made against private property owners. However, by law adverse possession claims cannot be made against the State. As noted in the BLNR staff submittal, the downside to keeping property in Land Court, "is the lengthy backlog at Land Court which frequently causes delays, the need to obtain additional surveys and documents that would not be required in the regular system, and the need to navigate Land Court procedures." HDOA staff is in agreement that the land should be deregistered from Land Court.

The proposed action to deregister the feedlot parcel (Lot 12022) affects other lots listed on the relevant certificate of title. In this case, Transfer Certificate of Title ("TCT") 498,504 lists four lots, three of which have been set aside to HDOA with the fourth (Lot 12019, TMK: (1) 9-1-031:037) set aside to the Agribusiness Development Corporation ("ADC"). To avoid a Land Court requirement that all lots on a TCT be deregistered together, staff is recommending that TCT 498,504 be canceled and separate TCTs be issued for the three HDOA lots. BOA only has jurisdiction over the three lots identified on pages 1-2 above that are set aside to it (Lots 12020, 12021 and 12022). ADC action will be needed to authorize the deregistration of the fourth lot (Lot 12019).

RECOMMENDATION:

That the Board of Agriculture authorize:

1. The cancellation of Land Court Transfer Certificate of Title No. 498,504 covering Lots 12020, 12021 and 12022, Map 888, Land Court Application No. 1069, designated as TMKs: (1) 9-1-031:026; (1) 9-1-031:025; and (1) 9-1-031:001, respectively, and the issuance of separate TCTs for each lot; and
2. The deregistration from Land Court of Lot 12022, Land Court Application No. 1069, designated as TMK: (1) 9-1-031:001.

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

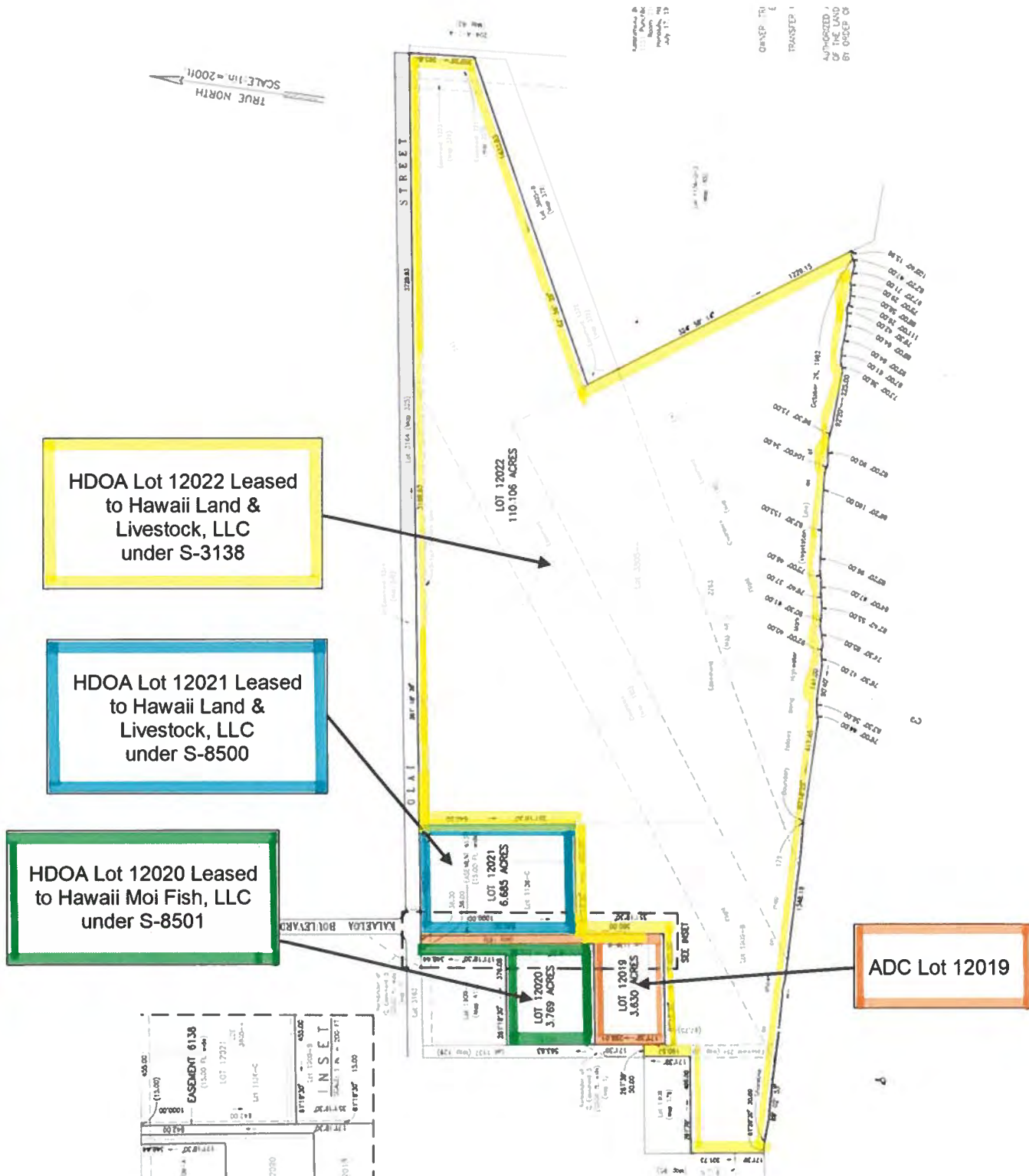
Attachment – Exhibit "A"

APPROVED FOR SUBMISSION:



SHARON HURD
Chairperson, Board of Agriculture

EXHIBIT "A"



STATE OF HAWAI'I
DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESOURCE MANAGEMENT DIVISION
HONOLULU, HAWAI'I

June 24, 2025

Board of Agriculture
Honolulu, Hawai'i

Subject: REQUEST THAT THE BOARD OF AGRICULTURE
DELEGATE AUTHORITY TO THE CHAIRPERSON TO
FURTHER NEGOTIATE AND EXECUTE A PURCHASE AND
SALE AGREEMENT, AND OTHER RELEVANT
DOCUMENTS, REGARDING THE PURCHASE OF THE
WAHIAWA DAM SPILLWAY, PURSUANT TO ACT 218, SLH
2023; TMK (1) 7-1-012:014, ISLAND OF OAHU

I. **Background**

Act 218, SLH, 2023, appropriated \$26 million dollars and authorized the Department of Agriculture, Department of Land and Natural Resources, and Agribusiness Development Corporation to acquire the Wahiawa Irrigation System, on terms negotiated and agreed upon by the office of the Governor, or by eminent domain, and to purchase, repair, and maintain the associated spillway.

Pursuant to the Act, the State is required to acquire certain lands, including the Wahiawa Reservoir, Dam, and Spillway. The Dam and Spillway are currently owned by Sustainable Hawaii, LLC. The Department of Agriculture, Department of Land and Natural Resources, and Agribusiness Development Corporation have been working closely with the Governor to negotiate with Sustainable Hawaii, LLC to acquire the relevant land parcels.

On February 25, 2025, this Board approved the request to delegate authority to the Chairperson to execute the Memorandum of Agreement between ADC and HDOA. That MOA identified the entities responsibilities with regards to funding, land acquisition, and improvements to the dam. The MOA was subsequently executed on April 17, 2025.

II. **Summary**

Presently, the relevant State agencies are prepared to finalize and execute the Purchase and Sale Agreement with Sustainable Hawaii, LLC. The most recent version of the Purchase and Sale Agreement is attached as Exhibit A. There are a few provisions of the Purchase and Sale Agreement that are still in negotiations. However, the provisions are unlikely to substantively change or affect the transaction and are more legal in nature.

All

III. **Recommendation**

That the Board delegate authority to the Chairperson to further negotiate and execute the Purchase and Sale Agreement with Sustainable Hawaii, LLC, and any other relevant documents related to the transaction to purchase the Wahiawa Dam Spillway.

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

DISPOSITION AGREEMENT

This Disposition Agreement (this "**Agreement**") dated _____ (the "**Effective Date**"), is made by Sustainable Hawaii, LLC, a Hawaii limited liability company ("**Sustainable Hawaii**"), and the State of Hawaii Department of Agriculture ("**HDOA**") and the State of Hawaii Agribusiness Development Corporation ("**ADC**") (HDOA and ADC together are referred to as the "**State**").

RECITALS:

A. WHEREAS, Sustainable Hawaii owns approximately 143.116 acres of real property situated at Wahiawa, City and County of Honolulu, Island of Oahu, State of Hawaii, consisting of (i) Lot 1-H-1-B-1 and Lot 1-H-1-B-2, collectively identified by Tax Map Key No. (1) 7-1-012-014 (the "**HDOA Site**"); (ii) Lot 1-I-1-D and Lot 1-I-2-B-2, collectively identified by Tax Map Key No. (1) 7-1-001-013; (iii) Lot 1-I-4-B, identified by Tax Map Key No. (1) 7-1-001-017; (iv) Lot 1-H-1-C-1, identified by Tax Map Key No. (1) 7-1-012-003; (v) Lot 4, Lot 1-F-3, Lot 1-H-4, and Lot 1-H-6, collectively identified by Tax Map Key No. (1) 7-1-012-004; and (vi) Lot 1-G-1-C, identified by Tax Map Key No. (1) 7-1-012-007 ((ii) – (vi), collectively the "**ADC Site**"). The HDOA Site and the ADC Site are collectively referred to as the "**Property**".

B. WHEREAS, the State has the right and power of eminent domain under Hawaii Revised Statutes ("**HRS**") Chapter 101, and HDOA has the power to acquire by eminent domain property, in relevant part, for paths, trails, roads, and landing sites, ditches, tunnels, flumes, reservoirs, and pipelines necessary or proper for the construction and maintenance of water facilities under HRS Chapter 167-5(1).

C. WHEREAS, the State has the authority to enter into this Agreement pursuant to 2023 Haw. Sess. Laws Act 218 ("**Act 218**"), to acquire the Wahiawa Irrigation System (the "**System**"), which includes the spillway located on the HDOA Site, and the fee simple interest in the System which includes the ADC Site, by purchase or by eminent domain, and Sustainable Hawaii and the State have agreed upon the terms and conditions under which Sustainable Hawaii will convey the Property to the State as set forth herein.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and the agreements set forth in this Agreement, the parties agree as follows:

1. CONVEYANCE AND ACQUISITION UNDER THREAT OF CONDEMNATION.

1.1 Agreement to Convey and Acquire Property Under Threat of Condemnation. Sustainable Hawaii agrees to convey the Property to ADC under threat of condemnation, and the State agrees to acquire the Property from Sustainable Hawaii in accordance with the terms and conditions set forth in this Agreement. Sustainable Hawaii and the State acknowledge that the Property is being conveyed and acquired under threat of condemnation and the State would proceed with condemnation if Sustainable Hawaii did not agree to voluntarily convey the Property under the terms of this Agreement. Sustainable Hawaii intends to seek the same tax treatment and entitlements that would apply to a

condemnation of property under the laws, rules and regulations in effect as of the date of this Agreement, and the recitals and statements made by the State herein regarding its authority and intent to condemn shall survive Closing as a matter of record for that purpose.

1.2 Acquisition Price. The acquisition price for the Property shall be FOUR MILLION NINE HUNDRED THOUSAND AND NO/100 DOLLARS (\$4,900,000.00) (the "**Acquisition Price**"), which price is established by an appraisal pursuant to Act 218.

2. **OPENING OF ESCROW, PAYMENT OF ACQUISITION PRICE, AND DELIVERY OF DOCUMENTS.**

2.1 Opening of Escrow. Within three (3) calendar days after the Effective Date, the State shall open an escrow with Title Guaranty Escrow Services, Inc., Jeremy Trueblood ("**Escrow**"), by depositing with Escrow a fully executed copy of this Agreement. The parties shall work cooperatively to deliver joint instructions to Escrow within five (5) calendar days after the Effective Date, incorporating this Agreement and containing such other standard and usual provisions as may be requested by Escrow and approved by the parties in writing. In the event there is a conflict between any such standard or usual provisions and the provisions of this Agreement, the provisions of this Agreement shall control.

2.2 Closing Payment. The State shall use commercially reasonable efforts to cause the Acquisition Price to be delivered to Escrow as soon as possible after the Effective Date, but in no event later than 90 days after the Effective Date. Within two (2) business days before Closing, the State shall deposit its share of closing costs pursuant to Article 5, to Escrow.

2.3 Delivery of Deeds. Following the Effective Date, Sustainable Hawaii shall execute and deliver to Escrow (i) a deed for the HDOA Site, with appurtenant easement rights ("**HDOA Site Deed**"), and (ii) a deed for the ADC Site, with appurtenant easement ("**ADC Site Deed**," and collectively with the HDOA Site Deed, the "**Deeds**"). The Deeds shall be effective as of the Closing Date and Escrow shall hold the Deeds until Closing.

2.4 Delivery of Right of Entry. Within three (3) business days of the Effective Date, Sustainable Hawaii shall deliver to Escrow an instrument granting the State an immediate right to proceed with the pre-construction and construction work in respect of the planned new pedestrian bridge from Witmore Village to Wahiawa town across Kaukonahua Stream and surrounding area, including but not limited to a right of entry in and to those portions of Tax Map Key Nos. (1) 7-1-012-003, (1) 7-1-001-017, and (1) 7-1-001-013 that are near, adjacent, and upstream of the Karsten Thot Bridge, upon customary terms and conditions (the "**Right of Entry**"). Escrow shall release the Right of Entry to the State immediately upon its receipt.

2.5 Release of Non-Refundable Deposit. Thirty percent (30%) of the Acquisition Price, which is equal to ONE MILLION FOUR HUNDRED SEVENTY THOUSAND AND NO/100 DOLLARS (\$1,470,000.00), shall be non-refundable

and shall be released to Sustainable Hawaii promptly upon Escrow's receipt of all of the following: (i) the Acquisition Price deposit from the State pursuant to Section 2.2, (ii) the Deeds from Sustainable Hawaii pursuant to Section 2.3, and (iii) the Right of Entry from Sustainable Hawaii pursuant to Section 2.4.

3. ACCEPTANCE OF TITLE MATTERS; EASEMENT RIGHTS; ACCEPTANCE OF PROPERTY "AS-IS".

3.1 Acceptance of Title and Lease. The State acknowledges and agrees that it received a Preliminary Title Report for the Property dated August 15, 2024 ("PTR"), together with copies of all documents referenced therein as exceptions to title. The State has reviewed and hereby approves of all title matters disclosed in the PTR. Upon the Effective Date, Sustainable Hawaii shall cause Title Guaranty of Hawaii, LLC to issue an updated preliminary title report respecting the Property ("**Updated PTR**"). In the event that the Updated PTR reveals exceptions to title that were not previously identified in the PTR, the State shall have five (5) business days from its receipt of the Updated PTR to deliver written notice to Sustainable Hawaii of the State's disapproval of any such newly identified exceptions (the "**Title Notice**"). All such exceptions that have been disapproved by the State are referred to herein as "**Disapproved Exceptions**." Sustainable Hawaii shall have thirty (30) days after receipt of the State's Title Notice to cause the Disapproved Exceptions to be removed from title or endorsed over by the Title Company with the State's approval. If Sustainable Hawaii is unable or unwilling to cure the Disapproved Exceptions (other than a monetary lien, as to which Sustainable Hawaii's obligation to remove is absolute), the State shall have the option to terminate this Agreement by written notice to Sustainable Hawaii and Escrow Holder. At Closing, the State shall accept the Property in accordance with the terms of this Agreement, subject to all encumbrances of record and any other matters which are revealed in the PTR and Updated PTR, subject to the foregoing Title Notice and cure procedures,, including, but not limited to the terms, provisions, and easements set forth in that certain Lease dated July 16, 1953, as amended, and filed in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as L.C. Doc. No. 151,198 (the "**Dole Lease**").

3.2 Easement Rights. At Closing, the Property shall be conveyed together with access easement rights necessary to lawfully access the Property and all other appurtenant easement rights held by Sustainable Hawaii, all of which shall be included in the Deeds (defined in Section 2.3 above).

3.3 Property in "As Is, Where Is" Condition.

3.3.1 No Warranties. It is expressly understood and agreed that Sustainable Hawaii has not made any representation or warranty, express or implied, regarding any aspect of the Property including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, suitability, habitability, quality, physical condition and value, and Sustainable Hawaii hereby disclaims any and all liability for any and all such representations and warranties.

3.3.2 "As Is" Condition. The State acknowledges and agrees that it is acquiring the Property in its "as is, where is" condition, with all faults, if any. No

patent or latent condition affecting the Property, in any way shall affect the State's obligations hereunder, nor shall any such conditions give rise to any right of damage or rescission against Sustainable Hawaii. Except to the extent otherwise expressly provided in this Agreement, the State has assumed all risks regarding all aspects of the Property, and the condition thereof, including, without limitation, the effect of (including non-compliance with) any applicable laws, statutes, rules, regulations, ordinances, limitations, restrictions or requirements concerning the use, density, location, construction or suitability for use or development of the Property or any existing or proposed development or condition thereof (collectively the "**Regulations**"), including but not limited to zoning, land use, development plan, subdivision, building, construction, hazardous materials, archeological, environmental or other such Regulations; the necessity or availability of any development plan amendments, rezoning, zoning variances, conditional use permits, building permits, environmental impact statements, subdivision maps, and all other governmental permits, approvals or acts; the economic value of the Property; the size, dimensions, boundaries, location, and topography of the Property, including its location within any flood zone, wetlands zone or tsunami inundation zone; the availability or adequacy of access to the Property, or of water, sewage, gas, electrical or other utilities serving the Property; the presence or adequacy of infrastructure or other improvements on, near or concerning the Property; the presence of pesticides on the Property; the extent or condition of any grading or other site work relating to the Property; any surface, soil, subsoil, geologic, drainage or groundwater conditions or other physical conditions and characteristics of or affecting the Property, such as drainage, air, water or minerals; the existence on or under the Property of any hazardous materials, any soils conditions, or the existence of archeological or historical conditions on the Property; the risk of any damage or loss to the Property caused by any means including, without limitation, flood or earthquake; the risk of use, zoning, habitability, merchantability or quality of the Property or the suitability of the Property for its present use or future development; and the activities of Sustainable Hawaii and others on adjacent or other nearby lands.

3.3.3 Waiver. The State hereby agrees to: (a) assume any and all risks associated with Property and the conditions and circumstances described in this Section 3, and (b) waive all rights to make any claim against Sustainable Hawaii and its members, managers, and agents (collectively the "**SH Parties**"), attributable thereto. However, such waiver shall not release Sustainable Hawaii from any liability to third parties that Sustainable Hawaii or SH Parties may have under applicable law with respect to matters occurring prior to Closing; provided, further, that such waiver shall not preclude the State from exercising any rights it may have as a governmental entity to enforce applicable environmental law. No provision contained in this Section shall prevent the State from pursuing all remedies legally available to the State against any third party, other than Sustainable Hawaii and the SH Parties.

3.4 Spillway Improvements. Notwithstanding anything herein to the contrary, the State acknowledges and agrees that it will use commercially reasonable efforts to proceed with design work that will allow the State to effect the required repairs and improvements to the spillway, including the immediate engagement of a design consultant(s) and development of a design plan. Upon request, the

State will provide Sustainable Hawaii with updates regarding the status of its efforts in respect of the spillway improvements.

3.5 Survival. The State's responsibilities and waivers set forth in this Section 3, with the exception of paragraph 3.4, shall survive Closing.

3.6 Removal of Vagrant Activities. The parties acknowledge that the State has provided to Seller that certain Phase I Environmental Site Assessment, dated April 10, 2024, prepared by Element Environmental, LLC ("Phase I ESA"). The Phase I ESA has identified certain "vagrant activities" on the Property, which include the "littering and illegal dumping and burning of waste materials, including hazardous substances such as chemicals, electronic waste, and construction debris". See Phase I ESA, Table ES-2. Seller agrees that it will use commercially reasonable efforts to remove the trespassers on the Property engaging in said "vagrant activities" as described in the Phase I ESA prior to Closing.

4. CLOSING.

4.1 Closing Date. The "Closing" or "Closing Date" shall mean that date on which, subject to satisfaction of all conditions precedent and contingencies specified herein, the conveyance of the Property to the State shall be consummated by the filing of the Deeds in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, and all deliverables as provided in this Agreement are delivered to the respective parties. The Closing shall occur on the earlier of (i) May 29, 2026; (ii) ten (10) days after the Dole Closing, or (iii) such earlier date as the parties may agree to in writing. The "Dole Closing" refers to the State's plan to acquire certain property owned by Dole Food Company, Inc. ("Dole") and referenced in Act 218 (2023) (the "Dole Property"). The Dole Closing shall be considered satisfied for purposes of this Agreement upon the acquisition and conveyance of the Dole Property to the State or its assignee(s) as contemplated by Act 218. Notwithstanding what is provided in this paragraph, Sustainable Hawaii and the State may mutually agree in writing to extend Closing.

4.2 Conditions Precedent to Closing. The parties respective obligations to close the sale and transfer of the Property are conditioned upon all of the following happening prior to the Closing Date (the "Closing Conditions"):

- (a) The State has accepted any newly identified title matters in accordance with Section 3.1.
- (b) ADC receives approval of the transaction which is the subject of this Agreement by ADC's Board of Directors ("ADC Board"), to enter into this Agreement and to acquire the Property, which approval is subject to the ADC Board's sole discretion.
- (c) DOA receives approval of the transaction which is the subject of this Agreement by DOA's Board of Directors ("DOA Board"), to enter into this Agreement and to acquire the Property, which approval is

subject to the DOA Board's sole discretion.

- (d) The State receives all sources of funding which are to be used to purchase the Property.
- (e) At least two (2) business days prior to Closing, the parties, as appropriate, shall execute and deliver to Escrow (i) an assignment of the lessor's interest in the Dole Lease, and (ii) such additional documents and items as may be reasonably required to consummate the transactions pursuant to this Agreement.
- (f) Satisfaction of all obligations stated in this Agreement by all parties, within the periods provided in this Agreement (if any).

5. CLOSING COSTS AND PRORATIONS.

5.1 Sustainable Hawaii's Closing Costs. Sustainable Hawaii shall be responsible for paying any recording fees, one-half (1/2) of Escrow fees, the costs of standard ALTA title policy coverage for the full Acquisition Price, and all conveyance tax, if any; provided the parties acknowledge that Section 247-3(9), Hawaii Revised Statutes, exempts, in relevant part, "[a]ny document or instrument conveying real property to the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof pursuant to the threat of the exercise or the exercise of the power of eminent domain" from conveyance tax. Sustainable Hawaii shall be solely responsible for submitting the necessary conveyance tax forms for processing and the State shall reasonably cooperate with the same.

5.2 The State's Closing Costs. In addition to the Acquisition Price and other costs which the State has agreed to pay under this Agreement, the State shall be responsible to pay the costs of any endorsements and/or an extended coverage policy to its title insurance (if requested by the State), one-half (1/2) of Escrow fees, and all of the appraiser's fees.

5.3 Other Closing Costs/Prorations. Escrow shall apportion all other closing costs, if any, in a manner customary for real estate transactions of this nature in the State of Hawaii. Real property taxes and all assessments and other expenses shall be prorated as of Closing. Except as otherwise specifically provided in this Agreement, each party shall be responsible for all closing costs incurred by them, including each of their respective attorney's fees.

6. GENERAL PROVISIONS.

6.1 Binding Effect. This Agreement shall inure to the benefit of and be binding upon and enforceable against each of the parties hereto and their respective representatives, successors, and assigns.

6.2 Time of the Essence. Time is of the essence in this Agreement.

6.3 Further Assurances. Each of the parties shall execute and deliver all additional papers, documents and other assurances, and shall do all acts and things reasonably necessary in connection with the performance of their respective obligations hereunder to carry out the intent of this Agreement.

6.4 Notices. All notices given under this Agreement shall be in writing, and shall be deemed duly communicated when sent by United States mail, postage prepaid, addressed as follows or to such other address as a party may designate by notice:

If to Sustainable Hawaii: Sustainable Hawaii, LLC
Attn: Howard R. Green
95-1005 Helepu Street
Mililani, Hawaii 96789

With copy to: Case Lombardi
c/o Lisa Broulik, Esq.
737 Bishop Street, Suite 2600
Honolulu, Hawaii 96813
Email: lkb@caselombardi.com

If to HDOA: Hawaii Department of Agriculture
Office of the Chairperson
1428 S. King Street
Honolulu, Hawaii 96814

With copy to: State of Hawaii Attorney General's Office
425 Queen Street
Honolulu, Hawaii 96816

If to ADC: Agribusiness Development Corporation
235 S. Beretania Street, Room 205
Honolulu, Hawaii 96813

With copy to: State of Hawaii Attorney General's Office
425 Queen Street
Honolulu, Hawaii 96816

6.5 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Hawaii.

6.6 Entire Agreement. This Agreement constitutes the entire agreement between the parties and replaces any prior written or oral agreement of the parties with respect to the matters set forth herein.

6.7 Amendment. Any amendment to this Agreement shall be in writing and signed by all parties hereto.

6.8 Construction; Section Headings. The use of any pronoun herein shall include all pronouns, and the singular shall include the plural and vice versa, as the context may require. Section headings are inserted only for convenience of

reference and shall in no way modify or affect the meaning or construction of any of the terms or provisions hereof.

6.9 Severability. If any portion of this Agreement shall become illegal, null, void or against public policy for any reason, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the full extent permissible by law.

6.10 No Party Deemed Drafter. No party shall be deemed the drafter of this Agreement. If this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision hereof against any party as drafter.

6.11 Authority to Execute. Each person executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to so bind and that such party has full right and authority to enter into this Agreement and perform all of its obligations hereunder.

6.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

6.13 Risk of Loss. All risk of loss will remain with Sustainable Hawaii until Closing. The parties agree that the State shall not be responsible for any and all liabilities, obligations, or risks related to the Property until Closing.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

SUSTAINABLE HAWAII LLC, a Hawaii
limited liability company

By: _____
Name: Howard Green
Its: Manager

The State:

STATE OF HAWAII, DEPARTMENT OF
AGRICULTURE

By: _____
Name: Sharon K. Hurd
Its: Chairperson

APPROVED AS TO FORM:

Deputy Attorney General

STATE OF HAWAII, AGRIBUSINESS
DEVELOPMENT CORPORATION

By: _____
Name: Wendy L. Gady
Its: Executive Director

APPROVED AS TO FORM:

Deputy Attorney General