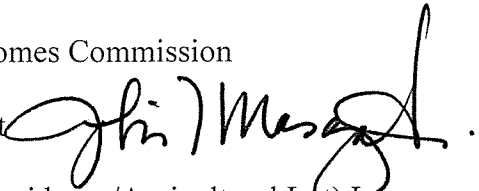


STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

June 21-22, 2021

To: Chairman and Members, Hawaiian Homes Commission

From: Jobie Masagatani, Executive Assistant 

Subject: Approval of consolidation of Lot 4 (Residence/Agricultural Lot) Lease no. 106 to HARRY K. PURDY III and Lot 4 (Detached Agricultural Lot) unencumbered and re-subdivision into Lot 4 Agricultural Lot Lease no. 106 to HARRY K. PURDY III and Lot 4A Subsistence Agricultural Lot unencumbered; Ho`olehua, Molokai; authorization to extend the term of Lease no. 106 to HARRY K. PURDY III.

Recommended Action

That the Commission approve the following:

- (1) Authorize the Chair to consolidate Lot no. 4 TMK 5-2-07:31 encumbered by Residence/Agricultural Lease no. 106 to HARRY K. PURDY III with Detached Agricultural Lot 4 TMK 5-2-07:79 and 5-2-07:88 currently unencumbered; and re-subdivide into two lots: (1) Agricultural Lot no. 4 encumbered by Lease no. 106 to HARRY K. PURDY III (approximately 37 acres); and Subsistence Agricultural Lot 4A (approximately 3 acres) with access. The consolidation/re-subdivision is subject to the following conditions:
  - a. Lease terms and conditions are brought up to date;
  - b. Lessee is in good standing; and
  - c. Proposed map and location of the two new lots including access easements is approved by the Chair.
- (2) Authorize the payment of costs to complete item no. 1 including reimbursement to lessee HARRY K. PURDY III for any appropriate costs with prior DHHL approval. Reimbursement costs are not to exceed \$25,000.
- (3) Authorize extension of lease no. 106 for an additional 100 years.

Discussion

At the May 2021 Hawaiian Homes Commission meeting, Item C-4 was presented to the Commission for information (Attached as Exhibit B). At that meeting, Commissioner Neves requested that a conceptual map identifying the approximate location of the two

lots be included as part of the submittal seeking authorization to proceed. Attached as Exhibit A is a map showing the approximate location of the two lots.

Mr. Purdy is currently in compliance with his lease. He occupies his residence, and actively cultivates Lot 4. Further, he has no outstanding loan balance with the Department and his property taxes are paid. A small balance of less than \$20 is outstanding on his lease rent which was brought to the lessee's attention and will be brought current by the lessee before the end of June 2021.

Mr. Purdy has also demonstrated his ability to cultivate a portion of the increased acreage as he currently does so under a right of entry from DHHL. The inclusion of the increased acreage to his homestead lease, however, will allow Mr. Purdy to take advantage of U.S. Department of Agriculture (USDA) financing and other resources that he currently may not be eligible for due to the short- term nature of the right of entry.

#### *New Lot 4 and Lot 4A Configuration*

Upon initial review, placement of the new lot 4A to the back of the existing parcel is recommended for the following reasons:

- (1) Proximity to the Department's existing water tanks is closer at the top of the parcel. Therefore, any water lines that may be needed to service the new lot may not need to travel as far to service both Lot 4A and the upper boundary of Lot 4.
- (2) The new Lot 4A driveway could also potentially serve as a secondary emergency road to the DHHL water tanks. This would require further due diligence by DHHL staff, however, to confirm if this is an option DHHL would like to pursue. If upon investigation a secondary access road makes sense without compromising the security of the tanks, DHHL could retain the right to utilize this driveway easement/emergency road as necessary.

If DHHL use of this driveway/emergency road is made clear as a part of the new lease agreement for lot 4A, this is easier to sustain than trying to secure access via an existing driveway after many years of quiet enjoyment by a lessee and expectation that the driveway only serves as an entry into the lot.

According to Mr. Purdy, an infrequently used dirt driveway currently exists on the eastern side of Lot 4 that provides access to the top of the parcel.

- (3) Placement of the access to the east side of Lot 4 minimizes impact to the existing improvements and crops currently in place including an extensive concrete driveway, a mature macadamia nut grove, and additional crops that extend up to the lower border of the gulch.
- (4) The proposed configuration is acceptable to the current lessee, Mr. Harry Purdy.

Further due diligence by DHHL staff is necessary to confirm whether this proposed configuration makes the most sense based on the topography of the land, the existing infrastructure and improvements onsite and offsite, and any other factors that should be considered. As noted in the recommended action, the final configuration of the two lots will require approval by the Chair.

*Payment of Expenses*

Staff is recommending that expenses incurred by the lessee to complete any survey or other costs that may be necessary to complete the consolidation and re-subdivision of the two lots be reimbursed by DHHL. This recommendation is based on the following:

- (1) The task requires that certain steps be undertaken whether those steps are completed by DHHL or by the lessee. These steps may include surveying, adjustments to property descriptions with the County of Maui, identification of easements, etc. Further, the outcome of two lots - one encumbered by Lease no. 106 and one unencumbered within DHHL's inventory intended for award to the next applicant on the waiting list - is the same whether the process is completed by DHHL or by the lessee.

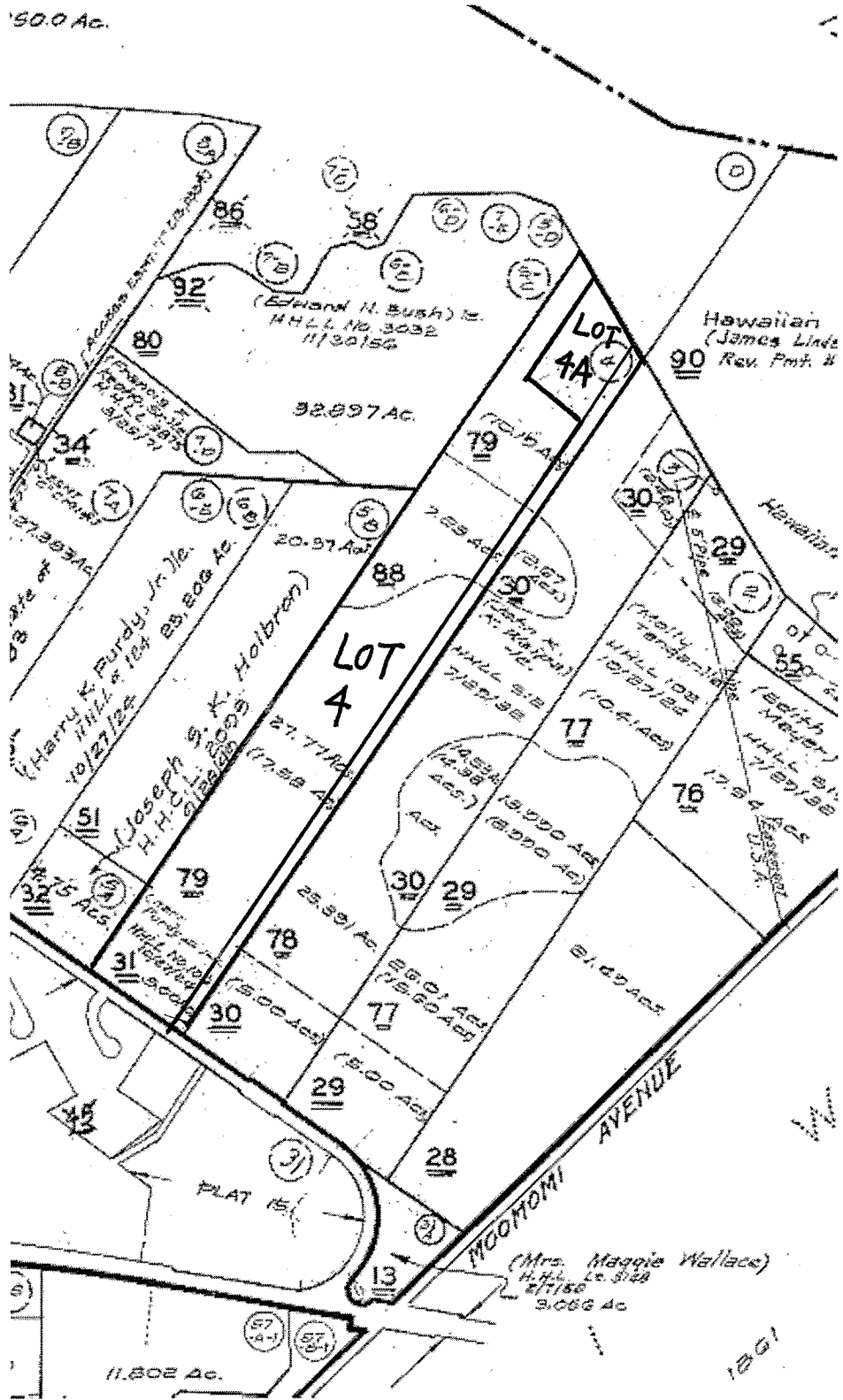
Given current staffing levels, other priorities, and state procurement processes it is highly likely that the lessee will be able to accomplish some, if not all, of the steps in a more expeditious and cost effective manner.

- (2) The Department has reimbursed lessees for subdivision costs in the past, under a program that is no longer in operation, and has provided reimbursement for telecom infrastructure installation, due to extraordinary circumstances. The mechanism and authority to provide a reimbursement to a lessee for DHHL authorized expenses already exists. Note that any reimbursement would require DHHL's prior approval.

*Lease Extension*

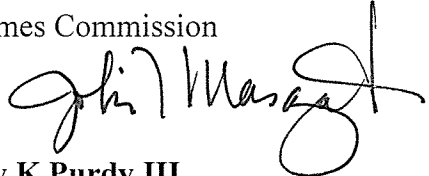
Lease no. 106 is scheduled to end on October 26, 2023. Staff is seeking the Commission's approval to extend this lease for an additional 100 years as authorized under section 208 of the Hawaiian Homes Commission Act, as amended.

NOT TO SCALE



STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

May 17-18, 2021

To: Chairman and Members, Hawaiian Homes Commission  
From: Jobie Masagatani, Executive Assistant   
Subject: Request for Additional Acreage **Harry K. Purdy III**  
Residence/Agricultural Lot Lease no. 106, Lot 4 Hoolehua, Molokai--.

Recommended Action

For information only.

Discussion

**Request**

Mr. Harry K. Purdy III (Mr. Purdy) and his family actively cultivate agricultural products, primarily macadamia nuts, and reside on a five-acre residence/agricultural lot in Hoolehua, Molokai, under residence/agricultural lot lease no. 106, lot 4 (also referred to as lot 4A). The farm is a primary source of income for Mr. Purdy, and inspection of his file indicate that he has consistently maintained and grown his operations since May 1980 when he received the lot via a transfer from Mr. Frank Kupau.

Beginning in February 1990, correspondence from Mr. Purdy to the Department of Hawaiian Home lands (DHHL) indicate that his current lot was at its maximum cultivation, and that additional acreage was needed to expand his operations and reduce his operating expenses due to his need to import nuts for his business from Hawaii Island. Mr. Purdy's request was for the adjoining 35 acre detached agricultural lot 4 (a.k.a. lot 4B) that is land locked, currently unencumbered, and in DHHL's inventory.

**Background**

*Early History*

Lot 4 was originally awarded to Mr. Albert Perkins under lease no. 106 with a commencement date of October 27, 1924. The original property description lists the property as "Lot 4 as shown on said Government Survey Registered Map No. 2719." This map, attached as Exhibit A, shows the size of lot 4 at 40 acres.

On September 28, 1949 lease no. 106 was transferred to Mr. Henry W. Kupau. On January 19, 1952 lease no. 106 was transferred from Mr. Henry W. Kupau to Mrs.

Josephine Kupau. On November 3, 1958 lease no. 106 was transferred from Mrs. Josephine Kupau to Mrs. Gladys K. Hulu.

*Lot 4 Into Two Parts*

On December 12, 1966 Mrs. Gladys K. Hulu transferred lease no. 106 to her son, Frank K. Kupau. However, Commission minutes in the file report that:

“Upon the transfer of Lot 4 (Houselot) by Mrs. Gladys Hulu and the award by the Commission of the said Lot 4 (Houselot) to Mr. Frank K. Kupau, the lease of Lot 4 (Agricultural) to Mrs. Gladys Hulu terminates.

In cases of this nature, it is the Commission's current policy to reaward such agricultural lots to the next person on the established list of Molokai homesteaders waiting for the award of such agricultural lots.

The next person on the waiting list for agricultural lots is Mrs. Evan English, Lot 35-D1&2 (Houselot), Hoolehua, Molokai. The staff recommends the award of Lot 4 (Agricultural), Hoolehua, Molokai, to Mrs. English.”

The Commission approved the staff's recommendation and the award was made on January 20, 1967. The 35-acre detached agricultural lot, at this time, was planted with pineapple and subject to a planter's agreement with the California Packing Corporation that was a source of additional income to the lessee.

From this point forward, lot 4 was divided into two parts: the residence/agricultural portion covered under lease no. 106 to Mr. Frank Kupau and the detached agricultural portion covered under lease no. 3160 to Mrs. Evan English.

The lot is also made up of three TMK parcels: 5-2-07:31 (under lease no. 106), 5-2-07:79, and 5-2-07:88 (under lease no. 3160). Attached as Exhibit B is a copy of the TMK parcels as identified in the current county property tax records, and attached as Exhibit C is a copy of the exhibit attached to the current lessee's Assignment of Lease and Consent document. Note that TMK 5-2-07:88 appears to be a gulch parcel of approximately 7.23 acres.

On January 28, 1977 the Hawaiian Homes Commission accepted Mrs. Evan English surrender of the detached agricultural lot back to DHHL. Since that time the lot has remained unleased in DHHL's inventory.

*Lease no. 106 to Mr. Harry Purdy III*

On May 23, 1980 Mr. Frank Kupau transferred lease no. 106 to Mr. Harry Purdy III. At the time of the transfer, Mr. Purdy held an agricultural lease to lot no. 69-E that commenced on July 22, 1978.

Lot no. 69-E was eventually subdivided and transferred to two different family members at Mr. Purdy's request. Lot 69-E-2 was transferred to Anne H.P. Ritte on August 29, 1989 and lot 69-E-1 was approved for transfer to Anna L. Chillingworth on March 21, 1995.

#### *Purdy Request for Additional Acreage*

The first written request from Mr. Purdy that is included in the file is dated February 28, 1990 and received by the Commission on April 24, 1990. In this letter Mr. Purdy requests either an acquisition of lot 4B or an exchange of lot 4B for lot 69-E.

The response to Mr. Purdy's request is dated April 16, 1990 and was also received by the Commission on April 24, 1990. Both the Purdy request, the Department's response, and the minutes of the Commission meeting when Mr. Purdy discussed his request are included as Exhibit D. The exchange of lots was deemed by the Department not to be an exchange, but a surrender of an existing agricultural lease and an award of a new agricultural lease. This required that the Department award the new lease consistent with the rules governing the process for award of leases. Further, the Department's response identifies lot 4B as intended for the next interested applicant on the waiting list.

The minutes indicate that in order to prepare the lot for award, an easement would need to be secured and water improvements may be necessary. These constraints still exist, and should be addressed before award of the lot to the next interested applicant can occur. Consequently, the lot still remains in DHHL's inventory at the current time.

The current rules governing the award of additional acreage (discussed in greater detail below) are very similar to the rules in place in 1990. Only minor changes have been made since that time. Therefore, although Mr. Purdy has been a consistent and strong advocate for his request for additional acreage (both written requests to the Department and Commission minutes document many appeals by Mr. Purdy), the Department's position and responses to his requests have essentially remained unchanged since 1990.

#### *Revocable Permit/Right of Entry*

Mr. Purdy currently holds a right of entry to the 35 acre lot 4B. In April 2015, the Commission reduced the fee he was charged to \$1 per year, to provide him some financial relief in his farm operations.

#### Options

#### **Option 1: Amend existing DHHL Administrative Rules**

##### *Background*

Hawaii Administrative Rule (HAR) section 10-3-25 Award of additional acreage indicates that a "lessee of an agricultural or pastoral lot may make a written request for additional acreage of the same class."

The rules also specify how an award of additional acreage is to proceed, which is essentially in the same manner followed for typical lot awards. Section 10-3-7 Priority and preference for award of leases indicates that “applicants shall be considered for award in the order in which their completed applications were received by the department;” provided that awards shall first honor the order established by previous (but now non-operational) waitlists such as area wait lists and wait lists established by priority order.

Section 10-3-7(b) also provides that “in making awards, the department shall give preference to an applicant who is not a lessee, or whose spouse is not a lessee.” Further, section 10-3-7(c) states that “an applicant who is a lessee, or whose spouse is a lessee, shall be placed on a deferred status until each applicant given preference as provided under subsection (b) has been offered a lot...” The pertinent rules related to award of additional acreage is included as Exhibit E. The unofficial version is provided for reading ease.

Although Mr. Purdy has not submitted a DHHL application for additional acreage, the earliest written request for additional acreage in Mr. Purdy’s file is dated February 28, 1990, as noted above.

If the Commission were to accept this as Mr. Purdy’s date of application, under the existing DHHL Administrative Rules, the offer of lot 4B would have to be made to all applicants that are not a lessee or whose spouse is not a lessee, and any lessee with an earlier application or written request date. As of April 30, 2021, the Molokai agricultural waiting list numbered 1,100.

Although the parcel is currently land locked, if the lot were to be accepted by an applicant access to the lot will need to be secured for the new lessee, requiring an easement across lot 4A.

*Description of Option*

Under this option, the current Administrative Rules would be amended in order to provide greater discretion to the Commission to directly award adjoining land-locked parcels as additional agricultural acreage to a current agricultural lessee who is in compliance with the terms of their lease including active cultivation.

**Pros:** Addresses Mr. Purdy’s request and provides discretion to the Commission to offer the same option to other lessees in a similar situation.

**Other Considerations:** This option prevents the opportunity to award the land to another beneficiary on the waiting list who is not an existing lessee or married to a lessee. Any Commission action should evaluate and consider why the benefit of additional acreage to an existing lessee outweighs the benefit of an award of land to an applicant that has yet to receive a lease.



Further due diligence would need to occur to vet the impact of such a rule change on the homesteading program. For example, how many lessees are in a similar situation? On what island? What are the unintended consequences of the rule change?

Finally, staff is concerned about the unforeseen consequences of making a rule change that impact the entire DHHL homesteading program to address a single lessee request with a specific unique set of facts.

## **Option 2: Consolidate and re-subdivide the lots**

### *Description of Option*

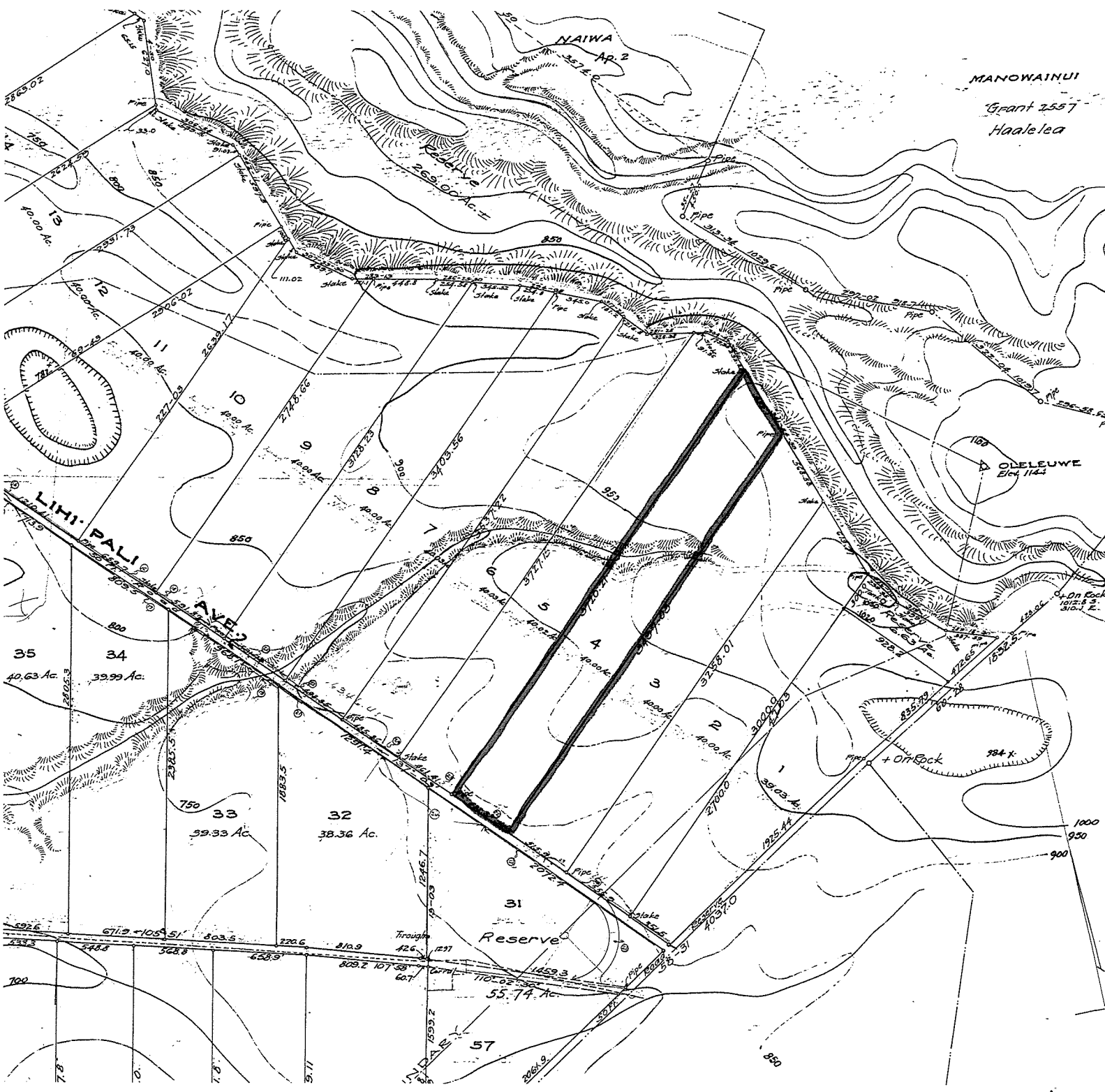
Under this option the two lots, the residence/agricultural lot 4 (5 acres) and the detached agricultural lot 4 (35 acres) would be consolidated and re-subdivided into two lots: subsistence agricultural lot 4B of three acres or less with access; and residence/agricultural lot 4 (approximately 37 acres inclusive of approximately 7.23 acres of gulch.) Mr. Purdy's lot description for lot 4 would be amended to include the new metes and bounds of lot 4 (approximately 37 acres.)

**Pros:** This option provides a potential win-win providing additional agricultural acreage to Mr. Purdy and a subsistence agricultural lot with access in DHHL's inventory. This option begins with two lots and ends with two lots. Mr. Purdy could continue to utilize subsistence agricultural lot 4B under a right of entry until such time that DHHL's resources allow for it to put in place the necessary infrastructure to award the lot to the next interested applicant on the waiting list.

**Other Considerations:** Other lessees in a similar situation may request a similar action from the Department.

### Next Steps

At this point, staff recommendation is to proceed with Option 2. Following discussion with the Commission of the available options, if there are no objections, staff will proceed with the appropriate follow up to present a submittal to the Commission for action at a future meeting.



Ex B June '21  
C-3

Exhibit A

C-4 May 2021 HHC

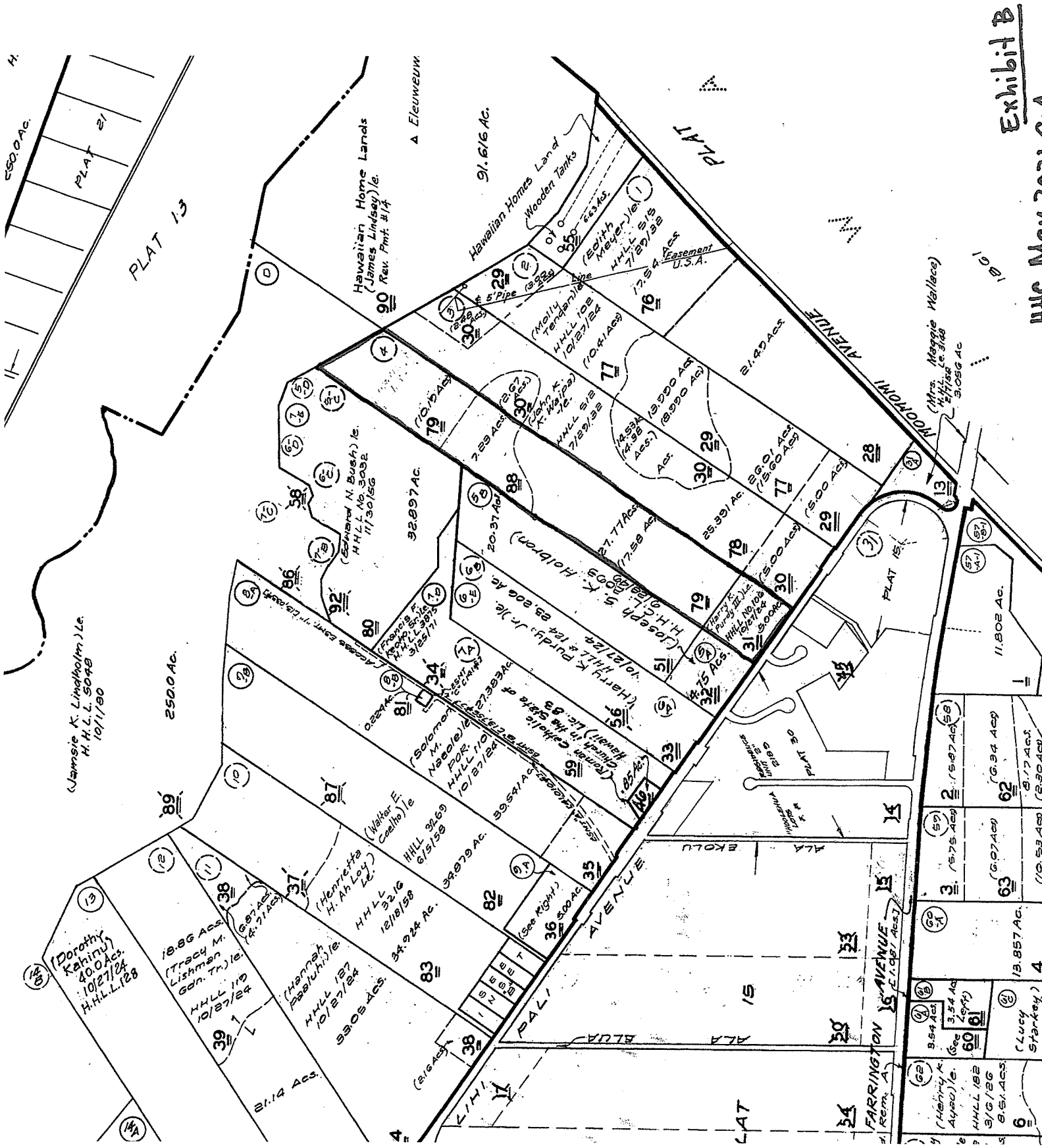


Exhibit B  
 H.H.L. Map 7-1-21

Ex B June '21  
 C-3

Lessee: Mrs Evan English  
 HHLL #3160, 35 acres agriculture  
 dtd, ~~4-11-58~~  
 Lot 4 1-20-67  
 Hoolehua, Molokai

10.19 acres  
 pine use

(10.19 ac)

79

7.23 acres  
 gulch

( 7.23 ac

88

17.58 acres  
 pine use

(17.58 ac)

79

6

Lessee: Frank Kupau  
 HHLL #106  
 dtd 10-27-24  
 Lot 4  
 TMK: 5-2-07-31

5.00 acres  
 houselot

31

LIHI PALI AVE

Ex. B June '21  
 C-3

HHC May 2021 C-4  
Exhibit C

MAP NOT DRAWN TO SCALE

February 28, 1990

Aloha Chairman Hoaliku Drake,

My name is Harry K. Purdy, III from the island of Molokai, homesteader of lot 4 and 69, Hoolehua.

I have a request to acquire an agriculture lot, TMK: 5-2-07:79 & 88, map attached, which was part of the original 40 acres, I am now lessee of only 5 acres, TMK: 5-2-07:31.

In 1980, I received lot 4-A on a transfer and from 1983 to 1990 I became a self sufficient business, which involves a 62 year old macadamia grove and combined with our visitor industry, both my mom and myself operate and manage this small, but ever growing business. We also employ another homesteader part-time. I have utilized the total 5 acres by planting more macadamia trees and other agricultural products.

I come to the Hawaiian Home Commission now only because: 1) I've utilized all of my property. 2) Our business deems it necessary to plant more to become financially secure. At the present time, I purchase majority of macadamia from the Big Island. My total gross income for the last 4 years has been over \$50,000. When bills are paid, very little is left. 3) It took my wife and I 2 years to acquire agriculture water to our property, now being totally used. I am more than willing to expand with more planting of fruit trees, but need more land. 4) The land I'd like to acquire is not on the list for award. It is landlocked, with no access and has been sitting dormant for the last 10 years with no available water.

In conclusion, as a homesteader, I am asking that you consider my request and grant me a lease to Lot 4-B, so I can continue to grow as an agriculture business, for the betterment of our own family and also to employ more homesteaders in our area.

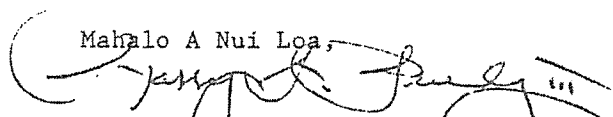
Lot 69-E was acquired through the waiting list in 1978. When ag water was finally connected in late 1979, I became a successful ti-leaf and flower grower on that property. I would prefer to retain this lot because a lot of hard work was put into it and alot exists on that land.

TMK: 5-2-07:31, lot 4-A	consists of	5.0	ac.
5-2-07:79, lot 4-B	"	"	27.77 ac.
5-2-07:88, lot 4-B	"	"	7.23 ac.
5-2-23:08, lot 69-E	"	"	<u>5.973</u> ac.
			45.973

There are three options to consider:

- 1) Acquire lot 4-B which is attached to lot 4-A
- 2) Exchange ag lot 69-E, which is detached for lot 4-B
- 3) If I could transfer lot 69-E to a member of my family.

Your time and consideration will be greatly appreciated. I would appreciate a reply prior to the March 20 Commission Meeting, in case there are any questions that I can answer.

Mahalo A Nui Loa,  
  
 Harry K. Purdy, III

Received at HHC Honolulu 4-24-90

Ex.B June '21  
C-3

HHC May 2021 C-4 p1 of 4

Exhibit D

4-10

JOHN WAIHEE  
GOVERNOR  
STATE OF HAWAII



HOALIKU L. DRAKE  
XXXXXXXXXXXXXXXXXXXX  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS  
P. O. BOX 1879  
HONOLULU, HAWAII 96805

April 16, 1990

Mr. Harry K. Purdy, III  
P. O. Box 84  
Hoolehua, Hawaii 96729

Dear Mr. Purdy:

SUBJECT: Request for Additional Agricultural Acreage

Your request to obtain Agricultural Lot No. 4-B, Hoolehua which is situated adjacent to your present Lot No. 4-A is hereby acknowledged.

Lot No. 4-B is not available for awarding at this time as it is land locked. However, when this parcel becomes available for homestead leasing, it will be offered to the next qualified and interested applicant on the waiting list.

Your option of exchanging your detached agricultural Lot No. 69-E for Lot No. 4-B is not an exchange. This would be a surrender of the lease on Lot No. 69-E, and an award of a new lease on Lot No. 4-B. Rules 10-3-25, Award of additional acreage; 10-3-24(a), Agricultural and pastoral leases; and 10-3-7, Priority and preference for award of leases provide for an orderly process of awarding homestead leases including the awarding of additional acreage of the same class.

You may transfer your lease on Lot No. 69-E to any person who is at least one-half Hawaiian, eighteen years old, and who is financially capable to assume any outstanding indebtedness and obligations on the lease. You relinquish your interest in the lease to the transferee who continues the remaining term of the lease. We note that on May 23, 1989, you transferred a 3-acre portion of this lot to Mrs. Anne H. P. Ritte.

Rule 10-2-11 of the department's Administrative Rules require a two-week notification if you wish to appear before the commission. As it is already too late for the March 20, 1990 commission meeting, you may request an appearance for the April 24, 1990, meeting on Oahu, or the June 26, 1990, meeting on Molokai.

Ex. B June '21  
C-3  
G.H.

Received at HHC Honolulu 4-24-90

Exhibit D

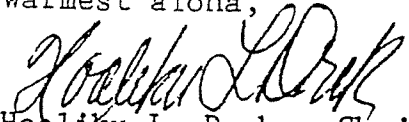
P 2 of 4

Mr. Harry K. Purdy, III  
Page 2  
April 16, 1990

If there are any further questions, please contact  
Mr. Gregory G. Helm, Sr., District Supervisor of the Molokai  
District Office, telephone 567-6104.

We acknowledge your hard work in the active cultivation of  
your farm homesteads, and thank you for your kokua.

Warmest aloha,

  
Hoaliku L. Drake, Chairman  
Hawaiian Homes Commission

HLD:HVY:gl

cc: Molokai District Office

bcc:  LESSEE FILE  
 APPLICANT FILE (# )  
 FISCAL OFC -  
 OTHERS -  
 APPLICATIONS BR -  
 LDD -  
 RETURN APP FILE  
 O.D.O. Pending File - RKA/LNI/HVY/RKM  
 LOANS BRANCH -  
 FAMILY COURT FILE  
 AWARDS BR -

Ex. B June '21  
C-3

P.3 of 4

Exhibit D

MINUTES OF April 24, 1990, Meeting held in Honolulu, Oahu

Other Areas of Concern:

Harry K. Purdy, III - Mr. Purdy of Molokai was on hand to explain his request for additional agricultural acreage. Copies of correspondence between Mr. Purdy and the department were distributed at the meeting and are included within these minutes. He desired to expand his farm through a proposed exchange of one of his two lots for an adjacent land-locked parcel.

Mr. John Hirota explained the department's policy and priority of awarding land to the next qualified and interested applicant on the waiting list. An award would be possible if the department had an easement through Mr. Purdy's lot, installed the necessary infrastructure, and subdivided the parcel. Mr. Purdy argued that the parcel has been vacant for 15 years. He is opposed to a general lease since it would be a short term arrangement. Growth and harvesting of macadamia nut trees requires a longer term lease.

Responding to Commissioner Brandt, Mr. Stewart Matsunaga stated that the department has not taken action to award this parcel since an easement is required and the process is long and tedious. He noted that all the lots on the road are currently leased. In addition, a booster pump may be needed to provide water service. He further reported that the department is focusing on developing infrastructure for the lots awarded during acceleration. Mr. Purdy requested that his needs be considered.

MOTION

Commissioner Brandt moved, seconded by Commissioner Robertson, to defer this matter until legal counsel and staff may consider the situation and arrive at a solution.

DISCUSSION

The commission commended Mr. Purdy for his farming efforts.

ACTION

Motion carried unanimously.



Oahu shall be made to applicants who are residing on the island of Oahu at time of application; provided further that a lessee of an agricultural lot on Oahu shall not be allowed to hold any other homestead lease. [Eff 7/30/81; am 2/3/83; am 8/1/85; am and comp 10/26/98; am 3/31/17] (Auth: HHC Act §222) (Imp: HHC Act §207)



- §10-3-25 Award of additional acreage.** (a) A lessee of an agricultural or pastoral lot may make a written request for additional acreage of the same class.
- (b) A lessee shall be contacted for an award in accordance with section 10-3-24(a).
- (c) A lessee shall be eligible for lot selection provided the lessee has actively cultivated and used the agricultural or pastoral lot and is in compliance with all terms and conditions of existing leases.
- (d) Following determination that a lessee is eligible for lot selection, the lessee shall be notified as provided in section 10-3-24(b).
- (e) Following lot selection, the lessee shall submit a plan as required in section 10-3-24(c) incorporating into the plan, all existing acreage.
- (f) Decision for award shall be based upon the provisions of section 10-3-24(d). [Eff 7/30/81; am and comp 10/26/98; am 3/31/17] (Auth: HHC Act §222) (Imp: HHC Act §207)

- §10-3-26 Residence on agricultural and pastoral lots, when.** (a) Upon award of an agricultural or pastoral lot, the applicant shall reside on the island on which the leasehold is located or move to that island within three years.
- (b) A lessee of an agricultural lot of not more than three acres shall within three years:
- (1) Reside and cultivate subsistence agriculture on the lot. Additional dwelling units shall

Ex. B June '21  
C-3

Exhibit E

- (E) The circumstances of the present lessee indicate sufficient need for relocation to justify the department's withholding of the residence lot to be leased from availability to qualified applicants, if any, for leases in that area and the department's awarding of a lease of that residence lot to the relocating lessee.
- (4) Exceptions to this limitation shall be made only after notice of the department's consideration of such action has been given through the posting of the agenda and after full disclosure of the material facts has been made in a public meeting. [Eff 7/30/81; comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §207)



**§10-3-24 Agricultural and pastoral leases.** (a)

When agricultural or pastoral lots become available for award, the applicant shall be contacted in accordance with section 10-3-7.

(b) The department shall notify applicants of the date, time, and place of lot selection. The department shall defer applicants who fail to appear or select.

(c) Except for agricultural awards of not more than three acres and UXO lands, the applicant shall submit a plan for the development of the lot no later than three months following lot selection. The plan shall include but not be limited to:

- (1) Crops to be grown or livestock to be raised;
- (2) Estimated expenses;
- (3) Estimated gross income;
- (4) Method of financing;
- (5) Market plan;
- (6) Timetable for operation;
- (7) Purpose of farm - subsistence, supplemental, commercial, or otherwise; and
- (8) Other assistance needed in terms of:

Ex. B June '21  
C-3  
Exhibit E

(A) Labor, number of individuals, tasks to be performed; and  
(B) Technical assistance.  
(d) Decision for award of agricultural lots of more than three acres and pastoral lots shall be based upon:

- (1) Review and acceptance of the plan's feasibility; and
- (2) Evaluation of the general knowledge and experience of the applicant or the experienced individual who will assist in the development of the lot. That general knowledge or experience or combination thereof may include but not be limited to the following:
  - (A) Member of the Hawaii young farmer association or a future farmer of America graduate with two years of training with farming projects;
  - (B) Satisfactory vocational agriculture course in high school;
  - (C) Satisfactory completion of an agricultural curriculum at a university or community college leading to a bachelor of science or an associate degree in agriculture;
  - (D) One year full-time work experience on a farm or ranch;
  - (E) Completion of study at classes conducted by the University of Hawaii extension service; or
  - (F) Persons who have had at least two years of experience as part-time farmers or ranchers.

(e) For agricultural awards of not more than three, lot size shall be determined in accordance with the current island plan as approved by the commission and lot quality factors such as topography, natural resource availability, and soil quality.

(f) In recognition of the shortage of available lands on the island of Oahu in relation to available lands in the State, an award of an agricultural lot on

on which the lessee resides. [Eff 7/30/81; am 8/1/85; am and comp 10/26/98] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §207)

**§10-3-6 Island-wide waiting lists.** (a) The department shall maintain area waiting lists until the lists are exhausted. Applicants on a waiting list for any area will be placed on the respective island-wide residential lot, agricultural lot, or pastoral lot waiting list according to the date and time stamp described in section 10-3-3.1(a)(2). Applicants on a waiting list for an area will be considered first for award of any lots in the area. Applicants on the island-wide waiting list shall be considered for award according to the date and time stamp described in section 10-3-3.1(a)(2).

(b) Applicants wishing to transfer their completed application on one island-wide waiting list to another island-wide waiting list may do so. Upon the completion of the transfer, the transfer date will replace the original date of application. No applications will be accepted for any area waiting list. [Eff 7/30/81; am and comp 10/26/98; am 3/31/17] (Auth: HHC Act §222) (Imp: HHC Act §207)

→ **§10-3-7 Priority and preference for award of leases.** (a) Except as otherwise provided in section 10-3-11 relating to Lanai awards, applicants shall be considered for award in the order in which their completed applications were received by the department; provided that awards shall first be made according to ranking in existing priority I, II, and III waiting lists in that order until those waiting lists are exhausted. Thereafter, awards shall be based on numerical designation by date of completed application on the area waiting list, then on the island-wide waiting list, except as otherwise provided in this chapter.

(b) In making awards, the department shall give preference to an applicant who is not a lessee, or whose spouse is not a lessee.

(c) An applicant who is a lessee, or whose spouse is a lessee, shall be placed on a deferred status until each applicant given preference as provided by subsection (b) has been offered a lot; provided that an applicant who is a lessee, or whose spouse is a lessee, shall not be placed on a deferred status and may be offered a lot if the applicant or the applicant's spouse states in writing that the applicant or the applicant's spouse, as the case may be, will transfer an existing lease or surrender an existing lease to the department before, and as a condition for, the award of a new lease.

(d) An exception to subsection (c) may be made if the lessee of a residential lot or the spouse of a lessee of a residential lot is awarded a new agricultural or pastoral lot which is unimproved and on which a residence cannot be constructed. In this case, the transfer or surrender of the residential lease may be postponed until such time as the new agricultural or pastoral lot is improved and a residence can be constructed on the new lot. [Eff 7/30/81; am 1/20/86; am and comp 10/26/98; am 8/6/14] (Auth: HHC Act §222) (Imp: HHC Act §207)

**§10-3-8 Transfer of application rights.** (a) An applicant may designate an individual relative who is at least eighteen years of age and a native Hawaiian from among the following to succeed to the applicant's application rights upon the death of the applicant:

- (1) Husband or wife;
  - (2) Child;
  - (3) Grandchild;
  - (4) Father or mother;
  - (5) Widow or widower of a child;
  - (6) Brother or sister;
  - (7) Widow or widower of a brother or a sister;
- or