

LINDA LINGLE
Governor



SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE K. OKAMOTO
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512

TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON FINANCE
THURSDAY, MARCH 25, 2010
3:30 P.M.
ROOM 308

SENATE BILL NO. 2951, S.D. 2, H.D.1
RELATING TO AGRICULTURE

Chairperson Oshiro and Members of the Committee:

Thank you for this opportunity to provide testimony on part II of Senate Bill No. 2951, S.D.2, H.D.1 relating to agriculture. The department supports part II of this bill with the following changes.

The first change is necessary to clarify that all fees and moneys collected pursuant to the enumerated statutory chapters and rules, not just certain fees and moneys, will be deposited into the new special fund this bill establishes, and to insert the relevant statutory section, 141-4, in place of the overbroad reference to chapter 141, which includes other department programs unrelated to this special fund. The second change is necessary to clarify that administration and enforcement of rules adopted pursuant to section 141-4, regarding coffee weight, is among the purposes for which the new special fund moneys can be spent. This purpose was included in H.B. No. 2290, as introduced, but appears to have been inadvertently left out of subsequent drafts of the bill. The third change corrects the reference to section 141-4, regarding coffee weight, to "rules adopted pursuant to section 141-4", and also clarifies that program staff salaries and other operational costs are intended to be covered by the new special fund.

The fourth change is to specify the moneys to be deposited into the agricultural inspection and certification special fund. The fifth change is to deposit the general fund appropriation into the agricultural inspection and certification special fund. The sixth and seventh changes correct the reference to section 141-4, regarding coffee weight, to "rules adopted pursuant to section 141-4". The eighth change is to provide for an appropriation out of the new special fund for the administration, operation, and enforcement of the programs described in the bill.

1. Section 6, page 9, line 10, "Transmitting [~~certain~~] all fees [~~-, civil penalties,~~] and moneys collected by the department of agriculture pursuant to [~~section 141-4, chapter 144, part I of chapter 145, and chapter 147 by the department of agriculture~~] chapters 144, 145, 147, 150, Hawaii Revised Statutes, and rules adopted pursuant to section 141-4, Hawaii Revised Statutes to the agriculture inspection and certification special fund;"
2. Section 7, page 11, line 6, "The administration, operation, and enforcement of chapter 144, part I of chapter 145, [~~and~~] chapter 150, and this chapter[~~;-and~~] , and rules adopted pursuant to section 141-4; and"
3. Section 7, page 11, line 12, "No moneys from the general or other special or revolving funds shall be expended by the department for the administration, operation, or enforcement of [~~section 141-4,~~] chapter 144, part I of chapter 145, chapter 150, [~~or~~] this chapter, or rules adopted pursuant to section 141-4; provided that the expenditure of moneys from the general fund for central services and departmental administrative expenses shall be permitted. Moneys in the agriculture inspection and certification special fund shall be expended to cover costs of administering chapter 144, part 1 of chapter 145, chapter 150, this chapter, and rules adopted pursuant to section 141-4, including the costs of salaries, fringe

benefits, operating expenses, equipment, motor vehicles, contracts for services, and promotional expenses.”

4. Section 10, Page 13, line 8, include additional subsection (b) as follows:
(b) The following moneys shall be deposited into the agriculture inspection and certification special fund:
 - (1) Fees, charges, expenses, and other moneys collected under this part;
 - (2) Fines collected from violations of this part;
 - (3) Interest earned on the moneys in the special fund; and
 - (4) All other moneys made available to the fund.

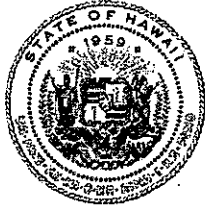
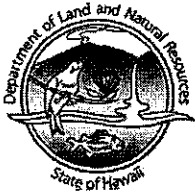
5. Section 23, page 23, line 9-10, “...necessary for fiscal year 2010-2011 for deposit into the agriculture inspection and certification special fund to cover the costs of the agriculture inspection and certification program of the department of agriculture; ”

6. Section 22, page 21, line 17, “... [~~and~~] chapter 147, chapter 150, and rules adopted pursuant to section 141-4, Hawaii Revised Statutes, ... ”

7. Section 22, page 22, line 4, “... [~~and~~] chapter 147, chapter 150, and rules adopted pursuant to section 141-4, Hawaii Revised Statutes, ...”

8. Section 23, page 23, line 15 before the current text, “There is appropriated out of the agriculture inspection and certification special fund established by chapter 147, Hawaii Revised Statutes, the sum of \$ _____ for fiscal year 2010-2011 for the purposes of the agricultural inspection and certification program.”

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the House Committee on
FINANCE**

**Thursday, March 25, 2010
3:30 PM
State Capitol, Conference Room 308**

**In consideration of
SENATE BILL 2951, SENATE DRAFT 2, HOUSE DRAFT 1
RELATING TO AGRICULTURE**

Senate Bill (SB) 2951, Senate Draft (SD) 2, House Draft (HD) 1, Part I, provides for extraordinary and previously unprecedented levels of compensation to lessees when leased public land for agricultural or pastoral uses is withdrawn, condemned, or taken for public purposes. Part II of the bill establishes the Agricultural Inspection and Certification Special Fund, to be used for the inspection and certification of agricultural commodities. The Department of Land and Natural Resources (Department) strongly opposes Part I because the concept behind the bill has the potential to impede the State's flexibility to set-aside portions of state lands for state public purposes. The Department defers to the Department of Agriculture with regard to Part II of this measure.

SB 2951 SD2, HD1, Part I is a reincarnation of SB 1345 that was vetoed by the Governor in 2009. The main differences between SB 2951, SD2, HD1 and SB 1345 are that the current bill does not provide for reimbursement of lessees' "loss of reasonably anticipated income", or for an automatic lease extension when land is taken for public purposes. But like its predecessor, SB 2951 SD2, HD1, Part I would require the State to provide unprecedented additional levels of compensation in the form of hypothetical future income losses relating to breeding livestock under some circumstances, insurance costs and real property taxes payable on lands subsequent to the original lease date. The changes in this bill apply prospectively to new leases and clarifies that compensation need only be paid if a withdrawal occurs during the last half of the full term of the lease.

State law already provides clear safeguards for tenants and terms for leasing public lands. Chapter 171, Hawaii Revised Statutes (HRS), ensures transparency and fairness in the

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CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
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DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

disposition of state assets and most importantly to guaranty that state land resources will be available when needed to meet the greater public safety and other public needs of all of Hawaii's residents. The Department points out that all existing tenants were aware of these provisions, willingly entered into leases with the State under these conditions, and received rent well below the market rate, in many cases for decades, due to these provisions. It would be in direct conflict with basic contract law and the general state welfare to now pass a measure that requires the State to provide extraordinary and unprecedented compensation to such tenants when they have reaped years of benefit from below market rates. Indeed, to take such action at a time of great economic downturn and when the legislature is looking to departments to maximize state revenue is downright puzzling.

While providing limited preferential terms for the disposition of public lands for certain types of activities such as agriculture, renewable energy, government projects, industrial parks and utilities, etc., is well established in statute based on policy considerations, the State's right and responsibility to withdraw portions or all of the leased lands for a greater public purpose has never and should not be compromised.

The law already requires the State to compensate the lessee for the reasonable loss of vested rights under those affected leases. The Department's standard lease form contains a provision requiring the State to lower rents in proportion to the reduction in leased area and compensate the lessee for improvements made unusable in the process of taking leased lands for such purposes. Similarly, Hawaii law provides with respect to agricultural and pasture leases that:

"upon withdrawal any person with a long-term lease shall be compensated for the present value of all permanent improvements in place at the time of withdrawal that were legally constructed upon the land by the lessee to the leased land being withdrawn."

On top of the relief already provided by law, SB 2951 SD2, HD1, Part I would require the State to reimburse lessees for any insurance required by the Department to be maintained on lands subject to easements that are placed on the land subsequent to the original lease date, if the easements prevent the lessee from using the land for its original intended use. Ostensibly, if such an easement prevented the lessee from making any use of the land, the Department could waive the insurance requirement for the area subject to the easement. However, there may also be cases where an easement prevents a lessee from using the land for its original purposes, but does not prevent all beneficial use of the area. For example, if the lease is a pasture lease, an easement might restrict the grazing of cattle on a portion of the land. But the lessee may have a water delivery system or other infrastructure on the easement area that provides a benefit to the remaining usable lease area. In such a case, the lessee should be required to maintain liability insurance for its operations in the easement area at its own cost.

SB 2951 SD2, HD1, Part I would also require the State to reimburse a lessee for real property taxes paid on an area subject to such an easement. In the case of the Palila Critical Habitat Mitigation Lands easement that was placed on certain state pasture leases on Mauna Kea, Department staff researched the real property taxes lessees pay on the easement areas and determined that the amounts were negligible. The County Real Property Tax Division classifies the easement areas as waste with the result that the total annual real property tax on 2,226 acres

of easement area under one lease was 84 cents per year. If an easement allows a lessee to continue beneficial use of the easement area¹, as illustrated in the hypothetical example from the preceding paragraph, then it is not unreasonable to require the lessee to bear these nominal costs.

Additionally, SB 2951 SD2, HD1, Part I would require the State to reimburse pasture lessees for losses to breeding stock when the animals cannot be relocated or "marketed" for breeding value. In the normal situation, a lessee would have one or two years or more of notice of an impending taking of lease land. Accordingly, the Department believes a pasture lessee would have ample time to plan for the relocation or sale of livestock, and that the proposed amendment would only encourage damage claims against the State.

The lessees have enjoyed the special benefits associated with the use of the public lands including in many instances very low rent that effectively constitutes a subsidy of certain agricultural activities. As stated above, the withdrawal provision was included in the State's standard lease provisions to ensure that any important or overriding public purpose arising after the disposition of public lands can be addressed in an appropriate manner by the withdrawal of any lands needed for such action. The proposed modifications to the withdrawal provision would deprive the State of its right to use public lands for legitimate and important public purposes.

Passage of this bill in its current form would hinder the Department's ability to withdraw lands for any public purposes. Government agencies would be burdened with unknown project costs that will have to be paid by taxpayers.

¹ In the case of the Palila mitigation, the Board of Land and Natural Resources (Board) reduced the annual rent, pro rata, based upon the square footage of the easement area. Thus, no rent is assessed for the easement area, despite the Lessee retaining control and some beneficial use of that area. In addition, the Board allowed those Lessees affected by the conservation easement to use 10% of the remaining lands for alternative agricultural use, with no increase in rent for the difference between pasture and the alternative agricultural use.

WRITTEN ONLY

TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON FINANCE
ON
SENATE BILL NO. 2951, S.D. 2, H.D. 1

March 25, 2010

RELATING TO AGRICULTURE

Part II of Senate Bill No. 2951, S.D. 2, H.D. 1, establishes the Agriculture Inspection and Certification special fund. In addition, Senate Bill No. 2951, S.D. 2, H.D. 1, redirects: 1) all fees, expenses, and penalties collected for certification and agriculture control activities; 2) fees to defray the cost of administering the weighing of coffee; 3) fees for certification services of flowers and foliage; and 4) fees charged by the Department of Agriculture for audits and certification that are currently deposited into the general fund to be deposited into the Agriculture Inspection and Certification special fund. Senate Bill No. 2951, S.D. 2, H.D. 1, also transfers all moneys in the certification services revolving fund to the Agriculture Inspection and Certification special fund. Senate Bill No. 2951, S.D. 2, H.D. 1, also resets inspection and certification fees, provided that the Department of Agriculture has not amended administrative rules, to generate sufficient revenues to fund the operation of agricultural inspection and certification programs.

As a matter of general policy, this department does not support the creation of any special fund which does not meet the requirements of Section 37-52.3 of the Hawaii Revised Statutes. Special or revolving funds should: 1) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program;

- 2) provide an appropriate means of financing for the program or activity; and
- 3) demonstrate the capacity to be financially self-sustaining. It is difficult to determine whether there is a clear nexus between the benefits sought and the charges made upon the users or beneficiaries of the program and whether the fund will be self-sustaining.

Lastly, House Bill No. 2951, S.D. 2, H.D. 1, appropriates unspecified general revenues in FY 11 for the agriculture inspection and certification program; however, this general fund appropriation is not included in the Administration's financial plan.



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

March 25, 2010

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

SENATE BILL NO. 2951 SD 2 HD 1

COMMITTEE ON FINANCE

The Department of Transportation opposes this bill for the following reasons:

1. SB 2951 is the same as last year's (SB 1345), changing 171 HRS to include withdrawal of leased lands, fair compensation and lease extension. The bill requires lands withdrawn or made unusable a proportionate value thereof shall be paid to the lessee based upon the unexpired term of the lease. Any person with a long term lease shall be compensated for the present value of all permanent improvements in place at the time of the withdrawal. For any tree crops damaged, the board shall pay to the lessee the residual value of the trees taken and the value of crops, not harvested. Livestock shall be compensated by the board paying the lessee the difference of the appraised breeding value and the salvage value. The bill also requires the lessee to be entitled to compensation for costs attributed to the diminished use of the leased lands and reimbursement for any insurance costs and property taxes. This will cause an undue burden on public projects.
2. There will be a conflict between public purpose approved by the Legislature and paying for compensation not covered by federal laws and public purpose projects approved by Congress.

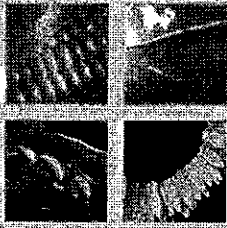
Under 2007 49 cfr 24.101 (5) (c), federal acquisition requirements for less than full fee interests all subparts apply. One requirement is to review the lease terms and condition acknowledged by the tenant (Lessee) when accepting the lease. Most lease terms have a condemnation clause that already adjusts for the compensation described above.

Under 24.105 when the State acquires tenant owned improvements as established to be real property, not personal property and just compensation established. This amount is the value of those improvements as it contributes to the fair market value of the whole property.

Under 24.106, the owner of the real property right (such as a lease) shall be reimbursed for all reasonable expenses the owner incurs, including: recording fees, transfer taxes, pro-rata share of any pre-paid property taxes, and moving and re-establishment costs.

This bill will affect the situation by creating a conflict with what is real property and what is personal property. For example, cattle is not considered as crop damage. Damages through federal regulations need to be supported by tax returns or other claims. If there are none, then it would be hard to justify. Other claims, such as the "in lieu of" payments, refer to going out of business costs. If the ranchers are not going out of business, this expense could not be evoked. Under federal regulations we need to reimburse based on receipts and justification.

In the Governor's Message No. 834, SB 1345 was not approved because of being "objectionable and disproportionately and inappropriately compensates the lessees of public lands above other lessees of State lands." Other laws already provide procedures for the withdrawal of leased lands and rents adjusted to reflect the portion of lands withdrawn and they must be adjusted to reflect the portion of lands withdrawn and must be compensated for the value of improvements on the withdrawn portion. The automatic extension circumvents the authority of the Board of Land and Natural Resources and hinders their ability to ensure that public lands are used for the highest and best public use.



Hawaii Crop Improvement Association

Growing the Future of Worldwide Agriculture in Hawaii

Testimony By: Alicia Maluafiti
SB 2951, SD2, HD1, Relating to Agriculture
The House Committee on Finance
Thursday, March 25, 2010
Room 308, 3:30 pm

Position: Support

Aloha Chair Oshiro, Vice Chair Lee and members of the Committee:

My name is Alicia Maluafiti, Executive Director of the Hawaii Crop Improvement Association. HCIA is a nonprofit trade association representing the agricultural seed industry in Hawaii. Now the state's largest agricultural commodity, the seed industry contributes to the economic health and diversity of the islands by providing high quality jobs in rural communities, keeping important agricultural lands in agricultural use, and serving as responsible stewards of Hawaii's natural resources.

HCIA believes that SB 2951 – Part II - is an important and necessary attempt to mitigate further cutbacks to the Dept. of Agriculture as a result of Hawaii's fiscal crisis and the department's reliance on the general fund to support the ag inspector positions. It is an important, comprehensive and necessary initiative because of all the state departments impacted by the furloughs and reduction in force, the Department of Agriculture suffered the greatest loss. Therefore, the seed industry is supporting a number of efforts this legislative session – including SB 2951 - to restore the Dept. of Agriculture positions and minimize future losses to the department in the face of a worsening budget crisis. The restoration of their department is critical to not only the agricultural industry, but to the health and safety of the entire state.

Mahalo for the opportunity to comment.

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Hawaii Cattlemen's Council, Inc.

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HOUSE COMMITTEE ON FINANCE

Thursday March 25, 2010 3:30 pm Room 308

SB 2951 SD2 HD 1 RELATING TO AGRICULTURE

Provides for fair compensation, when leased public land for agricultural or pastoral uses is withdrawn, condemned, or taken for public purposes.

Chair Oshiro, Vice Chair Lee and Members of the Committee:

My name is Alan Gottlieb, and I am the President of the Hawaii Cattlemen's Council. The Hawaii Cattlemen's Council, Inc. (HCC) is the Statewide umbrella organization comprised of the five county level Cattlemen's Associations. Our 130+ member ranchers represent over 60,000 head of beef cows; more than 75% of all the beef cows in the State. Ranchers are the stewards of approximately 25% of the State's total land mass.

The Hawaii Cattlemen's Council **strongly supports** SB 2951 SD2 HD1, but we have **strong concerns** with language inserted by the House committee on WLO/AGR.

The concerns we have about the changes to SB 2951 HD1 are mainly in the following language:

Section 2d page 4, line 16:

*(d) Subsections (a) and (b) shall only apply if the
17 withdrawal or taking that causes any portion of the land to
18 become unusable for the specific use or uses for which it was
19 leased, occurs after at least half of the lease term has
20 elapsed.*

In our opinion, it makes no sense that fair compensation for the undepreciated value of improvements would only take effect for leases in which half the lease term has expired. If anything, it would make more sense to be applicable for withdrawals in the first half of the lease term. For example, someone gets a lease for 35 years and spends the first 2 years putting in all their improvements (fences, water lines, etc) and in the 3rd year of a 35 year lease DLNR (or another State agency) needs to withdraw or cancel the lease. With the new language in HD1, the tenant would get zero for their investment in improvements, though they only got 2 years use out of fixed assets which may have a 20 year life, and no way to recoup those losses. What bank would loan money to a business which had that risk?

As DLNR has said in past testimony on this issue, the current law states that:

"upon withdrawal any person with a long-term lease shall be compensated for the present value of all permanent improvements in place at the time of withdrawal that were legally constructed upon the land by the lessee to the leased land being withdrawn."

The new language in 2d moves agriculture backwards and takes away fair compensation to farmers for the undepreciated value of their improvements, if the withdrawal comes in the first half of their lease. We do understand that these changes would only affect new future leases, but we don't want any farmers to lose fair compensation for which they are already entitled to under the current law.

We were asked at the WLO/AGR hearing: Where would the State come up with this money for Fair Compensation? We respectfully remind you that fair compensation (except for the value of the cattle) is already in current law. One might ask, where does the State come up with money to do any condemnation? In this Country and State while Eminent Domain is a fundamental principal, it always deals with fair compensation, NOT with what the government can afford.

While this bill is not retroactive or for past injustices, but to hopefully make sure farmers and ranchers are fairly compensated for future losses, we remind you (as DLNR does in their testimony) that the law already provides for compensation for undepreciated improvements. However, while this is the law, this is NOT what happened on the Saddle Road project. One rancher had over \$200,000 in undepreciated improvements (not counting breeding cow values which is not in the current law) but even while this is in the law, all DOT was willing to offer was \$20,000 for a relocation allowance. How do you relocate miles of fences and water lines for \$20,000 and WHERE would the rancher relocate them too? That is why none of the ranchers took the compensation offered. However, we want to reiterate, we have no intention that changes to the law affect past projects or injustices. We are looking forward and hope that these injustices do not happen in the future.

Actions, such as the removal of large portions of land from a state tenant, can cause serious financial losses as noted in this bill. Uncompensated losses to a farmer or rancher or any business can drive a marginal operator out of business, threatening not only that one business, but in the case of the Hawaii beef cattle industry, the entire industry itself. Allow me to explain:

Like the Hawaii dairy industry, our industry is dependent on a critical mass to help support its infrastructure (processing plants, transportation, marketing) and like dominos, key producers in our industry can quickly fall, if too much of our lands and productivity are lost. The small ranchers are especially susceptible, because without the big ranchers helping to support that infrastructure, everyone loses. Today there are 2 dairies in Hawaii which supply less than 10% of our locally consumed milk. Just 25 years ago there were 19 dairies supplying 100% of the locally consumed milk, plus ice cream production!

The genesis for this bill stems from actions taken by the BLNR in November 2008 when there was a proposal before the board for a direct lease to be awarded to a bio-fuels company for 37,000 acres of State lands currently leased to several of our member ranches. Several of these ranchers were very concerned having already lost significant portions of their leases to previous takings by the BLNR in 2001 under the Cayatano administration as a result of a Palila Mitigation action required by the then proposed realignment of the Saddle Road. These beef cattle producers had upwards of 30% of their leases removed without any compensation other than a lease reduction comparable to the acreage they could no longer graze. Infrastructure loss, the need to reduce their herd size by up to 30% and the continuing fixed costs required to carry the reduced herd (which did not decrease with the loss of one third of their carrying capacity) resulted in significant losses to particularly the smaller of the ranches. This all occurred while 15 million dollars in mitigation funds were distributed amongst the government agencies involved, including to DLNR upfront for the lease rent loss they would not receive from their lessees. To lose acreage which represented up to 30% of a beef cattle operation or any business is bad enough, but to not get any compensated for the taking was and still is absurd.

A rancher that loses grazing land can't just load up his cattle and head to the nearest livestock auction and get a high breeding value for his cattle. At best we can get only a much lower slaughter value and that is IF our local slaughter plants would be able to fit them into their slaughter schedule on a timely basis.

We also worry about the difficulty of finding financing in the future for ranchers who are on State lands, if lenders believe that the State can withdraw the lease or part of the lease at any time, without reimbursement for improvements and other monetary losses suffered by the tenant due to the removal.

Last year we had a similar bill, SB 1345, which addressed our concerns, and was passed by the legislature, but was vetoed by the Governor and not overridden by the Legislature. Since last year, we have met with Staff at DLNR and discussed many of their concerns with the prior bill, and have tried to address most of their concerns in this year's SB 2951.

We believe, as the State legislature did when in 2003 it passed Act 90, that it would be more appropriate if leases associated with agriculture are considered by people who understand and have agriculture as a priority. The preamble to Act 90, SLH 2003 stated: The purpose of this chapter is to ensure the long-term productive use of public lands leased or available to be leased by the Department of Land and Natural Resources for agricultural purposes by allowing these lands to be transferred to and managed by the Department of Agriculture. To date, some lands have transferred but many still reside in DLNR and the industry has found that ranchlands, especially are difficult to be transferred. This has been a very serious concern among our ranchers for many years, and we ask you to consider measures which would expedite the intent of Act 90.

We, The Hawaii Beef Cattle Industry, would like you to understand our issues today when our industry is strong and has continued potential, rather than to come back to you in several years to tell you we're all but done.

Thank you for giving me the opportunity to testify in favor of this very important issue.

Chris Manfredi
Ka'u Farm and Ranch Co. LLC
Ka'u Local Products, LLC
PO BOX 1109 Naalehu Hawaii
96772

March 24, 2010

Aloha Chairman Oshiro and members of the House Finance committee,

I am offering my testimony in support of SB 2951 HD 1.

As a stakeholder in the fledgling Ka'u coffee industry and founding president of Ka'u County Farm Bureau, I support SB 2951 HD 1, particularly relating to Section 147 (c) (1), which refers to "The licensure of commission merchants, dealers, brokers, agents, processors and retail merchants".

This provision represents precisely the legislation and support we need in our rural communities.

In Ka'u we were experiencing challenges relating to affordable access to commodity inspectors long before the proposed HDOA budget cuts. Additional expense in terms of time and cost were making our district un-competitive in a very competitive marketplace. Our industry has been forced to endure long delays, unfair costs imposed due to time and distance fees and our products have been compromised in terms of increased moisture content while in the care of HDOA. These costs have had the net effect of increasing our cost of production by up to \$1 per pound of green coffee beans.

Natural challenges in the form of drought and VOG have made this season particularly challenging. Economic challenges piled on top of these have caused some of our efforts to grow this emerging industry to stall. It would be very helpful if, with support from the Hawaii Department of Agriculture, commission merchants, brokers, agents, processors and retail merchants were licensed to certify our product in compliance with the law. Only then can the burden be shifted from government to the private sector making compliance with the law affordable, accessible and farmer friendly; not gaining a competitive advantage, but leveling the playing field with already stiff competition from around the globe.

Thank you for this opportunity to testify in support of SB 2951 HD 1.



Chris Manfredi

March 24, 2010

Aloha Chairman Oshiro and members of the House Finance committee,

Thank you for this opportunity to write in support of SB2951 HD1.

As president of the Ka'u Coffee Growers Cooperative (KCGC), I can tell you firsthand that our region's coffee farmers are worried about inadequate access to green-bean inspectors.

Having our coffee certified requires a 1.5-hour drive to Kona. In addition, coffee is certified only once a week because of the reductions in personnel. We fear that the reduced certification schedule will cause delays in delivery of products to our clients.

The coffee industry in Ka'u is young, but promising. It is growing into a sound economic base for an area that offers few jobs compared to Hawaii's cities. Our cooperative alone is comprised of 31 farms covering about 280 acres. There are additional coffee farms in Ka'u, for a total of about 380 acres.

All of them are small family farms operated by a diverse group. For example, KCGC's farmers are Hawaiian, Caucasian, Asian (Japanese and Thai), Pacific Islander (Filipino) or Latino (Salvadoran) and Portuguese. Attached please find the names of farmers in our cooperative.

We hope that SB2951 HD1 will be approved; having inspectors that are not subject to Department of Ag budget cuts and are located in our community would be an important step in maintaining, and even growing, the coffee industry of Ka'u.

Sincerely,

Lorie Obra
President
Ka'u Coffee Growers Cooperative

Members of the Ka'u Coffee Growers Cooperative

Efren Abellera

Sixto Asuncion

Rosita Avenue

Lori Baptista

Marlon Biason

Gloria Camba & Rogelio Aquino

Joseph Castaneda

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Pablo Mauricio

Jose & Berta Miranda

Roberto Miranda

Leo Norberte

Lorie Obra

Franklin Orcino

Stanley Quija

Keldon Sakata

Ricardo Sambajon

William Tabios

TESTIMONY OF JASON D. MONIZ, D.V.M.
KK RANCH INC.

BEFORE THE HOUSE COMMITTEE ON FINANCE
MARCH 25, 2010
3:30 PM
ROOM 308

SENATE BILL NO.2951 SD2 HD1
RELATING TO AGRICULTURE

Chairperson OSHIRO and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 2951 SD2 HD1. The purpose of this bill is to provide State lessees with fair compensation when their leases are affected by withdrawals or easements that disallow the lessee to use the lease or part of, for its intended purpose. I support the purpose of this Bill however request that the Bill be amended as proposed in (Attachment 1). We have carefully reviewed the testimony of those with concerns and oppositions to this bill and believe we sincerely offer amendments to address those concerns while recognizing certain changes need to be made to the current statute to fairly compensate pastoral lessees affected by withdrawals and easements placed on leases.

The genesis of this Bill comes from the November 2008 Board of Land and Natural Resources decision to lease in principle to Sunfuels Hawaii 37,264 acres of State lands on the Big Island leased to nine cattle ranches. The nine cattle ranches found out by reading newspaper articles that their leases were potentially in jeopardy as a result of the Board's decision. Three of these ranches had already lost up to one third of their leases back in 2001 as a result of mitigation measures provided for with the Realignment of the Saddle Road. My family and I are one of the ranchers that was affected in 2001 and lost one third of our cattle ranch.

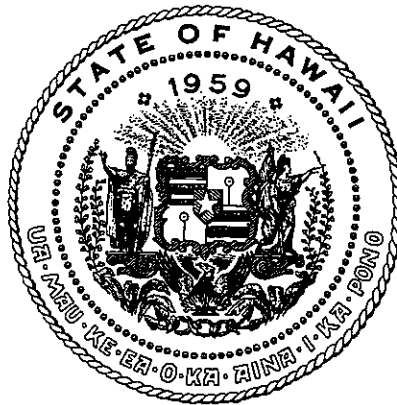
The intent of this Bill is not to compensate the ranches that were affected with lease losses as a result of the 2001 Saddle Road Palila Mitigation Plan. The 2001 BLNR easement action on those ranches recognized that compensation was not adequate and included remedies by granting in principle lease extensions if certain conditions were met. (Attachment 2) A 2002 DLNR report on this matter to the legislature explains in further detail the concern over fair compensation and the resolution provided to the affected ranchers. (Attachment 3)

I have not personally testified on this Bill this year but felt compelled to step forward when I recognized that drafts were not addressing concerns brought up by various testifiers. I am also concerned that several testimonies contain misleading information, distortions and factual misrepresentations, some of which were directed at me. I'm not going to take your time addressing those concerns unless you have specific questions or interest.

I believe after thoroughly reviewing the concerns in the testimonies that the suggested amendments in (Attachment 1) address those concerns and provides language to adequately compensate pastoral lessees in the future that are affected by withdrawals and easements, except where specifically excluded.

Report to the Twenty-First Legislature
Regular Session of 2002

**Final Report on
Discussions With Affected Ranchers in
Connection with the Saddle Road Realignment Project**



Prepared by:
Department of Land and Natural Resources
State of Hawaii

In response to:
Act 236 (Section 2), Session Laws of Hawaii 2001

January 2002

**Final Report to the Twenty-First Legislature
Regular Session of 2002**

**On the Discussions With Affected Ranchers in
Connection with the Saddle Road Realignment Project**

Introduction

The 2001 Hawaii State Legislature enacted legislation, translated as Act 236, Session Laws of Hawaii (SLH) 2001, directing the Department of Land and Natural Resources (Department) to expedite discussions with representatives of Parker Ranch, K.K. Ranch, Inc., Schuman Carriage Corporation, and Boteilho Enterprises, Inc. and to identify and investigate all alternatives that will:

- (1) Fairly compensate the ranchers for losses suffered as a result of the withdrawal of any leased lands; and
- (2) Avoid providing exceptions to public land leasing policies.

The Act also directed the Department to authorize the lessees to utilize ten per cent of the remaining land for alternative agricultural use at no increase in the lease rent rate and to submit a final report on the result of these discussions and any proposed legislation to the legislature no later than twenty days prior to the convening of the regular session of 2002.

Background

The proposed Saddle Road Improvements Project is intended to provide a safe and efficient route for access along Saddle Road and for cross-island traffic between East and West Hawaii. The Improvements would upgrade and modernize Saddle Road (State Route 200) as a two-lane highway that would meet State Department of Transportation (DOT) and American Association of State Highway and Transportation Officials design standards for rural arterials and provide adequate capacity to handle anticipated traffic volumes through the year 2014 and beyond. The entire Saddle Road Project is approximately 48 miles long and extends from Mamalahoa Highway (State Route 190) to Milepost 6, near Hilo.

A portion of the overall project will involve the realignment and improvement of Saddle Road between Mileposts 29 and 42 (Saddle Road Section 2). Funding is appropriated for these improvements through the U.S. Army's Defense Access Road program, which is co-administered by the Army's Military Traffic Management Command and the Federal Highway Administration (FHWA).

Upon completion of the improvements, this section of the Saddle Road will be owned and maintained by DOT as part of its State Highway System.

The selected alignment of the Saddle Road Improvement Project between Mileposts 29 and 42 (Saddle Road Section 2), impacts approximately 102.5 acres of federally designated Palila Critical Habitat (PCH) established pursuant to the Endangered Species Act. The U. S. Fish & Wildlife Service which is responsible for the administration of this Act, has determined that the construction of the improvements within the PCH will not jeopardize the palila nor adversely modify the PCH provided that conservation measures identified in the Record of Decision and the Memorandum of Understanding (MOU) regarding implementation of the Saddle Road PCH mitigation, dated August 10, 1999, are implemented. This MOU was agreed to and signed by FHWA, DOT, U.S. Army Garrison Hawaii, Military Traffic Management Command, the State Department of Land and Natural Resources (Department), U.S. Fish & Wildlife Service and the Biological Resource Division of the U.S. Geological Survey.

This MOU determined that the palila mitigation, as presented in the Saddle Road Biological Opinion for the selected alignment, is necessary and must be implemented to ensure the successful completion of the proposed Saddle Road Project. As a condition of constructing the Saddle Road realignment within PCH, the Biological Opinion required:

1. The provision of approximately 5,143 acres of land on the north slope of Mauna Kea for palila habitat restoration;
2. The provision of approximately 1,400 acres of land immediately adjacent to the current palila population on the west slope of Mauna Kea for palila habitat restoration; and
3. The management of these lands for the re-establishment/sustenance of palila in accordance with the MOU.

Construction of Section 2 of the Saddle Road improvements is scheduled to begin in 2002. In order for this construction to commence, the mitigation components, including the assurance that the required lands will be managed for mamane forest restoration, must be in place prior to the start of construction.

The palila mitigation requirements of the Saddle Road Improvement Project will impact the following State pasture leases administered by the Department:

General Lease No. S-4471 to Parker Ranch;
General Lease No. S-4475 to K.K. Ranch, Inc.
General Lease No. S-4477 to S.C. Corporation; and
General Lease No. S-4478 to Boteilho Enterprises, Hawaii, Inc.

The DOT Highways Division, in coordination with FHWA, will provide compensation to the existing lessees in accordance with the provisions of the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, as amended. Under this Act, the tenants are eligible for reimbursement of actual reasonable

expenses for vacation of the property under the relocation provisions, as well as any required payment for improvements to the property. Compensation for improvements would consist of payment for the permanent improvements (buildings, wells, new fences, etc.) made to the properties by the leaseholders in accordance with the terms of the lease.

Some felt that compensation by DOT would not sufficiently address the actual damages to the lessees. Similar to other large ranchers in Hawaii, the affected lessees are primarily in the cow/calf business by which calves are shipped to the mainland for grow out and sale. The critics argued that the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, as amended, primarily views compensation for cattle on a salvage value basis and does not address the loss of future revenue from additional calves.

Actions by the Board of Land and Natural Resources

On September 28, 2001, the Board of Land and Natural Resources (Board) granted a Conservation District Use Permit to the DOT for the subdivision of the road right-of-way areas and construction of the Saddle Road improvements, subject to various terms and conditions.

On December 14, 2001, the Board approved the set aside of rights-of-way for the portion of the Saddle Road Improvement Project between Mileposts 29 and 42 (Saddle Road Section 2). At the same meeting, the Board approved the granting of a conservation easement over the subject four pasture leases for the purposes of the required palila mitigation effort.

In the interest of an alternative means of fairly compensating the lessees for the loss of the palila mitigation areas, the Board approved "in principle" an extension of the leases in connection with a mortgage as allowed under current statutes and land lease policies. Although not an actual approval for extension, it provides the lessees with an affirmative position by the Board towards a request for extension upon their application for such an extension with an actual mortgage commitment. Under current statutes, the lessees are allowed to request up to another 20 years beyond the current expirations in 2011.

With these extensions, the lessees will have another 20 years to recoup those revenues lost due to the removal of the palila mitigation areas from grazing.

The Board also made it a condition of their approval that should the cattle grazing be utilized as a management tool in the mitigation program, the current lessees shall have the first right-of-refusal to provide this service within their respective original lease areas.

These actions by the Board represent the Department's good faith efforts to comply with the intent of Act 236, SLH 2001.

Additionally, in compliance with Act 236, SLH 2001, the Board authorized an amendment of the subject four leases allowing the lessees to utilize ten per cent of the remaining acreage for alternative agricultural uses at no increase in the lease rent rate.

Report on Discussions with Ranchers

The following is a summary of discussions between the Department and the ranchers.

With the anticipation that the Board will grant lease extensions where the lessees comply with Chapter 171, HRS, the ranchers feel that the impact of the loss of the grazing areas to the palila mitigation requirement has been reasonably mitigated. Although not what they would consider ideal, they are accepting of the Board's actions in connection with the Saddle Road Improvement Project and the associated palila mitigation requirement.

The four lessees have indicated that they have no current plans to utilize the allowance for alternative agricultural uses on ten per cent of the remaining lease areas at no increase in lease rent rate. With less than ten years left on the current leases, it has been difficult for them to consider such alternative agricultural uses and the investment risk associated with such an endeavor. However, they have not ruled out the prospects of taking advantage of this option especially upon the extension of the leases.

A BILL FOR AN ACT

RELATING TO AGRICULTURE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

PART I

SECTION 1. The legislature finds that to widen Saddle Road, in the county of Hawaii, the department of land and natural resources established conservation easements on public land leased for pasture or special livestock use. Consequently, the lessee ranchers suffered serious financial losses.

The department of land and natural resources established conservation easements on approximately six thousand acres of leased lands, preventing the lessees from grazing cattle and effectively depriving the lessees of their use of the land. Although the department of land and natural resources reduced the lease rent in proportion to the taking of the land, the lessees received no other compensation. The final report on discussions with affected ranchers in connection with the Saddle Road realignment project prepared in response to Act 236, Session Laws of Hawaii 2001, states that the United States

Department of Transportation Highways Division will provide compensation to the existing lessees. However, according to the lessees, the department of land and natural resources has taken the position that because Hawaii law did not provide for any compensation, none was required.

Despite this lack of compensation, the lessees are required by their leases to maintain insurance on the land and pay taxes for the land. In addition, several lessees had to reduce their herd and suffered financial losses as a result of the sale of their cattle. One of the long-term effects of a reduced herd is that lessees cannot mitigate the long-term, fixed costs associated with operating a ranch in the way they anticipated when the lease was negotiated. Thus, the lessees have experienced financial hardship for an extended period of time that is not sufficiently mitigated by a reduction in their lease rent.

The purpose of this part is to prevent situations similar to the Saddle Road withdrawal from occurring in the future. This part is also intended to better provide for the viability and survival of Hawaii's agricultural producers. This part provides fair compensation for lessees when the department of land and natural resources takes or condemns any portion of the land, preventing a lessee from using the land as originally intended.

SECTION 2. Chapter 171, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§171- Withdrawal of leased land; fair compensation; lease extension. (a) Upon a withdrawal or taking of leased land pursuant to section 171-37(3) that causes any portion of the land to become unusable for the specific use or uses for which it was leased, the lease rent shall be reduced in proportion to the value of the land withdrawn or made unusable; provided that if any permanent improvement made to or constructed upon the land by the lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value thereof shall be paid to the lessee based upon the unexpired term of the lease appraised value of the improvements. No land that is under cultivation shall be withdrawn or taken until the crops are harvested, unless the board pays the lessee the value of the crops. Upon a withdrawal, any person with a long-term lease shall be compensated for the present value of all permanent improvements in place at the time of the withdrawal that were legally made to or constructed upon the land by the lessee of the leased land being withdrawn. In the case of tree-crops, as defined in section 171-37, the board shall pay to the lessee the residual value of the trees taken and, if there are unharvested crops,

the value of the crops. In the case of breeding livestock that cannot be relocated or marketed for the breeding value, the board shall pay to the lessee the difference between the appraised breeding value and the salvage value, including the cost of transportation to market.

~~(b) In addition to compensation received pursuant to subsection (a) or section 171-38, a lessee shall be entitled to compensation for costs attributable to the diminished use of the leased land.~~

~~(eb) On land subject to which easements are placed, if the easement that is placed upon the land subsequent to the original lease prevents the lessee from using the land for the original intended use, the lessee shall no longer be required to pay the property tax or cost of any insurance required by the board to be maintained.~~

~~(ec) Subsections (a) and (b) shall not apply now or in the future to 5143 acres of Saddle Road Palila Mitigation Plan lands which the 2001 Board of Land and Natural Resources placed an easement. only apply if the withdrawal or taking that causes any portion of the land to become unusable for the specific use or uses for which it was leased, occurs after at least half of the lease term has elapsed."~~

SECTION 3. Section 171-37, Hawaii Revised Statutes, is amended to read as follows:

"§171-37 Lease restrictions; intensive agricultural and pasture uses. In addition to the restrictions provided in section 171-36, the following restrictions shall apply to all leases for intensive agricultural and pasture uses:

- (1) The lease term shall [~~be~~] not be less than fifteen years nor more than thirty-five years, except that if the type of disposition requires the lessee to occupy the premises as the lessee's own personal residence, [~~it~~] the lease term may be longer than thirty-five years [~~, but~~]; provided that the lease term shall not be in excess of seventy-five years, [~~and~~] except in the case of a tree-crop orchard lease the term of which shall not be in excess of forty-five years.
- (2) If the land being leased is not immediately productive and requires extensive expenditures for clearing, conditioning of the soil, the securing of water, the planting of grasses, or the construction of improvements, as the result of which a longer term is necessary to amortize the lessee's investment, then the lease term may be longer than thirty-five years, but not in excess of fifty-five years.
- (3) The land leased hereunder, or any portion thereof, shall be subject to withdrawal by the board [~~of land and natural resources~~] at any time during the term of

the lease with reasonable notice and [without] compensation, [~~except as provided herein,~~] as provided in section 171- , for public uses or purposes, including residential, commercial, industrial, or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights-of-way and easements of all kinds, and shall be subject to the right of the board to remove soil, rock, or gravel as may be necessary for the construction of roads and rights-of-way within or without the demised premises [~~; provided that upon the withdrawal, or upon the taking which causes any portion of the land originally demised to become unusable for the specific use or uses for which it was demised, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value thereof shall be paid based upon the unexpired term of the lease; provided further that no withdrawal or taking shall be had as to those portions of the land which are then under cultivation with crops until the crops are harvested, unless the board pays to the~~

~~lessee the value of the crops; and provided further that upon withdrawal any person with a long-term lease shall be compensated for the present value of all permanent improvements in place at the time of withdrawal that were legally constructed upon the land by the lessee to the leased land being withdrawn. In the case of tree crops, the board shall pay to the lessee the residual value of the trees taken and, if there are unharvested crops, the value of the crops also].~~

"Tree-crop", as used in this section, shall be exclusive of papaya and banana."

SECTION 4. Section 171-38, Hawaii Revised Statutes, is amended to read as follows:

"§171-38 Condemnation of leases. The lease shall provide that whenever a portion of the public land under lease is condemned for public purposes by the State, or any county or city and county, or any other governmental agency or subdivision, the rental shall be reduced in proportion to the value of the portion of the premises condemned, and the lessee shall be entitled to receive from the condemning authority:

- (1) ~~[the]~~ The value of growing crops, if any, ~~[which]~~ that the lessee is not permitted to harvest; and

(2) [~~the~~] The proportionate value of the lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease[~~;~~ ~~provided that the~~].

The lessee [~~may~~], in the alternative, may remove and relocate the lessee's improvements to the remainder of the lands occupied by the lessee. The foregoing rights of the lessee shall not be exclusive of any other to which the lessee may be entitled by law[~~-~~], including those rights established in section 171- .

Where the portion so taken renders the remainder unsuitable for the uses for which the land was leased, the lessee shall have the option to surrender the lessee's lease and be discharged for any further liability therefor; provided that the lessee may remove the lessee's permanent improvements within [~~such~~] a reasonable period allowed by the board [~~of land and natural resources~~]."

SECTION 5. This part does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

PART II

SECTION 6. The purpose of this part is to promote and support agriculture by, among other things:

- (1) Establishing the agriculture inspection and certification special fund under the department of agriculture;
- (2) Transmitting certain fees, civil penalties, and moneys collected pursuant to section 141-4, chapter 144, part I of chapter 145, and chapter 147 by the department of agriculture to the agriculture inspection and certification special fund;
- (3) Allowing the department to enter into agreements with government and private agencies to hire inspectors;
- (4) Transferring all moneys and unpaid obligations of the certification services revolving fund on June 30, 2010, to the agriculture inspection and certification special fund; and
- (5) Repealing the certification services revolving fund.

SECTION 7. Chapter 147, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and read as follows:

"§147- Agriculture inspection and certification special fund. (a) There is established within the state treasury the agriculture inspection and certification special fund.

(b) The following sources of funds shall be deposited into the fund:

- (1) Fees, charges, fines, and penalties designated by law or rule for deposit into the fund;
 - (2) Federal funds received for inspecting, certifying, weighing, classifying, or grading of agricultural commodities to be exported from or shipped within the state;
 - (3) Grants and gifts;
 - (4) Funds received for food safety or food security certification seals;
 - (5) Funds received for promoting safety-certified food suppliers and services related to food safety;
 - (6) All interest earned or accrued on moneys deposited in the fund; and
 - (7) Any other moneys made available to the fund.
- (c) The moneys in the agriculture inspection and

certification special fund shall be expended by the department for:

- (1) The licensure of commission merchants, dealers, brokers, agents, processors, and retail merchants;
- (2) The administration, operation, and enforcement of chapter 144, part I of chapter 145, and this chapter;
and

(3) The inspection, certification, weighing, or grading of agricultural commodities that are to be imported into, exported from, or shipped within the state.

No moneys from the general or other special or revolving funds shall be expended by the department for the administration, operation, or enforcement of section 141-4, chapter 144, part I of chapter 145, chapter 150, or this chapter; provided that the expenditure of moneys from the general fund for central services and departmental administrative expenses shall be permitted."

SECTION 8. Section 141-4, Hawaii Revised Statutes, is amended to read as follows:

"**§141-4 Weights of coffee; rules.** The department of agriculture may make rules respecting the weighing of coffee prior to its shipment to points outside the [~~State,~~] state, and providing for the certification of weights thereof. Further, a reasonable schedule of fees to defray the expense of administering this section shall be established by the department, which fees shall be collected and [~~deposited with~~] transmitted to the state director of finance [~~to the credit of the general~~] for deposit into the agriculture inspection and certification special fund; provided that the department shall consult the appropriate industries, organizations, and agencies prior to the promulgation of the rules."

SECTION 9. Section 144-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There shall be paid to the department for all feeds distributed or imported for use or sale in this ~~[State,]~~ state, inspection fees as established by the rules of the department; provided that the department shall exempt by rule the payment of inspection fees on feed not subject to specific requirements of this chapter or rules adopted under this chapter. All inspection fees collected shall be ~~[deposited with]~~ transmitted to the state director of finance [to the credit of the general] for deposit into the agriculture inspection and certification special fund."

SECTION 10. Section 145-14, Hawaii Revised Statutes, is amended to read as follows:

"§145-14 Disposition of fees and charges. All fees, charges, expenses, finer collected from violations of this part, and other moneys collected pursuant to this ~~[chapter]~~ part shall be ~~[deposited with]~~ transmitted to the state director of finance ~~[to the credit of the general]~~ for deposit into the agriculture inspection and certification special fund."

SECTION 11. Section 147-10, Hawaii Revised Statutes, is amended to read as follows:

"§147-10 Income from certification and agriculture control activities. ~~[Except for fees collected by the department~~

~~pursuant to part VII, all]~~ All fees, expenses, and penalties collected by the department pursuant to this part shall be ~~[deposited with]~~ transmitted to the director of finance ~~[to the credit of the general]~~ for deposit into the agriculture inspection and certification special fund."

SECTION 12. Section 147-34, Hawaii Revised Statutes, is amended to read as follows:

"§147-34 Inspection; certification fees. The board of agriculture may designate any appropriately-certified employee or agent of the department as an inspector to classify and inspect fresh and processed flowers and foliage for quality and condition and to determine if containers, packing materials, and methods of packing meet the minimum requirements established. In addition the inspector may classify and inspect flowers and foliage for quality and condition at the request of persons having a financial interest in the commodities ~~[in order]~~ to ascertain and to certify to those persons the grade, classification, quality, or condition thereof and other pertinent facts. The department may fix, assess, and collect or cause to be collected fees for those certification services when they are performed by the employees of the department. The fees shall be on a uniform basis and in an amount reasonably necessary to cover the cost of certification services provided at the request of persons having a financial interest. ~~[Except~~

~~for fees collected by the department pursuant to part VII, all]~~
All fees collected by the department pursuant to this part shall be ~~[deposited with]~~ transmitted to the ~~[state]~~ director of finance ~~[to the credit of the general]~~ for deposit into the agriculture inspection and certification special fund."

SECTION 13. Section 147-64, Hawaii Revised Statutes, is amended to read as follows:

"**§147-64 Deposit of moneys.** ~~[Except for fees collected by the department pursuant to part VII, all]~~ All fees, charges, expenses, civil penalties, and other moneys collected by the department under this part or any rules prescribed by the department pursuant to this part shall be ~~[deposited with]~~ transmitted to the ~~[state]~~ director of finance ~~[to the credit of the general]~~ for deposit into the agriculture inspection and certification special fund."

SECTION 14. Section 147-74, Hawaii Revised Statutes, is amended to read as follows:

"**§147-74 Grading standards and regulations[-]; fees.** (a) Subject to chapter 91, the department of agriculture may make rules with respect to:

- (1) Sale and transportation for sale of eggs for human consumption;
- (2) Specific grades or standards of quality, condition and size or weight classes which shall conform when

practical to those established by the United States Department of Agriculture as local conditions will permit;

- (3) Inspection and classification;
- (4) Assessment and collection of fees for requested certification as to grade, standard of quality, condition, and size or weight classes;
- (5) Labeling of containers of imported and locally produced eggs and marking of individual imported eggs as to origin;
- (6) Seller's invoice for sale of eggs;
- (7) Records of imported shell eggs of foreign origin;
- (8) Methods of determining egg quality, which shall not include recandling or any other method applied to eggs in interstate commerce which is discriminatory or impairs that commerce in any way or requires a cost increase of eggs in interstate commerce; and
- (9) Enforcement of this part and of the rules adopted under this part.

(b) Any fees collected pursuant to subsection (a)(4) shall be transmitted to the director of finance for deposit into the agriculture inspection and certification special fund."

SECTION 15. Section 147-97, Hawaii Revised Statutes, is amended to read as follows:

"§147-97 **Disposition of fees.** All fees collected under this part shall be ~~[paid into a special fund established by the department of agriculture and shall be expended for the purposes of this part.]~~ transmitted to the director of finance for deposit into the agriculture inspection and certification special fund."

SECTION 16. Section 147-102, Hawaii Revised Statutes, is amended to read as follows:

"[+]§147-102[+] **Certification and audit services.** The department of agriculture shall fix, assess, and collect fees for certification or audit services provided by temporary inspectors employed under this ~~[part.]~~ chapter. The fees shall be in amounts necessary to cover all costs of the administration and provision of the certification or audit services provided under this ~~[part.]~~ chapter; provided that the department of agriculture shall establish charges for traveling expenses and extraordinary services when the performance of the services involves unusual cost. The fees and charges established by the department of agriculture shall not be subject to chapter 91~~[-]~~ and, upon collection, shall be transmitted to the director of finance for deposit into the agriculture inspection and certification special fund. The department of agriculture may employ temporary inspectors to assist in providing certification

or audit services under parts I, III, IV, VIII, and IX, and those temporary inspectors shall be exempt from chapter 76."

SECTION 17. Section 147-112, Hawaii Revised Statutes, is amended to read as follows:

"~~+~~\$147-112~~+~~ **Cooperative agreements and contracts to provide auditing and certification services.** The department may enter into cooperative agreements with the United States Department of Agriculture or other agreements and contracts with private parties or other governmental agencies for the purposes of:

- (1) Auditing and certifying that applicants are following good agricultural, handling, processing, and manufacturing practices; ~~and~~
- (2) Hiring and paying travel and other expenses for inspectors to perform the certification and audit services required under this chapter;
- ~~+~~ (3) Maintaining food safety, security, and product traceability~~-~~; and
- (4) Establishing and maintaining an Internet food safety promotional and reporting system."

SECTION 18. Section 147-114, Hawaii Revised Statutes, is amended to read as follows:

"~~+~~\$147-114~~+~~ **Fees and deposit of moneys.** (a) The department shall fix, assess, and collect fees for the audit and

certification services provided under this part~~(-)~~, including fees for hiring inspectors to perform the services. The fees shall be as established under cooperative agreement with the United States Department of Agriculture or other governmental agencies or, if not applicable, as established by rule under section 147-7. The department [~~may~~] shall also charge an amount necessary to cover all costs of traveling expenses and extraordinary services when the performance of the services involves unusual cost in their performance.

(b) [~~Except for fees collected by the department pursuant to part VII, all~~] All fees and expenses collected by the department pursuant to this part shall be [~~deposited with~~] transmitted to the director of finance [~~to the credit of the general~~] for deposit into the agriculture inspection and certification special fund."

SECTION 19. Section 147-126, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) [~~Except for fees collected by the department pursuant to part VII, all~~] All fees and expenses collected by the department pursuant to this part shall be [~~deposited with~~] transmitted to the director of finance [~~to the credit of the general~~] for deposit into the agriculture inspection and certification special fund."

SECTION 20. Section 147-101, Hawaii Revised Statutes, is repealed.

~~["§147-101 Certification services revolving fund. There is established a certification services revolving fund for use by the department of agriculture to support certification or audit services established under parts I, III, IV, VIII, and IX. Moneys in the fund may be expended for materials, salaries, equipment, training, travel, and other costs related to providing certification or audit services. Notwithstanding sections 147-10, 147-34, 147-64, 147-114 and 147-126, moneys derived from the certification or audit services provided by temporary inspectors employed under this part or from charges for traveling expenses or extraordinary services shall be deposited into the fund."]~~

SECTION 21. (a) The repeal of section 147-101, Hawaii Revised Statutes, shall not rescind any fees authorized or imposed under that section that would have been deposited into the certification services revolving fund. From July 1, 2010, the fees under those sections shall be deposited into the agriculture inspection and certification special fund.

(b) On the effective date of this Act:

- (1) All moneys in the certification services revolving fund on June 30, 2010, shall be transferred to the agriculture inspection and certification special fund;

- (2) All unpaid obligations of the certification services revolving fund on June 30, 2010, shall become payable from the agriculture inspection and certification special fund; and
- (3) The certification services revolving fund shall cease to exist.

SECTION 22. (a) Between July 1, 2010, and September 30, 2010, the department of agriculture shall adopt new or amend existing rules to impose or increase fees authorized to be charged under section 141-4, chapter 144, part I of chapter 145, and chapter 147, Hawaii Revised Statutes, without regard to the public notice and public hearing requirements of section 91-3, Hawaii Revised Statutes, the small business impact review requirements of chapter 201M, Hawaii Revised Statutes, or the limit on fee increases under section 92-28, Hawaii Revised Statutes. The department shall set the fees through a two-tiered increase at amounts intended to generate sufficient revenues to pay the operation and maintenance costs of implementing the agriculture inspection and certification programs of chapter 141, chapter 144, part I of chapter 145, and chapter 147, Hawaii Revised Statutes, and central services and departmental administrative expense assessments of section 36-27 and section 36-30, Hawaii Revised Statutes.

(b) If, by September 30, 2010, the department of agriculture has not complied with subsection (a), then the fee charged for each inspection or certification conducted under authority of section 141-4, chapter 144, part I of chapter 145, and chapter 147 shall be \$65 per hour or as established under cooperative agreement with the United States Department of Agriculture or other governmental agencies commencing October 1, 2010, and the fee charged for licensure of or license renewal for a commission merchant, dealer, broker, agent, processor, or retail merchant shall be:

- (1) \$80 for a commission merchant, dealer, broker, agent, or processor;
- (2) \$20 for a retail merchant; and
- (3) \$10 for each branch store,

commencing October 1, 2010.

(c) Any subsequent amendments to the rules adopted or amended pursuant to subsection (a) or the fee established under subsection (b) shall be subject to all applicable provisions of chapter 91, chapter 201M, and section 92-28, Hawaii Revised Statutes.

SECTION 23. Notwithstanding section 7 of this Act, there is appropriated out of the general revenues of the State of Hawaii the sum of \$ or so much thereof as may be necessary for fiscal year 2010-2011 for the agriculture

inspection and certification program of the department of agriculture; provided that funding shall cease when the collection into the agriculture inspection and certification special fund becomes sufficient to carry out the purposes of this part.

The sum appropriated shall be expended by the department of agriculture for the purposes of this part.

PART III

SECTION 24. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 25. This Act shall take effect on July 1, 2010, and part I of this Act shall apply only to leases entered into after the effective date of this Act.

Report Title:

Leased Public Lands; Withdrawal; Compensation; Agricultural Inspection and Certification

Description:

Provides for fair compensation when leased public land for agricultural or pastoral uses is withdrawn, condemned, or taken for public purposes. Establishes the Agricultural Inspection and Certification Special Fund, to be used for the inspection and certification of agricultural commodities.

Effective July 1, 2010. (SB2951 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

D-37

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division

December 14, 2001

Board of Land and Natural Resources
State of Hawaii
Honolulu, HI 96813

PSF: 01HD-412

HAWAII

Grant of Terms, Non-Exclusive Easement to the Department of Transportation, Highways Division in Connection with the Sandole Road Improvements Project for Palila Critical Habitat (PCH) Mitigation Purposes Affecting Portions of General Lease (GL) Nos. S-4471, S-4475, S-4477 and S-4478, Implement Act 256 SLR: 2001 Mandates; and Easement of Right-of-Entry for Management purposes; Kahe 2nd and 3rd and Kalopa, Hamakua, North Hilo, Hawaii, Tax Map Key: 4-3-10: Por. 2 and 6; 4-4-14: Por. 2 and 3; and 4-4-15: Por. 2

APPLICANT:

Department of Transportation (DOT), Highways Division in coordination with the Federal Highways Administration (FHWA).

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portions of the Government Land of Kahe 2nd and 3rd and Kalopa, Hamakua, North Hilo, Hawaii, identified by Tax Map Key: 4-3-10: Por. 2 and 6; 4-4-14: Por. 2 and 3; and 4-4-15: Por. 2, as shown on the attached maps labeled Exhibit A.

AREA:

Tax Map Key	Area (acres) Requested	Easement
4-3-10: 2	2,228.384	GL 4478
4-3-10: 6	790.943	GL 4477
4-4-14: 2	1,202.000	GL 4475
4-4-14: 3	921.629	GL 4475
4-4-15: 2	1,399.332	GL 4471
Total Area Requested	6,542.291	

ZONING:

State Land Use District: Agricultural
County of Hawaii CZO: Agricultural (A-40a)

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

12/14/2001

ITEM D-37

EXHIBIT C

TRUST LAND STATUS:

Section 5(a) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

GL 4471 (TMK: 4-4-15: 2) to Parker Ranch for pasture purposes, expiring February 28, 2011.

GL 4475 (TMK: 4-4-14: Pcr. 2 and 3) to EK Ranch Inc. for pasture purposes, expiring February 28, 2011.

GL 4477 (TMK: 4-3-10: 8) to Schuman Carriage Company for pasture purposes, expiring February 28, 2011.

GL 4478 (TMK: 4-3-10: 2) to Botelho Hawaii Enterprises for pasture purposes, expiring February 28, 2011.

CHARACTER OF USE:

The long-term restoration of a viable mamane (*Sophora chrysophylla*) forest that can support self-sustaining Paliu populations as well as the expansion and/or introduction of Paliu populations and control of Paliu predators and alien species detrimental to the survival of the Paliu.

COMMENCEMENT DATE:

Date of issuance.

LEASE TERM:

Ten (10) years

CONSIDERATION:

Fair market value, payable as a one-time payment, to be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

RENTAL REOPENINGS:

Not applicable.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In compliance with the National Environmental Policy Act and Chapter 343, Hawaii Revised Statutes, as amended, the Final Environmental Impact Statement was submitted to the Office of Environmental Quality Control for publication of its Notice of Acceptance. The Record of Decision, summarizing all of the mitigation commitments for the Saddle Road Improvements Project, was approved on October 30, 1999.

The use of the subject lands for Palila mitigation purposes was identified in the Final Environmental Impact Statement.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

1. Pay for an appraisal to determine the fair market value as a one-time payment.
2. Provide the Department of Land and Natural Resources (DLNR) with survey maps and descriptions for the easement area according to Department of Accounting and General Services, Survey Division standards at the Applicant's own cost.

REMARKS:

The Saddle Road Improvements Project involves the realignment and improvement of Saddle Road from Mamalahoe Highway (State Route 190) to Milepost 6, near the town of Hilo, a distance of approximately 48 miles.

The Saddle Road alignment that best meets its purpose impacts approximately 182.5 acres of federally designated Palila Critical Habitat (PCH) established pursuant to the US Endangered Species Act (ESA). The US Fish and Wildlife Service, which is responsible for the administration of the ESA, has determined that the construction of the improvements within the PCH will not jeopardize the Palila nor adversely modify the PCH, provided, that conservation measures identified in the ROD and the Memorandum of Understanding (MOU) regarding implementation of the Saddle Road PCH mitigation, dated August 10, 1999 are implemented.

The MOU determined that the Palila Mitigation, as presented in the Saddle Road Biological Opinion (BO) for the selected alignment, is necessary and must be implemented to ensure the successful completion of the proposed project. The BO, as a condition of constructing the Saddle Road realignment within the PCH, required the following:

1. Provision of approximately 5,143 acres of land on the north slope of Mauna Kea for Palila habitat restoration.
2. Provision of approximately 1,400 acres of land immediately adjacent to the current Palila population on the West slope of Mauna Kea for Palila habitat restoration.
3. The management of these lands for the re-establishment/sustenance of Palila in accordance with the MOU.

Staff is recommending that the PCH Mitigation Lands easement overlay the subject pasture leases. The easement will impact the leases in that ungulates, including cattle and sheep, will not be permitted to graze within the easement area as part of the requirements of the MOU and BO. This will cause the displacement of the existing lessees from grazing these lands. However, uses not inconsistent with the primary goal of the Palila mitigation program will be allowed.

DOT, in coordination with FHWA will provide compensation to the existing lessees in accordance with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. Under this Act, the tenants are eligible for reimbursement of actual reasonable expenses for vacation of the property under the relocation provisions, as well as any required payment for improvements to the property. Compensation for improvements would consist of payment for the permanent improvements (pavement, wells, new fences, etc.) made to the properties by the lessees in accordance with the lease.

In recognition of the potential impacts to the State's lessees, the 2001 Hawaii State Legislature enacted Act 236, which directs the Department of Land and Natural Resources to "expedite discussions with representatives from Parker Ranch, K.K. Ranch, Inc., S.C. Corporation, and Botolpho Ltd., Inc. to identify and investigate all alternatives that will:

1. Fully compensate the ranchers for losses suffered as a result of the withdrawal of any leased lands; and
2. Avert providing exceptions to public land leasing policies.

The department shall also authorize the lessees to utilize ten percent of remaining land for alternative agriculture use at no increase in the lease rent rate."

In compliance with the Act, staff is recommending that the lease rents be reduced in proportion to the areas being affected by the PCH Mitigation Lands easement. In addition, staff is recommending that lease easements, consistent with existing leasing policy, be considered for those leases, up to the maximum term of 55 years as provided in Chapter 171, Hawaii Revised Statutes, as amended. This would allow the lessees another 20 years to recover the operations consequences of the reduced leased areas. The lease extensions should be considered up to the termination of the leases in 2011.

RECOMMENDATION: That the Board, subject to the Applicant requirements above

- A. Authorize the issuance of an easement covering the subject PCH Mitigation Lands for the purpose of the long term restoration of a viable managed forest that can support self-sustaining Palila populations as well as the expansion and/or re-introduction of Palila populations and control of Palila predators and alien species detrimental to the survival of the Palila, subject to any applicable terms and conditions cited above, which are by this reference incorporated herein, and subject further to the following:
 1. All uses within the easement area shall be consistent with the purpose stated above. Any potential uses, including any use by the existing lessees, shall be evaluated and permitted only if the proposed use does not compromise the restoration of the managed forest.
 2. All management actions shall be consistent with the Palila mitigation goals as guided by the Biological Assessment of the Hawaii State Route 200-Maunaloa Highway to Kailipoint 6 Saddle Road Realignment Project, Island of Hawaii, the Biological Opinion of the US Fish and Wildlife Service for the Saddle Road Improvement Project and the US Fish and Wildlife Service's Palila Recovery Plan and all updates thereto.

3. All management plans or actions recommended for the easement area shall be in accordance with DLNR rules and regulations.
 4. Hunting activities that do not compromise the restoration of the mamane forest may be allowed (under the authority of DLNR) within the easement area, provided that such activities are consistent with the terms and conditions of the existing leases.
 5. The easement area shall be fenced and both domestic and feral ungulates, including cattle and sheep, removed.
 6. Access to and use of the PCH Mitigation Lands by the existing lessees shall be consistent with its purpose and subject to approval by DOT or its assigns, which will not be unreasonably withheld.
- B. Pursuant to Act 236 SLH 2001, authorize a reduction in lease rental for GL 4471, 4475, 4477 and 4478 in proportion to the leased area being impacted by the easement. The reductions shall be a percent equal to the easement area divided by the total leased area.
- C. Pursuant to Act 236 SLH 2001, amend GL 4471, 4475, 4477 and 4478 by authorizing the lessees to utilize ten percent (10%) of their remaining leased premises for alternative agriculture use at no increase in the lease rent.
- D. Agree in principal to the extension of the terms of the above leases in accordance with the provisions of Section 171-36(b), Hawaii Revised Statutes, as amended and existing Board policies for such extensions.
- E. Authorize the issuance of an immediate right-of-entry to the Applicant to enter upon the easement area for management purposes, subject to the following:
1. Effective upon approval and shall expire one (1) year thereafter, unless extended by the Department.
 2. The Grantee shall observe and comply with all laws, ordinances, rules and regulations of the Federal, State and County governments relative to the use of the subject premises.
 3. Indemnity and hold harmless clause.
 4. Liability insurance coverage clause for agents, consultants and/or contractors of DOT, Highways Division.
 5. Non-discrimination clause.
 6. Hazardous waste clause.
 7. Archeological artifacts clause.

8. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,

Gary Martin
GARY MARTIN
Land Agent *GM*

APPROVED FOR SUBMITTAL:

Gilbert S. Coloma-Agaran
GILBERT S. COLOMA-AGARAN, Chairperson

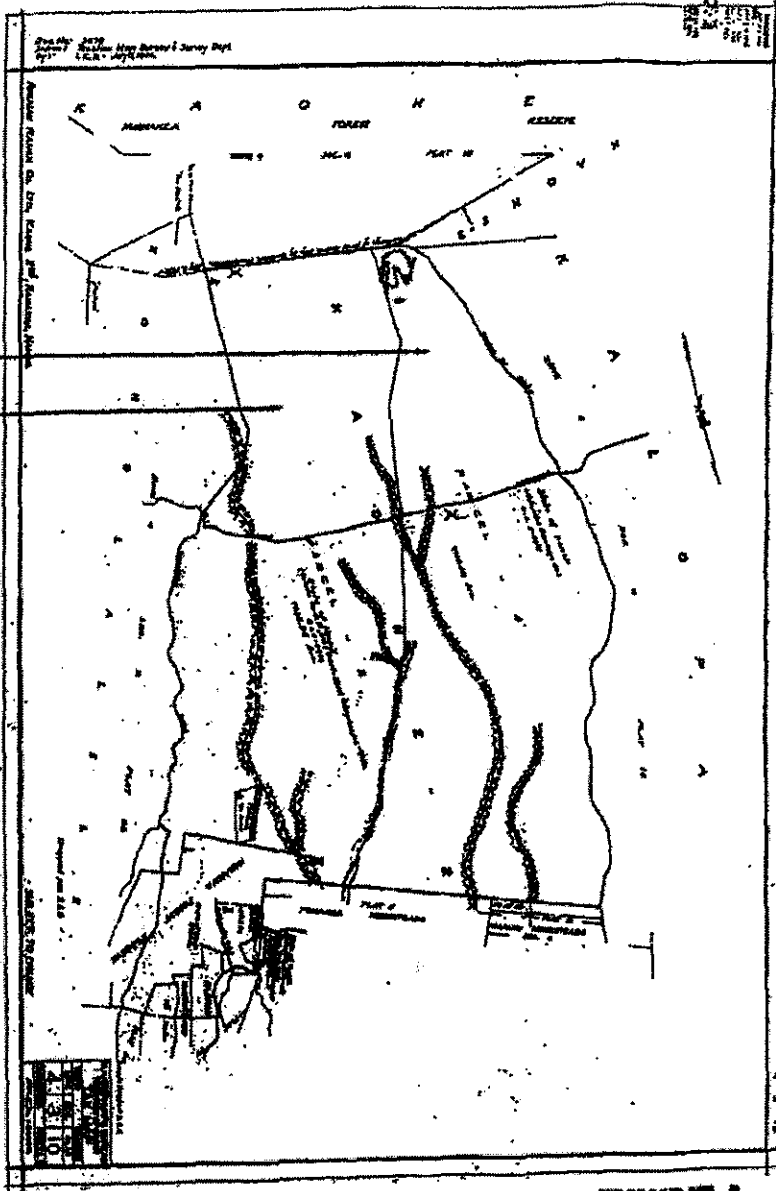


EXHIBIT A
 (to 12/14/01 submitted)

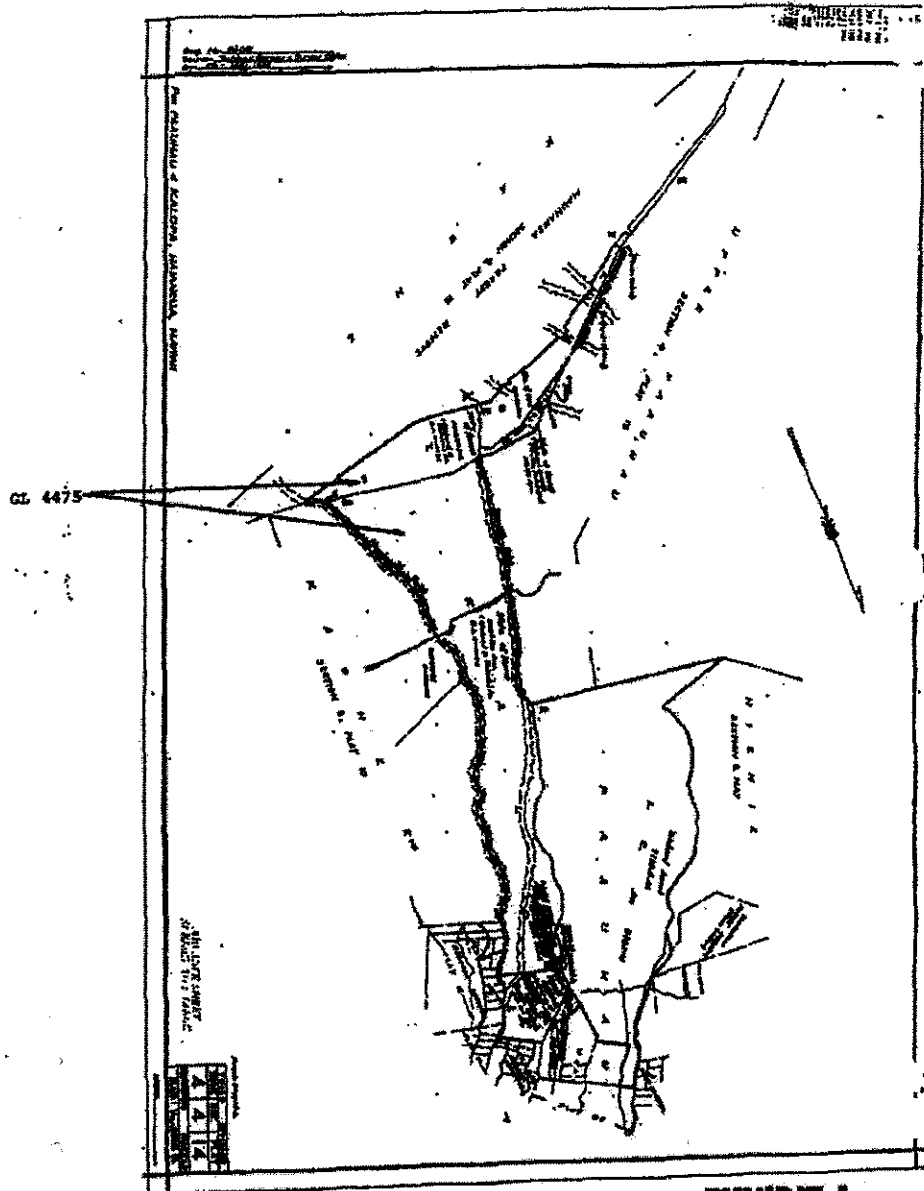


EXHIBIT A
 (to 12/14/01 submitted)