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

May 25, 2007

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

Oahu

Request for Clarification of Character of Use Provision, General Lease No. S-3856, Hemaloto Alatini and Leona Alatini, Waimanalo, Koolaupoko, Oahu, Tax Map Key:(1) 4-1-024:023.

BACKGROUND:

General Lease No. S-3856 was sold at public auction in 1965 and is located on a State lot identified as TMK:(1) 4-1-24:023 shown on Exhibit "A".

The character of use for the lease is described in paragraph 42(a) of General Lease No. S-3856 as "'Agriculture, diversified' shall mean the cultivation of truck, orchard, flower and nursery crops and shall not include or embrace the cultivation of grasses or forage crops except as 'cover crops' and then only for the short periods between crops consistent with good diversified crop practices."

Mr. and Mrs. Alatini are interested in cultivating ornamental turf grass that can be used in landscaping and erosion control projects by landscaping companies; see the letter of their attorney, John Carroll, attached as Exhibit "C". Staff agrees that turf grass products are currently an integral part of the landscape industry and are not cultivated for pasture or forage crops, nor as a cover crop. They are cultivated for sale to landscaping contractors who use this product for installing grass lawns and in erosion control projects.

There was a similar request to the Land Board on April 23, 2004, under agenda item D-8, attached as Exhibit "B". General Lease No. S-3780, located in Waimanalo, Oahu, had the same character of use provision as the subject lease. The lessee was a landscape contractor whose main business was to supply hybrid turf grass for ornamental and erosion control purposes. The lessee was unsure whether his turf grass operation was in compliance with the lease character of use provision and requested clarification from the Board. Staff at that time considered turf grass as a nursery product and requested the Land Board's affirmation of turf grass propagation as an allowable use under General Lease No. S-3780. This request was approved.

Staff currently believes that turf grass propagation has developed into a major agricultural product over the last thirty (30) years and should be included as a permissive use pursuant to the character of use provision of General Lease No. S-3856.

Mr. and Mrs. Alatini are current in all lease compliance issues regarding the rent, liability insurance, performance bond and are currently processing a conservation plan. The Lessees, have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Staff respectfully requests that the Land Board affirm turf grass propagation as a permissive use pursuant to the character of use provision of General Lease No. S-3856.

Recommendation:

That the Land Board affirm turf grass propagation as a permissive use pursuant to the character of use provision of General Lease No. S-3856.

Respectfully Submitted,

Steve Lau for

Cecil Santos
Oahu District Land Agent

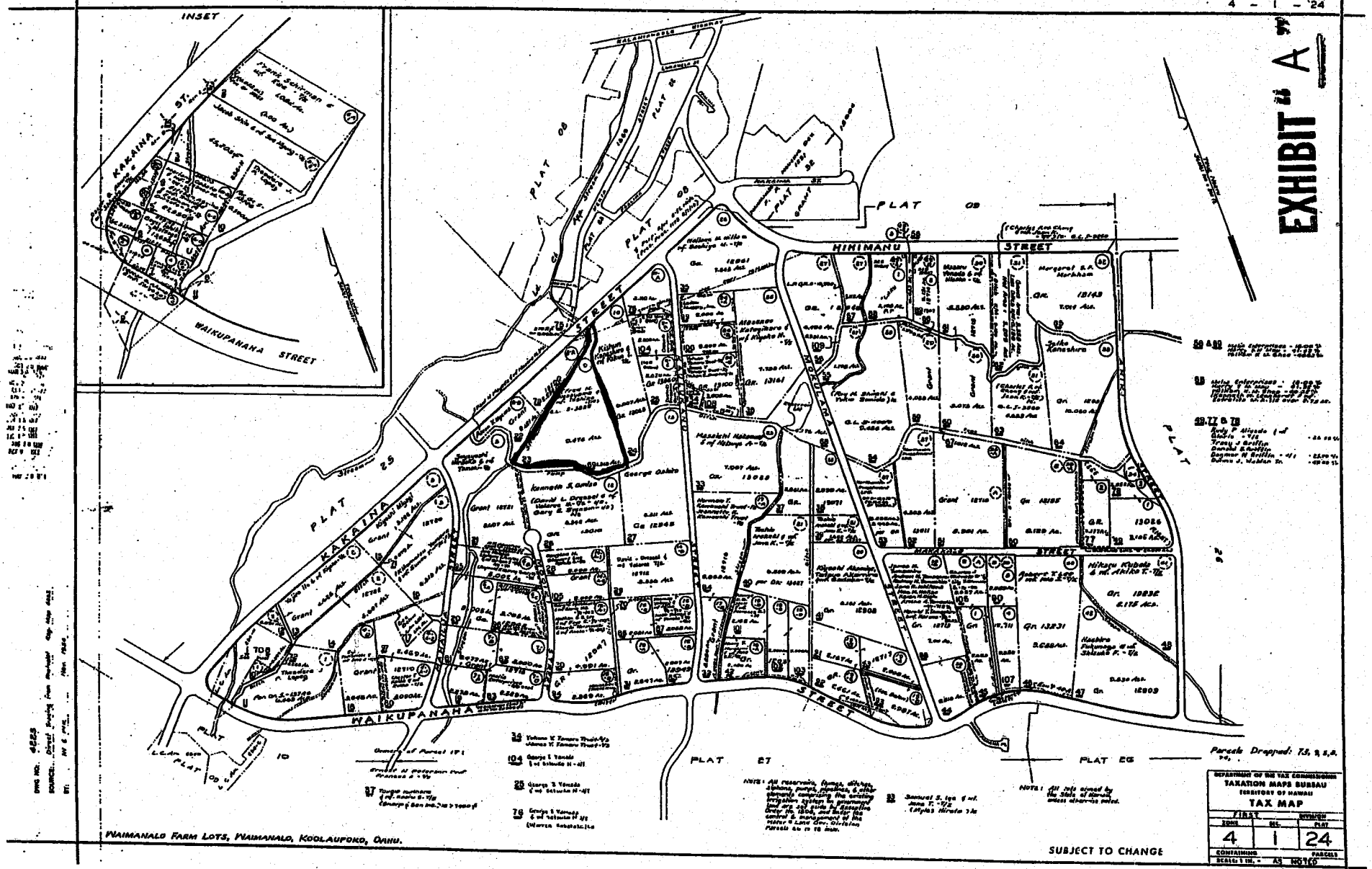
APPROVED FOR SUBMITTAL:

Allan A. Smith

Allan A. Smith, Interim Chairperson

4 - 1 - 24

EXHIBIT "A"



V-U

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

April 23, 2004

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

OAHU

Request for Clarification of Character of Use, General Lease No. S-3780, Campbell Cavasso, Lessee, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-026:019.

BACKGROUND:

General Lease No. S-3780 was sold at public auction in 1963. The character of use of the subject lease is "Diversified Agriculture" which is further defined in the lease document as "the cultivation of truck, orchard, flower and nursery crops and shall not include or embrace the cultivation of grasses or forage crops except as "cover crops" and then only for the short periods between crops consistent with good diversified crop practices; provided that nothing in this paragraph shall be construed as intending to prohibit the lessee and his employees from maintaining a home garden and keeping chickens or other food and/or pleasure animals (excepting swine) for his own use and not for sale to others."

On September 13, 2002, Item D-17, the Board consented to the assignment of GL S-3780 from Napuanani Farms to Campbell Cavasso. The Board also authorized the lease extension up to December 1, 2018.

Mr. Cavasso is a landscape contractor of which his main business is to supply hi-brid turf grass for ornamental and erosion control purposes. He applies a process called hydro-sprigging. Basically, a layer of sprigs is laid on the ground and mulch is applied. When the customer places an order, the grass will be harvested and mixed with fertilizer before it is sprayed on the property. The list of customers include Goodfellow Bros., Delta Construction, Ultimate Innovations, Distinct Landscape which are either construction or landscape contractors.

Mr. Cavasso has some concerns on the language used for the character of use in the subject lease as it mentions "……shall not include or embrace the cultivation of grass……". Mr. Cavasso believes that the intention of such language was to prohibit any pasture or grazing on the properties when the lease was sold in the 60's. In current agricultural industry, turf grass is simply one type of nursery products which is permissible in the lease. He requests the

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
April 23, 2004

ITEM D-8

EXHIBIT "B"

existing lease agreement be interpreted permissively to allow ornamental turf propagation. A copy of his request is attached as Exhibit A.

Staff researched the subject lease and other leases sold around the same time. Staff cannot find any indication of the intention of the character of use language, in particular, the explicit prohibition of grass or forage crops. Staff discussed the request internally and we do not consider the request to be unreasonable in view of the advance of agriculture from the 1960's to now. Our land agent who was formerly the Agricultural Specialist commented that the language appears to prohibit pasture or grazing and growing turf grass should be considered as a nursery crop.

Staff also discussed the case with the Department of Agriculture (DOA). DOA classifies turf grass as one type of nursery crop and this department considers nursery crop allowable under diversified agriculture.

Currently, when staff seeks authorization from the Board to dispose of new agricultural leases, staff would recommend "intensive agriculture" which prohibits raising of animals on the premises. Such use will allow the tenants to do anything permissible under the agriculture zoning, other than raising of animals. This current practice would allow Mr. Cavasso to grow turf grass.

The lessee has provided current liability insurance and performance bond and the rent is current.

Staff believes that growing turf grass on the subject lease premises does not conflict with the apparent intent of the prohibition in the character of use.

RECOMMENDATION:

That the Board affirm that turf grass propagation is an allowable use under General Lease No. S-3780.

Respectfully Submitted,

Barry Cheung

Barry Cheung
Acting Supervising Land Agent

APPROVED FOR SUBMITTAL:

for Peter T. Young, Chairperson

Cam Cavasso
41-530 Waikupanaha St.
Waimanalo, Hawaii, 96795

RECEIVED
LAND DIVISION

2004 MAR 16 A 9:19

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

March 15th, 2004

To: Chairman of the Board,
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hi 96809

From: Cam Cavasso, Owner
Lease number S-3780

Subject: Request for permissive interpretation of "Diversified Agriculture" Lease language to allow for ornamental hi-brid turf propagation.

Dear Sirs,

The Board of land and Natural Resources authorized the leasing of Waimanalo lot number S-3780 for the purpose of "Diversified Agriculture" August 16th, 1963. The lease has been transferred three times in the intervening forty years. We are the current lessees, operating our landscape business, Cam Cavasso doing business as Hydroseed Hawaii on the lease property.

Current language definitions found in recent new lease agreements for Waimanalo farm property leases similar to ours (i.e. tax map key (1) 4-1-27:11 dated June 2002) authorize permitted use for intensive agriculture purpose. Defined as:

> Character of use:
> Intensive agriculture purpose means the cultivation of truck, orchard, flower and foliage crops and any other agricultural use allowed under the county zoning excluding pasture, raising of animals, and raising of poultry.

Current definitions of Agriculture or agricultural (approved by the legislature on May 27th, 1988) SECTION 1. Section 171-1, Hawaii Revised Statures, reads as follows:

> "Agriculture or agricultural" means the planting, cultivating, harvesting, and processing of crops, including those planted, cultivated, harvested, and processed for food, ornamental, grazing, or forestry purposes, and

EXHIBIT A

including aquatic life farmed or ranched as aquaculture as defined by section 187A-1:"

Old language found in our Waimanalo farm lease dated December 1963 is as follows:

> 18. Character of use.
> 42. Definitions. As used herein, unless clearly repugnant to the context:
> (A) "Agriculture, diversified" shall mean the cultivation of truck, orchard, flower and nursery crops and shall not include or embrace the cultivation of grasses or forage crops except as "cover crops" and then only for the short periods between crops consistent with good diversified crop practices;

We request that the agricultural language in the existing lease agreement be interpreted permissively to allow ornamental turf propagation. The original contract, while clearly intended to disallow animal husbandry and grass growing for animal grazing and forage crops, is subject to miss application in light of current agricultural products and services.

The old language is ambiguous if not interpreted in the context of modern evolving practices to accommodate typical current hi-brid or recent high tech agricultural products which were non existent at the time of the original lease 40 years ago in 1963. Evolutionary developments have created new products and industries and markets not anticipated 40 years ago. And so has our language evolved over 40 years.

For example, a "mouse" would never have been tolerated in the office of a nursery 40 years ago. It would have been trapped and disposed of. But today, "mouses" are required, along with computers on practically every desk in Hawaii. 40 years ago, "spam", was only something for eating. SPAM today, is a major internet nuisance, subject to negative legislation. 40 years ago, "ice" was only welcome in every home, keeping our beverages cold. ICE today, is a terrible and deadly scourge, condemned in our community.

New or recently worded contracts for farm leases in Waimanalo accomplish the animal husbandry prohibition purpose intended by simply using the words "excluding pasture, raising of animals". Allowing ornamental turf growing should be consistent with the original terms of the lease.

Modern "Diversified Agriculture" rightfully includes hi-brid turf grass grown for ornamental and erosion control purposes as a major agricultural industry for Hawaii. 40 years ago grass was grown only for pasture use or seeded for lawns, golf courses and temporary erosion control. 40 years ago, grass on farms, was only considered in context of pasture with grazing animals. Today however, this brand new and viable agricultural industry product and service, hi-brid turf grass, exists, having been conceived, birthed and matured, all in less than 40 years.

Permissive interpretation of the language requested, to allow for turf propagation will not materially change the Lease contract as originally advertised and contracted (Diversified Agriculture). It can permit the growing and propagation of a landscape high-brid product which did not exist at the time of the original lease in 1963, and which is consistent with the spirit and intent of both the old and new agricultural farm leases.

Turf products are now an integral part of the landscape industry. Turf grass is a high-brid/high tech seedless product, developed in recent years for landscape and ornamental purposes only. Hi-brid turf grass is not intended for pasture or forage crops.

Permissive interpretation of our existing Waimanalo farm lease, allowing for the growing of turf products, should be considered exclusive of animal husbandry or grazing restrictions. Allowing for turf propagation is consistent with the spirit of the lease and should simply be considered an adaptation of old contract language (1963) to accommodate current and modern diversified agricultural techniques which were non existent at the time of the original contract.

Permissive interpretation of "Diversified Agriculture" with modern application conforms to the intent of, and continues in the spirit of, the original contract by accommodating modern invention, new products and language, and new developments without creating a lease different from that which was offered at the original public auction. Permissive interpretation allows an old contract with 40-year-old language to adapt to the changing agricultural needs and environment of Hawaii.

Thank you for your consideration.

Sincerely,

Cam Cavasso
Owner and lessee

Cc Hawaii Attorney General, The Honorable Mark Bennett