

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

November 16, 2007

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

Land Board Members:

SUBJECT: Request for Approval to Terminate the Surrender Agreement Between the Department and McBryde Sugar Company, LTD at Tax Map Key (4) 5-8-001:001, Wainiha Valley, Hanalei District, Kauai Pursuant to Section 183-15, Hawaii Revised Statutes, and Remove Same From Halelea Forest Reserve, and the Forest Reserve System.

Background: The private lands comprising Tax Map Key (4) 5-8-001:001, Hanalei District, Kauai (approximately 10,120 acres) are owned by McBryde Sugar Company, Limited (MSC), and lie within the boundaries of the Halelea Forest Reserve (Governor's Proclamation dated August 24, 1905). Over 90% of this parcel lies within the Preservation Subzone of the State's Conservation District, while a smaller area surrounding the central makai river valley lies within the Resource Subzone.

Pursuant to Section 183-15, Hawaii Revised Statutes, the Department of Land and Natural Resources, Division of Forestry and Wildlife (DLNR) and MSC entered into a 20-year surrender agreement for the subject lands within Wainiha Valley on February 10, 1948. The agreement was renewed, at the request of the landowner, on February 14, 1969 and again on June 7, 1989. The current agreement is scheduled to expire on June 6, 2009.

McBryde Sugar Company, Limited, by this agreement surrendered to the State the care, custody, and control, except water rights, that portion of land of the Ahupuaa of Wainiha, occupying the mauka portion of Wainiha Valley (Exhibit A). Among other terms, a surrender agreement imposes forest reserve status on a given land area for watershed management and protection by the Department, while providing tax benefits to the landowner.

This parcel of land extends from the peak of Mount Waialeale and adjoins the Alakai Wilderness Preserve along its western boundary (Exhibit B). The topography is rough and broken and uses other than watershed are limited.

The Nature Conservancy of Hawaii's (TNC) identification of this area as having high hydrologic and biological values and low ungulate and weed threats prompted them enter into a Conservation Management Agreement (CMA) with MSC in April 2007. The CMA covers approximately 7,000 acres, or 70% of the mauka portion of the subject parcel, and will be valid for a term of 10 years. Because of the existence of the DLNR-MSD surrender agreement, the term of the CMA between MSC and TNC will not commence until the surrender agreement expires or terminates. Pursuant to the CMA, TNC will undertake certain conservation management activities including weed control, feral animal management, trail maintenance and educational activities.

Discussion: Currently the Division expends few resources on managing the subject lands. Based on the development of the TNC-MSD CMA and correspondence with both parties, the Division believes that the surrender agreement is no longer necessary in order to protect the watershed values of this area. The Division also believes that Conservation District laws provide the additional contemporary protections that are in the State's interest relating to important watershed lands that are privately owned. Therefore, the Division recommends that the Board consent to the cancellation of this surrender agreement between DLNR and MSD approximately nineteen (19) months in advance of the end of the agreed upon twenty (20) year term. A draft version of a cancellation document is attached (Exhibit C).

In relation to private lands, forest reserve statutes and rules are intended to apply to those private lands that have been surrendered to the Government. Surrender agreements allow the State to exercise control and management over private lands as if they were forest reserves. The Department of the Attorney General has recommended to DLNR that private lands that are not surrendered to the government and which are within proclaimed Forest Reserve System boundaries should be excluded from the Forest Reserve System. The Division therefore recommends Board approval to remove the subject private parcel from the Halelea Forest Reserve.

RECOMMENDATIONS:

1. Pursuant to Section 183-15, Hawaii Revised Statutes (HRS), approve of the termination of the subject surrender agreement with the consent of the Department.
2. Authorize the Chairperson on behalf of the Department to negotiate and execute an agreement terminating the surrender agreement between DLNR and McBryde Sugar Company, Ltd., subject to the following:
 - A. Review and approval by the Department of the Attorney General; and
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

SURRENDER AGREEMENT

THIS AGREEMENT made this 7th day of June, 1989, by and between McBRYDE SUGAR COMPANY, LTD., a Hawaii corporation, hereinafter called the "OWNER", and the STATE OF HAWAII, by its Board of Land and Natural Resources, hereinafter called the "STATE";

WITNESSETH:

THAT, pursuant to the provisions of Chapter 183 Section 15, Hawaii Revised Statutes, the Owner, in consideration of the premises and of the conditions, covenants and agreements hereinafter contained, does hereby surrender to the State the care, custody and control of the following described lands for forest or water reservation for a term of not less than twenty (20) years from the date hereof:

That portion of the Ahupuaa of Wainiha, Royal Patent 7194 occupying the mauka portion of Wainiha Valley described as follows:

Beginning at a x on set stone in middle of ridge on the northerly boundary of this lot, the coordinates of which referred to Government Survey Triangulation Station "NIHA 2" being 21,141.0 feet South and 9,600.5 feet West and running as follows:

1. Following up middle of lateral ridge in south-easterly direction to the watershed boundary between the ahupuaas of Wainiha and Lumahai;
2. Thence following up this watershed boundary between Wainiha and Lumahai to the summit forming the triple divide between the ahupuaas of Wainiha, Lumahai and Hanalei;

3. Thence following the divide between the ahupuaas of Wainiha and Hanalei to the triple divide between Wainiha, Hanalei and Wailua;

4. Thence following the divide to Waialeale;

5. Thence following in a westerly direction along the divide between Wainiha and Makaweli to the triple divide between the ahupuaas of Wainiha, Makaweli and Waimea;

6. Thence following the divide between Wainiha and Waimea in a northwesterly direction to the triple divide between the ahupuaas of Wainiha, Waimea and Hanakapiai;

7. Thence following the divide between Wainiha and Hanakapiai to the junction of a lateral ridge on the north side of Maunahina stream watershed;

8. Thence down the middle of said lateral ridge in a southeasterly direction to a x on rock on the north edge of the North branch of Maunahina Stream, 15 feet east from center line of aqueduct;

9. Thence following around curve of aqueduct up the valley to a x on concrete block;

10. Thence running across the valley and Wainiha Stream to the point of beginning; containing an area of 10,120 acres.

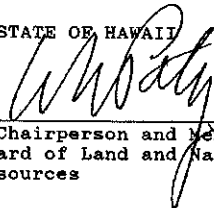
IT IS MUTUALLY AGREED AND UNDERSTOOD AS FOLLOWS:


1. That the State does hereby accept said lands for forestry purposes only.
2. That the State shall not be obligated to pay any rent whatsoever during the period of surrender.
3. That the State may develop and improve such surrendered lands through plantings and erosion control.
4. That the State may construct and install such improvements as may be necessary.
5. That the government shall not retain title to any improvement, and the party surrendering shall not, at the end of the surrender period, be required to pay the government the value of any timber or other crops planted during the term of surrender.

6. That the State shall not levy or collect any taxes on the private lands so surrendered so long as the lands remain exclusively under the control of the State as a forest reservation; provided, however, that if the lands so surrendered are withdrawn by the Owner prior to the expiration of said surrender period without the consent of the State, the said tax exemption privilege shall be cancelled retroactive to the date of this Agreement of Surrender and all taxes that would have been due shall be payable with a five per cent per annum penalty from the respective dates that said tax payments would have been due; provided, further, that nothing herein shall be deemed to limit the power of the State to impose, as a condition to the granting of its consent, conditions, including, without limiting the generality of the foregoing, those relating to the use of such lands and the State may also require the payment of a portion of the taxes that would have been due.
7. That the Owner reserves all rights to water located or arising on or flowing through said land, and the right to develop and utilize the same, and also reserves all existing roads, telephone and electric lines and appurtenances used in connection with its hydroelectric plant or forming a part same including, but not limited to, intake, dams, aqueduct, etc., and the right to repair, maintain and operate the same.

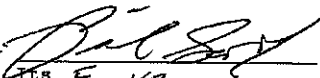
IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be duly executed this 7th day of June, 1989; and McBRYDE SUGAR COMPANY, LTD., has caused its corporate seal to be affixed hereto and its corporate name to be signed by its proper officers thereunto duly authorized by its Board of Directors this 7th day of June, 1989, both effective as of the day and year first above written.

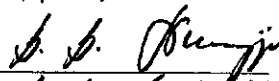
STATE OF HAWAII

By 
Chairperson and Member
Board of Land and Natural
Resources

By 
Member
Board of Land and Natural
Resources

McBRYDE SUGAR COMPANY, LTD.

By 
Its Ex VP

By 
Its Asst. Secretary

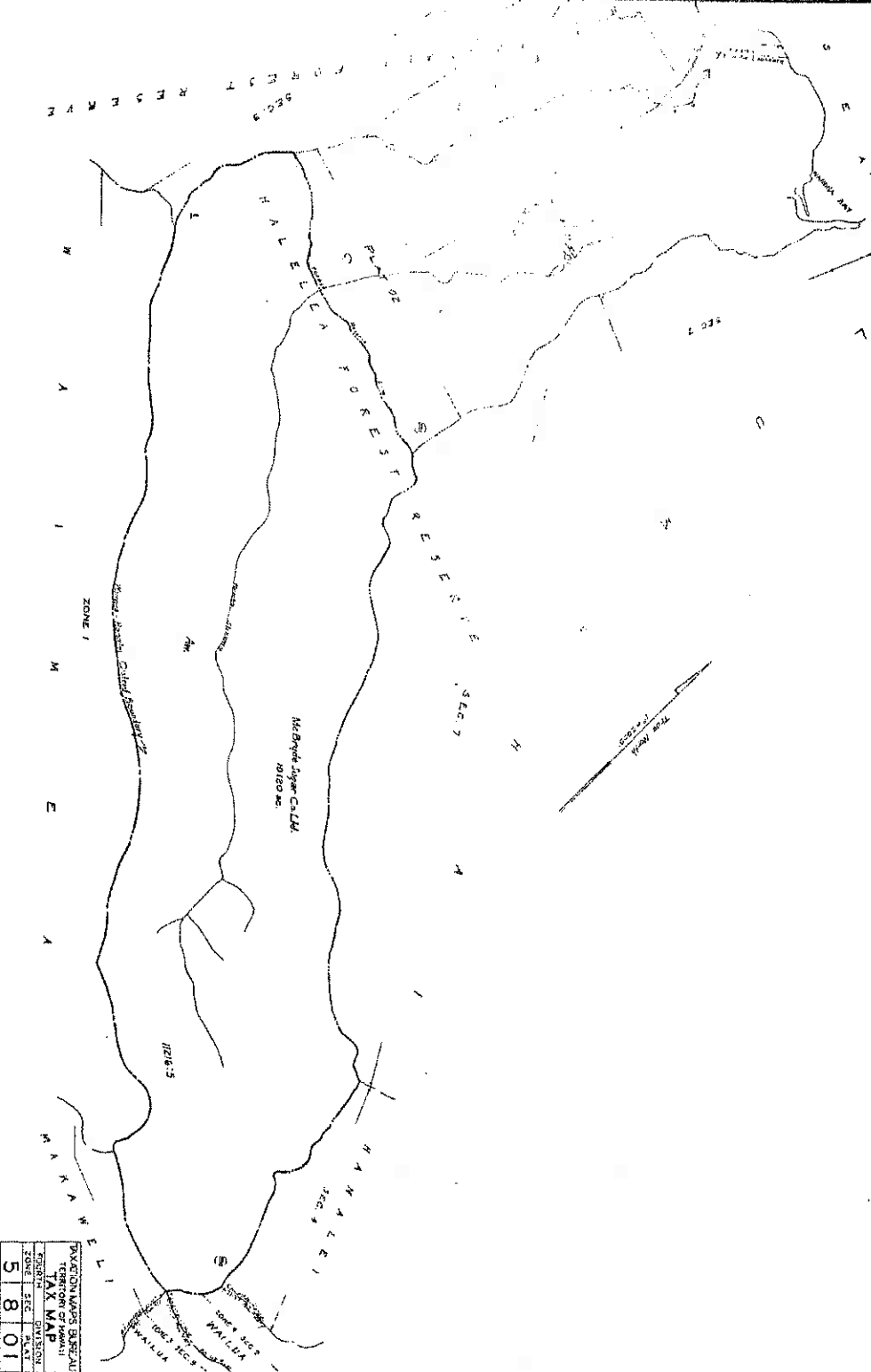
APPROVED AS TO FORM:


Deputy Attorney General

Dated: May 31, 1989

Owe No: 3102
 Scale: Top Maps Bureau USGS, Survey Dept
 by: L.C. 11-28-1925

THE HAWAIIAN FOREST PRESERVE, MAUI, HAWAII, CANAL

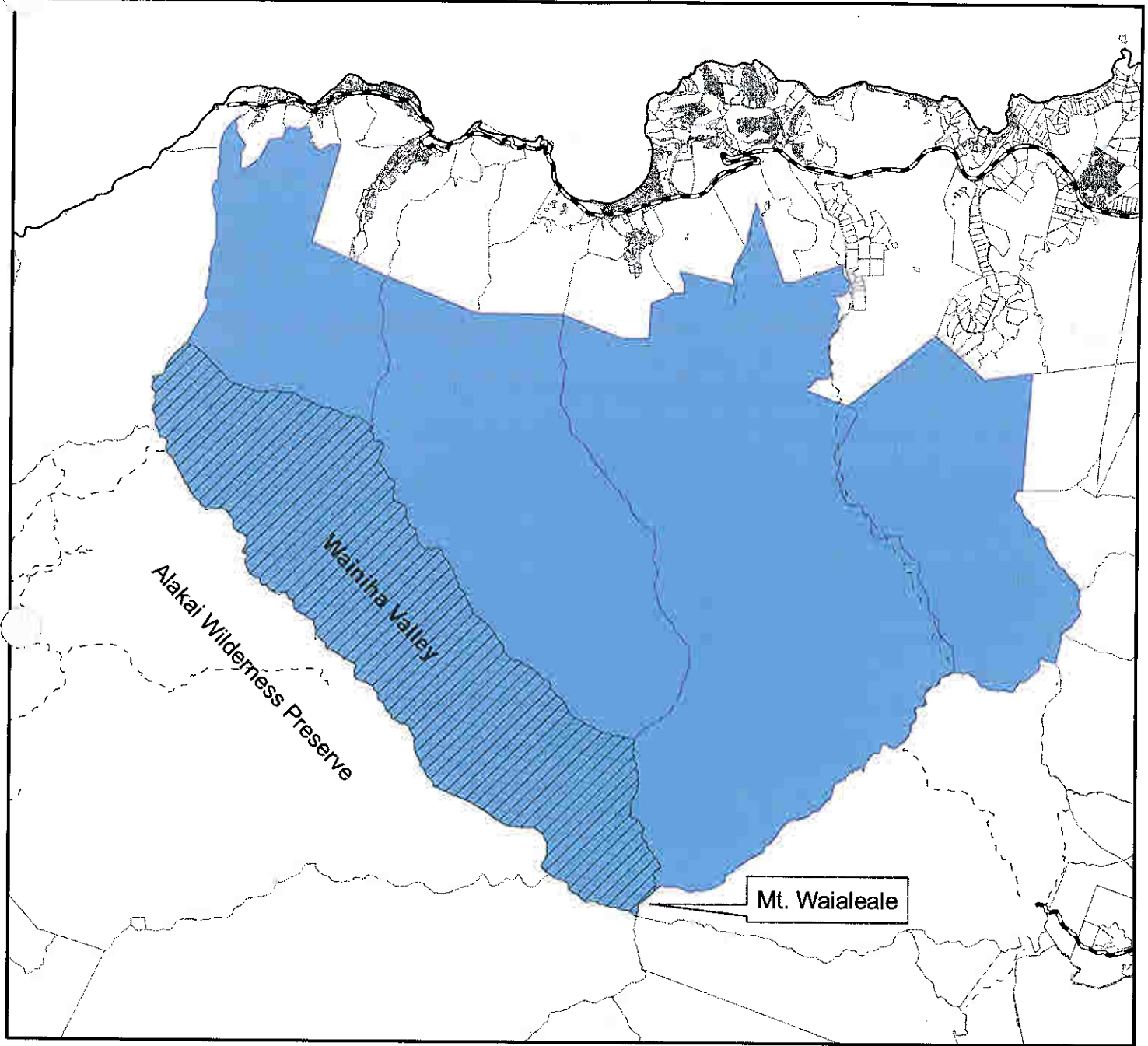


SUBJECT TO CHANGE





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TERRITORY OF HAWAII	8
MAUI	0
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REVISION	

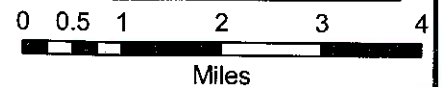
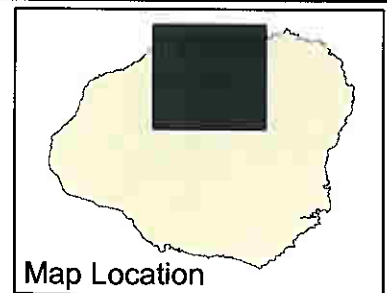
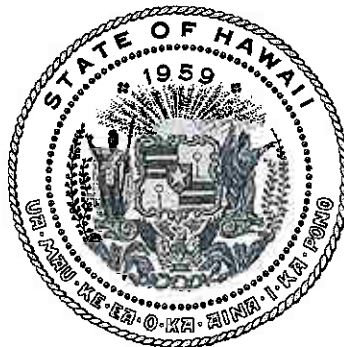
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Exhibit B: Proposed Removal from Halelea Forest Reserve Wainiha Valley, Kauai



Legend

-  Wainiha Valley TMK (4) 5-8-001:001
-  Halelea Forest Reserve
-  State Highway
-  Trails



November 16, 2007 Phone (808) 587-4166

