

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

October 8, 2021

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

PSF No.: 19HD-104

**HAWAII**

Issuance of Revocable Permit and an Immediate Management Right-of-Entry Permit to  
Gray Media Group, Inc., Humuula, North Hilo, Hawaii, Tax Map Key: (3) 3-8-001:020.

APPLICANT:

Gray Media Group, Inc.

LEGAL REFERENCE:

Sections 171-13 and -55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Mauna Loa situated at Humuula, North Hilo, Hawaii,  
identified by Tax Map Key (3) 3-8-001:020, as shown on the attached map and photos  
labeled **Exhibit A**.

AREA:

0.918 acre (40,000 square feet), more or less.

ZONING:

State Land Use District: Conservation.  
County of Hawaii Zoning: Forest Reserve (Conservation District).

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act.  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO.

CURRENT USE STATUS:

The subject property was previously encumbered by General Lease No. S-5265 (GLS 5265) to Raycom National Inc., now called Gray Media Group, Inc. (Gray), for television translator facility purposes. GLS 5265 expired on July 7, 2018. Gray is requesting a Revocable Permit for the subject property. Gray has continued television translator facility operations on subject property while a revocable permit is being processed. Gray has continued to make lease payments and maintain liability insurance during this phase.

CHARACTER OF USE:

Television translator facility purposes.

COMMENCEMENT DATE:

Right-of-Entry: Effective retroactive to July 8, 2018  
Revocable Permit: First day of the month to be determined by the Chairperson

MONTHLY RENTAL:

A monthly rent of \$740.83, based upon the annual rent of GLS 5265 at the time of expiration on July 7, 2018, i.e., \$8,890.00 annually. This rent amount will remain fixed until an independent appraiser may determine valuation of land, subject to review and approval by the Chairperson.

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200.1-16 and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1, Part 1, Item #44, where Type 1 exemptions involve "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing." and where Item No. 44 under Part 1 applies to "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing." Exemption Notification attached as **Exhibit B**.

DCCA VERIFICATION:

Place of business registration confirmed: YES X NO

Registered business name confirmed:	YES <u>X</u>	NO <u>  </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u>  </u>

JUSTIFICATION FOR REVOCABLE PERMIT:

Staff believes it is in the best interest of the community to allow applicant to continue its business operations on subject property with a month-to-month revocable permit. The applicant understands that the revocable permit is temporary, and that Land Division may request the Board to authorize the sale of a new lease of the subject property by public auction or to issue a new lease to a qualified public utility company or eleemosynary organization.

REMARKS:

HISTORY

At its meeting of April 22, 1992, the Board of Land and Natural Resources, under agenda item H-6, approved the issuance of Conservation District Use Permit, Permit No. HA-2514, to KFVE Joint Venture dba KFVE Channel 5 for the development and operation of a Television Translator Facility Site. General Lease No. S-5265 (GLS 5265) was originally awarded to King Broadcasting Company (King), the successful bidder at public auction, on October 22, 1992, at the State Office Building in Hilo, Hawaii. GLS 5265 was issued for the operation of a Television Translator Facility Site, for a term of twenty-five (25) years, commencing on the July 8, 1993, up to and including July 7, 2018. The Television Translator Facility Site was completed by King on September 17, 1993. At its meeting of September 24, 1999, the Board of Land and Natural Resources, under agenda item D-11, approved the Assignment of GLS 5265 from King to Raycom National Inc. (Raycom) for same character of use.

LEASE EXPIRATION

In a letter dated July 5, 2018 (received July 6, 2018), Raycom requested an Extension of GLS 5265, one day before expiration date. HRS §171-36 (b) authorizes the Board to extend a lease under some circumstances, however, a lease generally cannot be extended once it expires. As such, GLS 5265 expired on July 7, 2018.

REQUEST FOR NEGOTIATED DIRECT LEASE

In a letter dated July 20, 2018, Raycom requested a direct lease as a public utility, pursuant to HRS §171-95 (2). Raycom was subsequently provided with a direct lease application form. On January 2, 2019, Raycom was acquired by the Gray Media Group, Inc. (Gray). Gray completed and submitted a direct lease application, as a public utility, on April 24, 2019.

REQUEST FOR REVOCABLE PERMIT

Staff discovered that Gray does not have a “Certificate of Public Convenience and Necessity (CPCN)” from the State Public Utilities Commission (PUC). Accordingly, Gray is not recognized by the State as a public utility, pursuant to HRS §269-7.5 (a),

stating that “No Public utility, as defined in section 269-1, shall commence its business without first having obtained from the PUC a CPCN.” Accordingly, Gray does not qualify for a direct lease as a public utility, pursuant to HRS §171-95 (2). Gray previously considered obtaining a CPCN with subsequent regulation by the PUC, however, on December 8, 2020, Gray confirmed that it would not pursue a CPCN.

Since Gray does not qualify for a direct lease as a public utility, on March 10, 2021 Gray requested to continue its operations as a television translator facility under a month-to-month revocable permit. Gray was subsequently provided with a revocable permit application that was completed and submitted to staff on April 15, 2021.

#### CURRENT STATUS

Gray has continued to make lease rental payments and maintain liability and fire insurance and bond on subject property during this period.

#### INTERIM

Gray will continue to make monthly lease rental payments of \$740.83 (based upon the annual rent of GLS-5265 at the time of expiration on July 7, 2018) while a month to month revocable permit is being processed. Gray will also continue to maintain the liability and fire insurance and the bond on subject property while the revocable permit is being processed.

#### ALLOWED USE

The proposed use is allowable under current zoning. The subject property is classified Conservation by the State and Forest Reserve/Conservation by the County. Translator facility site use and other communication site uses are allowed in the Conservation District. The Office of Conservation and Coastal Lands (OCCL) has confirmed that a new CDUP is not necessary because the new lease does not constitute a change in character of use.

#### GRAY MEDIA GROUP, INC.

Gray is one of the largest television conglomerates in the country. It owns and/or operates television stations in 93 television markets. Gray stations cover approximately 24 percent of US television households and broadcast approximately 400-separate programming streams, including nearly 150 affiliates of the CBS/NBC/ABC/FOX networks. In Hawaii, Gray does business as KGMB (CBS), KHNL (NBC) and K5. Collectively, these stations make up Hawaii News Now, Hawaii's dominant multimedia news organization with the largest digital news footprint in the islands. Gray has 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.

#### OWNERSHIP OF IMPROVEMENTS

Although the State arguably has a claim to the ownership of the communications tower and other improvements on the premises of expired GLS 5265, staff recommends that the Board require the removal of the improvements instead of asserting ownership of them.

GLS 5265 provides in relevant part as follows:

9. Improvements. The Lessee shall not at any time during the term construct, place, maintain or install on the premises any building, structure or improvement of any kind and description except with the prior written approval of the Board and upon those conditions the Board may impose, including any adjustment of rent, unless otherwise provided in this lease. The Lessee shall own these improvements until the expiration or termination pursuant to a breach of the lease, at which time the ownership shall, at the option of the Lessor, remain and become the property of the Lessor or shall be removed by Lessee.

The improvements include the communications tower, a concrete pad, a steel control room mounted on supports, and chain-link fencing, as shown on the attached photos labeled **Exhibit A**. Land Division recommends against the State asserting ownership of the improvements because the cost of removing them may be substantial. The site is in the Mauna Loa Forest and Game Reserve and in the conservation district and, as such, a site plan approval or other permitting requirements would need to be satisfied before the improvements could be removed.

Land Division would have required Gray to remove the improvements immediately if Gray had indicated an intention to terminate its use of the site. However, Gray continued to use the improvements and equipment located on the lease premises after lease expiration. If the Board approves the issuance of a revocable permit to Gray, staff is including a recommendation below that Gray be required to remove the tower at the expiration or earlier termination of the revocable permit unless the Board and Gray agree in writing to a different disposition of the improvements at that time.<sup>1</sup>

The result of this approach is that the rent charged under a new revocable permit will be for land only. Staff believes it is more important for the State not to be saddled with the cost of removal of improvements than to collect fair market rent on the value of the existing improvements under a revocable permit, especially because “but for” King Broadcasting approaching the State about leasing these conservation lands on Mauna Loa for television translator purposes, the State would not have leased the lands at all.<sup>2</sup>

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1 If the Board approves a new long-term lease of the site in the future and the lessee under that lease desires to continue using the improvements, staff may revisit the issue of ownership of the improvements with the Board.

2 The leases for the former Uncle Billy’s Hilo Bay Hotel were old forms that did not require the lessee to remove the improvements at least termination. The County of Hawaii shut the hotel down in 2017 for building and fire code violations. In 2018, the cost of demolishing the existing improvements was determined to be in excess of \$8 million. Also, in recent history, staff had recommended, and as a result the Board ordered, Hawaiian Telcom to remove a similar telecommunications tower at Summit Camp on Kauai which was also on conservation lands and in the Forest Reserve. The Department did not have a desire to seek to issue a new lease once Hawaiian Telcom decided to cease operations at the end of the lease term. Hawaiian Telcom removed the improvements and restored the land. This microwave tower is likewise on conservation land and within the Mauna Loa Forest and Game Reserve.

#### TRANSITION PERIOD

Given the circumstances above, staff believes it is in the best interest of the community to allow applicant to continue its business operations on subject property with a month-to-month revocable permit. The Applicant understands that the revocable permit is temporary, and that Land Division may request the Board to authorize the sale of a new lease for the site at public auction or to issue a direct lease to a qualified entity. Because a revocable permit takes time to process through Land Division and the Department of the Attorney General, staff is also recommending the issuance of an immediate right-of-entry permit (ROE) at the same rent provided above for the revocable permit. The ROE will terminate upon issuance of the revocable permit.

#### RECOMMENDATIONS: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, Hawaii Administrative Rules, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the issuance of a revocable permit to Gray Media Group, Inc. covering the subject property under the terms and conditions cited above, which are by this reference incorporated here in and further subject to the following:
  - a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time; provided, however, that the revocable permit shall include a condition requiring Gray to remove the improvements on the premises at the expiration or earlier termination of the permit and restore the premises to a condition acceptable to the Department;
  - b. Review and approval by the Department of the Attorney General; and
  - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize the issuance of an immediate management right-of-entry permit to Gray Media Group, Inc. covering the subject property under the terms and conditions cited above, which are by this reference incorporated here in and further subject to the following:
  - a. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time; and
  - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

BLNR – Issuance of RP and ROE  
to Gray Media Group, Inc.

October 8, 2021

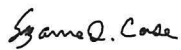
Respectfully Submitted,



*gch*

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Pua Ishibashi, Land Agent

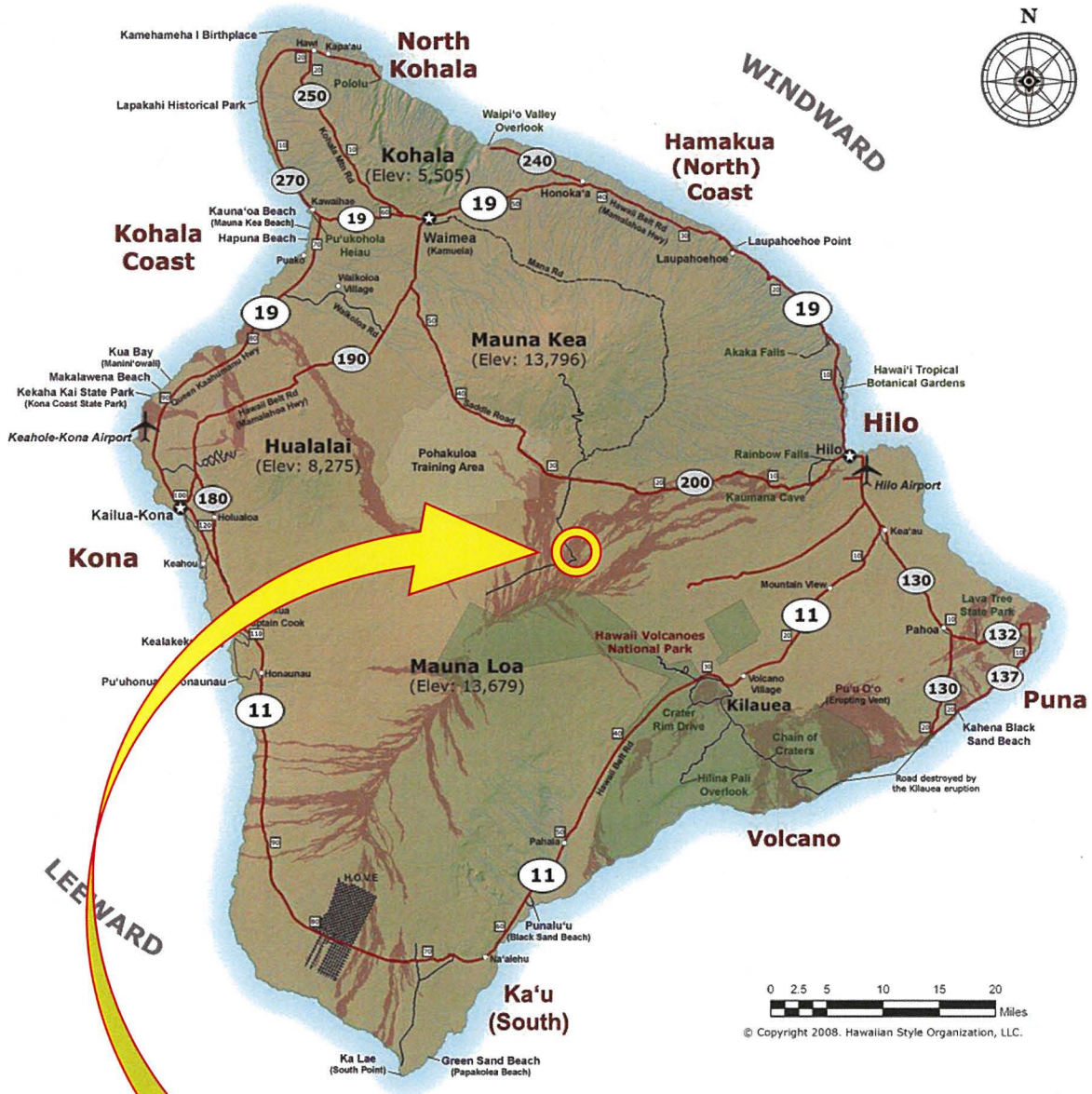
APPROVED FOR SUBMITTAL:



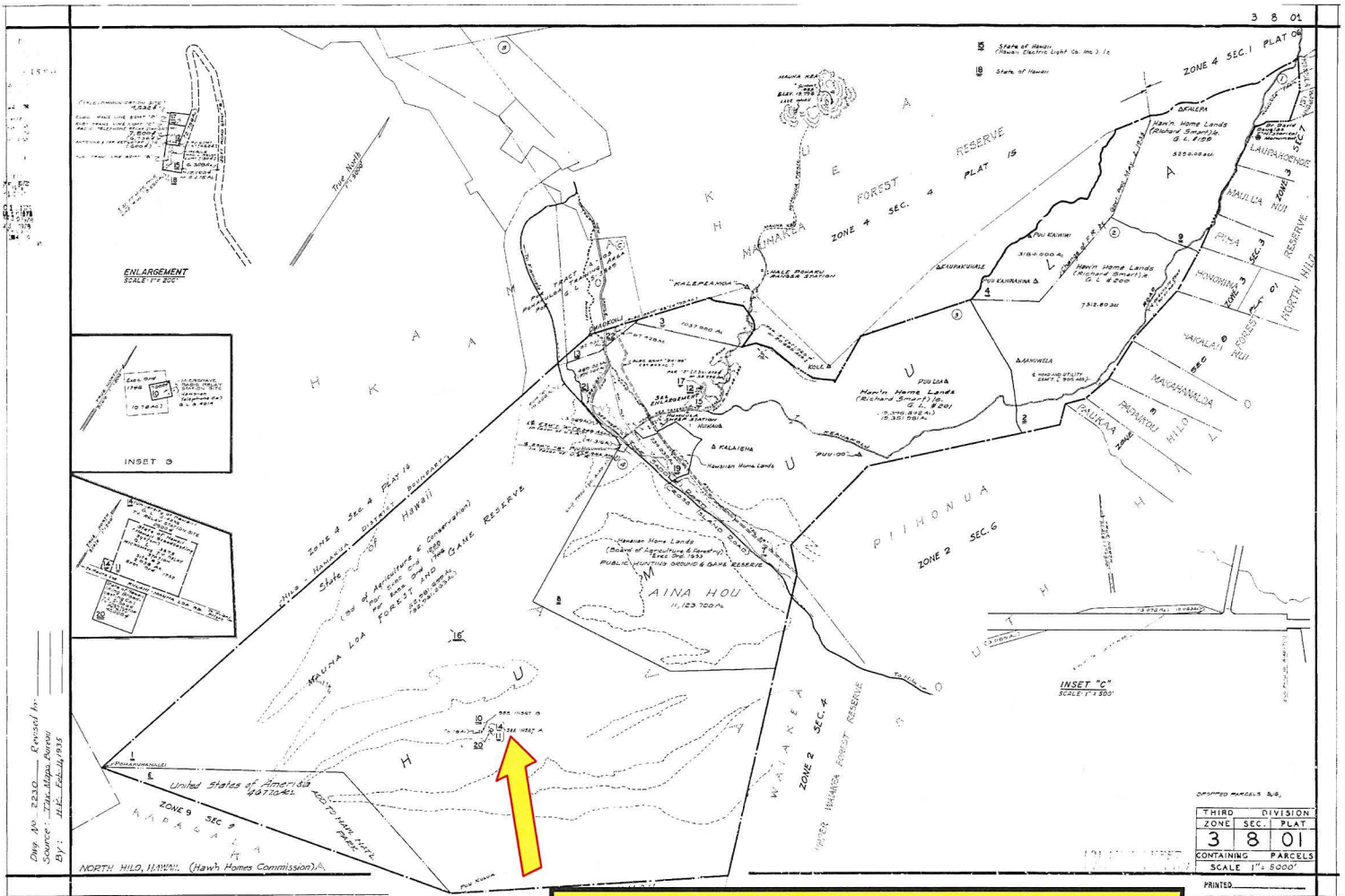
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Suzanne D. Case, Chairperson

# EXHIBIT A

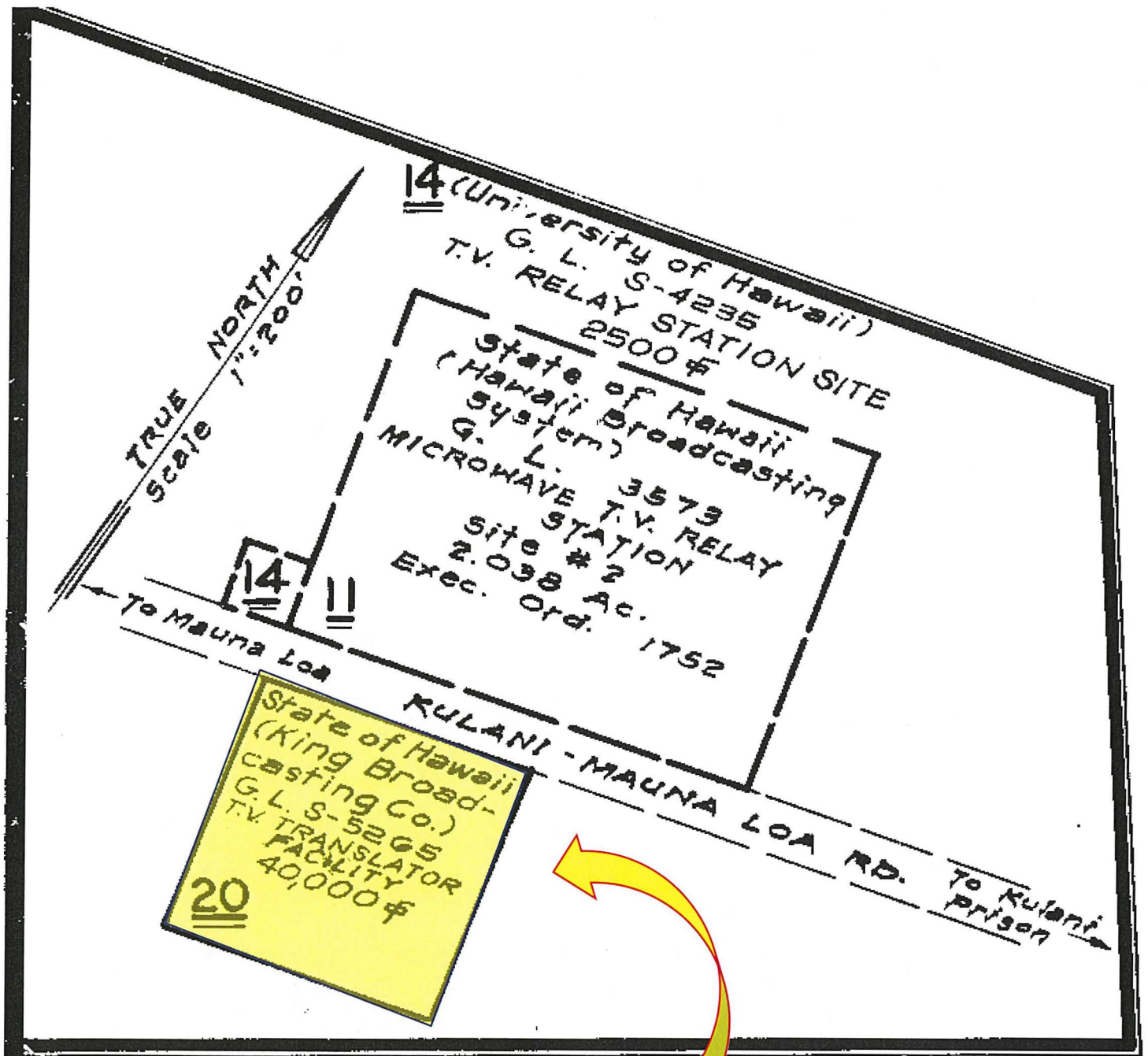


Humuula, North Hilo, Hawaii  
 TMK: (3) 3-8-001:020



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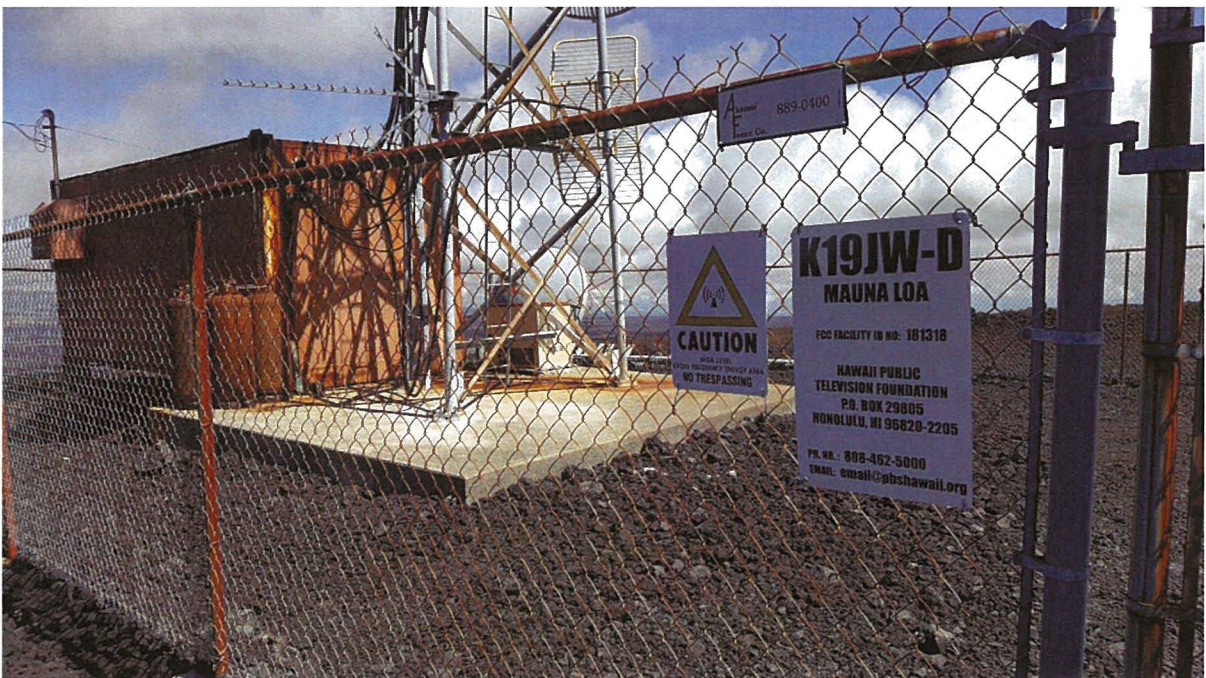
## Gray Media Group, Television Translator Facility



**Southwest View**



Southeast View



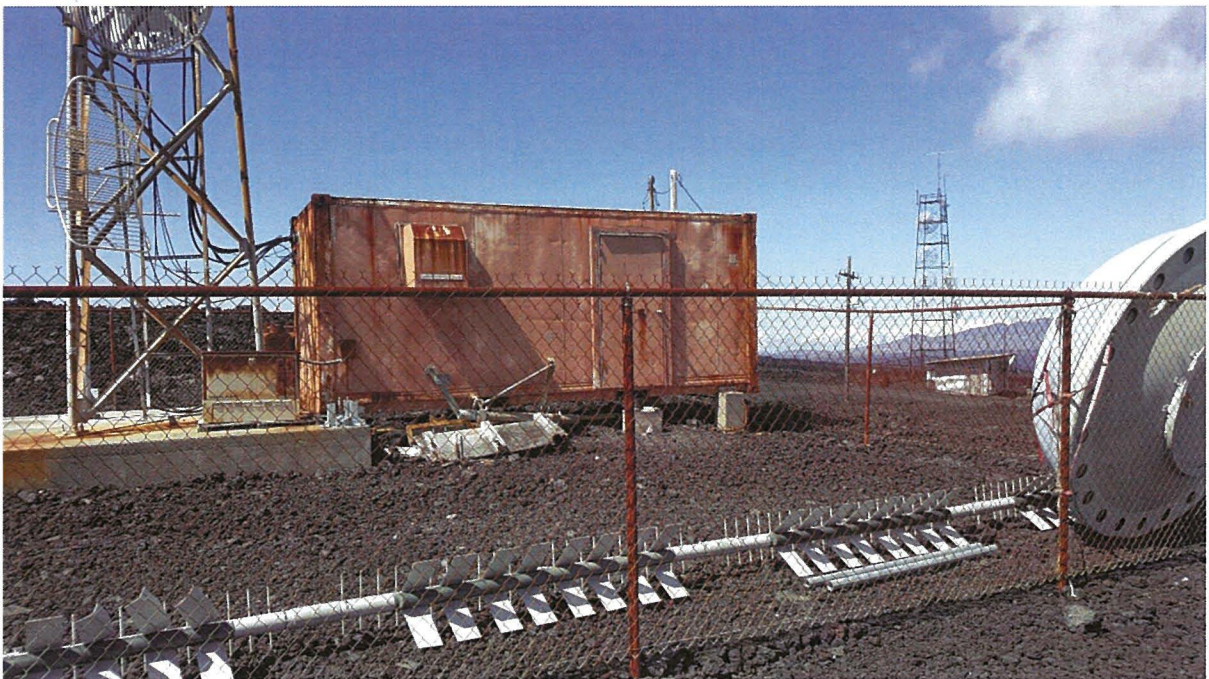
Southeast View



East View



**Northeast View**



**Northeast View**



**Southwest View**



**Southwest View**

DAVID Y. IGE  
GOVERNOR OF HAWAII



SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT

## EXHIBIT B

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

75 Aupuni Street, Room 204  
Hilo, Hawaii 96720  
PHONE: (808) 961-9590  
FAX: (808) 961-9599

October 8, 2021

### EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, Hawaii Revised Statutes (HRS), and Chapter 11-200.1-16, Hawaii Administrative Rules (HAR):

<b>Project Title:</b>	Issuance of Revocable Permit and an Immediate Management Right-of-Entry Permit to Gray Media Group, Inc. for Television Translator Facility Purposes.
<b>Project / Reference No.:</b>	PSF 19HD-104.
<b>Project Location:</b>	Portion of Government lands of Mauna Loa situated at Humuula, North Hilo, Hawaii, identified by Tax Map Key: (3) 3-8-001:020.
<b>Project Description:</b>	Issuance of Revocable Permit and an Immediate Management Right-of-Entry Permit to Gray Media Group, Inc. dba KHNL/KGMB, for Television Translator Facility Purposes.
<b>Chap. 343 Trigger(s):</b>	Use of State Land
<b>Exemption Type, Part, Item, and Description:</b>	In accordance with Hawaii Administrative Rule Sections 11-200.1-16 and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1, Part 1, Item #44, where Type 1 exemptions involve "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing." and where Item No. 44 under Part 1 applies to "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing."

## EXHIBIT B

**Cumulative Impact of  
Planned Successive  
Actions in Same  
Place  
Significant?:**

No, the use of the land for television translator facility purposes is a continuation of the previous use of the property and is compliant with the county zoning requirements. Staff believes there are no cumulative impacts involved.

**Action May Have  
Significant Impact on  
Particularly Sensitive  
Environment?:**

No, there are no particularly sensitive environmental issues involved with the proposed use of the property.

**Analysis:**

The subject property was formerly encumbered by General Lease No. S-5265 to Raycom National, now called Gray Media Group, Inc. dba KHNL/KGMB, for television translator facility purposes. A month-to-month revocable permit will allow Lessee to continue to provide the community with local television programming. Staff believes that the proposed use will involve negligible or no expansion or change in use of the subject property beyond that previously existing.

**Consulted Parties:**

Various government agencies, responses are included in the submittal to the Land Board.

**Recommendation:**

That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.