

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

August 25, 2023

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

PSF Nos.: 23HD-057a (w/draw);
23HD-057b (easmt); 23HD-057c (set-aside)
Hawai'i

Pursuant to Act 90, Session Laws of Hawaii 2003 (Act 90), as mutually agreed upon between Department of Land and Natural Resources (DLNR) and Department of Agriculture (DOA),

1. Approve the Withdrawal of 7,000 Acres, more or less, from General Lease No. S-5374, Kapapala Ranch, Lessee; Grant of Term, Non-Exclusive Easement to Department of Agriculture for Water Pipeline Purposes over Area so Withdrawn; Authorize Department of Land and Natural Resources, Division of Forestry and Wildlife, to Conduct a Public Hearing to Set Aside the Withdrawn Area as an Extension of the Kapapala Forest Reserve, Kapapala, Kau, Hawaii, Tax Map Key: (3) 9-8-001:010 (pors.);
2. Set Aside of Remainder of Lands under General Lease No. S-5374, Kapapala Ranch, Lessee (Approximately 15,684.168 Acres, more or less), to Department of Agriculture for Agricultural Purposes Including Pasture, existing Single Family Residential and Employee Residential Use, and Eco-tourism Purposes, Kapapala, Kau, Hawaii, Tax Map Keys: (3) 9-8-001:009 and 010 (pors.); and
3. Set Aside Lands under Revocable Permit Nos. S-7637 and S-7758, Kapapala Ranch, Permittee, to Department of Agriculture for Pasture Purposes; Ahulili and Kapapala, Kau, Hawaii, Tax Map Keys: (3) 9-6-011:002, 9-8-001:003, 006, 011, 012, and 013.

APPLICANTS:

DLNR, Division of Forestry and Wildlife (DOFAW), as to the requested withdrawal of lands from General Lease No. S-5374 (GL S-5374) and authorization to conduct a public hearing on the addition of the area so withdrawn to the Kapapala Forest Reserve.

DOA requested a water pipeline easement across a portion of TMK: (3) 9-8-001:010, as to the set-aside of the 15,684.168, acres, more or less, of GL S-5374 remaining after the

withdrawal of lands to be retained by DLNR, as well as to the set-aside of lands under Revocable Permit S-7637 (RP S-7637) and Revocable Permit S-7758 (RP S-7758).

LEGAL REFERENCE:

Sections 171-6, -11, -37, -37.5, -95, 166E-3, 183-11 and -12, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands of:

- GL S-5374 – Kapapala, Kau, Hawaii, identified by Tax Map Keys: (3) 9-8-001:009 and 010;
- RP S-7637 – Kapapala, Kau, Hawaii, identified by Tax Map Keys: (3) 9-8-001:003, 006, and 013;
- RP S-7758 – Ahulili and Kapapala, Kau, Hawaii, identified by Tax Map Keys: (3) 9-6-011:002, 9-8-001:009, 011, and 012.

as shown on the attached maps labeled Exhibit 1.

AREA OF WITHDRAWAL, RETENTION AND SET-ASIDE:

Encumbrance	Existing Area	Area to be Set Aside to DOA	Area to be Retained by DLNR
GL S-5374	22,684.168 acres	15,684.168 acres, more or less	7,000 acres, more or less
RP S-7637	8,141.16 acres	8,141.16 acres	NA
RP S-7758	942 acres	942 acres	NA
Totals:	31,767.328 acres	24,767.328 acres, more or less	7,000 acres, more or less

GL S-5347 – Original Lease Area: 23,941.902 acres
Less Withdrawal Area: -1,257.734 acres (Koa Management Area)
Remaining Area: 22,684.168 acres

RP S-7637 – 8,141.16 acres, more or less.

RP S-7758 – 942 acres, more or less.

EASEMENT AREA:

9.14 acres, more or less.

ZONING:

State Land Use District: Agriculture
County of Hawaii CZO: A-20 acre

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

GL S-5347: NO
RP S-7637: YES (former sugar cane lands)
RP S-7758: YES (former sugar cane lands)

CURRENT USE STATUS:

Encumbered under the following dispositions:

GL S-5347 – 22,684.168 acres
RP S-7637 – 8,141.16 acres
RP S-7758 – 942 acres

LEASE AND REVOCABLE PERMIT PURPOSE:

GL S-5347 – Pasture, single family residential, employee residential, and eco-tourism
RP S-7637 – Pasture
RP S-7758 – Pasture

PURPOSE OF SET-ASIDE:

GL S-5347 – For agricultural purposes (including pasture, single family residential, employee residential, and eco-tourism).

RP S-7637 and RP S-7758 – For agricultural purposes (pasture).

EASEMENT CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair, replace and remove water transmission pipeline over, under and across State-owned land.

EASEMENT TERM:

Sixty-five years.

EASEMENT COMMENCEMENT DATE:

To be determined by the Chairperson.

EASEMENT CONSIDERATION:

Gratis disposition to State agency.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject requests are exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1 that states, “Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing,” Part 1, Item 36 that states, “Transfer of management authority over state-owned land, such as setting aside of state lands to or from other government agencies through a Governor's executive order,” Part 1, Item 41 that states, “Subdivision or consolidation of lots not previously subdivided,” and Part 1, Item 39 that states, “Creation or termination of easement, covenants, or other rights in structures or land.” The proposed subdivision and withdrawal from of lands from GL S-5374 to be retained by DLNR, the granting of an easement to DOA across lands so withdrawn for an existing water pipeline, and the set-aside to DOA are de minimis actions that will probably have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17, HAR.

APPLICANT REQUIREMENTS:

DOFAW shall be required to:

1. Process and obtain subdivision at DOFAW's own cost for the area to be withdrawn from GL S-5347; and
2. Provide survey maps and descriptions according to State DAGS standards and at DOFAW's own cost for: (a) the area to be withdrawn from GL S-5347; (b) any roads, trails and other rights-of-way that DOFAW desires the Board of Land and Natural Resources to expressly designate as exceptions and reservations from the executive order setting aside the subject lands to DOA (with the understanding that the inclusion of metes and bounds descriptions and maps for these exceptions/reservations in the executive order will not be exclusive of any other road or trail required for public purposes that may presently exist on the ground or be designated in the future); and (c) any easements requiring survey.

DOA shall be required to:

1. Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost for the areas covered by RP S-7637 and RP S-7758.

REMARKS:

Request:

The DOA has identified the subject lease and two revocable permits as suitable for transfer from the DLNR inventory. The properties identified are the lands under GL S-5374, RP S-7637 and RP S-7758, all currently encumbered to Kapapala Ranch for pasture, single-family, employee residential and eco-tourism purposes (GL S-5374) or pasture purposes only (RP S-7637 and RP S-7758). In a letter dated March 15, 2023, Kapapala Ranch proposed that approximately 7,000 acres be withdrawn from the lease and set aside to DOFAW.

Background:

The set-aside of agriculture lands to DOA is pursuant to Act 90, later codified at Chapter 166E, HRS. The purpose of Act 90 is to ensure the long-term productive use of public lands leased or available to be leased by DLNR for agricultural purposes by allowing those lands to be transferred to and managed by DOA.

As reported to the Board of Land and Natural Resources (BLNR) at its meeting of April 28, 2023, under agenda Item D-7, DLNR has transferred approximately 19,000 acres to DOA over the years but retained large pasture leases adjacent to forest reserves, such as the subject lands, due to the important natural resource value these lands have. DLNR has reconsidered its position and is now recommending the transfer of certain pasture lease lands to DOA, including the lands under General Lease No. S-5374 (GL S-5374), Revocable Permit S-7637 (RP S-7637) and Revocable Permit S-7758 (RP S-7758) under the conditions discussed below, including that once the land is no longer in productive pasture use, the lands shall revert to DLNR.

GL S-5374 – Lease History:

On September 9, 1988, the BLNR approved the issuance of a revocable permit to J. Gordon Cran for pasture-residential purposes covering 24,573 acres under Tax Map Key: (3) 9-8-001:003 por. Revocable Permit S-6582 (RP S-6582) was thereafter issued to J. Gordon Cran with a retroactive effective date of September 1, 1988.

On June 28, 1991, under agenda Item F-8, the BLNR approved the conversion of RP S-6582 to a long-term lease pursuant to Act 237 Sessions Laws of Hawaii 1988. GL S-5374 was issued to J. Gordon Cran by direct negotiation effective December 1, 1994.

Originally, the total area of the lease lands was 23,941.902 acres with the specific use of pasture and residential purposes (lessee’s principal domicile only). The term of the lease is 35 years with rental reopenings at the end of the 10th, 20th and 30th years of the lease term. The rent for years 21-30 (the current reopening period under the lease) was established at \$44,100.00 per annum. A final rent reopening is scheduled for December 1, 2024.

On October 13, 1995, under agenda Item F-4, the BLNR approved a number of amendments to the lease. First, the BLNR authorized the withdrawal of approximately 1,100 acres for public purposes, specifically a Koa Management Area.¹ Second, the BLNR authorized an amendment to include an appurtenant non-exclusive pipeline easement 10 feet wide through the Kau Forest Reserve for an existing water pipeline beginning at the Makakupu Tunnel and ending at the boundary of the lease premises under GL S-5374. Third, the BLNR authorized an amendment of paragraph 46 of the lease to DOFAW to manage public hunting on the premises and allow an appropriate rent discount in recognition of permitting public hunting on the lease premises. Fourth, the BLNR authorized a lease amendment to designate the location of ‘Āinapō Road over and across the lease premises at the location prescribed by DOFAW and its Na Ala Hele trails system. Fifth, an amendment was authorized for the designation of the location of the access roadway through the lease premises to the Koa Management Area. Sixth, an amendment was made to change the name of the lessee.² Seventh, the BLNR authorized an amendment to the character of use provision to change it from pasture and residential purposes (lessee’s principal domicile only) to pasture, single family residential and employee residential use.³ Eighth, the BLNR approved the grant of an easement to the lessee over a portion of public land outside of the lease premises on which to construct a 2.5 million gallon water reservoir. The site was on land under Revocable Permit No. S-6581 (RP S-6581) to Kau Agribusiness Co., Inc. (KACI) at the time. The staff report indicates KACI had no objection to the construction of the reservoir on 2-5 acres of lands under RP S-6581.⁴

On May 10, 1996, under agenda Item D-4, the BLNR approved the assignment of GL S-

1 By Partial Withdrawal From General Lease No. S-5374 dated December 13, 2004, the actual area of the withdrawal turned out to be 1,257.734 acres. An Amendment of Partial Withdrawal General Lease No. S-5374 dated April 20, 2005 amended the December 13, 2004 document by clarifying that a rent credit was due to lessee.

2 This amendment was later superseded by the BLNR’s consent to an assignment of lease, which was the appropriate vehicle for addressing the change in title to the lease.

3 The amendments discussed in the second, third, fourth, fifth and seventh items listed in this paragraph were effectuated by a Second Amendment of General Lease No. S-5374 dated December 13, 2004.

4 For reasons that are not clear from the file, the reservoir was ultimately constructed within the premises of GL S-5374 obviating the need for an easement on State lands outside the premises.

5374 from J. Gordon Cran, as assignor, to Kapapala Ranch, a Hawaii limited partnership, as assignee. The Chairperson signed the consent to assignment on July 3, 1996.

On July 12, 1996, under agenda Item D-6, the BLNR approved the waiver of the performance bond requirement under GL S-5374 based on the lessee's track record of substantial compliance with lease requirements.

On August 21, 1997, under agenda Item D-5, as amended at its meeting of April 9, 1998, Item D-1, the BLNR approved a further amendment of the character of use of GL S-5374 to allow for pasture, residence and eco-tourism.⁵ At its meeting of January 30, 1998, Item D-4, the BLNR approved the eco-tourism plan submitted by Kapapala Ranch. Amendment of General Lease No. S-5374 documenting these amendments was thereafter executed as of July 7, 1998.⁶

On January 16, 1998, under agenda Item D-17, the BLNR consented to a sublease between Kapapala Ranch, as sublessor, to the National Weather Service, Pacific Region, as sublessee, for the installation of an automatic rainfall observing system on the lease premises. No sublease rent was paid under this arrangement.

GL S-5374 – Withdrawal of Acreage Prior to Set-Aside to DOA:

As a condition of the set-aside of a portion of the premises under GL S-5374 to DOA, DLNR is requesting the withdrawal of certain high natural resource value acreage from the lease to be retained under DLNR management. Kapapala Ranch proposed the withdrawal of approximately 7,000 acres, which DLNR accepted.

The BLNR has authority to withdraw lands from pasture leases for public purposes pursuant to Sections 171-37 and -37.5, HRS. Additionally, GL S-5374 itself reserves to the BLNR authority to withdraw lands from the lease premises at page 17, paragraph 43.

DOFAW explains that the lands leased to Kapapala Ranch were all originally native koa-`ōhi`a forests, interspersed with rocky lava flows and native shrublands. The long history of cattle ranching and sugar cane production has led to widespread deforestation, but the

⁵ “Eco-tourism to mean offering for a fee, guided tours or allowing non-related individuals to stay on the subject leasehold up to two weeks or less, to do horseback riding, truck rides, trail rides, hiking/walking, camping/sleeping overnight and meals (breakfast, lunch, dinner).” The lease was further amended to provide that 2% of all eco-tourism revenues shall be paid to the State.

⁶ The amendment document the parties signed on July 7, 1998 is somewhat inconsistent with the BLNR's action of October 13, 1995, under agenda Item F-4, which had already approved a change in the character of use to “pasture, single family residential and employee residential use.” The July 7, 1998 amendment describes the character of use as, “pasture, residence (Lessee's principal domicile only), and eco-tourism purposes.” However, the Second Amendment of General Lease No. S-5374 dated December 13, 2004 signed by the parties resolved the discrepancy by fixing the character of use as, “pasture, single family residential and employee residential, and eco-tourism purposes.”

highest elevation sections of these lands, particularly TMK (3) 9-8-001:010 (Parcel 10), and areas furthest away from intensive grazing have retained closed canopy native forest. As noted above, the BLNR approved the withdrawal of a section of the pasture lease at its meeting of October 13, 1995, under agenda Item F-4, to create the Koa Management Area, also known as the Kapapala Koa Canoe Forest, in recognition of the koa in this region that often grow tall and straight and are the best candidates for traditional canoe logs for racing clubs, civic organizations, and educational purposes. The area was fenced from cattle in the early 1990s and restoration is ongoing.

High-quality koa forest still exists in portions of the remainder of the leased lands. These forests are very important habitat for Hawaii’s declining populations of forest birds, which require native forests in higher elevations where mosquitoes cannot breed and/or avian disease is not transmissible. Areas that have been largely converted to grasslands by ranching near these high elevations are also strategic for restoration because the soil still contains a seedbank of koa and other native plants, and they are in high elevations where native birds and insects can also distribute seeds and are far away from invasive plants that plague restoration sites.

Staff is recommending that a portion of Parcel 10 be subdivided from the lands proposed to be transferred to DOA and instead be considered as an extension of the Kapapala Forest Reserve. DOFAW seeks to protect the existing closed-canopy forest in this area, restore additional forest, manage public hunting, and create new trails and road access for public use. Exhibit 2 demonstrates the restoration that has occurred in the nearby Keauhou lands, which were also formerly pasture, but have been fenced and restored through a partnership with landowner Kamehameha Schools, The Three Mountain Alliance watershed partnership, DOFAW, and other funders. The area that Kapapala Ranch has agreed to be withdrawn, comprising 7,000 acres, more or less, is shown in red on the map attached as Exhibit 3A and in orange on map attached as Exhibit 3B.

The remaining parcels that are being proposed to be transferred to DOA do have some remnant native forests as well, particularly directly south of the existing Kapapala Koa Canoe Forest, as well as the Maunaiu tract, which is the northeastern-most corner of the lease. This area has potential for reforestation and is in prime forest bird habitat and is directly adjacent to the Hawaii Volcanoes National Park. These were excluded from the proposed addition to the Kapapala Forest Reserve by request of the lessee.

Pursuant to Section 171-37.5, HRS, when lands are withdrawn from a pasture lease, “the lease rent shall be reduced in proportion to the value of the land withdrawn or made unusable” DLNR would normally procure an appraisal to determine the extent of the rent reduction due to lessee as the result of a withdrawal. In this case, however, because DOA is not bound by the same statutory requirements to charge far market rents to lessees that DLNR follows, staff proposes that the rent payable under GL S-5374 after withdrawal of the area to be retained by DLNR be determined by DOA upon set-aside of the remainder to of the lease premises to DOA. Further, staff is including a recommendation below that the withdrawal not be effectuated until immediately prior to

the set-aside to DOA so that Kapapala Ranch retains use of the area designated for withdrawal up until the set-aside of the remaining lease lands to DOA. Under this approach, no rent adjustment will be required until DOA is managing the lease under the executive order transferring the land to it.

Section 171-37.5, HRS, further provides that the lessee shall be compensated for any improvements owned by lessee that are taken as a result of the withdrawal and for any impacts to breeding livestock.⁷ In this case, no lessee improvements will be taken in connection with the withdrawal.⁸ Finally, staff understands that the area to be withdrawn is not currently used as part Kapapala Ranch’s grazing operations, so there will be no impacts to breeding livestock.

Grant of Easement to DOA over Portion of Lands Withdrawn from GL S-5374:

A portion of the southwestern-most point of Parcel 10, known as the Kanewai Reservoir area, is also proposed to be subdivided out of the larger parcel and transferred to DOA. The resulting lot configuration will require the grant of a 10-foot wide⁹ easement to DOA for water pipeline purposes to transmit water from the reservoir across the area proposed

⁷ Section 171-37.5, HRS, provides in part:

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 a market on the island on which the leased land is located. If there is disagreement between the board and the lessee as to the number of breeding livestock that cannot be relocated or marketed for breeding value, the issue shall be submitted to the department of agriculture to make a determination, which shall be final. The appraised breeding value shall be the fair market value of the livestock, as opposed to net present value, at the time the board approves the withdrawal or taking of a portion or all of the leased land. The fair market value shall be determined by:

- (1) An employee of the department of agriculture qualified to appraise livestock; or
- (2) A disinterested livestock appraiser whose services shall be contracted for by the board, and the lessee shall be promptly notified of the determination; provided that should the lessee fail to agree upon the fair market value, the lessee may appoint the lessee's own livestock appraiser who together with the board's appraiser shall appoint a third appraiser and the fair market value shall be determined by arbitration as provided in chapter 658A. The lessee shall pay for the lessee's own livestock appraiser, the board shall pay for the board's livestock appraiser, and the cost of the third livestock appraiser shall be borne equally by the lessee and the board. Whenever more than one livestock appraiser is appointed, each shall prepare and submit an independent appraisal report.

⁸ Although Kapapala Ranch has a water pipeline running across a portion of the area to be withdrawn, as discussed below, staff is recommending the grant of an easement to DOA, who can then subgrant an easement to Kapapala Ranch to maintain the pipeline in its current location.

⁹ An easement width of 10 feet is proposed because that is the width of the easement the BLNR approved at its meeting of October 13, 1995, under agenda Item F-4, for the pipe running from the Makakupu Tunnel to the boundary of GL S-5374.

for withdrawal and terminating at the new boundaries of the lease premises under GL S-5374 as shown on the map attached as Exhibit 3B. The easement will need to allow for the subletting or sublicensing of easement rights from DOA to its lessee of the portions of the TMKs: (3) 9-8-001:090 and 010 to be set aside to DOA as proposed in this submittal, and DOA's lessee should be required to provide liability insurance naming DLNR as an additional insured and indemnify DLNR for lessee's use of the easement area. DLNR will also need to retain access to the water in Kanewai Reservoir for firefighting and out-planting purposes and is therefore recommending the inclusion of a condition in the executive order transferring the leased lands to DOA that reserves access to the reservoir and water infrastructure if needed for such purposes.

GL S-5374 – Exceptions and Reservations to BLNR/DLNR Upon Set-Aside to DOA are Consistent with the Existing Lease Terms:

The DLNR is additionally recommending that certain exceptions and reservations contained in GL S-5374 be included as exceptions and reservations in favor of BLNR/DLNR in the executive order transferring portions of the lands to the DOA. The CSF map of the lease premises includes the following language after the metes and bounds description of Parcel 1:

Excepting and reserving therefrom all existing roads and trails within the above-described parcel of land and such other roads, trails and other rights-of-way that may be required for public purposes, such as rights-of-way to be designated by the Board of Land and Natural Resources at such times and for such widths as deem proper and necessary.

See Exhibit 4 attached, which is a copy of GL S-5374 as originally issued, at page 7 of lease Exhibit A.

Pursuant to this language, DOFAW seeks to reserve co-management access through the subject lands for public purposes including over the 'Āinapō Road (part of the ancient 'Āinapō Trail) and the adjacent Container Storage and Materials Cache, Powerline Road, Honanui Road, including associated quarries and connector roads, Wood Valley Access Road, and the Priority Access Road. See map attached as Exhibit 3B. The express exception and reservation of the accesses shown in Exhibit 3B are not exclusive of any additional road access that may be designated in the future. DOFAW intends to survey the alignments/locations of Honanui Road, Wood Valley Access Road, the quarries, and Container Storage and Materials Cache so these roads and areas can be identified with certainty as exceptions/reservations in the executive order setting aside the lease premises under GL S-5374 to DOA. The inclusion of metes and bounds descriptions and maps for these exceptions/reservations in the executive order is not exclusive of any other road or trail required for public purposes that may exist on the ground or be designated in the future.

Kapapala Ranch currently manages public access over 'Āinapō Road under an agreement

with DOFAW. DOFAW and Kapapala Ranch have agreed that Kapapala Ranch should continue to manage public access over Honanui Road, and Wood Valley Access Road. Accordingly, staff is including a recommendation below that Kapapala Ranch, or any future lessee of the lands being transferred to DOA, shall manage public access over ‘Āinapō Road, Honanui Road, and Wood Valley Access Road under such terms and conditions as Kapapala Ranch (or any future lessee) and DOFAW shall from time to time agree.

Additionally, DOFAW maintains a Remote Area Weather Station (RAWS) along the Honanui Access Road on a 50’ x 50’ portion of Tax Map Key: (3) 9-8-001:009. See map attached as Exhibit 3C. DOFAW indicates it needs to retain control of this area. Staff is therefore recommending that this area be excepted and reserved from the set-aside to DOA.

The CSF map also includes the following reservation after the metes and bounds description of Parcel 2 (533.442 acres):

Reserving to the State of Hawaii, its successors and assigns, a six (6.00) feet wide easement for pipeline purposes over and across the above-described Parcel 2 as shown on plan attached hereto and made a part hereof.

Staff recommends the pipeline easement also be reserved in the executive order setting aside the land to DOA.

There will also be a reservation to the DLNR to manage public hunting of gamebirds and mammals. See Exhibit 5 attached, which is a copy of the Second Amendment of General Lease dated September 13, 2004, at pages 2-3, paragraph 2.

Public Hearing on Addition to Kapapala Forest Reserve:

A public hearing must be held before lands can be set aside as forest reserves, so the DLNR is seeking authority to conduct the hearing as part of this submittal. After the hearing, the DLNR intends to submit a request for the BLNR to approve the set-aside of the withdrawn lands to DOFAW as a forest reserve. DOFAW will process a subdivision of the withdrawn acreage to facilitate the set-aside to DOFAW, should the BLNR approve it.

RP S-7637:

A portion of the lands under RP S-7637 was previously encumbered under Revocable Permit No. S-7271 (RP S-7271) issued to Kapapala Ranch as of July 1, 2002 for “pasture purposes with participation in [DOFAW’s] cooperative hunting program.” At its meeting of May 11, 2007, agenda Item D-8, the BLNR approved the cancellation of RP S-7271 and the issuance of a new revocable permit to Kapapala Ranch for a larger area.

RP S-7637 was thereafter issued to Kapapala Ranch for pasture purposes effective December 21, 2010. The lands covered by RP S-7637 include Tax Map Keys: (3) 9-8-001:003 (Parcel 3), 006 (Parcel 6), and 013 (Parcel 13), which are contiguous to one another and abut the southeastern boundary of the lease premises under GL S-5374. Parcels 3 and 13 also abut the Kau Forest Reserve and/or the Koa Management Area to the west. See Exhibits 1, 3A and 3B.

RP S-7758:

At its meeting of July 8, 2005, agenda Item D-5, the BLNR approved the issuance of a revocable permit covering additional lands in the vicinity of GL S-5374 identified as Tax Map Keys: (3) 9-6-011:002, 9-8-001:009, 011, and 012. The staff submittal explains that these lands had previously been under agricultural use under various dispositions to Kau Agribusiness Co., Inc. and others. RP S-7758 was thereafter issued to Kapapala Ranch effective August 12, 2011 covering these contiguous parcels that share a short common boundary with the premises under RP S-7637. See Exhibit 1 attached.¹⁰

Reverter Clause:

The DOA will assume management responsibilities for the properties under the current dispositions to Kapapala Ranch upon the Governor’s execution of the executive orders effecting the set-aside. Once lands are set-aside to DOA, Chapter 166E, HRS, provides that DOA is not required to seek BLNR approval under Chapter 171, HRS, for any disposition of the land DOA makes thereafter.¹¹ Notwithstanding Chapter 166E, HRS, DOA and the current lessee agree, that should the land no longer be used for pasture purposes, the land will revert to BLNR, except with prior BLNR approval. This is to ensure that any future use of these public trust lands remains consistent with the set aside.

RECOMMENDATION:

That the BLNR, subject to Applicants fulfilling their respective Applicant Requirements above:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, this action will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment as a de minimis action.

¹⁰ There is one other revocable permit issued to Kapapala Ranch in this area – Revocable Permit No. S-7054 (RP S-7054) for water purposes. However, DLNR will retain management of RP S-7054 and continue working with Kapapala Ranch on the conversion of the permit to a water license.

¹¹ See Sections 166E-8 and -12, HRS.

2. Approve the withdrawal of 7,000 acres, more or less, from the premises of General Lease No. S-5374 under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - A. The standard terms and conditions of the most current amendment of or withdrawal from lease document form, as may be amended from time to time;
 - B. The withdrawal shall not be effectuated until immediately prior to the set-aside to DOA contemplated under recommendation 5 below so that Kapapala Ranch retains use of the area designated for withdrawal up until the set-aside of the remaining lease premises to DOA;
 - C. Review and approval by the Department of the Attorney General; and
 - D. 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 a 10-foot wide, 65-year term, non-exclusive easement to the Department of Agriculture covering a portion of TMK: (3) 9-8-001:010 for water pipeline purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term easement document form, as may be amended from time to time; provided that the document shall allow for the subletting or sublicensing of easement rights from DOA to its lessee of the portions of the TMKs: (3) 9-8-001:090 and 010 to be set aside to DOA; provided further that the easement shall require DOA's lessee to provide liability insurance naming DLNR as an additional insured and shall further require DOA's lessee to indemnify DLNR;
 - 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.

4. Pursuant to Section 183-11, HRS, as amended, authorize the Division of Forestry and Wildlife to conduct a public hearing on the island of Hawaii regarding the proposed addition of approximately 7,000 acres of the parcel designated as TMK: (3) 9-8-001:010 as an extension of the Kapapala Forest Reserve, Hawaii, and further, pursuant to Section 183-12, HRS, as amended, authorize the Chairperson to:
 - A. Set the date, location and time of the public hearing; and

- B. Appoint a hearing master(s) for the public hearing.
5. Approve of and recommend to the Governor the issuance of an executive order setting aside the lands under GL S-5374 to the Department of Agriculture under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time; provided, however, that the executive order shall provide that any amendment or extension of General Lease No. S-5374, or any new lease, permit or other disposition that DOA may issue over the land or any portion of it, shall expressly include the following exceptions and reservations in favor of the BLNR as indicated:
 - i. The exception and reservation of all existing roads and trails within the land set aside to DOA and such other roads, trails and other rights-of-way that may be required for public purposes, such as rights-of-way to be designated by the BLNR at such times and for such widths as BLNR deems proper and necessary;
 - ii. Without limiting the generality of the foregoing, the exception and reservation of ‘Āinapō Road (part of the ancient ‘Āinapō Trail) and the adjacent Container Storage and Materials Cache, Remote Area Weather Station, Powerline Road, Honanui Road including associated quarries and connector roads, and the Priority Access Road and Management Roads, all as shown on the map attached as Exhibit 3A. Kapapala Ranch, or any future lessee of the lands being transferred to DOA, shall manage public access over ‘Āinapō Road, Honanui Road, and Wood Valley Access Road under such terms and conditions as Kapapala Ranch (or any future lessee) and DOFAW shall from time to time agree;
 - iii. The reservation to the BLNR, its successors and assigns, of a six (6.00) foot wide easement for pipeline purposes over and across Parcel 2 described in GL S-5374;
 - iv. The reservation of access to the water in Kanewai Reservoir and the water infrastructure for firefighting, out-planting, and similar forest management purposes;
 - v. The reservation of the management of public hunting of gamebirds and mammals on the lands;
 - vi. Additionally, in the event DOA ever seeks to change the allowed

use of the subject lands from pasture to a different agricultural or non-agricultural use, DOA shall be required to seek prior BLNR approval for the change notwithstanding the provisions of Chapter 166E, HRS; and

- vii. In the event the land is no longer needed for pasture purposes, the executive order setting aside the lands to DOA shall be canceled and the lands returned to the inventory of DLNR, except with prior approval of the BLNR.
- B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
6. Approve of and recommend to the Governor the issuance of an executive order setting aside the lands under Revocable Perm Nos. S-7637 and S-7758 to the Department of Agriculture under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
- A. The standard terms and conditions of the most current executive order form, as may be amended from time to time; provided, however, that the executive order shall provide that any amendment or extension of Revocable Permit Nos. S-7637 or S-7758, or any new permit, lease or other disposition that DOA may issue over the land or any portion of it, shall expressly include the following exceptions and reservations in favor of the BLNR as indicated:
 - i. The exception and reservation of all existing roads and trails within the land set aside to DOA and such other roads, trails and other rights-of-way that may be required for public purposes, such as rights-of-way to be designated by the BLNR at such times and for such widths as BLNR deems proper and necessary;
 - ii. The reservation of the management of public hunting of gamebirds and mammals on the lands;
 - iii. Additionally, in the event DOA ever seeks to change the allowed use of the subject lands from pasture to a different agricultural or non-agricultural use, DOA shall be required to seek prior BLNR approval for the change notwithstanding the provisions of Chapter

166E, HRS; and

- iv. In the event the land is no longer needed for pasture purposes, the executive order setting as the lands to DOA shall be canceled and the lands returned to the inventory of DLNR, except with prior approval of BLNR.
- B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Kevin E. Moore
Assistant Administrator

APPROVED FOR SUBMITTAL:

RT



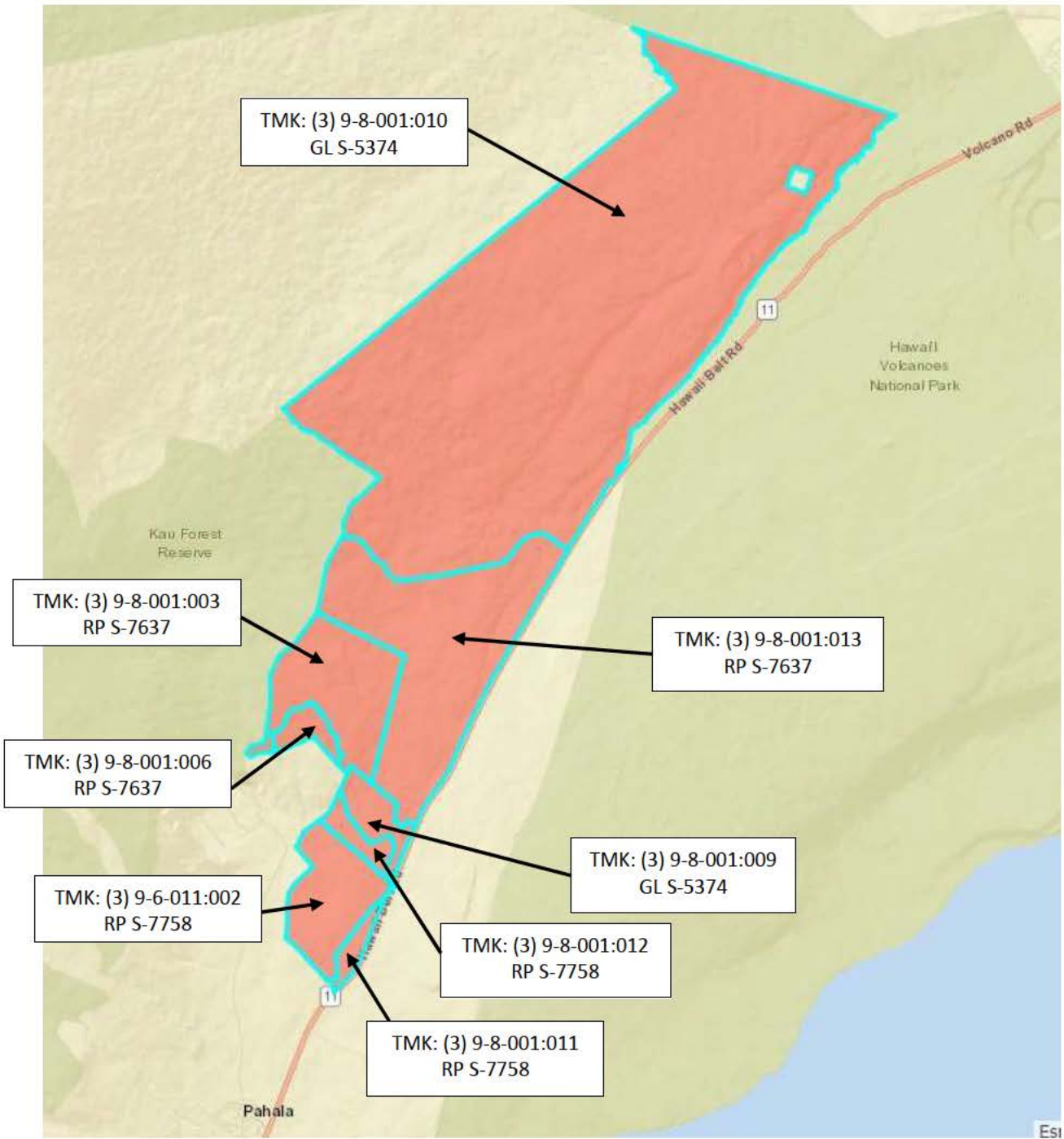
Dawn N.S. Chang, Chairperson

EXHIBIT 1



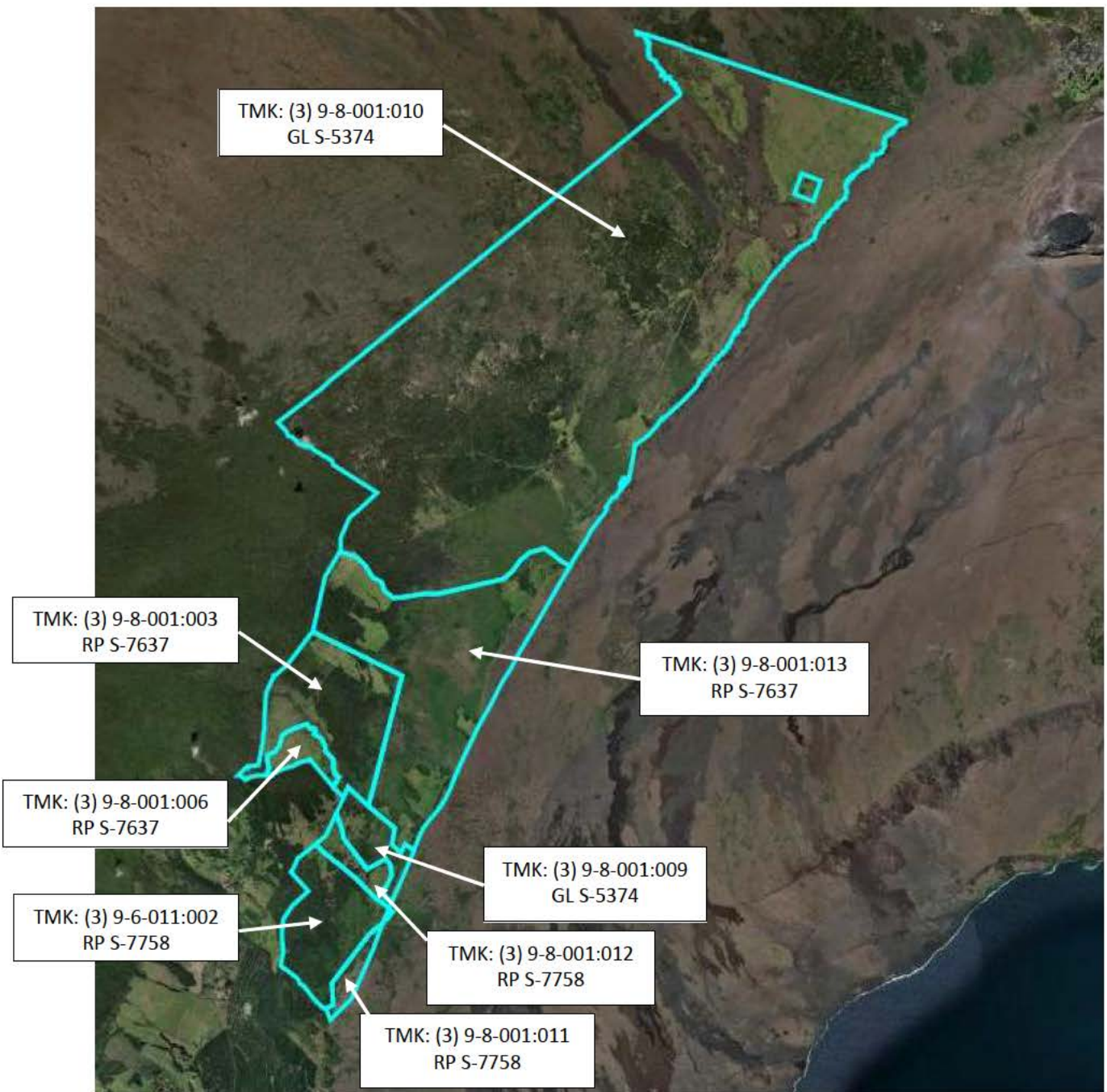
**LANDS LEASED TO KAPAPALA RANCH UNDER GENERAL LEASE NO. S-5374,
REVOCABLE PERMIT NO. S-7637 AND REVOCABLE PERMIT NO. S-7758**

EXHIBIT 1



**LANDS LEASED TO KAPAPALA RANCH UNDER GENERAL LEASE NO. S-5374,
REVOCABLE PERMIT NO. S-7637 AND REVOCABLE PERMIT NO. S-7758**

EXHIBIT 1

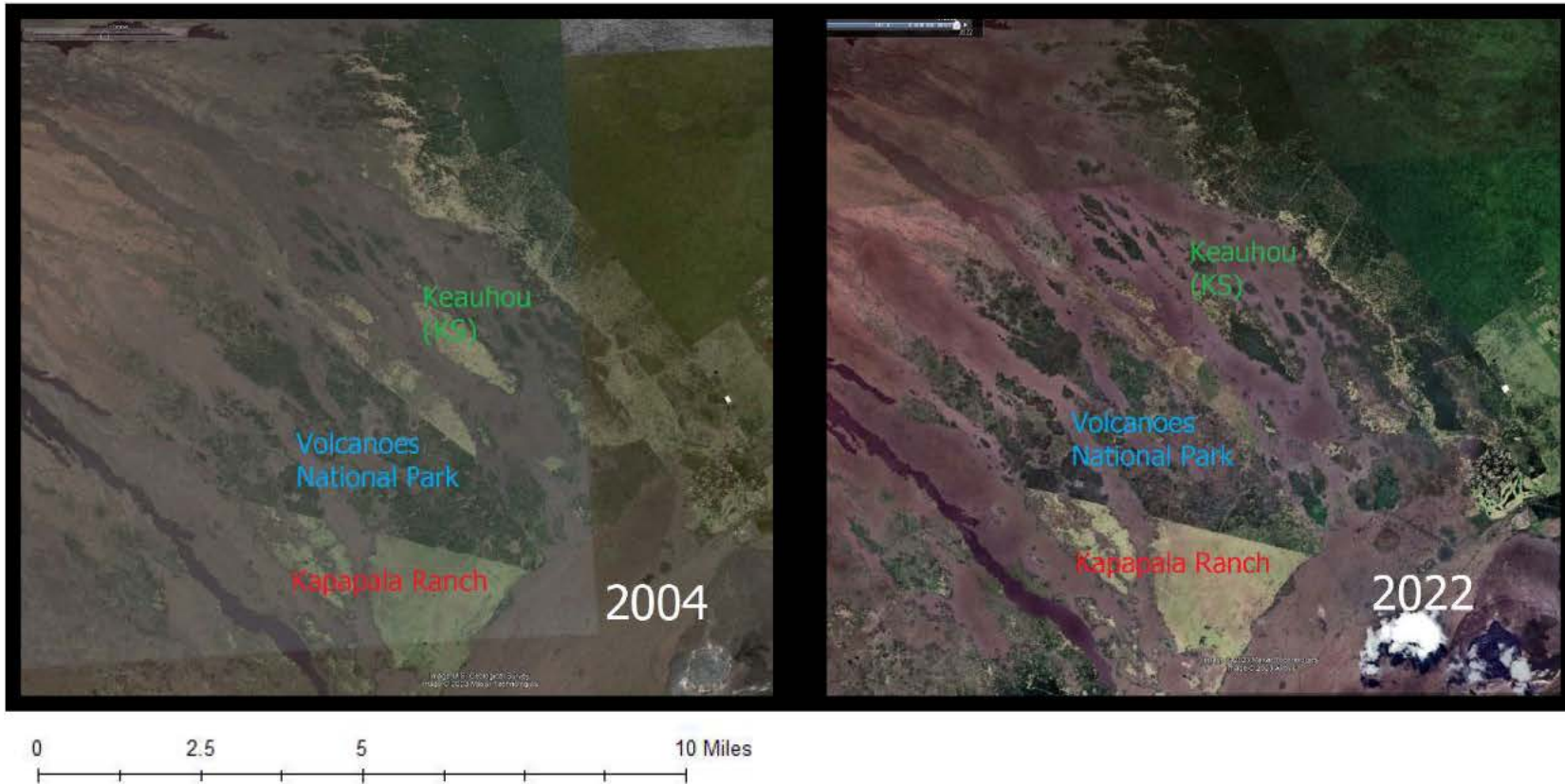


**LANDS LEASED TO KAPAPALA RANCH UNDER GENERAL LEASE NO. S-5374,
REVOCABLE PERMIT NO. S-7637 AND REVOCABLE PERMIT NO. S-7758**

EXHIBIT 1

EXHIBIT 2

Exhibit 2



On the left, a 2004 satellite image of the east flank of Mauna Loa clearly shows the boundary between the fenced, dark green forested portions of the Hawaii Volcanoes National Park in center of the image, contrasted with the light green grasslands of Kapapala Ranch to the south and the former ranch lands of Keauhou to the north. Then, approximately 25,000 acres of Keauhou was fenced from hooved animals and actively restored through a partnership with Kamehameha Schools and the Three Mountain Alliance Watershed Partnership. In the 2022 image on the right, the areas that were formerly grasslands at Keauhou have been largely restored to dark green forested areas and the boundary between the forested areas of the park is much less distinguishable.



EXHIBITS 3A, 3B & 3C

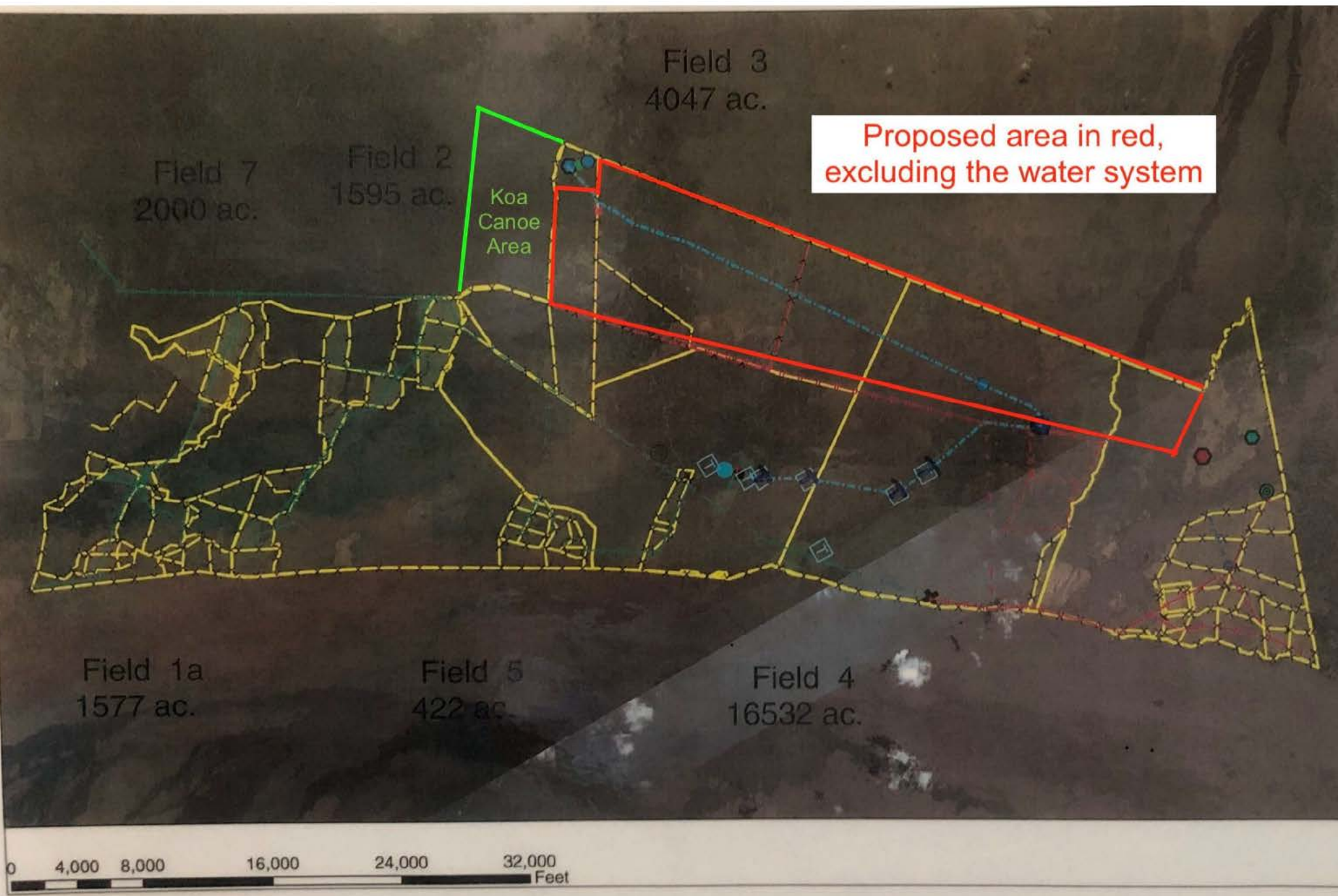


EXHIBIT 3A

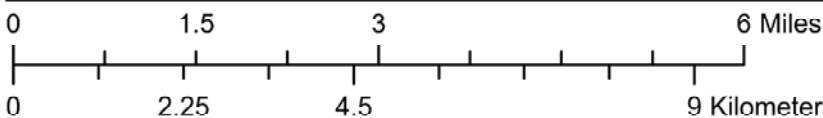
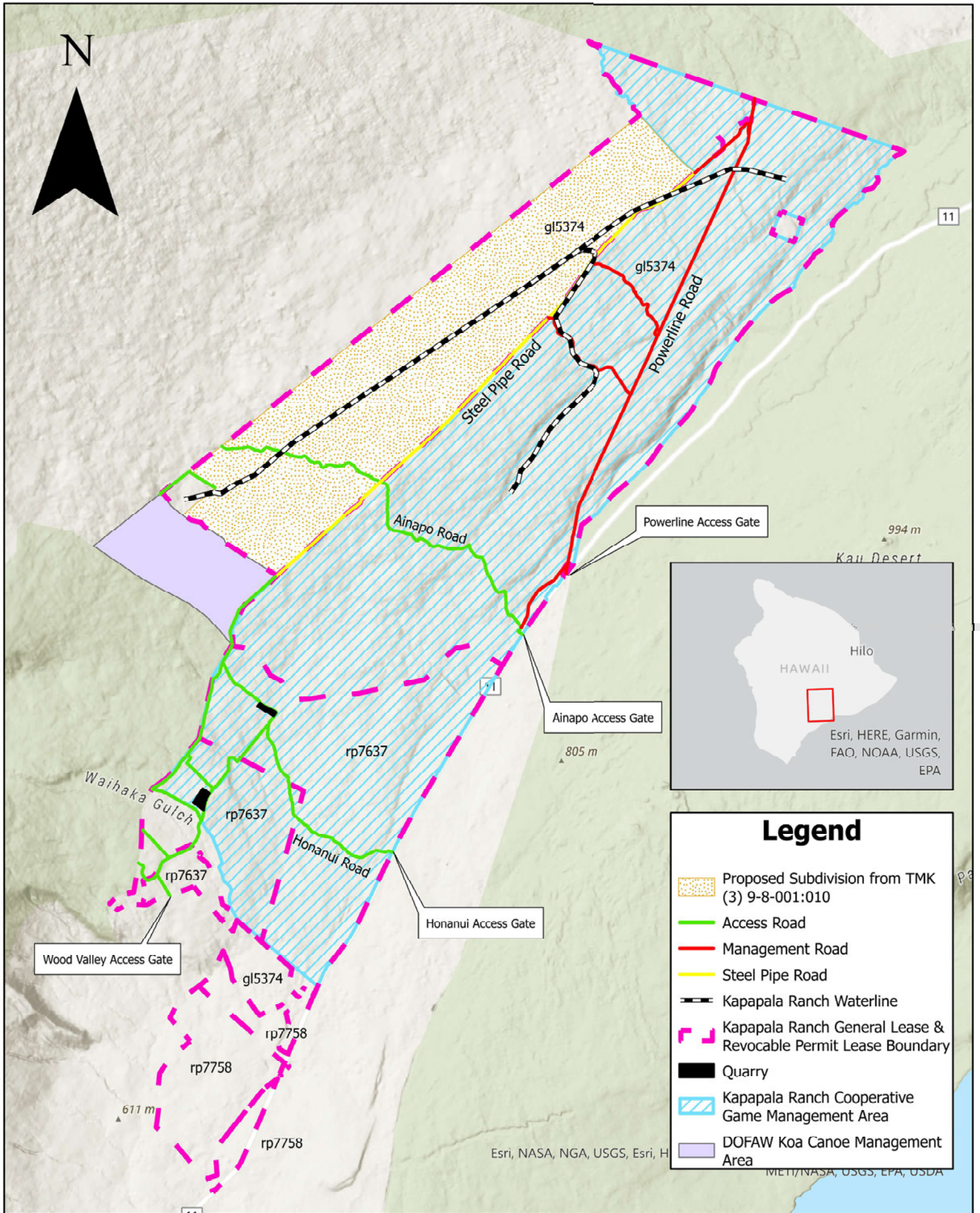


EXHIBIT 3B

Scale: 1:100,000

Date Exported: 6/1/2023 10:53 AM

Kapapala RAWs



EXHIBIT 4

L-407 STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
RECORDED

DEC 23, 1998 11:00 AM

0

on Cert(s)
UNRECORDED

/s/ CARL T. WATANABE
ASSISTANT REGISTRAR

CONVEYANCE TAX: \$736.30

LAND COURT SYSTEM

R-438

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

FEB 01, 1995 10:00 AM

Doc No(s) 0

UNRECORDED

/s/ CARL T. WATANABE
ACTING REGISTRAR OF CONVEYANCES

REGULAR SYSTEM

Return by Mail () Pickup () To:

STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-5374

between

STATE OF HAWAII

and

J. GORDON CRAN, husband of Genevieve B. Cran,
as his separate property, whose mailing address is
[REDACTED], Hilo, Hawaii 96721-1639

covering

PORTION OF THE GOVERNMENT LAND OF KAPAPALA
PARCELS 1 AND 2

situate at
Kapapala, Kau, Island of Hawaii, Hawaii

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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-5374

THIS LEASE, made this 1st day of DECEMBER, 1994, by and between the STATE OF HAWAII, hereinafter referred to as the "Lessor," by its Board of Land and Natural Resources, called the "Board," and J. GORDON CRAN, husband of Genevieve B. Cran, as his separate property, whose mailing address is Post Office Box 1639, Hilo, Hawaii 96721-1639, hereinafter referred to as the "Lessee";

WITNESSETH:

The Lessor for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the Lessee to be kept, observed and performed, does lease unto the Lessee, pursuant to Act 237, Session Laws of Hawaii 1988 and Act 162, Session Laws of Hawaii 1994, and the Lessee does lease from the Lessor the premises identified as "Portion of The Government (Crown) Land of Kapapala," described as follows:

PARCEL 1: containing a Gross Area of 23,468.460 acres, more or less, and a Net Area of 23,408.460 acres, more or less, after excluding therefrom Grant 9163 to Edith Austin and Walter Austin (Area = 60.00 acres), vehicle access shall not be permitted into and from Hawaii Belt Road, Federal Aid Project No. F-18(5) over and across Courses 42, 43, 44, 51 to 60, inclusive, 62 and 63 of Parcel 1, and Excepting and Reserving therefrom all existing roads and trails within Parcel 1 and such other roads, trails and other rights-of-way that may be required for public purposes, such as rights-of-way to be designated by the Board at such times and for such widths as deem proper and necessary, more particularly described in Exhibit "A" and as shown on the map marked Exhibit "B," attached hereto and made parts hereof, said exhibits being respectively, a survey description and survey map, prepared by the Survey Division, Department of Accounting and General

Services, State of Hawaii, respectively designated C.S.F. No. 22,110 and H.S.S. Platt 127-A both dated May 27, 1994; and

PARCEL 2: containing an area of 533.442 acres, Reserving to the State of Hawaii, its successors and assigns, a six (6.00) feet wide easement for pipeline purposes over and across Parcel 2, more particularly described in Exhibit "C" and delineated on Exhibit "D," attached hereto and made parts hereof, said exhibits being respectively, a survey description and survey, prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, both being designated C.S.F. No. 22,120 and dated June 20, 1994.

TO HAVE AND TO HOLD the leased premises unto the Lessee for the term of thirty-five (35) years, commencing on the 1st day of December, 1994, up to and including the 30th day of November, 2029, unless sooner terminated as hereinafter provided, the Lessor reserving and the Lessee yielding and paying to the Lessor at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, State of Hawaii, an annual rental as provided hereinbelow, payable in advance, without notice or demand, in semi-annual installments on December 1 and June 1 of each and every year during the term as follows:

A. For the first four (4) years, the sum of FIFTY-NINE THOUSAND EIGHT HUNDRED SEVENTY-FIVE AND NO/100 DOLLARS (\$59,875.00) per annum (fair market annual lease rent: \$47,900.00 per annum plus 25% premium \$11,975.00 per annum).

Beginning with the fifth (5th) year of the lease term, Lessee shall pay the effective annual rent only of FORTY SEVEN THOUSAND NINE HUNDRED AND NO/100 DOLLARS (\$47,900.00) per annum.

B. The annual rental reserved shall be reopened and redetermined as of the day following the expiration of the tenth (10th), twentieth (20th), and thirtieth (30th) years of the term.

C. Determination of rental upon reopening of the annual rental. The rental for any ensuing period shall be the fair market rental at the time of reopening. Except as provided herein, the provisions in Hawaii Revised Statutes, Chapter 658, shall be followed. At least six (6) months prior to the time of reopening, the fair market rental shall be determined by an appraiser whose services shall be contracted for by the Lessor, and the Lessee shall be promptly notified by certified mail, return receipt requested, of the fair market rental as determined by Lessor's appraiser; provided, that should the Lessee fail to

notify Lessor in writing within thirty (30) days after receipt thereof that Lessee disagrees with the fair market rental as determined by Lessor's appraiser and that Lessee has appointed its own appraiser to prepare an independent appraisal report, then the fair market rental as determined by Lessor's appraiser shall be deemed to have been accepted by Lessee and shall be the fair market rental as of the date of reopening. If Lessee has notified Lessor and appointed his appraiser as stated hereinabove, Lessee's appraiser shall complete his appraisal and the two appraisers shall then exchange their reports within forty-five (45) days from the date of Lessee's appointment of the appraiser.

The two appraisers shall review each other's reports and make every effort to resolve whatever differences they may have. However, should differences still exist fourteen (14) days after the exchange, the two appraisers shall within seven (7) days thereafter appoint a third appraiser who shall also prepare an independent appraisal report based on the review of the two appraisal reports prepared and any other data. Copies thereof shall be furnished to the first two appraisers within forty-five (45) days of the appointment. Within twenty (20) days after receiving the third appraisal report, all three shall meet and determine the fair market rental in issue. The fair market rental as determined by a majority of the appraisers shall be final and binding upon both Lessor and Lessee, subject to vacation, modification or correction in accordance with the provisions of Sections 658-8 and 658-9, Hawaii Revised Statutes. Each party shall pay for its own appraiser and the cost of the services of the third appraiser shall be borne equally by the Lessor and the Lessee. All appraisal reports shall become part of the public record of the Lessor.

In the event that the appraisers are unable to determine the fair market rental before the reopening date, or by the foregoing prescribed time, whichever is later, the Lessee shall pay the fair market rental as determined by Lessor's new appraised value until the new rent is determined and the rental paid by Lessee shall then be subject to retroactive adjustments as appropriate to reflect the fair market rental determined as set forth hereinabove. However, Lessee or Lessee's appraiser's failure to comply with the procedures set forth above shall constitute a waiver of Lessee's right to contest the new rent, and the Lessee shall pay the rent as determined by Lessor's appraiser without any retroactive adjustments. Alternatively, Lessor may treat this failure as a breach of this lease and terminate the lease.

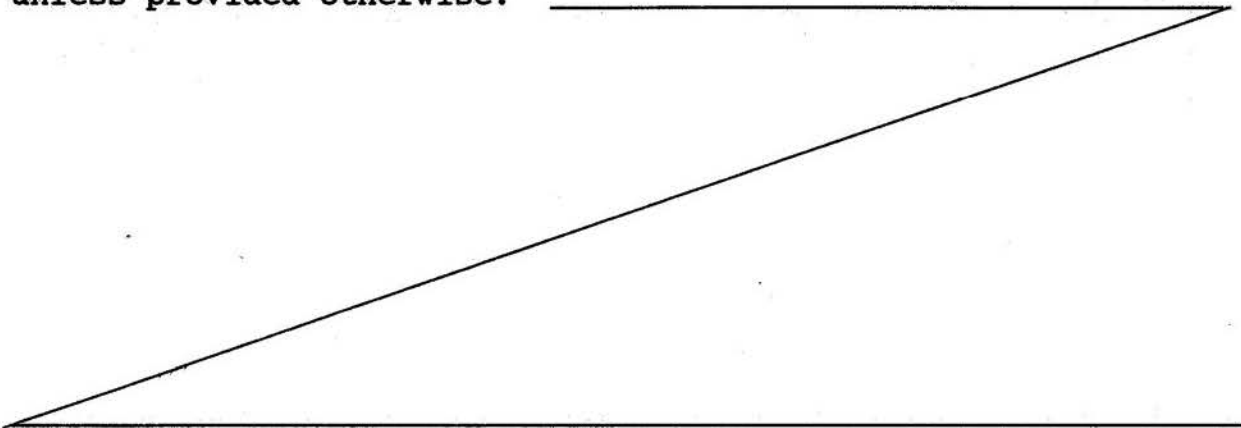
D. The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each month of delinquency.

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Lessee's permitted activities on the premises and not for sale to others. (b) All surface and ground waters appurtenant to the premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the premises required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of Lessee's improvements taken.

2. Prehistoric and historic remains. All prehistoric and historic remains found on the premises.

3. Ownership of improvements. The ownership of all improvements of whatever kind or nature, including but not limited to fences and stockwater system(s) located on the land prior to or on the commencement date of this lease, excluding those improvements constructed during the term of this lease unless provided otherwise.



THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Payment of rent. The Lessee shall pay the rent to the Lessor at the times, in the manner and form provided in this lease and at the place specified above, or at any other place the Lessor may from time to time designate, in legal tender of the United States of America.

2. Taxes, assessments, etc. The Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, and assessments of every description as to which the premises or any part, or any improvements, or the Lessor or Lessee, are now or may be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only those installments, together with interest, which becomes due and payable during the term.

3. Utility services. The Lessee shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as to which the premises or any part, or any improvements, or the Lessor or Lessee may become liable for during the term, whether assessed to or payable by the Lessor or Lessee.

4. Covenant against discrimination. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

5. Sanitation. The Lessee shall keep the premises and improvements in a strictly clean, sanitary and orderly condition.

6. Waste and unlawful, improper or offensive use of premises. The Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the premises or any part, nor, without the prior written consent of the Lessor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the premises.

7. Compliance with laws. The Lessee shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the premises, now in force or which may be in force.

8. Inspection of premises. The Lessee shall permit the Lessor and its agents, at all reasonable times during the lease term, to enter the premises and examine the state of its repair and condition.

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.

10. Repairs to improvements. The Lessee shall, at its own expense, keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the premises in good order, condition and repair, reasonable wear and tear excepted.

11. Liens. The Lessee shall not commit or suffer any act or neglect which results in the premises, any improvement, or the leasehold estate of the Lessee becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this lease, and shall indemnify, defend, and hold the Lessor harmless from and against all attachments, liens, charges, and encumbrances and all resulting expenses.

12. Character of use. The Lessee shall use or allow the premises leased to be used solely for pasture and residential (Lessee's principal domicile only) purposes.

13. Assignments, etc. The Lessee shall not transfer, assign, or permit any other person to occupy or use the premises or any portion or transfer or assign this lease or any interest, either voluntarily or by operation of law, except by way of devise, bequest, or intestate succession, and any transfer or assignment made shall be null and void; provided that with the prior written approval of the Board the assignment and transfer of this lease or any portion may be made if (1) it contains the personal residence of the Lessee; (2) in the case of commercial, industrial, hotel, resort, apartment and other business uses, the Lessee was required to put in substantial building improvements; (3) the Lessee becomes mentally or physically disabled; (4) extreme economic hardship is demonstrated to the satisfaction of the Lessor; or (5) it is to the corporate successor of the Lessee; provided, further, that prior to the approval of any assignment of lease, the Board shall have the right to review and approve the consideration paid by the

Assignee and may condition its consent to the assignment of the lease on payment by the Lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the straight-line depreciated cost of improvements and trade fixtures being transferred to the Assignee pursuant to the Assignment of Lease Evaluation Policy adopted by the Board on December 15, 1989, as amended, a copy of which is attached hereto as Exhibit "E." The premium on any subsequent assignments shall be based on the difference in the selling and purchase price plus the straight-line depreciated cost of any improvements constructed by the then Assignor, pursuant to the above-mentioned Evaluation Policy.

With respect to state agricultural leases, in the event of foreclosure or sale, the above-described premium shall be assessed only after the encumbrances of record and any other advances made by the holders of a security interest are paid.

If the Lessee is a partnership, joint venture or corporation, the sale or transfer of 20% or more of ownership interest or stocks by dissolution, merger or any other means shall be deemed an assignment for purposes of this paragraph and subject to the right of the Lessor to impose the foregoing premium.

14. Subletting. The Lessee shall not rent or sublet the whole or any portion of the premises, without the prior written approval of the Board; provided, however, that prior to this approval, the Board shall have the right to review and approve the rent to be charged to the proposed sublessee and that in the case where the Lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee or any subsequent sublessees shall be included as part of the Lessee's gross receipts, and the Board shall have the right to revise the rent of the premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided, further, that the rent may not be revised downward.

15. Indemnity. The Lessee shall indemnify, defend, and hold the Lessor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of Lessee relating to Lessee's use, occupancy, maintenance, or enjoyment of the premises; 2) any failure on the part of the Lessee to maintain the premises and sidewalks, roadways and parking areas adjacent thereto in Lessee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition; and 3) from and against all actions, suits,

damages, and claims by whomsoever brought or made by reason of the Lessee's non-observance or non-performance of any of the terms, covenants, and conditions of this lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

16. Costs of litigation. In case the Lessor shall, without any fault on its part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the premises, or in the collection of delinquent rental, taxes, and any and all other charges.

17. Liability insurance. The Lessee shall procure and maintain, at its cost and expense and acceptable to the Lessor, in full force and effect throughout the term of this lease, commercial general liability insurance, in an amount of at least \$100,000.00 for each occurrence and \$300,000.00 aggregate and \$50,000.00 for property damage, with an insurance company or companies licensed to do business in the State of Hawaii. The policy or policies of insurance shall name the State of Hawaii as an additional insured. The insurance shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of the Lessee.

The Lessee, prior to entry and use of the premises or within thirty (30) days from the effective date of this lease, whichever is sooner, shall furnish the Lessor with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire lease term, and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the Lessor.

The Lessor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this lease. If, in the opinion of the Lessor, the insurance provisions in this lease do not provide adequate protection for the Lessor, the Lessor may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Lessor's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Lessor shall notify Lessee in writing

of changes in the insurance requirements and Lessee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Lessor incorporating the changes within thirty (30) days of receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Lessee's liability under this lease nor to release or relieve the Lessee of the indemnification provisions and requirements of this lease. Notwithstanding the policy(s) of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by Lessee's negligence or neglect connected with this lease.

It is agreed that any insurance maintained by the Lessor will apply in excess of, and not contribute with, insurance provided by Lessee's policy.

18. Bond, performance. The Lessee shall, at its own cost and expense, within thirty (30) days after the date of receipt of this lease document, procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by Lessee of all the terms, conditions, and covenants of this lease, in an amount equal to two times the annual rental then payable. This bond shall provide that in case of a breach or default of any of the lease terms, covenants, conditions, and agreements, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty.

19. Lessor's lien. The Lessor shall have a lien on all the buildings and improvements placed on the premises by the Lessee, on all property kept or used on the premises, whether the same is exempt from execution or not and on the rents of all improvements and buildings located on the premises for all Lessor's costs, attorney's fees, rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee, and for the payment of all money provided in this lease to be paid by the Lessee, and this lien shall continue until the amounts due are paid.

20. Mortgage. Except as provided in this lease, the Lessee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this lease without the prior written approval of the Chairperson and any mortgage, hypothecation, or pledge without the approval shall be null and void.

Upon due application and with the written consent of the Lessor, the Lessee may mortgage this lease, or any interest,

or create a security interest in the leasehold of the public land. If the mortgage or security interest is to a recognized lending institution in either the State of Hawaii or elsewhere in the United States, the consent may extend to foreclosure and sale of Lessee's interest at the foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified to lease, own, or otherwise acquire and hold the land or any interest. The interest of the mortgagee or holder shall be freely assignable. The term "holder" shall include an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other Federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of these Federal agencies.

21. Breach. Time is of the essence in this agreement and if the Lessee shall fail to pay the rent, or any part, at the times and in the manner provided within thirty (30) days after delivery by the Lessor of a written notice of breach or default, or if the Lessee shall become bankrupt, or shall abandon the premises, or if this lease and premises shall be attached or taken by operation of law, or if any assignment is made of the Lessee's property for the benefit of creditors, or if Lessee shall fail to observe and perform any of the covenants, terms, and conditions contained in this lease and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default, by personal service, registered mail or certified mail to the Lessee at its last known address and to each mortgagee or holder of record having a security interest in the premises, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination, at the option of the Lessor, all buildings and improvements shall remain and become the property of the Lessor or shall be removed by Lessee; furthermore, Lessor shall retain all rent paid in advance to be applied to any damages.

22. Right of holder of record of a security interest. In the event the Lessor seeks to forfeit the privilege, interest, or estate created by this lease, each recorded holder of a

security interest may, at its option, cure or remedy the default or breach of rent payment within thirty (30) days or any other default or breach within sixty (60) days, from the date of receipt of the Lessor's notice, or within an additional period allowed by Lessor for good cause, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Lessor may: (a) pay to the holder from any moneys at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest, or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, the Lessor shall be entitled to the conveyance of the privilege, interest, or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to the State, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default and use its best efforts to redispose of the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by the Lessor in instituting or prosecuting its rights or remedies shall not operate as a waiver of these rights or to deprive it of a remedy when it may still otherwise hope to resolve the problems created by the breach or default. The proceeds of any redispotion shall be applied, first, to reimburse the Lessor for costs and expenses in connection with the redispotion; second, to discharge in full any unpaid purchase price or other indebtedness owing the Lessor in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the State upon redispotion which exceeds the fair market lease value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate.

23. Condemnation. If at any time, during the term of this lease, any portion of the premises should be condemned, or required for public purposes by any county or city and county, the rental shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which Lessee is not permitted to harvest and (b) 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 Lessee may, in the alternative,

remove and relocate its improvements to the remainder of the premises occupied by the Lessee. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion taken renders the remainder unsuitable for the use or uses for which the premises were leased, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability; provided, that Lessee may remove the permanent improvements constructed, erected and placed by it within any reasonable period allowed by the Lessor.

24. Right to enter. The Lessor or the County and their agents or representatives shall have the right to enter and cross any portion of the premises for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, the Lessor or the County shall not interfere unreasonably with the Lessee or Lessee's use and enjoyment of the premises.

25. Inspection by prospective bidders. The Lessor shall have the right to authorize any person or persons to enter upon and inspect the premises at all reasonable times following a published notice for its proposed disposition for purposes of informing and apprising that person or persons of the condition of the lands preparatory to the proposed disposition; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to the Lessee, and shall, if the Lessee so requires, be made in the company of the Lessee or designated agents of the Lessee; provided, further, that no authorization shall be given more than two years before the expiration of the term of this lease.

26. Acceptance of rent not a waiver. The acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant, or condition of this lease, nor of the Lessor's right of re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any breach, and the failure of the Lessor to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option.

27. Extension of time. Notwithstanding any provision contained in this lease, when applicable, the Board may for good cause shown, allow additional time beyond the time or times

specified in this lease for the Lessee to comply, observe, and perform any of the lease terms, conditions, and covenants.

28. Justification of sureties. Any bonds required by this lease shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, the Lessee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Lessor security in certified checks, certificates of deposit (payable on demand or after a period the Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to the Lessor a deed or deeds of trust of real property, all of a character which is satisfactory to Lessor and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value of any securities which may be accepted and at any time thereafter held by the Lessor shall be determined by the Lessor, and that the Lessee may, with the approval of the Lessor, exchange other securities or money for any of the deposited securities if in the judgment of the Lessor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Lessee, but only upon the written consent of the Lessor and that until this consent is granted, which shall be discretionary with the Lessor, no surety shall be released or relieved from any obligation.

29. Waiver, modification, reimposition of bond and liability insurance provisions. Upon substantial compliance by the Lessee of the terms, covenants, and conditions contained in this lease on its part to be observed or performed, the Lessor at its discretion may in writing, waive or suspend the performance bond and/or improvement bond requirements or may, in writing, modify the particular bond(s) or liability insurance requirements by reducing its amount; provided, however, that the Lessor reserves the right to reactivate the bonds or reimpose the bond(s) and/or liability insurance in and to their original tenor and form at any time throughout the term of this lease.

30. Quiet enjoyment. The Lessor covenants and agrees with the Lessee that upon payment of the rent at the times and in the manner provided and the observance and performance of these covenants, terms, and conditions on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess, and enjoy the premises for the term of the lease,

without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under it.

31. Surrender. The Lessee shall, at the end of the term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the premises, together with all improvements existing or constructed thereon or Lessee shall remove such improvements, at the option of the Lessor. Furthermore, upon the expiration, termination, and/or revocation of this lease, should the Lessee fail to remove any and all of Lessee's personal property from the premises, after notice thereof, the Board may remove any and all personal property from the premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Lessee, and the Lessee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the lease.

32. Non-warranty. The Lessor does not warrant the conditions of the premises, as the same are being leased as is.

33. Hazardous materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Lessee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the premises any such materials except to use in the ordinary course of Lessee's business, and then only after written notice is given to Lessor of the identity of such materials and upon Lessor's consent which consent may be withheld at Lessor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Lessee, then the Lessee shall be responsible for the reasonable costs thereof. In addition, Lessee shall execute affidavits, representations and the like from time to time at Lessor's request concerning Lessee's best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by Lessee.

Lessee agrees to indemnify, defend, and hold Lessor harmless, from any damages and claims resulting from the release of hazardous materials on the premises occurring while Lessee is in possession, or elsewhere if caused by Lessee or persons acting under Lessee. These covenants shall survive the expiration or earlier termination of the lease.

For the purpose of this lease "hazardous material" shall mean any pollutant, toxic substance, hazardous waste,

hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

34. Hawaii law. This lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

35. Exhibits - Incorporation in lease. All exhibits referred to are attached to this lease and hereby are deemed incorporated by reference.

36. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provision of this lease.

37. Partial invalidity. If any term, provision, covenant or condition of this lease should be held to be invalid, void or unenforceable, the remainder of this lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

SPECIAL CONDITIONS

38. Full utilization of the land. The Lessee shall, within one (1) year from the commencement of the lease, utilize the land for pasture purposes only, all in accordance with a plan of development and utilization which shall be submitted by the Lessee within three (3) months of the lease commencement date for approval by the Chairperson. The Lessee shall not commence any improvement work prior to approval of the plan; provided, however, that should the Chairperson fail to render a decision either for or against the plan within sixty (60) days following receipt of the plan, the Lessee may proceed with the work. The plan must discuss dates by which different increments of the plan will be completed.

39. Good husbandry and conservation program. The Lessee shall at all times practice good husbandry and carry out a program of conservation in cooperation with the appropriate Soil and Water Conservation District, with which district the Lessee shall maintain cooperative status. The conservation program shall be in accordance with a conservation plan which shall be submitted to the Chairperson for acceptance within six (6) months following receipt of the executed lease. The conservation plan shall include, but not limited to, those practices as land clearing, cropping system, irrigation system, drainage, noxious weed control and others needed to protect the land against deterioration and to prevent environmental degradation; provided, however, that this requirement may be waived for leases with little or no apparent conservation problems when verified by the appropriate Soil and Water Conservation District. In the event the activities of the Lessee in this regard shall be found to be unsatisfactory to the Chairperson, the Chairperson shall notify the Lessee and the Lessee shall be required, within sixty (60) days of the notice, to cure the fault and submit proof satisfactory to the Chairperson.

40. Boundary fences. The Lessee shall, within six (6) months of the lease commencement date, install stockproof fence along the entire outside perimeter of the land under lease where the fencing does not now exist, regardless of whether the Lessee has an interest or ownership in adjoining lands, and shall maintain these fences in good order and condition throughout the term of this lease and those now existing on the premises. The Lessee shall, wholly at its own cost and expense, stake out the boundaries wherever necessary in conformance with the legal descriptions provided in this lease. The cost of installing and maintaining the boundary fences shall be in accordance with Part II of Chapter 664, Hawaii Revised Statutes, which provides generally for the sharing of the costs by adjacent landowners or

Lessees for the purpose of confining animals of each adjacent owner or Lessee unless the adjacent land is owned and not leased by the government.

41. Exclusion of animals from forest lands. The Lessee shall at all times during the lease term keep its cattle, horses, and other grazing animals out of any forest reserve, if any, adjacent to the premises and shall take all reasonable precautions to prevent forest fires, and in the event fires occur, it shall use all reasonable means at its command or under its control to have the fires speedily extinguished.

42. Stock-proof fencing. Should the Lessee utilize any portion of the leased premises for grazing and/or pasturing of animals (other than pigs), the Lessee shall erect stock-proof fencing along the boundaries of the leased premises immediately upon issuance of the lease. No animals shall be placed on the lease premises until this condition is completed to the satisfaction of the Chairperson. The Lessee shall bear the cost and expense of installing and maintaining such boundary fences.

43. Withdrawal. The Lessor shall have the right to withdraw the premises, or any portion, at any time during the term of this lease upon giving reasonable notice and without compensation, except as otherwise provided in the lease, 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 premises; provided, that upon the withdrawal, or upon the taking which causes any portion of the land originally leased to become unusable for the specific use or uses for which it was leased, 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 shall be paid based upon the unexpired term of the lease; provided, further, that no withdrawal or taking shall be had of 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 those crops.

44. Clearances. The Lessee shall be responsible for obtaining all necessary federal, state or county clearances.

45. Restriction on employee residential use. The premises, or any portion, shall not be utilized for employee residential purposes. The construction or placement of any

structure on the premises for employee residential purposes is strictly prohibited, excepting, however, Lessee's principal residence.

46. Hunting. No hunting shall be allowed on the premises during the term of this lease unless otherwise provided by State law.

47. Improvement requirement. The Lessee is permitted to construct and/or place one (1) dwelling for Lessee's principal residence on the lease premises. The Lessee shall within two (2) years from the commencement date of the lease expend no less than \$3,000.00 to termite treat, paint and otherwise renovate or improve the dwelling in compliance with County, State and Federal regulations and shall be accomplished to the satisfaction of the Chairperson. Confirmation that the funds have been expended to make improvements shall be provided to the Chairperson in the form of receipts for goods and services rendered by the Lessee. Construction of a new dwelling shall be of masonry or new material in compliance with County, State and Federal regulations and in accordance with plans and specifications submitted by the Lessee to and approved by the Chairperson prior to construction.

48. Fire and extended coverage insurance. The Lessee, at its own cost and expense, shall procure and maintain at all times during the term of this lease fire and extended coverage insurance with an insurance company(s) licensed to do business in the State of Hawaii, insuring all buildings and improvements erected on the land leased in the joint names of Lessor and Lessee, with the standard mortgage clause for Mortgagee, if any, as their interest may appear, in an amount equal to the replacement cost of the facilities and shall pay the premiums at the time and place required under the policy.

In the event of total or partial loss, any proceeds derived from the policy(s) shall be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to plans and specifications approved in writing by the Board; provided, however, that with the approval of the Lessor, the Lessee may surrender this lease and pay the balance owing on any mortgage and the Lessee shall then receive that portion of the proceeds which the unexpired term of this lease at the time of the loss or damage bears to the whole of the term, the Lessor to be paid the balance of the proceeds.

The Lessee shall furnish the Lessor within thirty (30) days of the date of receipt of the executed lease, a certificate showing the policy(s) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(s). Each certificate(s) shall contain or be accompanied by an

assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to the Lessor.

All rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived.

49. Commercial operations. The Lessee, its employees, customers, guests, agents and/or invitees shall not display or offer for sale or sell any article(s) or merchandise whatsoever within the premises without the prior written approval of the Lessor and upon such terms and conditions established by the Lessor. No commercial activities whatsoever shall be allowed within the premises without the prior written approval of the Lessor.

50. Abandoned vehicles. Lessee shall take all steps necessary to prevent the placing or storing of abandoned vehicles within the premises. Any and all abandoned vehicles within the premises shall be removed by Lessee at Lessee's cost and expense.

51. Environmental regulations. Lessee shall comply with all applicable federal, state and county environmental impact regulations, including but not limited to Chapter 343, Hawaii Revised Statutes, as amended, and regulations governing historic preservation.

52. Building construction requirements. All buildings and improvements placed and/or constructed on the lease premises, shall be in full compliance with all laws, rules and regulations of the of the Federal, State and County governments applicable thereto and in accordance with plans and specifications submitted by the Lessee to and approved by the Chairperson prior to construction. No quonset hut or similar type structure will be permitted.

53. Access roadways. Lessee shall have use of roadway through the Ka'u Agribusiness, Inc. permit area (within Tax Map Key: 3rd/9-8-01:03) for access purposes to Lessee's water system and upper pastures.

54. Cane-haul roads. Cane-haul roads traversing the "Ranch Headquarters Area" shall primarily be for Ka'u Agribusiness, Inc. use. Lessee, however, shall have use of same at any time.

55. Water system. Lessee shall have operation and maintenance responsibilities and the use of the water system (including the source tunnel and pipeline) within the premises, all at Lessee's cost and expense.

Definitions.

1. The use of any gender shall include all genders, and if there is more than one lessee, then all words used in the singular shall extend to and include the plural.

2. As used in this lease, unless clearly repugnant to the context:

(a) "Chairperson" means the Chairperson of the Board of Land and Natural Resources of the State of Hawaii or his successor.

(b) "Lessee" means and includes the Lessee, its officers, employees, invitees, successors or permitted assigns.

(c) "Holder of record of a security interest" means a person who is the owner or possessor of a security interest in the land leased and who has filed with the Department of Land and Natural Resources and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

(d) "Premises" means the land leased and all buildings and improvements now or hereinafter constructed and installed on the land leased.

(e) "Waste" includes, but is not limited to, (1) permitting the premises, or any portion, to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct the erosion; (2) permitting a substantial increase in noxious weeds in uncultivated portions of the premises; and (3) failure to employ all of the usable portions of the premises.

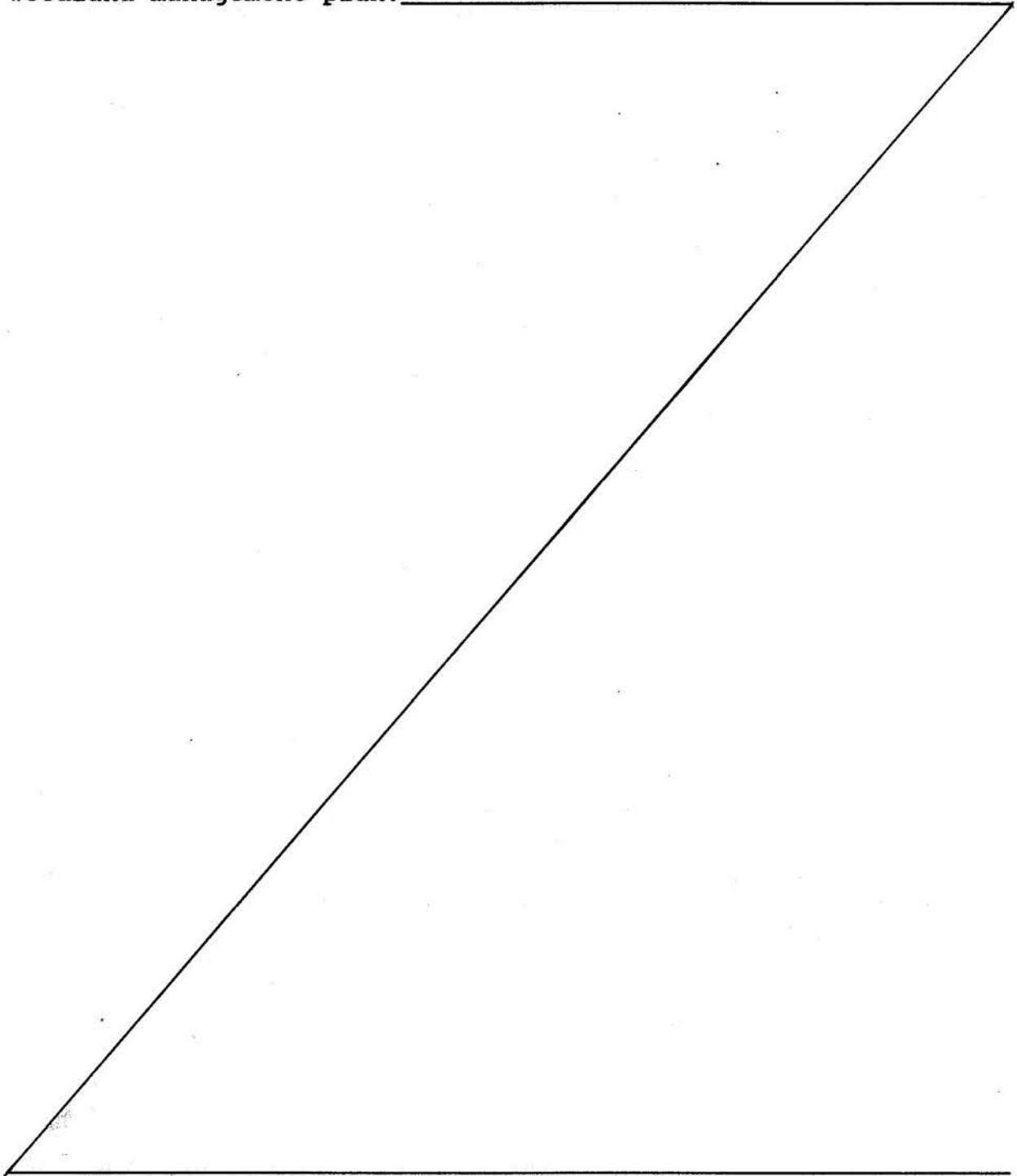
(f) "Days" shall mean calendar days, unless otherwise specified.

(g) "Noxious weed" means any plant species which is injurious, harmful, or deleterious or which may be likely to become so to the agricultural, horticultural, and livestock industries of the State, as determined by the Department of Agriculture of the State of Hawaii by administrative rules.

(h) "Pasture" means the conduct of livestock operation consisting of keeping cattle, primarily, and others, in a minor role, such as horses and sheep where animals graze the land for feed produced thereon. Compatible uses as woodland management, wildlife management and the cultivation of feed crops to be used strictly within the premises is permitted. The operation of commercial activities such as feedlots (excepting a private

feedlot designed to feed the Lessee's own cattle), dairy milking parlors, or boarding of horses is not permitted.

(i) "Timber" means any trees standing within designated areas of the leased land which are covered by a woodland management plan.



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 the parties hereto have caused these presents to be executed the day, month and year first above written.

STATE OF HAWAII

Approved by the Board of Land and Natural Resources at its meetings held on June 28, 1991, August 13, 1993, January 14, 1994 and August 26, 1994, as amended.

By *Kirk W. Stone*
Chairperson and Member
Board of Land and
Natural Resources

LESSOR

J. Gordon Cran
J. GORDAN CRAN
Gordon *co/VP*

LESSEE

APPROVED AS TO FORM:

D. [Signature]
Deputy Attorney General

Dated: *11/10/94*

13297

STATE OF HAWAII

COUNTY of Hawaii

)
) SS.
)

On this 25th day of November, 1994, before me personally appeared J. ^{Gordon}~~GORDAN~~ ^{CRAN}~~CRAN~~, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Carol a. Davis

Notary Public, State of Hawaii

My commission expires: 1/04/98

13297

JD



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES

HONOLULU

C.S.F. No. 22,110

May 27, 1994

PORTION OF
THE GOVERNMENT (CROWN) LAND OF KAPAPALA

PARCEL 1

Kapapala, Kau, Island of Hawaii, Hawaii

Beginning at the southeast corner of this parcel of land and on the northwest side of Hawaii Belt Road, Federal Aid Project No. F-18(5), the coordinates of said point of beginning referred to Government Survey Triangulation Station "UWEKAHUNA" being 33,143.20 feet South and 38,915.59 feet West as shown on Government Survey Registered Map H.S.S. Plat 127-A, thence running by azimuths measured clockwise from True South:-

1. 130° 56' 1345.72 feet along the remainder of the Government (Crown) Land of Kapapala to a 1/2 inch pipe;
2. 97° 34' 1620.00 feet along the remainder of the Government (Crown) Land of Kapapala to a 1/2 inch pipe;
3. 48° 35' 1438.00 feet along the remainder of the Government (Crown) Land of Kapapala to a 1/2 inch pipe;
4. 85° 11' 1075.00 feet along the remainder of the Government (Crown) Land of Kapapala to a 1/2 inch pipe;
5. 60° 29' 318.00 feet along the remainder of the Government (Crown) Land of Kapapala to a 1/2 inch pipe;
6. 45° 46' 1187.00 feet along the remainder of the Government (Crown) Land of Kapapala to a 1/2 inch pipe;

EXHIBIT "A"

7. 149° 48' 1137.00 feet along the remainder of the Government (Crown) Land of Kapapala to a 1/2 inch pipe;
8. 74° 21' 3786.00 feet along the remainder of the Government (Crown) Land of Kapapala to a 1/2 inch pipe;
9. 76° 03' 4268.00 feet along the remainder of the Government (Crown) Land of Kapapala to a 1/2 inch pipe;
10. 142° 41' 1094.00 feet along the remainder of the Government (Crown) Land of Kapapala to a 1/2 inch pipe;
11. 160° 47' 740.00 feet along the remainder of the Government (Crown) Land of Kapapala to a 1/2 inch pipe;
12. 102° 58' 484.00 feet along the remainder of the Government (Crown) Land of Kapapala to a 1/2 inch pipe;
13. 75° 15' 159.00 feet along the remainder of the Government (Crown) Land of Kapapala to a 1/2 inch pipe;
14. 145° 57' 1697.00 feet along the remainder of the Government (Crown) Land of Kapapala to a 1/2 inch pipe;
15. 148° 42' 875.00 feet along the remainder of the Government (Crown) Land of Kapapala to a 1/2 inch pipe;
16. 88° 40' 490.00 feet along the remainder of the Government (Crown) Land of Kapapala to a 1/2 inch pipe;
17. 89° 30' 602.00 feet along the remainder of the Government (Crown) Land of Kapapala to a 1/2 inch pipe;
18. 98° 40' 44" 117.42 feet along the remainder of the Government (Crown) Land of Kapapala;

Thence along the forest reserve fence along Kau Forest Reserve, Governor's Proclamation dated October 17, 1930, for the next five (5) courses, the direct azimuths and distances between points along said fence being:

- 19. 88° 16' 182.00 feet;
- 20. 138° 45' 2017.00 feet;
- 21. 127° 41' 1793.00 feet;
- 22. 116° 40' 3677.00 feet;
- 23. 125° 18' 30" 4205.30 feet;
- 24. 231° 25' 30" 19,251.00 feet along Kapapala Forest Reserve, Governor's Proclamation dated October 17, 1930;
- 25. 230° 58' 40" 28,526.80 feet along Kapapala Forest Reserve, Governor's Proclamation dated October 17, 1930;
- 26. Thence along edge of aa and pahoehoe flow along Kapapala Forest Reserve, Governor's Proclamation dated October 17, 1930, the direct azimuth and distance being:
 145° 20' 6218.80 feet to a spike;
- 27. 288° 20' 22,680.40 feet along Hawaii National Park to a 3/4 inch pipe;
- 28. Thence along the west edge of Keamoku Lava Flow along Hawaii National Park, Kilauea Section, Governor's Executive Order 86, the direct azimuth and distance being:
 37° 47' 56" 10,166.32 feet to a 1/2 inch pipe;
- 29. 45° 46' 340.60 feet along Hawaii National Park, Kilauea Section, Public Law 680 dated June 20, 1938;
- 30. 42° 53' 240.00 feet along Hawaii National Park, Kilauea Section, Public Law 680 dated June 20, 1938;
- 31. 32° 44' 200.00 feet along Hawaii National Park, Kilauea Section, Public Law 680 dated June 20, 1938 to a 1/2 inch pipe;

32. 40° 54' 245.00 feet along Hawaii National Park, Kilauea Section, Public Law 680 dated June 20, 1938;
33. Thence along the west bank of ravine along Hawaii National Park, Kilauea Section, Public Law 680 dated June 20, 1938, the direct azimuth and distance being:
23° 23' 475.70 feet;
34. 5° 30' 380.00 feet along Hawaii National Park, Public Law 680 dated June 20, 1938 to a spike;
35. 59° 30' 315.00 feet along Hawaii National Park, Kilauea Section, Public Law 680 dated June 20, 1938 to a spike;
36. 54° 02' 200.00 feet along Hawaii National Park, Kilauea Section, Public Law 680 dated June 20, 1938;
37. 58° 07' 250.00 feet along Hawaii National Park, Kilauea Section, Public Law 680 dated June 20, 1938;
38. Thence along stonewall along Hawaii National Park, Kilauea Section, Public Law 680 dated June 20, 1938, the direct azimuth and distance being:
39° 21' 50" 18,114.00 feet to a spike;
39. 40° 40' 1787.00 feet along Hawaii National Park, Kilauea Section, Public Law 680 dated June 20, 1938 to a 3/4 inch pipe;
40. 54° 12' 59" 1376.70 feet along Hawaii National Park, Kilauea Section, Public Law 680 dated June 20, 1938 to a 2 inch pipe;
41. 11° 00' 20" 2790.78 feet along Hawaii National Park, Kilauea Section, Public Law 680 dated June 20, 1938 to a 1/2 inch pipe;
42. Thence along the northwest side of Hawaii Belt Road, F.A.P. No. F-18(5), on a curve to the left with a radius of 68,794.96 feet, the chord azimuth and distance being:
37° 35' 15.25" 721.92 feet;
43. 127° 17' 13" 21.72 feet along a jog on the northwest side of Hawaii Belt Road, F.A.P. No. F-18(5);

- 44. 189° 51' 13" 523.68 feet along the northeast side of Hawaii Belt Road, F.A.P. No. F-18(5) to a "←";
- 45. 279° 51' 13" 150.00 feet along Grant S-15,603 to Hawaii Electric Light Co., Inc.;
- 46. 189° 51' 13" 150.00 feet along Grant S-15,603 to Hawaii Electric Light Co., Inc.;
- 47. 99° 51' 13" 190.00 feet along Grant S-15,603 to Hawaii Electric Light Co., Inc.;
- 48. 9° 51' 13" 20.00 feet along Grant S-15,603 to Hawaii Electric Light Co., Inc.;
- 49. 99° 51' 13" 40.00 feet along the north end of Hawaii Belt Road, F.A.P. No. F-18(5);
- 50. 9° 51' 13" 250.00 feet along the northwest side of Hawaii Belt Road, F.A.P. No. F-18(5);
- 51. 9° 51' 13" 430.65 feet along the northwest side of Hawaii Belt Road, F.A.P. No. F-18(5);
- 52. Thence along the northwest side of Hawaii Belt Road, F.A.P. No. F-18(5), on a curve to the right with a radius of 723.94 feet, the chord azimuth and distance being:
23° 24' 28" 339.33 feet;
- 53. Thence along the northwest side of Hawaii Belt Road, F.A.P. No. F-18(5), on a curve to the left with a radius of 68,794.96 feet, the chord azimuth and distance being:
36° 40' 01" 708.41 feet;
- 54. 126° 22' 19" 110.00 feet along a jog on the northwest side of Hawaii Belt Road, F.A.P. No. F-18(5);
- 55. Thence along the northwest side of Hawaii Belt road, F.A.P. No. F-18(5), on a curve to the left with a radius of 68,904.96 feet, the chord azimuth and distance being:
35° 59' 49" 901.96 feet;
- 56. 305° 37' 19" 110.00 feet along a jog on the northwest side of Hawaii Belt Road, F.A.P. No. F-18(5);
- 57. Thence along the northwest side of Hawaii Belt Road, F.A.P. No. F-18(5), on a curve to the left with a radius of 68,794.96 feet, the chord azimuth and distance being:
35° 29' 48" 300.84 feet;

- 58. 53° 01' 13" 220.54 feet along the northwest side of Hawaii Belt Road, F.A.P. No. F-18(5);
- 59. 9° 33' 13" 155.58 feet along the northwest side of Hawaii Belt Road, F.A.P. No. F-18(5);
- 60. Thence along the northwest side of Hawaii Belt Road, F.A.P. No. F-18(5), on a curve to the left with a radius of 68,794.96 feet, the chord azimuth and distance being: 34° 00' 24" 2576.68 feet;
- 61. Thence along the northwest side of Hawaii Belt Road, F.A.P. No. F-18(5), on a curve to the left with a radius of 68,794.96 feet, the chord azimuth and distance being: 32° 54' 46" 50.03 feet;
- 62. Thence along the northwest side of Hawaii Belt Road, F.A.P. No. F-18(5), on a curve to the left with a radius of 68,794.96 feet, the chord azimuth and distance being: 31° 42' 07" 2857.46 feet;
- 63. 30° 30' 43" 252.00 feet along the northwest side of Hawaii Belt Road, F.A.P. No. F-18(5) to the point of beginning and containing a GROSS AREA OF 23,468.460 ACRES, MORE OR LESS and a NET AREA OF 23,408.460 ACRES, MORE OR LESS, after excluding therefrom Grant 9163 to Edith Austin and Walter Austin (Area = 60.00 Acres).

Vehicle access shall not be permitted into and from Hawaii Belt Road, Federal Aid Project No. F-18(5) over and across Courses 42, 43, 44, 51 to 60, inclusive, 62 and 63 of the above-described Parcel 1.

May 27, 1994

Excepting and reserving therefrom all existing roads and trails within the above-described parcel of land and such other roads, trails and other rights-of-way that may be required for public purposes, such as rights-of-way to be designated by the Board of Land and Natural Resources at such times and for such widths as deem proper and necessary.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Raymond S. Nakamura
Raymond S. Nakamura
Land Surveyor gm

Compiled from survey and data provided by ESH, Inc., CSFs 4618, 4623, 4625, 7369, 11033, 17585 and 18221, H.T.S. Plats 116 and 116-A and other Govt. Survey Records.

TRUE NORTH
SCALE: 1 IN. = 300 FT.

Grant S-15,603
to Hawaii Electric
Light Company, Inc.
(C.S.F. 17585)

Parcel A
Electric Substation
Site

Parcel B
Right-of-way for Access
and Utility Purposes

9° 51' 13" 20.00

9° 51' 13" 40.00

"<-cut
(fnd.)

Access
Permittee

306° 57' 43" R=723.94

R=68794.96 126° 57' 43"

Hwy. Monument
(Fnd. & Adopted)

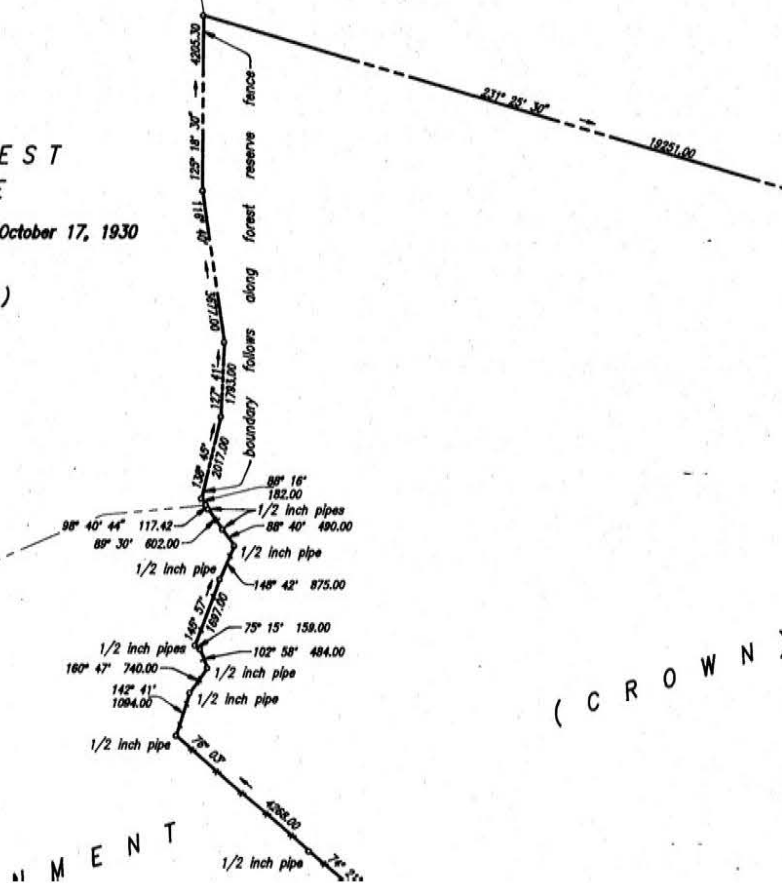
126° 22' 19" 110.00

R=68794.96
R=68904.96 126° 22' 19"

EL 1

901.96
F-18 (5)

KAU FOREST
RESERVE
Governor's Proclamation Dated October 17, 1930
Parcel B
(C.S.F. No. 18221)



(CROWN)

MONUMENT
1/2 inch pipe

KAPAPALA
Governor's Proclamation FOREST RESERVE
Dated October 17, 1930
(C.S.F. 5669)

TRUE NORTH
Scale : 1 inch = 3000 feet

HAWAII
NATIONAL
(C.S.F. 4625)
PAR

"PUU PUU"

230° 58' 40"

26526.60

boundary follows along edge
of aa and pahoehoe flow

Spine (found)

6272.20

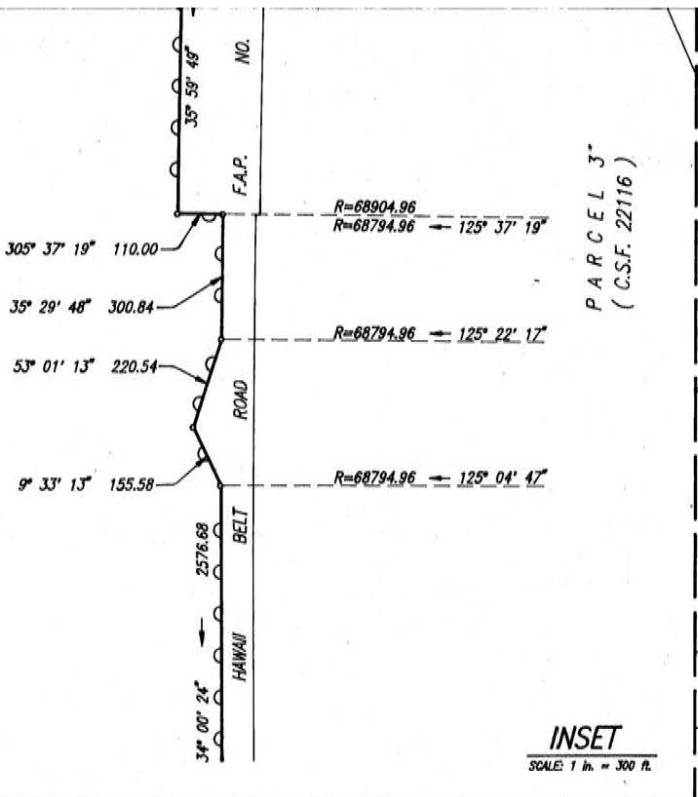
1997.50

LAND

PARCEL 1

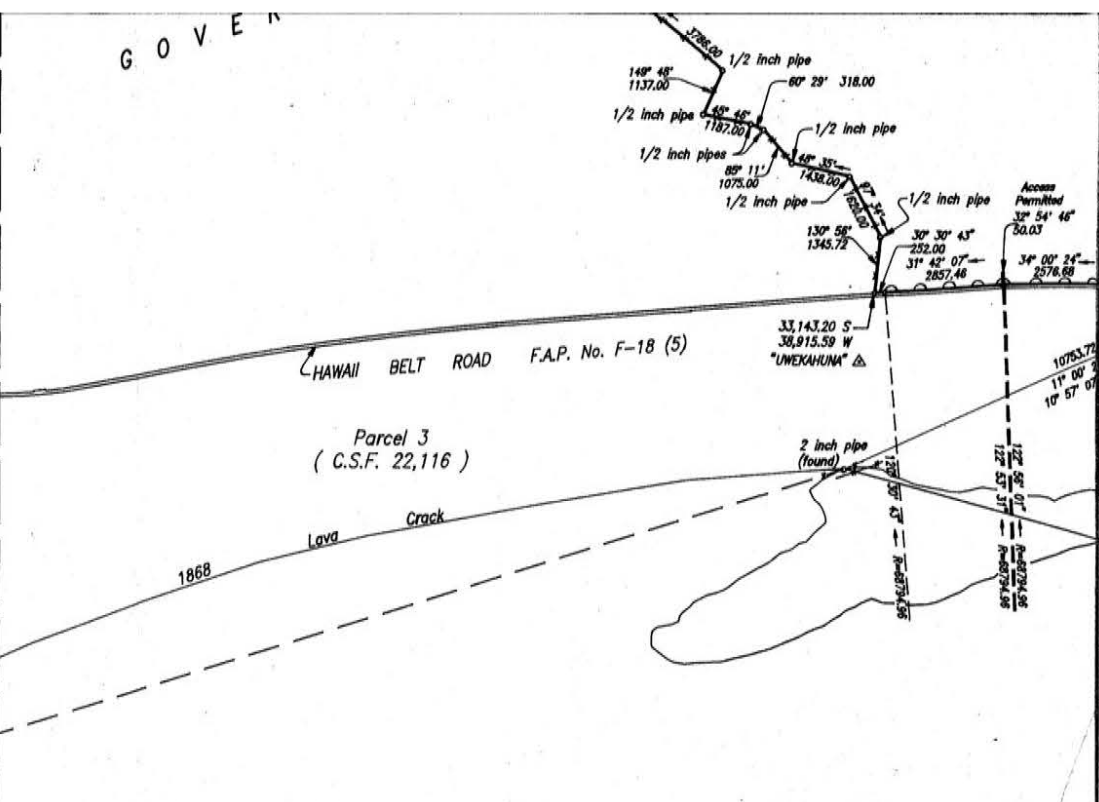
Gross Area = 23,468.460 Acs. MORE OR LESS
Less Grant 9163 = 60.00 Acs.
Net Area = 23,408.460 Acs. MORE OR LESS

PARC



INSET
SCALE: 1 in. = 300 ft.

G O V E R N

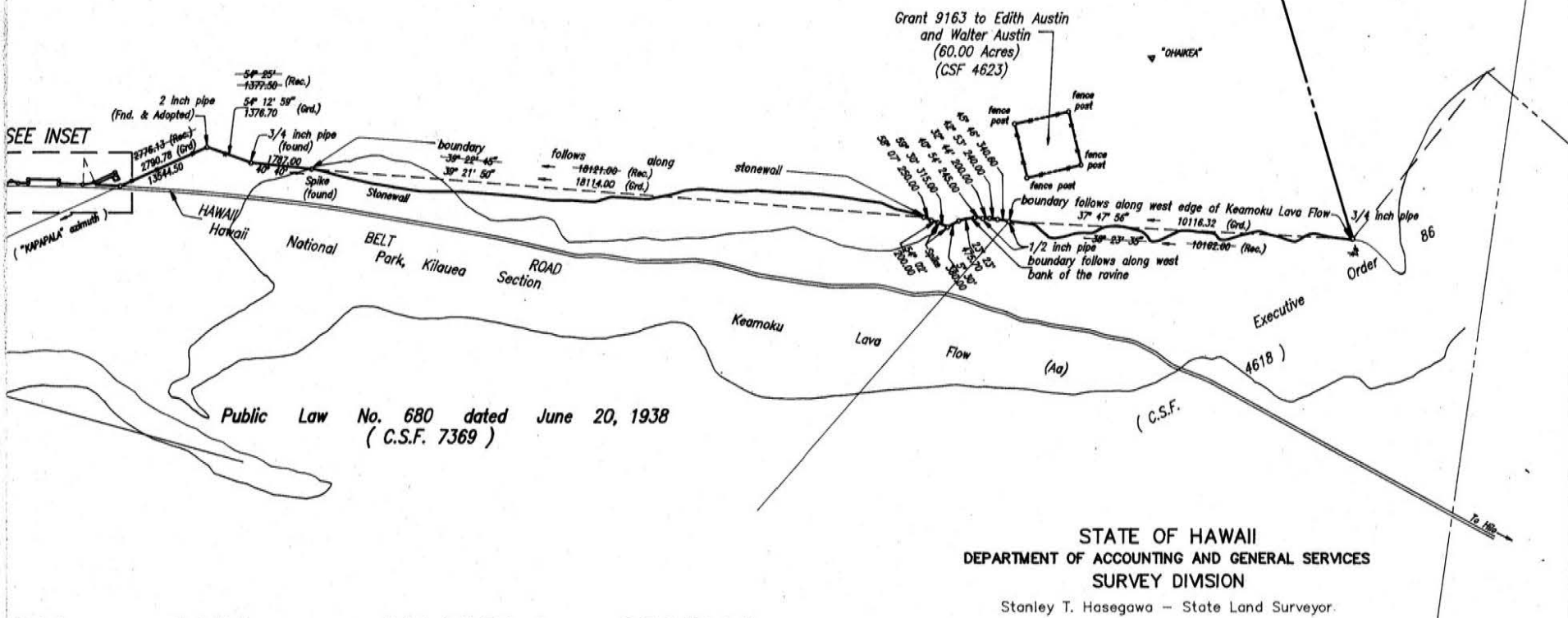


HAWAII NATI

NOTES:

Origin of Azimuths: "UWEKAHUNA" \triangle
Coordinates referred to: "UWEKAHUNA" \triangle

 Denotes access permitted
 Denotes no vehicle access permitted



Public Law No. 680 dated June 20, 1938
(C.S.F. 7369)

Grant 9163 to Edith Austin
and Walter Austin
(60.00 Acres)
(CSF 4623)

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
SURVEY DIVISION

Stanley T. Hasegawa - State Land Surveyor.

PORTION OF THE GOVERNMENT (CROWN) LAND OF KAPAPALA
PARCEL 1

KAPAPALA, KAU, ISLAND OF HAWAII, HAWAII

KILAUEA
CRATER

SCALE: 1 inch = 3000 feet

Tracing by: E.S.H. , Inc. - May 27, 1994

Job No. H-6(92)

EXHIBIT "B"

See C.S.F. NO. 22,110 for description

H.S.S. PLAT 127-A

21" X 32" = 4.7 Sq.Ft.

NAL PARK , KILAUEA SECTION



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

June 20, 1994

C.S.F. No. 22,120

PORTION OF THE GOVERNMENT (CROWN) LAND OF KAPAPALA

PARCEL 2

Kapapala, Kau, Island of Hawaii, Hawaii

Beginning at a fence post at the east corner of this parcel of land and on the northwest side of Kau Belt Road, War Emergency Relief Project No. W.E.R. 1(1), the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPAPALA" being 11,082.00 feet North and 4,041.53 feet East, thence running by azimuths measured clockwise from True South:-

1. 22° 39' 40" 4207.00 feet along the northwest side of Kau Belt Road, War Emergency Relief Project No. W.E.R. 1(1) to a fence post;
2. 117° 22' 936.00 feet along the remainder of the Government (Crown) Land of Kapapala to a fence post;
3. 211° 52' 1389.00 feet along the remainder of the Government (Crown) Land of Kapapala to a fence post;
4. 184° 57' 993.00 feet along the remainder of the Government (Crown) Land of Kapapala;
5. 138° 32' 810.00 feet along the remainder of the Government (Crown) Land of Kapapala to a fence post;
6. 59° 50' 1589.00 feet along the remainder of the Government (Crown) Land of Kapapala;
7. 139° 26' 364.00 feet along the remainder of the Government (Crown) Land of Kapapala;

- | | | |
|-----|--------------|--|
| 8. | 143° 34' | 1011.00 feet along the remainder of the Government (Crown) Land of Kapapala; |
| 9. | 143° 44' | 1532.00 feet along the remainder of the Government (Crown) Land of Kapapala to a fence post; |
| 10. | 148° 52' | 433.00 feet along the remainder of the Government (Crown) Land of Kapapala to a fence post; |
| 11. | 192° 10' | 399.00 feet along the remainder of the Government (Crown) Land of Kapapala to a fence post; |
| 12. | 172° 12' | 457.00 feet along the remainder of the Government (Crown) Land of Kapapala; |
| 13. | 153° 28' | 908.00 feet along the remainder of the Government (Crown) Land of Kapapala; |
| 14. | 159° 00' 19" | 703.58 feet along the remainder of the Government (Crown) Land of Kapapala to a 1/2 inch pipe; |
| 15. | 203° 26' 47" | 1883.17 feet along Grant 7704, Apana 5 to B. P. Bishop Estate and along the remainder of the Government (Crown) Land of Kapapala to a 1/2 inch pipe; |
| 16. | 306° 36' | 5593.15 feet along the remainder of the Government (Crown) Land of Kapapala; |
| 17. | 34° 17' | 837.00 feet along the remainder of the Government (Crown) Land of Kapapala; |
| 18. | 1° 32' | 1074.00 feet along the remainder of the Government (Crown) Land of Kapapala to a fence post; |
| 19. | 299° 55' | 685.00 feet along the remainder of the Government (Crown) Land of Kapapala; |
| 20. | 206° 41' | 498.00 feet along the remainder of the Government (Crown) Land of Kapapala; |

22,120

June 20, 1994

C.S.F. No. _____

21. 294° 09'

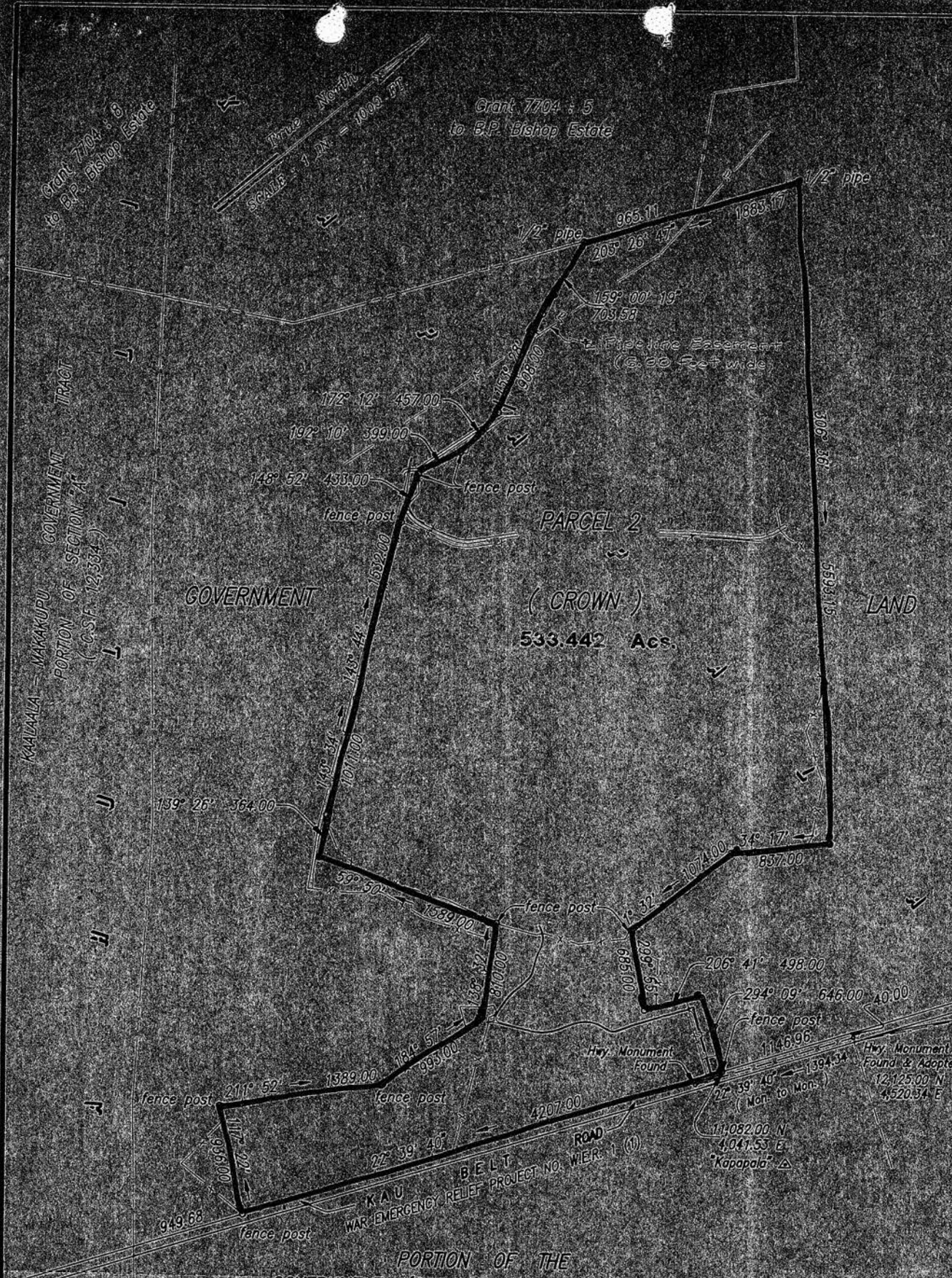
646.00 feet along the remainder of the Government
(Crown) Land of Kapapala to the point of
beginning and containing an AREA OF
533.442 ACRES.

Reserving to the State of Hawaii, its successors and assigns, a six
(6.00) feet wide easement for pipeline purposes over and across the above-described
Parcel 2 as shown on plan attached hereto and made a part hereof.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Raymond S. Nakamura
Raymond S. Nakamura
Land Surveyor gm

Compiled from survey and
data provided by ESH, Inc.,
CSF 3497, 12334 and other
Govt. Survey Records.



Grant 7704 : 5
to B.P. Bishop Estate

True North
SCALE 1 in. = 1000 FT

Grant 7704 : 8
to B.P. Bishop Estate

KAILAKA
MAKAKUPU
GOVERNMENT
TRACT
PORTION OF SECTION 21
(C.S.F. 12,334)

GOVERNMENT

PARCEL 2

(CROWN)

533.442 Acs.

LAND

JOB H-6(92)
C. BK.

Scale 1 inch = 1000 feet

N.O.T.E.
Origin of azimuths and coordinates
referred to "KAPAPALA" Δ

PORTION OF THE
GOVERNMENT (CROWN) LAND OF KAPAPALA
PARCEL 2
Kapapala, Kau, Island of Hawaii, Hawaii

TAX MAP 5rd. Div. 9-8-01 '19

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

EXHIBIT "D"

C.S.F. NO. 22,120

E.S.H., Inc. 1972-20-374

ASSIGNMENT OF LEASE EVALUATION POLICY

1. Enabling Statute.

Act 104, effective May 24, 1989, amended Chapter 171-36(a) (5) to read in part:

"... provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee;" (revision underlined)

2. Qualifying Leases.

This policy shall be applicable to the subject lease.

3. Prior Approval.

Prior to giving its consent to an assignment, DLNR must receive (i) the name, legal composition and address of any proposed assignee, (ii) a complete copy of the purchase agreement and the proposed assignment agreement, including the total consideration to be paid by the assignee for the assignment whether by cash, credit or otherwise, and (iii) the best available financial statement or balance sheet no older than 1 year prior to date of purchase agreement of the proposed assignee or any other such statement, audited or certified as correct by a financial officer of the proposed assignee.

Assignments of lease shall not be entered into until the Attorney General has reviewed the proposed assignment and the Land Board have given their approval. Such assignments shall be entertained only if they meet the criteria set forth in Section 171-36(a) (5), HRS.

4. Qualifications of Assignee.

If qualification was required of a lessee as a pre-condition of the lease, the prospective assignee must also be qualified to assume the lease.

5. Consideration to be Paid.

Prior to review by the Attorney General and approval by the Land Board, the lessee (assignor) must present with written evidence of the consideration to be paid by the assignee and any other cost data that the state may require.

6. Payment of Premium.

The act permits the state to receive from the lessee (assignor) a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee. The value of the inventory of merchandise and any other tangible assets in the sale of a business shall be deducted from the consideration paid. The appropriate cost index is then applied to determine the adjusted depreciated cost.

All lessees shall be required to furnish the state with the actual costs of construction of all improvements and renovations within 30 calendar days after its completion as well as the purchase costs of all trade fixtures acquired for the lessee's operation on the premises within 30 calendar days after their purchase. Lessees shall be required to furnish evidence of the actual costs by copy of the construction contract, receipts or otherwise. Lessees shall also be required to furnish an inventory of all personal property placed on the premises. Records of all costs incurred by the lessee for construction of improvements or renovations as well as trade fixtures submitted by the lessee shall be maintained in the lease file and shall include the Construction Cost Index for Apartments, Hotels, Office Buildings (CCI) and the Honolulu Consumer Price Index for All Urban Consumers (CPI) as published by the U.S. Department of Labor, Bureau of Labor Statistics for the year construction is completed.

The replacement cost for improvements or renovations is calculated by using the CCI for the evaluation year divided by the CCI for the year in which the improvements or renovations were completed (base year). The result is then multiplied by the original cost of the improvements or renovations. For trade fixtures, the cost is similarly calculated by using the CPI for the purchase year (base year) and the evaluation year.

Depreciation of improvements and trade fixtures will be determined on a straight line basis. Depreciation of improvements or renovations will be determined in the same proportion that the expired term of the improvements or renovations bear to the whole term. The whole term will be from the date the construction of the improvements or renovations are completed until the termination date of the lease. Depreciation of trade fixtures will be determined in the same manner, except that the whole term will be the anticipated life of the trade fixture.

The premium will be a maximum of 50% of the excess. The percentage will decrease by 5% after every 5 years of the term has elapsed in accordance with Schedule C. The sliding scale will encourage long term occupancy and prevent speculation as well as recognize the investment, effort, and risk of the lessee.

In cases where the lessee is unable to furnish the Department of Land and Natural Resources with evidence of the actual cost of construction of improvements because the lessee has performed the work itself, the State may determine the cost or the lessee shall have the option of paying for an appraiser, to be selected by the Department of Land and Natural Resources, to determine what the improvements would have cost if the labor had been performed by a third party rather than the lessee. The lessee shall exercise its option by giving written notice to the lessor within thirty (30) calendar days after completion of construction of the improvements. If the lessee fails to exercise its option within this period, the lessor shall have the right to determine the cost of the improvements.

Schedule D attached provides a typical example of the evaluation calculations using Schedule A to calculate the replacement cost for improvements or renovations and depreciation, Schedule B to calculate the cost and depreciation for trade fixtures, and Schedule C to obtain the premium percentage.

7. Non-qualifying Deductions.

The statute only recognizes tangible items. Intangibles such as "goodwill", business name recognition, etc., are not deductible.

8. Subsequent Assignments.

If the consideration for any subsequent assignment includes the purchase of existing tenant owned

improvements, the evaluation will be conducted in a similar manner as the first assignment. An example is shown on Schedule E.

Using Schedule E, the consideration the assignor paid less included inventory and any premiums will be used to obtain the adjusted depreciated cost of improvements and trade fixtures. Also, the Base Year is redefined to be the date the assignor received the Consent of the Board to occupy the premises. The holding period (redefined Base Year to assignment date), or actual occupancy of the assignor, is used in place of the "expired term" when calculating depreciation. Depreciation will be calculated by dividing the holding period by the whole term of the lease (The whole term will remain unchanged).

The change in the CCI will be reflected by comparing the CCI for the redefined base year to the most current CCI.

The holding period will be the basis for determining the appropriate premium percentage. Subtracting the included inventory and any premiums from the consideration the assignor paid will result in a reassessment of the market value of the improvements. If additional improvements were constructed by the assignor, they will be treated in the same manner as improvements constructed by an original lessee.

The excess of subtracting the adjusted depreciated consideration the assignor paid and the adjusted depreciated cost of additional improvements, if any, from the consideration the assignor received will be used against the appropriate premium percentage to determine the amount payable to the state.

9. Rights of Holders of Security Interest-Agricultural Leases only.

In the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid.

10. When state-owned improvements are included in the leased premises, improvement renovation requirements shall be recognized as being tenant-owned improvements for evaluation in the policy.

In other words, the total expenditure of the lessee to fulfill the requirement would be treated as though a new improvement was constructed.

SCHEDULE A. Adjusted Depreciated Cost of Improvements or Renovations

1. Adjusted Cost of Improvements or Renovations.

Multiply the actual cost of the improvements or renovations by the most recent U.S. Construction Cost Index for Apartments, Hotels, Office Buildings (CCI)* and divide the result by the CCI of the year construction was completed (base year) to get the adjusted cost of improvements or renovations.

2. Depreciation

Determine the depreciation percentage on a straight-line basis by dividing the expired term of the improvements or renovations by the whole term of the improvements or renovations, the whole term beginning on the date the improvements or renovations are completed to the expiration date of the lease. Multiply the adjusted cost of the improvements or renovations by the depreciation percentage to determine the depreciation.

3. Depreciated Cost of Improvements or Renovations

Subtract the depreciation from the adjusted cost of improvements or renovations. The balance is the depreciated cost of improvements or renovations.

*As published by the U.S. Department of Labor, Bureau of Labor Statistics

Example

	Actual cost:	\$500,000
	CCI (most recent):	121.1
	CCI (base year):	102.3
1. Adjusted Cost of Improvements or Renovations	Expired term:	57 mos.
	Whole term:	408 mos.

Actual Cost X $\frac{\text{CCI (most recent)}}{\text{CCI (base year)}}$

$$\$500,000 \times \frac{121.1}{102.3} = \$591,887$$

2. Depreciation

$$\$591,887 \times \frac{57 \text{ mos.}}{408 \text{ mos.}} = \$82,690$$

3. Adjusted Depreciated Cost of Improvements or Renovations

$$\$591,887 - \$82,690 = \underline{\$509,197}$$

SCHEDULE B. Adjusted Depreciated Cost of Trade Fixtures

1. Adjusted Cost of Trade Fixture.

Multiply the actual cost of the trade fixture by the most recent Honolulu Consumer Price Index for All Urban Consumers (CPI)* and divide the result by the CPI of the year in which the purchase was made (base year).

2. Depreciation.

Determine the depreciation percentage on a straight-line basis by dividing the expired term of the trade fixture by its anticipated life. Multiply the adjusted cost of the trade fixture by the depreciation percentage to determine the depreciation.

3. Depreciated Cost of Trade Fixtures.

Subtract the depreciation from the adjusted cost of the trade fixture. The balance is the depreciated cost of the trade fixture.

*As published by the U.S. Department of Labor, Bureau of Labor Statistics

Refrigerator

Example

	Actual cost:	\$1,510
	CPI (most recent):	118.1
	CPI (base year):	104.6
1. Adjusted Cost of Trade Fixture	Expired term:	57 mos.
	Whole term:	96 mos.
	(Anticipated life)	

Actual Cost X $\frac{\text{CPI (most recent)}}{\text{CPI (base year)}}$

$$\$1,510 \times \frac{118.1}{104.6} = \$1,705$$

2. Depreciation

$$\$1,705 \times \frac{57 \text{ mos.}}{96 \text{ mos.}} = \$1,012$$

3. Adjusted Depreciated Cost of Trade Fixture

$$\$1,705 - \$1,012 = \$693$$

SCHEDULE C. Premium Percentages

1. For the first 5 years, the premium is 50% of the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee. The percentage will decrease by 5% after every 5 years of the total term has elapsed.

<u>Years</u>	<u>Percentage</u>
1 - 5	50%
6 - 10	45%
11 - 15	40%
16 - 20	35%
21 - 25	30%
26 - 30	25%
31 - 35	20%
36 - 40	15%
41 - 45	10%
46 - 50	5%
51 -	0%

As an example, if a 55 year lease was assigned after 57 months, the premium percentage would be 50%. If the assignment occurs after 130 months (10+ years), the percentage would be 40%.

2. The Board of Land and Natural Resources may impose a ten percent (10%) surcharge if the assignor has not performed lease covenants to improve or use the property.

SCHEDULE D. Assignment of Lease Calculations

1. Subtract from the consideration for the assignment that amount, if any, that is attributable to inventory.
2. Calculate the Adjusted Depreciated Cost of Improvements or Renovations (see Schedule A).
3. Calculate the Adjusted Depreciated Cost of Trade Fixtures (see Schedule B).
4. Calculate the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee by subtracting the amounts derived by no. 2 and 3 from the amount in no. 1 above.
5. Determine the appropriate premium percentage (see Schedule C). Multiply by the excess, if any, derived by no. 4.

Example

A lease is being assigned 57 months after completion of the improvements at a consideration of \$600,000.

The initial cost of the improvements was \$500,000 while the current year CCI and base year CCI were 121.1 and 102.3, respectively. The whole term for the improvements is 408 months.

For the trade fixtures, the initial cost was \$1,510 with the current year CPI and base year CPI being 118.1 and 104.6, respectively. The total life expectancy is 96 months.

1.	Net Consideration:		\$600,000
2.	Adj Cost Imp/Ren:	\$591,887	
	Depreciation:	<u>- 82,690</u>	
	Adj Dep Cost Imp/Ren:		-509,197
3.	Adj Cost Trade Fixtures:	1,705	
	Depreciation:	<u>- 1,012</u>	
	Adj Dep Cost Trade Fixtures:		<u>- 693</u>
4.	Excess:		\$ 90,110
5.	Premium:	Percentage: 50%	\$ 45,055

SCHEDULE E. Subsequent Assignment of Lease Calculations

1. Subtract from the consideration the assignor received for the assignment that amount, if any, that is attributable to inventory to derive the net consideration received.
2. Subtract from the consideration the assignor previously paid for the assignment that amount, if any, that was attributable to inventory. Also, subtract from the consideration the assignor previously paid for the assignment that amount, if any, that was attributable to premiums. The net consideration paid is now defined to be the value of improvements as of the date of the occupancy by the assignor.
3. Using the result from no. 2, calculate the Adjusted Depreciated Value of Improvements or Renovations (see Schedule A).
4. Subtract the amount derived by no. 3 from the amount in no. 1 to determine the amount by which the consideration received for the assignment, whether by cash, credit, or otherwise, exceeds the adjusted depreciated value of improvements being transferred to the assignee.
5. Determine the appropriate premium percentage (see Schedule C). Multiply by the excess, if any, derived by no. 4.

Example

An assignor is assigning a lease 107 months after receiving the consent of the Board. Occupancy or the holding period is defined to be 107 months. The consideration received is \$1,000,000.

The consideration paid by the assignor was \$600,000 while the current year CCI and redefined base year CCI were 156.4 and 121.1, respectively. The whole term was 408 months.

No inventory was included in either consideration. However, a premium of \$45,055 was paid to the state by the previous occupant from the \$600,000 consideration.

1.	Net Consideration <u>Received</u> :		\$1,000,000
2.	Consideration <u>Paid</u> :	\$600,000	
	Premium:	<u>- 45,055</u>	
	Net Consideration <u>Paid</u> :	\$554,945	
3.	Adj Value Consideration (improvements):		
	\$554,945 X $\frac{156.4}{121.1}$	=	\$716,708
	Depreciation:		
	\$716,708 X $\frac{107 \text{ mos.}}{408 \text{ mos.}}$	=	<u>-187,960</u>
	Adj Dep Value Consideration:		- <u>528,748</u>
4.	Excess:		\$ 471,252
5.	Premium:	Percentage: 45%	<u>\$ 212,063</u>

EXHIBIT 5

WHEREAS, said Lessee is the present Lessee of General Lease No. S-5374 dated December 1, 1994, covering land situate at Kapapala, Kau, Island of Hawaii, Hawaii; and

WHEREAS, said lease was amended by that certain unrecorded Amendment of General Lease No. S-5374 dated July 7, 1998 ("Amendment"); and

WHEREAS, the Lessee desires that the general lease be amended; and

WHEREAS, the Board of Land and Natural Resources, at its meeting held on October 13, 1995, has approved the amendment to General Lease No. S-5374 for the purposes of:

1. Including an appurtenant non-exclusive pipeline easement 10-feet wide to cover the in existence water pipeline system beginning at the Makakupu Tunnel and ending at the boundary of the lease premises.
2. Amending paragraph 46 to allow the State of Hawaii, Department of Land and Natural Resources, Division of Forestry and Wildlife ("DOFAW"), to manage public hunting on the premises, and to allow appropriate rent discount in recognition of the public hunting agreement with the understanding that the discount will cease if DOFAW formally cancels public hunting on the premises.
3. Designating the location of the Ainapo Road over and across the lease at the location prescribed by DOFAW and the Na Ala Hele Trail and Access Program.
4. Designating the location of the access roadway through this lease to the Koa Management Area.
5. Amending paragraph 12, character of use, to include pasture, single family residential and employee residential use.

NOW, THEREFORE, the Lessor and Lessee covenant and agree that:

1. This lease shall include an appurtenant non-exclusive pipeline easement 10-feet wide to cover the in existence water pipeline system beginning at the Makakupu Tunnel and ending at the boundary of the lease premises.
2. Paragraph 46, hunting, is hereby amended to add an



additional paragraph to wit:

"The State of Hawaii, Department of Land and Natural Resources, Division of Forestry and Wildlife ("DOFAW"), shall be allowed to manage public hunting on the premises, and to allow an appropriate rent discount in recognition of the public hunting agreement with the understanding that the discount will cease if DOFAW formally cancels public hunting on the premises."

3. The location of the Ainapo Road over and across the lease at the location prescribed by DOFAW and the Na Ala Hele Trail and Access Program shall be designated.

4. The location of the access roadway through this lease to the Koa Management Area shall be designated.

5. Paragraph 12, character of use, is hereby deleted and replaced with the following:

"The Lessee shall use or allow the premises to be used solely for pasture, single family residential and employee residential use, and eco-tourism purposes."

IN CONSIDERATION THEREOF, the Lessor and Lessee further agree that this Second Amendment of Lease Agreement is subject to all the covenants and conditions in the General Lease No. S-5374, and the Amendment, except as herein provided.

This Second Amendment, read in conjunction with the General Lease No. S-5374, and the Amendment, sets forth the entire agreement between the Lessor and Lessee; and the general lease as amended and modified hereby shall not be altered or modified in any particular except by a memorandum in writing signed by the Lessor and Lessee.

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 the parties hereto have caused these presents to be executed the day, month, and year first above written.

STATE OF HAWAII

Approved by the Board of Land and Natural Resources at its meeting held on October 13, 1995.

By [Signature]
Chairperson
Board of Land and Natural Resources

LESSOR

KAPAPALA RANCH, a Hawaii limited partnership

By J. Gordon Cran
J. Gordon Cran
Its Partner

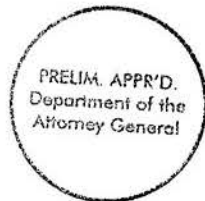
And by Genevieve B. Cran
Genevieve B. Cran
Its Partner

Lani Cran Petrie LESSEE
LANI CRAN PETRIE
PARTNER

APPROVED AS TO FORM:

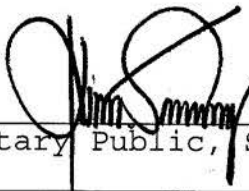
[Signature]
Russell Y. Tsai
Deputy Attorney General

Dated: 11/1/04



STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 30th day of NOVEMBER, 20 04,
before me personally appeared J GORDON CRAN, GENEVIEVE B CRAN
and LANI CRAN PETRIE, to me personally known,
who, being by me duly sworn or affirmed, did say that such
person(s) executed the foregoing instrument as the free act and
deed of such person(s), and if applicable in the capacity shown,
having been duly authorized to execute such instrument in such
capacity.



Notary Public, State of Hawaii
KIM T SAMOY

My commission expires: 26NOV2006

W

PRELIM. APPR'D.
Department of the
Attorney General