

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

February 9, 2024

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

HAWAII

Amend General Lease No. S-5976, Hospice of Hilo, Lessee, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-001: 179.

The Purposes of the Amendment are to:

1. Expand the Current Use of "Hospice and Allied Purposes" to Include Adult Residential Care-home Services.
2. Modify the rent reopening provision of the lease to set rent based on the Board's then prevailing policy on leasing to eleemosynary organizations (instead of fair market rental determined by appraisal) for the remainder of the lease term, from February 22, 2024 until the expiration of the lease on February 21, 2073.

APPLICANT:

Hospice of Hilo dba Hawai'i Care Choices, a Hawaii nonprofit corporation.

LEGAL REFERENCE:

Section 171-43.1, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-4-001:179, as shown on the attached map labeled Exhibit A.

AREA:

3.500 acres, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: RS-10

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

YES ___ NO X

CURRENT USE STATUS:

Encumbered under General Lease No. S-5976 to Hospice of Hilo.

CHARACTER OF USE:

For Hospice and allied purposes.

LEASE TERM:

65 years, commencing on February 22, 2008 and expiring on February 21, 2073. Next rental reopening is scheduled for February 22, 2028.

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL RENT:

\$480.00 Payable in advance, without notice or demand, on February 22nd of each and every year.

RENTAL REOPENINGS:

At the 10th, 20th, 30th, 40th, 50th, and 60th years of the lease term, by staff or independent appraisal.

PERFORMANCE BOND:

Twice the annual rental amount.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-16 (a)(1) 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 request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1

that states, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing," and Item 40 that states, "Leases of State land involving negligible or no expansion of change of use beyond that previously existing." The proposed request is a de minimis action 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.

DCCA VERIFICATION:

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

REMARKS:

Background:

At its meeting of February 22, 2008, Item D-3, the Board of Land and Natural Resources approved the issuance of a direct lease to the Hospice of Hilo, for Inpatient Hospice Facility and Related purposes. The lessee constructed a new twelve (12) unit (with infrastructure which allows for possible expansion to accommodate additional units) single story hospice center that included conference rooms, office/outreach space, a multi-denominational chapel, visitor and children meeting rooms along with equipment storage rooms and visitor and staff restrooms. Each furnished suite has sleeping and sitting area for patient, ample closet space, a portioned sleeping area for visiting family member and a private bath specially designed to accommodate the needs of the patient (Exhibit B).

Since its opening, data and trends have shown that hospice patients prefer to receive care in the comfort and familiarity of their homes. As a result, in-patient facility care dropped while operating expenses grew, leading to economic sustainability issues. A tactical pause on inpatient care delivery was implemented in November 2022 to reassess and reimagine future uses of the facility. A feasibility study was completed in June 2023 which identified gaps in senior living options in East Hawai'i, the need for memory care and caregiver respite for those caring for seniors in private residences, adult foster care homes and adult residential care. Considering the design of the facility, it was determined that establishing an adult residential care home (ARCH) program was the most effective use of the facility while serving community health care needs.

Use Amendment:

Although the facility was initially utilized for its intended purposes, recently, the patient rooms have been underutilized as a majority of the hospice patients being cared for preferred in-home care. The lessee is looking to make use of the facilities in a manner best suited for the expanded scope of services now being proposed by lessee for the community.

Lessee proposes expanding use of the building to include 24-hour living accommodations to adults who require assistance in activities of daily living and those who are physically infirm, have mental disabilities such as dementia, and those who are chronically ill or have a life-limiting illness. Many of the ARCH residents will likely qualify for hospice and palliative care, which lessee will continue to provide in the facility.

The community's response to lessee's plans has been positive, and lessee is confident that it will soon be able to fully utilize the facility for ARCH programs while also continuing to offer palliative, hospice and bereavement care.

The State Department of Health, Office of Health Care Assurance (OHCA) is reviewing lessee's ARCH License Application. Approval is subject to written consent from DLNR granting lessee permission to operate an ARCH on the premises, hence the lessee's request to amend the lease to include these proposed uses.

Hospice of Hilo is seeking an amendment to the lease to expand the services offered to include Adult Residential Care Home (ARCH) to provide 24-hour elderly residential care, including those who are physically infirm, have mental disabilities such as dementia, and those who are chronically ill or have a life-limiting illness.

Under the lease, Condition 12, Character of use, currently states:

“12. Character of use, The Lessee shall use or allow the premises leased to be used solely for inpatient hospice facility and related purposes.”

Staff is requesting that Condition 12 be amended to provide as follows:

“Character of use. The Lessee shall use or allow the premises leased to be used solely for adult residential care home services, inpatient hospice facility and related purposes.” (new material underscored)

Lease rent amendment:

The initial lease term provided for nominal rent of \$480 annually for the first ten (10) years, with reopenings at fair market rent at the tenth year of the lease and every 10 years thereafter. For the first reopening in 2018, the annual lease rent was administratively maintained at \$480 pending Land Board approval of this request. To reduce staff time and administrative costs of rent reopenings for this lease, staff suggests that the lease be amended to provide that the rent for each scheduled reopening be set at the then current minimum rent established by the Board from time to time (currently \$480 per annum). The specific amendment proposed is noted below.

Page 1 paragraph A of GLS-5976 provides that:

“A. For the first ten (10) years, [rent shall be] the sum of FOUR HUNDRED EIGHTY AND NO/100 DOLLARS (\$480.00) per annum.”

Paragraph B provides that:

“B. The annual rental reserved shall be reopened and redetermined on the expiration of the tenth (10th), twentieth (20th), thirtieth (30th), fortieth (40th), fiftieth (50th), and sixtieth (60th) years of the term.”

Paragraph C provides that:

“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 658A, shall be followed. At least six (6) months prior to the time of reopening, the fair market rental shall be determined by a staff appraiser or an independent appraiser, as allowed by law, 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 marked rental as determined by the 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 the Lessor’s appraiser and that Lessee has appointed its own appraiser to prepare and independent appraisal report, then the fair market rental as determined the Lessor’s appraiser shall be deemed to have been accepted by the Lessee and shall be the fair market rental as the date of reopening. If Lessee has notified Lessor and appointed his appraiser as stated hereinabove, Lessee’s appraiser shall complete his appraisal and forty-five (45) days from the date of the 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 tow appraisal reports prepared and any other data. Copies thereof shall be furnished to the two appraisers within forty-five (45) days of the appointment. Within twenty (20) days after receiving the third appraisal report, all three shall meet ant 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 above. 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."

Staff recommends that Paragraph C be deleted in its entirety and replaced with the following:

C. The annual rental shall be reopened and redetermined based on the Board's then prevailing Minimum Rent Policy for eleemosynary organizations.

Staff believes a nominal rent based on the prevailing Board policy on minimum rent for leases to eleemosynary organizations is appropriate in view of the services provided to the community.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, this project 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.
2. Authorize the Amendment of General Lease No. S-5976, Hospice of Hilo, Lessee, subject to the terms and conditions cited above and further subject to the following:
 - A. The "Character of Use" provision (Condition 12) of the lease, shall be amended to read as follows:

"Character of use. The Lessee shall use or allow the premises leased to be used solely for adult residential care home services, inpatient hospice facility and related purposes."
 - B. The rent reopening provision at paragraph C of the lease shall be replaced with the following.

“The annual rental shall be reopened and redetermined based on the Board’s then prevailing Minimum Rent Policy for eleemosynary organizations.”

- C. The standard terms and conditions of the most current lease amendment document form, as may be amended from time to time; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.

Respectfully Submitted,



Gordon C. Heit
District Land Agent

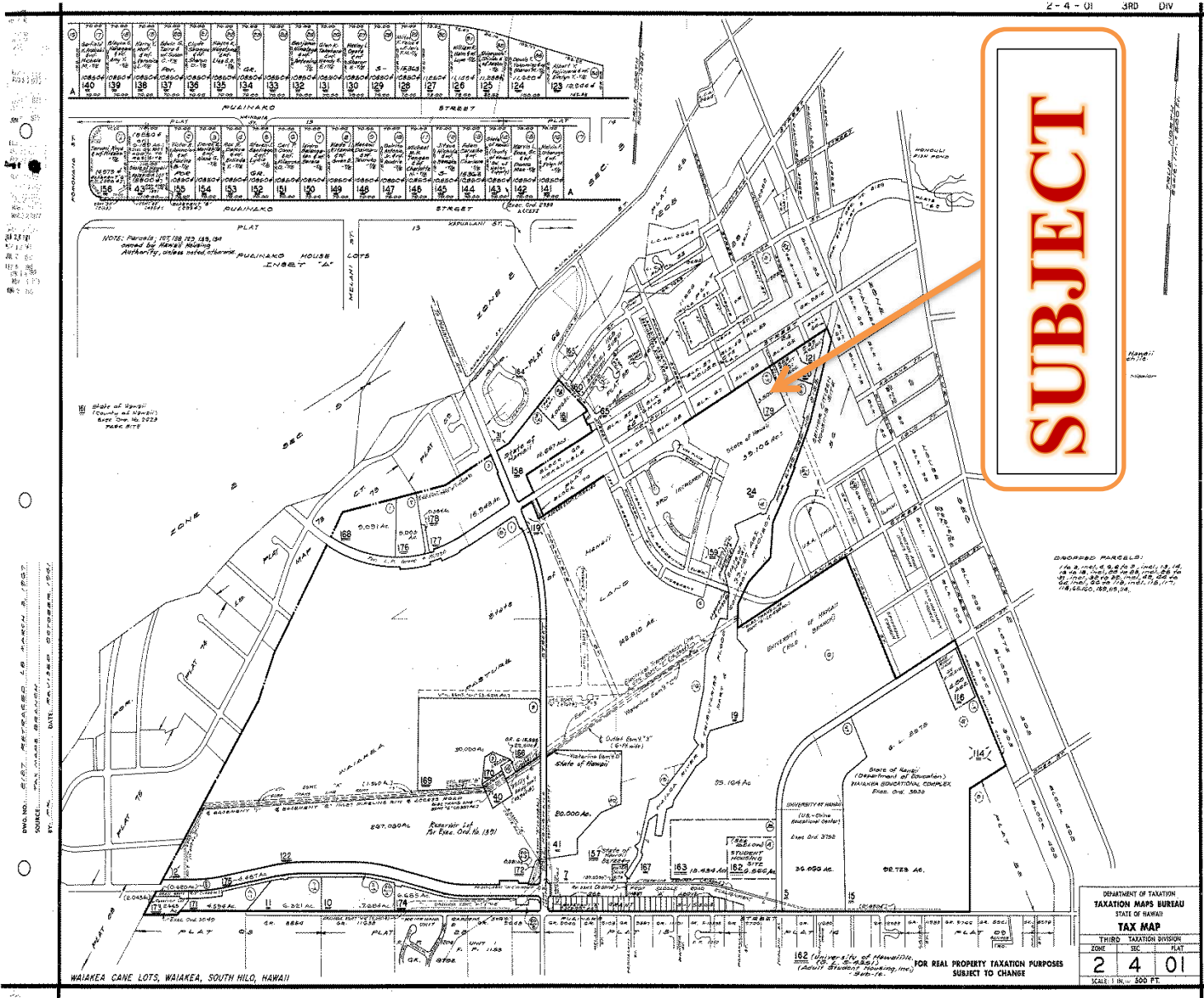
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APPROVED FOR SUBMITTAL:



Dawn N. S. Chang., Chairperson

RT



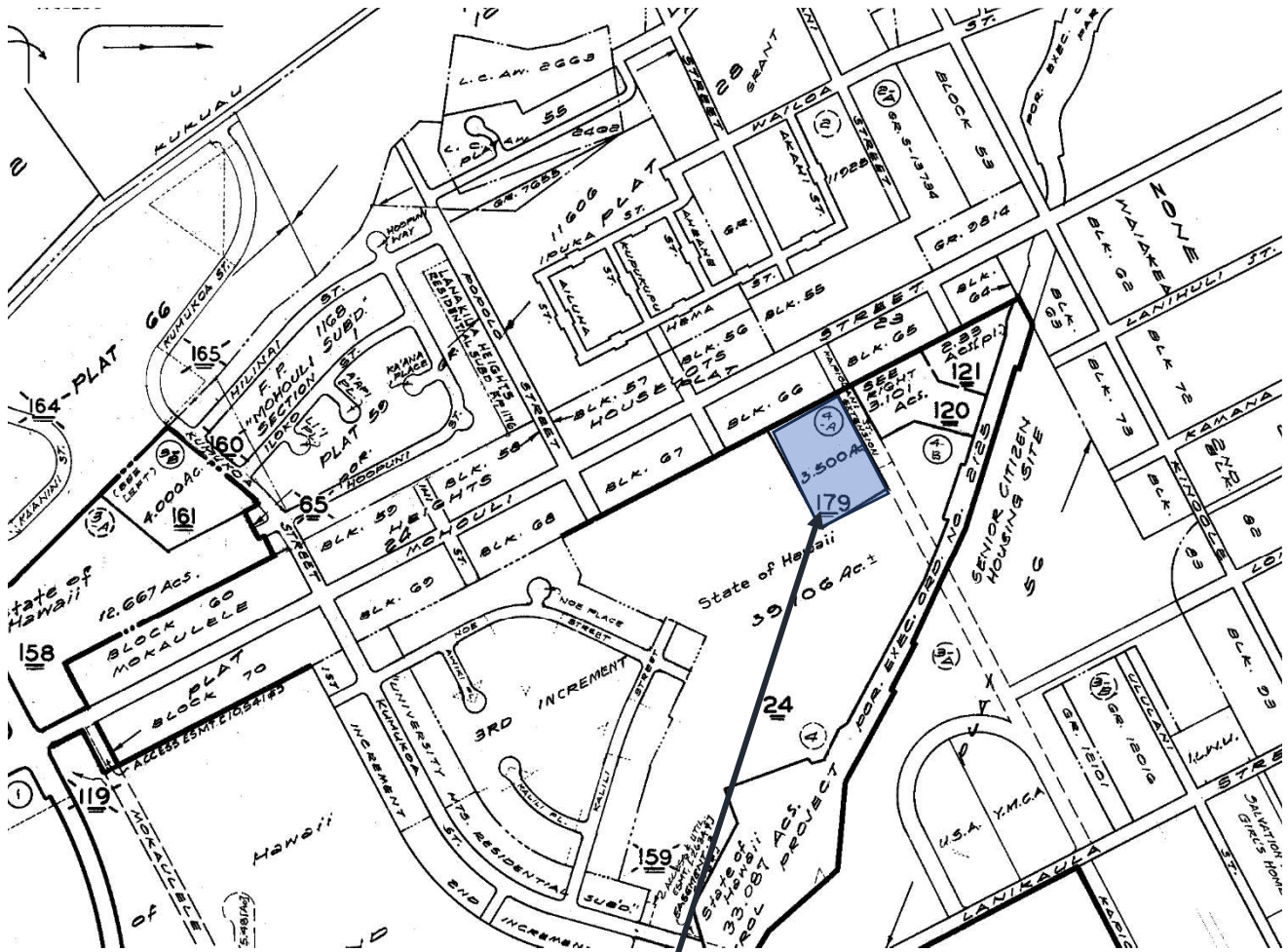
SUBJECT

EXHIBIT A

2-4-01 3RD DIV

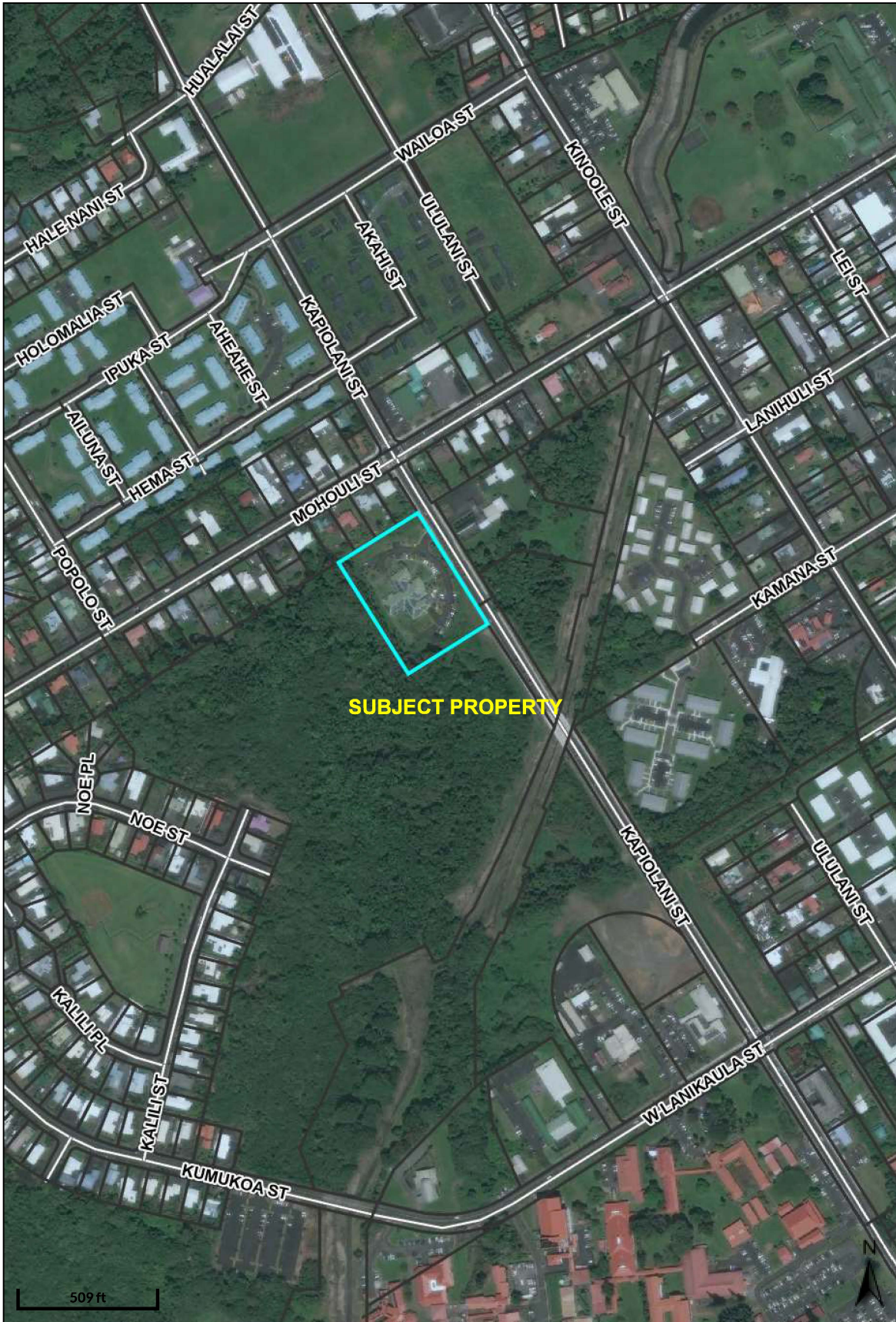
EXHIBIT A

TMK: (3) 2-4-001:179

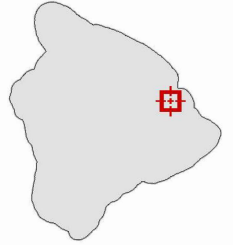


SUBJECT PROPERTY

GLS-5976



Overview



Legend

□ Parcels

EXHIBIT A

EXHIBIT B



Personal Suites



Recreation Room

EXHIBIT B



Certified Kitchen



Dining Room

EXHIBIT B



Spacious garden with walking path and benches



Family Room