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

February 13, 2009

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

PSF No.: 99od-105

OAHU

Amend General Lease No. 5498; Rachel Kuulei Haili and Rachel Ching Haili, Lessees; Waimanalo, Koolaupoko, Oahu; Tax Map Key (1) 4-1-010:080

BACKGROUND:

General Lease (GL) No. 5368 and 5498 are two of the leases that are supposed to be transferred from this Department to the Department of Agriculture pursuant to Act 90, SLH 2003. During the process of reviewing the leases in preparation for the transfer, staff discovered that portions of the two leased areas are overlapping. Exhibit A is the map showing the respective leased areas and the overlapping portions. Staff is recommending resolution of this problem by reducing the leased area for GL 5498.

GL5368

On September 24, 1993, under agenda item F-8, the Board authorized the issuance of a direct lease to Save a Nation Foundation, a non-profit organization. The leased area covers Lots 3, 4 & 5 of Waimanalo Agricultural Subdivision Phase Two. The leased area was later changed to include Lot 6 of the same subdivision and outlined in black on Exhibit A.

The said lease was the result of the negotiation between the government and the group of homeless people camping on Makapuu Beach Park. On June 13 and 15, 1994, about 80 campers relocated to the above mentioned State lands. Subsequently, the name of the lessee was changed to Aloha First (Aloha First will be referred to as the lessee, notwithstanding that Save a Nation Foundation was the original applicant). GL 5368 was finally executed in March 2001.

GL5498

Rachel Kuulei Haili and Rachel Ching Haili (Haili) were the holders of Revocable Permit No. 5154 for the property identified as Tax Map Key No. (1) 4-1-010:080 that was issued for pasture purposes. In June 1991, the Board approved the direct issuance of leases to some revocable permit holders, including Haili, pursuant to Act 237, SLH 1998 for the same areas subject to the permits. Subsequent to a few amendments to the Board's prior action, GL 5498 for general agriculture was finally signed in June 1996 covering the area

shown in yellow and yellow hatched red on Exhibit A. Current annual rent payable is $2,100 and the next rental reopening is due on June 15, 2016.

REMARKS:

When the Board considered the issuance of lease to Aloha First in 1993, staff noted that the original area requested by Aloha First covered Haili's permit area. Further, the submittal mentioned the possibility of incorporating Haili as a sublessee to Aloha First, but there was no decision on the possibility of such sublease in 1993. It appears the overlapping interests were overlooked when GL5368 was finalized and executed.

In 1994, the Board allowed an additional area (Lot 6) to be leased to Aloha First. Staff cannot find any records to substantiate whether or not the additional area was intended to replace Haili's area as part of the Aloha First lease.

The drafting of the lease documents for GL 5368 and 5498 occurred at different times (2001 and 1996 respectively) and may have contributed to the reasons why the discrepancy was not discovered until recently.

During a recent site inspection, the overlapping area was observed as being overgrown with vegetation and there was no evidence of active farming activity due to its terrain. The overlap area appears to be of limited value for agricultural purposes. Consequently, staff discussed the proposed reallocation of overlap area with Haili, and they have no objection to the proposed course of action. Staff did not seek comment from Aloha First because no changes to GL5368 are contemplated by this action.

To rectify the situation, staff recommends the Board authorize the amendment of GL 5498 by revising the leased area from 7.070 acres to 3.320 acres, as shown in yellow on Exhibit A, and depicted on the current survey map attached as Exhibit B; and reducing the rent payable based on 3.320 acres as shown in the computation below until the next rental reopening:

3.320 ac / 7.070 ac x $2,100 = $986

This request is for housekeeping purpose only, and staff did not solicit comments from other agencies.

RECOMMENDATION: That the Board amend General Lease No. 5498 by:

1. Revising the leased area from 7.070 acres to 3.320 acres;

2. Reducing the annual rent payable to $986 effective from the execution of the amendment document based on the reduced area until June 14, 2016;

3. Review and approval by the Department of the Attorney General; and

4. Such other terms and conditions as prescribed by the Chairperson that best the interest of the State.

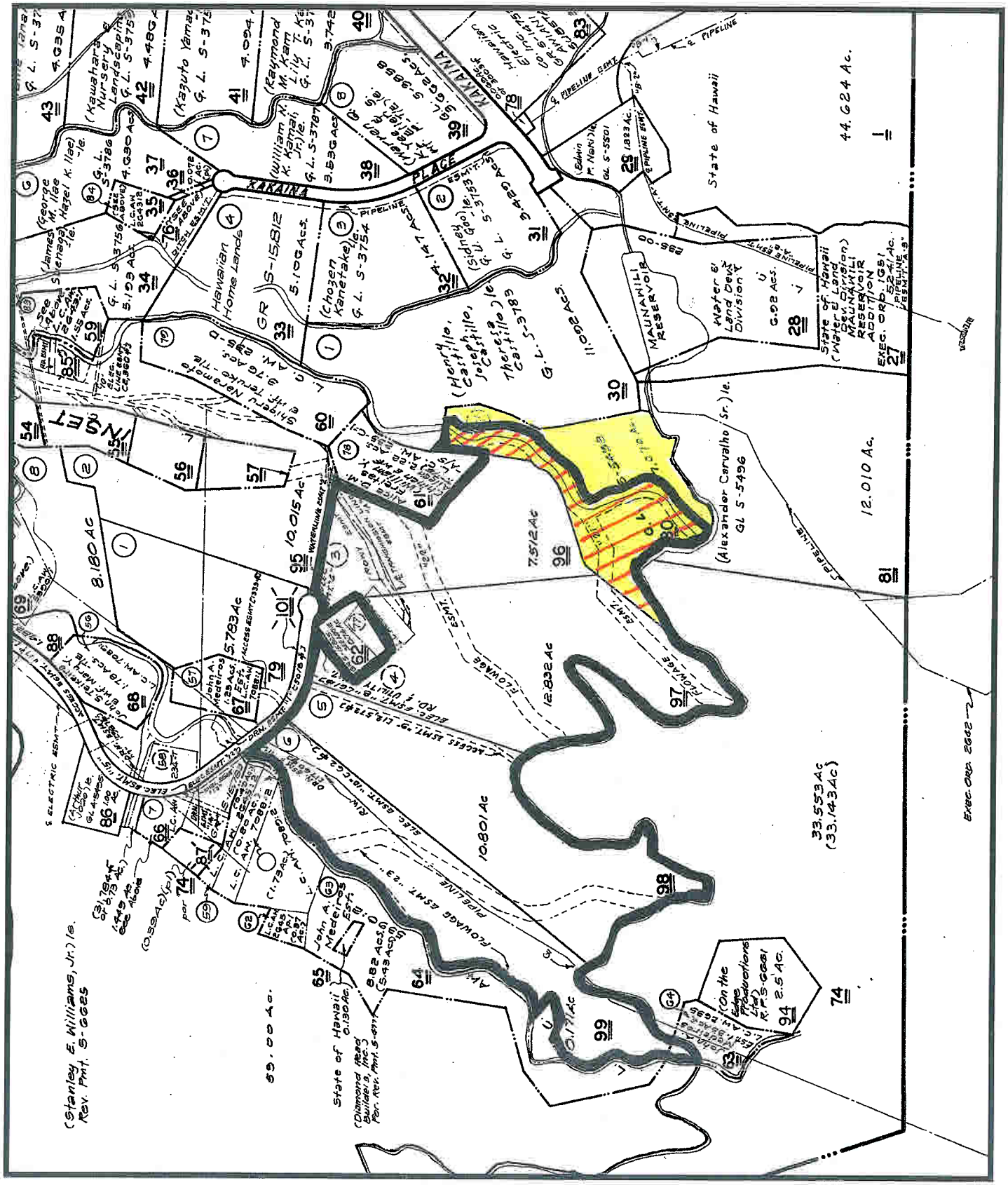
Respectfully Submitted,

Barry Cheung

Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:

Laura H. Thielen, Chairperson

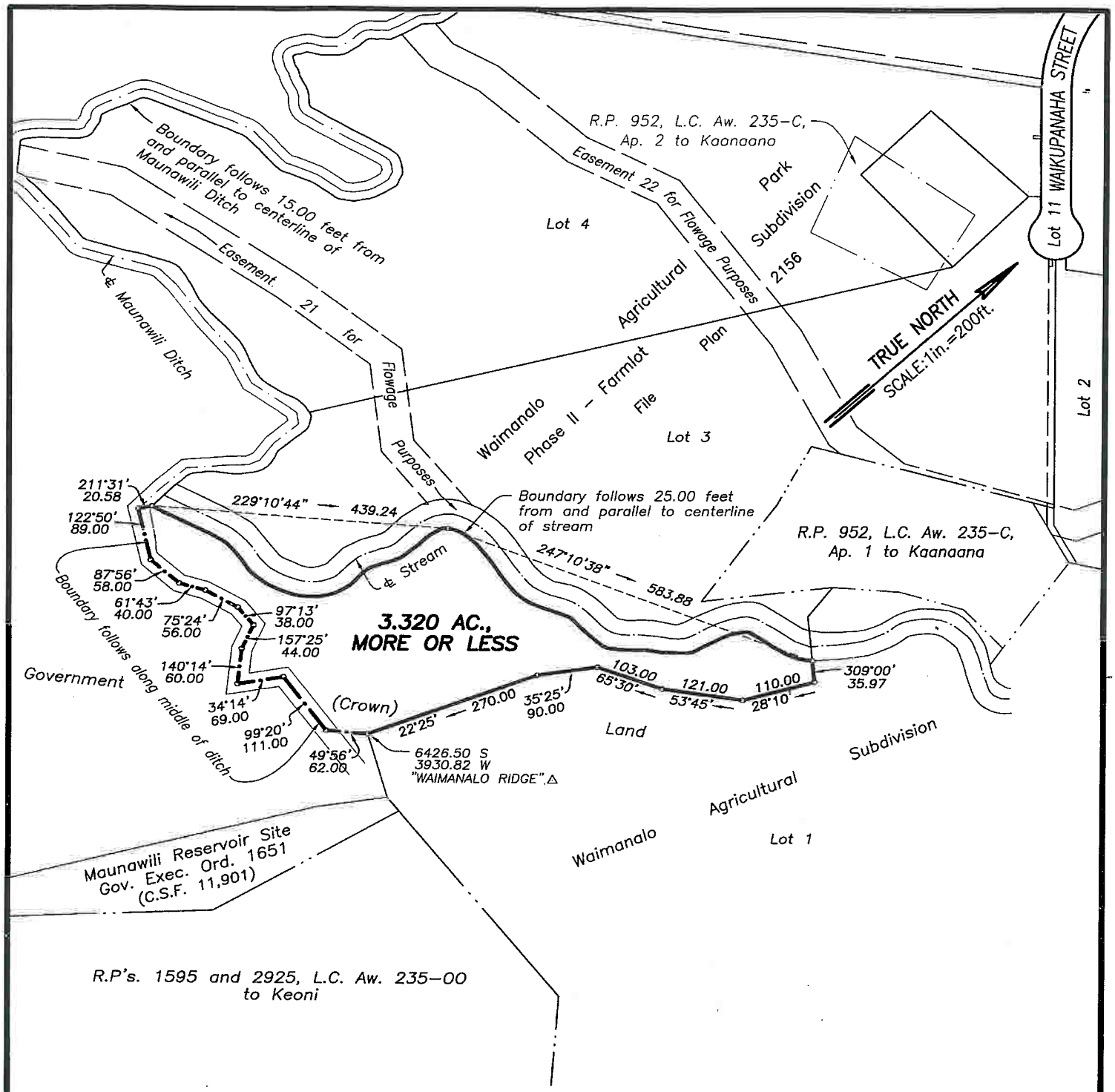


GL 5368 Boundary (Lots 3, 4, 5, & 6)

GL 5498 Revised Boundary

Overlapping Portions

EXHIBIT "A"



PORTION OF THE GOVERNMENT (CROWN) LAND OF WAIMANALO

Waimanalo, Koolaupoko, Oahu, Hawaii

Scale: 1 inch = 200 feet

JOB 0-125(08)

C. BK.

EXHIBIT "B"

TAX MAP 4-1-10 : portion of 80

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

C.S.F. NO. 24,615

JGL May 22, 2008