

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

October 28, 2010

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

OAHU

Consent to Revocable License Agreement for Non-Federal Use of Real Property, under General Lease No. S-3748, United States of America, Department of Transportation, Federal Aviation Administration, Licensor, to Hawaiian Telcom, Inc., Licensee, Mokuleia, Waialua, Oahu, Tax Map Key: (1) 6-7-003:018

APPLICANT:

United States of America, Department of Transportation, Federal Aviation Administration, Licensor, to Hawaiian Telcom, Inc., Licensee

LEGAL REFERENCE:

Section 171-36(a)(6), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Mokuleia, Waialua, Oahu, identified by Tax Map Key: (1) 6-9-003:018, as shown on the attached map labeled Exhibit A.

AREA:

2,382 square feet, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

LEASE CHARACTER OF USE:

Access rights of way for establishment, construction, operations, repair and maintenance

of a Remote Receiver and Remote Transmitter and access roads thereto, together with a general access road to serve the above-mentioned installations and a Long Range Radar Facility to be constructed on adjacent Federal lands.

TERM OF LEASE:

65 years, commencing on April 19, 1963 and expiring on April 18, 2028.

TERM OF REVOCABLE LICENSE:

From August 12, 2010 to September 30, 2013.

ANNUAL RENTAL:

Gratis

ANNUAL RENTAL UNDER REVOCABLE LICENSE:

None.

RECOMMENDED ADJUSTMENT TO LEASE RENTAL:

Not applicable as the subject lease does not have a provision allowing for sandwich profits.

DCCA VERIFICATION:

LICENSOR:

Not applicable. Government agency.

SUBLESSEE:

Place of business registration confirmed: YES x NO   

Registered business name confirmed: YES x NO   

Good standing confirmed: YES x NO   

REMARKS:

United States of America, by its Federal Aviation Administration (Licensor) obtained General Lease 3748 for the purposes cited above since 1963. In 1966, Hawaiian Telcom, Inc. (Licensee) obtained a separate lease (GL4223) for its telecommunication facilities. Subsequently, a portion of Licensee's improvement was found being constructed on the access road encumbered by GL 3748. Agreement was reached between the Licensor and Licensee regarding such improvement. The Licensee shall pay no monetary consideration to the Licensor. However, the Licensee is responsible for its pro-rata share of the expenses incurred to maintain the access road.

A new revocable license was signed by both parties effective from August 12, 2010 until September 30, 2013. A copy of the agreement is attached as Exhibit B.

Pursuant to Condition 24 of GL 3748, the Licensor "shall not assign, sublease or grant any interest in the demised premises." Staff recommends the Board consent to the revocable license.

The Licensor is in compliance with the terms and conditions of GL 3748. Staff did not solicit comments from other agencies as the request is for housekeeping purpose only.

Staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing under GL 3748. A copy of the environment assessment exemption notification is attached as Exhibit C.

There are no other pertinent issues or concerns, and staff does not have any objections to the request.

RECOMMENDATION:

That the Board consent to the revocable license agreement under General Lease No. S-3748 between United States of America, Department of Transportation, Federal Aviation Administration, as Licensor, and Hawaiian Telcom, Inc., as Licensee, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following terms and conditions:

1. The standard terms and conditions of the most current consent form, as may be amended from time to time;
2. Review and approval by the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

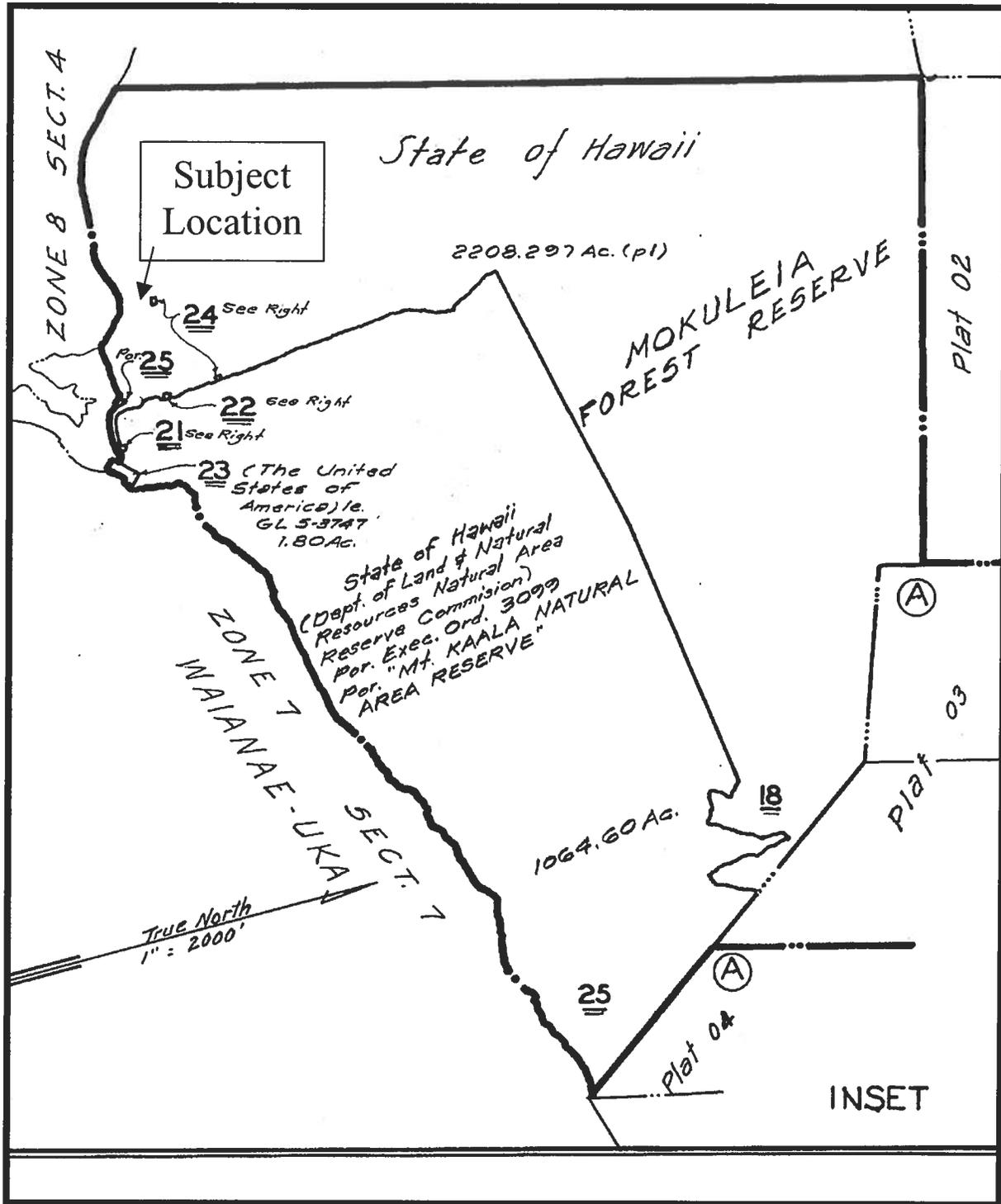


Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:


\_\_\_\_\_  
Laura H. Thielen, Chairperson



TMK (1) 6-9-003:018

EXHIBIT A

FEDERAL AVIATION ADMINISTRATION      FAA No. DTFAWP-10-J-00006  
Western-Pacific Region      Mount Kaala Air Route Surveillance Radar – 4 Road  
P. O. Box 92007      (Kaala ARSR-4 Road)  
Los Angeles, California 90009-2007      Honolulu, Oahu, Hawaii

REVOCABLE LICENSE AGREEMENT  
FOR  
NON-FEDERAL USE OF REAL PROPERTY

THIS REVOCABLE LICENSE AGREEMENT (hereinafter "Agreement"), made and entered into this 12<sup>th</sup> day of August 2010, by and between the United States of America, Department of Transportation, Federal Aviation Administration, hereinafter referred to as the "FAA" and Hawaiian Telcom, Inc., hereinafter referred to as the "Licensee".

WITNESSETH

WHEREAS, the United States of America, acting by and through the FAA was granted State of Hawaii General Lease No. S-3748 (FAA No. FA66PC-893) for certain lands needed for a FAA communication site and access road at Mount Kaala, Mokuleia, Waialua, Oahu, Hawaii;

WHEREAS, a portion of this area leased to the FAA for the access road, was later first permitted from the FAA to the Licensee by Agreement (FAA No. FA66PC-790) dated April 7, 1966, for the Licensee's Mount Kaala Radio Building Site Part 2 to operate its Microwave Station and other Radio Communication facilities; and

WHEREAS, it has been determined that Licensee's use of the subject facility will not interfere with, or adversely impact FAA's mission, and has also determined that granting the Licensee's use of the site under conditions and limitations set forth below is in the best interest of the United States.

WHEREAS, it is in the public's interest to improve property utilization and permit this secondary use.

NOW THEREFORE, the FAA does hereby grant unto the Licensee permission for the continued nonexclusive use of approximately 2,382 square feet of land, a portion of the area granted by State of Hawaii General Lease No. S-3748 for the FAA Kaala ARSR-4 Road, hereinafter referred to as the "Demised Premises", all as shown on Exhibits A and B, subject to the following terms and conditions:

A. SPECIAL CONDITIONS

1. TERM. This Agreement shall be effective when fully executed by all parties and may continue until September 30, 2013. It is revocable at the will of the FAA. The Licensee agrees to notify the FAA, in writing, 30 days in advance of the date of its proposed

surrender of the Demised Premises.

2. DESCRIPTION OF PROPERTY. The Demised Premises consists of the nonexclusive use of approximately 2,382 square feet of land, accepted in its present "as is" condition, a portion of Tax Map Key 6-7-03, as described on Exhibit "A" and as shown on Department of Accounting and General Services, Survey Division drawing Exhibit "B", which are attached hereto and made a part hereof.

TOGETHER WITH the use of the Kaala ARSR-4 Road to access the Demised Premises.

3. PURPOSE OF AGREEMENT. The Demised Premises shall be used by the Licensee for its Microwave Station and other Radio Communication facilities required for the telephone services it provides to its customers in the subject area.

4. CONSIDERATION. The Licensee shall pay the FAA no monetary consideration in the form of rental, it being mutually agreed that the rights extended to the Licensee herein are in consideration of the obligations assumed by the Licensee in its establishment, operation, and maintenance of its telephone facilities upon the Demised Premises. However, by Reimbursable Agreement (FAA No. AJA-OA-WSA-09-0327), or succeeding agreements, the Licensee reimburses the FAA for its pro rata share of the expenses incurred to maintain the Kaala ARSR-4 Road.

5. The Licensee must comply with all conditions or restrictions herein stated.

6. The Licensee shall not cause or permit any electrical/electronic radiating devices, apparatus, or equipment on the Demised Premises that may interfere or conflict with the operation of the FAA and other communications facilities. No electrical/electronic radiating devices will be installed upon the Demised Premises that exceed 100 watts of radiated power. The use and operation of the Demised Premises by the Licensee shall be so conducted that interference is not caused to radio electronic equipment operated by the FAA or other permitted users. If such operations cause interference to the FAA operations, Licensee's use will shut down immediately and remain shut down until the interference problem is resolved and Licensee will, at no cost to the FAA, take corrective measures needed to eliminate the interference problem.

7. The Licensee is liable to third parties for any possible electromagnetic radiation hazards or damage which may be caused by transmitters on the Demised Premises.

8. The Licensee must provide adequate security for the Demised Premises.

9. NOTICES. Notices may be sent to the following addresses:

- (a) Federal Aviation Administration  
Attn: Real Estate and Utilities Section, AWP-53  
P. O. Box 92007  
Los Angeles, CA 90009-2007

(b) Hawaiian Telcom, Inc.  
Attn: Portfolio Administrator  
P. O. Box 2200, Mail Code: A1  
Honolulu, HI 96841

## B. GENERAL CONDITIONS

1. **COMPLIANCE.** Any use made of the Demised Premises, and any construction, maintenance, repair, or other work performed thereon by the Licensee, including the installation and removal of any article or thing, shall be approved by the FAA prior to commencement of any installation or future addition or installation work and shall be accomplished in a manner satisfactory to the FAA.

2. **LAWS AND ORDINANCES.** In the exercise of any privileges granted by this Agreement, Licensee shall comply with all applicable State, municipal and local laws, and the rules, orders, regulations and requirements of Federal governmental departments and bureaus.

3. **MAINTENANCE.** Licensee shall maintain the improvements and Demised Premises to the standards of repair, orderliness, neatness, sanitation, and safety acceptable to the FAA. Upon request, the Licensee shall allow inspection of the Demised Premises by the FAA or its Representatives, to insure proper use and protection of the Demised Premises.

4. **DAMAGE.** Except as may be otherwise provided by the Special Conditions above, no FAA property shall be destroyed, displaced, or damaged by the Licensee in the exercise of the privileges granted by this Agreement without the prior written consent of the FAA. In such event, the Licensee shall, at the FAA's request, promptly replace, return, repair and restore any such property to a condition satisfactory to the FAA.

5. **INDEMNIFICATION.** The Licensee hereby agrees to indemnify, defend and save harmless, FAA, its officers, agents and employees from:

(a) Any and all claims and demands which may be made against the FAA, its officers, agents or employees by reason of any injury to, or death of, any person, or damage suffered or sustained by any person or corporation caused by, or alleged to have been caused by, any intentional or negligent act or omission of the Licensee or any of the Licensee's contractors, agents, employees, or persons invited or allowed on the Demised Premises by the Licensee;

(b) Liability for any and all damage to; or destruction of the property of the FAA, occupied or used by the Licensee, caused by any act or omission, negligent or otherwise, of the Licensee or any of the Licensee's contractors, agents, employees or persons invited or allowed on the Demised Premises by the Licensee.

6. **OPERATION.** The Licensee shall confine activities on the Demised Premises strictly to those necessary for the enjoyment of the privilege hereby licensed, and shall refrain from marring or impairing the appearance of said property, obstructing access thereto, interfering with the transaction of Government business and the convenience of the public, or jeopardizing the safety of persons or property, or causing justifiable public criticism.

7. **RESTORATION.** Upon termination of the use of the Demised Premises, the Licensee shall restore the Demised Premises to the condition existing on the effective date of this

License, reasonable wear and tear excepted, and repair any damage caused by its presence or use. Any property of the Licensee installed or located on the Demised Premises shall be removed, if required by the FAA. At the option of the FAA, the FAA's property may be required to be restored to its original condition upon thirty (30) days' written notice from the FAA. If the Licensee fails to remove all structures and improvements, except those owned by the FAA, within a reasonable period, they shall become the property of the FAA. This, however, will not relieve the Licensee of liability for the cost of their removal and the restoration of the Demised Premises. The FAA reserves the right to remove the Licensee's improvements, restore the Demised Premises to a satisfactory condition, and hold the Licensee liable for all costs if the Licensee fails to remove said structures and improvements and restore the Demised Premises as directed by the FAA.

8. EXPENSE. Any cost, expense, or liability connected with, or in any manner incident to, the granting, exercise, enjoyment, or relinquishment of this Agreement shall be assumed and discharged by the Licensee.

9. FUTURE REQUIREMENTS. The Licensee shall promptly comply with such further conditions and requirements as the FAA may hereafter prescribe.

10. ATTEMPTED VARIATION. There shall be no variation or departure from the terms of this Agreement without prior written consent of the FAA.

11. TRANSFERABILITY. This Agreement is not transferable. If the Licensee, through voluntary sale or transfer, or through enforcement of contract, foreclosure, tax sale, or other valid legal proceeding shall cease to be the owner of the physical improvements situated on the Demised Premises, this Agreement shall automatically terminate.

12. INSURANCE. Licensee, at its expense, shall maintain commercial general liability insurance during the entire term of this Agreement, from an insurance company authorized to do business in the State of Hawaii either directly or through a licensed surplus lines broker or agent. The combined single limit for bodily injury and property damage shall be \$1,000,000 each occurrence, \$2,000,000 general aggregate. The FAA shall be named as additional insured with respect to liability arising out of operations performed by Licensee pursuant to this Agreement. A certificate of insurance, as evidence of insurance required by this Agreement, shall be furnished to the FAA's Local Representative prior to use of the Demised Premises. The certificate shall provide that the policy will not be materially changed or cancelled without thirty (30) days written notice being given to the FAA.

13. NONDISCRIMINATION.

(a) Licensee agrees that no person shall be discriminated against in connection with the use made by the Licensee of the Demised Premises, on the grounds specified in Title VI of the Civil Rights Act of 1964 (78 Stat, 238, 252; 42 U.S.C. 2000 (d)) and the applicable regulations of the General Services Administration (41 C.F.R. Subpart 101-6.2).

(b) Licensee shall obtain from each person or firm who, through contractual or other arrangements with the Licensee, provides services, benefits or performs work on the Demised Premises, a written agreement whereby said person or firm agrees to assume the same obligations with respect to nondiscrimination as those imposed upon the Licensee as indicated above. The Licensee shall furnish a copy of such agreement to the FAA.

(c) The breach by the Licensee of conditions relating to nondiscrimination shall constitute sufficient cause for cancellation and revocation of this Agreement.

14. OFFICIALS NOT TO BENEFIT. No member of, or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefits that may arise therefrom; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

15. COVENANT AGAINST CONTINGENT FEES. The Licensee warrants that it has not employed any person to solicit or secure this Agreement upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the Government the right to annul this Agreement or, in its discretion, to recover from the Licensee the amount of such commission, percentage, brokerage, or contingent fee in addition to the consideration herein set forth. This warranty shall not apply to commissions payable by the Licensee upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Licensee for the purpose of securing business.

16. ANTI-KICKBACK. The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from (1) Providing or attempting to provide or offering to provide any kickback; (2) Soliciting, accepting, or attempting to accept any kickback; or (3) Including, directly or indirectly, the amount of any kickback in the license contract price paid by the Licensee to the United States or in the license contract price paid by a subcontractor to the Licensee or higher tier subcontractor.

17. CHANGE OF ADDRESS. In the case of change of address, the Licensee shall immediately notify the FAA, in accordance with Section A.9. herein.

18. BREACH. This License may be terminated and revoked upon breach of any conditions herein or otherwise at the discretion of the FAA.

19. EFFECTIVE DATE. This License shall be effective on the date it has been fully executed by the parties hereto.

20. GOVERNING LAW. This License shall be governed by Federal Law.

21. CONTRACT DISPUTES.

(a) All contract disputes and arising under or related to this lease contract shall be resolved through the Federal Aviation Administration (FAA) dispute resolution system at the Office of Dispute Resolution for Acquisition (ODRA) and shall be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17, which are hereby incorporated by reference. Judicial review, where available, will be in accordance with 49 U.S.C. 46110 and shall apply only to final agency decisions. A Lessor may seek review of a final FAA decision only after its administrative remedies have been exhausted.

(b) All Contract Disputes shall be in writing and shall be filed at the following address:

(1) Office of Dispute Resolution for Acquisition, AGC-70,  
Federal Aviation Administration,  
800 Independence Ave, S.W.,  
Room 323,  
Washington, DC 20591,  
Telephone: (202) 267-3290,  
Facsimile: (202) 267-3720

(c) A contract dispute against the FAA shall be filed with the ODRA within two (2) years of the accrual of the lease contract claim involved. A contract dispute is considered to be filed on the date it is received by the ODRA.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date written above.

HAWAIIAN TELCOM, INC.

By:   
**JOHN T. KOMIJI**  
Title: **SVP & General Counsel**  
Date: AUG 03 2010

By:   
**ROBERT REICH**  
Title: **SVP & Chief Financial Officer**  
Date: AUG 03 2010

Approved  
as to form  
LEGAL DEPT.  
By RSS  
Date 7/20/10

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION

By:   
Darice B. N. Young  
Title: Realty Contracting Officer  
Date: August 12, 2010

EXHIBIT "A"

MOUNT KAALA RADIO BUILDING SITE

PARTS 1 AND 2

Mount Kaala, Mokuleia, Waiialua, Oahu, Hawaii

PART 1: Being a portion of the Government Land of Mokuleia. Being also a portion of Mokuleia Forest Reserve covered by Governor's Proclamation dated December 31, 1918.

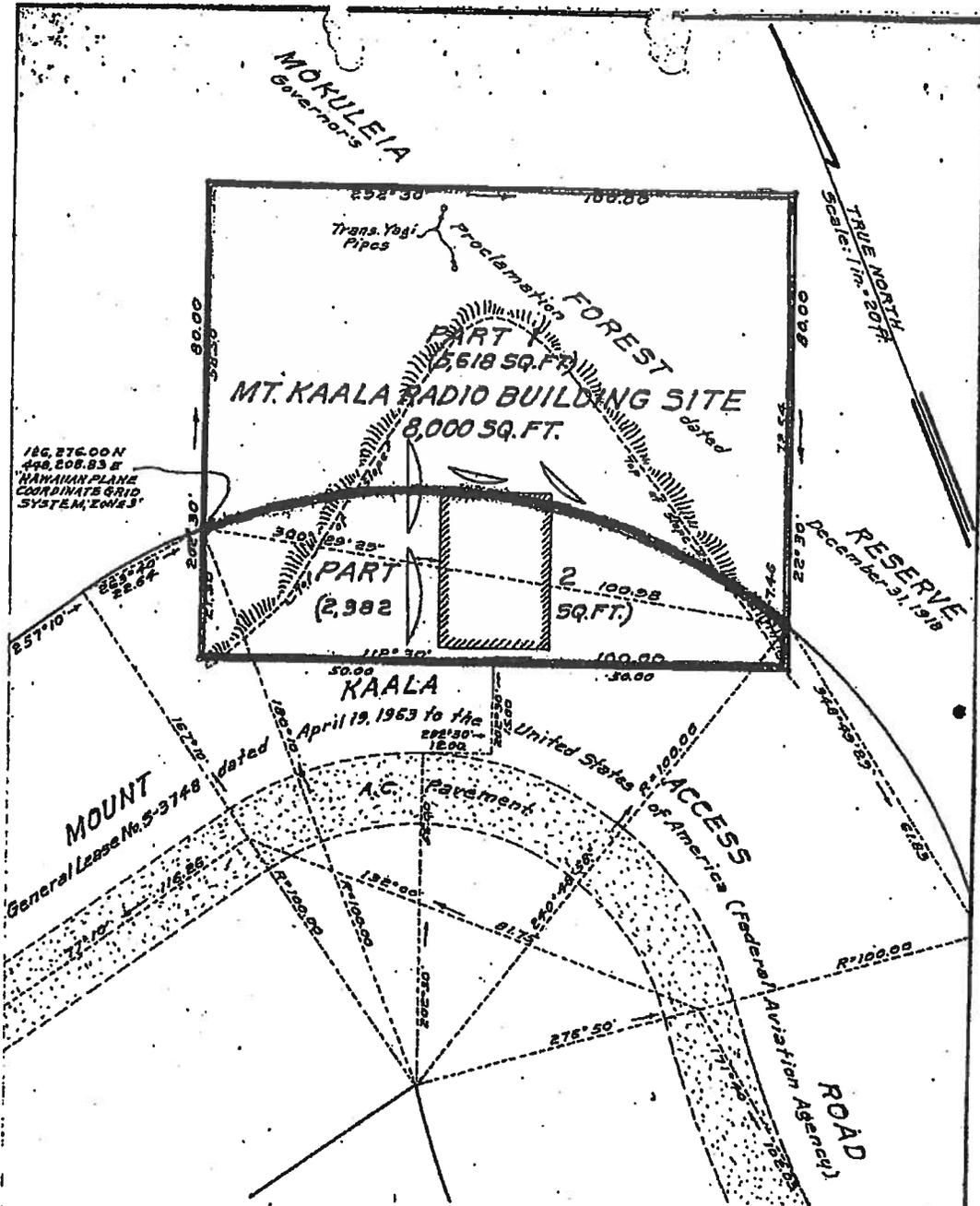
Beginning at the southwesterly corner of this parcel of land, the northwesterly corner of Part 2 of Mount Kaala Radio Building Site and on the northerly side of Mount Kaala Access Road (General Lease No. S-3748 to United States of America (Federal Aviation Agency)), the coordinates of said point of beginning referred to "HAWAIIAN PLANE COORDINATE GRID SYSTEM, ZONE 3" (Central Meridian 158° 00' 00") being 126,276.00 feet North and 448,208.83 feet East, as shown on Government Survey Registered Map 1533, thence running by azimuths measured clockwise from True South:-

1. 202° 30'            58.50 feet along remainder of Mokuleia Forest Reserve;
2. 292° 30'            100.00 feet along remainder of Mokuleia Forest Reserve;
3. 22° 30'             72.54 feet along remainder of Mokuleia Forest Reserve;
4. Thence along the northerly side of Mount Kaala Access Road, along Part 2 of Mount Kaala Radio Building Site, on a curve to the left with a radius of 100.00 feet, the chord azimuth and distance being: 120° 29' 29" 100.98 feet to the point of beginning and containing an AREA OF 5,618 SQUARE FEET.

PART 2: Being a portion of the Government Land of Mokuleia. Being also a portion of Mount Kaala Access Road covered by General Lease No. S-3748 to United States of America (Federal Aviation Agency) within the Mokuleia Forest Reserve covered by Governor's Proclamation dated December 31, 1918.

Beginning at the northwesterly corner of this parcel of land, the southwesterly corner of Part 1 of Mount Kaala Radio Building Site and on the northerly side of Mount Kaala Access Road (General Lease No. S-3748 to United States of America (Federal Aviation Agency)), the coordinates of said point of beginning referred to "HAWAIIAN PLANE COORDINATE GRID SYSTEM, ZONE 3" (Central Meridian 158° 00' 00") being 126,276.00 feet North and 448,208.83 feet East, as shown on Government Survey Registered Map 1533, thence running by azimuths measured clockwise from True South:-

1. Along the northerly side of Mount Kaala Access Road, along Part 1 of Mount Kaala Radio Building Site, on a curve to the right with a radius of 100.00 feet, the chord azimuth and distance being: 300° 29' 29" 100.98 feet;
2. 22° 30' 7.46 feet along the remainder of Mount Kaala Access Road;
3. 112° 30' 100.00 feet along the remainder of Mount Kaala Access Road;
4. 202° 30' 21.50 feet along the remainder of Mount Kaala Access Road to the point of beginning and containing an AREA OF 2,382 SQUARE FEET.



**MT. KAALA RADIO BUILDING SITE**  
**PARTS 1 AND 2**  
 Mount Kaala, Mokuleia, Waialua, Oahu, Hawaii.  
 Scale: 1 inch = 20 feet

**EXHIBIT "B"**

JOB 6-3350  
 C. BK 9 (Taka)



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

October 28, 2010

**EXEMPTION NOTIFICATION**

regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Consent to Revocable License Agreement

Project / Reference No.: GL 3748

Project Location: Waialua, Oahu, TMK (1) 6-7-003:portion of 018

Project Description: Consent to revocable license agreement issued on the use of access road

Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject project is considered to be exempt from the preparation of an environmental assessment pursuant to Exemption Class No.1, that states: "Operations, repairs, maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing".

The subject request pertains to the use of the existing access road leased by the Federal Aviation Administration pertaining to the telecommunication site. As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties Not applicable

Exemption Item Description  
from Agency Exemption List: Not applicable

**EXHIBIT C**

Exemption Notification for Consent

October 28, 2010

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Recommendation:

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

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Laura H. Thielen, Chairperson

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Date