

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

August 12, 2011

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

PSF No.: 11OD-087

OAHU

Request to Extinguish an Existing Ditch Easement, Waimanalo, Koolaupoko,
Oahu, Tax Map Key: (1) 4-1-025:010 portion

APPLICANT:

Janet Kappas, Roy Harada, Calvin Harada, Charlotte Oda and Dexter Harada,
("Applicants").

LEGAL REFERENCE:

Section 171-57, Hawaii Revised Statutes, as amended, states,

§171-57 Reserved rights and easements. "Notwithstanding any limitations to the contrary, where public land is disposed of with reservation in the State of quarry rights to rock, sand or gravel or an easement, and if the board of land and natural resources finds that a disposition of the reserved right or easement is not prejudicial to the best interest of the State, community or area in which the land is situated, it may, after giving public notice of the intended disposition as provided in section 171-16(d), dispose of the reserved right or easement to the owner of the land by direct sale or by lease without public auction."

LOCATION:

Portion of former Government lands situated at Waimanalo, Koolaupoko, Oahu, identified by tax map key: (1) 4-1-025:010 portion, as shown on the attached map labeled **Exhibit 1**.

AREA:

0.079 acres, more or less.

ZONING:

State Land Use District: Agriculture

City & County of Honolulu LUO: AG-2

CURRENT USE STATUS:

Vacant

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

CHARACTER OF USE:

Former irrigation ditch

APPLICANT REQUIREMENTS: Applicant shall be required to:

1. Pay for an appraisal to determine a one-time payment; and
2. Pay for the costs of public notice pursuant to section 171-16(d), HRS.

CONSIDERATION:

A one-time payment to be determined by an independent appraiser, subject to review and approval by the Chairperson.

REMARKS:

The subject parcel was sold by the government through Land Patent Grant 13265 in 1957 (copy attached as **Exhibit 2**). The grant had reserved in perpetuity an easement for ditch purposes running along the boundary fronting the public road in favor of the government.

The Applicants, current owners of the subject parcel, are in the process of obtaining subdivision approval to develop their property. They propose to construct a new driveway over the ditch easement that connects their property to the public road. The county rejected the subdivision application due to the existence of the ditch easement. Therefore, the Applicants request the Board extinguish the subject ditch easement.

Applicants confirmed with the Department of Agriculture (DOA) that the ditch was once used to convey irrigation water to the surrounding farmlands, although it is currently no longer in service.

Pursuant to obtaining county subdivision approval for the proposed new construction of the driveway, the applicant formally requests that the existing ditch easement become extinguished.

DOA, Department of Facility Maintenance, Office of Hawaiian Affairs, and Board of Water

Supply have no objections/comments regarding the subject request.

The Department of Health, Department of Hawaiian Home Lands, Division of Historic Preservation, Commission on Water Resource Management, and Department of Planning and Permitting have not responded to staff’s request for comments as of the suspense date.

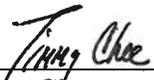
Section 171-57, HRS allows the Board authorize the extinguishment of an easement reserved to the State by direct sale. Staff recommends an appraisal be conducted to determine the consideration, if appropriate, payable to the State from the extinguishment of the said easement.

There are no further pertinent issues or concerns and staff has no objections to the request.

RECOMMENDATION: That the Board

1. Find that the extinguishment of the subject ditch easement is not prejudicial to the best interest of the State, community or area in which subject ditch easement is located.
2. Subject to the Applicants fulfilling the Applicant Requirements listed above, authorize the extinguishment of the ditch easement on said land under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. Review and approval by the Department of the Attorney General; and
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

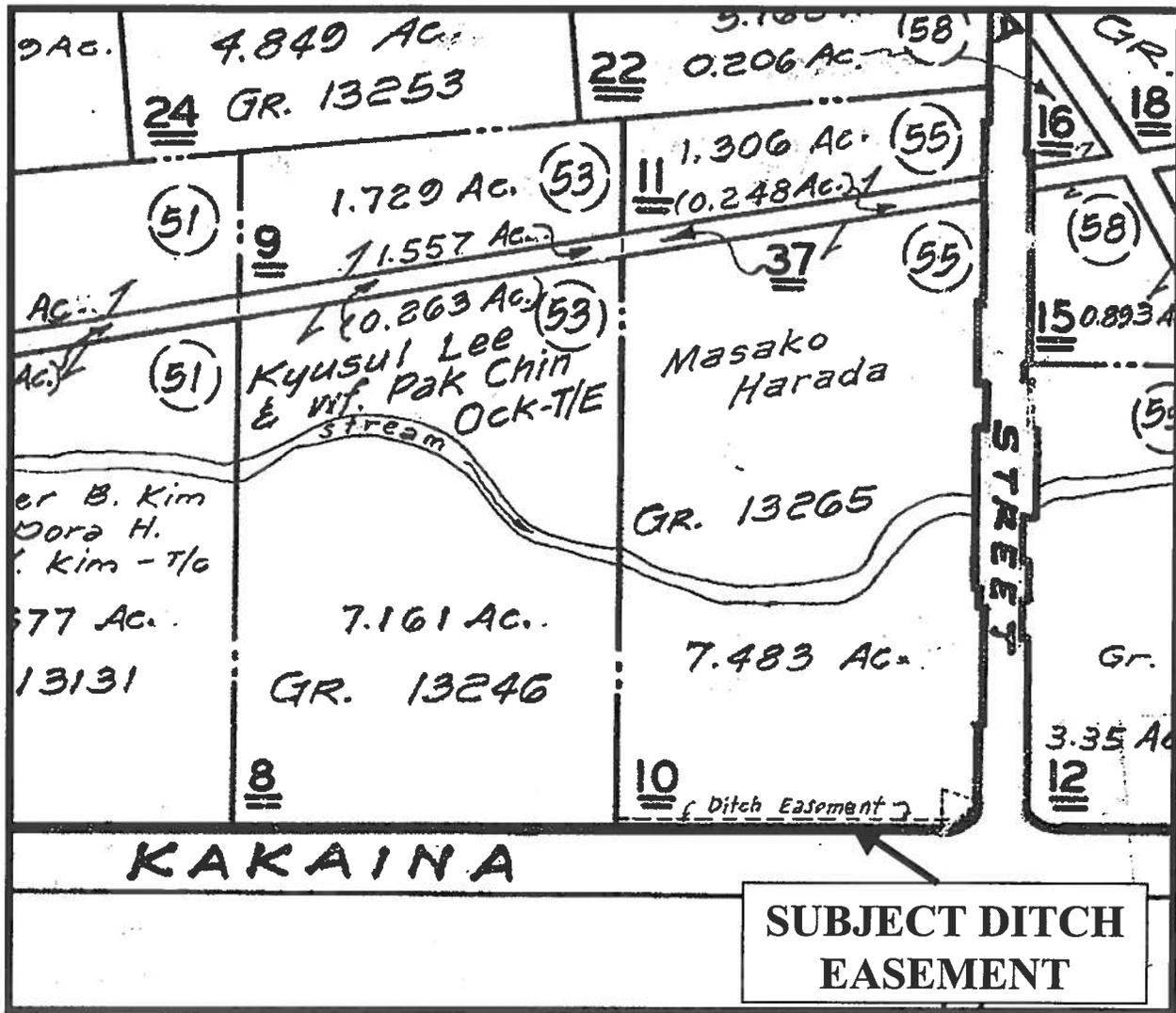


 Timmy Chee
 Land Agent

APPROVED FOR SUBMITTAL:




 William J. Aila, Jr., Chairperson



TAX MAP KEY: (1) 4-1-025:010 Portion

EXHIBIT 1

328 1/2
A

Land Patent No. 13,265

(Grant)

Issued On

SALE OF HOMESTEADS FOR CASH WITHOUT
RECOURSE TO DRAWING OR LOT

By THIS PATENT the Governor of the Territory of Hawaii, in conformity with the laws of the United States of America and of the Territory of Hawaii,

and in conformity more particularly with Section 73 (1) of the Hawaiian Organic Act as amended by Public Law 484, Chapter 617, 82nd Congress, 2nd Session, H.R. 4799, (66 Stat. 515), approved July 9, 1952,

makes known to all men that he has this day granted and confirmed unto

ISAMU HARADA and MASAKO MASUDA HARADA,
husband and wife, as tenants by the entirety,
hereinafter called the "PATENTEE",

for the consideration of ~~their~~ having paid into the Treasury the sum of
NINE THOUSAND THREE HUNDRED SIXTY AND 29/100—Dollars, \$ 9,360.29 ,

and in further consideration of the covenants of the PATENTEE
above named, hereinafter set forth,

all of the land situate at WAIMANALO

in the District of KOOLAUPOKO *Island of* OAHU *bounded*

and described as follows:

LOT 55
WAIMANALO FARM LOTS
(Revised October 1956)

Being a portion of the Government (Crown) Land of Waimanalo.

BEGINNING at a pipe at the south corner of this lot, the east corner of Lot 53 of Waimanalo Farm Lots and on the north side of Government Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "WAIMANALO RIDGE" being 4502.70 feet South and 727.87 feet East, as shown on Government Survey Registered Map 4068, thence running by azimuths measured clockwise from True South:-

1. 157° 50' 867.89 feet along Lot 53 of Waimanalo Farm Lots to a pipe;
2. 242° 39' 450.85 feet along Lot 56 of Waimanalo Farm Lots to a pipe;
3. 337° 50' 38.38 feet along the westerly side of Government Road;
4. 67° 50' 4.00 feet along a jog on the westerly side of Government Road;
5. 337° 50' 225.00 feet along the westerly side of Government Road;
6. 67° 50' 7.00 feet along a jog on the westerly side of Government Road;

7. 337° 50' 100.00 feet along the westerly side of Government Road;
8. 247° 50' 11.00 feet along a jog on the westerly side of Government Road;
9. 337° 50' 50.00 feet along the westerly side of Government Road;
10. 67° 50' 11.00 feet along a jog on the westerly side of Government Road;
11. 337° 50' 200.00 feet along the westerly side of Government Road;
12. 247° 50' 4.00 feet along a jog on the westerly side of Government Road;
13. 337° 50' 25.00 feet along the westerly side of Government Road;
14. 247° 50' 7.00 feet along a jog on the westerly side of Government Road;
15. 337° 50' 140.00 feet along the westerly side of Government Road;
16. 67° 50' 3.00 feet along a jog on the westerly side of Government Road;
17. 337° 50' 97.30 feet along the westerly side of Government Road;
18. Thence along the westerly side of Government Road, on a curve to the right having a radius of 50.00 feet, the chord azimuth and distance being: 32° 48' 27" 57.39 feet to a pipe;
19. 67° 50' 399.00 feet along the north side of Government Road to the point of beginning and containing a GROSS AREA OF 9.037 ACRES.

EXCLUDING therefrom a strip of land, designated as "Ditch Right-of-Way on the plan attached hereto and made a part hereof, and extending across said Lot 55 as shown on said plan, containing an Area of 0.248 Acre, and more particularly described as follows:

BEGINNING at a pipe at the southwest corner of this Ditch Right-of-Way and on the boundary between Lots 53 and 55 of Waimanalo Farm Lots, the true azimuth and distance from the initial point of the hereinabove described Lot 55 being 157° 50' 700.31 feet, thence running by azimuths measured clockwise from True South:-

1. 157° 50' 24.31 feet along Lot 53 of Waimanalo Farm Lots to a pipe;
2. 238° 40' 450.76 feet;
3. 337° 50' 24.31 feet along the westerly side of Government Road;
4. 58° 40' 450.76 feet to the point of beginning and containing an AREA OF 0.248 ACRE.

LEAVING A NET AREA OF 8.789 ACRES

TOGETHER WITH the right in the Patentee to bridge the hereinabove excluded strip of land, such right to be subject, however, to the condition that the Patentee shall first submit and obtain the written approval of the Commissioner of Public Lands of the plans, specifications and location of the structure or structures to be erected; PROVIDED, HOWEVER, that if and to the extent and for such period of time said Lot 55 shall be included in any irrigation project, district, or area hereafter established by the Hawaii Irrigation Authority, its successors or any governmental agency or body having the power to create and operate irrigation projects for the reclamation, or improved economic use of public and private lands, then such written approval shall be obtained from said Hawaii Irrigation Authority, its successors, or said governmental agency or body.

RESERVING to the Territory of Hawaii in perpetuity the right to enter and cross said lot for access to the excluded area to do construction, maintenance and repair work thereon.

RESERVING ALSO in perpetuity, to the Territory of Hawaii, its successors and assigns, an easement for ditch purposes, over, under and across the hereinabove described Lot 55, as shown on the plan attached hereto and made a part hereof, together with rights of ingress and egress to and from said easement area for the purpose of construction, repair, maintenance and operation of said ditch, and more particularly described as follows:-

BEGINNING at a pipe at the southwest corner of this easement, being also the initial point of the hereinabove described Lot 55 and on the north side of Government Road, thence running by azimuths measured clockwise from True South:-

1. 157° 50' 10.00 feet along Lot 53 of Waimanalo Farm Lots;
2. 247° 50' 237.27 feet;
3. 337° 50' 4.00 feet;
4. 247° 50' 185.48 feet;
5. Thence along the northerly side of Government Road, on a curve to the right having a radius of 50.00 feet, the chord azimuth and distance being: 53° 39' 16" 24.50 feet to a pipe;
6. 67° 50' 399.00 feet along the north side of Government Road to the point of beginning and containing an AREA OF 0.079 ACRE.

RESERVING ALSO in perpetuity, to the Territory of Hawaii, its successors and assigns, the waters and all riparian and other rights in and to the stream which passes over and across the hereinabove described Lot 55, as shown on the plan attached hereto and made a part hereof.

RESERVING to the Territory of Hawaii in perpetuity all rights to ground and surface waters which are or may be appertaining to the land herein described or the ownership thereof.

RESERVING ALSO to the Territory of Hawaii in perpetuity all minerals, mineral substances, oils and natural gases of every sort and description that may be upon the surface or in or under the land herein described, together with the right to enter upon said land for purposes of mining, drilling or otherwise capturing, collecting or extracting the same and of transporting such raw or processed materials off said land.

SUBJECT TO THE FOLLOWING CONDITIONS:

1. Neither said land nor any part thereof or interest therein or control thereof shall, without the written consent of the Commissioner of Public Lands and the Governor, be or contracted to be in any way, directly or indirectly, by process of law or otherwise, conveyed, mortgaged, leased, or otherwise transferred to or acquired or held by or for the benefit of any alien or corporation, or any person who owns, holds, or controls, directly or indirectly, other land or the use thereof, the combined area of which and said land or any part thereof exceeds eighty acres; provided, however, that said land may, without such consent, be mortgaged to the United States or any authorized agency thereof as provided in the Bankhead-Jones Farm Tenant Act (July 22, 1937, c. 517, 50 Stat. 522) as the same is now or may hereafter be amended from time to time.

2. For the period of twenty-five (25) years following the date of this patent, said land and the whole thereof shall be used for the production of crops, livestock, or poultry, or any or all of them, or for other agricultural purposes.

3. For the period of twenty-five (25) years following the date of this patent, said land shall not be subdivided into parcels of lesser extent than five acres each; provided, however, that the PATENTEE may at any time grant easements in said land for rights-of-way or public utilities purposes. After the expiration of said twenty-five (25) years, or upon the earlier change in the restricted use by law, the PATENTEE shall be bound by and shall comply with the applicable rules and regulations of the City Planning Commission of the City and County of Honolulu.

4. For the period of twenty-five (25) years following the date of this patent or until the restricted use is changed by law, no more than one family dwelling shall be erected on said land.

IN THE EVENT OF VIOLATION of any of the foregoing conditions or of the covenants of the PATENTEE hereinafter set forth, said land shall be forfeited and shall resume the status of public lands and possession thereof may be recovered by the Territory of Hawaii in an action at law brought for that purpose or by other appropriate proceedings.

AND THE PATENTEE, in consideration of the issuance of this patent and the grant of the land herein described, covenants that, if and to the extent that said land shall be included in any irrigation project, district or area hereafter established by the Hawaii Irrigation Authority, its successors or any governmental agency or body having the power to create and operate irrigation projects for the reclamation, or improved economic use of public and private lands, the PATENTEE will waive the right, if any, to object to the inclusion of said land therein, and the PATENTEE hereby consents to such inclusion and to accept and undertake all benefits and obligations incident thereto or connected therewith. The PATENTEE covenants further, in the use of said land, to protect the irrigation ditches and facilities, together with the water conducted or controlled thereby, of any such irrigation agency through or adjoining said land against damage, obstruction, pollution and contamination.

AS USED HEREIN, "PATENTEE" shall include the person or persons herein named as the "PATENTEE"; and, if PATENTEE includes more than one person, then all conditions and covenants herein set forth shall be binding upon the persons jointly and severally. Such covenants and conditions are, by the acceptance of this patent, made binding upon the PATENTEE, the survivor of them, the heirs, executors, administrators and assigns of him, her or them or of the survivor of them, as the case may be.

Containing _____ 8.789 ACRES _____, more or less.

TO HAVE AND TO HOLD the above granted Land unto the said

_____ ISAMU HARADA and MASAKO MASUDA HARADA,
 husband and wife, as tenants by the entirety,

their assigns and the heirs and assigns of the survivor of them forever;

SUBJECT, HOWEVER, to the reservations, conditions and covenants set forth in the insert sheets attached hereto and made a part hereof.

IN WITNESS WHEREOF, The Governor of the Territory of
 Hawaii has hereto set his hand and caused the Great
 Seal of the Territory to be hereunto affixed, this
 _____ 12th day of _____ March A.D. 1957.

TERRITORY OF HAWAII

Samuel Hilder King,
 Governor of Hawaii.

Countersigned:

James H. ...
 Commissioner of Public Lands.

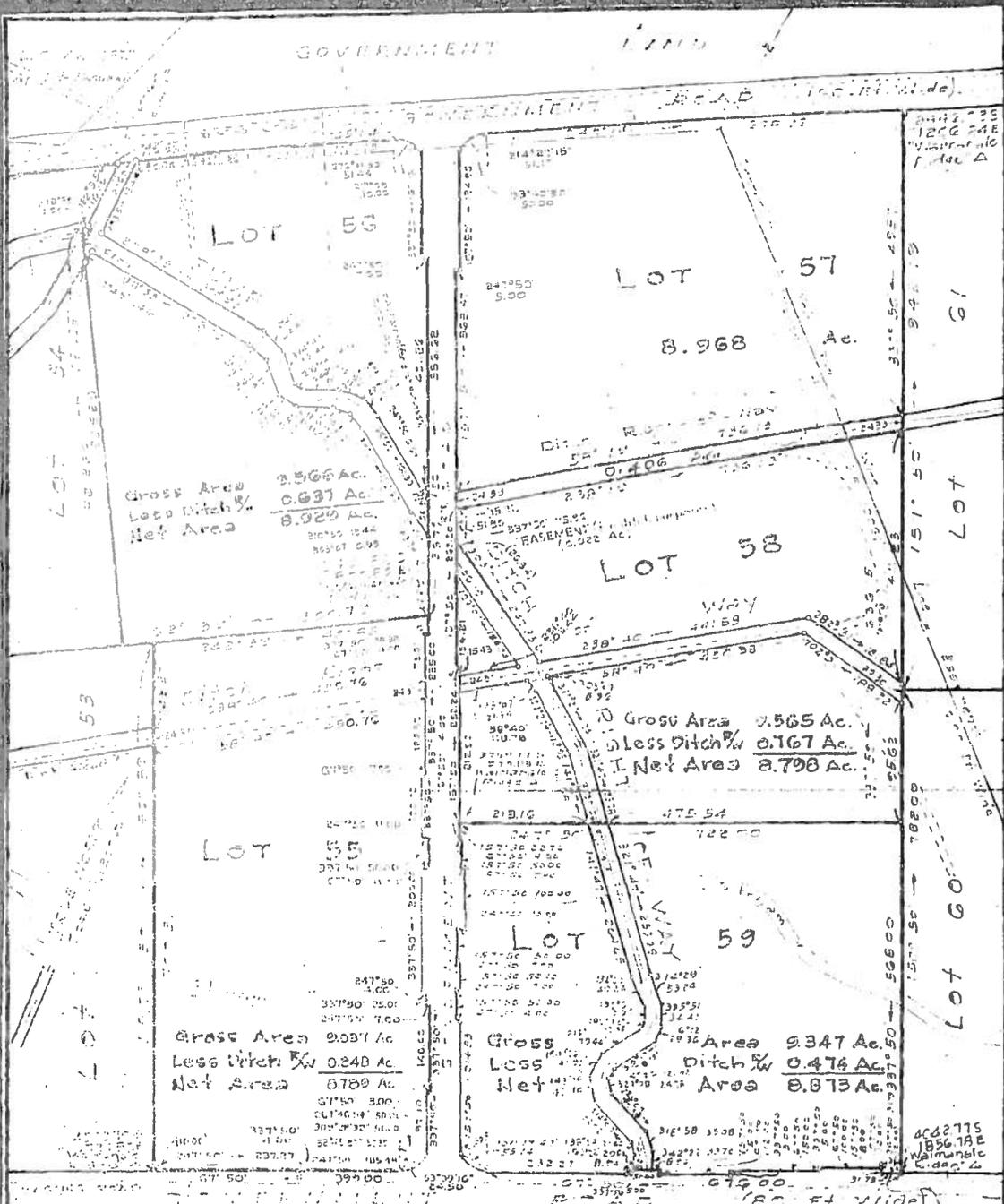
Approved as to form:

Richard K. ...
 Attorney General.

Written by CMB

Checked by lll

lll



EASEMENT (0.072 Ac.)
 EASEMENT (381 1/2 ft for 0.009 Ac.)
 Lot 5
 Lot 8
Lots 55 to 59, Inclusive
Waimanalo Farm Lots
 Waimanalo, Koolaupoko, Oahu, T. H.
 Scale: 1 inch = 200 feet.

Lots 55, 56, 57 Revised October 12, 1950-A.T.
 Lot 59 Revised October 12, 1950-A.T.
 Lot 58 Revised September 7, 1950-A.P.