

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

September 14, 2012

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

Hawaii

After-the-Fact Consent to License and Lease of Lands under
Governor's Executive Order No. 1040 to Volcano School of
Arts and Sciences, Olaa Summer Lots, Block B, Olaa, Puna,
Hawaii, Tax Map Key: (3) 1-9-4:19.

CONTROLLING AGENCY:

Department of Education

APPLICANT:

Volcano School of Arts and Sciences

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes, as amended.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: RS-20

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CURRENT USE STATUS:

Governor's Executive Order No. 1040 to the Department of
Education for Keakealani School Site purposes.

LEASE TERMS & CONDITIONS:LOCATION:

Government lands situated at Olaa Summer Lots, Block B, Olaa, Puna, Hawaii, identified by Tax Map Key: (3) 1-9-3:19, as shown on the attached map labeled Exhibit A.

AREA:

3.15 acres, more or less.

CHARACTER OF USE:

Charter school purposes

TERM:

59 years and 11 months, commencing August 1, 2012 and expiring on June 30, 2072.

RENT AMOUNT:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The controlling agency shall be responsible for ensuring compliance with Chapter 343, HRS.

DCCA VERIFICATION:

As a charter school of the Department of Education, Volcano School of Arts and Sciences is not required to register with the Department of Commerce and Consumer Affairs.

REMARKS:

By Executive Order No. 1040 dated November 27, 1943, control of the subject property was placed in the Territorial Department of Public Instruction, now the Department of Education (DOE). DOE operated a public school on the site until 1973, when the students were transferred to Mountain View Elementary School. Until 2010, DOE used the facility as an outdoor education center for elementary students on the island of Hawaii. Budgetary constraints caused DOE to terminate this program, and the facility was subsequently licensed on a year-to-year basis to Volcano School of Arts and Sciences (Volcano School), a public charter school, commencing on July 1, 2010 (the 2010 License). See Exhibit B attached.

Volcano School uses the facility as its middle school campus, and is the recipient of a \$618,000 grant-in-aid from the 2011 Legislature to expand the facility to better accommodate its middle school program. By memorandum dated April 30, 2012, Kathryn S. Matayoshi, Superintendent of the Department of Education, advised that Volcano School will use the facility for the foreseeable future and that DOE is agreeable to a long-term lease of the property to Volcano School. DOE and Volcano School subsequently executed a Lease Agreement effective as of August 1, 2012, a copy of which is attached as Exhibit C.

The lease specifies that the premises shall be used for a charter school. Accordingly, staff believes that the lease is consistent with the purpose of the executive order. Staff is presenting the request to the Board for after-the-fact consent because Volcano School has operated on the premises under the 2010 License and the Lease Agreement since July 1, 2010.

RECOMMENDATION:

That the Board consent after-the-fact to the 2010 License and the Lease Agreement between the Department of Education and Volcano School of Arts and Sciences, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following:

1. Review and approval by the Department of the Attorney General; and
2. 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:



William J. Aila, Jr., Chairperson



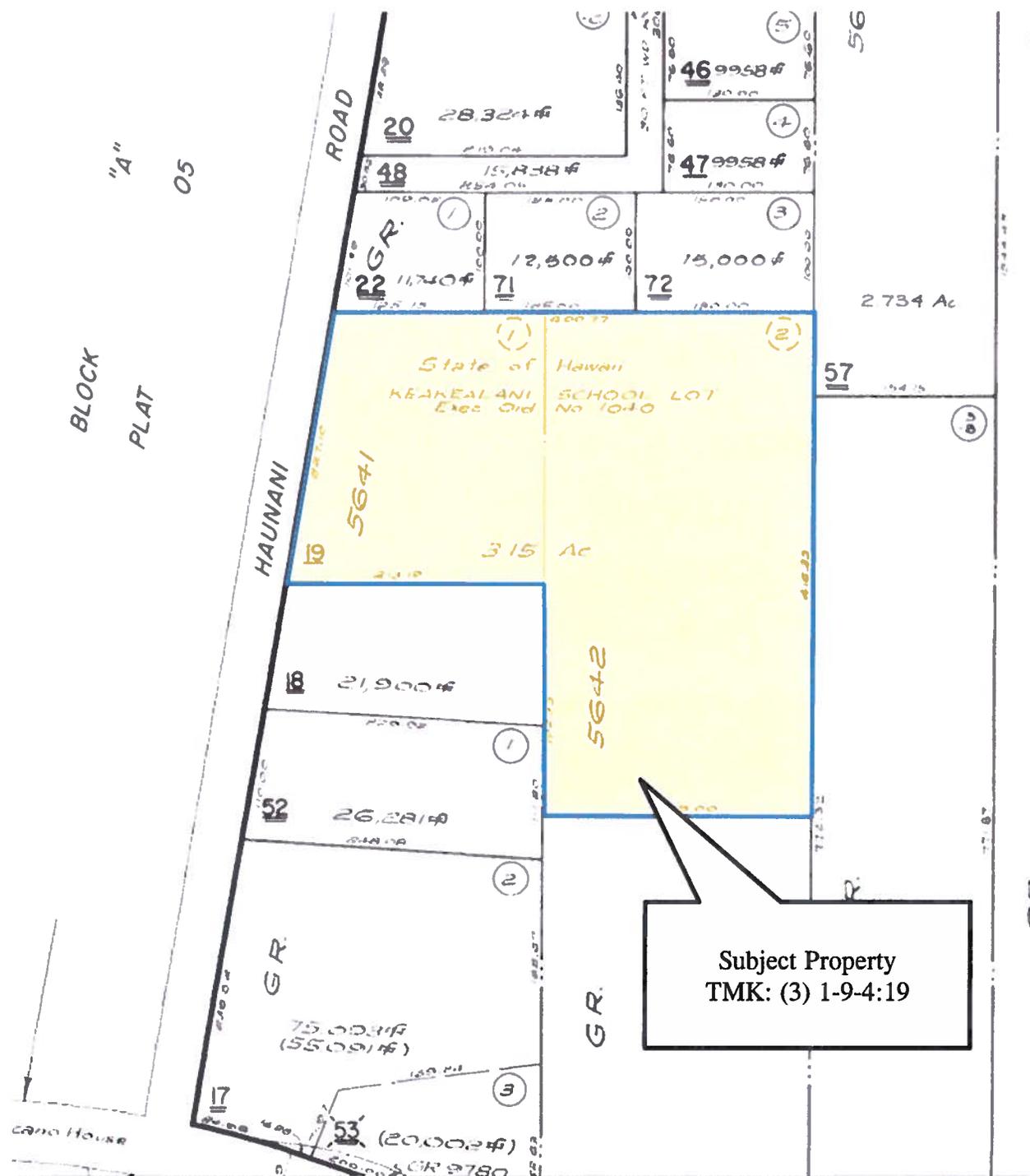


EXHIBIT A

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (hereinafter "License") between the STATE OF HAWAII, DEPARTMENT OF EDUCATION (hereinafter "Licensor") and VOLCANO SCHOOL OF ARTS AND SCIENCES, A New Century Public Charter School (hereinafter "Licensee") is effective as of July 1, 2010.

1. **Description of Property.** Land and improvements comprising the Keakealani Outdoor Education center, identified as TMK 1-9-004-019 (hereinafter "Premises") shown on Exhibit A. The improvements are listed in Exhibit B.
2. **Term.** This License shall begin on July 1, 2010 and end on the first to occur of (a) June 30, 2011 or (b) the date Licensee's charter is revoked or not renewed. This license may be renewed in writing upon mutual consent of Licensor and Licensee. It is the parties' intent that this License be renewed as long as the Premises continue to be desired and used by Licensee.
3. **Rental Fee.** The rental fee for the term shall be \$ 0.00 (zero dollars and cents).
4. **Insurance.** The Licensee shall carry fire insurance for the replacement cost of the improvements on the Premises and general liability insurance (minimum \$2,000,000) naming the Licensor as additional insured.
5. **Indemnification.** The Licensee indemnifies the Licensor against any claim for wrongful injury, death and property damage which is alleged to have occurred as a consequence of any negligent or intentional act or omission of the Licensee, its employees, agents, or anyone acting on its behalf, in connection with Licensee's use of the Premises.
6. **Construction of Improvements.**
 - a. Licensee shall not construct or place on the Premises any improvements or make any additions or structural alterations thereto or erect or place any exterior fixtures on the Premises except in accordance with a building, sign, or other applicable permit, a true copy being furnished to Licensor before commencement of work, and in accordance with plans and specifications, all of which shall be done by an approved contractor and/or prepared by a licensed architect and first submitted by Licensee to and approved in writing by Licensor, and shall at Licensee's expense complete any such improvements diligently after approval of the plans and specifications thereof. Licensee shall furnish Licensor as-built plans and specifications of the improvements within sixty (60) days following the completion of construction of any improvements. All improvements must be insured for their replacement costs
 - b. Licensee shall be responsible for obtaining any and all permits required for such construction. Licensor shall cooperate with Licensee as necessary or desirable in the permit application process.
7. **Utilities, maintenance, and repair.** Licensee shall be responsible at its sole cost and expense for the operation, repair, and maintenance, including utilities, of the Premises. Licensee shall at its sole cost and expense (a) keep the Premises neat, clean, and in good repair and (b) repair promptly any damage from whatever cause.

8. **Damage to Premises.** Licensee shall not commit any act which might damage the Premises, except in the case of a permitted construction and/or renovation project, in which case Licensee shall repair any damage at its expense.
9. **Casualty Loss.** In the event that any portion of the Premises is destroyed or damaged by fire, water, hurricane, wind or other natural or manmade disaster, Licensee shall, as soon as reasonably possible after the loss, restore the Premises to substantially the same or better condition as prior to such damage.
10. **Inspection.** Licensee will permit Licensor and its agents at all reasonable times during the term of this License and any extensions thereof, to enter the Premises and examine the state of repair and condition thereof and Licensee's performance of its obligations under the License.
11. **Assignment, Sublicense, Mortgage.** Licensee may not assign, sublet or mortgage this License.
12. **Use of Premises by Others.** Licensee shall make the Premises or any portion thereof available for general recreational purposes and for public community use whenever these activities do not interfere with the normal and usual activities of the school and its pupils as provided by law. Licensee shall follow the procedures set forth in Chapter 8-39 of the Hawaii Administrative Rules, Department of Education ("Use of School Buildings, Facilities, and Grounds"), as said rules change from time to time. Said Chapter 8-39 is attached as Exhibit C.

Notwithstanding the provisions of said Chapter 8-39, Licensee shall not allow the use of the Premises or any portion thereof for any term that extends beyond the term of this License.

13. **Liens.** Licensee shall not commit or suffer any act or neglect whereby the Premises or any part thereof shall at any time during said term become subject to any attachment, judgment, lien, charge or encumbrance whatsoever.
14. **Surrender.** At the end of said term of this License, Licensee will peaceably deliver up to Licensor possession of the Premises, including any improvements made by or belonging to Licensee by whomsoever made, in good repair, order and condition, except for reasonable wear and tear and as otherwise expressly provided herein; provided, however, that if Licensee is not in default hereunder, it may then remove any improvements installed by it but shall repair promptly to Licensor's satisfaction all damage caused by such removal.
15. **Notices.** Any notice or communication regarding this License may be given sufficiently for all purposes in writing delivered or mailed as registered or certified mail addressed to such party at its address as the party addressed shall have previously furnished to the other in writing.

Department of Education Point of Contact:
 Mr. Duane Y. Kashiwai, Public Works Director, Facilities Development Branch
 P.O. Box 2360, Honolulu, HI 96804, Phone: (808) 586-0430

Volcano School for the Arts and Sciences Contact:
 Dr. David Rizor
 P.O. Box 845, Volcano, HI 96785, Phone: (808) 985-9800

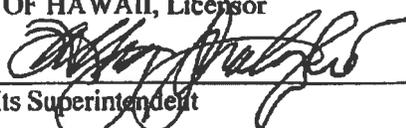
16. **Entire Agreement.** This is the entire agreement between the parties hereto regarding the letting of the Premises. No subsequent amendments shall be effective unless reduced to writing and signed by the parties hereto.

In witness herof, the parties hereto hereby agree to the foregoing.

APPROVED AS TO FORM

Halley J. Gundersen
Deputy Attorney General

DEPARTMENT OF EDUCATION
STATE OF HAWAII, Licensor

By: 
Its Superintendent

Date signed: 6-30-10

VOLCANO SCHOOL OF ARTS AND
SCIENCES, Licensee

By: David Lyon
Its

Date signed: 6/30/10

Exhibits

- A: Map of Premises
- B: Improvements
- C: Chapter 39, Hawaii Administrative Rules

NEIL ABERCROMBIE
GOVERNOR



3632

KATHRYN S. MATAYOSHI
SUPERINTENDENT

STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Planning Section Rec'd

JUN 26 2012

Fac. Dev. Branch

OFFICE OF SCHOOL FACILITIES AND SUPPORT SERVICES

June 21, 2012

TO: Ms. Kathryn S. Matayoshi, Superintendent
Department of Education

FROM: Randolph G. Moore, Assistant Superintendent
Office of School Facilities and Support Services

SUBJECT: License for Volcano School of the Arts

We are in the process of executing a long-term lease with the Volcano School of Arts and Sciences for the campus of the Keakealani Outdoor Education Center in Volcano, Hawaii. While the lease is going through legal review, we ask that you sign this license extension for the period of one (1) calendar year, from July 1, 2012 to June 30, 2013.

We would appreciate your signature on the attached (original) signature sheet. Please return the document to the Planning Section of the Facilities Development Branch. If you have any questions, please call Heidi Meeker of the Planning Section at 377-8301.

RGM:HM:jmb

Attachment

Confirmation of extension of License Agreement for Keakealani Outdoor Education Center from
July 1, 2012 – June 30, 2013:

VOLCANO SCHOOL OF ARTS AND SCIENCES
Licensee

By: *Alua Honua Manceel*

Date Signed: *6-12-12*

DEPARTMENT OF EDUCATION
STATE OF HAWAII, Licensor

By: *[Signature]*
Superintendent

Date Signed: *JUN 21 2012*

LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter "Lease") between the STATE OF HAWAII, DEPARTMENT OF EDUCATION (hereinafter "Lessor") and VOLCANO SCHOOL OF ARTS AND SCIENCES, A New Century Public Charter School (hereinafter "Lessee") is effective as of August 1, 2012.

1. Description of Property. Land and improvements comprising the Keakealani Outdoor Education Center located on Haunani Road in Volcano, Island of Hawaii, identified as TMK 1-9-4:19 (hereinafter "Premises"), totaling 3.15 acres and shown on Exhibit A.

2. Use of Premises. The Premises shall be used for a charter school.

3. Term. This Lease shall begin on August 1, 2012 and end on the first to occur of: (a) June 30, 2072, (b) the date Executive Order 1040, which transferred control of the Premises from the Department of Land and Natural Resources to Lessor, is cancelled, or (c) the date Lessee's charter is revoked or not renewed. If one or more portions of the Premises are withdrawn from Executive Order 1040, they shall simultaneously be withdrawn from this Agreement. If such withdrawn portion(s) render the remainder of the Premises unusable by Lessee, Lessee may terminate this Agreement after 30 days prior notice to Lessor.

4. Consideration. The rental fee for the term shall be \$ 0.00 (zero dollars and cents). Fair market lease rental value shall be offset by the maintenance, protection, improvement, repair, or restoration to be provided by the Lessee.

5. Insurance. Lessee shall carry fire insurance with broad form coverage for the replacement cost of the improvements on the Premises and general liability insurance (minimum \$2,000,000) naming Lessor as additional insured if Lessee is not covered by insurance obtained by the State of Hawaii's risk management program.

6. Construction of improvements.

a. Lessor understands that Lessee intends to improve the property by adding buildings and other facilities to accommodate its full educational program. Lessee will act as "approving agency" for purposes of obtaining permits and carrying out applicable statutory procedures; provided, however, that Lessee shall not construct or place on the Premises any improvements or make any additions or structural alterations thereto or erect or place any exterior fixtures on the Premises except in accordance with a building, sign, or other applicable permit, a true copy being furnished to Lessor before commencement of work, and in accordance with plans and specifications, all of which shall be done by a licensed contractor and/or prepared by a licensed architect and first submitted by Lessee to and approved in writing by Lessor, and shall at Lessee's expense complete any such improvements diligently after approval of the plans and specifications thereof. Lessee shall furnish Lessor as-built plans and specifications of the improvements within sixty (60) days following the completion of construction of any improvements. All improvements shall be insured for their replacement cost.

b. Lessee shall be responsible for obtaining any and all permits required for such construction. Lessor shall cooperate with Lessee as necessary or desirable in the permit application process.

7. Utilities, maintenance, and repair. Lessee shall be responsible at its sole cost and expense for the operation, repair, and maintenance, including utilities, of the Premises. Lessee shall at its sole cost and expense (a) keep the Premises neat, clean, and in good repair and (b) repair promptly any damage from whatever cause.

8. Damage to Premises. Lessee shall not commit any act which might damage the Premises, except in the case of a permitted construction and/or renovation project, in which case Lessee shall repair any damage at its expense.

9. Casualty Loss. In the event that any portion of the Premises is destroyed or damaged by fire, water, hurricane, wind or other natural or manmade disaster, Lessee shall, as soon as reasonably possible after the loss, restore the Premises to substantially the same or better condition as prior to such damage.

10. Inspection. Lessee will permit Lessor and its agents at all reasonable times during the term of this Lease any extensions thereof, to enter the Premises and examine the state of repair and condition thereof and Lessee's performance of its obligations under the Lease.

11. Assignment, SubLease, Mortgage. Lessee may not assign, sublet or mortgage this Lease.

12. Use of Premises by Others. Lessee shall make the Premises or any portion thereof available for general recreational purposes and for public community use whenever these activities do not interfere with the normal and usual activities of the school and its pupils as provided by law. Lessee shall follow the procedures set forth in Chapter 8-39 of the Hawaii Administrative Rules, Department of Education ("Use of School Buildings, Facilities, and Grounds"), as said rules change from time to time. Lessee shall determine the charges for the use of facilities based on its costs.

Notwithstanding the provisions of said Chapter 8-39, Lessee shall not allow the use of the Premises or any portion thereof for any term that extends beyond the term of this Lease.

13. Liens. Lessee shall not commit or suffer any act or neglect whereby the Premises or any part thereof shall at any time during said term become subject to any attachment, judgment, lien, charge or encumbrance whatsoever.

14. Surrender. At the end of the term of this Lease, Lessee will peaceably deliver up to Lessor possession of the Premises, including any improvements made by or belong to Lessee by whomsoever made, in good repair, order and condition, except for reasonable wear and tear and as otherwise expressly provided herein; provided, however, that if Lessee is not in default hereunder, it may then remove any improvements installed by it but shall repair promptly to Lessor's satisfaction all damage caused by such removal.

15. **Notices.** Any notice or communication regarding this Lease may be given sufficiently for all purposes in writing delivered or mailed as registered or certified mail addressed to such party at its address as the party addressed shall have previously furnished to the other in writing.

16. **Counterparts.** This Lease and any amendments thereto may be executed in counterparts, with each party furnishing the other a copy by facsimile as soon as practicable following execution.

17. **Entire Agreement.** This is the entire agreement between the parties hereto regarding the letting of the Premises. No subsequent amendments shall be effective unless reduced to writing and signed by the parties hereto.

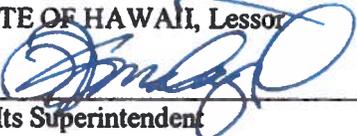
In witness hereof, the parties hereto hereby agree to the foregoing.

APPROVED AS TO FORM



Deputy Attorney General

DEPARTMENT OF EDUCATION
STATE OF HAWAII, Lessor

By: 

Its Superintendent

Date signed 8-8-12

VOLCANO SCHOOL OF ARTS AND
SCIENCES, Lessee

By: 

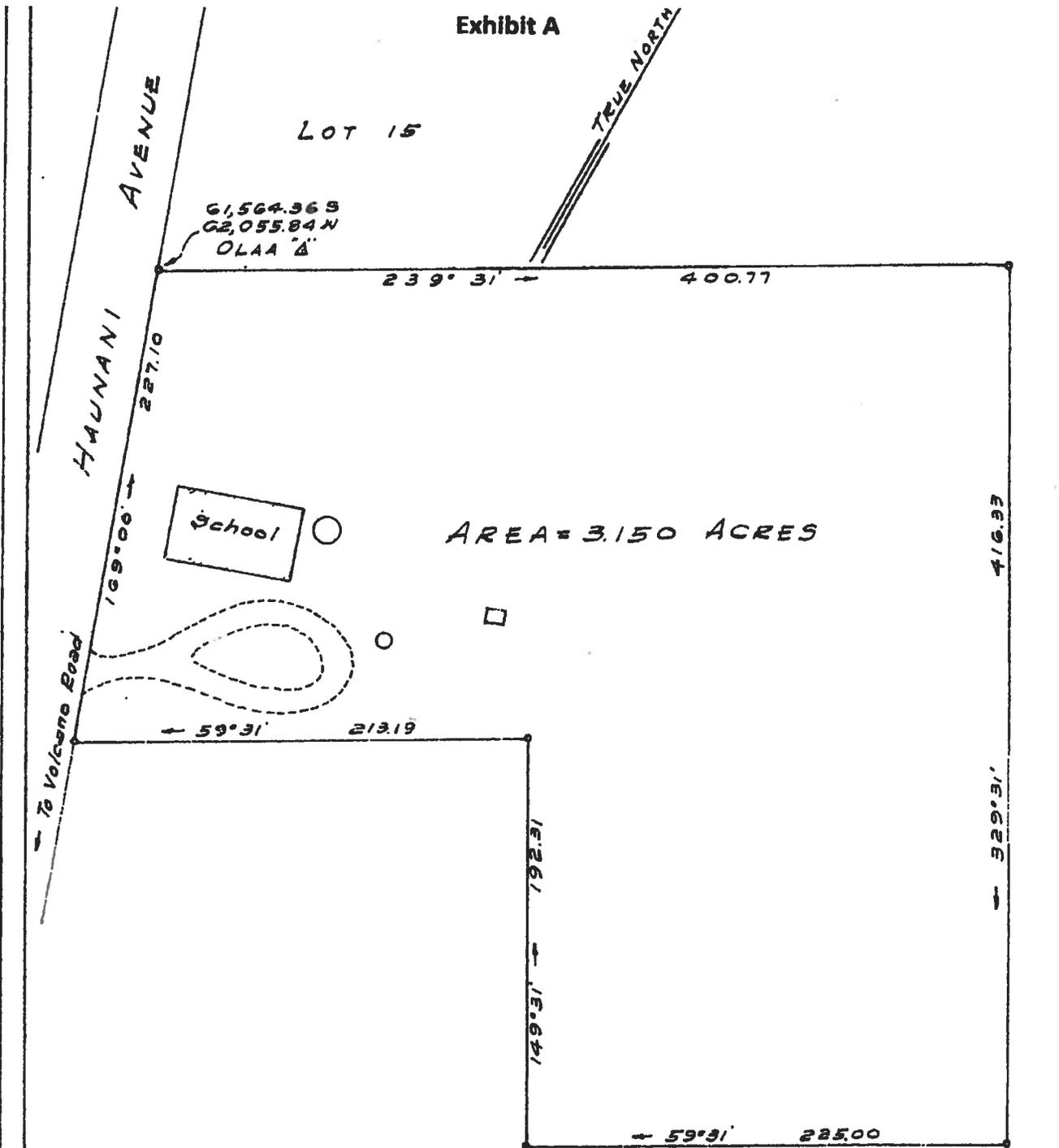
Its Board Chair

Date signed: 7-6-12

Exhibits:

A. Map of Premises

Exhibit A



PLOT PLAN

KEAKEALANI SCHOOL

District of Puna, County of Hawaii

Scale: 1" = 60 ft. June 5, 1964