

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

July 25, 2014

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

OAHU

Amend Grant of Non-Exclusive Easement S-5336 for Roadway, Utility, and Landscaping Purposes by Revising the Easement Area and Authorize Rental Credit to Gerald Y.H. Young and Diana G. Young; Withdraw from General Lease No. 5214 for Easement Purposes and Authorize Rental Credit to Green Thumb, Inc.; Withdrawal from Governor's Executive Order No. 4239 to Department of Agriculture for Agriculture Purposes, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-018:040.

APPLICANT:

Gerald Y.H. Young and Diana G. Young, ("Grantee") of GL 5336;

Green Thumb Incorporated, ("Lessee") of GL 5214; and

Department of Agriculture ("DOA") of EO 4239.

LEGAL REFERENCE:

Section 171-6 and 11 Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waimanalo, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-1-018:040 ("Parcel") as shown on **Exhibit 1**.

LEASE AREA:

7.021 acres, more or less.

EASEMENT AREA:

Area 1 – 5,303 square feet; and  
Area 2 – 965 square feet, more or less. (**Exhibit 2**)

ZONING:

State Land Use District: Agriculture  
City & County of Honolulu LUO: AG-2

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:

Encumbered by General Lease No. S-5214, Green Thumb Incorporated, Lessee, for general agriculture purposes;

Grant of Non-Exclusive Easement No. S-5336, Gerald Y.H. Young and Diana G. Young, Grantee, for access, utility, and landscaping purposes; and

Governor’s Executive Order No. 4239 setting aside to the Department of Agriculture for agriculture purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, 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 negligible or no expansion or change of use beyond that previously existing". See exemption notification attached as **Exhibit 3**.

DCCA VERIFICATION:

Mr. & Mrs. Gerald Young, Grantee  
Not applicable.

Green Thumb, Incorporated, Lessee.

Place of business registration confirmed: YES   x   NO     
Registered business name confirmed: YES   x   NO     
Applicant in good standing confirmed: YES   x   NO

REMARKS:

GL 5336 (“Easement’)-Rental Credit

In May 1990, the Board authorized the public auction of a 25-year lease (“Lease”) for general agriculture purposes encumbering the Parcel. At the auction conducted on August 29, 1991, the Lessee was the highest bidder, and the commencement date was subsequently noted as October 29, 1991. During the staking of the Parcel by the State Survey Office, encroachments comprising of roadway, utility, and landscaped area serving the Grantee’s private property were found.

The encroaching area [Area 1] was depicted in red on the map in the March 12, 1993, item F-7, submittal from which the Easement was authorized, and it is now attached as **Exhibit 4**. As noted in the 1993 submittal (**Exhibit 5**), Remarks, the Lessee “... requested the [easement] area be withdrawn from the lease ... give his approval for the easement.” Nevertheless, there was no formal recommendation in the 1993 Board submittal pertaining to the withdrawal described above.

Subsequently, the State Survey Office, after consulting with the Land Division, decided that Area 2 “... be created to provide legal access to a public road and also be included in the Grant of Easement to the applicant.” Eventually, the Easement comprising Areas 1 and 2 was issued to the Grantee commencing from April 1, 1994, with the rental history shown below.

From	To	Annual Rent	Note
04/01/1994	03/31/2004	\$248	
04/01/2004	03/31/2014	\$244	Reopening
04/01/2014	03/31/2024	\$590	Pending acceptance

Staff does not believe the inclusion of Area 2 in the Easement is proper, since such area is clearly a portion of the public road as noted from Exhibit 4. Roads are not considered as part of the public lands as defined in Chapter 171, HRS. In short, rent was overpaid and rental credit is due to the Grantee. Area 2 is about 15% of the total Easement area. Therefore, staff recommends the Board authorize the rental credit, without interest, be applied on the Easement to offset any future rental obligation.

From	To	Annual Rent Paid	Rental Credit
			[Annual rent paid x 0.15 x 10 years]
04/01/1994	03/31/2004	\$248	\$372
04/01/2004	03/31/2014	\$244	\$366
		Total:	\$738

Further, staff recommends the Board revise the annual rental for the period from 04/01/2014

to 03/31/2024 from \$590 to \$502 [ $\$590 \times 0.85 = \$501.5$ , say \$502]

GL 5336 (Easement)-Amendment

As mentioned above, the Easement should not include Area 2, which is a portion of the public road. Staff believes an amendment to the Easement to remove Area 2 from the Easement would be in order. Therefore, staff recommends the Board authorize such amendment.

GL 5214 (“Lease”)-Rental Credit

In 1994, the staff appraiser determined that the Area 1 would reflect a reduction of \$850 from the annual rent of the Lease. Written concurrence from the Lessee to the reduced leased rental and the issuance of the easement was obtained in April 1994. However, the reduction of lease rent was only applied to the first six (6) years of the lease. Two (2) appraisals for the subsequent rental reopening periods were using 7.021 acres as the base to determine the rent pertaining to the respective periods. The two (2) appraisals ignored the rent reduction for Area 1 (5,303 square feet/0.122 acre representing about 2% of the leased area) applied in the preceding six (6) years.

Rental history of the Lease is shown below.

From	To	Annual Rent	
10/29/1991	10/28/1997	\$47,000 (reduced to \$46,150)	Bid @ auction
10/29/1997	10/28/2003	greater of \$14,500 or 2%	Reopening
10/29/2003	10/28/2009	greater of \$6,100 or 3%	Reopening

Therefore, staff recommends the Board authorize the rental credit, without interest, be applied on the Lease.

From	To	Annual Rent	Rental Credit [Annual rent paid x 0.02 x 6 years]
10/29/1991	10/28/1997	\$47,000 (reduced to \$46,150)	Done
10/29/1997	10/28/2003	greater of \$14,500 or 2%	\$1,740
10/29/2003	10/28/2009	greater of \$6,100 or 3% <sup>1</sup>	\$732 <sup>2</sup>
		Total:	\$2,472

<sup>1</sup>Percentage rent obligation is based on gross revenue, not acreages. So, any rental credit due to reduction in acreage should not affect any percentage payment.

<sup>2</sup>The Parcel has been set aside by Governor’s Executive Order No. 4239 to the Department of Agriculture (“DOA”) pursuant to Act 90, SLH 2003, effective from September 17, 2008 when DOA started receiving rent from the Lessee. Upon approval of today’s request, staff will work with the Fiscal Office regarding the split between the Department and DOA.

GL 5214 (Lease)-Withdrawal

Since the beginning of the easement process, the withdrawal of the Area 1 from the Lease was contemplated, as noted by the 1993 submittal mentioned above and the communication between the Land Division and the Department of the Attorney General. Staff recommends the Board authorize the withdrawal of Area 1 from the Lease, pursuant to Condition 43, Withdrawal, which stipulates that the Board "... shall have the right to withdraw the premises, or any portion ... upon giving reasonable notice ... for public uses or purposes, including ... easements of all kinds ..."

In addition, pursuant to §171-37.5, HRS, "Withdrawal or taking of leased land; fair compensation", a lessee is entitled to, in addition to rent reduction, fair compensation to the loss of crops and breeding livestock, and present value of permanent improvements in the withdrawal. In the subject case, there were no activities (farming or improvements) by the Lessee over the proposed withdrawal area. So, no compensation, other than the rent reduction, is owed to the Lessee.

EO 4239 –Withdrawal

GL 5214 was transferred to DOA for ongoing lease management by EO 4239 on September 17, 2008. In view of the forthcoming withdrawal of Area 1 from the Lease, staff recommends the Board authorize the issuance of an executive order to withdraw Area 1 from EO 4239 for housekeeping purposes.

Staff has met with the grantee and representatives from DOA regarding the submittal. The Grantee indicated to DOA that portion of the Lessee's improvement is on his private property. Staff understands such issue is not pertaining to the subject request.

Grantee also inquired the possibility of acquiring the easement area as a remnant. Staff will assess the possibility and will bring the request to the Board for consideration, if appropriate, at a later date.

There are no other pertinent issues or concerns, and staff recommends the Board authorize the actions as noted below.

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, 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.
2. Approve of and recommend to the Governor issuance of an executive order withdrawing 5,303 square feet from the Governor's Executive Order No. 4239, subject to the following:
  - A. The standard terms and conditions of the most current executive order form,

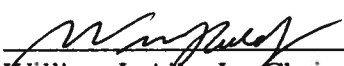

as may be amended from time to time;

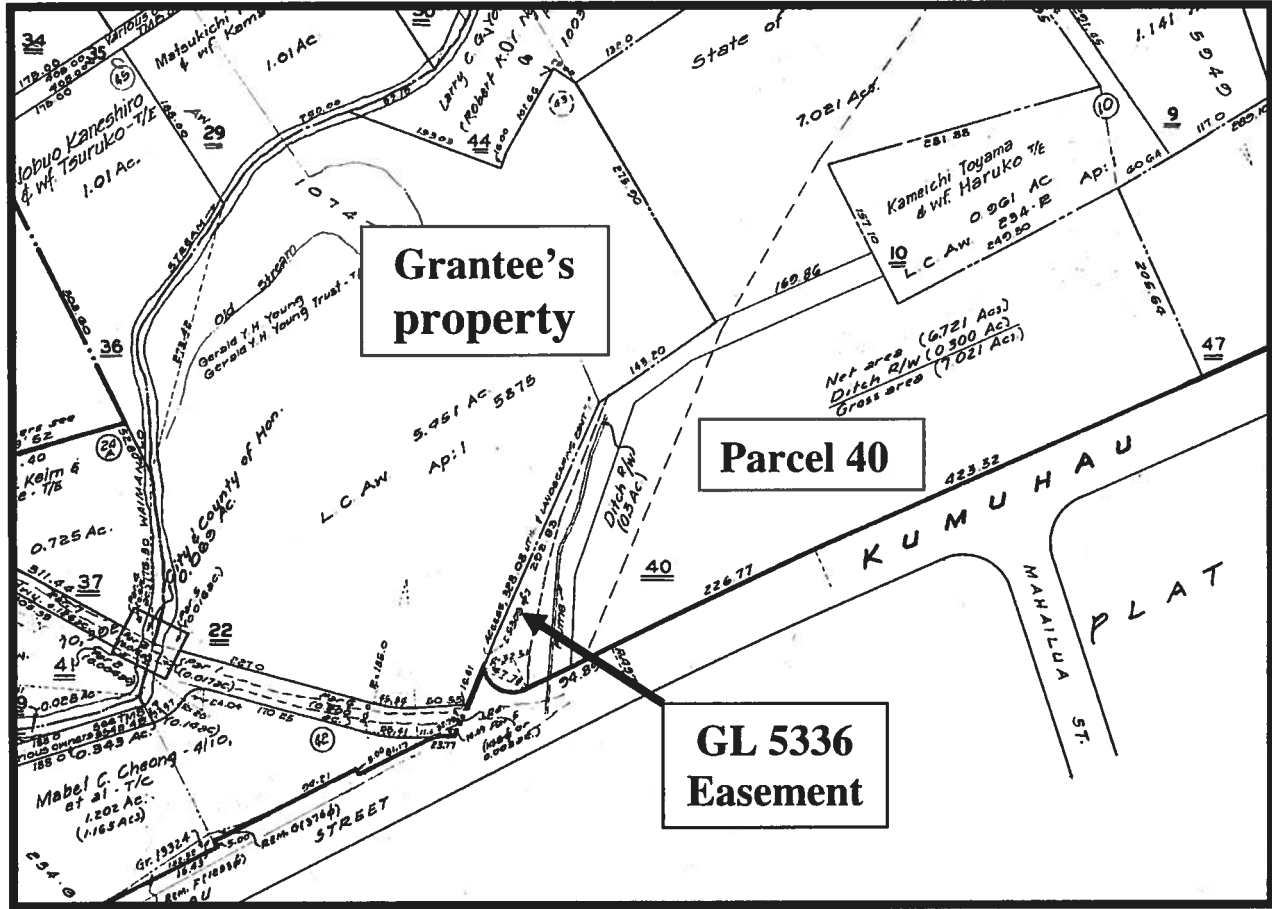
- B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
  - C. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize the refund for GL 5214 and GL 5336 under the terms and conditions cited above.
4. Authorize the withdrawal of Area 1 from GL 5214 under the terms and conditions cited above, and further subject to the following:
- A. The standard terms and conditions of the most lease withdrawal form, as may be amended from time to time;
  - B. Review and approval by the Department of the Attorney General; and
  - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
5. Authorize the amendment for GL 5336 under the terms and conditions cited above, and further subject to the following:
- A. The standard terms and conditions of the most easement amendment form, as may be amended from time to time;
  - B. Review and approval by the Department of the Attorney General; and
  - C. 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

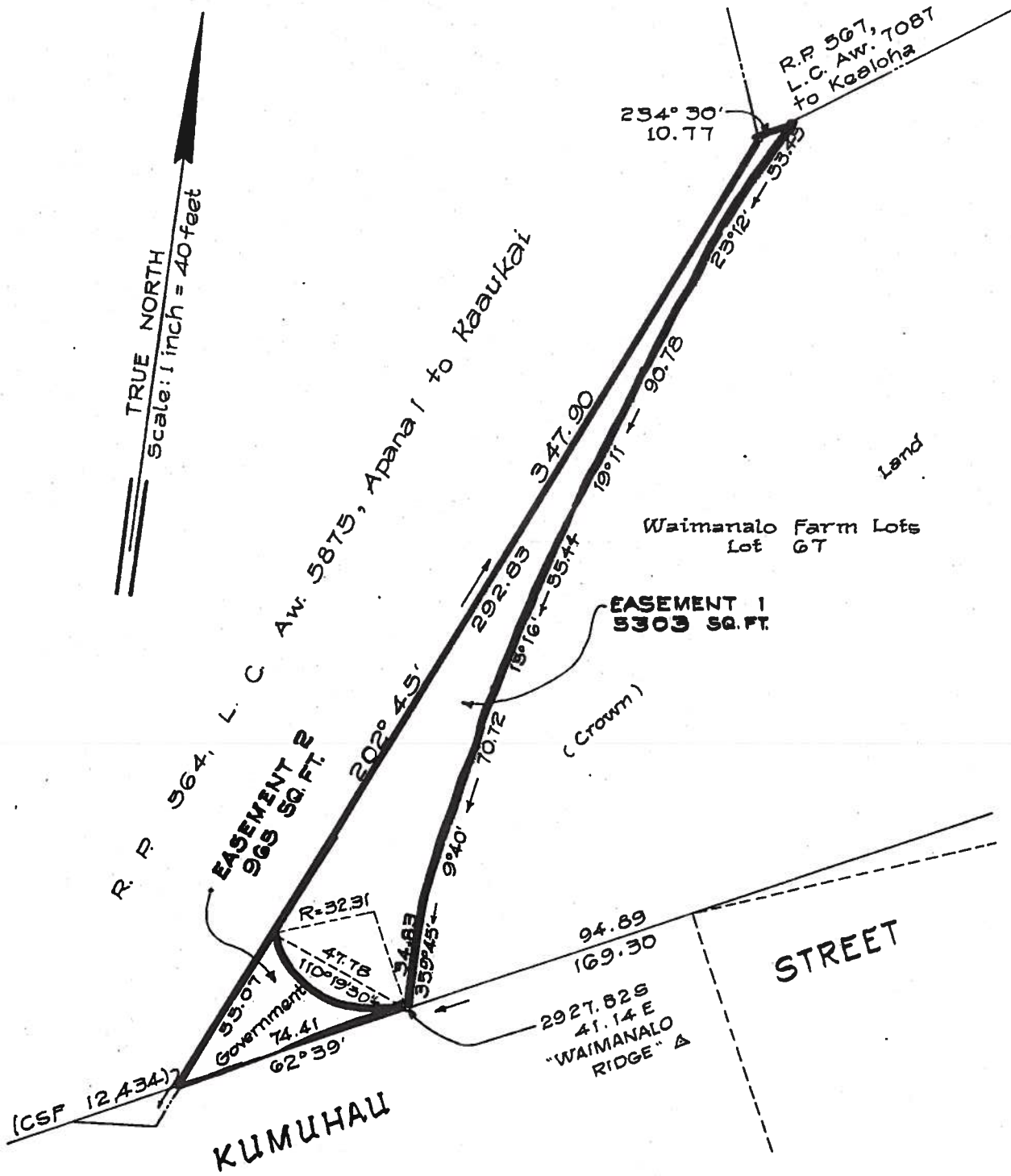
APPROVED FOR SUBMITTAL:

  
William J. Alfa, Jr., Chairperson  




**TMK (1) 4-1-018:040**

**EXHIBIT 1**



**NON-EXCLUSIVE ACCESS, UTILITY  
AND LANDSCAPING EASEMENTS  
EASEMENTS 1 AND 2**

Waimanalo, Koolau, Oahu, Hawaii  
Scale: 1 inch = 40 feet

**EXHIBIT "2"**

JOB O-141 (93)  
C.BK

TAX MAP: 4-1-18

C.S.F. No. 21974

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
**STATE OF HAWAII**

**EXHIBIT "B"**

66 July 8, 1993



## EXEMPTION NOTIFICATION

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

**Project Title:** Authorization of Rental Credit and Revising the Areas

**Project / Reference No.:** GL 5214 and GL 5336

**Project Location:** Waimanalo, Koolauapoko, Oahu, Tax Map Key: (1) 4-1-018:040.

**Project Description:** Authorization of rental credit and reducing the areas under the lease and easement.

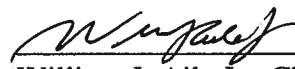
**Chap. 343 Trigger(s):** Use of State Land

**Exemption Class No.:** In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, 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 negligible or no expansion or change of use beyond that previously existing".

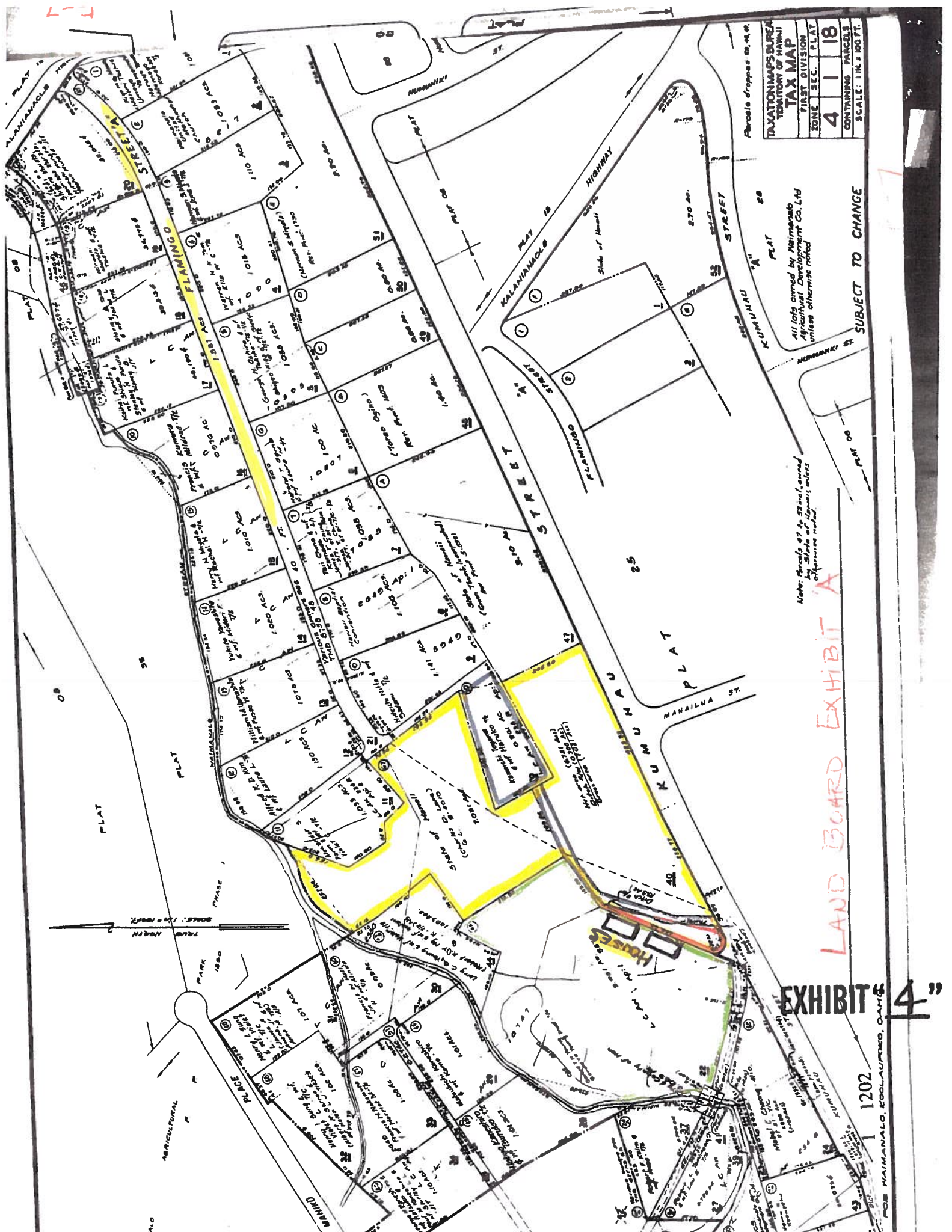
The request is for housekeeping purposes only, and does not involve any change in the existing use. As such, staff believes that the request would involve negligible or no expansion or change in use of the subject area beyond that currently existing.

**Consulted Parties:** As noted in the submittal.

**Recommendation:** That the Board finds this activity will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

  
\_\_\_\_\_  
William J. Aila Jr., Chairperson  
Date: 7/8/14

# EXHIBIT 3



TAXATION MAPS BUREAU	PARCELS DROPPED AS OF 10/1/00
TERRITORY OF HAWAII	
<b>TAX MAP</b>	
FIRST DIVISION	
ZONE 1 SEC. 1 PLAT	
<b>4 1 18</b>	
CONTAINING PARCELS	
SCALE: 1 IN. = 100 FT.	

All lots owned by Maimanalo Agricultural Development Co., Ltd. unless otherwise noted.

LAND BOARD EXHIBIT 'A'

EXHIBIT "4"

SUBJECT TO CHANGE

1202

FOR MAIMANALO, EOLAURUPU, OAHU

JOHN WAIHEE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF LAND MANAGEMENT  
P. O. BOX 821  
HONOLULU, HAWAII 96809

AQUACULTURE DEVELOPMENT  
PROGRAM  
AQUATIC RESOURCES  
CONSERVATION AND  
ENVIRONMENTAL AFFAIRS  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
LAND MANAGEMENT  
STATE PARKS  
WATER AND LAND DEVELOPMENT

March 12, 1993

Board of Land and  
Natural Resources  
Honolulu, Hawaii

OAHU

**Subject:** Staff Request Authorization for Easement Encumbrance on General Lease No. S-5214 to Green Thumb, Inc., and for Direct Issuance of Non-Exclusive Term Easement for Access and Utility and Landscaping Purposes to Gerald Y. H. Young, Waimanalo, Koolaupoko, Oahu, TMK: 4-1-18:40

**STATUTE:** Chapter 171-13, Hawaii Revised Statutes

**APPLICANT:** GERALD Y. H. YOUNG

**FOR:** 55-year term Grant of Easement for utility and access and landscaping purposes being a portion of General Lease No. S-5214 and of TMK: 4-1-18:40, shown outlined in red on the tax map labeled Land Board Exhibit "A" appended to the basic file.

**STATUS:** Encumbered under General Lease No. S-5214 to Green Thumb, Inc.

**AREA:** 4,000 sq. ft., more or less. Area subject to verification and confirmation by the State Survey Office

**LAND TITLE STATUS:** Ceded land, Sub-section 5(b) of the Admission Act

**ZONING:** State Land Use Commission: Agriculture  
City & County of Honolulu: AG-2

**PURPOSE:** Right, privilege and authority to construct, use, maintain and repair a roadway utility line and a landscaped area.

**TERM:** 55-year term. Easement effective on the first day of the month following the date of an approved Land Board action.

**ANNUAL RENTAL:** To be determined by an independent appraisal, same subject to review and approval by the Chairperson of the Board of Land and Natural Resources.

EXHIBIT "5"

ITEM F-7

March 12, 1993

RENTAL

REOPENINGS: Annual rental shall be reopened on the tenth year of the commencement date and reopened each successive tenth anniversary of the commencement date until expiration.

REMARKS:

The applicant owns a number of homes on a three and a half acre lot in Waimanalo identified as Tax Map Key: 4-1-81:22, shown outlined in green on the tax map labeled Land Board Exhibit "A" appended to the basic file. He owns two houses shown on the attached map on the south-west sector of his lot and utilizes an improved driveway on State land demised under General Lease No. S-5214 to Green Thumb, Inc. shown outlined in red on the attached exhibit amounting to approximately 4,000 sq. ft. as access to the two houses. He also has made substantial rock wall improvements and made substantial landscaping improvements utilizing approximately 1,500 sq. ft. for landscaping purposes.

Said area was originally a portion of a kuleana access road to Kuleana Lot LCA 234-E, TMK: 4-1-18:10, shown outlined in blue on the attached exhibit. Said road was used consistently by the kuleana owner ~~consistently~~ until access to the ~~kuleana~~ was established into Flamingo Street. By that time the land usage there under prior leases on the State lot (outlined in yellow) TMK: 4-1-18:40, and currently demised under General Lease No. S-5214 had completely excluded the subject access area from their use and have run a fence line up to the subject access easement area under consideration.

The current lessees of General Lease No. S-5214 ~~have requested that the subject area be withdrawn from the lease and have no need to utilize the subject area.~~ The subject lessee has give his approval for the easement encumbrance on their leasehold.

Staff recommends issuance of an access/utility/landscaping easement to the applicant and also recommends that a \$500.00 fine be assessed for the unauthorized use of State land pursuant to Chapter 171-6(12) of the Hawaii Revised Statutes.

RECOMMENDATION:

That the Board:

- A. Find that the area in question to be an economic unit in terms of the use to which the area will be put.

Board of Land and  
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March 12, 1993

- B. Fine the applicant \$500.00 for the unauthorized use of State-owned land pursuant to Chapter 171-6(12) of the Hawaii Revised Statutes.
- C. Authorize the direct award to the applicant of the subject easement under the terms and conditions listed above which are by this reference incorporated herein, and subject to the following terms and conditions:
1. The grantee shall use the easement for roadway, utility and landscaping purposes only.
  2. Standard abandonment and relocation clause.
  3. Standard indemnity and hold-harmless clause.
  4. Standard liability insurance policy clause.
  5. Upon expiration or sooner termination of the easement, if desired by the grantor, the grantee, at its own cost and expense, shall remove any and all improvements installed or constructed by him and restore the area to a condition satisfactory to the grantor.
  6. Other terms and conditions of the standard easement form document unless modified above, and such terms and conditions as the Chairperson may prescribe.

Respectfully submitted,



W. MASON YOUNG  
Land Management Administrator

APPROVED FOR SUBMITTAL:



Chairperson