

TO: Mike Maruyama

FEB 08 2006

**COPY** -BC

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After Recordation Return by: Mail ( ) Pickup ( ) To:

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STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS  
GENERAL LEASE NO. 231  
between  
STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS  
and  
THE UNITED STATES OF AMERICA  
DEPARTMENT OF THE INTERIOR  
NATIONAL PARK SERVICE  
Covering  
HAWAIIAN HOME LANDS  
Situate at  
Kalaupapa, County of Kalawao, Molokai  
Tax Map Key No. 6-1-01:01

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STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS  
GENERAL LEASE NO. 231

THIS INDENTURE OF LEASE, made this 2nd day of September 1991,  
by and between the STATE OF HAWAII, by its Department of Hawaiian Home  
Lands, whose principal place of business is 335 Merchant Street, Honolulu,  
Hawaii, and post office address is P. O. Box 1879, Honolulu, Hawaii 96805,  
hereinafter called the "LESSOR," and the United States of America, by its  
National Park Service-Western Regional Office, Department of the Interior,  
whose mailing address is 600 Harrison Street, Suite 600, San Francisco,  
California 94107-1372, hereinafter called "LESSEE":

W I T N E S S E T H :

THAT, the LESSOR, for and in consideration of the rent to be paid and  
of the terms, covenants and conditions herein contained, all on the part of  
the LESSEE to be kept, observed, and performed, does hereby demise and lease  
unto the LESSEE, and the LESSEE does hereby lease and hire from the  
LESSOR that certain parcel of Hawaiian home lands, comprising 1,247 acres  
more or less, situate at Kalaupapa, County of Kalawao, State of Hawaii, Tax  
Map Key No. 6-1-01:01, more particularly described in Exhibit "A," and shown  
on Exhibits "B" and "C," outlined in yellow, all such exhibits attached hereto  
and made a part hereof.

TO HAVE AND TO HOLD the demised premises unto the LESSEE for the term  
of FIFTY (50) years, commencing on the 15th day of July, 1991 up to and  
including the 14th day of July, 2041, unless sooner terminated as hereinafter  
provided, the LESSOR reserving and the LESSEE yielding and paying to the

LESSOR at the office of the Department of Hawaiian Home Lands, Honolulu, Oahu, State of Hawaii, the rental as provided hereinbelow.

1. Rental. The lease rental for the first five (5) years shall be the lump sum of ONE MILLION FOUR HUNDRED NINETY-ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,491,500.00) based on the annual rental of three hundred twenty-five thousand dollars (\$325,000.00) discounted to present value. The lump sum payment shall be due and payable on or before October 15, 1992. Thereafter, beginning with the sixth year of the lease, the lease rental shall be due and payable in quarterly installments on or before the 15th day of January, April, July and October, each and every year during said term.
2. Contracts subject to consent. LESSEE shall not enter into concession contracts, permits, or commercial licenses, without the prior written consent of the LESSOR.
3. Reopening of term. The rental hereinabove reserved shall be reopened and redetermined at the expiration of the fifth (5th), tenth (10th), fifteenth (15th), twentieth (20th), twenty-fifth (25th), thirtieth (30th), thirty-fifth (35th), fortieth (40th), and forty-fifth (45th) years of the lease term, in accordance with the procedure prescribed in paragraph 4 below.
4. Determination of rental upon reopening of the annual rental. The rental for each period to be reopened and redetermined shall be the fair market rental based on the highest and best use at the time of reopening without regard to the provisions of Public Law 96-565, as amended. At least six months prior to the time of reopening, the fair market rental shall be determined by an independent appraiser whose services shall be contracted for by the LESSOR at LESSEE'S cost; provided, that should the LESSEE fail to agree upon the fair market rental as determined by the LESSOR'S appraiser, the LESSEE shall promptly appoint its own appraiser and give written notice thereof to the LESSOR, and in case the LESSEE shall fail to do so within thirty (30) days after being advised of the fair market rental as determined by the LESSOR'S appraiser, the

LESSOR may apply to any person then sitting as judge of the Circuit Court of the judicial circuit in which the demised premises are located for appointment of a second appraiser, and the two appraisers thus appointed in either manner shall appoint a third appraiser, and in case of their failure to do so within thirty (30) days after appointment of the second appraiser, either party may have the third appraiser appointed by such judge and the fair market rental shall be determined by arbitration as provided in Chapter 658, Hawaii Revised Statutes. The decision of the appraisers or a majority of them shall be final, conclusive and binding upon both parties hereto. The appraisers so appointed shall deliver their determination before the sixtieth (60th) day following appointment of the third appraiser, and, in the event they shall fail to do so and the time for delivery of such determination shall not have been extended by mutual agreement of the LESSOR and the LESSEE, the employment of the appraisers shall immediately terminate and, except as may be approved by the LESSOR and the LESSEE in the exercise of their sole and absolute discretion with respect thereto, the appraisers shall not be entitled to any payment for services or reimbursement of expenses incurred because of such appointment. In the event the employment of the appraisers shall be so terminated, new appraisers shall be appointed in the manner hereinbefore provided. The LESSEE shall pay for its own appraiser, the LESSOR shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by the LESSEE and the LESSOR. Upon completion of the arbitration procedure, all appraisal reports shall become part of the public record of the LESSOR. If the rental for any ensuing period has not been determined prior to the expiration of the preceding rental period, the LESSEE shall continue to pay the rent effective for the previous rental period, but the LESSEE shall, within thirty (30) days after the new rental has been so determined, make up the deficiency, if any.

5. Non-waiver. Nothing herein contained shall be construed as being a waiver of any rights, duties, or obligations belonging unto the

LESSOR relating to any accrued back rentals due from the use of the demised premises.

6. Special provisions.

- a. Any future appraisal conducted for the purpose of a land exchange authorized by Section 104 of Public Law 96-565, shall be based on the demised premises being vacant and available for development to its highest and best use, without regard to the provisions of Public Law 96-565, as amended.
- b. If there is no longer a patient residing at said premises, the fair market rental shall be reopened and redetermined based on the demised premises being vacant and available for development to its highest and best use, without regard to the provisions of Public Law 96-565, as amended.
- c. The parties understand and agree that if funds are not appropriated by the date lease rental is due, any outstanding balance owed the LESSOR shall accrue interest at the rate allowed by federal law, which interest will be payable when authorized by Congress.

ARTICLE ONE

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters.

- a. All minerals as hereinafter defined, in, on, or under the demised premises, and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove such minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of such minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of

aluminum and, without limitation thereon, all other minerals substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land; provided, that "minerals" shall not include sand, gravel, rock, or other material suitable for use and when used in road construction in furtherance of the LESSEE's permitted activities on the demised premises and not for sale to others.

- b. All surface waters, ground waters, and water systems appurtenant to the demised land and the right on its own behalf or through persons authorized by it, to capture, divert, or impound the same and to occupy and use so much of the demised premises as may be required in the exercise of this right reserved.
  - c. As a condition precedent to the exercise by the LESSOR of any rights reserved in this paragraph 1, just compensation shall be paid to the LESSEE for any of the LESSEE's improvements taken which amount is to be determined in the manner set forth in paragraph 3, and, if only a portion of the land leased is withdrawn, the rental will be reduced in proportion to the rental value of the land withdrawn.
2. Prehistoric and historic remains. All prehistoric and historic remains found on the demised premises.
3. Withdrawal. Pursuant to Section 204(a)(2) of the Hawaiian Homes Commission Act, 1920, as amended, the LESSOR shall have the right to withdraw from the operation of this lease all or any portion of the demised land for the purposes of the Hawaiian Homes Commission Act. The LESSEE shall not be entitled to any compensation for improvements, if any, already erected on the lands hereby demised. The LESSEE shall be entitled to compensation for those improvements hereafter made by the LESSEE which have been approved by the LESSOR, in accordance with Article Two, Paragraph 7, titled Improvements, of this agreement on any land withdrawn, in an amount equal to the proportionate value of the LESSEE'S improvements so withdrawn in the proportion that it bears to the unexpired term of the lease; provided, that the LESSEE may, in the alternative,



remove or relocate its improvements to the remainder of the demised premises occupied by the LESSEE. The LESSOR shall give LESSEE five (5) years withdrawal notice prior to any withdrawal. Prior to issuing the notice of withdrawal, the State of Hawaii, Department of Health and the patients of Kalaupapa shall be provided an opportunity to submit their concerns within thirty (30) days. Final decision to withdraw lies with the Hawaiian Homes Commission. No further improvements shall be allowed to be constructed upon any lands for which withdrawal notice has been given. If only a portion of the demised land is withdrawn, the rental for the remaining portion will be reduced in proportion to the rental value of the land withdrawn. Such withdrawal shall be subject to the provision of Section 105(b)(2) of Public Law 96-565.

4. Relocation of trail/trail head. The right to relocate the trail and/or trail head at no cost to the LESSEE, providing that if the relocated trail/trail head lies wholly on Hawaiian Home Lands, the public and the LESSEE shall be guaranteed free access to the National Historical Park via said trail.

#### ARTICLE TWO

#### THE PARTIES HEREIN COVENANT AND AGREE AS FOLLOWS:

1. Payment of rent. That the LESSEE shall pay said rent to the LESSOR, at the time, in the manner and form aforesaid, and at the place specified above, or to such other place as the LESSOR may from time to time designate, in legal tender of the United States of America.
2. Utility services. That the LESSEE shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as to which said demised premises, or any part thereof, or any improvements thereon or the LESSOR or the LESSEE in respect thereof may during the term become liable, whether assessed to or payable by the LESSOR or the LESSEE.

3. Sanitation, etc. That the LESSEE shall keep the demised premises and improvements in a strictly clean, sanitary, and orderly condition.
4. Waste and unlawful, improper, or offensive use of premises. That the LESSEE shall not strip or commit, suffer or permit to be committed any waste, or nuisance, or unlawful, improper or offensive use of the demised premises, or any part thereof.
5. Compliance with laws. That the LESSEE shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal ordinances and state and federal statutes, pertaining to the premises, now in force or which may hereinafter be in force.
6. Inspection of premises. That the LESSEE will permit the LESSOR and its agents, at all reasonable times during the term, to enter the demised premises and all improvements thereon and examine the state of repair and condition thereof.
7. Improvements. That the LESSEE shall not at anytime during the term, construct, place, and install on the demised premises any building, structure or improvement of any kind and description whatsoever except with the prior written consent of the LESSOR and upon such conditions as the LESSOR may impose, unless otherwise provided herein. The LESSEE may make minor nonstructural alterations without the LESSOR's consent.
8. Repairs to improvements. That, subject to the availability of funds in future year's appropriations, the LESSEE shall keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the demised premises in good order, condition and repair, reasonable wear and tear excepted. State of Hawaii, by its Department of Health, may repair or expand all existing improvements as deemed necessary for the continuation of the existing uses of such improvements for the care and treatment of persons affected with Hansen's disease.
9. Liens. That the LESSEE will not commit or suffer any act or neglect whereby the demised premises or any improvement thereon or

the estate of the LESSEE therein shall at anytime during the term become subject to any judgment, attachment, lien, charge, or encumbrance whatsoever, except as hereinafter provided.

10. Character of use. That the LESSEE shall use the premises hereby demised solely as an integral part of the Kalaupapa National Historical Park established by Public Law 96-565 and for the purposes expressed therein.
11. Other Uses. Native Hawaiians, hereafter, will be given preference (second right of refusal) in the use of the premises to provide revenue-producing visitor services after patients have exercised their first right of refusal. The LESSEE may permit the continual use of the demised premises by State of Hawaii agencies, religious organizations, and others currently occupying said premises.
12. Assignments, etc. Except as hereinafter provided, the LESSEE shall not transfer, assign, or permit any other person to occupy or use the premises or any portion thereof, or transfer or assign this lease or any interest therein, either voluntarily or by operation of law, without the prior written approval of the LESSOR. The LESSEE may sublease, assign, or permit other persons to occupy or use the said premises or any portion thereof in order to carry out the purposes and provisions of Public Law 96-565 which established Kalaupapa National Historical Park and other laws relating to the administration and management of U.S. National Parks; provided that preference shall be given to Native Hawaiians in the use of said premises to provide revenue-producing visitor services after patients have exercised their first right of refusal.
13. Mortgage. That, except as provided herein, the LESSEE shall not mortgage, hypothecate, or pledge the demised premises or any portion thereof of this lease or any interest therein without the prior written approval of the LESSOR and any such mortgage, hypothecation, or pledge without such approval shall be null and void.
14. Indemnity. Pursuant to the Federal Tort Claims Act, as amended (28 U.S.C. 2671, et seq.), the LESSEE will diligently process all

claims for compensatory money damages for damage to, or loss of, property or personal injury or death occurring on the lands covered by this agreement caused by the negligent or wrongful act or omission of any employee of the LESSEE while acting within the scope of his office or employment under circumstances where the LESSEE, if a private person, would be liable in accordance with the laws of the place where the act or omission occurred.

Where a suit arising out of any aforesaid damage to, or loss of, property or injury or death is filed against the LESSOR in State Court, the LESSEE when requested by the LESSOR, will cooperate by requesting that the U. S. Attorney seek removal of said suit to the U. S. District Court and defend said suit. The LESSEE will pay any damage where it is determined that the damage to, or loss of, property or personal injury or death occurring on the lands covered by this agreement was caused by the negligent or wrongful act or omission of any employee of the LESSEE while acting within the scope of his office or employment under circumstances where the LESSEE, if a private person, would be liable in accordance with the laws of the place where the act or omission occurred, as provided in the Federal Tort Claims Act.

Further, the LESSEE agrees that the use of the land by its employees and volunteers in the park shall be effected with all reasonable diligence and precaution to avoid damage to the land, property, or personnel of the LESSOR (see 28 U.S.C. 1491).

15. Termination.

- a. That upon the natural expiration of this lease, the LESSEE shall peaceably deliver unto the LESSOR possession of the demised premises, and the improvements thereon shall become the property of LESSOR unless LESSEE desires to remove such capital improvements and restore the property to its natural state within a reasonable time.
- b. Should LESSOR, for any reason other than for breach of the condition of this lease, terminate this lease prior to its natural expiration, LESSOR shall be liable to the LESSEE in

an amount equal to the fair market value of any capital improvements made to or placed upon the demised land, consented to by the LESSOR, such value to be determined as of the date of such termination, or, at the election of the Secretary of the Interior, that the Secretary be permitted to remove such capital improvements within a reasonable time of such termination. As to any other improvements made to or placed upon the demised land the construction of which was consented to by the LESSOR, the LESSEE shall be compensated in an amount equal to the proportionate value of the LESSEE'S improvements in the proportion that it bears to the unexpired term of the lease.

- c. The LESSEE may terminate this lease, in whole or in part, at any time by giving a one (1) year termination notice in writing to the LESSOR, and no rental shall accrue after the effective date of termination. Said notice shall be computed commencing with the day after the date of the mailing. As a condition of termination under this paragraph, LESSEE agrees it will continue to pay proportional annual rent until such time as it removes all capital improvements owned by the LESSEE or after a six (6) month period following such termination, the LESSOR takes ownership of the improvements.

16. Non-warranty. The LESSOR does not warrant the conditions of the leased premises, as the same is being leased as is; and further, LESSOR does not warrant access to the demised premises, except as heretofore provided in Article One, paragraph four.

### ARTICLE THREE

IT IS HEREBY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. Breach. That time is of the essence of this agreement and if the LESSEE shall fail to yield to pay such rent or any part thereof at the times and in the manner aforesaid, or shall abandon the said premises, or if this lease and the premises shall be attached or

otherwise be taken by operation of law, or shall fail to observe and perform any of the covenants, terms and conditions therein contained and on its part to be observed and performed, and such failure shall continue for a period of more than sixty (60) days after delivery by the LESSOR of a written notice of such breach or default by service, as provided by Sections 634-35 or 634-36, Hawaii Revised Statutes, or by registered mail, or certified mail to the LESSEE at its last known address, and to each mortgagee or holder of record having a security interest in the demised premises, the LESSOR may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the demised premises or any part thereof, and upon or without such entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrearage of rental and interest at the legal rate allowed by federal law, or for any preceding or other breach of contract; and in the event of such termination, all buildings and improvements thereon shall remain and become the property of the LESSOR.

2. Right to enter. The LESSOR or the county and the agents or representatives thereof shall have the right to enter and cross any portion of the demised land for the purpose of performing any public or official duties; provided, however, in the exercise of such rights, the LESSOR or the county shall not interfere unreasonably with the LESSEE or the LESSEE's use and enjoyment of the premises.
3. Acceptance of rent not a waiver. That the acceptance of rent by the LESSOR shall not be deemed a waiver of any breach by the LESSEE of any term, covenant, or condition of this lease, nor of the LESSOR's right to re-entry for breach of covenant, nor of the LESSOR's right to declare and enforce a forfeiture for any such breach, and the failure of the LESSOR to insist upon strict performance of any such term, covenant, or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or option.

4. Extension of time. That notwithstanding any provision contained herein to the contrary, wherever applicable, the LESSOR may for good cause shown, allow additional time beyond the time or times specified herein to the LESSEE, in which to comply, observe, and perform any of the terms, conditions, and covenants contained herein.
5. Quiet enjoyment. The LESSOR hereby covenants and agrees with the LESSEE that upon payment of the rent at the times and in the manner aforesaid and the observance and performance of the covenants, terms, and conditions hereof on the part of the LESSEE to be observed and performed, the LESSEE shall and may have, hold, possess, and enjoy the demised premises for the term hereby demised, without hindrance or interruption by the LESSOR and as against the lawful acts of third parties and as against the acts of all other parties claiming title to, or a right to possession of the leased premises, except that the use of the demised premises by the LESSEE shall be limited and restricted by the continuation of the existing uses of the premises as a facility for the care and treatment of persons affected with Hansen's disease under the full and complete governance of the Director of Health pursuant to Chapter 326, Hawaii Revised Statutes; and further limited by the present ownership and/or use of all buildings and improvements by parties other than either the LESSOR or the LESSEE.
6. Severability. If any term or provision of this lease or the application thereof to any person or circumstance shall, to any extent, be determined by judicial order or decision to be invalid or unenforceable, the remaining provisions of this lease or the application of such terms or provisions to persons or circumstances other than those as to which it is held to be invalid or unenforceable shall not be affected thereby, and such other terms or provisions of the lease not affected by the decision or order shall be valid and shall be enforced to the fullest extent permitted by law.
7. Definitions. As used herein, unless clearly repugnant to the context:

- a. "Chairman" shall mean the Chairman of the Hawaiian Homes Commission, Department of Hawaiian Home Lands of the State of Hawaii or his successor.
  - b. "Holder of a record of a security interest" is a person who is the owner or possessor of a security interest in the land demised and who has filed with the Department of Hawaiian Home Lands and with the Bureau of Conveyances of the State of Hawaii a copy of such interest.
  - c. "Lessee" shall mean and include the LESSEE herein, successors, or permitted assigns, according to the context hereof.
  - d. "Premises" shall be deemed to include the land hereby demised and all buildings and improvements now or hereinafter constructed and installed thereon.
  - e. "Native Hawaiian" shall mean any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778.
  - f. "Patient" shall mean any person affected with Hansen's disease whose name is on the Kalaupapa registry and who is still on the registry maintained by the Department of Health.
  - g. The use of any gender shall include all genders, and if there be more than one, then all words used in the singular shall extend to and include the plural.
  - h. The paragraph headings throughout this lease are for the convenience of the LESSOR and the LESSEE and are not intended to construe the intent or meaning of any of the provisions thereof.
8. Contingent fee. The LESSOR warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, brokerage, percentage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the LESSOR for the purpose of securing business. For breach or violation of this warranty, the LESSEE shall have the right to annul this lease without liability, or in its discretion to deduct

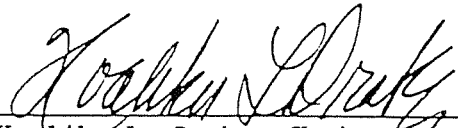


from amounts otherwise due under this lease or other consideration, the full amount of such commission, brokerage, percentage, or contingent fee.

9. Benefit. No member of Congress or Resident Commission shall be admitted to any share or part of this lease, or to any benefit to arise therefrom. Nothing, however, herein contained, shall be construed to extend to any incorporated company if the lease be for the general benefit of such corporation or company.

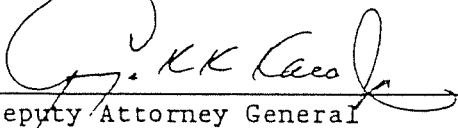
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

By   
Hoaliku L. Drake, Chairman  
Hawaiian Homes Commission

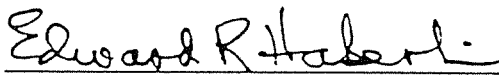
LESSOR

APPROVED AS TO FORM AND  
LEGALITY:

  
Deputy Attorney General  
State of Hawaii

Dated 9/8/92

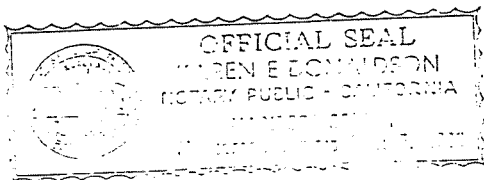
UNITED STATES OF AMERICA  
DEPARTMENT OF THE INTERIOR  
NATIONAL PARK SERVICE

By   
Edward R. Haberlin, Chief  
Division of Land Resources  
Western Region

LESSEE

STATE OF CALIFORNIA )  
 : SS  
COUNTY OF SAN FRANCISCO )

On this 31 day of AUGUST, 19 92, before me personally appeared Edward R. Haberlin, to me personally known, who, being by me duly sworn, did say that he is the Chief, Division of Land Resources of the National Park Service, Western Region, United States of America, Department of the Interior, and the person described in and who executed the foregoing instrument and acknowledged that he executed the same freely and voluntarily for the use and purposes therein set forth.



Karen E. Donaldson  
Notary Public

My Commission expires: 3-5-93

EXHIBIT "A"

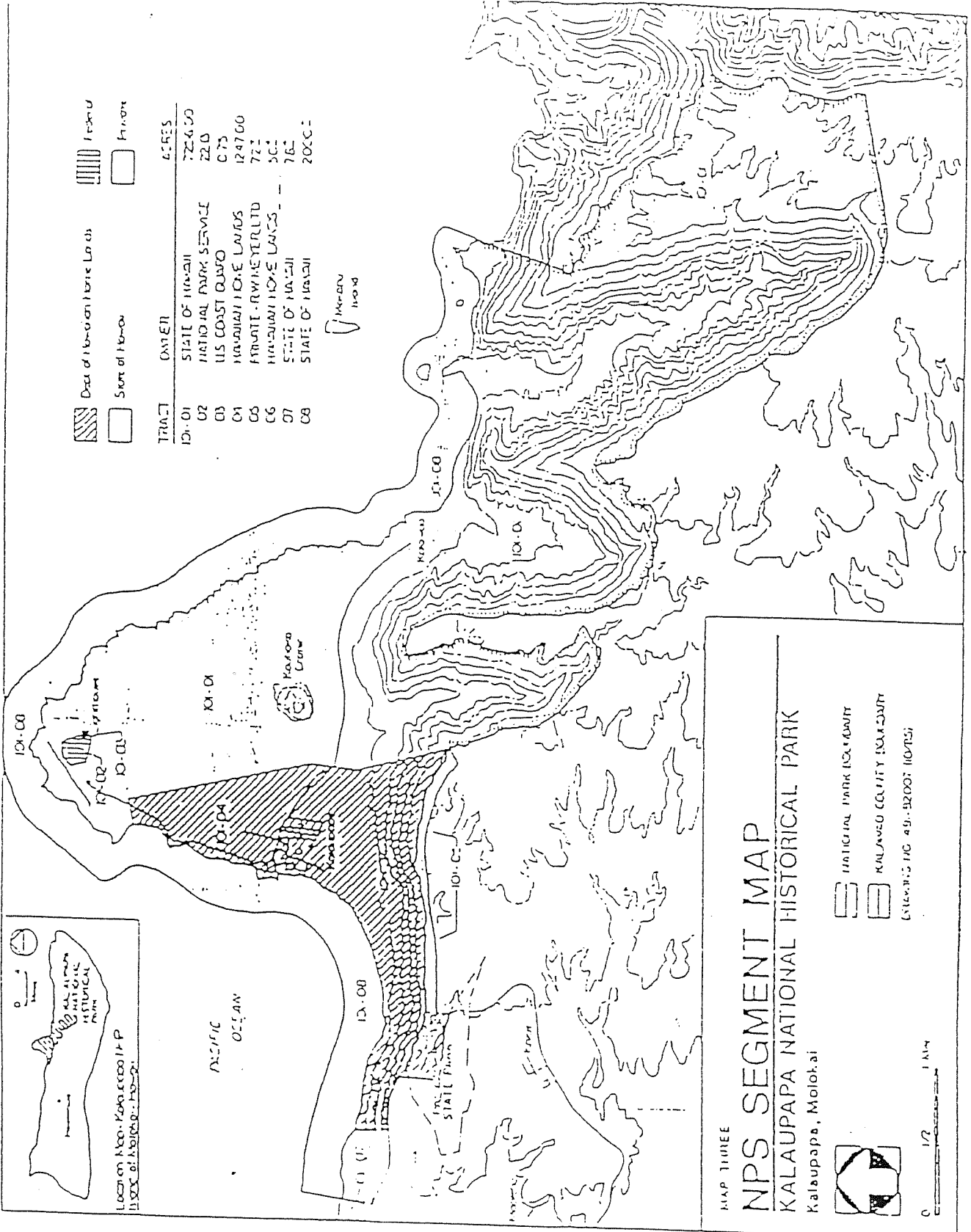
Until such time as more precisely described by a modern metes and bounds survey, the leased parcel is agreed to consist of:

All of that certain parcel of land (being all of the land described in and covered by Land Commission Award Number 6450, Apana 3 to Kaunuohua, comprising all of the Ahupuaa of Kalaupapa) situate, lying and being at Kalaupapa, District of Kalawao, Island of Molokai, County of Maui, bearing Tax Key Description 6-1-01-01 (2), and containing an area of 1,247.0 acres, more or less, shown outlined on the map attached hereto marked Exhibit "B" and made a part hereof.

LESS and EXCEPT that portion of the above described property lying seaward of the upper reaches of the waves, excluding storm and tidal waves, often evidenced by the line of vegetation along the shore of the Pacific Ocean.

EXHIBIT "A"

0012I



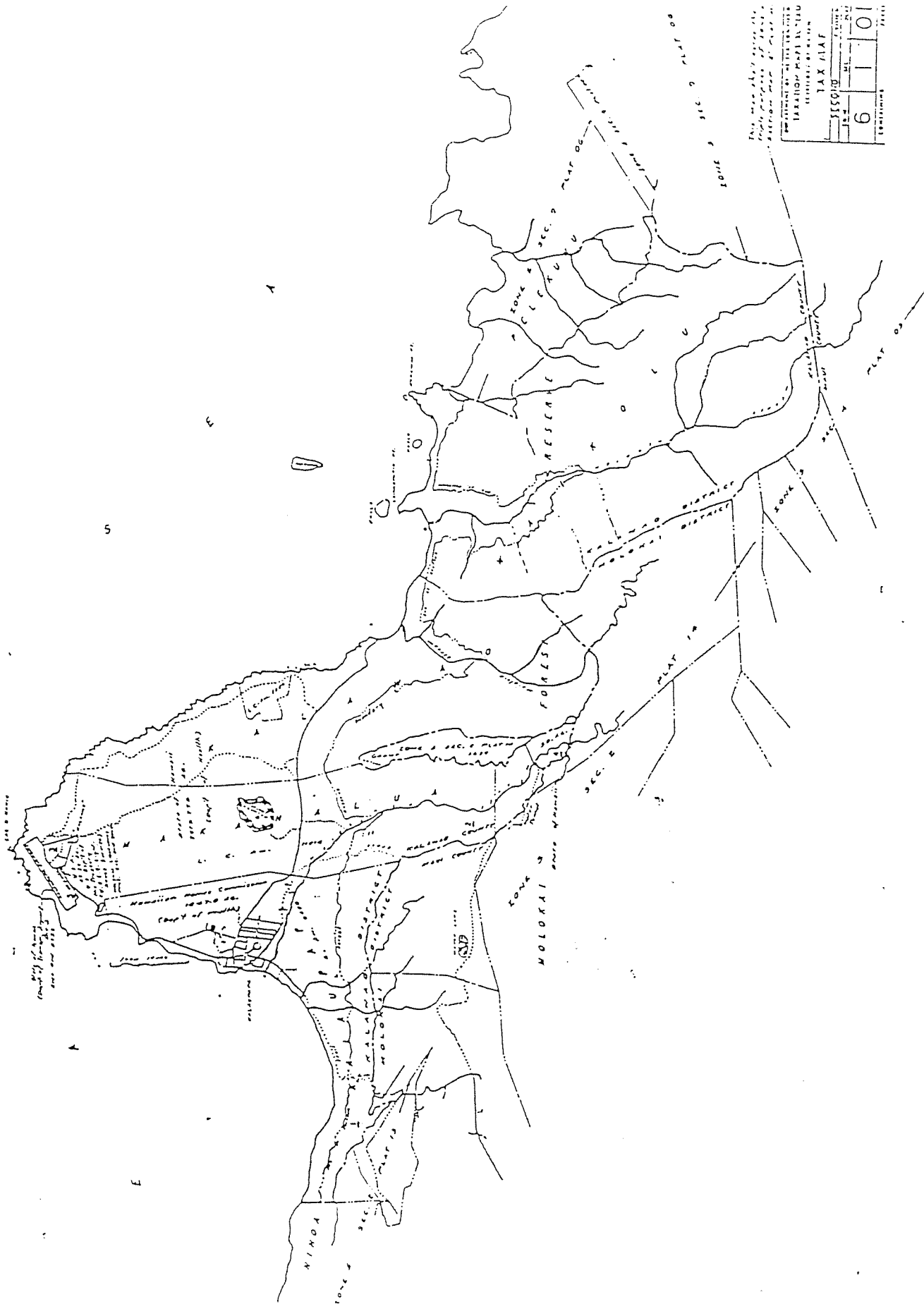
Date of Reservation Lands  
 State of Hawaii  
 Federal  
 Private

TRACT	OWNER	ACRES
10-01	STATE OF HAWAII	7226.50
02	NATIONAL PARK SERVICE	22.0
03	U.S. COAST GUARD	0.75
04	HAWAII HOME LANDS	1247.00
05	FRUIT - RWHEITLTD	72.2
06	HAWAII HOME LANDS	50.2
07	STATE OF HAWAII	76.2
08	STATE OF HAWAII	2000.2

MAP THREE  
**NPS SEGMENT MAP**  
 KALAUPAPA NATIONAL HISTORICAL PARK  
 Kalaupapa, Molokai

NATIONAL PARK SERVICE  
 HAWAII COUNTY GOVERNMENT  
 (STATE FILE 49-32007 10/75)

0 1/2 1 MILE



This map shall serve as the legal evidence of the location and extent of the sections shown hereon.

DEPARTMENT OF LAND AND NATURAL RESOURCES  
 TERRITORIAL MAPS DIVISION  
 HONOLULU, HAWAII

TAX MAP

SECTION	6
TOWNSHIP	101
RANGE	1



UNITED STATES  
DEPARTMENT OF THE INTERIOR

OFFICE OF THE SOLICITOR  
SAN FRANCISCO FIELD OFFICE  
450 GOLDEN GATE AVENUE, BOX 36064  
SAN FRANCISCO, CALIFORNIA 94102

March 17, 1983

File Ref:  
134 (SF-07)

Memorandum

To: Regional Director, Western Region, National Park Service

From: Field Solicitor, San Francisco

Subject: Legal Authority and Law Enforcement; Palauapapa

I have reviewed the several questions the Director, Pacific Area Office, has raised concerning the law enforcement authority of the Park Service Rangers within the Palauapapa National Historical Park. I have also reviewed the legislation establishing the Park and what legislative history I have been able to uncover at this time. I understand the Director is in need of a response soon because the subject matter is expected to come up in testimony with the State and others very shortly. Hence, the following are my immediate comments.

In the Director's December 7, 1982 memorandum to you, he related as to jurisdiction over lands and waters within the authorized boundaries of the Park as set out in parts "a" and "b" of his matrix. For the sake of brevity, attached is a copy of his memorandum with my notations.

With respect to my comment identified by as "2" which appears primarily in relation to "Cooperative Agreements", I offer the following explanation. It is an established principle (Constitutional) of law that the United States, through Congress, may enact laws and through its agencies, may enforce laws and may promulgate and enforce regulations in matters so authorized under the U.S. Constitution. The provision of the Constitution in which the Park Service, as a land managing agency, finds its primary law enforcement authority is the Property Clause. 1/ Simply stated, under the Property Clause the United States is empowered to enact any needed laws, rules and regulations in order to administer,

1/ There are other Constitutional powers and authorities vested in the United States but they generally do not involve Park Service activities and thus are not addressed in this memorandum.

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use and protect its property. In order to implement this power, the United States must possess a property or a proprietary interest. The courts have held that, in addition to fee ownership, a leasehold constitutes a sufficient interest to authorize a Federal agency to enforce laws, rules and regulations for the administration and protection of its proprietary interest.

Thus, where the United States does not have a proprietary interest, it generally cannot conduct law enforcement activities based in the Property Clause. 2/ An exception to this of course would be in a situation where a state cedes legislative jurisdiction, i.e., concurrent criminal jurisdiction, to the United States. This alternative might be appropriate for the Park Service to pursue in the case of Kalaupapa because of the unique relationship between the Service, the State agencies and the private owners.

In Kalaupapa generally where the Park Service does not have a proprietary interest in the land or other property, it does not have the authority to enforce the Service's laws, rules and regulations. In this regard, because of the unique nature of the Park, the Park Service might also explore the possibility of obtaining a proprietary interest, i.e., a lease, from the appropriate State agencies.

In the meantime under the present circumstances, I have researched the Kalaupapa legislation in an attempt to determine if Congress intended the Cooperative Agreements to include the acquisition of a proprietary interest 3/ as it relates to law enforcement. 4/ Enclosed is a copy of the Congressional actions on the legislation I have uncovered so far. There appears to be very little legislative history on the cooperative agreement aspect of the statute.

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2/ Supra.

3/ The language of the section on cooperative agreements does not suggest a proprietary interest is to be obtained. Reading the purposes together, it appears the preservation from deterioration or other causes of loss of the resources was the objective of the cooperative agreements, not law enforcement in activities that do not directly relate to resource protection.

4/ An interesting question is raised at this point. Even if we assume for the sake of discussion that the cooperative agreements are intended to be used as instruments for conveying a proprietary interest or jurisdiction, is the State agency authorized by the legislature to occur in or endorse this arrangement.

There apparently are, however, two referenced reports, House Report 86-1019 and Senate Report 96-1027, that I am attempting to obtain to see what, if any, light they may shed on this issue.

Turning to four other points raised in the Area Director's memorandum, under (c) he states rangers can enforce NPS regulations in the areas shown in (b). This is not entirely so for the reasons set forth above as it relates to Cooperative Agreements. In other words, where the United States has a proprietary interest, NPS regulations may be enforced. The extent to which the Cooperative Agreements will or could establish this interest is unknown at this time.

As to (d) and (f) in the subject memorandum, deputization is an alternative form of law enforcement of State laws and regulations, and County ordinances, of the respective appointing authorities. Such appointments would be in accord with 16 U.S.C. 1a-6(b)(2), but the rangers would be acting under State law in their law enforcement actions.

Finally, the suggestion that a National Park Ranger may be appointed, or elected sheriff, is quite possible given the Park Service role in the Park. However, this raises the potential conflict as to who that individual is answerable to, i.e., the State or the electorate vs. the Area Director, etc. and Secretary of the Interior, when it comes to law enforcement policy.

As mentioned above, I will continue to determine if the cooperative agreement issue was addressed during Congressional deliberations. Please call when you wish to discuss the matter further.

*Ralph G. Mihan*  
Ralph G. Mihan  
Field Solicitor

Attachment

cc:  
Director, Pacific Area, w/attach. ✓