

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

March 8, 2019

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

PSF No: 13KD-016

KAUAI

Amend Prior Board Action of May 22, 2015, Agenda Item D-4, Grant of Term, Non-Exclusive Easement to Uluwehi, Inc., for Access and Utility Purposes, Waioli, Hanalei, Kauai, Tax Map Keys: (4) 5-5-008:002 and (4) 5-6-002:001.

The purpose of the amendment is to change the easement area referenced in the prior Board action from 19,028 square feet, more or less, to 19,992 square feet, more or less, as determined by survey.

BACKGROUND:

At its meeting of May 22, 2015, agenda item D-4, the Board of Land and Natural Resources (Board) approved a Grant of Term, Non-Exclusive Easement to Uluwehi, Inc., for Access and Utility Purposes, Waioli, Hanalei, Kauai, Tax Map Keys: (4) 5-5-008:002 and (4) 5-6-002:001. (Exhibit 1)

At its meeting of February 26, 2016, agenda item D-4, the Board approved to amend its prior action of May 25, 2015, to specify the term of the easement as fifty-five (55) years.

REMARKS:

Upon requesting the assistance of the Department of the Attorney General to prepare the easement document, it was noted that the easement area referenced in the prior Board action of May 22, 2015, item D-4, was not consistent with the area shown on the survey map provided. As a result, it is necessary to amend the Land Board's prior action of May 22, 2015, item D-4, to change the easement area referenced in the Board approval from 19,028 square feet, more or less, to 19,992 square feet, more or less.

The grant of easement will consist of Easement A (2,747 square feet), Easement B (2,832 square feet), Easement D (11,799 square feet), and Easement E-2 (2,614 square feet), for a total of 19,992 square feet, more or less. (Exhibit 2)

RECOMMENDATION: That:

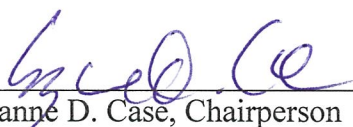
1. The Board amend its prior action of May 22, 2015, under agenda item D-4, by changing the easement area referenced in the approved submittal from 19,028 square feet, more or less, to 19,992 square feet; and
2. Except as amended hereby, all terms and conditions listed in the Board's approvals of May 22, 2015, agenda item D-4, and February 26, 2016, agenda item D-4, shall remain the same.

Respectfully Submitted,



Wesley T. Matsunaga
District Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson

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

May 22, 2015

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

PSF No.:13KD-016

Kauai

Grant of Term, Non-Exclusive Easement to Uluwehi, Inc. for Access and Utilities
Purposes, Waioli, Hanalei, Kauai, Tax Map Keys: (4) 5-5-008:002 and (4) 5-6-
002:001.

APPLICANT:

Uluwehi, Inc., a Hawaii corporation

LEGAL REFERENCE:

Section 171-13 and 55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waioli situated at Waioli, Hanalei, Kauai, identified by
Tax Map Key: (4) 5-5-008:002 and (4) 5-6-002:001, as shown on the attached maps
labeled Exhibit A.

AREA:

19,028 square feet, more or less.

ZONING:

TMK: (4) 5-5-008:002
State Land Use District: agricultural/conservation
County of Kauai CZO: agricultural/open

TMK: (4) 5-6-002:001
State Land Use District: conservation
County of Kauai CZO: open

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
May 22, 2015 Go.

D-4

EXHIBIT 1

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 Grant of Non-Exclusive Easement bearing Land Office Deed No. S-28,292 to Glenn I. Kobayashi, Christine Y. Kobayashi and Joseph N. Kobayashi for access and utility purposes.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across State-owned land for access and utility purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

Applicant is the owner of Tax Map Key: (4) 5-5-008:004, which is further identified as being a portion of the Government Ahupuaa of Waioli sold to Keala under Royal Patent Grant No. 1946 dated January 17, 1856. Therefore, staff is recommending the consideration be a one-time payment to be determined by independent appraisal establishing fair market value, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

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

DCCA VERIFICATION:

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Applicant in good standing confirmed:	YES

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 3) Obtain a title report to ascertain ownership, where necessary, at Applicant's own cost and subject to review and approval by the Department;

REMARKS:

Uluwehi, Inc. (Applicant) is the owner of Tax Map Key: (4) 5-5-008:004 (Parcel 4), which is further identified as being a portion of the Government Ahupuaa of Waioli sold to Keala under Royal Patent Grant No. 1946 dated January 17, 1856. See Exhibit C.

Applicant requested an easement for access and utility purposes to inure to the benefit of Parcel 4 over State lands identified as TMK: (4) 5-5-008:002 and (4) 5-6-002:001. Applicant has received approval for an After-The-Fact Conservation Use Permit from the Department of Land and Natural Resources, Office of Conservation and Coastal Lands (OCCL) for access and utility easement over State-owned land identified as TMK (4) 5-5-008:002. See Exhibit D. The access and utility easement request is an extension of (and inclusive of) easements A and B granted by the Board under Land Office Deed No. S-28,292. A copy of C.S.F. Map No. 22,726 from that grant is included in Exhibit A.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Comments were solicited from the agencies identified below with the results indicated.

State Agencies:

DOH	No response by suspense date
DLNR - DOFAW	No comments
DLNR – Historic Preserv.	Archeological survey done
DLNR - OCCL	CDUP on file
OHA	No response by suspense date

County Agencies

County Planning	No objections
Public Works	No comments
Dept. of Water	No response by suspense date

Staff has no objections to the request.

Staff believes that the recommended action qualifies for an exemption from the preparation of an environmental assessment because the easement alignment or portions of it have been used by residents of this area for some time, such as the Kobayashi family under LOD S-28,292. Such use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

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. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (4) 5-5-008:004, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Uluwehi, Inc. covering the subject area for access and utility purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term, non-exclusive easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (4) 5-5-008:004, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
 - 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.

Respectfully Submitted,

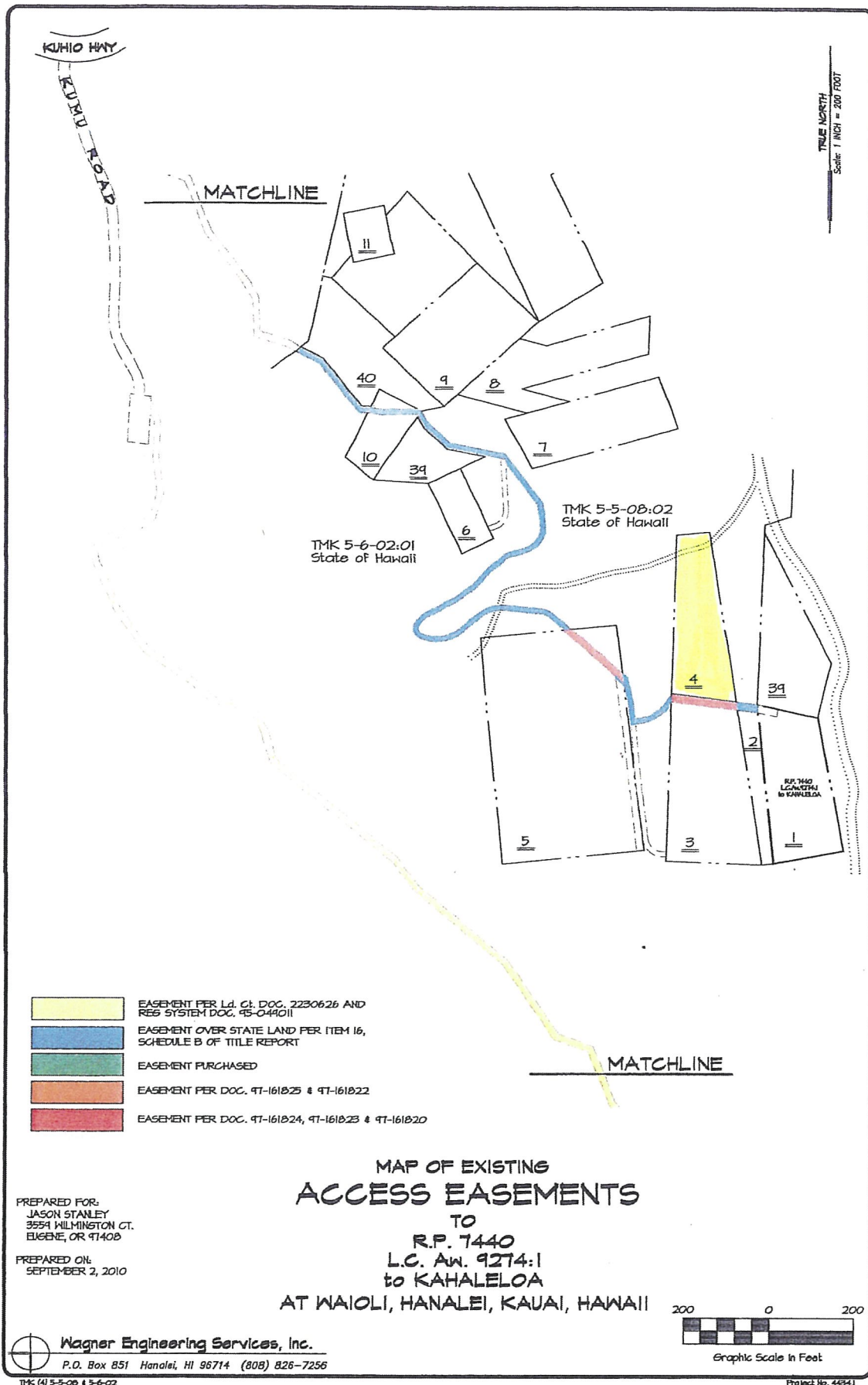


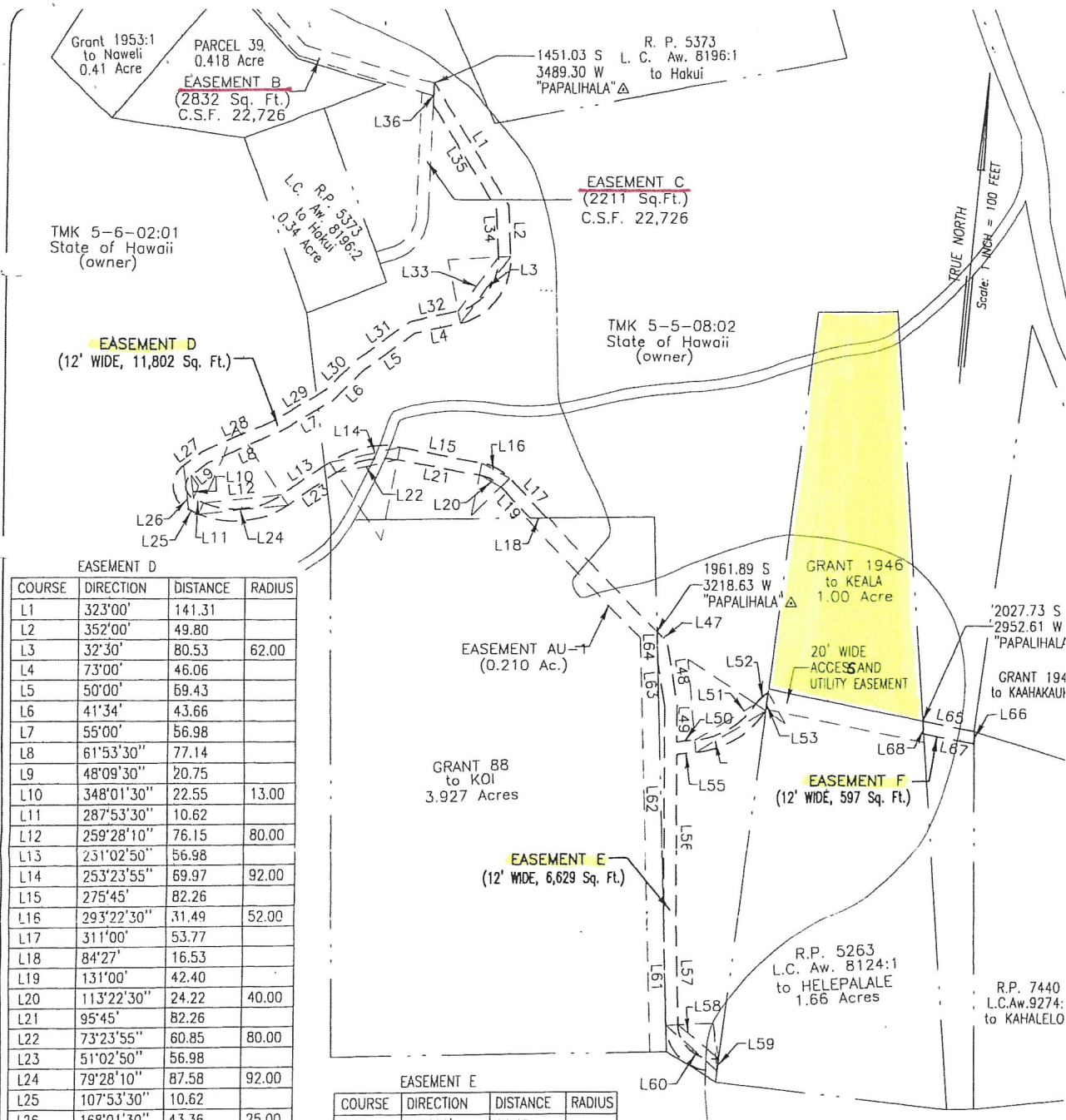
 Marvin Mikasa
District Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson

POR. of WAIOLI, HANALEI, KAUAI.





EASEMENT D

COURSE	DIRECTION	DISTANCE	RADIUS
L1	323°00'	141.31	
L2	352°00'	49.80	
L3	32°30'	80.53	62.00
L4	73°00'	46.06	
L5	50°00'	69.43	
L6	41°34'	43.66	
L7	55°00'	56.98	
L8	61°53'30"	77.14	
L9	48°09'30"	20.75	
L10	348°01'30"	22.55	13.00
L11	287°53'30"	10.62	
L12	259°28'10"	76.15	80.00
L13	231°02'50"	56.98	
L14	253°23'55"	69.97	92.00
L15	275°45'	82.26	
L16	293°22'30"	31.49	52.00
L17	311°00'	53.77	
L18	84°27'	16.53	
L19	131°00'	42.40	
L20	113°22'30"	24.22	40.00
L21	95°45'	82.26	
L22	73°23'55"	60.85	80.00
L23	51°02'50"	56.98	
L24	79°28'10"	87.58	92.00
L25	107°53'30"	10.62	
L26	168°01'30"	43.36	25.00
L27	228°09'30"	22.19	
L28	241°53'30"	77.87	
L29	235°00'	54.85	
L30	221°34'	43.13	
L31	230°00'	62.76	
L32	253°00'	48.50	
L33	212°30'	64.94	50.00
L34	172°00'	46.70	
L35	143°00'	120.41	
L36	177°00'	21.46	

EASEMENT E

COURSE	DIRECTION	DISTANCE	RADIUS
L47	311°11'	14.48	
L48	345°51'50"	62.98	
L49	354°40'	36.22	
L50	259°40'	17.72	
L51	234°06'30"	69.03	80.00
L52	222°08'15"	16.45	35.00
L53	1°34'25"	18.20	
L54	54°06'30"	79.11	92.00
L55	79°40'	18.77	
L56	354°40'	166.02	
L57	353°09'	101.31	
L58	304°42'19"	52.38	35.00
L59	2°00'	12.34	
L60	126°44'52"	68.07	47.00
L61	173°09'	101.47	
L62	174°40'	213.52	
L63	165°51'50"	44.56	
L64	173°09'	29.64	

EASEMENT F

COURSE	DIRECTION	DISTANCE
L65	277°04'09"	50.09
L66	354°23'	12.30
L67	97°04'09"	49.33
L68	171°00'	12.49

PREPARED FOR:
THOMAS THOMPSON
P.O. BOX 255087
SACRAMENTO, CA 95865-5067

SEPTEMBER 10, 2003

100 0 100

Graphic Scale in Feet

Wagner Engineering Services, Inc.
P.O. Box 851 Hanalei, HI 96714 (808) 826-7256

MAP DESIGNATING
EASEMENT D, E, and F
FOR ACCESS AND UTILITY PURPOSES
AFFECTING

T.M.K. (4) 5-5-08:02

AND

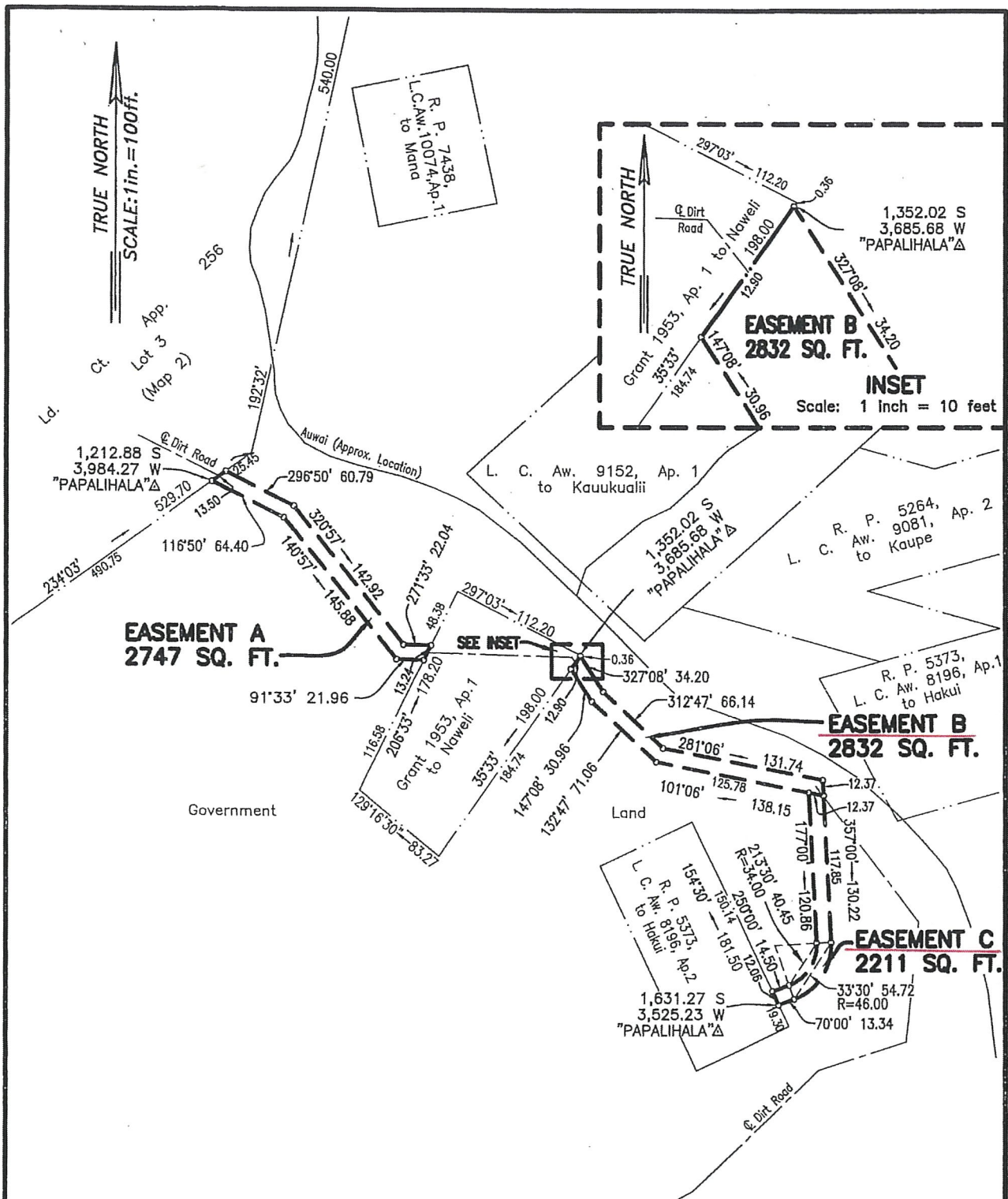
T.M.K. (4) 5-6-02:01

AT WAIOLI, HANAIEI, KAUAI, HAWAII



THIS MAP WAS PREPARED BY ME OR
UNDER MY SUPERVISION

Ronald J. Wagner
RONALD J. WAGNER
Licensed Professional Land Surveyor
Certificate No. 5074



JOB K-60(98)

C. BK.

TAX MAP 5-5-08:por.2
5-6-02:por.1

C.S.F. NO. 22,726

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

J.F.A. July 8, 1998

D:\Glenn\K6098\K6098.dwg

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

W. ROY HARDY
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Grant of Term, Non-Exclusive Easement to Uluwehi, Inc. for Access and Utility Purposes

Project Number: PSF No. 13KD-016

Project Location: por. of Waioli, Hanalei, Kauai, Tax Map Key: (4) 5-5-008;por. 2 and (4) 5-6-002;por. 1.

Project Description: Access and Utility Purposes

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

Consulted Parties: Office of Conservation and Coastal Lands

Exemption Class No. In accordance with the "Exemption List for the State of Hawaii, Department of Land and Natural Resources, as Reviewed and Concurred Upon by the Environmental Council (Docket 91-EX-2, December 4, 1991), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No.1, "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 [HAR § 11-200-8(a)(1)]."

Exemption Item No.: In accordance with the Division of Land Management Environmental
and Description: Impact Statement Exemption List, approved by the Environmental Council and dated April 28, 1986, the subject project is considered to be exempt from the preparation of an environmental assessment pursuant to:

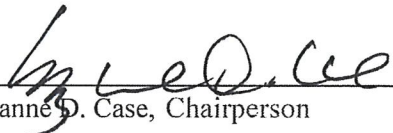
Exemption Class No. 1, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing," and

EXHIBIT " B "

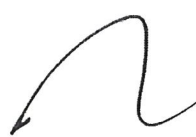
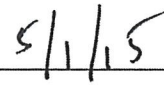
Exemption Class No. 4, which states, "Minor alterations in the conditions of land, water or vegetation."

Exemption Item Description Operations, repairs or maintenance of existing structures, facilities,
From Agency Exemption List equipment or topographical features, involving negligible or no
expansion or change of use beyond that previously existing.

Recommendation: It is anticipated that this request will probably have minimal or no
significant effect on the environment and is presumed to be exempt
from the preparation of an environmental assessment.



Suzanne D. Case, Chairperson

Date

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

December 23, 2010

WILLIAM J. AILA, JR.
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
INTERIM FIRST DEPUTY

WILLIAM M. TAM
INTERIM DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

10427 (K)

MEMORANDUM

TO: Charlene E. Unoki, Assistant Administrator

THROUGH: ~~Russell Y. Tsuji, Administrator~~

FROM: Sose Sauvao, Assistant Abstractor

SUBJECT: Kuleana Status of Original Title(s) to Tax Map Key Parcels (4) 5-5-08: 003, 004, and 005

We have been requested to confirm the kuleana status of the original source of titles to the subject tax map key parcels (4) 5-5-08: 003, 004 and 005, designated as "Parcels 3, 4 and 5", respectively, as shown colored red on the tax map attached hereto as Exhibit A.

As shown thereon the source of titles to the subject parcels are identified as follows:

"Parcel 3", (4) 5-5-08: 003 being all of L.C. Aw. 8124: 1;

"Parcel 4", (4) 5-5-08: 004 being all of Grant 1946; and

"Parcel 5", (4) 5-5-08: 005 being all of Grant 88.

Records filed in our office reveal that only "Parcel 3", being all of apana 1 of Land Commission Award 8124, acquired from the konohiki in 1841 by the claimant Helepalala, and adjudicated by the Land Commissioners on September 4, 1851, **is an award of kuleana status.**

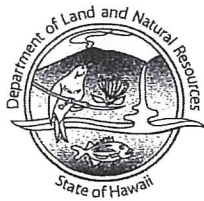
Parcels 4 and 5, being portions of the Government Ahupuaa of Waioli sold to Keala under Royal Patent Grant No. 1946 (Parcel 4) dated January 17, 1856, and to Koi under Royal Patent Grant No. 88 (Parcel 5) dated July 28, 1848 **are not kuleana.**

If you have any questions, please feel free to call me at 587-0383.

Enclosure

EXHIBIT "C"

POR. of WAIOLI, HANALEI, KAUAI.



TO: Central
FROM: KDLO

No.: 19KD-015

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

REF:OCCL:TM

Correspondence: KA 14-108; 109 & 110

JAN 17 2014

MEMORANDUM

TO: Kaua'i Land District Office

FROM: Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

JAN 16 2014

SUBJECT: Grant of Term, Non-Exclusive Easement for Access and Utility Purposes for Uluwehi, Inc., Ursula Lamberson, and A. Laurel Bennett Trust Located at Wai'oli, Hanalei, Kaua'i, TMK: (4) 5-5-008:002 & (4) 5-6-002:001

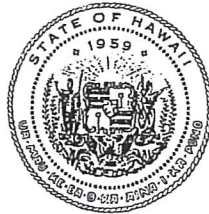
The Office of Conservation and Coastal Lands (OCCL) has reviewed the subject information and note that After the Fact authorization was gained via Conservation District Use Permit (CDUP) KA-3573 for the subject access/utility easement. We have attached CDUP KA-3573 and note that our files do not contain 'a land survey map prepared by a licensed land surveyor showing the alignment of the access and utility easement through parcel 2 for Parcel 3, 4, and 5' pursuant to condition #8.

Prior to going forward to the Board of Land and Natural Resources, the OCCL requests that the applicants for the easement comply with condition #8. A half-size survey map is sufficient for our files.

Should you have any questions regarding this memorandum, contact Tiger Mills of our Office at ~7-0382.

EXHIBIT "D"

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
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AQUATIC RESOURCES
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CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES AND
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

REF:OCCL:DH

ATF CDUA: KA-3573

Acceptance Date: November 22, 2010
180-Day Exp. Date: May 21, 2011

A. Laurel Bennett Trust

Uluwehi, Inc.

Ursula Lamberson Revocable Trust

C/o Laurel Bennett

Kapaa, Hawaii, 96746-8907

MAY 19 2011

Dear Ms. Bennett,

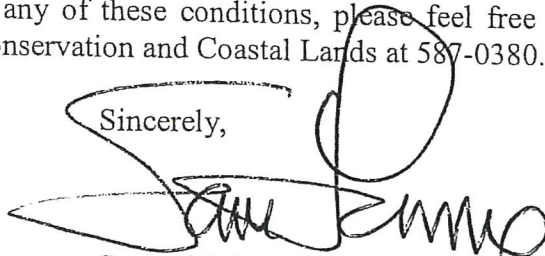
This is to inform you that on May 17, 2011, the Chairperson of the Department of Land and Natural Resources approved your After-The-Fact (ATF) Conservation District Use Application (CDUA) KA-3573 for an access and utility easement over State-owned land on Subject Parcel TMK: (4) 5-5-008:002, located in Waioli Valley, Hanalei District, Island of Kauai, subject to the following terms and conditions:

- 1) The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;
- 2) The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
- 3) The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawaii Administrative Rules (HAR) Section 11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control;"
- 4) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;

- 5) The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
- 6) Where any polluted run-off, interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the polluted run-off, interference, nuisance, harm, or hazard;
- 7) The applicant acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the immediate area, to the extent such practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;
- 8) The applicant will need to apply and receive a Land Disposition from the Land Division prior to CDUA approval. In addition, owners will need to submit a land survey map prepared by a licensed land surveyor showing the alignment of the access and utility easement through Parcel 2 for Parcels 3, 4, and 5;
- 9) Other terms and conditions as may be prescribed by the Chairperson; and
- 10) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other within thirty (30) days. Should you have any questions on any of these conditions, please feel free to contact Dawn Hegger, Senior Planner, Office of Conservation and Coastal Lands at 587-0380.

Sincerely,



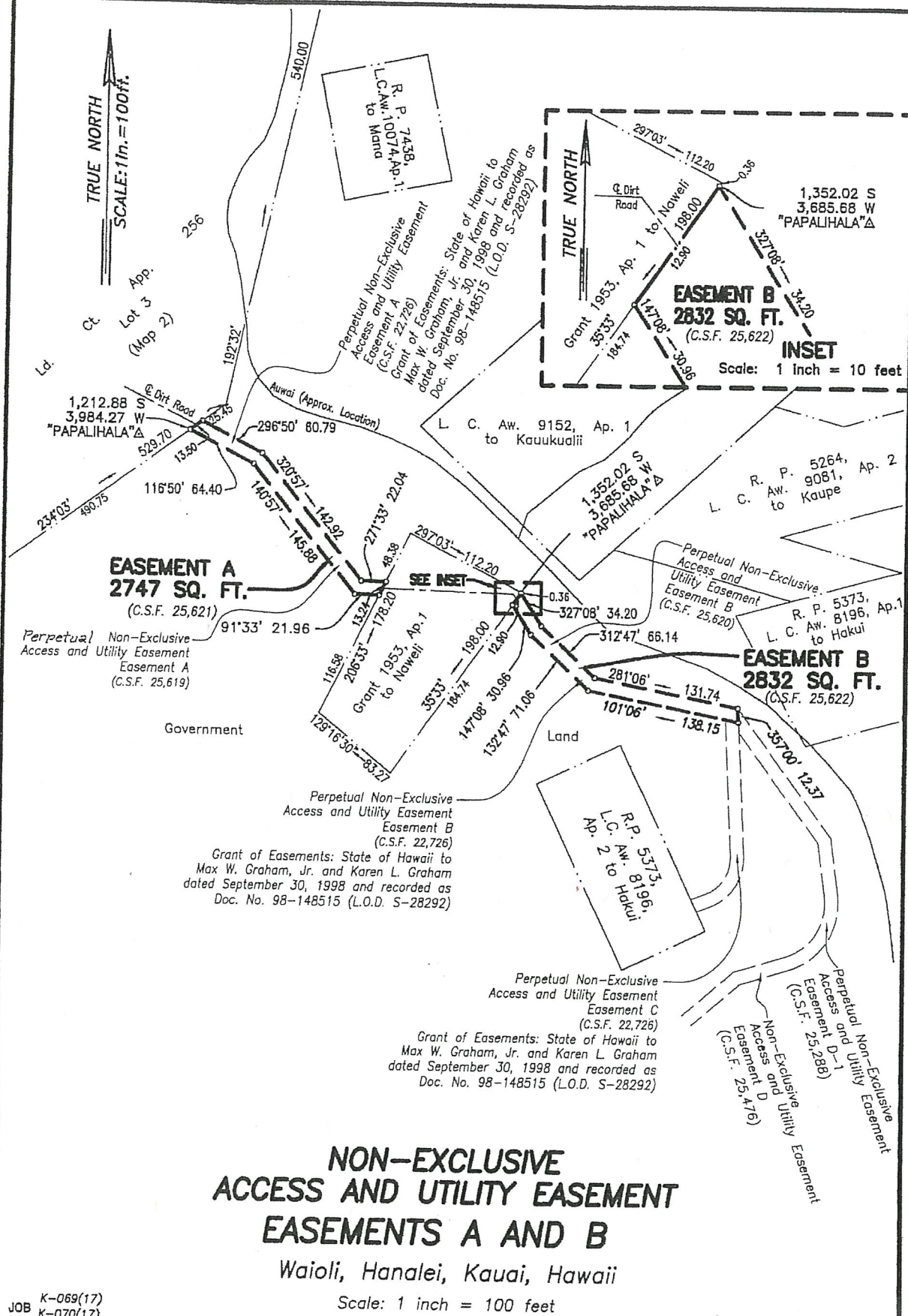
Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

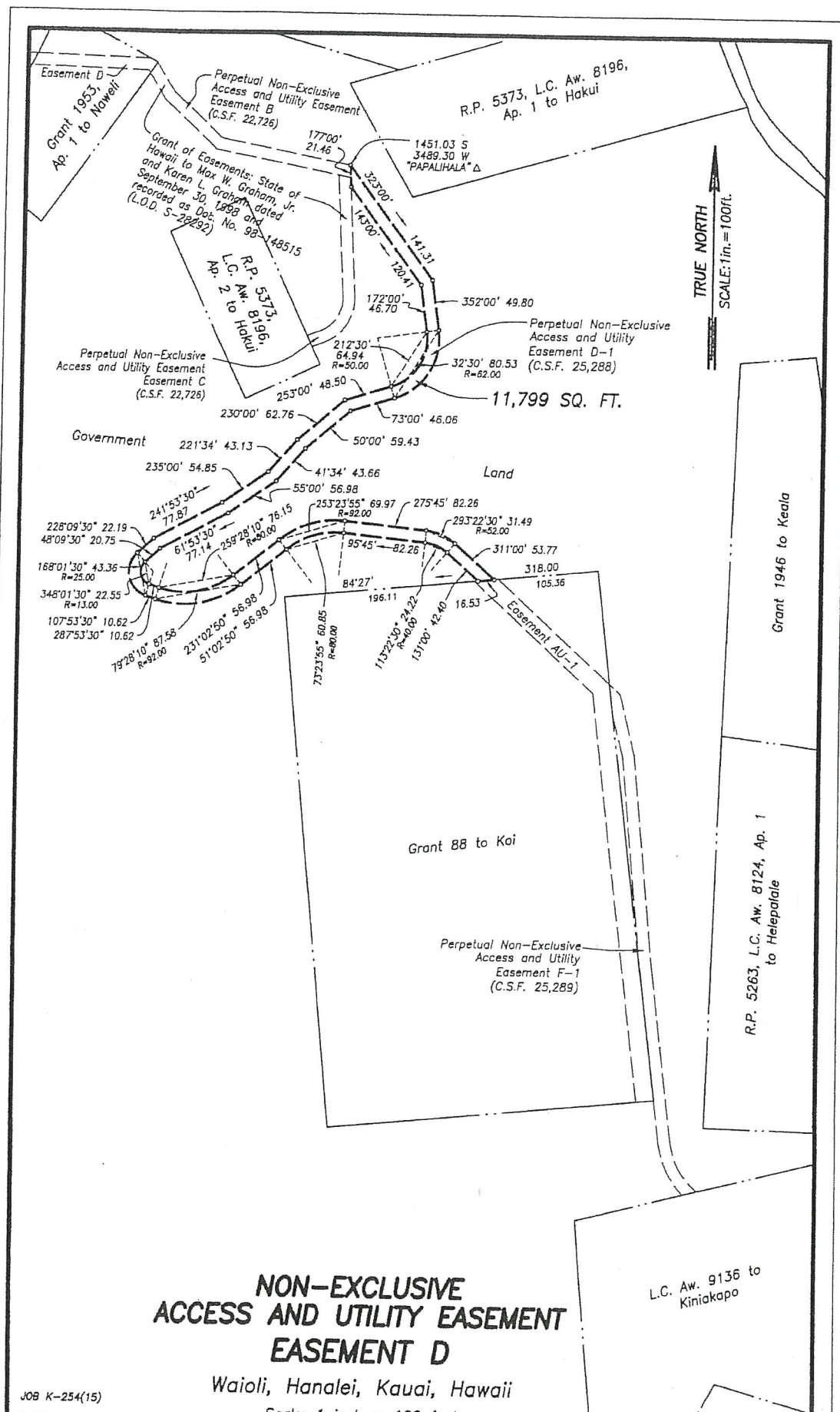
Receipt acknowledged:



Date: 6-1-11

c: Kauai Board Member
KDLO
County of Kauai, Department of Planning
Hanalei-Haena Community Association





JOB K-254(15)
C. BK.

TAX MAP 5-5-09 : Por. 2
5-6-02 : Por. 1
C.S.F. NO. 25,476

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

RDM December 16, 2015

EXHIBIT 2

