

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

July 8, 2016

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

OAHU

Amend Land Patent Grant No. S-13,720 by Revising the Easement Language in the Grant; Auwaiolimu, Honolulu, Oahu, TMK (1) 2-2-014:020 and 031

BACKGROUND:

Lot 18, Block 30, Auwaiolimu Lots was sold<sup>1</sup> to the Heirs of Hattie K. Kailiuli pursuant to Land Patent Grant (LPG) No. S-13,720 dated March 6, 1961 for a consideration of \$4,360. Lot 18, with an original area of 10,068 square feet, has been subdivided into Lots 18-A and 18-B, further identified as tax map key (1) 2-2-014:020 and 031 respectively, and shown on the map attached as **Exhibit A1** with the street view shown on **Exhibit A2**.

Pursuant to LPG 13,720, Lot 18 is subject to "...a non-exclusive easement in perpetuity for all purposes, over, under and across the above described Lot 18...", and the easement area [2,057 square feet] is depicted on the map as part of grant document and now attached as **Exhibit B** for reference.

In January 2015, Lot 18-A was transferred to the Abha Dubey Revocable Trust dated August 22, 2008 pursuant to the Commissioner's Quitclaim Deed recorded at the Bureau of Conveyances as document number A-55010249. The current owner has placed the property (Lot 18-A) on the market for sale. After going through the due diligence, the owner was advised that the easement mentioned above is actually outside the boundary of Lot 18-A, and it was never "over, under and across" of the said lot. The owner requests an amendment to the easement language.

Past Communications

When the government was contemplating the sale of Lot 18 in 1950s, staff recommended the Commissioner of Public Works to allow a right of way to serve both the residents over Lots 18 (Kailiuli) and 19 (Kalua).

Subsequently, map was prepared in 1956 to reflect the reduction of Lot 18 from 11,141 square

<sup>1</sup> The sale was conducted pursuant to Public Law 639, H.R. 5832, Chap. 888, 83<sup>rd</sup> Congress of the United States

feet to 10,073 square feet and the Heirs of Hattie Kailiuli indicated her agreement to the revision in area. Copies of the relevant communications are attached as **Exhibits C1 to C5** for reference.

The above mentioned would support the belief that the easement area was meant to be outside the lot boundary and to serve both Lots 18 and 19.

A blow-up version of the LPG map attached as **Exhibit D** shows the improvement of the area in the 1950s in more detail. There was a storm drain running along Lot 18 which would block direct access from Lot 18 onto Auwaiolimu Street. However, there was a concrete slab over the storm drain connecting directly to the subject easement and resolved the access issue. This connection reinforces the idea that the subject easement was to serve Lots 18 and 19. Therefore, the original grant language should stipulate that the lot was granted together with an easement over the subject area.

For the Board's reference, LPG 14,204 dated June 23, 1964 transferring the fee title of Lot 19 does stipulate that Lot 19 is granted together with an easement over the subject area.

#### Staff response

An abstract dated June 2, 2016 (**Exhibit E**) prepared by the staff abstractor recently confirms the easement area was never conveyed, i.e. still owned by the State.

Based on the above mentioned, staff believes LPG 13,720 should be amended with a stipulation that Lot 18 was granted together with a non-exclusive easement over the 2,057-square foot area.

Staff recommends the Board impose no consideration for the proposed amendment of LPG as the same easement right had been reflected in the original purchase price.

Staff recommends the Board require the owner and its successor(s) to provide the liability insurance naming the State as additional insured.

Staff did not solicit comments from other agencies as the subject request is for housekeeping purposes only.

**RECOMMENDATION:** That the Board authorize the amendment of Land Patent Grant No. S-13,720, covering the subject area 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 amendment of land patent grant document form, as may be amended from time to time;
- B. The grantee shall provide the State with the liability insurance provision naming the State as additional insured.
- C. Review and approval by the Department of the Attorney General; and

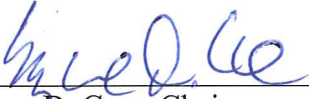
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

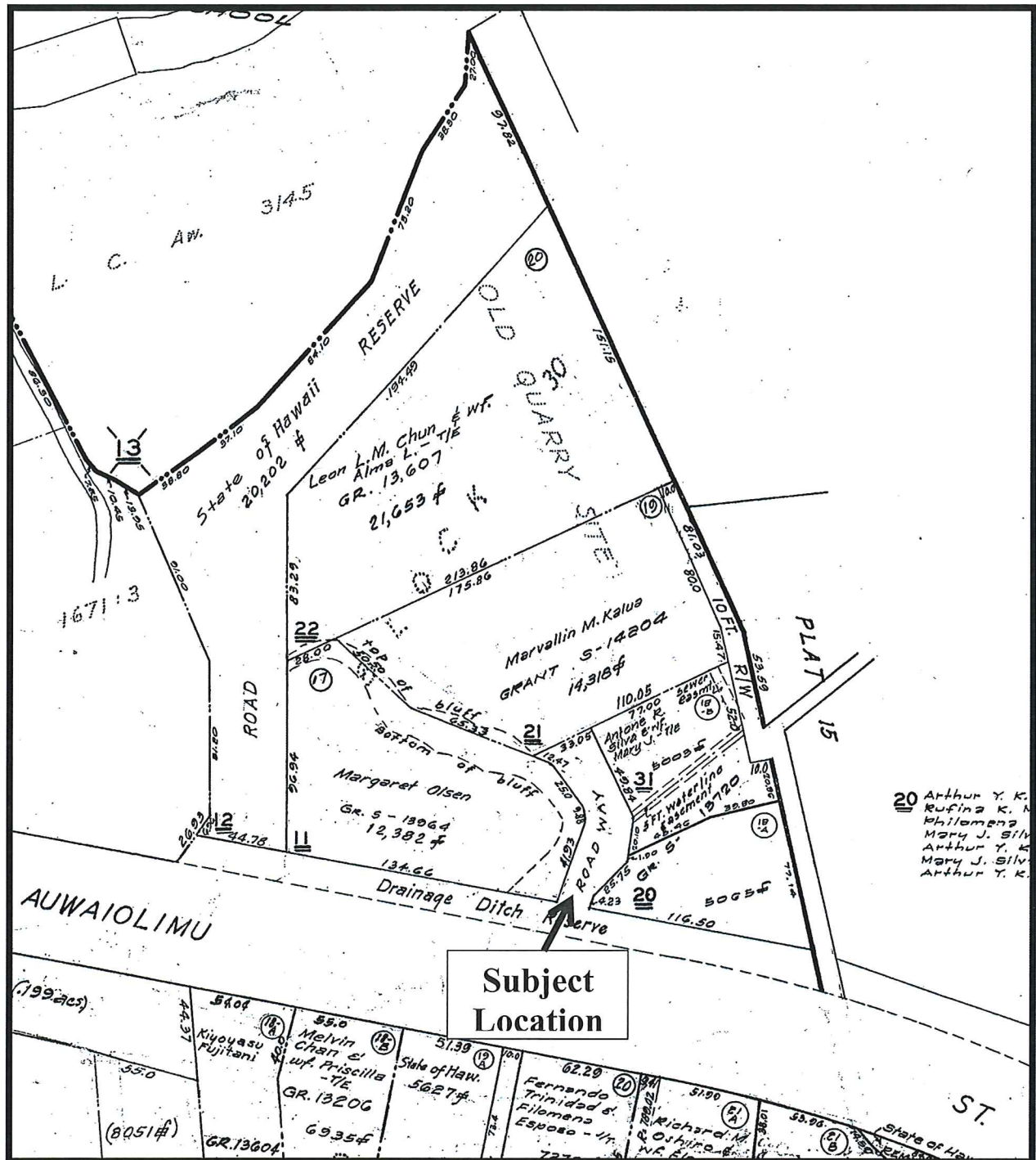


Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:



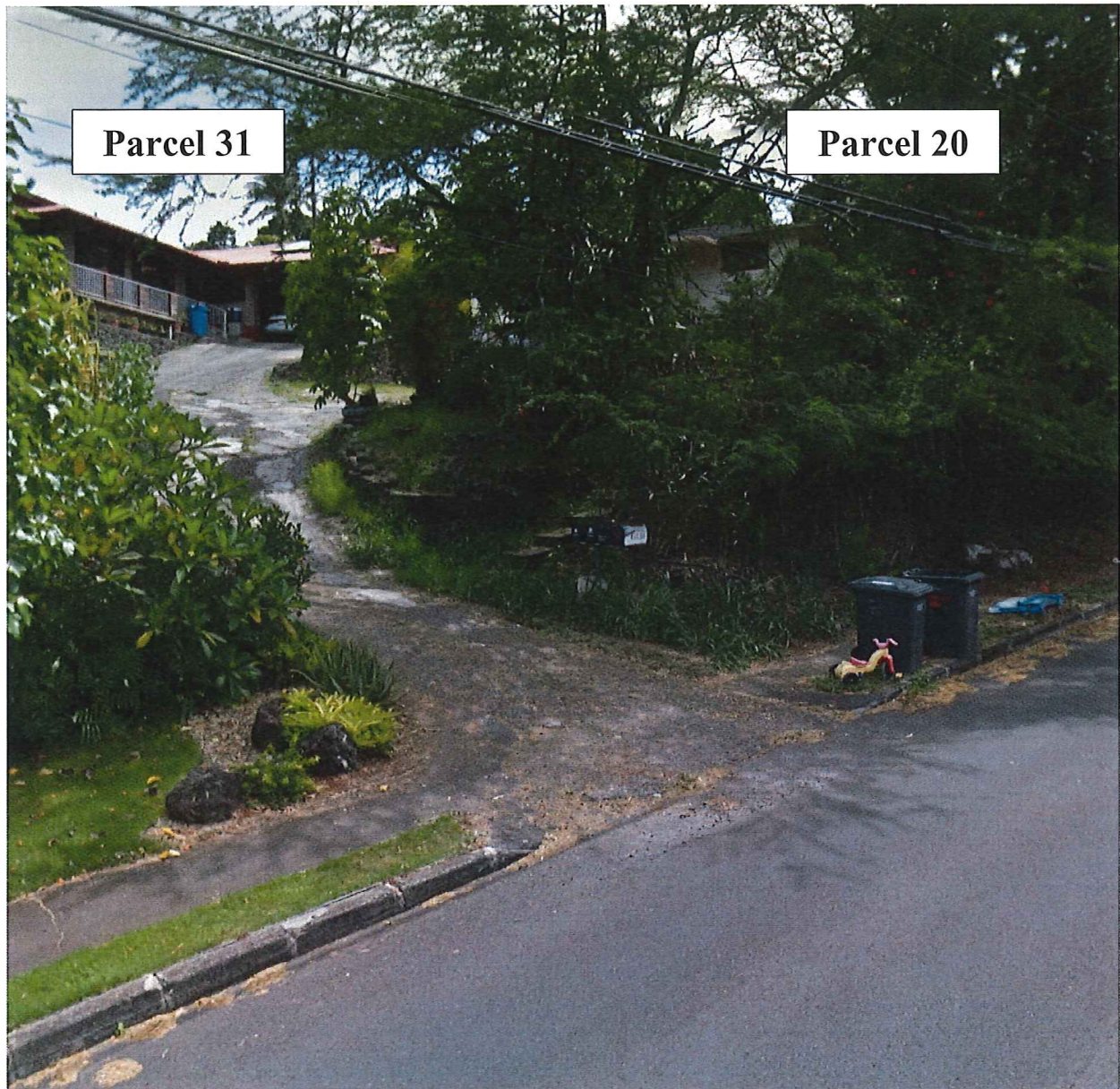
Suzanne D. Case, Chairperson



**TMK (1) 2-2-014:020 and 031**

# EXHIBIT A1





**TMK (1) 2-2-014:020 and 031**

**EXHIBIT A2**

# Land Patent No. S-13,720

(Grant)

Issued On

## CASH PURCHASE

*By THIS PATENT* the Governor of the State of Hawaii, in conformity with law and pursuant to Public Law 639, H.R. 5832, Chap. 888, 83rd Congress of the United States of America, 2d Session, approved August 24, 1954 (68 Stat. 781), and all other laws applicable hereto,

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

----- HEIRS OF HATTIE K. KAILIULI, DECEASED, -----

*for the consideration of--their-- having paid into the Treasury the sum of*  
FOUR THOUSAND THREE HUNDRED SIXTY AND 00/100 ----- Dollars, \$4,360.00 ,

*all of the land situate at ----- AUWAIOLIMU -----*  
*in the District of-- HONOLULU ----- Island of-- OAHU -----, State of Hawaii*  
*bounded and described as follows:*

LOT 18, BLOCK 30 -----  
AUWAIOLIMU LOTS  
(Revised October 1956)

North slope of Punchbowl

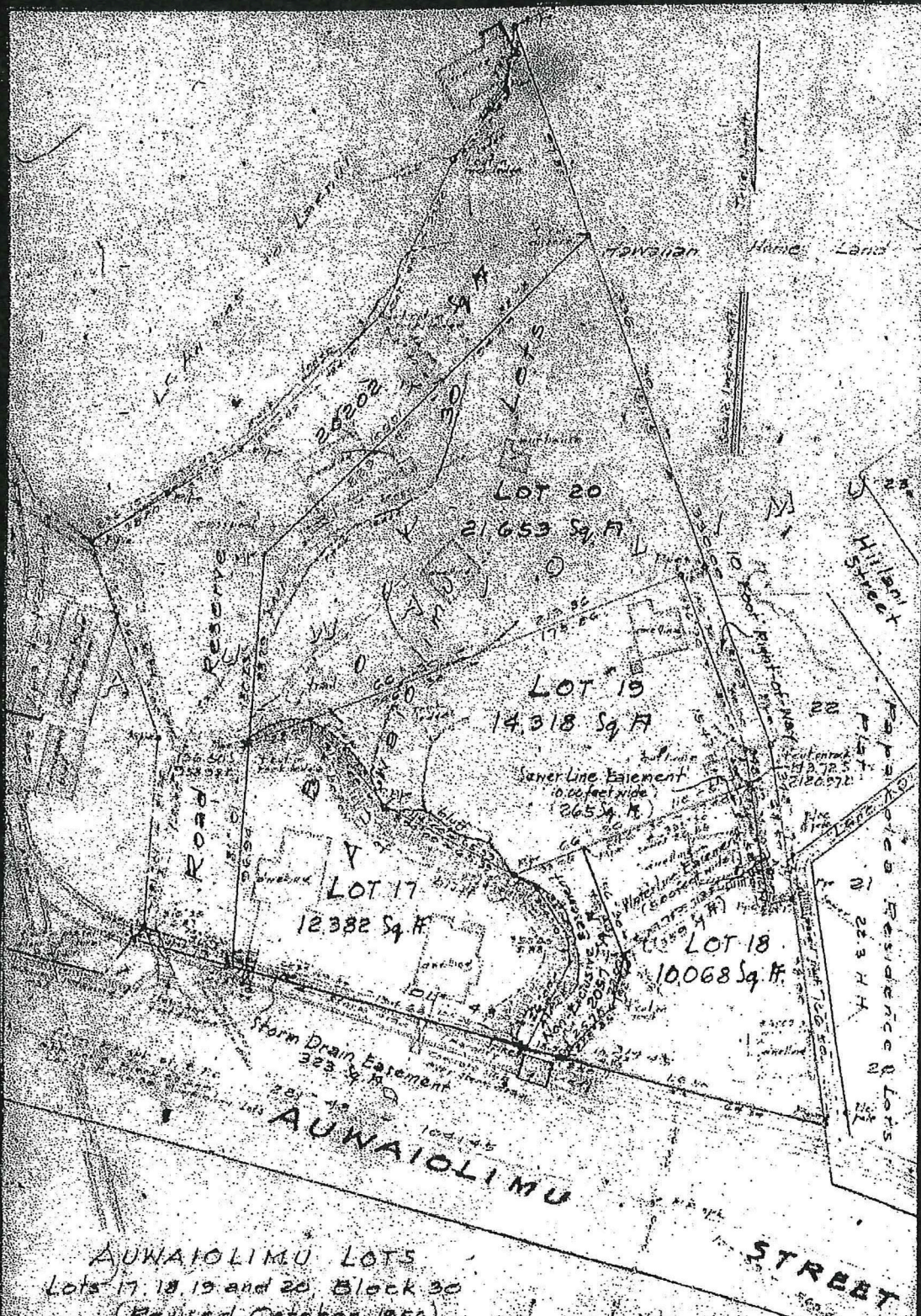
Being a portion of the Government (Crown) Land of Auwaiolimu.

BEGINNING at the "+" cut on rock at the northeast corner of this lot, the southeast corner of Lot 19, Block 30, Auwaiolimu Lots (Revised October 1956), and on the west side of 10-Foot Right-of-Way, the coordinates of said point of beginning referred to Government Survey Street Monument at the intersection of the tangents of the centerline of Lusitana Street at San Antonio Avenue being 143.72 feet South and 2180.97 feet East, and the coordinates of said Street Monument referred to Government Survey Triangulation Station "PUNCHBOWL," being 1919.70 feet North and 66.40 feet West, as shown on Government Survey Registered Map 2531, thence running by azimuths measured clockwise from True South:-

1. 348° 17' 52.00 feet along the west side of the 10-Foot Right-of-Way to a pipe;
2. 258° 17' 10.00 feet along the south end of 10-Foot Right-

**EXHIBIT "B"**





AUNAIOLIMU LOTS  
Lots 17, 18, 19, and 20, Block 30  
(Revised October 1956)  
North slope of Punch bowl  
Aunaiolimu, Honolulu, Oahu, T. H.  
Scale 1 inch = 50 feet

Note:  
Coordinates as shown are  
referred to U.S. Survey 18, North  
at the intersection of the boundaries  
at East Limestone Street, San Antonio, Tex.

July 1928  
H. O. 1512-8-610  
Louisiana 541, 5 and 10-2



3. 348° 17' 98.00 feet along the west side of Lane D of the Papakolea Residence Lots to a pipe;
4. 101° 48' 116.50 feet along the north side of Auwaiolimu Street to a "+" on rock;
5. 191° 40' 4.23 feet along the easterly side of the Non-Exclusive Easement to a pipe;
6. 222° 25' 25.75 feet along the easterly side of the Non-Exclusive Easement to a "+" cut on rock;
7. 192° 40' 22.00 feet along the easterly side of the Non-Exclusive Easement to a pipe;
8. 156° 30' 49.84 feet along the easterly side of the Non-Exclusive Easement to a pipe;
9. 246° 30' 77.00 feet along Lot 19, Block 30, Auwaiolimu Lots (Revised October 1956), to the point of beginning.

AREA 10,068 SQUARE FEET

SUBJECT, HOWEVER, to a Non-Exclusive Easement in perpetuity for all purposes, over, under and across the above-described Lot 18 along the west boundary of said lot, and extending from the south-easterly boundary of Lot 19, Block 30, Auwaiolimu Lots (Revised October 1956), to the north side of Auwaiolimu Street, as shown on the plan attached hereto and made a part hereof and more particularly described as follows:-

#### NON-EXCLUSIVE EASEMENT

Beginning at a pipe at the north corner of this Non-Exclusive Easement and at the northwest corner of the above-described Lot 18 the true azimuth and distance to the initial point of the above-described Lot 18 being: 246° 30' 77.00 feet, thence running by azimuths measured clockwise from True South:-

1. 336° 30' 49.84 feet along the west boundary of the above-described Lot 18 to a pipe;
2. 12° 40' 22.00 feet along the west boundary of the above-described Lot 18 to a "+" cut on rock;
3. 42° 25' 25.75 feet along the west boundary of the above-described Lot 18 to a pipe;
4. 11° 48' 4.23 feet along the west boundary of the above-described Lot 18 to a "+" on rock;
5. 101° 48' 18.50 feet along the north side of Auwaiolimu Street to a spike driven in rock ledge;
6. 206° 00' 41.93 feet along Lot 17, Block 30, Auwaiolimu Lots (Revised October 1956);



7. 170° 20' 9.88 feet along Lot 17, Block 30, Auwaiolimu Lots (Revised October 1956);
8. 144° 10' 25.00 feet along Lot 17, Block 30, Auwaiolimu Lots (Revised October 1956);
9. 117° 00' 12.47 feet along Lot 17, Block 30, Auwaiolimu Lots (Revised October 1956) to a pipe;
10. 246° 30' 33.05 feet along Lot 19, Block 30, Auwaiolimu Lots (Revised October 1956) to the point of beginning and containing an AREA OF 2,057 SQUARE FEET.

RESERVING to the State of Hawaii, its successors and assigns, in perpetuity, an easement for a Water Line over, under and across the above-described Lot 18, as shown on plan attached hereto and made a part hereof, said easement being more particularly described as follows:-

WATER LINE EASEMENT

Being a strip of land five (5.00) feet wide, and extending two and one-half (2.50) feet on each side of the following described centerline:-

Beginning at the east end of this centerline, on the east boundary of the above-described Lot 18 and on the west side of the 10-Foot Right-of-Way, the true azimuth and distance from the initial point of the above-described Lot 18 being: 348° 17' 35.26 feet, thence running by azimuths measured clockwise from True South:-

1. 54° 16' 71.42 feet to the east side of the Non-Exclusive Easement and containing an AREA OF 359 SQUARE FEET.

SUBJECT, ALSO, to a Sewer Line Easement in favor of the owner of Lot 19, Block 30, Auwaiolimu Lots (Revised October 1956) over, under and across the above-described Lot 18, together with rights of ingress and egress thereto for maintenance, inspection, repairs and reconstruction; said easement being shown on plan attached hereto and made a part hereof and being more particularly described as follows:-

SEWER LINE EASEMENT

Being a strip of land ten (10.00) feet wide and extending five (5.00) feet on each side of the following described centerline:-

Beginning at the north end of this centerline and on the northerly boundary of Lot 18, Block 30, Auwaiolimu Lots (Revised October 1956), the true azimuth and distance from the initial point of said above described Lot 18 being: 66° 30' 6.00 feet, thence running by azimuth measured clockwise from True South:-



**EXHIBIT A**

**Attached to and made a part of Land Patent Grant No. S-13,720**



1. 335° 30' 26.55 feet to the westerly boundary of 10-Foot Right-of-Way and containing an AREA OF 265 SQUARE FEET.

RESERVING ALSO to the State of Hawaii, its successors and assigns, in perpetuity, all rights to ground but not to surface waters which are or may be appurtenant to the hereinabove described land or the ownership thereof.

RESERVING ALSO to the State of Hawaii, its successors and assigns, in perpetuity, all minerals in, on or under the land and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove minerals and to occupy and use so much of the surface of the land as may be required for all purposes reasonably extending to the mining and removal of such minerals by any means whatsoever, conditioned upon the payment, prior to any exercise of such right, of compensation for destruction of or damage or injury, caused by the exercise of such right to occupy and use said land, to permanent improvements placed upon the land.

"Minerals" within the meaning of such reservation shall mean any or all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, in, on or under the land; provided, that "minerals" shall not include sand, rock, gravel, and other similar materials when used in road or building construction.

Containing 10,068 SQUARE FEET, more or less.

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

HEIRS OF HATTIE K. KAILIULI, DECEASED,

and their successors, heirs and assigns forever, subject, however,  
to the conditions and reservations herein set forth.

IN WITNESS WHEREOF, The Governor of the State of Hawaii  
has hereto set his hand and caused the Great  
Seal of the State to be hereunto affixed, this  
6th day of March A. D. 1961.

STATE OF HAWAII

Countersigned as authorized by  
the Board of Land and Natural  
Resources in its Resolution of  
May 19, 1960.

Countersigned:

R. L. Summers  
CHAIRMAN  
Board of Land and Natural Resources.

Written by mb  
Checked by hh

William F. Quinn  
Governor of Hawaii.

Approved as to form  
Thina L. King  
Attorney General.



March 15, 1956

NATHANIEL FELDER

ATTORNEY AT LAW

MEMORANDUM

TO: MARGUERITE K. ASHFORD  
Commissioner of Public Lands

FROM: BRYANT COOPER

Subject: Access to lot 19, block 30, Auwaiolimu Lots,  
Punchbowl slopes, Honolulu.

Mrs. Marcella Kalua who holds the above-mentioned lot under General Lease 2508 dated October 30, 1936 is desirous of purchasing same pursuant to Public Law 639, 83rd Congress.

I made an inspection of the ten foot right-of-way to the property as of this date. The right of way borders the edge of an excavated quarry and at the point shaded in red on the enclosed whiteprint, Carton 5, an avalanche into the quarry with a drop of perhaps forty (40) feet has reduced the right of way at that spot to only a width of four feet.

Mrs. Kalua has all plans and specifications for a new home prepared by Lewers and Cooke to be constructed but due to the narrowness of the right of way is unable to build as no truck can reach the lot.

Mrs. Kalua's father, Mr. Kahale Puna, informs me that Mrs. Hattie Kailiuli who has the property adjoining this right of way namely Lot No. 18 held under General Lease 2507, is willing to have the right of way extend into the property she is leasing. It would benefit her as a passable right of way would afford her access to her property, and she could construct a garage on it. At present she parks her car at Papakolea quite a distance from her lot.

I would recommend that Mrs Kailiuli's lot be reduced sufficiently to allow a passable twelve (12) foot road together with the existing right of way to serve both the Kaluas and Kailiulis. Mrs. Kalua is willing to bear all expense of constructing the road and replacing the existing water pipelines which exist on the present right of way.

Respectfully submitted,

(signed)  
BRYANT COOPER

EXHIBIT "C-1"

Refer to file  
No. 12.1907

September 24, 1936

Honorable James M. Dunn  
Surveyor, Territory of Hawaii  
Honolulu, Hawaii

Subject: Access to Lot 19 Block 30 - Anwaialima Lots, Punchbowl,  
Honolulu, Oahu. Tax map key 2-2-14-21.

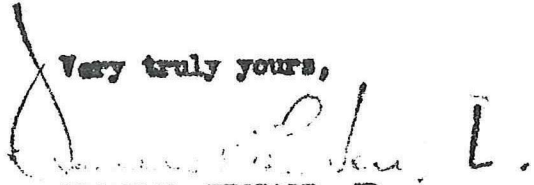
Dear Sir:

Mrs. Marcella Kalua is anxious to have access provided to her lot on which she plans to construct a house. In the present ten (10) foot right-of-way to the lot there was a landslide which leaves the width of the right-of-way only about four (4) feet wide at the point shaded in red on the enclosed whiteprint.

It is proposed to release a portion of the lot held under General Lease No. 2507 to make a right-of-way sufficiently wide for access to Mrs. Kalua's property, possibly fifteen (15) feet wide or whatever width you might recommend. This right-of-way would serve both Mrs. Kalua and the property held under General Lease No. 2507.

Will you please prepare a description for a suitable Right-of-way to Mrs. Kalua's Lot No. 19, as well as a description for the area to be relinquished from Lot No. 18, along with eight (8) blueprints.

Very truly yours,

  
FRANK W. HUSTACE, JR.  
Commissioner of Public Lands

BC:ap

encl.

EXHIBIT "c-2"

Refer to File  
No. 12.1950

November 5, 1956

Mr. Nathaniel Felzer  
Attorney at Law  
Room 268, Young Hotel Bldg.  
Honolulu, Hawaii

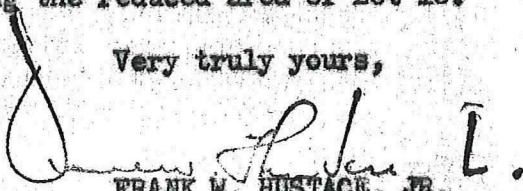
Subject: Estate of Hattie Kailiuli, deceased, General Lease No. 2507,  
Auwaiolima, Honolulu.

Dear Sir:

Enclosed is a whiteprint showing the realignment of the  
Right-of-Way to the Kalua property. You will note that it reduces  
the area of Lot 18 from 11,141 sq. ft. to 10,073 sq. ft.

Will you please notify your client Mrs. Rufina K. Lee that  
we have sent you the sketch showing the reduced area of Lot 18.

Very truly yours,

  
FRANK W. HUSTACE, JR.  
Commissioner of Public Lands

BC:ap

cc: Mrs. Marcella Kalua

encl.

EXHIBIT "C-3"

M



OFFICE OF THE  
COMMISSIONER OF PUBLIC LANDS

HONOLULU

NATHANIEL FELZER

ATTORNEY AT LAW

ROOM 268 • YOUNG HOTEL BUILDING

HONOLULU 13, HAWAII

Refer to File  
No. 12.1950

1957 JAN 9 AM 9:16

January 7, 1957

Mr. Frank W. Hustace  
Commissioner of Public Lands  
Territorial Office Building  
Honolulu, Hawaii

Subject: Estate of Hattie Kailiuli, deceased,  
General Lease No. 2507, Auwaiolimu, Honolulu.

Dear Sir:

Mrs. Rufina K. Molaka Lee as administratrix  
of the estate of Hattie Kailiuli has indicated that  
she is prepared to consent to the realignment of the  
Right-of-Way to the Kalua property referred to in  
your letter of November 5.

*Phil*  
Please prepare the necessary documents and  
forward same to me for inspection prior to having  
it properly executed.

Yours very truly,

*Nathaniel Felzer*  
NATHANIEL FELZER

NF:hk

Office of the Commissioner of Public Lands	
REFERRED TO	FOR YOUR
File .....	Attention & Response .....
Land Exec. ....	Investigation & Report .....
Land Agent .....	Recommendation & Report .....
Secretary .....	Legal & Title .....
Acct'g Dept. ....	Department .....
Headquarters .....	.....
Coordinator .....	.....
Planning .....	.....
Analyst .....	.....
Attorney .....	.....
REMARKS:	

EXHIBIT "C-4"

*Phil*  
*EW*



2010 10/14/10 D

10 Mar., 1958

Sir:

Thanking you kindly, we will wait for your reply.

Yours truly,

Mrs. Rufina J. Moleka-Lee  
 daughter

Appointed Administratrix  
1st. Circuit Court  
Territory of Hawaii  
27 Jan., 1956

Heirs:

Victor. K. Kailiungu — Son  
Philomena K. Ching. — Da

Office of the Commissioner of Public Lands	
REPORT TO	FOR YOUR
<div>File</div> <div><i>Lighter</i></div> <div>Chief Agent</div> <div>Secretary</div> <div>Asst. Dir.</div> <div>Household</div> <div>Coordinator</div> <div>Director</div>	<div>Attention &amp; Disposition</div> <div>Information &amp; Return</div> <div>Investigation &amp; Report</div> <div>Action &amp; Direct Reply</div> <div>Comment</div> <div>Recommendation</div> <div>Dealt with Me</div>

EXHIBIT

EXHIBIT "C-5"

Now

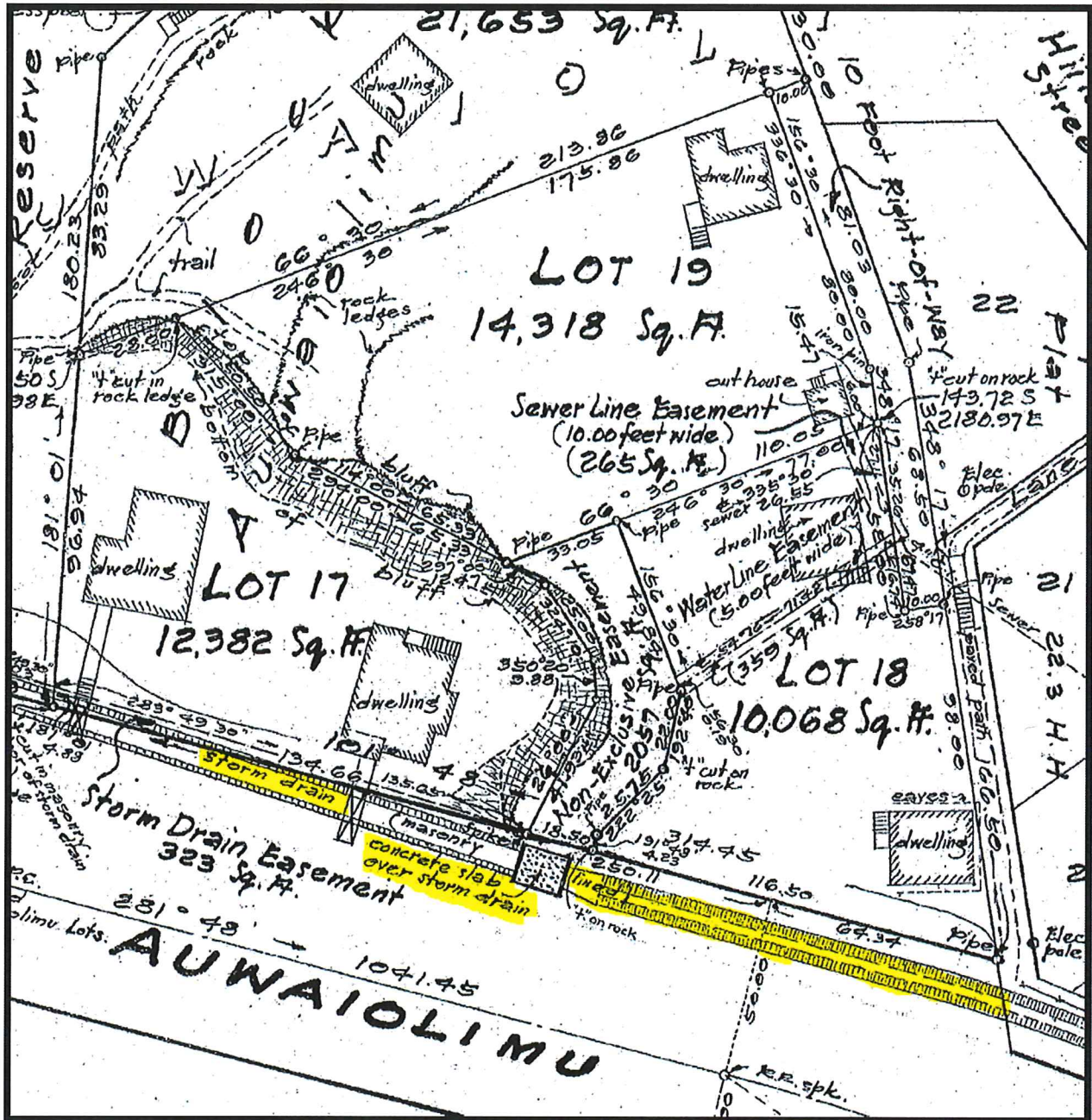


EXHIBIT D



DAVID Y. IGE  
GOVERNOR OF HAWAII



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

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809  
June 2, 2016

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0531  
DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

**MEMORANDUM**

**TO:** Barry W. Cheung, Oahu District Land Agent

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

**FROM:** E. Mahoe Collins, ~~State~~ Abstractor

**SUBJECT:** State of Hawaii's Ownership Interest(s), if any, in and to "the driveway" adjoining Tax Map Key Parcels (1) 2-2-014:011, 020, 021 and 031 situated lying and being at Auwaiolimu, District of Kona, Island of Oahu.

We have been requested to determine and confirm the State of Hawaii's ownership interests, if any, in and to the subject property, designated as the "Roadway" shown colored in green on Tax Plat Map (1) 2-2-14, attached hereto as Exhibit "B".

An examination of the records and files located in our office and the State Survey Office reveal that the subject property as situated, lying and being an un-awarded portion of the Government (Crown) Land of Auwaiolimu, is owned by the State of Hawaii pursuant to and in accordance with §5(b) of the Admissions Act of March 18, 1959.

Said records further reveal that by survey descriptions dated September 24, 1956, the subject property is identified as a "Non-Exclusive Easement in perpetuity for all purposes" and defined as running along Lots 17, 18 and 19 extending from Auwaiolimu Street to Lot 19 and containing 2,057 square feet.

Historically, as platted on Registered Map No. 2531, the Auwaiolimu Lots subdivision was created by the Territorial Government in 1912. As shown thereon, a portion of the subject property lay situated within Block 30, extending from Auwaiolimu Street to Lot 19 between and adjoining Lots 17 and 18.

**EXHIBIT "E"**

By survey descriptions dated September 26, 1936, the original boundaries to said Lots 17, 18, and 19 are established as running along said portion of the subject property identified as a "10-foot road right-of-way".

Following a landslide that diminished the original 10-foot road right-of-way, the Commissioner of Public Lands, by letter to the Territorial Surveyor dated September 24, 1956, proposed to **release a portion of Lot 18 "to make a right-of-way sufficiently wide for access"** to Lot 19, and requested that the surveyor **"prepare a description for a suitable Right-of-way to Lot No. 19, as well as a description for the area to be relinquished from Lot No. 18"**, stating that **"this right-of-way would serve both" lots.**

By Revised Survey Descriptions dated October 17, 1956, the former right-of-way is defined as a "Non-Exclusive Easement" containing an area of 2,057 Square Feet, and the boundaries to Lots 17, 18 and 19 (Exhibits C-1 thru C-4) along said easement are modified. Intending to serve both lots, the subject "Non-Exclusive Easement" is therein described as being "Together with" Lots 18 and 19.

However, Land Patent Grant S-13,720 (see Exhibit "D") which granted and confirmed all of the land described as Lot 18, Block 30 of the Auwaiolimu Lots (Revised October 1956), containing 10,068 square feet, to the Heirs of Hattie K. Kailiuli, failed to convey the purpose of the subject easement by recitation of the following encumbrance:

**"SUBJECT, HOWEVER, to a Non-Exclusive Easement** in perpetuity for all purposes over, under and across the above-described Lot 18 **along the west boundary of said lot,** and extending from the south easterly boundary of Lot 19, Block 30, Auwaiolimu Lots (Revised October 1956), to the north side of Auwaiolimu Street, ... described as follows:-".

We find that the subject "Non-Exclusive Easement" being a portion of the un-awarded Government (Crown) Land of Auwaiolimu, intended as an access to serve both Lots 18 and 19 of Block B of the Auwaiolimu Lots, is owned by the State of Hawaii.

If you have any questions please feel free to call me at 587-0458

Enclosures