

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

April 27, 2018

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

SF No.: 15HD-091

Hawai'i

Quitclaim of State's Interests, if Any, in the Abandoned Government Roadway off
Kynnersley Road, to the County of Hawaii, Nunulu Nui, North Kohala, Hawaii,
Tax Map Key: (3) 5-4-001: 005.

APPLICANT:

County of Hawaii whose business and mailing address is 25 Aupuni Street, Suite 2603,
Hilo, Hawaii 96720.

LEGAL REFERENCE:

Sections 171-95(a)(5) and 264-2, Hawaii Revised Statutes, as amended, and Act 288,
Session Laws of Hawaii 1993.

LOCATION:

Portion of Government lands of Kaauhuhu Homesteads situated at Nunulu Nui, North
Kohala, Island of Hawaii, identified by Tax Map Key: (3) 5-4-001: 005, as shown on the
attached map labeled Exhibit A.

AREA:

3.934 acres, more or less, to be determined by survey.

ZONING:

State Land Use District: Agriculture
County of Hawaii CZO: A-20a

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:

Vacant and unencumbered; abandoned roadway.

CONSIDERATION:

Not applicable.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Not applicable.

BACKGROUND:

By letter dated October 26, 2017, the County of Hawaii requests the conveyance of government lands identified by Tax Map Key: (3) 5-4-001:005 to them. A copy of the map showing relevant parcels is attached as Exhibit B. According to the H.T.S. Plat Map No. 512 prepared in 1954, a 40-foot roadway was laid out when the land was sold and several Land Patent Grants were established¹. This road was subsequently abandoned and became part of the State land inventory. Upon conveyance of this parcel from the State to the County, the owners of the adjacent properties² will be able to purchase the remnant parcel from the County.

The current owners have collectively submitted a request to acquire fee interest in the abandoned roadway as they would like to clear and maintain the road to legally use it to access their respective properties. In order to acquire this interest, the current ownership and title to the road first needs to be addressed. The road appears to be an old government road of which neither the State nor County acknowledges ownership. To resolve the issue of title, the County is requesting the State transfer any interest it may claim in the road to the County by way of a Quitclaim Deed. This would allow the Hawaii County to consider accepting the deed by County Council resolution, which would clear up any outstanding title issues.

Pursuant to Section 264-2, HRS, the ownership of all "public highways" (roads, alleys, streets, ways, lanes, bikeways, and bridges in the State, opened, laid out, or built by the government) are owned either by the State for state highways under the jurisdiction of the Department of Transportation or the county for all other public highways. While ownership was transferred by operation of law pursuant to this statutory section, the counties have continued to dispute that they own the roads because they do not have paper title.

¹ Land Patent Grant (LPG) 12,737 was awarded to Minoru and Yoshiko Nakasato; LPG 12,740 awarded to Daniel and Elizabeth Chang; LPG 13,086 was awarded to Randolph Solomon

² TMK: (3) 5-4-001:012 – the Leiomalama A. Solomon Trust. TMK: (3) 5-4-001:013 – Daniel S. Chang Trust and Elizabeth C. Chang Trust. TMK: (3) 5-4-001:014 – Nalani Evelyn Chang Fujimoto and Bette Sue Napua Chang Cazimero

DISCUSSION:

Act 288, SLH 1993, stated in its preamble "In consideration of the State waiving its right to have the proceeds from the sale of county public highways remitted to the State, the counties shall acknowledge ownership and jurisdiction of all disputed public highways within their respective counties, as defined in section 264-1, HRS, without the necessity of conveyancing documents transferring title from the State to the respective counties, except when required for the purpose of disposal." (Emphasis added.)

As a result, it is staff's practice that formal documentation (i.e., quitclaim deeds) be issued on roads owned by the counties under Section 264-2, HRS, only when the county is going to subsequently dispose of any real property interests (fee conveyance or any interests less than fee) in at least a portion of the road to a third party. In all other cases, the State's position is that the fee simple interest in the road was passed to the counties by operation of law and documentation is unnecessary. This policy provides for the chain of title and enables subsequent real estate transactions to occur. This policy should not be misconstrued to mean or imply that the State does not assert that the roads being quitclaimed are already owned by the applicable county.

To enable the County to dispose of the abandoned roadway, staff is recommending the issuance of a quitclaim deed. The form of the deed has been approved by the Department of the Attorney General and contains specific wording that the State is releasing and disclaiming any interest since it is our assertion that the County already owns the road.

Request for comments were sent to various government agencies and their responses are provided below.

County of Hawaii Agencies	Comments
Planning	Comments Below
Public Works	Comments Below
Finance Dept. Property Management	No Comments
State of Hawaii Agencies	Comments
DLNR-Historic Preservation	No Response
DHHL	No Response
DOT-Highways Division	No Objection
Other Agencies	Comments
Office of Hawaiian Affairs	No Response

According to the County of Hawaii, Planning Department, the North Kohala Community Development Plan (CDP) has determined that Old Government Roads retained within the public domain should be identified as potential trails for fishing, hunting, gathering, as well as cultural, spiritual, and recreational uses. It appears that the subject roadway is

identified in the North Kohala CDP as a recommended mountain trail³. If there are sufficient reasons to consider disposition of this parcel to private entities, the Planning Department would recommend that public access easements be included in the condition of sale of the roadway parcel.

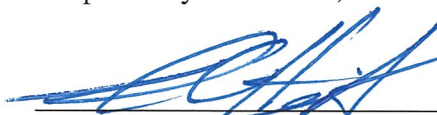
The County of Hawaii, Department of Public Works (DPW) has no objection to the conveyance of land to the County of Hawaii as described in the request. However, DPW may not elect to sell the road lot identified as TMK: (3) 5-4-001:005 because of the connectivity to Old Hall Road pending research and information from the State Abstractor. The determination to dispose of the road lot will depend on whether Old Hall Road is a private or government road.

RECOMMENDATION:

That the Board, subject to the Applicant fulfilling all of the Applicant requirements listed above authorize the quitclaim of interests, if any, the State may have in the subject roadway parcel to the County of Hawaii covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

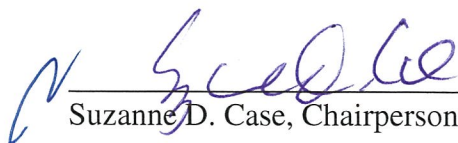
- a. The standard terms and conditions of the most current quitclaim deed (roads) form, as may be amended from time to time;
- b. Review and approval by the Department of the Attorney General; and
- c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

³ See page 54 of Chapter 4 of the Public Access section of the plan, which can be viewed at:
<http://records.co.hawaii.us/WebLink/DocView.aspx?dbid=1&id=89625&page=1&cr=1>

KAAHUHU HOMESTEADS

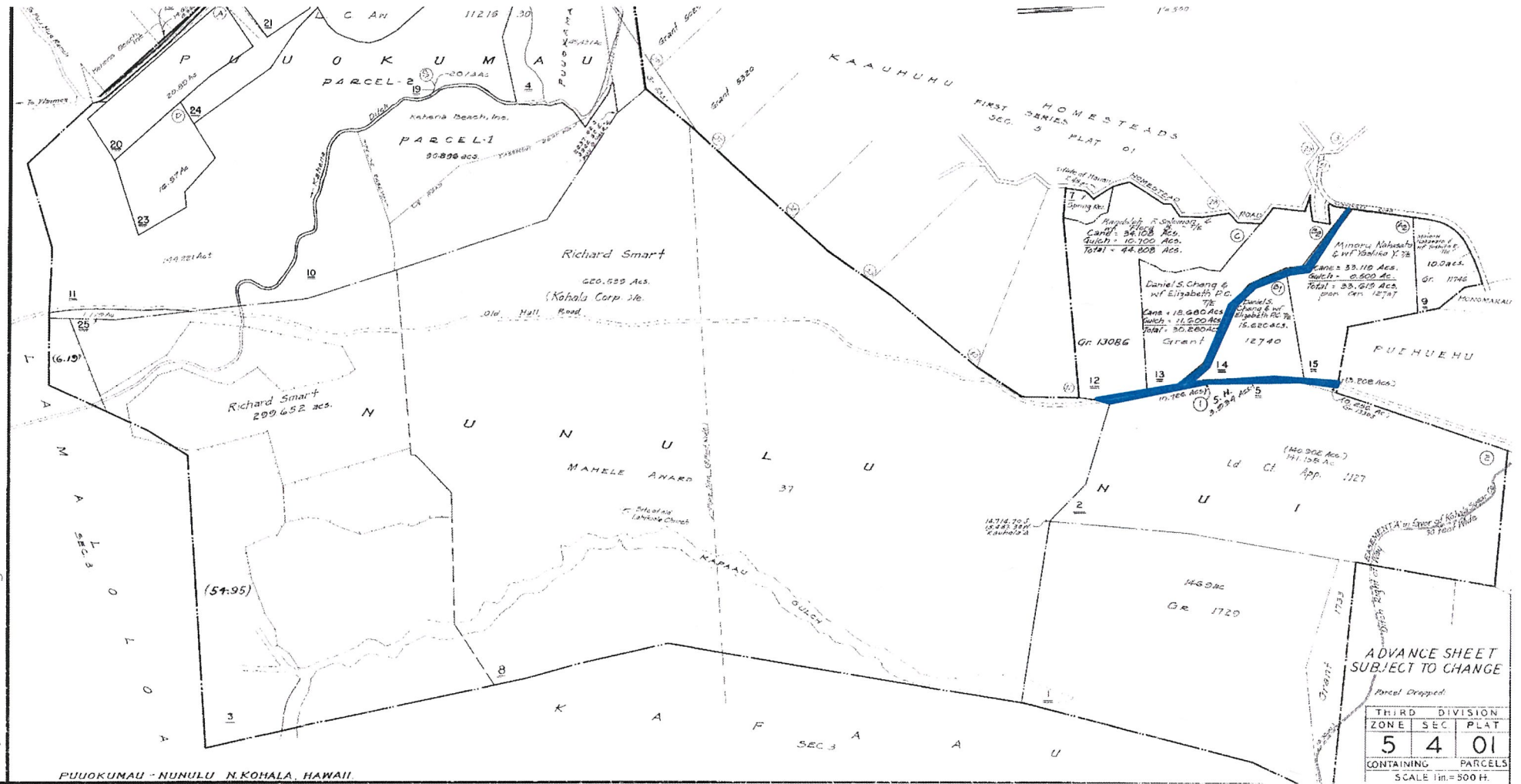


EXHIBIT A

KAUHUUHOMESTEADS

TMK: (3) 5-4-001

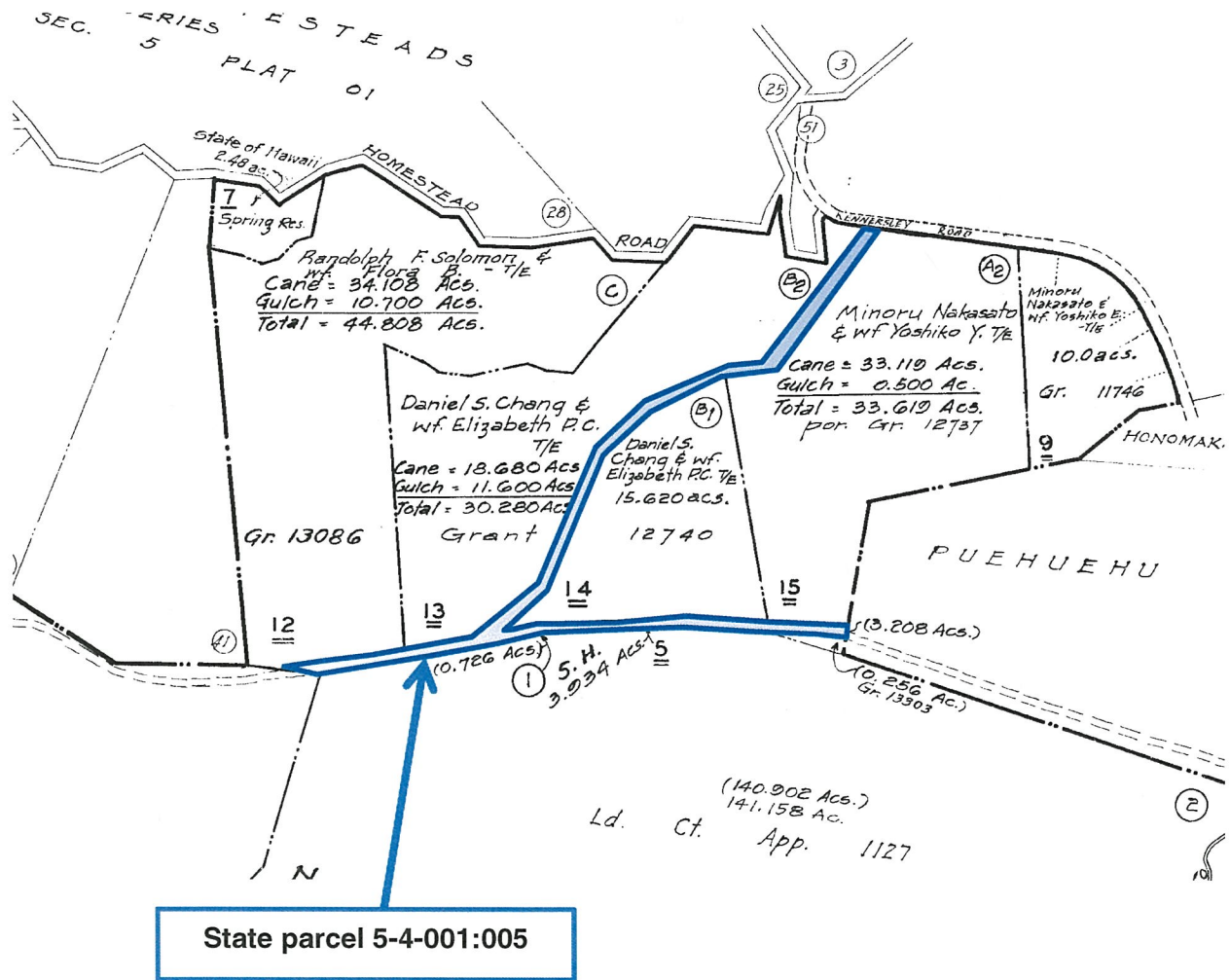


EXHIBIT A

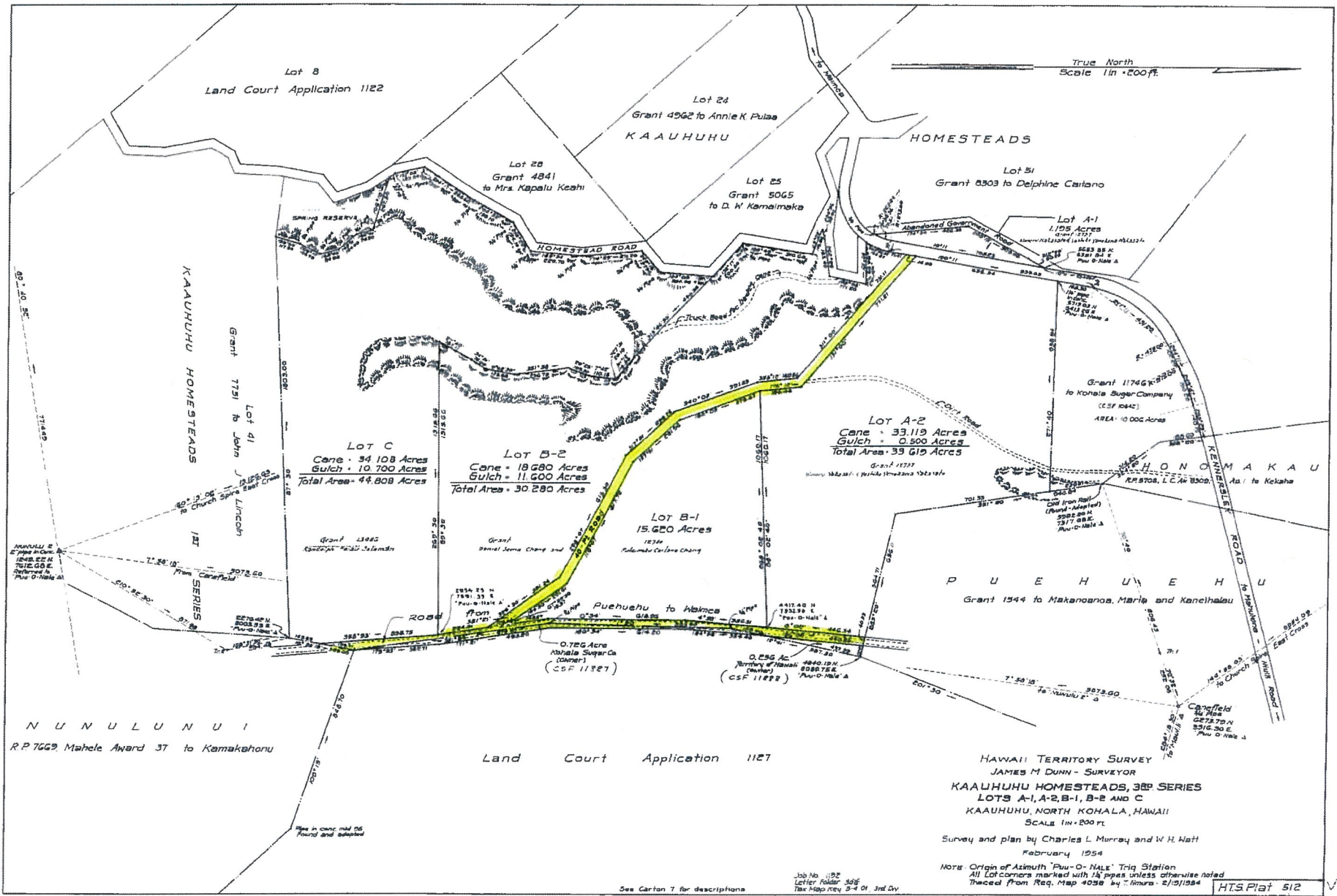


EXHIBIT B

HTS Plat 512

