

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

September 11, 2020

This Submittal is Subject to Hawai'i Rules of Evidence Rule 408

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

PSF No.: 20MD-076

(Island)

Grant of Term, Non-Exclusive Quitclaim Easement to Anthony B. Aruda and Corinne S. Aruda in their capacities as successor co-trustees in the under that certain unrecorded Alfred Aruda Revocable Living Trust Agreement dated July 19, 1976; Anthony B. Aruda and Corinne S. Aruda in their capacities as the successor co-trustees in and under that certain unrecorded Mary T. Aruda Revocable Living Trust Agreement dated July 19, 1976; and Lisa R. Brown, Trustee under that certain unrecorded Lisa R. Aruda Brown Revocable Living Trust dated December 3, 1991, for Pedestrian and Equestrian Access Purposes, Kanahena, Makawao, Maui, Tax Map Key: (2) 2-1-004:123 (por.).

APPLICANTS:

Anthony B. Aruda and Corinne S. Aruda in their capacities as successor co-trustees in the under that certain unrecorded Alfred Aruda Revocable Living Trust Agreement dated July 19, 1976

Anthony B. Aruda and Corinne S. Aruda in their capacities as the successor co-trustees in and under that certain unrecorded Mary T. Aruda Revocable Living Trust Agreement dated July 19, 1976; and

Lisa R. Brown, Trustee under that certain unrecorded Lisa R. Aruda Brown Revocable Living Trust dated December 3, 1991

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of land located in Kanahena, Makawao, Maui, identified by Tax Map Key: (2) 2-1-004:123 (por.), as shown on the attached maps labeled Exhibits I, II, and III.

AREA:

Easement Part 1:
8,333 square feet, more or less. See Exhibit II.

Easement Part 2:
28,554 square feet, more or less. See Exhibit IV.

ZONING:

State Land Use District: Conservation
County of Maui CZO: Agriculture (AG), Park (PK)

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ☐ NO ☒

CURRENT USE STATUS:

Undeveloped land.

CHARACTER OF USE:

Pedestrian and equestrian access.

TERM:

Fifty-five (55) years

COMMENCEMENT DATE:

The "Settlement Date," as defined in Paragraph 3 of the Settlement Agreement, attached hereto as Exhibit VIII.

CONSIDERATION:

The consideration provided is set forth in the Settlement Agreement, attached hereto as Exhibit VIII, which includes the dismissal with prejudice of the lawsuit captioned *Aruda v. Heirs and Assigns of Kahanapule (w)*, Civ. No. 16-1-0621(2), currently pending in the Circuit Court of the Second Circuit, to which the State of Hawaii is a defendant.

Land Division believes that a term quitclaim easement for pedestrian and equestrian access has de minimis value, if anything at all. In any event, the value to the State in settling the

litigation would likely far exceed the appraised amount of such a quitclaim easement. Pursuant to Paragraph 2.1.3 of the Settlement Agreement, the recommendation is that no monetary payment be required for the Applicant to receive the term quitclaim grant of easement.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

As provided in the Exemption Notification attached hereto as Exhibit IX, in accordance with Hawaii Administrative Rules (HAR) § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on March 3, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to HAR § 11-200.1-15(c)(1): "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing, and Item 40 that states, "Creation or termination of easement, covenants, or other rights in structures or land. See Exhibit IX for the Exemption Notification.

No CDUA is required because pedestrian and equestrian access does not constitute a "land use" under Chapter 183C, HRS.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

REMARKS:

This submittal is the culmination of a long litigation and settlement process involving six parcels of privately owned land in Maui and a bid to get access to the highway. The matter of *Aruda, et al v. Heirs and Assigns of Kahanapule (w)*, Civil No. 16-1-0621(2) ("Lawsuit") has a complicated history, but the relevant facts are relatively simple to distill.

Exhibit I is a survey map in which the Applicants' six lots are highlighted in green. Makena-Keoneeio Government Road ("Highway"), which abuts the sea on the left-hand side of the map, is the highway to which the Applicants seek access.

Exhibit I is actually a map depicting the subdivision of State land. On October 28, 1994, the Board approved the conveyance of approximately 16,518 acres of State land to the Department of Hawaiian Homelands ("DHHL") at various locations statewide. Among these places was 100 acres of land in Makawao. On March 9, 1999, the County of Maui provided final subdivision approval that created four lots. Lots 1 and 2 were eventually deeded to DHHL. Lot 4 remains state land. Lot 3 is a 50-foot wide strip of land that, when subdivided, was described as a 50-foot wide roadway for providing access to Lot 4. A 10-foot wide alanui runs along portions of Lot 3.

Since 1999, the subdivided land remains undeveloped including the Lot 1 and Lot 3.

Lot 3 is partially graded near the Highway, but is otherwise undeveloped grassy land. There is a historical feature that obstructs an area of Lot 3. *See* Ex. VI & Ex. VIII (last page).

While the Lawsuit was originally filed in 2016, the applicable pleading is the Third Amended Complaint (“Complaint”), attached as Exhibit VII. In the Complaint, the Applicants seek access to the Highway whether over Lot 3, DHHL Lot 1, or private land. The Applicants also sought to develop the easement area with utilities, grading, and paving without a conservation district use permit (“CDUP”). The governmental defendants in this action are the State of Hawai‘i (represented by Deputy Attorney General Dave Day), DHHL (separately represented), and the County of Maui.

In the course of the litigation, the Court dismissed the Applicants’ claim that it could develop land without a CDUP. The litigation got stuck, however, on a matter that really did not involve the Applicants at all—the question of whether the State or the County of Maui owned Lot 3. This is a highly technical and complicated legal issue.

Because the litigation technically has not officially settled yet, it is best not to get too deep into the Lot 3-ownership issue. Much of this stems from a rather complicated dispute as to whether Lot 3 constitutes a “public highway” under a rather antiquated statute, Chapter 264, HRS, that has been construed in different ways over the years. Despite the fact that the State and its counties normally are on the same side in most litigation, issues revolving around Chapter 264 “public highways” frequently cause disputes. In short, the ownership issue surrounding the Lot 3 threatened to overshadow the access issue and cause protracted litigation about something that really only a sideshow to the Applicants’ claim regarding access.

After lengthy settlement discussions, the parties ultimately agreed that one way to bypass the ownership issue was to have the Board issue a “quitclaim” easement to the Applicants, where the Board explicitly says that it does not believe that it owns the land over which the easement is granted, but to the extent it does, it grants a term easement subject to conditions. The settlement would include a grant of easement by DHHL for purposes of bypassing the historical feature in Lot 3. The fruit of these discussions is the attached Settlement Agreement as Exhibit VIII, which has been approved by all parties.

The Settlement Agreement requires that certain conditions precedent be met before the litigation is completed: it shows that this Board must grant an easement (which has full discretion to grant or deny) and that DHHL must also grant the easement before the Lawsuit is settled.

We believe that the proposed easement is reasonable. The two easement areas are relatively discrete and will not be seriously impacted by pedestrian and equestrian access. The first easement area begins as a partially graded area near the highway and concludes in an undeveloped grassy area. The second easement area is a grassy hill. The easement to be granted by DHHL connects these two easement areas for the purpose of bypassing the historic feature.

Both the settlement and easement documents attached thereto make clear that the State disclaims all interest in the land, but that the State is also well protected against liability through indemnities and disclaimers of warranty and also provisions that will protect the land, no matter who owns it.

Land Division solicited comments from the agencies listed below with the results indicated:

Division/Agency	Comment
DLNR-Division of Forestry and Wildlife	No response by suspense date.
DLNR-Office of Conservation and Coastal Lands	No objection; concurs with the HRS Chapter 343 exemption; see Exhibit X attached for more information.
DLNR-Historic Preservation	No response by suspense date.
Department of Hawaiian Home Lands	No response by suspense date.
Office of Hawaiian Affairs	No response by suspense date.
County of Maui Planning Department	No response by suspense date.
County of Maui Department of Public Works	No response by suspense date.

A copy of the Chapter 343 Exemption Notification is attached as Exhibit IX.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, 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 issuance of a quitclaim grant of non-exclusive easement to the Applicant covering the subject area for pedestrian and equestrian access purposes in the form found in Exhibit 1 to the Settlement Agreement, in accordance with the terms of the Settlement Agreement.

Respectfully Submitted,

Russell Tsuji

Russell Y. Tsuji
Administrator, Land Division

APPROVED FOR SUBMITTAL:

Suzanne D. Case

Suzanne D. Case, Chairperson

EXHIBIT I



Tax Map Key: (2) 2-1-004:123
Kahahena, Makawao, Maui

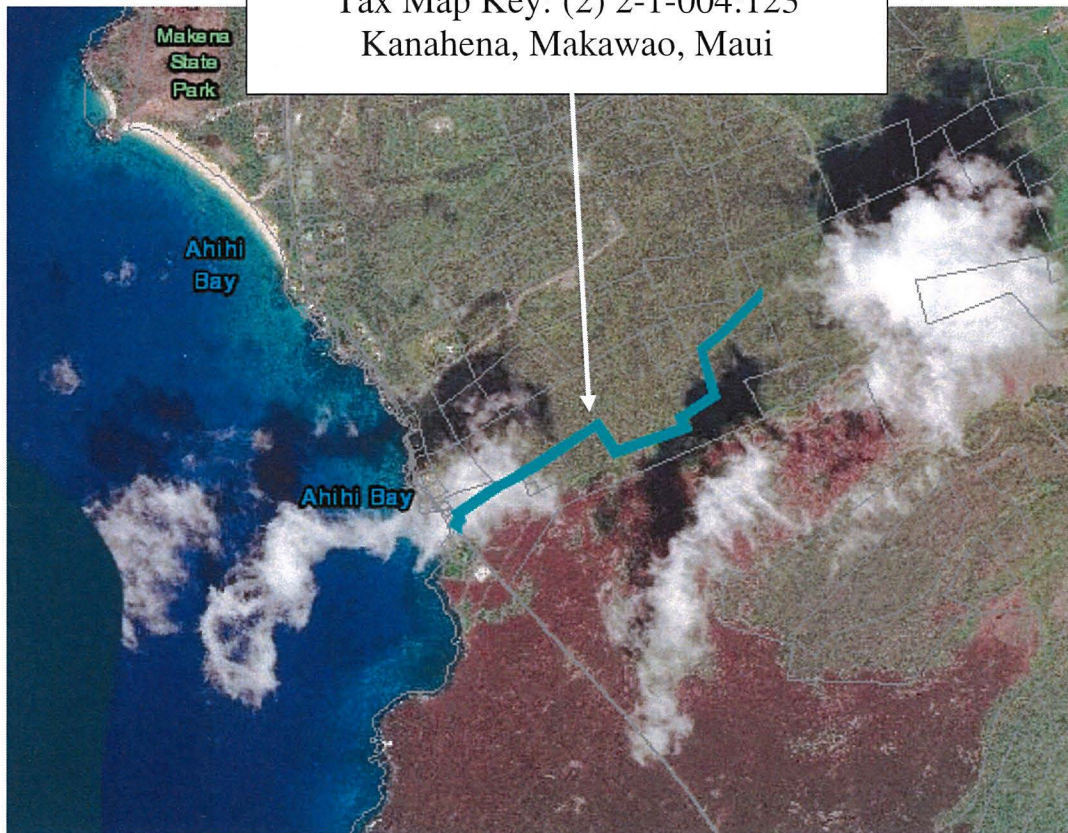


EXHIBIT I

EXHIBIT I

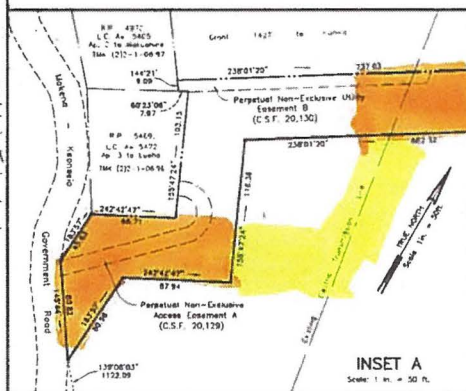
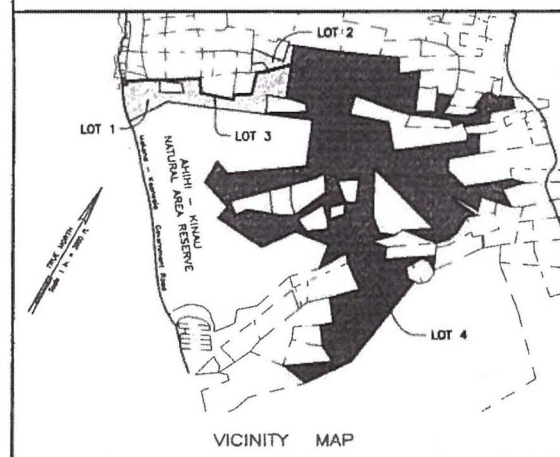
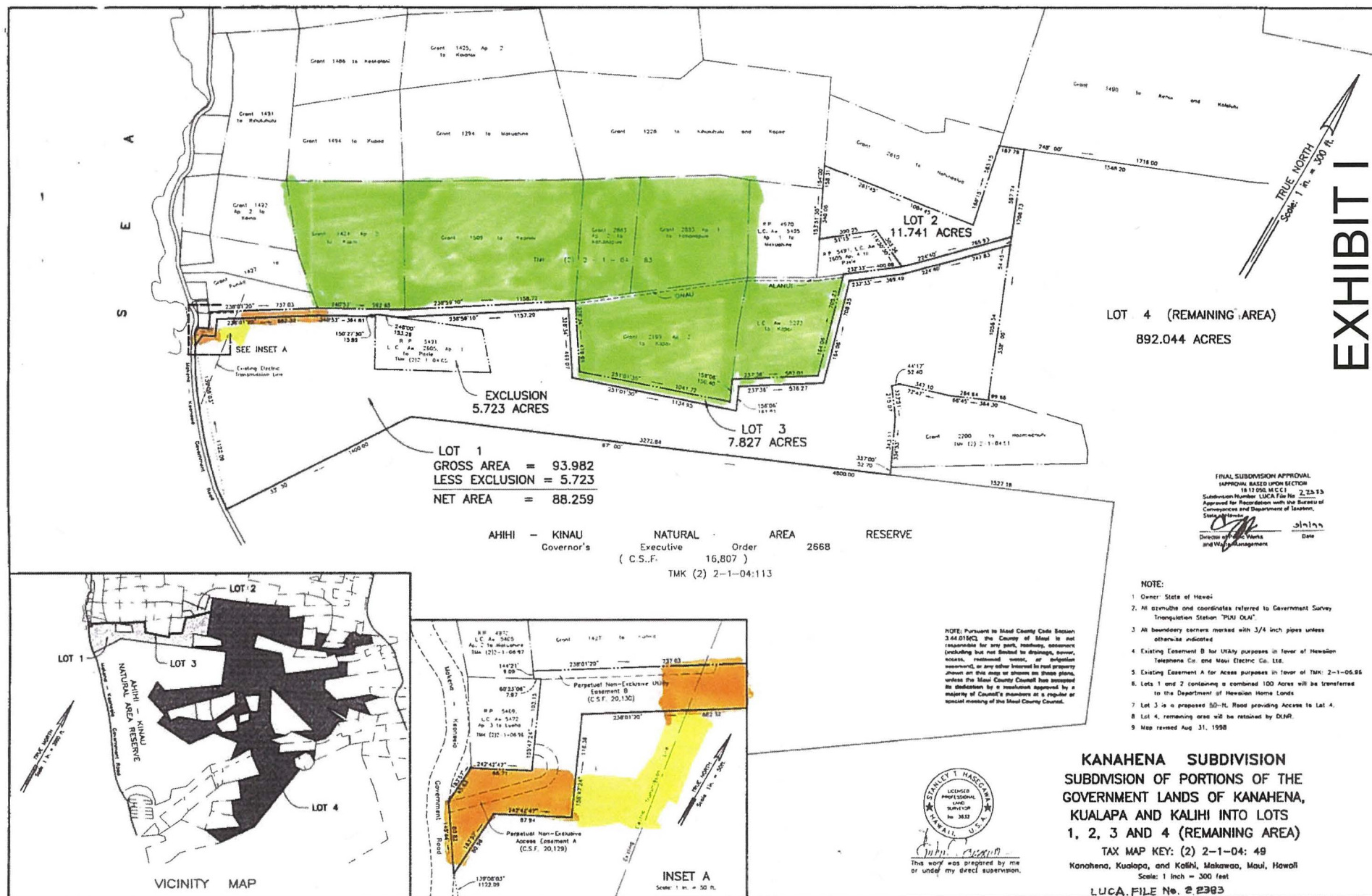
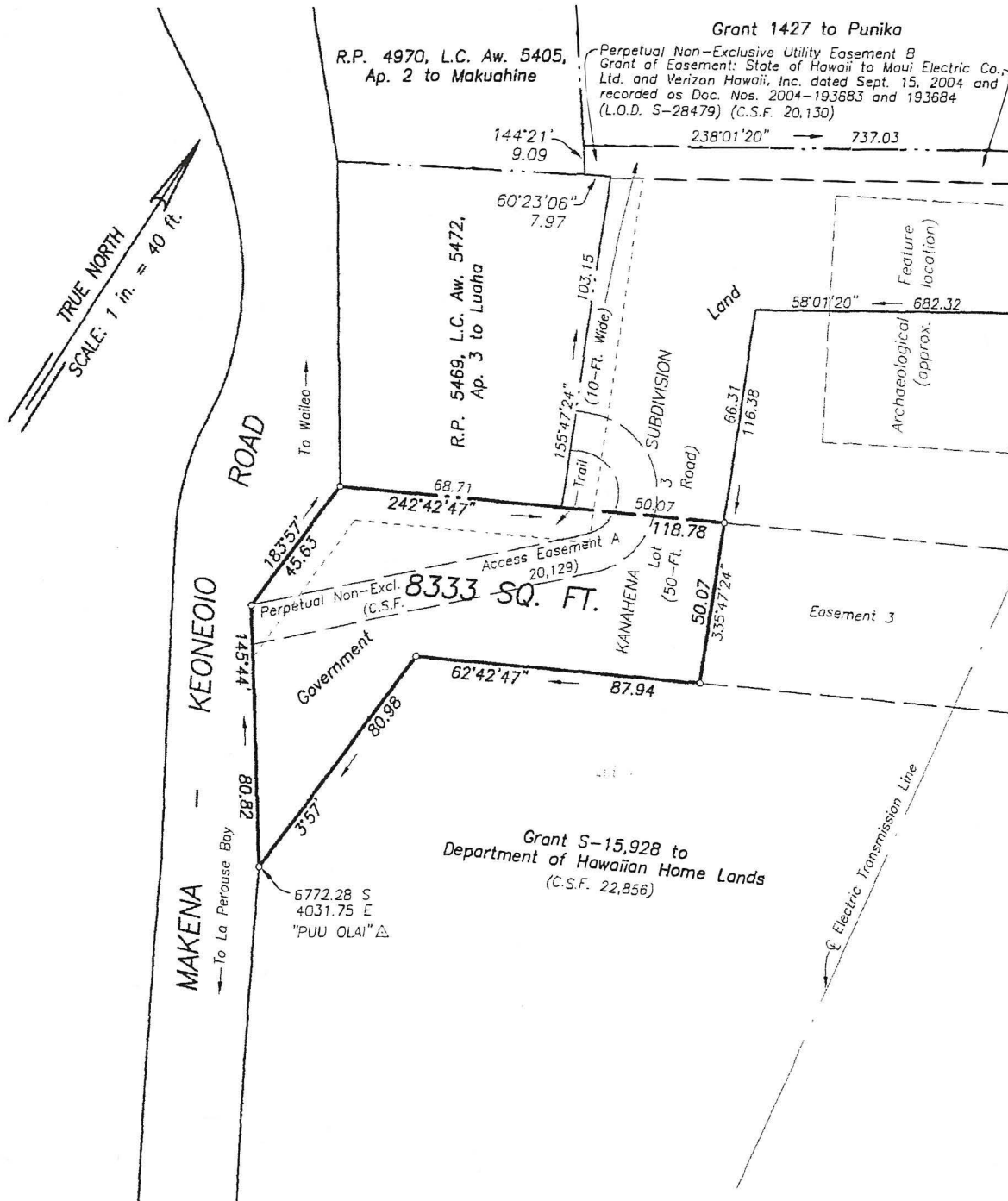


EXHIBIT II



REDUCED NOT TO SCALE

NON-EXCLUSIVE ACCESS EASEMENT EASEMENT 1

Kanahena, Makawao, Maui, Hawaii

Scale: 1 inch = 40 feet

Job Ma-006(17)

C. BK.

EXHIBIT II

TMK: 2-1-04: Por. 123

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

C.S.F. NO. 25,789

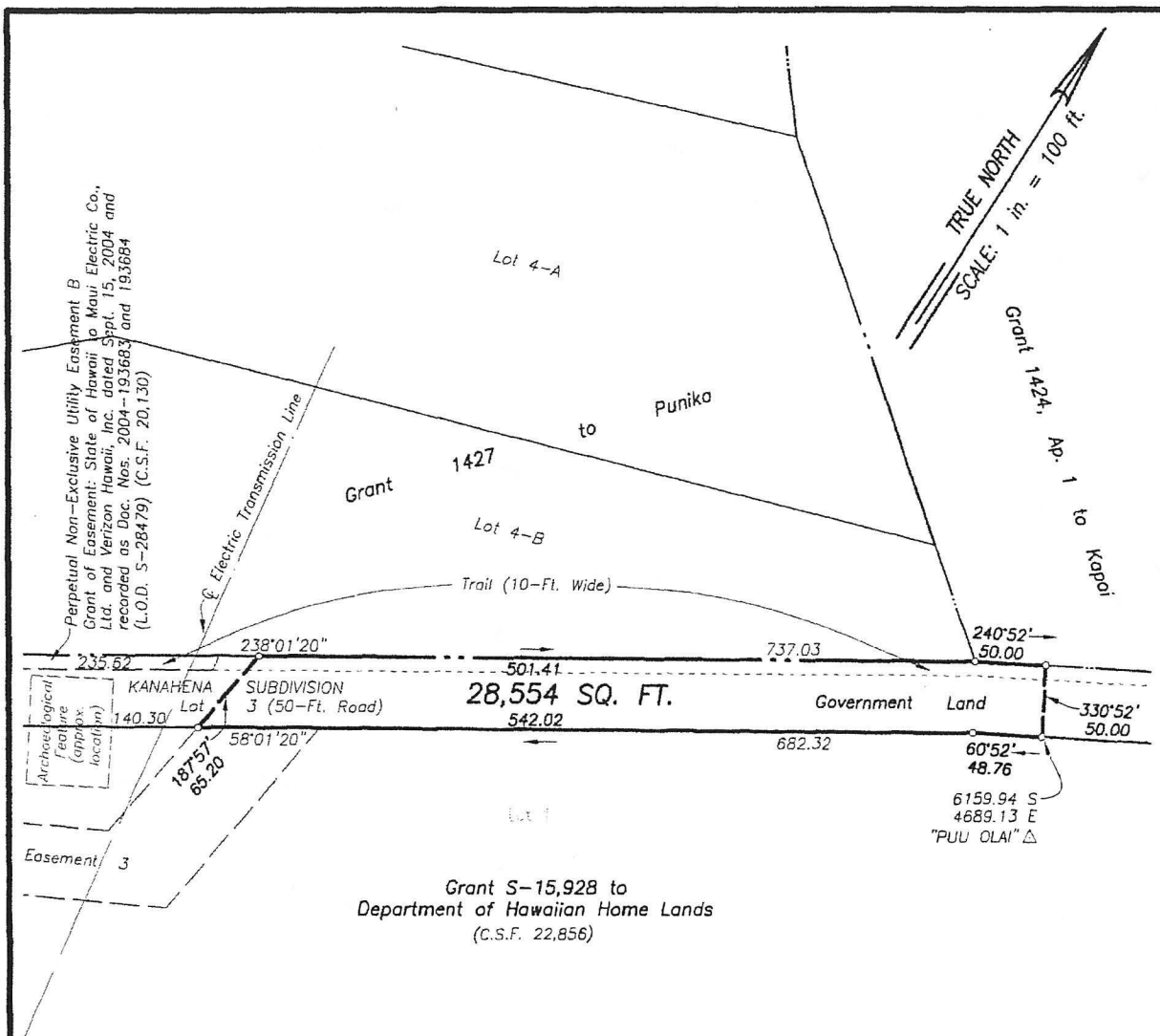
GZY March 31, 2020

EXHIBIT III



EXHIBIT III: Easement Area 1

EXHIBIT IV



REDUCED NOT TO SCALE

NON-EXCLUSIVE ACCESS EASEMENT EASEMENT 2

Kanahena, Makawao, Maui, Hawaii

Scale: 1 inch = 100 feet

EXHIBIT IV

Job Ma-006(17)

C. BK.

TMK: 2-1-04: Por. 123

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

C.S.F. NO. 25,790

GZY March 31, 2020

EXHIBIT V



EXHIBIT V: Easement Area 2

EXHIBIT VI



EXHIBIT VI: Historic Feature

EXHIBIT VII

Of Counsel
JENKINS & JENKINS L.L.P.
A limited Liability Law Partnership

BRIAN R. JENKINS 4245-0
Attorney at Law, a Law Corporation
Wailuku Executive Center
24 North Church Street, Suite 407
Wailuku, Maui, Hawaii 96793
Telephone: (808) 242-5545
Fax No.: (808) 243-8293

Attorneys for Plaintiffs

FILED

2018 DEC -3 AM 11:46

C. VAN KISLER, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

LAND/TRANS. DIV.
DEPARTMENT OF
ATTORNEY GENERAL
2018 DEC -6 P 2:59

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT
STATE OF HAWAII

ANTHONY B. ARUDA and CORINNE S.)
ARUDA IN THEIR CAPACITIES)
AS THE SUCCESSOR CO-TRUSTEES IN)
AND UNDER THAT CERTAIN ALFRED)
ARUDA REVOCABLE LIVING TRUST)
AGREEMENT DATED JULY 19, 1976;)
ANTHONY B. ARUDA and CORINNE S.)
ARUDA IN THEIR CAPACITIES AS THE)
SUCCESSOR CO-TRUSTEES IN AND)
UNDER THAT CERTAIN MARY T.)
ARUDA REVOCABLE LIVING TRUST)
AGREEMENT DATED JULY 19, 1976;)
LISA R. ARUDA BROWN, TRUSTEE)
UNDER THAT CERTAIN UNRECORDED)
LISA R. ARUDA BROWN REVOCABLE)
LIVING TRUST DATED DECEMBER 3,)
1991,)

Plaintiffs,)

HEIRS AND ASSIGNS OF)
KAHANAPULE (w) also known as)
MALEKA/MAREKA (w); HEIRS AND)
ASSIGNS OF LUAKA (w) also known as)
LUAKAA (w); HEIRS AND ASSIGNS OF)
ENOKA KAUPENA (k); HEIRS AND)
ASSIGNS OF KAHELEMAUNA)
KAUPENA (w) also known as MAUNA)
KAUPENA (w) also known as)

CIVIL NO. 16-1-0621(2)
(Other Civil action)

**THIRD AMENDED
COMPLAINT; EXHIBITS "A"-
"B"; SUMMONS**

I hereby certify that this is a full, true and
correct copy of the Original.

Clerk, Second Circuit Court

EXHIBIT VII

KAHELEMAUNA KANUHA (w) also)
 known as KAHELEMAUNA APAPAU;)
 and Heirs of persons named above who are)
 deceased, or persons holding under said)
 Heirs, and spouses, assigns, successors,)
 personal representatives, executors,)
 administrators, and trustees of persons)
 named above who are deceased; STATE OF)
 HAWAII; COUNTY OF MAUI;)
 DEPARTMENT OF HAWAIIAN HOME)
 LANDS OF THE STATE OF HAWAII;)
 RONALD R. JACINTHO, SR)
 individually and as Trustee for the)
 Ronald R. Jacintho Trust; MIRIAM M.)
 JACINTHO individually and as the Trustee)
 of the Mariam M. Jacintho Family Exempt)
 Trust and as the Trustee of the Mariam)
 Jacintho Family QTIP Marital Trust and the)
 following adjoining land owners:)
 MO'OLOA RANCH, LLC, a Delaware)
 limited liability company; ULUPALAKUA)
 RANCH, INC. a Hawai'i corporation, JOHN)
 DOES 1-50; JANE DOES 1-50; DOE)
 PARTNERSHIPS 1-50; DOE)
 CORPORATIONS 1-50; DOE ENTITIES)
 1-50; and DOE GOVERNMENTAL UNITS)
 1-50, and all other persons unknown)
 claiming any right, title, estate, lien or)
 interest in the real property described and)
 TO ALL WHOM IT MAY CONCERN,)
)
 Defendants.)
 _____)

THIRD AMENDED COMPLAINT

Come now Plaintiffs ANTHONY B. ARUDA and CORINNE S. ARUDA IN THEIR
 CAPACITIES AS THE SUCCESSOR TRUSTEES IN AND UNDER THAT CERTAIN
 ALFRED ARUDA REVOCABLE LIVING TRUST AGREEMENT DATED JULY 19, 1976;
 ANTHONY B. ARUDA and CORINNE S. ARUDA IN THEIR CAPACITIES AS THE
 SUCCESSOR TRUSTEES IN AND UNDER THAT CERTAIN MARY T. ARUDA
 REVOCABLE LIVING TRUST AGREEMENT DATED JULY 19, 1976; and LISA R. ARUDA

BROWN, TRUSTEE UNDER THAT CERTAIN UNRECORDED LISA R. ARUDA BROWN REVOCABLE LIVING TRUST DATED DECEMBER 3, 1991, (hereinafter collectively "Plaintiffs") by and through their attorney Brian R. Jenkins, and for Complaint against the Defendants, aver and allege as follows:

COUNT III

[Counts I, II and IV were previously adjudicated]

1. The real property which is the subject matter of this civil action is located in Maui, Hawai'i and is within the jurisdiction of this Court.

2. The Defendants or their unknown heirs, beneficiaries, trustees, successor trustees or assigns are the owners of land encumbered by access and utility easement rights in favor the lands described in Paragraph 6, below, owned by Plaintiffs or are physically obstructing the historic trail known as the Onau Alanui or are Defendants whose claims and rights were adjudicated earlier in this litigation.

3. Defendants Does are persons or entities whose names and identities are presently unknown to Plaintiffs but who may claim an estate or interest in the real property encumbered by access and utility easement rights in favor of the real property described in Paragraph 6, below. Plaintiffs intend to identify such persons or entities if and when their existence and identities become known.

4. The STATE OF HAWAI'I, the COUNTY OF MAUI, and THE DEPARTMENT OF HAWAIIAN HOME LANDS of the State of Hawaii are named as Defendants because they are: 1) owners of adjoining property, or are owners of the alanui/path that runs along the boundaries of the real property described in paragraph 6, below or 2) have rights in or own that certain roadway parcel identified as TMK (2) 2-1-004-123 (hereinafter "Roadway Lot 3" or 3) is the owner of TMK (2) 2-1-004-121 (hereinafter "DHHL Lot 1").

5. RONALD R. JACINTHO, SR individually and as Trustee for the Ronald R.

Jacintho Trust; MIRIAM M. JACINTHO individually and as the Trustee of the Mariam M. Jacintho Family Exempt Trust and as the Trustee of the Mariam Jacintho Family QTIP Marital Trust (hereinafter the "Jacintho Defendants") are residents of the County of Maui, State of Hawaii and are the owners of a portion of Grant 1427 to Punika designated as Lot 4-B, being TMK (2) 2-1-006:083 (hereinafter "Jacintho Property"), through which a portion of a historic trail, called the Onau Alanui, passes, said historic trail being a pre-Great Mahele foot trail used to access lands including but not limited to lands in Onau ahupuaa and Kanahena ahupuaa as well as other adjacent and nearby lands.

6. At the date of the commencement of this action, the Plaintiffs are in possession of and own in fee simple:

A. All of that certain parcel of land in Onau, Honuaula, Maui, Hawai'i described in and covered by apana 1 of Royal Patent Grant 2883 to Kahanapule containing an area of 12.772 acres, more or less.

B. All of that certain parcel of land in Onau, Honuaula, Maui, Hawai'i described in and covered by apana 2 of Royal Patent Grant 2883 to Kahanapule containing an area of 6.808 acres, more or less.

C. All of that certain parcel of land in Onau, Honuaula, Maui, Hawai'i described in and covered by Royal Patent Grant 1509 to Keanini containing an area of 22.443 acres, more or less.

D. All of that certain parcel of land in Onau, Honuaula, Maui, Hawai'i described in and covered by Royal Patent Grant 1424, apana 1 to Kapoi containing an area of 13.481 acres, more or less.

E. All of that certain parcel of land in Kanahena, Honuaula, Maui, Hawai'i described in and covered by Royal Patent Grant 2199, apana 2 to Kapoi with an area of 16.496 acres, more or less.

F. All of that certain parcel of land in Kanahena, Honuaula, Maui, Hawai'i described in and covered by Land Commission Award 5273 to Kapoi with an area of 9.494 acres more or less.

7. Plaintiffs have been adjudicated as the owners of the lands described in Paragraphs 6A and 6B, above, pursuant to that certain "Partial Final Judgment as to Count I and Count II of the Second Amended Complaint" filed in this civil action on June 27, 2018.

8. The two properties described in Paragraphs 6A and 6B, above, are two of six adjacent properties owned by Plaintiffs that comprise TMK (2) 2-1-004-083 (hereinafter "Plaintiffs' Lands").

9. The six adjacent parcels that comprise Plaintiffs' Lands were recognized as separate lots of record by the Development Services Administration, Department of Public Works, County of Maui by way of a separate lot determination dated January 14, 2017.

10. Plaintiffs' Lands are depicted in crosshatch on the attached Exhibit "A."

11. Lands in Onau and Kanahena were once accessed by a footpath called the Onau Alanui, which runs along the boundary between Onau and Kanahena within Kanahena, except where it enters the Jacintho Property, as shown on Exhibit "B."

12. The Onau Alanui footpath is not adequate for modern access and utility requirements.

13. The Onau Alanui is physically blocked by concrete walls at the boundary of the Jacintho Property and, upon information and belief, was obliterated by grading activities within the Jacintho Property.

14. None of the Royal Patent Grants or Land Commission Award for Plaintiffs' Lands expressly state in the body of such documents any right of easement for access to the Makena-Keoneoio Government Road but all six parcels have either implied easements of necessity or easements implied by prior use or easements pursuant to HRS 7-1 for access, including vehicular access, and easements for utility connection to the government Keoneoio-Makena Road.

15. The ahupuaa of Kanahena was initially quitclaimed to Ruth Keelikolani by Kamehameha III in the Mahele of 1848. Ruth Keelikolani in turn surrendered Kanahena and two other ahupuaa as commutation and since that time Kanahena ahupuaa has been treated as government land.

16. The ahupuaa of Onau was designated as government land by Kamehameha III in the Mahele of 1848.

17. Plaintiffs' Lands were all conveyed to Plaintiffs' predecessors in title by the Kingdom of Hawaii in the nineteenth century.

18. Prior to the conveyance of Plaintiffs' Lands from the Kingdom of Hawaii to private ownership, the portion of Kanahena ahupuaa retained by the government *makai* of Plaintiffs' Lands was used for all access purposes, including agricultural access purposes, necessary for the utilization of the lands that currently comprise Plaintiffs' Lands in the nature of quasi-easements.

19. Subsequent to the conveyance of Plaintiffs' Lands from the Kingdom of Hawaii to private ownership, the portion of Kanahena ahupuaa retained by the government *makai* of Plaintiffs' Lands was used by Plaintiffs' ancestors, family members and predecessors in title for all access purposes, including agricultural access purposes, necessary for the utilization of Plaintiffs' Lands for cattle ranching, farming and other agricultural purposes in the nature of easements implied by necessity or implied by prior use by prior use or by HRS 7-1.

20. Land Commission Award 5273 to Kapoi is entitled to an easement for access purposes over Kanahena ahupuaa pursuant to HRS 7-1 for vehicular and pedestrian uses pursuant to the holding in *Palama v. Sheehan*, 50 Haw. 298 (1968).

21. Royal Patent Grant 1424, apana 1, to Kapoi; Royal Patent Grant 1509 to Keanini; Royal Patent Grant 2883, apana 2, to Kahanapule; Royal Patent Grant 2883, apana 1 to Kahanapule; and Royal Patent Grant 2199, apana 2 to Kapoi are entitled to easements by necessity or by prior use for access purposes over Kanahena ahupuaa pursuant to the holding in *Malulani*

Group, Ltd. v. Kaupo Ranch, Ltd., 133 Haw. 425, 433, 329 P.3d 330, 338 (Haw. App. 2014).

22. By way of Revocable Permit S-4371 with an effective date of July 1, 1969, Ulupalakua Ranch was granted permission by the State of Hawaii to enter and use the following lands and other lands for pasture purposes: all of the government lands "situate at Honuaula, Makawao, Maui being the Kualapa-Kalihi, Kanahena and Mohopilo-Onau Government Tracts of tax map key nos. 2-1-04, 2-1-05 and 2-1-06 with an approximate area of 2,800 acres which include current lots TMK (2) 2-1-004-123 ("Roadway Lot 3"); TMK (2) 2-1-004-122 ("hereinafter DHHL Lot 2"); TMK (2) 2-1-004-121 ("DHHL Lot 1"); and TMK (2) 2-1-004-049 (hereinafter "State Lot 4").

23. The Hawaiian Homes Commission Act of 1921 designated certain public lands, totaling about 203,500 acres, as available lands for use by the Department of Hawaiian Home Lands ("DHHL"). As of 1990, the DHHL inventory was 186,982 acres. In the Governor's State of the State address in 1994, he expressed his intent to transfer approximately 16,000 acres of land to DHHL to "make their trust whole."

24. As part of the transfer of State of Hawaii lands on all of the major islands to the DHHL, a portion of the State of Hawaii lands in Kanahena, Kualapa and Kalihi in the District of Makawao, Island of Maui, were subdivided in a proceeding called the Kanahena Subdivision (LUCA 2.2383) ("Kanahena Subdivision"). The purpose of this subdivision was to create new lots in order to effect the transfer 100 acres of the lands of Kanahena to the DHHL as part of the statewide transfer of 16,518 acres of government land to DHHL to make their trust whole. Exhibit "A" is a copy of the final subdivision approval map for the Kanahena Subdivision.

25. The statewide transfer, including the 100 acres in Kanahena, was approved by the Board of Land and Natural Resources at its meeting of October 28, 1994. Although the statewide transfer to the DHHL included lands in the Conservation District, the subdivision was ruled as being exempt from the need for a Conservation District Use Permit as the proposed conveyances to the DHHL would result in "no expansion or change of use beyond that previously existing on the property."

26. Initially, the Kanahena Subdivision, that was submitted on July 26, 1996 to the Maui County Department of Public Works, was a two-lot subdivision with the 100 acre *makai* parcel (Lot 1) to be conveyed to the DHHL and the larger 892.044 acre *mauka* parcel (Lot 2) being retained by the State of Hawaii. Preliminary subdivision approval was granted on September 12, 1996. The 100 acre *makai* parcel had frontage along the main government Keoneoio-Makena Road.

27. In a letter dated February 22, 1997 from Charles Jencks, as the Director of the Department of Public Works of the County of Maui, to Dean Y. Uchida, as the Administrator of the DLNR, Charles Jencks noted that Section 18.12.050 of the Maui County Code provided that the Director of the Department of Public Works "shall not approve any subdivision that causes any lot to be landlocked on the land subdivided or any adjacent land." Mr. Jencks further noted that Lot 2 of the Kanahena Subdivision (as originally configured) "appears to be landlocked. How will Lot 2 have access to a government road?"

28. By way of a letter dated September 2, 1998, from Dean Y. Uchida to Charles Jencks, Mr. Uchida wrote: "[i]n compliance with the concerns of Mr. Philip Ohta, Maui District land Agent, the subdivision map was revised to include a fifty-foot wide roadway lot (Roadway Lot 3) to provide access to the remaining area (State Lot 4) to be retained by DLNR. This revision was approved by Mr. Ohta on August 28, 1998."

29. As a result of the creation of the fifty-foot wide roadway parcel (Roadway Lot 3 with an area of 7.827 acres), the 100 acres to be conveyed to DHHL were configured into two parcels separated by the Roadway Lot 3. As a result, the two parcels to be conveyed to DHHL with a total area of 100 acres were DHHL Lot 2, with an area of 11.741 acres in the State Agricultural District, and DHHL Lot 1 with a net area of 88.259 acres in the State Conservation District. State Lot 4, with an area of 892.044 acres, was retained by the State of Hawaii. There was also a 5.723 acre exclusion, identified as R.P. 5491, L.C.A.2605, apana 1, to Paele, within DHHL Lot 1 that touched and adjoined Roadway Lot 3.

30. Based on the final approved subdivision map of the Kanahena Subdivision, Exhibit "A," State Lot 4, DHHL Lot 2 and the 5.723 acre exclusion and Plaintiffs' Lands all depend on Roadway Lot 3 for access to the Keoneoio-Makena government road.

31. Roadway Lot 3 contains portions of the Onau Alanui footpath down to where said alanui veers north into the Jacintho Property as shown on Exhibit "B." Roadway Lot 3 also contains a portion of "Perpetual Non-Exclusive Utility Easement B" in favor of Maui Electric Company from the State of Hawaii and "Perpetual Non-Exclusive Access Easement A" in favor of TMK (2) 2-1-006-096 and TMK (2) 2-1-006:097, owned by Ulupalakua Ranch, from the State of Hawaii as well as an archaeological site that intrudes into Roadway Lot 3 which may require a realignment of Roadway Lot 3 or an easement into DHHL Lot 1 in order to provide access to Plaintiffs' lands as well as DHHL Lot 2 and State Lot 4.

32. Final approval for the Kanahena Subdivision was approved on March 9, 1999.

33. At the time of the Kanahena Subdivision, the Onau Alanui had been obliterated and walled off where it crossed into the Jacintho Property at some time before 1984. As a result of the blockage of the Onau Alanui where it passes through the Jacintho Property, the ancient foot path is physically blocked before reaching the Makena Keoneoio Road.

34. The area that includes DHHL Lot 1 with a net area of 88.259 acres and Roadway Lot 3 has been used since the 19th century to drive cattle to the coast and for access to the *mauka* lands as well as to haul water and supplies for cattle ranching and other agricultural uses. There is an old lava rock cattle pen ("Archaeological Site") that is partially located on Roadway Lot 3 and partially located on DHHL Lot 1 just *mauka* of TMK (2) 2-1-006-096 and TMK (2) 2-1-006:097, owned by Ulupalakua Ranch, that was used by Plaintiff's ancestors as part of their ranching operation since the late 1930s.

35. The State of Hawaii has asserted that it does not own Roadway Lot 3 and maintains that Roadway Lot 3 is owned by the County of Maui by operation of law.

36. The County of Maui denies that it owns Roadway Lot 3.

37. Roadway Lot 3 and DHHL Lot 1 are wholly within the Preservation Subzone of the Conservation District of the State of Hawaii.

38. The general area of Roadway lot 3 and the Onau Alanui that is within Roadway Lot 3 as well as the portion of Roadway Lot 3 that veers from the Onau/Kanahena boundary to its terminus with the Makena-Keoneoio Road and DHHL Lot 1 have been used as for general access and utility purposes such as water hauling for cattle operations for Plaintiffs' Properties by Plaintiffs' family members since the 1930s and well before October 1, 1964 and the inclusion of Kanahena in the Conservation District.

39. The area in Roadway Lot 3 that contains the Archaeological Site and another area that is otherwise impassible requires a detour through two portions of DHHL Lot 1.

40. The Onau Alanui foot path is too narrow and is insufficient for modern vehicular access and utility purposes, however, all physical obstructions blocking access to said Onau Alanui should be removed and the right of Plaintiffs and other occupants and owners of Kanahena and Onau to use said Onau Alanui must be adjudicated.

41. The easements in favor of Plaintiffs' Properties are for utility as well as for access purposes pursuant to the holding in *Fleming v. Napili Kai, Ltd.*, 50 Haw. 66, 69-70, 430 P.2d 316, 318 (1967).

42. Plaintiffs are entitled to a Judgment that both Roadway Lot 3 and DHHL Lot 1 are encumbered by access and utility easements implied by necessity and implied by prior use and/or by reserved right in favor of Plaintiffs' Properties in a width and location to be determined at trial together with a right to improve said easements and to install utilities without the need of a Conservation District Use Permit.

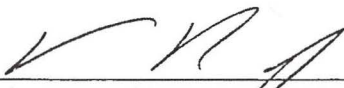
43. Plaintiffs are entitled to a judgment to use the historic footpath called the Onau

Alanui and to have all obstructions preventing the use of said alanui removed to as to allow access all of the way to the Keoneoio-Makena Road.

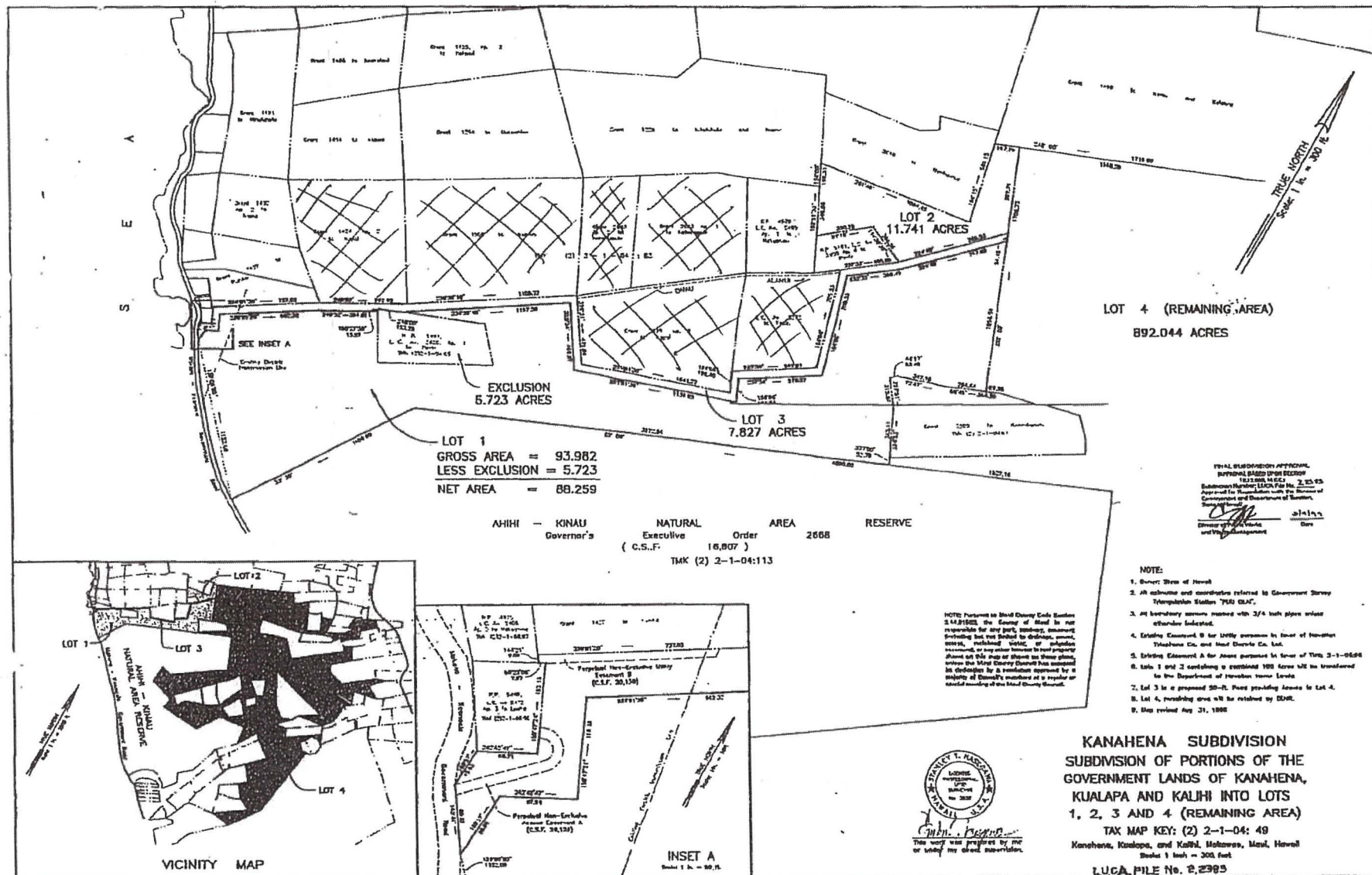
WHEREFORE PLAINTIFFS PRAY FOR RELIEF AS FOLLOWS:

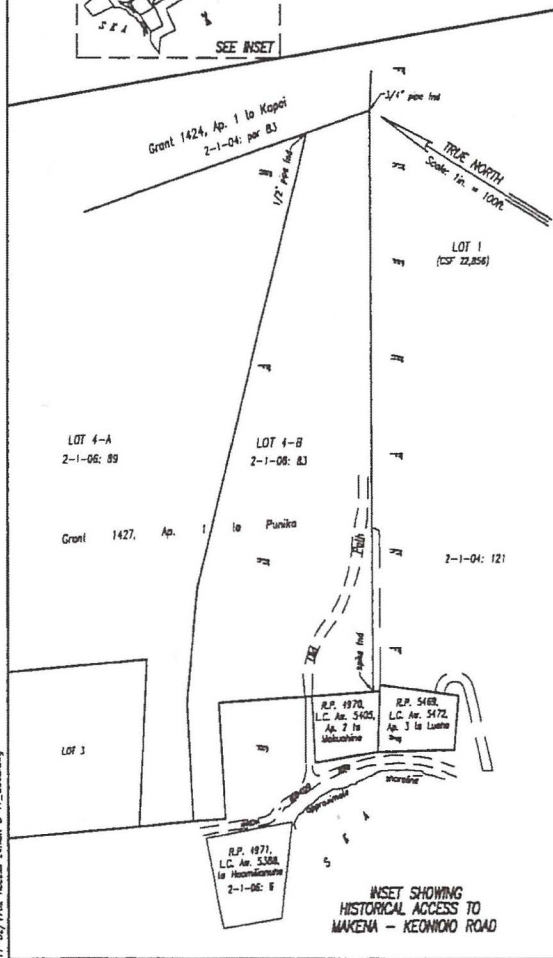
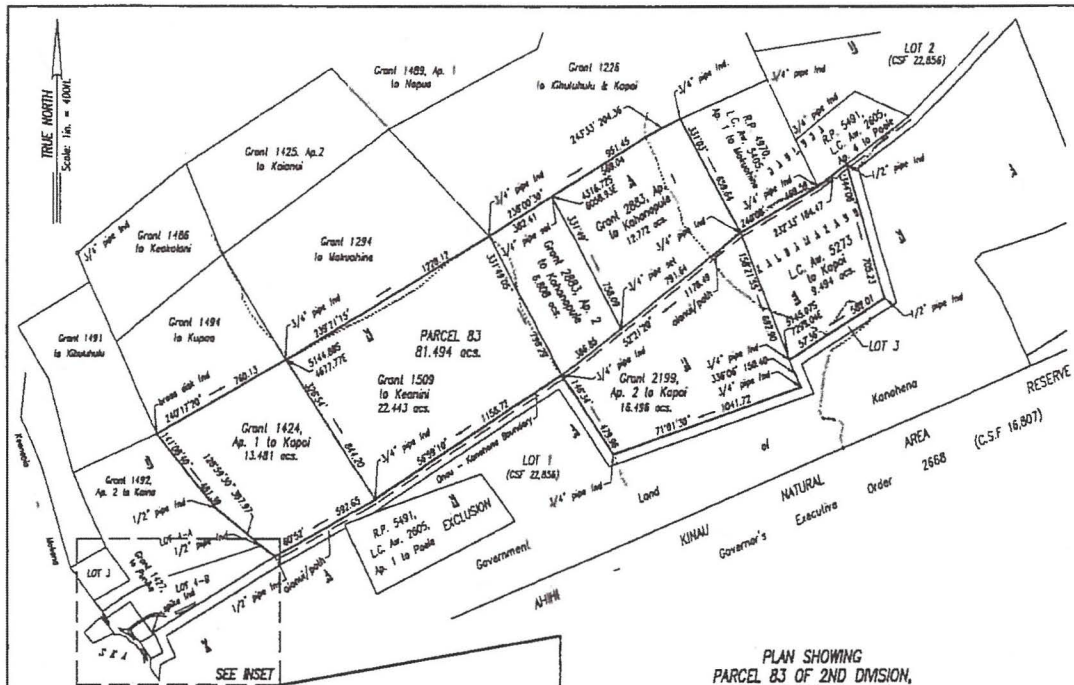
1. That all possible access and utility easement claims over, under, across and through Roadway Lot 3, DHHL Lot 1, and the Onau Alanui in favor of Plaintiffs' lands, including the right to grade, pave and install utilities be adjudicated pursuant to Hawaii Revised Statutes Chapter 669; Hawaii Revised Statutes Chapter 632; HRS 7-1, and all relevant case law, statutory law and administrative rules.
2. That the ownership of Roadway Lot 3 including easements that encumber Roadway Lot 3 be determined by the Court
3. That Plaintiffs' access rights to their lands where such access rights cross over land in the State Conservation District be adjudicated as exempt from the rules governing uses in State Conservation District lands
4. That the Plaintiffs receive their attorney's fees, costs, expenses and interest to the extent allowed by law.
5. That Plaintiffs receive such other and further relief as is just and equitable.

DATED: Wailuku, Hawai'i Nov. 29, 2018



Brian R. Jenkins, Attorney for Plaintiffs





PLAN SHOWING
PARCEL 83 OF 2ND DIVISION,
TAX MAP PLAT 2-1-04,
BEING ALL OF GRANT 1424, APANA 1,
TO KAPOI,
GRANT 1509 TO KEAHINI,
GRANT 2883, APANAS 1 AND 2,
TO KAHANAPULE,
GRANT 2199, APANA 2 TO KAPOI,
AND LAND COMMISSION AWARD 5273
TO KAPOI
AT ONAU AND KAHANAHUA, HONOLULU, MAUI, HAWAII



This work was prepared by me
or under my direct supervision.

Patrick M. Cummings
Patrick M. Cummings
Licensed Professional Land Surveyor
Certificate No. 5078
Expires April 30, 2018

NOTES:

1. The approximate shoreline and Matsuno-Keonihio Road were taken from map by James H. Armstrong dated December 5, 1978.
2. This map was compiled from the above listed sources of information and on the ground reconnaissance survey that was performed for Parcel 83 and the internal Grants and Kuleana within it between May 2 and May 5, 2016.
3. Azimuths and coordinates shown herein are referred to Government Survey Triangulation Station "PUU OLAN" and adopted from record maps filed at the State Survey Office.
4. rock wall
5. The Kuleana name Onau is used interchangeably with Hou in Land Commission documents, field notes and on maps.
6. Boundary and other information in inset were taken from State Survey Office files or this area.

August 11, 2017

(2) 2-1-04: 83

HAWAII LAND CONSULTANTS

15" x 21"

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT
STATE OF HAWAII

ANTHONY B. ARUDA and CORINNE S.) CIVIL NO. 16-1-0621(2)
ARUDA IN THEIR CAPACITIES) (Other Civil action)

AS THE SUCCESSOR CO-TRUSTEES IN)
AND UNDER THAT CERTAIN ALFRED)
ARUDA REVOCABLE LIVING TRUST)
AGREEMENT DATED JULY 19, 1976;) SUMMONS

ANTHONY B. ARUDA and CORINNE S.)
ARUDA IN THEIR CAPACITIES AS THE)
SUCCESSOR CO-TRUSTEES IN AND)
UNDER THAT CERTAIN MARY T.)
ARUDA REVOCABLE LIVING TRUST)
AGREEMENT DATED JULY 19, 1976;)
LISA R. ARUDA BROWN, TRUSTEE)
UNDER THAT CERTAIN UNRECORDED)
LISA R. ARUDA BROWN REVOCABLE)
LIVING TRUST DATED DECEMBER 3,)
1991,)

Plaintiffs,)

HEIRS AND ASSIGNS OF)
KAHANAPULE (w) also known as)
MALEKA/MAREKA (w); HEIRS AND)
ASSIGNS OF LUAKA (w) also known as)
LUAKAA (w); HEIRS AND ASSIGNS OF)
ENOKA KAUPENA (k); HEIRS AND)
ASSIGNS OF KAHELEMAUNA)
KAUPENA (w) also known as MAUNA)
KAUPENA (w) also known as)
KAHELEMAUNA KANUHA (w) also)
known as KAHELEMAUNA APAPAU;)
and Heirs of persons named above who are)
deceased, or persons holding under said)
Heirs, and spouses, assigns, successors,)
personal representatives, executors,)
administrators, and trustees of persons)
named above who are deceased; STATE OF)
HAWAII; COUNTY OF MAUI;)
DEPARTMENT OF HAWAIIAN HOME)
LANDS OF THE STATE OF HAWAII;)
RONALD R. JACINTHO, SR)
individually and as Trustee for the)

Ronald R. Jacintho Trust; MIRIAM M.)
 JACINTHO individually and as the Trustee)
 of the Mariam M. Jacintho Family Exempt)
 Trust and as the Trustee of the Mariam)
 Jacintho Family QTIP Marital Trust and the)
 following adjoining land owners:)
 MO'OLOA RANCH, LLC, a Delaware)
 limited liability company; ULUPALAKUA)
 RANCH, INC. a Hawai'i corporation, JOHN)
 DOES 1-50; JANE DOES 1-50; DOE)
 PARTNERSHIPS 1-50; DOE)
 CORPORATIONS 1-50; DOE ENTITIES)
 1-50; and DOE GOVERNMENTAL UNITS)
 1-50, and all other persons unknown)
 claiming any right, title, estate, lien or)
 interest in the real property described and)
 TO ALL WHOM IT MAY CONCERN,)
)
 Defendants.)
 _____)

SUMMONS

TO:

Russell A. Suzuki, Esq., Attorney General
 David D. Day, Esq., Deputy Attorney General
 Land/Transportation Division
 Department of the Attorney General
 465 King Street, Suite 300
 Honolulu, HI 96813
Attorneys for Defendant State of Hawai'i

Patrick K. Wong, Esq.
 Corporation Counsel
 Kristin K. Tarnstrom, Esq.
 Caleb P. Rowe, Esq.
 Deputies Corporation Counsel
 County of Maui
 200 S. High Street
 Wailuku, HI 96793
Attorneys for Defendant County of Maui

THE DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAII

c/o JASON W. HIRATA, ESQ.
The Department of the Attorney General, State of Hawaii
425 Queen Street
Honolulu, HI 96813

c/o CRAIG Y. IHA, ESQ.
The Department of Hawaiian Home Lands, State of Hawaii
91-5420 Kapolei Parkway
Kapolei, HI 96707

RONALD R. JACINTHO, SR, Individually & as Trustee
[REDACTED]
Kula, HI 96790

MIRIAM M. JACINTHO, Individually & as Trustee
[REDACTED]
Kula, HI 96790

You are hereby summoned and required to file with the court and serve upon Plaintiff's attorney Brian R. Jenkins of the law firm Jenkins & Jenkins L.L.P., whose address is 24 North Church street, Suite 407, Wailuku, Hawai'i 96793, an Answer to the Third Amended Complaint which is herewith served on you. This action must be taken within twenty (20) days after service of this summons upon you, exclusive of the day of service.

If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

Pursuant to Rule 4(b) of the Hawai'i Rules of Civil Procedure, this Summons shall not be delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the District or Circuit courts permits, in writing on the summons, personal delivery during those hours.

A failure to obey this summons may result in an entry of default and default judgment against the disobeying persons or party.

DATED: Wailuku, Maui, Hawai'i, DEC 03 2018.

/sgd/ C. von KUGLER (Seal)

Clerk of the Court

EXHIBIT VIII

SETTLEMENT AGREEMENT

(*Aruda, et al. v. Heirs and Assigns of Kahanapule (w)*, Civ. No. 16-1-0621(2))

This Settlement Agreement ("**Agreement**"), executed August 10, 2020, is made and entered into by and between (1) ANTHONY B. ARUDA and CORINNE S. ARUDA in their capacities as the successor co-trustees in and under that certain Alfred Aruda Revocable Living Trust Agreement dated July 19, 1976; ANTHONY B. ARUDA and CORINNE S. ARUDA in their capacities as the successor co-trustees in and under that certain Mary T. Aruda Revocable Living Trust Agreement dated July 19, 1976; and LISA R. ARUDA BROWN, Trustee under that certain unrecorded Lisa R. Aruda Brown Revocable Living Trust dated December 3, 1991 (collectively, "**Aruda**"); (2) the STATE OF HAWAII ("**State**"), by its Attorney General; (3) the DEPARTMENT OF HAWAIIAN HOMELANDS ("**DHHL**"), by its Attorney General; (4) the COUNTY OF MAUI ("**Maui County**"); and (5) RONALD R. JACINTHO, SR., individually and as Trustee for the Ronald R. Jacintho Trust ("**Jacintho**"). Collectively, all parties to this Agreement are referred to as the "**Parties**".

RECITALS

A. On December 20, 2016, Aruda filed a Complaint in the Circuit Court of the Second Circuit, State of Hawai'i, in a matter entitled *Aruda, et al. v. Heirs and Assigns of Kahanapule (w)*, Civ. No. 16-1-0621(2) (the "**Lawsuit**"). Aruda claimed to own six parcels of land in the County of Maui: (1) apana 1 of Royal Patent Grant 2883 to Kahanapule in Onau, Honuaula; (2) apana 2 of Royal Patent Grant 2883 to Kahanapule in Onau, Honuaula; (3) Royal Patent Grant 1509 to Keanini in Onau, Honuaula; (4) apana 1 of Royal Patent Grant 1424 to Kapoi in Onau, Honuaula; (5) apana 2 of Royal Patent Grant 2199 to Kapoi in Kanahena, Honuaula; and (6) Land Commission Award 5273 to Kapoi in Kanahena, Honuaula (collectively, the "**Aruda Lots**").

B. Aruda later filed a Third Amended Complaint ("**TAC**"), naming the State, DHHL, Maui County, and Jacintho as defendants, seeking, among other things, access via an easement from the Aruda Lots to Keoneoio-Makena Road via portions of State-owned lands identified as Lot 1 and Lot 3;

C. Lots 1 and 3 are two of four lots in the Kanahena Subdivision, which subdivision Maui County approved in 1999.

D. Following final subdivision approval, the State transferred Lots 1 and 2 to the management and control of DHHL. The State retained Lot 4. Lot 3 was subdivided as a proposed 50-foot wide road, and the State maintains that Maui County owns Lot 3, while Maui County asserts that the State owns Lot 3.

E. Lot 3 abuts the southern boundary of certain of the Aruda Lots and the northern boundary of Lot 1, separating the Aruda Lots from Lot 1.

F. The Parties desire to fully, finally, and completely resolve, release, discharge, terminate, settle, compromise, and reach a settlement of all claims for access owed by any

party to Aruda for use or access over a party's respective property, on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in mutual consideration of the terms, covenants, and conditions of this Agreement, the Parties hereby agree as follows:

1. EXECUTION DATE. The *Execution Date* of this Agreement shall be the date that all parties to the Agreement sign this Agreement, which is shown above.

2. STATE AND DHHL; CONDITIONS PRECEDENT

2.1. The State Easement Over Portion of Lot 3

2.1.1. Easement. The State will prepare a staff submittal to present to the Board of Land and Natural Resources ("BLNR") at a duly agendized Sunshine meeting regarding the granting of a quitclaim grant of non-exclusive easement, a sample of which is attached as Exhibit 1, be granted to Aruda (the "*DLNR Quitclaim Easement*"). Aruda understands and acknowledges that the staff submittal and the form of the DLNR Quitclaim Easement will go through the standard review process at the Department of Land and Natural Resources ("DLNR") for staff submittals, and that amendments to the quitclaim grant of non-exclusive easement may be required by the State Historic Preservation Division ("SHPD"), another division of DLNR, or the Chairperson of the BLNR, prior to submission to the BLNR. Aruda understands and acknowledges that the Chairperson of the BLNR has sole and absolute discretion over whether or not to place this matter on an agenda and over the date of the Sunshine meeting of the BLNR at which it will be heard. Aruda understands and acknowledges that Aruda will not have any control or input into the substance of the staff submittal, but that he may present written testimony in advance, as any other member of the public. Aruda further understands and acknowledges that the State has no control over the decision of the BLNR, including whether or not to grant the easement at all, whether any amendments or new conditions or terms of any kind will be imposed by the BLNR, whether any amendments will be acceptable to the Department of the Attorney General, or whether a determination is made that an environmental assessment shall be required prior to a decision on whether to grant the easement, among other possible eventualities.

2.1.2. Attendance of Attorney. Aruda's attorney shall be present at the Sunshine meeting of the BLNR and shall have full settlement authority for Aruda to accept or reject any proposed amendment to the DLNR Quitclaim Easement.

2.1.3. Recommendation of No Monetary Payment. The submittal presented to the BLNR shall recommend that no monetary payment be required for Aruda to receive the quitclaim grant of non-exclusive easement, in consideration of the settlement of the Lawsuit. Aruda understands and acknowledges that the BLNR retains the ultimate authority over whether or not a monetary payment and/or the performance of an appraisal at Aruda's own expense shall be required.

2.2. The DHHL License as Easement Over Portion of Lot 1

2.2.1. License as Easement. DHHL will prepare and present to the Hawaiian Homes Commission (the "**HHC**"), at a duly agendized Sunshine meeting, its recommendation to grant a non-exclusive license to Aruda over a portion of Lot 1, a sample of which is attached as Exhibit 2, and the final form, content, terms and conditions of which will be as the HHC may approve (the "**DHHL License**"). Aruda understands and acknowledges that the review and approval of the proposed DHHL License is subject to the process and procedures of dispositions of interests in lands managed by DHHL under the Hawaiian Homes Commission Act of 1920, as amended, and the use of "state lands", in general, which may include an appraisal, beneficiary consultation, review by DHHL's Office of Planning, and review and concurrence of SHPD. Aruda further understands and acknowledges that the State has no control over the decision of the HHC, including whether any amendments or new conditions or terms will be imposed, or whether a determination is made that an environmental assessment shall be required prior to a decision on whether to grant the DHHL License, among other possible eventualities.

2.2.2. Attendance of Attorney. Aruda's attorney shall be present at the Sunshine meeting of the HHC and any beneficiary consultation and shall have full settlement authority for Aruda to accept or reject any proposed amendment to the DHHL License.

2.3. Condition Precedent. Aruda understands and acknowledges that the BLNR's and HHC's approval of the respective agreements, and Aruda's acceptance of the final terms and conditions that may be offered or approved, shall be a condition precedent to the receipt of any easement concerning Lots 1 and 3. If (1) BLNR or the HHC do not approve the issuance of easements contemplated by this Settlement Agreement (or if the Chairperson of the BLNR, in her discretion, decides that she will not be placing the easements contemplated by this Settlement Agreement on the agenda for any meeting of the BLNR); (2) Aruda does not accept such agreements; or (3) of the Department of the Attorney General does not approve the easement documents as to form, then this Agreement shall be null and void.

3. SETTLEMENT DATE. If all conditions precedent are fulfilled in Paragraph 2, Aruda and the State and Aruda and DHHL shall execute the respective easement documents. The date that all easement documents are fully executed shall be the "**Settlement Date**".

4. FURTHER STAY. Concurrently with the execution of this Agreement, the parties will stipulate to further stay the litigation of this matter until this Agreement is terminated. All dates and hearings will be removed from the Court's calendar, except for any status conferences or hearings that the Court may require or to which that the parties may agree. The stay will continue until the settlement contemplated under this Agreement fails to be consummated or fully executed.

5. DISMISSAL AND RELEASE

5.1. Dismissal With Prejudice. Within TWO (2) WEEKS of the Settlement Date, Aruda shall file a Stipulation for Dismissal With Prejudice in the Lawsuit with respect to all parties and all claims, with each party to bear their own attorneys' fees and costs.

5.2. Release. In exchange for the good and valuable consideration described herein, on the Settlement Date, Aruda does hereby fully and finally release, acquit, and forever discharge the State, DHHL, the County, and Jacintho from and against any and all claims related to or arising from those asserted in the TAC (the “*Released Claims*”).

5.3. Covenant Not to Sue. Aruda agrees that they will forever refrain and forbear from commencing or instituting any lawsuit or other proceeding or making any claim against the State, DHHL, Maui County, and/or Jacintho based upon the Released Claims. This covenant does not cover or affect claims as may arise from failure to perform the obligations contained in this Agreement.

6. OTHER

6.1. No Representations. Aruda admits that no statement of fact or opinion has been made by the State or by anyone acting on behalf of State to induce execution of this Agreement, other than as expressly set forth in this Agreement, and that this Agreement is executed freely by Aruda upon advice of counsel. This Agreement should be construed without regard to who was the drafter.

6.2. No Admission of Liability or Ownership/No Warranty Regarding State Easement/Indemnification. Aruda understands and acknowledges that sole reason that the grant is identified as a “quitclaim” grant of non-exclusive easement is because the State disputes the ownership of the easement area and states its position that the owner of the easement area is the County of Maui under existing law. The State does not warrant that it is actually granting Aruda any legal rights to the easement area. Aruda acknowledges that the State has made no representation to Aruda that the State owns the easement area or that the State is actually granting to Aruda any legal rights whatsoever in the easement area or otherwise. Aruda is aware of and fully understands that the easement area is unmaintained land, that the State has not inspected the premises prior to entering into this quitclaim grant of non-exclusive easement, and that Aruda is taking this quitclaim grant of non-exclusive easement “as is.” The State does not make any warranty about the easement area whatsoever – whether as to fitness for any purpose including for access purposes or any other type of warranty. The use of the easement area for any purpose may be dangerous or hazardous. Aruda expressly assumes each and every risk with respect to any use whatsoever of the easement area and shall be solely responsible for its own use, occupancy, maintenance, and enjoyment of the easement area, and also for Aruda’s guests, invitees, or person in any way associated with Aruda utilizing, occupying, maintaining, or enjoying the easement area. In case the State is ever made a party to any litigation relating to the quitclaim grant of non-exclusive easement in any manner, Aruda shall hold the State harmless and shall indemnify the State for all damages or costs, including reasonable attorneys’ fees, that the State may incur in a judgment or in defending the litigation. The State, by entering into this Agreement, is not acknowledging liability or responsibility with respect to any claim and expressly disclaims all liability.

6.3. Captions or Headings. The captions or headings of paragraphs are inserted for convenience, reference, and identification purposes only, and shall not control, define, limit, or affect any provisions of this Agreement.

6.4. Further Assurances. The Parties shall take such other or further actions, and execute such other or further instruments, as any of them shall reasonably request in order to effectuate the purposes of this Agreement.

6.5. Binding on Successors. This Agreement, including the obligations and releases herein contained, shall be binding upon and inure to the benefit of each of the Parties hereto and each of their respective successors-in-interest.

6.6. Authority to Execute and Warranties. By signing this Agreement, Aruda represents and warrants that it has the authority to execute and bind itself to the Agreement.

6.7. Hawai'i Law. This Agreement is entered into in the State of Hawai'i, and shall be construed and interpreted according to its laws.

6.8. Amendment. This Agreement shall not be amended except by a written instrument executed by the Parties.

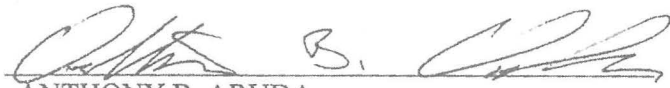
6.9. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be considered an original and all of which, when taken together, will constitute one and the same instrument. Duplicate, unexecuted pages may be discarded and the remaining pages assembled as one instrument. For the convenience of the Parties, any blanks in this Agreement may be completed after any party has signed or acknowledged this Agreement.

6.10. Extension of Time. Notwithstanding any provision contained in this Agreement, when applicable, the BLNR may for good cause shown, allow additional time beyond the time or times specified in this Agreement for Aruda to comply, observe, and perform any of the Agreement's terms, conditions, or covenants.

6.11. Entire Agreement. The Parties have not made any agreement or promise to do or omit to do any act or thing not mentioned in this Agreement. This Agreement contains the entire agreement between and among the Parties with regard to the matters set forth herein. There are no other understandings or agreements, verbal or otherwise, in relation hereto, between the Parties. It is mutually understood that each party fully participated in the drafting of this document and that in no case, including in the case of an ambiguity, should the terms of this Agreement be construed against the drafter because of its status as the drafter.

[Remainder of page left blank. Signature on following page(s).]

IN WITNESS WHEREOF, the Parties have signed this Settlement Agreement as of the date above.


ANTHONY B. ARUDA

Successor co-trustee under that certain Alfred Aruda Revocable Living Trust Agreement, dated July 19, 1976, and that certain Mary T. Aruda Revocable Living Trust Agreement dated July 19, 1976;



CORINNE S. ARUDA

Successor co-trustee under that certain Alfred Aruda Revocable Living Trust Agreement, dated July 19, 1976, and that certain Mary T. Aruda Revocable Living Trust Agreement dated July 19, 1976;

LISA R. ARUDA BROWN

Trustee under that certain unrecorded Lisa R. Aruda Brown Revocable Living Trust dated December 3, 1991

Aruda

STATE OF HAWAII

Approved as to Form:

Deputy Attorney General
State of Hawai'i

By: _____

Its: (First) (Deputy) Attorney General

State

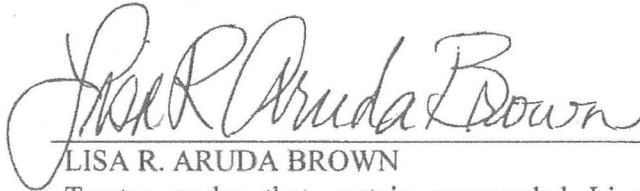
IN WITNESS WHEREOF, the Parties have signed this Settlement Agreement as of the date above.

ANTHONY B. ARUDA

Successor co-trustee under that certain Alfred Aruda Revocable Living Trust Agreement, dated July 19, 1976, and that certain Mary T. Aruda Revocable Living Trust Agreement dated July 19, 1976;

CORINNE S. ARUDA

Successor co-trustee under that certain Alfred Aruda Revocable Living Trust Agreement, dated July 19, 1976, and that certain Mary T. Aruda Revocable Living Trust Agreement dated July 19, 1976;



LISA R. ARUDA BROWN

Trustee under that certain unrecorded Lisa R. Aruda Brown Revocable Living Trust dated December 3, 1991

Aruda

STATE OF HAWAI'I

Approved as to Form:

Deputy Attorney General
State of Hawai'i

By: _____

Its: (First) (Deputy) Attorney General

State

IN WITNESS WHEREOF, the Parties have signed this Settlement Agreement as of the date above.

ANTHONY B. ARUDA

Successor co-trustee under that certain Alfred Aruda Revocable Living Trust Agreement, dated July 19, 1976, and that certain Mary T. Aruda Revocable Living Trust Agreement dated July 19, 1976;

CORINNE S. ARUDA

Successor co-trustee under that certain Alfred Aruda Revocable Living Trust Agreement, dated July 19, 1976, and that certain Mary T. Aruda Revocable Living Trust Agreement dated July 19, 1976;

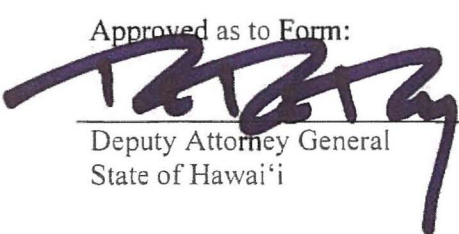
LISA R. ARUDA BROWN

Trustee under that certain unrecorded Lisa R. Aruda Brown Revocable Living Trust dated December 3, 1991

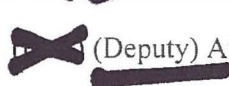
Aruda

STATE OF HAWAII

Approved as to Form:


Deputy Attorney General
State of Hawai'i

By: 

Its:  (Deputy) Attorney General

State

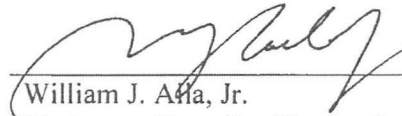
Approved as to Form:

**DEPARTMENT OF HAWAIIAN HOME
LANDS**
State of Hawai'i



Deputy Attorney General
State of Hawai'i

By:



Its: Chairman, Hawaiian Homes Commission

DHHL

COUNTY OF MAUI

Approved as to Form and
Legality:

By:

Deputy Corporation Counsel
County of Maui

Michael P. Victorino

Its: Mayor

Maui County

RONALD R. JACINTHO, SR.
Individually and as Trustee for the Ronald R. Jacintho
Trust

Jacintho

Approved as to Form:

**DEPARTMENT OF HAWAIIAN HOME
LANDS**
State of Hawai'i

Deputy Attorney General
State of Hawai'i

By: _____
William J. Aila, Jr.
Its: Chairman, Hawaiian Homes Commission

DHHL

COUNTY OF MAUI

Approved as to Form and
Legality:

Deputy Corporation Counsel
County of Maui
Kristin K. Tarnstrom

By: *Michael P Victorino*

Michael P. Victorino
Its: Mayor

Maui County

RONALD R. JACINTHO, SR.
Individually and as Trustee for the Ronald R. Jacintho
Trust

Jacintho

Approved as to Form:

**DEPARTMENT OF HAWAIIAN HOME
LANDS**
State of Hawai'i

Deputy Attorney General
State of Hawai'i

By: _____
William J. Aila, Jr.
Its: Chairman, Hawaiian Homes Commission

DHHL

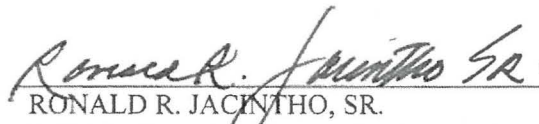
COUNTY OF MAUI

Approved as to Form and
Legality:

Deputy Corporation Counsel
County of Maui

By: _____
Michael P. Victorino
Its: Mayor

Maui County



RONALD R. JACINTHO, SR.
Individually and as Trustee for the Ronald R. Jacintho
Trust

Jacintho

EXHIBIT 1

Draft

LAND COURT SYSTEM)	REGULAR SYSTEM
Return by Mail () Pickup ())	To:

Total Number of Pages:
Tax Map Key No. (2) 2-1-004:Portion of 123

QUITCLAIM GRANT OF NON-EXCLUSIVE EASEMENT S-

THIS INDENTURE, made and entered into this _____ day of _____, 20____, by and between the STATE OF HAWAII, by its Board of Land and Natural Resources, hereinafter referred to as the "Grantor," and ANTHONY B. ARUDA and CORINNE S. ARUDA in their capacities as the successor co-trustees in and under that certain unrecorded Alfred Aruda Revocable Living Trust Agreement dated July 19, 1976; ANTHONY B. ARUDA and CORINNE S. ARUDA in their capacities as the successor co-trustees in and under that certain unrecorded Mary T. Aruda Revocable Living Trust Agreement dated July 19, 1976; and LISA R. ARUDA BROWN, Trustee under that certain unrecorded Lisa R. Aruda Brown Revocable Living Trust dated December 3, 1991, whose address is [REDACTED] Kula, Hawaii, 96790, hereinafter collectively referred to as the "Grantee."

WITNESSETH THAT:

The Grantor, for good and valuable consideration, the receipt of which is hereby acknowledged, pursuant to Section 171-13, Hawaii Revised Statutes and Section 183C-5, Hawaii Revised Statutes, to the extent applicable, for and in consideration of

the terms, conditions, and covenants herein contained, all on the part of the Grantee to be kept, observed, and performed, does hereby grant unto the Grantee, the following quitclaim non-exclusive and term easement rights:

Pedestrian and equestrian access, subject to the terms and conditions herein,

in, over, under and across that certain portion of land ("area"), also referred to as "premises," situate at Kanahena, Makawao, Maui, Hawaii, being identified as "Easement 1," containing an area of 8,333 square feet, more particularly described in Exhibit "A" and delineated on Exhibit "B," said exhibits being respectively, a survey description and survey map prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, designated C.S.F. No. 25,789 and dated March 31, 2020, and "Easement 2," situate at Kanahena, Makawao, Maui, Hawaii, containing an area of 28,554 square feet, more particularly described in Exhibit "C" and delineated on Exhibit "D," all of which are attached hereto and made parts hereof, said exhibits being respectively, a survey description and survey map prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, designated C.S.F. No. 25,790 and dated March 31, 2020.

TO HAVE AND TO HOLD the easement rights unto the Grantee, its successors and assigns, SUBJECT, HOWEVER, to the following terms, conditions and covenants:

1. The term of this easement shall be fifty-five (55) years, commencing on the ____th day of _____, _____, up to and including the ____th day of _____, _____, unless sooner terminated as hereinafter provided.

THE GRANTOR AND THE GRANTEE COVENANT AND AGREE AS FOLLOWS:

1. The Grantee shall at all times with respect to the easement area use due care for public safety and agrees to release, indemnify, defend, and hold the Grantor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of the Grantee relating to the Grantee's use, occupancy, maintenance, or enjoyment of the easement area, including with respect to guests, invitees, or person in any way associated with the Grantee utilizing, occupying, maintaining, or

enjoying the easement area; 2) any failure on the part of the Grantee to maintain the easement area and sidewalks, roadways, and parking areas adjacent thereto in the Grantee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Grantee to maintain the easement area in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Grantee's non-observance or non-performance of any of the terms, covenants, and conditions of this quitclaim grant of non-exclusive easement or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

2. The Grantor disputes any claim that it owns the easement area. Nevertheless, the Grantor reserves unto itself, its successors and assigns, the full use and enjoyment of the easement area and the right to grant to others rights and privileges for any and all purposes affecting the easement area, provided, however, that the rights herein reserved shall not be exercised by the Grantor and similar grantee(s) in any manner which interferes unreasonably with the Grantee in the use of the easement area for the purposes for which this easement is granted.

3. No improvements shall be placed in or upon the easement area by the Grantee, and no permanent modifications to the land shall be made, without the prior written consent of the Chairperson of the Board of Land and Natural Resources and/or without all proper permits, including a conservation district use permit.

4. Upon completion of any authorized work performed in or upon the easement area, the Grantee shall remove therefrom all equipment and unused or surplus materials, if any, and shall leave the easement area in a clean and sanitary condition satisfactory to the Grantor.

5. This easement or any rights granted herein shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of, directly or by operation of law, except with the prior written consent of the Grantor, except as follows:

Throughout the term of this easement (unless sooner abandoned or otherwise terminated herein) shall run with the land and shall inure to the benefit of the real property granted as (1) apana 1 of Royal Patent Grant 2883 to Kahanapule in Onau,

Honuaula; (2) apana 2 of Royal Patent Grant 2883 to Kahanapule in Onau, Honuaula; (3) Royal Patent Grant 1509 to Keanini in Onau, Honuaula; (4) apana 1 of Royal Patent Grant 1424 to Kapoi in Onau, Honuaula; (5) apana 2 of Royal Patent Grant 2199 to Kapoi in Kanahena, Honuaula; and (6) Land Commission Award 5273 to Kapoi in Kanahena, Honuaula; provided however, that the Grantee shall carry the required liability insurance covering the easement area and comply with all other terms and conditions as provided herein, and that the Grantee, or authorized representative of the Grantee's estate, shall notify the Grantor in writing when this easement is sold, assigned, conveyed, or otherwise transferred, and Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document.

6. The Grantee shall keep the easement area and the improvements thereon in a safe, clean, sanitary, and orderly condition, and shall not make, permit or suffer, any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the easement area.

7. The Grantee covenants, for itself, its successors and assigns, that the use and enjoyment of the land herein granted shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

8. The Grantee, in the exercise of the rights granted herein, shall comply with all of the requirements of the federal, state, and county authorities and shall observe all county ordinances and state and federal laws, rules and regulations, now in force or which may hereinafter be in force.

9. These easement rights shall cease and terminate, and the easement area shall automatically be forfeited to the Grantor, without any action on the part of the Grantor, in the event of non-use or abandonment by the Grantee of the easement area, or any portion thereof, for a consecutive period of one (1) year.

10. The Grantee shall, at the end of the term or other sooner termination of this easement, peaceably vacate the premises; the Grantee shall remove such improvements and shall restore the premises to their original state, or as close thereto as possible, within a reasonable time and at the expense of the

Grantee. If the Grantee does not remove the improvements or restore the premises to the satisfaction of the Grantor, the Grantor may effect such action and the Grantee agrees to pay all costs and expenses for such action. Furthermore, upon the expiration, termination, or revocation of this easement, should the Grantee fail to remove any and all of Grantee's personal property from the premises, after notice thereof, the Grantor may remove any and all of Grantee's personal property from the premises, and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Grantee and the Grantee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the quitclaim grant of non-exclusive easement.

11. The Grantee shall procure and maintain, at its own cost and expense, in full force and effect throughout the term of this easement, general liability insurance, or its equivalent, with an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A-VIII" or other comparable and equivalent industry rating, in an amount of at least \$1,000,000.00 for each occurrence and \$2,000,000.00 aggregate, and with coverage terms acceptable to the Chairperson of the Board of Land and Natural Resources. The policy or policies of insurance shall name the State of Hawaii as an additional insured. A copy of the policy or other documentation required by the Grantor shall be filed with the State of Hawaii, Department of Land and Natural Resources. The insurance shall cover the entire easement area, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the easement in the use or control of the Grantee.

The Grantee, prior to entry and use of the easement area or within fifteen (15) days after the effective date of this easement, whichever is sooner, shall furnish the Grantor with a policy(s) or other documentation required by the Grantor showing the policy(s) to be initially in force, keep the policy(s) or other documentation required by the Grantor on deposit during the entire easement term, and furnish a like policy(s) or other documentation required by the Grantor upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the Grantor. The Grantor may at any time require the Grantee to provide Grantor with copies of the insurance policy(s) that are or were in effect during the easement period or other documentation required by the Grantor.

The Grantor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this easement. If, in the opinion of the Grantor, the insurance provisions in this easement do not provide adequate protection for the Grantor, the Grantor may require Grantee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Grantor's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Grantor shall notify Grantee in writing of changes in the insurance requirements and Grantee shall deposit copies of acceptable insurance policy(s) or other documentation required by the Grantor thereof, with the Grantor incorporating the changes within thirty (30) days after receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Grantee's liability under this easement nor to release or relieve the Grantee of the indemnification provisions and requirements of this easement. Notwithstanding the policy(s) of insurance, Grantee shall be obligated for the full and total amount of any damage, injury, or loss caused by Grantee's negligence or neglect connected with this easement.

It is agreed that any insurance maintained by the Grantor will apply in excess of, and not contribute with, insurance provided by Grantee's policy.

12. Grantor reserves the right to withdraw the easement for public use or purposes, at any time during the term of this easement upon the giving of reasonable notice to Grantee.

13. The Grantee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this easement without the prior written approval of the Chairperson of the Board of Land and Natural Resources and any mortgage, hypothecation, or pledge without the approval shall be null and void.

14. Time is of the essence in this agreement and if the Grantee shall abandon the premises, or if this easement and premises shall be attached or taken by operation of law, or if any assignment is made of the Grantee's property for the benefit of creditors, or if Grantee shall fail to observe and perform any of the covenants, terms, and conditions contained in this

easement and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) calendar days after delivery by the Grantor of a written notice of breach or default, by personal service, registered mail or certified mail to the Grantee at its last known address and to each mortgagee or holder of record having a security interest in the premises, the Grantor may, subject to the provisions of section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this easement without prejudice to any other remedy or right of action for any preceding or other breach of contract; and in the event of termination, at the option of Grantor, all improvements shall remain and become the property of the Grantor or shall be removed by Grantee.

15. In the event the Grantor seeks to forfeit the privilege, interest, or estate created by this easement, each recorded holder of a security interest may, at its option, cure or remedy the default or breach within sixty (60) calendar days, from the date of receipt of the Grantor's notice, or within an additional period allowed by Grantor for good cause, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Grantor may: (a) pay to the holder from any moneys at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest, or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, the Grantor shall be entitled to the conveyance of the privilege, interest, or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to the State, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for any preceding or other breach or default and use its best efforts to redispense of the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by the Grantor in instituting or prosecuting its rights or remedies shall not operate as a waiver of these rights or to deprive it of a remedy when it may still otherwise hope to resolve the problems created by the breach or default. The proceeds of any disposition shall be applied,

first, to reimburse the Grantor for costs and expenses in connection with the redispotion; second, to discharge in full any unpaid purchase price or other indebtedness owing the Grantor in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the State upon redispotion which exceeds the fair market value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate.

16. In case the Grantor shall, without any fault on its part, be made a party to any litigation commenced by or against the Grantee as a result of this quitclaim grant of non-exclusive easement (other than condemnation proceedings), the Grantee shall pay all costs, including reasonable attorney's fees and expenses incurred by or imposed on the Grantor; furthermore, the Grantee shall pay all costs, including reasonable attorney's fees and expenses, which may be incurred by or paid by the Grantor in enforcing the covenants and conditions of this quitclaim grant of non-exclusive easement, or in the collection of delinquent rental, fees, taxes, and any and all other applicable charges attributed to said easement area.

17. The Grantee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Grantee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the easement area any such materials except to use in the ordinary course of Grantee's business, and then only after written notice is given to Grantor of the identity of such materials and upon Grantor's consent which consent may be withheld at Grantor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Grantee, then the Grantee shall be responsible for the reasonable costs thereof. In addition, Grantee shall execute affidavits, representations and the like from time to time at Grantor's request concerning Grantee's best knowledge and belief regarding the presence of hazardous materials on the easement area placed or released by Grantee.

The Grantee agrees to release, indemnify, defend, and hold Grantor harmless, from any damages and claims resulting from the release of hazardous materials on the easement area occurring while Grantee is in possession, or elsewhere if caused by Grantee or persons acting under Grantee. These covenants shall survive

the expiration or earlier termination of this easement.

For the purpose of this easement "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

18. The use of motorized vehicles of any kind upon the easement area by the Grantee, its guests, or invitees, including the parking of motorized vehicles, is strictly prohibited.

19. The Grantee shall at all times during the term of this easement keep trim all vegetation growing within, over, or onto the easement area so that it does not present a threat to public safety by creating or contributing to roadway, waterway, or pedestrian obstruction, visual obstruction to operators of vehicles, fire hazards, or interference with or downing of power lines.

20. The Grantee shall comply with all applicable federal and state environmental impact regulations.

21. The Grantee understands and acknowledges that sole reason that the grant is identified as a "quitclaim" grant of non-exclusive easement is because the Grantor disputes the ownership of the easement area and states its position that the owner of the easement area is the County of Maui under existing law. The Grantor does not warrant that it is actually granting the Grantee any legal rights to the easement area. The Grantee acknowledges that the Grantor has made no representation to the Grantee that the Grantor owns the easement area or that the Grantor is actually granting to the Grantee any legal rights whatsoever in the easement area.

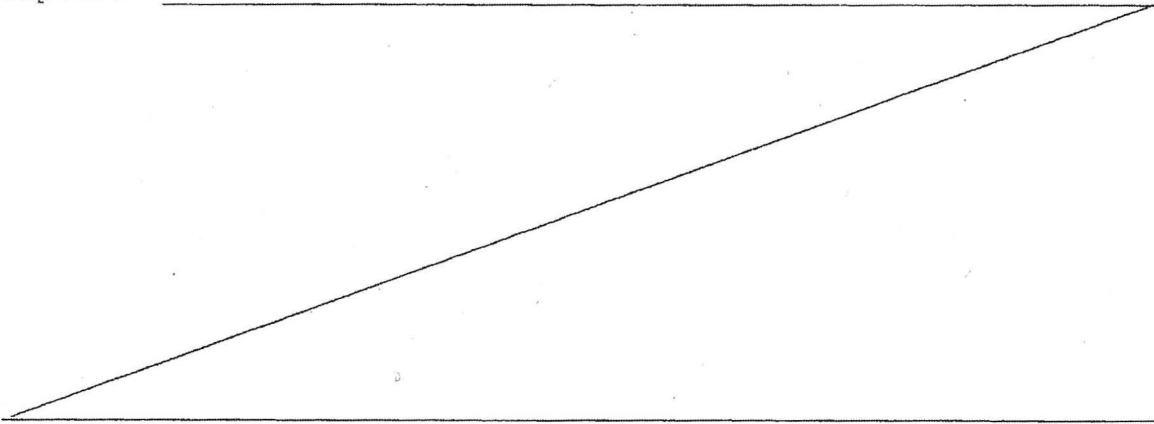
22. The Grantee is aware of and fully understands that the easement area is unmaintained land, that the Grantor has not inspected the premises prior to entering into this quitclaim grant of non-exclusive easement, and that the Grantee is taking this quitclaim grant of non-exclusive easement "as is."

23. The Grantor does not make any warranty about the easement area whatsoever - whether as to fitness for any purpose

including for access purposes or any other type of warranty. The use of the easement area for any purpose may be dangerous or hazardous. The Grantee expressly assumes each and every risk with respect to any use whatsoever of the easement area and shall be solely responsible for its own use, occupancy, maintenance, and enjoyment of the easement area, and also for the Grantee's guests, invitees, or person in any way associated with the Grantee utilizing, occupying, maintaining, or enjoying the easement area.

24. Many of the paragraphs in this lease are standard terms included in the Grantor's model generic grant of non-exclusive easement template where there is no dispute that the Grantor owns the servient lot over which the easement is granted. These paragraphs are included in this quitclaim grant of non-exclusive easement solely for the legal protection of the Grantor in the event that it is ever subsequently determined that the Grantor owns the easement area. Nothing in this quitclaim grant of non-exclusive easement shall be construed as a tacit admission of ownership by the Grantor.

25. The Grantee shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from the Grantee's, its invitee's and its agent's use, maintenance, repair and operation of the easement area, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the easement area and its surrounding waters of such pollutant or contaminant and restore to the Grantor's satisfaction the area affected by such pollution or contamination, all at the Grantee's own cost and expense.



Draft

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused this Indenture to be executed as of the day, month, and year first above written.

STATE OF HAWAII

Approved by the Board of
Land and Natural Resources
at its meeting held on

APPROVED AS TO FORM:

DAVID D. DAY
Deputy Attorney General

Dated: _____

By _____
SUZANNE D. CASE
Chairperson
Board of Land and
Natural Resources

GRANTOR

ANTHONY B. ARUDA, Trustee(s)
aforesaid

CORINNE S. ARUDA, Trustee(s)
aforesaid

LISA R. ARUDA BROWN, Trustee
aforesaid

GRANTEE

Draft

STATE OF HAWAII

)

) SS.

COUNTY OF

)

On this _____ day of _____, 20_____,
before me personally appeared ANTHONY B. ARUDA, to me personally
known, who, being by me duly sworn or affirmed, did say that such
person executed the foregoing instrument as the free act and deed
of such person, and if applicable in the capacities shown, having
been duly authorized to execute such instrument in such
capacities.

Notary Public, State of Hawaii

My commission expires: _____

Draft

STATE OF HAWAII

)

) SS.

COUNTY OF

)

On this _____ day of _____, 20_____,
before me personally appeared CORINNE S. ARUDA, to me personally
known, who, being by me duly sworn or affirmed, did say that such
person executed the foregoing instrument as the free act and deed
of such person, and if applicable in the capacities shown, having
been duly authorized to execute such instrument in such
capacities.

Notary Public, State of Hawaii

My commission expires: _____

Draft

STATE OF HAWAII

)

) SS.

COUNTY OF

)

On this _____ day of _____, 20_____,
before me personally appeared LISA R. ARUDA BROWN, to me
personally known, who, being by me duly sworn or affirmed, did
say that such person executed the foregoing instrument as the
free act and deed of such person, and if applicable in the
capacities shown, having been duly authorized to execute such
instrument in such capacities.

Notary Public, State of Hawaii

My commission expires: _____



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

C.S.F. No. 25,789

March 31, 2020

NON-EXCLUSIVE ACCESS EASEMENT

EASEMENT 1

Kanahena, Makawao, Maui, Hawaii

Being a portion of the Government Land of Kanahena.

Being also a portion of Lot 3 (50-Ft. Road) of Kanahena
Subdivision.

Beginning at the south corner of this easement, at the west corner
of Grant S-15,928 to Department of Hawaiian Home Lands and on the northeast side of
Makena – Keoneoio Road, the coordinates of said point of beginning referred to
Government Survey Triangulation Station "PUU OLAI" being 6772.28 feet South and
4031.75 feet East, thence running by azimuths measured clockwise from True South:-

1. 145° 44' 80.82 feet along the northeast side of Makena-
Keoneoio Road;
2. 183° 57' 45.63 feet along the northeast side of Makena-
Keoneoio Road;
3. 242° 42' 47" 118.78 feet along R.P. 5469, L.C. Aw. 5472, Ap. 3 to
Luaha and the remainder of Lot 3 (50-Ft.
Road) of Kanahena Subdivision;
4. 335° 47' 24" 50.07 feet along Grant S-15,928 to Department of
Hawaiian Home Lands;

C.S.F. No. 25,789

March 31, 2020

5. 62° 42' 47"

87.94 feet along Grant S-15,928 to Department of
Hawaiian Home Lands;

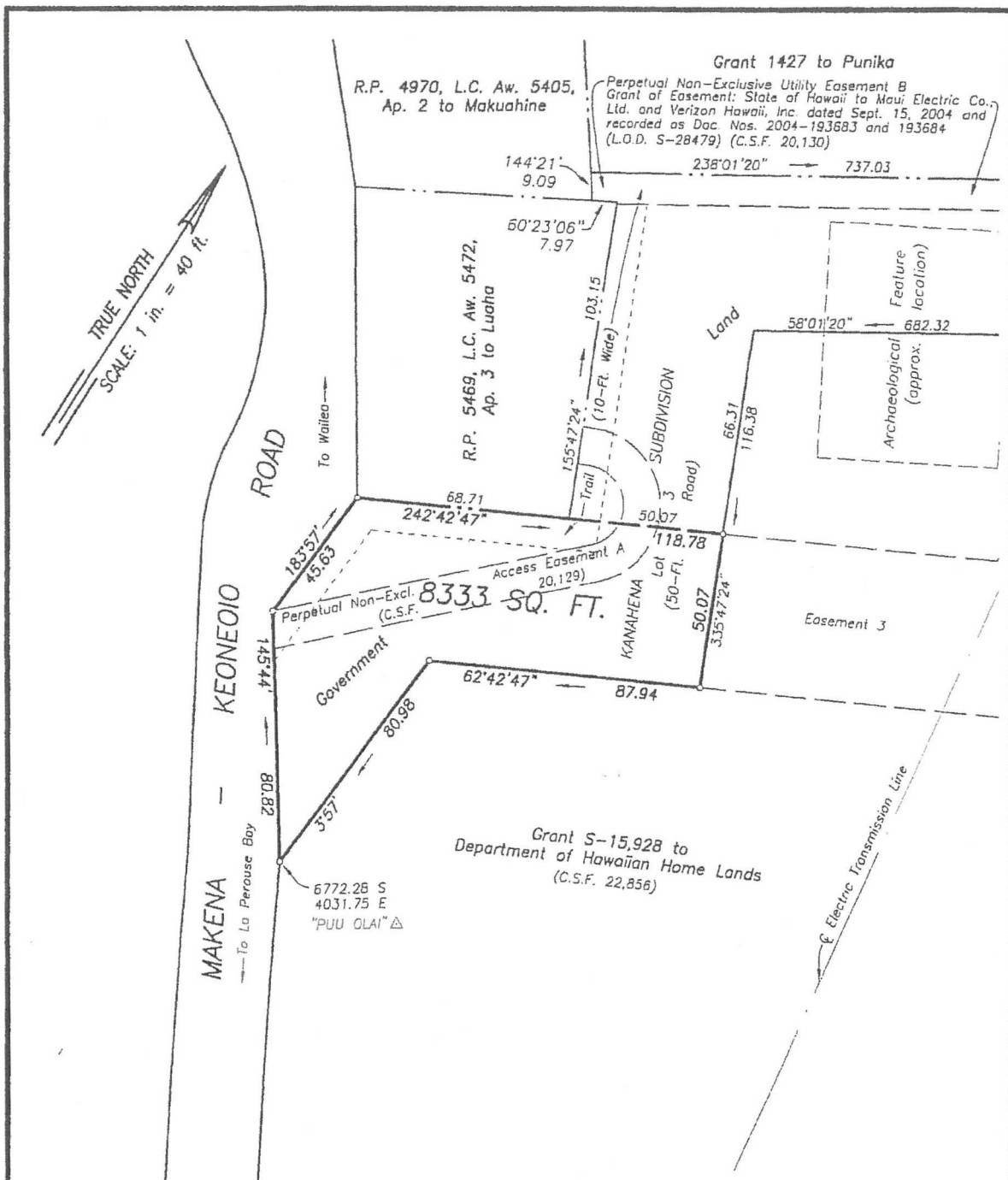
6. 3° 57'

80.98 feet along Grant S-15,928 to Department of
Hawaiian Home Lands to the point of
beginning and containing an AREA OF
8333 SQUARE FEET.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: *Gerald Z. Yonashiro*
Gerald Z. Yonashiro
Land Surveyor rk

Compiled from map and desc. furn.
by Akamai Land Surveying, Inc. Said
map and desc. have been examined and
checked as to form and mathematical
correctness but not on the ground by the
Survey Division.



REDUCED NOT TO SCALE

NON-EXCLUSIVE ACCESS EASEMENT EASEMENT 1

Kanahena, Makawao, Maui, Hawaii

Scale: 1 inch = 40 feet

Job Ma-008(17)

C. BK.

EXHIBIT "B"

TMK: 2-1-04: Por. 123

C.S.F. NO. 25,789

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

GZY March 31, 2020



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

C.S.F. No. 25,790

March 31, 2020

NON-EXCLUSIVE ACCESS EASEMENT

EASEMENT 2

Kanahena, Makawao, Maui, Hawaii

Being a portion of the Government Land of Kanahena.

Being also a portion of Lot 3 (50-Ft. Road) of Kanahena
Subdivision.

Beginning at the southeast corner of this easement and on the
northwest boundary of Grant S-15,928 to Department of Hawaiian Home Lands, the
coordinates of said point of beginning referred to Government Survey Triangulation
Station "PUU OLAI" being 6159.94 feet South and 4689.13 feet East, thence running by
azimuths measured clockwise from True South:-

1. 60° 52' 48.76 feet along Grant S-15,928 to Department of
Hawaiian Home Lands;
2. 58° 01' 20" 542.02 feet along Grant S-15,928 to Department of
Hawaiian Home Lands;
3. 187° 57' 65.20 feet along the remainder of Lot 3 (50-Ft. Road)
of Kanahena Subdivision;
4. 238° 01' 20" 501.41 feet along Grant 1427 to Punika;
5. 240° 52' 50.00 feet along Grant 1424, Ap. 1 to Kapoi;

C.S.F. No. 25,790

March 31, 2020

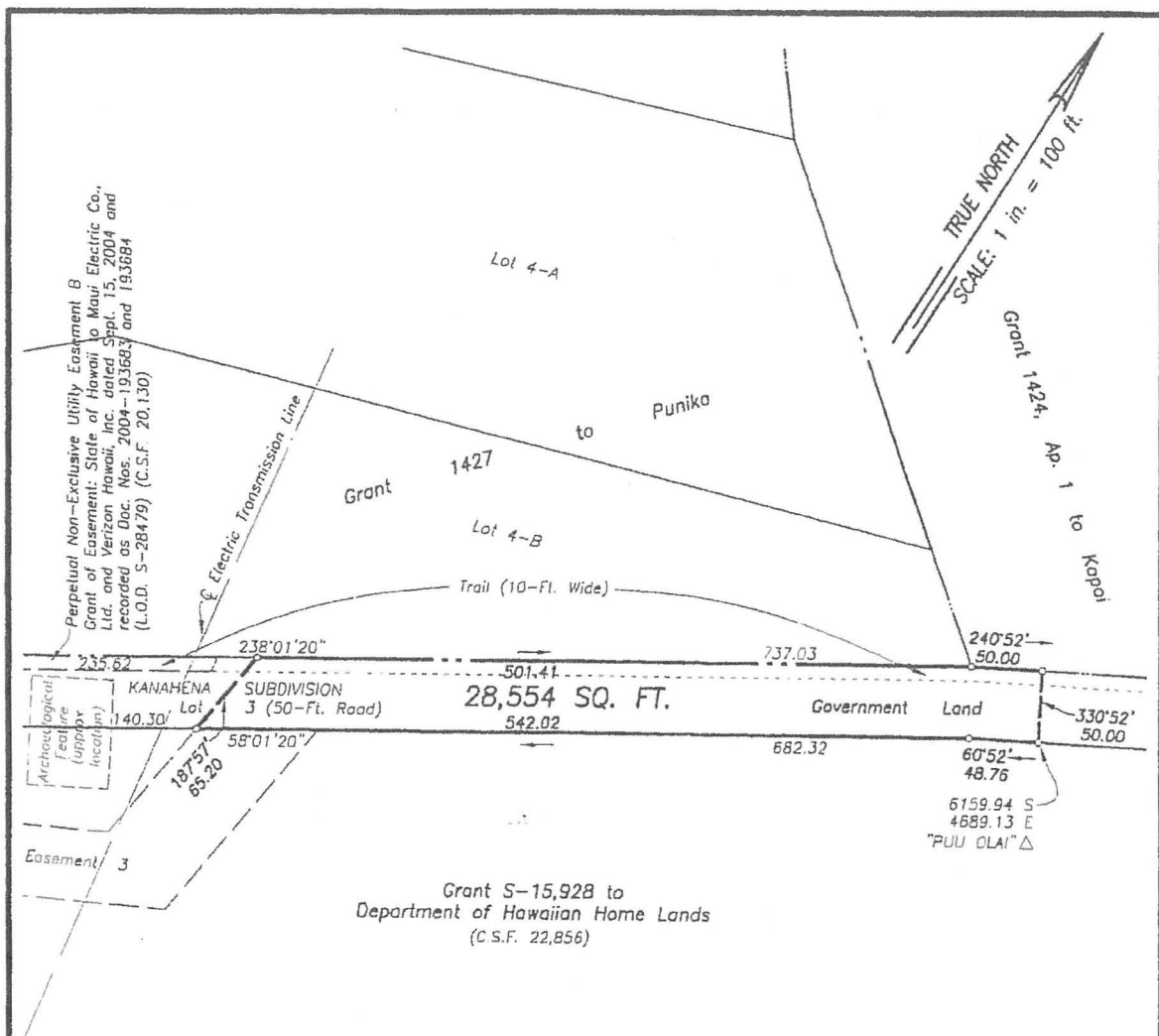
6. 330° 52'

50.00 feet along the remainder of Lot 3 (50-Ft. Road)
of Kanahena Subdivision to the point of
beginning and containing an AREA OF
28,554 SQUARE FEET.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: *Gerald Z. Yonashiro*
Gerald Z. Yonashiro
Land Surveyor rk

Compiled from map and desc. furn.
by Akamai Land Surveying, Inc. Said
map and desc. have been examined and
checked as to form and mathematical
correctness but not on the ground by the
Survey Division.



REDUCED NOT TO SCALE

NON-EXCLUSIVE ACCESS EASEMENT EASEMENT 2

Kanaheha, Makawao, Maui, Hawaii

Scale: 1 inch = 100 feet

EXHIBIT "D"

Job Ma-006(17)

C. BK.

TMK: 2-1-04: Por. 123

C.S.F. NO. 25,790

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

GZY March 31, 2020

EXHIBIT 2

Land Court

Regular System

Return by Mail (X) Pickup () To:

Department of the Attorney General
Public Safety, Housing, Hawaiian Homes Division
Hale Auhau
425 Queen Street
Honolulu, Hawai'i 96813
(808) 586-1180

Total Pages: []

**GRANT OF EASEMENT
(NON-EXCLUSIVE)**

GRANTOR **STATE OF HAWAI'I , DEPARTMENT OF HAWAIIAN HOME LANDS**,
an executive agency of the STATE OF HAWAI'I, whose address is 91-
5420 Kapolei Parkway, Kapolei, Hawaii 96707

GRANTEE **ANTHONY B. ARUDA** and **CORINNE S. ARUDA**, as SUCCESSOR
TRUSTEES under that ALFRED ARUDA REVOCABLE LIVING TRUST
AGREEMENT DATED JULY 19, 1976; **ANTHONY B. ARUDA** and
CORINNE S. ARUDA, as SUCCESSOR TRUSTEES under that MARY
T. ARUDA REVOCABLE LIVING TRUST AGREEMENT DATED JULY
19, 1976; and **LISA R. ARUDA BROWN**, TRUSTEE under that
UNRECORDED LISA R. ARUDA BROWN REVOCABLE LIVING
TRUST DATED DECEMBER 3, 1991

Burdened
Parcel TMK: (2) 2-1-004-121 (por.)

Benefited
Parcel TMKs: (2) 2-1-004-083 (por.)

TMK (2) 2-1-004-138

TMK (2) 2-1-004-137

TMK (2) 2-1-004-136

TMK (2) 2-1-004-135

TMK (2) 2-1-004-134

**GRANT OF EASEMENT
(NON-EXCLUSIVE)**

This GRANT OF EASEMENT is made this _____, by the **STATE OF HAWAII, DEPARTMENT OF HAWAIIAN HOME LANDS**, by and through its HAWAIIAN HOMES COMMISSION, an executive agency of the State of Hawaii whose address is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707 ("**Grantor**") and ANTHONY B. ARUDA and CORINNE S. ARUDA IN THEIR CAPACITIES AS THE SUCCESSOR TRUSTEES IN AND UNDER THAT CERTAIN ALFRED ARUDA REVOCABLE LIVING TRUST AGREEMENT DATED JULY 19, 1976; ANTHONY B. ARUDA and CORINNE S. ARUDA IN THEIR CAPACITIES AS THE SUCCESSOR TRUSTEES IN AND UNDER THAT CERTAIN MARY T. ARUDA REVOCABLE LIVING TRUST AGREEMENT DATED JULY 19, 1976; and LISA R. ARUDA BROWN, TRUSTEE UNDER THAT CERTAIN UNRECORDED LISA R. ARUDA BROWN REVOCABLE LIVING TRUST DATED DECEMBER 3, 1991 whose address is c/o Anthony B. Aruda, [REDACTED], Kula, Hawaii 96790 ("**Grantee**").

W I T N E S S E T H :

Grantor, in consideration of the covenants herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants and conveys unto Grantee, its successors and assigns, a perpetual, non-exclusive right over, across, and through the Easement Area, described in Exhibit "A" and depicted in the map attached as Exhibit "B", for the Permitted Uses, as an appurtenance to the Benefited Parcels described therein and being:

- (1) that land situate in Onau, Honuaula, Island of Maui, State of Hawaii as: 1) Royal Patent Grant 1424, Apana 1 to Kapoi, being approximately 13.481 acres, and currently identified by TMK Nos.: (2) 2-1-004-083;
- (2) that land in Kanahena, Honuaula, Maui, Hawaii described in and covered by Land Commission Award 5273 to Kapoi with an area of 9.494 acres more or less, dated May 8, 1854 being TMK (2) 2-1-004-138;
- (3) that land in Kanahena, Honuaula, Maui, Hawaii described in and covered by Royal Patent Grant 2199, apana 2 to Kapoi with an area of 16.496 acres, more or less, dated December 16, 185_(illegible last digit) being TMK (2) 2-1-004-137;
- (4) that land in Onau, Honuaula, Maui, Hawaii described in and covered by apana 1 of Royal Patent Grant 2883 to Kahanapule containing an area of 12.772 acres, more or less, dated September 19, 1862 being TMK (2) 2-1-004-136;

(5) that land in Onau, Honuaula, Maui, Hawai'i described in and covered by apana 2 of Royal Patent Grant 2883 to Kahanapule containing an area of 6.808 acres, more or less, dated September 19, 1862 being TMK (2) 2-1-004-135; and

(6) that land in Onau, Honuaula, Maui, Hawai'i described in and covered by Royal Patent Grant 1509 to Keanini containing an area of 22.443 acres, more or less, dated November 1, 1854 being TMK (2) 2-1-004-134;

subject to and in accordance with the following terms and conditions:

1. Permitted Uses. Grantee may use the Easement Area only for the following "**Permitted Uses**": (a) pedestrian and equestrian access, ingress, and egress to the Benefited Parcel (i.e., access). Grantee shall not cause, suffer, or permit the use of the Easement Area for any uses or purposes other than the Permitted Uses, except with Grantor's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed.

2. Care and Maintenance. Grantee shall keep, maintain, and repair the Easement Area, including any permitted improvements, in good, substantial, and safe condition, at Grantee's sole cost and expense.

3. Insurance. Grantee shall, at its own expense, effect, maintain and keep in force throughout the term, the following minimum insurance coverages: a general liability insurance policy, or its equivalent, with limits of not less than \$1,000,000.00 for each occurrence, including property damage and personal injury, and an aggregate limit of \$2,000,000.00 per policy year. Such insurance policy shall (a) be issued by an insurance company or surety company authorized to do business in the State of Hawai'i or approved in writing by the Chairman, Hawaiian Homes Commission; (b) name the State of Hawaii, DEPARTMENT OF HAWAIIAN HOME LANDS, as an additional insured; (c) provide that the DEPARTMENT OF HAWAIIAN HOME LANDS shall be notified at least thirty (30) days prior to any termination, cancellation or material change in the insurance coverage; and (d) cover all injuries, losses or damages arising from, growing out of or caused by any acts or omissions of Grantee. Within fifteen (15) days of the execution of this instrument, Grantee will furnish to Grantor certificates evidencing such insurance policy or policies and Grantee shall furnish like certificates upon each renewal thereof. Failure of Grantee to provide and keep in force such insurance shall be regarded as material default. These requirements shall not be construed to limit Grantee's obligation to indemnify Grantor, nor limit, restrict, release, or relieve Grantee of any liability arising under this instrument.

4. Indemnification. Grantee shall indemnify, defend, and hold harmless Grantor from and against all liabilities, damages, claims, costs, and expenses whatsoever (including reasonable attorney's fees and costs) arising out of or in connection with Grantee's use of the Easement Area.

5. Condemnation. If all or any part of the Easement Area is condemned or taken by any authority exercising the power of eminent domain, Grantee may claim and recover from the condemning authority such compensation as may be payable to Grantee but not from Grantor.

6. Reversion. If the Easement Area: (i) remains unused for a period of one (1) year (i.e., abandonment); (ii) ceases to be used for the Permitted Uses; or (iii) if the Benefited Parcel(s) shall have reasonable alternative access to a public road or way; then all rights granted hereunder shall immediately terminate and revert to Grantor without the need for any further action to effect such reversion; provided, however, that Grantee shall reasonable cooperate with Grantor and execute and record all necessary instruments to release, relinquish, terminate, convey, or re-convey any right or interest under this Grant of Easement to Grantor.

7. Relocation. If Grantor determines that the Easement Area or any part thereof unduly interferes with Grantor's use of the Burdened Parcel, Grantor may withdraw, reduce, or relocate the Easement Area to the extent reasonably necessary to address such interference and Grantor shall grant to Grantee a reasonable substitute for the Easement Area or part so withdrawn, reduced, or relocated. Grantor shall bear the cost of any such withdrawal, reduction, or relocation.

8. Inspection. Grantee shall not interfere with, obstruct, or otherwise prevent the State, the county, or their respective agents or representatives from accessing, entering, crossing, or using any part of the Easement Area to carry out any public or official duties.

9. Compliance with Laws. Grantee will at all times observe and perform all laws, ordinances, rules and regulations now or hereafter imposed by any authority which are applicable to the Permitted Uses. Grantee shall not cause, suffer, or permit the Easement Area or any improvement permitted therein to cause any dangerous condition, encroachment, trespass, public or private nuisance, or damage, waste, or spoil.

10. Surrender and Restoration. Before Grantee returns or surrenders any portion of the Easement Area to Grantor, Grantee shall remove any improvements in the Easement Area and restore the land as nearly as is reasonably possible to the condition existing immediately prior to the time such improvement was installed. If Grantee fails to remove its improvements or to restore the land within 30 days after notification by Grantor, Grantor may remove any improvements or restore the land on Grantee's behalf, and Grantee shall reimburse Grantor for all costs and expenses Grantor may incur in connection with the removal or restoration of the land, including, but not limited to, all reasonable attorneys' fees and costs.

11. Binding Effect. All the terms and conditions of this instrument shall inure to the benefit of and be binding upon the parties hereto and their respective successors, trustees, beneficiaries, heirs, personal representatives, related companies, officers, directors, successors in interest, and assigns. The easement created under this Grant of Easement shall be appurtenant to and for the benefit of the Benefited Parcels and shall

run with Benefited Parcels, subject to the conditions of this instrument. All covenants, conditions, and restrictions to be observed by Grantee shall also be binding upon any person or entity that acquires any right, title, or interest in a Benefited Parcel.

12. Miscellaneous

12.1. No Warranties. Grantor makes no express or implied warranties of any kind concerning the condition of the Easement Area and Grantee accepts the Easement Area "as-is, where-is" and with all faults with no warranties whatsoever.

12.2. No Waiver. Grantor's neglect, delay, omission, failure, or refusal to exercise any right, power, or privilege under this Grant of Easement shall not constitute a waiver of or otherwise affect any such right, power, or privilege, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

12.3. Governing Law. Grantee irrevocably waives any objection now or hereafter respecting choice of law, jurisdiction, and venue. This instrument shall be construed, interpreted, and governed by the laws of the State of Hawai'i without regard to or application of the rules of conflicts of laws. Any dispute arising under or in connection with this instrument shall be filed and adjudicated in the Circuit Court of the Second Circuit of the State of Hawai'i.

12.4. Counterparts. This instrument may be executed in any number of counterparts, any of which shall be deemed an original, and all of which, when taken together, shall be one and the same instrument.

12.5. Completion of Blanks. Any space or blank left in this instrument may be filled in or completed after the execution and notarization of this instrument as necessary to complete this instrument without the need to re-execute, re-notarize, or re-certify this instrument.

[signatures on following page(s)]

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

Approved by the Hawaiian
Homes Commission on:

**STATE OF HAWAI'I,
DEPARTMENT OF HAWAIIAN HOME
LANDS**

APPROVED AS TO FORM:

JASON W. HIRATA
Deputy Attorney General

WILLIAM J. AILA, JR., Chairman
Hawaiian Homes Commission

"Grantor"

ANTHONY B. ARUDA, SUCCESSOR CO-TRUSTEE under that ALFRED ARUDA REVOCABLE LIVING TRUST AGREEMENT DATED JULY 19, 1976 and under that MARY T. ARUDA REVOCABLE LIVING TRUST AGREEMENT DATED JULY 19, 1976

CORINNE S. ARUDA, SUCCESSOR CO-TRUSTEE under that ALFRED ARUDA REVOCABLE LIVING TRUST AGREEMENT DATED JULY 19, 1976 and under that MARY T. ARUDA REVOCABLE LIVING TRUST AGREEMENT DATED JULY 19, 1976

LISA R. ARUDA BROWN, TRUSTEE under that UNRECORDED LISA R. ARUDA BROWN REVOCABLE LIVING TRUST DATED DECEMBER 3, 1991

"Grantee"

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this _____, before me personally appeared WILLIAM J. AILA, JR., to me personally known, who, being by me duly sworn or affirmed, did say that he is the Director of the DEPARTMENT OF HAWAIIAN HOME LANDS and Chairman of the HAWAIIAN HOMES COMMISSION and the person who executed the foregoing instrument and acknowledged to me that he executed the same freely and voluntarily for the use and purposes therein set forth, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawaii

Print Name _____

My commission expires: _____

Document Date: _____	# of Pages: _____
Notary Name: _____	Circuit: First
Doc. Description: Grant of Easement (Non-Exclusive)	
(Stamp or Seal)	
Notary Signature	
NOTARY CERTIFICATION	

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF MAUI)

On this _____, before me personally appeared before me personally appeared ANTHONY B. ARUDA, as the Successor Co-Trustee in and under that certain Alfred Aruda Revocable Living Trust Agreement dated July 19, 1976 and under that certain Mary T. Aruda Revocable Living Trust Agreement dated July 19, 1976, to me personally known, who, being by me duly sworn or affirmed, did say that he is the person who executed the foregoing instrument and acknowledged to me that he executed the same freely and voluntarily in the capacity as aforesaid for the use and purposes therein set forth, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawai'i
Print Name _____
My commission expires: _____

Document Date: _____	# of Pages: _____
Notary Name: _____	Circuit: Second
Doc. Description: Grant of Easement (Non-Exclusive)	
(Stamp or Seal)	
Notary Signature	
NOTARY CERTIFICATION	

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF MAUI)

On this _____, before me personally appeared before me personally appeared CORINNE S. ARUDA, as the Successor Co-Trustee in and under that certain Alfred Aruda Revocable Living Trust Agreement dated July 19, 1976 and under that certain Mary T. Aruda Revocable Living Trust Agreement dated July 19, 1976, to me personally known, who, being by me duly sworn or affirmed, did say that she is the person who executed the foregoing instrument and acknowledged to me that she executed the same freely and voluntarily in the capacity as aforesaid for the use and purposes therein set forth, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawai'i

Print Name _____

My commission expires: _____

Document Date: _____	# of Pages: _____
Notary Name: _____	Circuit: <u>Second</u>
Doc. Description: <u>Grant of Easement (Non-Exclusive)</u>	
(Stamp or Seal)	
Notary Signature _____	
NOTARY CERTIFICATION	

STATE OF NORTH CAROLINA)
) SS.
COUNTY OF)

On this _____, before me personally appeared before me personally appeared LISA R. ARUDA BROWN, as the Trustee in and under that certain Lisa R. Aruda Brown Trust dated December 3, 1991, to me personally known, who, being by me duly sworn or affirmed, did say that she is the person who executed the foregoing instrument and acknowledged to me that she executed the same freely and voluntarily in the capacity as aforesaid for the use and purposes therein set forth, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of North Carolina

Print Name

My commission expires:

EXHIBIT "A"

Easement 3

Situate at
Kahahena, Kualapa, Kalihi, Makawao, Maui, Hawaii
Tax Map Key: (2) 2-1-04: Portion of 121

Beginning at the Northeasterly corner of this easement, being a point on the Northwesterly property boundary line of Lot 1 of the Kanahena Subdivision (Subdivision File No. 2.383) and the Southwesterly right-of-way line of Lot 3 (Government Road) of the Kanahena Subdivision (Subdivision File No. 2.383) (C.S.F. 22,856) [Tax Map Key: (2)2-1-04:123] the coordinates of said point of beginning are based on record information and refer to Government Survey Triangulation Station "PUU OLAI" being 6,422.37 feet South and 4,259.18 feet East, and running by azimuths measured clockwise from True South; thence,

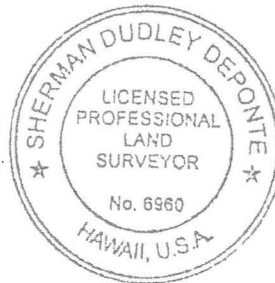
- | | | | |
|----|--------------|--------|---|
| 1. | 7° 57' 00" | 164.81 | feet along the remainder of Lot 1 of the Kanahena Subdivision (Subdivision File No. 2.383) (C.S.F. 22,856) to a point; thence, |
| 2. | 62° 42' 47" | 135.46 | feet along the same, to a point; thence, |
| 3. | 155° 47' 24" | 50.07 | feet along the Easterly right-of-way line of the Lot 3 (Government Road) of the Kanahena Subdivision (Subdivision File No. 2.383) (C.S.F. 22,856) [Tax Map Key: (2) 2-2-1-04:123] to a point; thence, |
| 4. | 242° 42' 47" | 88.51 | feet along the remainder of Lot 1 of the Kanahena Subdivision (Subdivision File No. 2.383) (C.S.F. 22,856) to a point; thence, |
| 5. | 187° 57' 00" | 95.11 | feet along the same, to a point; thence, |
| 6. | 238° 01' 20" | 84.76 | feet along the Southwesterly right-of-way line of the Lot 3 (Government Road) of the Kanahena Subdivision (Subdivision File No. 2.383) (C.S.F. 22,856) [Tax Map Key: (2)2-1-04:123] to the point of beginning and containing an area of 14,046 square feet. |

This work was done by me or
under my direct supervision.

AKAMAI LAND SURVEYING, INC.

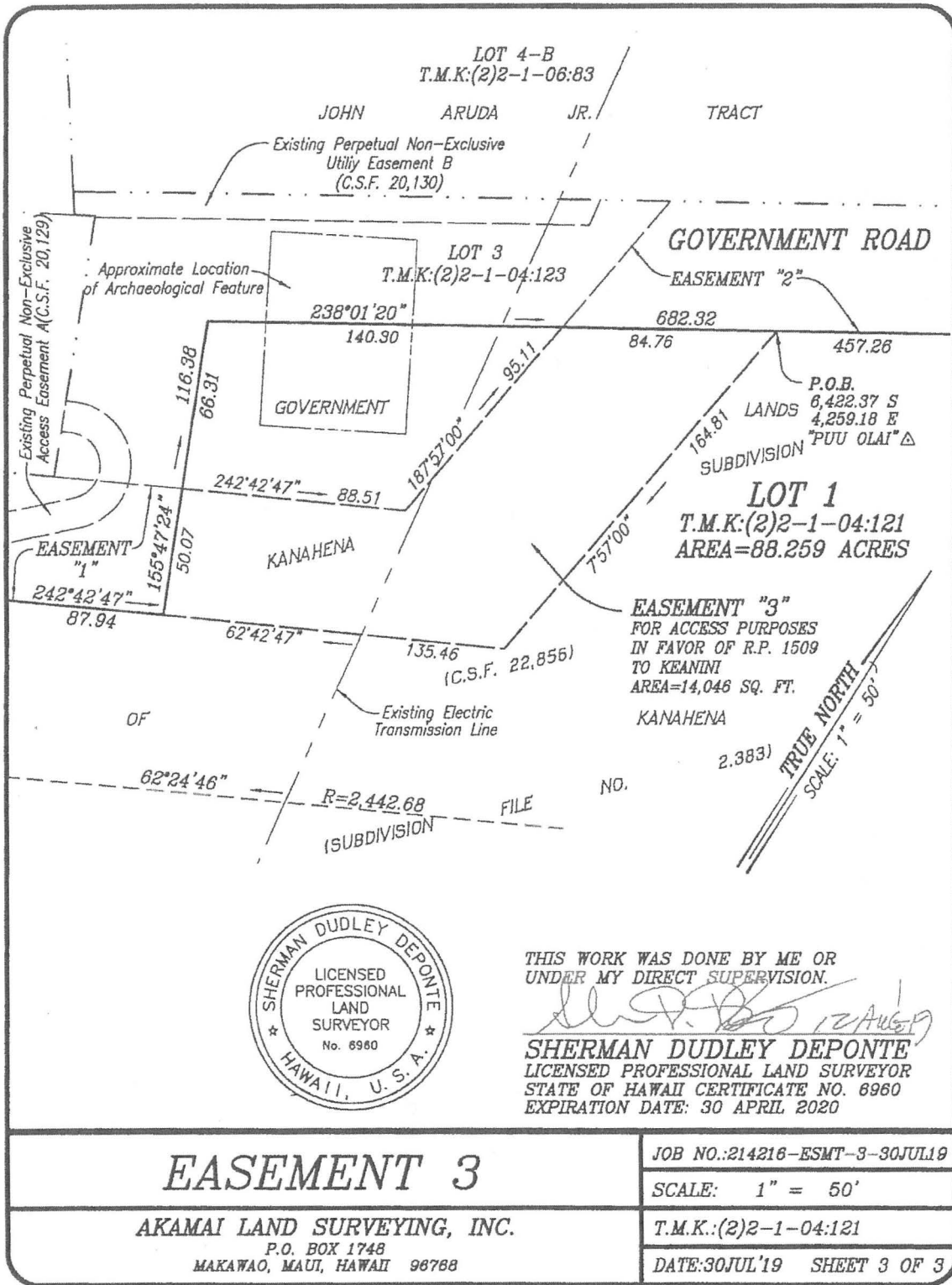
 12 AUG 19

Sherman Dudley DePonte
Licensed Professional Land Surveyor
State of Hawaii Certificate No. 6960
Expires: April 30, 2020
214216 (8/7/19)



END OF EXHIBIT "A"

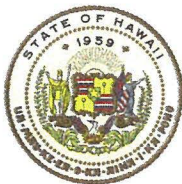
EXHIBIT "B"



END OF EXHIBIT "B"

EXHIBIT IX

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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

September 11, 2020

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, Hawaii Revised Statutes (HRS), and Chapter 11-200.1, Hawaii Administrative Rules (HAR):

Project Title: Grant of Term, Non-Exclusive Quitclaim Easement to Anthony B. Aruda and Corinne S. Aruda in their capacities as successor co-trustees in the under that certain unrecorded Alfred Aruda Revocable Living Trust Agreement dated July 19, 1976; Anthony B. Aruda and Corinne S. Aruda in their capacities as the successor co-trustees in and under that certain unrecorded Mary T. Aruda Revocable Living Trust Agreement dated July 19, 1976; and Lisa R. Brown, Trustee under that certain unrecorded Lisa R. Aruda Brown Revocable Living Trust dated December 3, 1991, for Pedestrian and Equestrian Access Purposes.

Project / Reference No.: PSF No. 20MD-076.

Project Location: Kanahena, Makawao, Maui, Hawai'i, Tax Map Key: (2) 2-1-4:123 (por.).

Project Description: The project is a term 55-year non-exclusive quitclaim easement for pedestrian and equestrian purposes across two discrete portions of a 50-foot wide tract of unimproved land, which includes a 10-foot wide alanui. The use of motorized vehicles of any kind, including for parking, in the easement area is strictly prohibited.

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

Exemption Class No. and Description: In accordance with HAR § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on March 3, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to HAR § 11-200.1-15(c)(1): "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing, and Item 40 that states, "Creation or termination of easement, covenants, or other rights in structures or land."

EXHIBIT IX

Analysis:

The grant of this easement will probably have minimal or no significant effect on the environment. The easement area has already been used for access purposes in recent years. The land in question is partially graded and partially undeveloped grassy land, which will not be significantly affected by pedestrian and equestrian access, which by its nature, has minimal impact. The path of the easement intentionally bypasses a historic corral, and pedestrian and equestrian access is not likely to cause any impact to the corral. The easement document itself includes substantial environmental protections and expressly prohibits the use of motorized in the easement area, including for parking.

**Cumulative Impact of
Planned Successive
Actions in Same Place
Significant?:**

No. There is no plan for successive actions in the same place. To the extent that the grant of easement will allow individuals to walk or ride horses on the easement area over a period of time, for the reasons stated above, the impact will not be significant

**Action May Have
Significant Impact on
Particularly Sensitive
Environment?:**

No. While the easement areas are zoned in the conservation district, the areas are not particularly sensitive and consist of a graded access road and undeveloped grassy areas. For the reasons stated above, the impact of pedestrian and equestrian access is likely to be minimal and will not be significant.

Consulted Parties:

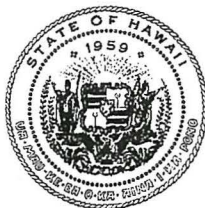
DLNR Division of Forestry and Wildlife
DLNR Office of Conservation and Coastal Lands
DLNR State Historic Preservation Division
Department of Hawaiian Home Lands
Office of Hawaiian Affairs
County of Maui Planning Department
County of Maui Department of Public Works

Recommendation:

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

EXHIBIT X

DAVID Y. IGE
GOVERNOR OF
HAWAII



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

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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

REF:OCCL:TM

Correspondence: MA 21-12

TO: Kevin E. Moore, Assistant Administrator
Land Division

AUG 18 2020

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

SUBJECT: Proposed Grant of Term, Non-Exclusive Quitclaim Easements Located at
Onau/Kanahena, Makawao, Maui, Lot 3 of Former TMK:(2) 2-1-004:049

The Office of Conservation and Coastal Lands (OCCL) has reviewed the subject matter and notes the easement areas lie within the Protective subzone of the Conservation District. The objective of the Protective subzone is to protect valuable natural and cultural resources in designated areas such as restricted watersheds, marine, plant, and wildlife sanctuaries, significant historic, archaeological, geological, and volcanological features and sites, and other designated unique areas.

The OCCL notes the non-exclusive easement area for pedestrian and equestrian access is undeveloped land that includes portions of a "10-foot wide alanui." Records indicate this feature to be known as the Onau Alanui or a 'Path, Boundary of Kanahena' (Reg Map1763).

The OCCL has no objections to non-exclusive access easement 1 as this area has been reviewed previously by the Board via CDUP MA-1565 that notes, "this access is reported to have been established for cattle ranching operations but has also been used for access...by the former landowner since the 1940's;" and no objections to the use of non-exclusive access easement 2 that contains a portion of the Onau Trail.

Pedestrian and equestrian access appear to be nonconforming uses in this particular area, therefore the OCCL concurs with the proposed exemption regarding the preparation of an environmental assessment pursuant to HAR, 11-200.1-15(c)(1) and the DLNR Exemption class 1-39. Should you have any questions regarding this memorandum, contact Tiger Mills of our Office at (808) 587-0382.

EXHIBIT X