

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

December 11, 2020

PSF No.:15KD-101

KAUAI

Amend Prior Board Actions of December 14, 2018, Item D-2, *Grant of Term, Non-Exclusive Easement to Konohiki Kihapai LLC for Access and Utility Purposes; Issuance of Immediate Management Right-of-Entry Permit, Portions of Waipouli & North Olohena, Kapaa Homesteads, 2nd Series, Kapaa, Kauai, Tax Map Keys: (4) 4-4-006: portions of 012 and 013.*

The purpose of this amendment is to correct/change the tax map key numbers and the easement areas.

BACKGROUND:

At its meeting of December 14, 2018, item D-2, the Board of Land and Natural Resources (Board) approved the issuance of a grant of term, non-exclusive easement to Konohiki Kihapai LLC for access and utility purposes; issuance of immediate management right-of-entry permit, portions of Waipouli & North Olohena, Kapaa Homesteads, 2nd Series, Kapaa, Kauai, Tax Map Keys: (4) 4-4-006: portions of 012 and 013. (Exhibit A)

REMARKS:

In the process of preparing the easement documents, the Department of the Attorney General noted some discrepancies in the tax map key parcel numbers and easement areas.

The tax map key parcel numbers referenced in the submittal were portions of parcel 12 (a railroad ROW) and all of parcel 13 (a stream) but should have been described in reverse as all of parcel 12 and portions of parcel 13.

The area for Easement AU-1A was referenced as 700 square feet, but should have been 375 square feet; Easement AU-2 was shown as 300 square feet but should have been 600 square feet; and Easement AU-3 indicated an area containing 31,799 square feet but should have been 31,973 square feet.

Although the easement areas referenced in the Board action need to be corrected/changed, the appraisal remains unaffected because the fair market value of the easements was based on the areas calculated by a survey conducted after the Board granted its approval.

RECOMMENDATION: That the Board:

1. Amend its prior Board actions of December 14, 2018, under agenda item D-2 by:
 - A. Changing the tax map key numbers referenced from (4) 4-4-006: portions of 012 and 013, to (4) 4-4-006: 012 and portions of 013.
 - B. Changing the easement areas for Easement AU-1B from 700 square feet to 375 square feet, Easement AU-2 from 300 square feet to 600 square feet, and Easement AU-3 from 31,799 square feet to 31,973 square feet.
2. Except as amended hereby, all terms and conditions as approved on December 14, 2018 shall remain the same.

Respectfully Submitted,

Wesley Matsunaga

Wesley T. Matsunaga
District Land Agent

— KEM

APPROVED FOR SUBMITTAL:

RT *Suzanne D. Case*

Suzanne D. Case, Chairperson

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

December 14, 2018

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Grant of Term, Non-Exclusive Easement to Konohiki Kihapai LLC for Access and Utility Purposes; Issuance of Immediate Management Right-of-Entry Permit, Portions of Waipouli & North Olohena, Kapaa Homesteads, 2nd Series, Kapaa, Kauai, Tax Map Keys: (4) 4-4-006: portions of 012 and 013.

APPLICANT:

Konohiki Kihapai LLC, a Hawaii limited liability company.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Waipouli situated at portion of Waipouli & North Olohena, Kapaa Homesteads, 2nd Series, identified by Tax Map Keys: (4) 4-4-006: Portions of 012 and 013, as shown on the attached maps labeled Exhibits A-1, A-2 & A-3.

AREA:

Stream: 1.49 acres, more or less.
Railroad Right-of-Way: 0.73 acre, more or less.

ZONING:

State Land Use District: Agriculture
County of Kauai CZO: Agriculture

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:
YES ___ NO x

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
December 14, 2018 Go

EXHIBIT A

CURRENT USE STATUS:

TAX MAP KEY	DISTRICT	ZONE		ENCUMBRANCE	AREA (Acres)
		SLU	CZO		
(4) 4-4-006:012	Waipoli, Kawaihau	Ag	Ag	Vacant. An abandoned railroad right-of-way.	0.730
(4) 4-4-006:013	Kawaihau, Kapaa	Ag	Ag	Vacant. A stream.	1.49

EASEMENT AREAS:

Applicant is requesting total of four access and utility easements as depicted in Exhibit B attached and detailed in the table below:

EASEMENT DESIGNATION	PURPOSE	AREA
Easement AU-1a	To cross stream.	700 s.f.
Easement AU-1b	To cross stream.	700 s.f.
Easement AU-2	To cross ditch.	300 s.f.
Easement AU-3	To provide access and utilities along old railroad right-of-way.	31,799 s.f.
	Total easement area requested, more or less:	33,499 s.f.

The easement areas provided above are subject to survey.

CHARACTER OF USE:

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

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on October 23, 2018 with a finding of no significant impact (FONSI).

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS:

Applicant shall be required to:

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

REMARKS:

A parcel situated in Kapaa, Kauai, and identified as Tax Map Key: (4) 4-4-006:002, is owned by Konohiki Kihapai LLC (KKL). Except and reserved therefrom is an abandoned railroad right-of-way identified as Tax Map Key: (4) 4-4-006:012, a stream identified as Tax Map Key: (4) 4-4-006:013, and a ditch. Olohena Road, the only government roadway in the area, runs along the northern boundary of the KKL property. The abandoned railroad right-of-way and the ditch that is reserved to the State run through the property.

Konohiki Stream runs from the Northwest corner of the property under an old bridge, along Olohena Road, through a stream diversion to an abandoned irrigation ditch running through the property southeastward. (Exhibits A-2 & A-3).

Applicant plans to access its property over an existing bridge that spans the ditch using Best Management Practices for low density roads. Due to the deteriorated condition of the bridge, it might be necessary to repair or replace the bridge at some time in the immediate future. At that time, if required, the Applicant will obtain the appropriate permits from the relevant agencies.

Applicant also plans to construct a graveled or paved road over sections of the existing abandoned railroad right-of-way.

Various governmental agencies and interest groups were solicited for comments, with the respective results indicated below.

AGENCIES	COMMENTS
County of Kauai	
Planning Department	No objections
Public Works	No objections
State of Hawaii	
DLNR -CWRM	See comments below
DLNR - Historic Preservation	No response
DOH	Best Management Practices for dust control
Other Agencies/ Interest Groups:	
Office of Hawaiian Affairs	No objections
EKWUC	No objections

The Commission on Water Resource Management commented that Stream Channel Alteration & Stream Diversion Works Permits are required before any alteration can be made to the bed and/or banks of the stream channel.

Staff is recommending the issuance of an immediate management right-of-entry permit to KKL to allow it to conduct any necessary planning and design work. However, no actual construction work will be allowed until the easement document is executed.

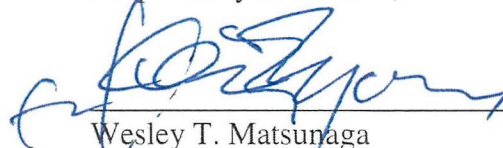
Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board:

1. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (4) 4-4-006:002, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term non-exclusive easement to Konohiki Kihapai LLC covering the subject area for access and utility purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term easement document form, as may be amended from time to time;

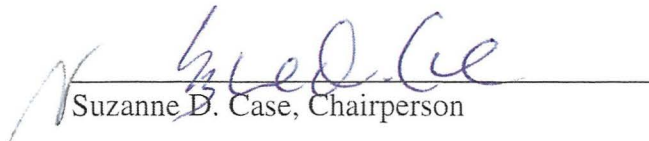
- B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (4) 4-4-006:002, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize the issuance of an immediate management right-of-entry permit to Konohiki Kihapai LLC, covering the subject lands under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
- A. The standard terms and conditions of the most current management right-of-entry permit form, as may be amended from time to time;
 - B. No construction work shall commence on the right-of-entry area prior to the execution of the easement document;
 - C. The management right-of-entry permit shall expire upon execution of easement document; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



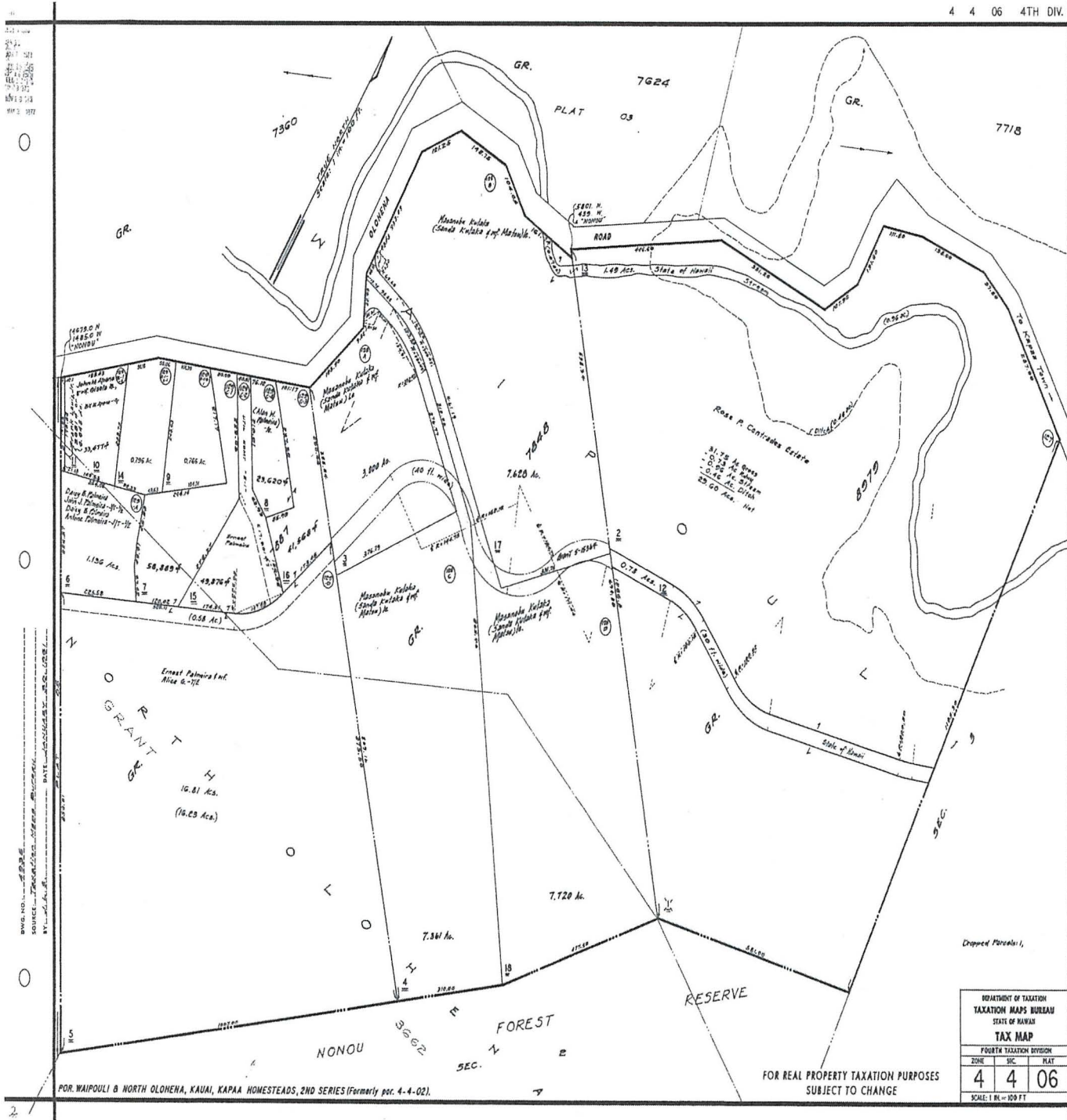
Wesley T. Matsunaga
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

EXHIBIT A-1



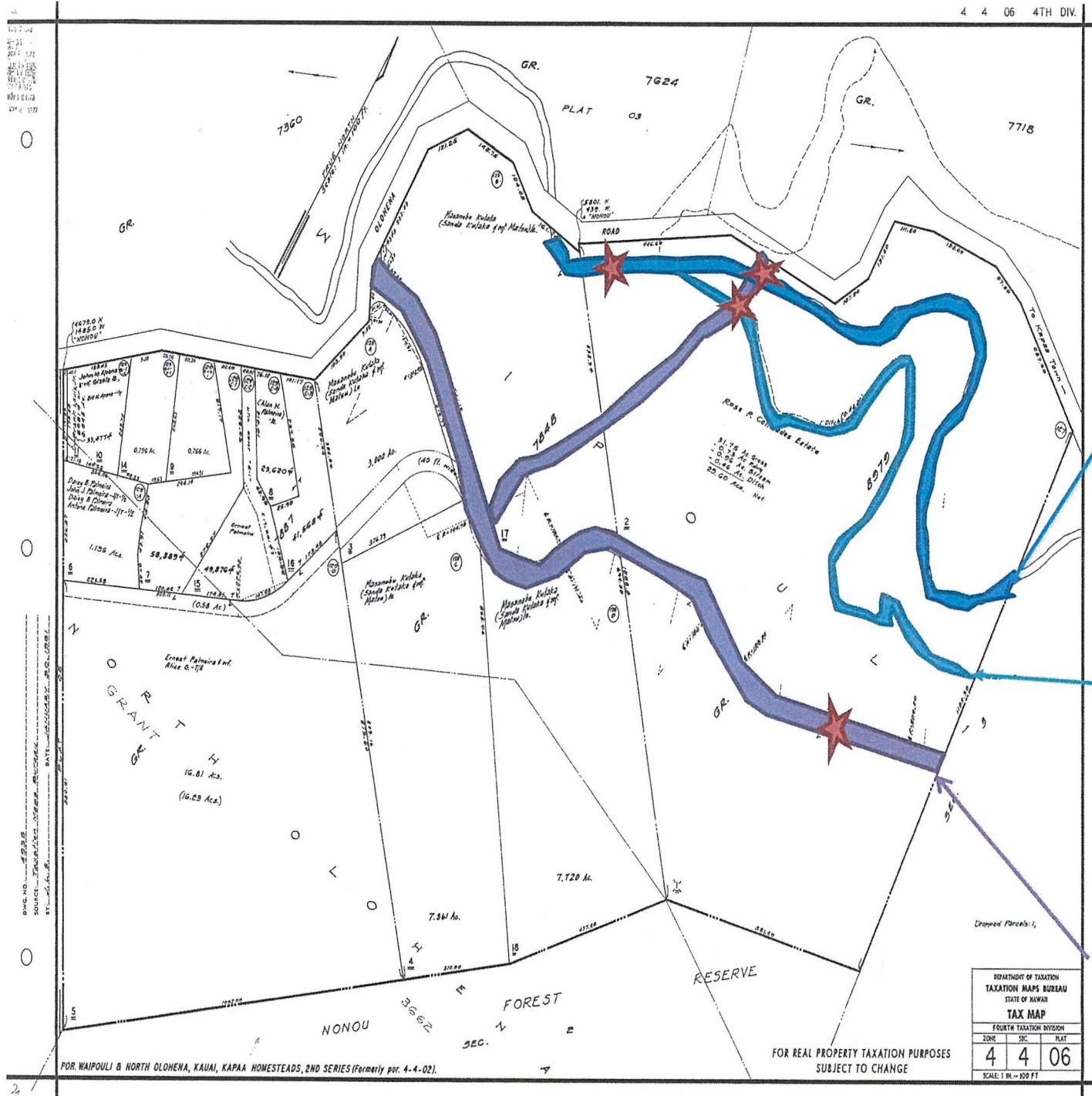
POR. WAIPOULI & NORTH OLOHENA, KAUAI, KAPAA HOMESTEADS, 2ND SERIES (Formerly pcc. 4-4-02).

FOR REAL PROPERTY TAXATION PURPOSES
SUBJECT TO CHANGE

DEPARTMENT OF TAXATION		
TAXATION MAPS BUREAU		
STATE OF HAWAII		
TAX MAP		
FOURTH TAXATION DIVISION		
ZONE	SEC.	PLAT
4	4	06
SCALE: 1 IN. = 100 FT.		

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Stream

Ditch

Railroad

EXHIBIT A-2

DEPARTMENT OF TAXATION
TAXATION MAPS BUREAU
STATE OF HAWAII
TAX MAP
FOURTH TAXATION DIVISION

ZONE	SEC.	PLAT
4	4	06

SCALE: 1 IN. = 100 FT

FOR WAIPOULI & NORTH OLOHENA, KAUI, KAPAA HOMESTEADS, 2ND SERIES (Formerly per. 4-4-02).

FOR REAL PROPERTY TAXATION PURPOSES
SUBJECT TO CHANGE

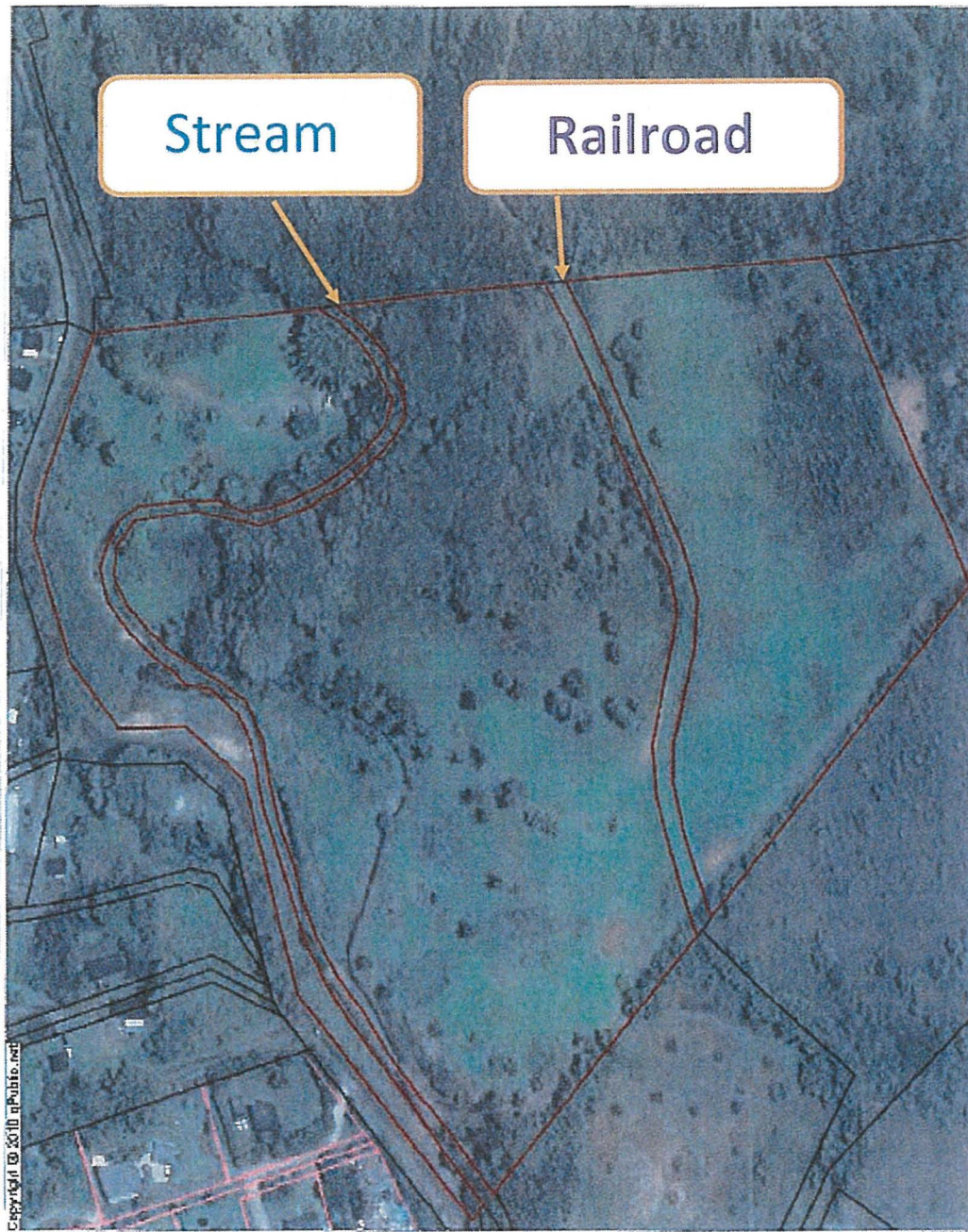
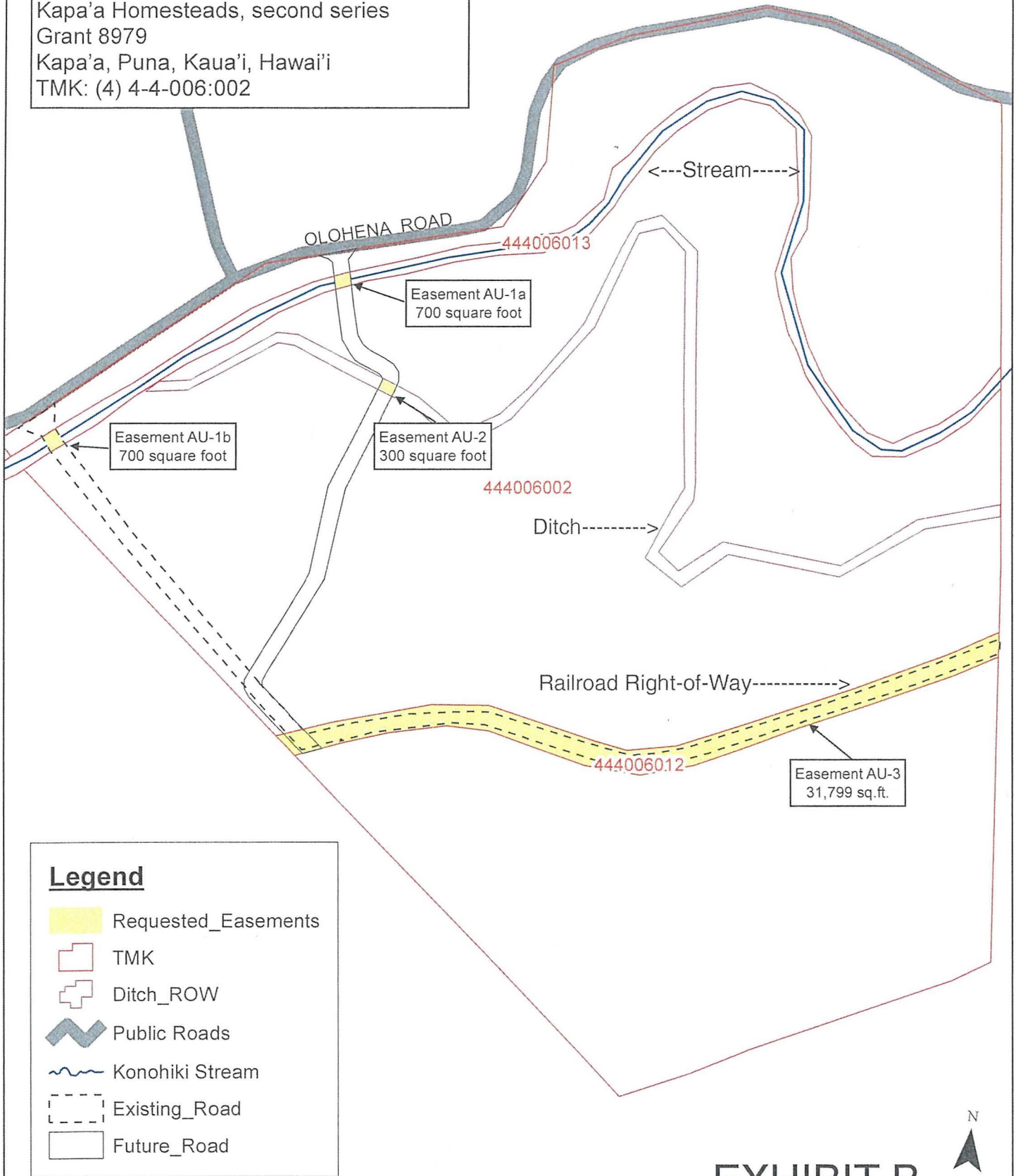


EXHIBIT A-3

GRANT OF EASEMENT MAP

in favor of:
Lot 127
Kapa'a Homesteads, second series
Grant 8979
Kapa'a, Puna, Kaua'i, Hawai'i
TMK: (4) 4-4-006:002



Legend

- Requested_Easements
- TMK
- Ditch_ROW
- Public Roads
- Konohiki Stream
- Existing_Road
- Future_Road

EXHIBIT B

