

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813
May 12, 2023

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

PSF No: 10KD-106
Kauai

Rescind Prior Board Action of January 13, 2012, Item D-3, Grant of Perpetual Non-Exclusive Easement to Eric A. Knudsen Trust for Access and Utility Purposes, Poipu, Koloa, Kauai, Tax Map Key : (4) 2-8-014: fronting Parcel 19 (Hapa Road).

BACKGROUND:

Hapa Road, also known as Po'ipu Short Cut Road, Lot 19-B as shown on Land Court Application 956, Map 28, Certificate of Title 15826, is owned by the State of Hawaii. Hapa Road, with an area of 6.205 acres was in existence in the late 1800's as a path from Koloa Town to the Poipu beach area. Hapa Road is listed on the State Inventory of Historic Places at site Number 50-30-10-992.

The Eric A. Knudsen Trust is the owner of TMK: (4) 2-8-014:019, also known as the Village at Po'ipu Subdivision Phase I (VPSPi). The VPSPi development wanted access to existing Kiahuna Plantation Drive. The old Hapa Road is situated between Parcel 19 and the Kiahuna Plantation Drive. This made it necessary for the Eric Knudsen Trust to acquire an access and utility easement over portion of Hapa Road.

On January 13, 2012, the Eric A. Knudsen Trust ("Knudsen Trust") sought an easement from the Board across Hapa Road for access and utility purposes as agenda item D-3 (see attached Exhibit A). Theodore "Teddy" Blake submitted written testimony and orally testified against the agenda item. The Board granted the easement to the Knudsen Trust. Blake requested a contested case hearing prior to the end of the meeting. Blake's oral request was followed up by a written request filed on January 23, 2012, with the Department of Land and Natural Resources' Land Division.

In his written request, Blake stated that his interests that may be affected by the Board's action are: (a) traditional and customary practices; (b) recreational interests; (c) historic preservation interests; and (d) environmental interests. Blake indicated that the activities that he engages in on Hapa Road include taking care of Hapa Road by weeding, cleaning up rubbish, and walking on it.

On August 24, 2012, the Board received testimony and was scheduled to make a decision on Blake's request for a contested case hearing. Based on testimony presented at the meeting on August 24, 2012, the Board deferred decision making on Blake's request. On September 14, 2012, the Board denied Blake's petition for a contested case hearing because Blake was not entitled to a contested case hearing as a matter of right.

REMARKS:

Blake filed an agency appeal from the Board's denial of his request for a contested case hearing. Blake also filed a complaint for declaratory and injunctive relief.

Because there were two pending actions related to the issuance of the easement – the appeal of the administrative proceeding on the contested case denial and a related action pending in the fifth circuit court – and with the agreement of the Knudsen Trust, Land Division held the request for issuance of the easement. As a result, although the easement was authorized, no easement document was issued to the Knudsen Trust.

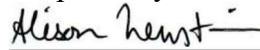
On April 17, 2023, Max Graham, Jr., attorney for the Knudsen Trust, sent a letter to Chairperson Chang stating that the Knudsen Trust has determined that it no longer needs or wants the Hapa Road easement and is therefore withdrawing its request for the grant of easement for Hapa Road. See attached Exhibit B.

Based on the above there appears to be no need for the issuance of the grant of easement and the authorization of the Board for the issuance of the grant of easement should be rescinded. Staff notes that if the Knudsen Trust would like to have an easement across or through Hapa Road in the future that the Trust would be required to submit a new application and a new authorization from the Board, at a duly noticed Board meeting at which the public would have an opportunity to testify, would be required.

RECOMMENDATION: That the Board:

1. Rescind the prior Board action of January 13, 2012, under agenda item D-3 that authorized the issuance of an easement to the Knudsen Trust.

Respectfully Submitted,



Alison Neustein
District Land Agent

APPROVED FOR SUBMITTAL:



Dawn N. S. Chang, Chairperson

EXHIBIT A

AMENDED

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

January 13, 2012

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

PSF No.: 10KD-106

Kauai

Grant of Perpetual, Non-Exclusive Easement to Eric A. Knudsen Trust for Access and Utility Purposes, Po'ipu, Koloa, Kauai, Tax Map Key: (4) 2-8-014: fronting Parcel 19 (Hapa Road).

APPLICANT:

Eric A. Knudsen Trust, Kalaheo, HI 96741

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Koloa situated at Po'ipu, Koloa, Kauai, identified by Tax Map Key: (4) 2-8-014: Fronting Parcel 19, (Hapa Road) as shown on the attached map labeled Exhibit A.

AREA:

2500 Square Feet, more or less.

ZONING:

State Land Use District: Agricultural/Rural
County of Kauai CZO: OPEN

TRUST LAND STATUS:

as amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
January 13, 2012 *Dee*

Section 5(b) lands of the Hawaii Admission Act

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

CURRENT USE STATUS:

Vacant and unencumbered.

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 value, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Impact Statement acceptance notice for the subject project was published in the OEQC's Environmental Notice on November 23, 2006.

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine the fair market value to be paid as a one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 3) Obtain a title report to ascertain ownership, where necessary, at Applicant's own

cost and subject to review and approval by the Department.

REMARKS:

Hapa Road (also known as Po'ipu Short Cut Road) Lot 19-B as shown on Land Court Application 956, Map 28, Certificate of Title 15826, State of Hawaii Owner. Hapa Road, with an area of 6.205 acres, was in existence in the late 1800's as a path from Koloa Town to the Poipu beach area. Hapa Road is listed on the State Inventory of Historic Places at Site Number 50-30-10-992. Its notable features are dry stacked rock walls along either side of the road. Although the walls are missing in some area, the walls are still present and visible in others.

The Eric A. Knudsen Trust is the owner of Parcel 19 identified on TMK: (4) 2-8-14, also known as the Village at Po'ipu Subdivision Phase I. The Village at Po'ipu Subdivision Phase I development would like to have vehicular access to the subdivision from the existing Kiahuna Plantation Drive.

Hapa Road is situated between the Parcel 19 and the Kiahuna Plantation Drive. This makes it necessary for the Eric Knudsen Trust to acquire an access and utility easement over a portion of Hapa Road. (See Exhibit B)

Previously, the subdivision had intended to obtain access across Hapa Road in an area that had intact rock walls and that would require a breach and removal of a portion of the walls. The location of the proposed easement has been moved to an area, that has already been breached and therefore will not require removal any of the historical walls. This location is approximately 690 feet south of the original intended easement location.

The State Historic Preservation Division has reviewed Archaeological Inventory Survey for the proposed access easement across Hapa Road and has approved the survey with their recommendations. (See Exhibit C)

The Final Environmental Impact Statement for the subject project was published in the OEQC's Environmental Notice on November 23, 2006. During the process of drafting the Environmental Impact Statement, all applicable County of Kauai and State of Hawaii agencies were requested to comment on this project.

Attached at Exhibits D and E are a letter from the Applicant's attorney and a revised draft of the State's standard form easement, respectively. The applicant requests that the draft easement language be modified to ensure that any relocation of the easement will be on State lands¹, and to prevent the State from withdrawing the easement unless the State provides a substitute easement across State lands, or there exists a fully constructed road

¹ If a proposed relocation of the easement would result in a breach or removal of an intact dry stacked rock wall, the Applicant must obtain the prior review and approval of the State Historic Preservation Division.

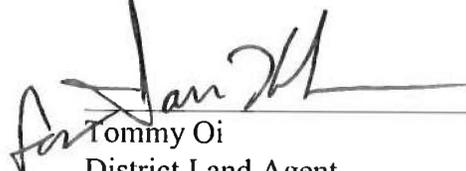
that meets county standards for vehicular and pedestrian access and fully constructed utilities that serves the benefitted property.

Given the limited amount of State land in this area, it is unlikely that this easement would be withdrawn in order to use the land for an alternative public purpose. However, in the past, the Board has approved the withdrawal of lands from leases when necessary for a greater public purpose. A notable example of this would be the recent withdrawal of lands from agricultural leases to K.K. Ranch, Inc. Schuman Carriage Company, Botheilo Hawaii Enterprises, and Parker Ranch in 2010 and 2011 for the Saddle Road improvement project and Palila Critical Habitat mitigation.

RECOMMENDATION: That the Board:

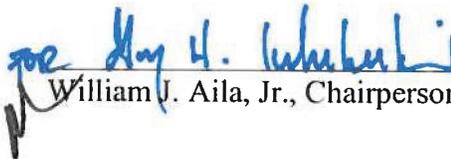
1. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (4) 2-8-014:019, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years 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 perpetual non-exclusive easement to Eric A. Knudsen Trust 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 perpetual easement document form, as may be amended from time to time, or the modified version as proposed by the Applicant;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (4) 2-8-014:019, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Tommy Oi
District Land Agent

APPROVED FOR SUBMITTAL:

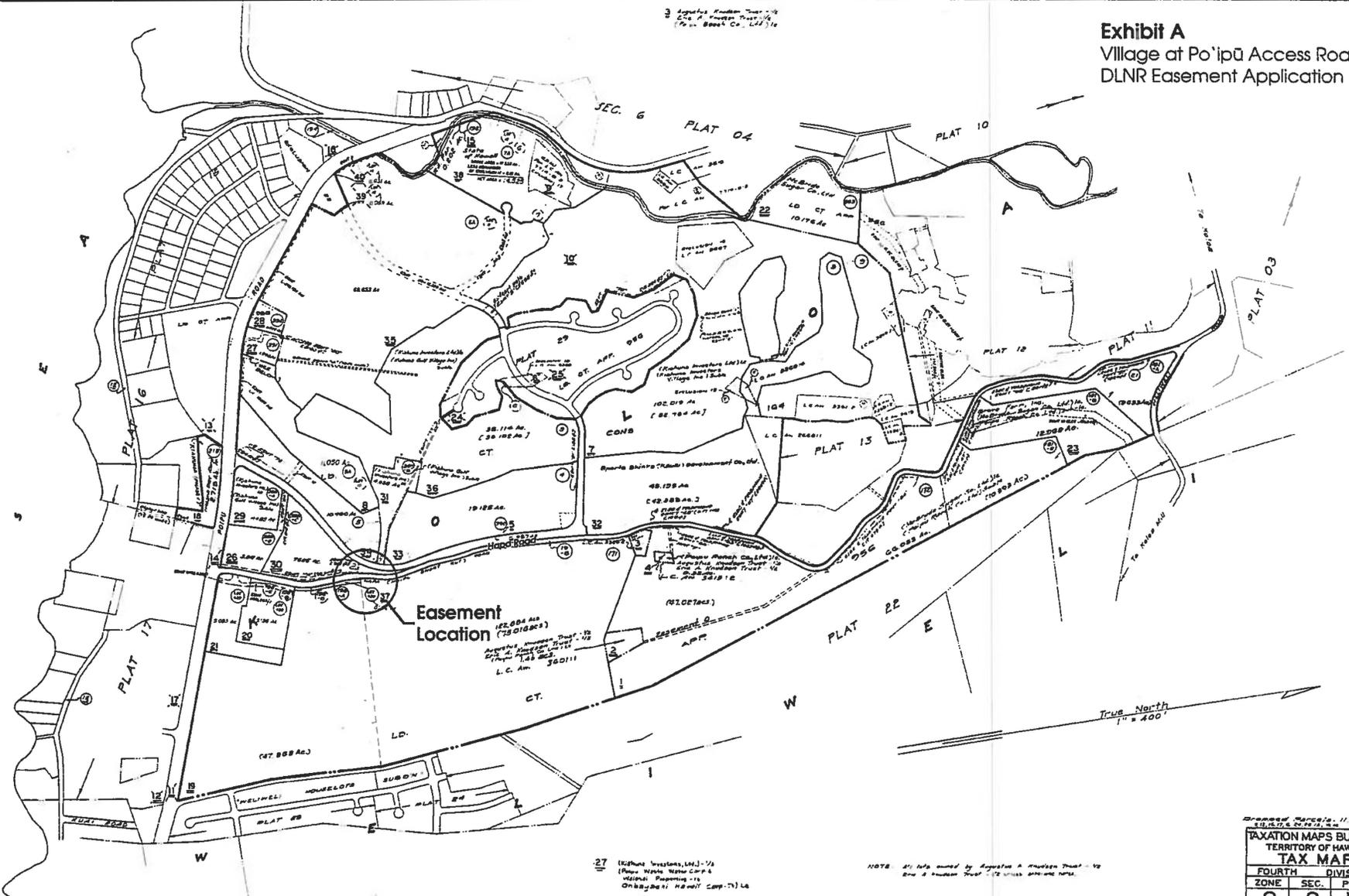


William J. Aila, Jr., Chairperson

Land Board Meeting, January 13, 2012; D-3:

Approved as amended. Recommendations section was amended by adding a condition number 3, to read "The applicant shall be limited to only one (1) vehicular crossing or access on the unimproved or unpaved portion of Hapa Road."

Exhibit A Village at Po'ipū Access Road DLNR Easement Application



DEC 18 1969
 DEC 18 1972
 DEC 18 1975
 DEC 18 1978
 DEC 18 1981
 DEC 18 1984
 DEC 18 1987
 DEC 18 1990
 DEC 18 1993
 DEC 18 1996
 DEC 18 1999
 DEC 18 2002
 DEC 18 2005
 DEC 18 2008
 DEC 18 2011
 DEC 18 2014

3037
 La. Ct. App. 956 (Am.)
 D.I.C. of I.L.C. Oct. 1996.

Div. No.
 Source
 By

POR of KOLOA, KOLOA, KAUAI.

27 (Kihuna Investments, Ltd.) - 1/2
 (Papa'iaha Water Corp.)
 (Kihuna Properties, Inc.)
 (Kihuna Water Corp.)

NOTE: All info owned by Augustus A. Mendenhall Trust - 1/2
 and a Mendenhall Trust - 1/2 unless otherwise noted.

SUBJECT TO CHANGE

Grassed Parcel 11, 4.10,
10.67, 6.0, 1972, 2.0

TAXATION MAPS BUREAU		
TERRITORY OF HAWAII		
TAX MAP		
FOURTH	DIVISION	
ZONE	SEC.	PLAT
2	8	14
CONTAINING PARCELS		
SCALE: 1 in. = 400 ft.		
PRINTED		

EXHIBIT "A"

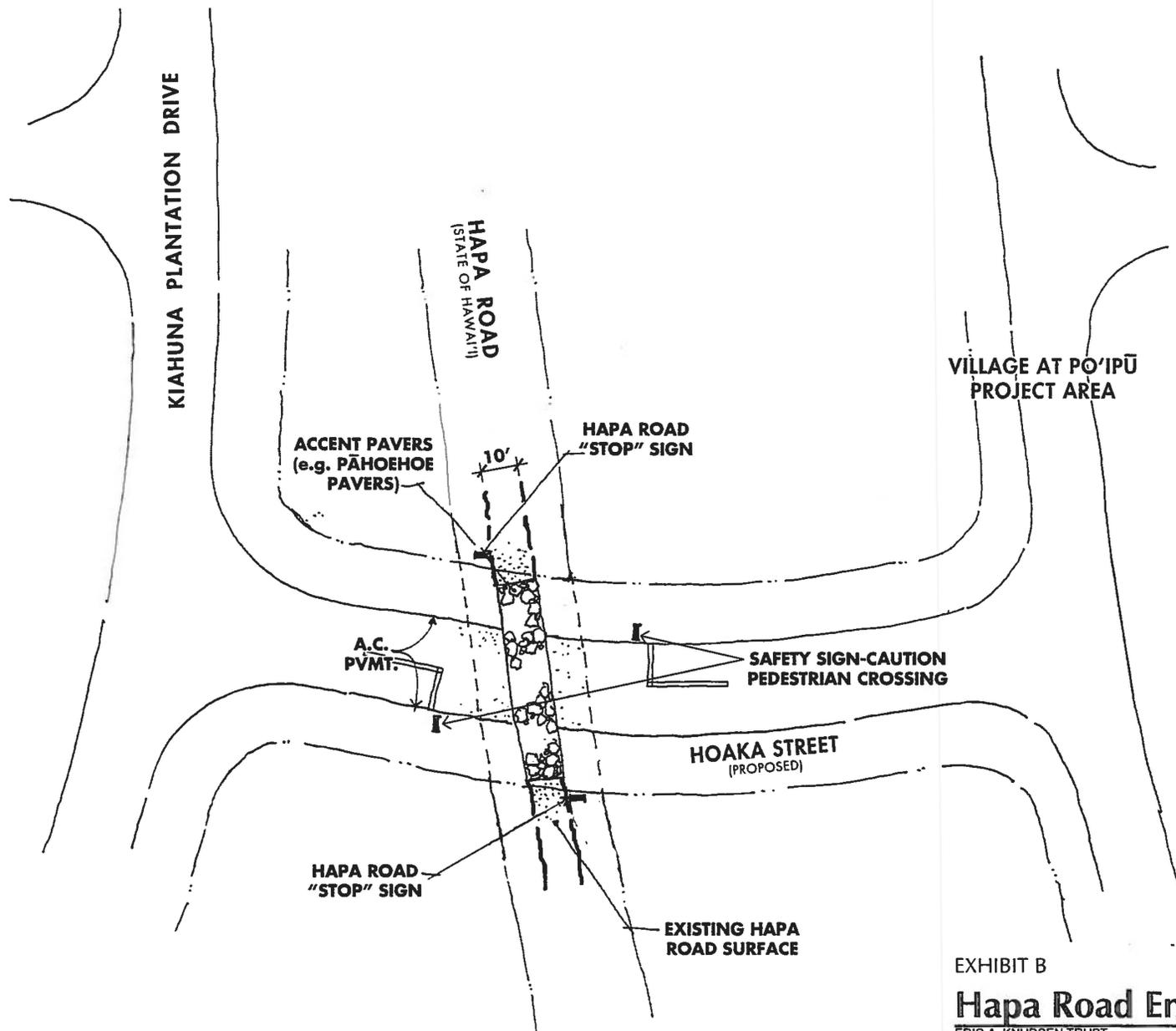
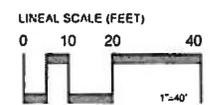
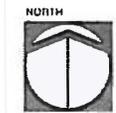


EXHIBIT "A-1"

EXHIBIT B

Hapa Road Entry Easement

ERIC A. KNUDSEN TRUST ISLAND OF KAUAI



4/20/11

OLD EASEMENT LOCATION

Lot 171
(Map 181)

$R=435.00$

EXCISEMENT
LOCATION

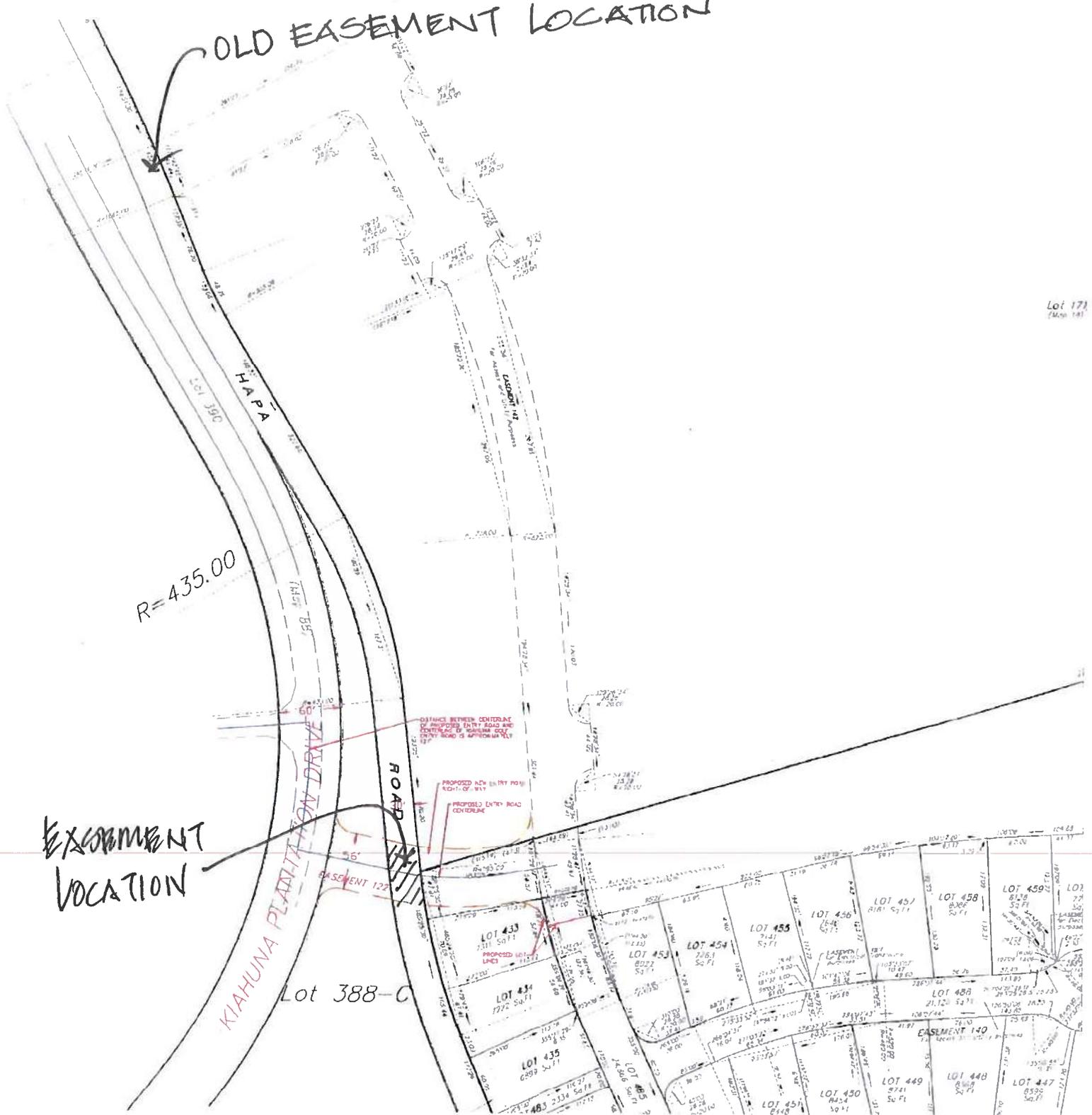


EXHIBIT "B"

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BOULEVARD, ROOM 555
KAPOLEI, HAWAII 96707

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

GUY KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
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

October 6, 2011

Hallett H. Hammett, Ph.D.
Cultural Surveys Hawai'i, Inc.
PO Box 1114
Kailua, Hawaii 96734

LOG NO: 2011.1774
DOC NO: 1110MD01
Archaeology

Dear Dr. Hammett:

**SUBJECT: Chapter 6E-8 and 42 Historic Preservation Review –
Archaeological Inventory Survey of One Acre with No New Sites
Kōloa Ahupua'a, Kōloa District, Island of Kaua'i
TMK: (4) 2-8-014:001 (por.)**

This letter summarizes our review of the aforementioned report (Altizer and Hammett April 2011; *An Archaeological Inventory Survey for a Proposed Access Road into Po'ipū Subdivision, Kōloa Ahupua'a, Kōloa District, Kaua'i Island, TMK: [4] 2-8-014:001 por./CSH Job Code: Koloa 46*), which we received on June 28, 2011. We apologize for the delay in our reply.

This report documents an archaeological inventory survey prepared in preparation for a proposed access road into the Villages at Po'ipū Subdivision. Fieldwork was conducted in March 2011, and included pedestrian survey and documentation of the previously-breached location of the wall currently being proposed for the new subdivision access road. The wall is the remnant of a section of a previously-documented site, State Inventory of Historic Places number 50-30-10-992, Hapa Road. The road as a whole has been determined to be significant under criteria "c" and "d." However, the portion of it proposed for the new road crossing was previously partially bulldozed during installation of water lines.

Because there will be an effect to the existing historic property by the planned road crossing, archaeological monitoring has been proposed for mitigation. While we agree that this recommendation is valid, we would also like to recommend that the proposed road design consider some sort of indication that Hapa Road is being traversed in the area where it existed.

This report is accepted as final pursuant to HAR §13-279-4. Upon receipt of this letter please submit one paper copy of your report marked Final to our Kapolei office along with a CD containing a searchable pdf version of the final report and a copy of this approval letter, marked to the attention of the Kapolei Library. If you have questions about this letter please contact me at (808) 243-5169 or via email to: morgan.e.davis@hawaii.gov.

Aloha,

A handwritten signature in black ink that reads "Morgan E. Davis".

Morgan E. Davis
Lead Archaeologist, Maui Island Section
State Historic Preservation Division

EXHIBIT " C "

**BELLES GRAHAM PROUDFOOT
WILSON & CHUN, LLP
ATTORNEYS AT LAW**

MICHAEL J. BELLES
MAX W.J. GRAHAM, JR.
DONALD H. WILSON
JONATHAN I. CHUN

Federal I.D. No. 99-0317663

WATUMULL PLAZA
4334 RICE STREET, SUITE 202
LIHUE, KAUAI, HAWAII 96766-1388

TELEPHONE NO: (808) 245-4705
FACSIMILE NO: (808) 245-3277
E-MAIL: mail@kauai-law.com

OF COUNSEL
DAVID W. PROUDFOOT

COUNSEL
LORNA A. NISHIMITSU

December 8, 2011

Mr. Russell Y. Tsuji, Administrator
Department of Land and Natural Resources
State of Hawaii
1151 Punchbowl Street, Room 220
Honolulu, Hawaii 96813

VIA EMAIL ONLY

Re: **Grant of Perpetual Non-exclusive Easement to Eric A. Knudsen Trust
for Access and Utility Purposes over Portion Hapa Road
Poipu, Koloa, Kauai
Kauai TMK No. (4) 2-8-14:Abutting Parcel 19
PSF: 10KD-106**

Dear Mr. Tsuji:

I am writing to you on behalf of Stacey T. J. Wong, Successor Trustee of the Eric A. Knudsen Trust ("Knudsen Trust"), concerning the draft Grant Of Non-Exclusive Easement ("GOE"). I very much appreciated your willingness to discuss this matter with Michael D. Tom, Esq. and me, and to explain the State's position and concerns.

As you know, the Hapa Road easement is intended to run in favor of the lots in the Village At Poipu ("VAP") Subdivision, and the two large lots surrounding or adjacent to the VAP Subdivision, for access and utility purposes. Paragraph 7 of this GOE allows the State to require the relocation of the easement even if there are no other lands of the State available for a substitute easement. Paragraph 15 of this GOE reserves to the State the right to withdraw the easement *"for public use or purposes, at any time"* (without compensation). Although these are standard provisions (and, as you explained, unlikely to be exercised), these paragraphs have the potential of turning a perpetual easement into an easement at will. As I explained, the easement will be the sole source of access and utilities to the VAP Subdivision. As a result, these provisions will create disclosure problems which, in my opinion, will make future financing for, or sales of, the VAP project difficult or impossible.

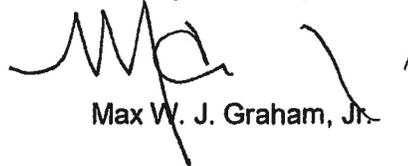
Mr. Russell Y. Tsuji, Administrator
Land Division
Department of Land and Natural Resources
December 8, 2011
Page 2

I have attempted to address both the State's needs and concerns with those of the Knudsen Trust, pursuant to certain revisions to Paragraphs 7 and 15 of the GOE. In summary, I have provided that (as long as the VAP project has no alternative access) the State will not relocate or withdraw the easement unless: the State provides a substitute easement across State lands; or an alternative access has otherwise been constructed to service the VAP project. I have enclosed a clean and redlined draft of the GOE which contains these proposed revisions.

Thank you very much for your cooperation and assistance in this matter.

Sincerely yours,

BELLES GRAHAM PROUDFOOT
WILSON & CHUN, LLP



Max W. J. Graham, Jr.

MWJG:jgm
Enclosures

cc: Stacey T. J. Wong, Successor Trustee, w/encls. (via email only)
Michael D. Tom, Esq., w/encls. (via email only)

in consideration of the sum of _____,
(\$ _____), the receipt of which is hereby acknowledged,
and of the terms, conditions, and covenants herein contained, and
on the part of the Grantee to be observed and performed, does
hereby grant unto the Grantee, ~~the following~~ a non-exclusive and
perpetual easement ~~rights~~.

for access purposes (including vehicular and
pedestrian) and utility purposes in, over, under and
across that certain parcel of land ("easement area")
situate at

Poipu,
Koloa, Kauai, Hawaii, being identified as

a portion of
Hapa Road, containing an area of

_____, more particularly described in
Exhibit "A" and delineated on Exhibit "B," both 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. _____ and dated _____, ~~TOGETHER WITH~~
~~the rights of ingress and egress to and from the easement~~
~~area for all purposes in connection with the rights~~
hereby granted.

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

1. The Grantee shall at all times with respect to the
easement area use due care for public safety ~~**~~{and agrees to
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; 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 grant of non-exclusive easement or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments†.

2. 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 herein Grantee in the use of the easement area for the purposes for which this easement is granted.

3. All improvements placed in or upon the easement area by the Grantee shall be done without cost or expense to the Grantor and shall remain the property of the Grantee and may be removed or otherwise disposed of by the Grantee at any time; provided, that the removal shall be accomplished with minimum disturbance to the easement area which shall be restored to its original condition, or as close thereto as possible, within a reasonable time after removal.

4. Upon completion of any 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 shall run with the land and shall inure to the benefit of the real property described as ~~tax map key no. _____~~ *{Lot 171 (Map 8) and Lot 490 (Map 121) of Land Court Application 956, both of which are located in Poipu, Koloa, Kauai, Hawaii, and which are identified by Kauai Tax Map Key No. (4) 2-8-014:019, and Lots 433 through 489 (Map 121) of Land Court Application 956, all of which are located in Poipu, Koloa, Kauai, Hawaii, and which are identified by Kauai Tax Map Key Nos. (4) 2-8-032:001 through 057, respectively (collectively, the "Benefitted Lots"), providing that the Grantee shall be required to carry 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, when this easement is sold, assigned, conveyed, or otherwise transferred, shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document†. ~~*delete the bracketed language if issuance to the counties.~~

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. Should future development or circumstances necessitate a relocation of the easement granted herein, or any portion thereof, to other lands of the Grantor, the relocation shall be accomplished at the Grantee's own cost and expense, ~~provided, however, that if other lands of the Grantor are available.~~ In such a case, the Grantor will grant to the Grantee, without payment of any monetary consideration, a substitute easement of similar width within the reasonable vicinity of the original alignment, which substitute easement shall be subject to the same terms and conditions as that herein granted and as required by law.

8. 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.

9. 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.

10. 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.

11. The Grantee shall, upon termination or revocation of this easement peaceably deliver unto the Grantor possession of the premises, together with all improvements existing or constructed thereon or Grantee shall remove such improvements and shall restore the premises to its original state, or as close thereto as possible, within a reasonable time and at the expense of the Grantee, at the option of the Grantor. 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 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 easement.

12. ~~**~~{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 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 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.}

13. 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 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.

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~~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. The Grantor reserves the right to withdraw the easement for public use or purposes, at any time during this grant of easement upon the giving of reasonable notice by the Grantor and without compensation. Provided, however, that the Grantor shall have no right to withdraw the easement unless and until: the Grantor provides a substitute easement as described in Paragraph 7, herein; or there is in existence a fully constructed road (which meets applicable County of Kauai standards) for vehicular and pedestrian access purposes servicing the Benefitted Lots and fully constructed utilities serving the Benefitted Lots.

16. The Grantee shall not mortgage 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 or pledge without such approval shall be null and void.

17. 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 dispose 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 disposition; 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 disposition 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.

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.

GRANTOR:

STATE OF HAWAII

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

By _____
Chairperson
Board of Land and
Natural Resources

GRANTOR

By _____
(Name of Grantee)

APPROVED AS TO FORM:

And By _____

Deputy Attorney General _____ GRANTEE

Date: _____

~~**Current policy is to not require the indemnification of other state agencies, therefore delete bracketed language at double asterisks' at nos. 1, 12 and 13 to be renumbered and subsequent paragraphs too. The remainder of second paragraph, no. 12 as renumbered, should be added to existing paragraph 1 of no. 12 as renumbered.~~

STATE OF HAWAII _____)
_____) SS.
_____)
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally appeared _____ to me known to be the person described in and who executed the foregoing instrument and acknowledged that _____ executed the same as _____ free act and deed.

Notary Public, State of Hawaii

My commission expires: _____

GRANTEE:

STACEY T. J. WONG, Successor Trustee
of the Eric A. Knudsen Trust under
Deed of Trust dated April 30, 1922,
as amended

STATE OF HAWAII _____)
_____) SS.
COUNTY OF _____)

On this _____ day of _____, 20____, before
me appeared _____ and
_____, to me personally known, who,
being by me duly sworn, did say that they are the
_____ and _____,
respectively of _____, a
Hawaii corporation, and that said instrument was signed in behalf
of said corporation by authority of its Board of Directors, and the
said _____ and _____
acknowledged said instrument to be the free act and deed of said
corporation.

Notary Public, State of Hawaii

My commission expires: _____

STATE OF HAWAII _____)
_____) SS:
COUNTY OF KAUAI _____)

STATE OF HAWAII _____)
_____) SS.
_____ COUNTY OF _____)

On this _____ day of _____ day of _____, 20____, before me personally appeared _____ and _____, before me appeared STACEY T. J. WONG, Successor Trustee of the Eric A. Knudsen Trust under Deed of Trust dated April 30, 1922, as amended, to me personally known, who, being by me duly sworn or affirmed, did say that ~~such~~ ~~person(s)~~ ~~he~~ executed the foregoing instrument as the GRANT OF NON-EXCLUSIVE EASEMENT dated _____, 20____, which document consists of _____ page(s), as his free act and deed of ~~such~~ ~~person(s)~~, and if applicable, in the ~~capacities~~ capacities shown, having been duly authorized to execute such instrument in such ~~capacities~~ capacities.

Name of Notary:

Notary Public,

Fifth Judicial Circuit,
State of Hawaii.

My

commission expires: _____

Document comparison done by DeltaView on Tuesday, December 06, 2011 4:28:20 PM

Input:	
Document 1	WORLD\DOCS\27551\2\W0120785.DOC
Document 2	WORLD\DOCS\27551\2\W0120786.DOC
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	35
Deletions	49
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	86

EXHIBIT B

BELLES GRAHAM LLP

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OF COUNSEL

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DAVID W. PROUDFOOT
DONALD H. WILSON

April 17, 2023

Ms. Dawn N. S. Chang, Chairperson
Board of Land and Natural Resources
Department of Land of Natural Resources
State of Hawaii
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii 96813

VIA EMAIL & REGULAR MAIL

Re: **Grant of Perpetual Non-Exclusive Easement to Eric A. Knudsen
Trust for Access and Utility Purposes over Portion Hapa Road;
Poipu, Koloa, Kauai, TMK: (4) 2-8-14: Abutting Parcel 19
Ref. No.: 10KD-106**

Dear Chairperson Chang and Board Members:

I am writing to you on behalf of the Eric A. Knudsen Trust ("Knudsen Trust") concerning the above-described Grant of Easement over Hapa Road ("Hapa Road GOE"). On January 13, 2012, the Board of Land and Natural Resources ("Land Board") approved the Knudsen Trust's request for the Hapa Road GOE.

Thereafter, on January 23, 2012, Theodore K. Blake ("Blake") filed a Petition For A Contested Case Hearing ("Petition") in this matter. On September 14, 2012, the Land Board denied Blake's Petition. On October 3, 2012, Blake filed a Notice Of Appeal To Circuit Court (Blake v. Board of Land and Natural Resources, et. al., Civil No. 12-1-2492-10, First Circuit Court, State of Hawaii), and a Complaint For Declaratory And Injunctive Relief (Blake v. Board of Land and Natural Resources, et. al., Civil No. 12-1-2491-10, First Circuit Court, State of Hawaii), challenging the Land Board's denial of Blake's Petition. These cases are still pending. As a result, the Hapa Road GOE was never formally prepared or executed by the State and the Knudsen Trust.

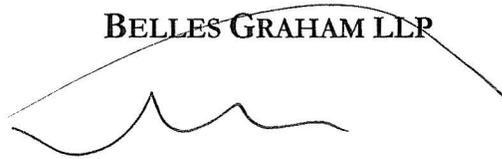
Ms. Dawn N. S. Chang, Chairperson
Board of Land and Natural Resources
April 17, 2023
Page 2

In the meantime, the Knudsen Trust has determined that it no longer needs or wants the Hapa Road GOE. The Knudsen Trust is therefore withdrawing its Request For State Lands previously filed herein for the Hapa Road GOE.

Thank you very much for your assistance in this matter.

Sincerely yours,

BELLES GRAHAM LLP

A handwritten signature in black ink, appearing to read "Max W. J. Graham, Jr.", is written over a thin, curved line that arches over the signature.

Max W. J. Graham, Jr.

MWJG:jgm

cc: Ms. Alison Neustein, Kauai District Land Agent, DLNR (via email only)
Charles A. Foster, Esq. (via email only)
Moses K. N. Haia, III, Esq. (via email only)
Linda L. W. Chow, Esq. (via email only)