

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, HI, 96813

January 26, 2024

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

Land Board Members:

SUBJECT: Denial of Petition for Contested Case Hearing filed by Richard Perry/Oho'olawa Gardens, LLC through attorney David Brittin on September 28, 2023, Regarding the Board Action of September 22, 2023 to Approve Agenda Item C-1: *Request to Approve Location and Course of the Public Trail to Ho'olawa Landing, Maui, Identified on Registered Map 861, Hamakualoa District, Maui, to Ensure Continued Public Access, and Request Approval of Declaration of Exemption from Chapter 343, HRS Environmental Compliance for the Project.*

Pursuant to Section 92-5(a)(4), Hawaii Revised Statutes (HRS), the Board may go into Executive Session in order to consult with its attorney on questions and issues pertaining to the Board's powers duties, privileges, immunities, and liabilities.

BACKGROUND

On September 22, 2023, after receiving testimony and considering the issues, the Board approved Agenda Item C-1: *Request to Approve Location and Course of the Public Trail to Ho'olawa Landing, Maui, Identified on Registered Map 861, Hamakualoa District, Maui, to Ensure Continued Public Access and Request Approval of Declaration of Exemption from Chapter 343, HRS Environmental Compliance for the Project.* A copy of the Board action of September 22, 2023, Agenda Item C-1, is attached as Exhibit A.

Petitioner, Richard Perry on behalf of his company Oho'olawa Gardens LLC, submitted written testimony on agenda item C-1 through his attorney, David Brittin, prior to the September 22, 2023, Board meeting. Oho'olawa Gardens LLC owns TMK (2) 2-9-001:032, through which the public trail to Ho'olawa Landing runs. During the meeting, the Board received verbal testimony from David Brittin, on behalf of Petitioner. Petitioner indicated he disputes the trail's location and requested that the matter be deferred so he could appear in person.

The Board ultimately voted to approve agenda item C-1 on September 22, 2023. After the Board voted to approve, David Brittin orally requested a contested case hearing on the item. On September 28, 2023, the Department received a written petition from Petitioner requesting a contested case hearing to challenge the location of the trail and the exemption from Chapter 343, HRS. A copy of the contested case petition is attached as Exhibit B.

The State owns the public trail to Ho‘olawa Landing, which goes across and over Petitioner’s property. In 1993, former owners of Petitioner’s property filed a quiet title action for what is now Petitioner’s property. The State participated in the lawsuit and asserted its ownership of all roadways, trails, and rights-of-way, including access to Ho‘olawa Landing as delineated on Registered Map No. 862. The final judgment quieted title to the property owners, but specifically reserved “all roadways, trails, and rights-of-way as provided for in HRS 264-1 over and across the subject real property, including but not limited to the public trail to Ho‘olawa Landing delineated on Registered Map No. 862.”

The Warranty Deed that granted title to Petitioner’s company, Oho‘olawa Gardens LLC, states that his title to the property is subject to:

“Reservation(s) in favor of the State of Hawai‘i of the following:

- (a) all right, title, interest, or claims to waters having their sources upon or flowing over or under said land;
- (b) an easement for the free flowage of waters over and across said land; and
- (c) **all roadways, trails, and rights-of-way as provided for in HRS 264-1 over and across the subject real property, including but not limited to the public trail to Ho‘olawa Landing delineated on Registered Map No. 862, as disclosed by that certain instrument dated November 20, 1996, recorded as Document No. 97-117365.”**

The location and course of the public trail to Ho‘olawa Landing that the Board approved on September 22, 2023, is the same location shown on Registered Map No. 862 (RM 862), but with two minor variances where the present-day location of the trail differs from the location shown on RM 862. For more detailed information, see page 4 of Item C-1.

DOFAW staff used the best available science, technology, and data to determine the present-day location of the trail by digitally superimposing the RM 862 map onto modern high-resolution imagery. The overlay showed that the RM 862 route coincides with a clearly identifiable trail on site, with only minor variances that are attributable to inaccuracies expected from old maps such as RM 862, which was hand-drawn in 1881 and not be expected to be 100% accurate to the present-day landscape.

As the location and course of the public trail relate to Petitioner’s property:

- At the upper variance, the present-day, observable trail turns west for approximately 100 feet before returning back to the RM 862 trail. This means that

the access point to the trail where it crosses over Petitioner's property is approximately 100 feet different from the location delineated on RM 862.

- At the lower variance, the present-day, observable trail varies slightly to the south before turning back to the RM 862 trail.

It is unknown whether the trail delineated on RM 862 *actually* varies from the present-day observable trail or if the slight variances distinguished by DOFAW staff are the result of present-day conditions and advanced technology being compared to a hand-drawn map from 1881.

DISCUSSION

A contested case hearing is one where the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing (HRS § 91-1(5)). A contested case hearing is not required by law unless it is required by (1) agency rule, (2) statute, or (3) constitutional due process.

In the present case, there is no statutory or rule-based requirement for a contested case hearing when the Board action involves a historic trail under HRS § 264-1 or exempts an action under HRS Chapter 343. The Board's action relates to its role as a landowner and involves the custodial management of State lands. Accordingly, whether Petitioner is entitled to a contested case depends upon a constitutional due process analysis.

Regarding whether constitutional due process requires a contested case hearing in this matter, such protections mandate a hearing when the claimant seeks to protect a property interest to which the claimant is legitimately entitled. *If* a petitioner has a protected property interest, *then* it would be necessary to evaluate whether the procedures provided adequately protected that property interest. *Sandy Beach Def. Fund v. City Council of Honolulu*, 70 Haw. 361, 376, 773 P.2d 250, 260, 378, 773 P.2d at 261 (1989).

1. Petitioner does not have a protected property interest, as the State owns the trail.

Constitutional due process protections mandate a hearing whenever the claimant seeks to protect a 'property interest,' in other words, a benefit to which the claimant is legitimately entitled. That interest must be one for which the claimant has "a legitimate claim of entitlement" and must be "more than an abstract need or desire" or "a unilateral expectation." *Bush v. Hawaiian Homes Comm'n*, 76 Hawai'i 128, 136, 870 P.2d 1272, 1280 (1994). The Petitioner claims in the written petition that the Board's action constitutes a Fifth Amendment taking, under the United States Constitution.¹

¹ The Fifth Amendment prohibits a government from taking private property for public use without just compensation. The Fifth Amendment is then applicable to the states and their governments through the Due Process Clause of the Fourteenth Amendment.

Petitioner does not have a property interest here because it has no legitimate claim of entitlement to the trail to Ho‘olawa Landing. The Board action of September 22, 2023 did not deprive Petitioner of any interest in his own property.

The Petition states, “Petitioner disagrees with the proposed siting and location of the trail to Ho‘olawa Landing. Petitioner believes that the survey produced by [DOFAW] is not accurate, and that the proposed location of the trail is being sited for the convenience of using Petitioner’s road, rather than it’s actual location.” This is demonstrably inaccurate, as explained starting on page 4 of the September 22, 2023, staff submittal. DOFAW staff provided the present-day location of the trail based on the best available science and data available—RM 862 was super imposed onto a modern-day map, then compared with geospatial data of the observable present-day trail. It is true that in several places the trail location that the Board approved in September 2022 deviates slightly from the Registered Map No. 862, however these discrepancies are explained in the September 22, 2023 staff submittal at pages 4-6.

There is no Fifth Amendment taking of the Petitioner’s private property in this case because the State has always owned the trail and it was never part of the Petitioner’s property, despite his assertions. The State owns the trail to Ho‘olawa Landing, as determined in the 1993 quiet title action. Petitioner does not have a property interest in the State’s ownership of a trail that a court has previously decided. There is no deprivation of Petitioner’s property under the Fifth Amendment of the United States Constitution. The State has “owned” the trail to Ho‘olawa Landing for over a century prior to Petitioner’s arrival. The previous landowner did not appeal the 1993 quiet title action and Petitioner is bound by that decision as a successor in privity.

The State has simply indicated to the public where its trail is, indicated its intent to formally conduct a metes and bounds survey, and indicated its intent to include the trail to Ho‘olawa Landing in the Nā Ala Hele program. Petitioner has no property interest in the State-owned trail. There has been no change in landownership or deprivation of Petitioner’s property. The State ensuring that the trail remains accessible to the public with a clearly demarked route does not deprive Petitioner of any of his property rights.

2. Even if Petitioner has a protected property interest, the procedures adequately protected that interest.

Even if the Petitioner has a protected property interest separate from the trail itself, the procedures followed adequately protected that interest. Procedural due process “requires that parties be given a meaningful opportunity to be heard. This includes the right to submit evidence and argument on the issues.” *Kahoma*, 149 Hawai‘i at 313, 489 P.3d at 417 (internal citation omitted). Petitioner was provided with meaningful opportunities to be heard. The Petitioner was provided with ample opportunity to resolve this issue with the Department since at least 2017, when access issues to the trail first arose. Despite DOFAW staff’s attempts to resolve the trail location and access issues in a non-adjudicatory fashion, Petitioner continuously denied that the trail even exists across his property.

Petitioner was provided notice of the September 22, 2023 Board meeting. Petitioner submitted written testimony on the matter but did not attempt to provide *any* evidence contrary to DOFAW's determination. Petitioner does not claim that he had no notice of the Board meeting, but rather that he could not attend in person because he was traveling internationally. But Petitioner's attorney appeared before the Board in person, submitted written testimony on Petitioner's behalf, and presented his arguments to the Board as his representative. Ultimately the Board approved the staff submittal. The Board's disagreement with Petitioner does not equate to a lack of procedural process entitling him to a contested case hearing.

The risk of erroneously depriving Petitioner of his property is low, as the Board simply exercised its authority to allow DOFAW to mark the trail, perform a metes and bounds survey, and open the trail to Nā Ala Hele program. Petitioner does not and has never owned the State trail, so the risk of erroneously depriving him of property is low.

Whereas, Petitioner has increasingly deprived the State and the public of their property through his efforts to block access to the trail where it crosses over his property. The government has a high interest in (1) ensuring that its public trail remains open and accessible; (2) protecting state trails and shoreline access; and (3) enforcing its administrative procedures. The historic trail has been accessible to the public since at least the late 1800s, but likely earlier. Only within the last decade or so has public access been restricted by private landowners.

Lastly, the burden on the government that holding a contested case hearing would entail weighs heavily in favor of rejecting the Petition. Contested case hearings are expensive and time-consuming endeavors for the staff of the Department, the Board, and its attorneys. The cost of retaining hearings officers and court reporters can be thousands of dollars for even one-day contested case hearings, not counting staff and attorney time. Petitioner has failed to justify why the Department should bear such costs and spend many hours of staff time on a contested case hearing, especially considering that Petitioner's predecessor in interest did not appeal the judicial decision that granted the State's reservation of the trail and the State's ownership of the trail cannot be contested. The administrative burden of providing a contested case hearing under these circumstances does not justify a contested case.

Petitioner was given ample opportunity to participate in the Board meeting of September 22, 2023, to advocate for the protection of his property interests, including demonstrating a scintilla of evidence that DOFAW staff's submittal was somehow incorrect. Furthermore, the record confirms that the Board fairly considered Petitioner's testimony in its decision making. Therefore, Petitioner has been provided with sufficient due process in this matter and is not entitled to a contested case hearing simply because he does not agree with the Board's decision.

HRS Chapter 343

A contested case hearing under HRS chapter 91 is an inappropriate venue for Petitioner's claims relating to HRS chapter 343. HRS chapter 343 has its own cause of action in the court.

RECOMMENDATION:

That the Board deny the Petition for a Contested Case Hearing filed by Richard Perry through his attorney, David Brittin, on September 28, 2023, regarding agenda item C-1 at the Board's September 22, 2023, meeting.

Respectfully submitted,



David G. Smith, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



DAWN N.S. CHANG, Chairperson
Board of Land and Natural Resources

- Exhibit A. Board action of September 22, 2023, Agenda Item C-1.
- Exhibit B. Petition for a contested case hearing filed on behalf of Petitioner.

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, HI, 96813

September 22, 2023

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

Land Board Members:

SUBJECT: REQUEST TO APPROVE LOCATION AND COURSE OF THE PUBLIC TRAIL TO HO'OLAWA LANDING, MAUI, IDENTIFIED ON REGISTERED MAP 862, HAMAKUALOA DISTRICT, MAUI, TO ENSURE CONTINUED PUBLIC ACCESS

AND

REQUEST APPROVAL OF DECLARATION OF EXEMPTION FROM CHAPTER 343, HRS ENVIRONMENTAL COMPLIANCE REQUIREMENTS FOR THE PROJECT

SUMMARY:

There is a public trail that leads from Ho'olawa Road to Ho'olawa Landing, which is at the shoreline of Ho'olawa Bay, in Hamakualoa, Maui. The State owns the public trail to Ho'olawa Landing. The public trail to Ho'olawa Landing crosses through one or more privately-owned properties. At least one of the current owners of the privately-owned properties has rejected the State's ownership of the public trail and has reportedly taken actions to prevent public usage of the trail. Constituent concerns about access to Ho'olawa Landing date back to at least 1993, and over the past several years, the Division of Forestry and Wildlife's (Division) Maui Branch has been contacted by numerous constituents regarding issues accessing and locating the public trail to Ho'olawa Landing.

The department, through the Division of Forestry and Wildlife, is responsible for ensuring public access to state trails¹. Division staff site visits to the trail to Ho'olawa Landing revealed an obvious trail, which coincides closely, but not exactly, with historic maps. However, staff were not able to locate a metes and bounds description of the trail in its search of records. Through site visits, extensive research of historical maps, and comparisons to modern-day maps and imagery, staff are reasonably certain as to the location of the trail to Ho'olawa Landing. As the trail to Ho'olawa Landing crosses through

¹ https://www.capitol.hawaii.gov/hrscurrent/Vol03_Ch0121-0200D/HRS0198D/HRS_0198D-.htm

one or more private properties, staff believes it is critical to accurately identify the trail's location to ensure that users are able to stay on the public trail and avoid trespassing onto adjacent lands. One issue is that the obvious course of the trail on site does not coincide exactly with the apparent course shown on the historic maps. Division staff believe that that it is essential to reconcile those minor differences and complete a metes and bounds survey of the public trail to ensure that the trail will remain accessible for the public for future generations and to ease conflicts regarding usage.

The purposes of this submittal are to (1) inform the Board of Land and Natural Resources (Board) and the public of the Division's research and re-affirm state ownership of the trail to Ho'olawa Landing, (2) request that the Board approve the location and course of the trail, and (3) request that the Board authorize the Division to complete a metes and bounds survey of the trail in order to document its location and course and implement such management actions as may be necessary to ensure safe and appropriate public access.

BACKGROUND:

The Division is responsible for the implementation of the department's trails and access program, known as Nā Ala Hele, established under Chapter 198D, Hawaii Revised Statutes (HRS). The statute directs the department to plan, develop, and acquire land or rights for public use of land, construct, restore, and engage in coordination activities to implement the program. DLNR's responsibilities include development and maintenance of a statewide inventory of trails and access with relevant information for each trail, including maps, locations, conditions, and other information relevant to potential public use.

Pursuant to §264-1, HRS, all trails and other nonvehicular rights-of-way in the state declared to be public rights-of-ways by the Highways Act of 1892, or opened, laid out, or built by the government or otherwise created or vested as nonvehicular public rights-of-way at any time thereafter, or in the future, are declared to be public trails². Under the Highways Act of 1892, the definition of public highway includes all trails existing at the time of the Act or thereafter opened, laid out or built by the Government, or by private parties, and dedicated or abandoned to the public as a highway. The Act provided further that all public highways, once established, shall continue to be so until abandoned by due process of law³. As explained further in this submittal, the trail to Ho'olawa Landing existed prior to 1892.

Constituent concerns regarding access to Ho'olawa Landing date back to at least 1993, when the department received reports that a public trail was being blocked. In response to those inquiries, research into trail ownership was initiated by the department. On September 1, 2016, the Division's Maui district office staff were contacted by the Friends of Ho'olawa Bay, who indicated that they are a group of residents that live near Ho'olawa

²https://www.capitol.hawaii.gov/hrscurrent/Vol05_Ch0261-0319/HRS0264/HRS_0264-0001.htm

³<https://evols.library.manoa.hawaii.edu/server/api/core/bitstreams/f324b489-dc1b-4ef9-ab5d-f92ac797560e/content>

Landing, Hamakualoa, Maui. The inquiry expressed concerns that the trail leading to Ho'olawa Landing may be unlawfully obstructed where it crosses through private land identified as tax map key (TMK) (2) 2-9-001:032, requested a determination as to whether the subject trail to the Landing was in fact a state trail, and requested assistance to ensure that the trail was available for public use. Pursuant to statutory duties, DOFAW staff initiated an investigation to determine whether a public trail to Ho'olawa Landing exists through the subject property, and if so, to assemble relevant information for inclusion of the trail in the state's inventory of trails and access, including identification of the location and course of the trail. The investigation included review of available land records and documents, site inspections, mapping, notifications and discussions with adjacent landowners, and consultation with the Department of the Attorney General.

FINDINGS:

Ownership

The Division's review of historic and contemporary records and documents revealed the following information:

- 1) A survey of Grant 3263, dated 1879, used as a reference point for that grant the "new road to Ho'olawa Landing."
- 2) The "new road" noted above in the survey of Grant 3263 is shown on Registered Map (RM) 862, dated 1881, leading to the shoreline at Ho'olawa Landing (Exhibit A). The road to Ho'olawa Landing was dedicated to the public use in 1892, as evidenced by historical accounts.
 - a) From 1879 to 1896, the lands near Ho'olawa from Honopou to Huelo supported sugar plantations known as the Huelo Plantations.
 - b) In 1880, an estimated 500 acres of sugar were under cultivation, employing an estimated 120 men under C. Brewer and Akanali'ili'i. Other sugar plantation interests in the area in later years included Watson and HC&S.
 - c) During those years, Ho'olawa Landing served as a commercial port, supported financially by the government, and served the public interests by providing transport for sugar, goods, US mail, and travelers.
 - d) The port at Ho'olawa landing was serviced weekly from 1878 to 1902 by the Wilder Steamship Company's 49-ton steamer Mokoli'i. The fare for passengers to travel from Honolulu to Ho'olawa Landing was \$6.
- 3) The road to the Landing shown on RM 862 is shown as a "Trail" on RM 2744, dated 1926.
- 4) The final judgment of a 1996 quiet title action involving the subject property (TMK (2) 2-9-001:032) reserved the road shown on RM 862 in favor of the State, pursuant to the Highways Act of 1892. The final judgment, including the reservation in favor of the State, was filed in the Bureau of Conveyances (BOC) as Document Number 97-117365 (Exhibit B).
- 5) The warranty deed for the subject property (TMK (2) 2-9-001:032) reserves, in favor of the State, the public trail to Ho'olawa Landing shown on Registered Map 862 and

recorded in the BOC as Document Number 97-117365. The warranty deed, dated July 8, 2011 and with the current owner listed as the "grantee," is attached hereto as Exhibit C.⁴

- 6) By virtue of its existence and use as a non-vehicular right-of-way to Ho'olawa Landing in 1892, the "Road" represented in RM 862 is a "public trail", as defined in §264-1(b), HRS.

Based on the findings above, and after consultation with the Department of the Attorney General, Division staff conclude that the access shown on RM 862 is a public trail pursuant to §264-1(b), HRS, that is owned in fee simple by the State of Hawai'i, under the jurisdiction of the Department of Land and Natural Resources.

Location and course

Although Division staffs' research includes maps of the trail to Ho'olawa Landing, the available records do not provide a metes and bounds description of the historic trail through TMK No. (2) 2-9-001:032. Division staff have confirmed the existence of an identifiable trail in the approximate location of the RM 862 through site visits and reviews of aerial imagery of the area. The identifiable trail's upper mauka portions are characterized by a dirt or gravel track that transitions to a grassy pathway in the lower makai portions. To determine whether the observable trail is indeed the RM 862 trail, Division staff created a georeferenced digital trace of the RM 862 trail, superimposed it onto modern maps and high-resolution imagery, and compared the digital reference to the approximate location of the course observed on site (Exhibit D). Exhibit D shows that the location of the RM 862 trail closely coincides with the identifiable trail to Ho'olawa Landing, with two exceptions that are small sections where the present-day location of the trail differs from the location shown on RM 862.

- The upper variance is shown approximately in Exhibit E, in which the observable trail turns to the west for approximately 100 feet before returning toward the north where it again coincides with the RM 862 trail.
- The lower variance is shown approximately in Exhibit F, in which the observable trail on the subject property varies slightly to the south along the elevational contour before turning north back to the apparent RM 862 trail.

As noted above, the trail to Ho'olawa Landing crosses through privately-owned property identified as TMK No. (2) 2-9-001:032. Due to the history of land ownership in Hawai'i, it is not uncommon for public trails to cross privately-owned properties. In the past, the Division has worked cooperatively with private landowners to reach solutions that accommodate their private property rights and public access. These collaborative efforts have included the adjustment of a trail location upon reasonable requests by the landowner, and installation of pedestrian gates and/or step-overs at trail access points in privately-owned fences at the Division's expense.

⁴ The reservation in favor of the state is condition 5(c) of Exhibit A of the warranty deed.

Adjacent landowner

Pursuant to the determinations of ownership, location, and course of the trail to Ho'olawa Landing, Division staff on February 6, 2017 contacted the owner of the subject property at TMK No. (2) 2-9-001:032 to inform him of the existence of the state-owned public trail crossing through his property. The landowner, through his then-retained attorneys, explained that he did not agree that the trail to Ho'olawa Landing was a public trail and provided the Division his certain concerns about impacts to his property that may result from public use of the state trail. In 2017, with the assistance of the Department of the Attorney General, Division staff engaged in numerous discussions with the landowner to identify potential solutions. The Division indicated its willingness to mitigate the landowner's concerns, including offering to establish an alternate route(s) or formal agreements with terms that mitigate concerns. Unfortunately, after lengthy discussions, the Division was unable to reach any agreements and the landowner affirmed his belief that the trail to Ho'olawa Landing is not a public trail.⁵ Since 2017, the landowner of the subject property has reportedly continued to take actions to limit public access to the public trail. The Division became aware of his actions through constituent reports and complaints. Staff notes in addition that the adjacent landowner is currently using the public trail to Hoolawa Landing for vehicular access to his property.

DISCUSSION:

Mapping the exact location and course of trails that are available for public use is essential for legal documentation, trail management, and safe and appropriate use. Where public trails are adjacent to private lands, accurate maps and Division trail markings ensure that users are able to stay on the trail and avoid trespassing onto adjacent lands.

Many historic roads and trails owned by the state pursuant to §264-1, HRS, even when reserved in land documents, may be known only from historic maps. It is common for historic trails, such as the trail to Ho'olawa Landing, to lack metes and bounds descriptions that geo-reference the trail location and route, as this is relatively modern technology. Using old maps to locate the present-day location of a trail can be challenging for several reasons. Historic maps may be imprecise because they are hand-drawn, and over time, trails may be destroyed or difficult to identify on site as land changes over time, such as when trails are graded or modified with gravel or fill. Where archeological evidence of a historic trail can be identified, such as stones or curbing, Division staff can determine the present-day location with reasonable certainty. It becomes much more challenging to determine the location of a historic trail when physical evidence has been lost or destroyed. In those cases, the department must determine the location and course of the state trail using the best available information, for example by reconciling historic maps with evidence of existing trails identifiable on site and current use.

⁵ Regardless of the subject property owner's beliefs, the trail to Ho'olawa Landing is reserved in legal documents to the state. Even with continued attempted-exclusive usage of the trail on the subject property, the trail remains the state's property because land cannot be adversely possessed from the state.

As staff investigated the exact location of the trail to Ho'olawa Landing, they did not find any archaeological evidence that definitively establishes the location of the trail. However, overlay of the RM 862 map onto modern imagery shows that the trail depicted in RM 862 coincides closely with the trail that is identifiable on site, with the exception of the variances noted above and shown in Exhibits E and F. For each of those variances, there is no physical evidence of a trail on site in the apparent location where the RM 862 trail would be, while there is clearly an identifiable path that is currently in use, as shown in the Exhibits. Based on those observations, staff believes that the identifiable path that is currently in use is the public trail.

This request seeks to affirm that the location and course of the public trail is the identifiable path that is currently in use, as shown approximately in Exhibits E and F, approve the completion of a metes and bounds survey to document that location and course, and approve that the public trail be set aside and managed as a Nā Ala Hele Program Trail. As the public trail and adjacent parcels identified as TMKs (2) 2-9-2:012 and (2) 2-9-001:033 are currently unencumbered state lands, this submittal requests approval of a right-of-entry to the Division of Forestry and Wildlife to support trail management.

CHAPTER 343 ENVIRONMENTAL ASSESSMENT:

In accordance with the requirements of Chapter 343, HRS, Hawaii Administrative Rule Section 11-200-8(6), the Exemption List for the Division of Forestry and Wildlife, Department of Land and Natural Resources, as reviewed and concurred upon by the Environmental Council on November 10, 2020, the subject project is exempt from the preparation of an environmental assessment pursuant to the following exemption classes:

From the DLNR November 10, 2020, Exemption List:

General Exemption Type 1, Part 1, #25, *Repair and maintenance of existing roadways, roadway shoulders, road structures and signage, parking areas, walkways, bikeways, multi-use pathways, driveways, and boat launch ramps (includes grading, resurfacing, infilling, sealing, grooving, cleaning, chipping, painting and patching).*

General Exemption Type 3, Part 1, #9, *Construction and location of new, small facilities or structures necessary to support or enhance public recreational use of lands and waters, such as outdoor showers, signage, interpretive kiosks, viewing platforms, tables, grills, lifeguard stations, improvements necessary for compliance with the Americans with Disabilities Act, and other similar structures.*

General Exemption Type 3, Part 2, #5, *Construction of off-street parking facilities having capacities of up to 25 passenger vehicle stalls.*

RECOMMENDATIONS:

That the Board:

1. Approve that the location and course of the state-owned trail to Ho'olawa Landing is the currently physically identifiable trail, as shown approximately on Exhibits D, E, and F as the present-day course;
2. Authorize the Division of Forestry and Wildlife to complete a metes and bounds description of the centerline of the twelve foot (12') trail corridor of the trail to Ho'olawa Landing;
3. Approve that the public trail documented in item 2 above be set aside as a Nā Ala Hele Program Trail, subject to regulation under Chapter 13-230, Hawaii Administrative Rules;
4. Require that the location and course of the state-owned trail to Ho'olawa Landing be recorded in the State of Hawai'i's Bureau of Conveyances, where appropriate;
5. Determine that the location and course of the state-owned trail to Ho'olawa Landing shall not be altered hereafter without express Board approval;
6. Authorize the Division of Forestry and Wildlife to plan and implement such actions as may be necessary to ensure that the public may safely access the trail to Ho'olawa Landing, including but not limited to trail marking, signage, improvements, and ancillary purposes, in accordance with all state and federal laws;
7. Approve the issuance of a Right-of Entry to the Division of Forestry and Wildlife to the public trail documented above as well as adjacent parcels identified as TMKs (2) 2-9-2:012 and 2-9-001:033, effective immediately, for the purposes authorized above.

Respectfully submitted



David G. Smith, Administrator

APPROVED FOR SUBMITTAL:







DAWN CHANG, Chairperson

- Exhibit A. Registered Map 862, dated 1881.
- Exhibit B. Judgement, 1996, Quiet Title.
- Exhibit C. Warranty Deed, TMK No. (2) 2-9-001:032
- Exhibit D. Overview map of public trails to Ho'olawa Landing
- Exhibit E. Upper section of map of public trails to Ho'olawa Landing
- Exhibit F. Lower section of map of public trails to Ho'olawa Landing

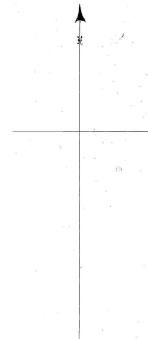
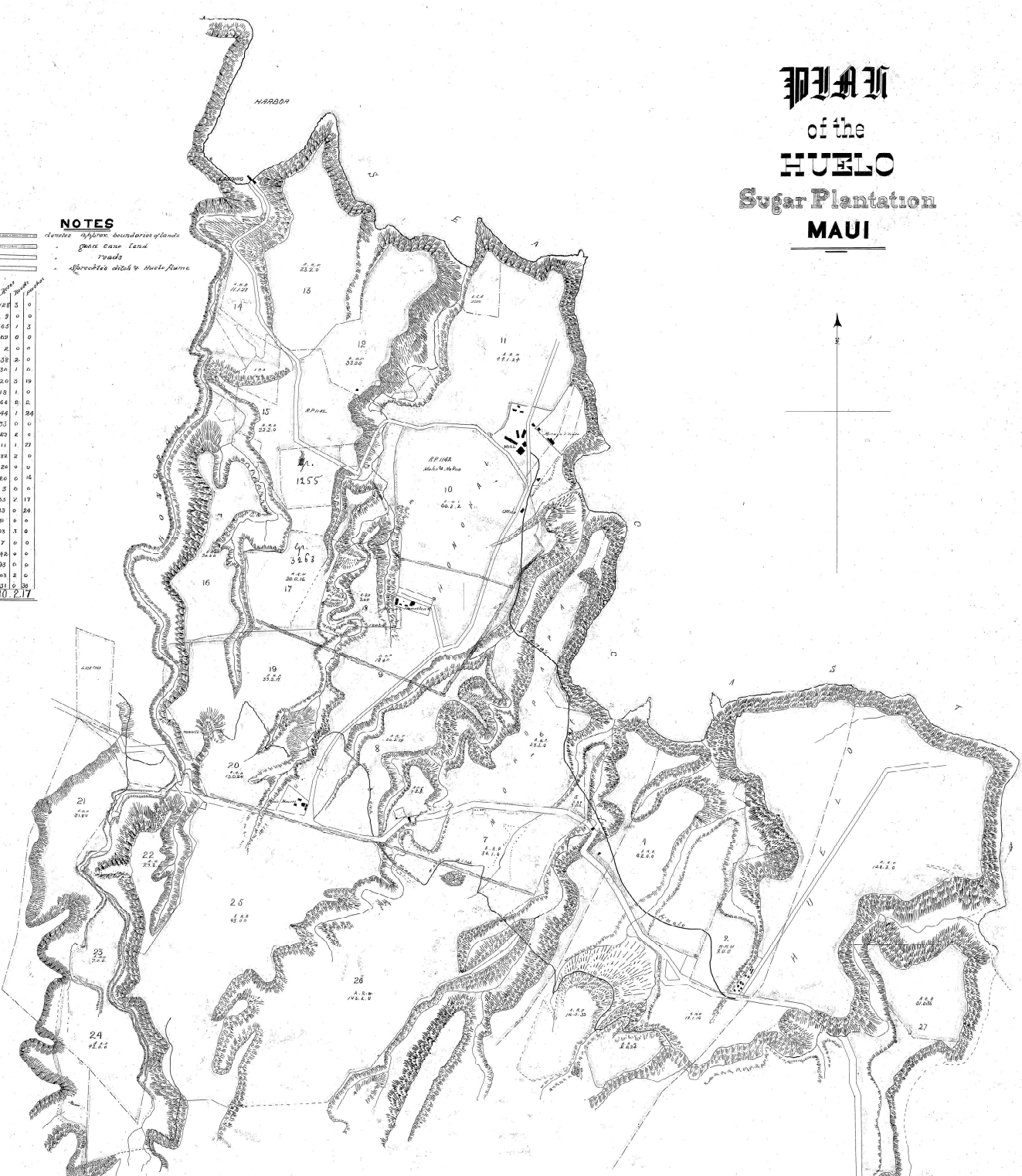
PLAN of the HUELO Sugar Plantation MAUI

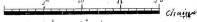
NOTES

-  denotes Approx. boundaries of lands
-  denotes Canal Lane
-  denotes Roads
-  denotes Abandoned ditch or rock-flume

Acres	Sq. Feet
1	128 3 0
2	2 0 0 0
3	3 0 0 0
4	4 0 0 0
5	5 0 0 0
6	6 0 0 0
7	7 0 0 0
8	8 0 0 0
9	9 0 0 0
10	10 0 0 0
11	11 0 0 0
12	12 0 0 0
13	13 0 0 0
14	14 0 0 0
15	15 0 0 0
16	16 0 0 0
17	17 0 0 0
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97	97 0 0 0
98	98 0 0 0
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100	100 0 0 0

TOTAL 1010 2.17



Scale of  chains
 Tracings from map made
 by James Egan for the Survey
 1881
 C.H.

Hawaiian Gov't Survey
 Register No 862.
 -P.H. 3-

R-384

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

SEP 02, 1997 08:02 AM

Doc No(s) 97-117365

/s/CARL T. WATANABE
ACTING
REGISTRAR OF CONVEYANCES

for office use only

	After recordation return <u> X </u> by mail or pick-up JOEL ESER RICHMAN, ESQ. P. O. BOX 46 PAIA, HI 96779	Do not mark this area
--	---	-----------------------

Title or type of Document:

JUDGMENT (QUIET TITLE)

Grantor name(s):

SECOND CIRCUIT COURT, STATE OF HAWAII

Grantee name(s):
and Address(es):

JACK JAMES KIAKONA and
SHIRLEY D. KIAKONA
352 Hualani Street
Kailua, HI 96734

Tax Map Key:

2	2	9	01	32	
Island	Zone	Section	Plat	Parcel	HPR

Joel Eser Richman 4060
P. O. Box 46
Paia, Hawaii 96779

Phone: (808) 572-6293

Attorney for Plaintiff

STATE OF HAWAII
FILED

1996 NOV 22 AM 9:21

J. KAYA
CLERK

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT
STATE OF HAWAII

JACK JAMES KIAKONA and
SHIRLEY D. KIAKONA,

Plaintiffs,

vs.

LOUISE N. COCKETT; UMI, aka
UMI KAPAHU, and their unknown
spouse(s), heir(s), assign(s),
successor(s), personal repre-
sentative(s), executor(s),
administrator(s) and/or
trustee(s); adjoining land-
owners or occupants ANNA
MARIA MILLER (aka Anna Maria
Palomino) and DONALD BOWKER
(previously identified in
this litigation as David
Bowker) both individually
and dba Ho'olawa Farms;
SUSAN BROWNE; ROAN BROWNE;
STEVEN DECOITE; LEROY
VARES; JEROME D. VARES,
ADELINO CONRAD; AUDRENE
VARES KAILIHIWA; GREGORY
JOSEPH GARNEAU; STEVEN
MICHAEL TORRES; ELVIS RICKY
PILA PATEA; EDMUND K.M. LING,
trustee and GABRIELLE LING,
trustee; COUNTY OF MAUI,
STATE OF HAWAII, through its
Department of Land and
Natural Resources; JOHN DOES
1-100; BEATRICE N. GOMES, now
known as BEATRICE N. KAHANU,
Personal Representative of
the Estate of Louise N.
Cockett, deceased; JANE DOES

Civil No. 93-0712(1)
(Quiet title)

JUDGMENT

1
I, _____
Clerk of the Court
Second Circuit

2-100; DOE PARTNERSHIPS 1-100;)
 DOE CORPORATIONS 1-100; DOE)
 ENTITIES 1-100; and all other)
 unknown parties claiming any)
 right, title, estate, lien or)
 interest in and/or to the)
 real property described in)
 Plaintiff's Complaint and/or)
 adverse ownership or cloud)
 upon plaintiff's title)
 thereto, and TO ALL WHOM IT)
 MAY CONCERN,)
)
 Defendants.)

JUDGMENT

Pursuant to Rule 58 of the Hawaii Rules of Civil Procedure and this Court's ORDER FOR DEFAULT as to DEFENDANTS UMI, aka UMI KAPAHU, and their unknown spouse(s), heir(s), assign(s), successor(s), personal representative(s), executor(s), administrator(s) and/or trustee(s), JEROME D. VARES, ADELINO CONRAD, AUDRENE VARES KAILIHIWA, GREGORY JOSEPH GARNEAU, STEVEN MICHAEL TORRES, ELVIS RICKY PILA PATEA, that was entered on September 30, 1996; the DISCLAIMER OF INTEREST entered herein on September 4, 1996 by ANNA MARIE WILLIAMS (also known as Anna Maria Palomino) and DONALD BOWKER (identified in this litigation as David Bowker) both individually and doing business as Ho'olawa Farms; the STIPULATION OF SETTLEMENT BETWEEN PLAINTIFFS JACK JAMES KIAKONA AND SHIRLEY D. KIAKONA AND DEFENDANT STATE OF HAWAII FOR INCORPORATION IN FINAL JUDGMENT AND ORDER as to the claims and defenses of DEFENDANT STATE OF HAWAII that was entered on June 5, 1996; this Court's ORDER GRANTING

DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT as to all claims and defenses of DEFENDANTS LOUISE COCKETT and BEATRICE N. GOMES, now known as BEATRICE N. KAHANU, Personal Representative for the Estate of Louise N. Cockett, Deceased, that was entered on May 28, 1996; the DISCLAIMER OF INTEREST OF DEFENDANT BEATRICE N. KAHANU that was entered on May 20, 1996; the ENTRY OF DEFAULT ON COMPLAINT TO QUIET TITLE TO REAL PROPERTY AND FOR PARTITION FILED ON AUGUST 25, 1993, AGAINST DEFENDANTS SUSAN BROWNE, ROAN BROWNE, STEVEN DECOITE, LEROY VARES, EDMUND K.M. LING, trustee, GABRIELLE LING, trustee AND COUNTY OF MAUI BY CLERK that was entered on October 31, 1994; and the DISCLAIMER OF INTEREST that was filed on June 6, 1994, by DEFENDANT COUNTY OF MAUI,

JUDGMENT is hereby entered in this case in favor of PLAINTIFFS JACK JAMES KIAKONA AND SHIRLEY D. KIAKONA against all Defendants, quieting title to certain real property situated in Hoolawa, Hamakualoa, Makawao, Island and County of Maui, State of Hawaii, that was conveyed to the Plaintiffs

(a) by an Order Approving Final Account, Distribution of Estate and Discharge of Statutory Administrator in the Estate of James K. Kiakona entered on April 25, 1966, in Probate No. 27019-2 in the Hawaii First Circuit Court, giving Jack James Kiakona $\frac{1}{2}$ interest in Grant 1260, subject to the dower interest of Shirley D.

Kiakona, the decedent's widow, recorded April 22, 1966, in book 9743 at pages 8-11, and (b) by a July 12, 1984, deed from George N. Kiakona to Shirley D. Kiakona, conveying his interest in Grant 1260; recorded July 17, 1984, in book 18019 at page 442,

said property being a portion of Royal Patent Grant Number 1260 to Kapahu, containing an area of 12.520 acres, more or less, all more particularly described in Exhibit A of the COMPLAINT TO QUIET TITLE TO REAL PROPERTY AND FOR PARTITION filed herein on August 25, 1993, subject, however, to the following reservations:

1. Reservation in favor of the State of Hawaii of the following:
 - a. all mineral and metallic mines of every description;
 - b. all right, title, interest, or claims to waters having their sources upon or flowing over or under said land;
 - c. an easement for the free flowage of waters over and across said land; and
 - d. all roadways, trails, and rights-of-way as provided for in HRS § 264-1 over and across the subject real property, including but not limited to the public trail to Hoolawa Landing delineated on Registered Map No. 862.

2. Reservation of rights of native tenants being reserved by the King in the Great Mahele, HRS § 7-1, Hawaii State Constitution Article XII, §7, and custom.

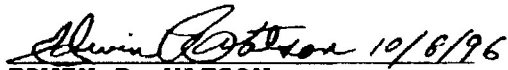
All other claims and counterclaims are dismissed.

DATED: Wailuku, Maui, Hawaii, NOV 20 1996.

Sgd./E. John McConnell (Seal)

~~STATE OF HAWAII~~
JUDGE of the above-entitled Court

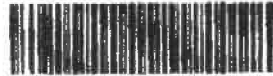
Approved as to form:


EDWIN P. WATSON
Attorney for Defendant
STATE OF HAWAII

KIAKONA VS. COCKETT, Civil No. 93-0712(1)
JUDGMENT



R-148 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
JUL 08, 2011 08:01 AM
Doc No(s) 2011-106819



20 1/1 Z1

/s/ NICKI ANN THOMPSON
REGISTRAR
CONVEYANCE TAX: \$12000.00

LAND COURT

REGULAR SYSTEM

Return By Mail Pick-Up To:

Oho'olawa Gardens, LLC
P. O. Box 617
Haiku, Maui, Hawaii 96708



201846

FHTC: 00201846
FGE: T1-204-3388
Michael E. Gamberdell

P.S.

bp

WARRANTY DEED

PARTIES TO DOCUMENT:

GRANTOR: ASGHAR REZAI SADRI, Trustee of the Asghar R. Sadri Trust, under that certain Trust Agreement dated September 5, 2002, as amended

GRANTEE: OHO'OLAWA GARDENS, LLC
P. O. Box 617
Haiku, Maui, Hawaii 96708

TAX MAP KEY(S): II-2-9-001:032

(This document consists of 8 pages.)

WARRANTY DEED

THIS INDENTURE made this 1st day of July, 2011, by and between ASGHAR REZAI SADRI, Trustee of the Asghar R. Sadri Trust, under that certain Trust Agreement dated September 5, 2002, as amended, with full powers to sell, lease, mortgage, exchange, or otherwise dispose of, or deal with any property of said Trust, whose address is 65/144 Athenee Residence Condo Wireless Road Lumpini, Pratumwan, hereinafter referred to as the "GRANTOR", and OHO'OLAWA GARDENS, LLC, a Hawaii limited liability company, whose address is P. O. Box 617, Haiku, Maui, Hawaii 96708, hereinafter referred to as the "GRANTEE",

WITNESSETH:

That the Grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00), lawful money of the United States of America, and for other good and valuable consideration to the Grantor paid by the Grantee, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, its successors and assigns, forever, the property described in Exhibit "A" attached hereto and by reference made a part hereof.

AND the reversions, remainders, rents, issues and profits thereof, and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereon and thereunto belonging or appertaining or

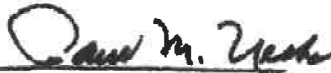
held and enjoyed therewith, unto the Grantee according to the tenancy and estate as hereinabove set forth, forever.

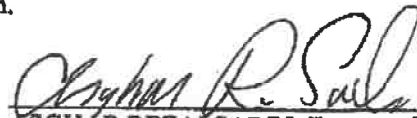
AND the Grantor hereby covenants and agrees with the Grantee, as aforesaid, that the Grantor is lawfully seised in fee simple of the property described in said Exhibit "A", and has good right and lawful authority to sell and convey the same as aforesaid; that said property is free and clear of all encumbrances, subject, however, to the reservations, restrictions, and encumbrances shown on said Exhibit "A", if any, and that the Grantor will WARRANT AND DEFEND the same unto the Grantee as aforesaid, against the lawful claims and demands of all persons whomsoever, except as herein set forth.

The covenants and obligations, and the rights and benefits of the Grantor and the Grantee shall be binding upon and inure to the benefit of their respective estates, heirs, devisees, personal representatives, successors, successors in trust, and assigns, and all covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless otherwise expressly provided herein. The terms "Grantor" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall mean and include the singular and the plural, and the use of any gender shall mean and include all genders.

IN WITNESS WHEREOF, the Grantor has caused these presents to be duly executed on the day and year first above written.

Approved as to Form
CARLSMITH BALL LLP

By 

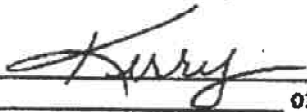

ASGHAR REZAI SADRI, Trustee of the
Asghar R. Sadri Trust, under that certain
Trust Agreement dated September 5, 2002, as
amended

EMBASSY OF THE UNITED STATES OF AMERICA

)
Kingdom of Thailand
Bangkok Metropolis
Embassy of the United States } SS
of America

I, **Kerry Webb**
Consular Associate, of the
United States of America at Bangkok, Thailand, duly
commissioned and qualified, do hereby certify that on this 01 JUL 2011, 2011, before me personally appeared ASGHAR REZAI SADRI,
Trustee of the Asghar R. Sadri Trust, under that certain Trust Agreement dated September 5, 2002, as amended, to me personally known, and known to me to be the individual described
in whose name is subscribed to, and who executed the annexed instrument, ASGHAR REZAI
SADRI, Trustee of the Asghar R. Sadri Trust, under that certain Trust Agreement dated
September 5, 2002, as amended, duly acknowledged to me that the annexed instrument was
executed freely and voluntarily.

In witness whereof, I have hereunto set my hand
and official seal the day and year last above written.


_____ of the United States of
America

Indefinite

Kerry Webb
Consular Associate of the
United States of America

APOSTILLE

1. Country: _____

This public document

2. has been signed by _____

3. acting in the capacity of _____

4. bears the seal/stamp of _____

Certified

5. at _____ 6. the _____

7. by _____

8. No. _____

9. Seal/stamp: _____

10. Signature: _____

EXHIBIT "A"

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant No. 1260 to Kapahu) situate at Hoolawa, Hamakualoa, Makawao, Island and County of Maui, State of Hawaii, being more particularly described as follows:

Beginning at a concrete monument at the southerly corner of this piece of land, being also the southerly corner of Grant 1076 to Wahahae, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPUAI" being 8066.63 feet North and 13,208.30 feet East and running by azimuths measured clockwise from true South:

1.	112° 51'	310.10	feet along Land Commission Award 6510-D: 1 to Manoa to a concrete monument;
2.	127° 31'	426.10	feet along Land Commission Award 5516-D: 1 to Naoopu and Grant 9532 to Lada to a pipe;
3.	194° 20'	79.20	feet along Grant 9532 to Lada to a pipe;
4.	189° 30'	660.00	feet along Government Land to a pipe;
5.	132° 30'	95.00	feet along same to a pipe;
6.	116° 30'	220.00	feet along same to a pipe;
7.	154° 00'	70.00	feet along same to a pipe;
8.	207° 00'	60.00	feet along same to a pipe;
9.	268° 41'	246.20	feet along same to a pipe;
10.	293° 30'	218.00	feet along same to a pipe;
11.	242° 00'	130.00	feet along same to a pipe;
12.	353° 00'	320.80	feet along same to a pipe;
13.	354° 45'	634.30	feet along same to a pipe;

14. 345° 30' 429.70 feet along same to the point of beginning and containing an area of 12.520 acres, more or less, as per survey NORMAN K. MURAKAMI, Registered Professional Land Surveyor, Land Surveyor No. 5824.

TOGETHER WITH a perpetual non-exclusive road easement for pedestrian and vehicular ingress and egress and for future utility access, designated as Easement "B", containing an area of 663 square feet, more or less, as granted by that certain Grant of Easement dated November 22, 1993, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 93-198082.

SUBJECT, HOWEVER, to the following:

1. Mineral and water rights of any nature in favor of the State of Hawaii.
2. Any variations in and along the boundaries running along Hoolawa Stream, as may be caused by the natural deviation of said Stream.
3. Roadway as shown on Tax Map (2) 2-9-001-032.
4. Covenants, conditions, restrictions, reservations, agreements, obligations, exceptions and other provisions as contained in the following:

INSTRUMENT

Dated: November 22, 1993
Document No. 93-198082

but omitting any covenants or restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons

5. Reservation(s) in favor of the State of Hawaii of the following:
- (a) all right, title, interest, or claims to waters having their sources upon or flowing over or under said land;
 - (b) an easement for the free flowage of waters over and across said land; and
 - (c) all roadways, trails, and rights-of-way as provided for in HRS 264-1 over and across the subject real property, including but not limited to the public trail to Hoolawa Landing delineated on Registered Map No. 862.

as disclosed by that certain instrument dated November 20, 1996, recorded as Document No. 97-117365.

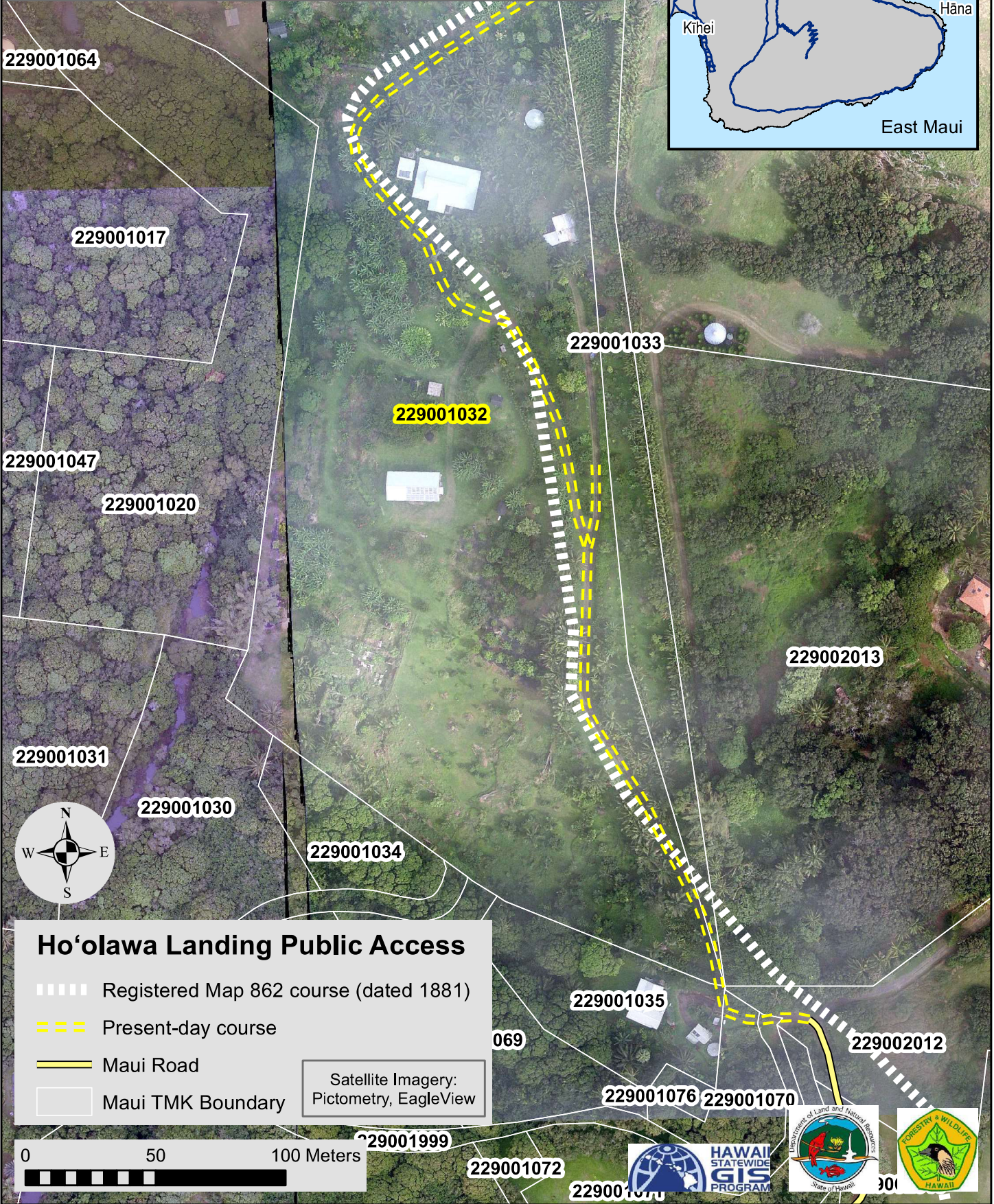
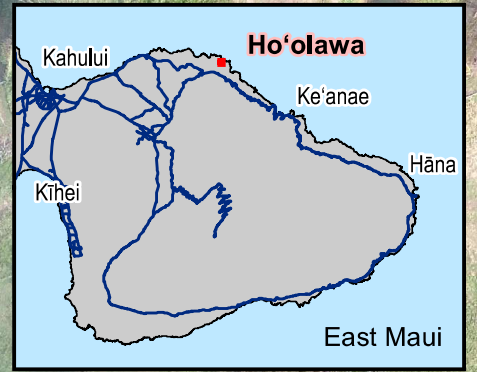
6. Reservation of rights of Native Tenants being reserved by the King in the Great Mahele, HRS 7-1, Hawaii State Constitution Article XII, 7, and custom, as disclosed by that certain instrument dated November 20, 1996, recorded as Document No. 97-117365.
7. Claims arising out of customary or traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes as provided for in the Hawaii Constitution or the Hawaii Revised Statutes, as amended.
8. Any unrecorded leases, subleases, and/or tenancy agreements demising a portion of the land herein described, and any encumbrances affecting the same.

Being the same premises conveyed to the Grantor by Deed To Trust of Asghar Rezai Sadri, unmarried, dated December 4, 2002, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-222425.

4835-6884-3529.1.019999-00143

Exhibit D

Course of shoreline access shown on RM 862 (white dashed line)
in relation to the the identifiable course present on site (yellow
dashed corridor)



Ho'olawa Landing Public Access

- Registered Map 862 course (dated 1881)
 - Present-day course
 - Maui Road
 - Maui TMK Boundary
- Satellite Imagery:
Pictometry, EagleView

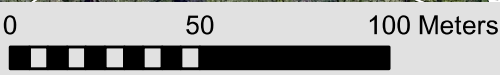
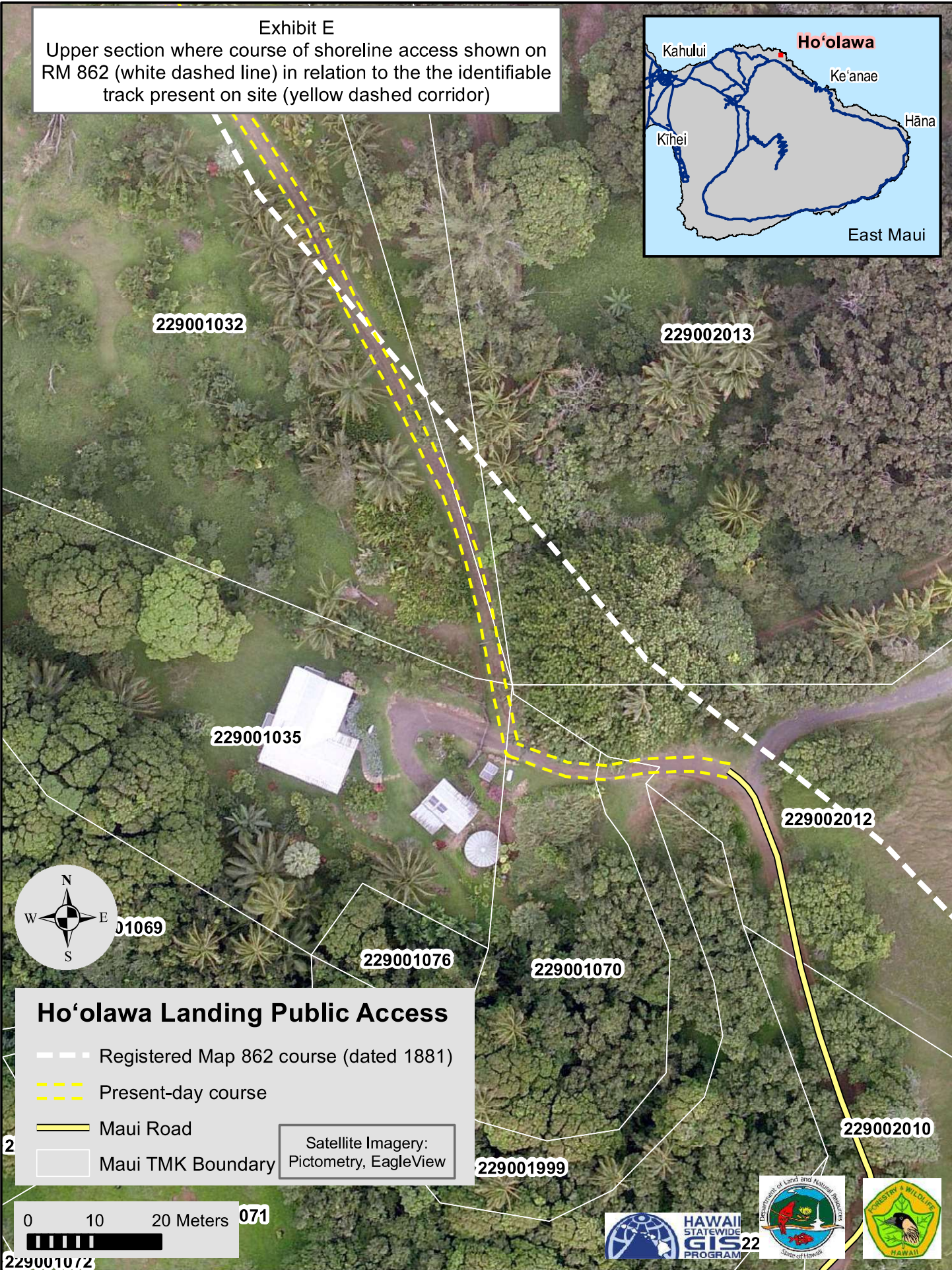
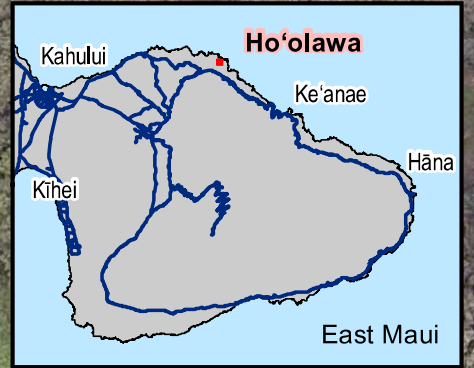


Exhibit E

Upper section where course of shoreline access shown on RM 862 (white dashed line) in relation to the the identifiable track present on site (yellow dashed corridor)

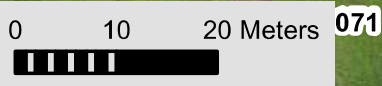


01069

Ho'olawa Landing Public Access

- Registered Map 862 course (dated 1881)
- Present-day course
- Maui Road
- Maui TMK Boundary

Satellite Imagery:
Pictometry, EagleView

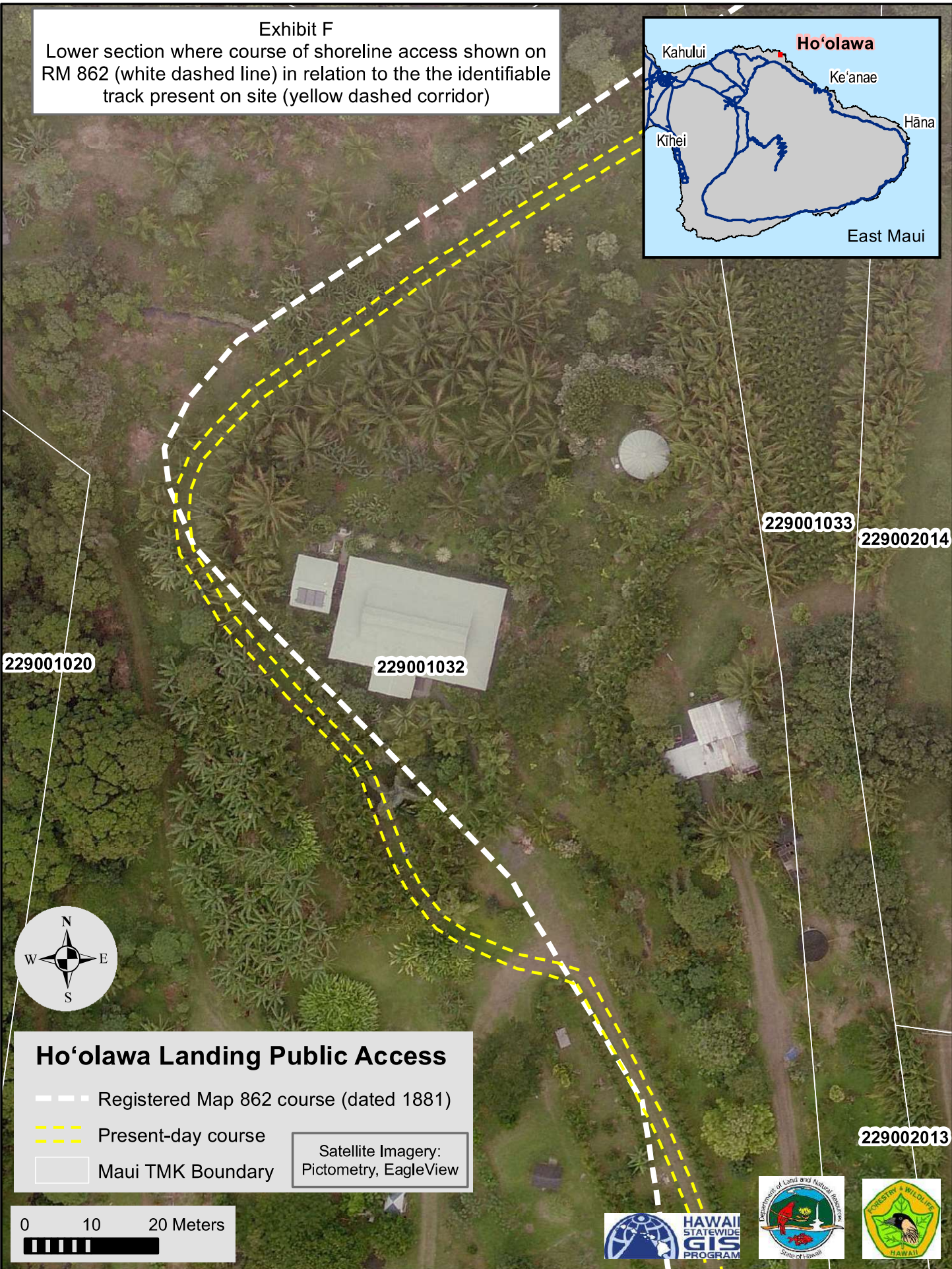
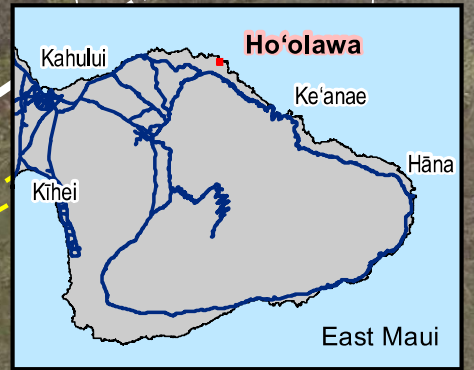


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071

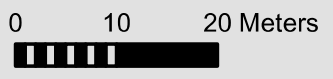
Exhibit F

Lower section where course of shoreline access shown on RM 862 (white dashed line) in relation to the the identifiable track present on site (yellow dashed corridor)



Ho'olawa Landing Public Access

- Registered Map 862 course (dated 1881)
 - Present-day course
 - Maui TMK Boundary
- Satellite Imagery:
Pictometry, EagleView



CASE LOMBARDI
A LAW CORPORATION

David G. Brittin
Lisa K. Broulik
Michelle J. Chapman
Matthew A. Cohen
Stacey W.E. Foy
Noah H. Gibson

Adelbert Green
Michael L. Lam
Dennis M. Lombardi
Jon M.H. Pang
Lauren R. Sharkey
Mark G. Valencia

† A Law Corporation
Daniel H. Case (1925-2016)

PACIFIC GUARDIAN CENTER, MAUKA TOWER
737 BISHOP STREET, SUITE 2600
HONOLULU, HAWAII 96813-3283

TELEPHONE: (808) 547-5400
FACSIMILE: (808) 523-1888
E-mail: info@caselombardi.com
http://www.caselombardi.com

Ka'ōnohiokalā J. Aukai IV
Madlaine N. Farmer
Kenneth V. Go
Dominic S. Jancaterino
Samuel W. King II
James W. Rooney
Steven E. Tom

Of Counsel
Gregory M. Hansen
Michael R. Marsh
Frederick W. Rohlifing III

LETTER OF TRANSMITTAL

To: Board of Land and Natural Resources
Administrative Proceedings Office
1151 Punchbowl Street
Honolulu, Hawaii 96813

Date: September 28, 2023

Via Hand Delivery

From: Fran Sakaguchi, Secretary to
David G. Brittin, Esq.


Re: Oho'olawa Gardens LLC

Our File: 29419-2

I am transmitting the following:

(1) Original + 3 copies of the Petition For A Contested Hearing

REMARKS: If you have any questions, please contact me at 547-5561. Thank you.

By: 

Fran Sakaguchi

DGB:2023
Enclosures



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

RECEIVED

2023 SEP 28 PM 2:13

PETITION FOR A CONTESTED CASE HEARING

DEPT. OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

OFFICIAL USE ONLY	
Case No.	Date Received
Board Action Date / Item No.	Division/Office

INSTRUCTIONS:

- File (deliver, mail or fax) this form within ten (10) days of the Board Action Date to:
 Department of Land and Natural Resources
 Administrative Proceedings Office
 1151 Punchbowl Street, Room 130
 Honolulu, Hawaii 96813
 Phone: (808) 587-1496, Fax: (808) 587-0390
- DLNR’s contested case hearing rules are listed under Chapter 13-1, HAR, and can be obtained from the DLNR Administrative Proceedings Office or at its website (<http://dlnr.hawaii.gov/forms/contested-case-form/>). Please review these rules before filing a petition.
- If you use the electronic version of this form, note that the boxes are expandable to fit in your statements. If you use the hardcopy form and need more space, you may attach additional sheets.
- Pursuant to §13-1-30, HAR, a petition that involves a Conservation District Use Permit must be accompanied with a \$100.00 non-refundable filing fee (payable to “DLNR”) or a request for waiver of this fee. A waiver may be granted by the Chairperson based on a petitioner’s financial hardship.
- All materials, including this form, shall be submitted in **three (3)** photocopies.

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name Oho'olawa Gardens LLC	2. Contact Person Richard Perry	
3. Address 344 Manawai	4. City HAiku	5. State and ZIP 96708
6. Email rp@nutribiotics.com	7. Phone	8. Fax

B. ATTORNEY (if represented)		
9. Attorney Name David G. Brittin	10. Firm Name Case Lombardi	
11. Address 737 Bishop Street, Suite 2600	12. City Honolulu	13. State and ZIP HI, 96813
14. Email dgb@caselombardi.com	15. Phone 808-547-5400	16. Fax 808-523-1888

C. SUBJECT MATTER

17. Board Action Being Contested

REQUEST TO APPROVE LOCATION AND COURSE OF THE PUBLIC TRAIL TO HO'OLAWA LANDING, MAUI, IDENTIFIED ON REGISTERED MAP 862, HAMAKUALOA DISTRICT, MAUI, TO ENSURE CONTINUED PUBLIC ACCESS
SUMMARY:
AND
REQUEST APPROVAL OF DECLARATION OF EXEMPTION FROM CHAPTER 343, HRS ENVIRONMENTAL COMPLIANCE REQUIREMENTS FOR THE PROJECT

18. Board Action Date

September 22, 2023

19. Item No.

C-1

20. Any Specific Statute or Rule That Entitles Petitioner to a Contested Case

United States Constitution, Fifth Amendment, Hawaii State Constitution, HRS Chapter 343, HAR §§ 13-1-28; 13-1-31(b)(2)

21. Any Specific Property Interest of Petitioner That Is Entitled to Due Process Protection

Petitioner is the owner of the real property located at 651 Hoolawa Road, Haiku, Maui 96708, TMK (2) 2-9-001-032, the property adjacent to the purported historic trail..

22. Any Disagreement Petitioner May Have with an Application before the Board

Petitioner disagrees with the proposed siting and location of the trail to Ho'olawa Landing. Petitioner believes that the survey produced by the Department of Forestry and Wildlife is not accurate, and that the proposed location of the trail is being sited for the convenience of using Petitioner's road, rather than in its actual location. Assuming that the proffered survey of the historic trail is correct, the Board's action proposes to place the trail in a different location, which would result in a taking of a significant amount of Petitioner's property without compensation, in violation of the Fifth Amendment in the Hawaii State Constitution. To the extent that the Department of Forestry and Wildlife has actually located the original trail, the State is entitled only to the trail as it originally existed, and the Board cannot simply help itself to additional land in a different location just because it would be more convenient.

Additionally, the Board's action improperly exempted the trail determination from the requirements of HRS Chapter 343 environmental review. The area in which the historic trail is located is environmentally sensitive, and opening the trail to the general public would cause significant cumulative environmental impacts which should be studied and addressed through the normal HRS Chapter 343 environmental review process. The exemptions upon which the Board purportedly made its decision do not apply in this instance given the cumulative impacts, and the exemption action appears to be improper segmentation designed to allow this decision to invade customary HRS Chapter 343 environmental review.

23. Any Relief Petitioner Seeks or Deems Itself Entitled to

Petitioner seeks to have the correct location of the historic trail identified, and for the trail to be sited in its original location. Petitioner seeks all data points and underlying CAD files used in creation of the maps presented in the staff report for this matter such that that Petitioner may have the data reviewed by an independent, third-party surveyor.

Placement of the historic trail in the location proposed by the Board would create a landlocked parcel, in which event Petitioner would have an easement by necessity over the historic trail. In the event a landlocked parcel is created, the parties should formalize an access easement

24. How Petitioner's Participation in the Proceeding Would Serve the Public Interest

Petitioner's participation is critical in order to ensure that all stakeholders have a chance to be heard. Petitioner had very little notice of the hearing, and was traveling abroad. Petitioner made a request through its attorneys for a deferral of the matter until Petitioner could return from abroad, however the request was denied.

25. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR

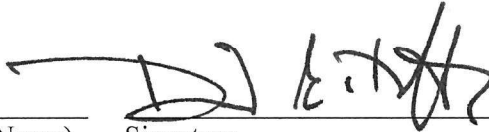
Petitioner believes that notice should be provided to all landowners in the area in order to ensure that the Board has input from all affected stakeholders.

Check this box if Petitioner is submitting supporting documents with this form.

Check this box if Petitioner will submit additional supporting documents after filing this form.

David Brittin

Petitioner or Representative (Print Name)



Signature

9/28/2023

Date