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

April 25, 2008

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

PSF No.:07HD-177

Hawaii

Grant of Term, Non-Exclusive Easement to Benjamin Konshak, Claude L. Harris, Jr. and Greeley West Corporation for Access Purposes, Kaiaakea, North Hilo, Hawaii, Tax Map Key:3rd/3-4-03:11

APPLICANT:

Benjamin Konshak, individual, as Tenant in Severalty, whose business and mailing address is P.O. Box 44576, Kamuela, Hawaii 96743 & Claude L. Harris, Jr., individual, as Tenant in Severalty, whose business and mailing address is HCR 3 Box 14030, Keaau, Hawaii 96749 and Greeley West Corporation, a New York corporation whose business and mailing address is 132 West 31st Street, 18th floor, New York, N.Y. 1001.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Kaiaakea, North Hilo, Hawaii identified by Tax Map Key: 3rd/3-4-03:11, as shown on the attached map labeled Exhibit A.

AREA:

2.5 acres, more or less.

ZONING:

State Land Use District:	Agriculture
County of Hawaii CZO:	5-acre agriculture

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES

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 purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

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

EASEMENT TERM:

Fifty-five (55) years.

ANNUAL RENT:

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

RENTAL REOPENINGS:

Not applicable.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion of use beyond that previously existing."

DCCA VERIFICATION:

Not applicable. The Applicants as landowners are not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicants shall be required to:

1) Pay for an appraisal to determine initial one-time payment;
2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;

REMARKS:

The subject State property identified as Tax Map Key: 3rd/3-4-03:11 is former sugar cane lands. An access road from the Mamalahoa Highway to the upper cane fields was built and

maintained by the Laupahoehoe Sugar Company under General Lease No. S-3616. This access road connected the highway to the "Old Government Road." The County of Hawaii Public Works Department indicated that they have no record of maintenance on this road. This would lead staff to believe the plantations maintained the Old Government Road. It is currently disconnected at the Poupou and Kulanakii Gulches (no existing bridges) and therefore can only be accessed via the cane haul road.

All applicants' own property adjacent to the Old Government Road and wish to utilize the cane haul road to access their respective properties (Exhibit B). Although the Old Government Road appears on the Tax Maps, it is unidentifiable and is therefore considered a "paper road". Mr. Konshak is owner of property identified by Tax Map Key 3rd/3-4-03:63 and is situated at the northwest end of the Old Government Road. Mr. Harris is the owner of property identified by Tax Map Key 3rd/3-4-03:07 and is situated at the southeast end of the Old Government Road. The Greeley West Corporation owns 2 parcels identified by Tax Map Key 3rd/3-4-03:62,63 and are situated on the northwest end of the Old Government Road.

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

Various governmental agencies were solicited for comments with results listed below.

County of Hawaii Agencies	Comments
Environmental Management	No Comments
Fire Department	No Comments
Planning	No Objections
Police Department	No Objections
Public Works	Comments Below
Water Department	No Objections
State of Hawaii Agencies	**Comments**
DOH–Environmental Management	No Response
DHHL	No Response
DLNR-Historic Preservation	No Response
DOT-Highways Division	No Comments
DLNR- Water Resource Management	No Comments
DLNR- Forestry and Wildlife	No Response
Other Agencies	**Comments**
Office of Hawaiian Affairs	Comments Below

The County of Hawaii, Department of Public Works stated they have no record of maintaining the identified "old government road" and that it may belong to their roads in limbo inventory.

The Office of Hawaiian Affairs requests information regarding the length of the term for the easement being requested by the applicant. OHA would like to point out that the subject parcel is Section 5 (b) Ceded Lands, and they would have concerns if the term of the easement were too long and that it would limit the State's future use if the subject parcel should the needs change. Staff responded to OHA concerns and pointed out the easement has a term limit of fifty-five (55) years

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

2. Authorize the subject requests to be applicable in the event of a change in the ownership of the applicants parcel described as Tax Map Key: 3rd/3-4-03:07,62, 63 & 66 provided the succeeding owners have 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.

3. Subject to the Applicants fulfilling all of the Applicants requirements listed above, authorize the issuance of a term non-exclusive easement to Benjamin Konshak, Claude L. Harris, Jr. and Greeley West Corporation covering the subject area for access purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

   A. The standard terms and conditions of the most current term easement document form, as may be amended from time to time;

   B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: 3rd/3-4-03:07,62, 63 & 66, provided however:(1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the 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,

Gordon C. Heit
Land Agent

APPROVED FOR SUBMITTAL:

Laura H. Thielen, Chairperson

TMK: 3RD/3-4-03:11

EXHIBIT A

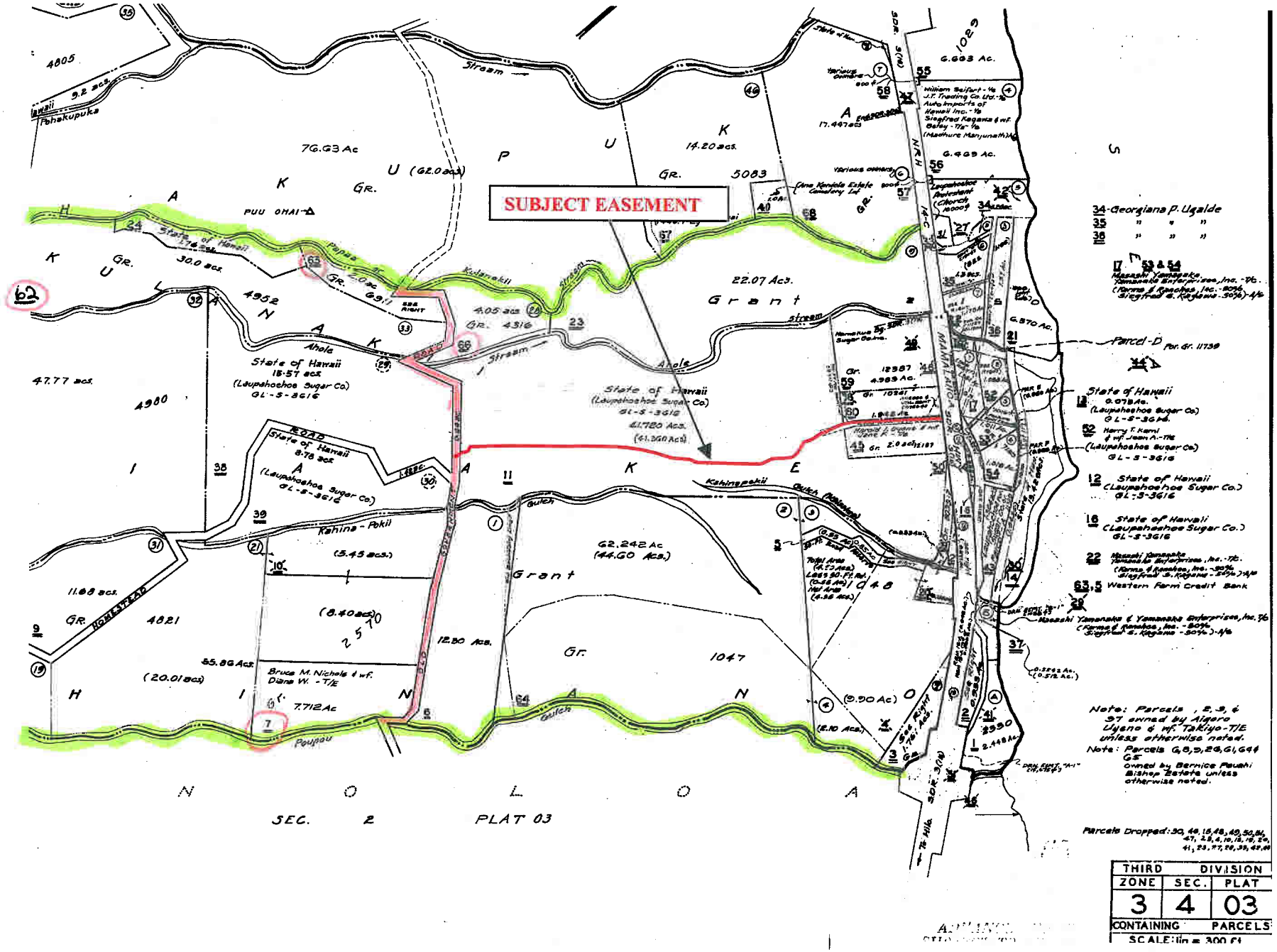
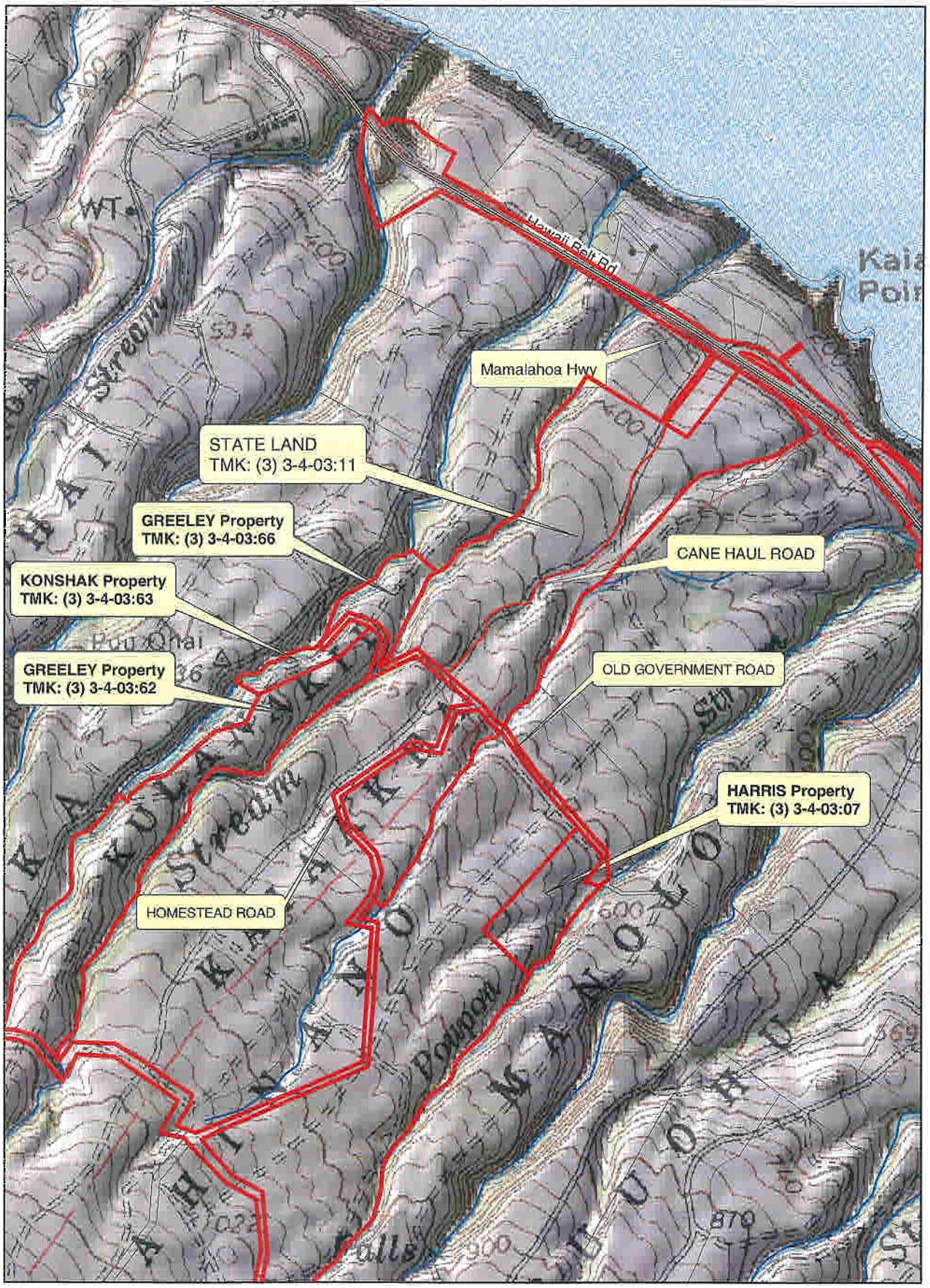


EXHIBIT B

KAIAAKEA, NORTH HILO



Feet
0 310 620 1,240 1,860 2,480

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