

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

March 27, 2009

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

PSF No. 00MD-541
MAUI

Rescind Prior Board Action of August 25, 2000, Item D-1, Grant of Perpetual, Non-Exclusive Easement to Keith Scott Douglas and Bonnie May Douglas for Access and Utility Purposes; Amend Grant of Non-Exclusive Easement Bearing Land Office Deed No. S-28000 Assigned to Keith Scott Douglas and Bonnie May Douglas; and Immediate Construction Right-of-Entry Permit to Keith Scott Douglas and Bonnie May Douglas, Located at Hanawana, Makawao, Maui, Tax Map Key (2) 2-9-011:008 Por.

BACKGROUND:

On June 23, 1989 under Agenda Item F-6, the Board approved the sale of a non-exclusive access and utility easement to Mr. and Mrs. M. Jeffrey White. The easement serves two (2) of the White's privately owned, non-contiguous parcels identified as tax map keys (2) 2-9-11:17 and 18. Both parcels have since sold separately to unrelated parties.

The parcels are remotely located about three quarters of a mile distant from Hana Highway. Inaccessible by State and County roads, the easement provides the only means of access to the two parcels. The two-part easement consists of Easement 1 (12,892 square feet) and Easement 2 (9,757 square feet). The easement crosses a portion of the Government Land of Hanawana, situate at Hanawana West, Makawao, Maui identified as a portion of tax map key (2) 2-9-011:008 attached as Exhibit A.

The Whites sold Parcel 18 to Jon and Linda Welch who ultimately divorced. Jon Welch's interests in the property and the easement were quitclaimed to ex-wife Linda Wertheimer, formerly known as Linda Welch. Linda Wertheimer sold Parcel 18 to Keith and Bonnie Douglas ("Applicant") and in May 1998 with the State's consent, assigned her interest in Grant of Non-Exclusive Easement bearing L.O.D. No. S-28000 to the Applicant.

On August 25, 2000, under Agenda Item D-1, the Board approved a Grant of Perpetual, Non-Exclusive Easement to the Applicant for access and utility purposes and the authorization to acquire 0.046 acres to add to Easement 2 allowing better vehicular access at a switchback turn.

REMARKS:

In November 2004 as the result of a boundary determination case, the Second Circuit Court ruled Applicant's privately owned Parcel 18 be moved eastward of its then existing location. While the boundary movement did not affect Easement 1, it severed Parcel 18 from its connection with Easement 2 effectively rendering the

parcel devoid of access.

The State Survey Division prepared C.S.F. No. 24,784 Perpetual Non-Exclusive Access and Utility Easement, Easement A, dated February 4, 2009 attached as Exhibit B. Easement A contains 15,449 square feet and re-establishes access to Parcel 18.

The two-part easement consisting of Easement 1 and Easement A (formerly Easement 2), provides the only means of access to privately owned Parcels 17 and 18. Parcel 18 is a kuleana. As an administrative housekeeping measure, it would be prudent to allow the two-part easement to run with the land and inure to the benefit of Parcel 18 for gratis pursuant to Section 7-1, Hawaii Revised Statutes, as amended.

The County of Maui requires the granting of appropriate access easements before issuing building permits. Applicant is requesting a construction right-of-entry permit in order to comply with this governmental requirement to secure proper County approvals for the construction of their single-family residence. Applicant has provided a current Certificate of Liability Insurance naming the State of Hawaii as an additional insured. The right-of-entry would be over and across encumbered State lands identified as tax map key (2) 2-9-011:008.

Parcel 08 is currently encumbered *by* Grant of Non-Exclusive Easement bearing L.O.D. No. S-28000 to Applicant for a perpetual non-exclusive access and utility easement; Grant of Non-Exclusive Easement bearing L.O.D. No. S-28211 to M. Jeffrey White et al, for a perpetual non-exclusive access and utility easement; Grant of Non-Exclusive Easement bearing L.O.D. No. S-28678 to Jeffrey Guild et al, for a perpetual non-exclusive access and utility easement; Grant of Non-Exclusive Easement bearing L.O.D. No. S-28677 to James Loomis et al, for a perpetual non-exclusive access and utility easement; and Grant of Non-Exclusive Easement No. S-5176 to Penelope S. Lutz et al, for a waterline easement expiring May 2051.

On February 23, 2009, Agency comments were solicited from two government agencies and the Office of Hawaiian Affairs with the following results:

Agency	Date Received	Comments
Department of Hawaiian Home Lands	03/10/09	No comments.
County of Maui, Department of Planning	03/11/09	No comments.
Office of Hawaiian Affairs	N/A	No response.

RECOMMENDATION:

That the Board, subject to the terms and conditions cited above, which are by this reference incorporated herein:

1. Rescind the prior Board action of August 25, 2000, under Agenda Item D-1.
2. Amend Grant of Non-Exclusive Easement bearing L.O.D. No. S-28000 assigned to Applicant by:
 - A. Replacing Easement 2 of Exhibit A containing 9,757 square feet (C.S.F. No. 21,171 dated February 12, 1990) with Easement A containing 15,449 square feet (C.S.F. No. 24,784 dated February 4, 2009);
 - B. Authorizing the easement shall run with the land and shall inure to the benefit of the real property described as tax map key (2) 2-9-011:18, 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;

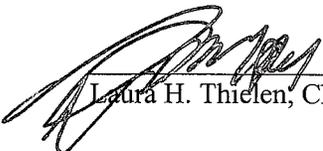
- C. Authorizing the easement for gratis pursuant to Section 7-1, Hawaii Revised Statutes, as amended;
 - D. All other terms and conditions in L.O.D. No. S-28000 shall remain the same;
 - E. Review and approval by the Department of the Attorney General; and
 - F. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize the issuance of an immediate construction right-of-entry permit to the Applicant covering the subject land 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 right-of-entry permit form, as may be amended from time to time; and
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



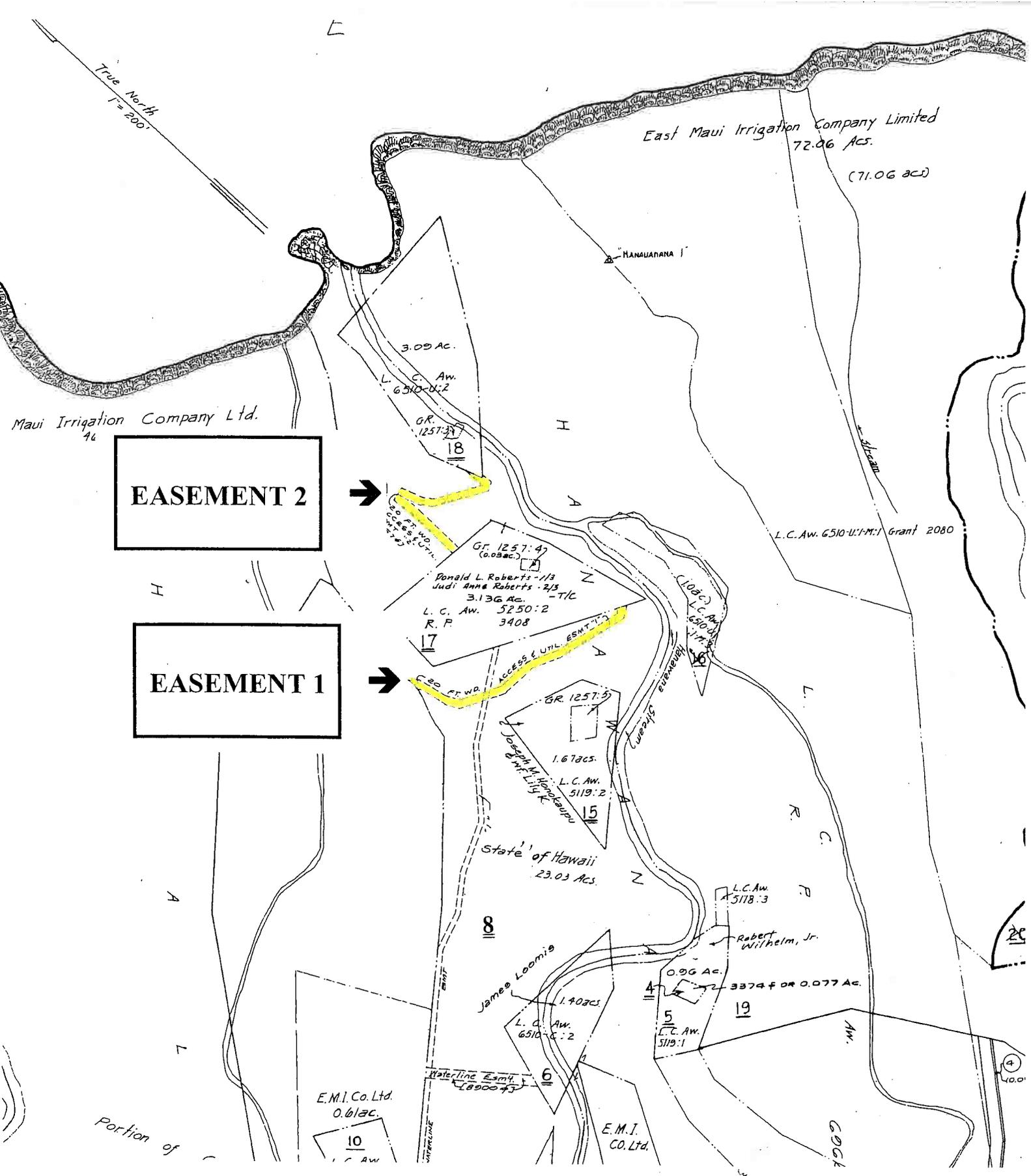
Darlene K. Ariola
Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson





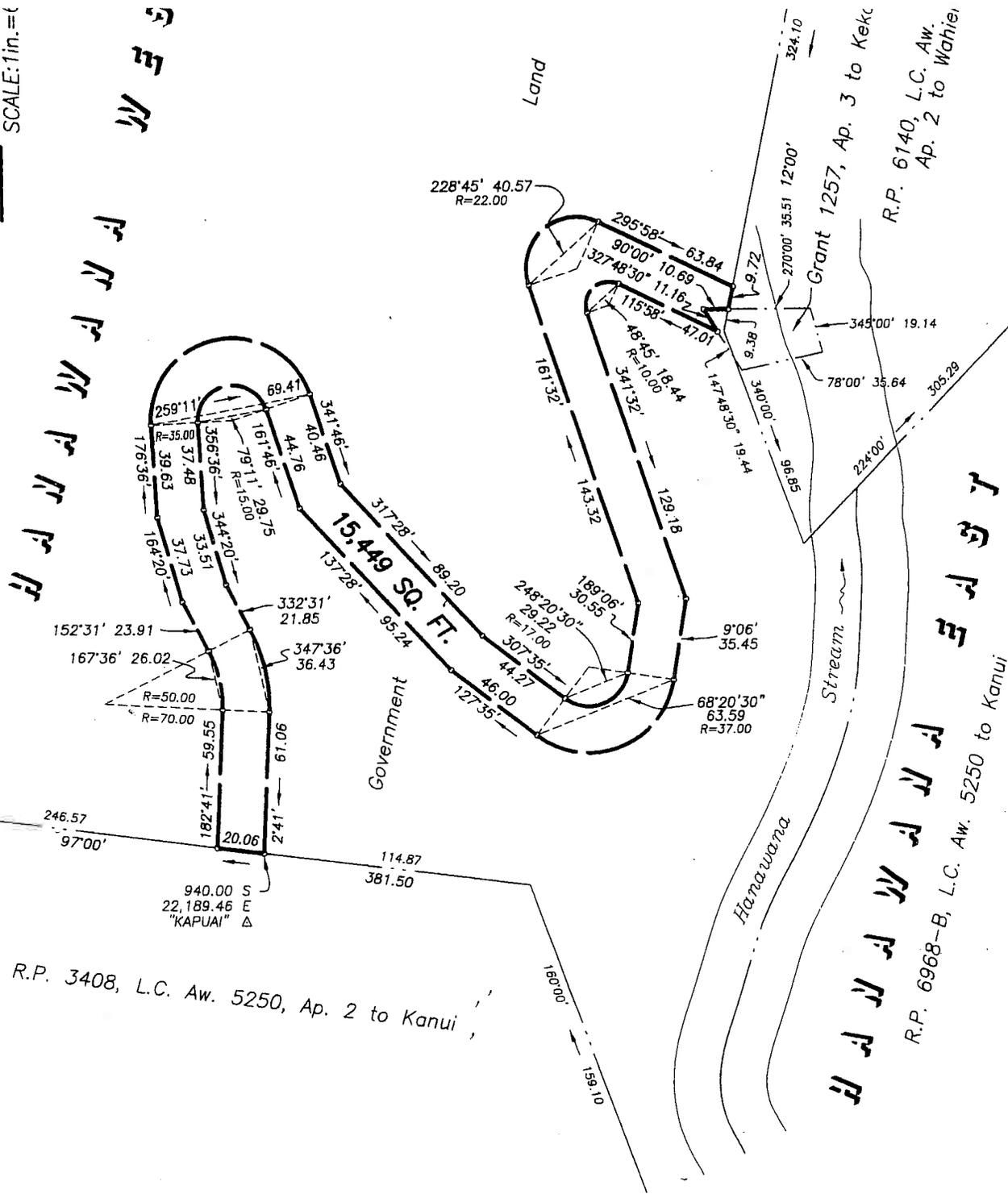
EASEMENT 2

EASEMENT 1

(2) 2-9-011:

EXHIBIT A

TRUE NORTH
SCALE: 1 in. = 60 ft



**PERPETUAL NON-EXCLUSIVE
ACCESS AND UTILITY EASEMENT
EASEMENT A**

Hanawana West, Makawao, Maui, Hawaii

Scale: 1 inch = 60 feet

JOB Ma-018(09)
C. BK.

TAX MAP: 2-9-11 : Por. 8

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

C.S.F. NO. 24,784

JGL February 4, 2009

EXHIBIT B