

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

April 24, 2009

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii 96813

PSF: 09HD-024

HAWAII

Set-Aside to the County of Hawaii for Public Roadway Purposes, Villages of Laiopua, Phase 1, Kealakehe, Keahuolu, North Kona, Hawaii; TMK: (3) 7-4-21: Road Lot Adjacent to 3 and 4;

Construction Rights-of-Entry onto TMKs: (3) 7-4-21: Road Lot Adjacent to 3 and 4, 7-4-20:06, and 7-4-21:04; and

Grant of Perpetual Slope Easements Affecting TMKs: (3) 7-4-20:06, 07, and 7-4-21:04

APPLICANT:

County of Hawaii

LEGAL REFERENCE:

Sections 171-11 and 171-95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of the Government Lands of Kealakehe situate at Kealakehe and Keahuolu, North Kona, Hawaii, identified by Tax Map Keys: (3) 7-4-21: Road lot adjacent to 3 and 4, 7-4-20:06, 7-4-20:07 and 7-4-21:04, as shown on the attached maps labeled Exhibits A, B and C.

TMK/ ZONING/ AREA/ ENCUMBRANCE/ CURRENT USE:

TMK	ZONING		AREA	ENCUMBRANCE/ CURRENT USE
	LUC	CZO		
3 <sup>rd</sup> / 7-4-21: Road Lot Adjacent to 3 and 4	Urban	Open and unplanned	7.267 ac	Unencumbered; designated on File Plan 2128 for public road use as Road Lot 28
3 <sup>rd</sup> / 7-4-20:06	Urban	Open	24.067 ac	Unencumbered
3 <sup>rd</sup> / 7-4-20:07	Urban	Open	193.547 ac	EO 3665 to County of Hawaii (County) for wastewater reclamation and golf

TMK	ZONING		AREA	ENCUMBRANCE/ CURRENT USE
	LUC	CZO		
				course; EO 4061 withdrawing portion of land for abutters' rights of vehicle access; Land Office Deed S-28,196 granting non-exclusive easement to County for sanitary sewer
3 <sup>rd</sup> / 7-4-21:04	Urban	Ag-5	48.848 ac	EO 3662 to Department of Education for Kealakehe High School site; EO 3697 setting aside easements to County for drainage and access; Land Office Deed S-28,302 granting nonexclusive utility easement to GTE Haw. Tel. Co.; Land Office Deed S-28,210 granting nonexclusive easement to County Water Commission for water meter box, pipes and fixtures

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act.

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

CURRENT USE STATUS:

See the table above for the current use of each of the subject parcels.

PURPOSE/CHARACTER OF USE:

The County is requesting the set-aside of Road Lot 28 for public roadway purposes.

The County is requesting slope easements over the parcels that abut Road Lot 28, including the right, privilege and authority to construct, use, maintain and repair such slope easements over and across State-owned land.

CONSIDERATION FOR EASEMENTS:

Gratis.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

The governor accepted the final EIS on September 27, 1990, and notice of its availability was subsequently published in the Office of Environmental Quality Control's Environmental Notice.

APPLICANT REQUIREMENTS:

- 1) For the construction right-of-entry onto parcel 7-4-21:04, prepare the right-of-entry on terms and conditions acceptable to the Department of Education (DOE) and the Department of Land and Natural Resources, Land Division.
- 2) For the grant of perpetual slope easement on parcel 7-4-21:04, secure the written concurrence of DOE to the easement.
- 3) For the grant of perpetual slope easements on parcels 7-4-20:06, 07, and 7-4-21:04, provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.
- 4) Comply with applicable requirements and specifications of File Plan 2128, including, without limitation, observance of the planting screen restriction on parcel 7-4-21:04.

REMARKS:Set-Aside of Road Lot 28

Road Lot 28 is an extension of Ane Keohokalole Highway and was included in the Villages of Laiopua (Villages) master plan prepared by the Hawaii Housing Finance and Development Corporation (HHFDC) and approved by the State Land Use Commission for inclusion in the urban district. Ane Keohokalole Highway is planned as a major midlevel connector road linking Kailua-Kona with points north. By letter dated March 11, 2009, Hawaii County Mayor William P. Kenoi requested the set-aside of Road Lot 28, designated on File Plan 2128, to the County. The County intends to commence construction on the Palani Road to Kealakehe Parkway segment of the highway as soon as possible.

The Department of Hawaiian Home Lands (DHHL) is developing most of the Villages' ceded lands as housing for its beneficiaries while HHFDC is developing the Villages' non-ceded lands as affordable housing.

Pursuant to Chapter 264, Hawaii Revised Statutes, as amended, the State intends to convey the fee simple title of Road Lot 28 to the County to maintain and repair. The County agreed to accept the road lot as part of its public highway system and intends to open it to the public when construction of the road is completed.

However, in 2008 the Hawaii Supreme Court issued an order prohibiting the sale of State ceded lands until the claims of native Hawaiians to those lands are resolved. On March 31, 2009, the United States Supreme Court issued a slip opinion reversing the Hawaii Supreme Court's order and remanding the case to it for further proceedings. In the interim an executive order setting aside Road Lot 28 to the County of Hawaii for public roadway purposes would be appropriate. At its meeting of January 23, 2009, Item D-5, the Board approved the set-aside of other road lots in Phase 1 of the Villages of Laiopua to the County under a similar rationale.

In light of the planned development of the area, staff is of the opinion that the highest and best use of the subject land is for public roadway purposes. Staff further believes that the proposed use fully utilizes the requested land. As indicated above, the road lot is vacant and unencumbered.

#### Construction and Management Right-of-Entry

A construction and management right-of-entry issued to the County for Road Lot 28 upon approval of this submittal would permit the County to begin groundwork pending issuance of the executive order. The County Department of Public Works has advised staff that, in addition to a construction right-of-entry onto Road Lot 28, the County requires construction rights-of-entry onto the abutting parcels up to one hundred feet from the boundary of Road Lot 28 as indicated in purple on the map included in Exhibit D. Ownership and/or management control of the abutting parcels is as follows:

- 7-4-21:03 – Department of Hawaiian Home Lands under Land Patent Grant No. 16,020 ("DHHL Parcel")
- 7-4-21:04 – Department of Education under Executive Order No. 3662 ("DOE Parcel")
- 7-4-20:07 – County Department of Public Works under Executive Order No. 3665 ("DPW Parcel")
- 7-4-20:06 – Department of Land and Natural Resources, unencumbered ("DLNR Parcel")

See Exhibits A and B for parcel locations.

The Board has no authority to grant a construction right-of-entry over the DHHL Parcel. Rather, the County will need to consult directly with DHHL for access. Under Hawaii Revised Statutes Section 171-11, DOE can grant the County a right-of-entry over the DOE Parcel with the Board's prior approval. DOE has requested that, upon Board approval of the County's request, the County prepare an unsigned form of right-of-entry and forward it to DOE for review.

The County has management control over the DPW Parcel. Finally, the Chairperson has authority to grant a construction right-of-entry over the DLNR Parcel.

#### Perpetual Slope Easements

The County has also requested perpetual slope easements on the parcels abutting Road Lot 28 as indicated in green on the map included in Exhibit D. The slope easements appear to be approximately 20-25 feet wide at their widest points. According to the County, the roadbed will be built up from grade and at the shoulders will slope back down to grade over the abutting parcels. The slope easements will ensure that the road has adequate lateral support during and after construction.

The County will need to contact DHHL directly with respect to any easement request over the DHHL Parcel. Under Hawaii Revised Statutes Section 171-11, the Board retains the authority to grant an easement over the DOE parcel with DOE's concurrence. Staff

notes that File Plan 2128 identifies a "No Vehicular Access Planting Screen Line (10-ft. wide)" along the DOE Parcel where it adjoins Road Lot 28 (see Exhibit C). Staff has included a requirement above that Applicant observe with the planting screen restriction in making use of this area.

The Board also has authority to grant slope easements to the County over the DPW Parcel as well as the DLNR Parcel. Staff is of the opinion that the requested easements are consistent with the designation and use of Road Lot 28 for highway purposes.

On March 17, 2009, staff solicited comments on the proposed set-aside of Road Lot 28 from the following agencies: DHHL, the State Department of Transportation, Highways Division, the Office of Hawaiian Affairs, the County Planning Department, the County Department of Public Works, and the County Department of Finance, Property Management Division. On March 24, 2009, staff solicited comments on an amended proposal for the action from these agencies, as well as from the Department of Education. The results were as follows:

<b>Agency</b>	<b>Date Received</b>	<b>Response</b>
Department of Hawaiian Home Lands	4/2/09	No objections
Department of Transportation, Highways Division	3/25/09	No comments
Department of Education	4/3/09	County should prepare requested form of right-of-entry onto DOE Parcel and forward to DOE for review unsigned.
Office of Hawaiian Affairs	4/2/09	Subject lands are ceded lands that hold considerable sentimental, historical and legal significance for Native Hawaiians. The set-aside of the parcel is only a transfer of management jurisdiction and not a transfer of title.
Planning Department, County of Hawaii	NA	No response
Department of Public Works, County of Hawaii	3/30/09	Map showing slope easements and construction access areas to be forwarded by Department of Finance, Property Management Division.
Department of Finance, Property Management Division, County of Hawaii	3/27/09	Department of Public Works will need construction rights-of-entry and perpetual slope easements. See Exhibit D attached.

Copies of this submittal will be provided to all encumbrance holders of record, including the County Department of Water Supply and Hawaiian Telcom, Inc. (as successor-in-interest to GTE Haw. Tel. Co.), upon confirmation of this matter on the Board agenda.

RECOMMENDATION: That the Board

- A. Approve of and recommend to the governor the issuance of an executive order setting aside the subject road lot to the County of Hawaii under the terms and conditions cited above, which are by this reference incorporated herein, and subject further to the following:
1. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  2. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
  3. Review and approval by the Department of the Attorney General; and
  4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- B. Grant an immediate construction and management right-of-entry to the County of Hawaii, its consultants, contractors, and/or persons acting for or on its behalf, onto Road Lot 28 under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
1. The standard terms and conditions of the most current construction and management right-of-entry form, as may be amended from time to time;
  2. This right-of-entry is effective upon Land Board approval and shall continue until the executive order document is issued; and
  3. The Department of Land and Natural Resources reserves the right to impose additional terms and conditions at any time if it deems necessary while this right-of-entry is in force.
- C. Grant an immediate construction right-of-entry to the County of Hawaii, its consultants, contractors, and/or persons acting for or on its behalf, onto the DLNR Parcel designated as TMK 3rd/ 7-4-20:06 up to one hundred feet west of its boundary with Road Lot 28 and covering the areas marked in green and purple on the DLNR Parcel as indicated on the map included in Exhibit D, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
1. The standard terms and conditions of the most current construction right-of-entry form, as may be amended from time to time;
  2. This right-of-entry is effective upon Land Board approval and shall continue until completion of construction and acceptance of the project by the State Department of Transportation; and

3. The Department of Land and Natural Resources reserves the right to impose additional terms and conditions at any time if it deems necessary while this right-of-entry is in force.

D. That the Board consent to the issuance of an immediate construction right-of-entry by the Department of Education to the County of Hawaii, for the DOE Parcel designated as TMK 3rd/ 7-4-21:04 up to one hundred feet east of its boundary with Road Lot 28 and covering the areas marked in green and purple on the DOE Parcel as indicated on the map included in Exhibit D, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following:

1. Such terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

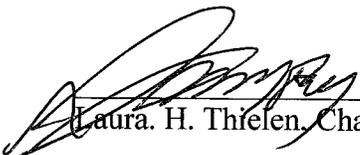
E. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of perpetual non-exclusive easements to the County of Hawaii covering portions of TMKs 3rd/ 7-4-20:06, 07, and 7-4-21:04 for slope purposes as indicated in green on the map included in Exhibit D under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- 1. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
- 2. Review and approval by the Department of the Attorney General; and
- 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

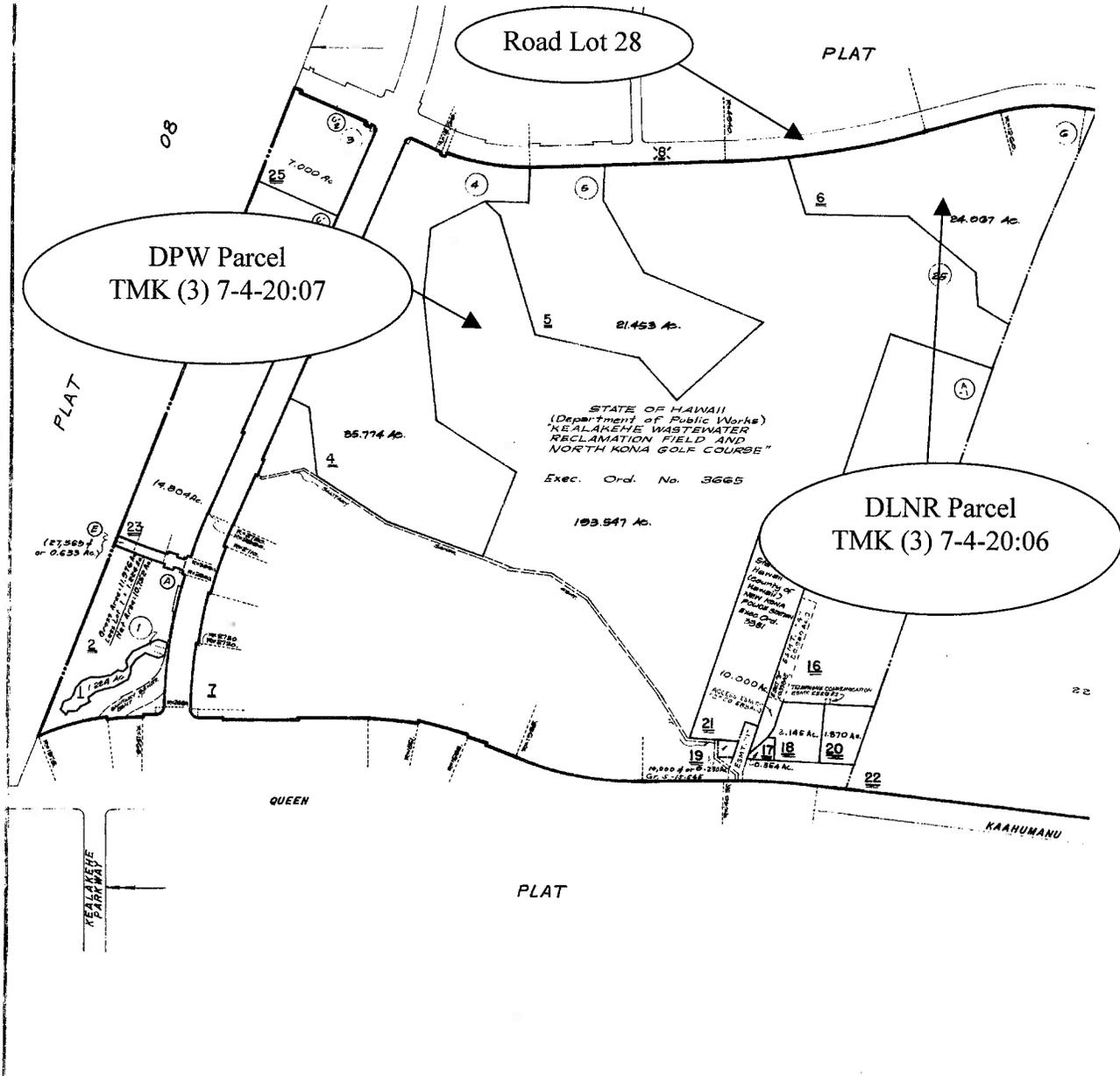
  
 \_\_\_\_\_  
 Kevin E. Moore  
 District Land Agent

APPROVED FOR SUBMITTAL:

  
 \_\_\_\_\_  
 Laura H. Thielen, Chairperson







**EXHIBIT B**



William P. Kenoi  
Mayor



Nancy E. Crawford  
Director

Deanna Sako  
Deputy Director

Harry Yada  
Property Manager

2009 MAR 27 12: 15

RECEIVED  
LAND DIVISION  
HILO, HAWAII

## County of Hawaii

### Finance Department

25 Aupuni Street, Room 118 • Hilo, Hawaii 96720  
(808) 961-8234 • Fax (808) 961-8248

March 25, 2009

Mr. Kevin E. Moore  
District Land Agent  
Dept. of Land and Natural Resources  
Land Division  
75 Aupuni Street, Rm. 204  
Hilo, Hawai'i 96720

Dear Mr. Moore:

Re: Request for Set-Aside to County of Hawai'i for Public Roadway Purposes  
TMK (3) 7-4-021: Road Lot adjacent to 3 & 4, Kealakehe, N. Kona, Hawai'i

This responds to your request for comments dated March 17, 2009 with Ref. No. 09HD-024.

Our Department of Public Works is requesting that along with the set-aside of Road Lot 28, temporary easements for construction purposes and permanent easements for slope purposes be granted to the County of Hawai'i. These easements will affect, among other parcels, TMKs (3) 7-4-020:6 and 7 and (3) 7-4-021:4, which are owned by DLNR. As shown on the enclosed plan by Belt Collins, temporary construction easements are colored purple and slope easements are colored green. Therefore, please include the permanent slope easements affecting the three parcels in your submittal to the Board, together with immediate construction rights of entry to the roadway lot and slope easements. We will ask DOE and DHHL to issue temporary construction easements for the purple areas affecting their parcels.

As stated in our March 11, 2009 letter to your Oahu office, the County has set a very aggressive timeline for this project. As such, we thank you in advance for your expeditious handling of this set-aside.

## EXHIBIT D

Mr. Moore, DLNR  
March 25, 2009  
Page 2

Should you have any questions, feel free to call me at 961-8567.

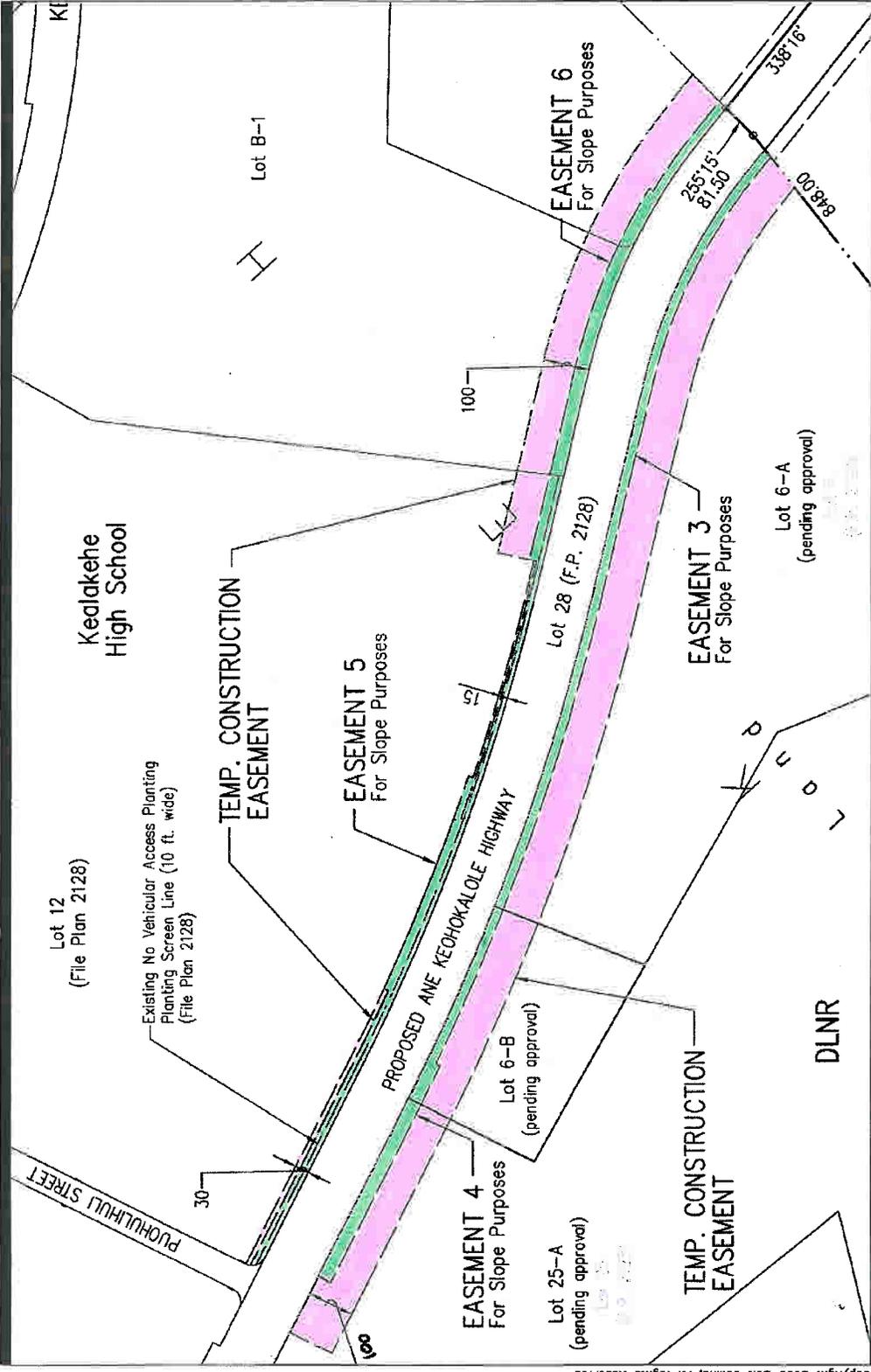
Yours truly,

A handwritten signature in cursive script that reads "Daryl H. Inaba".

Daryl H. Inaba  
Acting Property Manager

Enclosure

cc: G. Kuba



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Lot 28 Construction Easement  
 File Plan 2128, Villages of La'opua Phase 1  
 Ane Keohokalo Highway, Island of Hawaii  
 March 2009

**BELT COLLINS**  
 NORTH  
 0 150 300  
 SCALE IN FEET