

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

January 13, 2011

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

MAUI

After-the-Fact Consent to Assign Grant of Non-Exclusive Easement (Land Office Deed No. S-27932); Sybil A. Orr, Assignor, to Anthony P. and Dolores Amaral, Assignee and amendment of Grant of Non-Exclusive Easement (Land Office Deed No. S-27932), Waiakoa, Makawao, Maui, Tax Map Key: (2) 2-2-009:030 portion.

APPLICANT:

Sybil A. Orr, as Assignor, to Anthony P. and Dolores Amaral, husband and wife, Tenants by Entirety, as Assignee.

LEGAL REFERENCE:

Section 171-13, 36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waiakoa situated at Makawao, Maui, identified by Tax Map Key: (2) 2-2-009:030 portion, as shown on the attached map labeled Exhibit A.

AREA:

4,157 square feet, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES   X    
NO \_\_\_\_\_

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across State-owned land for access and utility purposes.

REMARKS:

On March 23, 1990, the Board of Land and Natural Resources (BLNR), under agenda Item F-3, approved the issuance of a 40-foot wide, perpetual, non-exclusive access and utility easement to Lance and Sybil Orr. The Orr's owned Parcel 21 and it is landlocked. Access would be over government lands, situated at tax map key: (2) 2-2-009:030 portion.

In July of 2000, pursuant to a divorce, the Orr's sold their private property (Parcel 21) to Anthony and Dolores Amaral but failed to notify the State of the transaction as stated in the easement document: this easement or any rights granted herein shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of, directly or by operation of law, except with the prior written consent of the Grantor.

A warranty deed, dated July 24, 2000, transferring the private property (Parcel 21) from the Orr's to the Amaral's includes the assignment of the State's easement.

Staff is requesting approval to amend the existing easement to allow the easement to run with the land and inure to the benefit of the real property described as Tax Map Key: (2) 2-2-009:021. This easement document was issued in 1992, a time when the State's perpetual easements did not "run with the land". Easements now issued by the State have such a provision. All that is required is the grantee is required to inform his buyer/successor to notify our office of the change in ownership. This eliminates needless paperwork and time by the Board, staff, Attorney General's office, grantee, private attorneys, escrow companies, etc.

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.

RECOMMENDATION: That the Board:

1. Consent to the assignment of Grant of Non-Exclusive Easement (LOD No. S-27932), from Sybil A. Orr, as Assignor, to Anthony P. and Dolores Amaral, as Assignee, subject to the following:
  - A. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
  - B. Review and approval by the Department of the Attorney General; and

- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Amend Grant of Non-Exclusive Easement (Land Office Deed No. S-27932) to include the following condition:

“The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (2) 2-2-009:021, 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.

- A. Review and approval by the Department of the Attorney General; and
- B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

  
\_\_\_\_\_  
Daniel Ornellas  
District Land Agent

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
William J. Aila, Jr. Interim Chairperson

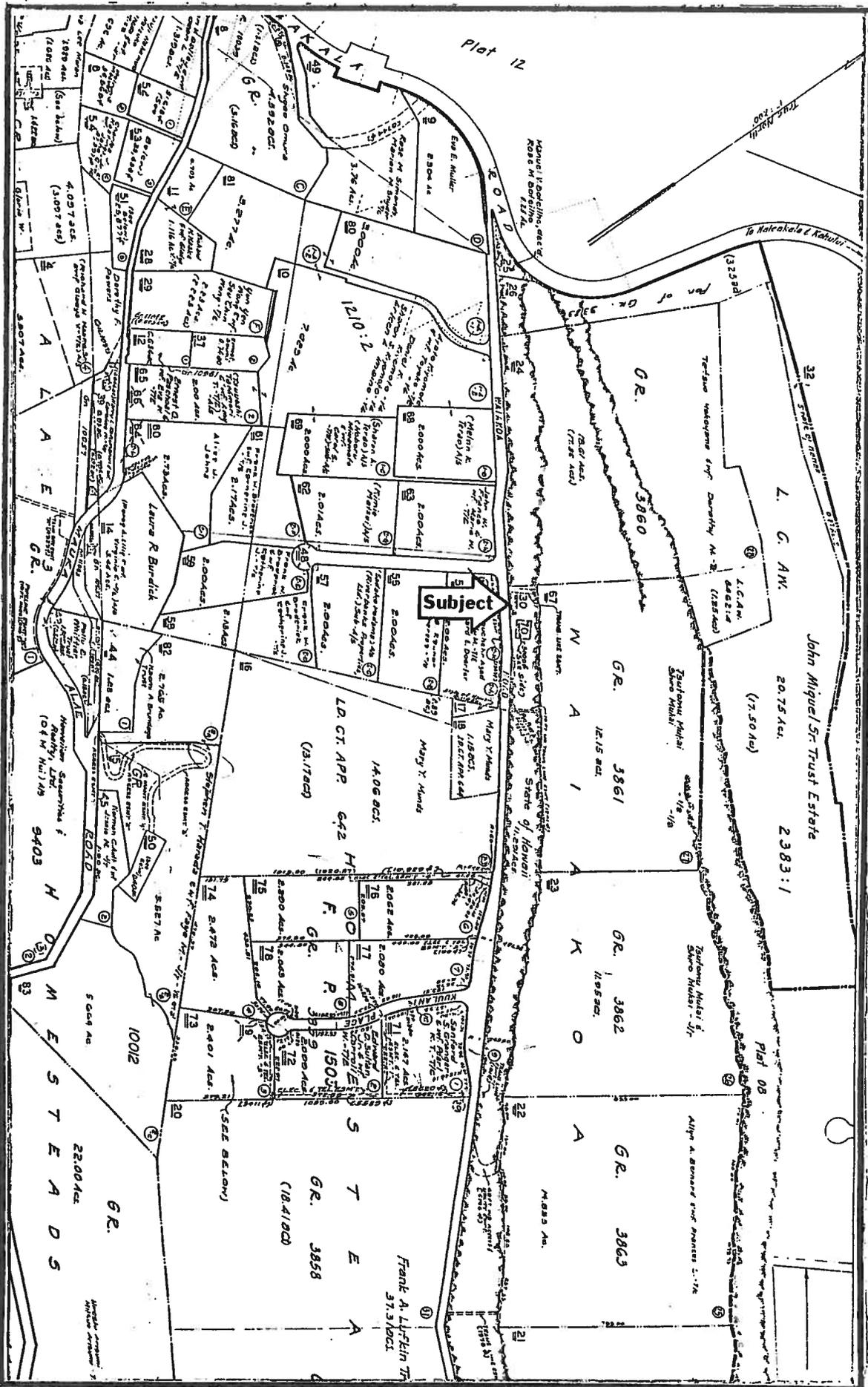
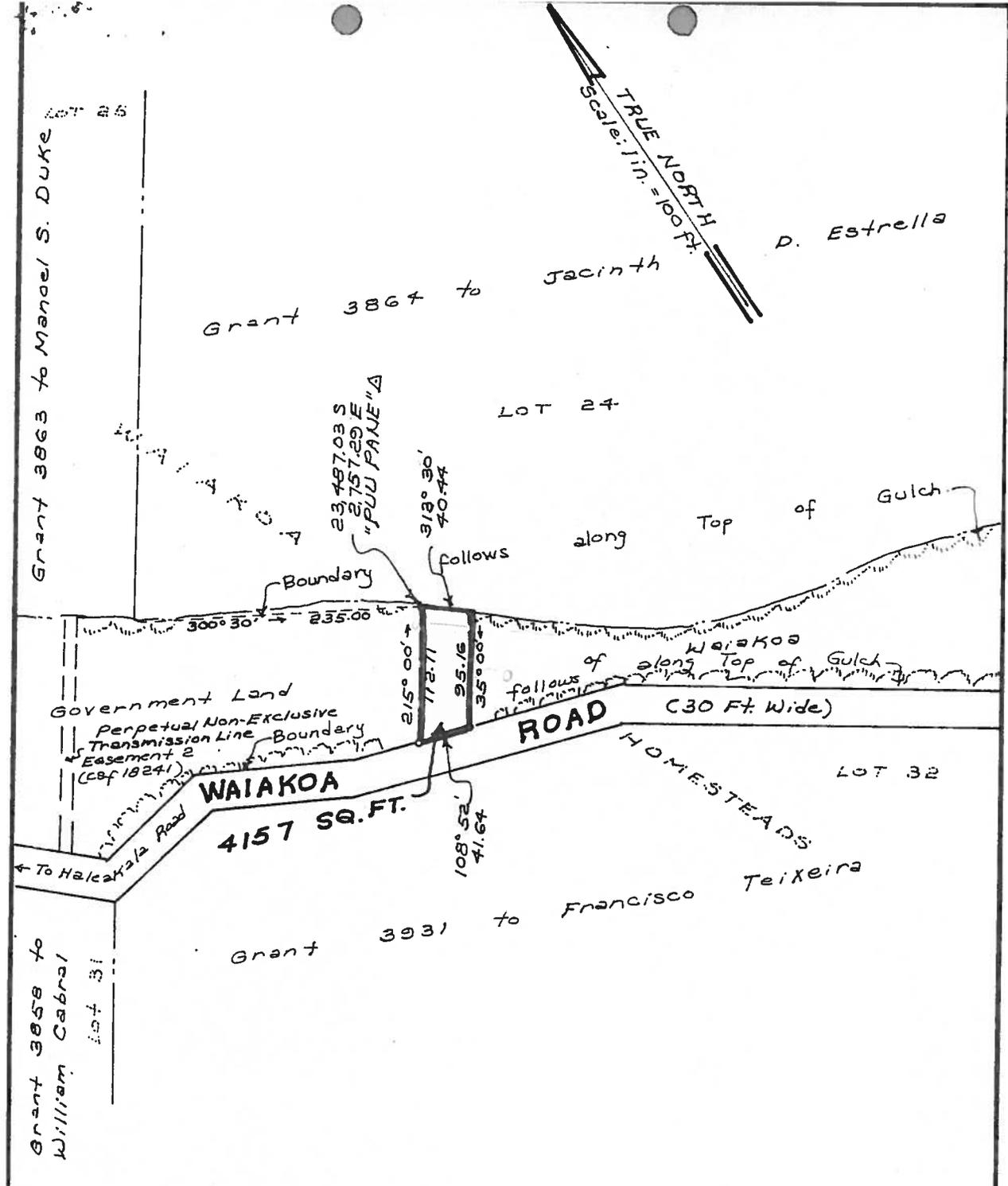


EXHIBIT "A"



**PERPETUAL NON-EXCLUSIVE  
ACCESS AND UTILITY EASEMENT**  
 WaiaKoa, Makawao, Maui, Hawaii  
 Scale: 1 inch = 100 feet

JOB MA-195(90)  
 C. BK. 13, Pg. 67-S. Nakamura

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail  Pickup  To:

Mr. and Mrs. Anthony Amaral

TG: 288216  
TGE: A0-204-0401  
Lynn M. Sueda

TITLE OF DOCUMENT:

WARRANTY DEED

PARTIES TO DOCUMENT:

GRANTOR: SYBIL ANNE ORR, Trustee or Successor Trustee(s), of the Sybil Anne Orr Trust dated April 7, 1995, Short Form of which is recorded as Document No. 96-040047

GRANTEE: ANTHONY P. AMARAL, SR.  
DOLORES AMARAL

TAX MAP KEY(S):

II-2-2-009:021

(This document consists of 6 pages.)

**EXHIBIT "C"**

WARRANTY DEED

THIS INDENTURE made this \_\_\_\_\_ day of JUL 24 2000, 20\_\_\_\_, by and between SYBIL ANNE ORR, Trustee or Successor Trustee(s), of the Sybil Anne Orr Trust dated April 7, 1995, Short Form of which is recorded as Document No. 96-040047, with full powers to sell, lease, mortgage, exchange, or otherwise dispose of, or deal with any property of said Trust, whose place of residence and mailing address is

\_\_\_\_\_, hereinafter referred to as the "GRANTOR", and ANTHONY P. AMARAL, SR. and DOLORES AMARAL, husband and wife, whose place of residence and mailing address is \_\_\_\_\_, 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, as joint tenants with full rights of survivorship, the survivor of them, their assigns and the heirs and assigns of such survivor, 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.

Sybil Anne Orr  
SYBIL ANNE ORR, Trustee or Successor  
Trustee(s), of the Sybil Anne Orr Trust dated  
April 7, 1995, Short Form of which is recorded  
as Document No. 96-040047

Approved as to Form  
CARLSMITH BALL

By Carol M. Yeck

STATE OF Hawaii )  
~~ARIZONA~~ ) ss.  
COUNTY OF Maricopa )

On this 24 day of July, 2000, before me personally appeared SYBIL ANNE ORR, Trustee or Successor Trustee(s), of the Sybil Anne Orr Trust dated April 7, 1995, Short Form of which is recorded as Document No. 96-040047, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity as said Trustee.

Lynn M. Sueda  
Name:

Notary Public, in and for said  
County and State

My commission expires:

LYNN M. SUEDA  
Expiration Date: April 6, 2001

EXHIBIT "A"

All of that certain parcel of land (being all of the land(s) described in and covered by Royal Patent Grant Number 3864 to Jacinth D. Estrella) situate, lying and being at Waiakoa, Kula, Island and County of Maui, State of Hawaii, being LOT 24, bearing Tax Key designation 2-2-009-021 (2), and containing an area of 13.790 acres, more or less.

Together with a perpetual non-exclusive easement (40 feet wide) for access and utility purposes over and across Government Land of Waiakoa, as granted by instrument dated June 4, 1992, recorded as Document No. 92-092502; and subject to the terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained therein. Said easement being more particularly described as follows:

Beginning at the top of gulch at the northwest corner of this easement, the true azimuth and distance from the south corner of Grant 3864 to Jacinth D. Estrella 300° 30' 235.00 feet and the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU PANE" being 23,487.03 feet south and 2,757.29 feet east, thence running by azimuths measured clockwise from true South:

1. Along the top of gulch along Grant 3864 to Jacinth D. Estrella, the direct azimuth and distance being:  
313° 30' 40.44 feet;
2. 35° 00' 95.16 feet along the remainder of the Government Land of Waiakoa;
3. 108° 52' 41.64 feet along the top of gulch along the northerly side old Waiakoa Road (30.00 feet wide);
4. 215° 00' 112.71 feet along remainder of the Government Land of Waiakoa to the point of beginning and containing an area of 4,157 square feet, more or less.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

2. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

Being the same premises conveyed to the Grantor by Deed of Sybil Anne Orr, unmarried, dated April 7, 1995, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 96-040049.

5055178.1.019999-143



**TITLE GUARANTY OF HAWAII**

INCORPORATED

235 QUEEN STREET HONOLULU, HAWAII 96813

PHONE: (808) 533-6261 FAX: (808) 521-0221

105344 R ORR SYBIL A TR  
/ E AMARAL ANTHONY P SR  
E AMARAL DOLORES

TITLE GUARANTY OF HAWAII, INCORPORATED

HEREBY CERTIFIES THAT THIS IS A TRUE COPY

OF THE ORIGINAL DOCUMENT RECORDED

REGULAR SYSTEM DOCUMENT NO. 2000-105344

ON JULY 31, 2000 AT 8:01 A.M.

DATE OF RECORDING : JULY 31, 2000

DESCRIPTION : LOT 24 OF GR 3864 CT §320

DOCUMENT TYPE : D

FILE 298216B

BY:

Man: hwen