

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

May 27, 2011

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

PSF No.:10MD-219

Maui

Grant of a Term, Non-Exclusive Easement to Keath B. Keathley, Anthony P. Amaral, Sr., Dolores Amaral, Vance N. Akinaka and Malia Akinaka for Access and Utility Purposes, at Waiakoa-Alae 3 and 4 Homesteads, Makawao, Maui, Tax Map Key: (2) 2-2-9:portion of 30.

APPLICANTS:

- 1) Keath B. Keathley, Unmarried, Tenant in Severalty.
- 2) Anthony P. Amaral, Sr. and Dolores Amaral, Married, Tenants by Entirety.
- 3) Vance N. Akinaka and Malia Akinaka, Married, Tenants by Entirety.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land of Waiakoa situated at Kula, Makawao, Maui, identified by Tax Map Key: (2) 2-2-9:Portion of 30 as shown on the attached map labeled Exhibit A.

AREA:

7,788 square feet, more or less.

ZONING:

State Land Use District:	Agriculture
County of Maui CZO:	Agriculture

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CURRENT USE STATUS:

Encumbrances:

- LOD 27169 Maui Electric Co. LTD, Perpetual Non-Exclusive, Access & Utility Easement
- LOD 28017 Maui Electric Co. LTD, Perpetual Non-Exclusive, Access & Utility Easement
- LOD 28021 Christopher & Jeffrey Bernard, Perpetual Non-Exclusive Access & Utility Easement.
- LOD 27906 Zane Y. Mukai, Perpetual Non-Exclusive, Access & Utility Easement.
- LOD 27932 Lance & Sybil Orr, Perpetual Non-Exclusive, Access & Utility Easement.

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.

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.

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.

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. 3, Item No. 1 that states "Construction of new structures on leased state lands and fee simple lands sold on installment payment basis: i.e. Accessory or appurtenant structures including water collection, distribution and storage systems, garages, carports, patios, swimming pools, driveways and swales."

Refer to attached Exemption Notification labeled Exhibit D.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment; and
- 2) Provide survey map and descriptions of the easement area in accordance with State DAGS standards at applicants own cost.

COMMENTS:

Comments have been requested from the following agencies:

Agency	Comments
DLNR – Historic Preservation	No effect to historic properties.
County of Maui – Planning	No comments
County of Maui – Public Works	No objections
Commission on Water Resource Management	No comment received
Office of Hawaiian Affairs	No objections

REMARKS:

The subject parcel is known as the Waiakoa Gulch. This gulch begins within the private properties mauka of the applicant's land locked parcels identified as TMK: (2) 2-2-009:21 and (2) 2-2-008:3. In the area of the requested easement the gulch is shallow, therefore previous owners have simply driven across the gulch to get to their properties. Currently Mr. Anthony Amaral and Mrs. Dolores Amaral are the owners of tax map key: 2-2-9:Parcel 21, this easement would also provide a legal access way to this property as well as tax map key:

2-2-8:Parcel 3 where a Co-Ownership Agreement exist between Mr. Anthony Amaral and Mrs. Dolores Amaral (Husband & Wife), Mr. Keath B. Keathley (Unmarried), and Mr. Vance N. Akinaka and Mrs. Malia Akinaka (Husband & Wife). There is no other State or County roadway, which would allow for access to the subject parcels, which runs along the opposite side of Waiakoa Gulch. Therefore, the access easement over State property identified as tax map key; 2-2-9:Parcel 30 is being requested.

Mr. Keathley, Mr. & Mrs. Amaral, and Mr. & Mrs. Akinaka are each one-third (1/3) owners of tax map key: 2-2-8:Parcel 3, which is raw land containing an area of approximately 26.77 acres. This parcel has been sub-divided whereas, Mr. Keathly owns 5.0 acres, Mr. & Mrs. Akinaka owns 5.0 acres and Mr. & Mrs. Amaral owns the remaining 16.77 acres.

Due to the fact that the Waiakoa Gulch is one of the major drainage gulches on the island and during periods of sustained heavy rains, sends water flooding across Kihei Road over 11 miles away before emptying into the ocean. It would be best that if approved, the easement be constructed similarly to the adjacent properties at tax map keys: 2-2-9:Parcels 22, 23 and 67, whereas the driveways are made of concrete lying atop the gulch floor which, allows flood waters to flow unimpeded.

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.

Several of the adjacent property owners have obtained access and utility easements through, over and across tax map key: 2-2-9:Parcel 30 (Waiakoa Gulch), this use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

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 abutting parcels described as Tax Map Key: (2) 2-2-009:021 and (2) 2-2-008:003, provided the succeeding owner has 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 Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Anthony P. Amaral,

Sr. and Dolores Amaral, Vance N. Akinaka and Malia Akinaka, and Keath B. Keathley covering the subject area for access and utility 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: (2) 2-2-009:021 and (2) 2-2-008:003, 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,



Larry Pacheco, Land Agent

APPROVED FOR SUBMITTAL:



William J. Aifa, Jr., Chairperson

Map No. 3882
 Source: The Maps Bureau & Survey Dept. Eng. Map 2239 of 1909
 By P. K. & L. D. July 1938

FOR OF MAIKAKA-ALAE 3 & 4 HOMESTEADS, MAKANAIQ, MAUI.

52 Original Survey of
 the State of Hawaii

51 Original Survey of
 the State of Hawaii

50 Original Survey of
 the State of Hawaii

49 Original Survey of
 the State of Hawaii

48 Original Survey of
 the State of Hawaii

47 Original Survey of
 the State of Hawaii

46 Original Survey of
 the State of Hawaii

45 Original Survey of
 the State of Hawaii

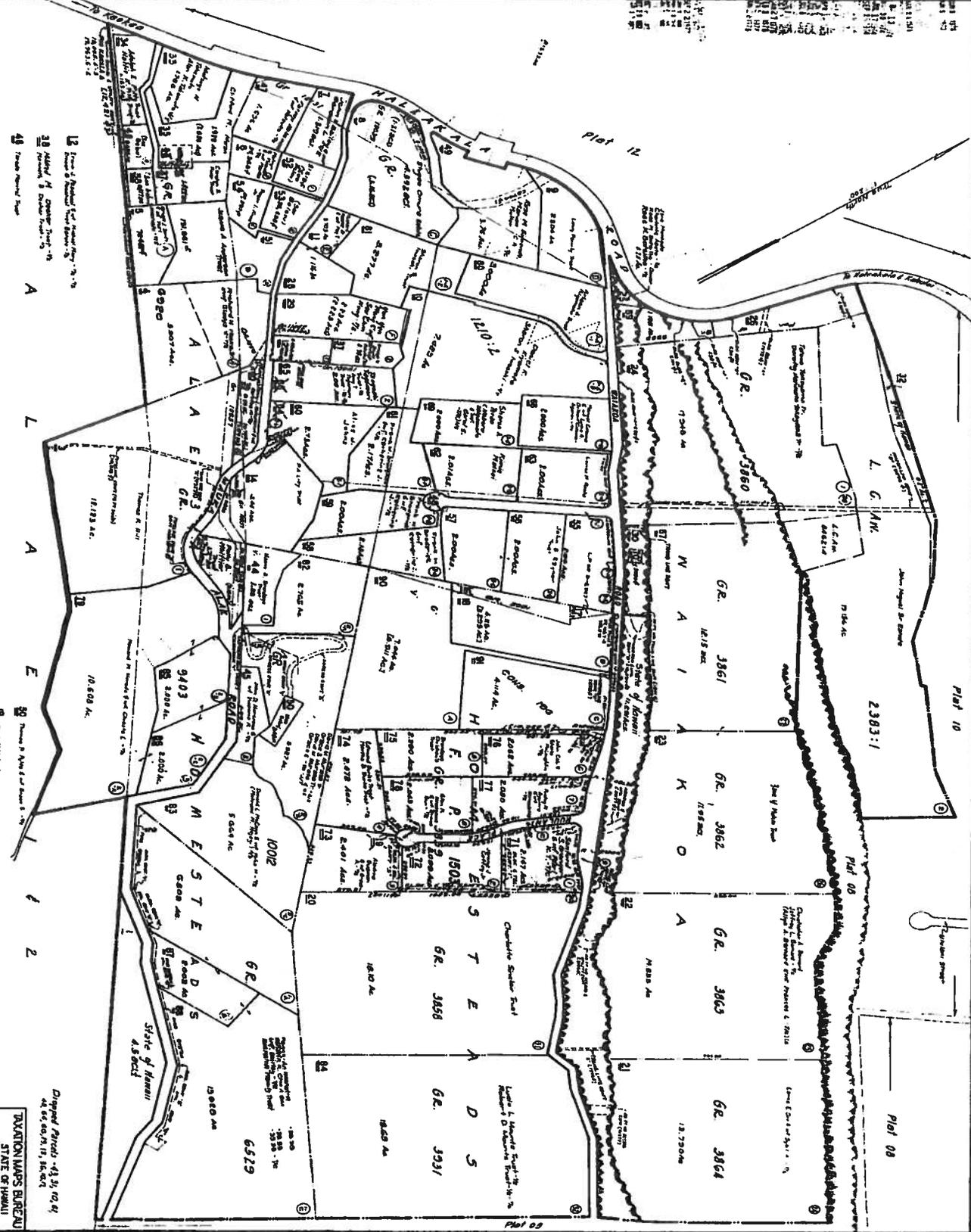
44 Original Survey of
 the State of Hawaii

43 Original Survey of
 the State of Hawaii

42 Original Survey of
 the State of Hawaii

41 Original Survey of
 the State of Hawaii

40 Original Survey of
 the State of Hawaii



SUBJECT TO CHANGE

TAX MAPS BUREAU			
STATE OF HAWAII			
TAX MAP			
SECOND DIVISION	ZONE	SEC.	PLAT
2	2	09	
CONTAINING PARCELS			
SCALE 1/2" = 200 FT.			

Original Filed - 03/25/09
 at 05:00 PM, 03/25/09

EXHIBIT A

Red: Private Property
Blue: State Property
GIS Overview. Lines Not to Scale.

(2) 2-2-009:021

(2) 2-2-009:030

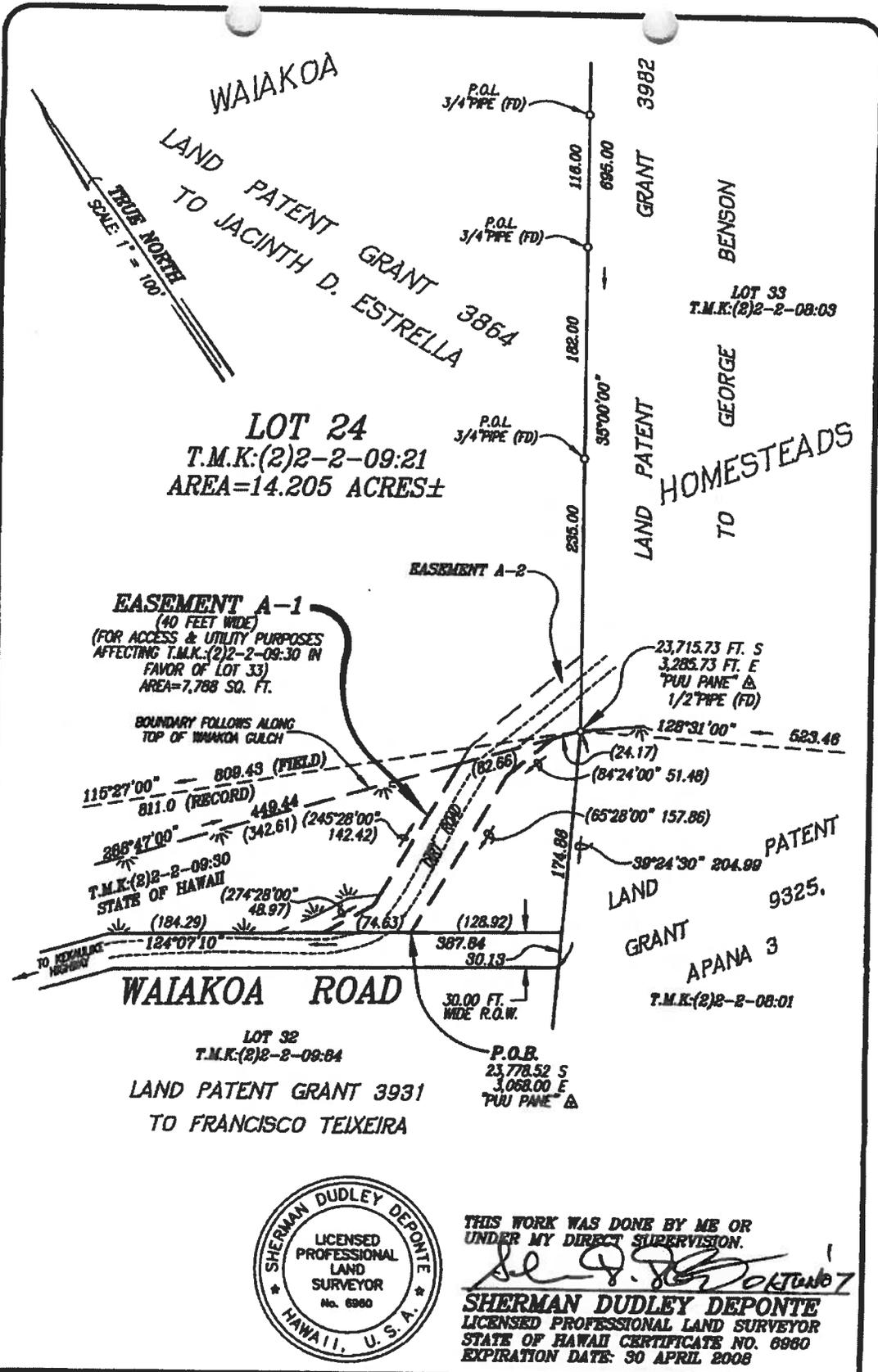
Waiakoa Road



(2) 2-2-008:003

Approx. location of Easement A-1
Area: 7,788 sq. ft.

Exhibit (B)



THIS WORK WAS DONE BY ME OR UNDER MY DIRECT SUPERVISION.

Sherman Dudley Deponte
SHERMAN DUDLEY DEPONTE
 LICENSED PROFESSIONAL LAND SURVEYOR
 STATE OF HAWAII CERTIFICATE NO. 6980
 EXPIRATION DATE: 30 APRIL 2008

EXHIBIT "C"

JOB NO.: 20041SESMTA-1

SCALE: 1" = 100'

AKAMAI LAND SURVEYING, INC.
 P.O. BOX 1748
 MAKAWAO, MAUI, HAWAII 96768

T.M.K.:(2)2-2-09:30

DATE: 29 MAY '07 SHEET 1 OF 1



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

May 27, 2011

EXEMPTION NOTIFICATION

regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Grant of Perpetual, Non-Exclusive Easement to Keath B. Keathley, Anthony P. Amaral Sr., Dolores Amaral, Vance N. Akinaka, and Malia Akinaka for Access and Utility Purposes.

Project / Reference No.: 10MD-219

Project Location: Waiakoa-Alae 3 and 4 Homesteads, Makawao, Maui, TMK: (2) 2-2-9:portion of 30.

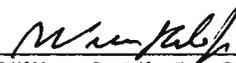
Project Description: Non-exclusive easement for access & utility purposes.

Chap. 343 Trigger(s): Use of State Land

Exemption Class No. and Description: In accordance with the Division of Land Management Environmental Impact Statement Exemption List, approved by the Environmental Council and dated April 28, 1986, the subject project is considered to be exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 3, Item No. 1 that states: "Construction of new structures on leased state lands and fee simple lands sold on installment payment basis: i.e. Accessory or appurtenant structures including water collection, distribution and storage systems, garages, carports, patios, swimming pools, **driveways** and swales."

Consultant Parties: Historic Preservation, County of Maui, Department of Planning and Department of Public Works, and Office of Hawaiian Affairs.

Recommendation: It is anticipated this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



William J. Aila Jr. Chairperson

5/27/11

Date

EXHIBIT "D"