

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

December 9, 2011

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

PSF 10MD-030
Maui

Grant of Two (2) Perpetual, Non-Exclusive (Re-Locatable) Easements and Grant of a Right of Entry to Kahoma Land, LLC, and General Finance Group, Inc., Collectively "Kahoma", for Access and Utility Purposes, Wahikuli, Lahaina, Maui, Hawaii, Portions of Tax Map Keys (2) 4-5-21:04 and 22

APPLICANT

Kahoma Land, LLC, a Hawaii limited liability corporation, and General Finance Group, Inc., a California corporation, collectively "**Kahoma**"

LEGAL REFERENCE

Section 171-13, Hawaii Revised Statutes, as amended

LOCATION

Portion of Government lands situated at Wahikuli, Lahaina, Maui, Hawaii, identified as portions of tax map keys (2) 4-5-21:04 and 22 ("**Subject Property**") as shown on the attached map labeled **Exhibit A**.

LAND AREA

Portions of tax map key (2) 4-5-21:

Parcel 04 669.550 acres, more or less
Parcel 22 584.305 acres, more or less

ZONING

State Land Use District Urban
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

CURRENT USE STATUS

Encumbered by:

1. Land Office Deed No. 28473 to Maui Electric Co., Ltd. for a perpetual utility easement since September 15, 2004; and
2. Right of Entry No. 3776 to the Department of Business, Economic Development, and Tourism ("DBEDT") for management purposes since September 3, 2009.

CHARACTER OF USE

Right, privilege, and authority to construct, use, maintain, and repair two (2) separate rights-of-way over, under, and across State land for access and utility purposes.

COMMENCEMENT DATE

To be determined by the Chairperson.

CONSIDERATION

A one-time payment, subject to adjustment if the easement is re-located, to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

CHAPTER 343 ENVIRONMENTAL ASSESSMENT

The Final Environmental Assessment for the subject project was published in the Office of Environmental Quality Control's, "The Environmental Notice" on October 8, 2010, with a finding of no significant impact ("FONSI").

DCCA VERIFICATION

Place of business registration confirmed	Yes <u> x </u>	No <u> __ </u>
Registered business name confirmed	Yes <u> x </u>	No <u> __ </u>
Applicant in good standing confirmed	Yes <u> x </u>	No <u> __ </u>

APPLICANT REQUIREMENTS

Applicant shall be required to:

1. Obtain an access and utility easement, proposed as Route B-1, across lands owned by Hawaii Housing Finance and Development Corporation ("HHFDC") connecting to an existing public right-of-way. Access and utility easements obtained from the State and HHFDC shall be contingent upon each other becoming effective.
2. Obtain an access and utility easement, proposed as Route C, across lands owned by Kaanapali Land Management Corp. ("KLM") connecting to an existing public right-of-way. Access and utility easements obtained from the State and KLM shall be contingent upon each other becoming effective.

3. Obtain a title report or other evidentiary information ascertaining ownership, where necessary, at Applicant's own cost and subject to review and approval by the Chairperson.
4. Provide survey maps and descriptions, in accordance with State, Department of Accounting and General Services' ("DAGS") standards, at Applicant's own cost.
5. Pay for an appraisal to determine a one-time payment, subject to adjustment if the easement is re-located.
6. In the event Applicant deems it necessary to re-locate the easements proposed as Routes B-1 and C, said re-location shall be done at Applicant's own cost, including but not limited to survey maps and descriptions according to DAGS standards, and an appraisal, if necessary.

BACKGROUND

Pioneer Mill Company

Pioneer Mill Company ("Pioneer") was founded in 1860 on Maui's west side. The small modest mill processed sugar for growers in the immediate area and thrived. By 1935, Pioneer owned and leased over 10,000 acres of land devoted to producing sugar in West Maui. Plantation villages housing workers and their families once scattered the cane fields from Olowalu to Honokohau.

The State leased up to 1,819 acres of the Subject Property to Pioneer for sugar cultivation and pasture purposes from 1950 to 1966 (GL S-3296), from 1966 to 1969 (RP S-4122), and from 1969 to 1994 (GL S-4229). Pioneer established supporting irrigation systems, and a network of agricultural cane haul roads. The roads provided access between the cane fields and villages, including mauka lands. Pioneer owned the fee simple and leasehold interests in the contiguous bulk acreages and consequently, access was not an issue at the time. In 1999, Pioneer processed its last sugar harvest, and with the cessation of sugar operations, State leases were not renewed.

Housing Finance and Development Corporation

On February 25, 1994, under Agenda Item F-6, the Board authorized the conveyance of 1,125 acres of the 1,819 acres of former sugar lands to the State's Housing Finance and Development Corporation ("HFDC")¹. Simultaneously, the Board authorized a revocable permit to Pioneer for sugar cultivation on the remaining 694 acres. Until the conveyance of the lands in fee simple, in whole or in parts, through the issuance of a land patent grant or quitclaim deed, the Board authorized a lease to HFDC and granted the agency an immediate right-of-entry to use the lands for short term sugar operations and long term development of a master planned community.

For conveyance purposes, the property would be subdivided with specific exclusions to be retained by DLNR for future public facilities (e.g., school sites, parks, roadways, etc.). Rather than identify all the exclusions, the intent was to convey the entire 1,125 acres to HFDC. Once development began, HFDC would convey the exclusions that were to remain in the public trust back to the appropriate agencies.

In November 1994, the State conveyed about 545 acres of the subdivided lower portion of the property to HFDC². Title to the upper portion of the property was not conveyed to HFDC and is included in the Subject Property as DLNR Parcel 22 comprised of about 584 acres.

¹ HFDC is a predecessor agency to the Hawaii Housing Finance and Development Corporation tasked with developing and financing housing projects and administering homeownership programs.

² Land Patent No. S-15,792 (Grant), dated November 4, 1994.

Villages of Leiali'i

HFDC's newly subdivided property was designated *Villages of Leiali'i* ("Leiali'i"). Development plans envisioned up to 4,800 residential units with a mix of affordable and market priced homes, parks, a public golf course, and limited commercial use. HFDC's proposal to develop housing on ceded lands triggered a lawsuit by the Office of Hawaiian Affairs³. The lawsuit was aimed at preventing the conveyance of ceded lands, in fee simple, to private parties while native Hawaiian claims remained unresolved. The development of Leiali'i was placed on hold.

In January 2008, the Hawaii Supreme Court barred the State from selling, exchanging, or transferring ceded lands to any third party. In June 2008, the Hawaii Circuit Court entered an injunction order, which barred the State of Hawaii, or any of its instrumentalities or agencies, from selling or transferring ceded lands to third parties, "except that the State of Hawaii, and its departments, agencies, agents, officers, and employees may continue its practice of transferring remnants, and issuing licenses, permits, easements and leases concerning ceded lands."

In March 2009, the U.S. Supreme Court reversed the judgment of the Hawaii Supreme Court ruling the lower court incorrectly based its decision on Congress' joint Apology Resolution of 1993 apologizing for the United States' role in overthrowing the Hawaiian monarchy⁴. In July 2009, the Governor signed into law Act 176, Session Laws of Hawaii 2009, requiring a community meeting, appraisal, and two-thirds vote approval of each house in the Legislature to convey State lands in fee simple to third parties. In light of the ceded land issue, HHFDC intends to lease property or comply with Act 176 for its affordable housing project⁵.

Leiali'i's master plan for water service includes six well sites at an elevation of 1,050 feet and/or up to three well sites at an elevation of 1,650 feet, together with reservoirs and transmission water lines. Exploratory wells have been drilled on lands owned by the State and the Applicant.

On August 14, 2009, under Agenda Item H-3, the Board authorized the set aside of a portion of the Subject Property to DLNR, Division of Forestry and Wildlife for purposes of the Na Ala Hele Trail and Wahikuli Off-Highway Vehicle Park. The park would provide managed recreational and educational facilities that would allow for a variety of riding experiences for off-highway motorcycles and all-terrain vehicles.

Kahoma's Mauka Lands

In August 2000, Kahoma Land, LLC purchased Pioneer's former sugar lands identified as tax map keys (2) 4-5-21:02, 06, and 24 ("**Mauka Lands**") as shown on the attached map labeled **Exhibit B**. In December 2006, General Finance Group, Inc. purchased Parcels 06 and 24 of the Mauka Lands from Kahoma Land, LLC. Acquisition of the Mauka Lands excluded access and the responsibility of establishing access continues to rest with the property's purchasers.

Applicant's Parcels 02 and 24 are non-contiguous and separated by State lands identified as tax map key (2) 4-5-21:23. In January 1994, the State granted⁶ then owner Pioneer exclusive easements over, under, and across all roads in State Parcel 23 for access and utility purposes in favor of Applicant's Parcels 02 and 24. The majority of the easements were assigned to the Applicant at the time it purchased the Mauka Lands from

3 Office of Hawaiian Affairs, et al. vs. Housing and Community Development Corporation of Hawaii, et al., Civil No. 94-4207-11.

4 One outcome of the lawsuit resulted in the initial increments of the proposed master planned community being made available to the Department of Hawaiian Home Lands ("DHHL") for homestead development. The DHHL area, including the completed Phase 1A and the planned Phase 1B, adjoins the Subject Property to the west in a makai direction.

5 Villages of Leiali'i Affordable Housing Draft Environmental Impact Statement, dated November 2010, published by the Office of Environmental Quality Control on December 23, 2010 in its publication, *The Environmental Notice*.

6 Grant of Easements, Document No. 94-012954, dated October 5, 1993, by and between the Department of Land and Natural Resources and Pioneer Mill Company, Limited.

Pioneer in 2000. Rights to ditches and reservoirs were reserved and retained by Pioneer.

Applicant's Parcel 02 is included in Land Court Application No. 439 that was filed by Pioneer in 1919. This application to register title (quiet title), is currently ongoing and has become more drawn out due to multiple parties claiming an ownership interest in the parcel which is comprised of Lots 1, 2, and 3A. Regardless of the outcome of this land court application, Applicant maintains it will have a significant interest in the parcel and that legal access is still required.

Applicant is requesting the State easements to continue its pursuit of diversified agricultural activities on its Mauka Lands including, but not limited to, cattle ranching, water reservoir management, agricultural tour operations, and an agricultural subdivision as a potential future secondary use.

In November 2003, the County of Maui ("**County**") granted the Applicant preliminary subdivision approval. An agricultural subdivision is currently a permitted use under the property's agricultural zoning classification pursuant to the County's Comprehensive Zoning Code, as amended. The County's subdivision process requires Applicant's full compliance with land use laws. Applicant maintains the requested access and utility easements over State lands are needed regardless if the proposed subdivision is realized.

Applicant owns the fee simple interest in conservation lands located immediately east of the Mauka Lands further identified as tax map keys (2) 4-5-22:02, 04, and 06. The State easements would provide Applicant with access to its Conservation Lands to maintain its management agreements with Malama Kahalawai, Inc. / West Maui Mountains Watershed Partnership, and The Nature Conservancy. Applicant anticipates no change in use of its Conservation Lands.

DISCUSSION

While historical, Applicant's current access over State lands is unauthorized. The Subject Property encompasses two interior parcels located mauka of lands owned by HHFDC and KLM both of whose properties adjoin existing public rights-of-way. The Subject Property itself lacks direct access from existing public rights-of-way. As a result, it is necessary for Applicant to obtain access and utility easements from adjoining landowners HHFDC and KLM.

Applicant is in the process of quitclaiming lands to the State of Hawaii, Department of Transportation ("**DOT**"). The lands are required for the construction of the Honoapiilani Highway Realignment, Phase 1A, Keawe Street Extension to Lahainaluna Road. On December 6, 2007, Applicant entered into an agreement with DOT, as amended by letter dated April 6, 2009. The agreement provides Applicant access to the Lahaina Bypass ("**Bypass**") by one of two access points being provided to HHFDC. Applicant is solely responsible for obtaining permission from adjoining landowners to enter their property in order to reach said access point.

Applicant is in negotiations with HHFDC for an access easement proposed as Route B-1 over HHFDC lands. A Draft Memorandum of Understanding ("**MOU**") between HHFDC and the Applicant is currently pending and discussions are ongoing.

KLM has proposed an MOU for Applicant's consideration regarding access and utility easements over KLM lands for proposed Route C. The Applicant has deferred its response to the proposal and the MOU has not been executed to date.

Proposed Access Routes

Applicant has identified four (4) potential access routes over State lands, including Routes A, B-1, B-2, and C,

as shown on the attached map labeled **Exhibit C**.

1. Route A would originate at the Keawe Street extension where it would connect with the Lahaina Bypass. A portion of Route A, mauka of the Bypass alignment, could potentially affect pre-historical archaeological sites.
2. Route B-1 would originate on HHFDC lands extending along Wahikuli Road corresponding with planned intersections along the Bypass and the alignment of Leiali'i's internal roads before entering State land. Route B-1 is currently used by the County of Maui to access Wahikuli Reservoir.
3. Route B-2 would require the construction of a new roadway through fallow agricultural fields along the northern portion of the modified Bypass alignment before continuing mauka along the same alignment as Route B-1.
4. Route C would originate on KLM lands corresponding with planned intersections along the Bypass before entering State land.

Preferred Access Routes

Routes B-1 and C are considered the most preferred and practical routes appearing to provide the most minimizing potential of environmental impacts. The two routes would travel in a mauka/makai direction across fallow lands following along a network of existing agricultural roads, irrigation transmission lines, and ditches used by Pioneer for sugar operations and access to Mauka Lands.

Route B-1 is the proposed southern access route through DLNR Parcel 22 with a length of about 3,170 linear feet. Based on a 40-foot width, the easement area would be about 126,800 square feet, or 2.911 acres, more or less. Route C is the proposed northern access route through DLNR Parcels 04 and 22 with a length of about 2,250 linear feet. Based on a 40-foot width, the easement area would be about 90,000 square feet, or 2.066 acres, more or less.

Route B-1 and Route C would originate on lands owned by HHFDC and KLM before entering State land. The routes would traverse the planned Leiali'i project, coinciding with the project's internal roads and planned intersections along the Bypass that is currently under construction. In the event Leiali'i's master plan road alignments differ from easements granted by the State, Applicant will seek to relocate the easements to align with the master planned roads, as necessary. The ability to relocate State easements provides Applicant with flexibility. In the event the relocated easements require more land than the original easement area approved by the Board, consideration shall be no less than the price per square foot determined by appraisal for the original easement area. Conversely, if the land area of the relocated easement is less in size than the original easement area, the initial consideration paid by Applicant shall be non-refundable as an inherent cost risk of seeking State easements before the completion of the Leiali'i subdivision. Upon completion of the Bypass through Leiali'i, Applicant anticipates its need for portions of the proposed easements to terminate with the newly available public right-of-way.

Applicant will assist with routine maintenance of the roadway easements that will primarily involve resurfacing with gravel or other suitable material to reduce dust generation. Future improvements within the easement areas will include providing a minimal pavement width of 20 feet and necessary drainage control features, including grassed swales, and runoff control basins, as well as overhead utility lines. Construction plans for improvements within the State easements, if any, shall be subject to prior review and approval by the Chairperson.

Comments were solicited from government agencies, the Office of Hawaiian Affairs, Kaanapali Land Management, and Kamehameha Schools with the following responses:

State of Hawaii, DLNR Forestry & Wildlife	No response.
State of Hawaii, DLNR Historic Preservation	No response.
State of Hawaii, Department of Hawaiian Home Lands	Notify agency of easement location if on its lands; coordinate location and potential extension of Wahikuli Street with DHHL.
State of Hawaii, Department of Transportation	Subject to DOT Agreement, dated December 6, 2007 as amended by letter dated April 6, 2009 regarding access to the Bypass.
State of Hawaii, Department of Agriculture	No response.
State of Hawaii, Hawaii Housing Finance and Development Corporation	Condition approval on an MOU.
County of Maui, Department of Planning	No comment.
County of Maui, Department of Public Works	No response.
Maui County Cultural Resources Commission	No response.
Office of Hawaiian Affairs	No response.
Kaanapali Land Management	Easement for proposed Route B-1 to be obtained from HHFDC and easement for proposed Route C to be obtained from KLM.
Kamehameha Schools	No response.

Applicant 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.

RECOMMENDTION

That the Board, subject to Applicant fulfilling all Applicant Requirements above:

1. Authorize the issuance of an immediate right-of-entry permit to Kahoma Lands LLC and General Finance Group, Inc. for access and utility purposes under terms and conditions cited above, which are by reference incorporated herein;
2. Authorize the issuance of two (2) perpetual, non-exclusive, re-locatable easements described above as Routes B-1 and C over and across the Subject Property for access and utility purposes under terms and conditions cited above, which are by reference incorporated herein and further subject to the following:
 - A. the standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time; and
 - B. the easements shall run with the land and shall inure to the benefit of the real properties described as the Mauka Lands and further identified as tax map keys (2) 4-5-21:02, 06, and 24, provided however:

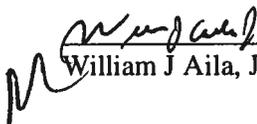
- (1) it is specifically understood and agreed that the easements shall immediately cease to run with the land upon termination or abandonment of the easements;
 - (2) if and when the easements are sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
 - (3) in the event the easements require relocation by the Applicant, Applicant shall pay for all costs related to the relocation of the easements;
 - (4) improvements within the easements shall be subject to prior review and approval by the Chairperson;
 - (5) the easements are used for access and utility purposes, or any other agricultural uses permitted under the County of Maui's Comprehensive Zoning Code, as said code may be amended from time to time; and
 - (6) the easements shall be subject to the State of Hawaii, Department of Transportation Agreement, between the State and the Applicant, dated December 6, 2007, as amended by letter dated April 6, 2009, or as may be further amended.
3. Authorize the subject requests to be applicable in the event of a change in ownership of the Mauka Lands described as tax map keys (2) 4-5-21:02, 06, and 24 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;
 4. Review and approval by the Department of the Attorney General; and
 5. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Morris M Atta
Special Projects Coordinator

Approved Disapproved



William J Aila, Jr., Chairperson

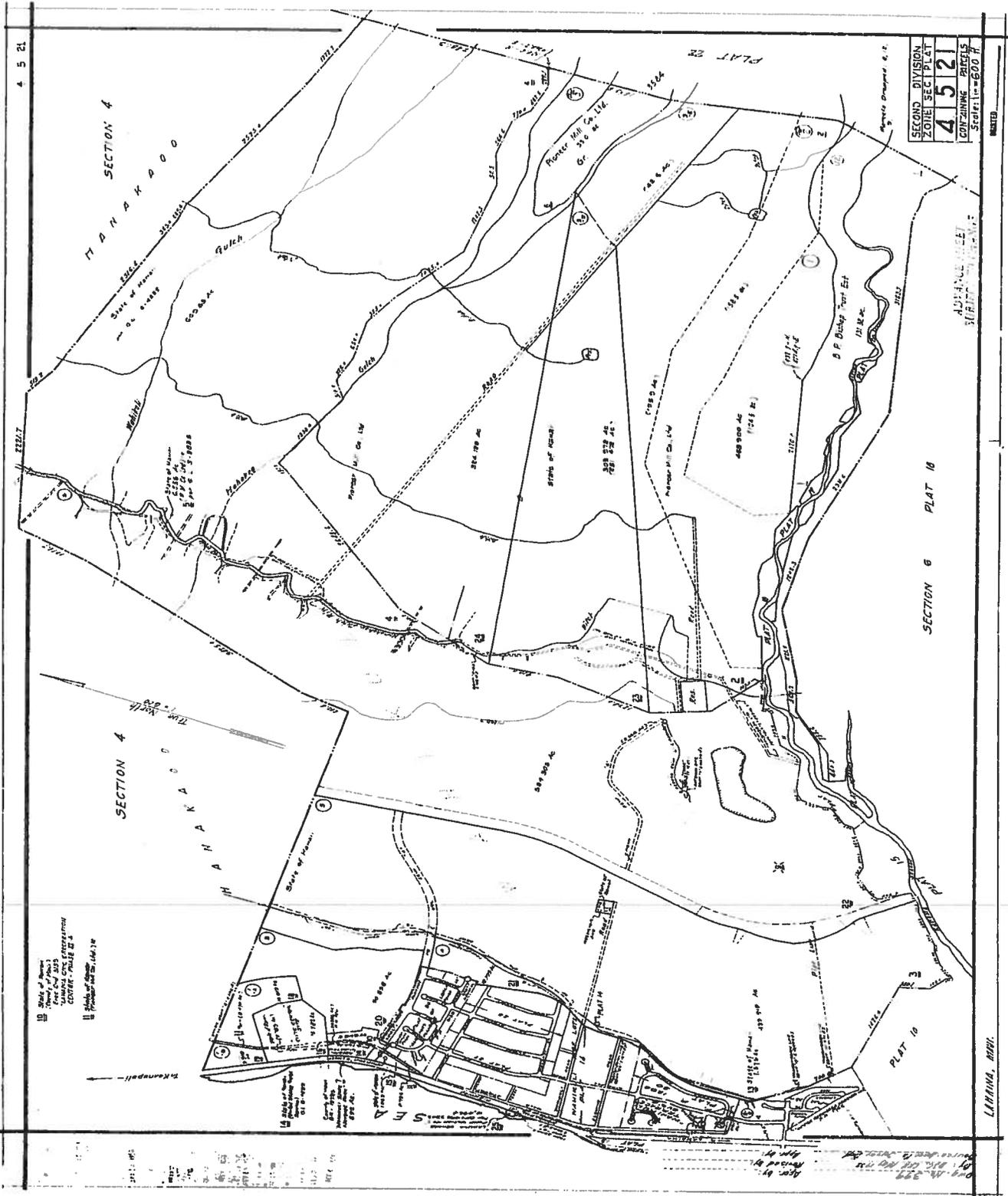


Exhibit A

