

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

September 28, 2012

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

PSF: 12MD-131

Maui

After-the-Fact Consent to Assignment of Grant of Perpetual, Non-Exclusive Easement No. LOD S-27655, Florence M. Schultz, Martha Ann Rice, and Colleen McCorriston-Smith, Assignors, to Bret Patrick Hoffman, Assignee; Amendment of Grant of Perpetual, Non-Exclusive Easement No. LOD S-27655 to Run with the Land Identified as Tax Map Key: (2) 5-7-011:017 and Add Current Comprehensive General Liability Insurance Requirement, Ualapue, Kona, Molokai, Tax Map Key: (2) 5-6-002: Por. of 001 and 034.

APPLICANT:

Florence M. Schultz, Martha Ann Rice, and Colleen McCorriston-Smith, as Assignor, to Bret Patrick Hoffman, Husband of Vikashni Hoffman, Tenant in Severalty, as Assignee.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Ualapue situated at Ualapue, Kona, Molokai, identified by Tax Map Key: (2) 5-6-002: Por. of 001 and 034, as shown on the attached map labeled Exhibit 1.

AREA:

0.180 acres, or
7,849 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 _____ NO x

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.

TERM OF EASEMENT:

Perpetual

DCCA VERIFICATION:

Assignor/Assignee is a landowner and, as such, is not required
to register with DCCA.

EXHIBITS:

Exhibit #1- Tax Map Key: (2) 5-6-002.

Exhibit #2- Approved Board Submittal dated June 13, 1986,
Item No. F-9.

Exhibit #3- Easement Map C.S.F. No. 20410.

REMARKS:

On June 13, 1986, the Board of Land and Natural Resources,
under agenda Item F-9, (attached as Exhibit 2) approved the
issuance of a twenty (20) foot wide perpetual, non-exclusive
easement over and across government lands at Ualapue, Molokai.
The subject easement, LOD No. S-27655, benefitted the private
parcel at TMK: (2) 5-7-011:017 (Parcel 17) owned by Martha Ann
Rice, Florence M. Schultz and Colleen McCorriston Smith
(Assignors). Land Office Deed No. S-27655 is an older
perpetual non-exclusive easement instrument requiring the
Board's approval prior to assignment of the easement.

Brett Patrick Hoffman purchased Parcel 17 from Assignors on
November 2, 2002. Mr. Hoffman believed that LOD No. S-27655
for access and utility purposes over the adjacent state lands
ran with Parcel 17 and that he would have continued use of the

September 28, 2012

easement. Therefore, an assignment of the subject easement from Assignors to Brett Hoffman was never completed.

Recently Mr. Hoffman contacted the Maui District Land Office to inquire about his rights to utilize the easement. He explained that he was encountering problems with one of the other users of the easement, a neighboring property owner who had erected a gate across the easement corridor. In response, checks were conducted and staff found that the subject easement area was also encumbered by a Grant of Easement LOD No. S-27279 to Helen A. Lum, for perpetual non-exclusive access and utility purposes.

Mr. Hoffman was advised that he would need to obtain approval from the Board of Land and Natural Resources for the transfer (assignment) of LOD No. S-27655. He has since provided a warranty deed dated November 2, 2002, evidencing the sale of Parcel 17 from Assignors to him. The warranty deed states in relevant part that Mr. Hoffman is: "TO HAVE AND TO HOLD [Parcel 17], together with all improvements, rights, easements, privileges and appurtenances thereon and thereunto belonging or appertaining or held and enjoyed therewith, unto [Mr. Hoffman] according to the tenancy and estate as hereinabove set forth, forever." (Emphasis added). Accordingly, the warranty deed would have been effective to convey the easement rights in LOD No. S-27655 if Land Board consent had been secured at the time of the conveyance in 2002.

Staff is requesting the Land Board's approval of an after-the-fact Consent to Assignment of LOD No. S-27655. Because of the length of time that has passed since the 2002 transaction and staff's inability to locate the original three Assignors, request is also being made for the consent to assignment to be drafted in such a manner that the Assignors' signatures are not required on the consent.

Staff is recommending that LOD No. S-27655 be amended to state that the easement will run with Parcel 17, provided that if and when the easement is conveyed, the grantee shall notify the State of such transaction in writing, and shall notify grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document. This will eliminate the need for Board action on future consents to assignment.

As an older easement, LOD No. S-27655 lacks a liability insurance provision. Due to current insurance requirements, staff deems it prudent that the standard language relative to comprehensive general liability coverage of no less than

\$1,000,000.00 per occurrence and \$2,000,000.00 aggregate be included as a requirement in the easement instrument by amendment.

Mr. Hoffman has 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.

No agency or community comments were solicited with regards to this request.

Such 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:

- A. Consent to the assignment of LOD No. S-27655, Florence M. Schultz, Martha Ann Rice, and Colleen McCorriston-Smith, as Assignors, to Bret Patrick Hoffman, as Assignee, subject to the following:
 1. The standard terms and conditions of the most current consent to assignment of easement form, except that the consent shall be drafted in such a manner that the Assignors' signatures are not required on the consent;
 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.
- B. Authorize the amendment of Perpetual, Non-Exclusive Access and Utility Easement, LOD No. 27655, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 1. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (2) 5-6-002:017, 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,

September 28, 2012

assigned, conveyed, or otherwise transferred, the Grantee shall notify the State of such transaction in writing, and shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;

2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (2) 5-6-002:017, 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. Include the standard provision for comprehensive general liability insurance in an amount of at least \$1,000,000.00 for each occurrence and \$2,000,000.00 aggregate, with coverage terms acceptable to the Chairperson of the Board of Land and Natural Resources;
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 interest of the State.

Respectfully Submitted,



Larry Pacheco, Land Agent

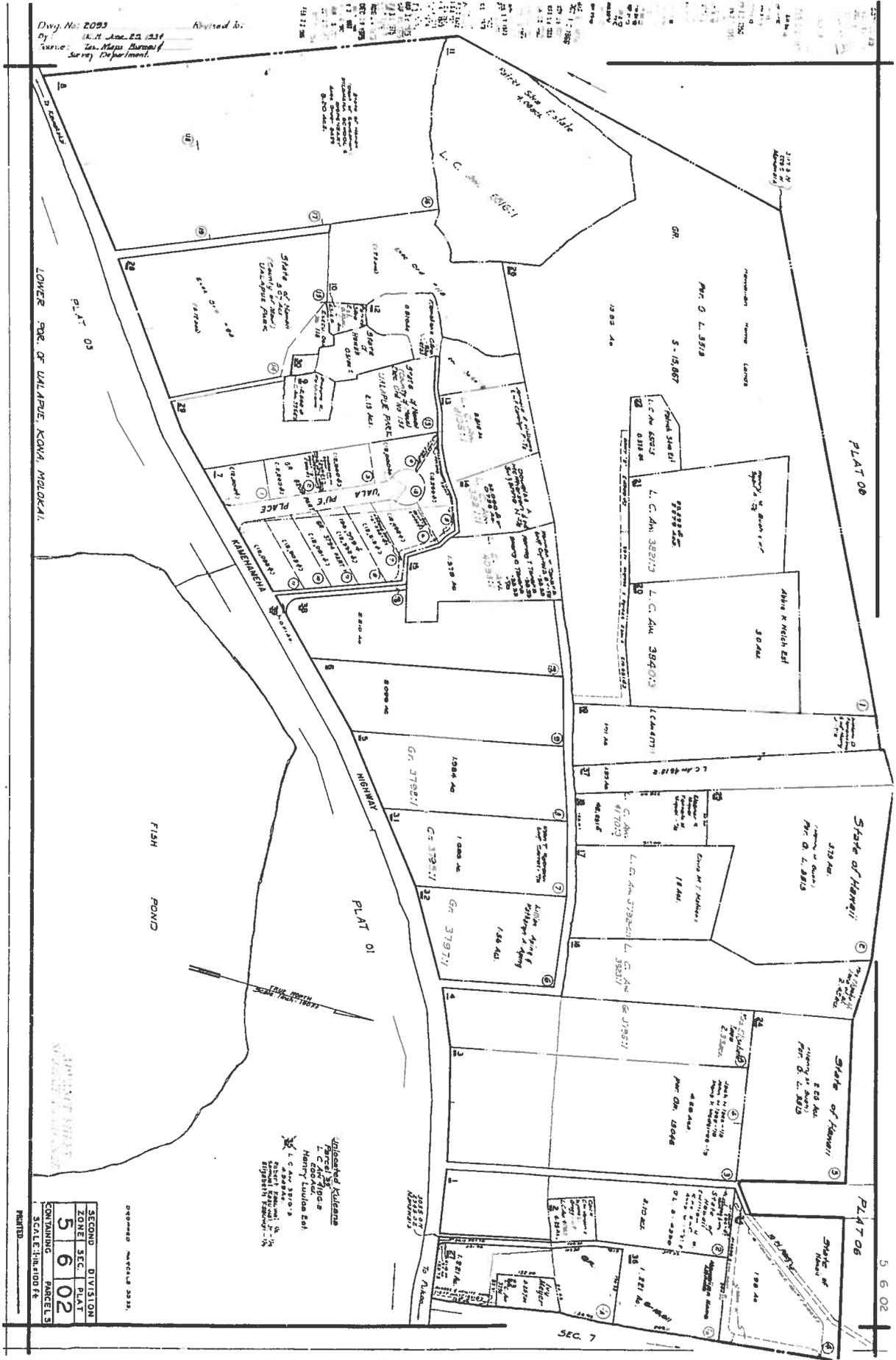
APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



Dwg. No: 2093
 By: K. H. Assoc. P.E. 334
 Title: Mass. Bureau of Survey Department.



SECOND DIVISION	5
ZONE SEC. PLAT	6 102
CONTAINING PARCELS	
SCALE: 3/4" = 100'	

Unaffected Kulauna
 L.C. Am. 38213
 Henry Ludson Sol
 Robert Edmund G. 15
 Joseph T. Tamm - 15

GEORGE R. ARIYOSHI
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF LAND MANAGEMENT
P. O. BOX 821
HONOLULU, HAWAII 96809

DIVISIONS:
CONVEYANCES
FISH AND GAME
FORESTRY
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

June 13, 1986

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

Gentlemen:

MOLOKAI

DIRECT SALE OF EASEMENT AT UALAPUE, MOLOKAI

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

APPLICANT: MARTHA ANN RICE, FLORENCE M. SCHULTZ and COLLEEN MCCORRISTON SMITH, as Tenants in Common.

FOR: Twenty (20)-ft.-wide perpetual, non-exclusive easement over and across Government land at Ualapue, Molokai, Tax Map Keys 5-6-02:pars. 1 and 34, as shown shaded in red on map labeled Land Board Exhibit "A" and appended to the basic file.

STATUS OF LAND TITLE: Subsection 5(b) land

STATUS: Encumbered under Grant of Easement to Helen A. Lum (A perpetual non-exclusive easement for access and utility purposes filed under Land Office Deed No. S-27279).

SPECIFIC USE: Access and utility purposes.

ZONING: Land Use Commission: Rural District
County of Maui: Interim-Agriculture

AREA: Approximately 7,800 sq. ft. (Subject to confirmation by the Survey Division of the Department of Accounting and General Services).

CONSIDERATION: To be determined by independent appraisal. (Same subject to review and approval by the Chairperson).

REMARKS: The applicants hold title to a landlocked parcel identified as Tax Map Key 5-7-11:17. Applicants would like to obtain legal access to this parcel and have asked that an access and utility easement be granted over State land to serve parcel TMK 5-7-11:17.

ITEM F-9

EXHIBIT " 2 "

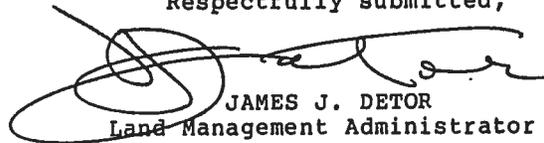
This easement will run over and across portions of an existing easement previously sold by the State to another landlocked property owner for the same purpose.

RECOMMENDATION:

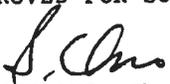
That the Board:

- A. Find the subject area is of minimum size relative to the intended use and constitutes an economic unit.
- B. Approve the direct sale of the subject easement to the applicants under the foregoing terms and conditions which are by reference incorporated herein, in addition to the following terms and conditions:
 1. Standard abandonment clause in the event of non use for a period of one (1) year.
 2. Standard indemnification and hold-harmless clause.
 3. Standard relocation clause.
 4. Other standard terms and conditions covering easements of this nature.
 5. Such other terms and conditions as may be prescribed by the Chairperson.

Respectfully submitted,

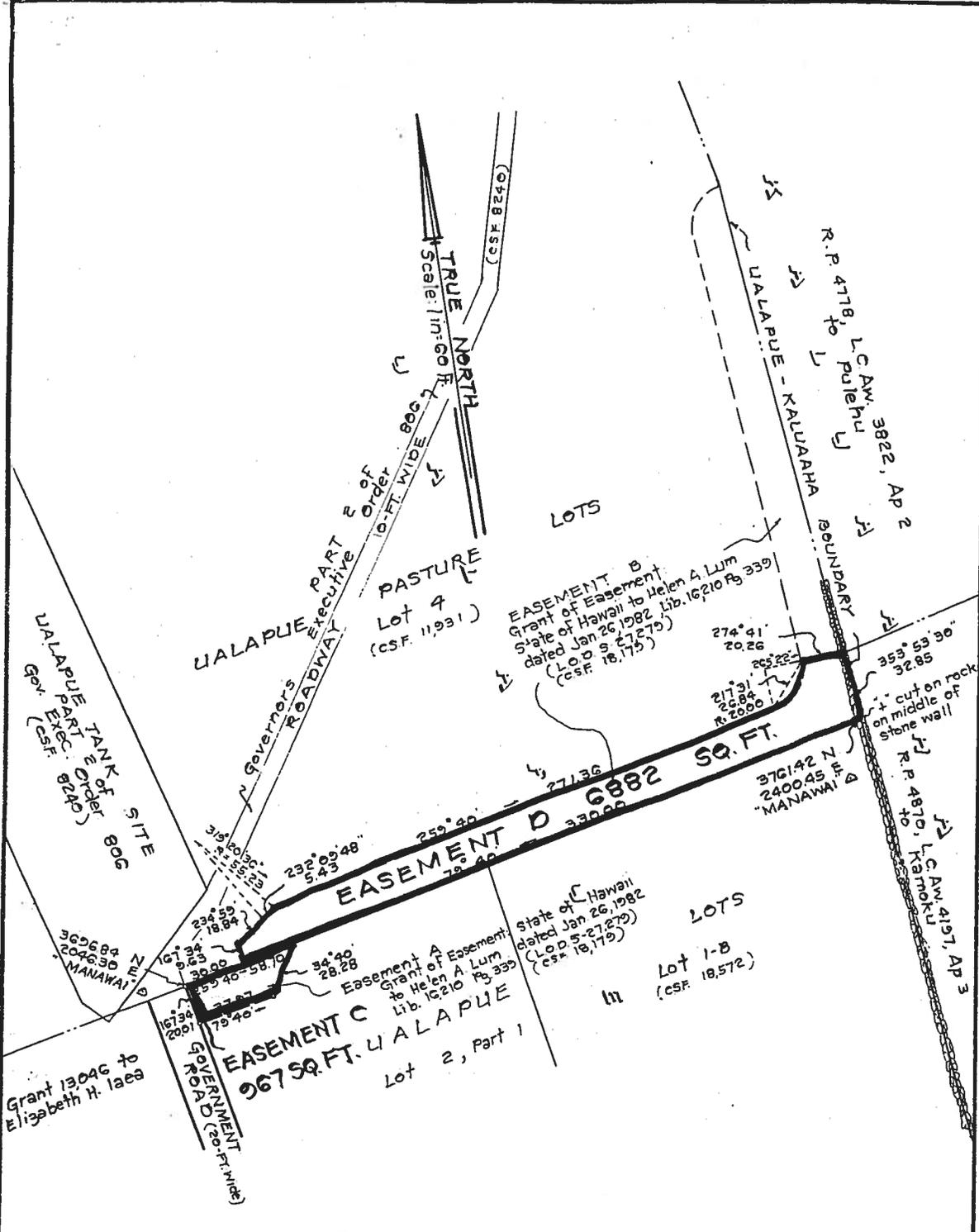

JAMES J. DETOR
Land Management Administrator *JB*

APPROVED FOR SUBMITTAL;


SUSUMU ONO, Chairperson

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

6/13/86



PERPETUAL NON-EXCLUSIVE EASEMENTS
 FOR ACCESS AND UTILITY PURPOSES
 EASEMENTS C AND D
 Ualapue, Molokai, Hawaii
 Scale : 1 inch = 60 feet

JOB Mo-226 (8C)
 C BK Hasegawa 10 Pg. 91

TAX MAP 5-C-02 SURVEY DIVISION
 DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
 STATE OF HAWAII

C. S. F. No. 20,410

STH June 26, 1986