

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

December 12, 2014

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

PSF No.:14KD-128

Kauai

Grant of Perpetual, Non-Exclusive Easement to Malulani Investments, Ltd. for Access and Utility Purposes, por. of Waioli, Hanalei, Kauai, Tax Map Key: (4) 5-5-008:por. 2 and (4) 5-6-002:por. 1.

APPLICANT:

Malulani Investment, Ltd., a domestic profit corporation.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Waioli, situated at Hanalei, Kauai, identified by Tax Map Keys: (4) 5-5-008:por. 2 and (4) 5-6-002:por. 1 as shown on the attached map labeled Exhibit A.

AREA:

2,747 square feet, more or less – Easement A  
2,832 square feet, more or less – Easement B  
2,211 square feet, more or less – Easement C

ZONING:

State Land Use District: Conservation  
County of Kauai CZO: Agricultural

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:

Encumbered by Land Office Deed No. S-28,292, Glenn Ichiro Kobayashi, Christine Yoshiko Kobayashi, and Joseph Niro Kobayashi, Grantees, for access and utility purposes.

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:

Access purposes: Gratis since the subject easement is to an existing Kuleana.

Utility purposes: 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:

Not applicable.

RENTAL REOPENINGS:

Not applicable.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or

topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation." See Exhibit B.

DCCA VERIFICATION:

Place of business registration confirmed:	YES	<u>X</u>	NO	___
Registered business name confirmed:	YES	<u>X</u>	NO	___
Applicant in good standing confirmed:	YES	<u>X</u>	NO	___

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Obtain a title report to ascertain ownership, where necessary, at Applicant's own cost and subject to review and approval by the Department.
- 2) Pay for an appraisal to determine initial one-time payment for the utility part of the easement.

REMARKS:

Applicant wishes to use State owned lands situated on a portion of Waioli, Hanalei, Kauai, for access and utility purposes to serve its private property identified as Tax Map Key: (4) 5-5-008:008. Applicant currently does not have legal access to property. See Exhibit C.

Staff recommends perpetual easements for kuleana lots. Land Office Deed No. S-28,292, which serves a kuleana parcel in the same area, is a perpetual, non-exclusive easement. Applicant's parcel is also a kuleana, as reported by staff abstractor. See Exhibits D, E & F. Applicant's easement will follow the same alignment as the easement under Land Office Deed No. S-28,292. Under applicable law, the access part of the easement is to be granted to the kuleana owner without charge. However, the applicant is required to pay for the utility part of the easement.

Comments were solicited from the agencies identified below with the results indicated.

State Agencies:

DOH	No comments, no environmental health concerns
DLNR – Historic Preserv.	No response by suspense date
DLNR – OCCL	No response by suspense date
OHA	No response by suspense date

County Agencies

County Planning	No objections
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Public Works	No objections
Dept. of Water	No response by suspense date

Applicant 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.

Staff has no objection to the requested action.

Staff believes that the recommended action qualifies for an exemption from the preparation of an environmental assessment as currently, this easement is being used by the Kobayashi family under LOD S-28,292. 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:

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 request to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (4) 5-5-008:008, 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 perpetual non-exclusive easement to Malulani Investments, Ltd. 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 perpetual 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: (4) 5-5-008:008, 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; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor 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;

- 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,



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Marvin Mikasa  
District Land Agent

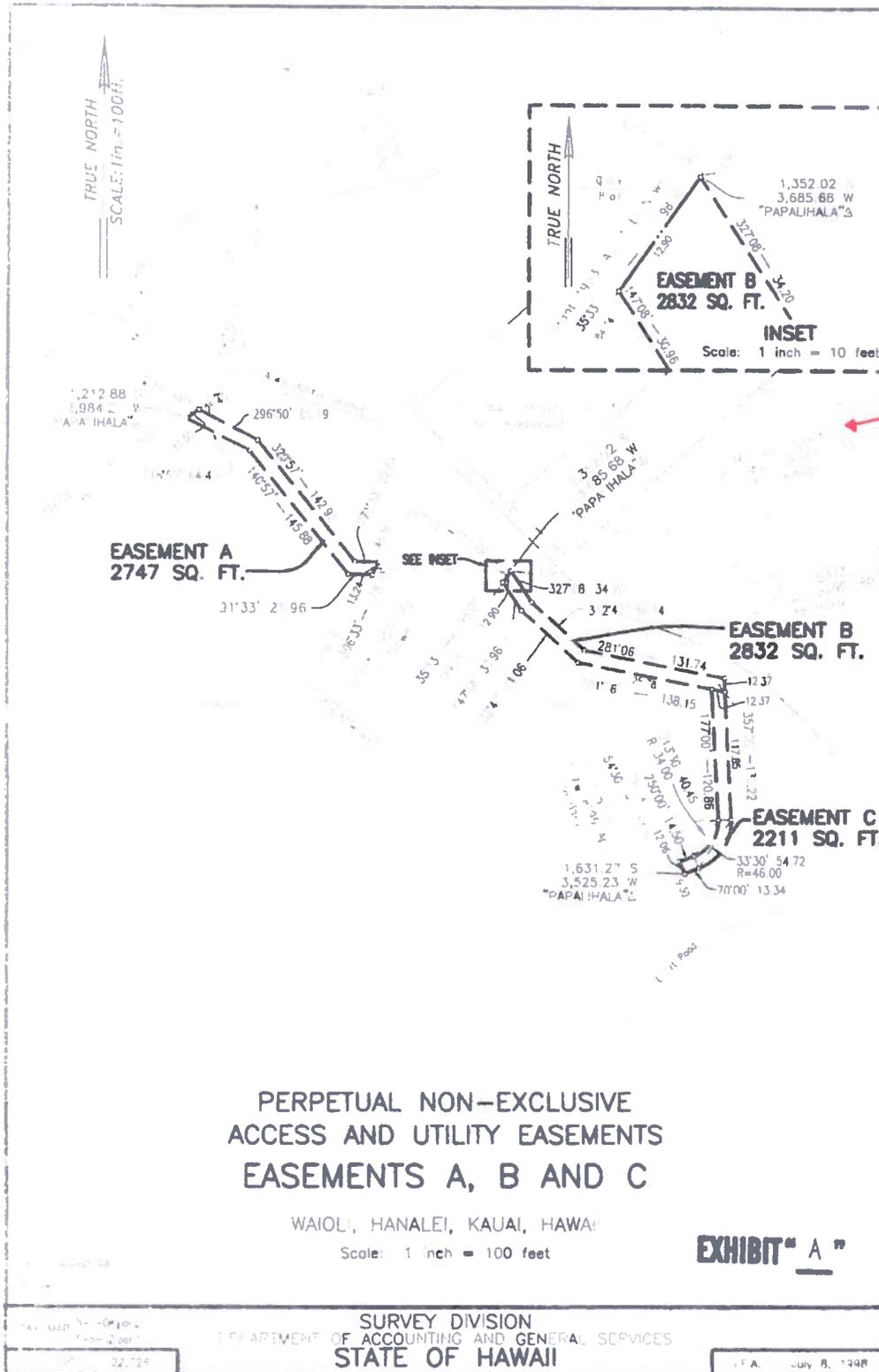
APPROVED FOR SUBMITTAL:



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William J. Aila, Jr., Chairperson





NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

WILLIAM J. AHL, JR.  
DIRECTOR  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
1555 KALANIANA'OLANI MAHALA DRIVE, HONOLULU, HAWAII 96813

JESSIE K. SOUKI  
DEPUTY DIRECTOR

WILLIAM M. TAM  
DEPUTY DIRECTOR

ADAM B. HARRISON  
DIRECTOR  
BUREAU OF CONSERVATION  
COMMISSIONER OF WATER RESOURCES  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
1555 KALANIANA'OLANI MAHALA DRIVE, HONOLULU, HAWAII 96813

### EXEMPTION NOTIFICATION

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Grant of Perpetual, Non-Exclusive Easement to Malulani Investments, LLC for Access and Utility Purposes

Project Number: PSF No. 14KD-128

Project Location: por. of Waioli, Hanalei, Kauai, Tax Map Key: (4) 5-5-008:por. 2 and (4) 5-6-002:por. 1.

Project Description: Access and Utility Purposes

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

Consulted Parties: Office of Conservation and Coastal Lands

Exemption Class No. In accordance with the "Exemption List for the State of Hawaii, Department of Land and Natural Resources, as Reviewed and Concurred Upon by the Environmental Council (Docket 91-EX-2, December 4, 1991), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1. "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing [HAR § 11-200-8(a)(1)]."

Exemption Item 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. 1, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing." and**

**EXHIBIT " B "**

**Exemption Class No. 4**, which states, "Minor alterations in the conditions of land, water or vegetation."

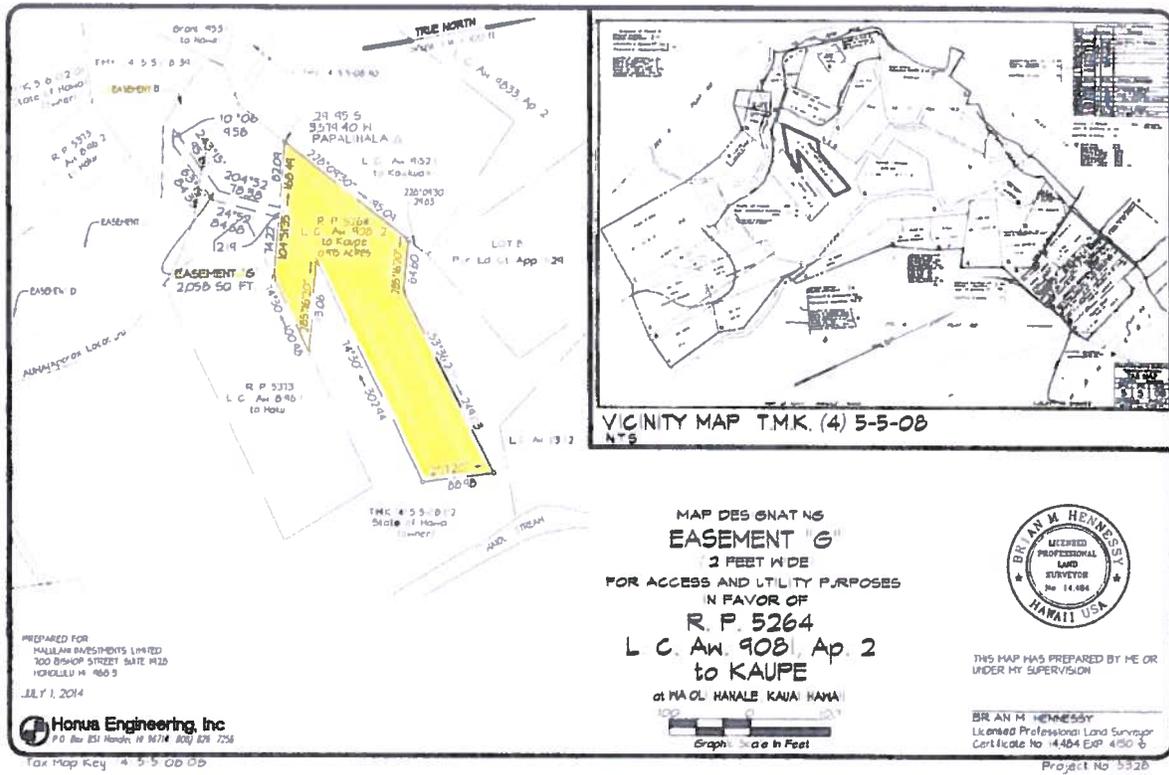
**Exemption Item Description From Agency Exemption List** Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing.

**Recommendation:** It is anticipated that this request 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. Aifa, Jr., Chairperson

  
\_\_\_\_\_  
Date





**EXHIBIT "C"**



State of Hawaii  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

January 16, 1998

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

KAUAI

**Subject:** Grant of Perpetual Non-Exclusive Access and  
Utility Easement Affecting Portions of State Owned  
Lands, Waioli Valley at Hanalei, Kauai

**STATUTE:** Chapter 171-13 and 17, Hawaii Revised Statutes, as amended.

**APPLICANT:** MAX W.J. GRAHAM, Jr. and KAREN L. GRAHAM, husband and wife

**FOR:** State owned lands and waters, situate portion of Waioli, Hanalei Kauai, Tax Map Keys 5-6-2: por. 1 and 5-5-8: por. 2, as shown outlined in red on the map labeled Land Board Exhibit "A" attached to this report.

**LAND TITLE STATUS:** Subsection 5(b) land of the Hawaii Admission Act

**STATUS:** Vacant and Unencumbered

**ZONING:** State Land Use Commission: Conservation  
County of Kauai CZO: -

**LAND AREA:** Approximately 3,000 sq.ft. (12 ft x 250 ft. on TMK 5-6-2: por. 1), and 6,960 sq.ft. (12 ft. x 400 ft. and 12 ft. x 180 ft. on TMK 5-5-8: por. 2), for a total of approximately 9,960 sq.ft.

*0,278 sq ft.  
3,000 sq ft.*

Exact land area and configuration to be determined by the applicant's surveyor, subject to review and confirmation by Survey Division, Department of Accounting and General Services.

**CHARACTER OF USE:** Grant of perpetual, non-exclusive access and utility easement

**CONSIDERATION:** Gratis, since the subject easement is to an existing kuleana

**EXHIBIT "D"**

Graham Easement

-2-

KAWAI

**ENVIRONMENTAL  
REVIEW:**

In connection with the CDUP approved by the Land Board on September 26, 1997 (Agenda Item D-10), and pursuant to Section 13 of Title 11, Chapter 200, HAR, the Department previously issued a FONSI based on the draft environmental assessment for which the required period for public review was completed.

**REMARKS:**

As noted above, the Land Board has already approved a Conservation District Use Permit to the Graham's for the construction of a single family residence on their kuleana. This easement request is a follow-up action necessary to provide a legal access and utility easement to the kuleana.

**RECOMMENDATION:** That the Board:

- A. Find that the area in question to be an economic unit in terms of the use to which the area will be put.
- B. Authorize the issuance of a perpetual non-exclusive access and utility easement to the Applicant under the terms and conditions listed above which are by this reference incorporated herein, and subject to the following terms and conditions:
  1. Standard terms, conditions, covenants and restrictions of the standard grant of easement form.
  2. The applicant shall provide the Department of Land and Natural Resources, Land Division, with five (5) sets of maps, together with metes and bounds description, of the easement area.
  3. Said easement shall; not be used at any time by the grantees, their guests or invites for parking, storage, dumping, and/or other unacceptable purposes.
  4. Grantee's shall be responsible for any repair and/or maintenance of the subject easement areas.
  5. Governor's concurrence.

Graham Easement

-3-

KAUAI

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

7. *Constitution Right of Entry to Courts of Hawaii*  
Respectfully submitted,



SAM LEE  
Kauai District Land Agency

APPROVED FOR SUBMITTAL:

~~Michael D. Wilson~~  
MICHAEL D. WILSON, Chairperson



AA2

State of Hawaii  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

October 30, 1998

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

KAUAI

Subject: Assignment of Grant of Perpetual Non-Exclusive  
Access and Utility Easement, Waioli, Hanalei,  
Kauai, TMK 5-5-8: por. 2 and 5-6-2: por. 1

**ASSIGNMENT**

**OF EASEMENT:** MAX W.J. GRAHAM, JR. and KAREN L. GRAHAM, husband  
and wife, t/e, to JOSEPH N. KOBAYASHI, husband of  
Suzanne Kobayashi, CHRISTINE Y. KOBAYASHI, single,  
and GLENN I. KOBAYASHI, husband of Grace Rumi  
Kobayashi, t/c.

**LOCATION AND  
AREA:**

Easement A containing an area of 2,747 sq.ft.,  
Easement B containing an area of 2,832 sq.ft., and  
Easement C containing an area of 2,211 sq.ft.,  
Waioli, Hanalei, Kauai, TMKs 5-5-8: por. 2 and  
5-6-2: por. 1 as shown on the map attached as Land  
Board Exhibit A.

**LAND TITLE**

**STATUS:** Subsection 5(b) land

**ANNUAL RENT:** Gratis

**CHARACTER OF  
USE:**

Perpetual N/E Access and Utility Easement

**ASSIGNMENT**

**CONSIDERATION:** None

**REASON FOR**

**ASSIGNMENT:**

The Graham's have agreed to sell their kuleana to  
the Kobayashi's.

**REMARKS:**

The Graham's obtained a CDUA Permit for the  
easement of 9/29/97. They also obtained  
authorization for the easement on 1/16/98 from the  
Land Board, Agenda Item D-36.

ITEM D-9

**EXHIBIT " E "**

Assignment of Easement

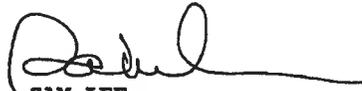
-2-

KAUAI

**RECOMMENDATION:** That the Board consent to the above assignment, subject to the following:

1. Review and approval of the assignment by the Department of the Attorney General;
2. Other conditions as may be prescribed by the Chairperson.

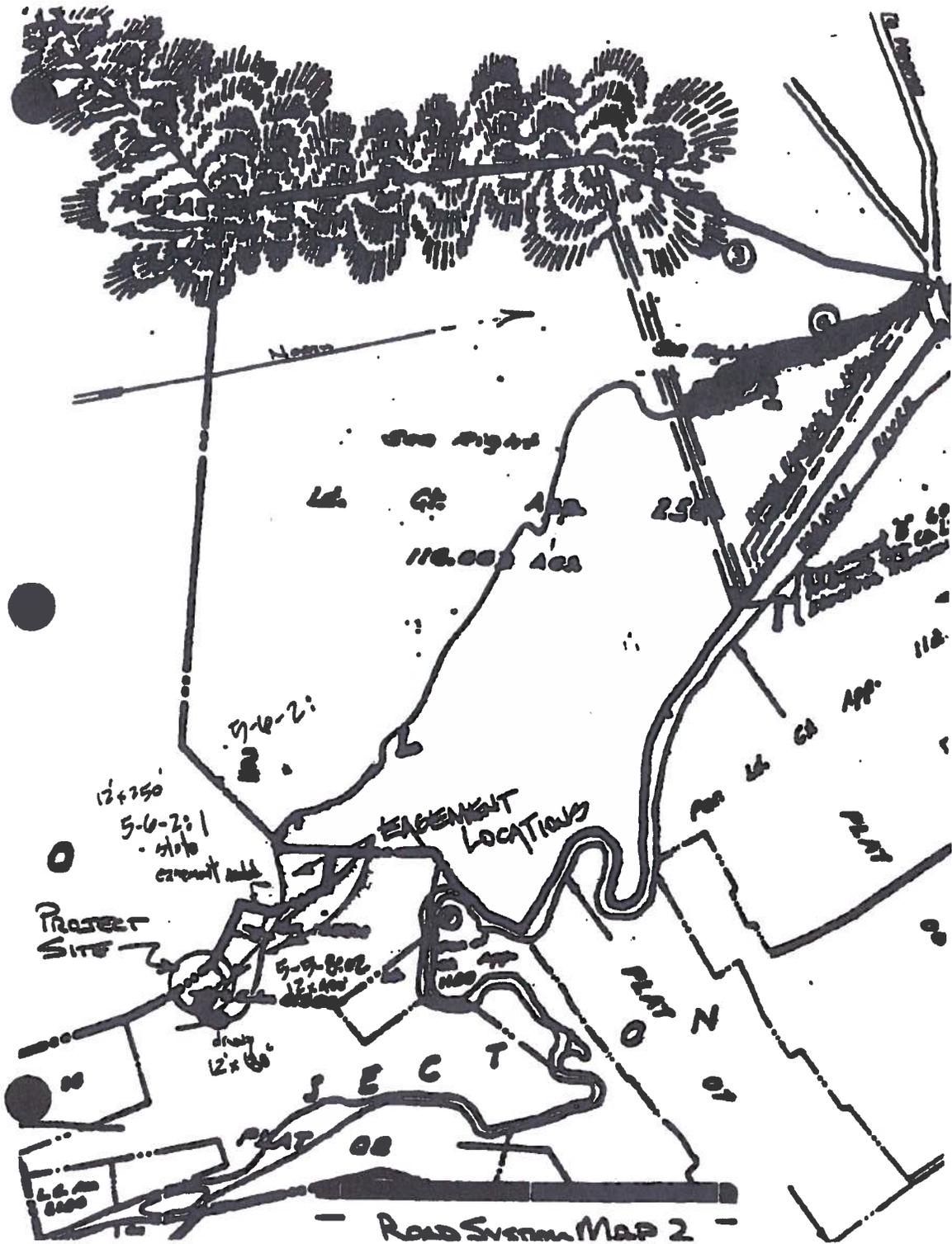
Respectfully submitted,



SAM LEE  
Kauai District Land Agent

APPROVED FOR SUBMITTAL:

  
MICHAEL D. WILSON, Chairperson



MLII ANFRCHOMBIE  
KUMUHANA O HAWAII



WILLIAM J. AHI, JR.  
CHAIRMAN  
BOARD OF LAND AND NATURAL RESOURCES  
HONOLULU, HAWAII 96814

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96814

October 3, 2014

10506(K)

MEMORANDUM

**TO:** Marvin T. Mikasa, Acting Kauai District Land Agent

**THROUGH:** Russell Y. Tsuji, Administrator

**FROM:** E. Mahoe Collins, State Abstractor

**SUBJECT:** Kuleana Status of Tax Map Key Parcel (4) 5-5-008:008

We have been requested to confirm the kuleana status of the original source of title to the subject real property designated as TMK: (4) 5-5-008:008, as shown colored in red on the map attached hereto as Exhibit A.

Thereon, the original source of title to the subject property is identified as being all of Apana 2 of Land Commission Award 9081.

An examination of the records and files located in our office reveal that said Land Commission Award 9081 adjudicated the claim of Kaupe and confirmed his fee simple title in and to three parcels of land lying situated in the Ahupuaa of Waoli, in the District of Halelea, Kauai on October 5, 1852.

Records of the Land Commissioners reveal that the claimant-awardee Kaupe received this land from his parents in the time of D. Papohaku and that his ownership to them has never been disputed. Said records further reveal that the name "Kaupe", does not appear in the 1848 Mahele Book, revealing that the lands claimed by and awarded to him, were not acquired in the Mahele of Kamehameha III, as a chief or konohiki.

By these records we confirm that the subject Apana 2 of Land Commission Award 9081 to Kaupe is a kuleana

If you have any questions please feel free to call me at 587-0458.

Enclosure

**EXHIBIT " F "**

