

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

May 8, 2015

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

PSF No.:15MD-069

Maui

Quitclaim of State's Interests, if Any, in Old Waikapu Road
to the County of Maui, Waikapu, Maui, TMK: (2)3-5-002.

APPLICANT:

County of Maui, Department of Public Works whose business and
mailing address is 200 South High Street, Room 434, Wailuku,
96793.

LEGAL REFERENCE:

Sections 171-95(a)(5) and 264-2, Hawaii Revised Statutes, as
amended.

LOCATION:

Portion of an old Government road situated at Waikapu, Maui
identified by Tax Map Key: (2) 3-5-002, as shown on the attached
map labeled Exhibit A.

AREA:

2.85 acres, more or less, to be determined by survey.

CURRENT USE STATUS:

Vacant and unencumbered; paper road (laid out).

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Not applicable.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

The Department of Public works, by the attached letter dated April 7, 2015 has requested that a 2.85 acre (more or less) portion of old Waikapu road be quitclaimed from the State of Hawaii to the County of Maui (Exhibit B & C).

The County of Maui and the owners of the adjacent properties are considering a realignment of the old Waikapu road in order to support the proposed Puunani subdivision situate at TMK (2) 3-5-002:002 & 003 by the Association of II Wai Hui LP, Endurance Investors LLC and Wailuku Kuikahi LLC (Exhibit D).

Pursuant to Section 264-2, HRS, the ownership of all "public highways" (roads, alleys, streets, ways, lanes, bikeways, and bridges in the State, opened, laid out, or built by the government) are owned either by the State for state highways under the jurisdiction of the Department of Transportation or the county for all other public highways. While ownership was transferred by operation of law pursuant to this statutory section, the counties have continued to dispute that they own the roads because they do not have paper title.

Act 288, SLH 1993, stated in its preamble "In consideration of the State waiving its right to have the proceeds from the sale of county public highways remitted to the State, the counties shall acknowledge ownership and jurisdiction of all disputed public highways within their respective counties, as defined in section 264-1, HRS, without the necessity of conveyancing documents transferring title from the State to the respective counties, except when required for the purpose of disposal." (Emphasis added.)

As a result, it is staff's practice that formal documentation (i.e., quitclaim deeds) be issued on roads owned by the counties under Section 264-2, HRS, only when the county is going to subsequently dispose of any real property interests (fee conveyance or any interests less than fee) in at least a portion of the road to a third party. In all other cases, the State's position is that the fee simple interest in the road was passed to the counties by operation of law and documentation is unnecessary. This policy provides for the chain of title and enables subsequent real estate transactions to occur. This policy should not be misconstrued to suggest that the Board of Land and Natural Resources acknowledges that it has any ownership interest in such roads; the statutes cited above show that the roads being quitclaimed are already owned by the applicable county.

To enable the County to efficiently and effectively negotiate the realignment of the old government road at Waikapu, staff is recommending the issuance of a quitclaim deed. The form of the deed has been approved by the Department of the Attorney General and contains specific wording that the State is releasing and disclaiming any interest since it is our assertion that the County already owns the road.

RECOMMENDATION:

That the Board, subject to the Applicant fulfilling all of the Applicant requirements listed above authorizes the quitclaim of interests, if any, the State may have in the subject roadway parcel to the County of Maui covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

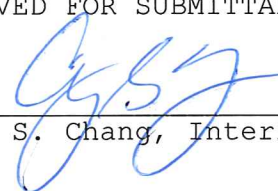
- a. The standard terms and conditions of the most current quitclaim deed (roads) form, as may be amended from time to time;
- b. Review and approval by the Department of the Attorney General; and
- c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



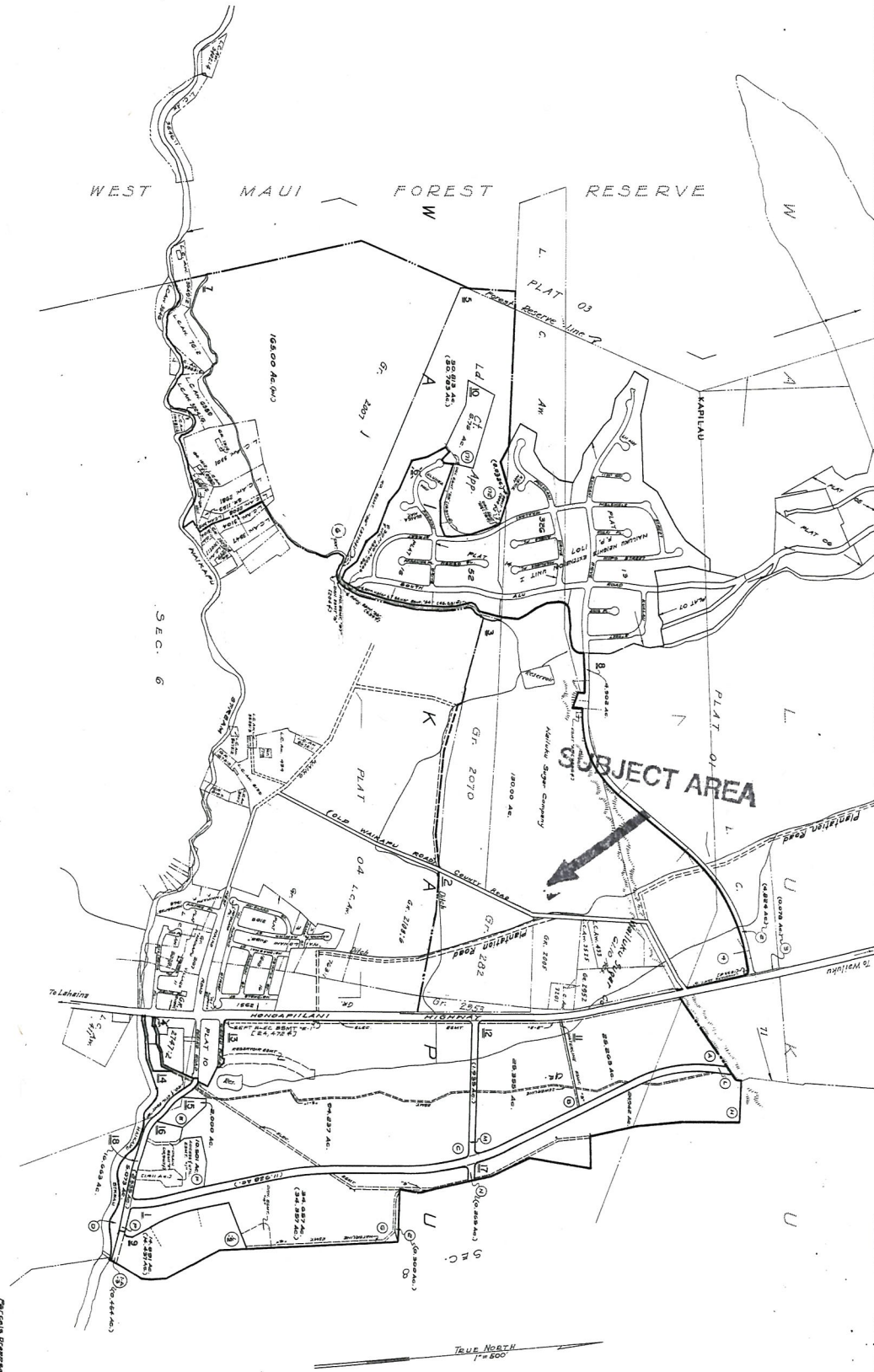
Daniel Ornellas
District Land Agent

APPROVED FOR SUBMITTAL:



Carty S. Chang, Interim Chairperson

Part of MAIKAPU, KAILUQU, MAUI



ADVANCE SHEET
 SUBJECT TO CHANGE

This is Original 1/4	
SECOND DIVISION	
ZONE	3 5 02
SEC.	6
PLAT	10
CONTAINING PARCELS	3 5 02
SCALE 1" = 500'	
PRINTED	

EXHIBIT A

ALAN M. ARAKAWA
Mayor

DAVID C. GOODE
Director

ROWENA M. DAGDAG-ANDAYA
Deputy Director

Telephone: (808) 270-7845
Fax: (808) 270-7955



COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS

200 SOUTH HIGH STREET, ROOM NO. 434
WAILUKU, MAUI, HAWAII 96793

GLEN A. UENO, P.E., P.L.S.
Development Services Administration

CARY YAMASHITA, P.E.
Engineering Division

BRIAN HASHIRO, P.E.
Highways Division

April 7, 2015

Via E-Mail (Russell.Y.Tsuji@hawaii.gov), Facsimile (808) 312-6357, and U.S. Mail

Russell Y. Tsuji, Esq.
State of Hawaii
Department of Land and Natural Resources
Land Division
1151 Punchbowl Street, Room 220
Honolulu, Hawaii 96813

Dear Mr. Tsuji:

SUBJECT: OLD WAIKAPU ROAD, WAILUKU, MAUI, HAWAII

Association of Il Wai Hui LP and Endurance Investors, LLC, are the owners of that certain parcel of land identified by Tax Map Key No. (2) 3-5-002:002 and Wailuku Kuikahi, LLC, is the owner of Tax Map Key No. (2) 3-5-02:03, both parcels being located in Wailuku, Maui, Hawaii. Together, these owners plan on developing the parcels into a subdivision to be called the Pu'unani Subdivision. See survey map attached hereto as Exhibit "1".

The properties are divided by the "Old Waikapu Road". This is an old "government road" that is abandoned. The owners and the County of Maui are considering an exchange of this old road for a new alignment that would be located on the owners' property and in order to do so, we need to address the current ownership and title to the road.

The County of Maui owns a portion of the Old Waikapu Road (that portion of the road is indicated in green on the attached map), pursuant to an Exchange Deed dated September 11, 1940, a copy of which is attached as Exhibit "2".

With respect to the remaining portion of the Old Waikapu Road (indicated in red on the attached map) this portion would appear to be an old government road that

Exhibit B

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neither the State nor the County acknowledges ownership of. In order to resolve this issue of title, we are requesting that the State transfer any interest it may have to the County of Maui, by way of Quitclaim Deed. This will allow the Maui County Council to consider accepting the deed by Council resolution, which would clear up any outstanding title issues.

As an analogy, there was a similar matter that came before the Board of Land and Natural Resources, relating to the Board's approval of a "Quitclaim of the State's Interests, if Any, in Forest Ridge Way to the City and County of Honolulu, Honolulu, Oahu, Tax Map Key: (1) 2-5-015; adjacent to 014 & 018" dated February 10, 2012 (a copy of which is attached as Exhibit "3".)

The Forest Ridge Way approval is closely analogous to ours. In that matter, the Honolulu City Council had adopted a resolution to approve the sale of a small portion of a road to an abutting property owner. The Land Division's staff report provides as follows:

Pursuant to Section 264-2, HRS, the ownership of all "public highways" (roads, alleys, streets, ways, lanes, bikeways, and bridges in the State, opened, laid out, or built by the government) are owned either by the State for state highways under the jurisdiction of the Department of Transportation or the county for all other public highways. While ownership was transferred by operation of law pursuant to this statutory section, the counties have continued to dispute that they own the roads because they do not have paper title.

Act 288, SLH 1993, stated in its preamble "In consideration of the State waiving its right to have the proceeds from the sale of county public highways remitted to the State, the counties shall acknowledge ownership and jurisdiction of all disputed public highways within their respective counties, as defined in section 264-1, HRS, without the necessity of conveyancing documents transferring title from the State to the respective counties, except when required for the purpose of disposal." (Emphasis added.)

As a result, it is staff's practice that formal documentation (i.e., quitclaim deeds) be issued on roads owned by the counties under Section 264-2, HRS, only when the county is going to subsequently dispose of any real property interests

Exhibit B

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(fee conveyance or any interests less than fee) in at least a portion of the road to a third party. In all other cases, the State's position is that the fee simple interest in the road was passed to the counties by operation of law and documentation is unnecessary. This policy provides for the chain of title and enables subsequent real estate transactions to occur. This policy should not be misconstrued to mean or imply that the State does not assert that the roads being quitclaimed are already owned by the applicable county.

To enable the City to convey the fee title of the subject area to the abutting private owner mentioned above, staff is recommending the issuance of a quitclaim deed. The form of the deed has been approved by the Department of the Attorney General and contains specific wording that the State is releasing and disclaiming any interest since it is our assertion that the County already owns the road. (Emphasis added.)

Thus, the staff report, while maintaining that the "County already owns the road", recommended that the State issue a quitclaim deed, which "provides for the chain of title and enables subsequent real estate transactions to occur."

We believe that this precedent is clearly analogous to our situation relating to the Old Waikapu Road and the same procedures should apply. The State's position is that the road is owned by the County and the State does not want to even acknowledge ownership of road, much less have the responsibility to repair and maintain it. The County will not be able to acknowledge ownership of the road until Council action is taken to accept the roadway, which can occur only after the State provides a quitclaim deed. Consistent with the 2012 approval, we are only asking that the State quitclaim any potential interest it may have in the road to the County of Maui, for the purposes of "disposal" and to "provide for a chain of title to enable subsequent real estate transactions to occur." The chain of title is a critical element, as the title company has informed the owners that they cannot insure title unless the State-County dispute is resolved.

Based on the 2012 precedent of the Department with the Forest Ridge Way approval, we believe that a Quitclaim Deed can be approved by the Board of Land and Natural Resources and issued by the Department, without legislative approval. We would like to proceed accordingly and would appreciate your review and approval of this request.

Exhibit B

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Should you have any questions or require any further information, please feel free to contact me. Thank you for your time and consideration of this matter.

Sincerely,



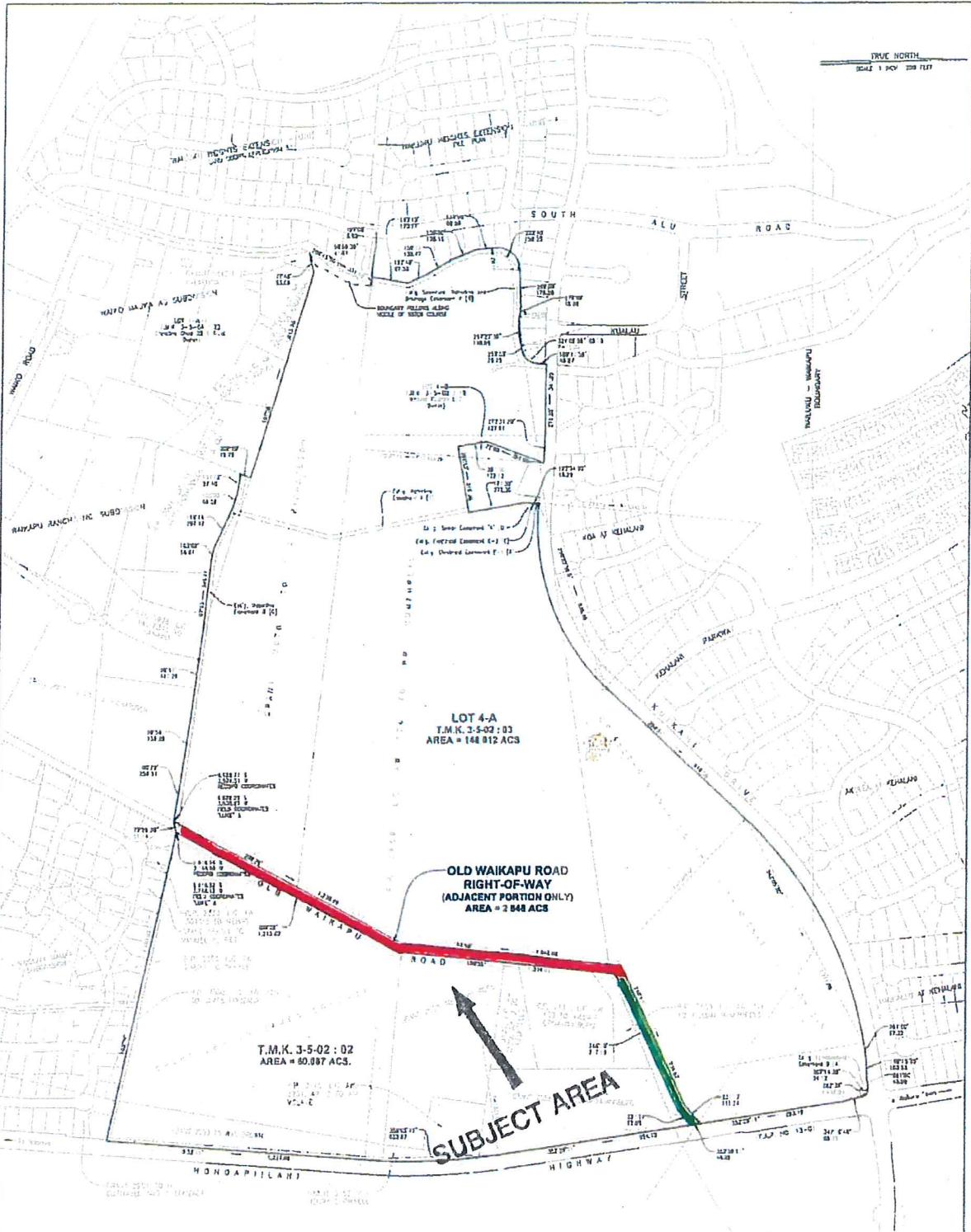
ROWENA M. DAGDAG-ANDAYA
Deputy Director of Public Works

RMDA:jso
Enclosures

xc: Association of II Wai Hui LP
Endurance Investors, LLC
Wailuku Kuikahi, LLC
Craig G. Nakamura, Esq.
Kevin Moore (Via E-Mail to: kevin.e.moore@hawaii.gov)
Department of the Corporation Counsel

s:\rowena\russell tsuji_old waikapu road

Exhibit B



TRUE NORTH
SCALE 1" = 200 FEET

LOT 4-A
T.M.K. 3-5-02:03
AREA = 148,812 ACS

OLD WAIKAPU ROAD
RIGHT-OF-WAY
(ADJACENT PORTION ONLY)
AREA = 2,848 ACS

T.M.K. 3-5-02:02
AREA = 80,087 ACS

SUBJECT AREA

- NOTES**
1. ALL DIMENSIONS ARE UNLESS OTHERWISE NOTED TO OTHERWISE.
 2. ALL DIMENSIONS ARE UNLESS OTHERWISE NOTED TO OTHERWISE.

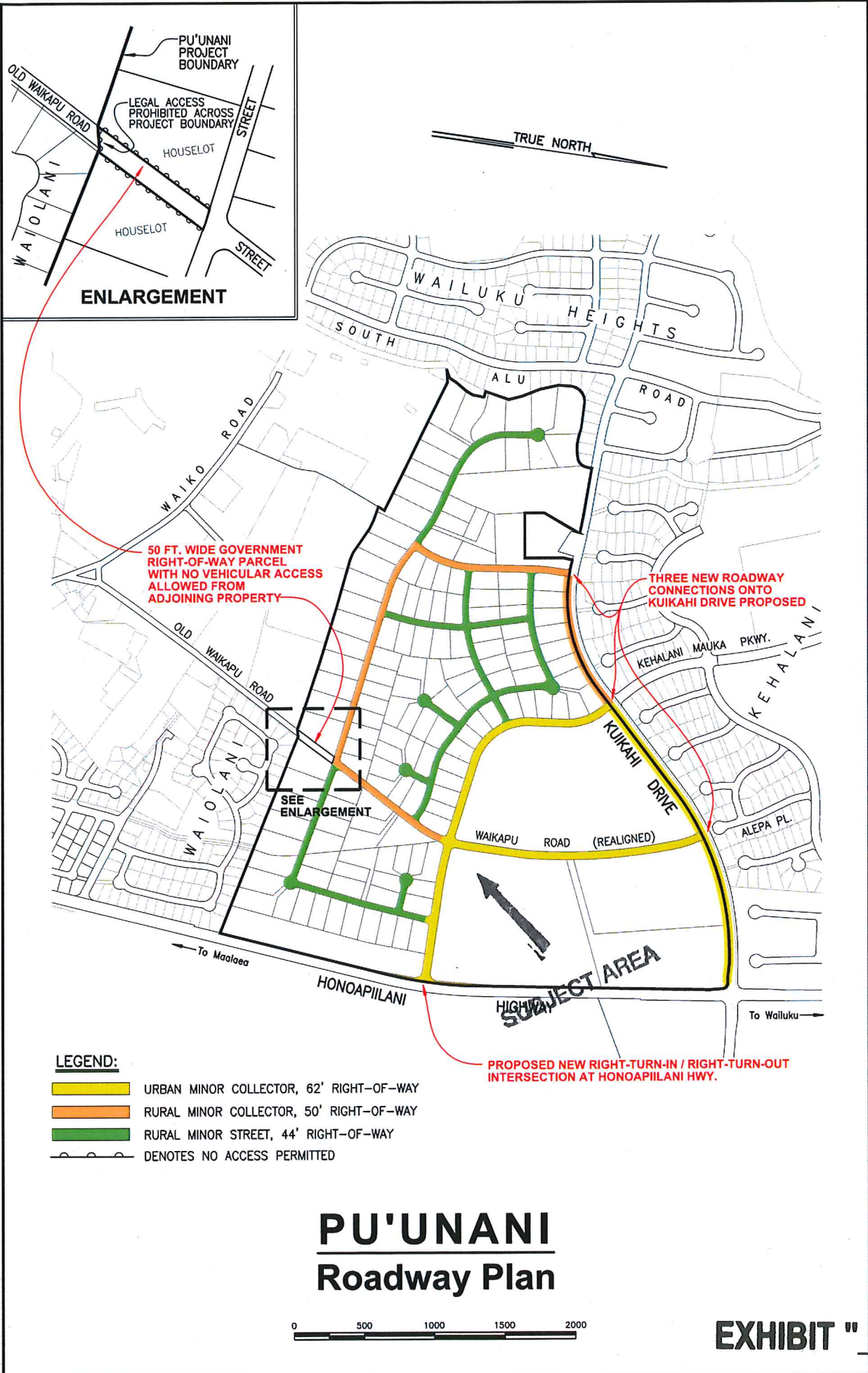
- EXISTING EASEMENTS**
- EXISTING EASEMENTS ARE SHOWN ON THIS MAP AS FOLLOWS:
1. EASEMENT TO IN FAVOR OF HAWAIIAN TELEPHONE COMPANY, INC. FOR LINESHARING PURPOSES AS DESCRIBED IN UNDER 1981, PAGE 111, DATED SEPTEMBER 22, 1981 (1981-09-22).
 2. EASEMENT TO IN FAVOR OF THE COUNTY OF MAUI FOR WASTEWATER, WASTEGAS AND DRAINAGE PURPOSES AS DESCRIBED IN UNDER 1981, PAGE 111, DATED JANUARY 31, 1981 (1981-01-31).
 3. EASEMENT TO IN FAVOR OF THE COUNTY OF MAUI FOR ELECTRIC COMPANY, LTD. AND HAWAIIAN TELEPHONE COMPANY, INC. AS DESCRIBED IN UNDER 1981, PAGE 111, DATED JANUARY 31, 1981 (1981-01-31).
 4. EASEMENT TO IN FAVOR OF HAWAIIAN TELEPHONE COMPANY, INC. FOR LINESHARING PURPOSES AS DESCRIBED IN UNDER 1981, PAGE 111, DATED SEPTEMBER 22, 1981 (1981-09-22).
 5. EASEMENT TO IN FAVOR OF THE COUNTY OF MAUI FOR WASTEWATER, WASTEGAS AND DRAINAGE PURPOSES AS DESCRIBED IN UNDER 1981, PAGE 111, DATED JANUARY 31, 1981 (1981-01-31).
 6. EASEMENT TO IN FAVOR OF THE COUNTY OF MAUI FOR WASTEWATER PURPOSES AS DESCRIBED IN UNDER 1981, PAGE 111, DATED JANUARY 31, 1981 (1981-01-31).

**SURVEY MAP OF
TAX MAP KEY (2) 3-5-02 : PARCELS 02 AND 03
AND PORTION OF OLD WAIKAPU ROAD
RIGHT-OF-WAY**

WAIKAPU, WAILUKU, MAUI, HAWAII
SCALE 1" = 200 FEET

RARUND S. UREKOHU - ENGINEER, INC.
1111 Kalia Road - Honolulu, Hawaii, 96813
Phone: (808) 941-1111 Fax: (808) 941-1112

EXHIBIT "C"



LEGEND:

- URBAN MINOR COLLECTOR, 62' RIGHT-OF-WAY
- RURAL MINOR COLLECTOR, 50' RIGHT-OF-WAY
- RURAL MINOR STREET, 44' RIGHT-OF-WAY
- DENOTES NO ACCESS PERMITTED

PU'UNANI Roadway Plan

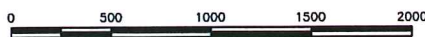


EXHIBIT "D"

V:\Pu'unani\1128072 - Pu'unani\Map\1128072_VPE\1128072_VPE.dwg