

JOHN WAIHEE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

P. O. BOX 621

HONOLULU, HAWAII 96809
FEB 13 1991

REF: OCEA: JN

OFC. OF ENV. & NAT. RES.
QUALITY CONTROL

WILLIAM W. PATY, CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES

DEPUTIES

KEITH W. AHUE
MANABU TAGOMORI
RUSSELL N. FUKUMOTO

AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
CONSERVATION AND
ENVIRONMENTAL AFFAIRS
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
PROGRAM
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

FILE: KA-1/2/91-2454
DOC.: 9720E

FEB 12 1991

MEMORANDUM

TO: Office of Environmental Quality Control

FROM: William W. Paty, Chairperson
Board of Land and Natural Resources

SUBJECT: Document for Publication in the OEQC Bulletin -
Environmental Assessment for Conservation District Use
Application KA-2454 for After-the-fact Constructed
Roadway, Fence and Other Property Improvements
TMKS: 5-2-05: 35, 36 and 37

The above-mentioned Chapter 343 Document was reviewed, and a negative declaration was declared based upon the environmental assessment provided with the CDUA.

Please call me or Ed Henry of our Office of Conservation and Environmental Affairs, at 548-7837, if you have any questions.

Keith W. Ahue
WILLIAM W. PATY

Attachment

WJP
21

1991-02-23-KA-PEA 5 Pikaishi after the
Fact CDUA

February 1993

FILE COPY

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
P. O. BOX 621
HONOLULU, HAWAII 96809

DEPARTMENT MASTER APPLICATION FORM

FOR DLNR USE ONLY

Reviewed by _____
Date _____
Accepted by _____
Date _____
Docket/File No. _____
180-Day Exp. _____
EIS Required _____
PH Required _____
Board Approved _____
Disapproved _____
Well No. _____

(Print or Type)

I. LANDOWNER/WATER SOURCE OWNER
(If State land, to be filled
in by Government Agency in
control of property)

Name KANE ENTERPRISES
Address P. O. Box 729
Bartlesville, OK
74005

Telephone No. (918) 336-4900

SIGNATURE By *Clinton P. Pikaishi*
Its Attorney
Date December 26, 1990

II. APPLICANT (Water Use, omit if applicant
is landowner)

Name BRUCE A. LAYMON
Address P. O. Box 645
Kapaa, HI 96746

Telephone No. (808) 822-7611

Interest in Property Lessee

(Indicate interest in property; submit
written evidence of this interest)

*SIGNATURE *Bruce A. Laymon*
Date December 26, 1990

III. TYPE OF PERMIT(S) APPLYING FOR

- A. State Lands
- B. Conservation District Use
- C. Withdraw Water From A Ground
Water Control Area
- D. Supply Water From A Ground
Water Control Area
- E. Well Drilling/Modification

IV. WELL OR LAND PARCEL LOCATION REQUESTED

District Hanalei
Island Kauai
County Kauai
Tax Map Key 5-2-05-36
Area of Parcel 23.803 acres
(Indicate in acres or
sq. ft.)
Term (if lease) Ten (10) years

V. Environmental Requirements

Environmental Assessment and Negative Declaration for the proposed work is attached.

VI. Summary of Proposed Uses

1. Create and maintain a roadway in the Conservation District. A boundary interpretation map from the State Land Use Commission designating the Conservation District area is attached as Exhibit A. The area highlighted in yellow is within the Conservation District. The location of the roadway is shown as a red line on Exhibit B.

2. Remove trash left on the property by unauthorized trespassers and illegal campers. See Exhibit C for the trash to be removed from the property.

3. Remove dead, deteriorated and noxious plants and clearing the underbrush in which persons have been illegally camping.

4. Contour certain areas within the Conservation District, especially in the lower valley areas located on the northwesterly portion of the property, to eliminate hiding places for vagrants, and to make such areas more accessible for regulation and control.

5. Fence the property for grazing and posting "No Trespassing" signs to keep out trespassers and illegal campers. Also, place signs within the Conservation District which reads that the area is within the State's Conservation District and that camping is not allowed. The approximate location of the proposed fence is shown as a dotted blue line on Exhibit B.

6. Application as necessary of government-approved herbicide by a licensed person or under his supervision to prevent growth of noxious plants and to control growth of underbrush.

INFORMATION REQUIRED FOR ALL USES

I. Description of Parcel

A. Existing structures/Use: None.

B. Existing utilities: None.

C. Existing access: Access to the property is off Kauapea Road over the 15-ft. "pole" portion of the property. There is also an unimproved public pedestrian easement leading to the sea located near the northwesterly corner of the property and shown as Easement "P-2" on Exhibit B.

D. Vegetation: The property is heavily forested by kamani, lauhala, java plum, guava, Christmas berry and ironwood pine. The ground areas are covered with dead trees and deteriorated and noxious plants and underbrush, such as lantana, catclaws, lilikoi, buffalo grass, haole koa and other crawling vines. No rare native plants are present. Exhibit D is a photo of the ironwood pine forest in which can be seen a tent put up by an illegal camper and in which can also be seen some dead trees. Exhibit E is a sample of the underbrush which provide excellent hiding places for the vagrants and illegal campers.

E. Topography: Steep rocky terrain with rough broken land. The U.S. Department of Agriculture, Soil Conservation Service describes the soil classifications of the property as follows: Rough Broken Land (rRR), Rock Outcrop (rRO), Hanalei Silty Clay, Deep Water Table, 0-6 Percent Slopes (HrB), Ioleau Series (IoB, IoC, IoD), and Beaches (BS). See Exhibit F. The property ranges in elevation from mean sea level to approximately 200 feet mean above sea level. There are numerous small valleys, and a steep cliffside on the northeast portion of the property. Exhibit G is a contour map (USGS) of the property.

F. Shoreline area: The cliff down to the shoreline on the northeast portion of the property is steep and rocky. The shoreline, known as Kauapea Beach, and popularized as "Secret Beach," is sandy.

G. Existing covenants, easements, restrictions: None.

H. Historic sites: None.

II. Description of proposed uses

1. Create and maintain a roadway* from the mauka Agricultural District area to the makai Conservation District area of the property to make it easier and safer for workmen to go into the Conservation District with their tools and equipment for the purpose of removing trash, dead trees, deteriorated and noxious plants. The roadway will also make it easier and safer for the property owner and enforcement officers to inspect, patrol and control the area, and to make arrests of vagrants and illegal campers on the property and for their removal therefrom.

Base course will be placed on the road and the shoulders grassed to prevent erosion.

2. Clear the underbrush, such as lantana, catclaws, lilikoi, haole koa, buffalo grass and other crawling vines which provide excellent hiding places for vagrants and illegal campers.

3. Place field fence to delineate boundaries of the property and the Conservation District to assist enforcement officers in performing their duties and to prevent vagrants from going through the property.

4. Grass the property and run cattle on the flatter portions of the property.

5. Application of government-approved herbicide by a licensed person or under his supervision to prevent growth of noxious plants and to control the growth of underbrush.

6. Place "No Trespassing" signs at various locations of the property, and also place signs within the Conservation District with language which states that the area is within the State's Conservation District and that camping is not allowed.

*NOTE: Since the area within the Conservation District is steep and rugged and difficult for the workers to maneuver their way down to the beach area with their equipment and tools, the Applicant thought that the work could be expedited if he cleared a path down to the beach area with the use of a John Deere 450 Bulldozer (JD 450).

On September 24, 1990, while the operator was clearing a path with the JD 450, the equipment slid into a valley within the Conservation District, and the operator was unable to move it out. To save the JD 450, the Applicant ordered the use of a John Deere 850 Bulldozer (JD 850) to cut a "roadway" from the mauka area within the Agricultural District to the makai Conservation District area where the JD 450 was located. The roadway is about 10 feet wide. The JD 450 was retrieved on September 26, 1990, the same day that a DLNR inspector verbally ordered that no further work within the Conservation District be performed without a use permit. The Applicant has complied with this order.

Attached hereto as Exhibit H is a photo of the emergency roadway, looking from mauka to makai, and Exhibit I is a photo of the same roadway looking from makai to mauka with the hillside down which the JD 450 slid indicated.

The roadway cut by the JD 850 starting from a point within the Agricultural District and extending into the Conservation District is shown on Exhibit B. The length of the roadway is approximately 400 feet, of which only about 30 feet is within the Conservation District. In creating this emergency roadway, no trees within the Conservation District were removed.

The Applicant acknowledges that the work within the Conservation District was performed without a use permit. He was ignorant of this requirement, which he also acknowledges is no excuse; however, in mitigation, he asserts that he was of the belief that what he attempted to do was something desired by, and was with the blessing of, the various government officials.

III. Commencement Date: Upon approval of application.

Completion Date: Within six months of approval, EXCEPT that certain kinds of work, such as maintaining the fences and signs, clearing dead trees and deteriorated and noxious plants, controlling the growth of underbrush, and pasturage of cattle will continue.

IV. Type of Use Requested

1. Permitted Use (exception occasional use): DLNR Title 13, Chapter 2, Section 12; Subzone L.

2. Accessory Use (accessory to a permitted use): DLNR Title 13, Chapter 2, Section 12; Subzone L.

Area of Proposed Use: Approximately 23 acres.

Name & Distance of Nearest Town or Landmark: Kilauea, Kauai.

Conservation District Subzone: Limited (L).

County General Plan Designation: Agricultural and Open.

ENVIRONMENTAL ASSESSMENT
AND
NEGATIVE DECLARATION
FOR
VARIOUS WORK ON TMK: 5-2-05:35, 36 and 37
KILAUEA, KAUAI, HAWAII

Owner:
KANE ENTERPRISES

Lessee:
BRUCE A. LAYMON

I. IDENTIFICATION OF APPLICANT:

The applicant for the proposed action is Mr. Bruce A. Laymon, of Kapaa, Kauai, Hawaii, who has a 10-year lease with the owner of the property, Kane Enterprises, an Oklahoma general partnership registered to do business in the State of Hawaii. Exhibit L is a copy of the lease agreement.

II. IDENTIFICATION OF APPROVING AGENCY:

The proposed action is being submitted to the State of Hawaii Department of Land and Natural Resources for a Conservation District Use Permit. The location of the proposed action is on TMK: 5-2-05:parcel 35 and on portions of parcels 36 and 37 ("the property"), which are within the State's Conservation District. See Exhibits A and B.

III. IDENTIFICATION OF AGENCIES CONSULTED:

The following agencies were contacted regarding the proposed action:

1. Department of Land and Natural Resources - State of Hawaii
2. Department of Health - State of Hawaii
3. Planning Department - County of Kauai
4. Department of Public Works - County of Kauai

An SMA Permit and a Clearing/Grubbing Permit have been submitted to the County of Kauai for review and approval.

IV. GENERAL DESCRIPTION OF PROPOSED ACTION:

The proposed action will take place on the property located in Kilauea, Kauai, Hawaii. The proposed action is to satisfy the Department of Health's concerns regarding illegal campers on the property. See Department of Health letters dated July 13, 1990 and September 12, 1990, attached as Exhibits J and K, respectively.

The proposed action will consist of:

1. Removing rubbish left on the property by unauthorized trespassers and illegal campers.
2. Removing dead, deteriorated and noxious plants and clearing the underbrush in which persons have been illegally camping.
3. Fencing the property and post "No Trespassing" signs to keep illegal campers out.
4. Providing an access road from the topside of the property to the valley floor (where many of the illegal campers are) to perform said clearing work. Base course will be placed on the road and the shoulders grassed to prevent erosion.

V. DESCRIPTION OF THE AFFECTED SITE:

The project site is located in Kilauea, Kauai, Hawaii, and highlighted in yellow on Exhibit B, is the area within the Conservation District.

The project site is bordered to the north by Kauapea Beach, also known as Secret Beach, and to the south, east and west by various other parcels and homesites.

Based on the U.S. Department of Agriculture, Soil Conservation Service Soil Survey, the project site has several different soil classifications: Rough Broken Land (rRR), Rock Outcrop (rRO), Hanalei Silty Clay, Deep Water Table, 0-6 Percent Slopes (HrB), Ioleau Series (IoB, IoC, IoD), and Beaches (BS). See Exhibit F.

Presently, the flatter portions of the project site are being used to raise cattle by the Lessee. The remainder of the site consists of steep rocky terrain with heavy underbrush growth of lantana, catclaws, buffalo grass, haole koa and crawling vines among others. Several common plant life also exists on the slopes such as kamani, lauhala, bananas, papaya, java plum, guava, Christmas berry and ironwood pine. No rare native plants are growing on the property.

The existing trees and accompanying underbrush provide for excellent cover and camouflage for the illegal campers. See Exhibit E. In addition, the project site is littered with trash left by the illegal campers. See Exhibit C. On the northern portion of the project site is Kauapea Beach which have also been occupied by transient illegal campers, many of whom prefer to wear no clothing at all, and who hassle and intimidate local fishermen and residents who may legally want to enjoy the beach and the ocean.

The project site ranges in elevation from mean sea level to approximately 200 feet mean above sea level. There exists

numerous small valleys, and a steep cliffside on the northeast portion of the property. Exhibit G is a contour map (USGS) of the project site.

VI. IDENTIFICATION AND SUMMARY OF IMPACTS:

The proposed action is necessary to mitigate the Department of Health's concerns regarding illegal campers residing on the property.

The clearing of underbrush and trash, and removal of dead, deteriorated and noxious plants will have a positive impact on the environment. When completed, the work will provide for a safer, healthier, and cleaner environment. In addition, the proposed action will deter and discourage any illegal camping on the project site.

The fencing of the property will delineate the boundary lines and will aid in the arrest and/or removal of the illegal campers. Also, the fence with posted signs will inform the public that the project site is private property and illegal camping is not allowed.

VII. ALTERNATIVES:

Do nothing approach. However, this alternative will only escalate the problems of illegal campers, trashing of the area, and discouraging local residents from enjoying themselves at the beach.

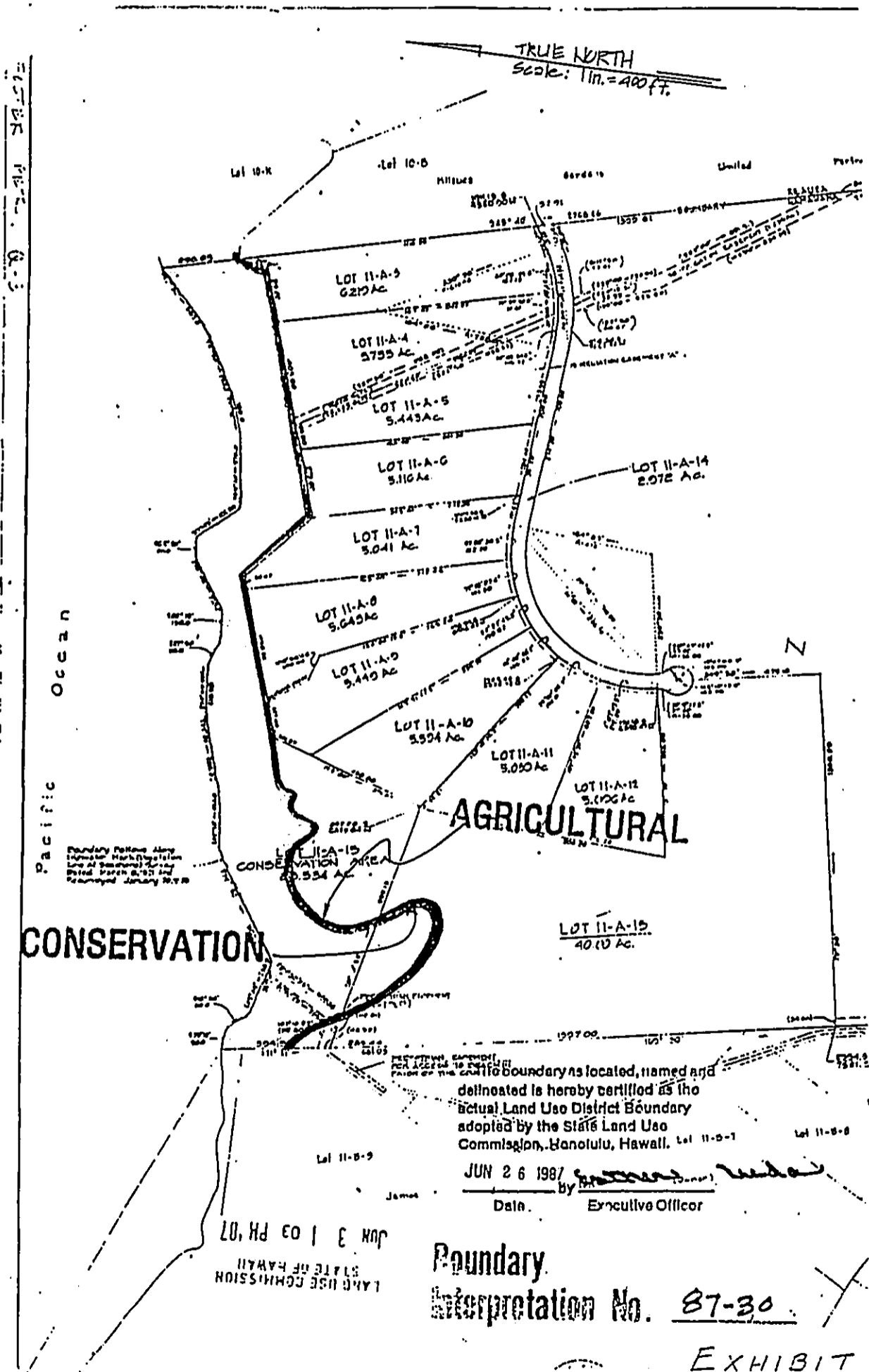
VIII. DETERMINATION:

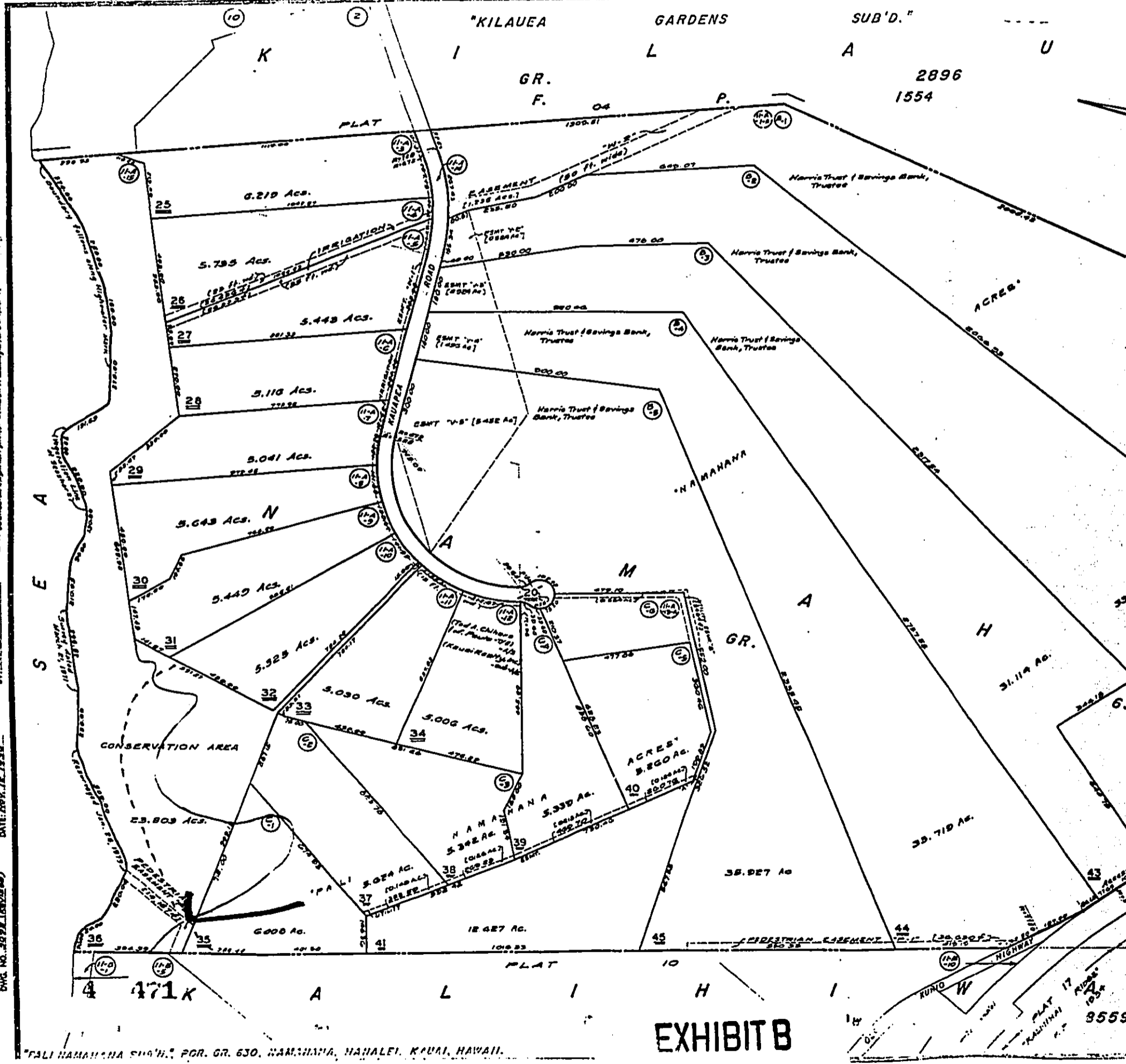
The proposed action will not have a negative impact to the social, economic, and environmental lifestyle of the Kilauea community and the island of Kauai. The proposed action will have a positive impact: it will clean the project site of unwanted trash, dead and noxious trees and shrubs and remove the illegal campers. The proposed action will provide a safer, cleaner and healthier lifestyle and environment for the use and enjoyment by our local residents.

IX. CONCLUSION:

It is requested that the emergency Environmental Assessment and Negative Declaration for the proposed action be approved.

DOCUMENT CAPTURED AS RECEIVED





"KILAUEA GARDENS SUB'D."

2896
1554

SEEA

EXHIBIT B

"KILAUEA GARDENS SUB'D.", POR. GR. 630, HAWAIIAN, HAWAII, KAUAI, HAWAII.

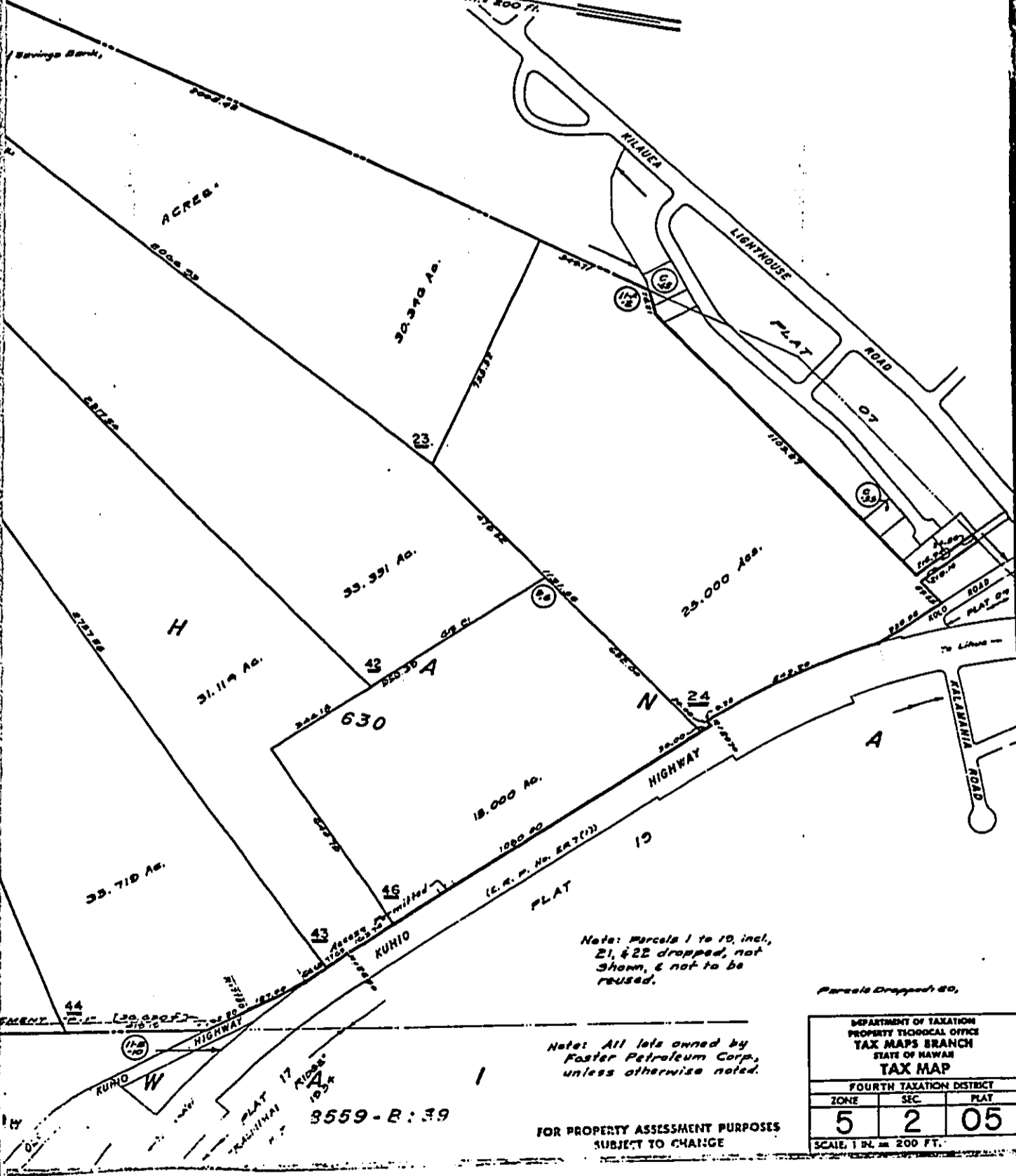
PLAT 17
KILAUEA
1954
9559

SUB'D."

U E A

2896
1554

TRUE NORTH
Scale: 1 in. = 200 ft.



Note: Parcels 1 to 10, incl.,
21, & 22 dropped, not
shown, & not to be
reused.

Note: All lots owned by
Foster Petroleum Corp.,
unless otherwise noted.

9559-B:39

FOR PROPERTY ASSESSMENT PURPOSES
SUBJECT TO CHANGE

DEPARTMENT OF TAXATION
PROPERTY RECORDS OFFICE
TAX MAPS BRANCH
STATE OF HAWAII
TAX MAP

FOURTH TAXATION DISTRICT

ZONE	SEC	PLAT
5	2	05

SCALE: 1 IN. = 200 FT.

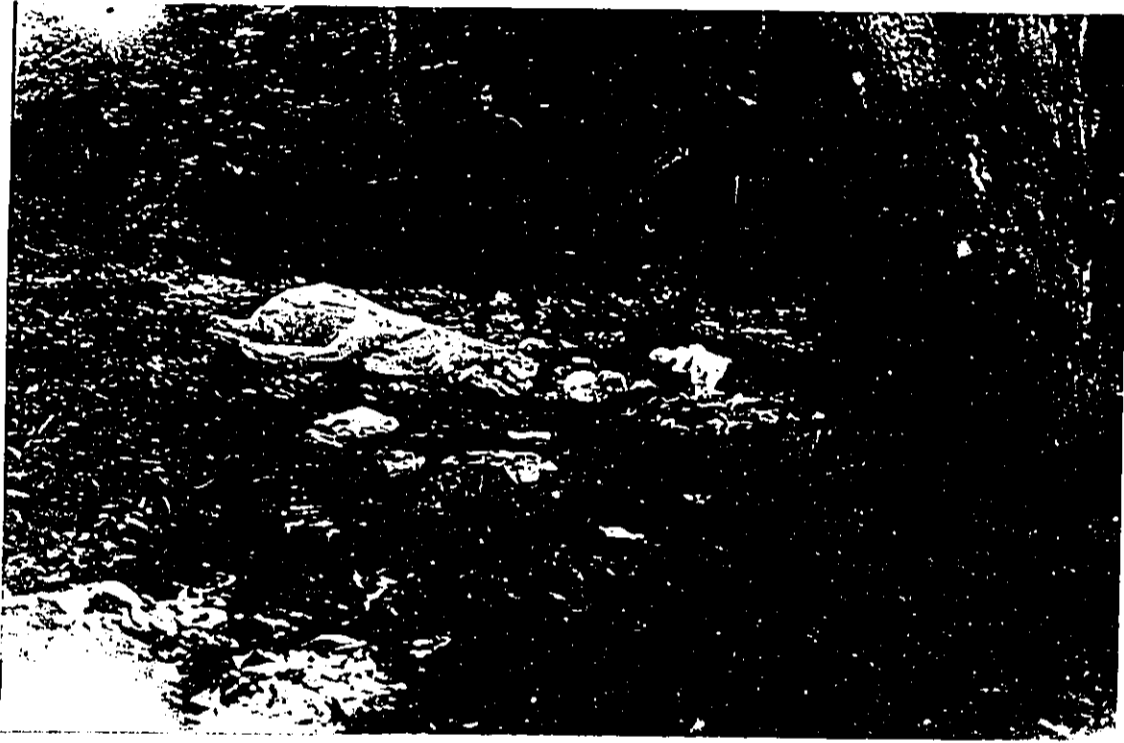


EXHIBIT C

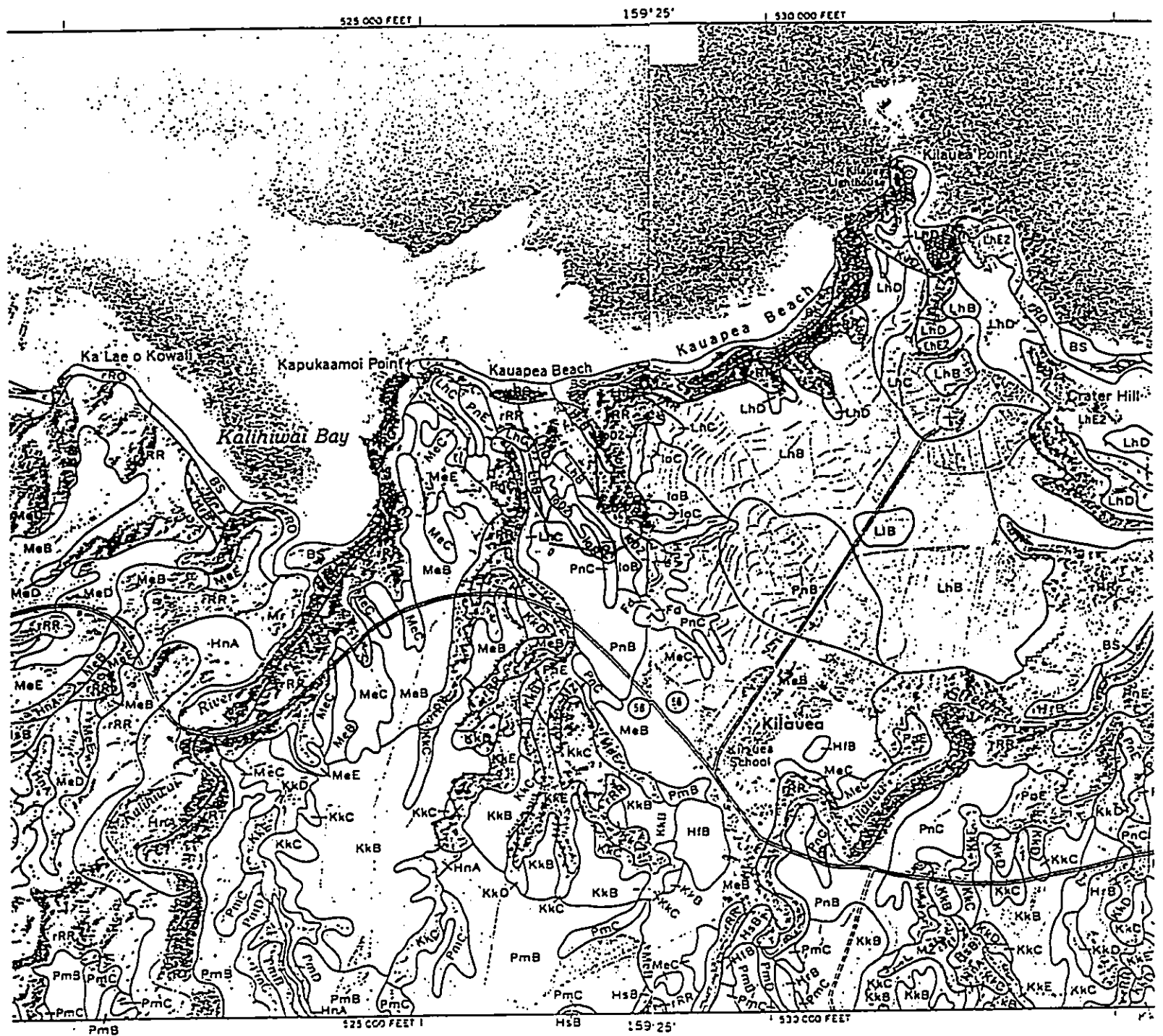


EXHIBIT D



EXHIBIT E

DOCUMENT CAPTURED AS RECEIVED



Photobase from 1945 aerial photographs. 5,000' contour base from 1945 aerial photographs. 5,000' contour
and ticks based on Hawaiian plane coordinate system. 5000' contour base from 1945 aerial photographs. 5,000' contour
and ticks based on Hawaiian plane coordinate system.
zone 4. O.S. Hawaiian datum. zone 4. O.S. Hawaiian datum

EXHIBIT F

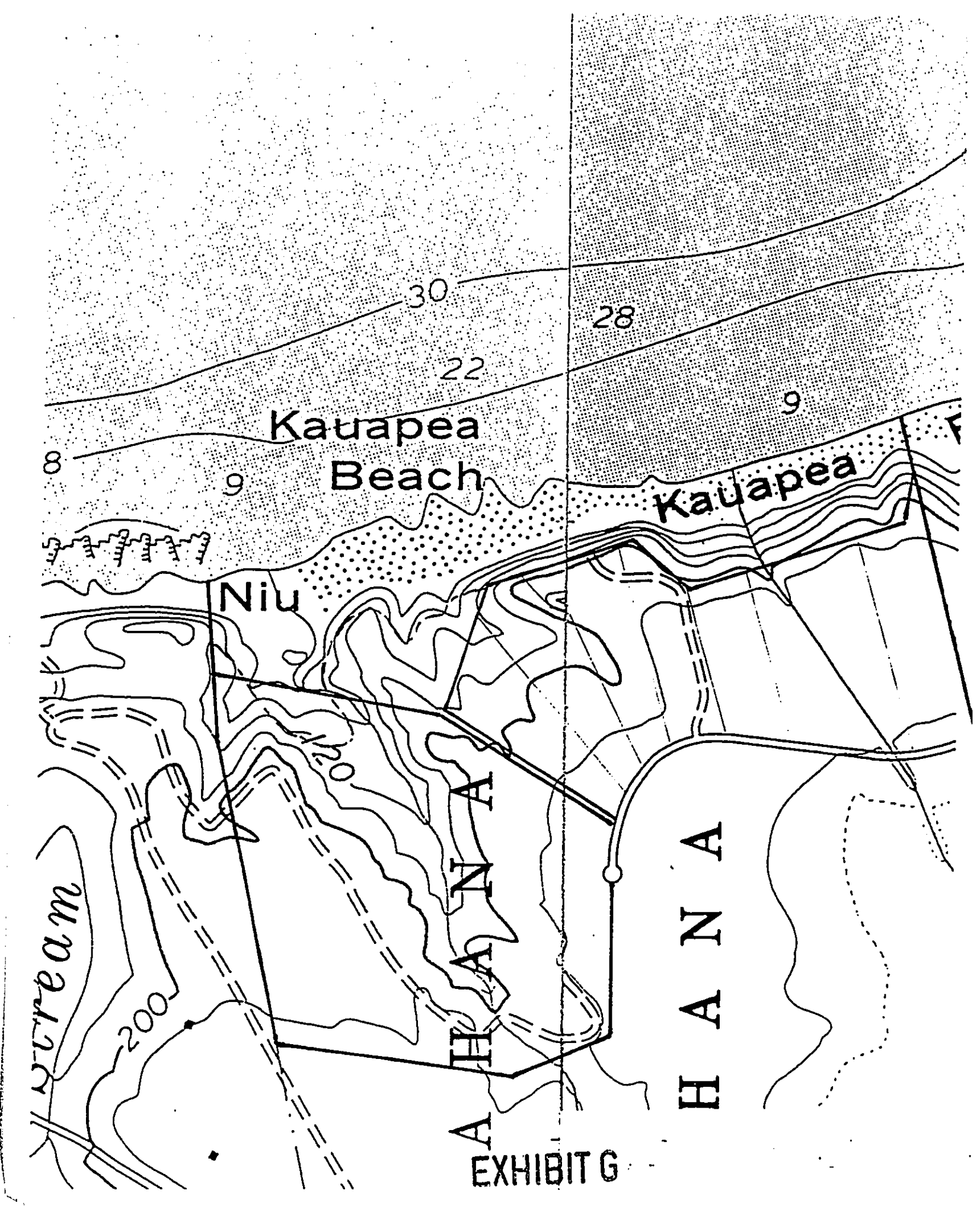


EXHIBIT G



EXHIBIT H



EXHIBIT I

DOCUMENT CAPTURED AS RECEIVED

JOHN WAINEE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF HEALTH
KAUAI DISTRICT HEALTH OFFICE
3040 UMI STREET
LILUO, HAWAII 96744

JOHN C. LEWIS, M.D.
DIRECTOR OF HEALTH

RON NIETLER, M.D.
CENTRAL HEALTH SERVICES ADMINISTRATOR

Certified P-556 434 151

July 13, 1990

Kane Enterprises
110-4 E. Frank Philips Blvd.
P.O. Box 729
Bartlesville, OK 74005

Dear Sir:

SUBJECT: Illegal Camping - Kauapea Beach, Kauai

As a result of a complaint about illegal campers at Kauapea Beach, an investigation was made by this department on July 11, 1990.

The results of the investigation confirmed the presence of campers on the beach at TMK: 5-2-5:36 Lot 11-A-15. Since there are no approved sanitary facilities available, camping is not permitted.

It is the responsibility of the property owner to prevent illegal camping by posting, patrolling, or suitable alternatives.

Illegal camping, i.e. camping at sites without approved sanitary facilities, is in violation of Chapter 62, Wastewater Systems, Title 11, Administrative Rules, State of Hawaii, Section 11-62-06. Any person who violates this chapter or any rule shall be fined not more than \$10,000 for each separate offense according to Act 212, Session Laws of Hawaii, 1989. Each day of violation shall constitute a separate offense. Whereas the preceding shall be considered a civil action, the director is also authorized to impose administrative penalties in accordance with the provisions of Act 212.

You are hereby ordered to take steps to resolve this matter within ten (10) working days of receipt of this letter.

If you have any questions regarding this letter, please contact me at (808) 245-4323. 241-3323

Sincerely,

Dean Jamieson
Registered Sanitarian, Kauai

THROUGH:

Gerald N. Takamura
Supervising Sanitarian, Kauai

DJ:GNT/plo

EXHIBIT J

DOCUMENT CAPTURED AS RECEIVED

JOHN WAIMEE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF HEALTH
KAUAI DISTRICT HEALTH OFFICE
3040 UMI STREET
LILUOE, HAWAII 96766

JOHN C. LEWIN, M.D.
DIRECTOR OF HEALTH

RON METLER, M.D.
DISTRICT HEALTH SERVICES ADMINISTRATOR

Certified P 453 959 578

September 12, 1990

Kane Enterprises
110-1/2 E. Frank Phillips Blvd.
P.O. Box 729
Barttesville, OK 74005

Dear Sir:

SUBJECT: NOTICE OF VIOLATION FOR ILLEGAL CAMPING
KAUAPEA BEACH, KAUAI
TMK: 5-2-5:36 Lot 11-A-15

On July 12, 1990, you were sent a notice to remove the campers on the subject property. Although this office was contacted by your legal counsel with an indication that action would be taken, an inspection of the property on August 30, 1990 showed the presence of illegal campers and that no action has been taken.

This letter shall serve as a second notice to you that you are in violation of Chapter 62, Wastewater Systems, Title 11, Administrative Rules, State of Hawaii, and you are to take corrective action within ten (10) working days upon receipt of this letter. Failure to do so will subject you to further legal and administrative action by this department.

Illegal camping, i.e. camping at sites without approved sanitary facilities, is in violation of Chapter 62, Wastewater Systems, Title 11, Administrative Rules, State of Hawaii, Section 11-62-06. Any person who violates this chapter or any rule shall be fined not more than \$10,000 for each separate offense according to Act 212, Session Laws of Hawaii, 1989. Each day of violation shall constitute a separate offense. Whereas the preceding shall be considered a civil action, the director is also authorized to impose administrative penalties in accordance with the provisions of Act 212.

EXHIBIT K

K

DOCUMENT CAPTURED AS RECEIVED

SEP 17 1990 MON 10:30 AM KANE ENTERPRISES

P. 03

Kane Enterprises

-2-

9/12/90

If you have any questions regarding this letter, please contact me at (808) 241-3323.

Sincerely,



Dean Jamieson
Registered Sanitarian, Kauai

THROUGH:



Gerald N. Takamura
Supervising Sanitarian, Kauai

DJ:GNT/plo

c: County Prosecuting Attorney
State Attorney General

THIS INDENTURE, made this 17th day of August, 1990, by and between KANE ENTERPRISES, an Oklahoma General Partnership registered to do business in the State of Hawaii, whose mailing address is P. O. Box 729, Bartlesville, Oklahoma 74005, hereinafter called the "LESSOR," and BRUCE A. LAYMON, doing business as PARADISE GROUNDS CARE, whose mailing address is P. O. Box 645, Kapaa, Hawaii 96746, hereinafter called the "LESSEE".

W I T N E S S E T H :

That the Lessor, in consideration of the rent to be paid and the covenants to be observed and performed by the Lessee as hereinafter provided, does hereby demise and lease to the Lessee, and the Lessee does hereby accept and rent from the Lessor, all of the following described property:

Land at Kilauea, Kauai, Hawaii, containing the total area of 63.8 acres, more or less, and highlighted in yellow on map attached hereto as EXHIBIT A.

TO HAVE AND TO HOLD the same, together with the rights, easements, privileges and appurtenances thereunto belonging or appertaining, unto the Lessee for a term of ten (10) years commencing on the 1st day of September, 1990, to and including August 31, 2000, the Lessee yielding and paying therefor unto the Lessor semi-annually in advance rent as follows:

Rent

- a. Base rent for the first three (3) years: \$1,200.00/yr.
- b. Base rent for the second three (3) years: \$1,500.00/yr.
- c. Base rent for the remaining four (4) years: \$1,800.00/yr.

AND THE LESSOR hereby covenants with the Lessee that upon payment of the rent as aforesaid and upon observance and performance of the covenants by the Lessee hereinafter contained, the Lessee shall peaceably hold and enjoy said premises for the term hereby demised without hindrance or interruption by the Lessor or any other person or persons

lawfully claiming by, through or under him except as herein expressly provided.

AND THE LESSEE hereby covenants with the Lessor as follows:

1. Payment of Rent. Lessee will pay or cause to be paid said rent in lawful money of the United States of America at the times and in the manner aforesaid, without any deduction and without any notice or demand, at the mailing address of the Lessor aforesaid.

2. Payment of Rates and Other Charges. Lessee will pay directly before the same become delinquent all charges, duties, rates and other outgoings of every description to which said premises or any part thereof or any improvement thereon, or the Lessor or Lessee in respect thereof, may during said term be assessed or become liable for electricity, gas, refuse collection, telephone, sewage disposal, or any other utilities or services, except water, whether assessed to or payable by the Lessor or Lessee.

3. Improvements Required by Law. Lessee will at his own expense during the whole of said term make, build, maintain and repair all fences, walls, gates, culverts, sewers, drains, roads, curbs and sidewalks which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of said premises or any part hereof.

4. Observance of Laws. Lessee will at all times during said term keep said premises in a strictly clean and sanitary condition and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to said premises or any improvement thereon or use thereof, and will indemnify the Lessor against all actions, suits, damages and claims by whomsoever brought or made

by reason of the non-observance or nonperformance of said laws, ordinances, rules and regulations or of this covenant.

5. Repair and Maintenance. Lessee will at his own expense from time to time and at all times during said term, well and substantially repair, maintain, amend and keep all trees, buildings, fences, gates, walls, culverts, roads, sprinkler and irrigation systems, and other improvements now or hereafter planted or built on the demised land with all necessary reparations and amendments whatsoever in good order and condition, except for damage by unavoidable casualty not herein required to be insured against, and maintain and keep said premises in a neat and attractive condition satisfactory to the Lessor.

6. Inspection. Lessee will permit the Lessor and his agents at all reasonable times during said term to enter said premises and examine the state of maintenance, repair and condition thereof, and will repair and make good all defects required by the provisions of this lease to be maintained or repaired by the Lessee of which notice shall be given by the Lessor or his agents within thirty (30) days after the giving of such notice.

7. Waste and Unlawful Use. Lessee will not make or suffer any strip or waste or unlawful, improper or offensive use of said premises.

8. Assignments and Subleases. Lessee will not without the prior written consent of the Lessor assign or mortgage this lease, nor sublet or part with possession of the whole or any part of said premises, which consent may not be unreasonably withheld.

9. Pasturage Uses. Lessee will use and allow the use of said premises only for pasturage purposes. Any other uses shall

be with the prior written consent of the Lessor, which consent may be unreasonably withheld.

10. Notice of Construction. Lessee will before commencing construction of any improvement on said premises give written notice thereof to the Lessor and complete such construction free and clear of all mechanics' and materialmen's liens.

11. Liability Insurance. The Lessee will procure at his own cost and expense and keep in force during the entire period of this Lease, a policy of general comprehensive liability insurance, with minimum limits of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) for injury to or death of one person and not less than ONE MILLION DOLLARS (\$1,000,000.00) for injury to or death of more than one person, and a policy in the sum of not less than FIFTY THOUSAND DOLLARS (\$50,000.00) insuring against claims of third persons for property damage, said policy or policies to name the Lessor as additional assured, and to cover the entire premises demised.

12. Lessor's Costs and Expenses. Lessee will pay to the Lessor on demand all costs and expenses including reasonable attorney's fees incurred by the Lessor in enforcing any of the covenants herein contained, in remedying any breach by the Lessee of said covenants, in recovering possession of said premises, in collecting any delinquent rents, taxes or other charges payable by the Lessee hereunder, or in connection with any litigation commenced by or against the Lessee (other than condemnation proceedings) to which the Lessor without any fault on his part shall be made a party.

13. Indemnity. Lessee will indemnify and hold the Lessor harmless against all claims and demands for loss or damages, including property damage, personal injury and wrongful death, arising out of or in connection with the use or occupancy of said

premises by the Lessee or any other person claiming by, through or under the Lessee, or any accident or fire on said premises, or any nuisance made or suffered thereon, or any failure by the Lessee to keep said premises in a safe condition, and will reimburse the Lessor for all his costs and expenses including reasonable attorneys' fees incurred in connection with the defense of any such claims, and will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on said premises at the sole risk of the Lessee and hold the Lessor harmless for any loss or damage thereto by any cause whatsoever.

14. Liens. Lessee will not commit or suffer any act or neglect whereby said premises or any improvement thereon or the estate of the Lessee therein shall at any time during said term become subject to any attachment, judgment, lien, charge or encumbrance whatsoever, except as herein expressly provided, and will indemnify and hold the Lessor harmless against all loss, costs and expenses including reasonable attorneys' fees with respect thereto.

15. Surrender. At the end of said term or other sooner determination of this lease the Lessee will peaceably deliver to the Lessor possession of the demised land, together with all erections and improvements upon or belonging to the same, by whomsoever made, in good repair, order and condition.

16. Condemnation. It is mutually agreed that if at any time or times during said term any authority having the power of eminent domain shall condemn said premises or any part or parts thereof for any public use or otherwise, then and in every such case the estate and interest of Lessee under this Lease in said premises or such part or parts as the case may be shall thereupon cease and determine, and Lessee shall not by reason of such

condemnation be entitled to claim or receive any portion of the compensation or damage payable or to be paid by reason of such condemnation, but the entire amount thereof shall be the sole property of Lessor; provided, however, that out of the proceeds of such condemnation Lessor shall pay to Lessee the value of any improvements so condemned that may have been paid for and placed on said premises by Lessee insofar as the value thereof shall have been specifically determined in the condemnation proceedings, but deducting therefrom a reasonable portion of the expense incurred by Lessor in connection with such proceedings; and in the case a part only of the area demised to the Lessee shall be so condemned and taken, the rent herein reserved shall be reduced at the rate of \$30.00 per acre during the first three (3) years, at the rate of \$40.00 per acre during the second three (3) years, and at the rate of \$50.00 per acre for the remaining four (4) years, and in the event the remainder cannot reasonably be used by the Lessee, then and in such case either party shall have the option to cancel and terminate this lease upon thirty (30) days prior notice in writing given to the other within thirty (30) days after the Lessee loses possession of the portion so taken.

17. Fire Insurance. The Lessee will at his own expense at all times during said term keep all buildings now or hereinafter erected on the demised land insured against loss or damage by fire with extended coverage in a responsible insurance company in the joint names of and payable in case of loss to the Lessor, Lessee and mortgagee, if any, as their interests may appear, in an amount as near as practicable to the maximum insurable value thereof, and will pay all premiums thereon when due, and will from time to time deposit promptly with the Lessor current policies of such insurance or true copies thereof, and any money

derived therefrom in case of total or partial loss shall be immediately available to and used as soon as reasonably possible by the Lessee for rebuilding, repairing or otherwise reinstating the same buildings in a good and substantial manner according to the plan and elevation of the building so destroyed or damaged or according to such modified plan as shall be previously approved in writing by the Lessor.

18. Time of the Essence. Time is of the essence of this lease and all of the terms, provisions, covenants and conditions hereof, except delivery of the premises by the Lessor.

PROVIDED, HOWEVER, and this demise is upon this condition, that if the Lessee shall fail to pay said rent or any part thereof within thirty (30) days after the same becomes due, whether the same shall or shall not have been legally demanded, or shall fail faithfully to observe or perform any of the other covenants herein contained and on the part of the Lessee to be observed and performed and such default shall continue for thirty (30) days after written notice thereof given to the Lessee, or shall become bankrupt, or shall abandon said premises, or if this lease or any estate or interest of the Lessee hereunder shall be sold under any attachment or execution, the Lessor may at once re-enter said premises or any part thereof in the name of the whole and upon or without such entry, at his option terminate this lease, without service of notice or legal process and without prejudice to any other remedy or right of action for arrears of rent for any preceding or other breach of contract, and the Lessee shall also forfeit any and all improvements made to the premises.

AND IT IS HEREBY EXPRESSLY AGREED and declared that the acceptance of rent by the Lessor or his agent shall not be deemed to be a waiver by him of any breach by the Lessee of any covenant

herein contained or of the Lessor's right of re-entry for breach of condition; that the Lessor's waiver of any breach by the Lessee shall not operate to extinguish the term, covenant or condition the breach whereof has been waived nor be deemed a waiver of the Lessor's right to declare a forfeiture for any other breach thereof.

As used herein, unless clearly repugnant to the context:

(a) "Premises" shall be deemed to include the land hereby demised and all trees, buildings and improvements now or hereafter planted or constructed and installed thereon.

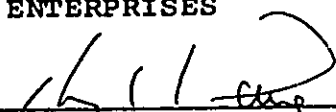
(b) "Lessor" shall mean and include the Lessor herein, his heirs, personal representatives, executors, administrators or assigns.

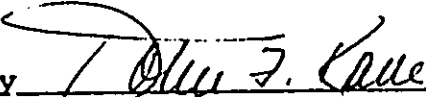
(c) "Lessee" shall mean and include the Lessee herein, his heirs, personal representatives, executors, administrators, successors, or permitted assigns, according to the context thereof.

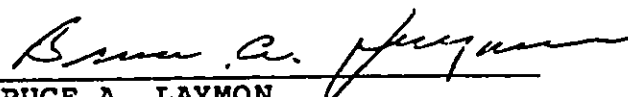
(d) The use of any gender shall include all genders, and if there be more than one Lessor or Lessee, then all words used in the singular shall extend to and include the plural.

(e) The marginal headings throughout this lease are for the convenience of the Lessor and the Lessee and are not intended to construe the intent or meaning of any of the provisions thereof.

KANE ENTERPRISES

By 
Its General Partner

By 
Its General Partner


BRUCE A. LAYMON

STATE OF OKLAHOMA,)
): SS.
COUNTY OF WASHINGTON.)

On this 27th day of August, 1990, before me,
the undersigned Notary Public, personally appeared HENRY F. KANE
and JOHN F. KANE, General Partners, of KANE ENTERPRISES, an
Oklahoma general partnership,
() personally known to me
() proved to me on the basis of satisfactory evidence to be the
persons whose names are subscribed to the within instrument, and
acknowledged that they executed it.

WITNESS my hand and official seal.

MY COMMISSION EXPIRES JULY 13, 1991

Maria Jackson
Notary Public

STATE OF HAWAII,)
): SS.
COUNTY OF KAUAI.)

On this 10th day of September, 1990, before me,
personally appeared BRUCE B. LAYMON, to me known to be the person
described in and who executed the foregoing instrument, and
acknowledged that he executed the same as his free act and deed.

Bruce B. Laymon
Notary Public, State of Hawaii ^{H.S.}

My commission expires: Oct. 12, 1990

DOCUMENT CAPTURED AS RECEIVED

