

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

January 27, 2012

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

PSF No: 05MD-148  
MAUI

Amend Prior Board Action of March 24, 2006, Item D-4, for Grant of Perpetual, Non-Exclusive Easement to John Ellis and Claudia Johnson-Ellis for Access and Utility Purposes, and Amend of General Lease S-5587 to Ellis, Inc. for the Withdrawal of 4,320 Square Feet for Additional Access Easement Purposes, Makawao, Maui, Hawaii, Tax Map Key: (2) 2-9-005: Por. 020.

BACKGROUND:

The prior board approval of March 24, 2006, under item D-4 (Exhibit 1), provided for issuance of a perpetual, non-exclusive, easement to John Ellis and Claudia Johnson-Ellis for access and utility purposes. Included in the board action was request for cancellation of the Virginia and Mark Cundiff Grant of Easement S-4374 due to abandonment. The Cundiff's were the prior grantees for the benefit parcel at Tax Map Key: (2) 2-9-005:portion of 19. Grant of Easement S-4374 has been cancelled effective the date June 30, 2008.

The March 24, 2006 board approval also provided for an increase to the width of the planned Ellis easement from 16' to 40'. DAGS Survey Division prepared map and descriptions (Exhibit 2) affecting both the new easement area and the Ellis' existing General Lease S-5587. The Ellis' have paid for pending easement LOD S-28952 that takes into consideration the larger width area of 7,098 square feet.

Staff has made request to the office of the Attorney General for preparation of the easement documents for Mr. and Mrs. Ellis.

REMARKS:

In response to Maui Land Division's request for the easement document LOD S-28952 preparation, the office of the Attorney General has recommended the need to amend of General Lease S-5587 to Ellis, Inc. Therefore, due to the reduction in size of the original leased area, staff is requesting a Board approval to amend the subject general lease as required under condition No. 45 WITHDRAWAL.

The total area being withdrawn from the General Lease S-5587 is 4,320 square feet. This area will be designated as an expansion to the new access easement that will service the Ellis property at (2) 2-9-005:019. The expansion of the easement area from the 16' to 40' width, will allow for the Ellis' to sub-divide their privately owned property if they choose to do so in the future.

Because the DAGS Survey map and descriptions were prepared after the March 24, 2006 board action, staff feels it necessary to request an amendment action to replace the prior Exhibit A with new CSF map No. 24,802, attached as Exhibit 2. Also, pursuant to an in-house valuation recommendation dated April 24, 2009 (Exhibit 3) the appraiser determined the decreased area of General Lease S-5587 results in no change to the fair market rent.

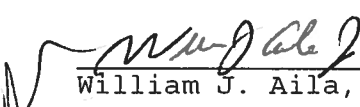
RECOMMENDATION: That the Board:

1. Amend prior Board action of March 24, 2006, Item D-4, for Grant of perpetual, non-exclusive easement to John Ellis and Claudia Johnson-Ellis for access and utility purposes, by replacing Exhibit A with attached Exhibit 2.
2. Amend of General Lease S-5587 to Ellis, Inc. for the withdrawal of 4,320 square feet for additional access easement purposes for LOD S-28952.
3. All terms and conditions listed in its March 24, 2006 approval to remain the same.

Respectfully Submitted,

  
\_\_\_\_\_  
Barry Pacheco, Land Agent

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
William J. Aila, Jr., Chairperson

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

March 24, 2006

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

PSF No.: 05MD-148

MAUI

Grant of Perpetual, Non-Exclusive Easement to John Ellis and  
Claudia Johnson-Ellis for Access and Utility Purposes,  
Makawao, Maui, Tax Map Key: (2) 2-9-5:portion 20.

APPLICANT:

John Ellis and Claudia Johnson-Ellis, husband and wife, Tenants  
by the Entirety, whose mailing address  
Hawaii 96733. Kahului,

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Honokala situated at Makawao,  
Maui, identified by Tax Map Key: (2) 2-9-5:portion 20, as shown  
on the attached map labeled Exhibit A.

AREA:

6,944 square feet, more or less.

ZONING:

State Land Use District:     Agriculture  
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 General Lease No. S-5587, Ellis, Inc., Lessee, for

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON  
March 24, 2006

**EXHIBIT " | " "**

D-4

March 24, 2006

intensive agriculture purposes. Lease to expire on July 23, 2034.

Encumbered by Grant of Easement S-4374, Virginia Cundiff and Mark Stephen Cundiff, Grantee, for access easement purposes. Easement to expire on April 11, 2028.

Encumbered by Grant of Non-Exclusive Easement bearing Land Office Deed No. S-28515 issued to Verizon Hawaii Inc. For 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:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, 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."

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment; and
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

March 24, 2006

BACKGROUND:

Parcel 19 was previously owned by Virginia Cundiff and her brother Mark Cundiff. Parcel 19 is a landlocked property.

We provide a brief history of Parcel 19:

	Grantor	Grantee
1/13/1977	Mark Cundiff conveys ½ interest to	Mark Cundiff and Deborah Newton
1/22/1979	Mark Cundiff dies	
4/22/1980	Deborah Newton conveys ½ interest to	Deborah Newton and Bradford Wood
7/9/1984	Virginia Cundiff conveys ½ interest to	Deborah Newton-Wood and Bradford Wood
2/27/1989	Deborah Newton-Wood and Bradford Wood conveys to	Michael and Denise Anello
2/27/1989	Michael and Denise Anello conveys to	John and Claudia Ellis

The Land Board at its meeting of November 19, 1993, under agenda item F-1-a, consented to the assignment from Virginia Cundiff and Mark Cundiff to John and Claudia Ellis. (Exhibit B) Years passed and in April 2000, our Maui District office contacted Mr. and Mrs. Ellis about finalizing the 1993 assignment and consent. They were unable to locate the Cundiff's heirs. Years passed and the matter remained "unresolved".

REMARKS:

Mr. and Mrs. Ellis require an easement through the State's Parcel 20. Also, Mr. Ellis is proposing to increase the width of the easement from 16 feet to 40 feet. The easement will continue to serve Parcel 19. Staff abstractor has confirmed that Parcel 19 is not a kuleana. (Exhibit C)

Currently, Mr. and Mrs. Ellis are leasing Parcel 20 via General Lease No. S-5587 for intensive agriculture purposes. They are current with all lease obligations.

The difficulty arises for us to go back and obtain the necessary consents by all of the previous owners. To eliminate further delays staff is proposing a new easement to Mr. and Mrs. Ellis that will run with Parcel 19 and only require them to inform their successor of our liability insurance requirement when the easement is sold. This eliminates needless paperwork and time by the Board, staff, Attorney General's office, grantee, private attorneys, escrow companies, etc.

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.

Comments were solicited and their statements are listed below:

DHHL	No response
Historic Preservation	No response
County of Maui, Planning	No comments
County of Maui, Public Works	No comments
OHA	No comments

A review of the file shows there are outstanding issues: Ms. Virginia Cundiff and Mr. Mark Stephen Cundiff have failed to post the required \$750 performance bond and liability insurance policy.

Staff is requesting Grant of Easement S-4374 issued to Ms. Virginia Cundiff and Mr. Mark Stephen Cundiff be cancelled due to failure to comply with the terms and conditions of the easement, abandonment, and they have cease using said easement for a continuous period of one (1) year.

RECOMMENDATION: That the Board:

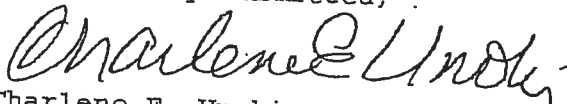
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual non-exclusive easement to John Ellis and Claudia Johnson-Ellis 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: (2) 2-9-5:19, provided that when the easement is 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;
  - 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

March 24, 2006

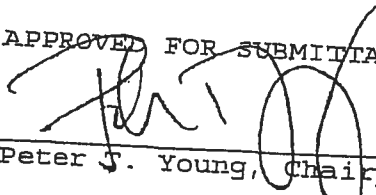
State.

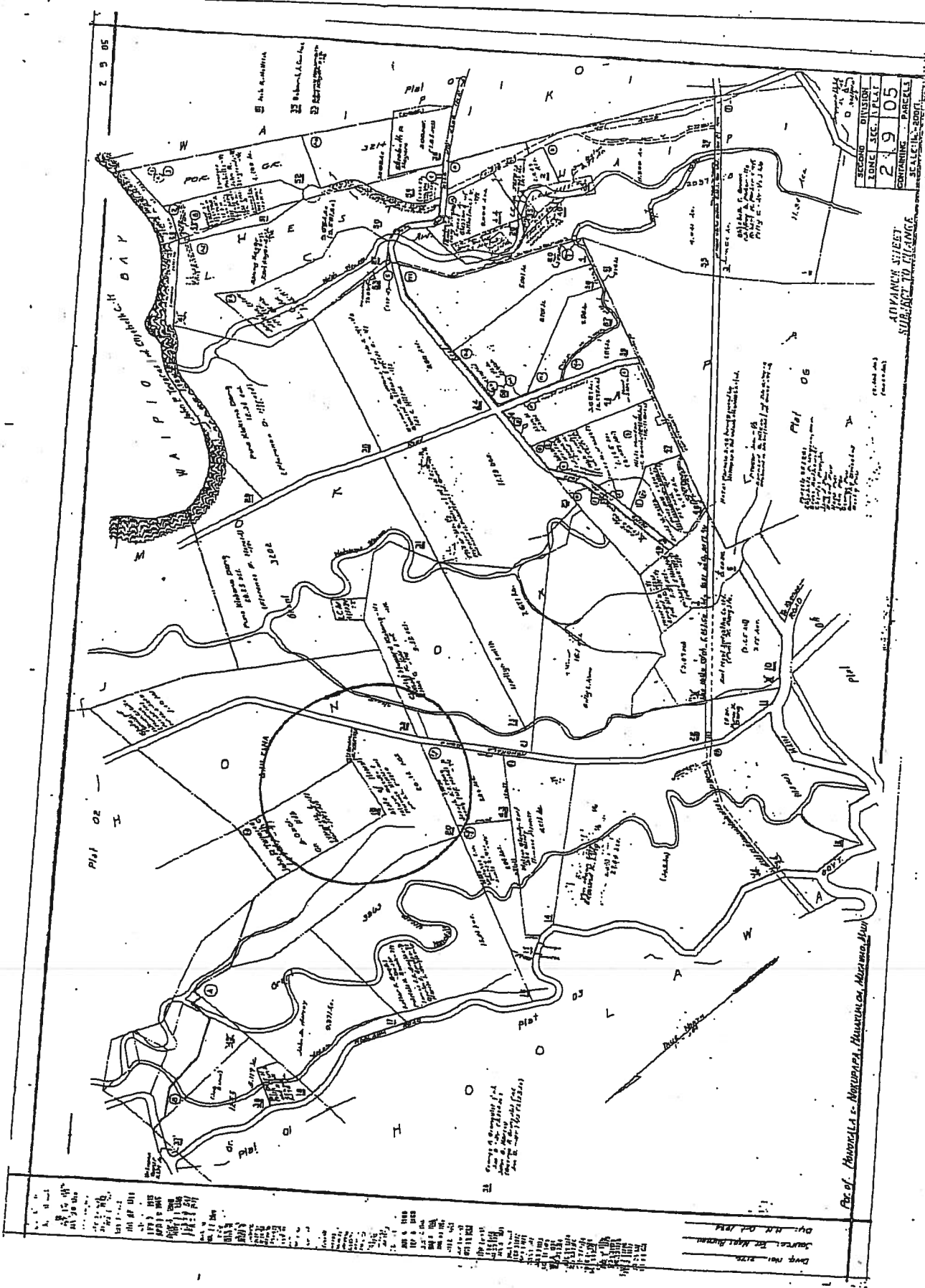
3. Rescind its prior action of November 19, 1993, under agenda item F-1-a.
4. Cancellation of Grant of Easement S-4374 issued to Virginia Cundiff and Mark Stephen Cundiff.

Respectfully Submitted,

  
Charlene E. Unoki  
Assistant Administrator

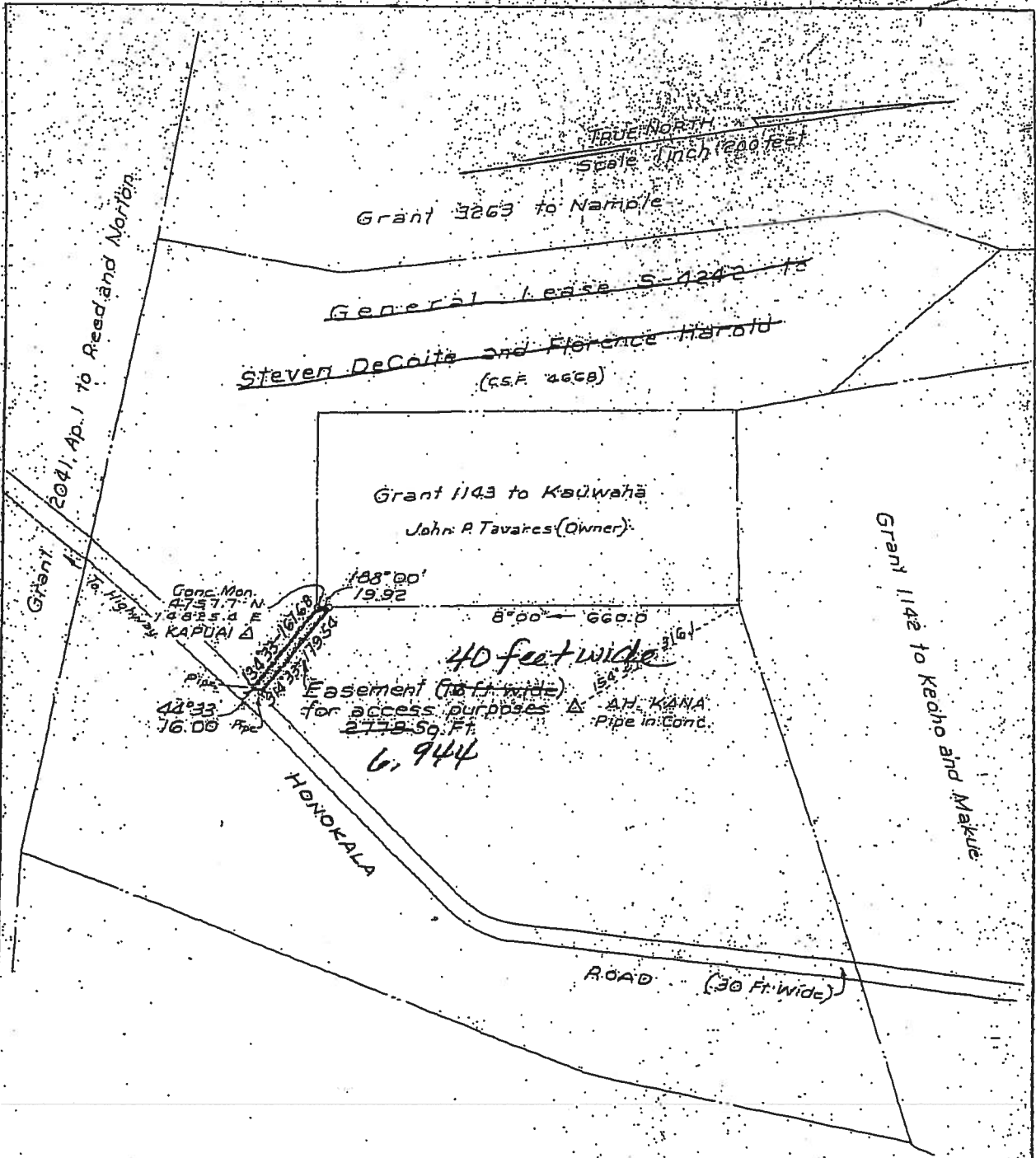
APPROVED FOR SUBMITTAL:

  
Peter J. Young, Chairperson



**EXHIBIT "A"**





NON-EXCLUSIVE EASEMENT (40 feet wide)  
 FOR ACCESS <sup>UTILITY</sup> PURPOSES  
 Honokala, Hamakua, Maui, Hawaii  
 Scale: 1 inch = 200 feet

JOB NO. Ma-5385  
 C.B.K. No. 3, pg. 35-J. CHRYSTAL

FB/1868, PG. 26

TAX MAP, 2-9-05:20

SURVEY DIVISION  
 DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

EXHIBIT A

03-24 03:43:53 P.M.

DOCUMENT FOR APPROVAL BY THE BOARD OF LAND AND NATURAL RESOURCES  
CONSENT

November 19, 1993

*OL*  
*W*

ASSIGNMENT OF GRANT OF EASEMENT:

MAUI

VIRGINIA and MARK CUNDIFF, as Assignors, to JOHN and CLAUDIA ELLIS, husband and wife, as Tenants by the Entirety, whose mailing address is Wailuku, Maui, HI 96793, as Assignees.

Grant of Easement No. S-4374, fifty-five (55)-year term commencing April 12, 1973 and expiring April 11, 2028.

TAX MAP KEY:

2-9-05:por. 20

LOCATION:

Por. of Honokala and Mokupapa, Hamakualoa, Makawao, Maui, Hawaii, as shown and described on Government Survey Map C.S.F. No. 16,448 appended to the basic file.

AREA:

2,778 square feet

ANNUAL RENTAL:

One-time rental of \$17.00 paid for the full term.

CHARACTER OF USE:

Non-exclusive, 16-ft.-wide surface easement.

ASSIGNMENT CONSIDERATION:

None

REASON FOR ASSIGNMENT:

The assignees are the present owners of the property being served by the easement.

**EXHIBIT "B"**

*OL*

BLNR - Assignment of  
Grant of Easement No. S-4374 -2-

November 19, 1993

REMARKS:

Grant of Easement No. S-4374 was awarded at public auction on April 12, 1973 at the upset price of \$17.00 for the full 55-year term of the period April 12, 1973 to April 11, 2028.

This easement was for a non-exclusive, 16-ft.-wide surface easement over and across State-owned Tax Map Key 2-9-05:por. 20 to serve Virginia and Mark Stephen Cundiff's Tax Map Key 2-9-05:19.

Virginia died on July 11, 1985. Her son, Mark, predeceased her.

John and Claudia Ellis purchased the property from Mark's widow and have been living there since, but no action was ever taken on assigning the easement.

Recently, GTE Hawaiian Telephone Company, Inc. requested a utility easement within the bounds of the current access easement to serve the Ellis' property.

As the present grantees for the access easement are both deceased, staff is recommending that the subject easement be assigned to the current property owners, John and Claudia Ellis, under Paragraph 6, Assignments, etc., page 4, of Grant of Easement No. S-4374.

Contained elsewhere on the Land Board agenda is a request for a utility easement from GTE Hawaiian Telephone Company, Inc., to service the Ellis' property.

RECOMMENDATION:

That the Board consent to the Assignment of Grant of Easement No. S-4374 from VIRGINIA and MARK STEPHEN CUNDIFF, as Assignors, to JOHN and CLAUDIA ELLIS, as Assignees, subject to such other terms and conditions as may be prescribed by the Chairperson.

**EXHIBIT "B"**

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 98809

October 19, 2004

PETER T. YOUNG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

DAN DAVIDSON  
DEPUTY DIRECTOR - LAND

YVONNE Y. IZU  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

10129(M)

MEMORANDUM

TO: Charlene E. Unoki, Assistant Administrator

THROUGH: Dierdre S. Mamiya, Administrator *[Signature]*

FROM: E. Mahoe Collins, Abstractor *[Signature]*

SUBJECT: Kuleana Status of designated TMK: (2) 2-9-05: 19 situate, lying and being at Honokala, District of Hamakualoa, Island and County of Maui.

We have been requested to determine the kuleana status of the original source of title to the subject tax map key parcel (2) 2-9-05: 19, identified on the attached map as being all of Royal Patent Grant No. 1143.

Records filed in our office reveal that the subject premises is a portion of the Ahupuaa of Honokala set aside to the Hawaiian Government by the King in the Mahele of 1848.

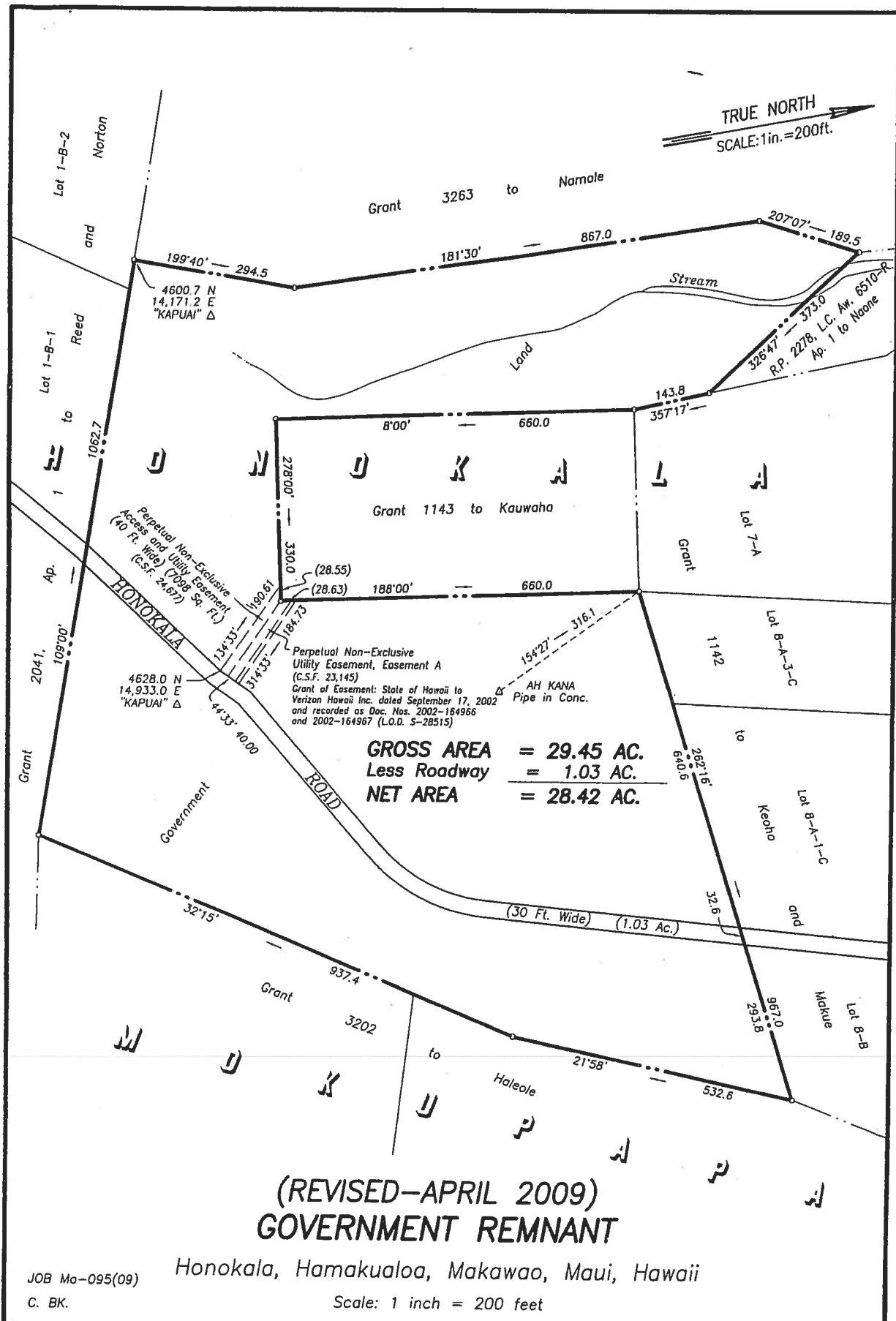
Pursuant to the Act Relating to the Lands of His Majesty the King and of the Government (L. 1848, p.22; C.C., p.374) and in accordance with the Act of August 6, 1850, the Minister of the Interior sold said portion of the Government Land of Honokala to Kauwaha under Royal Patent Grant No. 1143 dated July 11, 1853.

Having not been claimed or acquired "anterior to the law of December 10, 1845" we find that the subject parcel is not a kuleana.

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

Enclosure

EXHIBIT "C"



**(REVISED-APRIL 2009)  
GOVERNMENT REMNANT**

Honokala, Hamakualoa, Makawao, Maui, Hawaii

JOB Ma-095(09)  
C. BK.

Scale: 1 inch = 200 feet

Tax Map 2-9-05 : 20 & 32

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

C.S.F. NO. 24,802

JGL April 14, 2009

REDUCED NOT TO SCALE

**EXHIBIT 2**

LINDA LINGLE  
GOVERNOR OF HAWAII



RECEIVED  
MAUI DISTRICT  
LAND DIVISION  
LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
HONOLULU, HAWAII  
LAND RESOURCE MANAGEMENT

2009 APR 29 PM 1:28



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

April 24, 2009

MEMORANDUM

TO: Laura H. Thielen, Chairperson

THROUGH: Morris M. Atta, Land Division Administrator *Morris M. Atta*

FROM: Cyrus C. Chen, Real Estate Appraisal Manager *Cyrus C. Chen*

SUBJECT: In-House Valuation Recommendation – Rent Adjustment due to Easement

GL No.: S-5587  
Lessee: Ellis, Inc.  
Location: Honokala, Hamakualoa, Makawao, Maui, HI  
Land Area: 28.42 acres  
Tax Map Key: (2) 2-9-5: 20 & 32  
Char. of Use: Intensive Agriculture

We have been requested to provide an in-house evaluation of the impact on market rent that an increase in easement area may have. On March 24, 2006, the Land Board, under agenda item D-4, approved the grant of perpetual easement for access and utility purposes to John and Claudia Ellis who own Parcel 19, a landlocked parcel. John and Claudia Ellis lease from the State Parcels 20 and 32 under GL S-5587. The prior owners of Parcel 19 were granted an easement from the State, but Ellis requested a larger easement. The area of the easement increased from 2,778 sq. ft. to 7,098 sq. ft.

An appraisal was recently completed for a regularly scheduled reopening effective July 24, 2009. The appraiser, upon inspection of the lease file and discussions with the lessee, had assumed the larger easement was approved and incorporated the revised easement area into his appraisal. He further indicated the land area containing the access easement is not usable due to slope. In fact, much of the subject area is sloping and contains gulch land. He indicates that any moderate change in size of the access easement would not have any impact on the fair market rental value.

Exhibit 3

APR 28 2009

GMD 148/615587

Therefore, as of the date of this document, staff concludes there is no change to the fair market rent determined by the appraiser.

Approved/Disapproved:

  
\_\_\_\_\_  
Laura H. Thielen, Chairperson

  
\_\_\_\_\_  
Date

cc: District Branch Files  
Central Files

APR 24 11:50