



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

GLENN M. OKIMOTO
DIRECTOR

Deputy Directors
JADE T. BUTAY
FORD N. FUCHIGAMI
RANDY GRUNE
JADINE URASAKI

IN REPLY REFER TO:

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

FINAL APPROVAL OF THE ACQUISITION OF PRIVATELY-OWNED LANDS
AND SET ASIDE TO THE DEPARTMENT OF TRANSPORTATION FOR
ADDITION TO THE EXISTING KAHULUI AIRPORT, SITUATE AT
SPRECKELSVILLE, WAILUKU, MAUI MAUI

APPLICANT:

State of Hawaii, Department of Transportation, Airports Division (DOT-A).

PRIVATE LANDOWNER:

As to Subject Area "A" - Old Stable LLC, a Hawaii limited liability company and;
As to Subject Area "B" - Paia Spur LLC, a Hawaii limited liability company;
As to Subject Area "C" - Henry A. Spencer, collectively ("Seller").

LEGAL REFERENCE:

Sections 107-10, 171-1, 171-30, 261-4, Hawaii Revised Statutes, as amended, and
Chapter 101, HRS as may be necessary.

LOCATION:

Privately-owned lands situated at Spreckelsville, Wailuku, Maui, identified by Tax Map
Keys (2) 3-8-1: 03 (por.) and 04, as shown on Exhibit "A" and Exhibit "B", attached.

AREAS:

Subject Area "A": Tax Map Key (2) 3-8-1:03 (por.). Comprised of six (6) subdivided
lots located on the makai side of Paia Spur Road (Lots 21-B to 21-G; total of 22.612
acres, more or less, as shown on Exhibit "C").

Subject Area "B": Tax Map Key (2) 3-8-1:04. Comprised of nine (9) subdivided lots
(Lots 1 through 9; total of 55.478 acres, more or less, as shown on Exhibit "C").

Subject Area "C": Tax Map Key (2) 3-8-1:03 (por.). Comprised of two easements
containing a non-potable water well, pump and transmission lines, Easement W-3 (for the
construction, operation, repair and replacement of a well, pump, valves, waterlines and

appurtenances), containing an area of 533 square feet, more or less, as shown on Exhibit “D” and Easement W-4 (for the construction, operation, repair and replacement of waterlines, valves and appurtenances); containing an area of 4,782 square feet, more or less, as shown on Exhibit “E”.

Subject Areas “A”, “B” and “C”, collectively referred to as Properties.

ZONING:

State Land Use District: Agricultural
County: Agricultural

LAND TITLE STATUS

Not applicable. Private lands
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ___ NO X

CURRENT USE:

As to Subject Areas “A” and “B” – Vacant Land.
As to Subject Area “C” – Non-Potable Water Well, constructed in 2009.

CONSIDERATION:

The fair market value of the subdivided fifteen (15) vacant land lots was determined by an independent appraiser contracted by DOT-A to be \$14,317,000.00 and for Easements W-3 and W-4, together with the non-potable water well and pump to be \$110,400.00. DOT-A also obtained the services of an independent appraiser to conduct an appraisal review and field review of the appraisals. The review appraiser has approved the appraisal reports for the vacant land and the easements containing the non-potable water well.

PURPOSE:

For future expansion of facilities at Kahului Airport and to prevent incompatible land uses of future development by the current landowner in an area that could impede airport operations and safety. The non-potable water well will be used solely to support the future expansion of facilities at Kahului Airport.

CHAPTER 343, HRS – ENVIRONMENTAL ASSESSMENT:

Pursuant to Section 343-5, HRS, an environmental assessment is not required for the acquisition of unimproved land for which the DOT-A has no current plans for any action or development. The Chapter 343 environmental requirements will apply to DOT-A’s

future development of the lands, and the DOT-A shall then be responsible for compliance with Chapter 343, HRS, as amended.

REMARKS:

At its meeting of February 11, 2011, under agenda item M-2, the Board of Land and Natural Resources (BLNR) approved in principle the acquisition of approximately 78 acres of privately owned lands situated in Spreckelsville, Wailuku, Maui and further identified as Tax Map Keys (2) 3-8-1:03 (por.) and (2) 3-8-1:04.

DOT-A is requesting BLNR's final approval of the proposed acquisition.

Pursuant to the February 11, 2011 BLNR approval in principle, the Seller was required to:

- 1) Obtain final subdivision approval for Subject Area "B";
- 2) Provide survey maps and descriptions according to State DAGS standards;
- 3) Provide title reports and mitigate encumbrances as requested by DOT-A; and
- 4) Conduct a Phase 1 and Phase 2 environmental site assessment for Subject Area "B".

On August 8, 2011, DOT-A and the Seller entered into an Agreement of Purchase and Sale and Joint Escrow Instructions with Old Stable LLC and an Agreement of Purchase and Sale and Joint Escrow Instructions with Paia Spur LLC, collectively, ("Agreements"), for the purchase of Subject Areas A and B.

In addition to the fifteen (15) vacant land lots, the Agreements provided the option for DOT-A to enter into a Water Delivery Agreement with the Seller for the purchase of a specified amount of non-potable water, or if both parties reached an agreement on a purchase price, the Seller would convey to DOT-A, the full ownership and control of the non-potable water well together with the easements for the maintenance, operation, repair and replacement of the well and transmission lines.

DOT-A has reviewed and approved the Seller's Well Completion Report and the Annual Groundwater Use Reports in determining whether to enter into the Water Delivery Agreement or to purchase full ownership in the easements and non-potable water well. Due to the limited availability of water on the Island of Maui, it was determined that it would be in the best interest of DOT-A to purchase the easements and the non-potable water well. The purchase price has been determined by an independent appraiser and reviewed by a second independent appraiser.

Following is a summary of the Seller's fulfillment of their requirements as reported in the initial BLNR approval:

- 1) Final subdivision approval was granted by the County of Maui on December 6, 2011 for Subject Area “B” creating nine (9) individual lots. All conditions of subdivision have been satisfied.
- 2) A survey map and description has been provided for each of the 15 lots and the 2 easements.
- 3) The Seller has provided preliminary title reports as of December 2011 prepared by Title Guaranty of Hawaii for each lot and easement. A review of the title reports revealed various mortgages, encumbrances with indemnification language, Declaration of Covenants, Conditions and Restrictions (DCCR), utility easements, etc. As called for in the Agreements, all monetary liens and encumbrances will be released at closing. In consultation with the Seller’s attorney and DOT-A’s Deputy Attorney General, the Seller will be obtaining releases or partial releases for the DCCR’s, indemnification encumbrances and all other encumbrances that would impact DOT-A’s use of the Properties. Review of utility easements and airspace easements do not adversely impact DOT-A’s use of the Properties.
- 4) The Seller has provided a combined Phase I and Phase II Environmental Site Investigation Report prepared by Malama Environmental and dated October 6, 2011 (MEV Report) for Subject Area “B”. According to the MEV Report, there are no recognized environmental concerns regarding existing site conditions for Subject Area “B”. The Seller has also provided an October 3, 2011 “Reliance Letter” prepared by Malama Environmental for Subject Area “A”. This Reliance Letter updated Malama Environmental’s findings from its January 26, 2010 combined Phase I and Phase II Environmental Site Investigation for Subject Area “A”. The Reliance Letter concluded that there were no recognized environmental concerns since its original January 26, 2010 report.

Funding for the proposed conveyance of the fifteen (15) lots and two (2) easements is solely through the use of Airport special funds and a grant from the Federal Aviation Administration.

The finalized warranty deed shall remain subject to approval by the Department of the Attorney General and DOT-A.

RECOMMENDATION:

That the Board:

1. Authorize DOT to acquire the subject Properties under the terms and conditions cited above which are by this reference incorporated herein and subject further to the following:
 - A. The terms and conditions of the attached Warranty Deed document form, as may be amended from time to time;


- B. Review and approval by the Department of the Attorney General;
 - C. Such other terms and conditions as may be prescribed by the Director of Transportation or the Chairperson of the Board of Land and Natural Resources to best serve the interests of the State.
2. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the Department of Transportation for addition to the Kahului Airport under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
- A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General;
 - D. Such other terms and conditions as may be prescribed by the Director of Transportation or the Chairperson of the Board of Land and Natural Resources to best serve the interests of the State.

Respectfully submitted,



GLENN M. OKIMOTO, Ph.D.
Director of Transportation

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR.
Chairperson and Member

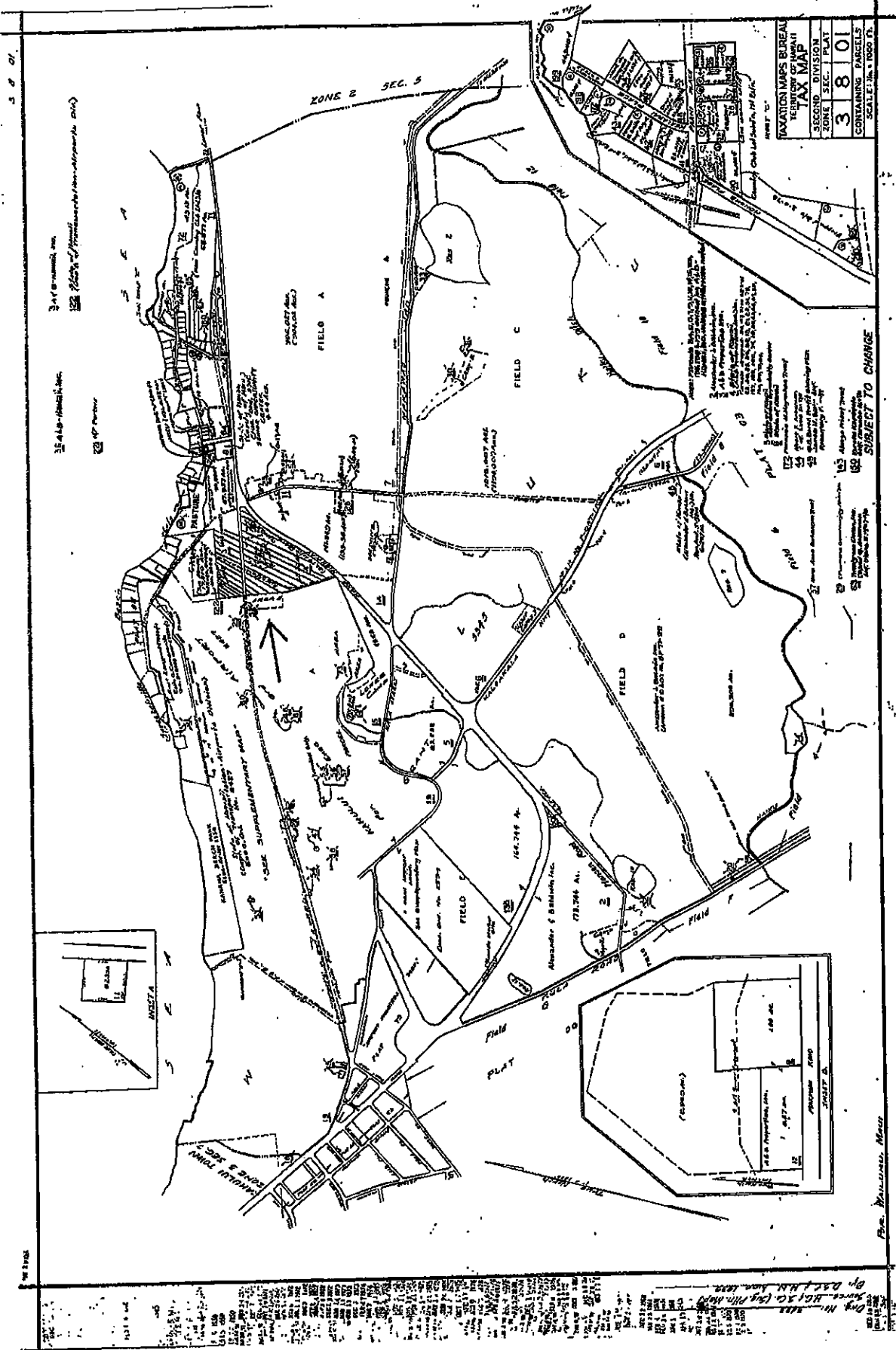
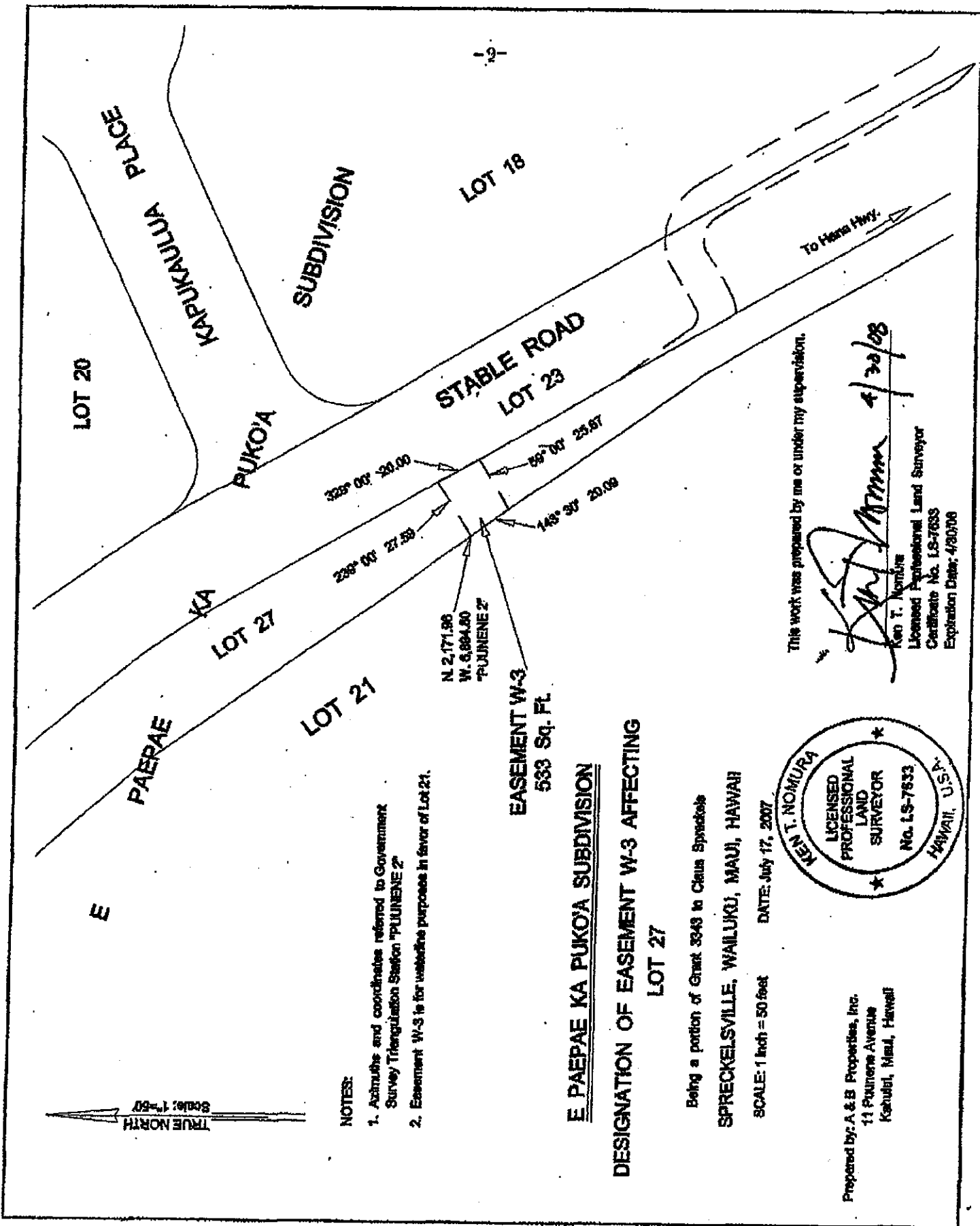


EXHIBIT "A"

EXHIBIT "D"



NOTES:

1. Azimuths and coordinates referred to Government Survey Triangulation Station "PUUNENE 2"
2. Easement W-3 is for vesting purposes in favor of Lot 21.

E PAERAE KA PUKO'A SUBDIVISION

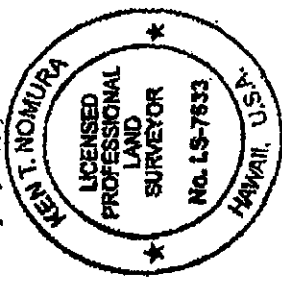
**DESIGNATION OF EASEMENT W-3 AFFECTING
LOT 27**

Being a portion of Grant 3348 to Clava Spradole

SPRECKELSVILLE, WAILUKU, MAUI, HAWAII

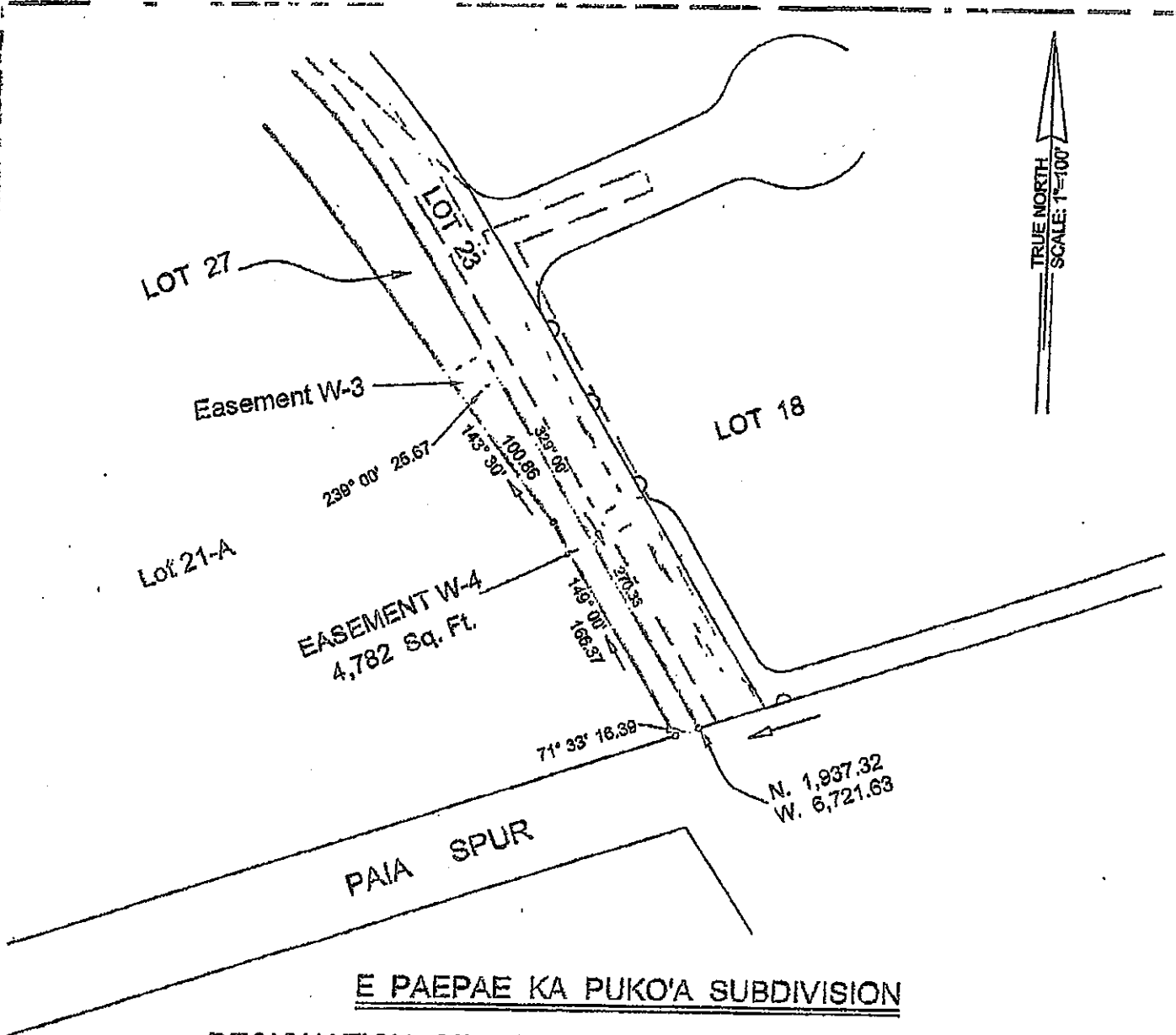
SCALE: 1 inch = 50 feet DATE: July 17, 2007

Prepared by: A & B Properties, Inc.
11 Puunene Avenue
Kahului, Maui, Hawaii



This work was prepared by me or under my supervision.

Ken T. Nomura
Ken T. Nomura
Licensed Professional Land Surveyor
Certificate No. LS-7833
Expiration Date: 4/30/08



E PAEPAE KA PUKO'A SUBDIVISION

DESIGNATION OF EASEMENT W-4 AFFECTING LOT 27

Being a portion of Grant 3343 to Claus Spreckels

SPRECKELSVILLE, WAILUKU, MAUI, HAWAII

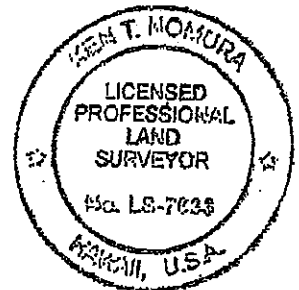
SCALE: 1 inch = 100 feet

DATE: November 8, 2011

Prepared by: A & B Properties, Inc.
 11 Puunene Avenue
 Kahului, Maui, Hawaii 96792

NOTES:

1. Azimuths and coordinates referred to Government Survey Triangulation Station "PUUNENE 2".
2. Easement W-4 is for waterline purposes.



This work was prepared by me or under my supervision.

Ken T. Nomura 9/30/2012

Ken T. Nomura
 Licensed Professional Land Surveyor
 Certificate No. LS-7633
 Expiration Date: 4/30/2012

EXHIBIT "E"

respectively, a survey description and survey map prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, designated as C.S.F. No. _____ and dated _____.

AND the reversions, remainders, rents, income and profits thereof, and all of the estate, right, title, and interest of the Grantor, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereunto belonging or in any ways appertaining or held and enjoyed therewith in fee simple unto said Grantee, the Grantee's successors and assigns, forever, free and clear of all liens and encumbrances.

The Grantor, for itself, its successors and assigns, does hereby covenant with the Grantee, its successors and assigns, that the Grantor is lawfully seised in fee simple and possessed of the above described land and premises, that it has a good and lawful right to convey the same as aforesaid, that the same is free and clear of all liens and encumbrances, and that it will and its successors and assigns, shall WARRANT AND DEFEND the same unto the Grantee, its successors and assigns, forever, against the claims and demands of all persons whomsoever.

AND, the Grantor warrants that if any governmental agency shall ever require testing to ascertain whether there has been any release of hazardous materials by Grantor on or adjacent to the Property, as determined by Grantee in its sole discretion, then the Grantor shall be responsible for the reasonable costs thereof. In addition, Grantor shall execute affidavits, representations and the like from time to time at Grantee's request concerning Grantor's best knowledge and belief regarding the presence of hazardous materials on the Property placed or released by Grantor.

The Grantor agrees to indemnify, defend, and hold Grantee harmless, from any damages and claims resulting from the release of hazardous materials on or about the Property occurring while Grantor was in possession of the Property, or elsewhere if caused by Grantor or persons acting through or under Grantor.

For the purpose of this deed "hazardous material" shall mean any pollutant, contaminant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, as all of the above are defined in or pursuant to the Resource Conservation

and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, Chapter 128D, Hawaii Revised Statutes, or any other federal, state, or local law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

AND, prior to the effective date of this deed, Grantor has conducted a Phase II environmental site assessment which is dated not earlier than one hundred eighty (180) days before the effective date of this deed. Grantor shall conduct any and all abatement and disposal, as warranted by that Phase II environmental site assessment, all as satisfactory to the standards required by the Federal Environmental Protection Agency, and the Department of Health, as determined by Grantee in its sole discretion.

AND, the Grantee covenants that this purchase of real property has had prior approval by the Attorney General pursuant to section 26-7 and section 107-10, Hawaii Revised Statutes as to legality and form, exceptions, and reservations.

The Grantor shall be responsible for payment of all property taxes up to the date of execution of this Warranty Deed.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, _____,
the Grantor herein, has caused these presents to be executed this
_____ day of _____, 20____, and the STATE OF
HAWAII, by its Department of Transportation, the Grantee herein,
has caused these presents to be executed this _____ day of _____
_____, 20____, both effective as of the day, month, and year
first above written.

(NAME OF GRANTOR)

By _____
Its

And By _____
Its

APPROVED AS TO LEGALITY,
FORM, EXCEPTIONS, AND
RESERVATIONS:

GRANTOR

Deputy Attorney General

Dated: _____

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION

By _____
Glenn M. Okimoto
Its Director of Transportation

Approved by the Board of
Land and Natural Resources
at its meeting(s) held on
_____.

GRANTEE

STATE OF HAWAII)
) SS.
COUNTY OF)

On this _____ day of _____, 20____, before me appeared _____ and _____, to me personally known, who, being by me duly sworn, did say that they are the _____ and _____, respectively, of _____, a _____ corporation, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and the said _____ and _____ acknowledged said instrument to be the free act and deed of said corporation.

Notary Public, State of Hawaii

My commission expires: _____

STATE OF HAWAII)
) SS.
COUNTY OF)

On this _____ day of _____, 20____, before me personally appeared _____ and _____, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged that _____ executed the same as _____ free act and deed.

Notary Public, State of Hawaii

My commission expires: _____

STATE OF HAWAII)

COUNTY OF

) SS.
)

On this _____ day of _____, 20____,
before me personally appeared _____
and _____, to me personally known,
who, being by me duly sworn or affirmed, did say that such
person(s) executed the foregoing instrument as the free act and
deed of such person(s), and if applicable in the capacity shown,
having been duly authorized to execute such instrument in such
capacity.

Notary Public, State of Hawaii

My commission expires: _____