

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

June 14, 2013

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

PSF: 10MD-119

Maui

Rescind Prior Board Action of February 11, 2011, Item D-10, Grant of Term, Non-Exclusive Easement to Douglas Lee Callahan & Madeline Cochrane Callahan for Access and Utility Purposes; After-the-Fact Consent to Assignment of Land Office Deed No. S-28,211, M. Jeffrey White and Judy A. White, also known as Judi A. White, Assignor, to Duncan McDonald and Crystal Lyn McDonald, Assignee, and from Duncan McDonald and Crystal Lyn McDonald, Assignor, to Douglas Lee Callahan and Madeline Cochrane Callahan, Assignee; Amendment of Land Office Deed No. S-28,211 to Allow the Easement to "Run With the Land" and be Assignable Without the Prior Written Consent of the Board of Land and Natural Resources, Hanawana, Hamakualoa, Maui; Tax Map Key: (2) 2-9-011:008 por.

APPLICANT:

M. Jeffrey White and Judy A. White, also known as Judi A. White, as Assignor, to Duncan McDonald and Crystal Lyn McDonald, as Assignee, and Duncan McDonald and Crystal Lyn McDonald, as Assignor, to Douglas Lee Callahan and Madeline Cochrane Callahan, Tenants by the Entirety, as Assignee.

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Hanawana situated at Hamakualoa, Maui identified by Tax Map Key: (2) 2-9-011:008 por., as shown on the attached map labeled Exhibit 1.

AREA:

12,892 sq. ft., more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: YES _____ NO X

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and
repair access and utility easement.

TERM:

Perpetual, non-exclusive

DCCA VERIFICATION:

Not Applicable. All Assignors and Assignees are natural persons
and, as such, are not required to register with DCCA.

REMARKS:

On June 23, 1989 under Agenda Item F-6, the Board of Land and
Natural Resources approved the sale of a non-exclusive access and
utility easement to M. Jeffrey White and Judi A. White, recorded
as Document Number 97-160945 on November 19, 1997. The easement
served two of the Whites' privately owned, non-contiguous parcels
identified as tax map keys (2) 2-9-011: 017 and 018. Both
parcels were later sold separately to unrelated parties. Parcel
018 was sold to Keith Douglas and Bonnie Douglas, and parcel 017
was sold to Duncan McDonald and Crystal McDonald. In 2006 the
McDonalds sold Parcel 017 to Douglas Lee Callahan and Madeline
Cochrane Callahan. At the time of each sale, the owners of
Parcel 017 failed to notify the State of their sale or request
the consent to an assignment of LOD S-28,211 as required by that
instrument.

On February 11, 2011, Item D-10, the Board approved the grant of
an access and utility easement to the Callahans in order to
provide legal access to their land-locked private property
(Parcel 017). The grant of easement was subject to appraisal and
consideration in favor of the State of Hawaii. See Exhibit 2.

Subsequently, counsel for the Callahans brought to the attention
of staff the fact that the deed conveyances from the Whites and
the McDonalds purported to convey the grantors' interest in LOD
S-28,211 to the grantees. An opinion dated February 16, 2011
from the Department of the Attorney General in an unrelated case
indicates that such deeds can be used as the basis for an after-

the-fact request for consent to assignment of an easement, to which the Board may give its consent.

As a result, staff recommends that the prior board approval granting an easement to the Callahans be rescinded and that the Board consent to the assignment "after-the-fact" of the interest in the easement from the Whites to the McDonalds and from the McDonalds to the Callahans. Staff further recommends that LOD S-28,211 be amended to allow it to run with the land.

The Callahans have 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 is recommending the easement document be amended to allow it to "run with the land", so that future conveyances of Parcel 017 and the easement rights will not require the prior written approval of the Board. Easements currently issued by the State have such a provision. All that is required is that the grantor/assignor inform his successor of the liability insurance requirement and notify the Board of the assignment in writing.

The standard consent to assignment used by the Department of the Attorney General includes a signature block for the party assigning the easement, who makes the following acknowledgment in the consent:

FURTHERMORE, Assignor hereby acknowledges that the Grantor's consent to assignment of this grant of non-exclusive easement, does not release the Assignor of any and all responsibilities, obligations, liabilities, and claims respecting or arising under or out of said grant of non-exclusive easement.

In this case, it may be difficult to obtain the signatures of the Whites and McDonalds who have already parted with their interest in Parcel 017. Accordingly, staff is including a recommendation below that the consent to assignment instrument be prepared without requiring the signatures of the Whites or McDonalds and without the standard assignor acknowledgment quoted above.

RECOMMENDATION:

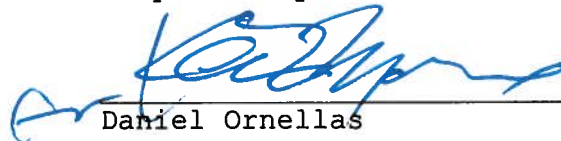
That the Board:

1. Rescind the prior Board action of February 11, 2011, Item D-10, Grant of Term, Non-Exclusive Easement to Douglas Lee Callahan & Madeline Cochrane Callahan for Access and Utility Purposes;
2. Consent to the assignment of Land Office Deed No. S-28,211

from M. Jeffrey White and Judy A. White, also known as Judi A. White, Assignor, to Duncan McDonald and Crystal Lyn McDonald, Assignee, and from Duncan McDonald and Crystal Lyn McDonald, Assignor, to Douglas Lee Callahan and Madeline Cochrane Callahan, Assignee, subject to the following:

- A. The standard terms and conditions of the most current consent to assignment 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.
3. Authorize the amendment of Land Office Deed No. S-28,211, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
- A. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (2) 2-9-011: 017, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other 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;
 - 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:



William J. Aila, Jr., Chairperson



2911

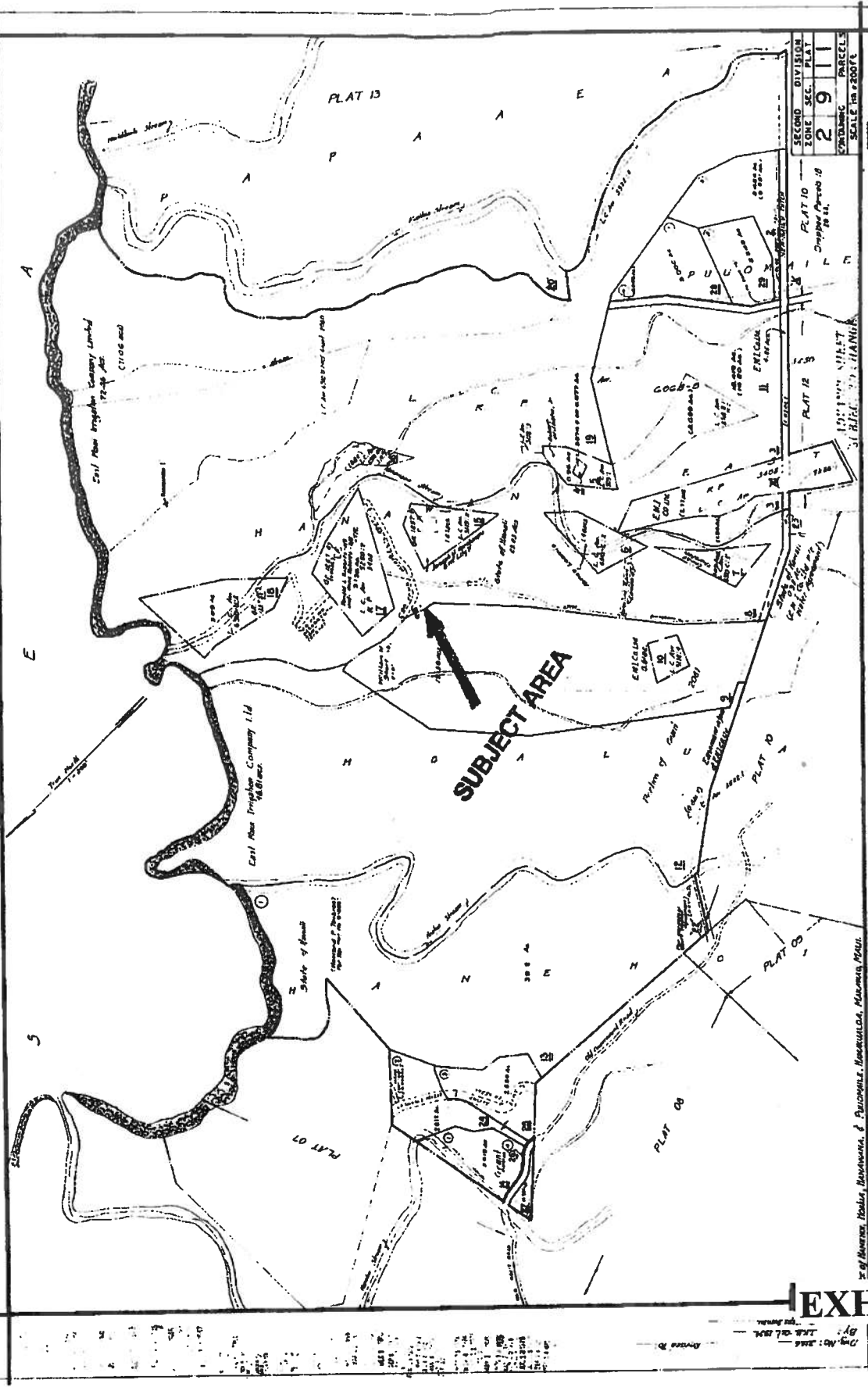
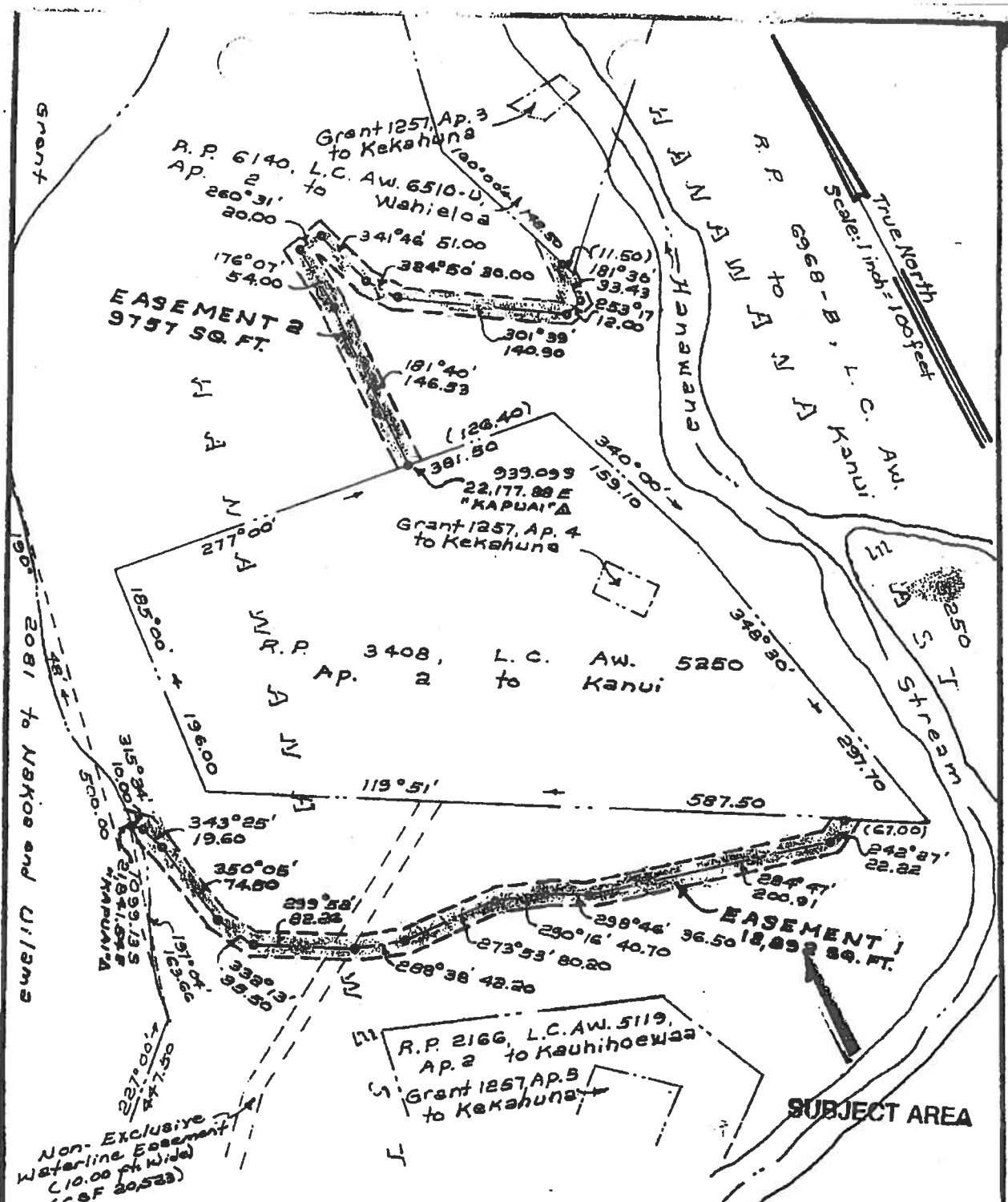


EXHIBIT 1

2 of Bureau, Idaho, Montana, & Wyoming, Incorporated, Moscow, Idaho.

By: J. M. O'Neil
Surveyor

Scale: 1" = 100'



**PERPETUAL NON-EXCLUSIVE
ACCESS AND UTILITY EASEMENTS
EASEMENTS 1 AND 2**

Over, Under and Across the Government Land of Hanawana
Hanawana West, Makawao, Maui, Hawaii

Scale: 1 inch = 100 feet

JOB M2-350(89)
C. SE. 13, Pg. 40 - 3. Hanawana

REDUCED
NOT TO SCALE

TAX MAP 8-9-11: Per. 3
C.S.F. NO. 21,71

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

EXHIBIT "B"
12
STN Feb. 12, 1990

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

February 11, 2011

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

PSF No.: 10MD-119

Maui

Grant of Term, Non-Exclusive Easements to Douglas Lee Callahan & Madeline Cochrane Callahan for Access & Utility Purposes, Por. of Hanawana, Hamakualoa, Makawao, Maui
Tax Map Key: (2) 2-9-011: Por. of 008.

APPLICANT:

Douglas Lee Callahan & Madeline Cochrane Callahan, Married, Tenants by Entirety.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Hanawana, Hamakualoa, Makawao, Maui, identified by Tax Map Key: (2) 2-9-011: Por. of 008, as shown on the attached map labeled Exhibit (A).

Exhibit (B)- Survey Map of easement area numbered CFS #21,171.
Exhibit (C)- GIS overview photo depicting easement area 1.

AREA:

Easement 1 - 12,892 Sq. Ft., 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

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON ^{10th}
February 11, 2011

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES _____
NO X

CURRENT USE STATUS:

Easement 1 is encumbered by Land Office Deed No. S-28,000, Keith S. Douglas and Bonnie May Douglas, Grantee, 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:

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

Note: The subject private property is a Konohiki parcel not a Kuleana.

EASEMENT TERM:

55 - year Term Easement

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, Land Division 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. See attached Exemption Notification form.

ENCUMBRANCES:

LOD S-28000 Keith Scott and Bonnie May Douglas
LOD S-28211 Jeffrey and Judi White
LOD S-28678 Jeffrey A. and Cynthia L. Guild
LOD S-28677 James Loomis and Cynthia L. Guild
GL-5176 Penelope Susan Lutz, Donald L. Roberts, and Arthur and Robin Jehle

REQUEST FOR COMMENT:

The following agencies were solicited for comments:

Agency	Comments
County of Maui, Planning	No response
County of Maui, Public Works	No objections
County of Maui, Department of Water	No comments or objections
Dept of Hawaiian Home Lands	No comments or objections
Office of Hawaiian Affairs	No response
Commission on Water Resource Management	No objections
DLNR Historic Preservation	No historic properties affected.
Office of Conservation & Coastal Lands	No comment or objection

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.

REMARKS:

Douglas and Madeline Callahan are currently the owners of parcel (2) 2-9-011:017 located at Hanawana, Makawao, Maui. This parcel is currently land locked by surrounding state land identified as (2) 2-9-011:008. The Callahans are requesting an Access and Utility Easement over an existing Perpetual Non-Exclusive Easements currently identified by Land Office Deed S-28000 to Keith and Bonnie Douglas, adjacent property owners of parcel (2) 2-9-011:018. Easements one would provide access to their private property.

On June 23, 1989 under Agenda Item F-6, the Board approved the sale of a non-exclusive access and utility easement to Mr. and Mrs. Jeffrey White, which was recorded with the Bureau of Conveyances as Document Number 97-160945 on November 19, 1997. The easement served two (2) of the White's privately owned, non-contiguous parcels identified as tax map keys (2) 2-9-011:017 and 018. Both parcels were later sold separately to unrelated parties, parcel 018 to Keith and Bonnie Douglas and parcel 017 to Duncan and Crystal McDonald.

In 2004, when the Whites sold the subject parcel identified by (2) 2-9-011:017 to the McDonalds they failed to obtain the consent of the Board of Land & Natural Resources to

assign the Grant of Easement in favor of the subject parcel to the McDonalds. In 2006, when the McDonalds then sold the property to the Callahans, they likewise failed to obtain permission to assign the easement to the Callahans.

The Callahans are now requesting an access and utility easement over easement #1, which would allow for vehicular access to their private property.

The subject parcel is remotely located about three quarters of a mile below Hana Highway. Inaccessible by State and County roads, this easement provides the only means of access to the parcel. The easement consists of 12,892 square feet as identified on C.S.F. map number 21,171 attached as Exhibit (B). The easement crosses over portions of Government lands of Hanawana, situate at Hanawana West, Makawao, Maui, identified as portion of tax map key (2) 2-9-011:008 attached as Exhibit (A).

Memorandum dated July 11, 2002, from State Abstractor Mahoe Collins, attached as Exhibit (D), it was determined that parcel (2) 2-9-011:017 is a Konohiki parcel and not Kuleana. Therefore, this property is not entitled to the same type of access rights as that of a Kuleana parcel and therefore consideration shall be paid to the State of Hawaii.

The 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.

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 requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (2) 2-9-011:017, 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 term non-exclusive easement to Douglas and Madeline Callahan 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 term 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) 2-9-011:017, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other 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 Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;

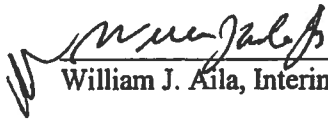
- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Larry Pacheco
Land Agent

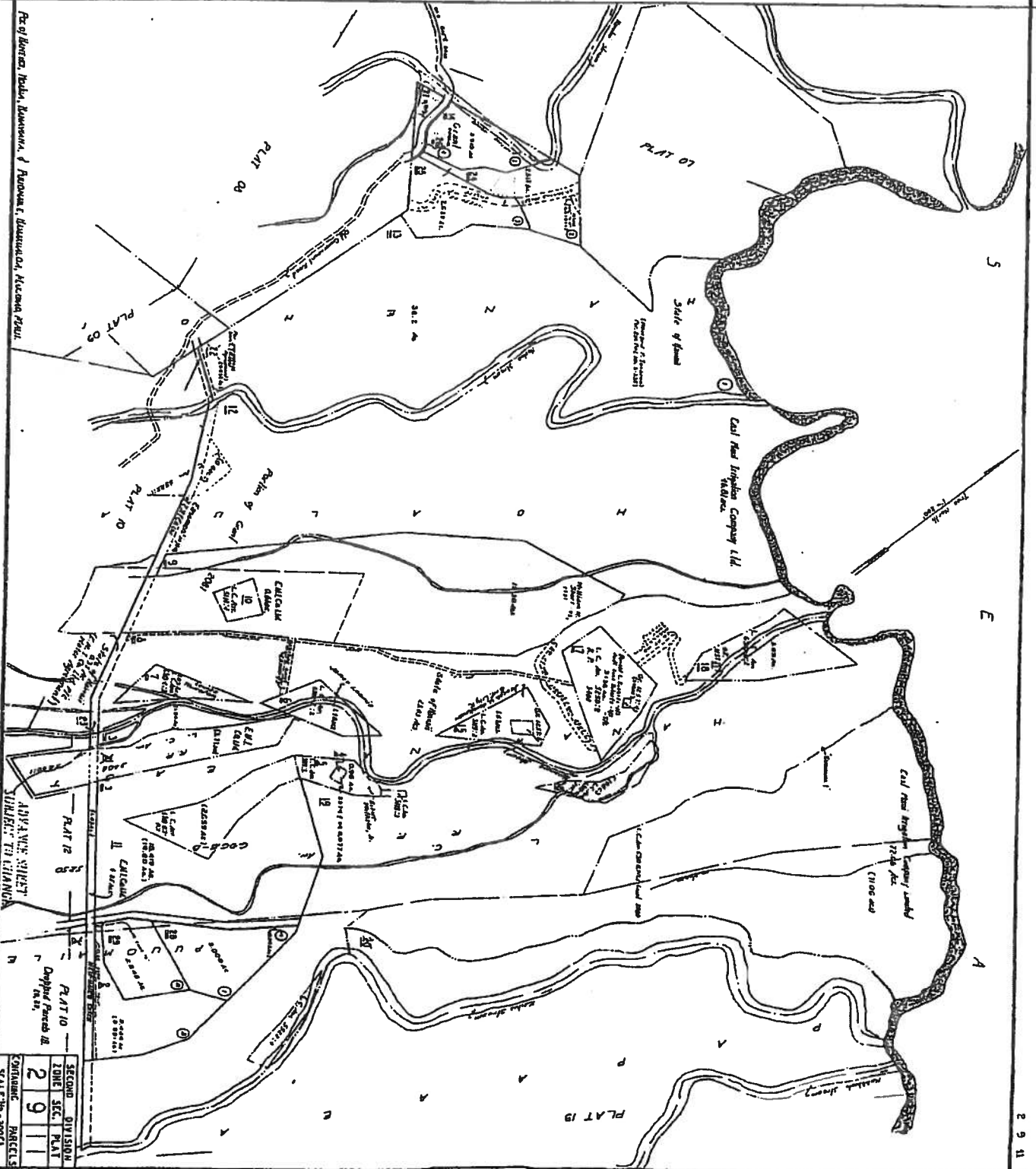
APPROVED FOR SUBMITTAL:



William J. Aila, Interim Chairperson

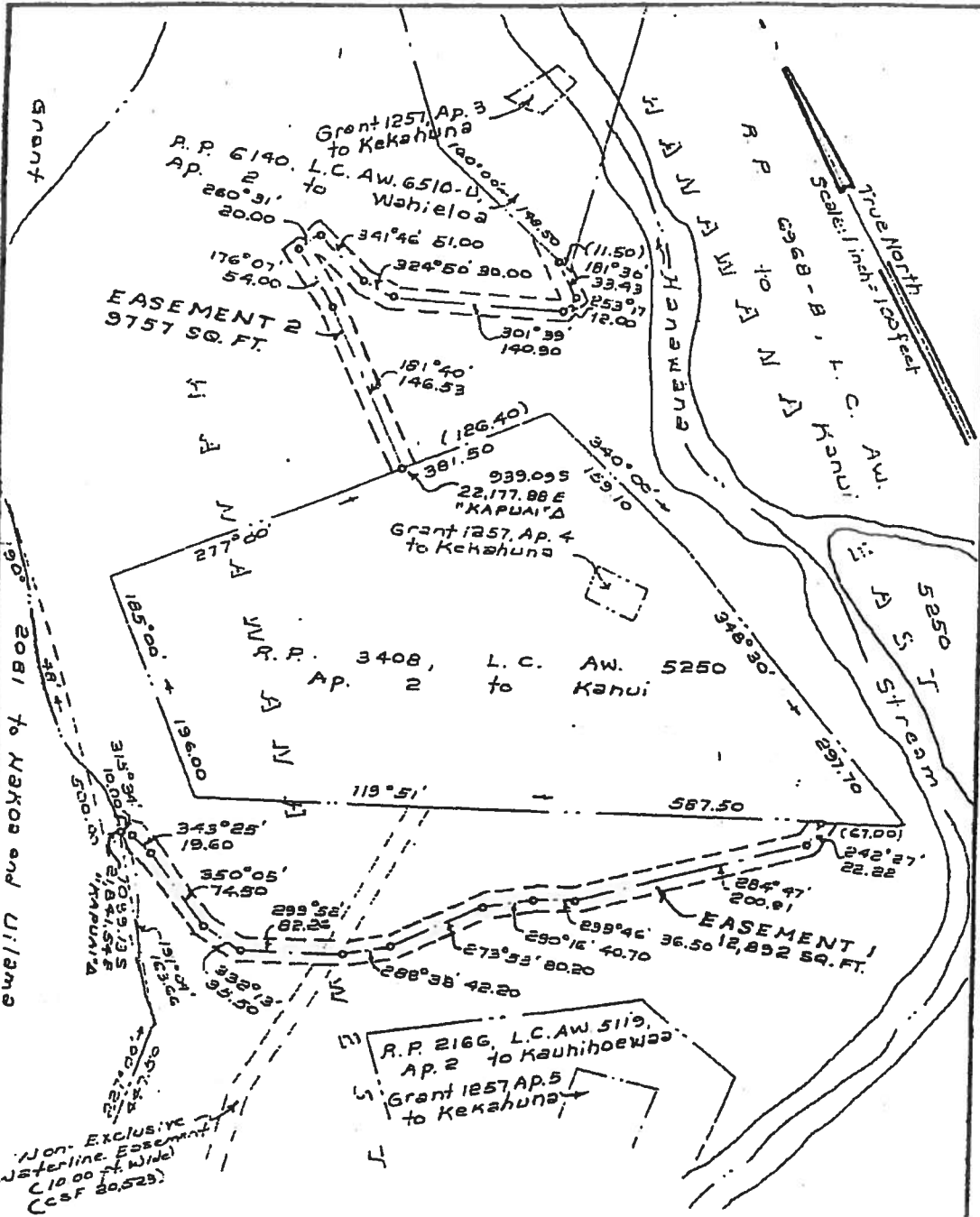
D. No. 3188
 Date: 11-1-1911
 Source: Subdivision

City of Kansas, Topeka, Kansas, of Harwood, Lawrence, Kansas, Topeka, Kansas



SECOND DIVISION	2
ZONE SEC. PLAT	9 11
CONTAINING PARCELS	
SCALE 1/4" = 200 FT	

EXHIBIT A



**PERPETUAL NON-EXCLUSIVE
ACCESS AND UTILITY EASEMENTS
EASEMENTS 1 AND 2**

Over, Under and Across the Government Land of Hanawana
Hanawana West, Makawao, Maui, Hawaii
Scale: 1 inch = 100 feet

JOB M2-390(B9)

C. BK. 12, Pg. 40 - 3 HAWAIIAN

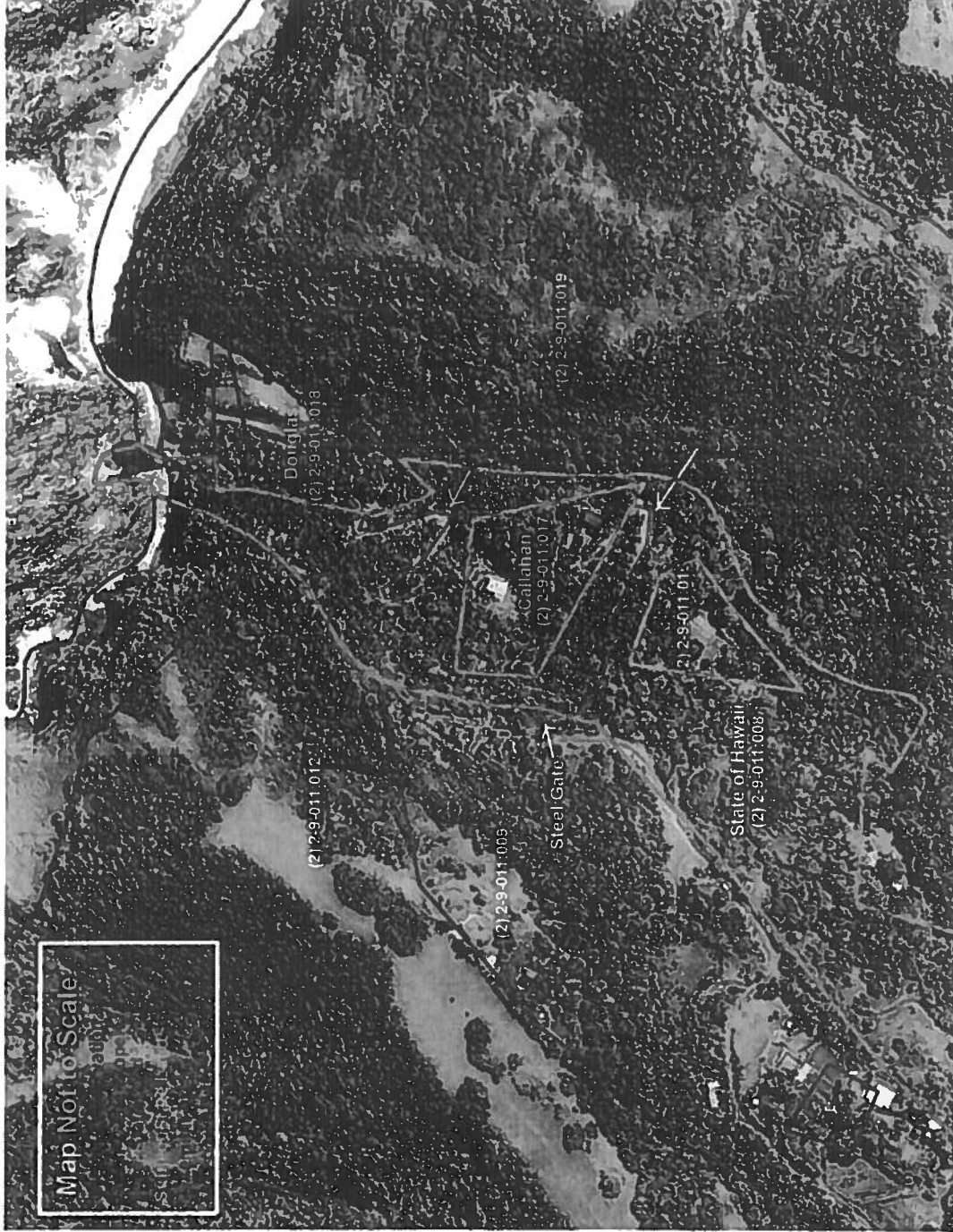
TAX MAP 2-2-11: Per. 8

**SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII**

C.S.F. NO 21,171

STN. Feb. 12, 1990

Exhibit B





RECEIVED
DIVISION OF
LAND MANAGEMENT

2002 JUL 12 AM 9:46

GILBERT S. COLOMA-AGARAN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES

ERIC T. HIRANO
DEPUTY DIRECTOR

LINNEL T. NISHIOKA
DEPUTY DIRECTOR FOR
THE COMMISSION ON WATER
RESOURCE MANAGEMENT

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

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

July 11, 2002

9943(M)

MEMORANDUM

TO: Jason Koga, Maui Land Agent

THROUGH: ^{JK} Dierdre S. Mamiya, Administrator

FROM: E. Mahoe Collins, Abstractor

Subject: Determining the Kuleāna Status of TMK parcels (2) 2-9-11: 6, 7, 15, 17 and 18 situate at Hanawana, District of Hamakualoa, Island and County of Maui, State of Hawaii.

We have been asked to determine the "kuleana status" of the following sources of titles to the subject tax key parcels, situate in the Ahupuaa of Hanawana, District of Hamakualoa, Island and County of Maui, State of Hawaii.

- Land Commission Award 6510-C: 2 and 3 to Kalama (2) 2-9-11: 6 & 7
- Land Commission Award 6510-U: 2 to Wahiloa (2) 2-9-11: 18
- Land Commission Award 5119: 2 to Kauhihoewaa (2) 2-9-11: 15
- Land Commission Award 5250:2 to Kanui (2) 2-9-11: 17

The names of the awardees Kalama and Kanui appear on the list of Konohiki who participated in the 1848 Land Division with the king. The names of Wahiloa and Kauhihoewaa are not on the said list.

As enumerated in the Mahele Book, ONLY Kanui received lands from the king in Hanawana. The lands of Kanui adjudicated under L. C. Award 5250 are konohiki lands.

The lands awarded under Land Commission Award Nos. 6510-C: 2 and 3, 6510-U: 2 and 7: 2 are kuleana lands.

EXHIBIT "D"

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



WILLIAM J. AILA, JR.
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

January 18, 2011

EXEMPTION NOTIFICATION

regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Grant of Perpetual Non-Exclusive Easements to Douglas Lee Callahan and Madeline Cochrane Callahan for Access and Utility Purposes.

Project / Reference No.: PSF#10MD-119

Project Location: Hanehoi, Hoalua, Hanawana, Puuomaile, Hamakualoa, Makawao, Maui, Tax Map Key: (2) 2-9-011: Portion of 008.

Project Description: Grant of Perpetual Non-Exclusive Easement for Access and Utility Purposes.

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

Exemption Class No. and Description: Exemption Class Number 1
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, 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."

Recommendation: It is anticipated this project 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. Aila Jr.
Interim Chairperson

Date

EXHIBIT "E"