

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

December 13, 2013

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

Maui

Forfeiture of Grant of Easement Bearing Land Office Deed No. S-28678 for Access and Utility Purposes to Jeffrey A. Guild and Cynthia L. Guild, Husband and Wife, as Tenants by the Entirety "Grantee", Hanawana West, Makawao, Maui, Tax Map Key:(2) 2-9-011: Portion of 011.

PURPOSE:

Forfeiture of Grant of Easement Bearing Land Office Deed No. S-28678, for Access and Utility Purposes to Jeffrey A. Guild and Cynthia L. Guild.

LEGAL REFERENCE:

Section 171-39, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Hanawana situated at Makawao, Maui, identified by Tax Map Key: (2) 2-9-011: Portion of 008, as shown on the attached maps labeled Exhibits 1 and 2.

AREA:

11,641 square feet, 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: NO

CHARACTER OF USE:

Access and Utility purposes.

REMARKS:

At its meeting of July 11, 2003, under Item No. D-7, the Board of Land and Natural Resources approved the issuance of a perpetual, non-exclusive easement to Jeffrey A. and Cynthia L. Guild, for access and utility purposes, to inure to the benefit of the property at Tax Map Key No.: (2) 2-9-011:007. The subject easement encumbered an area of 11,641 square feet of State land, further identified by Tax Map Key: (2) 2-9-011: Portion of 008.

Grant of Easement LOD S-28678 was issued on October 22, 2003, to Jeffrey A. and Cynthia L. Guild, husband and wife, as tenants by the entirety. It is a newer form easement that runs with the land, provided the grantee maintains liability insurance coverage for the easement.

On May 9, 2005, staff was notified by Cynthia Guild that she and Jeffrey Guild were getting divorced. She advised that upon completion of the divorce, she would provide a title report and divorce decree indicating that she would maintain ownership of parcel 007 which utilizes the subject access and utility easement over parcel 008. Pursuant to the divorce action Mrs. Guild advised she was changing her name back to Cynthia Matzke.

Pursuant to the authority granted to the Chairperson by the Board of Land and Natural Resources at its meeting of January 11, 1980 and the breach provision contained in Land Office Deed S-28678, the Guilds were served default notices dated July 1, 2009, and again on July 14, 2010, via certified mailing for failure to post required liability insurance policy (Condition #18, Insurance Requirement).

Per Bureau of Conveyances official public record, document number 2011-044709, on March 17, 2011, PNC Bank N.A. exercised a foreclosure on Ms. Matzke's benefitted property (parcel 007).

Staff learned by other public records of the Bureau of Conveyances, under document number 2011-138314, that the benefitted property was purchased on August 30, 2011 by Sugopa Young, LLC, Trustee of The Sharana Jile Trust dated 6-29-2011. On March 5, 2012, staff sent a letter to the new owner. The trust was advised of Land Office Deed No. S-28678, which allowed for access over State land to its newly acquired property. In this notification staff also requested contact information and evidence of general liability insurance coverage, as required in the easement document. To date, no response has been received.

On June 25, 2013, the trust was sent a notice of default via certified mail advising of its failure to post the required liability insurance coverage for the use of the easement area. The

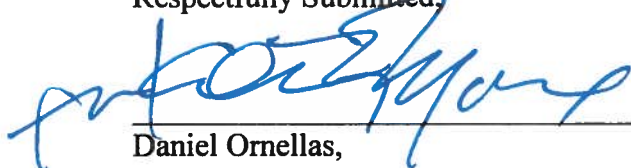
letter was received and signed for upon delivery, and the 60-day cure period provided in the notice has expired. The grantee has failed to respond to a number of requests for liability insurance compliance as required by the easement agreement.

Staff is requesting that the Board approve the forfeiture of Land Office Deed No. 28678 due to non-compliance with the terms and conditions of the access easement document.

RECOMMENDATION: That the Board:

1. Authorize the forfeiture of Grant of Easement bearing Land Office Deed No. S-28678 in the manner specified by law;
2. Authorize the retention of all sums heretofore paid or pledged under Land Office Deed No. S-28678 to be applied to any past due amounts;
3. Terminate Land Office Deed No. S-28678 and all rights of Grantee and all obligations of the Grantor effective as of December 13, 2013, provided that any and all obligations of the Lessee which have accrued up to said effective date or which are stated in the Land Office Deed to survive termination shall endure past such termination date until duly fulfilled, and further provided that Grantor reserves all other rights and claims allowed by law; and
4. Authorize the Department of the Attorney General, the Department of Land and Natural Resources, or their agents to collect all monies due the State of Hawaii under Land Office Deed No. S-28678 and to pursue all other rights and remedies as appropriate.

Respectfully Submitted,

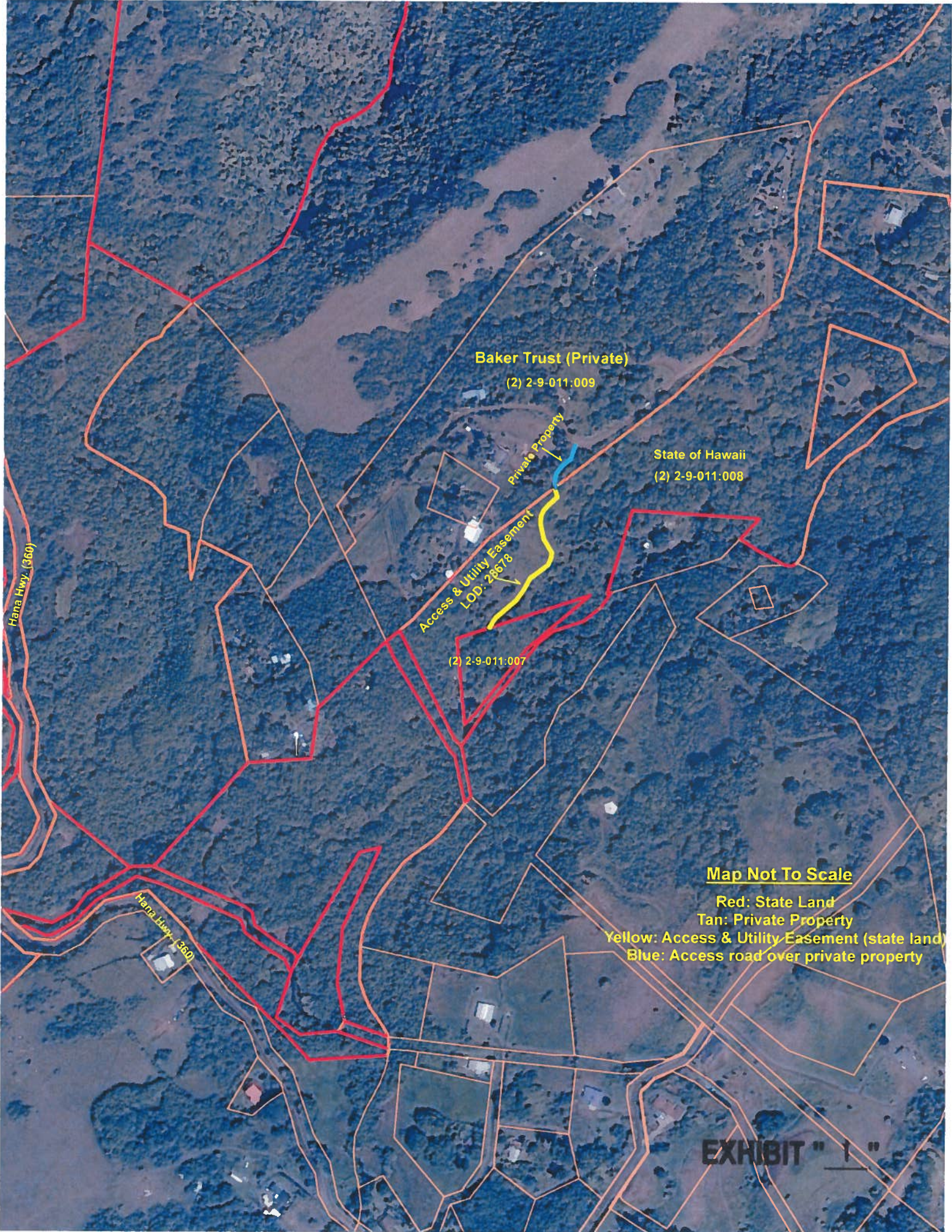


Daniel Ornellas,
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



Baker Trust (Private)

(2) 2-9-011.009

State of Hawaii

(2) 2-9-011.008

Access & Utility Easement
LOD: 28678

Private Property

(2) 2-9-011.007

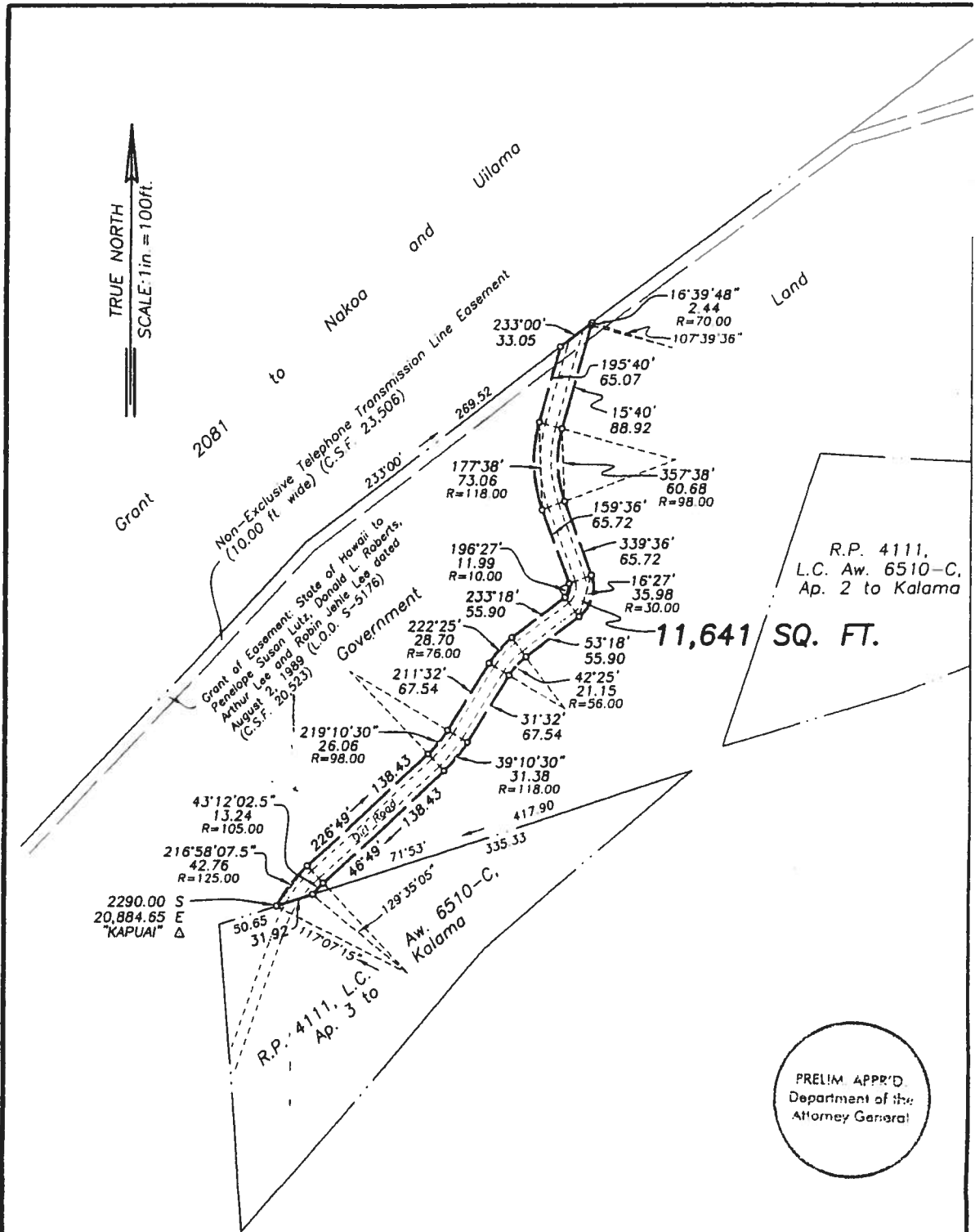
Hana Hwy. (360)

Hana Hwy. (360)

Map Not To Scale

Red: State Land
Tan: Private Property
Yellow: Access & Utility Easement (state land)
Blue: Access road over private property

EXHIBIT " 1 "



11,641 SQ. FT.

**PERPETUAL NON-EXCLUSIVE
ACCESS AND UTILITY EASEMENT**

Hanawana West, Makawao, Maui, Hawaii

JOB Ma-176(03)
C. BK.

Scale: 1 inch = 100 feet **REDUCED NOT TO SCALE**

TAX MAP 2-9-011: por. 08
C.S.F. NO 23,607

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

PRELIM APPR'D
Department of the
Attorney General

JGL August 22, 2003