

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

March 28, 2014

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

PSF No.: 14KD-004

Kauai

Set Aside to County of Kauai for Affordable Housing, Various lots in Wailua Houselots, Kapaa, Hanapepe, Waimea, Kauai. Tax Map Keys: (4) 4-1-011:016,020, (4) 4-1-009:054, (4) 4-5-008:009,012, (4) 4-5-011:007, (4) 1-9-009:006,007,008,009, (4) 1-9-010:003, and (4) 1-6-004:003

APPLICANT:

County of Kauai

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands of Kauai situated at Wailua Houselots, Kapaa, Hanapepe, Waimea, Kauai. Tax Map Keys: (4) 4-1-011:016,020, (4) 4-1-009:054, (4) 4-5-008:009,012, (4) 4-5-011:007, (4) 1-9-009:006,007,008,009, (4) 1-9-010:003, (4) 1-6-004:003, as shown on the attached maps labeled **Exhibit I**.

AREA and ZONING:

TMK#	AREA	STATE LUD	COUNTY CZO
(4) 4-1-011: 020	38,500 square feet	Urban	R-6
(4) 4-1-011: 016	22,749 square feet	Urban	R-6
(4) 4-1-009: 054	26,571 square feet	Urban	Open
(4) 4-5-008: 009	7,560 square feet	Urban	Open/SPA-A
(4) 4-5-008: 012	7,175 square feet	Urban	Open/SPA-A
(4) 4-5-011: 007	7,810 square feet	Urban	Open/SPA-A
(4) 1-9-009: 006	7,017 square feet	Urban	Open
(4) 1-9-009: 007	6,451 square feet	Urban	Open

TMK#	AREA	STATE LUD	COUNTY CZO
(4) 1-9-009: 008	6,172 square feet	Urban	Open
(4) 1-9-009: 009	6,851 square feet	Urban	Open
(4) 1-9-010: 003	16,792 square feet	Urban	Open
(4) 1-6-004: 003	13,539 square feet	Urban	R-4

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CURRENT USE STATUS:

TMK (4) 4-1-009:054, partially encumbered by General Lease No. S-6021 for a non-exclusive access easement over 616 square feet of the 26,571 square foot parcel. **(Exhibit II)**

TMK (4) 4-5-008:012 is encumbered by Revocable Permit No. S-6892 to Frances Madrid and Sam Wunschel for "Home Garden". **(Exhibit III)**

All other lots are vacant and unencumbered.

PURPOSE:

Affordable housing purposes

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. **(Exhibit IV)**. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 2) Obtain a title report to ascertain ownership, where necessary, at Applicant's own cost and subject to review and approval by the Department.
- 3) Obtain a title report to ascertain ownership, where necessary, at Applicant's own

cost and subject to review and approval by the Department.

REMARKS:

All of the parcels have been identified under HRS 171-49.7 as public lands suitable and available for residential development.

TMK (4) 4-1-011:020 is 38,500 square feet in the CZO R-6, potentially buildable for 2 homes due to DOH restrictions on septic systems.

TMK (4) 4-1-011:016 is 22,749 square feet in the CZO R-6, potentially dividable into 2 lots with a potential maximum density of 4 units.

TMK (4) 4-1-009:054 is 26,571 square feet in the CZO Open. This lot may not be divided and is subject to an existing easement from the neighboring residential property under GL S-6021. The lot has a potential maximum density of 2 units.

TMK (4) 4-5-008:009 is 7,560 square feet in the CZO Open/SPA-A. This lot may not be divided and is suitable for 1 unit.

TMK (4) 4-5-008:012 is 7,175 square feet in the CZO Open/SPA-A. This lot may not be divided and is suitable for 1 unit. This parcel is encumbered by RP S-6892.

TMK (4) 4-5-011:007 is 7,810 square feet in the CZO Open/SPA-A. This lot may not be divided and is suitable for 1 unit.

TMK (4) 1-9-009:006 is 7,017 square feet in the CZO Open. This lot may not be divided and is suitable for 1 unit.

TMK (4) 1-9-009:007 is 6,451 square feet in the CZO Open. This lot may not be divided and is suitable for 1 unit.

TMK (4) 1-9-009:008 is 6,172 square feet in the CZO Open. This lot may not be divided and is suitable for 1 unit.

TMK (4) 1-9-009:009 is 6,851 square feet in the CZO Open. This lot may not be divided and is suitable for 1 unit.

TMK (4) 1-9-010:003 is 16,792 square feet in the CZO Open. This lot may not be divided and is suitable for 1 unit.

TMK (4) 1-6-004:003 is 13,539 square feet in the CZO R-4. This lot may not be divided and is suitable for 2 units.

On January 23, 2009, TMK (4) 1-9-009: 006, 007, 008, 009 and TMK (4) 1-9-010:003 were set aside under Governor's Executive Order No. 4261 to the Hawaii Housing Finance and Development Corporation for future housing and housing-related development purposes. On March 15, 2011, under Governor's Executive Order No. 4362, Governor's Executive Order No. 4261 was cancelled.

The Kauai County Housing Agency (KCHA) was formed in May 1976 in recognition of the need to provide housing for low-income households and the elderly and to participate in the federal Housing Assistance Payments Program under Section 8 of the Housing and Community Development Act of 1974. Its mission is to provide greater opportunities for Kauai's citizens to choose and secure affordable, safe, decent and sanitary housing and to live and work in neighborhoods and communities that can accommodate the needs and desires of all households and individuals.

The KCHA is composed of two divisions, the Housing & Community Development Division and the Rental Assistance Division. The Development Division develops affordable housing with government resources, plans and monitors affordable housing with private developers, monitors restrictions on affordable projects, provides research and community education regarding housing needs and solutions, administers the Community Development Block Grant Program (CDBG), the Home Investment Partnership Program (HOME), Residential Rehabilitation and Home-buyer Loan Programs, various far housing activities, and other related County, State, and federal housing programs.

KCHA is proposing to use the parcels to develop an in-fill, single family, affordable housing development. By using United States Department of Agriculture (USDA) Rural Development Direct Loan funds for 80% of the cost of the unit and 20% from KCHA, the County of Kauai will be able to leverage its funds and provide an affordable home for a Kauai family. KCHA has a current list of qualified applicants and approved designs for development. Under proposed timelines, the first home could begin construction within 3 months of the execution of this proposed Executive Order.

All of the parcels are within residentially developed neighborhoods and the highest and best use for the parcels would be for residential use. The Kauai District Land Office (KLDO) receives complaints about overgrown vegetation on these parcels and does regular maintenance to ensure that any potential liability is mitigated. DLNR and the BLNR are not in the business of developing residential units and therefore, staff recommends that the BLNR set aside these parcels to the County of Kauai to develop affordable housing. This would allow for development of the parcels' highest and best use and would remove an expense and liability from BLNR management.

Various government agencies and interest groups were solicited for comments:

AGENCIES	COMMENTS
<b>State of Hawaii</b>	
DOH-EPO	No comments
DHHL	No response by suspense date
DLNR-Aquatic Resources	No response by suspense date
DLNR-Forestry & Wildlife	Has concerns about parcel TMK (4) 1-9-010:003, that contains a burial site.
DLNR-Historic Preservation	See <b>Exhibit V</b>
DLNR-State Parks	No comments
<b>County of Kauai</b>	
Planning Department	No response by suspense date
Public Works	No response by suspense date
Water Department	No response by suspense date
<b>Other Agencies / Interest Groups</b>	
Office of Hawaiian Affairs	No response by suspense date

RECOMMENDATION:

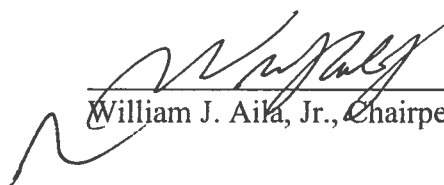
That the Board, subject to Applicant fulfilling the Applicant Requirements above:

1. Declare that this action before the Board is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.
  
2. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the County of Kauai 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; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

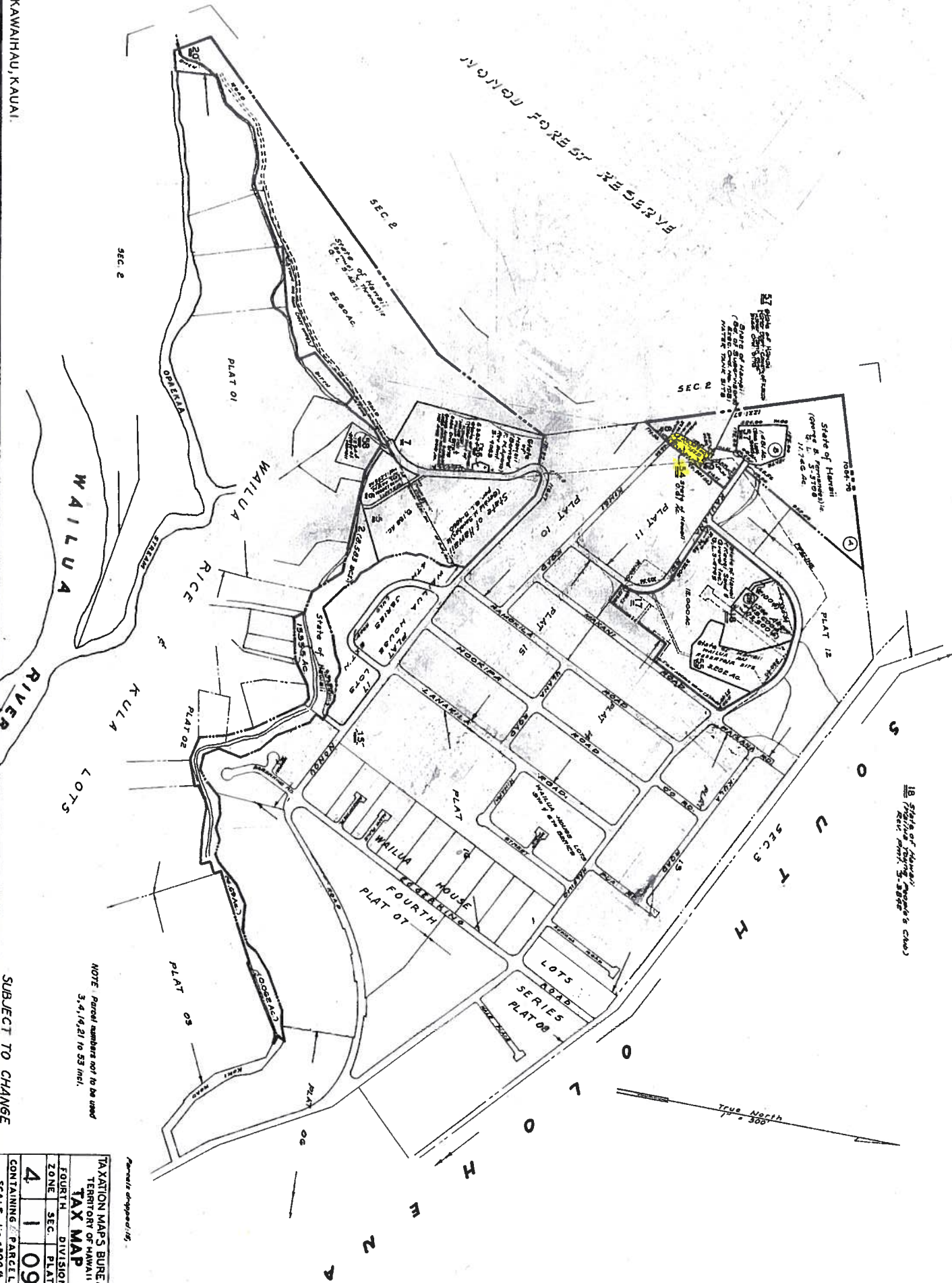
  
\_\_\_\_\_  
Marvin Mikasa  
Acting District Land Agent

APPROVED FOR SUBMITTAL:

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







18. State of Hawaii, Agents' Claim  
 Re: Tax Map 3-8888

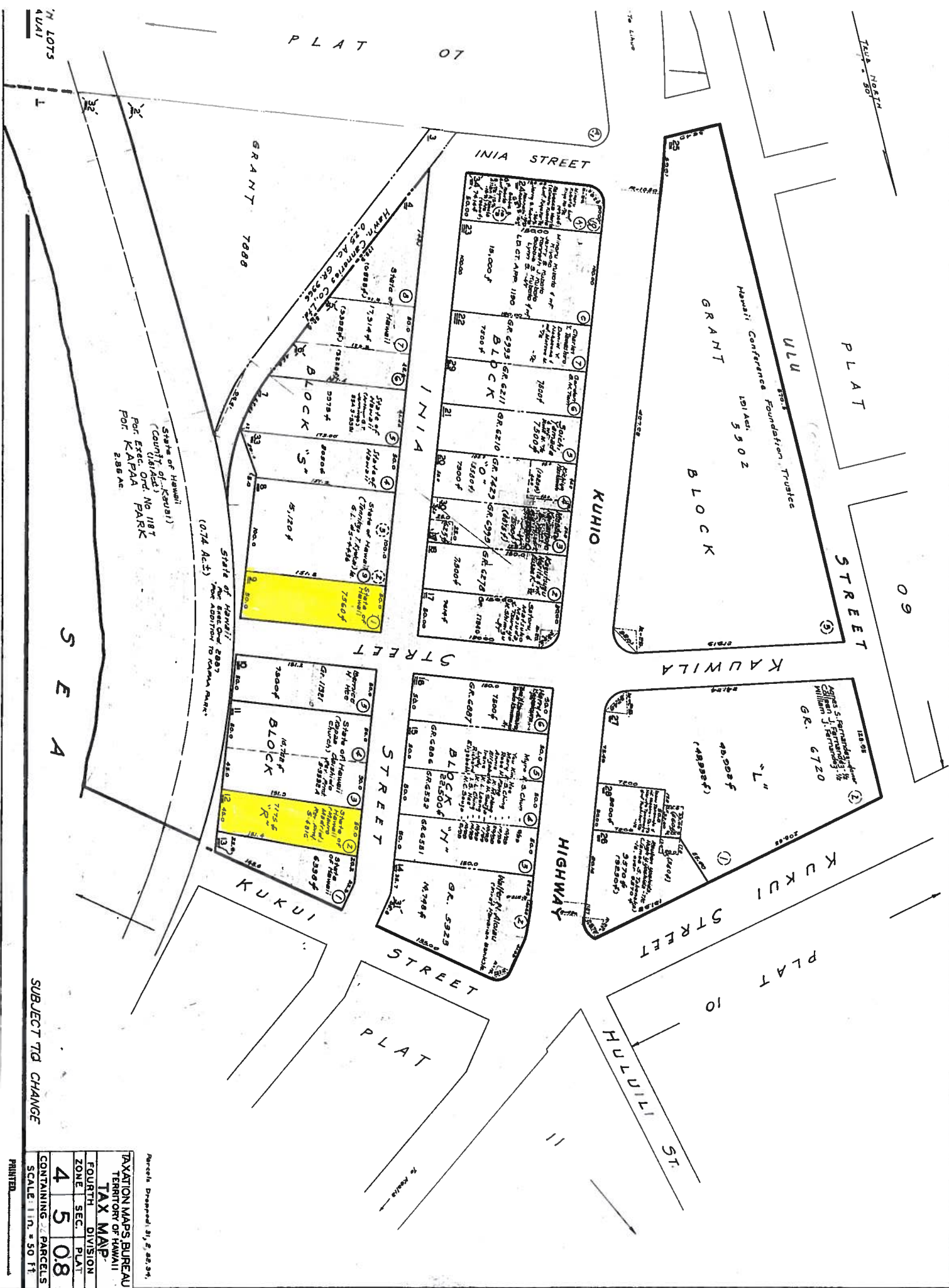
NOTE: Parcel numbers not to be used  
 3, 4, 14, 21 to 53 incl.

SUBJECT TO CHANGE

Permits depicted 1/5.

TAXATION MAPS BUREAU			
TERRITORY OF HAWAII			
FOURTH DIVISION			
TAX MAP			
ZONE	SEC.	DIVISION	PLAT
4	1	09	
CONTAINING PARCELS			
SCALE 1 in = 500 ft.			





PLAT 07

09

SE A

SUBJECT TO CHANGE

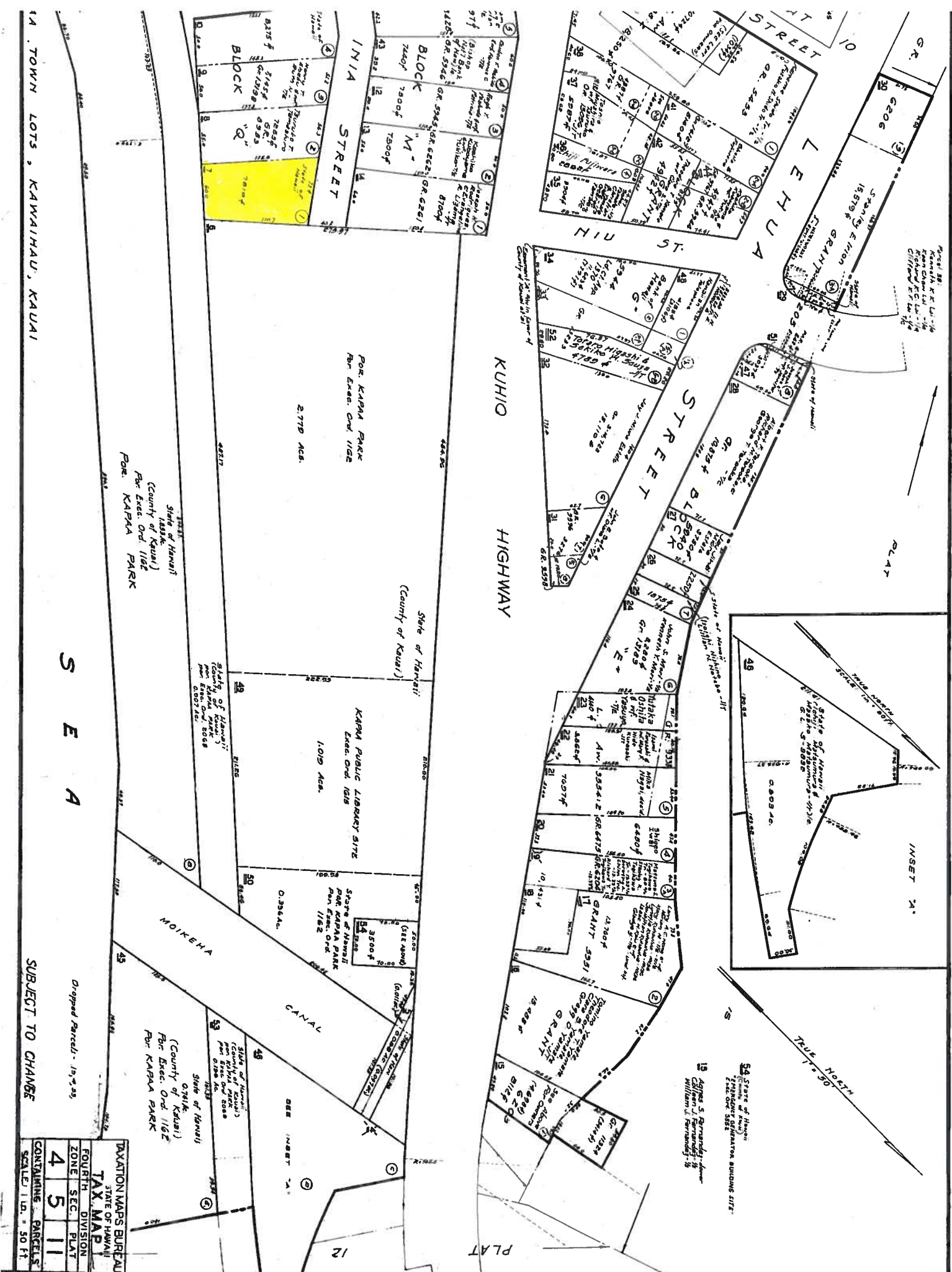
Parcels Designated, S. & S. 25.

TAXATION MAPS BUREAU  
 TERRITORY OF HAWAII

**TAX MAP**

FOURTH DIVISION	PLAT
ZONE SEC.	4 5 08
CONTAINING PARCELS	
SCALE: 1 IN. = 50 FT	

PRINTED



14. TOWN LOTS, KAWAIIHAU, KAUAI

SE A

SUBJECT TO CHANGE

TAXATION MAPS BUREAU STATE OF HAWAII			
FOURTH DIVISION			
ZONE SEC. PLAT			
4	5	11	
CONTAINING PARCELS SCALE 1 IN. = 30 FT.			

INIA STREET

BLOCK "M" - 7500sq' 7500sq' 7500sq'

BLOCK "Q" - 7500sq'

State of Hawaii  
For Exec. Ord. 1162  
FOR KAPAA PARK

2,770 ACB.

KUHIO HIGHWAY

LEHUA STREET

NIU ST.

STATE OF HAWAII  
FOR EXEC. ORD. 1162  
FOR KAPAA PARK

1,019 ACB.

KAPAA PUBLIC LIBRARY SITE  
Exec. Ord. 1018

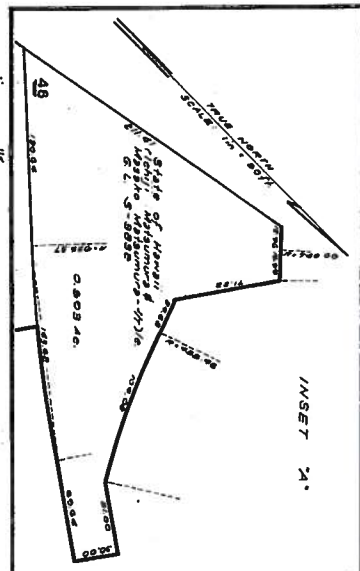
STATE OF HAWAII  
FOR EXEC. ORD. 1162  
FOR KAPAA PARK

3500sq' (siteland)

STATE OF HAWAII  
FOR EXEC. ORD. 1162  
FOR KAPAA PARK

19 Agnes S. Fernandez-Jones  
William J. Fernandez

20 State of Hawaii  
FRANCIS D. BERTON  
Exec. Ord. 1162



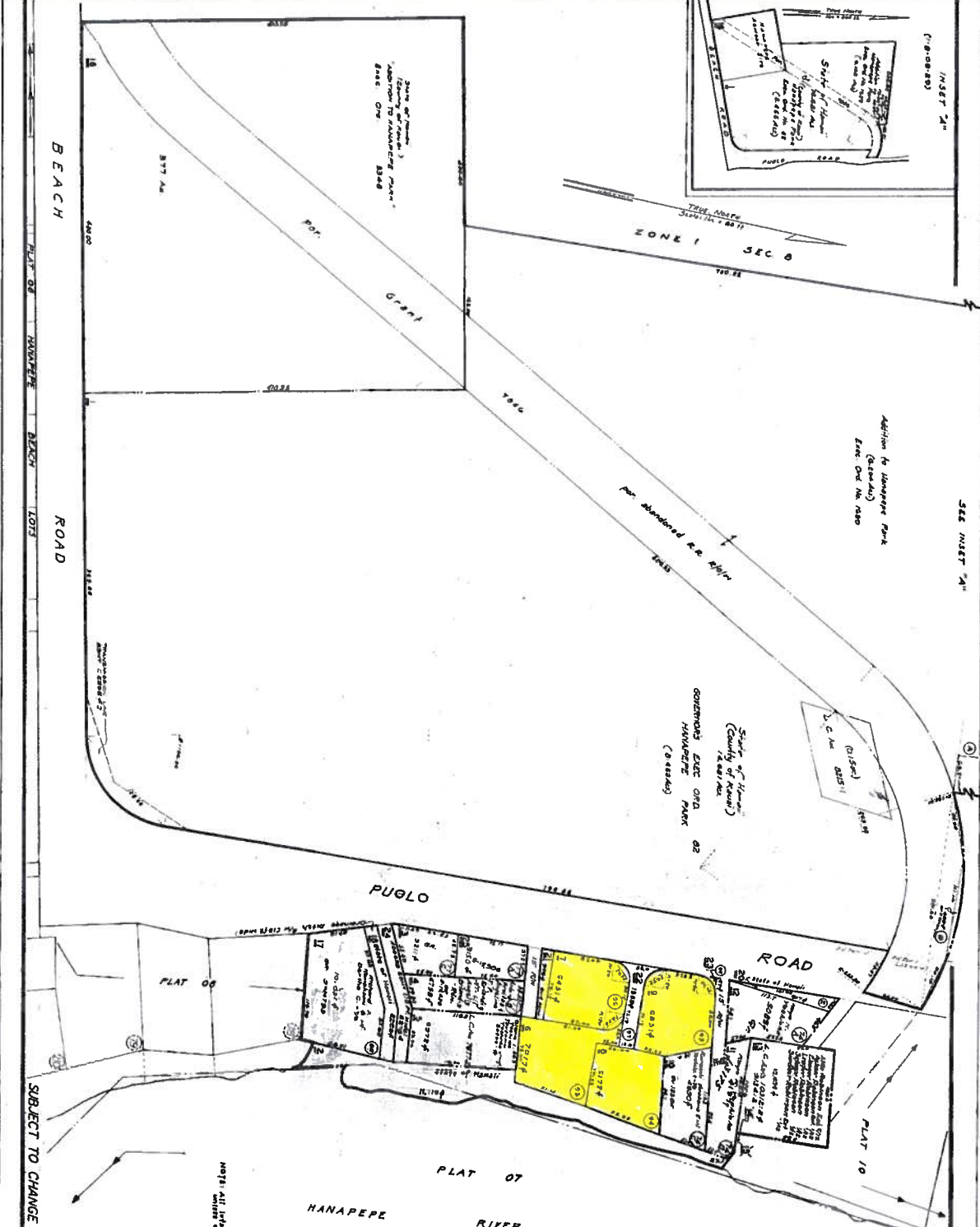
MOIKEHA CANAL

STATE OF HAWAII  
FOR EXEC. ORD. 1162  
FOR KAPAA PARK

12

Map No. 2301  
 Source: Division of Survey  
 Date: 10/11/1954

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97	1.00	1.00	1.00
98	1.00	1.00	1.00
99	1.00	1.00	1.00
100	1.00	1.00	1.00



TAXATION MAPS BUREAU	1
TERRITORY OF HAWAII	9
1st DISTRICT	09
1st SEC. DISTRICT	09
CONTAINING PARCELS	09
SCALE 1" = 300'	

Note: All information for title of record  
 unless otherwise stated.





DWG. NO. 2873 CM/road  
 SOURCE Reg. Map E 100 of Map 17, 196  
 BY R.O. GUY DATE October, 1952

1:25,000  
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 1:200,000  
 1:400,000  
 1:800,000  
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 1:3,200,000  
 1:6,400,000  
 1:12,800,000  
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STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

June 5, 2012 1:00 PM

Doc No(s) A-45390739



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B-32073180

/s/ NICKI ANN THOMPSON  
REGISTRAR

LAND COURT SYSTEM )  
REGULAR SYSTEM )  
Return by Mail ( ) Pickup ( ) To:

**DEPT. OF LAND AND NATURAL RESOURCES  
LAND DIVISION**

Total Number of Pages: 1

Tax Map Key No. (4)4-1-009:Portion 054

GRANT OF NON-EXCLUSIVE EASEMENT S-6021

THIS INDENTURE, made and entered into this 30<sup>th</sup> day of May, 2012, by and between the STATE OF HAWAII, by its Board of Land and Natural Resources, hereinafter referred to as the "Grantor," and RANDALL C. ROE, unmarried and JILDA V. LOOMIS, unmarried, whose address is \_\_\_\_\_ Kapaa, Hawaii 96746, as tenants in common of an undivided fifty percent (50%) interest each, hereinafter referred to as the "Grantee."

WITNESSETH THAT:

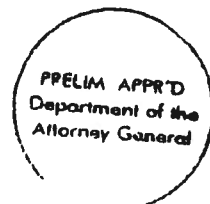
The Grantor, pursuant to Section 171-13, Hawaii Revised Statutes, for and in consideration of the rent to be paid and of the terms, conditions, and covenants herein contained, all on the part of the Grantee to be kept, observed, and performed, does hereby grant unto the Grantee, the following non-exclusive and term easement rights:

Right, privilege, and authority to construct, use, maintain, and repair a right-of-way, subject to the terms and conditions herein,

in, over, under and across that certain parcel of land ("area"), also referred to as "premises," situate at Wailua, Kawaihau, Kauai, Hawaii, being identified as "Non-Exclusive Access Easement," containing an area of 616 square feet, more particularly described in Exhibit "A" and delineated on Exhibit "B," both of which are attached hereto and made parts hereof, said exhibits being respectively, a survey description and survey map prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, designated C.S.F. No. 25,020 and dated December 6, 2010, TOGETHER WITH the rights of ingress and egress to and from the easement area for all purposes in connection with the rights hereby granted.

TO HAVE AND TO HOLD the easement rights unto the Grantee, its successors and assigns, SUBJECT, HOWEVER, to the following terms, conditions and covenants:

1. The term of this easement shall be fifty-five (55) years, commencing on the 30th day of May, 2012, up to and including the 29th day of May, 2067, unless sooner terminated as hereinafter provided, the Grantor reserving and the Grantee yielding and paying to the Grantor at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, State of Hawaii, a one time payment, payable in advance, without notice or demand of ONE THOUSAND FOUR HUNDRED NINETY AND NO/100 DOLLARS (\$1,490.00).





THE GRANTOR AND THE GRANTEE COVENANT AND AGREE AS  
FOLLOWS:

1. The Grantee shall at all times with respect to the easement area use due care for public safety and agrees to indemnify, defend, and hold the Grantor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of the Grantee relating to the Grantee's use, occupancy, maintenance, or enjoyment of the easement area; 2) any failure on the part of the Grantee to maintain the easement area and sidewalks, roadways, and parking areas adjacent thereto in the Grantee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Grantee to maintain the easement area in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Grantee's non-observance or non-performance of any of the terms, covenants, and conditions of this grant of non-exclusive easement or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

2. The Grantor reserves unto itself, its successors and assigns, the full use and enjoyment of the easement area and the right to grant to others rights and privileges for any and all purposes affecting the easement area, provided, however, that the rights herein reserved shall not be exercised by the Grantor and similar grantee(s) in any manner which interferes unreasonably with the Grantee in the use of the easement area for the purposes for which this easement is granted.

3. The placement of all improvements in or upon the easement area by the Grantee shall be done without cost or expense to the Grantor and shall remain the property of the Grantee and subject to the terms of paragraphs 10 and 14 may be removed or otherwise disposed of by the Grantee at any time; provided, that the removal shall be accomplished with minimum disturbance to the easement area which shall be restored to its original condition, or as close thereto as possible, within a reasonable time after removal.

4. Upon completion of any work performed in or upon the easement area, the Grantee shall remove therefrom all equipment and unused or surplus materials, if any, and shall leave the easement area in a clean and sanitary condition satisfactory to the Grantor.

5. Throughout the term of this easement (unless sooner abandoned or otherwise terminated herein) this easement shall run with the land and shall inure to the benefit of the real property described as tax map key no. (4) 4-1-011:001, provided however, that the Grantee shall carry the required liability insurance covering the easement area and comply with all other terms and conditions as provided herein, and that the Grantee, or authorized representative of the Grantee's estate, when this easement is sold, assigned, conveyed, or otherwise transferred, shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document.

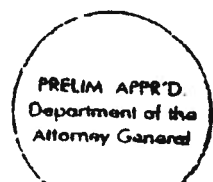
6. The Grantee shall keep the easement area and the improvements thereon in a safe, clean, sanitary, and orderly condition, and shall not make, permit or suffer, any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the easement area.

7. The Grantee covenants, for itself, its successors and assigns, that the use and enjoyment of the land herein granted shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

8. The Grantee, in the exercise of the rights granted herein, shall comply with all of the requirements of the federal, state, and county authorities and shall observe all county ordinances and state and federal laws, rules and regulations, now in force or which may hereinafter be in force.

9. These easement rights shall cease and terminate, and the easement area shall automatically be forfeited to the Grantor, without any action on the part of the Grantor, in the event of non-use or abandonment by the Grantee of the easement area, or any portion thereof, for a consecutive period of one (1) year.

10. The Grantee shall, at the end of the term or other sooner termination of this easement, peaceably deliver unto the Grantor possession of the premises, together with all improvements existing or constructed thereon or Grantee shall remove such improvements and shall restore the premises to their original state, or as close thereto as possible, within a reasonable time and at the expense of the Grantee. If the Grantee does not remove the improvements or restore the premises

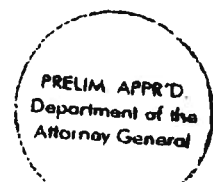


to the satisfaction of the Grantor, the Grantor may effect such action and the Grantee agrees to pay all costs and expenses for such action. Furthermore, upon the expiration, termination, or revocation of this easement, should the Grantee fail to remove any and all of Grantee's personal property from the premises, after notice thereof, the Grantor may remove any and all of Grantee's personal property from the premises, and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Grantee and the Grantee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the easement.

11. The Grantee shall procure and maintain, at its own cost and expense, in full force and effect throughout the term of this easement, comprehensive general liability insurance, or its equivalent, with an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A-" or other comparable and equivalent industry rating, in an amount of at least \$1,000,000.00 for each occurrence and \$2,000,000.00 aggregate, and with coverage terms acceptable to the Chairperson of the Board of Land and Natural Resources. The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy shall be filed with the State of Hawaii, Department of Land and Natural Resources. The insurance shall cover the entire easement area, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the easement in the use or control of the Grantee.

The Grantee, prior to entry and use of the easement area or within fifteen (15) days after the effective date of this easement, whichever is sooner, shall furnish the Grantor with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire easement term, and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the Grantor. The Grantor may at any time require the Grantee to provide Grantor with copies of the insurance policy(s) that are or were in effect during the easement period.

The Grantor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this easement. If, in the opinion of the Grantor, the insurance provisions in this easement do not provide adequate protection for the Grantor, the Grantor may require Grantee to



obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Grantor's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Grantor shall notify Grantee in writing of changes in the insurance requirements and Grantee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Grantor incorporating the changes within thirty (30) days after receipt of the notice.

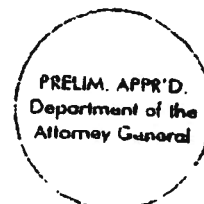
The procuring of the required policy(s) of insurance shall not be construed to limit Grantee's liability under this easement nor to release or relieve the Grantee of the indemnification provisions and requirements of this easement. Notwithstanding the policy(s) of insurance, Grantee shall be obligated for the full and total amount of any damage, injury, or loss caused by Grantee's negligence or neglect connected with this easement.

It is agreed that any insurance maintained by the Grantor will apply in excess of, and not contribute with, insurance provided by Grantee's policy.

12. Grantor reserves the right to withdraw the easement for public use or purposes, at any time during the term of this easement upon the giving of reasonable notice to Grantee. Upon withdrawal of the easement, Grantor shall return to Grantee a portion of the one-time payment described in paragraph 1. For purposes of determining the amount to be returned to the Grantee, the term "net payment" shall mean the one-time payment described in paragraph 1 reduced by any non-refundable portion of the one-time payment, if any, that Grantor was required by statute to pay to any other entity or body. The amount returned to Grantee shall be the net payment prorated for the unused term of the easement.

13. The Grantee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this easement without the prior written approval of the Chairperson of the Board of Land and Natural Resources and any mortgage, hypothecation, or pledge without the approval shall be null and void.

14. Time is of the essence in this agreement and if the Grantee shall abandon the premises, or if this easement and premises shall be attached or taken by operation of law, or if any assignment is made of the Grantee's property for the benefit of creditors, or if Grantee shall fail to observe and perform any

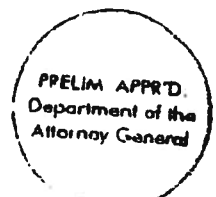


of the covenants, terms, and conditions contained in this easement and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) calendar days after delivery by the Grantor of a written notice of breach or default, by personal service, registered mail or certified mail to the Grantee at its last known address and to each mortgagee or holder of record having a security interest in the premises, the Grantor may, subject to the provisions of section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this easement without prejudice to any other remedy or right of action for any preceding or other breach of contract; and in the event of termination, at the option of Grantor, all improvements shall remain and become the property of the Grantor or shall be removed by Grantee.

15. In the event the Grantor seeks to forfeit the privilege, interest, or estate created by this easement, each recorded holder of a security interest may, at its option, cure or remedy the default or breach within sixty (60) calendar days, from the date of receipt of the Grantor's notice, or within an additional period allowed by Grantor for good cause, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Grantor may:

(a) pay to the holder from any moneys at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest, or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, the Grantor shall be entitled to the conveyance of the privilege, interest, or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or

(b) if the property cannot be reasonably reassigned without loss to the State, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for any preceding or other breach or default and use its best efforts to redispense of the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by the Grantor in instituting or prosecuting its rights or remedies shall not operate as a waiver of these rights or to deprive it of a remedy when it may still otherwise hope to resolve the problems created by the breach or default. The proceeds of any redistribution shall be applied,

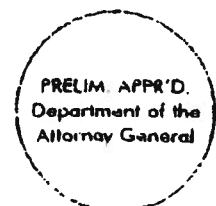


first, to reimburse the Grantor for costs and expenses in connection with the redispotion; second, to discharge in full any unpaid purchase price or other indebtedness owing the Grantor in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the State upon redispotion which exceeds the fair market value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate.

16. In case the Grantor shall, without any fault on its part, be made a party to any litigation commenced by or against the Grantee as a result of this grant of non-exclusive easement (other than condemnation proceedings), the Grantee shall pay all costs, including reasonable attorney's fees and expenses incurred by or imposed on the Grantor; furthermore, the Grantee shall pay all costs, including reasonable attorney's fees and expenses, which may be incurred by or paid by the Grantor in enforcing the covenants and conditions of this grant of non-exclusive easement, or in the collection of delinquent rental, fees, taxes, and any and all other applicable charges attributed to said easement area.

17. The Grantee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Grantee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the easement area any such materials except to use in the ordinary course of Grantee's business, and then only after written notice is given to Grantor of the identity of such materials and upon Grantor's consent which consent may be withheld at Grantor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Grantee, then the Grantee shall be responsible for the reasonable costs thereof. In addition, Grantee shall execute affidavits, representations and the like from time to time at Grantor's request concerning Grantee's best knowledge and belief regarding the presence of hazardous materials on the easement area placed or released by Grantee.

The Grantee agrees to indemnify, defend, and hold Grantor harmless, from any damages and claims resulting from the release of hazardous materials on the easement area occurring while Grantee is in possession, or elsewhere if caused by Grantee or persons acting under Grantee. These covenants shall survive the expiration or earlier termination of this easement.



For the purpose of this easement "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as 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, or any other federal, state, or local environmental law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

18. The easement area shall not be used at any time by the Grantee, its guests or invitees for parking purposes.

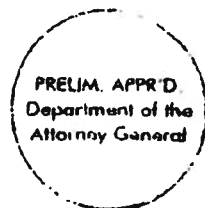
19. The Grantee shall not construct, place or maintain any building or structure over or upon the easement area, except for the purposes described in this grant.

20. The Grantee shall at all times during the term of this easement keep trim all vegetation growing within, over, or onto the easement area so that it does not present a threat to public safety by creating or contributing to roadway, waterway, or pedestrian obstruction, visual obstruction to operators of vehicles, fire hazards, or interference with or downing of power lines.

21. Should future development necessitate a relocation of the easement granted herein, or any portion thereof, the relocation shall be accomplished at the Grantee's own cost and expense; provided, however, that if other lands of the Grantor are available, the Grantor will grant to the Grantee without payment of any money, a substitute easement of similar width within the reasonable vicinity of the original alignment, which substitute easement shall be subject to the same terms and conditions as that herein granted and as required by law.

22. The Grantee shall comply with all applicable federal and state environmental impact regulations.

23. The Grantee shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from the Grantee's, its invitee's and its agent's use, maintenance, repair and operation of the easement area, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the easement area and



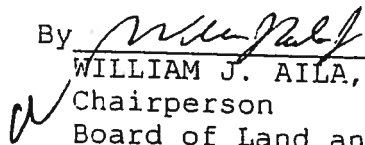


its surrounding waters of such pollutant or contaminant and restore to the Grantor's satisfaction the area affected by such pollution or contamination, all at the Grantee's own cost and expense.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused this Indenture to be executed as of the day, month, and year first above written.

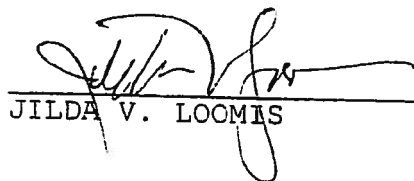
STATE OF HAWAII

Approved by the Board of Land and Natural Resources at its meeting held on June 10, 2010.

By   
WILLIAM J. AILA, JR.  
Chairperson  
Board of Land and  
Natural Resources

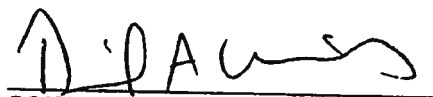
GRANTOR

  
RANDALL C. ROE

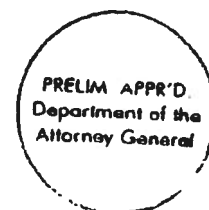
  
JILDA V. LOOMIS

GRANTEE

APPROVED AS TO FORM:

  
DANIEL A. MORRIS  
Deputy Attorney General

Dated: 2-2-12





STATE OF HAWAII  
SURVEY DIVISION  
DEPT. OF ACCOUNTING AND GENERAL SERVICES  
HONOLULU

C.S.F. No. 25,020

December 6, 2010

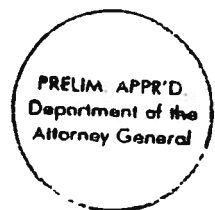
NON-EXCLUSIVE ACCESS EASEMENT

Wailua, Kawaihau, Kauai, Hawaii

Being a portion of the Government (Crown) Land of Wailua.

Beginning at the east corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NONOU" being 806.42 feet South and 1931.83 feet East, thence running by azimuths measured clockwise from True South:-

1. 28° 00' 57.00 feet along Grant 12027 to Kenneth T. and Nora S. S. Tada;
2. 166° 49' 10.63 feet along the remainder of the Government (Crown) Land of Wailua;
3. 196° 28' 50.01 feet along the remainder of the Government (Crown) Land of Wailua;



**EXHIBIT "A"**

C.S.F. No. 25,020

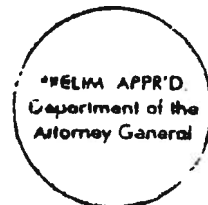
4. 298° 00' 17.00 feet along the remainder of the Government (Crown)  
Land of Wailua to the point of beginning and  
containing an AREA OF 616 SQUARE FEET.

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

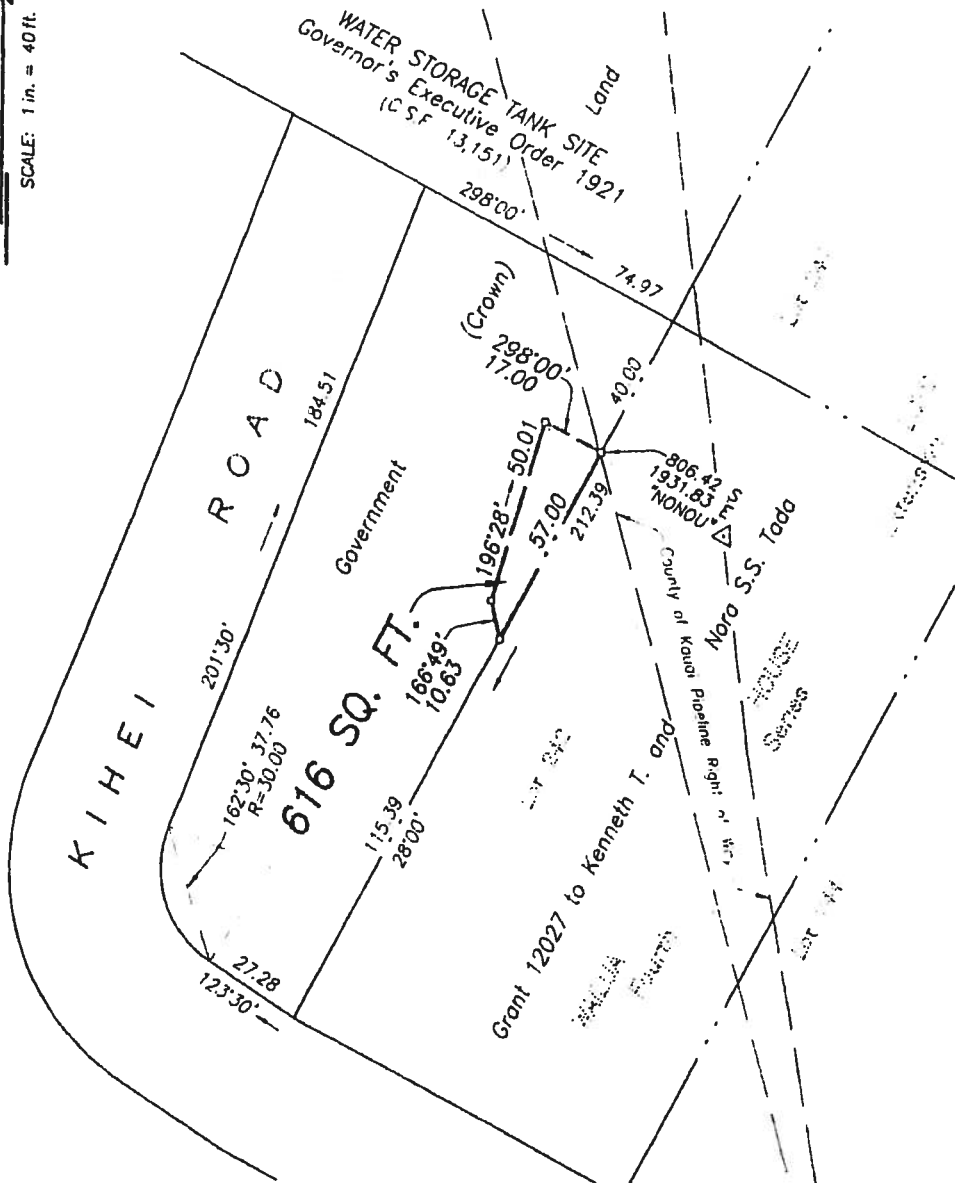
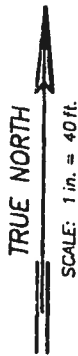
By: Glenn J. Kodani  
Glenn J. Kodani  
Land Surveyor

ry

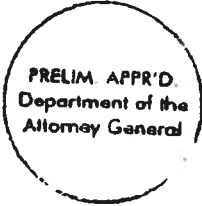
Compiled from map and desc. furn. by  
Wagner Engineering Services, Inc. Said map  
and desc. have been examined and checked  
as to form and mathematical correctness but  
not on the ground by the Survey Division.



REDUCED NOT TO SCALE



NON-EXCLUSIVE ACCESS EASEMENT



Wailua, Kawaihau, Kauai, Hawaii

Scale: 1 inch = 40 feet

EXHIBIT "B"

JOB K-348(10)  
C. BK.

TAX MAP 4-1-09: Por. 54

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

C.S.F. NO. 25,020

DM December 6, 2010

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF LAND MANAGEMENT

REVOCABLE PERMIT NO. S- 6892

KNOW ALL MEN BY THESE PRESENTS:

THAT, effective the 1st day of November, 1993, hereafter

FRANCES C. MADRID and SAMMIE L. WUNSCHEL  
called the "PERMITTEE", whose business and mailing address is  
KAPAA, HI 96746

is permitted to enter and occupy, on a month-to-month basis only,  
that certain parcel of Government land (and any improvements  
located thereupon) situate at Lot 2, Block R, Kapaa Town Lots, Kapaa,  
Kawaihau (Puna) Kauai TMK: 4-5-08:12

as indicated on the map attached hereto, if any, and made a part  
hereof, containing an approximate area of 7,175 sq. ft., which  
parcel is hereinafter referred to as the "PREMISES".

THIS PERMIT IS GRANTED UNDER THE FOLLOWING CONDITIONS:

A. The Permittee shall:

- 1. Occupy and use the Premises for the following specified purposes only:

Home Garden

- 2. Pay, at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, or at the office of its Land Agent on the Island where the Premises are located, the sum of THIRTEEN AND NO/100 DOLLARS---  
(\$13.00) DUE AND PAYABLE ON THE FIRST OF EACH AND EVERY MONTH  
COMMENCING NOVEMBER 1, 1993.

The interest rate on any and all unpaid or delinquent rentals shall be at one per cent (1%) per month plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each month of delinquency.

- 3. Upon execution of this Permit, deposit with the Board of Land and Natural Resources, hereinafter called the "Board", the sum of \$26.00 as security for the faithful performance of all of these terms and conditions. The whole or portion

of the deposit will be returned to the Permittee upon termination of this Permit, but only after all of the terms and conditions of the Permit have been observed and performed to the satisfaction of the representatives of the Department of Land and Natural Resources.

4. At the Permittee's own cost and expense, keep the government-owned improvements located on the Premises insured against loss by fire and other hazards, casualties and contingencies, for the full insurable value of those improvements. The policies shall name the State of Hawaii as an additional insured and shall be filed with the Board. In the event of loss, damage, or destruction of those improvements, the Board shall retain from the proceeds of the policies those amounts it deems necessary to cover the loss, damage, or destruction of the government-owned improvements and the balance of those proceeds, if any, shall be delivered to the Permittee.
5. Give the Board twenty-five (25) days notice, in writing, before vacating the Premises.
6. If a holdover lessee or licensee, pays all real property taxes, which shall be assessed against the Premises from the date of this Permit. In addition, a Permittee, not a holdover lessee or licensee, who has occupied the Premises for commercial purposes for a continued period of one year or more, shall pay the real property taxes assessed against the Premises after the first year of the Permit as provided in Section 246-36(1) (D), Hawaii Revised Statutes.
7. Observe and comply with all laws, ordinances, rules and regulations of the federal, state, municipal, or county governments affecting the Premises or improvements.
8. Repair and maintain all buildings or other improvements now or hereafter on the Premises.
9. Obtain the prior written consent of the Board before making any major improvements.
10. Keep the Premises and improvements in a clean, sanitary, and orderly condition.
11. Pay, when due, all payments for water and other

utilities, and whatever charges for the collection of garbage that may be levied.

12. Not make, permit, or suffers, any waste, strip, spoil, nuisance or unlawful, improper or offensive use of the Premises.
13. At all times with respect to the Premises use due care for public safety and agrees to indemnify, defend, and hold harmless the State of Hawaii, its officers, agents, and employees from and against all claims or demands for damage, including claims for property damage, personal injury or death, arising on or about the Premises, or by any fire or explosion thereon, or growing out of, or caused by any failure on the part of the Permittee to maintain the Premises in accordance with the terms and conditions of this Permit.
14. Procure, at its own cost and expense, and maintain during the entire period of this Permit, a policy or policies of commercial general liability insurance, in an amount acceptable to the Chairperson, insuring the State of Hawaii and the Permittee against all claims for personal injury, death and property damage. The policy or policies shall cover the entire Premises, including all buildings, improvements and grounds and all roadways or sidewalks on or adjacent to the premises in the control or use of the Permittee. The Permittee shall furnish the State with a certificate showing the policy to be initially in force and shall furnish a like certificate upon each renewal of the policy; each certificate to contain or be accompanied by an assurance of the insurer to notify the State of any intention to cancel any policy sixty (60) days prior to actual cancellation. The procuring of this policy shall not release or relieve the Permittee of its responsibility under this Permit as set forth herein or limit the amount of its liability under this Permit.

**B. Additional Conditions:**

1. The Board may revoke this Permit for any reason whatsoever, upon written notice to the Permittee at least thirty (30) days prior to the revocation; provided, however, that in the event payment of rental is delinquent for a period of ten (10) days or more, this Permit may be revoked upon written



notice to the Permittee at least five (5) business days prior to the revocation.

2. If the Permittee does not vacate the Premises upon the revocation of the Permit by the Board, the Permittee shall pay to the State liquidated damages at the daily rate of \$ 3.00 for each day, or portion thereof, the Permittee remains on the Premises over the date of revocation. The payment is in addition to any other rights or remedies the Board may be entitled to pursue for breach of contract, or for illegal occupancy, including the right to evict the Permittee without court action, and the cost thereof to be paid by the Permittee.
3. If the Permittee fails to vacate the Premises upon the revocation of the Permit, the Board, its agents and/or representatives may enter upon the Premises and remove and dispose of all vehicles, equipment, materials, and/or any personal property remaining on the Premises, and the Permittee agrees to pay for all costs and expenses of removal and disposition.
4. the Board may at any time increase or decrease the monthly rental by written notice at least 30 days prior to the date of change of rent.
5. Any major improvements, including but not limited to buildings and fences, erected on or moved onto the Premises by the Permittee shall remain the property of the Permittee and the Permittee shall have the right, prior to the termination of this Permit, or within an additional period the Board in its discretion may allow, to remove the improvements from the Premises; provided, however, that in the event the Permittee shall fail to remove the improvements within 30 days after written notice to remove has been sent, the Board may elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to the Permittee.
6. The Board reserves the right for itself, its agents, and/or representatives to enter or cross any portion of the premises at any time in the performance of its duties.
7. This Permit or any rights hereunder shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of.

8. It is understood that the Permittee has inspected the Premises and knows the conditions thereof and fully assumes all risks incident to its use.
9. The acceptance of rent by the Board shall not be deemed a waiver of any breach by the Permittee of any term, covenant or condition of the Permit nor of the Board's right to declare and enforce a forfeiture for any breach, and the failure of the Board to insist upon strict performance of any term, covenant or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option.
10. The term of this month-to-month permit beyond one year from date of issuance is subject to the prior approval of the Board.
11. The use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon race, creed, color, sex, national origin, or a physical handicap.
12. Any and all disputes and/or questions arising under this Permit shall be referred to the Chairperson of the Board and his determination of these disputes or questions shall be final and binding on the parties.
13. The premises shall be used for home gardening purposes only. No subleasing is allowed.
14. The land is rented "as is" and the permittee is aware of its condition.

Unless the text indicates otherwise, the use of any gender shall include all genders, and if the Permittee includes more than one person, the singular shall signify the plural, and this Permit shall bind the persons, and each of them jointly and severally.

DATED: January 4, 1994.

STATE OF HAWAII

BY Kirk L. Blue  
Chairperson and Member  
Board of Land and Natural  
Resources

Approved by the Board  
at its meeting held on  
October 8, 1993 (Item F-6).

PERMITTEE:

Frances C. Madrid  
FRANCES C. MADRID  
Sammie L. Wunschel  
SAMMIE L. WUNSCHEL

STATE OF HAWAII )  
 ) SS.  
COUNTY OF )

On this 26<sup>th</sup> day of October, 1993, before me personally appeared Frances C. Madrid and Sammie L. Wunschel, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged to me that they executed the same as their free act and deed.

LS

Melvin A. Sasser  
Notary Public, State of Hawaii  
My commission expires: 8/8/97

STATE OF HAWAII )  
 ) SS.  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me appeared \_\_\_\_\_ and \_\_\_\_\_, to me personally known, who being by me duly sworn, did say that they are the \_\_\_\_\_ and \_\_\_\_\_, respectively of \_\_\_\_\_, a Hawaii corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on 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: \_\_\_\_\_

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

March 28, 2014

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

JESSE K. SOUKI  
FIRST DEPUTY

WILLIAM M. TAM  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOARDING 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

**EXEMPTION NOTIFICATION**

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

Project Title: Set Aside to County of Kauai for Affordable Housing

Project / Reference No.: PSF 14KD-004

Project Location: Various lots in Wailua Houselots, Kapaa, Hanapepe, Waimea, Kauai; Tax Map Keys: (4) 4-1-011:016,020, (4) 4-1-009:054, (4) 4-5-008:009,012, (4) 4-5-011:007, (4) 1-9-009:006,007,008,009, (4) 1-9-010:003, and (4) 1-6-004:003

Project Description: Set Aside to County of Kauai for Affordable Housing

Chap. 343 Trigger(s) Use of State Land

Exemption Class No. and Description: 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 approved by the Environmental Council and dated December 4, 1991, 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" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

Consulted Parties: DLNR – Aquatic Resources, Forestry & Wildlife, Historic Preservation; and State Parks, Department of Health; Department of Hawaiian Home Lands, County of Kauai Planning and Public Works, and Office of Hawaiian Affairs

Recommendation: It is anticipated this project will probably have minimal or no significant effect on the environmental and is presumed to be exempt from the preparation of an environmental assessment.

**EXHIBIT "IV"**

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



3/16/04  
\_\_\_\_\_  
Date

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
STATE HISTORIC PRESERVATION DIVISION  
601 KAMOKII A BOULEVARD, ROOM 555  
KAPOLEI, HAWAII 96707

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

GENY KAUPEPU  
FIRST DEPUTY

WILLIAM M. JANI  
DEPUTY DIRECTOR FOR WATER

ADAM B. BROWN  
DIRECTOR OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSULTATION AND OASIS LEADS  
CORRELATION WITH HISTORIC PRESERVATION  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LIMBOW AND ENVIRONMENTAL COMMISSION  
LAND  
STATE PARKS

RECEIVED  
LAND DIVISION  
2014 FEB 27 AM 9:15

February 21, 2014

Ms. Lydia Morikawa  
Department of Land & Natural Resources  
Land Division  
P.O. Box 621  
Honolulu, Hawaii 96809  
[Lydia.M.Morikawa@hawaii.gov](mailto:Lydia.M.Morikawa@hawaii.gov)

LOG NO: 2014.00382  
DOC NO: 1402GC 07  
Archaeology

**SUBJECT: Chapter 6E-8 and National Historic Preservation Act (NHPA) Section 106 Review –  
Set Aside to County of Kaua'i for Affordable Housing  
Various Lots in Wailua Houselots, Kapa'a, Hanapēpē and Waimea  
Waimea, Hanapepe, Wailua and Kapa'a Ahupua'a  
Kawaihau and Kona, District, Island of Kaua'i  
TMK: (4) 1-6-004:003; 1-9-009:006 thru 009; 1-9-010:003; 4-1-009:054; 4-1-011:016, 020 and  
4-5-008:009, 012**

Thank you for the opportunity to review the above referenced request for comments that was received by our office January 27, 2014. According to the information submitted to our office, the applicant Kaua'i County Housing Agency (KCHA) is requesting to have portions of government (State) lands situated at Wailua Houselots, Kapa'a, Hanapēpē, and Waimea set aside for proposed affordable housing. KCHA is proposing to use the parcels to develop an in-fill, single family affordable housing development. All of the parcels have been identified under HRS §171-49.7 as public lands suitable and available for residential development. Federal funding is provided in part by the United States Department of Agriculture (USDA) Rural Development (RD). The proposed project is established as a federal undertaking pursuant to 36 CFR 800.16 (y), and is therefore subject to National Historic Preservation Act Section 106 review.

**TMK: (4) 1-6-004:003, Waimea**

This parcel is located within Waimea Town and totals 13, 539 square feet and is suitable for two proposed units. The parcel is bounded by Ala Wai Road (Riverside Road) on the southeast and an earthen berm on the northwest bank of the Waimea River. Our records indicate that an archaeological inventory survey (AIS) was previously conducted of this parcel (Chaffee et al. 1994). No significant surface or sub-surface historic properties were identified during the survey, and SHPD previously concurred with a "no effect" determination for the parcel (Log 12881, Doc 9410NM03). We have received no new information regarding potential historic properties since our previous determination. In addition, current satellite imagery indicates this parcel has been subjected to major grubbing and grading. Therefore, we believe **no historic properties will be affected** by the proposed development of two units on this parcel.

**TMK: (4) 1-9-009:006, 007, 008 & 009, Hanapēpē Houselots**

These four parcels are located along Puolo Road to the west and the Hanapēpē River to the east, and totals approximately 26,887 square feet; each of the four parcels has been designated as suitable of one unit. Our records indicate no archaeological inventory survey has been conducted, and no historic properties have been identified within the subject parcels. However, the proposed project area is within 70 meters of two Hanapepe burial sites (SIHP 50-30-09-704 and 705). Therefore **SHPD requests more information** in the form of a thorough and good faith effort to identify historic properties within the area of potential effect (APE). The identification effort should include consultation with Native Hawaiian Organizations (NHO) pursuant to 36 CFR Part 800.4(a) (4). For the level of effort identified in 36 CFR 800.4(b)(1), we recommend field survey for areas of proposed ground disturbance, and background research for areas of potential visual impacts in addition to consultation with NHO. We request that a report of survey findings be prepared and submitted to SHPD for review and approval, pursuant to The Secretary

**EXHIBIT " V "**

of the Interior's Standards for Identification and Hawaii Administrative Rule §13-276. If needed, appropriate mitigation plans will need to be approved and implemented prior to commencement of construction activities.

We look forward to the opportunity to consult on the significance evaluations [36 CFR Part 800.4(c)], assessment of project effects [36 CFR Part 800.5] and if necessary, resolution of adverse effects [36 CFR Part 800.6] for any sites located within the APE. 36 CFR Part 800 also mandates that NHO are provided the opportunity to consult on all of these phases of historic preservation review process.

**TMK: (4) 1-9-010:003, Hanapēpē Town Lots**

The proposed project parcel is located within the Hanapēpē Town Lots, First Series, with Puolo Road being at the western end of the property and the Hanapēpē River on the East. The property consists of approximately 16, 792 square feet and is suitable for one unit. Our records indicate that an archaeological inventory survey has been conducted of this parcel (Creed et al.1994) and accepted by SHPD (Log 10923, Doc No. 9402NM43). The survey identified three significant historic properties, two burials (SIHP 50-30-09-704 and 705) and a discontinuous cultural layer (Site 706). The burials were identified within one meter of the surface, and the cultural layer was identified at approximately 70 cms (35 inches) below the surface. Site 706 is considered no longer significant as appropriate information has been collected. The two burials are preserved in place within the existing parcel. We have not received any new information regarding this parcel; therefore we believe the proposed construction of a residential unit on this parcel will have an **adverse effect** on the identified historic properties. SHPD requests that a project specific **burial treatment plan** be completed and submitted to SHPD for approval and to the Kauai-Niihau Islands Burial Council for determination and recommendations, to insure the protection of the known burial sites in the project area. In addition, a project specific **archaeological monitoring plan** should be implemented to identify the measures that will be employed to minimize the damage of this project on historic properties. Specifically this plan should address how the known burials sites will be avoided and how machinery will safely access the construction site without disturbing the two identified burial sites. The monitoring plan should be approved by our office pursuant to HAR §13-279 and the Secretary of the Interior's standards prior to implementation We also recommend that Native Hawaiian Organizations and other interested parties be part of the consultation process. .

**TMK: (4) 4-1-009:054 and 4-1-011:016 & 020, Wailua**

The proposed project parcels are located within the Wailua Houselots. The property located within TMK: (4) 4-1-009:054 consists of 26, 571 square feet and is subject to an existing non exclusive access easement of 616 square feet from the neighboring residential property under GL S-6021. The property is bounded by Nounou Forest reserve to the east and Haleilio Road to the west. The subject parcels located within TMK: (4) 4-1-011:016 and 020 consist of consists of 38,500 square feet and 22,749 square feet respectively, and are potentially dividable into two lots with a potential maximum density of four units.

Our records indicate no historic properties have been identified within the above parcels. Our records also indicate that SHPD made a previous determination of "no effect" to significant historic properties for the property located within TMK: (4) 4-1-009:054 (Log. 2006.0854, Doc 0603NM39); and "no effect" for the property located within TMK: (4) 4-1-011: 016 & 020 (Log 19576, Doc 9705NM19, Log 19575, Doc 9705NM18). We have no new information for these parcels; therefore, we believe **no historic properties will be affected** by the proposed development at these three locations.

**TMK: (4) 4-5-008: 009 & 012 and 4-5-011:007, Kapa'a makai**

The proposed project parcels are located within Kapa'a Town Lots on Inia Street. The parcels located at TMK: (4) 4-5-008:009 and 012 consist of 7,560 square feet each; both are suitable for one unit per parcel. The parcel located within TMK: (4) 4-5-011:007 is 7, 810 square feet and is suitable for one unit. Of these three parcels, TMK: (4) 5-8-009:012 is encumbered by revocable permit No. S-6892 to Frances C. Madrid and Sammie L. Wunschel for "Home Garden."

Our records indicate that numerous known historic properties are present in Kapa'a Town. Several archaeological reports have been conducted within Kapa'a Town in close proximity of the proposed project parcels, specifically along Inia Street and Kapa'a State Beach Park. These include two burial reports (Kawachi 1994 and Jourdane 1995); four archaeological monitoring reports (Creed et al. 1995, Callis 2000, Dega and Powell 2003, and Terry et al. 2004); and two archaeological inventory survey reports (Bushnell et al. 2002, Dagher and Dega 2010). The results of the above reports indicate that a total of eleven burials (SIHP 50-30-08-626, 867, 871) and a cultural layer with sub-surface features (Site 1849) have all been identified along Inia and Kauwila Streets. The cultural layer (Site 1849) has been expanded to include Ulu Street located *mauka* of Kuhio Highway, to the north along Lehua Street



and Kukui Street, and down to Kapa'a Beach Park. The recorded area of Site 1849 extends into all three of the project area parcels in Kapa'a Town. The disposition of the identified burial sites is uncertain at this time; it is possible that at least two of the burials may be preserved in place within or adjacent to the boundaries of two project area parcels. The above surveys and monitoring projects were located adjacent to the subject parcels, within public road right-of-ways; the findings indicate a high probability that undocumented burials and subsurface cultural deposits are present within the proposed construction areas.

We believe the proposed construction of residential units on the above parcels has the potential to **adversely affect** identified and unknown historic properties. Therefore **SHPD requests more information** in the form of a thorough and good faith effort to identify historic properties within the area of potential effect (APE). The identification effort should include consultation with Native Hawaiian Organizations (NHO) pursuant to 36 CFR Part 800.4(a) (4). For the level of effort identified in 36 CFR 800.4(b)(1), we recommend field survey with subsurface testing for areas of proposed ground disturbance, and background research for areas of potential visual impacts in addition to consultation with NHO. We request that a report of survey findings be prepared and submitted to SHPD for review and approval, pursuant to The Secretary of the Interior's Standards for Identification and Hawaii Administrative Rule §13-276. If needed, appropriate mitigation plans will need to be approved and implemented prior to commencement of construction activities. We look forward to the opportunity to consult on the significance evaluations [36 CFR Part 800.4(c)], assessment of project effects [36 CFR Part 800.5] and if necessary, resolution of adverse effects [36 CFR Part 800.6] for any sites located within the APE. 36 CFR Part 800 also mandates that NHO are provided the opportunity to consult on all of these phases of historic preservation review process.

#### **Summary of Recommendations**

In summary, significant historic properties are present within Hanapēpē, Wailua and Kapa'a Town and there is a potential for historic properties to be adversely affected by the proposed projects at these locations. We recommend that the permits for the development of the following affordable housing units be deferred until the applicant has submitted the information as requested above and listed here for the following project locations:

1. **TMK: (4) 1-9-009:006, 007, 008 & 009** - an archaeological inventory survey (AIS) report, prepared in accordance with The Secretary of the Interior's Standards and Hawaii Administrative Rule (HAR) §13-276;
2. **TMK: (4) 1-9-010:003** - a burial treatment plan prepared pursuant to HAR §13-300 and an archaeological monitoring plan prepared pursuant to HAR §13-279 and The Secretary of the Interior's Standards; and
3. **TMK (4) 4-5-008: 009 & 012 and 4-5-011:007** - an archaeological inventory survey (AIS) report, prepared in accordance with The Secretary of the Interior's Standards and HAR §13-276.

Based on available information as noted above, we believe that **no historic properties will be affected** by the proposed construction in the following project locations:

1. **TMK: (4) 1-6-004:003** and
2. **TMK: (4) 4-1-009:054 and 4-1-011:016 & 020**

Please contact Susan Lebo at (808) 692-8019 or [Susan.A.Lebo@hawaii.gov](mailto:Susan.A.Lebo@hawaii.gov) if you have any questions or concerns regarding this letter.

Aloha



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