

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawai'i

180-Day Exp. Date: May 28, 2014

March 28, 2014

**Board of Land and
Natural Resources
State of Hawai'i**

REGARDING: 1) Conservation District Use Application (CDUA) OA-3694 for Public Purpose Subdivision
2) Approval of Proposed Settlement

**APPLICANT/
LANDOWNER:** Earl Donovan Pfeiffer
Pfeiffer Family Partners, LP

AGENT: Philip Leas of Cades Schutte, LLP.

LOCATION: 2399 Kuaheha St., Pālolo Valley, Wai'ōma'o, O'ahu
Tax Map Key: (1) 3-4-015:027

SUBZONE: General

DESCRIPTION OF AREA/CURRENT USE & BACKGROUND (Exhibits A & B)

The subject parcel exists in the Kona District of the island of O'ahu at Wai'ōma'o in the northeastern section of Pālolo valley within the General subzone of the Conservation district. The property is a former quarry site and is bounded by a steep wall on the south, mauka end of the property. The front of the property is relatively flat consisting of the quarry floor. Currently there are two residents on the property located toward the front of the property closest to Kuaheha Street. The property is served by a driveway that extends from the street.

The Property is owned by PFEIFFER FAMILY PARTNERS, L.P., a Hawaii limited partnership ("PFP") and EARL DONOVAN PFEIFFER, aka Earl D. Pfeiffer, as Trustee under that certain unrecorded Earl Donovan Pfeiffer Revocable Trust Agreement dated February 8, 2001, also referred to as the Earl D. Pfeiffer Revocable Trust Agreement dated February 8, 2001 ("Pfeiffer").

On March 23, 2004, the State filed a lawsuit in the Circuit Court of the First Circuit of the State of Hawai'i, State of Hawaii v. Earl D. Pfeiffer, et al., CIVIL NO. 04-1-0545-03 (BIA) (the "Lawsuit"). The purpose of the lawsuit was to condemn the Property. The State filed the Lawsuit because it believes that the Property is endangered by potential rockfalls from adjoining lands which are owned by the State, namely, the Wai'ōma'o Ridgeline.

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A dispute exists between the State, PFP, and Pfeiffer regarding the scope of the condemnation and the amount of just compensation that should be paid for the Property. PFP and Pfeiffer believe that the State's taking should be reduced to only the potentially dangerous portion near the south end of the Property, and that they should be able to keep a portion of the Property that contains one of the existing dwellings on the north end of the Property.

The State is willing to allow PFP and Pfeiffer to retain a portion of the Property that can be made safe for a residence with the installation of a rockfall fence, in exchange for an indemnity absolving the State of any liability for personal injury and/or property damage arising from any rockfalls from the adjoining State land onto the retained portion of the Property.

The Parties also wish to settle claims against each other relating to the Property and the condemnation. In general the settlement proposes that 1) the Property be subdivided, 2) that PFP and Pfeiffer retain a portion of the Property, 3) the other portion go to the State; and 4) other claims be released.

PROPOSED USE (Exhibit C)

According to the information provided, the applicant proposes to subdivide the property into two lots of record for the State of Hawaii to acquire the back lot to address rockfall hazards and to resolve a condemnation lawsuit. Designation of access easements has been included with the subdivision proposal. This CDUA is for subdivision only.

SUMMARY OF COMMENTS

The Office of Conservation and Coastal Lands referred the application to the following agencies for review and comment: the Department of Land and Natural Resources: O'ahu District Land Office, Division of Forestry and Wildlife, Engineering, and the Historic Preservation Division; Office of Hawaiian Affairs; the State's Department of Health and Office of Environmental Quality Control; and the City and County of Honolulu's Department of Planning and Permitting and the Pālolo Neighborhood Board. In addition, this application was also sent to the nearest public library, the Kaimukī State Public Library, to make this information readily available to those who may wish to review it.

Comments were received by the following agencies and summarized by Staff as follows:

THE STATE

DEPARTMENT OF LAND AND NATURAL RESOURCES

O'ahu District Land Office

No comments

Engineering

The project site, according to the flood Insurance Rate Map (FIRM), is located in Flood Zone X. The National flood Insurance Program does not have any regulations for developments within Zone X.

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Historic Preservation Division

Our records indicate that no archaeological inventory survey (AIS) has been conducted, that no historic properties have been identified, and that no Land Commission Awards or Land Grants were awarded for the subject property. We believe that no historic properties will be affected by the proposed subdivision because these lots occur within a former quarry.

DEPARTMENT OF HEALTH

No comments

ANALYSIS

Following review and acceptance for processing, the Applicant's Counsel was notified, by correspondence dated December 6, 2013 that:

1. The proposed use is an identified land use in General subzone of the Conservation District, pursuant to the Hawaii Administrative Rules (HAR), §13-5-22, P-10, SUBDIVISION OR CONSOLIDATION OF PROPERTY, D-1, "Subdivision of property into two or more legal lots of record that serves a public purpose and is consistent with the objectives of the subzone." Please be advised, however, that this finding does not constitute approval of the proposal;
2. Pursuant to §13-5-40, HAR, a Public Hearing will not be required;
3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and HAR, Title 11, Department of Health, Chapter 200, Environmental Impact Statement Rules, Subchapter 8, §11-200-8(a)(1), the proposed use is exempt; and
4. The subject area does not appear to be in the Special Management Area (SMA).

Notice of CDUA OA-3694 was published in the January 23, 2014, issue of the Environmental Notice.

CONSERVATION CRITERIA

The following discussion evaluates the merits of the proposed land use by applying the criteria established in §13-5-30, HAR.

- 1) *The proposed use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.

The proposed subdivision, should not conflict with any of the above objectives. The proposed action will subdivide the lot so that the State of Hawai'i may acquire the back portion of the lot to address rockfall hazards. No greater intensity of use should result from this subdivision.

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- 2) *The proposed land use is consistent with the objectives of the Subzone of the land on which the use will occur.*

The objective of the General subzone is to designate open space where specific conservation uses may not be defined, but where urban use would be premature. The proposed land use is an identified land use that could be applied for pursuant to §13-5-22, HAR. The proposed subdivision does not conflict with these objectives, as no land disturbing uses are proposed under this action.

- 3) *The proposed land use complies with the provisions and guidelines contained in Chapter 205A, HRS entitled "Coastal Zone Management", where applicable.*

The site is not located within the Special Management Area. The proposed action will not affect recreational, historic, marine, beach, scenic and open space resources or coastal ecosystems.

- 4) *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.*

The proposed action will have no effect on the surrounding area, community or region as no land disturbing activities area involved. Staff is of the opinion that this will not have any adverse impact on existing natural resources.

- 5) *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

No physical structures are proposed.

- 6) *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

The action shall have no physical impact on the land. Therefore Staff is of the opinion that the natural beauty and open space characteristics of the Conservation District will be maintained.

- 7) *Subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.*

The goal of the proposed action is to subdivide the property so the State could acquire the back portion of the property to address rockfall hazards.

- 8) *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

The proposed land use will not be detrimental and may improve public health, safety and welfare by allowing the State to manage the portion of the property that

contains a rockfall hazard while allowing the applicant to continue the residential use of the remaining portion of the property.

DISCUSSION

The proposed subdivision is for public purpose to allow the State to acquire the back portion of a property that has rockfall hazards. **Exhibit C** illustrates the preliminary subdivision map and access easements. According to the applicant, the subdivision action "resolves a long standing condemnation lawsuit brought by the State of Hawai'i to address a rockfall hazard located in the back of the property."

RECOMMENDATION

Based on the preceding analysis, Staff recommends that the Board of Land and Natural Resources APPROVE the proposed settlement and authorize the Chair to negotiate (with the advice and consent of the Department of Attorney General) and execute an appropriate settlement agreement to resolve the lawsuit.

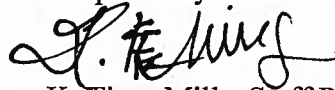
Staff further recommends that the Board APPROVE this application to subdivide land that lies within the Conservation District for public purpose located at 2399 Kuahea St., Pālolo Valley, Wai'ōma'o, O'ahu, Tax Map Key: (1) 3-4-015:027 subject to the following conditions:

- 1) The permittee shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;
- 2) The permittee, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
- 3) The permittee shall provide documentation (e.g. book and page or document number) that this permit approval has been placed in recordable form as a part of **each** deed instrument;
- 4) In issuing this permit, the Department has relied on the information and data that the permittee has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
- 5) The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
- 6) Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;

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- 7) The subdivision action will generally be consistent with the preliminary subdivision map with access easements noted as **Exhibit C**;
- 8) The permittee shall obtain the approval of the City & County of Honolulu for the subdivision and **file the final subdivision plan with the OCCL**;
- 8) Other terms and conditions as may be prescribed by the Chairperson; and
- 9) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Respectfully submitted,



K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands



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

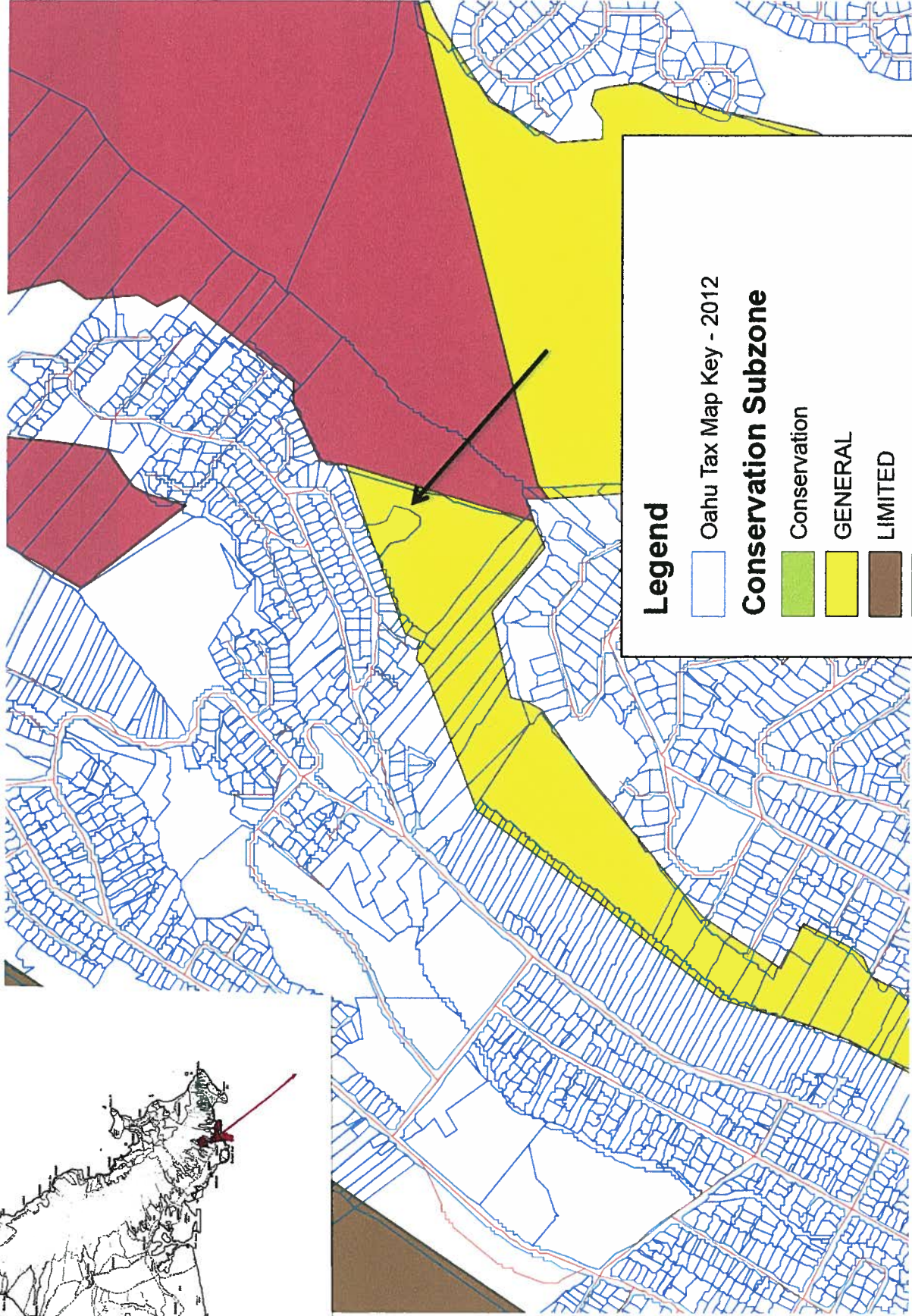


EXHIBIT A

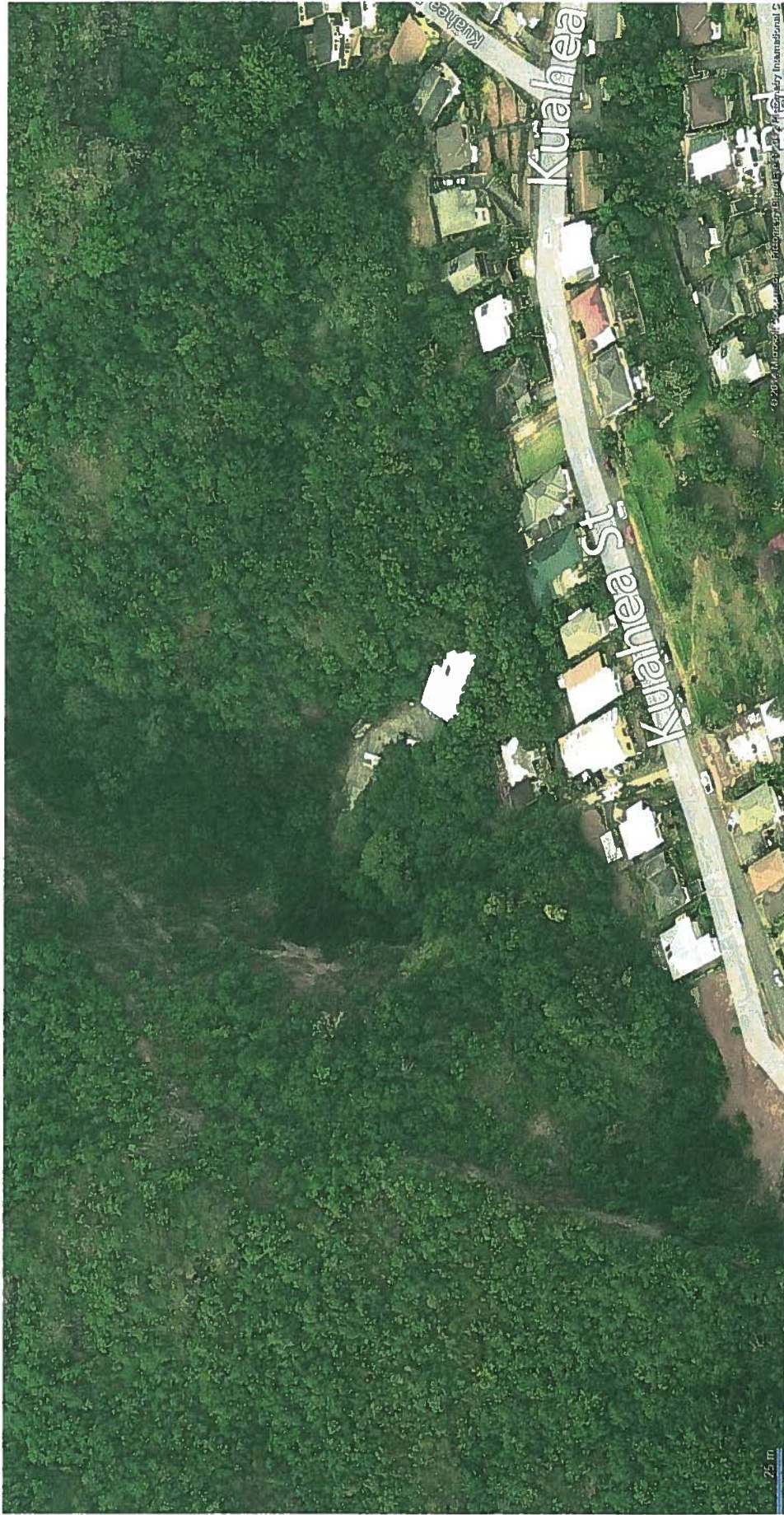


EXHIBIT B

PRELIMINARY SUBDIVISION MAP

CONS 50

MAP

LAND COURT
State of Hawaii
LAND COURT CONSOLIDATION 50
Subdivision of
Lot 82-A As Shown on Map 4
Into Lots 82-A-1 and 82-A-2
Designation of Easement H
For Surface Access Easement Purposes
In Favor of Lot 82-A-2
At Waiomao, Palolo Valley, Honolulu, Oahu, Hawaii

2016 WATERHOUSE ST., STE. 101
HONOLULU, HAWAII 96819
AUGUST 20, 2013



LEAPS & BOUNDARIES, INC.
This map was prepared by me or
under my direct supervision
LICENSED PROFESSIONAL LAND SURVEYOR
CERTIFICATE NUMBER 10257
Exp. 4/30/2014

OWNERS: Earl D. Pfeiffer, Trustee
Earl Donovan Pfeiffer, Trustee
Pfeiffer Family Partners, L.P. - a Hawaii limited partnership
OWNER'S CERTIFICATE OF TITLE: 804-491

AUTHORIZED AND APPROVED BY ORDER OF THE JUDGE
OF THE LAND COURT DATED _____
BY ORDER OF THE COURT _____

REGISTRAR OF THE LAND COURT

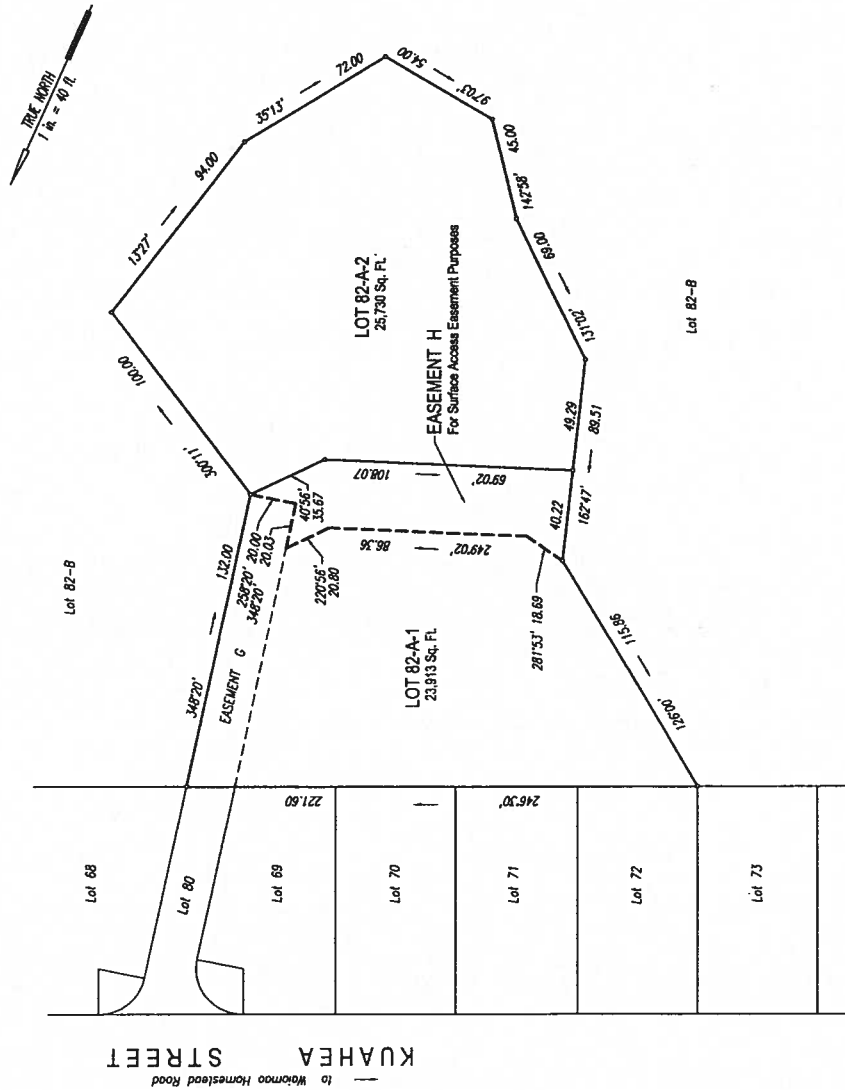


EXHIBIT C

NOTE: Area of Easement H = 3,387 Sq. Ft.

Top Map Key (1) J-4-015: 027

15" x 21" = 2.2 Sq. Ft.

EXHIBIT C