

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

August 8, 2014

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

PSF No.:11MD-118

Maui

Amendment of Perpetual, Non-Exclusive Easement, Land Office Deed No. S-28,499, for Access and Utility Purposes, Waiohuli, Maui, Tax Map Key: (2) 3-9-009: 013 por. The Purpose of the Amendment is to Increase the Area of the Easement to Cover Existing Encroachments.

APPLICANT:

Gary L. Passon and Charlene Y. Schulenburg, Husband and Wife, Tenants in Severalty.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Waiohuli, Maui, identified by Tax Map Key: (2) 3-9-009: 013 por., as shown on the attached map labeled Exhibit A.

AREA:

8,687 sq. ft. existing area  
157 sq. ft. proposed additional area  
8,844 sq. ft. total area (more or less).

EXHIBITS:

Exhibit A- Tax Map (2) 3-9-009:013  
Exhibit B- Easement Map #1  
Exhibit C- Easement Map #2  
Exhibit D- Consent letter dated August 24, 2012, signed by Mr. David Goode, Director, County of Maui, Department of Public Works.

ZONING:

State Land Use District: Urban  
County of Maui CZO: Park

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:

Access and Utility Easement, Land Office Deed No. S-28,499

Governor's Executive Order No. 0177, to the County of Maui, Department of Public Works, for Drainage System 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 FOR AMENDED AREA:

To be determined by the Chairperson.

CONSIDERATION FOR AMENDED AREA:

One-time payment to be determined by independent appraisal establishing fair market rent for the additional 157 sf (more or less) area, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the Department of Land and Natural Resources Department-wide Exemption List, approved by the Environmental Council and dated December 4, 1991, 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 [HAR 11-200-8 (a)(1)], and Exemption Class No. 4, Minor alteration in the conditions of land, water, or vegetation."

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 for amended area;
- 2) Provide survey maps and descriptions of the amended area according to State DAGS standards and at Applicant's own cost;

REMARKS:

Gary Passon and Charlene Schulenburg (husband and wife), purchased the privately owned property further identified by tax map key number (2) 3-9-009:008, on September 28, 2010, from Richard and Janna Hoehn. Historically, Parcel 008 was landlocked and set far back from the main public roadway. To resolve access issues for parcel 008, the State of Hawaii granted a perpetual, non-exclusive access and utility easement through a portion of the adjacent State property identified as TMK: (2) 3-9-009:013.

After purchasing the property from Hoehn in 2010, Passon and Schulenburg had the easement area surveyed. During the survey it was discovered that a few improvements, which include a portion of rock wall and planter, were built outside of the designated easement area. These encroachments into parcel 013 encumber a total area of 157 square feet. Passon and Schulenburg are requesting to amend LOD 28,499 to cover the improvements that encroach into parcel 013. Furthermore, the previous tenant, Hoehn, installed a security gate on the non-exclusive access easement. It is noted that the area covered by LOD 28,499 is subject to unrestricted access by the Grantor and its agents. The Maui District Land Office will work with the new tenants to resolve this unauthorized improvement by having the gate removed at no expense to the State.

Staff has received concurrence from the County of Maui, Department of Public Works for the additional portion of land encumbered by the rock wall / planter within Executive Order No. 0177's area. Comments were also solicited from the following agencies.

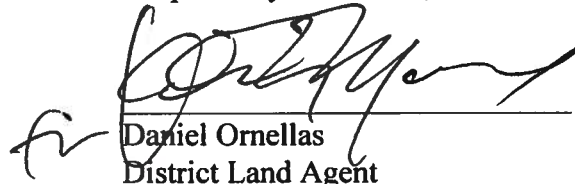
Agency	Comments
County of Maui – Planning Dept.	No objections
Office of Hawaiian Affairs	No response received
Historic Preservations	No response received

The requested use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such, staff believes that the proposed use would involve negligible or no change in use of the subject area beyond that previously existing. 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.

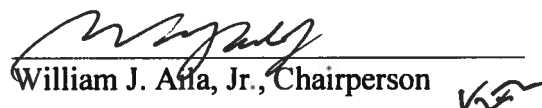
RECOMMENDATION: That the Board:

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) 3-9-009:008, 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 amendment of LOD 28,499 to Gary L. Passon and Charlene Y. Schulenburg 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 amendment of easement document 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.

Respectfully Submitted,

  
Daniel Ornellas  
District Land Agent

APPROVED FOR SUBMITTAL:

  
William J. Afla, Jr., Chairperson



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

August 8, 2014



**EXEMPTION NOTIFICATION**

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

Project Title:	Amendment of Perpetual, Non-Exclusive Easement, Land Office Deed No. S-28,499, for Access and Utility Purposes, Waiohuli, Maui, Tax Map Key: (2) 3-9-009: 013 por. The Purpose of the Amendment is to Increase the Area of the Easement to Cover Existing Encroachments.
Project / Reference No.:	PSF No. 11MD-118
Project Location:	Waiohuli, Kihei, Wailuku, Maui, Tax Map Key: (2) 3-9-009: Por. of 013.
Project Description:	Amendment of perpetual, non-exclusive easement, for access and utility purposes.
Chap. 343 Trigger(s):	Use of State Lands
Exemption Class No. and Description:	In accordance with the Department of Land and Natural Resources Department-wide Exemption List, approved by the Environmental Council and dated December 4, 1991, 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 [HAR 11-200-8 (a)(1)], and Exemption Class No. 4, Minor alteration in the conditions of land, water, or vegetation."

Recommendation:

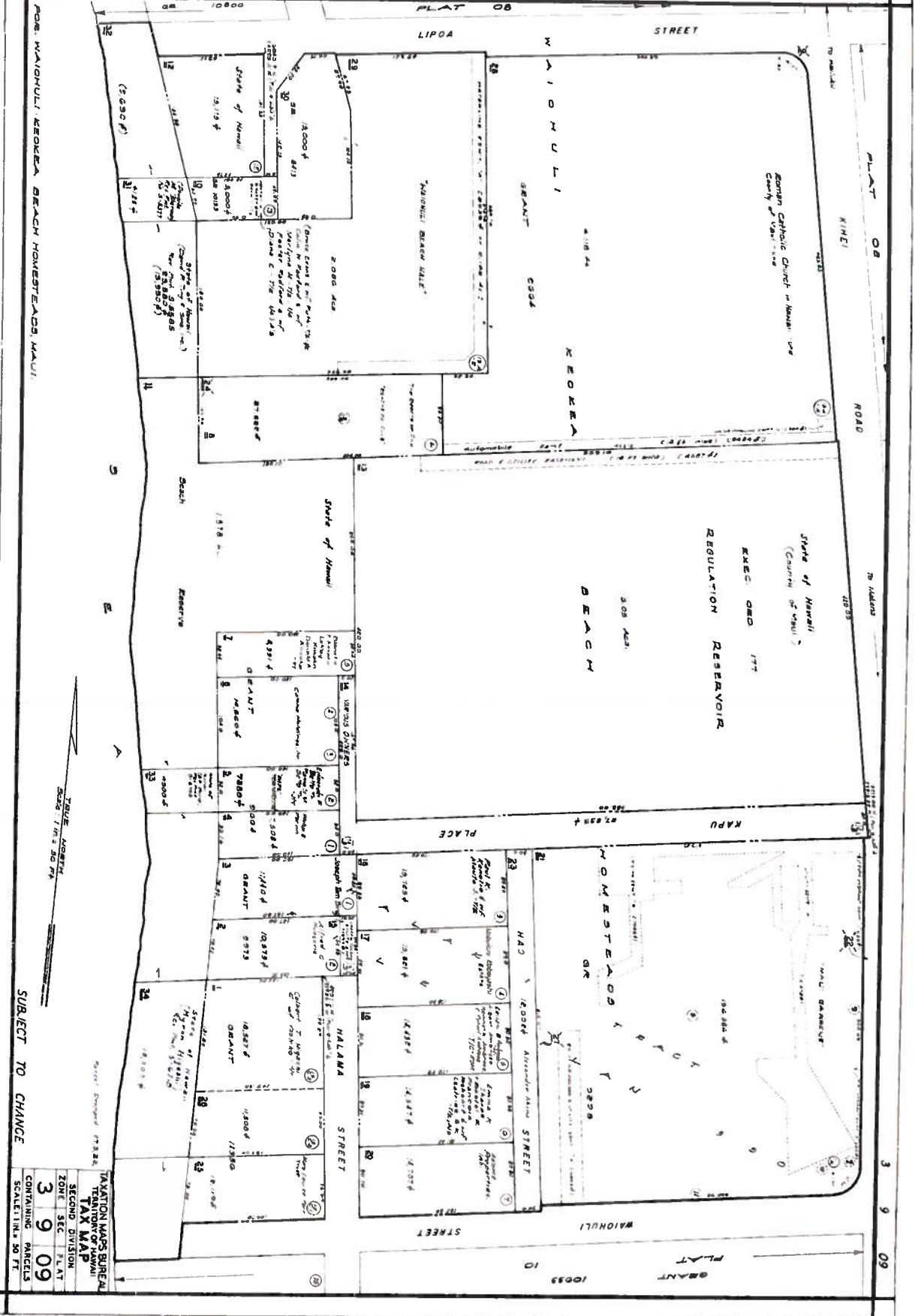
It is anticipated this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

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

  
\_\_\_\_\_  
Date

Orig No : 5180  
 Source : Taxation Maps Bureau  
 By : J.HILL & S.L. Date : November, 1926

POS. WAIHOLI, KEOKEA BEACH HOMESTEADS MAUI

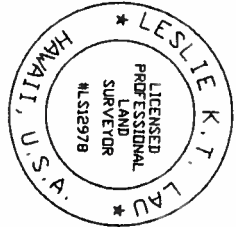


TAXATION MAPS BUREAU			
TERRITORY OF HAWAII			
TAX MAP			
SECOND DIVISION	ZONE SEC	PLAT	FLAT
3	9	09	09
CONTAINING PARCELS			
SCALING 20 FT			

Prepared For:  
Gary Passon  
Kihei, HI. 96753

Date: 6 MAR 2011

This map was prepared by me or  
under my direct supervision.



Leslie K.T. Lou  
Licensed Professional Land Surveyor  
State of Hawaii Certificate Number LS12978  
License Expiration Date: April 30, 2012

NOTES:  
1. This map is based on an actual field  
survey performed on 31 JAN 2011.

JOB NO.: J11-2 PASSON

TMK: (2) 3-9-09:008

149 IPUKULA WAY  
LAHAINA, HI. 96761

LAHAINA SURVEYING COMPANY

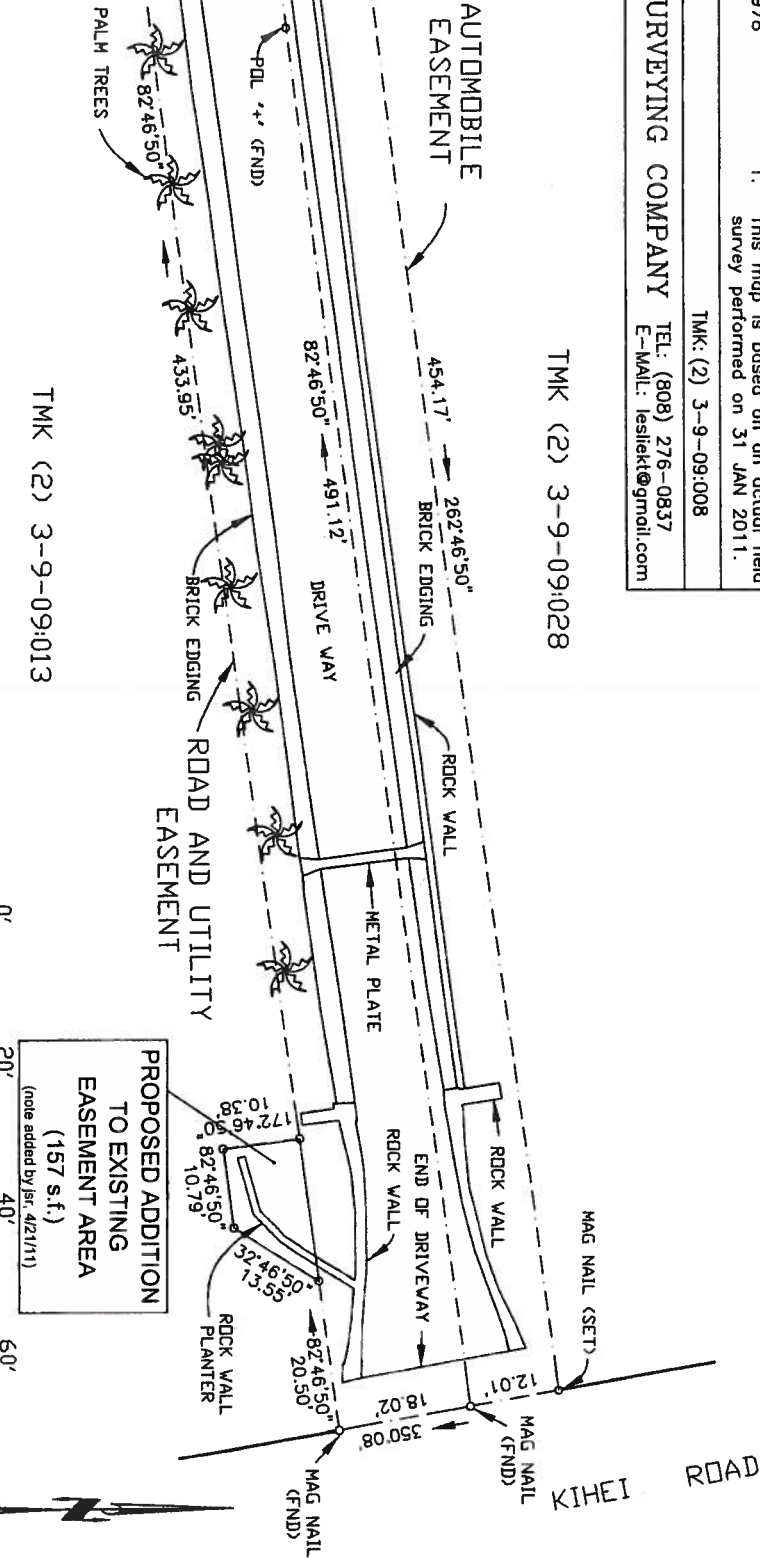
TEL: (808) 276-0837  
E-MAIL: lesliakt@gmail.com

TMK (2) 3-9-09:028

# EASEMENT MAP FOR THE PASSON RESIDENCE KIHEI, KULA, MAUI, HAWAII

EXHIBIT "B"

MATCH LINE



TMK (2) 3-9-09:013



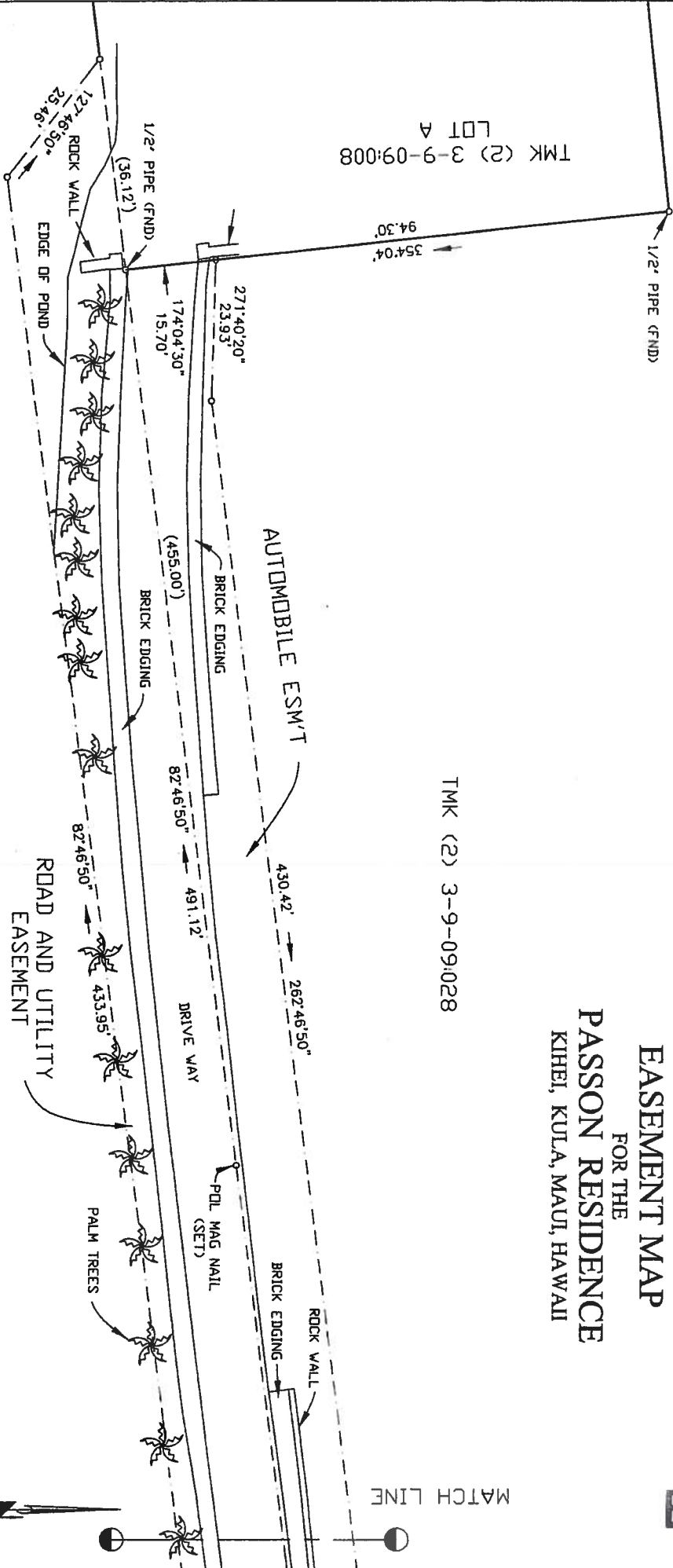
SCALE: 1 INCH= 20 FEET



EASEMENT MAP  
FOR THE  
PASSON RESIDENCE  
KIHEI, KULA, MAUI, HAWAII

TMK (2) 3-9-09:028

TMK (2) 3-9-09:008  
LOT A



TMK (2) 3-9-09:013



SCALE: 1 INCH = 20 FEET

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



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



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

54 High Street, Room 101  
Wailuku, Hawaii 96793  
PHONE: (808) 984-8103  
FAX: (808) 984-8111

August 24, 2012

2012 NOV -7 PM 2: 19  
RECEIVED  
MAUI DISTRICT  
LAND DIVISION

Ref. No.: 11MD-118  
Author: LD- DO/lp

Mr. David Goode, Director  
County of Maui, Department of Public Works  
200 South High Street  
Kalana O Maui Bldg, 4<sup>th</sup> Floor  
Wailuku, Hawaii 96793

Dear Mr. Goode:

Subject: Consent to Amend Perpetual, Non-Exclusive Access and Utility Easement No. LOD S-28499 Benefitting Tax Map Key: (2) 3-9-009:008 Over a Portion of State Land Encumbered by Governor's Executive Order No. 0177 to the County of Maui, Department of Public Works, for Drainage System Purposes at Waiohuli, Kihei, Wailuku, Maui, Tax Map Key: (2) 3-9-009:Por. 013

The Maui District Land Office has received a request from new property owners, Gary Passon and Charlene Schulenburg (husband and wife) also identified as Tax Map Key: (2) 3-9-009:008. The Passon/ Schulenburg's wish to amend and assign the Grant of Easement LOD S-28499 at Tax Map Key: (2) 3-9-009:Por. 013 which benefits their recently acquired property.

The amendment of this easement is necessitated due to a section of the rock wall/ planter extending 157 square feet beyond a previously existing easement area onto the State property at parcel 013. Parcel 013 is also under Governor's Executive Order No. 0177 to the County of Maui, Department of Public Works for drainage system purposes. Therefore, as a part of the process for accommodating the Passon/Schulenburg request, we are seeking written consent from your office to encumber the additional 157 square feet currently under executive order before taking this matter before the Board of Land and Natural Resources. Attached is a draft board submittal providing additional detailed information.

Should you have no objections to the above-mentioned request, please sign in the space provided below and submit your signed concurrence to the Maui District Land Office for consideration by the State Board of Land and Natural Resources. If you have additional questions, please contact me at (808) 984-8103.

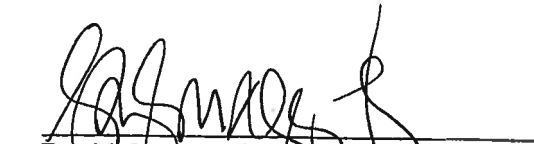
EXHIBIT "D"

Sincerely,



Daniel Ornellas  
District Land Agent

Concur:

  
David Goode, Director  
County of Maui, Dept. of Public Works

11/1/12

Date

Enclosure

cc: Central Files  
District File