

State of Hawai'i  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife  
Honolulu, Hawai'i 96813

February 27, 2015

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawai'i  
Honolulu, Hawai'i

Land Board Members:

**SUBJECT: REQUEST AUTHORIZATION FOR THE CHAIRPERSON TO NEGOTIATE, SIGN, EXECUTE, AND AMEND A MEMORANDUM OF AGREEMENT WITH THE EDMUND C. OLSON TRUST NO. 2 FOR THE ESTABLISHMENT OF A PUBLIC ACCESS ROUTE TO THE KA'Ū FOREST RESERVE, KA'Ū, HAWAI'I, TMK: (3) 9-5-015:001**

**AND**

**REQUEST APPROVAL OF DECLARATION OF EXEMPTION FROM CHAPTER 343, HAWAI'I REVISED STATUTES, ENVIRONMENTAL COMPLIANCE REQUIREMENTS FOR THE SUBJECT MEMORANDUM OF AGREEMENT**

**SUMMARY:**

The Division of Forestry and Wildlife (DOFAW) requests that the Board of Land and Natural Resources (BLNR) authorize the Chairperson to negotiate, sign, execute, and amend a Memorandum of Agreement (MOA) between the BLNR and the Edmund C. Olson Trust No. 2 (Olson) for the establishment of a public access route to the Ka'ū Forest Reserve (Draft MOA attached). Additionally, DOFAW requests that the BLNR approve a declaration that the establishment of the public access route, as proposed within the MOA, is exempt from the requirement of Chapter 343, Hawai'i Revised Statutes (HRS) to prepare an environmental assessment.

**BACKGROUND:**

The subject MOA addresses management objectives identified in the Ka'ū Forest Reserve (Reserve) Management Plan developed by DOFAW and approved by the BLNR on September 28, 2012. The 60,000 acre Reserve is one of the largest areas of intact native forest and wildlife habitat in the State. However, substantial portions of this public forest reserve are landlocked by

private ranch and agricultural lands. Management Plan objectives include providing for continued public use of the Reserve for hunting, recreation, cultural practices, personal gathering, and educational programs and activities. Recommended actions include development of new access routes in cooperation with neighboring landowners and land operators to increase public access, particularly on existing roads and other alignments just within the Reserve boundary, and across private and State-leased lands below the Reserve.

DOFAW Access and Acquisitions staff have been working on the development of the subject access route for several years in conjunction with the development of the Reserve Management Plan. Unpaved ranch/plantation roads already exist on the access route through private property as well as on both state and private property along the forest edge. However, these roads are inaccessible due to privately locked gates. In several areas, old fences run between the road and the forest. Olson has requested that these existing fences be moved to the privately-owned ranch side of the road, and that the fencing in these areas be improved to alleviate the need for gates; allow easier public access to the forest; improve wildlife habitat by limiting domestic cattle incursion into the forest; and reduce public trespass, agricultural theft, and animal poaching on private property.

DOFAW received two grants for implementing access projects for the lower portions of Ka'ū Forest Reserve. A Voluntary Public Access Program grant from the U.S. Department of Agriculture included funding for private landowner incentives, educational outreach, and fencing materials, and a grant from the National Shooting Sports Foundation paid for cadastral surveys of the access alignment.

#### DISCUSSION:

Olson recognizes and desires to further the public interest in providing and facilitating public access to Ka'ū Forest Reserve. DLNR and Olson prepared a draft MOA (attached), with input from the Deputy Attorney General, for establishing an access route that will provide both public access and DOFAW management access to the lower boundary of the Reserve.

Pursuant to Chapter 198D, HRS, DLNR's Nā Ala Hele Program (NAH) is responsible for the management, maintenance, development, and regulation of trails and accesses in the State. The NAH mandate is to plan, develop, acquire land or rights for public use of land, construct, restore, and engage in coordination activities to implement the statewide trail and access program. DLNR, through its NAH, may enter into agreements with owners of public or private land to defend an owner from claims made by public users of the owner's land and to indemnify an owner for property losses incurred due to public use.

#### CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The MOA is an agreement between DLNR and Olson for public access and related operations, repair, and maintenance on an existing road across agriculturally zoned lands used for cattle ranching. The terms of the MOA require that DOFAW (1) install gates and fencing to contain vehicular traffic and animals along specific portions of the access road, and (2) place signage to direct and inform access route users about access requirements, applicable rules, and potential

environment and are exempt from the requirement to prepare an environmental assessment in accordance with Chapter 343, HRS, and Chapter 11-200-8, Hawaii Administrative Rules, under the following exemption classes (Exemption List for the Division of Forestry and Wildlife of the Department of Land and Natural Resources, Reviewed and Concurred Upon by the Environmental Council on June 12, 2008):

Exemption Class #1: 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.

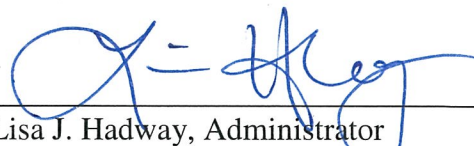
Exemption Class #3: Construction and location of single, new, small facilities or structures and the alteration and modification of same and installation of new, small equipment and facilities and the alteration and modification of same [].

RECOMMENDATIONS:

That the Board:

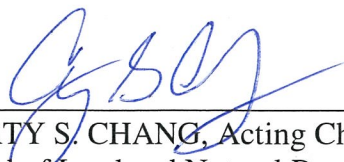
1. Authorize the Chairperson to negotiate, sign, execute, and amend a Memorandum of Agreement between the Board of Land and Natural Resources and the Edmund C. Olson Trust No. 2 for the establishment of a public access route to the Ka'ū Forest Reserve, pursuant to the terms in Exhibit A and subject to approval by the Attorney General.
2. Approve a declaration of exemption from the requirement of Chapter 343, Hawai'i Revised Statutes to prepare an environmental assessment for the actions proposed in this Memorandum of Agreement.

Respectfully submitted,



Lisa J. Hadway, Administrator  
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:

  
CARTY S. CHANG, Acting Chairperson  
Board of Land and Natural Resources

**Attachments:**

1. **Draft Memorandum of Agreement**

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail ( ) Pickup ( ) To:

Total Number of Pages: 8

**MEMORANDUM OF AGREEMENT  
BETWEEN  
EDMUND C. OLSON TRUST NO. 2  
AND THE  
STATE OF HAWAI'I  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF FORESTRY AND WILDLIFE  
NĀ ALA HELE TRAILS AND ACCESS PROGRAM  
FOR THE ESTABLISHMENT OF A PUBLIC ACCESS ROUTE  
TO THE KA'Ū FOREST RESERVE**

This Memorandum of Agreement ("MOA") made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the EDMUND C. OLSON TRUST NO. 2, created in 1985 and hereinafter referred to as "OLSON," and the State of Hawai'i by its Department of Land and Natural Resources (hereinafter referred to as "DLNR"), Division of Forestry and Wildlife, Nā Ala Hele Trails and Access Program (hereinafter referred to as "NAH").

**WITNESSETH:**

WHEREAS, pursuant to section 198D-2, Hawai'i Revised Statutes ("HRS"), NAH is charged with the responsibility of managing and regulating trails and accesses in the State and with the responsibility to plan, develop, acquire land or rights for public use of land, construct, restore, and engage in coordination activities to implement the statewide trail and access program; and

WHEREAS, public access to forest lands for recreational use is provided for in section 198D-2, HRS, through the NAH; and

WHEREAS, pursuant to section 183-1.5, HRS, DLNR is charged with the responsibility of managing and regulating all forest reserves; and

WHEREAS, the Ka'ū Forest Reserve is under the management and authority of DLNR and is of significant importance for watershed management, scientific research, public educational, recreational, and hunting activities; and

WHEREAS, DLNR desires to have vehicular management access and public vehicular access to Ka'ū Forest Reserve; and

WHEREAS, public access is of critical importance for public recreation and public hunting of feral ungulates, which is identified in the Ka'ū Forest Reserve Management Plan as a management goal; and

WHEREAS, OLSON is the owner of certain real property located in Ka'ū on the Island of Hawai'i, TMK No. 395015001, as shown on the map attached hereto as a part of Exhibit "A", which property is referred to as the "OLSON property"; and

WHEREAS, DLNR desires to develop, manage, and maintain a public access route to the Ka'ū Forest Reserve via the Access Road that is located on the OLSON property. The Access Road is described by metes and bounds and shown on the map as Easement 1, which description and map are attached hereto and made a part hereof as Exhibit "A"; and

WHEREAS, OLSON recognizes and desires to further the public interest in providing and facilitating public access to Ka'ū Forest Reserve, recognizing also the necessity of effective management, maintenance, and control of public access through or near private agricultural lands in cultivation for the public health, safety and welfare; and

WHEREAS, DLNR, through its Na Ala Hele Trails and Access Program, may enter into agreements to defend and indemnify owners of private lands to establish public accesses in the manner provided for in section 198D-7.5, HRS; and

WHEREAS, DLNR and OLSON have a mutual interest in management,

## June 2014 Draft (updated February 2015)

maintenance, and regulated control of the Access Road for both public and private use; and

WHEREAS, DLNR agrees to maintain and manage the Access Road for public use, to take enforcement action against illegal activities associated with public use of the Access Road to the extent authorized under this MOA and as allowed by law, and to take appropriate enforcement action against unpermitted use associated with public use of the Access Road; and

WHEREAS, DLNR shall conduct scheduled periodic inspections of the Access Road at DLNR's expense, but in coordination and cooperation with OLSON, to assess surface conditions, monitor public access, and address any environmental or enforcement issues;

NOW, THEREFORE, it is mutually agreed that both parties hereto shall adhere to the following duties and obligations:

### **DLNR shall:**

1. Develop and administer a management plan for public access along the Access Road. Administration shall include reasonable on-site monitoring to verify that access users are in compliance with the management plan. The management plan will describe allowable uses and applicable Hawai'i Administrative Rules and will include a map depicting the Access Road and describing the permitted course of vehicular travel, and will also include DLNR Division of Conservation and Resources Enforcement (DOCARE) contact information. DLNR shall immediately inform OLSON of any security concerns that DLNR becomes aware of and of DLNR's intended response. Entrants shall be expressly prohibited by DLNR from stopping (unless in an emergency), hunting, or hiking on any OLSON property, and use of OLSON property shall be limited to transiting the portions of the Access Road indicated on Exhibit "A" attached hereto.
2. Install and manage mutually approved gates and lock system as identified in the management plan. The gates and lock system will be changed by DLNR as needed. DLNR will be solely responsible for removal of mud, dust, and debris tracked onto the Access Road at or nearby the location of the gates, unless this debris is attributable to agricultural operations of the lessees, individuals, or agents of OLSON.
3. Design and install signage along the Access Road to direct and inform users of, as necessary, access requirements, applicable rules, and potential hazards.
4. Remove all trash and debris resulting from the public use of the Access Road.
5. Provide all needed development, improvements, and maintenance of fences,

## June 2014 Draft (updated February 2015)

roads, and other infrastructure along the Access Road to establish safe public access suitable for four-wheel drive vehicles.

6. Design and install, within one year of the consummated date of this Memorandum of Agreement, a fence to contain vehicular traffic along specific portions of the access road. The design of the fence shall be developed by DOFAW and other partners and shall be approved by OLSON. Additional gates necessary for OLSON operations, as reasonably determined by OLSON, shall be paid for and installed by DLNR.
7. Reimburse OLSON for an amount of up to \$10,000 per year for costs associated with mitigation of any crop theft, vandalism, illegal dumping, or removal of abandoned vehicles on or nearby the Access Road that is reasonably attributable to the permitted public's access to OLSON property by virtue of this Memorandum of Agreement. OLSON shall provide documentation of the cost associated with responding to these issues. Cost greater than \$10,000 per year shall be subject to appropriation.

### **OLSON shall:**

1. Allow the public to access the Ka'ū Forest Reserve 7 days per week. Access will be strictly for thoroughfare to access portions of the State owned Ka'ū Forest Reserve.
2. Advise DLNR within 48 hours whenever its management or personnel responsible for overseeing related OLSON lands are actually aware of unsafe conditions or hazards, as a result of being encountered or reported to OLSON by the public or OLSON representatives.
3. Have the ability to close the Access Roads with 48 hours written notice (or shorter, if due to exigent circumstances as reasonably determined by OLSON) for a specific period of time due to agricultural or other related uses that would conflict with or jeopardize public access.
4. Notify DLNR within 48 hours upon discovering any OLSON property damaged, stolen, or vandalized on the Access Road, including but not limited to signs and equipment. If the property damage merits reimbursement pursuant to the terms of this agreement, OLSON shall provide documentation relating to the actual cost of the loss incurred.
5. Allow passage of emergency vehicles and equipment necessary for wildfire suppression, search and rescue, or other management-related access. This includes the passage of State or County vehicles and/or equipment involved in active management of, or enforcement of rules within, the Ka'ū Forest Reserve.



## **June 2014 Draft (updated February 2015)**

6. Allow DLNR to place mutually approved signage on OLSON lands adjacent to the Access Road.
7. Allow DLNR to close access to the public along the Access Road upon DLNR assessment that the Access Road conditions are too hazardous or dangerous for continued public access or for any other reason as determined by DLNR.
8. Provide DLNR with a contact list of all lessees and other individuals and agents associated with OLSON operations that require habitual and frequent use of the Access Road, and insure that these lessees, individuals, and agents are aware of this MOA and the terms herein, and that these additional parties are not responsible for any theft, vandalism, or dumping on or nearby the Access Road caused by members of the public not associated with OLSON operations or by DLNR personnel, agents, or contractors.

### **DLNR and OLSON shall jointly:**

Collaborate, as necessary, on determining the potential improvements to and maintenance of the Access Road, fence, and other infrastructure to ensure the safety of the users, a standard suitable for public four-wheel drive vehicles, and OLSON's interest in preserving the agricultural uses of the property. Notwithstanding the foregoing collaboration, DLNR shall be ultimately responsible for implementing all measures necessary to ensure safety for the public's use of the Access Road as described herein.

### **INDEMNIFICATION**

DLNR shall fully defend and indemnify OLSON, its affiliates, and their respective heirs, executors, administrators, representatives, successors, trustees, guardians, assigns, lessees, officers, directors, stockholders, employees, agents, and partners against any losses, demands, claims, fines, penalties, expenses, damages and costs (including reasonable attorneys' fees) sustained by or made against OLSON, from or arising out of the public's use of the Access Road pursuant to this Memorandum of Agreement, to the extent allowed and provided by the law and Chapter 198D, Hawai'i Revised Statutes, as amended, and subject to the provisions of said chapter of the Hawai'i Revised Statutes. The provisions of this paragraph shall survive termination of this Memorandum of Agreement but shall be effective only for losses, demands, claims, fines, penalties, expenses, damages, and costs that arise during, or that are attributable to occurrences during, the period in which this Memorandum of Agreement is or was in effect.

**NONSUBSTANTIVE AMENDMENTS AND AMENDMENTS FOR MANAGEMENT EFFICIENCIES**

Nonsubstantive amendments or amendments for management efficiencies may be made by mutual agreement of the parties and be executed by a written supplement approved by the DLNR Chairperson and OLSON and attached hereto.

**TERM AND TERMINATION CLAUSES**

1. **Term.** The term of this Agreement shall be 20 years, subject to (a) early termination as provided herein, and (b) extension on terms and conditions as are mutually agreeable to the parties in their sole discretion.
  
2. **Termination.** This Agreement may be terminated prior to the expiration of the term then in effect by either party, for any reason, upon receipt of ninety (90) days written notification. OLSON desires to further the public interest in providing and facilitating public access to the Ka'ū Forest Reserve during the term, recognizing also the necessity of effective management, maintenance, and control of public access through or near private agricultural lands in cultivation for the public health, safety and welfare, and the potential for changes in circumstances; accordingly, it is OLSON's intent to exercise such early termination right only for just cause, including, without limitation, (a) vandalism or other unreasonable burdens on OLSON resulting from this Agreement which DLNR has failed to adequately cure or address, and (b) changes in circumstances which cause this Agreement to interfere with or adversely impact OLSON's operations or use of its property. The Department shall have the right, for a period of twelve (12) months upon termination of this Memorandum of Agreement, to remove fences, signs and other improvements established pursuant to this Memorandum of Agreement, except as may be necessary or advisable for health and safety reasons as determined by DLNR and OLSON, and thereafter, except for improvements not removed for health and safety reasons, all such fences, signs and improvements remaining on OLSON lands shall be deemed abandoned, and may be removed and disposed of by OLSON, in its discretion, the reasonable costs of which shall be borne by DLNR and reimbursed on demand.
  
3. IN WITNESS WHEREOF, OLSON, and the State of Hawai'i, Department of Land and Natural Resources have executed this Memorandum of Agreement as of the date first above written.

**June 2014 Draft (updated February 2015)**

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON:

\_\_\_\_\_

EDMUND C. OLSON TRUST NO. 2

By \_\_\_\_\_

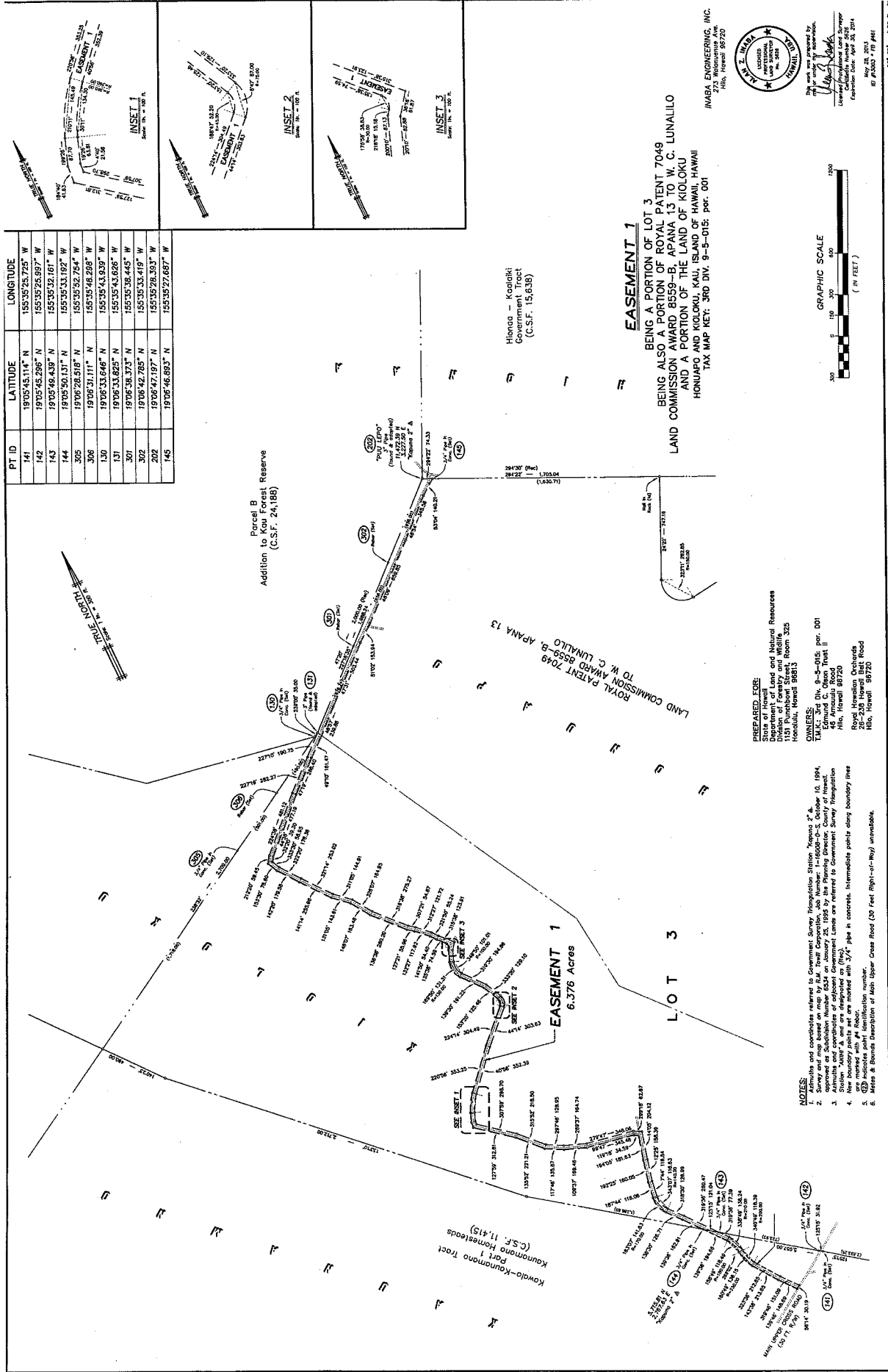
Title Trustee \_\_\_\_\_

STATE OF HAWAI'I,  
DEPARTMENT OF LAND AND NATURAL  
RESOURCES

By \_\_\_\_\_  
Chairperson

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General



**EASEMENT 1**  
 BEING A PORTION OF LOT 3  
 BEING ALSO A PORTION OF ROYAL PATENT 7049  
 LAND COMMISSION AWARD 8559-B, APANA 13 TO W. C. LUNALLO  
 AND A PORTION OF THE LAND OF KIOLOOKU  
 HONUAPO AND KIOLOOKU, KAUAI, ISLAND OF HAWAII, HAWAII  
 TAX MAP KEY: 3RD DIV. 9-5-015; PAR. 001

IMAGA ENGINEERING, INC.  
 1001 KALANANAKU AVE., SUITE 200  
 HONOLULU, HAWAII 96820

Prepared by: [Signature]  
 Checked by: [Signature]  
 Licensed Professional Land Surveyor  
 Registration No. 1000  
 Expiration Date: April 30, 2014  
 May 23, 2013  
 87-10003 - 178-1811

**PREPARED FOR:**  
 Department of Land and Natural Resources  
 Division of Forestry and Wildlife  
 1001 KALANANAKU AVE., ROOM 305  
 HONOLULU, HAWAII 96813

**OWNERS:**  
 T.M.K. 3rd Div. 9-5-015; par. 001  
 Edmund C. Wilson, Trust II  
 Honolulu, Hawaii 96820  
 Royal Hawaiian Orchards  
 25-235 Hualalai Rd.  
 Hilo, Hawaii 98720

- NOTES:**
1. This map and coordinates referred to Government Survey Memorandum Station "Kamae", T.A. approved as Substation Number 6331 on January 25, 1955 by the Planning Director, County of Hawaii.
  2. Survey and map based on map by E.M. Iwani Corporation, Job Number 1-1600-0-3, October 10, 1994.
  3. Station "A" and "B" are shown on this map. Station "A" and "B" are shown on this map.
  4. New boundary points are marked with 3/4" pipe in concrete. Intermediate points along boundary lines are marked with 1/4" pipe in concrete.
  5. 100' indicates point identification number.
  6. Metes & Bounds Description of Lots Upper Cross Road (20 Feet Right-of-Way) unadopted.

