

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

October 9, 2015

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

PSF No: 07HD-177

HAWAII

RESUBMITTAL: Amend Prior Board Action of April 25, 2008, Item D-8, Grant of Easement to Benjamin Konshak, Claude L. Harris, Jr., and Greeley West Corporation for Access Purposes, Kaiaakea, North Hilo, Hawaii, Tax Map Key: (3) 3-4-003: Portion of 011.

Purpose of the amendment is to change the grantee from Konshak, Harris & Greeley West Corp, to the Maulua Homesteads Owners' Association, and to include an immediate right-of-entry to the Maulua Homesteads Owner's Association.

BACKGROUND:

At its meeting of April 25, 2008, under item D-8, the Board of Land and Natural Resources approved grant of term, non-exclusive easement to Benjamin Konshak, Claude L. Harris, Jr., and Greeley West Corporation for access purposes. (Exhibit A) The easement document was not finalized pending receipt of grantees' tax clearances. To date, a survey and appraisal was prepared and a consideration of \$7,300 was paid.

Over the years, various landowners in the Maulua Homesteads area have utilized the subject cane haul road as an access to the mauka homestead roads to then access their respective private properties. The cane haul road was originally built and maintained by the Laupahoehoe Sugar Company, which was previously under General Lease No. S-3616. The Sugar Company closed down and the lease was cancelled on January 12, 2010, with the Maulua landowners continuing to utilize the former cane haul roads. Now as a community association, the landowners are seeking to legalize their use of the former cane haul road as an easement over the State parcel identified as TMK: (3) 3-4-003:011, to provide an access from the Hawaii Belt Road to the mauka homestead roads.

REMARKS:

In an attempt to complete the processing of the easement, a survey and appraisal was prepared for the subject easement. The easement was valued at \$7,300.00, which was paid by Konshak, Harris and Greeley West Corporation. The easement document has not yet been finalized pending receipt of grantees' tax clearances.

By letter dated June 18, 2015, Mr. David Real, President of the Maulua Homesteads Owners' Association, explained that the community association was formed in hopes of acquiring the easement. The three original grantees were contacted and it was agreed by all parties involved, to amend the prior Board action of April 25, 2008, to substitute the Maulua Homesteads Owners' Association in place of the previously approved three grantees. In so doing, it would allow most, if not all of the adjacent mauka landowners in the Maulua area to legally utilize the existing roadway that traverses the State property. The Maulua Homestead Owners' Association is an unincorporated association and is registered with the Department of Commerce and Consumer Affairs as a trade name only. Presently, there are a total of fourteen (14) properties listed under the Maulua Homesteads Owners' Association, but more are expected to enroll as other landowners learn of the arrangement. Attached is Exhibit B which lists the names of the landowners currently enrolled with the community association, along with a listing of their respective properties.

The existing roadway on the ground will be within the proposed easement alignment, which has been verified by a certified survey. The easement will not run with the land as the proposed easement does not abut any of the adjacent private property boundaries. The easement basically serves as a shorter, more direct route from the Hawaii Belt Road (Highway 19) to the mauka homestead roads, which in turn leads to the various private properties. Adjacent landowners needing authorization to legally utilize the easement need only register as an active member of the Maulua Homesteads Owners' Association and to share in the maintenance and insurance costs.

The Maulua Homesteads Owners' Association 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.

Various government agencies and interest groups were solicited for comments and no one had objections to the request.

The County of Hawaii, Department of Public Works stated they have no records of maintaining the identified "old government road."

The Office of Hawaiian Affairs mentioned that the subject parcel is Section 5(b) Ceded Lands, and they would have concerns if the term of the easement were too long, which would limit the State's future use if the parcel needs should change. Staff notified OHA that the term shall be no more than 55-years.

Staff is recommending that an easement be issued to the Maulua Homesteads Owners' Association, instead of issuing separate easements to the various landowners in the area. The easement is non-exclusive; therefore no gates shall be erected by the Grantee to restrict public accesses. The easement shall not be assigned or subleased without first obtaining Land Board approval. Notwithstanding the foregoing, the Maulua Homesteads Owners' Association membership list may be revised periodically to update the list of authorized landowners/users of the easement, and any change in the composition of the association shall not be deemed an assignment or sublease under the easement.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of April 25, 2008, agenda item D-8, by:
 - A. Changing the grantee(s) from Benjamin Konshak, Greeley West, and Claude L. Harris to the Maulua Homesteads Owners' Association.
 - B. Deleting the recommendations of the April 25, 2008 submittal and inserting the following:
 - “ 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. Subject to the Applicant fulfilling all of the Applicant requirements listed above, issue a term, non-exclusive easement to the Maulua Homesteads Owners' Association covering the subject area for access 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 term easement document form as may be amended from time to time:
 - 1) Additional landowners may be added as authorized grantees upon enrollment as active participating members of the Maulua Homesteads Owners' Association;

- 2) That there will be no land altering activity without prior review by the State Historic Preservation Division;
 - 3) No gates or barriers shall be erected over the easement to restrict public access;
 - 4) The easement shall not be assigned or subleased without prior written approval from the Board of Land and Natural Resources, provided, however, that the Maulua Homesteads Owners' Association membership list may be revised periodically to update the list of authorized landowners/users of the easement, and any change in the composition of the association shall not be deemed as assignment or sublease under the easement;
 - 5) That the easement be contained entirely within the existing roadway edges, prohibiting parking outside the easement area to prevent encroachments into adjacent State property, or damage to unrecorded historical/archaeological sites.”
- C. Grant an immediate right-of-entry to the Maulua Homesteads Owners' Association, under the terms and conditions cited above, which are by this reference incorporated herein and subject to the following:
- 1) The standard terms and conditions of the most current right-of-entry form as may be amended from time to time;
 - 2) This right-of-entry is effective upon Land Board approval and shall continue until the grant of easement document is issued;
 - 3) The Maulua Homesteads Owners' Association shall provide evidence of liability insurance acceptable to Land Division prior to the execution of the Right-of-Entry Permit;
 - 4) The Department of Land and Natural Resources reserves the right to impose additional terms and conditions at any time if it deems necessary while this right-of-entry is in force.
- D. Review and approval by the Department of the Attorney General; and

- E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

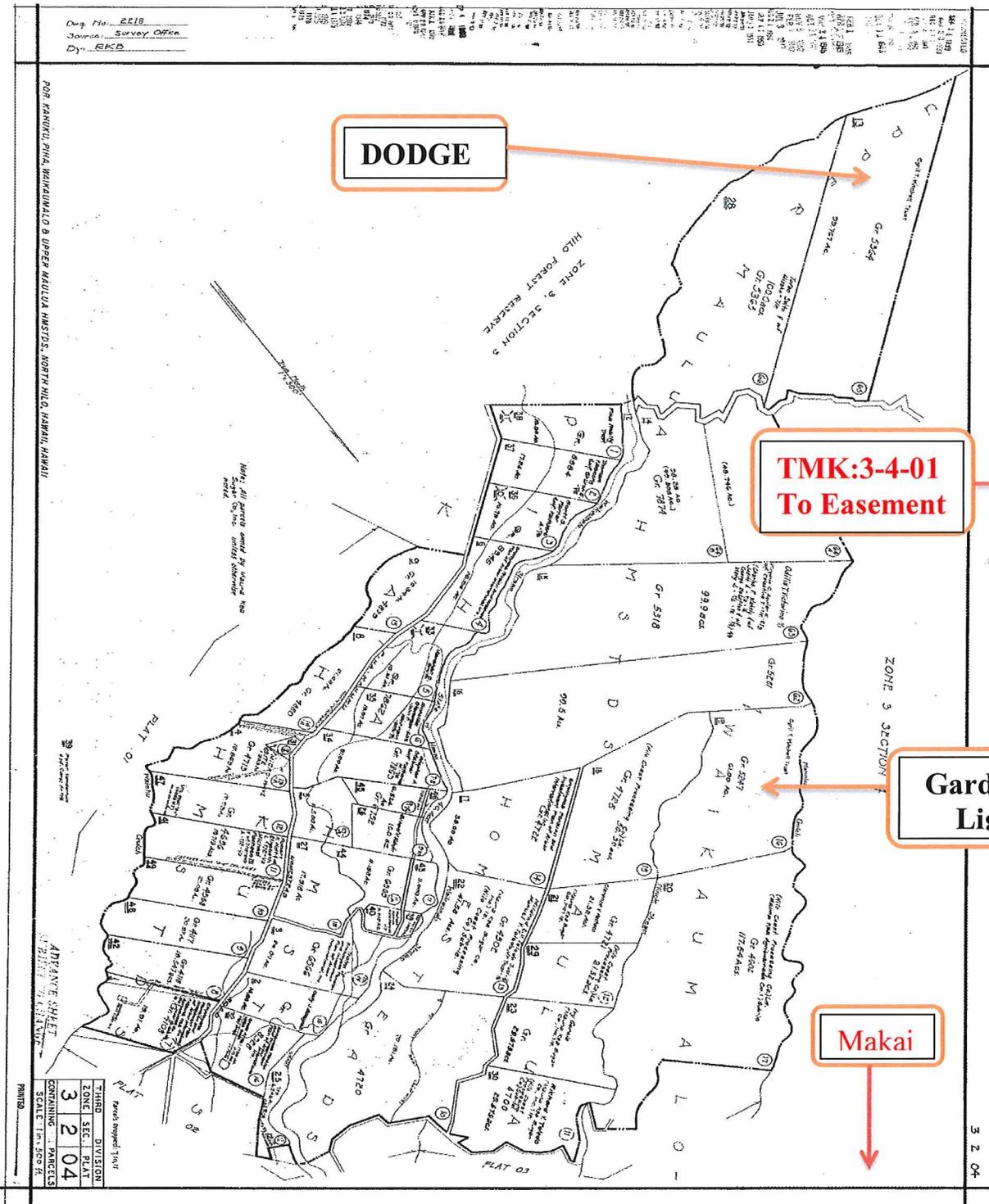
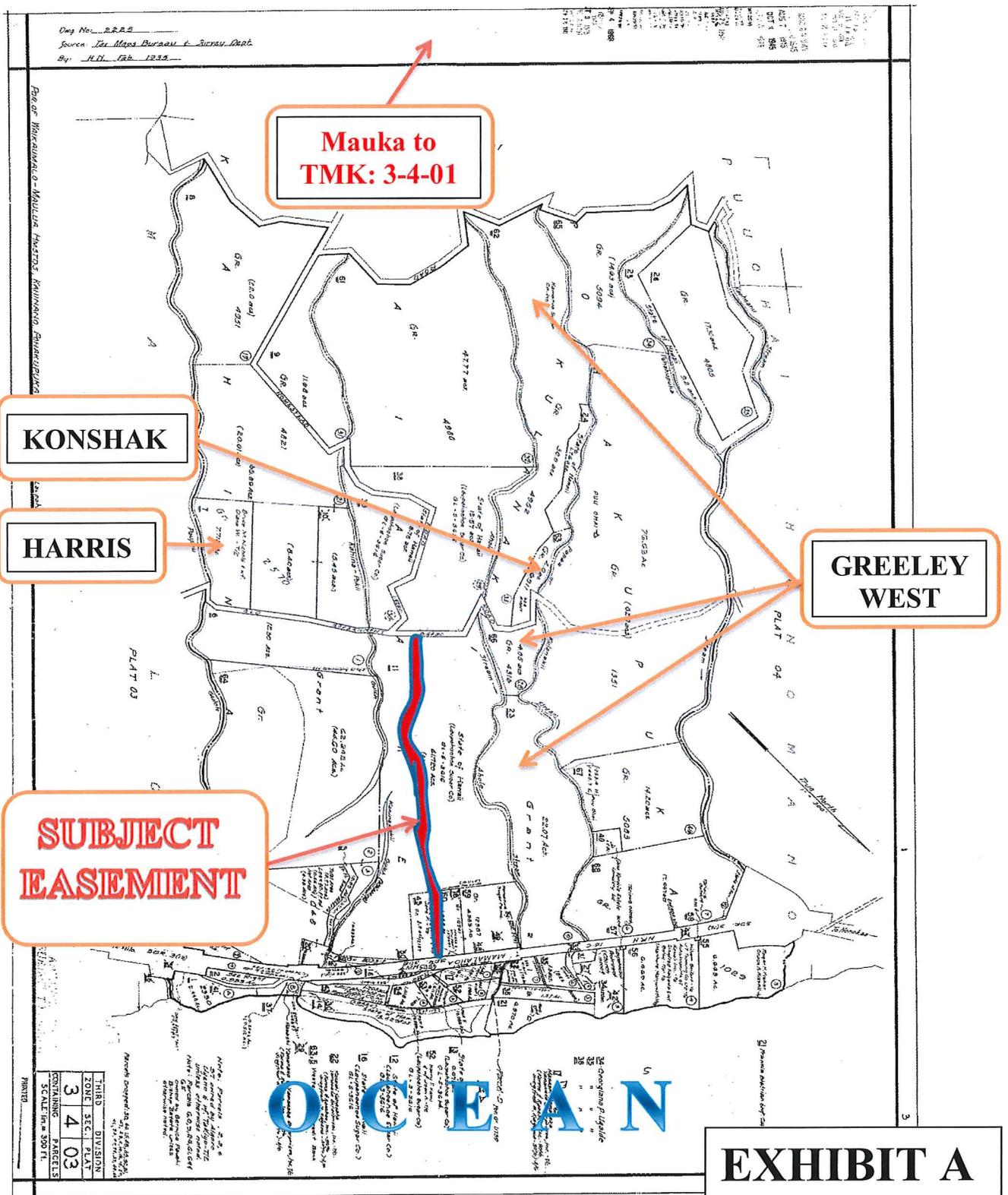


EXHIBIT A



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

April 25, 2008

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

PSF No.:07HD-177

Hawaii

Grant of Term, Non-Exclusive Easement to Benjamin Konshak, Claude L. Harris, Jr.
and Greeley West Corporation for Access Purposes, Kaiaaakea, North Hilo, Hawaii,
Tax Map Key:3rd/3-4-03:11

APPLICANT:

Benjamin Konshak, individual, as Tenant in Severalty, whose business and mailing address
is Kamuela, Hawaii 96743 & Claude L. Harris, Jr., individual, as Tenant in
Severalty, whose business and mailing address is Keaau, Hawaii 96749
and Greeley West Corporation, a New York corporation whose business and mailing
address is 132 West 31st Street, 18th floor, New York, N.Y. 1001.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Kaiaaakea, North Hilo, Hawaii identified by Tax Map
Key: 3rd/3-4-03:11, as shown on the attached map labeled Exhibit A.

AREA:

2.5 acres, more or less.

ZONING:

State Land Use District: Agriculture
County of Hawaii CZO: 5-acre agriculture

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES

CURRENT USE STATUS:

Vacant and unencumbered.

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

April 25, 2008

EXHIBIT A

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 purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years.

ANNUAL RENT:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

RENTAL REOPENINGS:

Not applicable.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, 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 of use beyond that previously existing."

DCCA VERIFICATION:

Not applicable. The Applicants as landowners are not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicants shall be required to:

- 1) Pay for an appraisal to determine initial one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;

REMARKS:

The subject State property identified as Tax Map Key: 3rd/3-4-03:11 is former sugar cane lands. An access road from the Mamalahoa Highway to the upper cane fields was built and

maintained by the Laupahoehoe Sugar Company under General Lease No. S-3616. This access road connected the highway to the "Old Government Road." The County of Hawaii Public Works Department indicated that they have no record of maintenance on this road. This would lead staff to believe the plantations maintained the Old Government Road. It is currently disconnected at the Poupou and Kulanakii Gulches (no existing bridges) and therefore can only be accessed via the cane haul road.

All applicants' own property adjacent to the Old Government Road and wish to utilize the cane haul road to access their respective properties (Exhibit B). Although the Old Government Road appears on the Tax Maps, it is unidentifiable and is therefore considered a "paper road". Mr. Konshak is owner of property identified by Tax Map Key 3rd/3-4-03:63 and is situated at the northwest end of the Old Government Road. Mr. Harris is the owner of property identified by Tax Map Key 3rd/3-4-03:07 and is situated at the southeast end of the Old Government Road. The Greeley West Corporation owns 2 parcels identified by Tax Map Key 3rd/3-4-03:62,63 and are situated on the northwest end of the Old Government Road.

The Applicants have 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.

Various governmental agencies were solicited for comments with results listed below.

County of Hawaii Agencies	Comments
Environmental Management	No Comments
Fire Department	No Comments
Planning	No Objections
Police Department	No Objections
Public Works	Comments Below
Water Department	No Objections
State of Hawaii Agencies	Comments
DOH-Environmental Management	No Response
DHHL	No Response
DLNR-Historic Preservation	No Response
DOT-Highways Division	No Comments
DLNR- Water Resource Management	No Comments
DLNR- Forestry and Wildlife	No Response
Other Agencies	Comments
Office of Hawaiian Affairs	Comments Below

The County of Hawaii, Department of Public Works stated they have no record of maintaining the identified "old government road" and that it may belong to their roads in limbo inventory.

The Office of Hawaiian Affairs requests information regarding the length of the term for the easement being requested by the applicant. OHA would like to point out that the subject parcel is Section 5 (b) Ceded Lands, and they would have concerns if the term of the easement were too long and that it would limit the State's future use if the subject parcel should the needs change. Staff responded to OHA concerns and pointed out the easement has a term limit of fifty-five (55) years

RECOMMENDATION: That the Board:

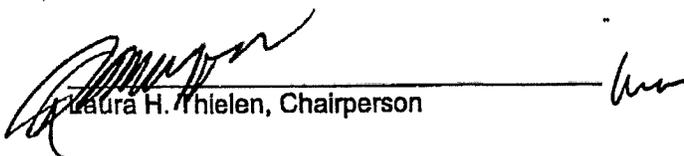
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the applicants parcel described as Tax Map Key: 3rd/3-4-03:07,62, 63 & 66 provided the succeeding owners have 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 Applicants fulfilling all of the Applicants requirements listed above, authorize the issuance of a term non-exclusive easement to Benjamin Konshak, Claude L. Harris, Jr. and Greeley West Corporation covering the subject area for access 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 term easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: 3rd/3-4-03:07,62, 63 & 66, provided however:(1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
 - 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,



with Gordon C. Heit
Land Agent

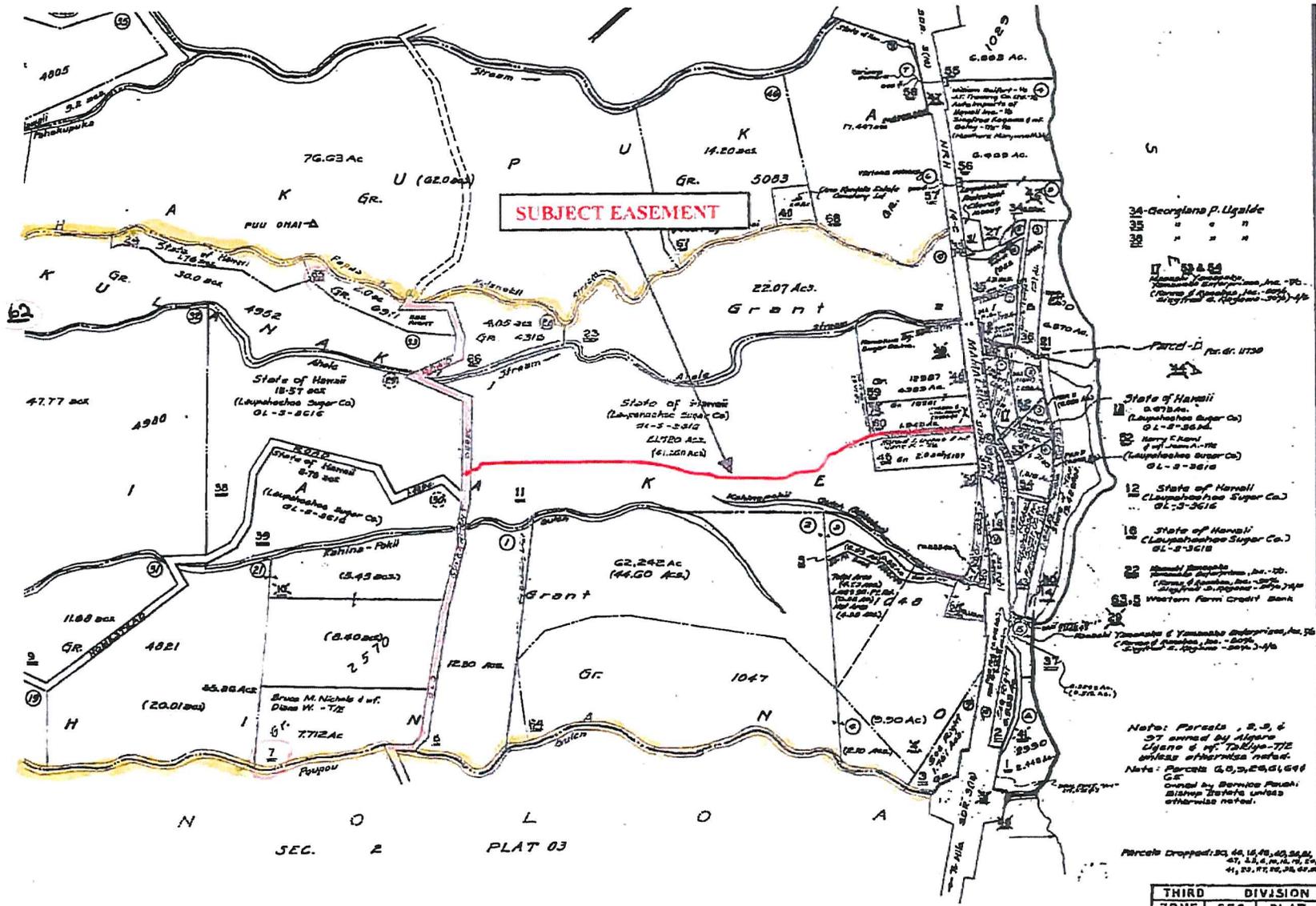
APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

TMK: 3RD/3-4-03:11

EXHIBIT A



SUBJECT EASEMENT

- 34 Georgiana P. Uigilde
- 11 8344 Hawaiian Company, Honolulu Corporation, Inc. - 90 (Trust of Honolulu, Inc. - 90) (Trust of Honolulu - 90) - 46
- Parcel - D per dr. 1730
- State of Hawaii (Leimihoua Sugar Co) 01-2-3616
- 11 8478a State of Hawaii (Leimihoua Sugar Co) 01-2-3616
- 12 State of Hawaii (Leimihoua Sugar Co) 01-2-3616
- 16 State of Hawaii (Leimihoua Sugar Co) 01-2-3616
- 22 Hawaii Corporation, Inc. - 10 (Trust of Honolulu, Inc. - 90) (Trust of Honolulu - 90) - 46
- 23.5 Western Farm Credit Bank
- Honolulu Telephone & Telegraph Enterprises, Inc. 56 (Trust of Honolulu, Inc. - 90) (Trust of Honolulu - 90) - 46

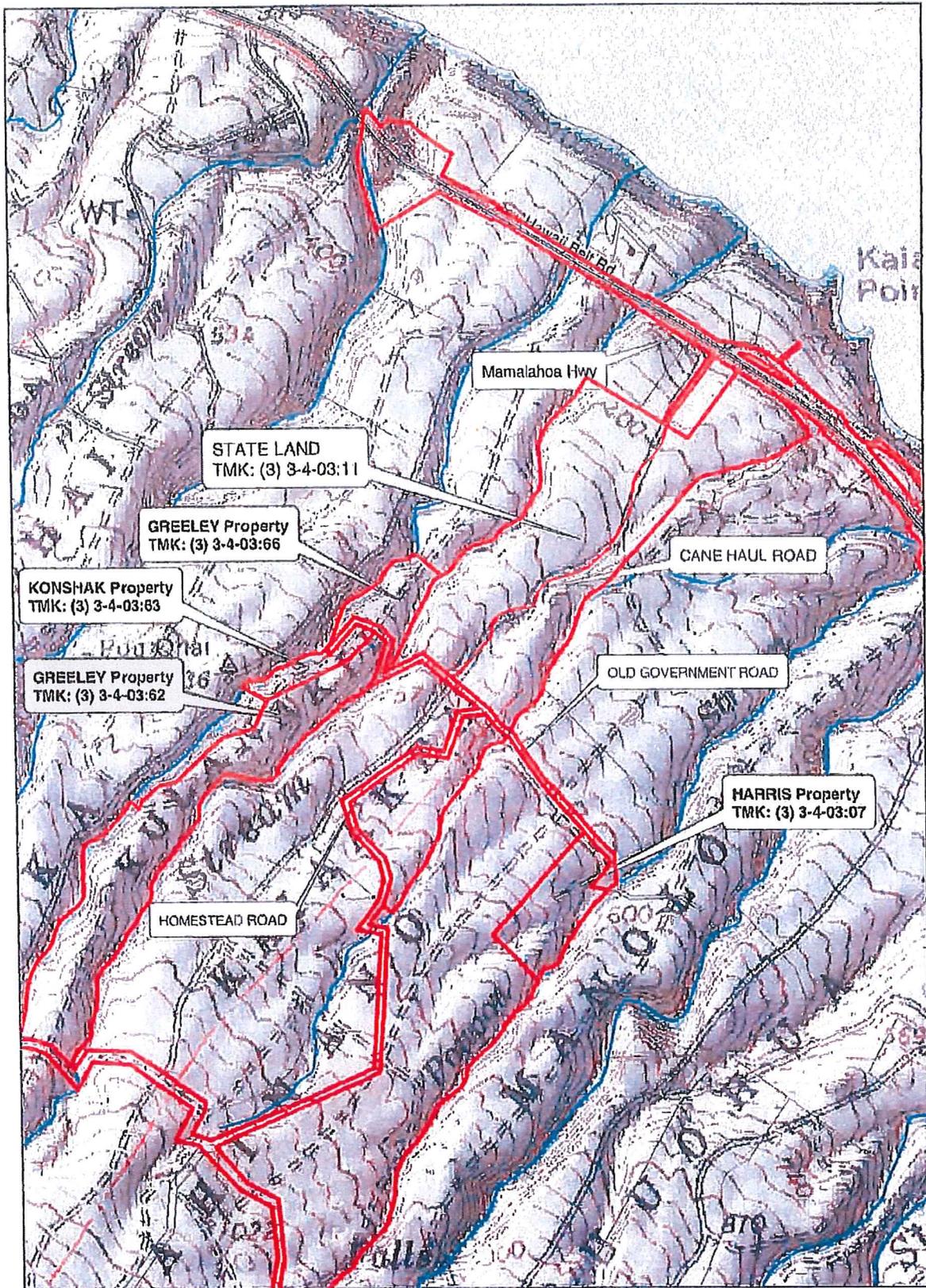
Note: Parcels 2, 3, & 37 owned by Uigilde Uigilde & Uigilde-712 unless otherwise noted.
 Note: Parcels 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100 owned by Service Parish; Bishop District unless otherwise noted.

Parcels Dropped: 33, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

SEC. 2 PLAT 03

THIRD DIVISION	
ZONE	SEC. PLAT
3	4 03
CONTAINING PARCELS:	
SCALE: 1" = 300 FT	

KAIAAKEA, NORTH HILO



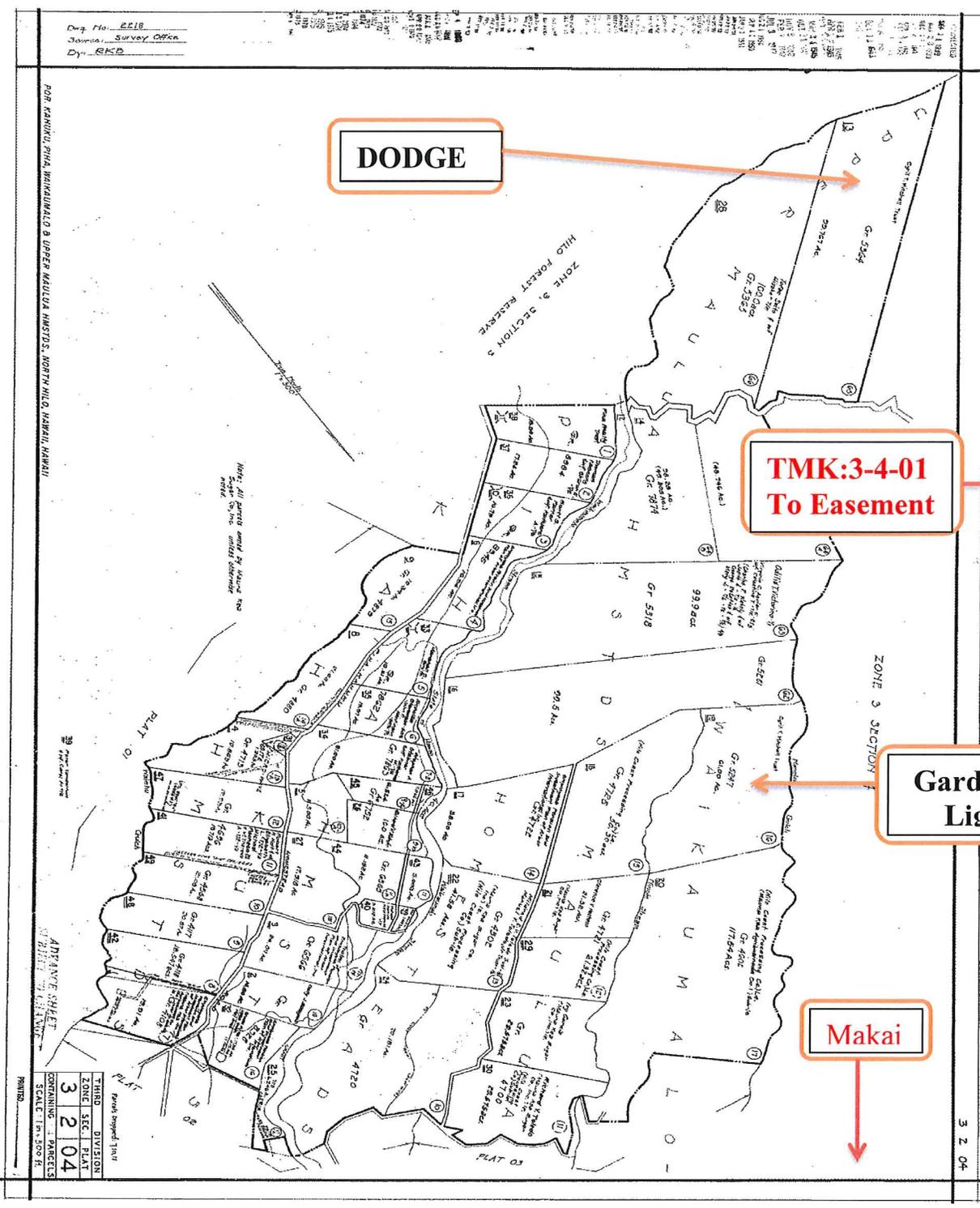
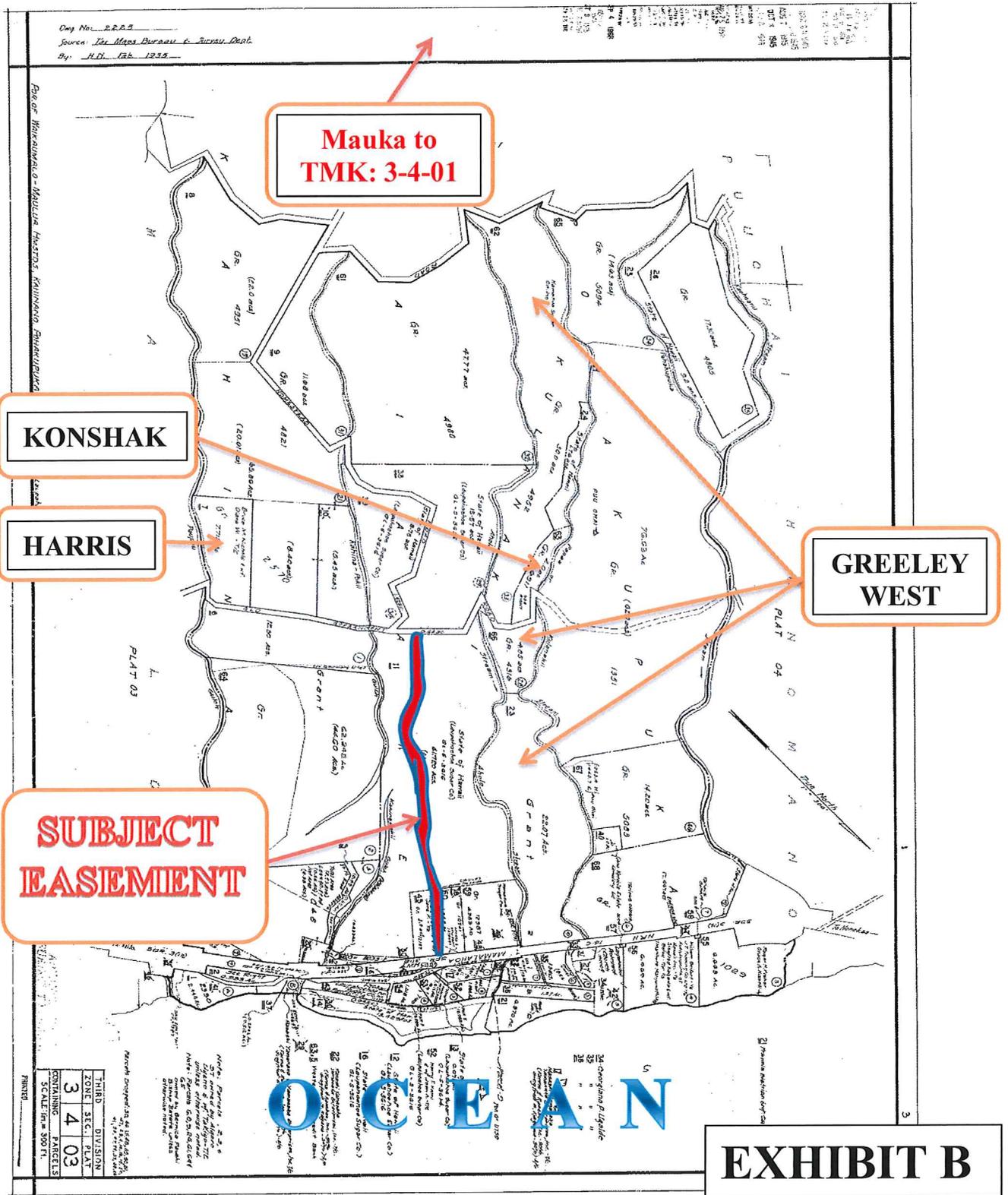


EXHIBIT B



Maulua Homesteads Owner's Association

- (3) 3-2-04-13; Ross and MaryAnne Dodge
- (3) 3-2-04-19; Garden of Light, Tim Barker, Stephen and Deidre Farrow

- (3) 3-4-01-01; Dustin and Rachel Real, David and Jennifer Real
- (3) 3-4-01-02; William Shine
- (3) 3-4-01-03; Pat Powers
- (3) 3-4-01-05; Monik Taing
- (3) 3-4-01-06; Nancy Shaw
- (3) 3-4-01-14; David and Jennifer Real
- (3) 3-4-01-15; Dylan Jude

- (3) 3-4-03-07; Claude Harris
- (3) 3-4-03-23; Greeley West Corp.
- (3) 3-4-03-62; Greeley West Corp
- (3) 3-4-03-63; Benjamin Conshack
- (3) 3-4-03-66; Greeley West Corp

EXHIBIT B

EXHIBIT B