

**STATE OF HAWAI‘I
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawai‘i**

File No: CDUA MA-3746

October 23, 2015

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

REGARDING: Conservation District Use Application (CDUA) MA-3746 for
an Above Ground Waterline

APPLICANT: Ray P. Wimberley, Commissioner

AGENT: Arsima Muller
Callsmith Ball, LLP

LANDOWNER: County of Maui
Lochland Holdings, LLC
Ray P. Wimberley, Commissioner
State of Hawai‘i (?)

LOCATION: Honua‘ula, Makawao, Maui

TAX MAP KEY: (2) 2-1-004: 046, 068, 073, & 113

USE: Approximately 12, 190 linear feet

SUBZONE: Protective, Resource, & General

DESCRIPTION OF AREA AND CURRENT USE:

The project corridor is located in Honua‘ula in the Makawao District on the island of Maui and is further identified as Mākena-Keone‘ō‘io Road or the so-called Mākena-Keone‘ō‘io Road right-of-way (ROW) (see **Exhibit 1**).

The northern portion project corridor is mainly located within the State Land Use Conservation District Protective subzone which traverses the mauka side of the road through an already developed residential community. Heading south, the corridor then reaches the ‘Āhihi Kina‘u Natural Area Reserve (NAR) (Parcel 73 and 121) which is also located within the protective subzone. Once out of the NAR area, the corridor traverses private property

identified as Parcel 46. This area is identified as being located within the State Land Use Conservation General subzone. From Parcel 46, the waterline reaches its intended parcel (parcel 68) which is located within the State Land Use Conservation District Resource subzone.

Areas of the corridor located outside of the NAR area is mainly comprised of either paved areas or areas that are comprised with weeds and other introduced plants commonly found in the area. The corridor through the NAR area is mainly comprised of lava rock fields. In addition, early comments received from the Department of Land and Natural Resources (DLNR), Division of Forestry and Wildlife (DOFAW) noted that there are a large number of both larval and adult host plants, including tree tobacco (*Nicotiana glauca*), for the endangered hawk moth, *Manduca blackburni* (Blackburn's Sphinx Moth or BSM) occurring along both sides of the road.

An archaeological field inspection and cultural impact evaluation was prepared for the project. The study found known archaeological sites in the near vicinity of the proposed waterline project. In particular, the pipeline will be installed in close proximity to site 50-50-14-4467 which consists of a boundary wall and serves as a portion of the eastern boarder of the Lochland Holdings property. In addition, as a portion of the waterline will consist of subsurface crossings at several driveways and one section of Old Mākena-Keone'ō'io Road, precautionary archaeological monitoring was recommended. Therefore, an archaeological monitoring plan has been prepared and submitted to the State Historic Preservation Division for review and comment.

PROPOSED USE:

The applicant is proposing to install an above ground, two inch diameter driscoll waterline. The majority of the waterline will be located completely within the so-called Mākena-Keone'ō'io ROW. The project corridor extends approximately 12,190 linear feet from a water meter installed in front of TMK (2) 2-1-006:104, owned by the Stevens 1995 Living Trust, to TMK (2) 2-1-004:068 which is the property that the proposed waterline is planning to serve(see **Exhibits 2 & 3**). Staff notes that an existing above-ground waterline also runs along this proposed route and serves Parcel 46. The new, proposed waterline will run adjacent to this existing waterline.

The waterline is a part of a Second Circuit Court partition action settlement in which Lochland Holdings agreed to provide an easement for waterline purposes across Parcel 46 in favor of Parcel 68. The County of Maui was also a party in the settlement and has installed a water meter in the so-called ROW, two (2) miles north of Parcel 68 pursuant to the agreement.

According to the applicant, the purpose of the proposed waterline is to serve a single family residence (SFR) that may be constructed on Parcel 68 sometime in the future. Staff notes that any future use would be subject to the rules and standards set forth in HAR, Chapter 13-5 and an environmental assessment may also be required.

The proposed waterline will involve the installation of approximately 12,190 linear feet of black High Density Polyethylene (HDPE) pipeline which will run from an existing water meter fronting TMK (2) 2-1-006:104 to the project site (see Exhibit 3). The black color of the pipe was chosen as it resembles the existing lava rock surface that is typical along the proposed pipeline route. The pipeline will traverse the east side of Mākena road for approximately 5,730 linear feet. The pipeline will be installed primarily on the existing grade, however, it will need to cross 12 existing driveways. Where the pipeline needs to cross a driveway, a 4-inch diameter pipe sleeve will be installed under the driveways. Once the pipeline has crossed all the driveways, the pipeline will then enter into the 'Āhihi Kina'u NAR where it will travel along the mauka side of the road and cross under the road to the west (makai) side of Mākena road at the same location of the Lochland Holdings waterline. A 4-inch polyvinyl chloride (PVC) sleeve will be installed below the road adjacent to the existing Lochland Holdings pipe sleeve at the same depth and the proposed waterline will be installed in the new pipe sleeve crossing Mākena Road. The proposed pipeline will then be installed at-grade and traverse Mākena Road for approximately 6,440 linear feet adjacent to the existing Lochland Holdings waterline until it reaches the project site.

As a portion of the waterline will consist of subsurface crossings at several driveways and one section of Old Mākena-Keone'ō'io Road, precautionary archaeological monitoring was recommended. Therefore, an archaeological monitoring plan has been prepared and submitted to the State Historic Preservation Division for review and comment. However, while no archaeological sites are anticipated to be negatively impacted by the proposed project, should any artifacts or remains be uncovered during the course of construction, work will immediately cease and SHPD notified. In addition, the proposed waterline is not anticipated to block any view planes or prevent pedestrian access to the shoreline area for traditional cultural or other purposes.

As there are numerous host plants for the endangered BSM on either side of the road, the applicant will work with both the U.S. Fish and Wildlife Service (USFWS) and DOFAW to avoid take of the BSM and to assist with Endangered Species Act (ESA) compliance. This may include a possible incidental take permit under section 10(a)(1)(B) of the ESA if incidental take of a listed species cannot be avoided.

Short term impacts from the construction of the proposed project may include fugitive dust which will be mitigated through Best Management Practices (BMPs) determined by the chosen contractor. Disturbed areas will be re-vegetated or re-paved once work is completed. Noise due to construction can also be anticipated, however, construction will be limited to normal working hours, five days a week to minimize any inconvenience to neighboring properties. Construction may also result in an increase of traffic along Mākena-Keone'ō'io, however, the impact is not anticipated to be significant.

SUMMARY OF COMMENTS

The Office of Conservation and Coastal Lands referred the application to the following agencies and organizations for review and comment:

Federal

U.S. Fish and Wildlife Service

State

DLNR, Division of Forestry and Wildlife
DLNR, Engineering Division
DLNR, Maui District Land Office
DLNR, State Historic Preservation Division
Department of Health (DOH)
DOH, OEQC
Office of Hawaiian Affairs

County

Planning Department

Organizations

Kīhei Community Association

Notice of CDUA HA-3746 was published in the June 23, 2015, issue of *The Environmental Notice*. Below is a summary of comments received as well as the applicant's response to those comments as applicable.

FEDERAL

US Fish and Wildlife Service (USFWS)

Comments: Based on the property description provided, supporting materials, and pertinent information in our files, the endangered Blackburn's Sphinx Moth (BSM) is known to occur near the project site. Tree tobacco is a known host to BSM and occurs on both sides of the road where the waterline is proposed. Given the presence of known host plants near or within the project footprint, we offer the following information to assist you in project planning:

The endangered BSM may occur in the project area. Construction and land disturbance may pose significant direct and indirect threats to BSM though the disturbance or destruction of occupied host plants, disturbance or destruction of pupae in the ground, or displacement of adults through host removal. Surveys for BSM host plants and BSM should be conducted prior to plant or land disturbance. The adult moth feeds on nectar from native plants including beach morning glory (*Ipomoea pes-caprae*), iliee (*Plumbago zeylancia*), and maiapilo (*Capparis sndwishesiana*). Known larval plants include aiea (*Nothocestrum latifolium*), commercial tobacco (*Nicotiana tabacum*), tree tobacco (*Nicotiana glauca*), eggplant (*Solanu melongena*), tomato (*solanum lycopersicon*), and possibly Jimson weed (*Datura stramonium*). Adults typically emerge after a rain to lay eggs during the wet season or two to three weeks after a significant rain. Larvae may be present on a plant for several weeks, and thus surveys for eggs and larvae should be conducted immediately prior to initiating project actions that may result in disturbance of inhabited host plants, eggs, or

larvae. Surveys for BSM eggs and larvae on the host plants should be conducted by a qualified biologist capable of recognizing all life stages of the BSM and familiar with BSM-appropriate survey techniques. The Service recommends you contact our office should BSM be found on plants that may be impacted by the action, so that we may help you avoid take of the endangered BSM.

If it is determined that the proposed project may affect listed species, we recommend you contact our office early in the planning process so that we may assist you with the ESA compliance. If the proposed project is funded, authorized, or permitted by a Federal agency, then that agency should consult with us pursuant to section 7(a)(2) of the ESA. If no Federal agency is involved with the proposed project, the applicant should apply for an incidental take permit under section 10(a)(1)(B) of the ESA if incidental take of a listed species cannot be avoided. A section 10 permit application must include a habitat conservation plan that identifies the effects of the action on listed species and their habitats, and defines measures to minimize and mitigate those adverse effects.

Applicant's Response: The applicant will consult with the USFWS to address these concerns so that you can assist the applicant to avoid take of the endangered BSM, and to assist with ESA compliance, including a possible incidental take permit under section 10(a)(1)(B) of the ESA if incidental take of a listed species cannot be avoided.

STATE OF HAWAII

Department of Land and Natural Resources (DLNR)

Division of Forestry and Wildlife Comments: DOFAW has no objection to the proposed project if the existing and proposed waterlines are installed and maintained within the ROW for Mākena-Keone'ō'io Road and does not encroach into the 'Āhihi Kina'u NAR. However, the Division recently completed a survey of the Reserve boundaries and has concerns that the waterlines may encroach into NAR if not properly sited. We encourage the applicant to coordinate with the Division to ensure proper placement of the proposed and existing waterlines.

Additionally, there are large numbers of both larval and adult host plants for the endangered BSM occurring along both sides of the road, so additional care needs to be taken when placing any lines to avoid take under the ESA and Chapter 195D, Hawai'i Revised Statutes (HRS), and they should consult with us and the USFWS if the placement requires any disturbance of the host plants.

Applicant's Response: The applicant will coordinate with DOFAW to ensure proper placement of the proposed waterline. Additionally, the applicant will take additional care when placing any lines to avoid take under the ESA and Chapter 195D, HRS, and will consult with DOFAW and the USFWS if the placement requires any disturbance of the host plants.

Division of Engineering: Please take note that the project site, according to the Flood Insurance Rate Map (FIRM), is located in Flood Zones VE and X. The National Flood Insurance Program (NFIP) regulates developments within Flood Zone VE, but not Flood Zone X.

Please note that the project must comply with the rules and regulations of the NFIP presented in Title 44 of the Code of Federal Regulations (44CFR), whenever development within a Special Flood Hazard Area is undertaken. Please be advised that 44CFR indicates the minimum standards set forth by the NFIP. Your Community's local flood ordinance may prove to be more restrictive and thus takes precedence over the minimum NFIP standards.

Applicant's Response: The applicant will work to comply with the NFIP regulations.

Office of Conservation and Coastal Lands: Pursuant to our meeting on August 5, 2015, the OCCL requests further documentation regarding the jurisdiction of the Mākena-Keone'ō'io Road and the easements granted by the County of Maui. This information is necessary prior to submitting the application to the Board for review and decision as the project may traverse State lands and may need landowner signature from the Department.

Applicant's Response: For purposes of this application, the County is listed as the landowner because Mākena-Keone'ō'io Road is not a highway that is listed among those roads managed by the State of Hawai'i, Department of Transportation and therefore falls within the County's jurisdiction, which is confirmed by a letter from the Department of the Attorney General, Land/Transportation Division, dated June 13, 2011, attached to the CUDAs as Exhibit "D" (see Exhibit 4). In addition, the County is responsible for the managerial control and maintenance of Mākena-Keone'ō'io Road under a MOU between the State of Hawai'i and the County of Maui dated December 15, 2010. Although the route of the proposed waterline passes through the 'Āhihi Kina'u NAR, the road has been excluded from the reserve. Attached to the CDUA as Exhibit "F" is Executive Order (E.O.) 02668 (see Exhibit 5).

In addition, the owners of Parcel 68 are authorized to locate a waterline within the Mākena-Keone'ō'io Road ROW pursuant to the Partial Assignment Grant of Exclusive Easement For Above Ground Waterline recorded in the Bureau of Conveyances of the State of Hawai'i as Document No. 2007-221477. We also bring your attention that the ROW is defined in the Partial Assignment Grant of Exclusive Easement For Above Ground Waterline as follows:

An area consisting of approximately 26,400 square feet, being two feet in width, measured from the boundary lines of the county's Mākena Road right-of-way, and approximately 13,200 feet in length, locate entirely within the County's Mākena Road right-of-way, from the water meter at the end of the County's existing waterline and extending to the Benefited Property, and more particularly shown as a cross-hatched line on Exhibit "a" attached hereto.

Pursuant to the settlement agreement, the County of Maui also issues a water meter for the use of Parcel 68 which has been installed within the right-of-way approximately two miles north of property.

Since the road is specifically excluded from the NAR, and the County signed and approved the Partial Assignment Grant of Exclusive Easement For Above Ground Waterline, the project does not appear to traverse State land, requiring landowner signature from the Department.

STAFF NOTE: In the discussion section of this report, Staff further addresses the issue of ownership.

Office of Hawaiian Affairs

Comments: OHA requests assurances that should iwi kūpuna or Native Hawaiian cultural deposits be identified during any ground altering activities, all work will immediately cease and the appropriate agencies, including OHA, will be contacted pursuant to applicable law.

Applicant's Response: The applicant acknowledges your request and agrees that should iwi kūpuna or Native Hawaiian cultural deposits be identified during any ground altering activities, all work will immediately cease and the appropriate agencies, including OHA, will be contacted pursuant to applicable law.

COUNTY OF MAUI

Department of Planning

Comments: The entire project area is located within the Special Management Area (SMA) and will require filing of an SMA Assessment Application. We recommend that you consult with Zoning Administration Enforcement to determine whether a Flood Development Permit is required.

Applicant's Response: The applicant acknowledges that the project area is located within the SMA. The applicant has submitted a SMA Assessment Application. The applicant has also received a Zoning and Flood Confirmation form the Zoning Administration and Enforcement Division indicating that a Flood Development Permit will be required.

ORGANIZATIONS

Kīhei Community Association (KCA)

Comments: This area is open space resource. The addition of a new above ground utility impacts the scenic resource. Rather than the addition of more above ground utilities, we believe the existing waterline and utility lines should be under ground. To lay more random black pipe above ground does not improve the natural reserve area. The state should consider the word "natural" and "reserve."

The addition of the waterline will allow the further development of property at the south end of Mākena Road. This road is less than 20 feet wide and in most areas will not allow for two way traffic. To add even a small amount of traffic to this road will increase the potential for collisions. KCA, in their Community Plan, has taken the position of development only with adequate infrastructure. Mākena Road through the NAR is not adequate for even minor traffic.

The application calls for placement of the above ground waterline in the road ROW. However, there does not seem to be a defined ROW for this road. The ROW is shown to be 7.01 acres from the state survey's documents. With this small acreage, there is not enough width for a two land road and a waterline. In addition, according to documents included as part of application, it would appear ownership of the road is not identified as either State or County owned. The Memorandum of Understanding (MOU) between the State and the County will expire this year for road maintenance.

Plastic pipe above ground is an easy target for vandalism and vehicles going off the narrow road. Water on Maui is a vital resource and placing the waterline above ground places it in a vulnerable position to waste a great deal of water. The existing line has been broken many times in the last several years and has been repaired after loss of water.

We believe that installation of above ground utilities in most cases is not good government policy. We are still one of the top tourist islands in the world. It is our hope to retain our island beauty and not degrade the visual impact by running additional ugly black pipe randomly across beautiful lava fields.

Applicant's Response: The applicant has a Partial Assignment Grant of Exclusive Easement for Above Ground Waterline recorded on December 26, 2007, in the Bureau of Conveyances of the State of Hawai'i as Document No. 20047-221477 ("the Easement"), and therefore placing the waterline underground is not a possibility.

The waterline is not designed to facilitate further development, but rather to provide water to the individual parcel located at TMK (2) 2-1-004:068, royal Patent Grant 2284:1 to Kahula ("Parcel 68"). The owners of that parcel are entitled to receive water from the previously installed water meter via the waterline pursuant to the Amended Final Judgment and Decree in Civil No. 96-0755(2), filed in the Second Circuit Court, State of Hawai'i, December 17, 2007, and recorded on January 9, 2008 as Document No. 2008-003598.

To clarify, the ROW is defined in the Easement as follows:

An area consisting of approximately 26,400 square feet, being two feet in width, measured from the boundary lines of the county's Mākena Road right-of-way, and approximately 13,200 feet in length, locate entirely within the County's Mākena Road right-of-way, from the water meter at the end of the County's existing waterline and extending to the Benefited Property, and more particularly shown as a cross-hatched line on Exhibit "a" attached hereto.

Pursuant to the terms of the above referenced Easement, the owners of the Easement are required to maintain the waterline and repair any damages.

ANALYSIS

Following review of the application, representatives of the Applicant were notified by letter dated June 2, 2015, of the following:

1. The proposed project is an identified land use within the Conservation District, pursuant to Hawai'i Administrative Rules (HAR) §13-5-22 *Identified land uses in the protective subzone*, P-13 (D-1) WATER SYSTEMS. The proposed use requires a Board Permit.
2. Pursuant to HAR §13-5-40 HEARINGS, a Public Hearing will be required.
3. In conformance with Chapter 343, Hawai'i Revised Statutes (HRS), as amended, and HAR, Title 11, Department of Health, Chapter 200, Environmental Impact Statement Rules, Subchapter 8, §11-200-8 (a)(3)(D), the proposed use is exempt¹; and
4. The subject area is within the Special Management Area (SMA). The applicant's responsibility includes complying with the provisions of Hawai'i's Coastal Zone Management law (Chapter 205A, HRS) that pertain to the Special Management Area (SMA) requirements administered by the various counties. Negative action on this application can be expected should you fail to obtain and provide us, at least forty-five (45) days prior to the 180-day expiration date, one of the following:
 - An official determination that the proposal is exempt from the provisions of the county rules relating to the SMA;
 - An official determination that the proposed development is outside the SMA; or
 - An SMA Use Permit for the proposed development.

In addition, pursuant to HAR §13-5-40 (a)(3) *Public hearings shall be held on applications requiring a Board permit in the protective subzone*. A public hearing for the proposed project was held on July 14, 2015 at the Kihei Community Center. No members of the general public came to testify.

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

¹ In conformance with HRS, Chapter 343 and HAR §11-200, the project is exempt pursuant to HAR §11-200 (a)(3)(D) *Construction and location of single, new, small facilities or structures and alteration and modification of the same and installation of new, small equipment and facilities and the alteration and modification of same, including, but not limited to...(D) Water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities; accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences; and acquisition of utility easements.*

1. *The proposed land 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 and cultural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare.

It is unclear to Staff whether the project meets this criterion as the proposed waterline will service a currently vacant property (Parcel 68) with no concrete future development plans at this time except for the applicant stating that the purpose of the waterline is to serve an SFR that may be constructed on Parcel 68 sometime in the future. Therefore, it is clear that the waterline is a part of a larger project and that the project in its entirety (waterline and the future use of Parcel 68) should be disclosed and discussed in a single application so that Staff is able to properly evaluate the merits of the proposed land use based on the Conservation District criteria.

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

The project site is located in the Protective, Resource, and General subzone. The objective of the Protective subzone is to protect valuable natural and cultural resources in designated areas such as restricted watersheds, marine, plant, and wildlife sanctuaries, significant historic, archaeological, geological, and volcanological features and sites, and other designated unique areas. The objective of the Resource subzone is to ensure, with proper management, the sustainable use of the natural resources of those areas. 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 project is an identified land use within the Conservation District, pursuant to HAR §13-5-22, P-13 (D-1) WATER SYSTEMS. However, HAR §13-5-22, defines a water system as “a network of pipelines, storage, pumps, water sources, and other appurtenances...that furnishes a supply of water to water users.” Based on this definition it is unclear whether the proposed project meets this definition as the proposed project does not necessarily “furnish a supply of water to water users.” The proposed waterline will service a currently vacant property (Parcel 68) with no concrete future development plans at this time except for the applicant stating that the purpose of the waterline is to serve an SFR that may be constructed on Parcel 68 sometime in the future.

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

The proposed use is located within the Special Management Area (SMA). The landowner is responsible to comply with the provisions of Hawai'i's Coastal Zone Management Law (HRS, 205A) that pertain to the SMA requirements administered by the various counties. This would include obtaining either an official determination

that the proposed development is exempt from the provisions of the county rules relating to the SMA or an SMA permit for the proposed development.

According to the County Planning Department's comment letter, the project will require a filing of an SMA Assessment Application. On October 8, 2015, the County issued an SMA Minor Permit for the project.

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

Both DOFAW and the USFWS have stated that the endangered BSM and its host plants occur within the project corridor. The applicant has agreed to work with both entities to address these concerns so that applicant can avoid take of the endangered BSM. They will also work with DOFAW and USFWS so that they may assist the applicant with ESA compliance which may include a possible incidental take permit under section 10(a)(1)(B) of the ESA if incidental take of a listed species cannot be avoided.

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

While the new water line is proposed to be black as it resembles the existing lava rock surface, its presence may further intrude upon the natural features of the NAR as shown in **Exhibit 3** which depicts the existing waterline.

In addition, it is unclear to Staff whether the project meets this criterion as the proposed waterline will service a currently vacant property (Parcel 68) with no concrete future development plans at this time except for the applicant stating that the purpose of the waterline is to serve an SFR that may be constructed on Parcel 68 sometime in the future. Therefore, it is clear that the waterline is a part of a larger project and that the project in its entirety (waterline and the future use of Parcel 68) should be disclosed and discussed in a single application so that Staff is able to properly evaluate the merits of the proposed land use based on the Conservation District criteria.

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

As state above, while the new water line is proposed to be black as it resembles the existing lava rock surface, its presence may further intrude upon the natural features of the NAR as shown in **Exhibit 3** which depicts the existing waterline.

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

No subdivision of land is proposed.

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

It is unclear to Staff whether the project meets this criterion as the proposed waterline will service a currently vacant property (Parcel 68) with no future development plans at this time except for the applicant stating that the purpose of the waterline is to serve an SFR that may be constructed on Parcel 68 sometime in the future. Therefore, it is clear that the waterline is a part of a larger project and that the project in its entirety (waterline and future use of Parcel 68) should be disclosed and discussed in a single application so that Staff is able to properly evaluate the merits of the proposed land use based on the Conservation District criteria.

DISCUSSION

The proposed project is an identified land use within the Conservation District, pursuant to HAR §13-5-22, P-13 (D-1) WATER SYSTEMS. However, HAR §13-5-22, defines a water system as “a network of pipelines, storage, pumps, water sources, and other appurtenances...that furnishes a supply of water to water users.” Based on this definition it is unclear whether the proposed project meets this definition as the proposed project does not necessarily “furnish a supply of water to water users” as the proposed waterline will service a currently vacant property (Parcel 68) with no concrete future development plans at this time except for the applicant stating that the purpose of the waterline is to serve an SFR that may be constructed on Parcel 68 sometime in the future. In addition, Staff was unable to evaluate the merits of the proposed project based on the Conservation District Criteria because it is evident that the waterline is a part of a larger project and that the project in its entirety (waterline and future use of Parcel 68) should be disclosed and discussed in a single application.

There is also a discrepancy regarding landownership and jurisdiction of the Mākena-Keone‘ō‘io Road as it traverses through the ‘Āhihi Kina‘u NAR. The proposed waterline has been described as being located completely within the so-called Mākena-Keone‘ō‘io Road ROW within a partial assignment grant of easement to the applicant by the existing easement grantee and the County of Maui.

When the Executive Order (E.O.) for the set aside of the Ahihi-Kina‘u Natural Area Reserve was done in June 1973, Mākena-Keone‘ō‘io Government Road was excluded from the NAR area. The applicant claims that as Mākena-Keone‘ō‘io Road is not a highway that is listed among those roads managed by the State of Hawai‘i, Department of Transportation (DOT), it therefore falls within the County’s jurisdiction. In addition, the County of Maui has signed, as landowner, two easement documents; the first being the Grant of Exclusive Easement for Private Above Ground Waterline in 1996 and the second being the Partial Assignment Grant of Exclusive Easement for Above Ground Water line in 2007 (see Exhibit 6).

However, it is Staff’s belief that the proposed waterline is cited within the NAR as evident by the Memorandum of Understanding (MOU) between the State of Hawai‘i, Department of Land and Natural Resources (DLNR) and the County of Maui, dated December 15, 2010, which states that neither the State nor the County claims jurisdiction over that portion of

Mākena-Keone‘ō‘io Road that runs through the NAR (see Exhibit 7). According to the MOU, the County is responsible for the surface maintenance of the road while the DLNR is responsible to maintaining roadside vegetation immediately adjacent to the roadway surface. Thus, it appears that the waterline is located within the NAR.

Staff, therefore, recommends the following:

RECOMMENDATION

That the Board of Land and Natural Resources DENY CDUA MA-3746 for an above ground waterline along Mākena-Keone‘ō‘io Road located at Honua‘ula, Makawao, Maui and affecting TMKs (2) 2-1-004: 046, 068, 073, and 121 for the following reasons:

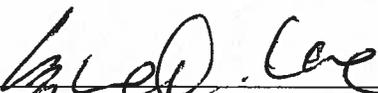
1. Staff was unable to evaluate the merits of the proposed project based on the Conservation District Criteria because the proposed waterline will service a currently vacant property (Parcel 68) with no future development plans at this time except for the applicant stating that the purpose of the waterline is to serve an SFR that may be constructed on Parcel 68 sometime in the future. As it is evident that the waterline is a part of a larger project, the project in its entirety (waterline and future use of Parcel 68) should be disclosed and discussed in a single application so that Staff is able to properly evaluate the merits of the proposed land use based on the Conservation District criteria; and
2. Based on the MOU for the Mākena Road and ‘Āhihi Kina‘u NAR, it appears that the proposed waterline may be located within the NAR.

Respectfully submitted,

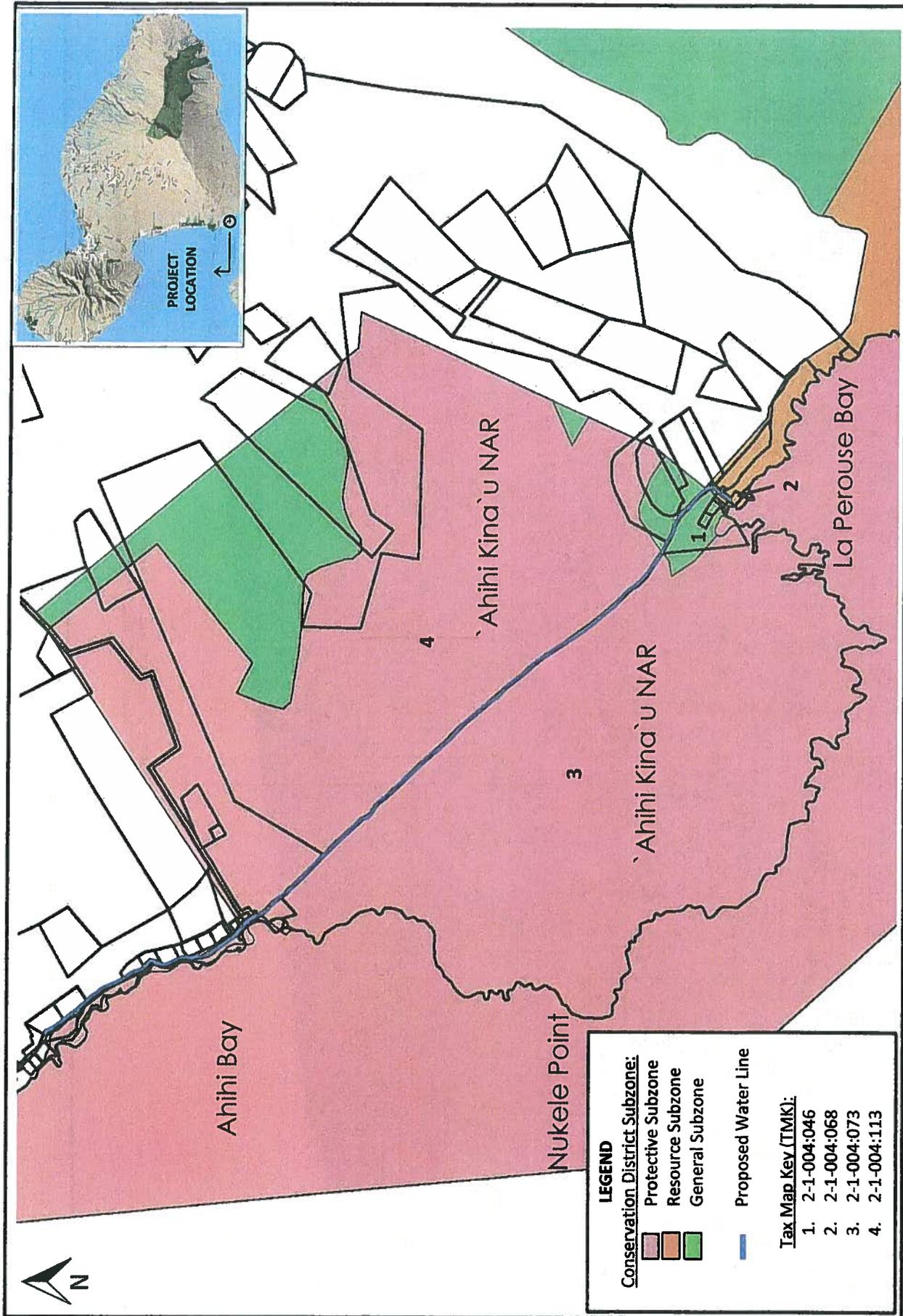


Lauren Yasaka, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:



SUZANNE D. CASE., Chairperson
Board of Land and Natural Resources



CONSERVATION SUBZONE AND LOCATION MAP

LEGEND

Conservation District Subzone:

- Protective Subzone
- Resource Subzone
- General Subzone

Proposed Water Line

Tax Map Key (TMK):

1. 2-1-004:046
2. 2-1-004:068
3. 2-1-004:073
4. 2-1-004:113



EXHIBIT - PROPOSED 2" WATERLINE FOR TMK: (2) 2-1-04 : 68
 MAKENA, MAUI, HAWAII

LEGEND:
 [Red Line] EXISTING WATERLINE
 [Blue Line] PROPOSED WATERLINE

WINDY & LUNDO
 ENGINEERS & ARCHITECTS
 1000 S. W. 10TH AVE.
 MIAMI, FL 33135
 October 7, 2014

SHEET 1 OF 4

WATERLINE ROUTE



LEGEND:
 [Red Line] EXISTING WATERLINE
 [Blue Line] PROPOSED WATERLINE

EXHIBIT - PROPOSED 2" WATERLINE FOR TMK: (2) 2-1-04 : 68
 MAOENA MAUL HAWAII

TRACON & LOGGERS
 1111 KAWAULA DRIVE
 HONOLULU, HI 96813
 October 3, 2014

SHEET 2 OF 4

TMK (2) 2-1-04 : 68
 (Owner)
 INSTALL WATERLINE UNDER
 EXISTING ASPHALT DRIVEWAY

TMK (2) 2-1-04 : 68
 (Owner)
 INSTALL WATERLINE UNDER
 EXISTING ASPHALT DRIVEWAY

TMK (2) 2-1-04 : 68
 (Owner)
 INSTALL WATERLINE UNDER
 EXISTING ASPHALT DRIVEWAY

TMK (2) 2-1-04 : 68
 (Owner)
 INSTALL WATERLINE UNDER
 EXISTING ASPHALT DRIVEWAY

WATERLINE ROUTE



LEGEND:
 [Red line] EXISTING WATERLINE
 [Blue line] PROPOSED WATERLINE

EXHIBIT - PROPOSED 2" WATERLINE FOR TMK: (2) 2-1-04 : 88
 MAHUKOHA, MAUI, HAWAII

WALTER S. JACOBSON
 AN ENGINEER, INC.
 P.O. BOX 1011
 HONOLULU, HAWAII 96808

WATERLINE ROUTE

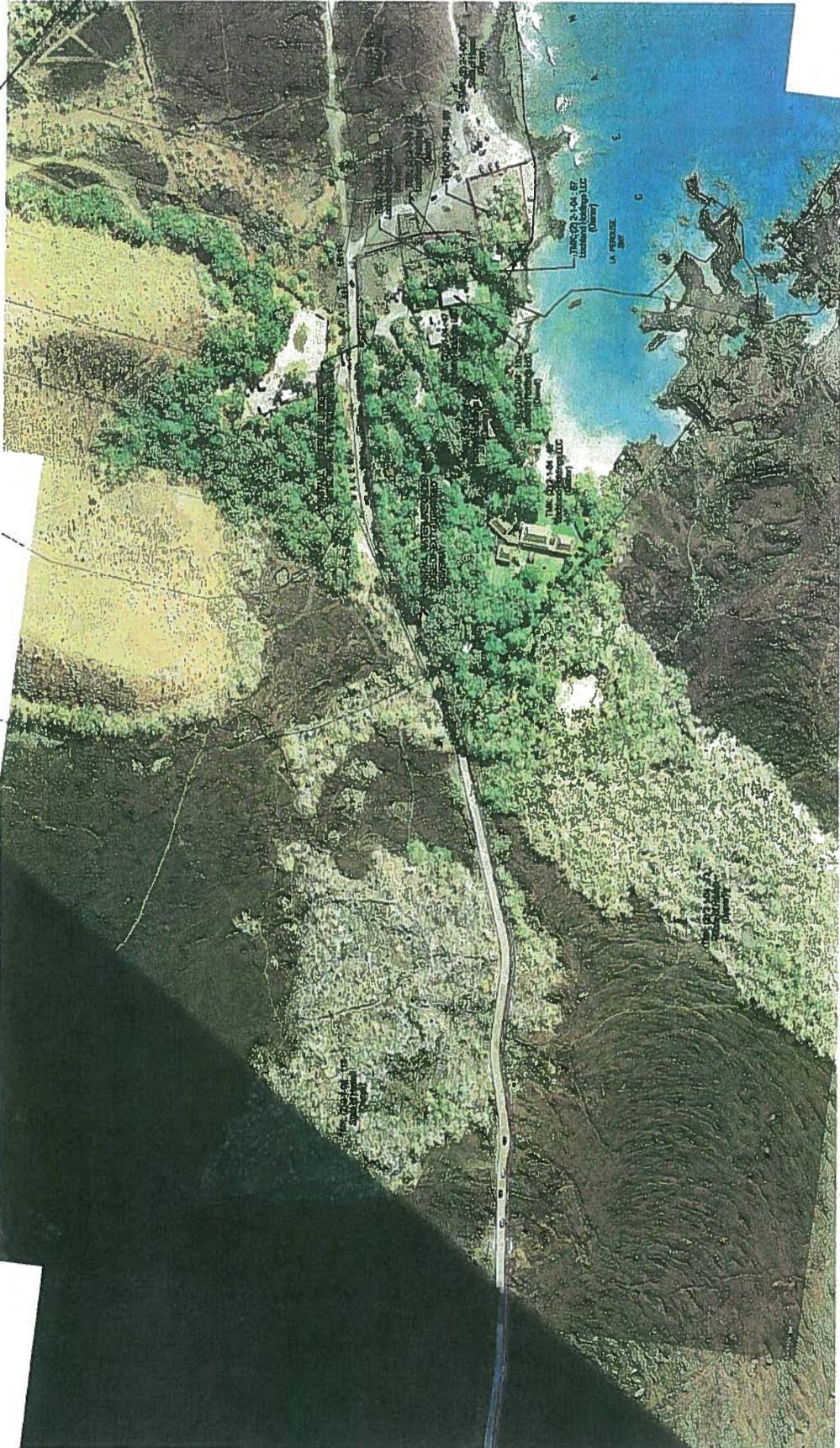


EXHIBIT - PROPOSED 2" WATERLINE FOR TMK: (2) 2-1-04 : 68
 MAKENA, MAUI, HAWAII

LEGEND:
 EXISTING WATERLINE
 PROPOSED WATERLINE

WALTER J. LEITCH
 ENGINEER
 LICENSE NO. 10000
 OCTOBER 2, 2014

SHEET 4 OF 4

WATERLINE ROUTE



**Location of the Water Meter –
Start of Proposed Water Line (Existing Waterline Shown)**



View to the North; Existing Waterline Shown

PHOTOS OF PROPOSED WATERLINE ROUTE & EXISTING WATERLINE

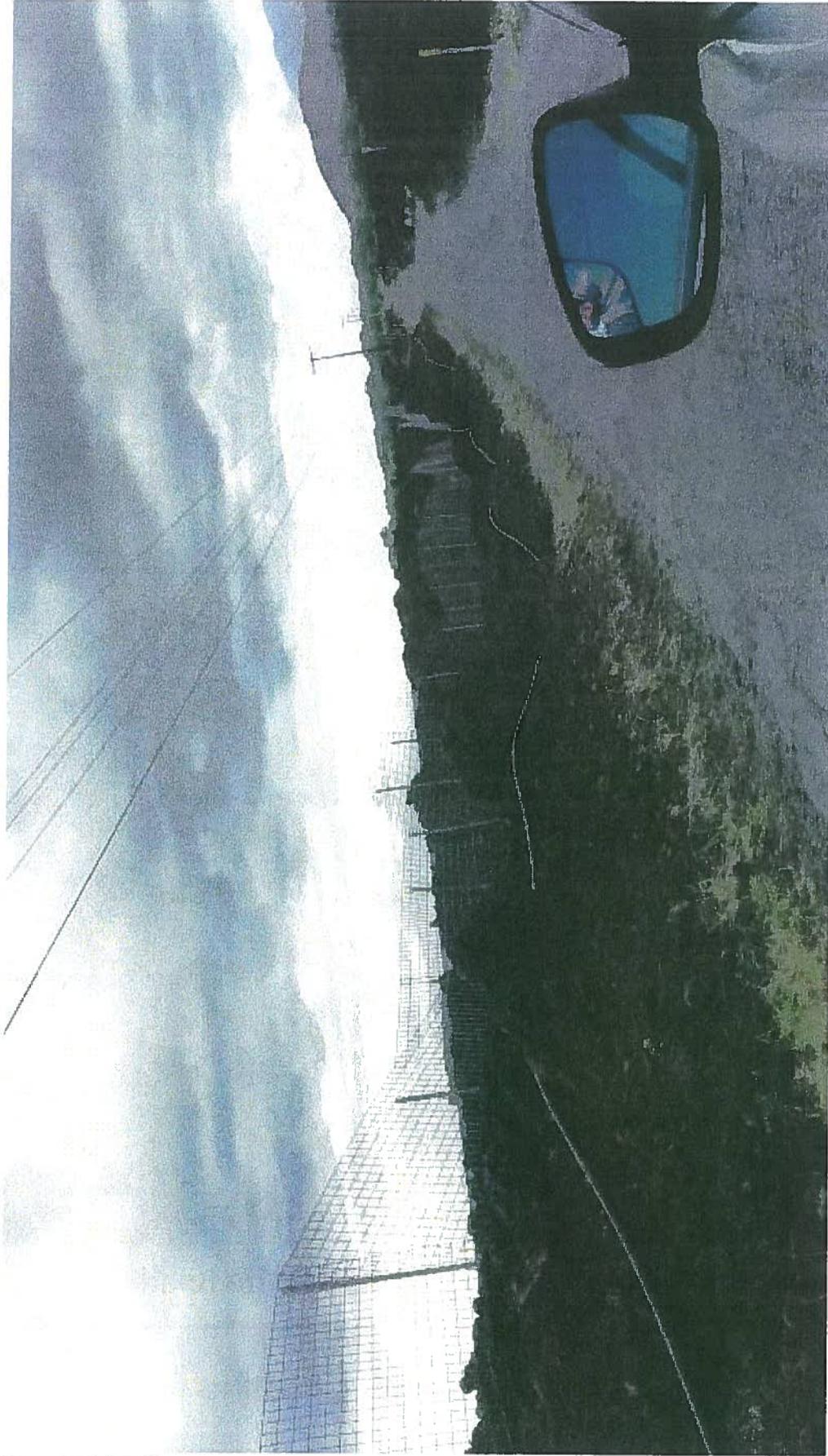


**Existing Waterline on the Mauka Side of the Road
Shown Behind NARS Sign**



Area Where the Waterline Will Cross the Road

PHOTOS OF PROPOSED WATERLINE ROUTE & EXISTING WATERLINE



Existing Waterline on the Makai Side of the Road Through the NAR

PHOTOS OF PROPOSED WATERLINE ROUTE & EXISTING WATERLINE



Close-Up of Existing Waterline on Lava Field



Existing Waterline Near Lochland Holdings, LLC Property

PHOTOS OF PROPOSED WATERLINE ROUTE & EXISTING WATERLINE



Existing Waterline Within the Lochland Holdings, LLC Property



View Along Easter Boundary of Parcel 68. Existing Waterline in Center Crosses Portion of Lochland Holdings, LLC Property

PHOTOS OF PROPOSED WATERLINE ROUTE & EXISTING WATERLINE

Mailed on
6/13/11.eb

NEIL ABERCROMBIE
GOVERNOR



DAVID M. LOUIS
ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
LAND/TRANSPORTATION DIVISION
ROOM 300, KEKUAHAO'A BUILDING
465 SOUTH KING STREET
HONOLULU, HAWAII 96813
Telephone No. (808) 587-2992
FAX No. (808) 587-2999

RUSSELL A. SUZUKI
FIRST DEPUTY ATTORNEY GENERAL

June 13, 2011

Tom Leuteneker, Esq.
One Main Plaza, Suite 400
2200 Main Street
Wailuku, Hawaii 96793

Dear Mr. Leuteneker:

Re: Lochland Holdings LLC v. Keleau, et al.,
Civil No. 96-0755(2)

I spoke with Paul Conry, Administrator of the Division of Forestry and Wildlife, Department of Land and Natural Resources ("DOFAW"). Mr. Conry informed me that his division has no objection to a waterline being installed within the portion of the Makena-Keoneoio Government Road right-of-way that traverses through the Ahihi Kinau Natural Area Reserve so long as the waterline is installed entirely within the right-of-way. The County of Maui has entered into an agreement with the State of Hawaii wherein the County has agreed to manage and maintain the road.

Contrary to the information you provided to me, Joe Fell-McDonald, a DOFAW employee, has not spoken with anyone about a waterline. Mr. Fell-McDonald was not aware of the waterline matter. However, he has been informed that Maui County is managing the road and the installation of a waterline falls within that responsibility.

Please be aware that this letter does not exempt the owner of Grant 2844, Apana I and its contractor from observing applicable laws while installing the waterline.

Very truly yours,

Pamela K. Matsukawa
Deputy Attorney General

c: Paul Conry

Sent on
6/13/11.eb

421165_1.DOC

Setting Aside Land for Public Purposes

By this Executive Order, I, the undersigned, Governor of the State of Hawaii, by virtue of the authority in me vested by Section 171-11, Hawaii Revised Statutes, and every other authority me hereunto enabling, do hereby order that the public land hereinafter described be, and the same is, hereby set aside for the following public purposes:

FOR THE AHIHI-KINAU NATURAL AREA RESERVE, to be under the control and management of the Department of Land and Natural Resources, State of Hawaii.

All of the land situate at Honuaula, Makawao, Maui, Hawaii, Part 1, being portions of the Government Land of Onau, Kanahena, Kualapa and Kalihi and Part 2, being submerged land fronting Moomuku, Onau, Kanahena, Kualapa and Kalihi, 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, both being designated C.S.F. No. 16,807 and dated January 22, 1973.

SUBJECT to disapproval by the Legislature by two-thirds vote of either the Senate or the House of Representatives or by majority vote of both, in any regular or special session next following the date of this Executive Order.

In Witness Whereof, I have hereunto set my hand and caused the Great Seal of the State of Hawaii to be affixed.

Done at the Capitol at Honolulu this 29th day of June, Nineteen Hundred and 73

Joan A. Bush
Governor of the State of Hawaii

Approved as to form:

H. Al Rite
Deputy Attorney General

Dated: 6-12-73

lt

Copied at the Hawaii

State of Hawaii

Office of the Lieutenant Governor

02668

This is to Certify That the within is a true copy of Executive Order No. setting aside land for public purposes, the original of which is on file in this office.

In Testimony Whereof, the Lieutenant Governor of the State of Hawaii, has hereunto subscribed his name and caused the Great Seal of the State to be affixed.

George H. Ruggles
DONE in Honolulu, this 29th day of June, A.D. 1913

02668

Executive Order No.

Setting Aside Land for Public Purposes

Form with fields for Land, Purpose, and Date, each followed by a dotted line for text entry.



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES

HONOLULU

January 22, 1973

No. 16,807

AHIHU-KINAU

NATURAL AREA RESERVE

PARTS 1 AND 2

Honuauia, Makawao, Maui, Hawaii

PART 1 - Being portions of the Government Land of Onau, Kanahena, Kualapa and Kalihi.

Beginning at a bent railroad spike imbedded in rock at high-water mark at seashore, at the northwest corner of this tract of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "FUV OLAI" being 5901.80 feet South and 3332.30 feet East, as shown on Government Survey Registered Maps 4132 and 4133, thence running by azimuths measured clockwise from True South:-

1. 280° 45' 20" 50.00 feet along Government Land and across Makena-Keoneoio Government Road, to the mauka side of said Government Road;
2. Thence along the mauka side of Makena-Keoneoio Government Road following all of its sinuosities to a point on the mauka side of said Government Road, the direct azimuth and distance being:
321° 00' 2200.00 feet;
3. 213° 30' 1400.00 feet along Government Land;
4. 247° 00' 4800.00 feet along Government Land;
5. 337° 30' 1500.00 feet along Government Land;
6. 55° 00' 2600.00 feet along Government Land;
7. 107° 00' 500.00 feet along Government Land;
8. 2° 00' 800.00 feet along Government Land;
9. 287° 00' 1088.26 feet along Government Land;
10. 10° 00' 486.50 feet along Government Land;

2668

EXHIBIT "A"

Copied at the Hawaii State Archives.

11. 273° 00' 1800.00 feet along Government Land;
12. 215° 00' 1200.00 feet along Government Land;
13. 264° 00' 1200.00 feet along Government Land;
14. 352° 00' 800.00 feet along Government Land;
15. 46° 23' 992.87 feet along Grant 1380 to Kapuahelane;
16. 15° 30' 1400.00 feet along Government Land;
17. 52° 30' 700.00 feet along Government Land;
18. 340° 00' 450.00 feet along Government Land;
19. 36° 30' 743.39 feet along Government Land, to toe of hill;

Thence along the toe of hill for the next four (4) courses, the direct azimuths and distances between points on said toe of hill being:

20. 140° 00' 639.58 feet;
21. 95° 00' 500.00 feet;
22. 59° 00' 500.00 feet;
23. 29° 00' 600.00 feet, continuing over and across to the makai side of Makena-Keonecio Government Road;
24. 114° 21' 20" 155.00 feet along the land conveyed to J. H. Raymond by the Territory of Hawaii by Exchange Deed dated January 25, 1915;
25. 355° 11' 20" 1161.00 feet along the land conveyed to J. H. Raymond by the Territory of Hawaii by Exchange Deed dated January 25, 1915;
26. 241° 12' 20" 300.00 feet along the land conveyed to J. H. Raymond by the Territory of Hawaii by Exchange Deed dated January 25, 1915, to highwater mark at seashore;

Thence along highwater mark at seashore for the next five (5) courses, the direct azimuths and distances between points on said highwater mark at seashore being:

27. 40° 00' 2500.00 feet;
28. 114° 30' 3200.00 feet;
29. 139° 00' 3270.08 feet;
30. 195° 30' 4526.06 feet;

31. 157° 19' 48" 1320.34 feet, to the point of beginning and containing a GROSS AREA OF 1245.50 ACRES and a NET AREA OF 1238.49 ACRES, after excepting and excluding Grants, Land Commission Awards and the Government Road, containing a total Area of 7.01 Acres.

Exclusions:

a. Grant 2199, Apana 3 to Kāpoi	2.06 Acres
b. L.C.Aw. 2605, Apana 5 to Paela	0.67 Acre
c. L.C.Aw. 5424, Apana 2 to Kanao	0.13 Acre
d. L.C.Aw. 5388 to Hoomilianuke	0.25 Acre
e. Makena-Keoneoio Government Road	<u>3.90 Acres</u>
	7.01 Acres

PART 2 - Submerged land fronting Moomuku, Onau, Kūnahena, Kualapa and Kalihi.

Beginning at a bent railroad spike imbedded in rock at highwater at seashore, at the northeast corner of this submerged parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "FOU OLAI" being 5901.80 feet South and 3332.30 feet, as shown on Government Survey Registered Maps 4132 and 4133, thence running by azimuths measured clockwise from True South:-

Along the lands of Onau, Kānohea and Kualapa, along highwater mark at seashore for the first five (5) courses, the direct azimuths and distances between points at said highwater mark at seashore being:

1. 337° 19' 48"	1320.34 feet;
2. 15° 30'	4526.06 feet;
3. 319° 00'	3270.08 feet;
4. 294° 30'	3200.00 feet;
5. 220° 00'	2500.00 feet;
6. 0° 30'	3000.00 feet to a point, said point being: 20° 35' 40.26" North Latitude and 156° 25' 27.90" West Longitude;
7. 60° 30'	1917.14 feet to a point, said point being: 20° 35' 30.91" North Latitude and 156° 25' 45.47" West Longitude;

Copied at the Hawaii State Archives

- 8. 108° 00' 3287.30 feet to a point, said point being:
20° 35' 40.98" North Latitude and
156° 26' 18.37" West Longitude;
- 9. 137° 00' 5000.00 feet to a point, said point being:
20° 36' 17.23" North Latitude and
156° 26' 54.26" West Longitude;
- 10. 173° 30' 7200.00 feet to a point, said point being:
20° 37' 28.57" North Latitude and
156° 26' 56.25" West Longitude;
- 11. 280° 45' 20" 2500.00 feet to the point of beginning and containing
an AREA OF 807.40 ACRES.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Robert T. Hashimoto
Robert T. Hashimoto
Land Surveyor

ac

Compiled from
Govt. Survey Records.

Copied at the Hawaii State Archives



R-911 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
DEC 26, 2007 08:02 AM
Doc No(s) 2007-221477



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

20 212 212

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation Return by Mail () Pickup () To:

CARLSMITH BALL LLP
One Main Plaza, Suite 400
2200 Main Street, P.O. Box 1086
Wailuku, Maui, Hawaii 96793-1087

Attention: Tom C. Leuteneker
Telephone: (808) 242-4535

TITLE OF DOCUMENT:

**PARTIAL ASSIGNMENT GRANT OF EXCLUSIVE EASEMENT FOR
ABOVE GROUND WATERLINE**

PARTIES TO DOCUMENT:

ASSIGNOR: LOCHLAND HOLDINGS LLC
1009 Lochland Court
Fort Collins, Colorado 80524

ASSIGNEE: BETTY SNOWDEN
TRUSTEE OF PUNFIA OHANA 2000 TRUST
c/o Stanley H. Roehrig
101 Aupuni Street, Suite 124
Hilo, Hawaii 96720

TAX MAP KEY(S): (2) 2-1-04-68

(This document consists of 20 pages)

**PARTIAL ASSIGNMENT GRANT OF EXCLUSIVE EASEMENT FOR ABOVE
GROUND WATERLINE**

Comes now Lochland Holdings LLC, a Colorado limited liability company, with its address at 1009 Lochland Ct., Ft. Collins, Colorado 80524, hereinafter referred to Assignor, and Betty Snowden, Trustee of the Puni'ia Ohana 2000 Trust, with her address at c/o Stanley H. Roehrig, 101 Aupuni Street, Suite 124, Hilo Hawaii 96729, hereinafter referred to Assignee, as follows:

Whereas Assignor is the successor to the Hawaiian Trust Company, Limited, the Grantee in the GRANT OF EXCLUSIVE EASEMENT FOR PRIVATE ABOVEGROUND WATERLINE, which GRANT is dated October 29, 1996, and is recorded as Document No. 96-163725, and a copy of which is attached hereto as Exhibit "B" (hereinafter referred to as the GRANT); and

Whereas Assignor wishes to assign to the Assignee a non-exclusive easement in the real property described in the GRANT; and

Whereas the Assignee wishes to receive a non-exclusive easement in the real property described in the GRANT;

NOW THEREFORE, the Assignor, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration to it paid by the Assignee, the receipt whereof is hereby acknowledge, does hereby grand and convey unto the Assignee, its successors and assigns, subject to the terms and conditions set forth in this agreement, a non-exclusive, perpetual easement as an appurtenance to and in favor of that certain parcel of real property at Keneoio, Kihei, Maui, Hawaii designated as Maui Tax Map Key No. (2) 2-1-04-68 (hereinafter called the "Benefited Property"), to build, construct, reconstruct, rebuild, repair, and maintain a

private waterline pipe for Assignee's exclusive use over, under along and through the following described easement area:

An area consisting of approximately 26,400 square feet, being two feet in width, measured from the boundary lines of the County's Makena Road right-of-way, and approximately 13,200 feet in length, located entirely within the County's Makena Road right-of-way, from the water meter at the end of the County's existing waterline and extending to the Benefited Property, and more particularly shown as a cross-hatched line on Exhibit "A" attached hereto.

The Assignor however retains all rights granted to it in the GRANT, including all rights in its waterline pipe.

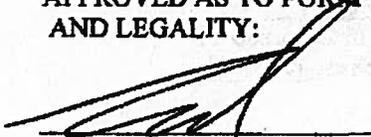
The Assignee agrees to comply with all promises, covenants and conditions contained in the GRANT.

If the private waterline pipe installed by the Assignee results in an additional cost or expense to the Assignor, the Assignee will pay all such additional cost and expense. If the Assignee damages the Assignor's waterline at any time, the Assignee will pay all costs to repair that damage. The Assignee understands that the Assignor regularly repairs its waterline, which is an ongoing expense for maintenance, and the Assignee will pay all maintenance costs of its waterline.

The County of Maui, by and through its Mayor, hereby consents to and approves this Assignment Agreement.

COUNTY OF MAUI

APPROVED AS TO FORM
AND LEGALITY:


EDWARD KUSHI, JR.
Deputy Corporation Counsel
County of Maui

By 
CHARMAINE TAVARES
Its Mayor

LOCHLAND HOLDINGS LLC

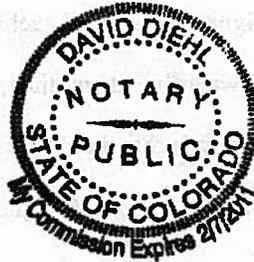
PUN'IA OHANA 2000 TRUST

By: [Signature]
Its Managing Member

By: [Signature]
BETTY SNOWDEN
Its Trustee

APPROVAL RECOMMENDED:

[Signature]
JEFFREY ENG, Director
Department of Water Supply
County of Maui



STATE OF COLORADO)
) SS.
COUNTY OF La Plata)

On this 3rd day of October, 2007, before me appeared Douglas S. Schute, satisfactorily proven to me, who, being by me duly sworn, did say that he is the Managing Member of LOCHLAND HOLDINGS LLC, a Colorado Limited liability corporation, and that said instrument was signed on behalf of said corporation by authority of its members, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

[Signature]
Notary Public, State of Colorado
My Commission expires: 2-7-11

1987-13-2907

P-482

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDS

NOV 19, 1998 04:55 AM

Doc No(s) 88-18724

/s/ CARL T. WATKINS
ATTY
HAWAIIAN TRUST COMPANY

LAND COURT REGULAR SYSTEM
AFTER RECORDATION, RETURN BY: MAIL (X) PICK UP ()

COUNTY OF MAUI
Department of Finance
200 South High Street
Wailuku, Maui, Hawaii 96791

Maui Tax Key No. 1 (3) 2-1-4-46

GRANT OF EXCLUSIVE EASEMENT
FOR PRIVATE ABOVEGROUND WATERLINE

GRANTOR: COUNTY OF MAUI, a political subdivision and body corporate of the State of Hawaii, whose principal place of business and mailing address is 200 South High Street, Wailuku, Maui, Hawaii 96791.

GRANTEE: HAWAIIAN TRUST COMPANY, LIMITED, a Hawaii corporation, whose mailing address is P. O. Box 3170, Honolulu, Hawaii 96802, as Trustee under Unrecorded Revocable Trust Agreement of Mary Louise Carter Dated January 14, 1983.

THIS INSTRUMENT made this 14th day of November, 1998, by and between the COUNTY OF MAUI, a political subdivision and body corporate of the State of Hawaii, whose principal place of business and mailing address is 200 South High Street, Wailuku,

EXHIBIT B

Maui, Hawaii 96793, hereinafter called the "Grantor", and HAWAIIAN TRUST COMPANY, LIMITED, a Hawaii corporation, whose mailing address is P. O. Box 3170, Honolulu, Hawaii 96802, as Trustee under Unrecorded Revocable Trust Agreement of Mary Louise Carter Dated January 14, 1983, hereinafter called "Grantee".

W I T N E S S E T H:

That the Grantor, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration to it paid by the Grantee, the receipt whereof is hereby acknowledged, does hereby grant and convey unto the Grantee, its successors and assigns, subject to the terms and conditions set forth in this agreement, a non-exclusive, perpetual easement as an appurtenance to and in favor of that certain parcel of real property at Keheo, Kihui, Maui, Hawaii designated as Maui Tax Map Key No. (2) 2-1-04-46, and any subdivision of that parcel (hereinafter called the "Benefitted Property"), to build, construct, reconstruct, rebuild, repair, and maintain a private waterline pipe for Grantee's exclusive use over, under, along and through the following described easement area:

An area consisting of approximately 26,400 square feet, being two feet in width, measured from the boundary lines of the County's Makena Road right-of-way, and approximately 13,200 feet in length, located entirely within the County's Makena Road right-of-way, from the water meter at the end of the County's existing waterline and extending to the Benefitted Property, and more

JUL-26-86 FXI 8 58 AM

JC Kean
CENTURY 21 ADVANTAGE

808 79-2907
1AA HV OUD 013 UUUU

P. 16

particularly shown as a cross-hatched line on Exhibit "A" attached hereto and made a part hereof (hereinafter the "easement area").

1. The Grantee's private waterline shall be located as close to the Makens Road right-of-way boundary lines as reasonably practicable. In areas where the Grantee's private waterline crosses driveways, the Grantee shall bury said waterline to prevent any damage or risk of injury. Should additional driveways be constructed in the future, said waterline shall be buried by the Grantee in order that such driveways can be constructed. The Grantee shall be solely responsible for making repairs to said waterline, whether said waterline be damaged by the public or by equipment belonging to the Grantee or the Grantor, but the Grantee shall not be precluded from seeking damages or obtaining recourse from parties whose negligence causes such damages. The relocation of said waterline, due to future County improvements, shall be undertaken by the Grantee, and at no cost to the Grantor. It shall be the responsibility of the Grantee to obtain permission from the State of Hawaii wherever said waterline crosses State property.

2. The Grantee shall pay, at its sole expense, for all costs of constructing, relocating, maintaining, operating, repairing, replacing or removing the Grantee's private waterline over, under, along and through the easement area, and the Grantee shall defend, indemnify and hold harmless the Grantor from any and all such costs, including but not limited to attorney's fees, other than for damages caused by Grantor's own negligence or willful misconduct.

3. After the installation of the Grantee's private waterline, or after any subsequent relocation, removal, maintenance, replacing or repair/work thereon has been completed, the easement area and all surrounding grounds, to the extent such surrounding grounds shall be disturbed, shall be restored by the Grantee to their original condition, to the extent that such restoration is reasonably possible.

4. The Grantee shall defend, indemnify and hold harmless the Grantor and the Grantor's officers, employees, agents, successors and assigns, against any and all claims for property damage, personal injury, or wrongful death by whomsoever suffered or brought, arising in any manner whatsoever, directly or indirectly, from the Grantee's private waterline or its placement, construction, reconstruction, maintenance, operation, repair, replacement, removal, or relocation, except as may have been caused by Grantor's own negligence or willful misconduct.

5. The Grantee shall defend, indemnify and hold harmless the Grantor and the Grantor's officers, employees, agents, successors and assigns, from and against any and all damage to Grantee's private waterline resulting from the public's use of the easement area, Makana Road or the Makana right-of-way, or from the Grantee's use, construction, and maintenance of the easement area, Makana Road or the Makana right-of-way, or from the Grantor's construction, reconstruction, maintenance, operation, repair or removal of any waterlines, sewerlines or any other improvements in the easement area, Makana Road or the Makana right-of-way.

JUL-26-96 FRI 9 00 AM

J. I. Kean
CENTURY 21 ADVANTAGE

FRA NY

808-478-2807
000 0/3 0000

P. 18

6. Within ninety days after written notice from the Grantor to the Grantee requesting Grantee to relocate its private waterline underground or to a different location, the Grantee shall relocate its private waterline underground or from the easement area to another area, as designated by the Grantor. PROVIDED, HOWEVER, the Grantor covenants with the Grantee that any new location shall be within the County's Makana Road right-of-way, or any widening thereof, in which the Grantor shall grant to the Grantee an easement to build, construct, reconstruct, rebuild, repair and maintain a private waterline pipe for Grantee's exclusive use as an appurtenance to and in favor of the Benefitted Property. PROVIDED FURTHER, HOWEVER, at the sole option of the Grantee, upon the Grantee's receipt of the relocation notice from the Grantor, the Grantee may choose to completely remove its private waterline and terminate its rights under this agreement as provided in paragraph 16.

7. The Grantee shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the easement area, or any part thereof, nor, without the prior written consent of the Grantor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing within the easement area.

8. The Grantee shall comply with all of the requirements of all county, municipal, state and federal authorities and observe all county, municipal, state and federal

JUL-28-98 FRI 9:00 AM

Jr. Kean
CENTURY 21 ADVANTAGE

FAA KV

808-678-2907
000 8:3 0000

P. 18

laws now in force or which may hereinafter be in force pertaining to the easement area and Grantee's private waterline.

9. The Grantee shall not commit or suffer any act or neglect whereby the easement area or any improvement thereon shall become subject to any attachment, lien, charge or encumbrance whatsoever, and shall defend, indemnify and hold harmless the Grantor from and against all attachments, liens, charges and encumbrances caused by any act or omission of the Grantee, its officers, employees or agents, and all expenses resulting therefrom.

10. The Grantee shall defend, indemnify and hold harmless the Grantor from and against any claim or demand for loss, liability or damage, including but not limited to claims for property damage, personal injury or death resulting from the granting of this easement or the Grantee's private waterline or its placement, construction, maintenance, operation, repair, replacement, removal or relocation, or arising out of any accident on the easement area occasioned by any act or nuisance made or suffered by the Grantee within the easement area, Makana Road or the Makana right-of-way, or growing out of or caused by any failure on the part of the Grantee to maintain the easement area in a safe condition, or by any act or omission of the Grantee, and 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 herein or the rules, regulations, ordinances and laws of the federal, state,

municipal or county governments applicable to the easement area or Grantee's private waterline.

11. If the Grantor shall be made a party to any litigation commenced by or against the Grantee (other than condemnation proceedings or actions against the Grantor challenging its title to the easement area or its authority to grant this easement), having to do with the construction, maintenance, operation, repair, replacement, removal or relocation of this waterline, the Grantee shall pay all costs and expenses incurred by or imposed on the Grantor, including but not limited to Grantor's attorney's fees; furthermore, the Grantee shall pay all costs and expenses, including but not limited to attorney's fees, which may be incurred by or paid by the Grantor in enforcing the covenants and agreements of this easement.

12. In consideration for the granting of this easement, the Grantee shall procure, at its own costs and expense, and shall maintain during the entire period of this easement and at all times during which all or any portion of Grantee's private waterline shall be installed above ground, a policy or policies of comprehensive public liability insurance, in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00), insuring and defending the Grantor against all claims for personal injury and/or death against which the Grantee is responsible to defend, indemnify or hold harmless the Grantor under the terms of this agreement, and in an amount of at least ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) for all claims of property damage against which the

Grantee is responsible to defend, indemnify or hold harmless the Grantor under the terms of this agreement. The Grantee shall furnish the Grantor with a certificate showing said policy or policies to be initially in force and shall furnish a like certificate upon each renewal of the policy or policies, each certificate to contain or be accompanied by an assurance of the insurer to notify the Grantor of any intention to cancel said policy or policies at least sixty (60) days prior to actual cancellation. The procuring of this policy or policies shall not release or relieve the Grantee of its responsibility under this agreement or limit the amount of the Grantee's liability under this agreement. The notice to cancel shall be sent to the Grantor at least sixty (60) days prior to the date of cancellation.

13. The Grantee shall, at its own expense, from time to time and at all times during the term hereof, substantially repair, maintain and keep in good and safe repair, order, and condition, reasonable wear and tear excepted, the easement area and the Grantee's private waterline.

14. In the event condemnation proceedings shall be initiated by the Grantor against the easement area, the Grantee hereby acknowledges that the Grantee shall not be entitled to nor will the Grantee assert any claim for compensation arising from the rights granted by this agreement or Grantee's private waterline.

15. The Grantor does not warrant the conditions of the easement area. The Grantee accepts the easement area in the condition it is in at the commencement of this easement, and the

Grantee hereby acknowledges that the Grantor has made no representations concerning the conditions of the easement area or its suitability for the use intended to be made thereof. The Grantee accepts and assumes all risks with respect to entry upon the easement area and the conditions thereof including, without limitation, any dangerous conditions (latent or patent).

16. In the event the Grantee shall at any time completely remove the waterline from the easement area and for a period of two (2) years thereafter fail to reinstall the waterline, the Grantee shall, at the Grantor's request, forthwith execute and deliver to the Grantor an instrument suitable for recordation in the appropriate registry office of the State of Hawaii as shall be sufficient to evidence the termination and surrender of the easement granted under this agreement.

17. This agreement shall be construed and governed by the laws of the State of Hawaii.

18. The term "Grantee" wherever used herein shall be held to mean and include the undersigned Grantee, and its personal representatives, devisees, heirs, successors and assigns; the term "Grantor" wherever used herein shall be held to mean the County of Maui, its officers, employees, agents, successors and assigns; and this instrument shall be binding upon and shall inure to the benefit of the parties hereto and their respective personal representatives, devisees, heirs, successors and assigns.

19. This written agreement represents the entire agreement of the parties hereto. This agreement may be amended

only by written amendment executed by all of the undersigned parties.

20. This agreement shall be recorded at the Bureau of Conveyances of the State of Hawaii at the Grantee's expense and upon such recording, the Grantee's rights, benefits and burdens herein shall constitute rights, benefits and obligations which shall run with the Grantee's land described above and shall accrue to the benefit of and be the responsibility of the Grantee and all future owners of the Benefitted Property, and the burden on the easement area shall be a covenant running with the Grantor's land in favor of the Benefitted Property.

21. If the Grantee fails to observe or perform any of the terms and conditions provided herein to be observed or performed by the Grantee, including but not limited to failing to maintain the insurance for the Grantor described above, then an essential condition of this agreement shall be conclusively presumed to have been breached and the Grantee shall be deemed to be in default and Grantor can cancel this agreement as follows:

At any time after a breach shall have occurred, the Grantor shall notify the Grantee in writing of its intention to cancel this agreement. If, within sixty (60) days of the notice of intention to cancel being mailed by the Grantor to the Grantee, the Grantee shall undertake to cure the default and shall with due diligence thereafter promptly cure the default, then the Grantor shall not have grounds to cancel this agreement on account of such default. If, within sixty (60) days of the notice of intention to

cancel being mailed by the Grantor to the Grantee, the Grantee shall not undertake to cure the default or, having undertaken to cure the default, shall not cure the default promptly thereafter, then the Grantor shall have the right to apply to the Second Circuit Court of the State of Hawaii or other court of competent jurisdiction for an order declaring this agreement cancelled and of no further force and effect, and upon receiving such an order from the Court, the Grantor shall be entitled to remove the Grantee's private waterline from the easement area.

Nothing in this paragraph shall be construed to limit or preclude the Grantor from exercising any other available remedy at law or in equity with respect to the Grantee's breach of the terms of this agreement.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to duly executed this 19th day of October, 1978.

GRANTOR:
COUNTY OF MAUI

By *Linda Crockett Lingle*
LINDA CROCKETT LINGLE
Its Mayor

GRANTED:

HAWAIIAN TRUST COMPANY, LIMITED as Trustee under Unrecorded Revocable Trust Agreement of Mary Louise Carter Dated January 14, 1983 and not Individually.

By *Judy Miller*
(Signature)
JOY A. ALEXANDER
(Print Name)
Its _____
(Title)

By *Mr. Olson*
(Signature)

(Print Name)
Its _____
(Title)

APPROVED AS TO FORM AND LEGALITY:

William B. Koller
WILLIAM B. KOLLER
Deputy Corporation Counsel
County of Maui
of Hawaiian Trusts and Loans

APPROVAL RECOMMENDED:

Charles Jones
CHARLES JONES
Director of Public Works
and Waste Management

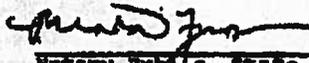
APPROVAL RECOMMENDED:

David Cradick
DAVID CRADICK
Director of Water Supply

STATE OF HAWAII
CITY AND COUNTY OF HONOLULU

vs.

On this 30th day of July, 1996
before me appeared JUDY ALEXANDER
and SEA OKUDA to me personally
known, who, being by me duly sworn, did say that they are the
VICE PRESIDENT and REAL ESTATE OFFICER
respectively of HAWAIIAN TRUST COMPANY, LIMITED, a Hawaii
corporation, as Trustee as aforesaid and that the seal affixed to
the foregoing instrument is the corporate seal of said corporation
and that said instrument was signed and sealed in behalf of said
corporation by authority of its Board of Directors, and the said
JUDY ALEXANDER and SEA OKUDA
acknowledged said instrument to be the free act and deed of said
corporation as Trustee.


Notary Public, State of Hawaii
My commission expires 11/27/99

42

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this _____ day of _____, 19____, before me appeared _____, to me personally known, who, being by me duly sworn, did say that he/she is the _____ of HAWAIIAN TRUST COMPANY, LIMITED, a Hawaii corporation, as Trustee under Unrecorded Revocable Trust Agreement of Mary Louise Carter Dated January 14, 1981; 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 officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public, State of Hawaii

My commission expires: _____

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 29th day of October, 1996 before me appeared LINDA CROCKETT LINDLE, to me personally known, who being by me duly sworn did say that she is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui by authority of its Charter, and the said LINDA CROCKETT LINDLE acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Marshall Harris LS

Notary Public, State of Hawaii

My commission expires: 12-7-79



EXHIBIT " A "

MEMORANDUM OF UNDERSTANDING
Makena Road and Ahihi-Kina'u Natural Area Reserve

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into this 15th day of December, 2010, by and between the Department of Land and Natural Resources, State of Hawaii ("DLNR") and the County of Maui ("COUNTY"), a political subdivision of the State of Hawaii.

WITNESSETH:

WHEREAS, pursuant to Executive Order No. 2668, dated June 29, 1973, the Ahihi-Kina'u Natural Areas Reserve ("NAR") was set aside by the governor of the State of Hawaii, to be under the exclusive control and management of DLNR; and

WHEREAS, pursuant to said Executive Order No. 2668, Makena-Keoneoio Government Road, as shown on the map attached hereto as Exhibit "A", and made a part hereof, was excluded from the NAR; and

WHEREAS, neither the State of Hawaii nor COUNTY claim jurisdiction over that portion of Makena-Keoneoio Road that runs through the NAR; and

WHEREAS, COUNTY has the authority, pursuant to Chapter 12.50, Maui County Code, as amended, to provide surface maintenance of "old government roads", as the same is defined in Section 12.50.030, Maui County Code, as amended, which includes that portion of Makena-Keoneoio Road that runs through the NAR; and

WHEREAS, DLNR and COUNTY are desirous of protecting the natural environment within the NAR, and also providing for the safety of the public traveling along Makena-Keoneoio Road; and

WHEREAS, DLNR and COUNTY wish to enter into a mutually-beneficial agreement to accomplish both these purposes;

NOW THEREFORE, in consideration of the mutual benefits that will accrue to DLNR and COUNTY, the parties agree as follows:

A. DLNR agrees:

1. DLNR shall be responsible for, and shall bear all the cost of maintaining roadside vegetation along that portion of Makena-Keoneoio Road that runs through the NAR, on both sides of the road, immediately adjacent to the roadway surface.
2. DLNR shall be responsible for access to the NAR from that portion of Makena-Keoneoio Road that runs through the NAR, and shall be responsible for any

control of parking along the roadway or the area immediately adjacent to the roadway surface. DLNR shall install and maintain appropriate signs as necessary to carry out this function.

3. If, in the course of its normal and regular activities in and around the NAR, DLNR discovers a condition requiring correction which it believes to be within the scope and responsibility of COUNTY under this MOU, DLNR shall notify COUNTY as soon as practicable. If the condition is within COUNTY's scope of responsibilities under this MOU, COUNTY shall take reasonable steps to remedy such condition.

B. COUNTY agrees:

1. COUNTY shall provide surface maintenance to that portion of Makena-Keoneoio Road that runs through the NAR, including placement or removal of surface materials on the roadway and remedial patching, as necessary, to the extent the Council of the County of Maui has authorized funds for such work in the annual budget ordinance, or any amendments thereto.

2. If, in the course of its normal and regular activities in and around the NAR, COUNTY discovers a condition requiring correction which it believes to be within the scope and responsibility of DLNR under this MOU, COUNTY shall notify DLNR as soon as practicable. If the condition is within DLNR's scope of responsibilities under this MOU, DLNR shall take reasonable steps to remedy such condition.

C. DLNR and COUNTY jointly agree:

1. DLNR and COUNTY will jointly pursue enforcement of any laws, rules and regulations on and around that portion of Makena-Keoneoio Road that runs through the NAR, whether civil or criminal, or both, to the extent necessary to carry out the intent of this MOU.

2. DLNR and COUNTY expressly agree and affirm that no obligations to either party pursuant to this MOU shall be construed as an admission of ownership over that portion of Makena-Keoneoio Road that runs through the NAR by either party.

3. DLNR and COUNTY agree to use best efforts to jointly pursue available monies through capital improvement projects from their respective legislative bodies, in order to assist with the services to be rendered under this MOU.

4. DLNR and COUNTY agree to abide by all general terms and conditions included in Section D, as stated below.

5. This MOU shall be effective for five (5) years from the date of execution, provided that it may be canceled, amended or extended upon written agreement by both DLNR and COUNTY.

D. General Terms

DLNR and COUNTY also agree that the following provisions be made a part of this Agreement as general terms:

1. Governing Law. This Agreement shall be governed by, and construed and interpreted in accordance with the laws of the State of Hawaii, and the courts of the State of Hawaii shall have exclusive jurisdiction in any action to interpret or enforce this Agreement.

2. Nondiscrimination. No person performing work under this Agreement, including any subcontractor, employee, or agent of the DLNR or COUNTY, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

3. Compliance With Laws. The DLNR and COUNTY shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws now in force or which may be in force.

4. Assignments. Neither the DLNR nor the COUNTY shall transfer to, assign, or permit any other person to perform its respective duties, obligations, or interests under this Agreement, either voluntarily or by operation of law, without the prior written approval of the other party.

5. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provision of this Agreement.

6. Partial Invalidity. If any term, provision, covenant or condition of this Agreement should be held to be invalid, void or unenforceable, the remainder of this Agreement shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

7. Waiver. No party to this Agreement shall be deemed to have waived the exercise of any right or any obligation hereunder, unless such waiver is made expressly and in writing.

8. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto and supersedes all other prior or concurrent oral or written letters, agreements, or understandings.

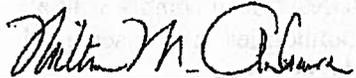
9. No Partnership. The COUNTY and the DLNR agree that nothing in this Agreement should be construed as creating any type of partnership or joint venture arrangement or principal and agent relationship between them.

10. No Party Deemed Drafter. Each party has thoroughly reviewed and revised this Agreement and has had the advice of counsel prior to the execution hereof, and the parties agree that neither party shall be deemed to be the drafter of this Agreement.

This MOU may be executed in counterparts, each of which shall be deemed an original and said counterparts shall together constitute one and the same instrument.

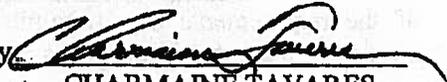
IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the day and year first above mentioned.

APPROVAL RECOMMENDED:

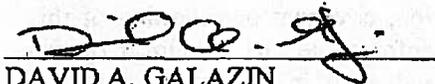

MILTON M. ARAKAWA, A.I.C.P.
Director of Public Works

COUNTY:

COUNTY OF MAUI

By 
CHARMAINE TAVARES
Its Mayor

APPROVED AS TO FORM AND LEGALITY:


DAVID A. GALAZIN
Deputy Corporation Counsel
County of Maui
S:\ALLDAG\Mayor\Makona Rd MOU draft 5-26-10.doc

DLNR:

DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAII

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

APPROVED AS TO FORM:

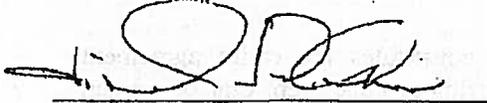

LINDA L. W. CHOW
Deputy Attorney General
State of Hawaii

EXHIBIT A: Map of Paved Road Through Makena

