

AGREEMENT

This Agreement sets out the 4th day of April, 2002 settlement agreement ("Agreement") reached between the County of Hawaii and Surety Kohala Corporation ("Surety Kohala") (formerly Chalon International) with respect to Subdivision applications numbered 2000-056, 2000-200, 2000-071, 2000-072, and 2000-209 (collectively the "Subdivisions" or "Surety Kohala Lands").

A. TERMS OF PUBLIC ACCESS

1. This Agreement settles the public access obligations asserted by the County over the Subdivisions in question pursuant to Chap. 34, Hawaii County Code. The County of Hawaii agrees and stipulates that compliance with the terms of this Agreement and the designation of the easements for public access described herein on the final subdivision map(s) and recordation of the map(s) at the Bureau of Conveyances, State of Hawaii shall constitute full and final compliance with all public access requirements for the Surety Kohala Lands of Hawaii Revised Statutes ("HRS") Section 46-6.5, HRS Chapters 205A and 343, the Ala Loa or Ala Kahakai, and Hawaii County Code Chapter 23 (Subdivision) and Chapter 34 (Public Access). The public access easements described in this Agreement and attached maps will be entered on the final subdivision maps as future easement reservations in favor of the County of Hawaii or State of Hawaii, as the case may be.
2. Surety Kohala will withdraw its appeals that are pending with the Board of Appeals. The County of Hawaii will withdraw its letters implementing Chap. 34 with respect to these Subdivisions and upon compliance with the applicable conditions by Surety Kohala, issue tentative or final subdivision approval.
3. This Agreement is without prejudice to Surety Kohala's right to challenge the application of Chap. 34 with respect to property not covered by this Agreement. By entering into this Agreement Surety Kohala does not concede that the County of Hawaii properly exercised its authority under Chap. 34.
4. The County of Hawaii does not waive its potential rights to require further public access over the lands covered by this Agreement pursuant to Chap. 34 if further subdivision of the parcels in question is applied; or in connection with further applications for land use approvals, such as rezonings and SMA permits, to which public access conditions may be attached pursuant to law.
5. Surety Kohala has the right to rescind and void any or all of the present Subdivisions as provided in Chap. 23, Hawaii County Code. If it does, this agreement is of no further force and effect on the rescinded and voided subdivision(s).

6. The vehicular easements and public parking area shall not be "County highways." They will be easements for public vehicular travel and parking over private property.
7. The various county public accesses will not be officially open to the public until easement documents have been approved by both parties and the easements conveyed to and accepted by the County. Enactment of rules governing the use of the public accesses pursuant to Chap. 34, Hawaii County Code, will also be a condition precedent to the official opening of the public accesses. If the Chapter 34 rules regulating use of the public accesses described herein are not promulgated by the County pursuant to Hawaii County Code Section 34-11 within two (2) years from the date of this Agreement, the County shall accept, upon the tender by Surety Kohala, all responsibility for maintenance and liability of the public accesses, provided however, that the terms of this Agreement shall not impose any duties upon the County for the maintenance and liability for the vehicular and pedestrian public access easements in favor of the State of Hawaii as established in Civ. Nos. 5464 and 5466. The existing State easements will remain open pursuant to the terms of Civ. Nos. 5464 and 5466. Surety Kohala, its successors and assigns, will not, however, close public access on the future County easement to Kauhola lighthouse that has been open to the public, pending the acceptance of the easement.
8. Except for the State easements, the easements will be controlled pursuant to rules adopted under Chap. 34, Hawaii County Code.
9. Upon receipt of final subdivision and approval(s), Surety Kohala will draft the easement documents for the County's review and approval. Surety Kohala will retain for itself and its successors or assigns any applicable rights under H.R.S. Chap. 520.
10. This Agreement, with respect to the State easements, is made on the assumption that these remain essentially as shown in the settlement agreements for Civ. Nos. 5464 and 5466. If there has been revision of those agreements, this Agreement will be revised accordingly.
11. The County of Hawaii is surrendering its claim under Chapter 34 to public access over the proposed 5-lot Sub. No. 2000-071, in that there is insufficient evidence to demonstrate that the lots were offered as part of a common promotional plan of advertising and sale.
12. The following descriptions of the public accesses, as more particularly shown on Maps 1, 2, 3 and 4 which are attached hereto and incorporated herein by reference, are the parties' best efforts to describe the locations of the desired public access easements. The parties agree that the exact locations of some of the trails in question must be physically located on the ground and cannot be

exactly specified on maps at the present time. In determining the final locations of the trails and access points, the parties agree to be guided by the following principles: the goal is to establish public access that provides safe and feasible pedestrian access to the shoreline and along the coast with a minimum of site improvement. (Where vehicular access is specified, the route should follow the existing roads.) Where the public access crosses gulches, there must be a safe, feasible route to get from one side of the gulch to the other. Where the public access runs along the top of the sea cliff, the route should be close to the cliff, but not so close that it is hazardous. If portions of the sea cliff erode away, destroying the trail or making it hazardous, the trail must be relocated to a safe location in the immediate vicinity. Where the trail goes along the top of the sea cliff, there shall be spur trails to permit pedestrians to go down the sides of the cliff at locations where it is safe to do so. These will be at locations traditionally used by surfers and fishermen. In general, the trails will follow field roads or existing paths where possible. Where the trails do not exist on the ground in the area of the desired public access, Surety Kohala has no obligation to make trails. Where there is a lateral access specified near the top of the sea cliff, and the easement is described as following an existing field road and/or the alignment of the "Kohala Trail" SMA permit, the easement can be relocated at Surety's request closer to the top of the cliff if (1) the route in question can easily be used for pedestrian travel without improvement, and (2) the location is a safe distance from the top of the cliff.

B. DESCRIPTION OF PUBLIC ACCESS

As used herein, the terms "pedestrian public access" or "pedestrian access" shall mean and be limited to pedestrian foot traffic, and does not include use by bicycles, motor bikes, all-terrain vehicles of any type, or horse, mule or other animal use.

Segment 1: Sub. 2000-209 (Map 1); Sub. 2000-72 (Map 2)

1. Vehicular and pedestrian public access as shown in settlement of Civ. No. 5466 (see Map 1).
2. Vehicular access as shown on Map 1 on old railroad right-of-way from road to former Loran station (insofar as it crosses property owned by Surety Kohala) to Mo'okini Heiau and birthplace of Kamehameha the Great.
3. Vehicular and pedestrian access easement in favor of County, 10' wide, across makai boundary of Surety Kohala property from Upolu Airport to east boundary of TMK No. 5-5-7:10, as shown on Map 2. This will generally run near the top of the sea cliff at a safe location, with spurs connecting to existing fishermen's trails that lead down the sea cliff to the shoreline at safe locations.
4. Surety Kohala will offer an easement to the State of Hawaii over the coastal road in TMK No. 5-5-05-04 in settlement of the State's claims to a "school lot" on this parcel, in the pending quiet title litigation on this property.

Segment 2: Sub. 2000-200 (Map 3)

1. If development occurs under the Watkins/Sunderland SMA permit, public access will be satisfied under the terms of that SMA, as shown on Map 3. Surety Kohala will cooperate in allowing vehicular and pedestrian public access over its property between the Akoni Pule Highway and the property involved in the SMA permit. There will be a public access easement for pedestrian travel over the same alignment in the event that public access is not developed under the terms of the Watkins/Sunderland SMA permit.

Segment 3: Sub. 2000-056 (Map 4)

1. Vehicular access over the present road from Akoni Pule Highway to the Kauhola Pt. lighthouse, ending in a parking area at or near the present parking area. A 10' wide lateral pedestrian access, ending at the point shown on the map, with safe access to Keawaeli Bay at the present surfer trail, and across Pali Akamoa Gulch, at or near the location of the trail shown on the "Kohala Trail" SMA maps.
2. From the Kauhola Pt. parking area, a 10' wide pedestrian access easement north to the lighthouse, and east across Kauhola Pt. along the existing road, and eastward following the existing road, on the general alignment of the "Kohala Trail" SMA permit. Crossing Halelua Gulch at a feasible location to be determined. Between Halelua Gulch and Halewa Gulch, on the "Kohala Trail" alignment. A spur easement 10' wide along the bottom of Halelua Gulch to the ocean; and a spur easement 10' wide along the bottom of Halewa Gulch to the ocean.
3. Easements to the State of Hawaii shall be shown on the final subdivision maps per Civ. No. 5464 settlement, to the extent that these are within this subdivision.

C. GENERAL TERMS

1. Issuance of Final Subdivision Approval. The Planning Director shall issue final subdivision approval for each of the Applications within fifteen (15) working days of Surety Kohala's submission of the final map to the Planning Department indicating the public access easements described herein, or satisfying the conditions of tentative subdivision approval in the respective Applications, whichever is later.
2. No Admission. The parties hereto acknowledge that neither this Agreement, nor the fact of settlement, nor the settlement negotiations or proceedings are, may be construed as, may be deemed evidence of, or may be used at any time as an admission, presumption, or inference of fault, wrongdoing or liability of any party in any case, action, or proceeding in

any court, administrative agency, or other tribunal, or in any manner, for any purpose whatsoever, except, however, that this Agreement may be used in any action for the enforcement of this Agreement.

3. Advice of Counsel. No party has made any representations of fact or opinion to another party to induce this compromise, and this compromise is made by the parties with full knowledge of the facts and possibilities of the case, and with the advice of, or the opportunity to obtain experienced counsel.
4. Authority to Execute: The parties represent and warrant that their signatories to this Agreement have the authority to execute and bind the party or parties on whose behalf this Agreement is signed.
5. Entire Agreement. This Agreement constitutes the entire agreement among the parties and may be changed, modified, or amended only by all parties executing a written instrument.
6. No Waiver. Waiver of any breach of this Agreement by any party shall not be deemed a waiver by such party of any other breach of this Agreement.
7. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of Hawaii. In the event of any dispute or litigation relating to the matters within the scope of this Agreement, the parties consent to the jurisdiction of the courts of the Circuit Court of the Third Circuit, State of Hawaii, and further agree that the courts of the Circuit Court of the Third Circuit, State of Hawaii shall constitute the place of sole, exclusive, and mandatory jurisdiction and venue over such disputes or litigation.
8. No Party Deemed Drafter. The terms of this Agreement have been negotiated at arms' length among knowledgeable parties represented by experienced counsel. As a result, the rule of "interpretation against the draftsman" shall not apply in any dispute over interpretation of the terms of this Agreement.
9. Prior Agreements Cancelled. This Agreement contains the entire agreement among the parties and supersedes and cancels each and every other prior conflicting agreement, promise and/or negotiation among them. The terms of this Agreement are contractual and are not a mere recital.

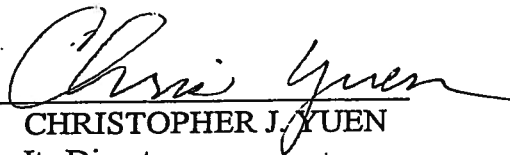
10. Further Documents and Acts. The parties agree to execute any other or further documents, and to perform any and all other acts reasonably required to carry out the purpose of this Agreement.
11. Attorneys' Fees and Costs. Each party hereto shall bear its own attorney's fees and costs.
12. Enforcement. If any party to this Agreement goes to court to enforce any provision of this Agreement, the prevailing party shall receive its reasonable attorney's fees and costs.
13. Successors and Assigns. All the terms, rights, obligations and duties of the parties to this Agreement shall inure to the benefit of and be binding upon the parties and their respective heirs, devisees, personal representatives, successors and permitted assigns.

The parties acknowledge that the terms of this Settlement Agreement have been read, that its provisions are fully understood, and that the same have been duly agreed upon and signed by the parties as their free act and deed.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date above written.

RECOMMEND APPROVAL:

PLANNING DEPARTMENT

By 
CHRISTOPHER J. YUEN
Its Director

APPROVED AS TO FORM AND LEGALITY:

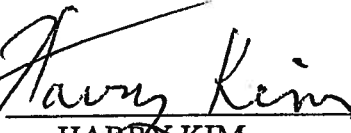
By 
Deputy Corporation Counsel

SURETY KOHALA CORPORATION

By 
Its President

By 
Its Vice President

COUNTY OF HAWAII

By 
HARRY KIM
Its Mayor

STATE OF HAWAII

)

)

ss.

COUNTY OF HAWAII

)

On this 13th day of May, 2002, before me personally appeared Masahiro Kume, and Michael S. Gomes, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that they are the President and Vice President respectively, of **SURETY KOHALA CORPORATION**, and that such persons executed the foregoing instrument as the free act and deed of such persons, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

L.S.



Name: HERMANN P. FERNANDEZ

Notary Public, State of Hawaii

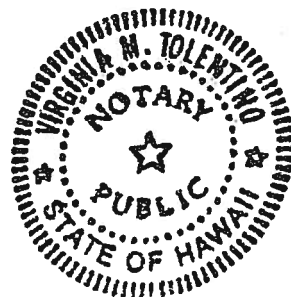
My commission expires: Nov. 20, 2005

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

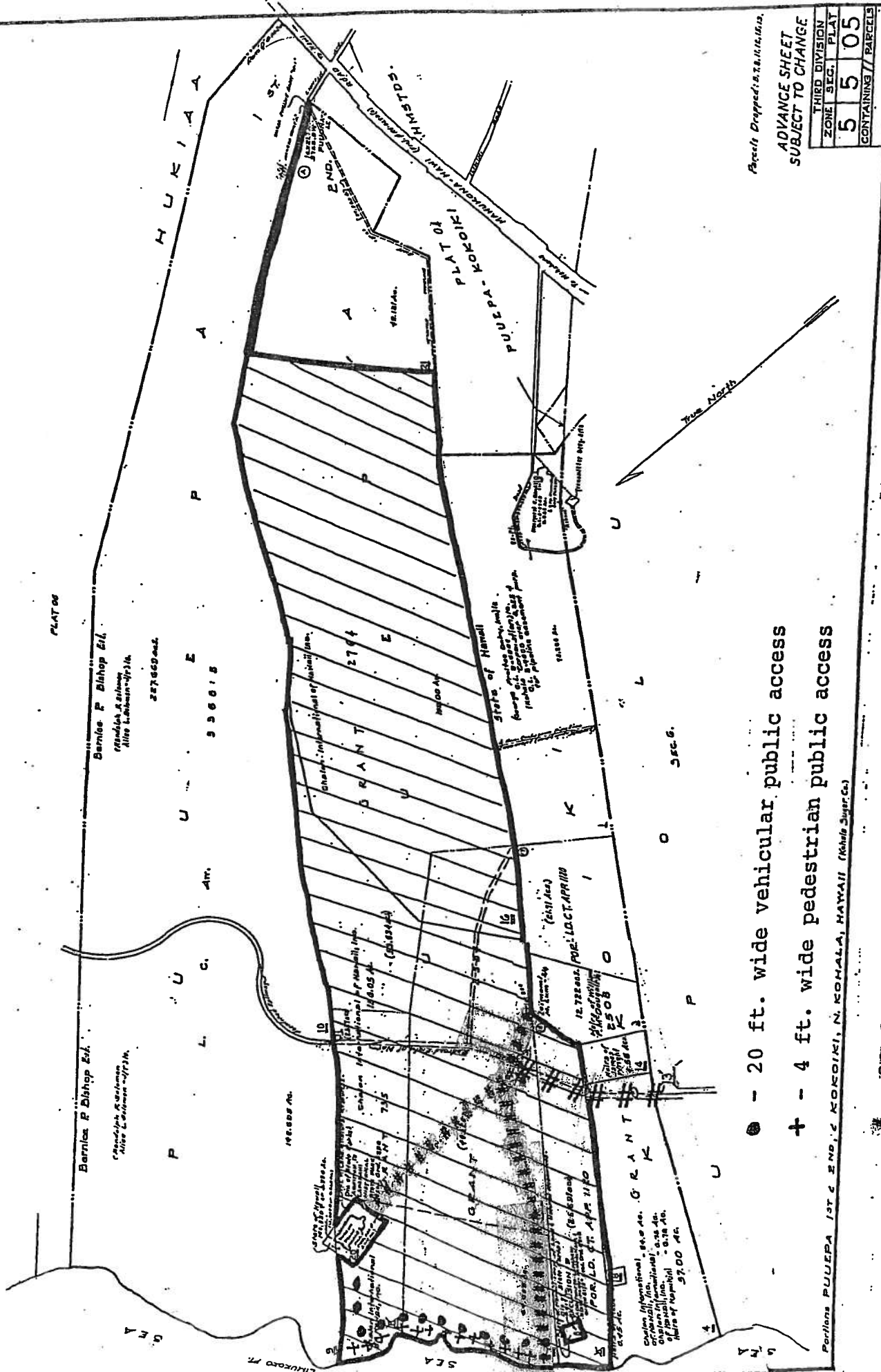
On this 2nd day of May, 2002, before me personally appeared HARRY KIM, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the County of Hawaii, a municipal corporation of the State of Hawaii; that the seal affixed to the foregoing instrument is the corporate seal of the said County of Hawaii; that the foregoing instrument was signed and sealed in behalf of the County of Hawaii by authority given to said Mayor of the County of Hawaii by Section 5-1.3 (g) of the County Charter, County of Hawaii (1991), as amended; and said HARRY KIM acknowledged said instrument to be the free act and deed of said County of Hawaii.

Virginia M. Tolentino
VIRGINIA M. TOLENTINO
Notary Public, State of Hawaii

My commission expires: 4/22/2005



O P I H I P



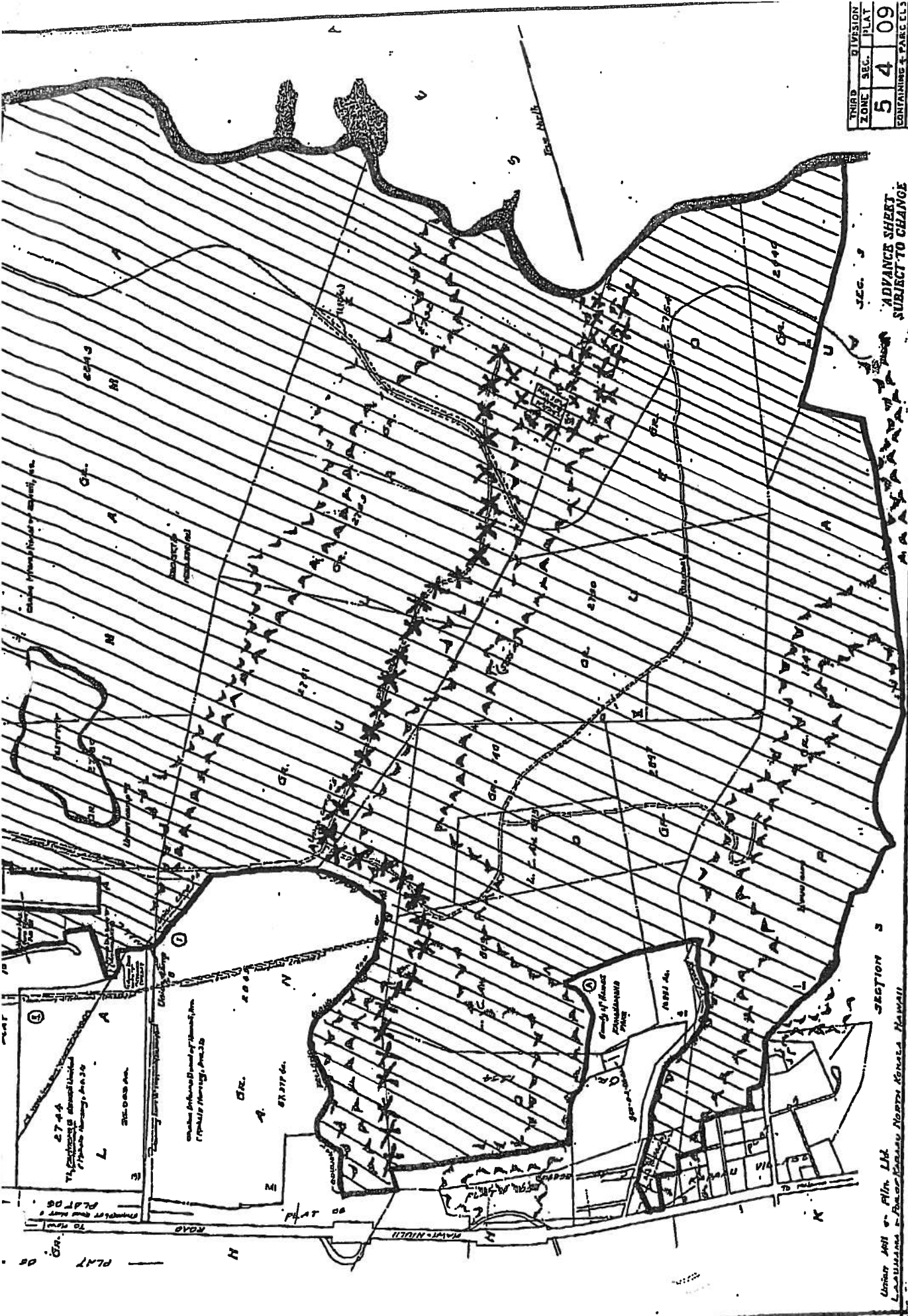
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- - 20 ft. wide vehicular public access
- + - 4 ft. wide pedestrian public access
- # - 20 ft. wide vehicular public access

ADVANCE SHEET SUBJECT TO CHANGE	
THIRD DIVISION	PLAT
ZONE 1 SEC. 1	5 5 05
CONTAINING // PARCELS	

Portions PULUEPA 1ST & 2ND & KOKOIKI, N. KOKALA, HAWAII (Kohala Sugar Co.)

SUB 2000-209



XXXX UNDESIGNATED 10-FOOT WIDE PEDESTRIAN
 MAUKA-MAKAI PUBLIC ACCESS

PUBLIC ACCESS THROUGH WATKINS AND SUNDERLAND

SUB 2000-200

SMA 00-003

BOA 01-26

MAAFC

Section 5
 MAUKA-MAKAI ROAD
 WATKINS ROAD
 MAUKA-MAKAI PUBLIC ACCESS

TERRITORY	DIVISION
ZONE	SEC. PLAT
5	4 09
CONTAINING 4 PARCELS	

ADVANCE SHEET
 SUBJECT TO CHANGE

EXISTING LIVED AREA
EXISTING AS OF 2-7-02

CIVIL NO. 5464

ADVANCE SHEET
SUBJECT TO CHANGE

- - 20 ft. wide vehicular access
- + - 4 ft. wide pedestrian access

THIRD	DIVISION
ZONE	SEC. PLAT
5	3 06
CONTAINING PARCELS	

THIRD	DIVISION
ZONE	SEC. PLAT
5	3 07
CONTAINING PARCELS	

+++ Undesignated 10-foot wide pedestrian lateral public access

SUB 2000-56

*** Undesignated 20-foot wide vehicular public access

MAP 4

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail Pickup To:

CARLSMITH BALL LLP
121 Waianuenu Avenue
Hilo, Hawaii 96720

Attention: Steven S. C. Lim, Esq.

TITLE OF DOCUMENT:

DECLARATION OF EASEMENTS FOR PUBLIC ACCESS

TAX MAP KEY(S) Portions of (3) 5-6-01:18
Subdivision No. 2000-007, Lots 8, 10 and 11
Subdivision No. 2000-008, Lots 17, 20 21, 22 and 23
Subdivision No. 2000-0138, Lots 1 and 6

No. of Pages: 14

DECLARATION OF EASEMENTS FOR PUBLIC ACCESS

THIS DECLARATION OF EASEMENTS FOR PUBLIC ACCESS
("Declaration") made this 14th day of January, ~~2001~~²⁰⁰², by the **RICHARD SMART**
REVOCABLE PERSONAL TRUST, with its mailing address at Post Office Box 458,
Kamuela, Hawaii, 96743, (hereinafter referred to as "Declarant"), and the **COUNTY OF**
HAWAII, a municipal corporation with its principal place of business and mailing address at
25 Aupuni Street, Hilo, Hawaii 96720 (hereinafter referred to as "County").

existing parcels, all located adjacent to, and on the makai side of Akoni Pule Highway, a publically-owned street or highway.

B. The Property is intended to be consolidated, subdivided and used pursuant to the original and any future zoning and uses accessory thereto (each such lot shall individually be referred to herein as a "Subdivision Lot" or "Lot"). This Declaration affects those certain original Subdivision Lots which are designated as Lots 8, 10 and 11 of Subdivision No. 2000-007; Lots 17, 20, 21, 22 and 23 of Subdivision No. 2000-008; and Lots 1 and 6 of Subdivision No. 2000-0138; as more particularly described in Exhibits "A-1", "A-2" and "A-3", respectively.

C. Pursuant to the provisions of Hawaii Revised Statutes Section 46-6.5 relating to Public Access, the County of Hawaii has adopted Hawaii County Code Chapter 34 (Public Access), which provides for implementation of public access over private property in appropriate locations to the ocean, shorelines and mountain areas by requiring dedication of land for such public rights-of-way by fee or easement as a condition precedent to final subdivision approval or the issuance of a building permit for a multiple-family development where adequate public access is not already provided, including provisions requiring the County of Hawaii to be responsible for all improvement costs, liability and maintenance issues.

D. Accordingly, in order to assure that public pedestrian access is provided within the Property to and along designated shoreline access areas or mountain areas, as applicable, the Declarant and the County of Hawaii hereby agree to be bound by, and to encumber portions of the Property by recordation of this Declaration of Easements for Public Access in the Bureau of Conveyances of the State of Hawaii.

NOW, THEREFORE, Declarant hereby declares, and the County hereby acknowledges and accepts, that each Lot within the Property and any future Lot(s) subdivided therefrom, which is encumbered by one or more of the public access rights-of-way designated herein, shall be held, sold, conveyed, encumbered, leased, occupied and improved, subject to the limitations, restrictions, easements, covenants and conditions set forth in this Declaration, all of which are established, declared and agreed to be for the purpose of enhancing and protecting the value, desirability, attractiveness or usefulness of public access to the ocean, shorelines and/or mountain areas through the Property, as applicable. These limitations, restrictions, easements, covenants and conditions shall run with the land and shall be binding upon all persons having or who acquire any right, title or interest in and to any Lot, and any future Lot(s) subdivided therefrom which is encumbered by one or more of the public access rights-of-way designated herein, (regardless of whether any provision of this Declaration specifically so provides), and shall inure to the benefit of the County and owner of each Lot, but only to the extent expressly provided herein.

ARTICLE 1
DECLARATION OF EASEMENTS FOR PUBLIC ACCESS

1.1 DECLARATION OF EASEMENTS. Declarant hereby declares the following perpetual non-exclusive easements for pedestrian public access purposes over, upon, across and through the Property ("Easements for Public Access"), which shall be appurtenant to, and shall run with each respective Subdivision Lot as expressly set forth herein and in **Exhibits "A-1", "A-2" and "A-3"** attached hereto and incorporated herein by this reference:

Subdivision No. 2000-007 (Exhibit "A-1")

Easement A-9 Undesignated ten-foot wide easement for public access purposes within 40-foot corridor, affecting Lots 8, 10 and 11

Subdivision No. 2000-008 (Exhibit "A-2")

Easement A-6 Ten-foot wide easement for public access purposes affecting Lots 22 and 23

Easement A-7 Undesignated ten-foot wide easement for public access purposes within 40-foot corridor, affecting Lot 21

Easement A-8 Undesignated ten-foot wide easement for public access purposes within 40-foot corridor, affecting Lots 17 and 20

Easement A-11 Ten-foot wide easement for public access purposes affecting Lot 20

Easement A-12 Ten-foot wide easement for public access purposes affecting Lot 21

Subdivision No. 2000-0138 (Exhibit "A-3")

Easement A-10 Undesignated ten-foot wide easement for public access purposes within 40-foot corridor, affecting Lots 1 and 6

As used herein, the term "pedestrian public access" shall mean and be limited to pedestrian foot traffic, and does not include use by bicycles, motor bikes, all-terrain vehicles or motorized vehicles of any type, or horse, mule or other animal use. The County of Hawaii hereby agrees and stipulates that this Declaration and the Easements for Public Access shall constitute full and final compliance with all public access requirements for the Property of Hawaii Revised Statutes ("HRS") Section 46-6.5, HRS Chapters 205A and 343, and Hawaii County Code Chapter 23 (Subdivision) and Chapter 34 (Public Access). Notwithstanding anything contained in any deed, agreement or other instrument to the contrary, the public

access easements set forth herein may only be amended by written agreement of the owner(s) of the affected Lot and the County.

1.2 LOCATION OF EASEMENT FOR PUBLIC ACCESS. The Easements for Public Access shall be located within the following: 1) a ten (10) foot wide mauka-makai pedestrian easement between the public road and the shoreline, as depicted in Easement A-6 of Subdivision No. 2000-008 (Exhibit "A-2"), and 2) a ten (10) foot wide lateral pedestrian easement located within the shoreline setback area as defined by HRS Section 205A-43(a), running laterally along the shoreline solely within the areas as expressly set forth in Exhibits "A-1", "A-2" and "A-3" attached hereto and incorporated herein by this reference. This lateral pedestrian easement shall be deemed to be the Ala Kahakai as it runs through the Property. The Declarant shall survey the mauka-makai easement and designate it on the final subdivision map for the Property. The Declarant shall designate the general location of the forty (40) foot wide corridor within the shoreline setback area as defined by HRS Section 205A-43(a) on the final subdivision map, provided however, that the lateral easement need not be surveyed at this time. Should a shoreline certification map be processed for any Lot(s) encumbered by the Easements for Public Access, the specific location of the ten (10) foot wide lateral pedestrian easement shall be surveyed and located on said map. In the event that all of any portion of the original Easements for Public Access are replaced by a substitute public access easement, the original alignment for that portion of the Easements for Public Access shall be extinguished, and the parties hereto agree to execute any and all necessary documents to effect extinguishing the original easement alignment.

1.3 EFFECT ON LANDOWNERS' LIABILITY. Nothing in this Declaration of Easements for Public Access shall amend, qualify or otherwise limit the following: 1) the liability protections given to the Declarant and owners of the Subdivision Lots pursuant to Hawaii Revised Statutes Chapter 520, including without limitation the protections afforded in Section 520-4(b), relating to Landowners' Liability; and 2) the liability protections given to the owners or operators of any business providing recreational activities to the public who obtain voluntary written release waivers for their patrons pursuant to the provisions of Hawaii Revised Statutes Section 663-1.54 relating to Recreational Activity Liability.

1.4 ARCHAEOLOGICAL CLEARANCE. Prior to any grading on the Property by the Declarant or its agents, the Declarant shall obtain archaeological clearance (which shall not include an inventory level survey) for the areas to be graded from the State Historic Preservation Division.

ARTICLE 2 TERMS AND CONDITIONS OF USE AND MAINTENANCE OF EASEMENTS FOR PUBLIC ACCESS

2.1 GENERAL CONDITIONS. The Easements for Public Access described in Article 1 hereinabove shall be used by the owners and occupants of each respective Subdivision Lot within the Property and any members of the public having the right to use such Easements for Public Access, subject to and upon the following terms and conditions:

2.1.1. Easements Not Effective Until Acceptance by County. The Easements for Public Access designated herein shall not be effective or provide any access to the public or any party until such time as the County, pursuant to the provisions of Hawaii County Code Chapter 34, to include without limitation Sections 34-10, 34-11 and 34-14, accepts the liability, maintenance and control duties and responsibilities over the Easements for Public Access. It is intended that in addition to the rights and duties provided in this Declaration, the Declarant and its successors and assigns in their sole discretion shall have the right to dedicate and convey by quitclaim deed to the County of Hawaii, and the County shall have the duty to accept, the fee simple interest in the right-of-way for the Easements for Public Access.

2.1.2. Maintenance of Easements for Public Access Area. Other than the execution of this Declaration and performance of the duties hereunder, the Declarant shall have no responsibility to maintain, implement or provide public access upon and through the Property. Upon the commencement of public access within the Easements for Public Access, or upon acceptance for dedication of the fee simple interest in the right-of-way for the Easements for Public Access by the County, the County shall be responsible for constructing, maintaining, insuring and repairing the Easements for Public Access areas, and any and all improvements constructed upon and/or located within said easement areas, in a good and safe condition, ordinary wear and tear excepted.

2.2 Restriction Re: Easements for Public Access. The Easements for Public Access shall be appurtenant to each respective Subdivision Lot as set forth in Exhibits "A-1", "A-2" and "A-3", and shall not be sold, mortgaged, leased, rented or otherwise granted or conveyed separate or apart from such Subdivision Lot.

2.3 Reservations in Favor of Declarant and the Association. The Easements for Public Access shall be subject to a reservation in favor of the Declarant or the Lot Owner, whichever may be the fee simple owner of the Lots at the time the following reservation is to be exercised, who shall have the right to do the following:

(a) Enter and otherwise limit the use of the Easement Area by Lot owners and occupants and all other individuals entitled to use the same at any time, and for any purpose, in the event of an emergency, for so long as the emergency continues. The Declarant and/or the Lot owners, whichever may be applicable, shall have the absolute discretion to determine whether or not a particular set of circumstances rises to the level of an emergency for purposes of this section; and

(b) Dedicate the fee simple interest in the Easements for Public Access, or any portion thereof, to the County of Hawaii and/or any other governmental agency, department or division for public access use, subject to any easements, rights and obligations existing at the time of the dedication, or as maybe agreed to by the parties, and upon said dedication, this Declaration of Easements for Public Access over the Subdivision Lot(s) so dedicated shall automatically terminate. If deemed necessary by any party hereto, the non-moving party shall

cooperate to execute and record any documents necessary to effectuate the purpose of this Declaration at no cost to the moving party.

2.4 DECLARANT'S RESERVED RIGHT TO GRANT EASEMENT ADDITIONAL RIGHTS. The Easements herein set forth shall also be subject to the following rights reserved to the Declarant, notwithstanding the conveyance of Declarant's fee simple or easement interest in and to the public access easements to the County:

(a) The Declarant's reserved right to grant Easements over or in favor of each respective Subdivision Lot together with the conveyance of such Subdivision Lot;

(b) The Declarant's reserved right to grant to the United States of America, State of Hawaii, the County of Hawaii, Parker Ranch, Inc., Parker Ranch Foundation Trust and any related trust, legal entity, corporation or limited liability company, or any public or private utility or other party, non-exclusive easements for utility, drainage and access purposes over, under, and across the Easements for Public Access area.

2.5 RIGHTS IN EASEMENTS AND SUBSEQUENT GRANTS. The Owner and Occupants of each Subdivision Lot shall have the right to use the Easements for Public Access appurtenant thereto. Each Owner shall also have the right to further transfer such easement rights together with the transfer of a Subdivision Lot, or to pledge the same to any Mortgagee of a Subdivision Lot; provided that such transfer or pledge is upon and subject to all of the applicable terms and conditions and the reservations in favor of the Declarant and the County of Hawaii set forth in this Declaration.

ARTICLE 3 MISCELLANEOUS PROVISIONS

3.1 RESERVED RIGHT TO AMEND. Notwithstanding anything contained herein to the contrary, Declarant hereby reserves the right, in favor of both the Declarant and, and if it or one of its related entities is the fee owner of any Lot, to amend this Declaration without the consent or joinder of any Owner, Occupant, Mortgagee (if any) or any other person or entity for the purpose of meeting any requirement imposed by any applicable law, any federal, state or county government, any governmental or judicial action, order or decree, any institutional mortgage lender or any governmental or quasi-governmental agency including, without limitation, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, the U.S. Department of Housing and Urban Development or the Office of Veterans Administration or for the purpose of correcting any error herein. Each and every Owner, Occupant, Mortgagee and other party acquiring an interest in the Project, or the Subdivision Lots therein, by such acquisition, consents to such amendments as described in the preceding sentence and agrees to execute and deliver such documents and instruments and do such other things as may be necessary or convenient to effect the same; and appoints the

Declarant and its assigns, whichever may be applicable, his or her attorney-in-fact with full power of substitution to execute and deliver such documents and instruments and to do such things on his or her behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties. No amendment hereto shall negate or adversely impact any of the Declarant's reserved rights hereunder without the prior written consent of the Declarant.

3.2 TERMINATION. Unless earlier terminated pursuant to the express terms hereof, this Declaration shall remain in effect perpetually or until mutually terminated by the Declarant and the County.

3.3 SEVERABILITY AND THE RULE AGAINST PERPETUITIES. If any provision of this Declaration, or any section, sentence, clause, phrase or word or the application thereof in any circumstances, shall be held invalid, the validity of the remainder of this Declaration and of the application of such provision, sentence, clause, phrase or word under any other circumstances shall not be affected. If any provision of this Declaration would violate the Rule Against Perpetuities or any other limitation on the duration of the provisions contained herein imposed by law, then such provisions shall be deemed to remain in effect only for the maximum permissible period permitted by law or until 21 years after the death of the last survivor of the now living descendants of former President William Clinton and of President George Bush, whichever is later.

3.4 INTERPRETATION. The captions of the Articles and Sections hereof are for convenience only and shall not be considered to expand, modify or aid in the interpretation, construction or meaning of this Declaration. As used herein, the singular shall include the plural and the masculine shall include the feminine and neuter.

3.5 NO WAIVER. The failure to enforce any provision of this Declaration shall not constitute a waiver thereof or of the right to enforce such provision thereafter.

3.6 COOPERATION. Each Owner and the County shall cooperate with each other and the Declarant, as appropriate, in every way and will exercise their best efforts in carrying out the transactions contemplated herein, and in executing and delivering in recordable form all documents, instruments, or copies thereof or other information deemed reasonably necessary or useful by the Owners, Declarant and/or the County.

3.7 DISPUTE RESOLUTION PROCEDURES. Declarant, the County and its officers, directors, and committee members, each Owner of a Subdivision Lot and all other persons subject to this Declaration (each of the foregoing parties shall be referred to herein as a "Bound Party") hereby consents in advance that said Bound Party shall adhere to and comply with the following procedures to resolve any dispute arising out of or in connection with this Declaration, or any alleged breach thereof, including, without limitation, any dispute as to any amount owed, any act of performance or nonperformance or any interpretation under this Declaration ("Dispute"):

3.7.1. Notice. The Bound Party asserting the Dispute (“Claimant”) shall provide the Bound Party with whom said Claimant has the Dispute (“Respondent”), with a written notification of the Dispute which shall describe the nature and legal basis of the Dispute, the Claimant’s proposed resolution or remedy, and the Claimant’s desire to meet with the Respondent to discuss in good faith the ways to resolve the Dispute.

3.7.2. Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Dispute by good faith negotiation. If requested in writing, the Board may appoint a representative to assist the parties in negotiating a resolution of the Dispute.

3.7.3. Mediation. If the parties have not resolved the Dispute through negotiation within thirty (30) days of the date of the notice described in Section 3.7.1 above (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Dispute to mediation with an entity designated by the Association (if the Association is not a party to the Dispute) or to an independent agency providing dispute resolution services in the Hilo, Hawaii area.

(a) If the Claimant does not submit the Dispute to mediation within said thirty (30) day period, or does not appear for mediation when scheduled, the Claimant shall be deemed to have waived the Dispute, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of the Dispute.

(b) If the parties do not settle the Dispute within thirty (30) days after the submission of the Dispute to mediation, the mediator shall issue a notice of termination of the mediation proceedings, indicating that the parties are at an impasse, and the date that mediation was terminated.

(c) Each party shall bear its own costs of the mediation, including attorney’s fees, and each party shall share equally all fees charges by the mediator.

3.8 ENFORCEMENT COSTS. If any legal action or other proceeding, including arbitration, is brought for the enforcement of this Declaration, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Declaration, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys’ fees, court costs and all expenses even if not taxable as court costs, incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

3.9 NOTICES. Any notice or demand provided for or permitted by this Declaration may be given sufficiently for all purposes in writing mailed as registered or certified mail, addressed to the appropriate party at such party’s post office address or such other address designated by such party in writing to the other parties, or delivered personally

or telecopying within the State of Hawaii to such party, as the case may be, and shall be deemed conclusively to have been given on the date of such mailing, personal delivery or telecopying.


3.10 BINDING EFFECT. This Declaration shall inure to the benefit of, and be binding upon the Declarant, the owner(s) of any Subdivision Lot herein, and/or the County of Hawaii, as appropriate, and their respective heirs, personal representatives, successors, and assigns.

3.11 ASSIGNMENT TO STATE OF HAWAII AND/OR UNITED STATES OF AMERICA. Upon the precondition that all applicable provisions of this Declaration that benefit the Declarant and its respective heirs, personal representatives, successors and assigns are in full force and effect, and with the prior written consent of the Declarant, the County of Hawaii may assign its rights, obligations and duties under this Declaration in whole or in part to the applicable department or agency of the State of Hawaii and/or the United States of America. In the event of any such assignment, in whole or in part, the Declarant and its successors and assigns shall release the County of Hawaii from its maintenance and liability obligations for the portion(s) so assigned.

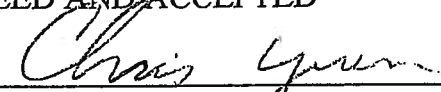
3.12 APPLICABLE LAW. This Declaration shall be governed by the laws of the State of Hawaii both as to interpretation and performance.

IN WITNESS WHEREOF, the Declarant has hereunto caused this Declaration to be executed as of the date hereinabove set forth.

COUNTY OF HAWAII, a municipal corporation

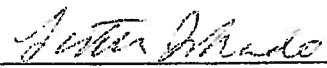
By: 
HARRY KIM
Its: Mayor

AGREED AND ACCEPTED

By: 
Planning Director
County of Hawaii

Date: Jan. 9, 2002


Agreed as to Form and Legality

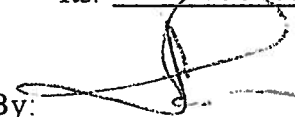
By: 
Deputy Corporation Counsel

Date: Jan. 8, 2002

RICHARD SMART REVOCABLE PERSONAL TRUST

By: _____
Name: Melvin B. Hewett
Its: Trustee

By: 
Name: Carl A. Carlson, Jr.
Its: Trustee


By: 
Name: Thomas P. Whittemore
Its: Trustee

STATE OF HAWAII)
)
COUNTY OF HAWAII) SS.

On this 26th day of December, 2001, before me personally appeared Carl A. Carlson Jr., to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that he executed the foregoing instrument as his free act and deed, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Witness my hand and seal.

L.S.



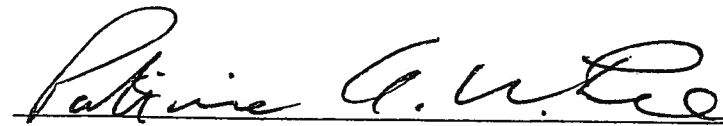
Patricia A. W. Lee
Notary Public, State of Hawaii
My commission expires 11/1/2005

STATE OF HAWAII)
)
COUNTY OF HAWAII) SS.

On this 27th day of December, 2001, before me personally appeared Thomas P. Whittemore, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that he executed the foregoing instrument as his free act and deed, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Witness my hand and seal.

L.S.



Patricia A. W. Lee
Notary Public, State of Hawaii
My commission expires 11/1/2005

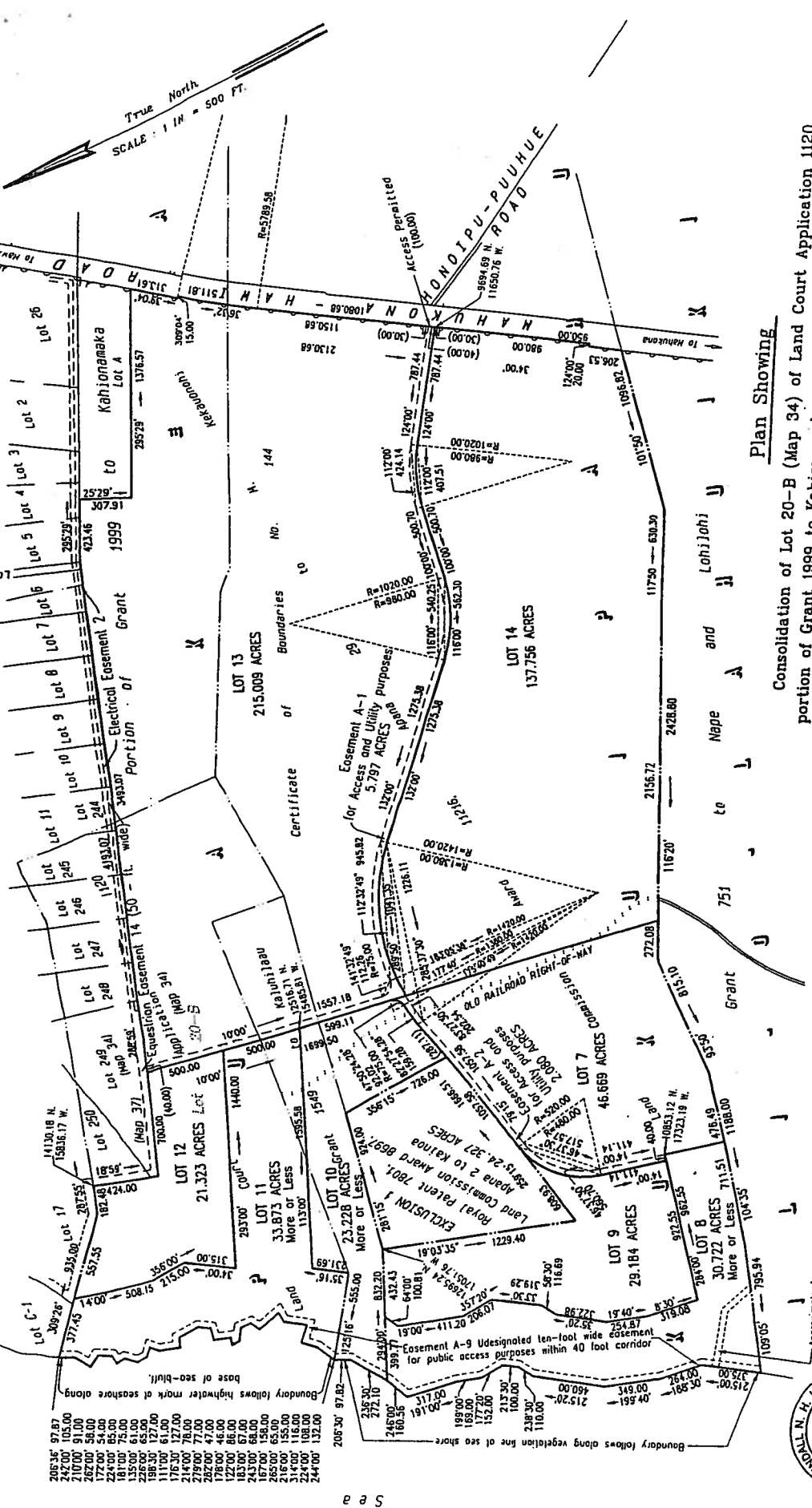
STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 14th day of January, 2002, before me personally appeared HARRY KIM, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the County of Hawaii, a municipal corporation of the State of Hawaii; that the seal affixed to the foregoing instrument is the corporate seal of the said County of Hawaii; that the foregoing instrument was signed and sealed in behalf of the County of Hawaii by authority given to said Mayor of the County of Hawaii by Section 5-1.3 (g) of the County Charter, County of Hawaii (1991), as amended; and said HARRY KIM acknowledged said instrument to be the free act and deed of said County of Hawaii.

Jean Viernes
JEAN VIERNES
Notary Public, State of Hawaii

My commission expires: 11/1/2005





Plan Showing

Consolidation of Lot 20-B (Map 34) of Land Court Application 1120, portion of Grant 1999 to Kahionamaka, portions of Grant 1549 to Kaluhilaau Land Commission Award 11216, Apana 29 to M. Kekauonohi (Certificate of Boundaries No.144) above and below the Old Railroad Right-of-Way and portions of the Old Railroad Right-of-Way between portions of Grant 1549 to Kaluhilaau and Land Commission Award 11216 Apana 29 to M. Kekauonohi (Certificate of Boundaries No.144)

And Subdivision of said Consolidation into Lots 7 to 14, inclusive

And Designation of Easements A-1, for Access and Utility purposes affecting Lot 13 in favor of Lots 7 thru 12, lot 14 and Exclusion 1, and A-2 for Access and Utility purposes affecting Lot 7 thru 10 and Exclusion 1.

T.M.K. : (3rd DIV.) 5-6-01: por. parcel 18

Owner: Richard Smart Trust

Updated : November 12, 2001 Updated : April 24, 2001
 Updated : November 27, 2001 Updated : May 10, 2001

ENGINEERS SURVEYORS - HAWAII, INC.
 CIVIL ENGINEERS - LAND SURVEYORS - PLANNERS

NOTE :

- Origin of Abbreviations : "Pur O Hair"
- Coordinates referred to : "Pur O Hair"
- Indicates no vehicle access permitted
- Map compiled from available data.
- Property is located in Zone X, 155166 0025 C as shown on F.I.R.M. map.
- Flood inundation areas were created from USGS 600d sheets

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

Kenneth N. H. Hee
 Licensed Professional Land Surveyor
 Certificate Number 5649

Honolulu, Hawaii
 50-104 FINAL

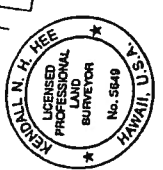
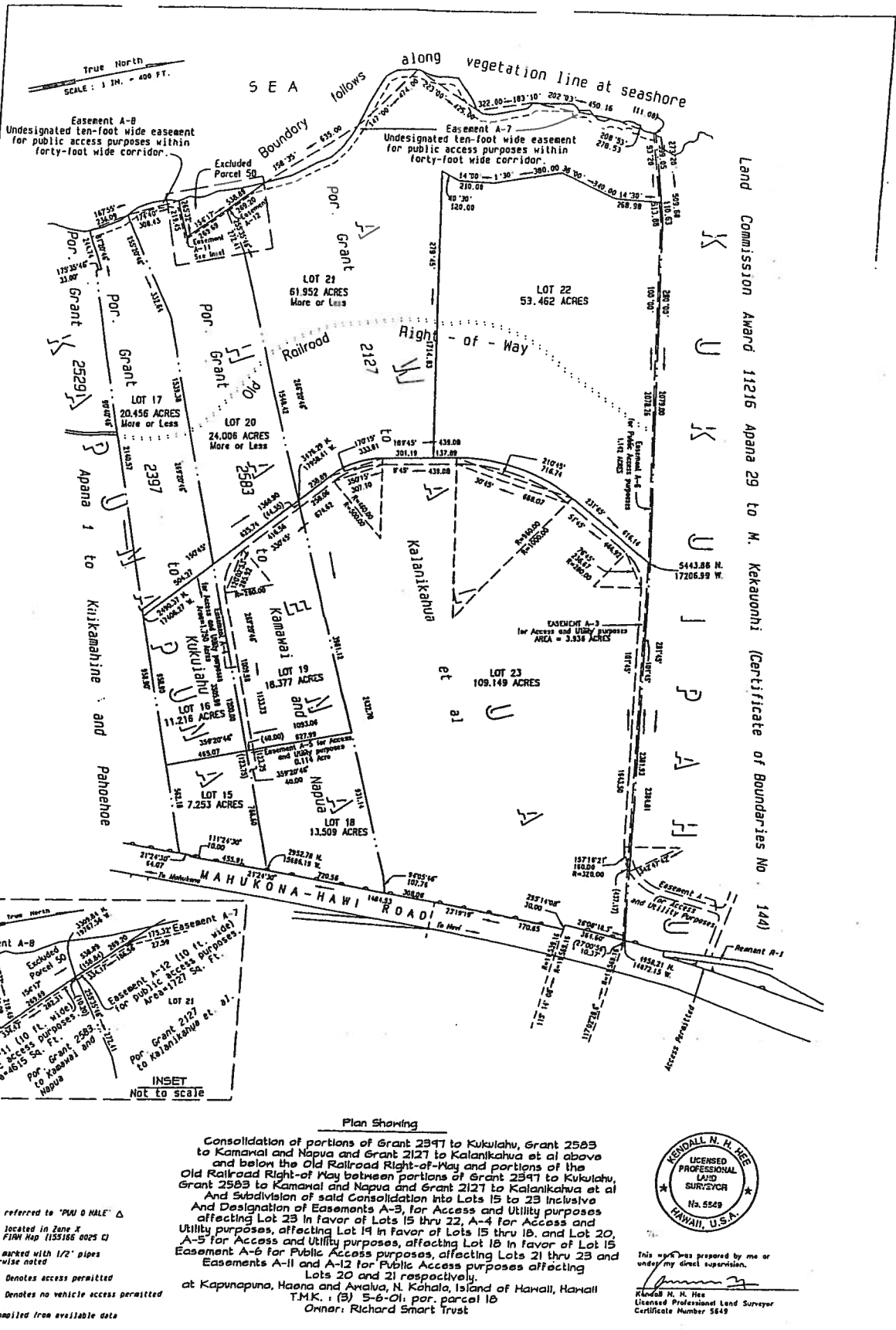


EXHIBIT A-1

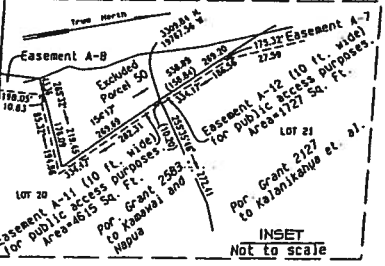


Land Commission Award 11216 Apana 29 to M. Kekauonhi (Certificate of Boundaries No 144)

True North
SCALE: 1 IN. = 400 FT.

Easement A-8
Undesignated ten-foot wide easement
for public access purposes within
forty-foot wide corridor.

Easement A-7
Undesignated ten-foot wide easement
for public access purposes within
forty-foot wide corridor.



Plan Showing

Consolidation of portions of Grant 2397 to Kukulahu, Grant 2583 to Kamahai and Napua and Grant 2127 to Kalanikahua et al above and below the Old Railroad Right-of-Way and portions of the Old Railroad Right-of-Way between portions of Grant 2397 to Kukulahu, Grant 2583 to Kamahai and Napua and Grant 2127 to Kalanikahua et al And Subdivision of said Consolidation into Lots 15 to 23 inclusive And Designation of Easements A-3, for Access and Utility purposes affecting Lot 23 in favor of Lots 15 thru 22, A-4 for Access and Utility purposes, affecting Lot 19 in favor of Lots 15 thru 18, and Lot 20, A-5 for Access and Utility purposes, affecting Lot 18 in favor of Lot 15 Easement A-6 for Public Access purposes, affecting Lots 21 thru 23 and Easements A-11 and A-12 for Public Access purposes affecting Lots 20 and 21 respectively.

at Kapunapuna, Haena and Amelua, N. Kahaia, Island of Hawaii, Hawaii
T.M.K. 1 (5) 5-8-01; por. parcel 18
Owner: Richard Smart Trust



This work was prepared by me or under my direct supervision.
Kendall N. H. Hee
Licensed Professional Land Surveyor
Certificate Number 5549

Note:
Coordinates referred to "PMU D HALE" Δ
Property is located in Zone X
as shown on FIRM Map (155165 0025 C)
All corners marked with 1/2" pipes
unless otherwise noted

Denotes access permitted
Denotes no vehicle access permitted

Boundaries compiled from available data

Honolulu, Hawaii

ENGINEERS SURVEYORS HAWAII, INC.
CIVIL ENGINEERS - LAND SURVEYORS - PLANNERS

Revised: November 11, 2001 900 Halekaunila Street
Revised: November 27, 2001 April 23, 2001
Revised: January 31, 2002 Revised May 11, 2001

