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COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/council

February 14, 2007

Mr. Jeffrey K. Eng, Acting Director
Department of Water Supply
County of Maui
Wailuku, Hawaii 96793

Dear Mr. Eng:

**SUBJECT: ACCESS THROUGH THE HANS MICHEL
PROPERTY FOR MAINTENANCE AND
OPERATION OF KANAHA VALLEY
STREAM (WR-27)**

At the Water Resources Committee meetings of August 2, 2006 and September 13, 2006, and by correspondence dated September 11, 2006, your Department provided status reports regarding the conditions set forth in an agreement dated June 3, 1994 between the Board of Water Supply and Mr. Hans Michel. I am attaching relevant portions of the minutes of the committee meetings, and a copy of the agreement for your reference.

As requested at the meeting, and in subsequent discussions with the Deputy Director of Water Supply, please respond to the following:

1. Provide a detailed explanation regarding the efforts to obtain a permit from the Corps of Engineers to begin the extensive repairs to the stream crossing located on State property (Condition No. 2).
 - a. Has your Department obtained the permit?
 - b. Has anyone been contracted to do the work?
 - c. Please provide a copy of the design plan being considered by the Department.
 - d. What is the anticipated timeframe for completion?
2. Explain how the retaining wall will be built to prevent further damage to the roadway adjacent to the Kanaha tank site (Condition No. 3).
 - a. Who has been contracted to do the work?
 - b. When will the work begin?


- c. Is there a design plan? If so, please transmit a copy to the Committee.
3. Has your Department visited the site to determine whether the two truckloads of base course delivered in December 2005 to repair the roadway was adequate to restore the ground to its original condition?
4. At the meeting of August 2, 2006, the Director of Water Supply stated that repair work to the owner's dry stack rock wall, damaged by an excavator hired by the Department in 2004, will definitely be completed by the end of the fiscal year (June 2007).
 - a. Who has been contracted to do the work?
 - b. When will the work be completed?
5. At the meeting of September 13, 2007, the Deputy Director of Water Supply stated that the subdivision process is unable to be initiated until a title search has been completed and that the Department is pursuing the title search. What measures have been taken to secure a title search on said property to ensure that Condition Nos. 6, 7, 11, and 12 of the agreement are met? If no measures have been taken, please explain.
6. Condition No. 8 states, "The board shall discuss with the State of Hawaii and Pioneer Mill the Owner's request to repair pedestrian trail along cliff eroded by overflow water from screenbox, and erosion on property caused by overflow water." Your Department responded that the design of the overflow allowed the water to cascade over the cliff wall. Please provide the Committee with the original design of the overflow and explain how the Department plans to prevent further erosion.
7. At the meeting of August 2, 2006, the Deputy Director of Water Supply stated that he would need about six months to prepare an estimated funding proposal. What measures has your Department taken to secure funding for the above-mentioned projects? Please include a timetable in your description. If no measures have been taken, please explain.

May I please request your response by February 23, 2007. To ensure efficient processing, please include the relevant Committee item number in the subject line of your response.

Mr. Jeffrey K. Eng
February 14, 2007
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Should you have any questions, please contact me or the Committee staff
(Kim at ext. 7761, or Clarita at ext. 7668).

Sincerely,



MICHELLE ANDERSON, Chair
Water Resources Committee

wr:ltr:027aws01:kcw

Enclosures

cc: Honorable Charmaine Tavares, Mayor
Brian T. Moto, Acting Corporation Counsel

MINUTES
WATER RESOURCES COMMITTEE

Council of the County of Maui

Council Chamber

August 2, 2006

WR-27 ACCESS THROUGH THE HANS MICHEL PROPERTY FOR MAINTENANCE AND OPERATION OF KANAHA VALLEY STREAM (C.C. No. 06-160)

CHAIR ANDERSON: So, Mr. Tengan, are you prepared to bring us up to date on this please?

MR. TENGAN: Madam Chair, thank you. If I may, I'd like to defer this matter to Deputy Eric Yamashige.

CHAIR ANDERSON: Fine. Thank you.

MR. YAMASHIGE: Thank you, George. The two issues that Mr. Michel has recently been pursuing, specifically the stream ford crossing, our Engineering Division is reviewing that. The existing ford is concrete. However, it's not reinforced. So, when, when it breaks it does fall apart. So, we're looking at how we're going to reinforce the ford and reconstruct it so it will be more durable. We are also making sure that the contractors are taking measures to limit further damage to the ford crossing. We hope to have a remedy and something we can do shortly.

CHAIR ANDERSON: What, what does shortly mean?

MR. YAMASHIGE: I guess when we can get some money to do it.

CHAIR ANDERSON: What, somebody being a private contractor, within the Department?

MR. YAMASHIGE: It depends on the scope of the work and how much our operations crew can, can actually do. It is a pretty, it's not a very large ford, but it does require some work.

CHAIR ANDERSON: We all know that. So, we're trying to get a date when we can expect to have this accomplished.

MR. YAMASHIGE: I cannot give you any date.

CHAIR ANDERSON: And, and why is that, Mr. Yamashige? I mean is this like a design project that is just done when they have time? Or are they, is somebody assigned to do this and get it done?

WATER RESOURCES COMMITTEE
Council of the County of Maui

August 2, 2006

MR. YAMASHIGE: Yes, we do have an engineer assigned to this.

CHAIR ANDERSON: And so, you should have some expectation when he might have the design done.

MR. YAMASHIGE: The engineers are tasked with a lot of functions and responsibilities and this is one of them. At this point, I do not have a date when that work will be done.

CHAIR ANDERSON: Well, since he's been waiting ten years, I would think that you should, you know, if you put this a priority you could get us some kind of ex..., expected time that this design should be done. It's not like their designing a dam or anything.

MR. YAMASHIGE: Yeah, I'm sorry, Ms. Chair. This ford crossing is not a ten year old matter. It, it is actually less than a year, because I understand that the damage occurred after I was with the Department.

CHAIR ANDERSON: Is that all you have to add?

MR. YAMASHIGE: Yes.

CHAIR ANDERSON: What about the dry rock wall?

MR. YAMASHIGE: Okay. The dry rock wall was constructed by Mr. Michel, and it was damaged when the excavator was trying to...

MR. MICHEL: *(NOTE: He's speaking from the gallery.)* In '04. Destroyed in 2004.

CHAIR ANDERSON: Mr. Michel, you're going to have a chance to come back and speak. Okay. But we have to follow protocol.

MR. MICHEL: *(NOTE: He's speaking from the gallery.)* Okay. Thank you.

CHAIR ANDERSON: And it's the Department's turn. Mr. Yamashige.

MR. YAMASHIGE: Yeah, the dry rock wall was damaged when the excavator was trying to access the intake. And that we've been looking at different design criteria, and recently have determined that we need to just replace the wall that was there. So, we're looking at how we can get that done.

CHAIR ANDERSON: And, and what does that mean you're looking at how you can get it done?

MR. YAMASHIGE: It, it may be...

CHAIR ANDERSON: I mean...

WATER RESOURCES COMMITTEE
Council of the County of Maui

August 2, 2006

MR. YAMASHIGE: I'm sorry. It may be outside the scope of what our field operations will be able to accomplish. So, we, we'll probably have to hire out to restack the rocks.

CHAIR ANDERSON: And when do you anticipate doing that?

MR. YAMASHIGE: That is a matter of putting this project out to bid, and then being able to fund that repair.

CHAIR ANDERSON: And so, can you tell us why there was funding in '07 that was, where that funding, that \$50,000 was used?

MR. YAMASHIGE: I understand that that was taken out of our '07 Budget. It...

CHAIR ANDERSON: Have you ever, well, have you ever come to the Council and asked for funding to get this done? I mean I see it's in, you know, in the '06 Budget there's nothing. But then it shows it's going to be funded in '07. But then when '07 comes it's not there. So, has this Department ever brought forward the requested funding to get this done?

MR. TENGAN: Madam Chair, not that I know.

CHAIR ANDERSON: And, and, Mr. Tengan, don't you feel responsibility to Mr. Michel--

MR. TENGAN: Yes, we do.

CHAIR ANDERSON: --to get this done? Then why haven't you brought forward a request for the funding?

MR. TENGAN: Well, it's something that we probably felt that if we need, needed to, or we were ready to go ahead with the work that we could fund it through some other means. As Mr. Yamashige was mentioning we, we were looking at doing, especially the rock wall repair in-house, because it's primarily restacking the rocks that have crumbled when the excavator was going up over that area.

CHAIR ANDERSON: So, you know, I, I just feel like there should be some kind of timeframe that you can give us. Within six months, within two months, within eight months that we can expect to see this happen. And if we need, if you need funding and there isn't funding, we should be able to determine that right now, so we can work on that.

MR. TENGAN: Madam Chair, if you, if you need a definite timetable, I'll give you a definite timetable. We will certainly do it by the end of this fiscal year.

CHAIR ANDERSON: Thank you for that, Mr. Tengan. We appreciate that. The end of this fiscal year means June of 2007.

MR. TENGAN: That's correct.

WATER RESOURCES COMMITTEE
Council of the County of Maui

August 2, 2006

CHAIR ANDERSON: Which is like a year from now.

MR. TENGAN: Eleven months.

CHAIR ANDERSON: Members, any questions? Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you. As we do work in the, I guess, stream, do we need any type of special permits to do repair work? When, when you mentioned that we need to reinforce the concrete crossing, do we need any special permit to get in there and, and redo the thing?

MR. YAMASHIGE: Yes, for small repair work I think the Corp does allow us to do that. For larger projects there is a Corp permit when you affect the waters of the United States.

COUNCILMEMBER PONTANILLA: Have we started that process?

MR. YAMASHIGE: No, we, we do not have a completed design for that yet.

COUNCILMEMBER PONTANILLA: How, how long does it take for the Corp to approve such an undertaking before we can start pouring concrete, a timeframe? You know, if we submit it today, it takes five months to get approved?

MR. YAMASHIGE: Sorry, Joe, it's been a while since I've done that, and I cannot tell you. I think it takes longer than six months, though.

COUNCILMEMBER PONTANILLA: Because you, you guys committing at the end of fiscal year '07 and, you know, you got 11 months. And if it's going to take more than five, six months, I'm sure it's going to, hopefully you can construct it in, in four months time. So, my concern is the process that we need to go through, and how long it's going to take to get it, get it done for sure.

MR. YAMASHIGE: Yeah, we'll make every effort to get it done.

COUNCILMEMBER PONTANILLA: Thank you. Thank you, Chair.

CHAIR ANDERSON: Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes, Eric or George, if we were to resolve the outstanding issues as well as the, you know, the two most recent ones, would you be able to provide the Committee with I guess a total estimate, and then work with the Mayor or even our risk manager, because I know that some of this may be due to damages where, you know, there might be some type of liability. Would you be able to come up with some kind of a resolution and come back with a proposal so that instead of leaving this linger on, even if you had to do it with an outside contractor, is that something that is a possibility?

MR. YAMASHIGE: Yes, I'll do that.

WATER RESOURCES COMMITTEE
Council of the County of Maui

August 2, 2006

COUNCILMEMBER JOHNSON: Okay, and, and about how much time would you need to complete that total estimate and figuring out what the cost would be?

MR. YAMASHIGE: I would say we would need at least six months, because we need to assess some of the, some of the, the current situation. There are some items that I have seen personally, but it has been probably six months since I've seen that. I'm sure some of the situations have changed or the conditions.

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MINUTES

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WATER RESOURCES COMMITTEE

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Council of the County of Maui

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Council Chamber

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September 13, 2006

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19 WR-27 ACCESS THROUGH THE HANS MICHEL PROPERTY
FOR MAINTENANCE AND OPERATION OF KANAHA
20 VALLEY STREAM (C.C. No. 06-160)

21

21 MR. YAMASHIGE: Okay. I think the good news is we

22 have been working on this project. I grant you

23 that it has taken a long time.

24 You will notice that there are a couple

25 of issues that have not been resolved, and those

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1 are primarily associated with the subdivision
2 process. I came with the Department about a
3 year ago, and this was one of the tasks that
4 were assigned to me. The comment that I
5 received then was that there are land title
6 issues with the property which would hinder the
7 subdivision process. We are looking into that,
8 and we will secure the services of a land
9 surveyor to process the subdivision.

10 CHAIR ANDERSON: Well, who has determined that there
11 are land title issues?

12 MR. YAMASHIGE: That was something that I heard from
13 staff when I got here, and we are trying to
14 pursue that. As -- I am not sure who explained
15 earlier the difference between a quitclaim deed
16 and a warranty deed.

17 The land was transferred to Mr. Michel
18 from Pioneer Mill via a quitclaim where they no
19 longer reserve their rights to it, but it
20 doesn't mean that it's free and clear from any
21 other ownership. And that is what we need to

22 pursue before we can process the subdivision.

23 CHAIR ANDERSON: You need clear title is what you are

24 saying?

25 MR. YAMASHIGE: Need clear title, yes.

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1 CHAIR ANDERSON: And that there's only a quitclaim

2 deed on the property?

3 MR. YAMASHIGE: Yes.

4 CHAIR ANDERSON: And so that is what is holding up

5 the subdivision?

6 MR. YAMASHIGE: Yes, at this point, yes.

ALAN M. ARAKAWA
Mayor



GEORGE Y. TENGAN
Director

RECEIVED

ERIC H. YAMASHIGE, P.E., L.S.
Deputy Director

2006 SEP 12 PM 4:01

DEPARTMENT OF WATER SUPPLY
COUNTY OF MAUI

200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793-2155
www.mauewater.org

OFFICE OF THE MAYOR

OFFICE OF THE
COUNTY COUNCIL

06 SEP 12 P4:35

RECEIVED

September 11, 2006

Honorable Alan M. Arakawa
Mayor, County of Maui
Wailuku, Hawaii 96793

For transmittal to

Honorable Michele Anderson, Chair
Water Resources Committee
Maui County Council
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

[Signature] 9/12/06
Mayor: Date

Dear Chair Anderson:

**SUBJECT: ACCESS THROUGH THE HANS MICHEL PROPERTY FOR
MAINTENANCE AND OPERATION OF KANAHA VALLEY
STREAM (WR-27)**

Thank you for the opportunity to provide comments on the status of the agreements with Mr. Hans Michel. There are two agreements, attached for reference. We identify the conditions of the agreement, the status, and an order of magnitude cost & time to accomplish the outstanding conditions.

JUNE 3, 1994 AGREEMENT between Hans Michel (Owner) and the Board of Water Supply, County of Maui (Board).

- 1. Water Meter for the Property:** The Board shall provide a 5/8-inch water meter on property and adjacent to existing 0.30 MG Kanaha tank after (1) Owner makes request, and (2) Owner enters into elevation agreement. Owner shall pay for water consumed.

Comment: Owner has not submitted application, and elevation agreement not done.

"By Water All Things Find Life"



Honorable Alan M. Arakawa
For transmittal to:
Honorable Michelle Anderson
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2. **Maintenance of Dirt Roadway Located Between the Lahainaluna High School's Piggery and the Board's Kanaha Pump Station No. 2:** The Board shall maintain the existing roadway and stream crossing within the property, and pursue a resolution with the State of Hawaii to maintain the existing roadway and stream crossing within the state's property. The Board shall limit maintenance work to repair of damage or wear caused by Board with crushed rock waste or base course. Damage to the stream crossing due to storm flow shall be jointly funded by Owner and Board.

Comment: The Board, or department, has delivered and placed base course on the existing roadways on multiple occasions. The stream crossing within the State property was recently damaged. Work on this crossing will require a Corps of Engineers (COE) permit for work within the stream. O/M cost: \$100,000.

3. **Drainage Control Improvements Within the Board's 0.30 MG Kanaha Tank Site:** Board shall repair damages to roadway adjacent to Kanaha tank site caused by runoff through the tank site. Repair work to restore ground to original condition as reasonably possible.

Comment: The department recently, upon request from Mr. Michel, delivered and spread two truckloads of base course in December 2005.

4. **Board Vehicles Parking on the Property Adjacent to the 0.30 MG Kanaha Tank:** Owner shall allow Board vehicles to park adjacent to tank, and grade to maintain the parking area.

Comment: As noted in condition 3, the department, upon request from Mr. Michel, delivered and spread two truckloads of base course in December 2005.

5. **Grading of the Roadway Near the Tank Site Access Driveway Gate:** Board shall perform excavation work, one-time to the satisfaction of Owner, for vehicle turn-around near tank site access.

Comment: Board completed this work.

6. **Board 0.30 MG Kanaha Tank Site Boundary Adjustment:** Board shall modify the subdivision map (SD 90-15) to delete portion of land Owner wishes to acquire. Owner shall coordinate with State to acquire State owned land.

Honorable Alan M. Arakawa
For transmittal to:
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September 11, 2006

Comment: This work is not complete. There are land title issues requiring resolution. The Department will research resolution and processing of subdivision.

7. **Easements:** Owner shall grant easements to Board for (1) Board vehicle parking, (2) 0.30 MG Kanaha tank overflow discharge, (3) Kanaha tank surface runoff discharge, (4) pump prelubrication discharges at pump stations 1 & 2, (5) vehicular access along existing dirt road to Kanaha tank site & pump stations 1 & 2, and (6) waterlines and appurtenances.

Comment: This work is not complete. There are land title issues requiring resolution. The Department will research resolution and processing of subdivision.

8. **Repair Eroded Areas Within the Property and Along the Pedestrian Trail:** The Board shall discuss with the State of Hawaii and Pioneer Mill the Owner's request to repair pedestrian trail along cliff eroded by overflow water from screenbox, and erosion on property caused by overflow water.

Comment: The design of the overflow allowed the water to cascade over the cliff wall. The department needs to initiate discussion with the State and Kaanapali.

9. **Boulder Removal:** Board, at its cost, remove or relocate 5 boulders from property.

Comment: Done.

10. **Relocation of Board Waterlines:** Board, at its cost, relocate portion of 6-inch waterline from pump station 2 into access easement.

Comment: In conversation with Mr. Michel, relocation of waterline at this time not cost effective, and serves no purpose. Relocate waterline into proposed easement when repairs required.

11. **Ownership of the Pump Site No. 2:** Owner shall dedicate to Board title to Kanaha Pump Site No. 2, as revised. Ownership revert back to Owner if pump station function abandoned.

Comment: This work is not complete. There are land title issues requiring resolution.. The Department will research resolution and processing of subdivision.

Honorable Alan M. Arakawa
For transmittal to:
Honorable Michelle Anderson
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- 12. Relocation of Access Gate at Pump Station No. 2:** Board shall relocate vehicle access gate to east (south?) side of site. Owner to grant easements for roadway and power pole relocation.

Comment: This work is not complete. There are land title issues requiring resolve. The Owner and Department recently entered into an agreement to reduce the pump site from 4,874 square feet to 2,000 square feet, with necessary easement adjustments. This amendment to agreement dated May 23, 2005, recorded in the Bureau of Conveyances October 10, 2005 at 2:00 PM, document no. 2005-205101.

- 13. Grading of Land Near Pump Station No. 2 for Access Onto Kanaha Stream:** The Board discuss with State and Pioneer Mill excavation work to access stream with heavy equipment.

Comment: Done, heavy equipment access into the stream is available.

- 14. Flowage Easement for Discharge From the Lahaina Water Treatment Plant Improvements and the Existing State and Pioneer Mill Co., Ltd. Water System:** Board pay \$25,000 for flowage easement from south boundary line of property to Kanaha Valley.

Comment: Done.

- 15. Payment of Attorney Fees:** Board pay Owner \$900.00 for attorney fees during May 11, 1993 meeting.

Comment: Done.

- 16. Reimbursement to the Owner for Improvements Performed by the Owner Which Benefited the Board:** Board pay Owner \$40,000.00 for materials, equipment and labor for various maintenance and improvements.

Comment: Done.

- 17. Damage or Injury from Landslide or Earthquake and Falling rocks:** Owner not responsible or liable for damages or injury resulting from landslide, earthquake or falling rocks.

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For transmittal to:
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18. **Stream Crossing and Heavy Flood Water:** Owner not responsible for loss or injury when crossing stream.
19. **Damage to Vehicle and Injuries to Employees and Agents:** Owner's property is a farm. Owner not responsible for damage or injury caused by collision with animals.
20. The Board shall not grant permission over roadway easements, except employees and agents pursuing Board's business.

MAY 23, 2005 AMENDMENT TO AGREEMENT between Hans Michel (Owner) and Department of Water Supply (Department). Recorded in Bureau of Conveyances on October 10, 2005 at 2:00 PM, document no. 2005-205101.

1. **Revise Kanaha Pump Site 2:** Revise Kanaha Pump Station Site 2 (Lot B) to: (a) 2,000 square feet area reflected by existing fenced site and parking lot turn-around, and (b) revise 20-foot wide easements 9 and 12 to follow south boundary of Lot B.
2. **Revise Exhibits A & B (1994) with Exhibits A-1 and B-1 (2005).**
3. **Other terms, covenants, and conditions of 1994 agreement unchanged.**

In addition to the above noted discussion, in 2004 the Department had constructed a man bridge to provide safe crossing of the stream during high flows.

We have evaluated the intake dam, and designed reinforcing to strengthen the dam, restore the dam spillway, and reduce erosion undermining. This work requires coordination with the US COE. Order-of-magnitude cost is \$250,000, and estimated time of 1-1/2 years, subject to funding. We have also, on several occasions, hired a contractor to remove landslide materials from the dam storage basin.

Finally, several years ago a dry stack rock wall constructed by Mr. Michel was damaged by an excavator hired by the Department. After much discussion and consideration of alternatives, the Department is pursuing a contractor to re-stack the damaged rockwall in its original construction. Order-of-magnitude cost is \$100,000, and an estimated time of one year, subject to funding.

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For transmittal to:
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Thank you for the opportunity to provide this update. The Department continues to pursue the conditions of the agreement, the maintenance of the improvements, and the operation of the water system.

Sincerely,



GEORGE Y. FENGAN
Director

Attachments

AGREEMENT

THIS AGREEMENT, made and entered into this 3 day of June, 1994, by and between HANS MICHEL, whose address is 1404 Olona Place, Lahaina, Maui, Hawaii 96761-1754, referred to as the "Owner", and the BOARD OF WATER SUPPLY of the COUNTY OF MAUI, a political subdivision of the State of Hawaii, Wailuku, Maui, Hawaii, its successors and assigns, referred to as the "Board",

W I T N E S S E T H:

WHEREAS, the Owner represents that he is the fee simple owner of a parcel of real property situated at Panaewa (Kanaha Valley), Lahaina, Maui, Hawaii, identified as Tax Map Key 4-6-17:12, referred to as the "Property"; and

WHEREAS, the Board operates and maintains the Kanaha Pump Station No. 2 located within the Property; and

WHEREAS, the Board utilizes the existing unimproved roadway located on the Property to access the Board's 0.30 MG Kanaha Tank, and the Kanaha Pump Stations No. 1 and No. 2; and

WHEREAS, the Board desires to obtain from the Owner title to the Kanaha Pump Station No. 2 site and easements for waterlines and access; and

WHEREAS, the Owner had made a request to the Board to provide compensation, improvements, water service, and

miscellaneous work in exchange for the conveyance of title to the Kanaha Pump Station No. 2 site and easements for waterlines and access; NOW, THEREFORE

W I T N E S S E T H F U R T H E R T H A T:

FOR AND IN CONSIDERATION of the mutual obligations of the parties to be performed as hereinafter set forth, it is hereby understood and agreed by the Owner and the Board that:

1. Water Meter for the Property:

The Board shall provide a five-eighth inch (5/8") water meter for water service to the Property. The meter shall be installed after (1) the Owner makes a request to the Board for water service and (2) the Owner enters into an elevation agreement. The water meter shall be installed by the Board at no charge (no water system development fee or installation charge). The meter shall be located within the Property and adjacent to the existing 0.30 MG Kanaha tank site. The Owner shall pay the Board for water consumed through the meter at the Department's current rates at the time of water consumption.

2. Maintenance of the Dirt Roadway Located Between the Lahainaluna High School's Piggery and the Board's Kanaha Pump Station No. 2:

The Board shall maintain the existing roadway and stream crossing located within the Property. The Board shall

pursue a resolution with the State of Hawaii on the maintenance of the roadway and stream crossing located within the State of Hawaii property identified as Tax Map Key 4-6-18:7. The Board shall limit its maintenance work to repair damage or wear caused by the Board with crushed rock waste or base coarse. Damage to the stream crossing due to storm generated stream flows shall be jointly funded by the Owner and Board.

3. **Drainage Control Improvements Within the Board's 0.30 MG Kanaha Tank Site:**

The Board shall repair damages to the roadway adjacent to the southern boundary of the 0.30 MG Kanaha tank site, referred to as the "Tank Site", caused by rainfall surface runoff flowing through the Tank Site. Repair work shall restore the surface of the ground to their original condition to the extent that such restoration work is reasonably possible.

4. **Board Vehicles Parking on the Property Adjacent to the 0.30 MG Kanaha Tank:**

The Owner shall allow Board vehicles to park on the Property on the southern side adjacent to the Tank Site. The Board shall provide grading work to maintain the parking area.

5. **Grading of the Roadway Near the Tank Site Access Driveway Gate:**

The Board shall perform excavation work to the area near the Tank Site access driveway gate along the roadway to provide the Owner with a turn-around area for vehicles. The Board shall grade the area only one time to the satisfaction of the Owner.

6. **Board 0.30 MG Kanaha Tank Site Boundary Adjustment:**

The Board shall modify the subdivision map (SD 90-15) currently being processed for the acquisition of the Tank Site lot to delete the portion of land the Owner wishes to acquire. The Owner shall coordinate with the State to acquire the State owned land.

7. **Easements:**

The Owner shall grant easements within the Property in favor of the Board for (1) Board vehicle parking, (2) the 0.30 MG Kanaha tank overflow discharge, (3) the 0.30 MG Kanaha tank site surface runoff discharge, (4) the pump prelubrication discharges at Pump Stations No. 1 and No. 2, (5) vehicular access along the existing dirt road to the 0.30 Kanaha MG tank site and Pump Stations No. 1 and No. 2, and (6) waterlines and appurtenances. The locations of the subjects within this paragraph are shown on the map attached hereto as Exhibit "B".

8. Repair Eroded Areas Within the Property and Along the Pedestrian Trail:

The Board shall discuss with the State of Hawaii and Pioneer Mill Co., Ltd. the request by the Owner to repair the pedestrian trail along the cliff that was eroded by the overflow water from the screenbox and also the erosion on the Property caused from the overflow water.

9. Boulder Removal:

The Board shall, at its own cost, remove the five boulders from the Property. The Owner may choose to have the Board relocate the boulders to a different location within the Property.

10. Relocation of Board Waterlines:

The Board shall, at its own cost, relocate a portion of the six-inch waterline from Pump Station No. 2 into the access easement area (onto the existing roadway area).

11. Ownership of the Pump Site No. 2:

The Owner shall grant, convey and dedicate unto the Board title to the Kanaha Pump Site No. 2 site, as revised. The Board shall transfer the title for the Kanaha Pump Station No. 2 site back to the Owner or his heirs in the event the pump station function is abandoned by the Board, at no cost to the Owner or his heirs.

12. Relocation of Access Gate at Pump Station No. 2:

The Board shall relocate the vehicle access to the east side of the Pump Station No. 2. The Owner shall provide the Board the necessary easements for such access from the roadway. The Owner shall provide the necessary easements to Maui Electric Company for any power pole relocations as required.

13. Grading of Land Near Pump Station No. 2 for Access Onto Kanaha Stream:

The Board shall discuss with the State of Hawaii and Pioneer Mill Co., Ltd. the grading (excavation) work the Owner requested at the area east of the Pump Station No. 2. The Owner desires the grading work to provide improved access for heavy construction equipment into the Kanaha Stream bed.

14. Flowage Easement for Discharge From the Lahaina Water Treatment Plant Improvements and the Existing State and Pioneer Mill Co., Ltd. Water Systems:

The Board shall pay Owner TWENTY FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00) for the flowage easement. The easement path shall extend from the southern boundary line of the Property to the Kanaha Valley. Owner shall not interfere with, terminate, or in any way restrict or affect the Board's easement for any reason, including suspected or actual unauthorized use by anyone other than the Board.

The Board shall not give permission to anyone to use the flowage easement, except its employees and agents who are pursuing business of the Board.

15. Payment of Attorney Fees:

The Board shall pay the Owner for his attorney expenses in the sum of NINE HUNDRED AND NO/100 DOLLARS (\$900.00) incurred during the May 11, 1993 meeting.

16. Reimbursement to the Owner for Improvements Performed by the Owner Which Benefitted the Board:

The Board shall pay FORTY THOUSAND AND NO/100 DOLLARS (\$40,000.00) to the Owner for the materials, equipment and labor the Owner had expended for various maintenance and improvements performed which benefits the Board.

The locations of the subjects within paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 16 are shown on the map attached hereto as Exhibit "A", as revised.

17. Damage or Injury from Landslide or Earthquake and Falling Rocks:

The Owner shall not be responsible or liable for any damage to property or vehicles or injuries to person caused by landslide or earthquake and rocks from the hillside. Board shall indemnify and protect Owner from any and all claims for damage to Board's property or vehicle or injury to its employees resulting from such landslide, earthquake or falling rocks, including attorney's fees and costs.

18. Stream Crossing and Heavy Flood Water:

Owner shall not be held responsible for loss of vehicles or injury to person (its employees and agents) when crossing the stream. The Board shall indemnify and protect Owner from any or all claims for loss of Board's vehicles, or injury to its employees and agents, when crossing the stream during heavy flood water, including attorney's fees and costs.

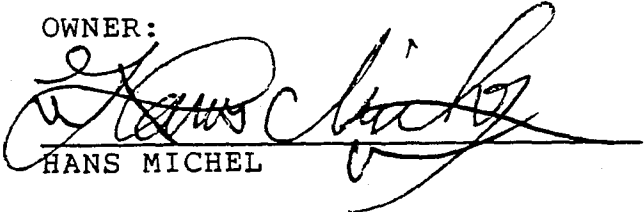
19. Damage to Vehicle and Injuries to Employees and Agents:

The property belonging to Owner is a farm. Owner shall not be held responsible for any damage to Board's vehicles or its employees and agents caused by collisions with the Owner's animals. The Board shall indemnify and protect Owner from any and all claims for damage to vehicles or injury to its employees and agents caused by collision with Owner's animals, including attorney's fees and costs.

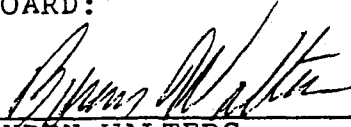
20. The Board shall not give permission to anyone to use the roadway easement, except its employees and agents who are pursuing business of the Board.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

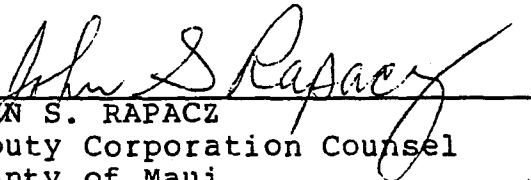
OWNER:


HANS MICHEL

BOARD:


BYRON WALTERS
Its Chairperson

APPROVED AS TO FORM
AND LEGALITY:


JOHN S. RAPACZ
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
) SS:
COUNTY OF MAUI)

On this 3 day of June, 1994, before me personally appeared HANS MICHEL, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Raymond W. ...
Notary Public, State of Hawaii

My commission expires: 6/7/95

STATE OF HAWAII)
) SS:
COUNTY OF MAUI)

On this 28th day of September, 1994, before me appeared BYRON WALTERS, to me personally known, who, being by me duly sworn, did say that he is the Chairperson of the BOARD OF WATER SUPPLY of the County of Maui, and that the seal affixed to the foregoing instrument is the lawful seal of the BOARD OF WATER SUPPLY, and that said instrument was signed and sealed on behalf of said BOARD OF WATER SUPPLY, and said BYRON WALTERS acknowledged said instrument to be the free act and deed of said BOARD OF WATER SUPPLY.

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

Joseph Annunzio
Notary Public, State of Hawaii

My commission expires: 4/19/98

MAP 54-7

KANAHA WELL NUMBER TWO SUBDIVISION

**PROPOSED
SUBDIVISION OF PARCEL 12 OF
TAX MAP KEY: 4-6-17 INTO
LOT A AND LOT B AND DESIGNATION
OF EASEMENTS 9, 12 AND 13**

Being all of
Royal Patent 1800, Land Commission Award 2852,
Apata 3 to W. K. Kakuahi, Royal Patent 2300, Land
Commission Award 1066, Apata 3 to Pihahole, Land
Commission Award 1077, Apata 1 to David Molo,
Land Commission Award 1216 to Kekuaonahi

PAEHI, MOALI, AND KANAHA VALLEY, LAHANA, MAUI, HAWAII

Date: February 17, 1989

Prepared for:
County of Maui
Board of Water Supply
Wailuku, Maui, Hawaii, 96793

Prepared by:
DONALD S. BIRD
ENGINEERING CONSULTANTS, INC.
100 W. Ilioulioua Street, Suite 207
Wailuku, Hawaii 96793

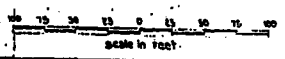
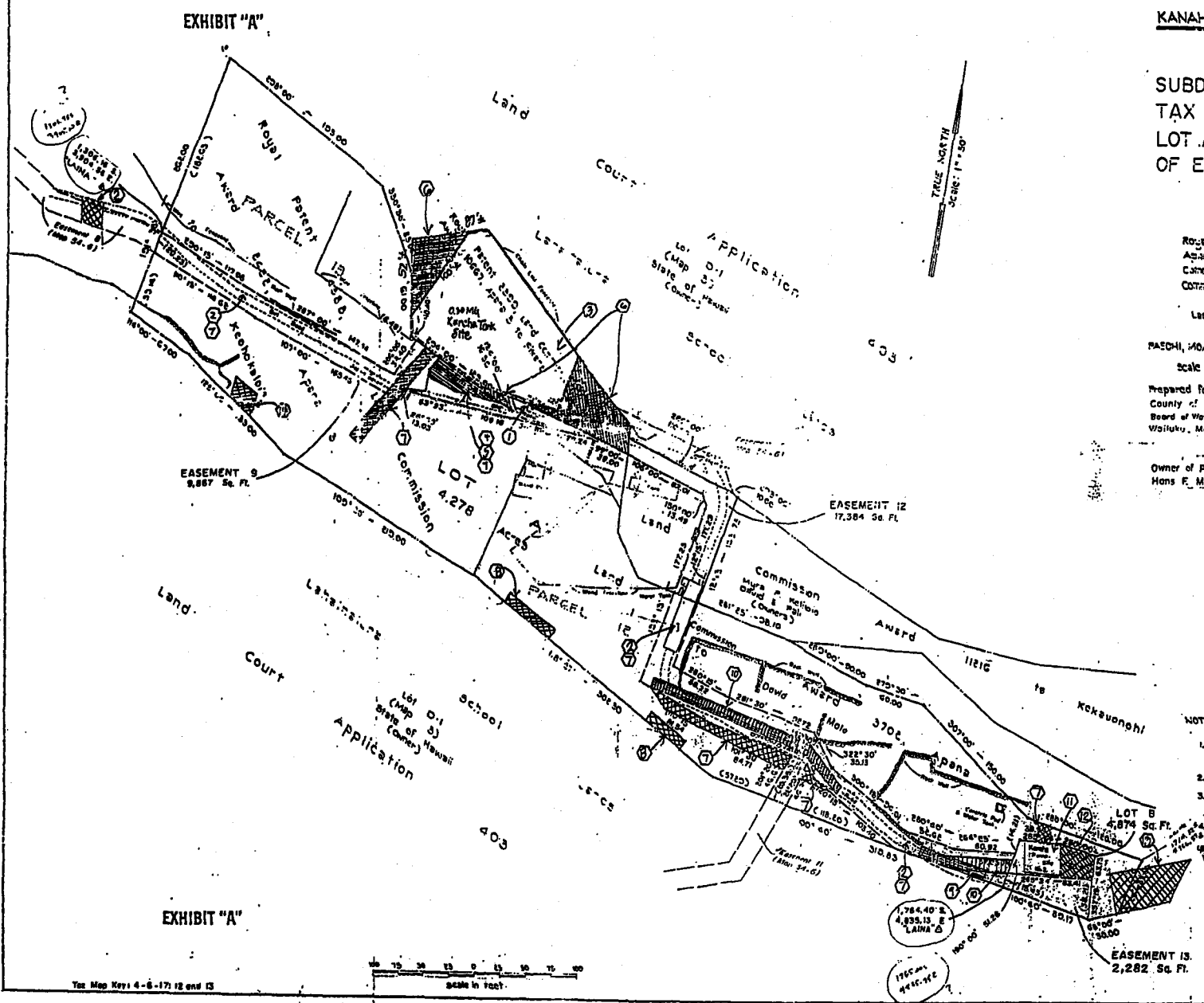
Owner of Parcel 12:
Hans F. Michs



This work was prepared by me
under my supervision.
Donald S. Bird
Registered Professional
Land Surveyor No. 205-S

NOTES:

1. All points and field coordinates refer to Government Survey Triangulation Station 121A.
2. Owners of adjoining parcels are listed from Tax Map Records.
3. Boundary corners of Lot B and Easements 9, 12 and 13 are marked with 3/4-inch pipe unless noted otherwise.
4. Easements 9, 12 and 13 are for utility and access purposes in favor of the Board of Water Supply.



The Map Key 4-6-17 12 and 13

EXHIBIT "A"

L.U.C.A. File No.

KANAHU WELL NUMBER TWO SUBDIVISION

EXHIBIT B

SUBDIVISION OF PARCEL 12 OF TAX MAP KEY: 4-6-17 INTO LOT A AND LOT B AND DESIGNATION OF EASEMENTS 9, 12 AND 13

Being all of Royal Patent 4388, Land Commission Award 8452, Apans 3 to Keohokulole, Royal Patent 1390, Land Commission Award 10647, Apans 3 to Pikanaha, Land Commission Award 3702, Apans 1 to David Molo, and a portion of Land Commission Award 1121G to Kekeuonahi

FAOHI, MOALI, AND PANAENA (KANAHU VALLEY), LAHANA, MAUI, HAWAII

Scale: 1 inch = 30 feet

Date: February 17, 1989

Prepared for: County of Maui, Dept of Water Supply, Wailuku, Maui, Hawaii 96793

Prepared by: NORMAN SATO ENGINEERING CONSULTANTS, INC. 218 Main Street, Suite 203 Wailuku, Maui, Hawaii 96793

Owner of Parcel 12: Hans F. Michel

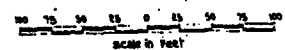
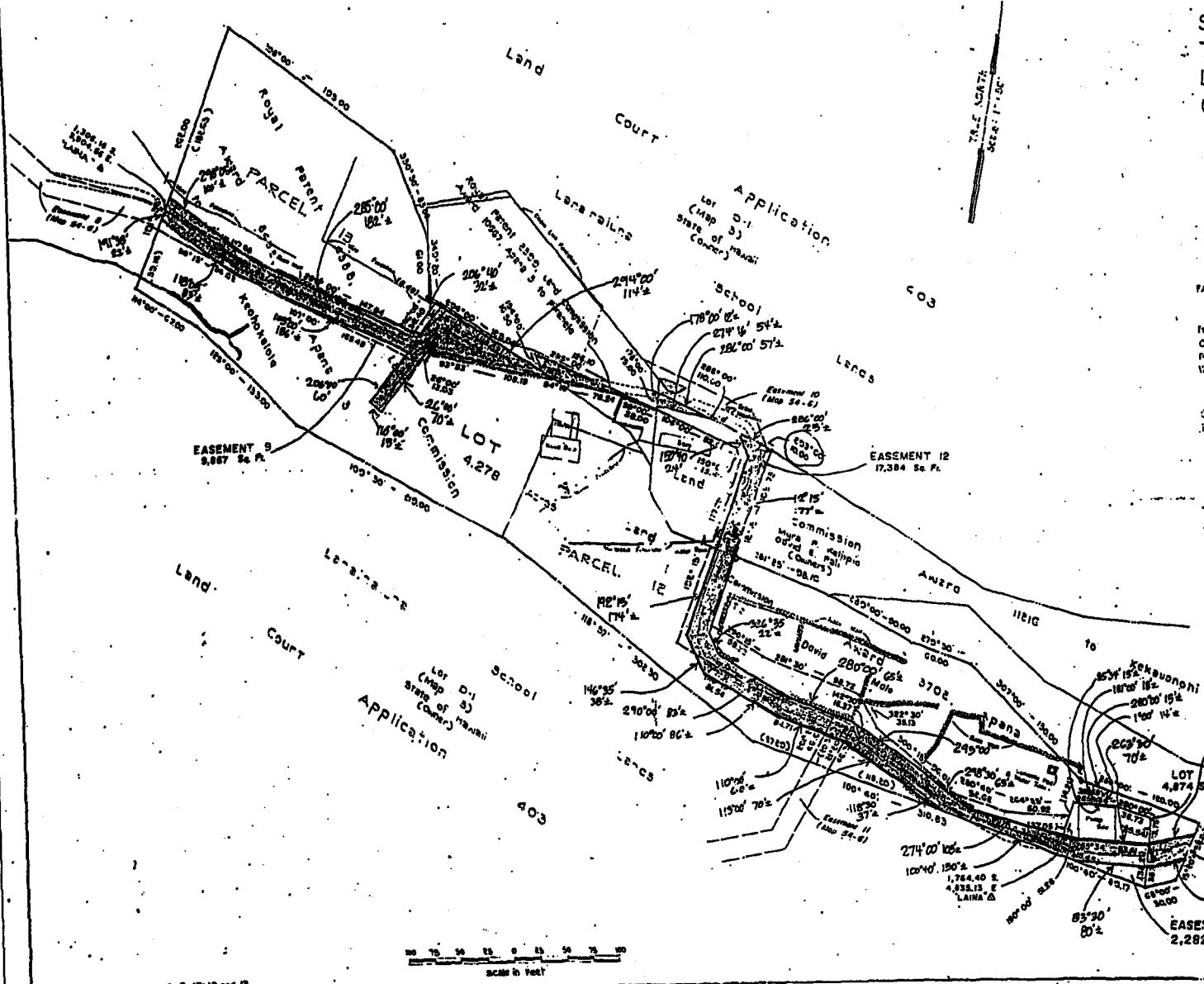


This work was prepared by me or under my supervision. Norman Sato, Registered Professional Land Surveyor No. 803-5

NOTES:

- 1. Azimuths and field coordinates refer to Government Survey Triangulation Station 'LAHANA'.
2. Owners of adjoining parcels are taken from the Tax Map Records.
3. Boundary corners of Lot B and Easements 9, 12 and 13 are marked with 3/4-inch pipe unless noted otherwise.
4. Easements 9 and 12 are for waterline and access purposes in favor of the Board of Water Supply.

Note: Metes & Bounds of Easements are Approximate Only



The Map Key: 4-6-17: 12 and 13

L.U.C.A. File No.

8 1/4" x 32"

C-54

51 12-101

AMENDMENT TO AGREEMENT

This Amendment, made and entered into this _____ day of
MAY 23 2005, 20____, by and between HANS MICHEL, whose address is
1404 Olona Place, Lahaina, Maui, Hawai`i 96761-1754, herein
referred to as the "Owner", and the DEPARTMENT OF WATER SUPPLY
of the COUNTY OF MAUI, a political subdivision of the State of
Hawai`i, whose address is 200 South High Street, Wailuku, Maui,
Hawai`i 96793-2155, herein referred to as the "Department".

W I T N E S S E T H:

WHEREAS, the Owner and the Board of Water Supply of the
County of Maui, herein referred to as the "Board", made and
entered into that certain Agreement dated June 03, 1994; and

WHEREAS, the Department has succeeded to the rights and
obligations of the Board under the said Agreement; and

WHEREAS, the Owner and the Department now wish to amend the
said Agreement;

NOW, THEREFORE, for good and valuable consideration, it is
hereby agreed by and between the parties that:

1. Exhibits "A" and "B" shall be revised at the Kanaha Pump
Site 2 as follows:

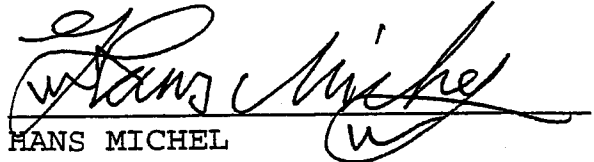
- a. Lot B shall be reduced to a total combined area of
2,000 square feet to reflect the existing fenced
Kanaha Pump Site 2 and the parking lot turnaround
(shown as shaded on Exhibits "A-1" and "B-1"); and

b. Non-transferable Easements 9 and 12 for access to Kanaha Pump Site 2 by Owner and Department of Water Supply only shall be revised to follow the south boundary line at Kanaha Pump Site 2 (shown as a dashed line on Exhibits "A-1" and "B-1"). The easement width where revised shall be approximately 20 feet.


2. Exhibits "A" and "B" to the said Agreement shall be changed as shown on Exhibits "A-1" and "B-1", attached hereto and incorporated herein by this reference;

3. Other than as changed in paragraphs 1 and 2, all of the other terms, covenants, and conditions of the said Agreement shall remain in full force and effect forever.

DATED: Lahaina, Maui, Hawai'i, May. 5. 2005.


HANS MICHEL

DATED: Wailuku, Maui, Hawai'i, MAY 23 2005

COUNTY OF MAUI
By 
ALAN ARAKAWA
Its Mayor

APPROVED AS TO FORM
AND LEGALITY:



Deputy Corporation Counsel

Dated: 4/28/85

APPROVAL RECOMMENDED:



GEORGE Y. TENGAN

Director, Department of Water Supply

STATE OF HAWAI'I)
) SS.
COUNTY OF MAUI)

On this 5 day of May, 2005, before me personally appeared HANS MICHEL, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Barbara P.H. Robert

Notary Public, State of Hawai'i

Barbara P.H. Robert

TYPED OR PRINTED NAME OF NOTARY

My Commission expires: 10. 1. 07
L.S.

STATE OF HAWAI'I)
) SS.
COUNTY OF MAUI)

On this _____ day of MAY 23 2005, 20____, before me personally appeared ALAN ARAKAWA, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Linda K. Tanashiro

Notary Public, State of Hawai'i

LINDA K. TANASHIRO

TYPED OR PRINTED NAME OF NOTARY

My Commission expires: 10/19/06

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 12th day of May, 2005, before me appeared ALAN M. ARAKAWA, to me personally known, who being by me duly sworn did say that he 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 ALAN M. ARAKAWA 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.

L.S.

Kay A. Ogasawara
NOTARY PUBLIC, State of Hawaii
Kay A. Ogasawara
(Print Name)
My commission expires: 7/1/05

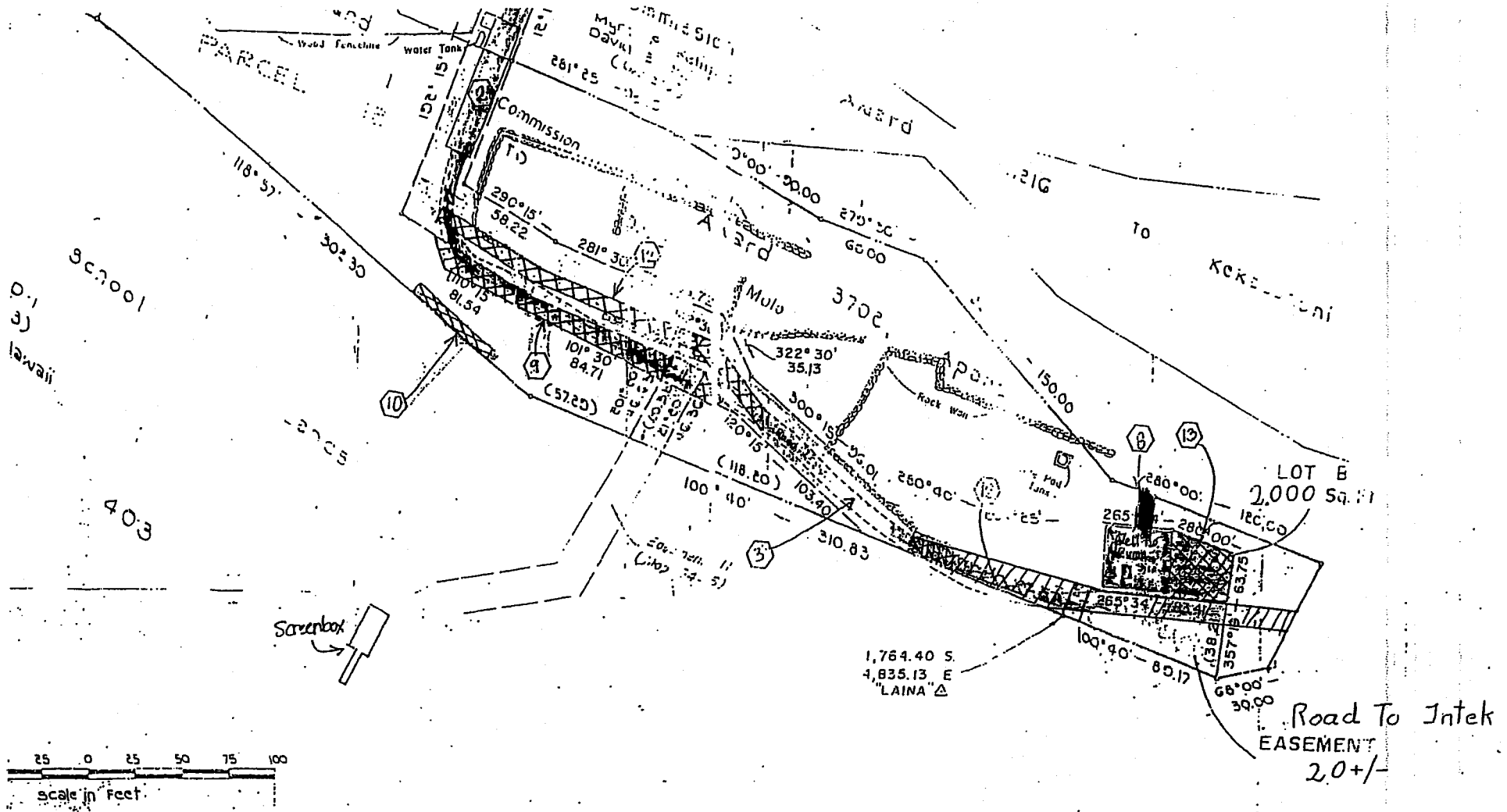


Exhibit - Lot B. 2,000 Sq. Ft.

21" x 30"

EXHIBIT "A-1"

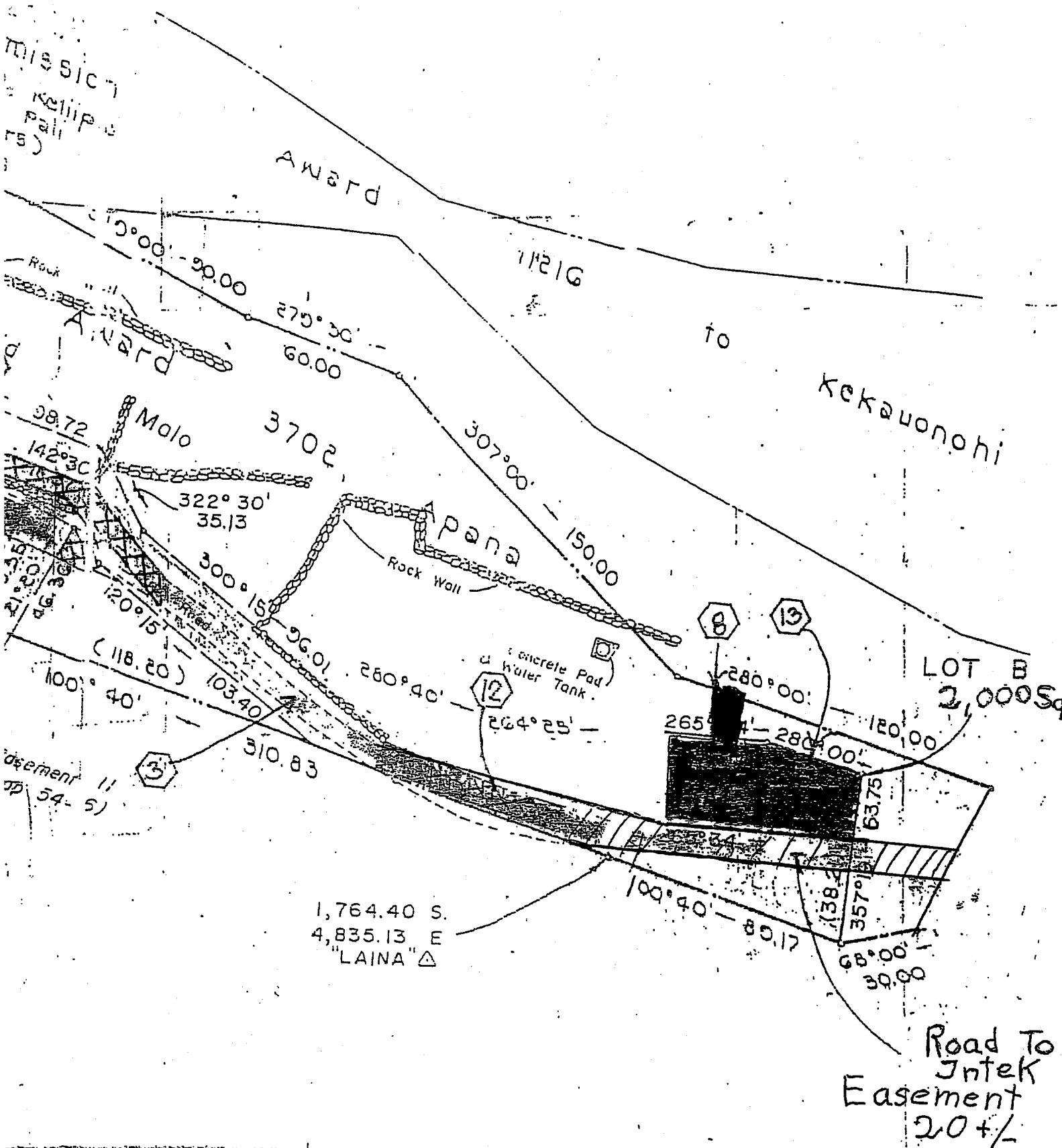
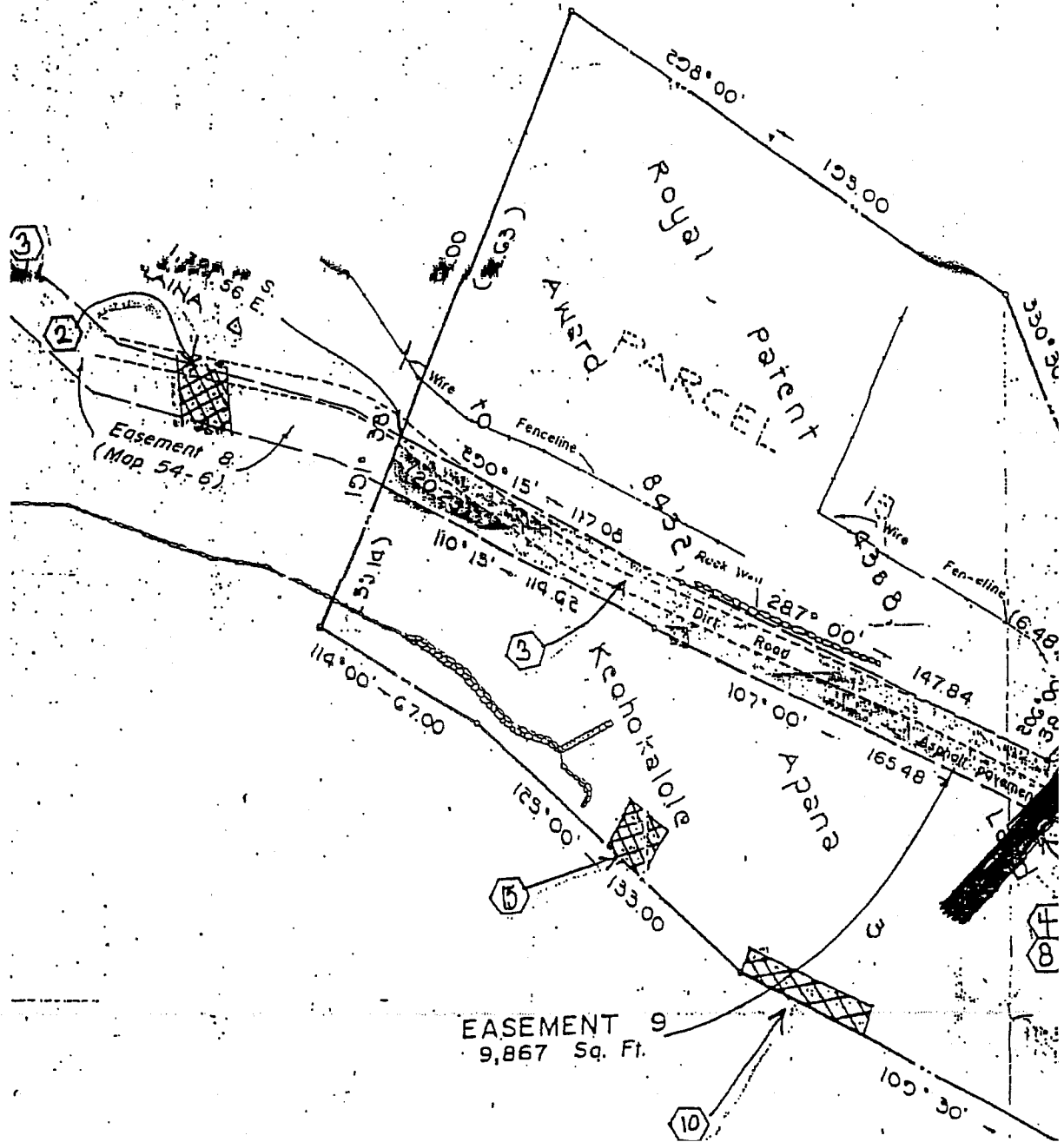


Exhibit-LOT B. 2,000 Sq. Ft.



EASEMENT 9
9,867 Sq. Ft.

Easement 8
(Map 54-6)

Royal Patent
AWARD PARCEL

Keohokalole
Apana

100° 30'

114° 00' - 67.00'

107° 00' - 147.84'

165.48'

100.30'

110° 15' - 117.08'

119.92'

103.00'

208° 00'

330.30'

6.48'

20.50'

100.00'

100.00'

200.00' (163)

200.00'

170.00'

147.84'

165.48'

100.00'

100.00'

3

2

3

5

10

OFF

122.56' E. 19.

122.56'

122.56'

122.56'

122.56'

122.56'

122.56'

122.56'

122.56'

122.56'

122.56'

122.56'

122.56'

COURT

State of
Maine
County of
Cumberland

Application

W O A



Tax Map Key: 4-6-17: 12 and 13

100 75