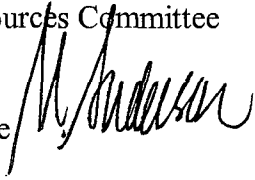


September 12, 2006

MEMO TO: Members of the Water Resources Committee

F R O M: Michelle Anderson, Chair  
Water Resources Committee

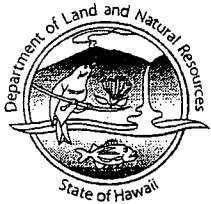


SUBJECT: **DOCUMENT TRANSMITTAL**

Please consider the attached document in connection with Item No. 27 on your Committee agenda.

Attachment

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

August 22, 2003

PETER T. YOUNG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

DAN DAVIDSON  
DEPUTY DIRECTOR - LAND

ERNEST Y.W. LAU  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Ref. No.: 02MD-584

Author: LD-jk

Mr. Jeffrey T. Pearson  
Deputy Director  
Department of Water Supply  
P. O. Box 1109  
Wailuku, HI 96793-7109

Dear Mr. Pearson:

Subject: Assignment of Rights under Deed to the County of Maui, Lands owned by Hans Fritz Michel; Kanaha Valley, Lahaina, Maui, TMK: (2) 4-6-017:012

Enclosed are an original and four (4) copies of the above referenced document.

This is in response to a request from former director David Craddick to help finalize the conveyance of the well site and easements from Mr. Hans Fritz Michel to the County of Maui. We understand that the Department of Water Supply will continue to work with Mr. Michel in accordance with its Agreement dated June 3, 1994, to finally complete the conveyance.

Please review, and have the mayor sign and notarize all copies in accordance with the following instructions, which you may also want to share with your notary.

1. The mayor must sign on the appropriate signature lines provided for GRANTEE. If a name is spelled incorrectly, please make the necessary corrections and initial.
2. Do not date the document! (Only the notary page should be dated.)
3. Do not make any additions, deletions or changes to the terms and conditions of the document. Any such changes will require starting the document preparation process over again.

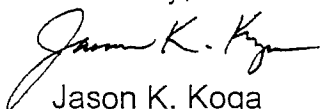
Mr. Jeffrey T. Pearson  
August 22, 2003  
Page 2

4. For the notary page:
  - a. All blanks must be filled in.
  - b. The appropriate county name must be filled in.
  - c. The notary's name must be printed directly under the notary's signature line.
  - d. The notary's seal must be affixed with "L.S" printed over the seal (if embossed).

Please pay particular attention to these instructions, as non-adherence will delay the processing of your document.

If you have any questions, please feel free to contact me at 984-8103. Thank you.

Sincerely,



Jason K. Koga  
District Land Agent

Enclosures

cc: Central Files  
District Files

D-2

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

June 27, 2003

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

PSF No.:02MD-584

Maui

Assignment of State's Rights under Hans Fritz MICHEL's Deed to the County of Maui, Department of Water Supply; Well Site and Roadway and Waterline Easements affecting Property Owned by Hans Fritz MICHEL; Lahaina, Maui; Tax Map  
Key: (2) 4-6-017:012.

APPLICANT:

County of Maui, Department of Water Supply, whose business and mailing address is 200 South High Street, Wailuku, Hawaii 96793.

LEGAL REFERENCE:

Sections 171-6, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of private lands owned by Hans Fritz MICHEL, situated at Lahaina, Maui, identified by Tax Map Key: (2) 4-6-017:012 as shown on the attached map labeled Exhibit A.

AREA:

Well site: 8,348 square feet, more or less  
Roadway and Waterline Easements: 29,246 square feet, more or less

ZONING:

State Land Use District: Agriculture  
County of Maui: Agriculture

BLNR - Assignment of State's  
Rights under MICHEL's Deed  
to the County of Maui

Page 2

June 27, 2003

TRUST LAND STATUS:

Not applicable.

CURRENT USE STATUS:

County of Maui, Department of Water Supply operated well site and roadway and waterline easements.

CONSIDERATION:

Not applicable.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Not applicable.

APPLICANT REQUIREMENTS:

None.

REMARKS:

The Division of Water and Land Development (DOWALD) drilled an exploratory well in 1974 when the property was owned by Pioneer Mill Company, Limited. In 1978, the well was developed and turned over to the County of Maui, Department of Water Supply (DWS).

In 1981, via a Quitclaim Deed, the property was sold by Pioneer Mill to Mr. Hans Fritz MICHEL. By the terms of the Quitclaim Deed, Pioneer Mill had agreed to convey to the State of Hawaii, a portion of the land for a well site, referred to as Lot B in the Deed, together with a non-exclusive easement for roadway and waterline purposes. The conveyance to the State was subject to the subdivision of said Lot B and the payment of \$100.00 as consideration. The subdivision was not completed and the conveyance to the State was never done. The obligation to convey the well site and easements to the State was transferred to MICHEL via the Quitclaim Deed.

DWS and MICHEL entered into an agreement in 1994. Within that agreement, MICHEL agreed to grant the well site and easements to DWS with certain concessions based on damages to his property from the development of the well site and ongoing usage. No consideration is being requested by MICHEL for the conveyance.

BLNR - Assignment of State's  
Rights under MICHEL's Deed  
to the County of Maui

Page 3

June 27, 2003

DWS is willing to complete the formal subdivision in order to facilitate the final conveyance of the well site and easements to them. Since the State no longer has any need for the well site and easements (as confirmed by DOWALD), and in order to expedite the final conveyance to DWS, staff is seeking to transfer the State's rights under MICHEL's deed to DWS, as opposed to completing the acquisition with MICHEL and setting aside the well site and easements to DWS.

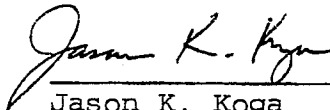
Staff has discussed this strategy with Pioneer Mill, Hans Fritz MICHEL, DWS and the Department of the Attorney General. Pioneer Mill stated that they are no longer a party to this transaction. MICHEL has agreed to work directly with DWS on the conveyance, and DWS has also agreed to the strategy. Staff will continue to work with the Department of the Attorney General in properly conveying the State's rights under MICHEL's deed to DWS.

RECOMMENDATION:

That the Board authorize the assignment of the State's rights under Hans Fritz MICHEL's deed to the County of Maui, Department of Water Supply, subject to:

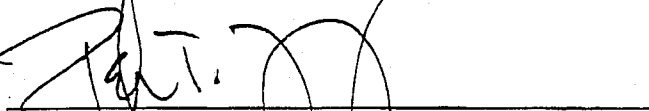
- a. Hans Fritz MICHEL's formal consent to the assignment;
- b. Review and approval by the Department of the Attorney General; and
- c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Jason K. Koga  
District Land Agent

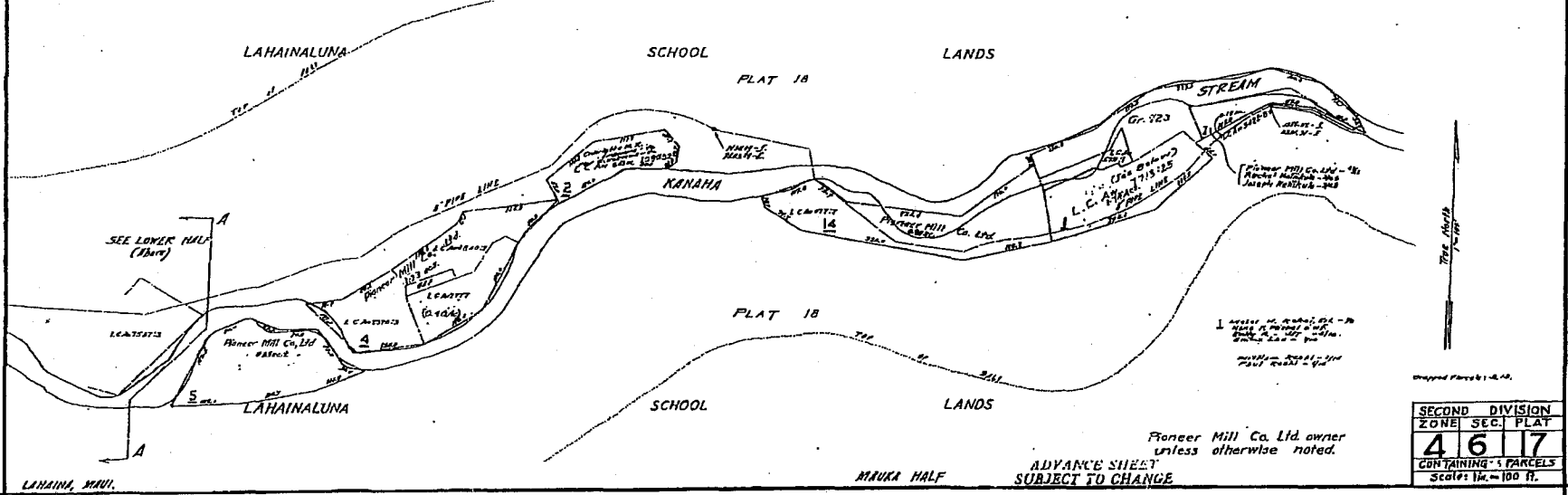
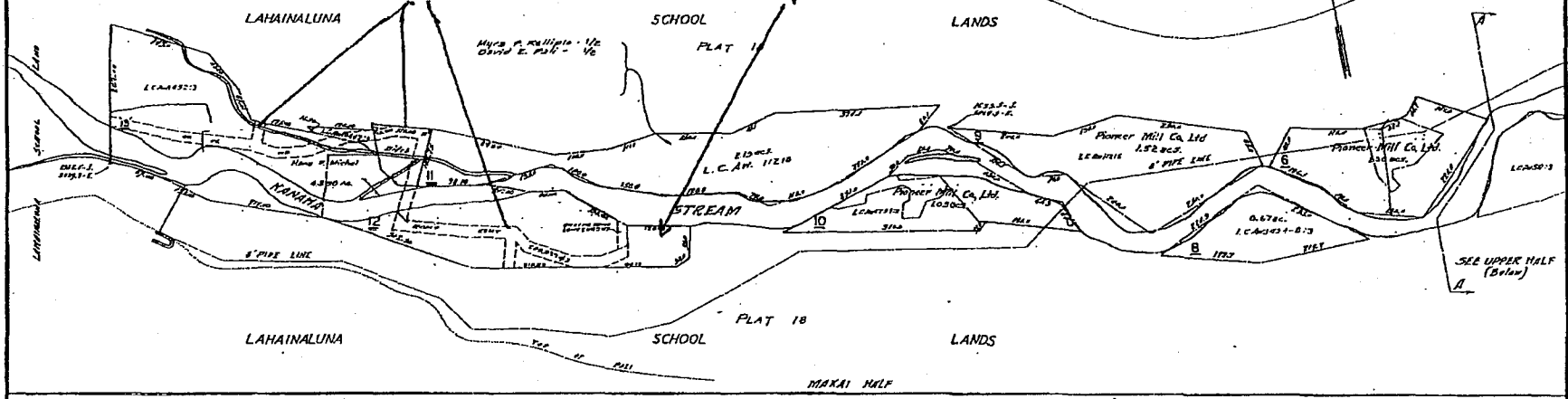
APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

ROADWAY AND WATERLINE EASEMENTS

WELL SITE



Drawn by: S.A. [unclear]  
 Checked by: [unclear]  
 Surveyed by: [unclear]

Second Division  
 Zone Sec. Plat  
**4 6 17**  
 CONTAINING 3 PARCELS  
 Scale: 1 in. = 100 ft.  
 PRINTED

Pioneer Mill Co. Ltd. owner unless otherwise noted.  
 ADVANCE SHEET  
 SUBJECT TO CHANGE

EXHIBIT "A"

014003; B. O. JAMES

MULL

11

# 4 / 1

**PIONEER MILL COMPANY, LIMITED**

700 Bishop Street, Suite 501  
Honolulu, Hawaii 96813  
Phone: (808) 543-8520  
Fax: (808) 543-8528

2003 FEB 21 PM 1:19

February 20, 2003

Mr. Jason K. Koga  
District Land Agent  
Department of Land and Natural Resources  
54 High Street, Room 101  
Wailuku, Maui, Hawaii 96793

Dear Mr. Koga:

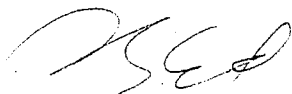
Re: Well Site and Easements within Kanaha Valley, affecting Hans Michel's Property,  
Lahaina, Maui (TMK: (2) 4-6-017:012)

We are in receipt of your letter, dated December 13, 2002 regarding the above-referenced matter. Pioneer Mill Company, Limited ("PMCo") conveyed its interest in the subject land to Mr. Michel pursuant to a Quitclaim Deed dated May 6, 1981, subject to a right of first refusal. PMCo has no interest in exercising its right of first refusal. PMCo will continue, however, to maintain its reserved rights as set forth in Exhibit "A" to the Deed. Since PMCo has conveyed its interest in the property subject to certain reserved rights, PMCo is not in a position to convey land to a third party. Consequently, PMCo would not be involved in any transaction regarding this land.

If you have any questions or comments, please do not hesitate to call.

Sincerely,

PIONEER MILL COMPANY, LIMITED

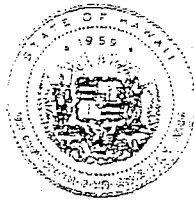


Tamara G. Edwards  
Vice President

cc: Hans Michel



LINDA LINGLE  
GOVERNOR



PHONE (808) 984-8103  
FAX: (808) 984-8111

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION  
54 High Street, Room 101  
Wailuku, Hawaii 96793

PETER T. YOUNG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES

ERNEST LAU  
DEPUTY DIRECTOR

DEAN A. NAKANO  
ACTING DEPUTY DIRECTOR FOR  
THE COMMISSION ON WATER  
RESOURCE MANAGEMENT

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
COMMISSION ON WATER RESOURCE  
MANAGEMENT  
CONSERVATION AND RESOURCES  
ENFORCEMENT  
CONVEYANCES  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE  
COMMISSION  
LAND  
STATE PARKS

March 12, 2003

Ms. Tamara G. Edwards  
Vice President  
Pioneer Mill Company, Limited  
700 Bishop Street, Suite 501  
Honolulu, HI 96813

Dear Ms. Edwards:

Subject: Well Site and Easements within Kanaha Valley affecting Hans Michel's  
Property, Lahaina, Maui (TMK: (2) 4-6-017:012)

Thank you for your letter dated February 20, 2003, and your call this morning, clarifying Pioneer Mill's position pertaining to the conveyance of Lot B and easements for roadway and waterline to the State of Hawaii, as stated in the Quitclaim Deed between Pioneer Mill and Mr. Hans Fritz Michel dated May 6, 1981.

We understand that Pioneer Mill's position is that the conveyance obligation to the State of Hawaii was transferred from Pioneer Mill to Mr. Michel via the Quitclaim Deed and therefore, negotiations and the ultimate consummation of the conveyance should be made directly with Mr. Michel.

Thank you for taking the time to research and clarify this matter for us.

Sincerely,

A handwritten signature in cursive script, reading "Jason K. Koga".

Jason K. Koga  
District Land Agent

cc: Central Files  
District Files  
George Tengan, Water Department  
Hans Michel

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.

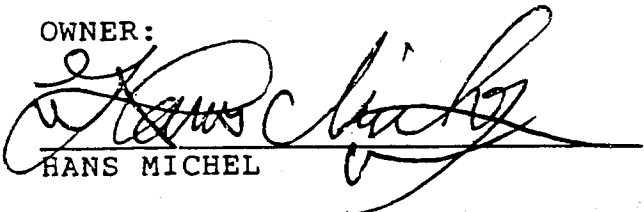
19. Damage to Vehicle and Injuries to Employees and Agents:

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.

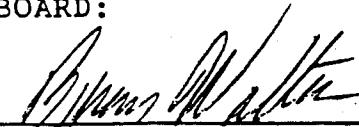
20. The Board shall not give permission to anyone to use the roadway easement, except its employees and agents who are pursuing business of the Board.

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

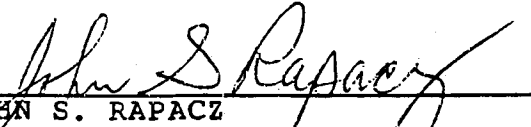
OWNER:

  
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.

*Myron LeRou*  
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.

*Josephann...*  
Notary Public, State of Hawaii  
My commission expires: 4/19/98