

IEM Committee

From: Mahie Reimann <Mahie.Reimann@co.maui.hi.us>
Sent: Wednesday, January 10, 2018 8:07 AM
To: IEM Committee
Cc: Deanna Thyssen; Lisa Tajiri; Marci Sato; Mark Walker; Pili Nahooikaika
Subject: Mayor's Transmittal #6317
Attachments: Mayor's Transmittal #6317.pdf

Subject: Kualono Subdivision Waterline Easements W-2, W-3, W-4, & W-5 Subdivision File No. 2.2896 TMK(2)2-3-011: 124, 125, 126, 127, 128, 129, & 130 (IEM-49)

Attached copy of Mayor's Transmittal dated 1/8/2018

Māhie Reimann
County of Maui
Office of the Mayor
270-7855

ALAN M. ARAKAWA
Mayor



RECEIVED
2018 JAN -8 PM 12: 51
OFFICE OF THE MAYOR
MARK R. WALKER
Director
MARCI M. SATO
Deputy Director

COUNTY OF MAUI
DEPARTMENT OF FINANCE
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793

January 8, 2018

Honorable Alan M. Arakawa
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

For Transmittal to:

Honorable Elle Cochran, Chair
Infrastructure and Environmental Management Committee
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

Dear Chair Cochran:

**SUBJECT: KUALONO SUBDIVISION
WATERLINE EASEMENTS W-2, W-3, W-4 & W-5
SUBDIVISION FILE NO. 2.2896
TMK: (2) 2-3-011:124, 125, 126, 127, 128, 129, & 130 (IEM - 49)**

APPROVED FOR TRANSMITTAL

ACTING MAYOR
COUNTY OF MAUI
1/9/18
Date

This correspondence responds to your request dated January 3, 2018, regarding the acquisition of (4) four waterline easements located in the Kualono Subdivision.

Enclosed herewith please find a copy of the recorded Waterline Easement – Easements “W-2” through “W-5” Inclusive.

There are no other associated documents or Warranty Deed(s) that have been recorded pertaining to this acquisition.

IEM - 49
January 8, 2018
Page 2

Please feel free to contact me should you have any questions or require further assistance regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Walker', written in a cursive style.

MARK R. WALKER
Director of Finance

Enclosure:

Cc: Alan M. Arakawa, Mayor
Director of Water

Mc Eas



STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

October 12, 2017 8:01 AM

Doc No(s) A-64940491



1 1/2 OFC
B-33063389

/s/ LESLIE T. KOBATA
REGISTRAR

LAND COURT

REGULAR SYSTEM

Return by Mail Pick-Up

TO:
COUNTY OF MAUI
Department of Finance
200 South High Street, 2nd Floor
Wailuku, Maui, Hawaii 96793

TG: 492868C

(RS-1)

TITLE GUARANTY OF HAWAII HAS
FILED THIS DOCUMENT FOR RECORD
AS AN ACCOMMODATION ONLY. THIS
DOCUMENT HAS NOT BEEN
REVIEWED OR IN ANY WAY EXAMINED
AS TO ITS EFFECT ON REAL PROPERTY.

TITLE OF DOCUMENT:

WATERLINE EASEMENT
EASEMENTS "W-2" THROUGH "W-5", INCLUSIVE

PARTIES TO DOCUMENT:

GRANTOR: HANO HANO LLC
P.O. Box 220
Kihei, Hawaii 96753

GRANTEE: COUNTY OF MAUI
200 South High Street
Wailuku, Maui, Hawaii 96793

TAX MAP KEY NOS: (2) 2-3-011:124, (2) 2-3-011:125, (2) 2-3-011:126
(2) 2-3-011:127, (2) 2-3-011:128, (2) 2-3-011:129 and
(2) 2-3-011:130

Total No. of Pages 12

WATERLINE EASEMENT
(Easements W-2 through W-5, Inclusive)

THIS GRANT is made this 20th day of September, 2017, by and between HANOHANO LLC, a Hawaii limited liability company, whose address is P.O. Box 220, Kihei, Hawaii, 96753, (hereinafter referred to as the "Grantor"), and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, the principal office and mailing address of which is 200 South High Street, Wailuku, Hawaii 96793 (hereinafter referred to as the "Grantee").

W I T N E S S E T H:

That the Grantor, pursuant to Section 3.44.015(F)(2), Maui County Code, and in consideration of the sum of TEN DOLLOARS (\$10.00) paid to the Grantor by the Grantee, and other valuable consideration, the receipt whereof is hereby acknowledged, and subject to the terms, conditions, and covenants contained herein, does hereby grant, bargain, and convey unto the Grantee, its successors and assigns, perpetual, nonexclusive easements over, under, across and through those portions of certain real property situate at Pukalani, Maui, Hawaii as follows: Easement W-2, also identified as Tax Map Key No. (2) 2-3-011:124; Easement W-3, also identified as Tax Map Key Nos. (2) 2-3-011:125, (2) 2-3-011:126, (2) 2-3-011:127, and (2) 2-3-011:128; Easement W-4, also identified as Tax Map Key No. (2) 2-3-011:129; and Easement W-5, also identified as Tax Map Key No. (2) 2-3-011:130; all being more particularly described in Exhibit "A" and shown on Exhibit "B", both attached hereto and made a part hereof, hereinafter referred to as the "Easement Area".

The easements granted hereunder shall be for access to water meters and for waterline purposes, including the right to construct, reconstruct, install, maintain, operate, repair, replace, and remove such water meter(s), pipelines and related facilities, including other equipment and appurtenances necessary or expedient for the proper maintenance, operation or repair of such water meter(s) or pipelines (collectively, the "Water System Improvements") installed within said easements in connection with the construction of the KUALONO SUBDIVISION, SD No. 05-038.

TOGETHER with reasonable rights of ingress to and egress from the Easement Area across existing roadways or such other portions of the Grantor's property provided for or specified by the Grantor for such purposes, as reasonably required in connection with the rights granted herein.

AND, the Grantor hereby covenants with the Grantee that the Grantor is lawfully seized in fee simple of the described real property and that the Grantor has good right to convey the same as aforesaid; that said real property is free and clear of all encumbrances affecting Grantor's conveyance described herein, and the Grantor will warrant and defend the same unto the Grantee, forever, against the lawful claims and demands of all persons.

In consideration of the rights hereby granted and the acceptance thereof and the obligations hereby assumed, the Grantor and the Grantee hereby covenant and agree that the foregoing grant is made upon the following restrictions and conditions, which shall be binding upon, as applicable, the Grantor, the Grantee, and their respective successors and assigns:

1. Use and Restoration of Premises. Upon and in connection with performing any maintenance or repair work of the Water System Improvements in the Easement Area, the Grantee shall restore the surface of the Easement Area damaged in the performance of said maintenance or repair work to its original condition to the extent such restoration is reasonably possible.

Notwithstanding the foregoing, when the pavement within any portion of the Easement Area shall be excavated or removed by the Grantee in connection with the repair or maintenance of the Water System Improvements, the Grantee shall be obligated to restore the surface of the pavement only by "cold patch" method. Any final surfacing of the pavement by any more costly method shall be performed by the Grantor at the Grantor's expense.

2. Use by the Grantor. The Grantor shall not erect or construct any building foundations, buildings, or structures above or below the present ground level of the Easement Area, raise or lower the present ground level of the Easement Area, or plant any hedges or trees within seven and one-half feet of the centerline of any water pipeline or related appurtenance, referred to as the "Restricted Area", unless the Grantor receives prior written approval from the Grantee, which approval shall not be unreasonably withheld, delayed or conditioned; provided, however, that this provision shall not prevent the Grantor from constructing and maintaining roadways within the Easement Area or from laying, constructing, operating, maintaining, repairing, or removing its own water pipelines, conduits or drains, or other utilities or facilities on or below the surface of the Easement Area, provided that such uses and water pipelines, conduits, drains or other utilities or facilities do not interfere with the exercise by the Grantee of the rights herein granted; provided, further, however, that notwithstanding and irrespective of any prior written approval of the Grantee, the Grantor shall promptly repair any damage to the Water System Improvements or other appurtenances in the

Easement Area and shall defend, indemnify and hold harmless the Grantee from and against any and all damage, including loss to person or property, and damage to the Grantee's water pipelines, meters, fire hydrants, or other appurtenances in the Easement Area, resulting or arising from the Grantor's improvements to or activities within the Easement Area, from the Grantor's erection or construction of said building foundation, building or structure, from the Grantor's raising or lowering of the ground level, from the Grantor's planting of hedges or trees, or from the Grantor's construction, operation, maintenance, repair or removal of its own water pipelines, conduits, drains, or other utilities or facilities in the Easement Area.

3. Maintenance of Easement Area. This grant of easements does not obligate or charge the Grantee with any duties or responsibilities with regard to the ownership, condition, repair, and/or maintenance of the Easement Area except as provided in Section 1 above.

4. Indemnity.

(a) The Grantee shall indemnify and hold harmless the Grantor, its successors and assigns, from and against all claims for property damage, personal injury, or wrongful death arising out of or in connection with the intentional, reckless or negligent act or omission of the Grantee, its agents, employees, contractors and servants, or from or in connection with the exercise by the Grantee of the rights and privileges granted herein, but only to the extent that the Grantee's liability for such damage, loss or injury has been determined by a court of competent jurisdiction or otherwise agreed to by the Grantee, and further, to the extent the payment for such damage, loss or injury is permitted by law and approved by the Maui County Council, pursuant to Chapter 3.16, Maui County Code, as amended.

(b) The Grantor shall defend, indemnify and hold harmless the Grantee, its directors, officers, employees, contractors, agents, successors and assigns, from and against all claims for property damage, personal injury, or wrongful death when such damage, injury or death proximately results from or arises out of the intentional, reckless or negligent act or omission of the Grantor, or of any person for whose acts or omissions Grantor shall be legally responsible, and will reimburse the Grantee for any judgments, costs, and expenses, including reasonable attorney's fees, incurred in connection with the defense of any such claim, or incurred by the Grantee in enforcing this Grant.

5. Damage to Water System Improvements. The Grantor, regardless of any prior approval granted by the Director of the Department of Water Supply to make improvements within the Easement Area, shall be responsible for all costs and expenses incurred by the Grantee in connection with the repair of damages to the Water System Improvements when and to the extent such damages result from or arise out of the intentional, reckless or

negligent act or omission of the Grantor, or of any person for whose acts or omissions Grantor shall be legally responsible, and shall reimburse the Grantee for costs and expenses, including reasonable attorney's fees, incurred by the Grantee in enforcing this provision.

6. Non-Exclusive Easements. The rights and easements granted herein are nonexclusive, and the Grantor shall have the right to make one or more revocable or irrevocable, non-exclusive grants or assignments of all or portions of the Easement Area from time to time to governmental authorities, public or private utilities, corporations, owners associations or other parties, and the Grantee hereby consents thereto; provided, however, that any such grant or assignment shall not unreasonably interfere with the Grantee's use and enjoyment of the Easement Area for the purposes stated herein.

7. Special Provisions Relating to Restriction of Public Road Access. If, and as long as, the Kualono Subdivision shall restrict public access to the internal roads in the subdivision and the Easement Area, the Grantor and the Grantee hereby agree that the following covenants and conditions shall apply:

a. For all purposes of these easements, the term "Grantor" shall mean the Grantor named above and the Kualono Homeowners' Association, a Hawaii non-profit corporation and planned community association (the homeowner's association of which the owners of all lots in the Kualono Subdivision shall be members, and which shall be responsible for holding, managing, maintaining and repairing all common areas within the subdivision, including the interior roads) (the "Association") and their respective successors in interest. The conditions and covenants set forth in these easements shall run with the land upon the conveyance of the interior roads to the Association, and upon any other or future transfer of title or interest thereof. At such time as HANO HANO LLC shall have conveyed to third parties all residential lots in the Kualono Subdivision and the road lots to the Association so that it has no further ownership interest in any land in the subdivision, the term "Grantor" shall mean the Association only; and thereafter HANO HANO LLC shall have no further obligations or liabilities as "Grantor" hereunder (except for obligations and liabilities which shall have accrued or arisen prior to HANO HANO LLC's transfer of its last remaining property interest in the subdivision).

b. The Grantor shall provide the Grantee with the means to gain access to the Easement Area in the form of keys, electronic bypass codes, or other devices which shall be located in a lock box at the entrance of the Kualono Subdivision. The Grantor shall provide the Grantee a lock box with a padlock as specified by the

Grantee so that the Grantee may gain access to the subdivision by use of the keys, electronic bypass instructions, or other devices contained within the lock box. If said keys, access codes or other devices are changed at any time in the future, the Grantor shall promptly place new keys, access codes, or devices into the lock box so that the Grantee will continue to have means of access.

c. If at any time in the future and for any reason the Grantee's access to the Easement Area for the purpose of performing repairs or maintenance to the Water System Improvements shall be hindered, restricted or delayed as a result of the access to said roads by the public being restricted, the Grantor shall indemnify, defend, and hold harmless the Grantee from and against any and all claims for property damage, personal injury or wrongful death when and to the extent that such damage, injury or death proximately results from or arises out of said hindrance, restriction or delay in the Grantee's gaining access.

d. The Grantor shall at all times and at its sole expense keep in full force and effect a policy or policies of liability insurance, insuring against loss, damage or liability for bodily or personal injury to, or death of persons, and loss or damage to property for which the Grantor is obligated to indemnify the Grantee under any provision of this easement, and said policy or policies shall name the Grantee as an additional insured. The limits of public liability and property damage liability shall not be less than \$1,000,000 per person, per occurrence for personal injury and not less than \$100,000 per occurrence, per property for property damage liability. The Grantor shall provide the Grantee with certificates or copies of such policies from time to time as the Grantee may request to evidence the Grantor's compliance with this insurance requirement.

8. No Warranties. The Grantor does not warrant the condition of the Easement Area. The Grantee accepts the Easement Area in the condition it is in at the commencement of this easement, and the Grantee hereby acknowledges that the Grantor has made no representations concerning the conditions of the Easement Area or its suitability for the use intended to be made thereof. The Grantee accepts and assumes all risks with respect to entry upon the Easement Area and the conditions thereof.

9. Definitions. When more than one person is involved in the grant of this indenture and the covenants herein contained, the term "Grantor" and "Grantee" and related verbs and pronouns in the singular shall include the plural. Where appropriate, the masculine gender shall be deemed to include the feminine or neuter genders. The term "Grantor" wherever used herein shall be held to mean and include the Grantor, its

successors and assigns, and the term "Grantee", wherever used herein shall be held to mean and include the Grantee, its successors and permitted assigns. This instrument shall be binding upon and shall inure to the benefit of the Grantor and its successors and assigns, and the Grantee and its successors and permitted assigns.

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

[SIGNATURE PAGE FOLLOWS]

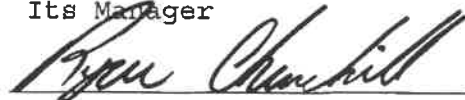
IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed on the day and year first written above.

GRANTOR:


HANOHANO LLC

By Separate Maui Investment, LLC
A Washington limited liability
company
Its Manager

By JSG Separate Management, Inc.
A Washington Corporation
Its Manager


By Ryan Churchill
Its Vice President


APPROVED:


DAVID TAYLOR, P.E.
Director of Water Supply

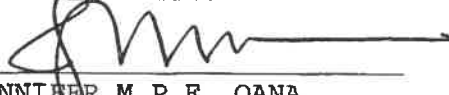
REVIEWED AND APPROVED:


DAVID C. GOODE
Director of Public Works

ACCEPTED:



DANILO F. AGSALOG
Director of Finance

APPROVED AS TO FORM
AND LEGALITY:


JENNIFER M.P.E. OANA
Deputy Corporation Counsel

GRANTEE:

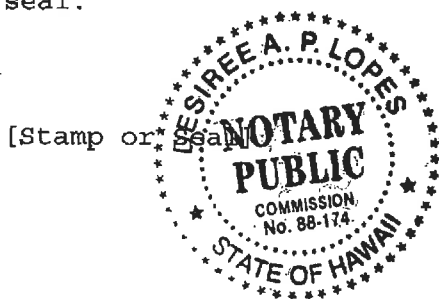
COUNTY OF MAUI

By 
ALAN M. ARAKAWA
Its Mayor

STATE OF Hawaii)
) SS.
COUNTY OF Maui)

On this 19th day of July, 2017, before me personally appeared Ryan Churchill, 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.

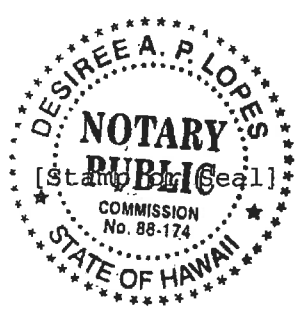
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



[Signature]
Notary Public, State of Hawaii

Print Name: DESIREE A. P. LOPES

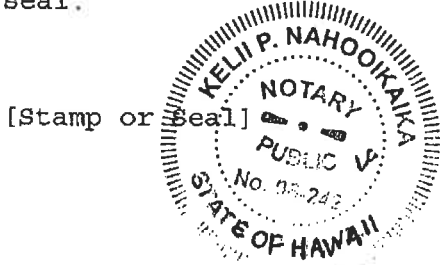
My Commission Expires: 3/30/2020

NOTARY PUBLIC CERTIFICATION	
Doc. Date: <u>undated at time of notarization</u>	# Pages: <u>12</u>
Notary Name: <u>Desiree A P Lopes</u>	Judicial Circuit: <u>Second</u>
Doc. Description: <u>Waterline Easement</u> <u>Easements "W-2" through "W-5",</u> <u>Inclusive</u>	
Notary Signature: <u>[Signature]</u>	
Date: <u>7.19.17</u>	

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 20th day of September, 2017, before me personally appeared ALAN M. ARAKAWA, to me personally known, who, being by me duly sworn or affirmed, 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.



Keli P. Nahooikaika
Notary Public, State of Hawaii
Print Name: KELII P. NAHOOIKAIKA
My commission expires: 4.30.18

NOTARY PUBLIC CERTIFICATION			
Doc. Date:	<u>9.20.17</u>	# Pages:	<u>12</u>
Notary Name:	<u>KELII P. NAHOOIKAIKA</u>	Judicial Circuit:	<u>2nd</u>
Doc. Description:	<u>waterline easement</u>		
Notary Signature:	<u>Keli P. Nahooikaika</u>		
Date:	<u>9.20.17</u>		

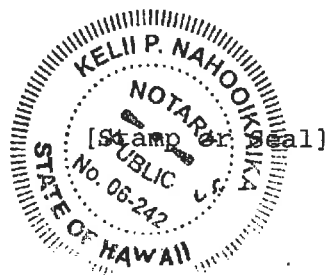


EXHIBIT A

**Kualono Subdivision
Description of Easements W-2, W-3, W-4 and W-5**

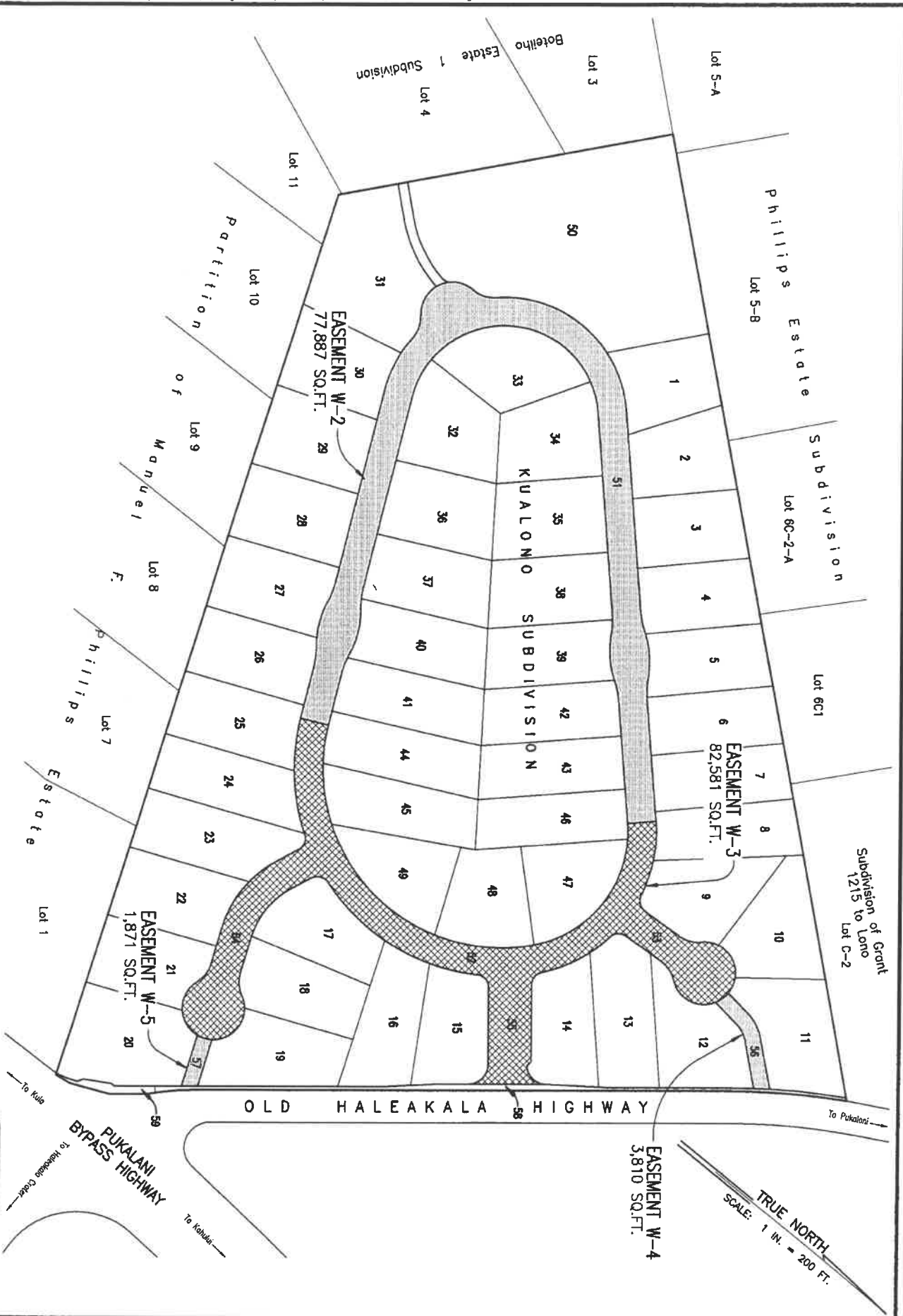
Easement W-2 for waterline purposes as shown on File Plan Number 2488, filed in the Bureau of Conveyances of the State of Hawaii (the "Bureau"), being all of LOT 51 of the "KUALONO SUBDIVISION", as shown on File Plan Number 2488, filed in the Bureau, and containing approximately 77,887 square feet.

Easement W-3 for waterline purposes as shown on File Plan Number 2488, filed in the Bureau, being all of LOTS 52, 53, 54 and 55 of the "KUALONO SUBDIVISION", as shown on File Plan Number 2488, filed in the Bureau, and containing approximately 82,581 square feet.

Easement W-4 for waterline purposes as shown on File Plan Number 2488, filed in the Bureau, being all of LOT 56 of the "KUALONO SUBDIVISION", as shown on File Plan Number 2488, filed in the Bureau, and containing approximately 3,810 square feet.

Easement W-5 for waterline purposes as shown on File Plan Number 2488, filed in the Bureau, being all of LOT 57 of the "KUALONO SUBDIVISION", as shown on File Plan Number 2488, filed in the Bureau, and containing approximately 1,871 square feet.

EXHIBIT "B"



WARREN & UENEMORI
ENGINEERING, INC.
ONE SOUTH ALI DRIVING / LAND SURVEYORS
June 26, 2017