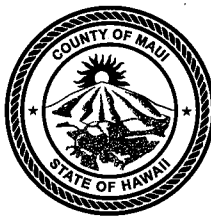


ALAN M. ARAKAWA
Mayor



KA'ALA BUENCONSEJO
Director

RECEIVED

2016 FEB -4 PM 2:41

OFFICE OF THE MAYOR

BRIANNE L. SAVAGE
Deputy Director

(808) 270-7230
Fax (808) 270-7934

DEPARTMENT OF PARKS AND RECREATION

700 Hali'a Nakoa Street Unit 2, Wailuku, Hawaii 96793


February 3, 2016

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

For Transmittal to:

Honorable Mike White, Chair
and Members of the Maui County Council
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL


Mayor 2/3/16
Date

Dear Chair White and Members:

SUBJECT: PROPOSED RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO
A LEASE OF REAL PROPERTY WITH ALEXANDER & BALDWIN, LLC

I am transmitting a proposed resolution entitled, "AUTHORIZING THE MAYOR TO ENTER INTO A LEASE OF REAL PROPERTY WITH ALEXANDER & BALDWIN, LLC".

The purpose of the proposed resolution is to allow the Mayor to enter into a lease for Maliko Gulch to be utilized for recreational purposes and managed by the Department of Parks and Recreation for public use.

May I respectfully request that this matter be referred to the appropriate Council committee for review and discussion.

Thank you for your attention to this matter. Should you have any questions or require additional information, please contact me at Ext. 7230.

Sincerely,



KA'ALA BUENCONSEJO
Director of Parks and Recreation

Attachment

c: Brianne Savage, Deputy Director
Danilo Aagsalog, Director of Finance

KB:BS:ls

COUNTY COMMUNICATION NO. 16-34

Resolution

No. _____

AUTHORIZING THE MAYOR TO ENTER INTO A LEASE OF REAL
PROPERTY WITH ALEXANDER & BALDWIN, LLC

WHEREAS, ALEXANDER & BALDWIN, LLC desires to provide real property for public use, public access to the ocean, and open space through a lease of the property identified as tax map keys (2) 2-5-004:055, :068, :069, and :070, and (2) 2-7-004:007 (por.), :027 and :048, an area of approximately 12.77 acres, to the County of Maui; and

WHEREAS, the proposed Lease of Real Property ("Lease") is attached hereto and made a part hereof as Exhibit "1"; and

WHEREAS, pursuant to Maui County Code Section 3.44.015(D), the Council of the County of Maui may authorize the County to accept donations of any interest in real property by the passage of a resolution; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:


1. That pursuant to Maui County Code Section 3.44.015(D), the Lease, is hereby authorized; and

Resolution No. _____

2. That the Mayor and the Director of Finance or their authorized representatives may execute the Lease; and

3. That certified copies of this Resolution be transmitted to the Mayor, the Director of Finance, the Director of Parks and Recreation, and to Alexander & Baldwin, LLC.

APPROVED AS TO FORM
AND LEGALITY:



JERRIE L. SHEPPARD
Deputy Corporation Counsel
County of Maui
2016-0083

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (X) Pickup ()

To: COUNTY OF MAUI
DEPARTMENT OF PARKS AND RECREATION
700 Halia Nakoa Street #2
Wailuku, Maui, Hawaii 96793

Total No. of Pages: _____

Affects TMK Nos.: (2) 2-5-004:055, 068, 069, and 070, and
(2) 2-7-004:007 (por.), 027 and 048

LEASE OF REAL PROPERTY

THIS LEASE made this _____ day of _____, 2016, by and between ALEXANDER & BALDWIN, LLC, a Hawaii corporation, whose principal place of business and mailing address is 822 Bishop Street, Honolulu, Hawaii 96813, hereinafter called "LESSOR", and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose principal place of business and mailing address is 200 South High Street, Wailuku, Maui, Hawaii 96793, through its Department of Parks and Recreation, with its principal place of business and mailing address at 700 Halia Nakoa Street #2, Wailuku, Maui,

Hawaii, 96793, hereinafter referred to as "LESSEE", and collectively referred to as "the Parties";

W I T N E S S E T H:

WHEREAS, LESSOR owns property situate in Maliko, Maui, Hawaii, identified as Tax Map Key (TMK) Nos. (2)2-5-004:055, :068, :069, and :070, and (2) 2-7-004:007 (por.), :027 and :048, which property is shown on the map marked Exhibit "A", attached hereto and made a part hereof, hereinafter referred to as the "Premises"; and

WHEREAS, LESSEE desires to acquire control of the Premises to use for public purposes; and

WHEREAS, LESSOR is willing to lease the Premises to LESSEE while LESSOR undertakes efforts to subdivide the Premises so that the Premises comprise a separate, legally recognized subdivided lot or lots able to be identified from other property owned by LESSOR; and

WHEREAS, after said subdivision, LESSOR intends to convey in fee simple the Premises to LESSEE, subject to approval by the Council of the County of Maui, at no cost to the County.

NOW, THEREFORE, the Parties agree as follows:

LESSOR, for and in consideration of LESSEE's covenants and agreements set forth herein, and for no monetary payment during the term, does hereby grant a lease to LESSEE, subject to approval by the Council of the County of Maui¹ and LESSEE hereby accepts said lease on the terms and conditions set forth below:

¹ Section 3.44.015, Maui County Code, provides in relevant part:

1. Term. This Lease shall commence as of the date first noted above, and shall continue on a year-to-year basis for a period not to exceed three (3) years from the date first noted above, provided that either party may terminate this Lease for any reason whatsoever by giving the other party at least sixty (60) days prior written notice of such termination.

2. Use of Premises. LESSEE shall at all times use the Premises solely for public use, public access to the ocean, and open space. LESSEE will use the Premises for no other purposes without the prior written consent of LESSOR, which consent may be granted or withheld in LESSOR's sole discretion.

A. No construction. LESSEE shall not alter the Premises, construct, erect or place any structure or other improvement on the Premises, or demolish, remove, remodel, replace, alter or make any addition to any improvements now or hereafter located on the Premises, without LESSOR's prior written consent, which consent shall not be unreasonably withheld.

B. Recreational public use allowed. LESSEE is authorized to erect non-permanent improvements to the Premises to enhance the public's recreational use of the Premises, including but not

A. Except as otherwise provided for by law, any acquisition of real property by the County, whether by agreement, purchase, exchange, gift, devise, eminent domain or otherwise, shall be accomplished in accordance with the provisions of this chapter.

...

D. The County council may, by resolution, authorize the acceptance of gifts or donations of real property or any interest in real property (emphasis added).

limited to picnic tables, refuse containers, jersey barriers, parking control measures, and signage, without prior consent by LESSOR.

3. **Maintenance.** LESSEE shall, at its own expense, keep the Premises in good, clean and sanitary order, condition and repair, for recreational use as described herein.

4. **Cooperation to remove trespassers.** LESSEE acknowledges that it is aware that the Premises are occupied by a Hawaiian Sovereignty group which claimed ownership of all or a portion of the Premises. LESSOR obtained from the Second Circuit Court of the State of Hawaii, in Civil No. 13-1-1065(3), an injunction which entitles LESSOR to eject this group from the Premises. LESSOR and LESSEE hereby agree to cooperate with one another to execute the injunction and regain possession and control of the Premises, with LESSEE coordinating additional resources to effectuate this execution.

5. **No Representation or Warranties.** LESSOR has not made and will not make, any representation or warranty, implied or otherwise, with respect to the condition of the Premises, including but not limited to (a) any express or implied warranty of merchantability or fitness for any particular purpose, or (b) any dangerous or defective conditions existing upon the Premises, whether or not such conditions are known to LESSOR or are reasonably discoverable by LESSEE. LESSEE accepts the Premises in completely "as is" condition, with full assumption of the risks and consequences of such conditions.

6. Responsibility for past violations. LESSOR retains and assumes full responsibility for any past violations, citations, infractions, or other obligations including but not limited to fines, fees, or other responsibilities accruing to a land owner, for land use or zoning requirements pertaining to the Premises. None of these obligations transfer to LESSEE.

7. Compliance with laws. The Parties agree to conduct all use or activities on the Premises in accordance with all applicable Federal, State and County laws, regulations and policies.

8. Nearby agricultural activities. LESSEE acknowledges that the Premises are adjacent to, nearby, or in the vicinity of growing, harvesting and processing of sugar cane and other agricultural products (such growing, harvesting and processing activities being herein collectively called the "Agricultural Activities") which may, from time to time, bring about upon the Premises or result in smoke, dust, noise, heat, agricultural chemicals, particulates and similar substances and nuisances (collectively, the "Agricultural By-Products".) LESSEE hereby assumes complete risk of and forever releases LESSOR from all claims for damages (including, but not limited to, consequential, special, exemplary and punitive damages) and nuisances occurring on the leased premises and arising out of any Agricultural Activities or Agricultural By-Products. Without limiting the generality of the foregoing, LESSEE hereby, with full knowledge of its rights, forever: (a) waives any right to require LESSOR, and releases LESSOR from any obligation, to take any action to correct,

modify, alter, eliminate or abate any Agricultural Activities or Agricultural By-Products, and (b) waives any right to file any suit or claim against LESSOR for injunction or abatement of nuisances. Any Agricultural Activities or Agricultural By-Products, and any claim, demand, action, loss, damage, liability, cost or expense arising therefrom, shall not constitute a breach of any covenant or warranty of LESSOR under this lease or be the basis for a suit or other claim for injunction or abatement of nuisances, and LESSEE hereby forever waives any right to file any such suit or claim. As used in this section regarding Agricultural Activities, all references to the "LESSOR" shall mean and include LESSOR and all parent, subsidiary, sister and other affiliated companies of LESSOR, in their respective capacities as the current owner of the Premises, the owner of the lands on which the Agricultural Activities are or may be conducted, and the person conducting or who may conduct the Agricultural Activities, and all successors and assigns of LESSOR and its parent, subsidiary, sister and affiliated companies.

9. **No Liens.** LESSEE shall not commit or suffer any act or neglect whereby the Premises shall at any time become subject to any attachment, lien, charge or encumbrance whatsoever.

10. **Indemnification.** Subject to Chapter 3.16, Maui County Code, as amended, LESSEE shall indemnify, defend and hold harmless LESSOR from and against all actions, suits, investigations, governmental proceedings damages and claims filed against LESSOR arising out of (a) any act or omission of LESSEE or any person

claiming by, through or under LESSEE, or (b) any mishap, fire, casualty or nuisance occurring or made on the Premises, or (c) the use of the Premises by LESSEE, the general public or LESSEE's invitees, permittees, employees, agents or contractors, or (d) LESSEE's breach of any of the terms or conditions of this Lease.

Likewise, LESSOR shall indemnify, defend and hold harmless LESSEE from and against all actions, suits, investigations, governmental proceedings damages and claims filed against LESSEE arising out of (a) any act or omission of LESSOR or any person claiming by, through or under LESSOR, or (b) any mishap, fire, casualty or nuisance occurring or made on the Premises attributable to LESSOR or LESSOR's invitees, permittees, employees, agents or contractors, or (c) LESSOR's breach of any of the terms or conditions of this Lease.

11. **Assignment.** LESSEE shall not directly or indirectly, by operation of law or otherwise, assign, mortgage, or encumber this Lease, or sublease the whole or any portion of the Premises without LESSOR's consent, which may be withheld in its sole and absolute discretion.

12. **Surrender upon termination.** Upon the termination, surrender or expiration of this Lease, LESSEE shall peaceably surrender the Premises to LESSOR in good, clean and sanitary condition, order and repair (reasonable wear and tear excepted), and shall restore the land as nearly as is reasonably possible to its condition immediately prior to the issuance of this Lease to LESSEE.

13. Hazardous materials. LESSEE and LESSOR agree that both parties shall at all times during the term of this Lease, except for Agricultural Byproducts as set forth in Section 8. herein, keep the Premises (and improvements thereon) free of any and all flammable explosives, radioactive materials, asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of "hazardous substance," "hazardous wastes," "hazardous materials," or "toxic substances" (collectively, "Hazardous Materials") under any federal, state or local laws, ordinances or regulations, now or hereafter in effect, relating to environmental conditions, industrial hygiene or Hazardous Materials on, under or about the leased premises and improvements thereon, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 6901, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Clean Air Act, 42 U.S.C. Section 7401, et seq., the Toxic Substances Control Act, 15 U.S.C. Sections 2601 through

2629, the Safe Drinking Water Act, 42 U.S.C. Sections 300f through 300j, and any state and local laws and ordinances and the regulations now or hereafter adopted, published and or promulgated with respect to Hazardous Materials (collectively, the "Hazardous Materials Laws"). LESSEE shall keep and maintain the Premises, including, without limitation, the groundwater on or under the Premises, in the current condition, "as is", upon execution of this lease, and shall not cause or permit the Premises to be in violation of any Hazardous Materials Laws, and shall ensure compliance with same. LESSEE shall not use, generate, manufacture, treat, handle, refine, produce, process, store, discharge, release, dispose of or allow to exist on, under or above the leased premises, any Hazardous Materials.

LESSEE shall immediately advise LESSOR in writing of (a) any and all enforcement, clean up, removal, mitigation, or other governmental or regulatory action instituted, contemplated or threatened pursuant to any Hazardous Materials Laws affecting the Premises, (b) all claims made or threatened by any third party against LESSEE, LESSOR or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials or violation of or compliance with any Hazardous Materials Laws, and (c) LESSEE's discovery of any occurrence or condition on the Premises or any

real property adjoining or in the vicinity of the Premises which could subject LESSOR, LESSEE or the Premises to any restrictions on ownership, occupancy, transferability or use of the Premises under any Hazardous Materials Laws.

LESSEE shall, subject to Chapter 3.16, Maui County Code, as amended, indemnify and hold harmless LESSOR, its directors, officers, employees, agents, successors and assigns from and against, any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under or about the Premises, including, without limitation: (i) all foreseeable and unforeseeable consequential damages; (ii) all fines which may be imposed and all costs of any required or necessary repair, clean up or detoxification of the leased premises, and the preparation and implementation of any closure, remedial or other required plans; and (iii) all reasonable costs and expenses incurred by LESSOR in connection with clauses (i) and (ii), including, without limitation, reasonable attorneys' fees.

Prior to the surrender, expiration or termination of this Lease, LESSEE, shall (A) remediate and clean-up any contamination, spills or leakages upon the Premises which occurred during the

term of this Lease so as to render the Premises and improvements in compliance with all applicable Hazardous Materials Laws, and (B) if such remediation and clean-up is necessary, provide LESSOR with a written certification (dated no earlier than the date LESSEE fully vacates the leased premises) from an independent leased engineer or other environmental expert approved by LESSOR that clause (A) has been satisfied and that there exists no violation of any Hazardous Materials Laws pertaining to the leased premises.

All of the agreements and obligations of LESSEE under this paragraph shall survive and shall continue to be binding upon LESSEE notwithstanding the termination, expiration or surrender of this Lease, for two years from termination or expiration of this Lease.

14. **Existing Encumbrances.** This Lease is subject to all existing recorded and unrecorded encumbrances. At any time during the term of this Lease, LESSOR may create easements and encumbrances upon the Premises in addition to any easements and encumbrances which currently affect the Premises, but shall notify LESSEE of any such encumbrances. Any such new easements, encumbrances, leases or licenses shall not unreasonably restrict or interfere with LESSEE's use of the Premises.

15. **Notice.** Any notice or demand to be given to or served upon either LESSOR or LESSEE in connection with this Lease shall

be deemed to have been sufficiently given or served for all purposes by being sent as registered or certified mail, postage prepaid, addressed to the parties at the respective addresses set forth in the introductory paragraph of this Lease, or at such other address as a party may from time to time designate in writing to the other party, and any such notice or demand shall be deemed conclusively to have been given or served upon the earlier to occur of the actual date of delivery or three business days after the date of mailing.

16. **Neither Party Deemed to be the Drafter.** All provisions of this Lease have been negotiated by LESSOR and LESSEE at arm's length and with the opportunity for full representation of their respective legal counsel and neither party shall be deemed to be the drafter of this Lease. If this Lease is ever construed by a court of law, such court shall not construe this Lease or any provision of this Lease against either party as the drafter of the Lease.

17. **Subdivision Cooperation.** LESSEE will cooperate with LESSOR in LESSOR's efforts to create a separate, legally recognized lot or lots comprising the Premises. LESSEE is not expected to expend any monies in connection with such cooperation but will assist and provide support to LESSOR, including allowing LESSEE to process the subdivision in LESSEE's name, in order to expedite the

subdivision process.

18. No Other Agreements. This Lease supersedes all prior written or oral agreements between the parties hereto, all of which earlier agreements are hereby terminated.

IN WITNESS WHEREOF, this Lease has been executed by the parties hereto as of the day and year first above written.

LESSOR: ALEXANDER & BALDWIN, LLC

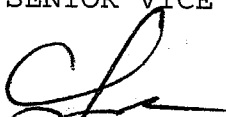
By



Name: NELSON N.S. CHUN

Its: SENIOR VICE PRESIDENT

By



Name: CHARLES W. LOOMIS


Its: ASST. SECRETARY

LESSEE:

COUNTY OF MAUI

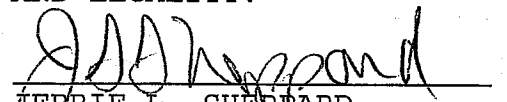
By _____
ALAN M. ARAKAWA
Its Mayor

APPROVAL RECOMMENDED:


BUTCH KAALA BUENCONSEJO
Director of Department
of Parks and Recreation

By _____
DANILO F. AGSALOG
Its Director of Finance

APPROVED AS TO FORM
AND LEGALITY:


JERRIE L. SHEPPARD
Deputy Corporation Counsel
County of Maui
2015-4110

STATE OF HAWAII)
)
 COUNTY OF MAUI) SS.

On this day of _____, 20 , before me personally 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 pursuant to Section 7-5.11 and Section 9-18 of the Charter of the County of Maui; 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.

[Stamp or Seal]

 Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____ <div style="text-align: right;">[Stamp or Seal]</div>	
Notary Signature: _____	
Date: _____	

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this day of _____, 20 , before me appeared DANILO F. AGSALOG, to me personally known, who being by me duly sworn, did say that he is the Director of Finance 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 pursuant to Section 9-18 of the Charter of the County of Maui; and the said DANILO F. AGSALOG 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.

[Stamp or Seal]

Notary Public, State of Hawaii Print

Name: _____

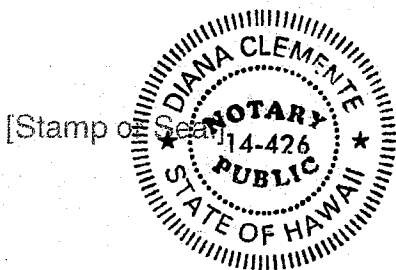
My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	
[Stamp or Seal]	
Notary Signature: _____	
Date: _____	

STATE OF HAWAII)
) SS.
CITY & COUNTY OF HONOLULU)

On this 13th day of January, 2016, before me personally appeared NELSON N.S. CHUN, 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.

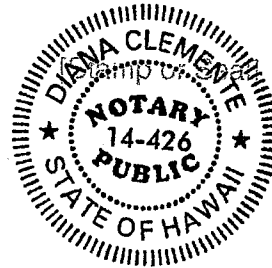


Diana Clemente
Notary Public, State of Hawaii

Print Name: DIANA CLEMENTE

My commission expires: DEC 14 2018

NOTARY PUBLIC CERTIFICATION	
Doc. Date:	(Undated at time of notarization) # Pages: 19
Notary Name:	<u>DIANA CLEMENTE</u> Judicial Circuit: <u>FIRST</u>
Doc. Description:	<u>LEASE OF REAL PROPERTY</u> <u>TMKs: (2) 2-5-004:055,068,069</u> <u>& 070 and (2) 2-7-004:007,027</u> <u>& 048</u>
Notary Signature:	<u>Diana Clemente</u>
Date:	<u>January 13, 2016</u>

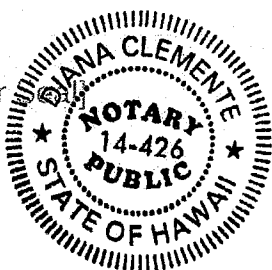


STATE OF HAWAII)
) SS.
CITY & COUNTY OF HONOLULU)

On this 13th day of January, 2016, before me personally appeared CHARLES W. LOOMIS, 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.

[Stamp or Seal]



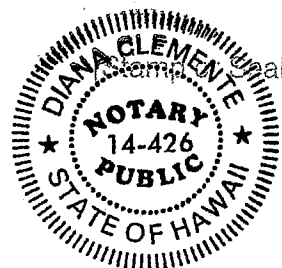
Diana Clemente

Notary Public, State of Hawaii

Print Name: DIANA CLEMENTE

My commission expires: DEC 14 2018

NOTARY PUBLIC CERTIFICATION	
Doc. Date:	(Undated at time of notarization) # Pages: 19
Notary Name:	<u>DIANA CLEMENTE</u> Judicial Circuit: <u>FIRST</u>
Doc. Description:	<u>LEASE OF REAL PROPERTY</u> <u>TMKs: (2) 2-5-004:055,068,069</u> <u>& 070 and (2) 2-7-004:007,027</u> <u>& 048</u>
Notary Signature:	<u>Diana Clemente</u>
Date:	<u>January 13, 2016</u>



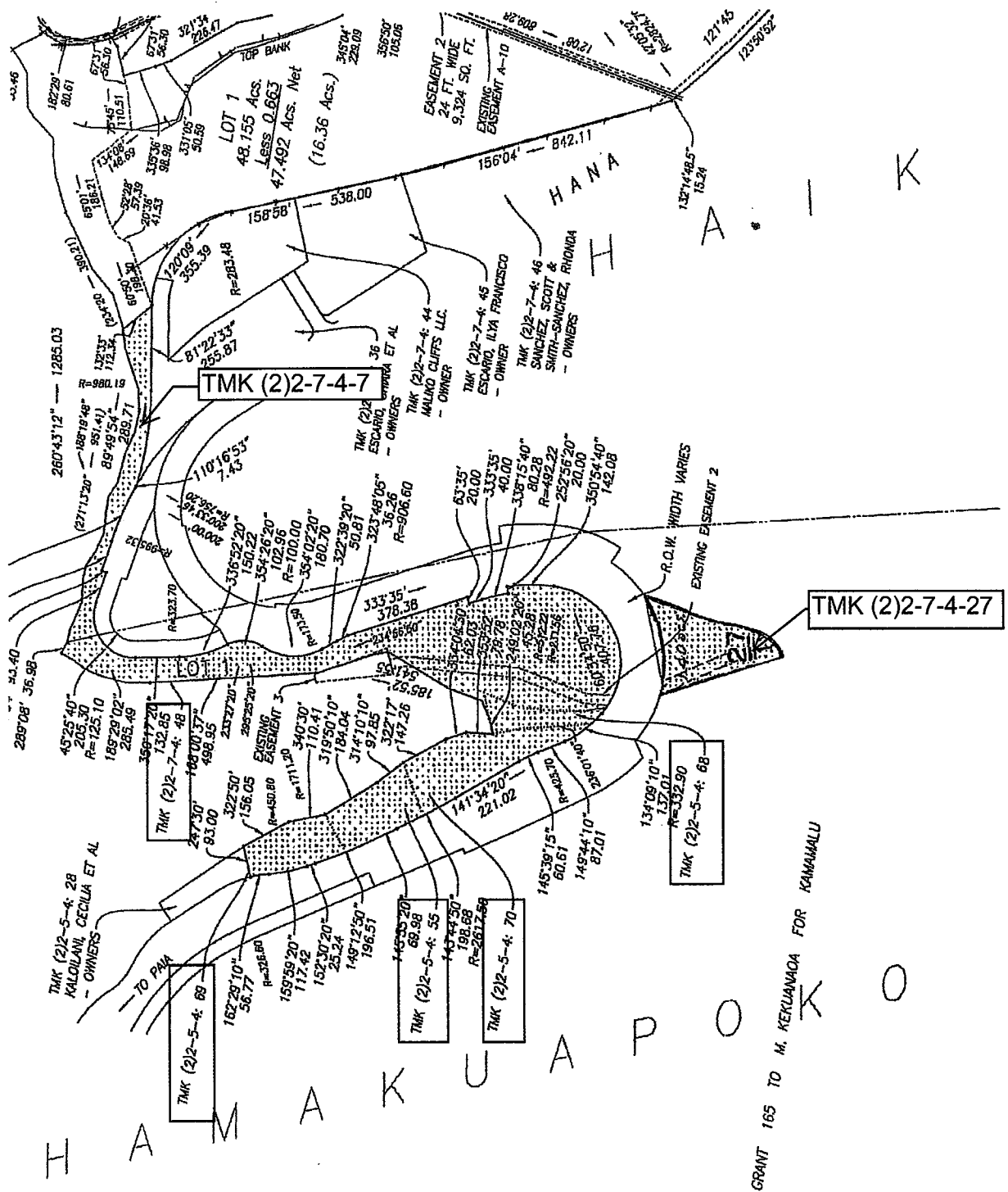


EXHIBIT "A"