

STATE OF HAWAIT

2019 MAR 14 A 8: 14

7210-03 March 12, 2019

Mr. Daniel E. Orodenker, Executive Officer State Land Use Commission Department of Business, Economic Development & Tourism P.O. Box 2359 Honolulu, Hawaii 96804-2359

Subject:

2019 Annual and Final Report

Land Use Commission Docket A05-758 Pupukea Ridge Preservation Project

Tax Map Key: 5-9-23: 001; 5-9-24: 001, and 6-1-02: 022

Dear Mr. Orodenker:

In accordance with Condition No. 8 of the "Findings of Fact, Conclusions of Law, and Decision and Order" for the subject project granted by the State Land Use Commission ("Commission") on April 24, 2006, and the Declaration of Conditions ("Commission's Declaration of Conditions") recorded on June 7, 2006 as Document No. 2006-105635 in the Bureau of Conveyances of the State of Hawaii, transmitted herewith is the annual report on the progress and status of the project and compliance with the conditions of the Stand Land Use Boundary Amendment.

The status of the conditions imposed in the Commission's April 24, 2006 approval is as follows:

1. Conveyance of Lands for a State Park Reserve. Petitioner shall, upon receiving all necessary entitlements and governmental approvals, proceed with the consolidation, re-subdivision, and conveyance of approximately 79.031 acres of land, which shall include Petition Area A and adjacent Conservation District land, to the DLNR for a State Park Reserve, to be kept in perpetuity for the public good in maintenance and preservation of the view planes, open space, recreational values, and the cultural, historical, and natural qualities of Pupukea Ridge.

In the 2018 Annual Report, we reported that Petitioner recorded a Declaration of Restrictive Covenants ("Agricultural DRC") as Document No. A-64300656 and a certified subdivision plat map as Document No. A-64420258 in the Bureau of Conveyances of the State of Hawaii.

Since then, the Petitioner has been coordinating with the State Parks and Land Division, Department of Land & Natural Resources (DLNR) on the conveyance of "Lot A" to the State. By Limited Warranty Deed recorded in the Bureau of Conveyances on January 24, 2019 (Document No. A-69631003),

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Petitioner conveyed Lot A to the State. See Attachment A.

With the conveyance of "Lot A" to the DLNR, all of the provisions of the Decision and Order have been satisfied. A motion will be filed to release all the conditions.

2. **Farm Dwelling**. Farm dwelling(s) on Petition Area B, if any, shall be consistent with the DOH's sewage disposal rules and regulations. Any single-family dwelling on the lot shall be a single-family dwelling located on and used in connection with a farm or where agricultural activity provides income to the family occupying the dwelling.

Where the Commission's Declaration of Conditions and the Agricultural DRC are encumbrances which run with and encumber title to Petition Area B, any future use of Petition Area B is and will be subject to the foregoing requirements.

3. **Agricultural Uses**. Any future use of the retained 15.144 acres of land, which include Petition Area B, shall be consistent with City and County zoning, and Petitioner or any future owner shall not subdivide the retained 15.144 acres into more than two zoning or subdivided lots.

Any agricultural use shall be consistent with the Agricultural DRC. Final Subdivision Approval divided the agricultural portion of Pupukea Ridge into two separate parcels (Lots B and C) with road access (Lot D) to comply with this condition. Where the Commission's Declaration of Conditions and the Agricultural DRC are encumbrances which run with and encumber title to Lots B, C and D, any future use of the retained agricultural land, including Lots B and C encompassing 15.144 acres that includes Petition Area B, will be consistent with the City and County zoning and Lots B and C will not be further subdivided into more than two lots.

4. Maintenance of Trail System. With the approval of DLNR, Petitioner shall be responsible for maintaining the existing trail system as currently configured in Petition Area A and the adjacent Conservation District land at its own cost following the conveyance of Petition Area A and the adjacent Conservation District land to the DLNR until such time as the DLNR decides to accept responsibility for the maintenance, or ten years from the date of this Decision and Order, whichever occurs first.

ACF maintained the existing trail system up to the time it transferred title to the State which exceeded the 10 year requirement.

5. Previously Unidentified Burial/Archaeological/Historic Sites. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations charcoal deposits, stone platforms, pavings, and walls not previously identified in studies referred to herein, are discovered during the course of development of the Petition Areas, then all development activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigation measures have been implemented to its satisfaction.

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This condition is acknowledged and will be complied with should such situations occur. If any burial, archaeological, or historic sites are discovered during the course of development of the area, all development activity will stop until the issuance of an archaeological clearance from the State Historic Preservation Division.

The Commission's Declaration of Conditions, including the foregoing condition, is and will continue to run with and be an encumbrance on title to all of the Petition Areas.

6. Compliance with Representations to the Commission. Petitioner shall comply with the representations made to the Commission. Failure to so comply may result in reversion of the Petition Areas to their former classification, or change to a more appropriate classification.

ACF, its successors or assigns, will comply with the representations made to the Commission.

7. **Notice of Change to Ownership Interest**. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Areas, prior to any development of the Petition Areas.

The condition is acknowledged and will be complied with should this situation arise. Any sale, lease, assignment, place in trust, or otherwise voluntary alteration of the ownership interests in the Petition Areas will by subject to the Commission's Declaration of Conditions.

8. Annual Reports. Petitioner shall timely provide without any prior notice, annual reports to the Commission, the OP, and the DPP in connection with the status of the Petition Areas and the Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

This report constitutes the annual report submittal for the year 2019. Solely for the purpose of submitting further annual reports, all of the foregoing conditions have been met. Petitioner respectfully requests the Commission to confirm that no further annual reports shall be required. A copy of this annual report will be sent to the Office of Planning and the City and County of Honolulu Department of Planning & Permitting.

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9. **Release of Conditions Imposed by the Commission**. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Areas upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

Acknowledged.

10. **Recording of Conditions**. Within seven days of the issuance of the Commissioner's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Petition Areas are subject to conditions imposed herein by the Commission in the reclassification of the Petition Areas, and (b) shall file a copy of such recorded statement with the Commission.

The Commission's Decision and Order was recorded on June 7, 2006 as Document No. 2006- 105635 in the Bureau of Conveyances. A copy of the recorded Commission's Decision and Order was filed with the Commission.

11. **Recording of Conditions**. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to section 15-15-92, HAR.

The Commission's Decision and Order was recorded with the Bureau of Conveyances on June 7, 2006 as Document No. 2006- 105635 in the Bureau of Conveyances.

Please feel free to call me if you should have any questions regarding the status of any of the items above.

Sincerely,

Tracy Fukuda

Project Manager

Attachment

cc: Mr. Dave Druz, A Charitable Foundation

Mr. Leo R. Asuncion, Jr., Office of State Planning

Ms. Kathy Sokugawa, Department of Planning and Permitting

Mr. Dickson Lee, Takushi, Wong, Lee & Yee - ALC

ATTACHMENT A

Limited Warranty Deed, Document No. A-69631003 January 24, 2019

THE ORIGINAL OF THE DOCUMENT RECORDED AS FOLLOWS: STATE OF HAWAII

BUREAU OF CONVEYANCES

DOCUMENT NO. January 24, 2019 3:29 PM

LAND COURT SYSTEM

Return by Mail (X) Pickup (7 To:

REGULAR SYSTEM

Land Court () Regular (X)

Division of State Parks
Attention: Administrator
Department of Land and Natural Resources
1151 Punchbowl Street, Room 310
Honolulu, Hawaii 96813

LOD S-29197

Tax Map Key No. (1) 5-9-033-001

LIMITED WARRANTY DEED

PRELIM, APPR'D.
Department of the
Attorney General

A Charitable Foundation Corporation

a Nevada nonprofit corporation, P.O. Box 909 Haleiwa, Hawai'i 96712 ("Grantor")

and

State of Hawai'i,

by its Board of Land and Natural Resources, 1151 Punchbowl Street Honolulu, Hawai'i 96813 ("Grantee" or "State of Hawai'i")

WITNESSETH:

A. Grantor is the owner of that certain parcel of land situate at Pupukea, Koolauloa, Oahu, Hawai'i, as more particularly described in <u>Exhibit "A"</u> and delineated in <u>Exhibit "B"</u>, being a survey map, both prepared by the State of Hawai'i Survey Division, Department of Accounting and General Services, identified as C.S.F. No. 25,698 and dated November 15, 2018, attached hereto and made a part hereof (hereinafter referred to as the "Property").

Said above described parcel of land being a portion of the land acquired by A CHARITABLE FOUNDATION CORPORATION, a Nevada non-profit corporation, as Tenant in Severalty, as follows:

- 1. By LIMITED WARRANTY DEED of FINANCE REALTY, LTD, a Hawaii corporation, formerly known as Finance Realty Company, Limited, as Trustee of the land trust known as the Pupukea land Trust dated April 3, 1986, dated May 23, 2003, recorded as Document No. 2003-107293; and
- 2. By LIMITED WARRANTY DEED of FINANCE ENTERPRISES, LTD, a Hawaii corporation, and KALANI HOLDINGS, LTD, a Hawaii corporation, dated May 23, 2003, filed as Land Court Document No. 2936207, recorded as Document No. 2003-107294, and noted on Certificate of Title No. 647646
- B. Pursuant to that certain Declaration of Conditions ("Declaration of Conditions") dated June 1, 2006 and recorded in the Bureau of Conveyances of the State of Hawai'i as Document No. 2006-105635, Grantor agreed to convey the Property to Grantee for a State park reserve, to be kept in perpetuity for the public good in maintenance and preservation of the view planes, open space, recreational values and the cultural, historical and natural resources of Pupukea Ridge.

PRELIM. APPR'D. Department of the Attorney General C. In satisfaction of Condition No. 1 set forth in said Declaration of Conditions, Grantor is conveying to Grantee and the Grantee has agreed to accept the conveyance of the Property.

Grant of the Property

For and in consideration of the sum of TEN AND N0/100 DOLLARS (\$10.00), and other valuable consideration, paid by the Grantee to the Grantor, the receipt whereof is hereby acknowledged, Grantor does hereby grant, bargain, sell and convey the Property unto the Grantee, the Grantee's successors and assigns.

AND the reversions, remainders, rents, income and profits thereof, and all of the estate, right, title, and interest of the Grantor, both at law and in equity, therein and thereto.

Together with additional casement being 1.481 acres, more or less, as set forth by Land Court Order No. 22150, filed January 10, 1964, being more particularly described in Exhibit "A" attached hereto and incorporated by reference.

SUBJECT TO:

1. The terms and provisions contained in the following:

INSTRUMENT:

DECLARATION OF CONDITIONS

DATED

June 1, 2006

RECORDED:

Document No. 2006-105635

- 2. The land has no recorded access to a public roadway.
- 3. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawai'i Constitution or the Hawai'i Revised Statutes.

TO HAVE AND TO HOLD the same unto Grantee, as tenant in severalty, its successors and assigns, forever, together with all improvements, rights, easements, privileges and appurtenances thereunto belonging or in anyways appertaining or held and enjoyed therewith in fee simple unto said Grantee, the Grantee's successors and assigns, forever, free and clear of all liens and encumbrances except as described in Exhibit "A" attached hereto and made part hereof, which rights and restrictions shall run with the land and bind any of Grantee's successors in interest.

The Grantor, for itself, its successors and assigns, does hereby covenant and agree with Grantee, its successors and assigns, that Grantor is lawfully seised in fee simple and possessed

PRELIM. APPRID.
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of the above-described land, that Grantor has a good and lawful right and title to sell and convey the same as aforesaid, and Grantor has done or suffered no act or thing whereby such premises hereby granted are encumbered, except as aforesaid; that such premises are free and clear of liens and encumbrances made or suffered by Grantor except as aforesaid; and that Grantor will and their successors and assigns shall WARRANT AND DEFEND the same unto Grantee, its successors and assigns, forever, against the loss or claims and demands of all persons claiming by, through or under Grantor except as aforesaid.

AND, Grantee covenants that the Property is and shall be forever owned for the public good in the management, maintenance and preservation of the Property's scenic, view planes, open space, recreational values, and cultural, historical and natural resources and values of the Pupukea Ridge and restricted from any development or use that would impair or interfere with such resources and values. Structures, such as communication or other utility towers or poles, zip lines and wind turbines, are and shall be prohibited. Notwithstanding the foregoing, Grantee may construct improvements, such as maintenance structures and comfort stations, provided that such improvements do not detract from such resources and values and blend with the natural environment, do not exceed a height of 15 feet, are set back so that such improvements are not visible from Waimea Valley and Waimea Beach Park below. Recreational use is and shall be restricted to traversing the Property by foot or on animals, such as horses, mules or donkeys. Dogs and public hunting are not and shall not be permitted on the Property provided that Grantee may conduct ungulate control and eradication of invasive animals. Except for motor vehicles necessary for Grantee to maintain the Property and to allow for a parking area for no more than 24 motor vehicles, no other motor vehicles, including motorcycles and all terrain vehicles, and non-motorized vehicles, such as bicycles, shall be permitted to be operated or used within the Property for any other use or purpose. Any activity on or use of the Property inconsistent with the foregoing covenant is and shall be prohibited. Notwithstanding the foregoing, Grantee shall have the right to grant easements and rights-of-way and the right to grant to any public utility or governmental authority such rights-of-way over, across and under said easements for lines and other transmission facilities and appurtenances only for water and electricity serving only the Property as a state park reserve and no other properties, and the right to enter for such purposes and to repair such facilities and to trim any trees in the way of such lines; provided that any poles for electricity shall not exceed a height of 15 feet and shall not be visible from Waimea Valley and Waimea Beach Park below.

The foregoing covenant shall run with the land and with the title to the Property, in perpetuity, and shall apply to and be binding upon and inure to the benefit of the Grantee, its successors and assigns.

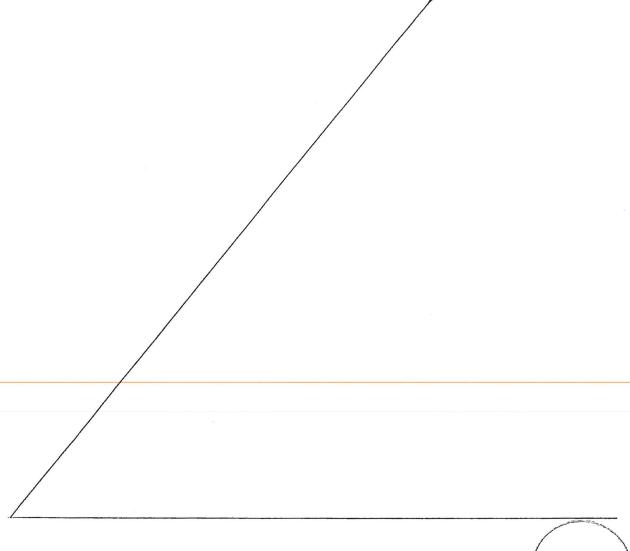
The Grantor shall be responsible for payment of all rollback or retroactive property taxes and their associated costs, and property taxes up to the date of execution of this Limited Warranty Deed.

AND, Grantor shall execute affidavits, representations and the like from time to time at Grantee's request concerning Grantor's best knowledge and belief regarding the presence of hazardous materials on the Property placed or released by Grantor.

PRELIM. APPR'D. Department of the Attorney General AND, Grantor agrees to release, indemnify, defend, and hold Grantee harmless, from any damages and claims resulting from the release of hazardous materials on or about the Property occurring while Grantor was in possession of the Property, or elsewhere if caused by Grantor or persons acting through or under Grantor.

For the purpose of this limited warranty deed "hazardous material" shall mean any pollutant, contaminant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, as all of the above are defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, Chapter 128D, Hawai'i Revised Statutes, as amended, or any other federal, state, or local law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

This Instrument may be signed in counterparts, each of which will be considered as an original and which together will constitute one and the same Instrument.



PRELIM. APPR'D. Department of the Afterney General Limited Warranty Deed

Grantor: A Charitable Foundation Corporation

Grantee: State of Hawai'i

IN WITNESS WHEREOF, Grantor and Grantee have executed these presents effective as of the day, month, and year first above written

> A Charitable Foundation Corporation, a Nevada nonprofit corporation registered to do business as a foreign nonprofit corporation in the State of Hawai'i

David S. Druz

Its: Director

Date: 12/6/18

"Grantor"

Approved by the Board of Land and Natural

Resources at its meeting held on:

September 14, 2018.

STATE OF HAWAI'I

Suzanne D. Case

Chairperson

Board of Land and Natural Resources

"Grantee"

APROVED AS TO LEGALITY, FORM, **EXCEPTIONS, AND RESERVATIONS:**

Deputy Attorney General

Dated: Dec. 6, 2018

PRELIM. APPRID. Department of the Attorney Ganeral

ACKNOWLEDGMENT/NOTARY CERTIFICATION

STATE OF HAWAI'I CITY AND COUNTY OF HONOLULU)) ss.)
by me duly sworn or affirmed, did say that Warranty Deed dated hydracation of Mylanzation	, 2018, in the First Circuit of the State David S. Druz, to me personally known, who, being such person executed this 12 - page Limited, 2018, as the free act and deed of such person, and if een duly authorized to execute such instrument in such
AN M. SETTING AND M.	Signature: Nalum M. Seaman Notary Public, State of Hawai'i My commission expires: October 20, 2022

PRELIM. APPRID. Department of 함의 Attorney General



STATE OF HAWAI'I SURVEY DIVISION DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES HONOLULU

C.S.F. No. <u>25,698</u>

November 15, 2018

PROPOSED STATE PARK RESERVE

LOT A

Waialua and Koolauloa, Oahu, Hawaii

Comprised of the following:

- A. Portions of Grant 5159 to L.B. Nevin and Grant 5236 to Earl K. Ellsworth, being also Lot 179 of Pupukea Highlands, File Plan 860.
- B. Portion of Grant 880 to Kaeliwai and Mahele Award 13 to Paalua, being also Lot 1-B-2 as shown on Map 8 of Land Court Application 561 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii covered by Transfer Certificate of Title 647646 issued to A Charitable Foundation Corporation, subsequently, deregistered and recorded on June 22, 2017 as Document No. A-63820674.

Beginning at the north corner of this parcel of land, at the southwest corner of Lot 65 of Pupukea Highlands, File Plan 860, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUPUKEA" being 5732.87 feet South and

1193.96 feet West, thence running by azimuths measured clockwise from True South:-

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1. 299° 10'

197.47 feet along Lot 65 of Pupukea Highlands, File Plan 860;

2. 272° 20'

51.26 feet along Lot 66 of Pupukea Highlands, File Plan 860;

C.S.F. No.	25,698	8_			November 15, 2018
3.	315°	20'		477.35	feet along Lot 74 of Pupukea Highlands, File Plan 860;
4.	325°	01'		138.54	feet along Lot 144 of Pupukea Highlands, File Plan 860;
5.	342°	20'		150.00	feet along Lot 144 of Pupukea Highlands, File Plan 860;
6.	318°	00'		97.00	feet along Lot 144 of Pupukea Highlands, File Plan 860;
7.	295°	40'		250.00	feet along Lot 144 of Pupukea Highlands, File Plan 860;
8.	274°	35'		205.00	feet along Lot 144 of Pupukea Highlands, File Plan 860;
9.	296°	05'		450.00	feet along Lots 144 and 145 of Pupukea Highlands, File Plan 860;
10.	306°	15'	30"	160.67	feet along Lot 145 of Pupukea Highlands, File Plan 860;
11.	272°	15'		90.00	feet along Lot 146 of Pupukea Highlands, File Plan 860;
12.	274°	01'	30"	134.62	feet along Lots 146 and 147 of Pupukea Highlands, File Plan 860;
13.	283°	01'	30"	151.76	feet along Lots 147 and 148 of Pupukea Highlands, File Plan 860;
14.	268°	22'		174.23	feet along Lots 148 and 149 of Pupukea Highlands, File Plan 860;
15.	268°	55'		173.94	feet along Lots 149 and 150 of Pupukea Highlands, File Plan 860;
16	2650				
16.	265°	14'	30"	178.97	feet along Lots 150 and 173 of Pupukea Highlands, File Plan 860;
17.	308° :	32'		734.45	feet along the remainders of Grant 5236 to Earl K. Ellsworth, and Grant 880 to Kaeliwai and Mahele Award 13 to Paalua;

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Department of the
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C.S.F. No.	25,69	98		November 15, 2018
18.	84°	9 08	' 14"	866.64 feet along Lot 12-A as shown on Map 13 of Land Court Application 561;
19.	102°	' 30'		215.00 feet along Lot 12-A as shown on Map 13 of Land Court Application 561;
20.	109°	00'		400.00 feet along Lot 12-A as shown on Map 13 of Land Court Application 561;
21.	96°	30'		380.00 feet along Lot 12-A as shown on Map 13 of Land Court Application 561;
22.	129°	55'	30"	141.48 feet along Lot 12-A as shown on Map 13 of Land Court Application 561;
23.	33°	00'		340.00 feet along Lot 12-A as shown on Map 13 of Land Court Application 561;
24.	56°	30'		545.00 feet along Lot 12-A as shown on Map 13 of Land Court Application 561;
25.	118°	05'	37"	548.35 feet along Lot 12-A as shown on Map 13 of Land Court Application 561;
26.	109°	00'		255.00 feet along Lot 12-A as shown on Map 13 of Land Court Application 561;
27.	119°	45'		325.00 feet along Lot 12-A as shown on Map 13 of Land Court Application 561;
28.	135°	00'		228.00 feet along Lot 12-A as shown on Map 13 of Land Court Application 561;
29.	102°	45'		305.00 feet along Lot 12-A as shown on Map 13 of Land Court Application 561;
30.	140°	45'		108.00 feet along Lot 12-A as shown on Map 13 of Land
				Court Application 561;
31.	86°	30'		355.00 feet along Lot 12-A as shown on Map 13 of Land Court Application 561;
32.	99°	05'	05"	792.23 feet along Lot 12-A as shown on Map 13 of Land Court Application 561;

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CCEN	25.60	0	•
C.S.F. No.	23,69	8_	November 15, 2018
33.	90°	00'	233.00 feet along Lot 12-A as shown on Map 13 of Land Court Application 561;
34.	97°	30'	541.93 feet along Lot 12-A as shown on Map 13 of Land Court Application 561;
35.	152°	18'	80.00 feet along Lot 12-A as shown on Map 13 of Land Court Application 561;
36.	267°	31'	2129.68 feet along Grant 5087 to A. A. Wilson and Grant 5162 to Louis Antonie Ginaca;
37.	277°	17'	639.11 feet along Grant 5162 to Louis Antonie Ginaca;
38.	186°	22'	964.44 feet along Grant 5162 to Louis Antonie Ginaca to the point of beginning and containing an AREA OF 79.031 ACRES.

TOGETHER WITH Additional Easement (14 - Ft. Wide), as set forth by Land Court Order No. 22150 filed January 10, 1964, shown on Maps 1 and 8 of Land Court Application 561 and on plan attached hereto and made a part hereof.

> SURVEY DIVISION DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES STATE OF HAWAII

> > Gerald Z. Yonashiro

Land Surveyor

rk

Compiled from map and desc. furn. by Towill, Shigeoka & Associates, Inc. Said map and desc. have been checked as to form and mathematical correctness but not on the ground by the Survey Division.

PASUM, APPATO. Department of Ana Altomay Ganard

