

**State of Hawaii**  
**Department of the Attorney General**



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**REPORT ON OWNERSHIP OF  
HONOPOU ROAD AND BRIDGE IN MAUI**  
**Pursuant to Act 107, Session Laws of Hawaii 2006**

*Submitted to*  
*The Twenty-Fourth State Legislature*  
*Regular Session of 2007*

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## **INTRODUCTION**

Act 107, Session Laws of Hawaii 2006, requires the Department of the Attorney General (Department) to investigate and assist in resolving the issue of ownership of Honopou Road and Honopou Bridge on the island of Maui. The Department is required to submit its findings and recommendations to the Legislature no later than twenty days before the regular session of 2007. A copy of the Act is attached as Exhibit "A".

## **BACKGROUND FACTS**

Honopou Road (the "Road") is an unpaved dirt road mauka of Hana Highway that winds through five different parcels of land owned by several private landowners and the State of Hawaii. Although the Road is accessible from Hana Highway, it does not connect to any other road or street and eventually ends in a dead-end. The Road is not used by the general public, but primarily by the area landowners to access their properties.

A title search of Honopou Road reveals that it traverses five separate parcels. See Exhibit "B" for title search and map of Honopou Road (Memorandum from E. Mahoe Collins to Stella Kam dated December 18, 2006). The five sections of Honopou Road are as follows:

- The first section of the road crosses over TMK (2)2-9-03:14, 41. The first document to convey this parcel was Royal Patent Grant No 972 dated December 24, 1852, to James Fern, and does not mention any road or any easement or access. Subsequent

conveyance documents for this parcel are silent as to the subject road. TMK (2)2-9-03:14 is currently owned by Ann R. Bauer, Trustee. TMK (2)2-9-03:41 is currently owned by the East Maui Irrigation Company, Limited.

- The second section of the road crosses over TMK (2) 2-9-03:20, which is owned by the State of Hawaii, Department of Land and Natural Resources. Honopou Bridge is located in this parcel. This parcel was a portion of the Government (Crown) Land of Honopou and was transferred to the State of Hawaii under section 5(b) of the Admission Act of March 18, 1959. A map entitled "Government Remnant Honopou, Hamakualoa, Maui," dated March 4, 1926, and other correspondence and maps in General Lease File No. 2517 dated November 13, 1936, show sections two, three, four, and five of the subject road.
- The third section of the road crosses over TMK (2) 2-9-03:21. The first document to convey this parcel, Royal Patent Grant No. 538, dated February 22, 1851, to Koahou, describes the road as "alanui" and "ke ala e holo ana I kai" ("the road/trail/path going seaward or to the sea . . ."). The road is not mentioned in subsequent documents until a warranty deed dated April 27, 1999, from Bioponic International, a California corporation (Grantor), conveying Bioponic's 89% interest in the parcel to Sandlewood Holdings Ltd. (Grantee). This warranty deed states that the parcel is subject to

"[a]n access easement (20 feet wide) along the Southerly boundary of said land and running from a road used by the public and crossing Honopou Stream. . . ." and is also subject to "[a] road running over and across said land as shown on tax map." Similarly, a warranty deed dated April 11, 2000 from Evelyn Anderson and Curt Christensen (Grantors), conveying their 11% interest in the parcel to Sandlewood Holdings Ltd. (Grantee), contains the same description of the access easement and road.

- The fourth section of the road crosses over TMK (2) 2-9-03:22. Land Commission Award No. 5459-0, dated February 18, 1853, awarding this parcel to Hewahewa is silent as to the subject road. However, the description of the parcel in a warranty deed dated January 9, 1992 from Bo F. Rodehn (Grantor) to Carl W. Martin and Martha E. Martin (Grantees) states that the parcel is subject to "[a]n access road crossing the southwesterly corner of the land described herein, as shown on survey map prepared by Randall Sherman, Registered Professional Land Surveyor, dated May 11, 1984." Carl W. Martin and Martha E. Martin are the current owners of this parcel.
- The fifth section of the road crosses over TMK (2) 2-9-03:37. Land Commission Award No. 10650 to Pia, dated September 15, 1856 does not mention any access or any roadway. Subsequent conveyance documents also do not mention any access or

roadway. Title to this parcel is currently held by the East Maui Irrigation Company, Limited.

As indicated by the above, the conveyance documents for the five parcels underlying the five sections of the Road are either silent as to the existence of the Road, or describe the road as an access road or access easement. Based upon this information and the fact that the road is a dirt road used primarily by the residents of the area to access their properties, it does not appear that Honopou Road is a public access or a government road. The Road appears to be privately owned for four of its sections with the one remaining section owned by the State of Hawaii.

On the parcel owned by the DLNR, Honopou Road crosses Honopou Stream. In 1990, the DLNR built a single-lane concrete bridge over the stream. The bridge has no railings and is designed to support only a five-ton truck. There is a sign at the approach to the bridge that notifies drivers of the five-ton vehicle limitation. Section 1 of Act 107 states that County of Maui (the County) fire trucks did not cross the bridge because of the five-ton limitation and, as a result, a house burned down several years ago because the fire trucks would not cross the bridge.

Both the State and the County have disclaimed ownership of the Road. And although the DLNR built the bridge, the Road is not considered a public highway maintained by the State Department of Transportation (DOT) or the County of Maui, so neither the State nor the County will expend funds to improve



the Road or the Bridge.<sup>1</sup> The Legislature, in Act 107, is seeking to resolve the issue of ownership and jurisdiction over Honopou Road and Honopou Bridge. By Act 107, the Department of the Attorney General has been asked to submit a report on its findings and recommendations concerning the ownership and jurisdiction issues. The DOT has also been asked to submit a report on the actions necessary to upgrade the bridge so that County fire trucks may cross.

The dispute over the ownership of roads in Hawaii has a long and complicated history. In 1989, the Legislative Reference Bureau (LRB) issued a detailed report on the dispute between the State and the counties over responsibility for roads in Hawaii. A copy of the LRB's 1989 report entitled, Roads in Limbo: An Analysis of the State-County Jurisdictional Dispute, is attached as Exhibit "C." The LRB's report contains the history of this ongoing dispute and this report will not repeat the historical findings of the LRB's report. Instead this report will focus on the current state of the law and its application to the results uncovered in the title search of Honopou Road.

### **RESOLVING THE OWNERSHIP OF HONOPOU ROAD AND BRIDGE**

By law, under section 264-1(a), Hawaii Revised Statutes, "[a]ll roads, alleys, streets, ways, lanes, bikeways, and bridges in the State opened, laid out, or built by the government are declared to be public highways." Public highways are divided into state and county highways. The State is responsible for those

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<sup>1</sup>Upgrading the Bridge without upgrading the Road is a possibility. However, the Road is an unpaved dirt road and given its present condition and future deterioration, it is doubtful that the fire trucks would be able to pass certain sections of the dirt road even if they were able to cross the Bridge.

public highways that are "under the jurisdiction of the department of transportation." Haw. Rev. Stat. § 264-1(a)(1) (1993). The rest of the roads, by default, are designated as county highways. Haw. Rev. Stat. § 264-1(a)(2) (1993). A copy of section 264-1, Hawaii Revised Statutes, is attached as Exhibit "D."

Section 264-1(c), Hawaii Revised Statutes, also explains that all "roads, alleys, streets, ways, lanes, trails, bikeways, and bridges in the State, opened, laid out, or built by private parties and dedicated or surrendered to the public use, are declared to be public highways or public trails. . . ." (emphasis added). However, these types of public highways must be dedicated for public use by deed of conveyance naming as grantee either the State for a state highway or the county for a county highway. Haw. Rev. Stat. § 264-1(c)(1) (1993). In addition, the deed of conveyance must be accepted by the department of transportation in the case of a state highway or the county legislative body in the case of a county highway. Id.

Applying the statutory framework to the present situation, we note that Honopou Road does not appear on the DOT's list of state highways. The Road is a dirt road crossing over several parcels of land owned by different landowners and is used primarily by the area landowners to access their properties. To our knowledge, the Road has not been dedicated for public use by deed of conveyance to either the State or the County of Maui. As a result, we believe that the Road is **not** a public highway subject to section 264-1, Hawaii Revised Statutes, but rather, it is a privately owned road for four of its five sections, with



the remaining section owned by the State.

With such a mix of private landowners and the State of Hawaii owning Honopou Road, it would be difficult if not impossible to coordinate an effort to upgrade the Road and the Bridge. Although the State owns one of the five parcels, the State has no authority over the privately owned portions of the road. Acquisition of the road through condemnation is a possibility and eminent domain is a governmental power possessed by both the State and the counties. However, if acquisition through eminent domain is selected as the means to obtain ownership of the Road and the Bridge, there are other issues to resolve.

The first problem is to determine which governmental entity, the State or the County of Maui, should be charged with initiating the eminent domain proceedings. Due to the nature of the road and its limited use, we believe it would be inappropriate to categorize Honopou Road as a state highway. We believe that the County of Maui would be the more appropriate entity to assume jurisdiction over Honopou Road. If the Legislature appropriates funds to the County to acquire the Road by eminent domain, and if the State conveys its portion of the Road and the Bridge to the County, the issue of ownership of the Road and the Bridge can be resolved. However, the ownership issue is not the only problem that needs to be resolved in upgrading the Road and the Bridge.

Given the current condition of Honopou Road and the costs involved in upgrading both the Road and the Bridge, it is unlikely that the County of Maui would be agreeable to accepting jurisdiction and responsibility even if the Legislature appropriated funds for acquiring ownership. Significant funding is

needed to transform this dirt road into a paved road meeting County standards. Strengthening the Bridge to withstand the load of a fully equipped County fire truck would also require substantial funding. The cost to maintain both the Road and the Bridge is yet another consideration. For these reasons, in order to convince the County to accept jurisdiction in this situation, a legislative appropriation must be sufficient to cover the acquisition, the upgrading, and the maintenance of the Road and the Bridge.

### **CONCLUSION**

Honopou Road crosses five separately owned parcels. It is owned by private owners for four of its five segments and is owned by the State of Hawaii for the remaining segment. Acquisition of the Road by the government, in this case, most appropriately by the County of Maui, would enable that governmental entity to initiate necessary upgrades to both Honopou Road and Honopou Bridge to bring them up to County standards. Sufficient funding from the Legislature for acquisition, upgrading, and maintenance costs are necessary, at a minimum, to convince the County to assume responsibility for the Road and the Bridge.

**Report Title:**

Honopou Bridge; Ownership; Firetrucks

**Description:**

Requires the attorney general to assist in resolving ownership issues relating to Honopou road, including Honopou bridge, of the Honopou district in Maui County; requires the department of transportation to determine the costs of strengthening Honopou bridge to allow firetrucks to safely cross and reach area residents. Effective on approval. (SD1)

HOUSE OF REPRESENTATIVES

TWENTY-THIRD LEGISLATURE, 2008

STATE OF HAWAII

**H.B. NO.** 2737

H.D. 1

S.D. 1

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# A BILL FOR AN ACT

Relating to the Honopou district of the county of Maui.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

**SECTION 1.** The legislature finds that the safety of residents of the Honopou district of the county of Maui may be at risk because of the condition of Honopou road, which includes Honopou bridge. Residents report that several years ago, a Maui county fire department fire truck failed to respond to an emergency call for assistance from a Honopou district resident because the fire truck crew apparently had concerns about the truck's ability to cross the Honopou bridge safely. As a result of the Maui county fire department's failure to cross Honopou bridge to provide the necessary fire-fighting assistance, the home of the Honopou resident burned down.

Presumably because of Honopou bridge's five-ton rating, the fire department feared for the safety of its firefighters in crossing the bridge, although residents of the area report that fully-loaded cement trucks, weighing approximately thirty-five tons, cross Honopou bridge regularly without incident.

Although Honopou road, a dirt road, runs through state land, a jurisdictional dispute exists over ownership of Honopou road, which includes the Honopou bridge. Regarding ownership of the road, the department of land and natural

resources defers to the department of transportation, which claims that the road and bridge are the responsibility of the county of Maui.

The legislature further finds that the lack of established jurisdictional responsibility has resulted in a corresponding lack of maintenance of Honopou road, including Honopou bridge. To avoid future threats to the safety and well-being of the residents of the Honopou district of the county of Maui, the matter of jurisdictional responsibility must be resolved, and the Honopou bridge must be strengthened and maintained in a manner that allows the Maui county fire department safe access across the Honopou bridge to provide necessary public services to the residents of the Honopou area.

The purpose of this Act is to protect the safety and well-being of the residents of the Honopou district by:

- (1) Requiring the department of the attorney general to assist in resolving the jurisdictional dispute over the Honopou road and Honopou bridge; and

- (2) Determining the costs of bringing the Honopou bridge up to standards that will allow access to Honopou district residents by the Maui county fire department.

SECTION 2. The department of the attorney general shall investigate and assist in the resolution of the issue of ownership of Honopou road, including Honopou bridge, and submit a report of its findings and recommendations, including any legislation deemed necessary to clarify legal jurisdiction, to the legislature no later than twenty days before the convening of the regular session of 2007.

SECTION 3. The department of transportation shall review the issues relating to the safety of Honopou bridge and submit a report to the legislature, mayor of Maui, and county council of Maui no later than twenty days before the convening of the regular session of 2007. The report shall include the department's findings and recommendations, including any legislation deemed necessary, that will result in strengthening, repairing, increasing the load limit, and improving Honopou bridge to provide safe access to Honopou district by the Maui county fire department. The department of transportation shall include in its report the estimated cost of improvements to Honopou bridge that are necessary to protect the safety and well-being of residents of the Honopou district.

Upon the resolution of the issue of ownership of Honopou road and Honopou bridge, the department of transportation shall also forward its report to the entity identified with the assistance of the attorney general as having jurisdiction over Honopou road and Honopou bridge. The department of transportation's report of its findings and recommendations shall be transmitted to the appropriate government agency no less than thirty days after the department's receipt of the attorney general's report on the resolution of the jurisdictional issue over which public agency has responsibility for the Honopou road and Honopou bridge.

SECTION 4. This Act shall take effect upon its approval.

LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

December 18, 2006

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

ROBERT K. MASUDA  
DEPUTY DIRECTOR

DEAN NAKANO  
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCES MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENFORCEMENT

FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

10248(M)

**MEMORANDUM**

**TO: Stella M. Kam, Deputy Attorney General**

**THROUGH: Russell Y. Tsuji, Administrator**

**FROM: E. Mahoe Collins, State Abstractor**

**SUBJECT: Title to the Lands Upon Which the Honopou Road and Honopou Bridge are Situated**

Pursuant to HB 2737 (Act 107) 2006 Session Laws, you requested our assistance in determining the fee title owner of the lands upon which the Honopou Road and Bridge are situated, as shown on Tax Plat Map (2) 2-9-03, attached hereto, and designated herein as Sections One through Five, inclusive, situate, lying and being at Honopou, District of Hamakualoa, Island of Maui, and described as follows:

Section One: Being a portion of the subject roadway over, through and across tax map key parcels (2) 2-9-03: 14 and 41, same being a portion of Royal Patent Grant No. 972 to James Fern, as shown colored red on said tax map attached.

Section Two: Being a portion of the subject roadway, including the Honopou Bridge, over, through and across tax map key parcel (2) 2-9-03: 20, same being portions of the Government Land of Honopou, as shown colored green on said tax map attached.

Section Three: Being a portion of the subject roadway over, through and across tax map key parcel (2) 2-9-03: 21, same being a portion of Apana 2 of Royal Patent Grant 538 to Koahou, as shown colored light blue on said tax map attached.

Section Four: Being a portion of the subject roadway over, through and across tax map key parcel (2) 2-9-03: 22, same being a portion of Land Commission Award No. 5459-O to Hewahewa, as shown colored yellow on said tax map attached.



Section Five: Being a portion of the subject roadway over, through and across tax map key parcel (2) 2-9-03: 37, same being a portion of Apana 2 & 3 of Land Commission Award No. 10650 to Pia, as shown colored orange on said tax map attached.

An examination of the records and files located in the State Survey Office, the State Archives, the Bureau of Conveyances and the Land Division of the Department of Land and Natural Resources reveal that, **EXCEPTING Section Two**, the subject road traverses on top of, over, through and across private property.

Pursuant to §5 (b) of the Admission Act of March 18, 1959, the United States Government transferred its interests to all of the public lands and other public properties, including Tax Map Key parcel (2) 2-9-03:20, to the State of Hawaii, subject to the public trust as provided under § 5(f) of said Admission Act.

We are unable to locate any dedication to, or acceptance of any portion of subject road by the State of Hawaii or the County of Maui, and find that private parties hold fee title to those specific lands listed below:

**As To Section One:**

Being a portion of TMK (2) 2-9-03:14, owned by ANN R. BAUER, Trustee, as acquired by QUITCLAIM DEED dated September 4, 2002, and recorded in Document No. 2002-162413 (see Exhibit A), and also being a portion of TMK (2) 2-9-03:41, owned by the EAST MAUI IRRIGATION COMPANY, LIMITED, as acquired by DEED and AGREEMENT dated December 29, 1926, and recorded in Book 864, Page 10 (see Exhibit A-1).

**As To Section Three:**

Being a portion of TMK: (2) 2-9-03:21, owned by SANDLEWOOD HOLDINGS LTD., as acquired by WARRANTY DEEDS, dated April 27, 1999, recorded in Document No. 99-084159, and April 11, 2000, recorded in Document No. 2000-050114 (see Exhibits B and C).

**As To Section Four:**

Being a portion of TMK: (2) 2-9-03:22, owned by CARL W. MARTIN and MARTHA E. MARTIN as Tenants in Common, as acquired by WARRANTY DEED dated January 9, 1992 and recorded in Document No. 92-005898 (see Exhibit D).

**As to Section Five:**

Being a portion of TMK: (2) 2-9-03:37, owned by the EAST MAUI IRRIGATION COMPANY, LIMITED, as acquired by EXCHANGE DEED dated May 23, 1927, and recorded in Book 898, Page 265 (see Exhibit E).



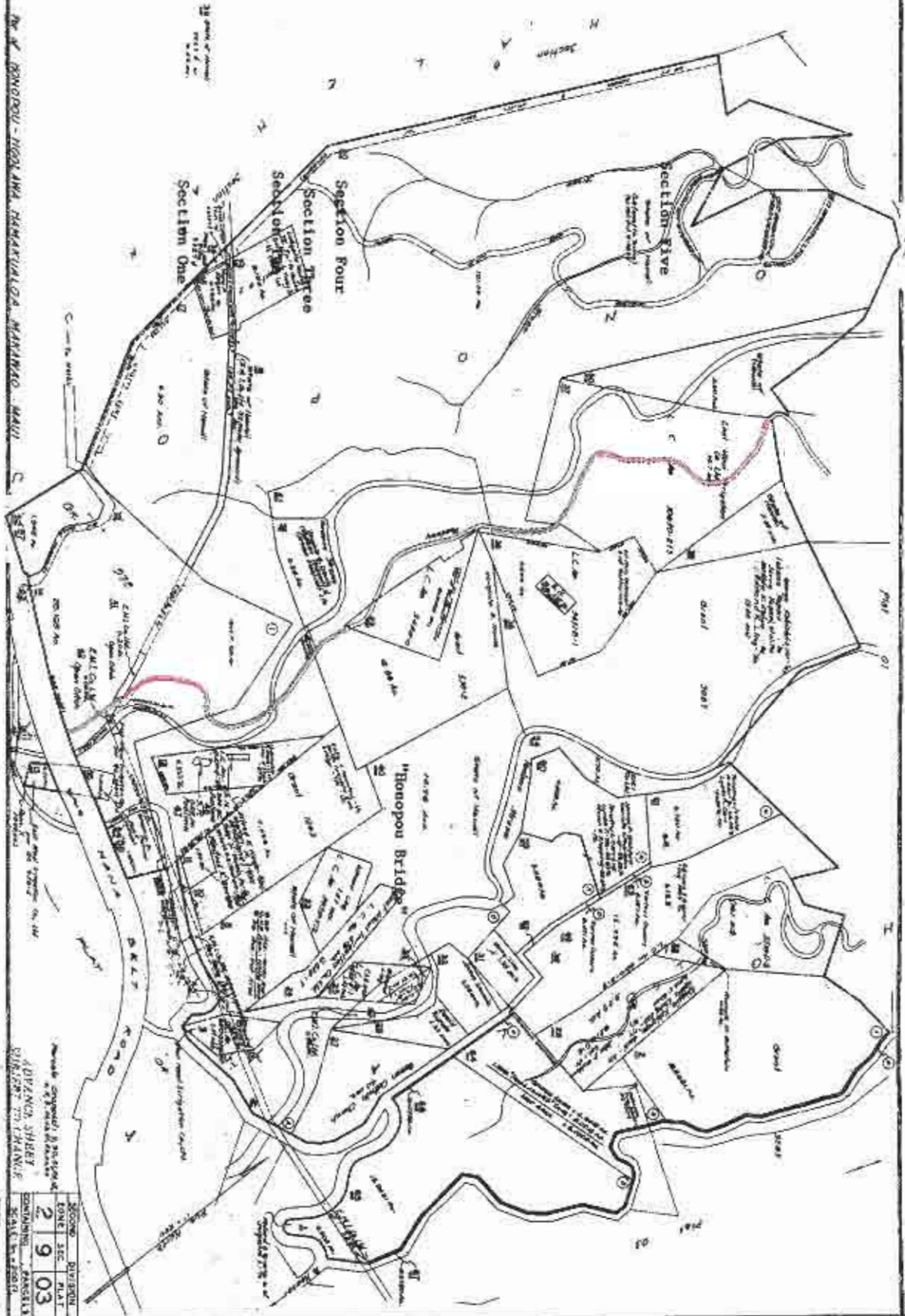
We note that by deeds marked Exhibits "B", "C" and "D", sections of the subject road, described as "a road running over and across said land as shown on tax map" and as an access road, encumber TMK: (2) 2-9-03: 21 and 22.

With respect to excepting **Section Two** above and as noted above, the fee title to the lands upon which a portion of the subject road lies (TMK (2) 2-9-03:20) is held by the State of Hawaii as a result of section 5(b) of the Admission Act. Provided however, please be aware that this opinion is limited to the fee title ownership of the land upon which the subject road and bridge are situated, and is not intended to imply that ownership, jurisdiction, and maintenance responsibilities for the subject road or bridge lie with the fee title owners of the land. As you are probably aware, roads and streets, including bridges are specifically excluded from the definition of public lands under section 171-2, HRS. Furthermore, Chapter 264, HRS, appears to place the ownership, jurisdiction, and maintenance responsibilities for the subject Honopou Road and bridge either with the Department of Transportation, Highways Division, or the County of Maui.

If you have any questions please feel free to call me at 587-0458.

Enclosures

10248(N)



SCORING	DIVISION	
LONG	SEC	PLAT
2	9	03
CONTAINING PARAGRAPHS		
SCALING: 10000		
APPROVED		



R-699

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
SEP 13, 2002 08:02 AM

Doc No(s) 2002-162413



5 1/1 23

/s/ CARL T. WATANABE  
REGISTRAR OF CONVEYANCES

CONVEYANCE TAX: \$0.00

LAND COURT SYSTEM

REGULAR SYSTEM

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GERMANY

TOTAL NUMBER OF PAGES: 5

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T.M.K.: (2) 2-9-003-014, (2) 2-7-001-076 and (2) 3-4-016-018

QUITCLAIM DEED

THIS INDENTURE, made on this September 4, 2002, by and between ANN R. BAUER, unmarried, whose address is Hauptstr 14 82319 Starnberg, Germany, hereinafter referred to as the "GRANTOR", and ANN R. BAUER, Trustee of the Ann R. Bauer Revocable Living Trust dated September 4, 2002, having all powers under said trust, including full power to sell, convey, exchange, mortgage, lease, assign or otherwise deal with and dispose of all lands of the trust estate and interests therein, whose address is Hauptstr 14 82319 Starnberg, Germany, hereinafter referred to as the "GRANTEE".

W I T N E S S E T H:

That the Grantor, for and in consideration of the sum of ONE AND NO/100 DOLLAR (\$1.00), to Grantor in hand paid by the Grantee, the receipt of which is hereby acknowledged, does hereby grant, convey, and forever quitclaim unto the Grantee, as Trustee, her successor trustees and assigns, forever, the property described in Exhibit "A" attached hereto and made a part hereof.

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

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereon or thereunto belonging or appertaining or held and enjoyed therewith, unto the said Grantee as aforesaid, forever.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, the singular or plural number, individuals or corporations, and their and each of their respective successors, heirs, personal representatives and assigns, according to the context thereof. If these presents shall be signed by two or more Grantors or by two or more Grantees, all covenants of such parties shall for all purposes be joint and several.

IN WITNESS WHEREOF, the undersigned executed these presents the day and year first above written.

APPROVED AS TO FORM:

Long  
ING HORIKAWA JORGENSEN & ENDO

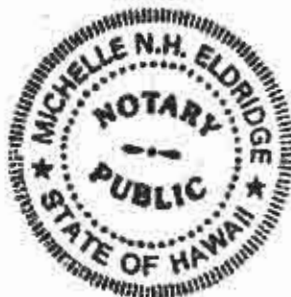
Ann R. Bauer  
ANN R. BAUER

STATE OF HAWAII

COUNTY OF MAUI

)  
) SS.  
)

On SEP 04 2002, before me personally appeared ANN R. BAUER, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Michelle N.H. Eldridge  
(notary's signature)  
MICHELLE N.H. ELDRIDGE

(print/type name of notary)  
Notary Public, in and for said  
County and State.

My commission expires: APR 01 2005



EXHIBIT "A"

FIRST:

All of that certain parcel of land (portion of the land described in and covered by Royal Patent Grant Number 972 to James Fern) situate, lying and being on the north side of Hana Belt Road, Federal Aid Project 32-A(1), at Honopou, Hamakualoa, District of Makawao, Island and County of Maui, State of Hawaii, and being LOT NUMBER ONE (1) and thus bounded and described:-

Beginning at the southwest corner of this piece of land, on the north side of said Hana Belt Road, and on the east side of the land of Halehaku, Boundary Certificate 211, the east side of R. P. 1666, L. C. Aw. 8515, Part 3 to Keoni Ana, and the coordinates of said point of beginning referred to Government Survey Triangulation Station "Kapuai" being: 4,367.77 feet north and 9,298.32 feet east, and thence running by azimuths measured clockwise from true south:-

- |    |      |         |        |  |
|----|------|---------|--------|--|
| 1. | 181° | 29'     | 417.51 | feet along land of Halehaku, along Boundary Certificate 211, same being along R. P. 1666, L. C. Aw. 8515, Part 3 to Keoni Ana; |
| 2. | 261° | 00'     | 747.10 | feet along Government land, State of Hawaii;   |
| 3. | 243° | 30'     | 447.10 | feet along same;   |
| 4. | 342° | 15'     | 470.20 | feet along Lot 1-A, remainder Grant 972 to James Fern;   |
| 5. | 19°  | 00'     | 480.60 | feet along same, crossing stream at 258.37 feet, along Government land, State of Hawaii;                                       |
| 6. | 293° | 01'     | 583.70 | feet along Government land, State of Hawaii;   |
| 7. | 22°  | 29'     | 175.52 | feet along Grant 1075 to Thos. A. L. Wills;  |
| 8. | 104° | 19' 30" | 384.14 | feet along north side of said Hana Belt Road;  |

Thence along same, on a curve to the right, with a radius of 3,832.36 feet, the chord azimuth and distance being:

- |    |      |     |        |       |
|----|------|-----|--------|-------|
| 9. | 110° | 16' | 778.93 | feet; |
|----|------|-----|--------|-------|

10. 116° 12' 30" 112.20 feet along same;

Thence along same, on a curve to the left, with a radius of 2,361.83 feet, the chord azimuth and distance being:

11. 113° 56' 45" 186.48 feet;

12. 21° 41' 10.00 feet;

Thence along the north side of said Hana Belt Road, on a curve to the left, with a radius of 2,351.83 feet, the chord azimuth and distance being:

13. 108° 18' 29.7" 277.04 feet to the point of beginning and containing a gross area of 23.668 acres, and a net area of 22.310 acres, a little more or less after deducting portions of stream ditch and Grant 538 Ap. 3 containing 1.358 acres, a little more or less.

TOGETHER WITH all easements or claims of easements, if any.

Being the same premises conveyed to Grantor herein by Quitclaim Deed dated August 14, 1987, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 21040, Page 427.

SUBJECT, HOWEVER, to the following:

1. That certain Grant in favor of -HAWAIIAN COMMERCIAL AND SUGAR COMPANY-, a California corporation, dated January 12, 1924, recorded in said Bureau of Conveyances in Liber 722, Page 13.

2. That certain Grant in favor of MAUI ELECTRIC COMPANY, LIMITED, a Hawaii corporation, dated September 24, 1960, recorded in said Bureau of Conveyances in Liber 3931, Page 459.

3. All other encumbrances, easements, reservations, restrictions and other matters, if any, presently of record.

SECOND:

That certain piece or parcel of land situated at Kokomo, District of Makawao, County of Maui, being more particularly described as follows:

Beginning at a ½ inch pipe which is the northeast corner of this lot on the west boundary of Lot F which is a portion of Lot 1 of the Puuomalei Subdivision the coordinates of said point of beginning referred to Government Survey Triangulation Station



"Piiholo" being north 6,866.39 feet, west 3,800.48 feet and running thence by azimuths measured clockwise from true south:

1. 302° 53' 00" 176.24 feet along the west boundary of Lot F, being a portion of Lot 1 of the Puuomalei Subdivision to a 1/4 inch iron pin thence,
2. Along the arc of a curve of the Government Road, having a radius of 744.94 feet, the direct azimuth and distance of the chord being 32° 25' 30" and 169.81 feet to a 1/4 inch pipe thence,
3. 127° 31' 00" 218.17 feet along the east side of a 12 foot road to a 1/4 inch pipe thence,
4. 227° 33' 30" 157.32 feet along a portion of the original lot to the point of beginning and containing an area of 32,412.00 square feet or 0.744 acre.

TOGETHER WITH all easements or claims of easements, if any.

Being the same premises conveyed to Grantor herein by Quitclaim Deed dated August 14, 1987, recorded in said Bureau of Conveyances in Liber 21040, Page 427.

SUBJECT, HOWEVER, to any and all encumbrances, easements, reservations, restrictions presently of record, if any.

THIRD:

All of that certain parcel of land situate in Wailuku, Island and County of Maui, State of Hawaii, known as Lot 5 of the Valley View Tract, containing 8,785 square feet, as shown on the Map filed in the Bureau of Conveyances of the State of Hawaii as File Plan No. 200;

TOGETHER WITH all easements or claims of easements, if any.

Being the same premises conveyed to Grantor herein by Quitclaim Deed dated July 22, 1987, recorded in said Bureau of Conveyances in Liber 20951, Page 366.

SUBJECT, HOWEVER, to any and all encumbrances, easements, reservations, restrictions presently of record, if any.

set my hand and seal this 22nd day of December, A. D. 1926.

In presence of:

Densu Hobo

K. Watanabe

Territory of Hawaii )  
Island & County of Maui ) ss.

On this 22nd day of December, A. D. 1926, before me personally appeared Densu Hobo, to me well known to be the person described in, and who executed the foregoing Deed, and he acknowledged to me that he executed the same as his free act and deed.

(Notarial Seal)

J. Garcia, Notary Public,

Second Judicial Circuit, County of Maui,

Territory of Hawaii.

Entered of record this 24th day of December, A.D. 1926, at 10:40 o'clock A. M., and compared. *Carl S. [Signature]* Registrar of Conveyances.

Hawaiian  
Commercial  
& Sugar Co.  
et al.

This Deed and Agreement, dated December 29, 1926, made by and

between the Hawaiian Commercial and Sugar Company, a California corporation, party of the first part, and the Maui Agricultural

To

Company, Limited, a Hawaiian corporation, party of the second part, and the East Maui Irrigation Company, Limited, a Hawaiian corporation, party of the third part,

East Maui  
Irrigation  
Co., Ltd.

Deed &  
Agrmt.

Witnesseth: Whereas the parties of the first and second parts are engaged principally in the growing of sugar cane and the manufacture of sugar and have their plantations and works on the Island of Maui, Territory of Hawaii, and the party of the second part, by a corporate consolidation of Maiku Sugar Company, Paia Plantation, Kalialinui Plantation Company, Limited, Pulehu Plantation Company, Limited, Kula Plantation Company, Limited, Makawao Plantation Company, Limited, and Kailua Plantation Company, Limited, (which seven last named corporations, since discontinued, are herein called, collectively, the "Seven Corporations"), become and is the owner of all of the properties, rights and interests heretofore owned and held by said Seven Corporations; and

Whereas, on June 19, 1908, an agreement (hereinafter called the "1908 Agreement") was entered into between said party of the first part and said Seven Corporations to more clearly define, establish and preserve their respective rights and interests with respect to all waters, water rights and irrigation works East of the westerly boundary of the Ahupuaa of Opaea, and to continue in force and effect until

July 1, 1948, all then existing agreements except only as modified by said 1908 Agreement itself; and

Whereas, said East Maui Irrigation Company, Limited, was organized by the party of the first part and said Seven Corporations for the better holding and administration of their combined water system and interests in accordance with said agreement, and on July 1, 1908, they did join in a conveyance or assignment to said East Maui Irrigation Company, Limited, of all the water, water rights, rights of way, ditches, aqueducts, pipe-lines, flumes, reservoirs, and other waterways and equipment whatsoever, for the supply, development, carriage or conservation of water, situate within the Districts of Koolau and Hamakualoa on said Island of Maui, on the East or Koolau side of the West boundary of the Ahupuaa of Opana, then owned, used or held by said parties, or any of them, or to which they or any of them were entitled, or in which they or any of them were interested, (save and excepting therefrom only the Kaluanui or "East Maui Plantation" ditch, and the waters tributary thereto), including in the rights thereby conveyed or assigned all of the rights of said Hawaiian Commercial and Sugar Company and of said Seven Corporations and each of them in and under any and all leases, contracts and agreements, held by them or any of them from any person or persons or source whatsoever, with all rights, easements, privileges and appurtenances thereto belonging, and including also sufficient rights of way to said East Maui Irrigation Company, Limited, for all ditches, waterways, pipe-lines, tunnels, flumes, and all other necessary privileges for the proper maintenance and use thereof as by said agreement contemplated, over and across any and all lands owned or held by said parties or any of them or in which they or any of them had any right or interest, situate on said East or Koolau side of the West boundary of said Ahupuaa of Opana; the said conveyance or assignment to continue in effect for the term of forty years beginning the first day of July, 1908, subject in all respects to all and singular the terms, provisions, conditions and limitations contained and prescribed in said agreement of June 19, 1908, the performance of which was then undertaken by the said East Maui Irrigation Company, Limited; and

Whereas, pursuant to the terms of said 1908 Agreement, all renewals and extensions of water rights and privileges of any party thereto, and all subsequent development and acquisitions of any such

rights, East of said West boundary of the Ahupuaa of Opana, have been taken and held in the name of said irrigation company; except only as changed by the agreement of December 30, 1921, hereinafter mentioned; and

Whereas, pursuant to said 1908 Agreement, and after the results obtained from the systematic recording of measurements of water from July 1, 1908, to July 1, 1912, it was determined that the waters belonging to said system East of the Westerly boundary of Opana should be divided between the parties of the first and second parts, until July 1, 1948, in the proportions of 55.6% to the party of the first part and 44.4% to the party of the second part; and in accordance with said agreement all shares of stock of the party of the third part were divided between the parties of the first and second parts in the same proportions, and all costs of maintenance, water rentals, new construction, etc., of said water system have since (until July 1, 1926) been divided and borne by said parties in said proportions; and

Whereas, on account of and to permit the construction of the Mailon Ditch Extension to effect delivery of water at Kamole, and for economic and other reasons incident thereto, the said parties hereto did on December 30th, 1921, enter into a supplemental agreement (hereinafter called the "1921 Agreement") pursuant to which the said ditch system under the administration of the party of the third part was extended Westwardly to the top of the Western pali of Maliko, and there was further assigned and transferred to the party of the third part by said instrument of December 30, 1921, for the same time and upon the same terms and conditions and for the same purposes recited in said 1908 Agreement, all of the respective rights of the parties of the first and second parts and each of them to the waters, water rights, rights of way, and other rights, interests, easements and privileges and property of every kind belonging to or forming any part of their respective water systems lying between the West boundary of the Ahupuaa of Opana and the top of the Western pali of Maliko Gulch, including the main ditches up to measuring weirs provided to be installed at points satisfactory to said parties, and rights of way for necessary connecting ditches on the West side of said Western pali of Maliko Gulch, and including also all ditches, aqueducts, pipe-lines, tunnels, flumes, reservoirs and other water ways and equipment owned, used or held by the parties of the first and second parts or either of



them (excepting the Kaluanui Ditch and the waters tributary thereto); and, in view of the possibilities of water power incident to said Waiala Ditch Extension available to both parties, and of allowances which will be required to balance gains of water formerly lost by seepage, and for water derived from new areas under the changed system, provision was made in said 1921 Agreement for the measurement of all waters contributed to the ditches by the new area, and for the adjustment (then contemplated to be made on or as of December 31, 1926) of the percentages of the parties of the first and second parts of their interests in the water and water system; and

Whereas, in consequence of the general administration of the water system under said agreements of 1908 and 1921, and in the light of all considerations involved, including the contributory values of their respective interests in the lands and waters involved or affected, as ascertained by past operations and the water measurements recorded up to July 1, 1926, (since which date the waters of said system have been divided in the corrected proportions hereinafter stated), and in order to accord to the parties respectively full recognition of their actual proportionate interests in the entire system, present and potential, the parties of the first and second parts have agreed that their respective interests in and rights in connection with said water system should be fairly and equitably readjusted and permanently defined substantially in accordance with a certain memorandum of agreement with respect thereto made between them dated April 12, 1926 (except only as changed by this indenture), for the better effectuation of which this indenture is now executed; and

Whereas, for the purposes aforesaid, the parties of the first and second parts (the party of the third part concurring) have determined to place said East Maui water and ditch system on a permanent basis, according to the terms, provisions and conditions of this present instrument, and to merge and embody in this instrument all terms, conditions and provisions whatsoever creating, defining and governing their respective rights, interests, undertakings and obligations whatsoever with respect to or in connection with said waters and water system, and the administration thereof, in complete displacement of all agreements, provisions and conditions at any time heretofore existing;

Now therefore, the said parties hereto do hereby recognize and declare that the interests of the parties of the first and second parts

in the said water system, as defined in this indenture, are in the corrected proportions of fifty-two and eight-tenths per cent (52.8%) for the party of the first part and forty-seven and two-tenths per cent (47.2%) for the party of the second part, and, in consideration of the premises, and of the terms and provisions of this instrument expressed, and the mutual and reciprocal covenants of the parties hereto herein set forth, they do hereby agree upon and particularly define the said water system, and their respective rights and interests, undertakings and obligations with respect thereto and in connection therewith, as follows:

## I.

General Cancellation of Previous Agreements.

The said parties hereto do hereby mutually cancel, annul and wholly terminate each and every agreement, contract, arrangement and understanding, of every kind and nature now existing between them or any of them relative to water and/or water rights, and/or water ditches and irrigation projects and accessories, from every source and in whatever locality, and having any reference to said East Maui water system or its administration; including, without prejudice to the comprehensive terms aforesaid, the following:

1. The said agreement of June 19, 1908;
2. The assignment of July 1, 1908;
3. The said agreement and assignment of December 30, 1921;
4. All agreements, rights and incidental matters heretofore effected or continued in force by or pursuant to the terms of either of said 1908 or 1921 agreements, (including all agreements relative to water and rights of way in connection with or incident to the so-called "Lowrie one-twentieth");
5. All other agreements, arrangements, definitive documents or understandings whatsoever.

## II.

Grants to E. M. I. Company

The parties of the first and second parts, in consideration of the premises and of all and singular the terms and provisions in this instrument set forth with respect to the future administration of said water system, and matters incidental thereto, do hereby jointly and severally grant, convey, assign and transfer and confirm unto the party of the third part, its successors and assigns forever, (subject, however,



to the exceptions, reservations and agreements hereinafter expressed, all of their several and respective or common rights, title and interest whatsoever, in and to:

1. All lands, rights of way and other interests in lands belonging to the parties of the first and second parts or either of them situate on the Easterly side of the boundary line which is particularly described in Schedule A hereunder written, and all water and water rights of or appurtenant to said lands or any of them, including, without prejudice to the generality of the foregoing terms, all of the lands, rights of way, water and other interests which are mentioned in Schedule B hereunder written; says and except that the party of the second part hereby reserves unto itself and its successors and assigns the following:

(a) The perpetual right to cut and remove firewood on that portion of the land of Opana herein conveyed, which right shall be so exercised in accordance with good forestry practice;

(b) The exclusive right to all potential power from the water on that portion of the land of Haiku-uka herein conveyed and the right to enter upon said land and construct and operate all works incidental to the development of said power, subject to the obligation on its part, in case of any exercise of said right, to deliver into the Wailoa Ditch (at its own expense except as otherwise contemplated in the second exception stated in Title VII of this agreement) all of said water (other than such water as is tributary to the Kaluanui Ditch) so utilized for water power;

(c) The Kaluanui Ditch (i. so far as it lies East of said boundary line described in Schedule A), and the waters of Upper Peahi tributary to the said Ditch or to any new or reconstructed ditch of the same or greater capacity at or above said present ditch, and the rights of way incident thereto, as hereinafter quitclaimed to the party of the second part by the party of the third part.

(2) Perpetual rights of way and easements for all existing ditches, pipe-lines, tunnels, flumes, dams, reservoirs, buildings, roads, trails, measuring and other stations, ditchmen's houselots, and other works, appurtenances and equipment, situate between said boundary line described in Schedule A and the top of the Western pali of Maliko Gulch, for the development, impounding, conservation, carriage, measurement, division or distribution of water or the operation of said

water system; and also any like rights of way and easements for any such irrigation works or appurtenances as may hereafter be installed in connection with said system between said boundaries; and also all water and water rights belonging to the parties of the first and second parts or either of them between said line described in Schedule A and the top of the Western pali of Waliko Gulch; including, without prejudice to the generality of the foregoing terms, all of the rights of way and easements mentioned in Schedule C hereunder written, lying between said boundaries, and also those mentioned in said Schedule C which lie West of said Waliko boundary; and including also the fee simple title to those certain lots or parcels of land West of said boundary line described in Schedule A which are mentioned in said Schedule C; save and except that the party of the second part hereby reserves unto itself and its successors and assigns the following:

(a) The right to use any of its lands aforesaid for cultivation or for any other purpose in such manner as will not interfere with the effectual use thereof by the party of the third part for any of its purposes aforesaid;

(b) All the waters of Waliko Stream and its branches and springs tributary thereto (excepting those of the branch at Haiku which are now taken into New Haiku Ditch);

(c) The Waliko pumping station of the party of the second part and the waters derived therefrom;

(d) The right to develop, conserve and use water, for itself, by means of pumping stations, shafts, tunnels or otherwise; provided always that such operations shall not impair any supply of water belonging to said water system of the party of the third part or be in any way inconsistent with the terms of this indenture or the rights of any of the parties hereunder;

and save and except, also, that each of said parties of the first and second parts does hereby reserve unto itself, its successors and assigns, the right to resume possession of any land West of said boundary line described in Schedule A with respect to which it has granted any right of way or easement to the party of the third part, in case such land shall be abandoned or cease to be used therefor by the party of the third part for any continuous period of ten years.

3. All existing ditches, pipe-lines, tunnels, flumes, dams, reservoirs, buildings, measuring and other stations, and other works

and equipment belonging to or used in connection with said water system, East of said western pali of Maliko Gulch; including, without prejudice to the generality of the foregoing terms, all the irrigation works mentioned in Schedule D hereunder written, and including those specified in said Schedule D as situate West thereof up to and including the weirs therein mentioned.

4. All interests in and under any government or other water licenses, leases or franchises relative to water tributary to said water system, and all rights of way in connection therewith; including, without prejudice to the generality of the foregoing terms, those mentioned in Schedule E hereunder written.

### III.

#### New Terms

In lieu of all agreements heretofore existing between the parties hereto, or any of them, relative to the ownership, division and distribution of water from the said East Maui water system, the rights, interests, privileges and obligations of the parties hereto, respectively, in to or concerning the said water system, shall be only as in this indenture provided or authorized.

### IV.

#### Division of Water

1. From and after December 31, 1926, the total supply of all waters of the East Maui water system, from all sources, shall continue to be divided between the Hawaiian Commercial and Sugar Company and the Maui Agricultural Company in the proportions of fifty-two and eight-tenths per cent (52.8%) thereof to Hawaiian Commercial and Sugar Company, and forty-seven and two-tenths per cent (47.2%) to said Maui Agricultural Company.

2. The waters delivered by the Koolau-Wailoa Ditch at Kamole, west of Maliko, shall be divided between said parties of the first and second parts in the said proportions respectively, (except as hereinafter provided), at or near Kamole weir, and the water so received by each party will be accounted as part of its share of the whole supply of said water system. It is mutually and particularly understood and agreed that each of said parties has a continuing interest in having said ditch deliver water as nearly as possible to its full capacity at Kamole so that water shall at all times there be available to both parties in the largest practicable quantity for such division thereof.

between them.

3. Except as hereinafter otherwise provided, all of the water delivered by the Haiku Ditch (at the Hamakuspoke weir) and/or the Lowrie Ditch (near the top of the western pali of Maliko Gulch) shall be accounted as part of the share of the party of the first part from the whole supply of said water system; and (except as hereinafter otherwise provided) all of the water delivered by the Kauhikoa Ditch west of Maliko Gulch (to be measured at Maunaolu weir if practicable) shall be accounted as part of the share of the party of the second part from the whole supply.

4. Whenever and as often as the total amount of water received by the party of the first part from the Haiku Ditch and/or Lowrie Ditch and at Kamole shall exceed the amount to which it is entitled for the time being, an amount equal to such excess shall be made up out of its share from the Wailoa Ditch at Kamole to the party of the second part. Whenever and as often as the total amount of water received by the party of the second part from the Kauhikoa Ditch and at Kamole shall exceed the amount to which it is entitled for the time being, an amount equal to such excess shall be made up out of its share of water from some other source to the party of the first part; such make-up of water due the party of the first part may be effected by crediting the amount thereof against subsequent make-up water accruing from it in favor of the party of the second part, except in cases where the party of the first part shall sooner require actual deliver to it of such make-up water then due, in which cases such water shall whenever practicable be delivered to the party of the first part at Hamakuspoke in the Haiku Ditch and/or Lowrie Ditch, from reservoirs and/or any other available supply, (but not so as to reduce the volume of water which said Wailoa Ditch is capable of delivering at Kamole, unless unavoidable).

In case an adjustable weir is hereafter installed at Kamole either party entitled to make-up water may require that all or any part thereof shall be delivered into its forebay at Kamole weir.

5. Whenever the water supply for any ditch shall be in excess of its capacity, such excess may, if practicable, be diverted to any lower ditch capable of handling the same or be stored by the party of the third part to the extent of any available reservoir capacity pending its utilization as part of the general supply; and/or whenever there



shall be water available which neither of said parties desires to receive for the time being, the excess may be so stored by the party of the third part (to the extent of any available reservoir capacity) pending its utilization as part of the general supply. No water deliverable to the parties of the first and second parts to which they are entitled for the time being and desired by them shall be so stored.

6. Whenever either of said parties of the first and second parts does not desire to receive the full quantity to which it is entitled for the time being, the portion not so desired shall during such period be stored by the party of the third part (if storage capacity is available) and remain as part of the general supply; or, in case the full storage capacity of the party of the third part is being utilized, the said portion not desired by one party may be delivered to the other party.

Any period during which either party does not desire to receive the full amount of water to which it is entitled shall be deemed a "no-division period", and any over or under deliveries of water during such period shall not be included in any accounting of or for "make-up water".

7. If the party of the first part, having received any water, shall allow any part thereof to pass or escape into any ditch or reservoir of the Maui Agricultural Company, then, unless credit therefor is allowed by agreement, such escaped water shall be deemed lost water, and shall not be deductible from any waters of the party of the second part, and vice versa.

8. By temporary and informal mutual agreements between themselves from time to time, subject to termination by either of them at any time, the parties of the first and second parts may make exchanges of water, or provide that either of them may receive water from the proportionate share of the other or from any ditch or other source otherwise than as hereinbefore provided, upon such terms (if any) as may be agreed upon between them, and either with or without being taken into account in the general division as they may agree; provided, always, that when either of said parties shall desire to use its share of water at Kamole for power purposes it may require that its full share of water deliverable from the Wailoa Ditch at Kamole shall be there delivered into its forebay at Kamole weir, except (a) as to make-up water due the party of the second part at Kamole which cannot (on

account of present physical conditions) be delivered into its forebay, and (b) as to make-up water due the party of the first part which is unavoidably withdrawn from a source which reduces the volume said ditch is capable of delivering at Kamole.

9. In case the party of the second part shall hereafter desire to have portions of its share of the general supply delivered to it East of Maliko Gulch, provision shall be made by a supplemental agreement between all of the parties hereto whereby the party of the second part shall be entitled to receive any such portion of its said share in any manner desired by it without thereby reducing the share of the water of the Koolau-Wailoa Ditch which the party of the first part is entitled to receive at Kamole (this to be accomplished, if necessary, by the installation of one or more weirs, including an adjustable weir or other adjustable measuring device at Kamole).

10. The provisions of this indenture with respect to the division and/or deliver of water may be temporarily altered in any respect from time to time in order to meet emergencies or to permit the party of the third part or either of the parties of the first and second parts to do any work necessary in the proper care or maintenance of any of its irrigation works or water power plants in connection therewith or in making repairs, renewals, replacements or changes affecting the same, and any changes in water deliveries so occasioned shall be adjusted as soon as practicable.

11. All deliveries of water, and changes therein from time to time, and operation of the water system, shall be handled solely by the party of the third part. If adjustments cannot be made completely from day to day the same may be extended over such time and be made in such manner as may be mutually agreeable to the parties of the first and second parts.

#### V.

##### Water, Etc. for Kaluamui Ditch

The party of the third part, in consideration of the premises does hereby release and quitclaim unto the party of the second part all right, title and interest which the party of the third part may have in and to such of the waters of Upper Peahi tributary to said Ditch or to any new or reconstructed ditch of the same or greater capacity at or above said present ditch; and does hereby grant unto the party of the second part, its successors and assigns, such perpetual rights of way



over any lands of the party of the third part as may be necessary for proper access to and the maintenance, use and operation of the said ditch, including diversion dams on said ditch in the main Opuna Stream and its east branch.

VI.

E. M. I. Co. Stock

The proportionate interests of the parties of the first and second parts in the shares of the capital stock of said East Maui Irrigation Company, Limited, shall be owned and held by them in the said proportions of 52.8% to and for said party of the first part and 47.2% to and for the party of the second part; and any further increases in the capital stock of the party of the third part shall be contributed to and the stock shared between them in the same proportions.

VII.

Costs of Operation, Etc.

The costs and expenses of maintenance, repair, upkeep, improvements and operation of the said ditch and water system (including rentals, taxes and depreciation charges) shall be borne by the parties of the first and second parts in their said proportions of fifty-two and eight-tenths (52.8%) and forty-seven and two-tenths per cent (47.2%) respectively; save and except:

1. It is agreed that the party of the first part shall have the right at any time, at its own cost, itself to line or otherwise improve the Lowrie Ditch East of Maliko Gulch, provided the same shall be done in such manner as will not impair the present value of said Ditch as a reservoir feeder; and that the party of the first part shall similarly have the right at any time, at its own cost, to renew or repair the pipe-line across Maliko Gulch; and

2. That if either of the parties of the second and third parties shall desire at any time to construct an aqueduct along or near the makai boundary of said land of Haiku-uka hereinbefore granted to the party of the third part, and in conjunction therewith to construct reservoirs, pipe-lines and/or other works on the said or any other lands in order to conserve the water from said aqueduct and/or make the same available for power purposes and ultimately deliver the same to the Waioa Ditch, such party shall give written notice of its intention to the other; and, (a) if such aqueduct or other works aforesaid shall be proposed by the party of the second part the party of the third part

shall thereupon have the right at its option to require that the proposed works shall be of any capacity and character in excess of that which would be required by the party of the second part for power purposes, and in such case the cost of such aqueduct and/or other works and of the subsequent maintenance, repair and operation thereof shall be borne by the party of the second part and the party of the third part in such proportions as will equitably correspond to the proportionate benefit thereof to the party of the second part for use of its water for power purposes and to the party of the third part for the value thereof for the carriage and conservation of water; or (b) if such aqueduct or other works shall be proposed by the party of the third part, and the party of the second part shall desire the use of the water thereof for power purposes, it may similarly require suitable enlargement thereof for power purposes, and the cost thereof and of the subsequent maintenance, repair and operation of the same shall be similarly equitably apportioned between them. Unless otherwise agreed any such works shall be constructed by the party initiating the original proposal therefor. Each party shall have a suitable right of way over the lands of the other for the purpose of enjoying its rights in the use of the works aforesaid.

#### VIII.

##### Rights of Way to H. C. & S. Co.

1. The party of the second part does hereby grant unto the party of the first part, its successors and assigns, forever, perpetual rights of way for the ditches and tunnels of the party of the first part, over, across, under and through the lands belonging to the party of the second part, as now used and enjoyed by the party of the first part West of Maliko Gulch, for the purpose of conveying water from the ditch system to the plantation of the party of the first part, according to the descriptions thereof set forth in Schedule F hereunder written; the party of the second part hereby reserving, however, the right at any and all times to use its lands affected by said rights of way, for cultivation or any other purpose, in such manner as will not interfere with the effectual use and enjoyment by the party of the first part of the rights of way herein granted.

2. The party of the second part hereby further agrees that it will in future similarly grant from its own lands to the party of the first part such other rights of way as shall hereafter become reasonably

necessary to the party of the first part for its ditch ways and other water aqueducts across any lands of the party of the second part West of Maliko, the location thereof to be mutually agreed upon, and for which the party of the first part will make just compensation to the party of the second part.

3. In connection with all rights of way so granted to the party of the first part it is agreed that the party of the first part at its own cost will construct and maintain all such bridges, pipes, etc. across said rights of way as may reasonably necessary for the carrying on of any operations of the party of the second part or its successors or assigns on its own premises; and also that either of said parties may construct and maintain such fences, slabs, guards and/or gratings as it may deem advisable for the protection of persons in or near any camp, houses, crossings, etc., on the line of any such right of way, the same to be at the cost of the party of the first part; provided that nothing herein expressed shall be regarded as relieving the party of the first part from any legal liability it might otherwise have for injury to or death of any person in connection with any of its irrigation works along any such right of way.

4. Provided, however, that in case any right of way herein or hereafter so granted to the party of the first part shall ever be abandoned or cease to be used for such purpose by the party of the first part for any continuous period of ten (10) years, then the same shall be deemed terminated and revert to the party of the second part.

#### IX.

##### New Rights

All renewals and extensions of existing water rights and privileges of any kind East of the West bank of Maliko Gulch (except as respects Kaluanui reserved by the party of the second part as aforesaid), and all development and future acquisitions of any such rights, (except as to Kaluanui and the water development and power rights of the party of the second part in Maiku-uka and other rights reserved to the party of the second part), shall be taken and held by and belong to the party of the third part.

#### X.

##### I. M. I. Co. Covenant

The said East Maui Irrigation Company, Limited, in consideration of the premises does hereby approve of and agree to be bound by all of

the terms and conditions expressed in this indenture, and agrees on its part that it will hold, operate and administer the said water system as herein contemplated.

# XI.

## Proviso

Provided, however, anything in this instrument expressed or implied to the contrary notwithstanding, that the parties of the first and second parts, acting jointly, shall always have, and they do hereby expressly reserve unto themselves, the joint right, at any time or times hereafter to alter, change, amend, add to, or cancel, any of the terms or provisions of this instrument relating to the method or manner of operation of the said East Maui system, or concerning any general or special expenses, or to their taking or use of any water, or affecting any division or readjustment of their mutual or reciprocal rights in any respect, or with reference to any additions to, withdrawals from or changes in the water system, whether as to land, water, rights of way or other rights or interests, and the party of the third part shall be bound thereby.

# XII.

## Schedules

The several Schedules hereinbefore mentioned are the following:

## SCHEDULES

### Schedule A (Two Pages).

Survey description of Boundary Line between the Districts to which to which Schedules B and C, respectively, apply.

### Schedule B (Seven Pages).

Properties, Rights, etc., east of said line.  
I. Lands and interests in lands.  
II. Perpetual rights of way  
III. Water Rights  
IV. Leasehold interests in lands.  
V. General Rights.

### Schedule C (Five Pages).

Properties, Rights, etc. west of said line.  
I. Reservations from Homestead Deeds.  
II. Other Lands and Interests in Lands.  
III. Perpetual Rights of Way.  
IV. Leases of Rights of Way.  
V. Water Rights.  
VI. General Rights.

### Schedule D (Two Pages).

I. Irrigation Works and Appurtenances  
II. Reservoirs.

### Schedule E (One Page).

Water Licenses and Franchises.



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Schedule F (One Page).

Perpetual Rights of Way as granted by M. A. Co.  
to H. C. & S. Co.

SCHEDULE A.

SURVEY DESCRIPTION OF BOUNDARY LINE BETWEEN THE  
DISTRICTS TO WHICH SCHEDULES B AND C, RESPECTIVELY, APPLY.

Beginning at a point on the westerly boundary of the Ahupuaa of  
Opana at the upper edge of the sea pali which point is marked by a  
concrete post and has the coordinates 14,690.5 feet North, 3441.3 feet  
West, referred to Government Trig. Station Kapuai, and running from said  
point of beginning by true azimuths:

1. 1° 32' 30" 2791.6 feet along the westerly boundary of the  
Ahupuaa of Opana;
2. 348° 32' 1872.0 feet along same;
3. 354° 41' 1689.3 feet along same;
4. 13° 02' 543.0 feet along same;
5. 58° 00' 28.3 feet along same;
6. 353° 22' 20" 2729.2 feet along same;
7. 354° 02' 1355.4 feet along same;
8. 316° 27' 1177.0 feet along same;
9. 337° 16' 1084.2 feet along same;
10. 12° 57' 339.9 feet along same;
11. 357° 38' 265.0 feet along same; to a point on the  
lower side of old (or upper) Maui  
Belt Road opposite the junction of  
said road and the road running  
Mauka along the westerly toe of  
Kapuai Hill; Thence continuing;
12. Along westerly boundary of Opana to a point near the New  
Hamakua Ditch Trail, the direct  
azimuth and distance being 347°  
54' 17" 5474.4 feet; Thence,
13. Along same along the present "Koolau" Forest Reserve to a  
concrete monument which marks the  
North westerly corner of Opana-Uka,  
the direct azimuth and distance  
being 350° 17' 09" 12,325.4 feet;
14. 268° 30' 1050.0 feet along said Forest Reserve across a  
portion of Opana;
15. 341° 30' 3000.0 feet along same continuing across Opana  
to the westerly pali of Opana  
Gulch;
16. 304° 34' 250.0 feet down westerly pali of Opana Gulch  
to a point in the center of Opana  
Stream; Thence
17. Along the center line of Opana Stream to a cross cut on a  
rock, said cross mark being known as  
Boundary Point #41 in the E. M. I.  
Co's. Peahi Hui Survey; the direct



azimuth and distance being 330° 34' 37" 7581.0 feet;

18. 252° 30' 149.0 feet along the upper boundary of the Ahupuaa of Peahi Grant 221 to Swinton;
19. 252° 30' 954.0 feet along same to a concrete monument;
20. 250° 42' 41" 787.9 feet along upper boundary of the Ahupuaa of Halehaku to a concrete monument; Thence
21. Along drainage divide between Halehaku and Opana water sheds the direct azimuth and distance being 343° 02' 45" 2356.9 feet; Thence continuing
22. Along same, the direct azimuth and distance being 317° 28' 01" 621.0 feet; Thence
23. Along same, the direct azimuth and distance being 3° 08' 13" 2576.6 feet; Thence
24. Along same, the direct azimuth and distance being 351° 25' 39" 2215.9 feet; Thence
25. Along same, the direct azimuth and distance being 350° 14' 05" 2512.2 feet; Thence
26. Along same, the direct azimuth and distance being 327° 47' 05" 1016.5 feet; Thence
27. Along same, the direct azimuth and distance being 9° 09' 33" 1115.1 feet to E. M. I. Co's. Trig. #138 "Puu O Kakae" being a point on the lower boundary of Kalialinui, whose coordinates are 10,353.4 feet North, 773.1 feet East referred to Gov. Survey Trig. Station Puu Nianiau.

Schedule A,  
Page 2.

#### SCHEDULE B.

#### Properties, rights, etc. East of line described in Schedule A.

#### I. Lands and interests in lands.

- A. Lands owned in common by Maui Agricultural Co. Ltd. and Hawaiian Commercial & Sugar Co.
  - (1) Lands in Koolau, Maui as conveyed by H. A. Baldwin, et al, Trustees to Maui Agricultural Co. Ltd. (2/3 undivided interest) and Hawaiian Commercial & Sugar Co. (1/3 undivided interest) by deed of December 29, 1921 624/221 and being the lands owned by Nahiku Sugar Co. Ltd. at the time of its dissolution less certain conveyances since made therefrom.
  - (a) Gt. 3176 to Pankuku, et al, Makapipi and Opikaula. Undivided interests from the following parties:-
 

(1) Hoponi, 3.35 acres;	(2) Pahia, et al, 10.2;	
(3) Kaluohinenui, 1.35;	(4) W.F. Pogue, et al, 1.0;	
(5) Kala, 2.35;	(6) Kahananui 1.35.	
	<b>Total</b>	<b>19.60 Acres</b>
  - (b) Gt. 3257 to Pu (same as Gt. 3190) at Honolulu. 36.68 "
  - (c) The Ahupuaa of Ulaino. L.C.A. 8515B; R.P. 2237 to Kanehoa. Undivided interests from the following parties:-
 

(1) Kani, 8.00;	(2) Lilia, 15.00;	(3) Kamaka 8.00;
(4) Jim Kaiawe, et al, 13.00;	(5) Makahilahila 18.00;	
(6) W.P. Hoopai, 3.00;	(7) Kani, 10.00;	(8) Kamaka 2.00;
(9) Kahaunaele, 3.00	(10) Puanamilia, 18.00.	
	<b>Total</b>	<b>98.00</b>
  - (d) L. P. 4529 to J. K. Pires. Lot 32 of Nahiku Homestead Tract. 68.45
  - (e) L. P. 4373 to Nahiku Sugar Co. Ltd. at Nahiku. 7.00
  - (f) L. P. 4375 to Nahiku Sugar Co. Ltd. at Nahiku. 36.76
  - (g) L. P. 4377 to Nahiku Sugar Co. Ltd. at Nahiku. 118.20
  - (h) L. P. 4378 to Nahiku Sugar Co. Ltd. at Nahiku. 103.20

- (1) Gt. 1983 to Yakua and Kaaka at Makapipi.  
Undivided interest from Kamanu less 1.00 acre  
deeded to B. C. A. Aohong. 11.00
- (j) Gt. 1818 to Kalawala at Makapipi and Opikaula 27.00
- (k) Gt. 2090 to Kalohi, et al at Honolulu-iki.  
Undivided interest from:-  
(1) R. J. McGettigan, 7.00; (2) R. Kaiwina, 14.20 21.20
- (l) The Iliaina of Kesa. L.C.A. 10512; R.P. 4488 to Nahuina.  
Divided interest of 74.50
- (m) L. P. 4472 to S. E. Kalama.  
Lot 52 of Nahiku Homestead Tract. 98.00
- (n) Gt. 3066 to Mamu at Hopemul 107.00
- (o) L.C.A. 4853; R.P. 2808 to Kawaloa at Waiahole. 11.50
- Total 828.09 Acres

- (2) The Ahupuaa of Halehaku.  
Apana 3 of L.C.A. 8515; R.P. 1666 to Keoni Ana as  
conveyed by Alexander J. Cartwright to Claus  
Spreckels (1/2 interest) and to Paia Plantation,  
Haiku Sugar Co. and Grove Ranch Plantation Co. (1/2)  
interest, by deed January 4, 1886 97/371 and as  
described by survey in Boundary Certificate issued  
May 16, 1924 excepting 45.3 acres thereof as con-  
veyed to L.E. Waipa, et al, by deed of March 29, 1922.  
The area hereby conveyed being:- 3689.98 Acres
- (Subject to leases given H.F. & P. Co. and Pauwela Pine-  
B. Lands owned by Maui Agricultural Co. Ltd. /apple Co.)

- (1) Gt. 182 to Kekuanooa.  
All that portion of Gt. 182 to Kekuanooa, Guardian  
for V. Kamamahu, in the Ahupuaa of Haiku lying on  
the Easterly (or Koolau) side of the line described  
in Schedule "A" of this document, the said land being  
a portion of the land acquired (as to 2/3 undivided  
interest) by Haiku Sugar Co. and Paia Plantation by  
deed 148/216 and correction deed 296/228 and (as to  
1/3 undivided interest) by deed 19/265, and being a  
portion of the land described in Boundary Agreement  
dated December 23, 1926 between Maui Agricultural Co.  
Ltd., Haleakala Ranch Co. and Territory of Hawaii,  
which said agreement is to be recorded concurrently  
herewith.

Area conveyed: 6621.00 Acres

- (2) The Ahupuaa of Opana. Apana 7 of L.C.A. 2937 to  
William Harbottle.  
The portion of this land lying on the Easterly (or  
Koolau) side of the aforementioned line (as in  
Schedule "A" described), the said land being a por-  
tion of the land acquired by Haiku Sugar Co. and Paia  
Plantation by 51/369 and by correction deed 296/114,  
and being a portion of the land described in Boundary  
Certificate 32 (upon which R.P. 7030 was issued) and  
in an additional Boundary Certificate dated May 16, 1924.

Area conveyed:- 686.3 Acres

- (3) Ahupuaa of West Waipio. Apana 8 of L.C.A. 2937; R.P. 7761  
to Harbottle. Undivided interests as follows:-  
(a) 1/24 from C.T. Plunkett 757/74; (b) 7/48 from  
Haiku Fruit & Packing Co. Ltd. 758/490; (c) 1/8 from  
H.A. Baldwin, et al, Trustees (H.P. Baldwin Estate)  
709/220.

Total: 15/48 undivided interest or 79.3 Acres

- (4) Gt. 2136 to Needham at Puumale as in deed to Central  
Mill Co. Ltd. 291/495. 92.5 Acres

- (5) L.P. 4444 to E.S. Pogue. Lot 42 of Nahiku Homesteads.  
2/3 undivided interest as in deed to Omaopio Planta-  
tion Co. Ltd. 458/457. 96.0 Acres

- (6) L.C.A. 5506; R.P. 3239 to Kaaukai at Halehaku.  
Undivided interest as in deed to Central Mill Co.  
Ltd. 360/383. 1.20 Acres

- (7) L.C.A. 5393; R.P. 3158 to Homaikai at Halehaku.  
As in deed to Omaopio Plantation Co. Ltd. 502/371 7.66 Acres

- (8) L.C.A. 6510U; R.P. 6140 to Wahioloa at Hanawana. Apana 2.  
As in deed to Maui Agricultural Co. Ltd. 624/855. 3.00 Acres

Schedule B,  
Page 1.

- (9) L.C.A. 5392B:R.P. 2762 to Kawahine at Puolua and Waipio  
(as in &) 5.14 Acres

C. Lands owned by Hawaiian Commercial & Sugar Co.

- (1) All lands acquired by Hawaiian Commercial & Sugar Co. by "Huelo Hui" Partition Deed 765/349 and being all of the following lands, situate between Halehaku and Puumale, Hamakualoa:-  
The Ahupuaa of Huelo (L.C.A. 520:R.P. 6847 to 11);  
Apanas 1, 2 and 3 of Ct. 2079 to Kalewe; Apanas 4 and 5 of L.C.A. 4964B:R.P. 2763 to Kalewe; Ct. 1143 to Kauwaha; Ct. 2471 to Keohokana; L.C.A. 6510F:R.P. 6939 to Hanauwaha; Aps. 1 and 2 of L.C.A. 5459T:R.P. 6937 to Lalabilli; Ct. 1900 to Kawaha (which is also numbered Ct. 1921); Ct. 1142 to Keoho and Makue; Ct. 3202 to Haleole; 1/2 undivided interest in Ct. 3214 to Papaia-kea; Ct. 1901 to Paukei; 4.0 acres of Ct. 2081 to Nakoa and Uilama; Ct. 1262 to Kahiewalu; Ct. 1075 to Wills; Ct. 2041 to Reed and Norton; Ct. 1152 to Reed and Norton; Ct. 3263 to Namale and Mahi; Ap. 3 of Ct. 535 to Koaohou; Ct. 1085 to Kamoekolohe; L.C.A. 5516B:R.P. 2815 to Maa and Ct. 2131 to Koles (one Apana of which is also numbered Ct. 1259)

Total Area 1533.7 acres, more or less.

Excepting therefrom:

- (a) Lands as conveyed to all parties (other than Hawaiian Commercial & Sugar Co.) by said Partition Deed  
439.07 Acres.

- (b) Deeds of Hawaiian Commercial & Sugar Co. to:-

- (1) Alice Surana 765/143 10.62 acres of Ct. 2079:3 and L.C.A. 520.  
(2) Kalei Paahao 792/249 4.00 acres of Ct. 1152.  
(3) E.J. Smythe 792/268 24.24 acres of Ct. 1152.  
(4) Manuel Freitas 797/135 21.29 acres of Ct. 3202 and Ct. 2041.  
(5) Ida Pacheco, et al 805/324 4.00 acres of Ct. 2041.  
(6) J.K. Smythe 842/232 2.15 acres of Ct. 1142.  
(7) Joseph Pacheco 843/381 28.41 acres of Ct. 2041 and Ct. 1075.  
(8) V.P. Smythe (Oct. 27, 1926) 3.75 acres of Ct. 1259-2131.  
(9) E. Wilhelm (Dec. 6, 1926) 9.00 acres of Ct. 1152.

Total 107.46 Acres

- (c) Undivided interests to which the heirs of the following are entitled under certain letters (not recorded) given by A.N. Kepolikai:-

Kupa Pihia (4 acres); Kekahuna Ono (4 acres); E.M. Kupele (4 acres); Neau (w) (3 acres); Jack Honokaupu (4 acres).  
Total 24 acres.

Area conveyed by this document:

963.17 Acres

- (2) Ct. 2081 to Nakoa and Uilama at Hoalua.  
All interest of Hawaiian Commercial & Sugar Co. in the Grant by "Ct. 2081 Partition Deed" 797/77 being 4.0 acres. (Same as listed above in "1").
- (3) Ct. 1152 to Reed and Norton at Hoolawa.  
Portion as conveyed to Kalei Paahao by 765/349 in "1" deed to Hawaiian Commercial & Sugar Co. by 792/249. 4.00 Acres
- (4) L.C.A. 6510T:R.P. 3775 to Kuwa at Honopou.  
As in deed to Claus Spreckels 61/200. 2.19 Acres
- (5) L.C.A. 6510C:R.P. 4111 to Kalama at Hanawana. Mahele II Ap. 1.  
From J.V. Honokaupu, et al 200/31; 198/340. 0.94 Acres
- (6) Ct. 1257 to Kekahuna at West Hanawana. Apana 2.  
From Akoni (w) 200/33. 0.26 Acres
- (7) L.C.A. 5516D:R.P. 2780 to Naopu at Hoolawa. Apana 2.  
From M. Freitas 797/135. 4.85 Acres
- (8) Ct. 2125 to Naopu at Hoolawa.  
From M. Freitas 797/135. 13.86 Acres

- (9) Lot 103 of Partition of "Peahi Hui Lands".  
From J.K.Smythe. September 21, 1926. 7.60 Acres
- (10) L.C.A.55168:R.P.2815 to Mua at Hoolawa.  
From J.Pacheco 843/381. 1.06 Acres
- (11) 80 ft. strip of land along Hoolawa Stream across  
land conveyed to J.Pacheco by 765/349.  
From J.Pacheco 843/381. 2.96 Acres
- (12) Qt.2137 to Nahinu at Puumaila and kuleanas within  
Qt.2137.  
1/6 undivided interest from Mary P. Smythe. Oct.27,1926.  
1/48 undivided interest from J.K.Smythe. Oct.27,1926.  
Approximately 9.75 Acres
- (13) L.C.A.5506:R.P.3239 to Kasukai at Halehaku.  
By deed from M.R. and S.Co. 623/248 and from E.Wilhelm  
(December 6, 1926) Interests totalling 3.96 Acres
- (14) Lot 116 of Peahi Hui Partition.  
From E.Wilhelm (December 6, 1926). 2.93 Acres
- (15) Ahupuaa of West Waipio. Ap. 8 of L.C.A.2937:R.P.7761  
to Harbottle.  
1/4 undivided interest from M.R. and S.Co. 623/248. 63.50 Acres
- (16) Qt.3214 to Papaiakea.  
1/4 undivided interest by deed as in "15".  
Excepting a 6.675 acre interest in a portion thereof  
as conveyed by H.C. & S.Co. to Kamsu Tava by 765/349  
and an additional 6.675 acre interest in said portion  
to be conveyed to Tava upon execution of Qt.3214  
Partition Deed. Area conveyed: 26.65 Acres
- (17) L.P.5032 to H.P.Baldwin at Hanehoi (including easement to government road). By deed as in "15". 150.60 Acres
- (18) L.C.A.65100:R.P.4111 to Kalama at Hanawana.  
Such portion of Mahele I of Apana 1 as is occupied  
by the Lowrie Ditch.  
From J.M.Honokaupu, et al, 191/177; 191/354 (area indefinite).
- (19) Option from H.P.Baldwin to purchase the strips of land in the Ahupuaa of Opana as conveyed to him by John de Costa by 296/198 (Same strip as in "3" of II A, excepting as to "Spreckels Ditch" Strip as conveyed to Pauwela Pineapple Co. 545/474.
- (20) New Haku Ditch Right of Way Strips.  
(a) 40 foot strip across L.C.A.54940 to Napoka to Kaaula.  
From X.S.Santos, March 31, 1926. 0.22 Acre  
(b) 40 foot strip across Qt.3221 to Naala (w) at Kaaula as reserved from deed of H.C. & S.Co. to M.S. Santos, March 31, 1926. 0.45 Acre

Schedule B,  
Page 4.

## II. Perpetual Rights of Way (and options for same).

- A. Rights of Way of Hawaiian Commercial and Sugar Co. for "Lowrie Ditch" (and other ditches as noted), and necessary trails, across the following lands:-
  - (1) Qt.2137 to Nahinu at Puumaila. From J.K.Smythe 210/389.
  - (2) L.C.A.5250:R.P.3408 to Kanui at Hanawana. (2 Apanas within, or near, L.C.A.5250:R.P.6968B to Kanui).  
From J.K.Smythe 210/389 and 254/51.
  - (3) The Ahupuaa of Opana, L.C.A.2937:7,R.P.7030 to Harbottle.  
From H.P.Baldwin 296/203.  
Includes perpetual rights of way for "Halehaku Ditch" ("Spreckels Ditch" right of way as referred to therein having been conveyed to Pauwela Pineapple Co. 545/474.
  - (4) Qt.3430 to E.M.Kahananui at Kaaula.  
From T.Awana 216/295.
  - (5) Qt.972 to J.Farn at Honopou. From Charles Copp 217/281.
  - (6) The Ahupuaa of West Waipio L.C.A.2937:8,R.P.7761 to Harbottle. From Lei Tava, et al 223/407.
  - (7) L.C.A.5459E:R.P.5162 to Kuluwaimakalani at Huelo and Hanehoi. From A.Iahiemoe 216/100.



- (8) L.C.A. 5459B:R.P. 4071 to Pahia at Huelo.  
From A. Kahiamoe 216/100.
- (9) L.C.A. 5519B:R.P. 7085 to Napohaku at Halehaku. Ap. 1.  
From Auwana (w) 210/431.
- (10) L.C.A. 5392B:R.P. 2782 to Kawahine at Puolua.  
From Kupa Pichia 193/320.

B. Perpetual Rights of Way (and options for same) of Hawaiian Commercial and Sugar Co. for ditches and necessary trails other than as in "A" (above).

- (1) General aqueduct rights of way across:-
  - (a) L.C.A. 5506, R.P. 3239 to Kaaukai at Halehaku. Ap. 1.  
From Kapua and Lupua to Claus Spreckels Aug. 6, 1879  
and from C.F. Merrill to Claus Spreckels Aug. 27, 1879.
  - (b) L.C.A. 6510Q to Kawaha at Honopou.  
(As to portion in Ili Waiohiki).  
From Kuku and Kuahi to Claus Spreckels Aug. 1, 1879.
  - (c) The Ahupuaa of Kesaala.  
Option to purchase aqueduct rights of way across all  
lands of M.S. Santos in Kesaala.  
From M.S. Santos March 31, 1926.

### III. Water Rights (other than all water rights appurtenant to lands as in I of this schedule).

A. Maui Agricultural Company Limited.

- (1) The Ahupuaa of West Kaipio.  
All such waters of West Waipio Stream as will (or could) flow by gravity into "Old Hamakua Ditch" as reserved deed of Hamakua Ditch Company to James Alexander and from deed of J.W. Alexander to B. Tava 103/92.

B. Hawaiian Commercial and Sugar Co.

- (1) Huelo Stream. Certain water rights of Kupa Pichia, therein, from Kupa Pichia, June 28, 1892.
- (2) Honomanu Stream. Grant of water as lost to kuleanas in Honomanu because of upper diversions by ditches.  
As to L.C.A. 10828:R.P. 2944 to Palaile; L.C.A. 6723:R.P. 5438 to Kalaiala; L.C.A. 7787:R.P. 7392 to Wahine; L.C.A. 7785:R.P. 2945 to Kinoleu.  
From D.W. Kapihna, et al. January 25, 1864.

Schedule B,  
Page 5.

### IV. Leasehold interests in lands.

A. Held by Hawaiian Commercial and Sugar Company.

- (1) Ct. 2137 to Nahinu at Puuwaile.
  - (a) Lease from Thomas Emmaley and J.E. Smythe 206/317,  
3 acre portion. Term: March 1, 1906 to February 28,  
1931. Rental: Fully paid up.
  - (b) Lease from Annie K. Emmaley. February 7, 1905.  
8.46 acre portion. Term: January 1, 1905 to December  
31, 1930. Rental: Fully paid up.

### V. General rights conveyed by this instrument to East Maui Irrigation Company, Limited by Maui Agricultural Company, Limited and Hawaiian Commercial and Sugar Company.

A. Water Rights. All water rights appurtenant to the lands as listed under "I" of this schedule, including particularly the water rights as acquired by Hawaiian Commercial and Sugar Co. under "Huelo Hui" Partition Deed as referred to under Part C 1 of "I" of this schedule, excepting all water rights of third parties.

B. Miscellaneous Rights.

- (1) All reservations made by M.A.Co.Ltd. or H.C. & S.Co., or their predecessors in interest, from any conveyances made by them of lands or rights within the area covered by this Schedule (except as made by this present instrument).
- (2) All other rights of, or that may accrue to the benefit of, M.A.Co.Ltd. or H.C. & S.Co. within the said area; including particularly all those certain unrecorded licenses, damage settlements, etc; entered into by, or in favor of, Claus Spreckels, in or about, the years 1876 to 1882 in connection with the construction of aqueducts, excepting that certain option held by H.C. & S.Co. to pur-



chase railway rights of way across certain lands in Kaula, as granted by M.S. Santos March 31, 1926., and excepting all power rights and rights to develop the same as specifically reserved by M.A.Co.Ltd. in this document, and also excepting all rights with reference to M.A.Co.Ltd.'s. Kaluanui Ditch as herein reserved.

C. General.

(1) Maui Agricultural Company, Limited.

All other rights of every nature of M.A.Co.Ltd. east of the line described in Schedule "A", including all such lands and rights east of said line as were conveyed or assigned to M.A.Co.Ltd. by the following deeds and assignments (excepting all exceptions noted heretofore in this Schedule):-

(a) All properties east of said line which were owned by the following companies at the time of their dissolution and conveyed to M.A.Co.Ltd. by various Trustees by deeds as noted:-

Paia Plantation 624/246; Haiku Sugar Company 624/236; Omaopio Plantation Company, Limited 624/227; Central Mill Company Limited 624/231; Paia Plantation, et al, 613/249; Haiku Sugar Company Limited 624/221.

(b) All properties east of said line which were conveyed or assigned by Maui Agricultural Company Limited by H.A. Baldwin by deeds 624/255, 708/405 and 733/29 and by H.A. Baldwin, Trustee by deed 624/252.

(2) Hawaiian Commercial and Sugar Company.

All other rights of every nature of H.C. & S.Co. east of the line described in Schedule "A", including all such lands and rights east of said line as were conveyed or assigned to H.C. & S.Co. by the following deeds and assignments (excepting all exceptions noted heretofore in this Schedule):-

(a) All properties east of said line which were conveyed or assigned to H.C. & S.Co. by Claus Spreckels by deeds 76/206, 93/235, 188/250, 195/234 and 201/155.

(b) All properties east of said line which were owned by the following companies at the time of their dissolution, and conveyed to H.C. & S.Co. by deeds as noted:-  
Maui Railroad and Steamship Company (of California) 623/248; Haiku Sugar Company, Limited 624/22; Kihai Plantation Company, Limited 620/395.

Schedule B.  
Page 6.

Schedule B.  
Page 7.

SCHEDULE C.

I. Properties, rights, etc., West of line described in Schedule "A".  
Reservations in "Kuiaba-Pauwela" and Kuiaba-Kaupakulus"

Homestead Tracts.

A. "Kuiaba-Pauwela" tract.

The following reservations made by Haiku Sugar Company from deed to H.P. Baldwin of May 11, 1909 316/337 and by H.P. Baldwin from deed to Territory of Hawaii 316/1, said reservations now being the property of Maui Agricultural Company, Limited.-

- (1) Reserves (for water conservation) 1, 2, 4, 5 and 6. 13.44 Acres  
50 foot strip including Lowrie Ditch (see sample). 6.20 Acres
- (2) Rights of way.  
(a) For proposed Kaupakulus Ditch; 20 to 40 foot strip.  
(b) For proposed Ditch Lowrie Ditch to Reservoir, 20 foot strip.
- (3) All water or water rights of lands as conveyed excepting water for domestic purposes of occupants thereof.
- (4) General Rights. Right to construct aqueducts, dams and reservoirs across lands as conveyed and rights of way for works as constructed. (Certain stipulations regarding compensation).

B. "Kuiaba-Kaupakulus" tract.

The following reservations made by Haiku Sugar Company from deed to Territory of Hawaii of August 27, 1912, 372/238 by Central Mill Company, Limited, et al from Amendatory and Confirmatory Deed to Territory of Hawaii of November 15, 1912 and by Maui Railroad and Steamship Company from deed to Territory of Hawaii of December 20,

1912, said reservations now being the property of Maui Agricultural Company, Limited and Hawaiian Commercial and Sugar Company, as indicated below:-

- (1) Lots reserved:-  
H.C. & S.Co. (a) Kaupakulua Reservoir Lot (Lot "A")  
39.65 Acres  
(b) Reservoir Reservation (Lot "B") 24.67 Acres  
and 20 foot roadway to Lot B 0.32 Acres 64.64 Acres  
M.A.Co.Ltd. (a) Reservoir Reservation (Lot "C")  
4.83 Acres 4.83 Acres
- (2) (a) Ditch rights of way 40 feet in width reserved in fee simple across tract for Lowrie ditch, Kaunihiko Ditch and Kaupakulua Side Ditch.  
(H.C. & S.Co. and M.A.Co.Ltd.).  
(b) Perpetual rights of way 40 feet in width reserved across tract for Old Hamakua Ditch and Kolealea (or Kuiaha) side ditch. (H.C. & S.Co. and M.A.Co.Ltd.).
- (3) All water or water rights of lands as conveyed excepting water for domestic purposes of occupants thereof.
- (4) General Rights. (H.C. & S.Co. and M.A.Co.Ltd.)  
Right to construct aqueducts, dams and reservoirs across lands as conveyed, and rights of way for works constructed (Certain stipulations regarding compensation).

Schedule C,  
Page 1.

## II.

### Other lands and interests in lands.

#### A. Lands owned by Maui Agricultural Company, Limited.

- (1) Kamole Weir Lot and Easement.  
A lot, not to exceed 5.00 acres in area, at Kamole, for Kamole Weir and Kamole Ditchman's House-lot, and easement to same.  
Excepting forebays and penstock lines of M.A.Co.Ltd. and H.C. & S.Co. 5.00 Acres
- (2) Ditchman's House-lot - Hamakua-poko Weir (of Haiku Ditch) and easement. A lot, not to exceed 2.00 acres in area and easement to same. 2.00 Acres  
The said two lots to be selected in a manner approved of by M.A.Co.Ltd. and to be conveyed to East Maui Irrigation Co.Ltd. by confirmatory deed (for the purposes indicated, only).

#### B. Lands owned by Hawaiian Commercial and Sugar Co.

- (1) East Kuiaha Reservoir Site.  
As deeded to Claus Spreckels 64/493 and as reserved from deed of Haiku Sugar Company to Territory 316/337 (Kuiaha-Pauwela Tract). 35.00 Acres  
(0.95 acres of this is subject to lease of H.C. & S.Co. to Pauwela Pineapple Co. for term of 10 years from June 1, 1922 at \$9.50 per year).
- (2) L.C.A. 4128; R.P. 2183 to Kaihanui at Pauwela.  
From Maui Railroad and Steamship Company 623/248. Portion having area of 0.95 Acres

## III. Perpetual Rights of Way.

#### A. Maui Agricultural Company, Limited.

- (1) For New Hamakua Ditch and Trail (unless otherwise noted), across lands at Ulumalu, (U); Kaupakulua, (K); and Haiku-uka, (H):-  
From: (a) A. Franco (K) 254/304; (b) A.R. de Souza (K) 254/306; (c) M. Joaquin (K) 254/303; (d) A. de Souza (K) 254/305; (e) J.P. de Souza (K) 254/308; (f) J. da Lima (K) 254/309; (g) J. Vivieros (K) 254/311; (h) M.V. Alves (K) 254/312; (i) C.S. Akiona (U) 258/69; (j) F. d'Olim (K) 254/301; (k) M.P. Pico (K) 254/300; (l) M. Franc (H) 254/301; (m) J.d'Abreu (K) 258/71; (n) M. Martens (K) 258/98 (no trail); (o) M. Candia (K) 254/400; (p) M.P. Pico (K) 261/122; (q) A.R. de Souza (K) 261/139 (no trail); (r) J. da Lima (K) 261/140; (s) M. Jacintho (K) 186/55 (bridge); (t) H.A. Baldwin (from Manuel Jose) (U) 278/410; (u) From H.A. Baldwin, Trustee 624/252, perpetual rights of way from A. Franco (Kaupakulua) 254/336; A. de Souza (Kaupakulua) 264/338; George E. Miner and Louisa Mossman by Commissioner (St. 59 to Miner at Lilikoi and Lilikoi Gulch) 256/194.
- (2) For Kaunihiko Ditch and Trail, (unless otherwise noted) across lands at Ulumalu (U) and Kaupakulua (K).

From: (a) L. Perreira (K) 388/146; (b) J. Abreu Sr. (U) 375/402; (c) P. Camacho (K) 375/400; (d) A. Ventura (K) 375/397; (e) D. Cravalho (K) 375/393; (f) A. Murse (K) 375/399; (g) M. Jacintho (K) 375/396; (h) M. Farias (U) and (K) 375/394; (i) M. A. Martins (K) 375/389; (j) H. I. Morton (U) 375/389; (k) J. de Lima (K) 375/387; (l) Tam Yau and Apollini (U) 375/385; (m) M. P. Martins (U) 375/384; (n) G. K. Arnold (U) 375/388; (o) Fook Tin Awana, et al (U) 375/390.

For Kauhikoa Ditch Trail only:-

(p) A. Ventura (K) 418/255; (q) D. Cravalho (K) 418/230; (r) L. Perreira (K) 418/229; (s) A. Bernardo (K) 418/229.

### 3. Other Rights of Way, etc.

(a) From James Lindsay 758/316. (1) Perpetual rights of way for Pauwela Reservoir Spillway Ditch and Outlet Pipe; tunnel running westerly from outlet pipe; necessary trails; (2) Easement for storm waters along Kaluanui Gulch; (3) Incidental rights. All as to 36.65 acres at Haiku and Pauwela.

(b) From Paahao et al to Haiku Sugar Co. 58/240. Perpetual rights for ditches, flumes, diversion works, etc. on L.C.A. 4131; R.P. 2190 to Kahoochanohano in Ili Kawaiila, Kuiaha.

### B. Hawaiian Commercial & Sugar Company.

#### 1. For Lowrie Ditch and Trail, (unless otherwise noted), across,

(a) Wilkins Lands. (Lands as in deeds, X.M. Lee to Wilkins 11/112; R. Armstrong to Haleole 1/53; Kaiuanui to S. Chandler 1/121 and Haiku Sugar Co. to L. Wilkins 61/298).

(b) Ahupuaa of Eastern Kaupakulua, Gt. 771 to Hikiu. 30 foot rights of way for Lowrie Ditch, Old Haiku (Spreckels) Ditch, Kaupakulua and Halehaku Side Ditches and certain rights for future ditches. From H.P. Baldwin 224/226.

(c) Gt. 138 to Kapihe at Kuiaha.

20 foot right of way from J.H. Nui 233/352.

(d) L.C.A. 6510PP: R.P. 2178 to Miu at Pauwela.

From J.H. Hana, and William Hana, 200/111; 200/112.

(e) L.C.A. 3336: R.P. 2194 to Nalopi at Kuiaha.

From Kokahe, et al; J.P. Kapihe and Kaleiheana, et al; 208/286; 210/106; 217/464.

(f) L.C.A. 4284D: R.P. 2776 to Maona at Pauwela.

From L.K. Waipa, 223/77.

(g) L.C.A. 4131: R.P. 2190 to Kahoochanohano at Kuiaha.

30 foot right of way from Kamaka, et al to H.P. Baldwin 249/338 and H.P. Baldwin to H.C. & S. Co., Dec. 23, 1926.

#### 2. For Haiku Ditch and trail.

(a) Kuiaha-Pauwela Homestead Tract.

From Maui Agricultural Company Limited Dec. 31, 1926. Right of way across laie as conveyed by Haiku Sugar Co. to Territory of Hawaii by 316/337. (Across Lots 5, 28, 4 and 3).

(b) L.C.A. 4518: R.P. 2173 to Kekanaka at Kuiaha.

Right of way across Apana 2 and right to construct and maintain intake and diversion dam. From Pokini Robinson 482/77.

### IV. Leases of Rights of Way.

#### A. Maui Agricultural Company Limited.

1. From A.S. Medeiros (New Hamakua-Huluhuluhui) 263/154.

Term: 45 yrs. from Feb. 23, 1904. Rental: \$28.00 per year.

2. From J. de Souza (New Hamakua-Huluhuluhui) 257/188.

Term: 45 yrs. from Feb. 23, 1904. Rental: \$10.00 per year.

3. From C. Copp Sr. and C. Copp, Jr. (New Hamakua-Ct. 2701 at Pauwela) 257/366. Term: 45 years from March 1, 1904.

Rental: \$100.00 per year.

4. From Catholic Mission (New Hamakua-Ulumalu) 273/85.

Term: 45 years from May 30, 1904 with renewal privilege.

Rental: Fully paid up.

5. From Catholic Mission (New Hamakua-Ulumalu) 288/100

Term: 45 yrs. from Jan. 1, 1905. Rental: \$10.00 per year.

6. From T. Awana (New Hamakua-Ulumalu) 263/166. Term: 45

years from May 27, 1904. Rental: \$25.00 per year.

7. From O. Burana (New Hamakua-Lilikoi) 263/59. Term: 45

years from June 1, 1904. Rental \$25.00 per year.

### V. Water Rights.

Schedule C.

Page 3.

Schedule C.

Page 3.



- A. Hawaiian Commercial and Sugar Company.
1. All water rights of Kuiaha Stream makai of Old Hamakua Ditch as deeded to Claus Spreckels 59/418.
2. Water rights of Apana 2 of L.C.A. 4518; R.P. 2173 to Kekanaka at Kuiaha (unless land is planted to wet crops). From Pokini Robinson 482/77.

VI. General rights conveyed by this instrument to East Maui Irrigation Company Limited, by Maui Agricultural Company Limited and Hawaiian Commercial and Sugar Company.

A. Water Rights.

All water rights appurtenant to all lands owned by Maui Agricultural Co. Ltd. and Hawaiian Commercial and Sugar Co. between the line described in Schedule "A" and the top of the western pali of Maliko Gulch, including particularly, all water rights of the following lands:-  
 Lands of M.A.Co.Ltd. (and H.C. & S.Co. if noted).  
 Grants: 193 (B. of E.); 59; 121; 137; 140; 141; 144; 166; 176; 182; 217; 220; 228; 383; 594; 771 (M.A.Co.Ltd. and H.C. & S.Co.); 3020; L.C.Awards:- 3304-B:2 and 3; 3304-D:1, 2 and 5; 3829:2; 3905-C:2; 3905-B; 3969:3; 4137-B:2; 4579:3; 5344; 5379:4; 5480:3; 5439; 6510-M; 6510-N; 6510-XX; "Ulumalu Hui Land", (L.C.A. 10474, L.C.A. 511 and Gt. 2974). M.A.Co.Ltd. 2/49.5 undivided interest and H.C. & S.Co. 5/49.5 undivided interest.  
 Excepting the water rights reserved by M.A.Co.Ltd. under the terms of this document, and also excepting such of such water rights as third parties may be entitled to and reserving particularly the waters to which J.A.Aheong, et al, are entitled from Kuiaha Stream under agreement 292/420.

B. Rights of Way and Rights to occupy certain lands.

- (1) Perpetual rights of way, forty feet in width, for the aqueducts described in Schedule "D" under "A", "C", "D", "E" and "F" from the line described in Schedule "A" to the westerly end of the said aqueducts as said westerly end is described in said Schedule "D", and for any aqueducts that may be constructed in the future by East Maui Irrigation Co. Ltd. between the said line and the top of the western pali of Maliko Gulch, across any lands owned by M.A.Co.Ltd. and H.C. & S.Co., including particularly the lands as listed under "Water Rights".
- (2) Perpetual rights of way of sufficient widths for such intake tunnels, intake ditches, feeder ditches, trails and roads as are, or hereafter may be, appurtenant to said aqueducts within the section described above, or as are reasonably necessary or desirable for the proper maintenance, replacement, or repair, of said aqueducts.
- (3) Perpetual right to occupy for the purposes indicated from the nature of the irrigation works, buildings, etc. as listed, such of the lands of the M.A.Co.Ltd. and/or H.C. & S.Co. as are now, or may hereafter be, occupied by stream diversion works, dams, gates, overflows, waste-ways, weirs, measuring stations, ditchmen's houses, stables, warehouses, etc. appurtenant to the said aqueducts within the said section, and as are reasonably necessary or desirable for the proper maintenance, replacement, or repair of said aqueducts, any selection of lands as house lots, stable lots, or warehouse sites to meet with approval of the owner of the land; reserving to the M.A.Co.Ltd. and H.C. & S.Co. the right to cultivate the surface over all tunnels running through lands owned by them, or either of them, provided that such cultivation shall not interfere with the operation and maintenance of the said tunnels.
- (4) Perpetual right to use stream beds owned by M.A.Co.Ltd. and H.C. & S.Co. between said line as described in Schedule "A" and the top of western pali of Maliko Gulch for the conveyance, diversion or wasting of waters, insofar as such use does not interfere with the Kaluanui Ditch.

C. Miscellaneous Rights.

All Rights of M.A.Co.Ltd. and H.C. & S.Co. under agreements with third parties regarding water rights or rights in any manner appertaining to the ditch system between the line described in Schedule "A" and the top of the west pali of Maliko Gulch, including particularly:-

1. Guarantee obligating Territory of Hawaii to prevent pollution of certain streams by documents as under 1-B of this schedule.
2. Rights of H.O.A. S. Co. under those certain unrecorded licenses, damage settlements, etc., entered into by, or in favor of Claus Spreckels, in or about the years 1876 to 1882, in connection with the construction of aqueducts.

Schedule C.  
Page 5.

**SCHEDULE D.  
IRRIGATION WORKS AND APPURTENANCES.**

- I. The following aqueducts, (made up of open ditch, tunnel, flume and pipe-line sections), together with all such intake tunnels and ditches, stream diversion works, dams, gates, settling basins, feeder ditches, overflows, wasteways, automatic control devices, weirs, measuring stations and instruments, trails, roads, bridges, houses, warehouses, stables, shops and structures of similar nature as are part of, or appurtenant to, the same, or reasonably necessary for their efficient operation, repair or replacement:-
  - A. Koolau-Wailoa System.  
An aqueduct running from Makapipi Stream, near Nahiku, by uniform grade, more or less, to and including the crest of Kamole Division Weir at Kaluanui, above Paia, including as portions of this system:-
    - (1) The sections of the Koolau Ditch known as Makapipi Ditch and Nahiku Ditch.
    - (2) The section of the Wailoa Ditch known as Wailoa Ditch Extension.
    - (3) The following main intake and development tunnels and ditches:-
      - (a) Spring Ditch at Makapipi.
      - (b) Makapipi Development Tunnel at Makapipi.
      - (c) Hauolo Tunnels at Ieanae.
      - (d) Honomanu Tunnels at Honomanu.
    - (4) Kamole Division Weir (not including Kamole Forebays).
    - (5) Kamole Chute Ditch from Kamole Weir and Forebays to New Hamakua Ditch.
    - (6) New Hamakua Ditch as graded back from lower end of Kamole Chute Ditch to spillway tunnel to Maliko Gulch.
  - B. New Hamakua System.  
An aqueduct running from Alo Stream (just East of Waikamoi) by uniform grade, more or less, to Halehaku Stream including, as portions of this system:-
    - (1) Such sections of the Old Hamakua Ditch as now deliver water to this system. (Said Old Hamakua Ditch now being virtually abandoned).
  - C. Kauhikoa System.  
An aqueduct running from Halehaku Stream by uniform grade, more or less, to West Kula Stream, thence down said stream a short distance, thence from said stream, by uniform grade, more or less, to and including the crest of Maunaloa Weir, above Paia, including as portions of this system:-
    - (1) The tunnels running from Makaa Stream to Halehaku Stream at the head of the main Kauhikoa aqueduct.
    - (2) Such sections of the Old Hamakua Ditch as now deliver water to the said tunnels at Makaa Stream.
  - D. Lowrie System.  
An aqueduct running from Nailililihaale Stream, by uniform grade, more or less, to the edge of the westerly pali of Maliko Gulch, including as portions of this system:-
    - (1) Such sections of the Spreckels Ditch as now deliver water to Nailililihaale Stream.
    - (2) The Manuel Luis Ditch from Kolea Stream (of Honomanu) to Waikamoi Stream.
    - (3) The Center Ditch from Waikamoi Stream to Nailililihaale Stream.
    - (4) Halehaku-Opana Diversion Tunnel.
    - (5) Lilikoi Diversion Tunnel at Haiku.
  - E. Haiku System.  
An aqueduct running from Kailua Stream, by uniform grade, more or less, to Kaupakulua Stream, thence down Kaupakulua Stream a short distance, thence from said stream, by uniform grade, more or less, (excepting as to a drop in said grade line at west

Schedule D.  
Page 1.



Kuiaha), to and including the crest of Hamakuaapoko Weir at Hamakuaapoko a short distance west of Maliko Gulch, including as portions of this system:-

- (1) The section of the Spreckels Ditch from Naililihaele Stream to Poalua Stream.
- (2) Halehaku Intake Tunnel.
- (3) The tunnels diverting the waters of Pauwela and Haiku Reservoirs to the Haiku Ditch.

F. Other Ditch Lines.

The following sections of ditches, now out of service but which may at some future time be restored to service:-

- (1) New Hamakua Ditch running from Halehaku Stream to the edge of the Western pali of Maliko Gulch.
- (2) Old Hamakua Ditch running from easternmost branch of Naililihaele Stream to, and connecting with, the portions of said ditch as included under "New Hamakua" and "Kauhikoe" Systems, thence to edge of said pali.
- (3) Spreckels Ditch running from easternmost branch of Honomanu Stream to, and connecting with, the portions of said ditch as included under "Lowrie" and "Haiku" Systems.
- (4) Chandler Ditch running from West Kuiaha Gulch to Pauwela Reservoir.
- (5) Haiku Reservoir Ditch running from Pauwela and Haiku Reservoirs to top of west pali of Maliko Gulch.

Including as portions of the ditches and ditch systems as above described the parts and appurtenances as first under this Schedule listed.

II. Reservoirs.

- A. "Kolea" Reservoir on Kolea Stream just above "Center Ditch".
- B. "Papaea" Reservoir in Papaea just above "Spreckels Ditch".
- C. "Kapulaalaea" Reservoir on Kapulaalaea Stream just below Lowrie Ditch.
- D. "Peahi Reservoir" in Peahi (or Uao) Stream just above Haiku Ditch.
- E. "Kaupakulua Reservoir" in Kaupakulua Stream just above Lowrie Ditch.
- F. "Pauwela Reservoir" in Lilikoi Stream just below Lowrie Ditch.
- G. "Haiku Reservoir" at head of Eastern branch of Maliko Gulch just below Lowrie Ditch.

Including all diversion tunnels and ditches leading to the said reservoirs, and also all such gates, outlets, dams and spillways as are appurtenant to, or are portions of the said reservoirs; and also including all such trails and roads as are reasonably necessary for the efficient operation, maintenance or repair of said reservoirs.

Schedule D,  
Page 2.

SCHEDULE E.

Water Licenses and Franchises.

All right, title and interest of Hawaiian Commercial and Sugar Company and Maui Agricultural Company, Limited, jointly or individually, in and to the following water licenses, under which the said parties, are entitled to divert and utilize all government owned waters of the streams named in the respective licenses; (Licenses held by East Maui Irrigation Company are included below only as a matter of record).

- (1) C.L. 2678 "Spreckels License" (Originally in name of Claus Spreckels).  
Term: July 8, 1878 to July 8, 1938.
- (2) C.L. 5209 "Haiku License" (Originally in name of H.P. Baldwin, et al).  
Term: October 11, 1898 to October 11, 1928.
- (3) C.L. 1134 "Honomanu License" (To E.M.I.Co.Ltd.).  
Term: October 17, 1919 to July 26, 1940.
- (4) C.L. 974 "Hamakua License" (To E.M.I.Co.Ltd.).  
Term: December 10, 1917 to December 10, 1938.
- (5) C.L. 1706 "Keanae-Wailua License" (To E.M.I.Co.Ltd.).  
Term: June 22, 1925 to June 22, 1946.

Including all such rights of way for aqueducts across Government

lands as are described in the above licenses and also including all rights of way across government lands, and other rights granted to H.C. & S.Co. by the following franchises:-

- (1) Lowrie Ditch Franchise of June 29, 1899.  
Term: With "Spreckels License".
- (2) New Haiku Ditch Franchise of May 26, 1911.  
Term: With "Spreckels License".

Schedule E  
Page 1

#### SCHEDULE F.

Perpetual Rights of Way as granted herein by Maui Agricultural Company, Limited to Hawaiian Commercial and Sugar Company.

Perpetual Rights of Way, forty feet in width, for:-

- (1) Kahaka Ditch running from Kahaka Tail-race Ditch (right of way for which has been granted heretofore to H.C. & S.Co.) to, and connecting with, the Lowrie Ditch at a point just West of Kailua Gulch (of Haliimaile).
- (2) Lowrie Ditch running from the top of the western pali of Maliko Gulch to the parcel of land conveyed by M.A.Co.Ltd. to H.C. & S.Co. as "Lot D" in 1924 (730/95) and for the section of the said Lowrie Ditch just mauka (or East of) the M.A.Co.Ltd's. Keahua Stable Lot, the said section connecting at each end with the said Lot D.
- (3) New Haiku Ditch running from crest New Haiku Ditch Weir at Hamakua-poko, just West of Maliko Gulch, to the Northeastly boundary of the Ahupuna of Wailuku (near top of easterly pali of Kailua Gulch (of Haliimaile)).

Together with such perpetual easements over roads, trails, and bridges of M.A.Co. Ltd. as may be reasonable necessary for the efficient operation, maintenance or repair of the said ditches.

Schedule F.  
Page 1

But excepting from this grant of rights of way all such portions of the said ditches as may be on lands not owned by M.A.Co.Ltd.

In witness whereof the said parties hereto have duly executed this instrument in triplicate the day and year first above written.

(Corporate Seal)

Hawaiian Commercial and Sugar Company,

By F. F. Baldwin, President.

By C. R. Hemenway, Assistant Secretary.

(Corporate Seal)

Maui Agricultural Company, Limited,

By H. A. Baldwin, President

By J. P. Cooke, Treasurer

(Corporate Seal)

East Maui Irrigation Company, Limited,

By J. Waterhouse, Vice-President.

By J. P. Cooke, Treasurer.

Territory of Hawaii )

: ss.

City and County of Honolulu.)

On this 29th day of December, 1926,

before me appeared C. R. Hemenway, to me personally known, who, being by me duly sworn, did say that he is the Assistant Secretary of the Hawaiian Commercial & Sugar Company, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said C. R. Hemenway acknowledged said instrument to be the free act and deed of said corporation.

(Notarial Seal)

James F. Morgan, Notary Public,  
First Judicial Circuit, Territory of Hawaii.

Territory of Hawaii, )  
City and County of Honolulu. ) ss. On this 29th day of December, 1926,  
before me appeared J. P. Cooke, to me personally known, who, being by  
me duly sworn, did say that he is the Treasurer of the Maui Agricultural  
Company, Limited, and that the seal affixed to said instrument is the  
corporate seal of said corporation, and that said instrument was signed  
and sealed in behalf of said corporation by authority of its Board of  
Directors, and said J. P. Cooke acknowledged said instrument to be the  
free act and deed of said corporation.

(Notarial Seal)

James F. Morgan, Notary Public,  
First Judicial Circuit, Territory of Hawaii.

Territory of Hawaii, )  
City and County of Honolulu. ) ss. On this 29th day of December, 1926,  
before me appeared J. Waterhouse and J. P. Cooke both to me personally  
known, who, being by me duly sworn, did say that they are respectively  
the Vice President and Treasurer of the East Maui Irrigation Co. Ltd.,  
and that the seal affixed to said instrument is the corporate seal of  
said corporation, and that said instrument was signed and sealed in  
behalf of said corporation by authority of its Board of Directors, and  
said J. Waterhouse and J. P. Cooke acknowledged said instrument to be  
the free act and deed of said corporation.

(Notarial Seal)

James F. Morgan, Notary Public,  
1st Judicial Circuit, Territory of Hawaii.

Territory of Hawaii, )

County of Maui. ) ss. On this 30th day of December, A. D. 1926,  
before me appeared F. F. Baldwin, to me personally known, who being  
duly sworn says that he is the President of Hawaiian Commercial & Sugar  
Co., Ltd., and that the seal affixed to the foregoing instrument is the  
corporate seal of said corporation and that said instrument was signed  
and sealed in behalf of said corporation by authority of its Board of  
Directors, and the said F. F. Baldwin acknowledged said instrument to  
be the free act and deed of said corporation.

(Notarial Seal)

F. P. Rosecrans, Notary Public,  
Second Judicial Circuit, Territory of Hawaii.

Territory of Hawaii, )

County of Maui. ) ss. On this 30th day of December, A. D. 1926,



before me appeared H. A. Baldwin, to me personally known, who being duly sworn did say that he is the President of Kaul Agricultural Co., Ltd. and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and the said H. A. Baldwin acknowledged said instrument to be the free act and deed of said corporation.

(Notarial Seal)

F. P. Rosecrans, Notary Public,

Second Judicial Circuit, Territory of Hawaii.

Entered of record this 3rd day of January A. D. 1927 at 10:15 o'clock A. M. and compared. *Carl P. Madison* Registrar of Conveyances.

This Indenture, made this 7th day of January, 1927, by and between Emily M. Potter, wife of William M. Potter, of Honolulu, City and County of Honolulu, Territory of Hawaii, hereinafter called the "Grantor", party of the first part, and William Thomas Greig and Gertrude T. Greig, husband and wife, as joint tenants, of Honolulu aforesaid, hereinafter called the "Grantees", parties of the second part,

Emily M. Potter & husband

To

William T. Greig & wife

Deed

Witnesseth: That the said Grantor for and in consideration of the sum of Twenty Four Hundred and Fifty (\$2,450.00) Dollars, Lawful Money of the United States of America to her paid by the said Grantees, the receipt whereof is hereby acknowledged, does by these presents give, grant, bargain, sell, convey and confirm unto the said Grantees, in joint tenancy, their assigns and the heirs and assigns of the survivor of them, forever:

All of that certain piece or parcel of land situate, lying and being at the North corner of Prospect and Emerson Streets, South slope of Punchbowl, Honolulu aforesaid, being a portion of Grant 3665 to H.M. Dow, and more particularly bounded and described as follows:

Beginning at a concrete post at the South corner of this piece of land, being also the North corner of Prospect and Emerson Streets, and running by true azimuths:-

- 1: 111° 12' 50.0 feet along the Northeast side of Prospect Street;
- 2: 201° 12' 70.0 feet along the remainder of Grant 3665 to H. M. Dow;
- 3: 291° 12' 50.0 feet along the remainder of Grant 3665 to H. M. Dow;
- 4: 21° 12' 70.0 feet along the Northwest side of Emerson Street to

the point of beginning and containing an area of 3,500 square feet.



R-145

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

MAY 26, 1999 08:01 AM

Doc No(s) 99-084159

/s/CARL T. WATANABE  
ACTING  
REGISTRAR OF CONVEYANCES  
CONVEYANCE TAX: \$655.00

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (x ) Pickup ( ) To:

Sandlewood Holdings, Ltd.  
c/o Suisse Security Bank & Trust, Ltd.  
Orissa House, East Bay Street  
Nassau, The Bahamas

Escrow No. 401517-SAY  
Susan A. Yoshimura

401517 (SR)  
FNTIC

Tax Key No.: (2) 2-9-03-021

Total Number of Pages: 5

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That BIOPONIC INTERNATIONAL, a California corporation, whose business and post office address is 767 Lincoln #3, San Raphael, California 94901, hereinafter called the "Grantor", in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to Grantor paid by SANDLEWOOD HOLDINGS LTD., an international business company formed in the Commonwealth of The Bahamas, whose place of business is in Nassau, The Bahamas, and whose post office address is c/o Suisse Security Bank & Trust Ltd., Orissa House, East Bay Street, Nassau, The Bahamas, hereinafter called the "Grantee", the receipt whereof is hereby acknowledged, does hereby grant and convey unto the Grantee as Tenant in Severalty, all of Grantor's eighty-nine percent (89%) undivided right, title and interest in and to the real property described in Exhibit "A" attached hereto and by this reference incorporated herein; subject, however, to all encumbrances noted on said Exhibit "A".

TO HAVE AND TO HOLD the same, together with any improvements thereon and the rights, easements, privileges, and appurtenances thereunto belonging or appertaining unto the Grantee, the heirs, representatives, administrators, successors and assigns of the Grantee, forever.

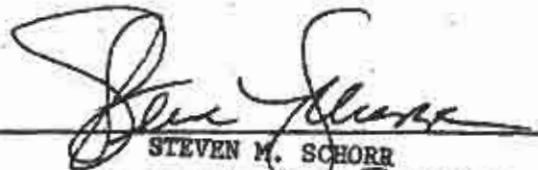
EXHIBIT "B"

AND the Grantor covenants with the Grantee that the former is now seised in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all encumbrances, except the liens and encumbrances hereinbefore mentioned, and except also the liens and encumbrances created or permitted by the Grantee after the date hereof; and that the Grantor will WARRANT and DEFEND the Grantee against the lawful claims and demands of all persons claiming the whole or any part of the above bargained and granted lands and premises.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, or neuter, the singular or plural number, individuals or corporations, and their and each of their respective successors, heirs, personal representatives, and permitted assigns, according to the context hereof. If these presents shall be signed by two or more Grantors or by two or more Grantees, all covenants of such parties shall for all purposes be joint and several.

IN WITNESS WHEREOF, the Grantor has executed these presents on this APR 27 day of 1999, 1999.

BIOPONIC INTERNATIONAL

  
By: STEVEN M. SCHORR  
PRESIDENT  
Its: PRESIDENT

STATE OF HAWAII

COUNTY OF MAUI

)  
) SS.  
)

On this APR 27 day of 1999, 1999, before me personally appeared Steven M. Schorr, to me personally known, who, being by me duly sworn, did say that he is the PRESIDENT of BIOPONIC INTERNATIONAL, a California corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and said officer acknowledged said instrument to be the free act and deed of said corporation.



  
Notary Public, State of Hawaii

Typed or Printed Name: SUSAN A. YOSHIMURA

My commission expires: AUG 11 1999

# EXHIBIT "A"

All of that certain parcel of land, being the Northerly portion of Grant 538, Apana 2 to Koahou, situated along Honopou Gulch approximately 1,800 feet Northerly of the Hana Highway at Honopou, Hamakualoa, Makawao, Island and County of Maui, State of Hawaii (TMK: 2-9-03-021).

Beginning at a 1/2 inch pipe (set) at the Southeasterly corner of this parcel of land and being also an angle point on the Northerly boundary of Grant 1263 to Puukoa, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPUAI" being 4,909.90 feet North and 11,152.74 feet East and running by azimuths measured clockwise from true South; thence,

1. 108° 10' 1,055.31 feet along Grant 1263 to Puukoa and along the Government Lands of Honopou (TMK 2-9-03:020) and passing over 1/2" pipes (set at 226.62, 262.31, 547.00, and 57.98 feet) to a concrete monument; thence,
2. 120° 30' 279.30 feet along Government Lands of Honopou (TMK: 2-9-03:020) to a concrete monument (found); thence,
3. Following along the same along the top bank of Honopou Gulch, the direct azimuth and distance being:  
209° 33' 956.20 feet to a concrete monument (found); thence,
4. 295° 40' 299.60 feet along the same to a concrete monument (found); thence,
5. 307° 40' 43.00 feet along the same to a 3/4" pipe (found); thence,
6. 47° 00' 42.10 feet along Royal Patent 5290, Land Commission Award 5451, Section "B", Apana 1 to Palea to a concrete monument (found); thence,
7. 287° 00' 121.20 feet along the same to a 1/2 inch pipe; thence,
8. 301° 25' 599.30 feet along Grant 3087 to Kamoku and passing over a concrete monument (found) at 531.70 feet to a concrete monument (found);
9. 9° 30' 780.73 feet along the Government Lands of Honopou

(TMK 2-9-03:040) and passing over a 1/2" pipe (set) at 729.90 feet and along Grant 1263 to Puukoa to the point of beginning and containing a gross area of 25.55 acres more or less; HOWEVER,

EXCEPTING AND EXCLUDING THEREFROM a remaining portion of Grant 538, Apana 2 to Kaohou being that portion Southerly of Honopou Stream (TMK 2-9-03:056) as shown on the Map attached to that certain instrument dated March 3, 1997, recorded in the Bureau of Conveyances of the State of Hawaii as Instrument No. 97-033667, containing an exclusionary area of 2.38 acres, more or less; AND,

ALSO, excepting and excluding therefrom all of Royal Patent 3333, Land Commission Award 5490, Section "O" to Hewahewa TMK 2-9-03:022, being more particularly described as follows:

Beginning at a 1/2" pipe (found) at the most Easterly corner of this parcel of land which is totally surrounded by the above described parcel (Northerly Portion Grant 538, Apana 2 to Koahou), the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPUAI" being 5,512.59 feet North and 10,988.24 feet East and running by azimuths measured clockwise from true South; thence,

- |    |          |        |   |
|----|----------|--------|---|
| 1. | 59° 30'  | 456.63 | feet along above described parcel (Grant 538, Apana 2 to Koahou) to a 1/2" pipe (found); thence,  |
| 2. | 178° 15' | 188.80 | feet along the same to a 1/2" pipe (found); thence,   |
| 3. | 184° 00' | 343.90 | feet along the same; thence,  |
| 4. | 274° 00' | 33.00  | feet along the same; thence,  |
| 5. | 184° 00' | 114.80 | feet along the same to a 1/2" pipe (found); thence,   |
| 6. | 94° 00'  | 33.00  | feet along the same to a 1/2" pipe (found); thence,   |
| 7. | 184° 00' | 96.40  | feet along the same to a 1/2" pipe (found); thence,   |
| 8. | 324° 47' | 625.12 | feet along the same to the point of beginning and containing an exclusionary area of 3.299 acres leaving a net area for the first described parcel above (Northerly Portion Grant 538, Apana 2 to Koahou) of 19.86 acres, more or less. |

BEING ALL OF THE PROPERTY CONVEYED by Commissioner's Limited Warranty Deed dated March 3, 1997, from Keith E. Tanaka, as Commissioner, as Grantor, to Bioponic International, a California corporation, as to an undivided 89% interest, and Evelyn Anderson,



unmarried, and Curt Christensen, unmarried, as Joint Tenants, as to an undivided 11% interest, as Tenants in Common, as Grantee, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 97-033667.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Claims arising out of rights customarily and traditionally exercises for subsistence, cultural, religious, access or gathering purposes as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
3. The rights of the United States of America, State of Hawaii, the municipality and the public, in and to that part of the premises in question falling in the bed of the Honopou Stream; also to the rights of the riparian owners in and to the free and unobstructed flow of the water of said stream, if any.
4. An access easement (20 feet wide) along the Southerly boundary of said land and running from a road used by the public and crossing Honopou Stream to the exclusion described as Tax Map Key 2-9-03-56.
5. A road running over and across said land as shown on tax map.
6. Any easement by necessity in favor of the owners of other lots over and across an existing road as shown on tax map.
7. Lack of legal right of access recorded in insurable form to and from said land to a public street.
8. Memorandum of Agreement dated January 31, 1997, by and between Bioponic International, a California corporation, "Bioponic", Evelyn Anderson, unmarried, and Curt Christensen, unmarried, pertaining to the ownership, operation and disposition of said land, recorded in said Bureau of Conveyances as Document No. 97-033669.
9. Agreement dated January 17, 1997, by and between Bioponic International, a California corporation, "Bi", Joy Nelson, "Ms. Nelson", and Jan Edelstein, "Ms. Edelstein", recorded in said Bureau of Conveyances as Document No. 97-044747.

The foregoing Agreement was amended by instrument dated January 28, 1997 recorded in said Bureau of Conveyances as Document No. 97-044748.

END OF EXHIBIT "A"  
Tax Map Key No. (2) 2-9-03-021

R-56

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

APR 14, 2000 08:01 AM

Doc No(s) 2000-050114

/s/ CARL T. WATANABE  
ACTING

REGISTRAR OF CONVEYANCES

CONVEYANCE TAX: \$2800.00

LAND COURT SYSTEM

AFTER RECORDATION, RETURN BY: ☒ MAIL ☐ PICKUP

Sandlewood Holdings, Ltd.  
P.O. Box 356, PMB110  
Paia, HI 96779

Escrow No. 700149-WG  
Wendy Gomes

TAX KEY NO.: (2) 2-9-03-021

Total Number of Pages: 5

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

11% That EVELYN ANDERSON, unmarried and CURT CHRISTENSEN, unmarried, both of whose residence is in Haiku, Hawaii and both of whose post office address is P.O. Box 1263, Haiku, Hawaii 96708, hereinafter called the "Grantor", in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to Grantor paid by SANDLEWOOD HOLDINGS, LTD., an International Business Company formed in the Commonwealth of the Bahamas, whose business and post office address is c/o Suisse Security Bank & Trust, Ltd., Orissa House, East Bay Street, Nassau, Bahamas and whose Hawaii post office address is P.O. Box 356, PMB110, Paia, Hawaii 96779, hereinafter called the "Grantee", the receipt whereof is hereby acknowledged, does hereby grant and convey unto the Grantee, as Tenant in Severalty, all of Grantor's right, title and interest in and to the real property described in Exhibit "A" attached hereto and by this reference incorporated herein; subject, however, to all encumbrances noted on said Exhibit "A".

TO HAVE AND TO HOLD the same, together with any improvements thereon and the rights, easements, privileges, and appurtenances thereunto belonging or appertaining unto the Grantee, the heirs, representatives, administrators, successors and assigns of the Grantee, forever.

EXHIBIT "C"

AND the Grantor covenants with the Grantee that the former is now seised in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all encumbrances, except the liens and encumbrances hereinbefore mentioned, and except also the liens and encumbrances created or permitted by the Grantee after the date hereof; and that the Grantor will WARRANT and DEFEND the Grantee against the lawful claims and demands of all persons claiming the whole or any part of the above bargained and granted lands and premises.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, or neuter, the singular or plural number, individuals or corporations, and their and each of their respective successors, heirs, personal representatives, and permitted assigns, according to the context hereof. If these presents shall be signed by two or more Grantors or by two or more Grantees, all covenants of such parties shall for all purposes be joint and several.

IN WITNESS WHEREOF, the Grantor has executed these presents on this 11 day of April, 2000.

Evelyn Anderson  
EVELYN ANDERSON

Curt Christensen  
CURT CHRISTENSEN  
"Grantor"

STATE OF HAWAII

COUNTY OF MAUI

}  
} SS.  
}

On this 11 day of April, 2000, before me personally appeared EVELYN ANDERSON and CURT CHRISTENSEN, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Carol M. Guerrero  
Notary Public, State of Hawaii

Typed or Printed Name: CAROL M. GUERRERO

My commission expires: 6/1/00 OS

# EXHIBIT "A"

All of Grantor's undivided 11% interest in and to the following:

All of that certain parcel of land, being the Northerly portion of Grant 538, Apana 2 to Koahou, situated along Honopou Gulch approximately 1,800 feet Northerly of the Hana Highway at Honopou, Hamakualoa, Makawao, Island and County of Maui, State of Hawaii (TMK: 2-9-03-021).

Beginning at a 1/2 inch pipe (set) at the Southeasterly corner of this parcel of land and being also an angle point on the Northerly boundary of Grant 1263 to Puukoa, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPUAI" being 4,909.89 feet North and 11,152.74 feet East and running by azimuths measured clockwise from true South, thence,

- |    |          |         |  |
|----|----------|---------|--|
| 1. | 108° 10' | 1055.31 | feet along Grant 1263 to Puukoa and along the Government Lands of Honopou (TMK 2-9-03:020) and passing over 1/2" pipes (set at 226.62, 262.31, 547.00, and 57.98 feet to a concrete monument, thence |
| 2. | 120° 30' | 279.30  | feet along Government Lands of Honopou (TMK 2-9-03:020) to a concrete monument (found), thence   |
| 3. |          |         | Following along the same along the top bank of Honopou Gulch, the direct azimuth and distance being 209° 33' 956.20 feet to a concrete monument (found), thence                                      |
| 4. | 295° 40' | 299.60  | feet along the same to a concrete monument (found), thence   |
| 5. | 307° 40' | 43.00   | feet along the same to a 3/4" pipe (found), thence   |
| 6. | 47° 00'  | 42.10   | feet along Royal patent 5290, Land Commission Award 5451, Section "B", Apana 1 to Palea to a concrete monument (found), thence   |
| 7. | 287° 00' | 121.20  | feet along the same to a 1/2 inch pipe, thence   |
| 8. | 301° 25' | 599.30  | feet along Grant 3087 to Kamoku and passing over a concrete monument (found) at 531.70 feet to a concrete monument (found),  |



9.	9° 30'	780.73	feet along the Government Lands of Honopou (TMK 2-9-03:040) and passing over a 1/2" pipe (set) at 729.90 feet and along Grant 1263 to Puukoa to the point of beginning and containing a gross area of 25.55 acres, more or less, HOWEVER
----	--------	--------	--

EXCEPTING and excluding therefrom a remaining portion of Grant 538, Apana 2 to Koahou being that portion Southerly of Honopou Stream and Easterly of a side stream to Honopou Stream (TMK 2-9-03:056) as shown on the Map attached to that certain instrument dated march 3, 1997, recorded in the Bureau of Conveyances of the State of Hawaii as Instrument No. 97-033667, containing an exclusionary area of 2.38 acres, more or less, and,

ALSO, excepting and excluding therefrom all of Royal Patent 3333, Land Commission Award 5490, Section "O" to Hewahewa TMK 2-9-03:022, being more particularly described as follows:

Beginning at a 1/2" pipe (found) at the most Easterly corner of this parcel of land which is totally surrounded by the above described parcel of land which is totally surrounded by the above described parcel (Northerly Portion Grant 538, Apana 2 to Koahou), the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPUAI" being 5,512.59 feet North and 10,988.24 feet East and running by azimuths measured clockwise from true South, thence,

1.	59° 30'	456.63	feet along the above described parcel (Grant 538, Apana 2 to Koahou) to a 1/2" pipe (found), thence
2.	178° 15'	188.80	feet along the same to a 1/2" pipe (found), thence
3.	184° 00'	343.00	feet along the same, thence
4.	274° 00'	33.00	feet along the same, thence
5.	184° 00'	114.80	feet along the same to a 1/2" pipe (found), thence
6.	94° 00'	33.00	feet along the same to a 1/2" pipe (found), thence
7.	184° 00'	96.40	feet along the same to a 1/2" pipe (found), thence
8.	324° 47'	625.12	feet along the same to a point of beginning and containing an exclusionary area of 3.299 acres leaving a net area of the first described parcel above (Northerly Portion Grant 538, Apana 2 to Koahou) of 19.86 acres, more or less.

Being all of the property conveyed by COMMISSIONER'S LIMITED WARRANTY DEED dated March 3, 1997 from KEITH E. TANAKA, as Commissioner as Grantor to BIOPONIC INTERNATIONAL, a California corporation, as to an undivided 89% interest, and EVELYN ANDERSON, unmarried and CURT CHRISTENSEN, unmarried, As Joint Tenants, as to an undivided 11% interest, as Tenants in Common as Grantee, recorded in said Bureau of Conveyances as Document No. 97-033667; and by

WARRANTY DEED dated April 27, 1999 from BIOPONIC INTERNATIONAL, a California corporation as Grantor to SANDLEWOOD HOLDINGS LTD., an international business company formed in the Commonwealth of the Bahamas, as Tenant in Severalty, as to an undivided eighty-nine percent (89%) interest as Grantee, recorded in said Bureau of Conveyances as Document No. 99-084159.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Claims arising out of rights customarily and traditionally exercised for subsistence, cultural, religious, access or gathering purposes as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
3. The rights of the United States of America, State of Hawaii, the municipality and the public, in and to that part of the premises in question falling in the bed of the Honopou Stream; also the rights of the riparian owners in and to the free and unobstructed flow of the water of said stream, if any.
4. An access easement (20 feet wide) along the Southerly boundary of said land and running from a road used by the public and crossing Honopou Stream to the exclusion described as Tax Map Key 2-9-03-56.
5. A road running over and across said land as shown on tax map.
6. Any easement by necessity in favor of the owners of other lots over and across an existing road as shown on tax map.
7. The lack of a legal right of access to and from a public street or highway.
8. A Memorandum of Agreement pertaining to the ownership, operation and dispositions of said land, upon and subject to all of the provisions contained therein, dated January 31, 1997 by and between Bioponic International, a California corporation, Evelyn Anderson, unmarried, and Curt Christensen, unmarried, recorded in said Bureau of Conveyances as Document No. 97-033669.

END OF EXHIBIT "A"  
Tax Map Key No. (2) 2-9-03-021

R-222

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

JAN 15, 1992 08:01 AM

Doc No(s) 92-005898

/s/ S. FURUKAWA  
REGISTRAR OF CONVEYANCES

CONVEYANCE TAX: \$35.00

LAND COURT SYSTEM

REGULAR SYSTEM

RETURN BY: MAIL (X) PICKUP ( )

TO: MR. CARL MARTIN  
P.O. BOX 836  
PAIA, HI 96779

TITLE GUARANTY ESCROW SERVICES, INC.

File No. 229051  
Escrow No. 91-201-1407  
Riki Inciong

AFFECTS TAX MAP KEY: (2) 2-9-003-022

WARRANTY DEED

THIS DEED, made this 9 day of January,  
1992, by BO F. RODEHN, unmarried, whose mailing address is  
Post Office Box 310, Paia, Maui, Hawaii, 96779, hereinafter  
called the "Grantor", and CARL W. MARTIN, unmarried, whose  
mailing address is Post Office Box 836, Paia, Maui, Hawaii, 96779  
and MARTHA E. MARTIN, unmarried, whose mailing address is Post  
Office Box 643, Paia, Maui, Hawaii, 96779, hereinafter  
collectively called the "Grantee",

EXHIBIT "D"

W I T N E S S E T H :

That in consideration of the sum of TEN DOLLARS (\$10.00) and other valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, the Grantor does hereby grant, bargain, sell and convey unto the Grantee, the property described in Exhibit "A", attached hereto and by reference made a part hereof.

The Grantee shall hold title as between themselves as tenants in common, but will have individual ownership interests as follows:

1. CARL W. MARTIN, unmarried, in severalty, his heirs, devisees, personal representatives and assigns, as to an undivided two-third (2/3rd) interest of the property described in Exhibit "A".
2. MARTHA E. MARTIN, unmarried, in severalty, her heirs, devisees, personal representatives and assigns, as to an undivided one-third (1/3rd) interest of the property described in Exhibit "A"

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

TO HAVE AND TO HOLD the same, together with all buildings, improvements, rights, easements, privileges and appurtenances thereon and thereto belonging or appertaining or held and enjoyed therewith, unto the Grantee according to the tenancy herein set forth, forever.



AND, in consideration of the premises, the Grantor does hereby covenant with the Grantee that the Grantor is seized of the property herein described in fee simple; that said property is free and clear of and from all liens and encumbrances, except for the lien of real property taxes not yet by law required to be paid, and except as may herein specifically be set forth; that the Grantor has good right to sell and convey said property, as aforesaid; and, that the Grantor will WARRANT AND DEFEND the same unto the Grantee against the lawful claims and demands of all persons, except as aforesaid.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, the singular or plural number, individuals or corporations, and each of their respective successors, successors in trust, heirs, personal representatives, administrators and permitted assigns, according to the context thereof, and that if these presents shall be signed by two or more Grantors, all covenants of such parties shall be, for all purposes, joint and several.

IN WITNESS WHEREOF, the Grantor has executed these presents on the day and year first above written.

  
BO F. RODEN

"Grantor"

STATE OF HAWAII  
COUNTY OF MAUI

)  
) SS.  
)

On this 9 day of January, 19 92,  
before me personally appeared BO F. RODEHN, to me known to be the  
person described in and/or satisfactorily proved to me 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.

JS

Patricia A. Heinrich  
Notary Public, State of Hawaii  
My commission expires: 12/17/93

EXHIBIT "A"

All of Grantor's undivided one-third (1/3rd) interest in and to the following:

All of that certain parcel of land (being all of the land(s) described in and covered by Royal Patent Number 3333, Land Commission Award Number 5459-0 to Hewahewa) situate upon and easterly of an access road running from the Hana Highway to Honopou approximately 1,600 feet northerly of its junction with same at Honopou, Hamakualoa, Makawao, Island and County of Maui, State of Hawaii, and thus bounded and described as per survey of Randall Sherman, Registered Professional Land Surveyor, dated May 11, 1984, to-wit:

Beginning at a 1/2 inch pipe (found) at the most northerly corner of this parcel of land, which is totally surrounded by Grant 538 Apana 2 to Koahou, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPUAI" being 6,023.30 feet north and 10,627.75 feet east and running by azimuths measured clockwise from true South; thence,

1.	324° 47'	625.12	feet along Grant 538 Apana 2 to Koahou to a 1/2 inch pipe (found); thence,
2.	59° 30'	456.63	feet along the same to a 1/2 inch pipe (found); thence,
3.	178° 15'	188.80	feet along the same to a 1/2 inch pipe (set); thence,
4.	184° 00'	343.90	feet along the same to a 1/2 inch pipe (set); thence,
5.	274° 00'	33.00	feet along the same to a 1/2 inch pipe (set); thence,
6.	184° 00'	114.80	feet along the same to a 1/2 inch pipe (set); thence,
7.	94° 00'	33.00	feet along the same to a 1/2 inch pipe (set); thence,

B. 184° 00' 96.40 feet along the same to the point of beginning and containing an area of 3.299 acres, more or less.

BEING THE PREMISES DESCRIBED IN DEED

GRANTOR : MAUI COUNTY COUNCIL OF THE BOY SCOUTS OF AMERICA, LIMITED, a Hawaii eleemosynary corporation

GRANTEE : CARL W. MARTIN, single, MARTHA E. MARTIN, single, and BO F. RODEHN, single, as Joint Tenants

DATED : December 28, 1984

RECORDED : Liber 18362 Page 383

SUBJECT, HOWEVER, to the following:

1. Real property taxes not yet required to be paid.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Access road crossing the southwesterly corner of the land described herein, as shown on survey map prepared by Randall Sherman, Registered Professional Land Surveyor, dated May 11, 1984.
4. The land described herein appears to be without a recorded easement to the nearest government road.
5. Any facts which a correct boundary and improvement survey would disclose; and which are not shown by public records.

END OF EXHIBIT "A"



against the lawful claims and demands of all persons.

In-witness whereof it, the said Oahu Railway and Land Company, has caused its corporate name and seal to be hereunto attached by its Vice-President and Secretary, the day and year first above written.

(Corporate Seal)

Oahu Railway and Land Company

By H.G. Dillingham, Its Vice President.

By A.W. Van Valkenburg, Its Secretary.

Territory of Hawaii

City and County of Honolulu } ss.

On this 10th day of August, A.D. 1927, before me appeared H.G. Dillingham and A.W. Van Valkenburg, to me personally known, who, being by me duly sworn, did say that they are respectively the Vice President and Secretary of the Oahu Railway and Land Company, an Hawaiian Corporation, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said H.G. Dillingham and A.W. Van Valkenburg severally acknowledged said instrument to be the free act and deed of said corporation.

(Notarial Seal)

J. Lewis, Notary Public,

First Judicial Circuit, Territory of Hawaii.

Entered of record this 7th day of September A.D. 1927 at 11:06 o'clock A.M. and compared *Paul J. Williams* Registrar of Conveyances. *L*

This Deed of Exchange, dated May 23rd, 1927, made by and between East Maui Irrigation Company, Limited, a Hawaiian corporation, party of the first part, and Manuel Burans (also known as Manuel Burns), of Peahi, Haiku, Island of Maui, party of the second part,

East Maui  
Irrigation  
Co., Ltd.

With

Witnesseth: That the party of the first part, in consideration of the conveyance to it hereinafter made by the party of the second part, and by way of exchange therefor, does hereby grant and convey unto the party of the second part, his heirs and assigns, all of the following pieces or parcels of land in the District of Hamakualoa, said Island of Maui, Territory of Hawaii, to-wit:

Manuel  
Burans

Exchange/D.

Lot 1. All that portion of L.C.A. 520 Apana 1, to J.D. II (known as the Ahupuaa of Kuele) and Grant 2079, Apana 3, to Kaiwe, situate in Kuele and Puolua, having the following description by survey:

Beginning at a concrete monument at the sea pali which marks the boundary between L.C.A. 520 Apana 1 and Grant 2079, Apana 3, said

monument being  $194^{\circ} 58' 49''$  1151.57 feet from Government Survey Trig. Station "Huelo", whose coordinates are 3054.4 feet North, 19626.7 feet East, referred to Government Survey Trig. Station "Kapuai", and running by true azimuths:

1. Along sea pali, the direct azimuth and distance being  $274^{\circ} 15'$  227.0 feet;
2. Along same, the direct azimuth and distance being  $321^{\circ} 30'$  546.0 feet;
3. Along same, the direct azimuth and distance being  $287^{\circ} 30'$  385.0 feet;
4. Along same, the direct azimuth and distance being  $308^{\circ} 30'$  272.0 feet;
5. Along same, to a concrete monument at the junction of the said pali and Western Pali of Huelo Gulch, the direct azimuth and distance being  $1^{\circ} 20' 10''$  1121.91 feet;
6. Along same to a point in the stream at the sea, the direct azimuth and distance being  $330^{\circ} 53' 33''$  717.24 feet, thence
7. Up center of Huelo stream, the direct azimuth and distance being  $129^{\circ} 02' 53''$  531.55 feet;
8. Up same, the direct azimuth and distance being  $40^{\circ} 51' 30''$  244.6 feet;
9. Up same to a large waterfall, the direct azimuth and distance being  $84^{\circ} 55' 10''$  994.84 feet, thence
10.  $134^{\circ} 15'$  200.2 feet up Western pali of Huelo Gulch to a concrete monument on the Western pali of said Gulch, thence
11. Along Western pali of Huelo Gulch along Lot 9 of Huelo Hui Partition Deed, the direct azimuth and distance being  $200^{\circ} 25' 41''$  198.03 feet;
12. Along same along same, the direct azimuth and distance being  $248^{\circ} 00'$  87.0 feet;
13. Along same, along same, the direct azimuth and distance being  $278^{\circ} 57'$  511.8 feet;
14. Along same, along same, the direct azimuth and distance being  $219^{\circ} 42'$  135.0 feet;
15. Along same, along same, to a concrete monument, the direct azimuth

and distance being 225° 57' 92.0  
feet;

16. 102° 59' 30" 81.8 feet along same to a concrete monument;
17. 102° 59' 30" 373.5 feet along same to a concrete monument;
18. 102° 59' 30" 36.42 feet along same;
19. 213° 10' 32.43 feet along same along Eastern limit of a 30  
foot right of way, to a concrete monu-  
ment which marks the South-eastern  
corner of E.M.I. Co. Exchange Dead Lot  
36;
20. 213° 10' 434.0 feet along said Lot 36 to a concrete monu-  
ment;
21. 213° 10' 51.59 feet along same to a point which marks the  
Easterly boundary between said Lot 36  
and Lot 16 of Hualo Hui Partition Deed;
22. 213° 10' 276.71 feet along said Lot 16, to a concrete monu-  
ment;
23. 172° 05' 223.8 feet along same to a concrete monument;
24. 107° 30' 96.0 feet along same to a concrete monument;
25. 107° 30' 413.0 feet along same to a concrete monument;
26. 107° 30' 304.3 feet along same to a concrete monument;
27. 107° 30' 546.4 feet along same to a concrete monument;  
which marks the Northwestern corner of  
the said lot;
28. 118° 59' 30" 30.1 feet along the makai limit of a 30 foot  
right of way to a concrete monument  
which marks the Northeastly corner  
of Lot 15 of Hualo Hui Partition Deed;
29. 146° 30' 568.0 feet along said Lot 15 to a concrete monument  
at the sea pali, thence
30. Along sea pali to the point of beginning, the direct azimuth and  
distance being 266° 34' 44" 1150.6  
feet.

Containing an Area of 61.7 Acres.

Lot II. All that parcel of land situate in Puolu and East Waipio,  
having the following description by survey and being comprised of a  
portion of Grant 2079 Apans 3 to Kaiwe, portion of Grant 3214 to Papaia-  
kea and all of L.O.A. 5469 Apans 2 to Laluhili.



Beginning at a concrete monument on the Westerly Pali of a deep Gulch at the Northeasterly corner of East Waipio, said monument being a common point between Grants 3214 and 407913 and is  $230^{\circ} 47' 57''$  585.6 feet from E.M.I. Co. Trig. #92 "Papaiakea" whose coordinates are 1511.5 feet North 17767.1 feet East, referred to Government Survey Trig. Station "Kapuai", and running by true azimuths:

1.  $227^{\circ} 45' 40''$  247.27 feet along the land conveyed to Manuel Burana by E.M.I., Exchange Deed to a concrete monument in the East Waipio Stream, thence
2. Along Lot 10 of Huolo Hui Partition Deed up center line of stream to a cross cut on a large rock at a small waterfall, the direct azimuth and distance being  $317^{\circ} 47' 50''$  205.91 feet;
3.  $44^{\circ} 13'$  500.0 feet along said Lot 10 to a concrete monument;
4.  $39^{\circ} 30'$  492.0 feet along same to a concrete monument;
5.  $36^{\circ} 01'$  550.0 feet along Puolua Government Remnant to a concrete monument;
6.  $36^{\circ} 01'$  467.33 feet along same to a concrete monument;
7.  $24^{\circ} 06' 38''$  105.78 feet along same to a concrete monument;
8.  $72^{\circ} 56'$  197.1 feet along same to a concrete monument;
9.  $55^{\circ} 54' 22''$  134.0 feet along same to a concrete monument; 25.0 feet makai of the center line of Maui Belt Road, thence
10. Along 25.0 feet Makai of center line of Maui Belt Road, along curve to the left, the long chord of which is  $148^{\circ} 43' 04''$  163.46 feet and whose radius is 120.0 feet;
11.  $98^{\circ} 16'$  117.4 feet along same;
12.  $72^{\circ} 48'$  129.31 feet along same;
13.  $216^{\circ} 30'$  489.61 feet along Lot conveyed to Heirs of Mary Mattson by East Waipio Partition Deed, to a concrete monument;
14.  $231^{\circ} 29'$  190.0 feet along Lot 12 of Huolo Hui Partition Deed to a concrete monument;
15.  $216^{\circ} 30'$  323.25 feet along same; across Waipio Stream;
16.  $207^{\circ} 29'$  568.04 feet along same to a concrete monument which



marks the Northeasterly corner of said Lot 12;

- 17. 540° 10' 32.05 feet across old road to a concrete monument;
  - 18. 138° 48' 85.1 feet along 15.0 feet makai of the center line of old government road;
  - 19. 125° 30' 188.7 feet along same;
  - 20. 138° 58' 122.5 feet along same to a concrete monument which marks the Southeasterly corner of Lot conveyed to Manuel Burana by E.M.I. Co. Exchange Deed;
  - 21. 260° 30' 143.6 feet along said Lot to a concrete monument;
  - 22. 260° 30' 223.2 feet along same to a concrete monument;
  - 23. 260° 30' 369.1 feet along same to a concrete monument;
  - 24. 260° 30' 210.2 feet along same to point of beginning;
- Containing an Area of 24.91 Acres.

Excepting and Reserving from the grant of said Lot II the following five parcels of land, to-wit:

1. Huelo Church Lot: All that parcel of land having the following description by survey:

Beginning at a concrete monument at the Northwesterly corner of the lot, the said monument being 75° 51' 48.0 feet from E.M.I. Co. Trig. Station #92 "Papaiakea", the coordinates of which Trig. Station are 1511.6 feet North, 17767.1 feet East, referred to Government Survey Trig. Station "Kapuai", and running from said point of beginning by true azimuths:

- 1. 300° 30' 208.0 feet along Kula;
- 2. 30° 30' 310.7 feet along Kula to a point on the makai side of the old Government Road;
- 3. 74° 00' 56.6 feet along makai side of said road;
- 4. 88° 35' 22.6 feet along same;
- 5. 118° 19' 35.74 feet along same;
- 6. 146° 51' 21.93 feet along same to a 3/4 inch driven pipe;
- 7. 177° 28' 174.8 feet along road;
- 8. 210° 30' 208.0 feet along kula to point of beginning.

Containing an Area of 1.54 Acres.

2. New Hailu Ditch Tunnel Strip: All that strip of land 30.0 feet in width, the center line of which has the following description by survey:

Beginning at a point on the Easterly boundary of the first above described land, said point being  $38^{\circ} 30' 97.7$  feet from end of Course 13 of said land and whose coordinates are 867.76 feet North, 16945.66 feet East referred to Government Survey Trig. Station "Kapuai", and running by true azimuths:

1.  $311^{\circ} 42' 485.66$  feet to a point on the Easterly boundary of the above described lot, said point being  $72^{\circ} 36' 45.73$  feet from end of Course 7 of said lot and whose coordinates are 192.87 feet North, 17278.93 feet East referred to Government Survey Trig. Station "Kapuai".

Containing an Area of 0.32 Acre.

3. Road to Church: All that Strip of land 30.0 feet in width, the center line of which has the following description by survey:

Beginning at a point on the Mauka side of Old Government Road, said point being  $19^{\circ} 52' 437.16$  feet from E.M.I. Trig. Station #92 "Papaiakea", the coordinates of which Trig. Station are 1511.5 feet North, 17767.1 feet East referred to Government Survey Trig. Station "Kapuai" and running from said point by true azimuths:

1.  $3^{\circ} 49' 62.7$  feet;
2.  $356^{\circ} 05' 194.7$  feet;
3.  $343^{\circ} 38' 40.7$  feet;
4.  $334^{\circ} 59' 55.12$  feet to a point on the Easterly boundary of the above described land, the said point being  $216^{\circ} 01' 110.03$  feet from a concrete monument which is described as the end of Course 5 of the said land, whose coordinates are 667.34 feet North 17596.95 feet East, referred to Government Survey Trig. Station "Kapuai";

And beginning again at a point on the Easterly boundary of the said land, the said point being  $24^{\circ} 06' 38" 43.77$  feet from the end of Course 6 of the said land, whose coordinates are 289.35 feet North, 17322.14 feet East and referred to Government Survey Trig. Station "Kapuai" and running

1.  $53^{\circ} 25' 45.9$  feet;

2. 68° 39' 57.65 feet;
3. 74° 25' 214.4 feet;
4. 94° 31' 44.6 feet to a point which is 25.0 feet makai of center line of present Government Road, said point having the coordinates 145.13 feet North, 16953.28 feet East, referred to Government Survey Trig. Station "Kapuai".

Containing an Area of .60 Acre.

4. Old Government Road Strip: A strip of land, 30 feet in width for the old government road which crosses the above described Land. Said right of way to be along the road as now constructed.

Containing an Area of 0.45 Acre.

5. Trig. Station "Papaiakea": A circular piece of land having a radius of five (5) feet centered on the Triangulation Station known and described as E.M.I. Trig. Station #92 "Papaiakea", the coordinates of which station are 1511.5 feet North, 17767.1 feet East, referred to Government Survey Trig. Station "Kapuai", the said parcel of land having an area of 78.5 square feet; together with a perpetual easement for a right of way for access to and egress from said Trig. Station "Papaiakea".

Lot III. All that parcel of land situate in East Waipio, having the following description by survey and being comprised of a portion of Grant 3214 to Papaiakea, portion of L.C.A. 4964B Apana 5 to Kaiewe, and portion of L.C.A. 5392B Apana 2 to Kawahine:

Beginning at a concrete monument on the Westerly Pali of a deep gulch at the Northeasterly corner of East Waipio, said monument being a common point between Grants 3214 and 2079:3 and is 230° 47' 57" 585.6 feet from E.M.I. Co. Trig. Station #92 "Papaiakea" whose coordinates are 1511.60 feet North, 17767.10 feet East referred to Government Survey Trig. Station "Kapuai", and running by true azimuths:

1. 80° 30' 210.2 feet along kula to a concrete monument;
2. 80° 30' 369.1 feet across gulch to a concrete monument;
3. 80° 30' 223.2 feet along kula to a concrete monument on the Easterly Pali of East Waipio Stream;
4. 80° 30' 143.6 feet down Easterly Slope of East Waipio Gulch to a concrete monument 15.0 feet makai of center line of former Government Road;
5. 138° 58' 60.3 feet along the makai side of said road;



6. 187° 00' 138.9 feet along same;
7. 146° 45' 40.8 feet along same to a 3/4 inch driven pipe;
8. 208° 45' 220.9 feet along lot conveyed by E.M.I. Co., Ltd.  
to Mrs. Soares to a 3/4 inch driven pipe;
9. 146° 45' 218.0 feet along same to a 3/4 inch driven pipe;
10. 208° 45' 118.4 feet along Lot 1 of West Waipio Partition  
Deed to a concrete monument;
11. 208° 45' 832.0 feet along same to a concrete monument;
12. 208° 45' 488.5 feet along same to a concrete monument near  
sea pali;
13. 259° 30' 61.64 feet along sea pali;
14. 255° 43' 161.17 feet along same to a concrete monument;
15. 325° 13' 57" 20.54 feet along Grant 207913 to a concrete monu-  
ment;
16. 336° 15' 367.1 feet along L.C.A. 5392B Apana 1;
17. 344° 37' 34" 159.78 feet along same;
18. 251° 15' 85.2 feet along same to the center of stream,  
thence
19. Up center of stream to the makai side of poalima in L.C.A. 4964B  
Apana 5, the direct azimuth and distance  
being 335° 41' 31" 93.8 feet;
20. 73° 31' 54" 25.12 feet along poalima;
21. 350° 00' 106.9 feet along same;
22. 87° 00' 34.3 feet along same;
23. 354° 00' 48.2 feet along same;
24. 258° 00' 20.1 feet along same to center of East Waipio  
Stream; thence
25. Up center of said stream to the Southwesterly corner of Lot 14 of  
Huele Hui Partition Deed, the direct  
azimuth and distance being 349° 19' 11"  
245.35 feet; thence
26. Up center of stream along Lot 10 of Huele Hui Partition Deed to  
concrete monument, the direct azimuth  
being 4° 10' 41" 826.99 feet;
27. 47° 45' 40" 247.27 feet up Westerly slope of Gulch to the point  
of beginning.

Containing an Area of 36-75/100 Acres.

Lot IV. All that parcel of land situate in Puolua and Huele.



having the following description by survey, and being comprised of all of Grant 1686 to Okuu, all of Grants 1900 and 1921 to Kawaha, and a portion of L.O.A. 520 Apana 1 to J.D. II.

Beginning at a concrete monument on the Westerly pali of Puolua Gulch said monument being 121° 57' 35" 560.98 feet from E.M.I. Co. Trig. Station, #125 "Puu O Hawaii", the coordinates of which Trig. Station are 92.4 feet South, 18387.4 feet East, referred to Government Survey Trig. Station "Kapuai", and running from said point of beginning by true azimuths:

1. 229° 40' 137.91 feet along Puolua Government remnant to a 3/4 inch driven pipe;
2. 72° 30' 134.32 feet along same;
3. 85° 11' 39" 45.82 feet along same to a concrete monument;
4. 190° 30' 128.7 feet along Grant 1901 to Paukai;
5. 189° 00' 178.2 feet along same to a 3/4 inch driven pipe;
6. 930° 30' 110.62 feet along same to a 3/4 inch driven pipe;
7. 187° 00' 298.58 feet along said government remnant to a 3/4 inch driven pipe;
8. 283° 45' 185.7 feet along same to a 3/4 inch driven pipe;
9. 297° 51' 55" 330.94 feet along same to a 3/4 inch driven pipe;
10. 24° 45' 249.08 feet along same to a 3/4 inch driven pipe;
11. 222° 40' 561.43 feet along same to a concrete monument on the mauka side of old government road;
12. 275° 28' 25" 26.0 feet along mauka side of old government road;
13. 277° 53' 145.0 feet along same to a 3/4 inch driven pipe;
14. 12° 52' 272.37 feet along lot conveyed to Mrs. Abigail Kahiamoe to a 3/4 inch pipe on the Westerly edge of Kanehoi Gulch;
15. 65° 08' 103.08 feet along same;
16. 44° 25' 189.62 feet along same;
17. 81° 03' 249.3 feet along Puolua Gulch;
18. 57° 58' 86.2 feet along same;
19. 40° 35' 192.7 feet along same;
20. 82° 49' 145.0 feet along same to a point of beginning.

Containing an Area of 7.75 Acres.

Lot V. All that portion of land situate in Honokala, having the following description by survey, and being comprised of a portion of Grant 3263 to Namale and Mahi, and a portion of Grant 2041 Lot 1 to

## Reed and Norton:

Beginning at a concrete monument at the Southeasterly corner of L.C.A. 6510D Apana 2 to Manoa, said monument being  $32^{\circ} 11'$  243.47 feet from E.M.I. Trig. Station #81 (Hoolawa #3) the coordinates of which Trig. Station are 5028.2 feet North, 13061.6 feet East referred to Government Survey Trig. Station "Kapuai", and running from said point of beginning by true azimuths:

1.  $178^{\circ} 30'$  860.0 feet along L.C.A. 6510D Apana 2 to Manoa along the Easterly pali of Hallimaumau Gulch to Concrete monument;
2.  $222^{\circ} 15'$  425.7 feet along L.C.A. 6516 D Apana 2 to Hooopu along kula to a concrete monument;
3.  $253^{\circ} 44'$  211.3 feet along Government Reservoir across a small gulch to a concrete monument;
4.  $205^{\circ} 30'$  198.7 feet along Grant 1266 to Kipawale across kula to a concrete monument on the Westerly side of a 30.0 foot Road;
5.  $354^{\circ} 57'$  37.9 feet along Westerly side of 30.0 foot Road;
6.  $339^{\circ} 46'$  80.7 feet along same;
7.  $354^{\circ} 33'$  103.5 feet " "
8.  $339^{\circ} 43'$  110.8 feet " "
9.  $3^{\circ} 02'$  29.0 feet " "
10.  $25^{\circ} 51'$  72.0 feet along same;
11.  $19^{\circ} 31'$  66.4 feet along same;
12.  $23^{\circ} 40'$  150.6 feet " "
13.  $20^{\circ} 43'$  78.7 feet " "
14.  $42^{\circ} 16'$  69.8 feet " "
15.  $12^{\circ} 19'$  110.5 feet " "
16.  $20^{\circ} 00'$  79.7 feet " "
17.  $44^{\circ} 15'$  32.9 feet " "
18.  $62^{\circ} 50'$  92.0 feet " "
19.  $42^{\circ} 32'$  78.2 feet " "
20.  $21^{\circ} 10'$  88.0 feet " "
21.  $26^{\circ} 55'$  138.7 feet " "
22.  $327^{\circ} 51'$  89.4 feet " "
23.  $276^{\circ} 10'$  64.0 feet " "
24.  $234^{\circ} 17'$  48.7 feet " "
25.  $205^{\circ} 08'$  25.1 feet " "

26.	290°	18'	32.9 feet along same;
27.	316°	25'	36.8 feet along same;
28.	325°	40'	77.1 feet " "
29.	327°	04'	44.5 feet " "
30.	357°	49'	53.9 feet " "
31.	52°	23'	167.4 feet " "
32.	23°	39'	161.0 feet along same;
33.	39°	37'	86.6 feet " "
34.	68°	54'	135.4 feet along same;
35.	85°	27'	162.2 feet " "
36.	46°	58'	60.5 feet " "
37.	352°	48'	250.0 feet " "
38.	338°	59'	174.15 feet " "
39.	17°	00'	203.0 feet " "
40.	46°	28'	156.8 feet along same to a concrete monument 25.0 feet wakai of Center line of present Government Road;
41.	130°	00'	23.0 feet along a 25.0 feet wakai of center line of said road;
42.	108°	23'	40.6 feet along same;
43.	78°	26'	38.9 feet " "
44.	52°	55'	114.6 feet along same;
45.	71°	28'	20.9 feet along same;
46.	85°	22'	22.25 feet along same;
47.	119°	55'	23.7 feet " "
48.	166°	54'	9.7 feet " "
49.	195°	34'	14.1 feet " "
50.	209°	38'	119.8 feet " "
51.	201°	38'	60.6 feet " "
52.	167°	20'	46.4 feet " "
53.	165°	13'	50.1 feet " "
54.	145°	05'	154.5 feet " "
55.	172°	20'	39.8 feet " "
56.	199°	19'	99.5 feet " "
57.	179°	30'	50.2 feet " "
58.	163°	18'	55.1 feet " "
59.	147°	43'	48.9 feet " "
60.	133°	35'	76.8 feet along same;

61. 106° 21' 42.4 feet along same;
62. 73° 12' 25.3 feet along same to a concrete monument;
63. 183° 00' 328.4 feet along Easterly side of a 30.0 foot road to a driven pipe;
64. 185° 30' 350.0 feet along same to a concrete monument;
65. 268° 15' 132.9 feet along Grant 2125 to Naopu to a concrete monument on the South Westerly corner of L.C.A. 6510D Apana 2 to Manoa;
66. 266° 24' 338.0 feet along said Apana 2 to point of beginning.  
Containing an Area of 33.80 Acres.

Excepting and Reserving from the grant of said Lot V the following four parcels of land, to-wit:

6. New Haiku Ditch and Tunnel Strip: All that strip of land 30.0 feet in width, the center line of which having the following description by survey:

Beginning at a point on the Easterly boundary of the lot, the said point being 4° 59' 53" 1477.6 feet from E.M.I. Co. Trig. Station #81 "Hoolawa #3" the coordinates of said Trig. Station are 5028.2 feet North, 13061.6 feet East referred to Government Survey Trig. Station "Kapuai" and running from said point of beginning by true azimuths:

1. 94° 48' 290.45 feet to a point on the Westerly boundary of said lot, the said point being by true azimuth 16° 06' 40" 1506.88 feet from E.M.I. Trig. Station #81 "Hoolawa" #3 the coordinates of said Trig. Station are 5028.2 feet North, 13061.6 feet East referred to Government Survey Trig. Station "Kapuai".

Containing an Area of 0.2 Acre.

7. Trig. Station "Hoolawa #3": A circular piece of land having a radius of five (5) feet centered on the Triangulation Station known and described as E.M.I. Trig. Station #81, "Hoolawa #3", the coordinates of which Station are 5028.2 feet North, 13061.6 feet East, referred to Government Trig. Station "Kapuai", the said parcel of land having an area of 78.5 square feet; together with a perpetual easement for a right of way for access to and egress from said Trig. Station "Hoolawa #3".

8. Old Spreckels Ditch Strip: That certain strip of land, thirty (30) feet wide, heretofore used for the "old Spreckels Ditch", the



course of which is physically apparent on the ground; its location being approximately indicated by parallel dotted lines and marked "Abandoned Spreckels Ditch" upon a blue print of said Lot V dated February 11, <sup>1927</sup>1927; the particular description and area of this strip to be J.F.M. determined by survey hereafter to be made.

9. Roadway Strip: A strip of land, reserved for a roadway, twenty (20) feet in width extending across said Lot V from course 36 of the foregoing description of Lot V by the most direct practicable route to the Easterly end of course 66 of said description of Lot V, the location thereof being approximately indicated on said blue print by parallel dotted lines and marked (between said courses 36 and 66) "old Road"; the particular location, description and area of this strip to be determined by survey hereafter to be made.

The party of the first part hereby further excepting and reserving unto itself from its foregoing grant of said lands all of the water and water rights of every kind, whether above or below the surface of the ground, belonging or which may be deemed appurtenant to said lands or any of them, whether heretofore actually diverted, withdrawn or utilized by the party of the first part or not.

To have and to hold all and singular the said several parcels of land above granted and described, with all rights, easements, privileges and appurtenances thereunto belonging, save and except as to the several parcels of land, water rights and easements excepted and reserved as aforesaid, unto the party of the second part, his heirs and assigns forever.

And the party of the first part does hereby covenant with the party of the second part that it is the lawful owner in fee simple of the lands by it hereinabove granted unto the party of second part; that the same are free from all incumbrances (except as to the rights, easements and interests excepted and reserved from said grant thereof as aforesaid); and that it will and its successors shall warrant and defend the same unto the party of the second part, his heirs and assigns, forever, against the lawful claims and demands of all persons, except as aforesaid.

And this Indenture further witnesseth: That the party of the second part, in consideration of the foregoing grant to him made by the party of the first part, and by way of exchange therefor, does hereby grant and convey unto the party of the first part, its successors and assigns,

Manuel  
Burans  
& wf.

With

East Maui  
Irrigation  
Co., Ltd.

Exchange/D.

all of the following parcels of land and interests in lands situate in the District of Hamakualoa and Koolau, said Island of Maui, to-wit:

Lot A. All of the land of Grant 1264 to Kahalelanu, at Honopou, Hamakualoa, having an area of 10.4 acres, more or less; the same having been conveyed to the party of the second part (in the name "Manuel Burns") by deed from Elikapeka K. Pa dated January 14, 1913, recorded in the Bureau of Conveyances in Honolulu, Oahu, Territory of Hawaii in Book 388 at page 211.

Lot B. All of the land of Land Commission Award 3236 to Pia, in Honopou, Hamakualoa, consisting of two apanas, of which Apana 1 has an area of 0.31 acre and Apana 2 has an area of 14.90 acres, more or less; the same having been conveyed to the party of the second part by said deed from Elikapeka K. Pa.

Lot C. All of Apana 3 of Land Commission Award 5459-G, Royal Patent 4063, to Mahoe, in Puolua, Hamakualoa, having an area of approximately 0.83 acres; the same having been conveyed to the party of the second part by deed from Antone R. Souza, Jr., dated April 4, 1916, recorded in said Bureau of Conveyances in Book 442 at page 39.

Lot D. All of Apana 1 of Land Commission Award 6510-P, Royal Patent 4951 to Kanui, at Puolua, Hamakualoa, having an area of approximately 4 acres; the same having been conveyed to the party of the second part by said deed from Antone R. Souza, Jr.

Lot E. All of the land at Waiuku, Koolau, described in Land Patent No. 4627 issued to Eliza dos Reis (later married to Eugene S. Capellas), having an area of 96 acres; the same having been conveyed by said patentee, in her married name of Eliza R. Capellas, to Joe De Coite (in the name of "Joe De Coito") by deed dated September 30, 1925, recorded in said Bureau of Conveyances in Book 787 at page 397, and by said Joe De Coite conveyed to the party of the second part (in the name "Manuel Burns") by deed dated October 3, 1925, recorded in said Bureau of Conveyances in Book 787 at page 398.

Lot F. An undivided 1/19th interest, amounting to approximately 5.63 acres undivided, in the land of Grant 1911 to Malailua and eighteen others, situate at Pahoa and Waiuku, Koolau; the same being the original share or interest of Kahaukomo who was one of the original nineteen grantees of said Grant 1911; and having been conveyed to the party of the second part by deed from H. Y. Chusk dated April 17, 1922, recorded in said Bureau of Conveyances in Book 564 at page 419.

Lot O. An undivided 1/16th interest, amounting to approximately 9.47 acres undivided, in the land of Grant 2549 to Paula and fifteen others, situate at Pauwahu, Koolau; the same being the original share or interest of Wahapuu who was one of the original sixteen grantees of said Grant 2549; and having been conveyed to the party of the second part by said deed from H.Y. Chuck.

To have and to hold all and singular the several parcels of land and interests in lands above granted and described, with all rights, easements, privileges and appurtenances thereunto belonging, unto the party of the first part, its successors and assigns, forever.

And the party of the second part does hereby covenant with the party of the first part that he is the lawful owner in fee simple of the said lands and interests in lands by him hereinabove granted unto the party of the first part; that the same are free from all incumbrances; and that he will and his heirs, executors and administrators shall warrant and defend the same unto the party of the first part, its successors and assigns, forever, against the lawful claims and demands of all persons.

And Alice Burans, the wife of said party of the second part, in consideration of the grant hereinbefore made to her husband by the party of the first part, and of One Dollar to her paid by the party of the first part, the receipt whereof is hereby acknowledged, does hereby release, remise and forever quitclaim unto the party of the first part, its successors and assigns, all of her right and possibility of dower and other right, title and interest in said property hereinbefore granted by her husband to the party of the first part.

In witness whereof, said parties hereto, and the said Alice Burans, have duly executed this instrument in duplicate the day and year first above written.

(Corporate Seal)

East Maui Irrigation Company, Limited,

By J. Waterhouse, Vice-President.

By J.P. Cooke, Treasurer.

Manuel Burans

Alice Burans

The date 8/11/1917 was changed to read 2/11/1927 before acknowledgment was taken.

A.B.S.

H.P.



On page 11-line 3- 1917 was scored out and 1927 inserted prior to the execution of this document by East Maui Irrigation Co. Ltd.

James F. Morgan, Notary

Territory of Hawaii, )  
County of Maui. ) ss.

On this 23rd day of May A.D. 1927, before me personally appeared Manuel Burans and Alice Burans to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

(Notarial Seal)

A. B. Brause, Notary Public,  
Second Judicial Circuit, Territory of Hawaii.

Territory of Hawaii, )  
City and County of Honolulu. ) ss.

On this 25th day of May, 1927, before me appeared J. Waterhouse and J.P. Cooke, both to me personally known, who, being by me duly sworn, did say that they are respectively the Vice President and Treasurer of the East Maui Irrigation Co. Ltd., and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said J. Waterhouse and J.P. Cooke acknowledged said instrument to be the free act and deed of said corporation.

(Notarial Seal)

James F. Morgan, Notary Public,  
1st Judicial Circuit, Territory of Hawaii.

Entered of record this 8th day of September A.D. 1927 at 9:30 o'clock A.M. and Compared. *Charles J. Williams* Registrar of Conveyances.

James Wakefield  
Wf.

To

Florence M.  
Smith

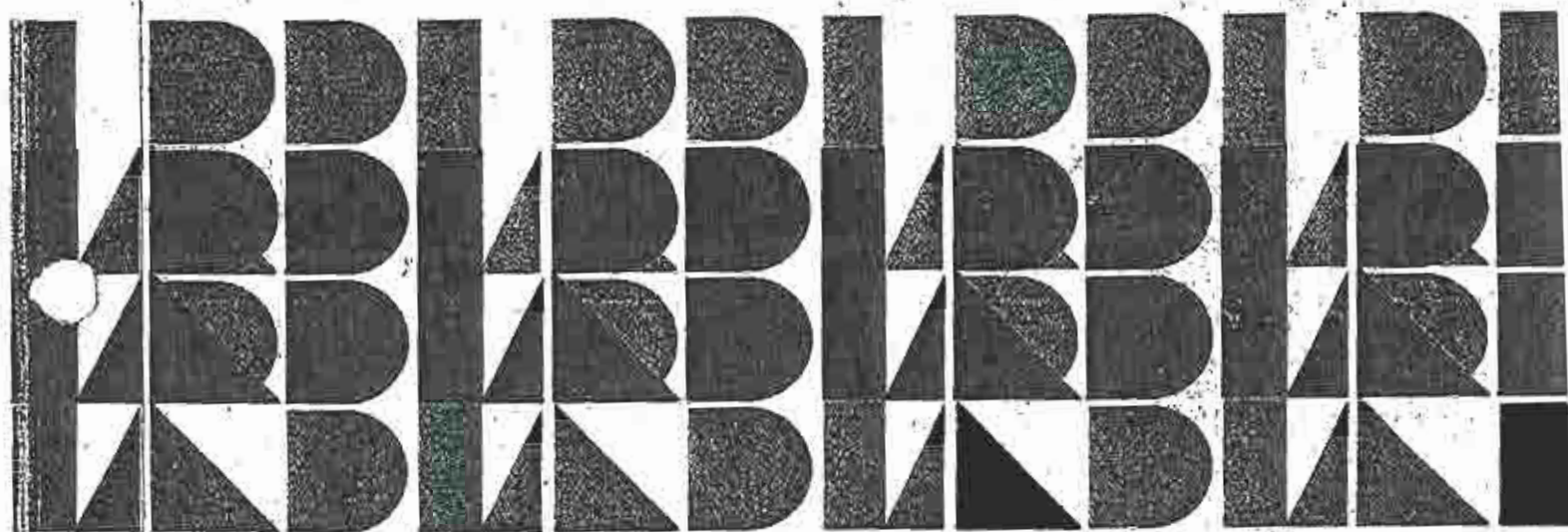
Deed

Know all men by these presents: That James Wakefield of Honolulu, City and County of Honolulu, Territory of Hawaii, hereinafter called the "Grantor", for and in consideration of the sum of Seven Thousand Five Hundred Dollars (\$7,500.00) to him paid by Florence Murphy Smith of Honolulu aforesaid, hereinafter called the "Grantee", the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell and convey unto said Grantee, her heirs and assigns, forever:-

All of those certain lots, pieces or parcels of land (portions of the land described in Royal Patent No. 308, Land Commission Award No. 273, Part 1, to Joseph Booth), situated on the Southwest side of Kaiulani Drive, at Kewalo, Paia, Honolulu, City and County of Honolulu, Territory of Hawaii, being portions of Lots Nos. Forty-Five (45) and



**ROADS IN LIMB**  
**AN ANALYSIS OF THE STATE-COUNTY**  
**JURISDICTIONAL DISPUTE**



LEGISLATIVE REFERENCE BUREAU / STATE OF HAWAII / 198

**ROADS IN LIMBO:  
AN ANALYSIS OF THE STATE-COUNTY  
JURISDICTIONAL DISPUTE**

**Susan Ekimoto Jaworowski  
Researcher**



**Report No. 11, 1989**

**Legislative Reference Bureau  
State Capitol  
Honolulu, Hawaii 96813**

## FOREWORD

Some twenty years ago, when the undersigned was in charge of the division responsible for land matters in the Office of the Corporation Counsel of the City and County of Honolulu, one of the perennial areas of controversy involving the State and the counties was that of jurisdiction over certain roadways, particularly substandard ones. At that time, the problem had been simmering for awhile. Today, the dispute continues, as it will likely continue twenty years from now if no serious consideration is given to the problem and a concerted but cooperative effort is made on the part of all involved to deal with the real issues.

The Bureau has no pretensions that this study will resolve a situation that has existed for so long. However, we do believe that efforts to arrive at a solution must begin with identifying the real problems that exist. It is with that approach the Bureau hopes to make a positive contribution. Only if the principals involved adopt an attitude of mutually striving to arrive at a consensus of what has to be done rather than one of saying the responsibility lies elsewhere, will the parties have made the first genuine attempts at resolving a situation whose correction is long overdue.

The Bureau extends its thanks to Corporation Counsels Richard Wurdeman, Glenn Kosaka, and Richard Miyamoto; County Attorney Michael Belles; Assistant Corporation Counsel Steven Christensen; Deputy Attorney General Dawn Chang; Hugh Y. Ono, Chief Engineer, Department of Public Works, County of Hawaii; Fred Chan, Chief of the Land Survey and Acquisition Division, Department of Public Works, City and County of Honolulu; Fred Shinsato, State Maintenance Engineer, Department of Transportation; Calvin Tsuda, Executive Assistant to the Director, Department of Transportation; and Norm Arthur, Deputy Division Administrator, Federal Highways Administration, U.S. Department of Transportation. Without the assistance and cooperation of the named individuals and others, the completion of this report would have been that much more difficult.

Samuel B. K. Chang  
Director

November 1989

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## **Chapter 1**

### **INTRODUCTION**

#### **Nature and Scope of the Study**

The House of Representatives of the Fifteenth Legislature of the State of Hawaii, Regular Session of 1989, adopted House Resolution No. 38, H.D. 2 (see Appendix A), requesting the Legislative Reference Bureau to study the issue of roadway jurisdiction disputes between the State and the counties. H.R. No. 38 described the origin of the jurisdictional dispute as arising in 1963 when public highways were separated into two categories: state highways under the jurisdiction of the Department of Transportation, and county highways, which comprise all other public roads. The State has since claimed that this and subsequent legislative enactments transferred title and maintenance responsibilities to the respective counties. The counties have cited an Intermediate Court of Appeals decision, *Santos v. Pereira*,<sup>1</sup> to support their position that the counties are only responsible for roads accepted or adopted by the County Council. The State and counties have been at an impasse over this conflict, and neither side is willing to take jurisdiction over these roads with their concomitant expense for maintenance, upgrading, and repair.

#### **Objective of the Study**

H.R. No. 38 requested the Legislative Reference Bureau to analyze the dispute between the State and the counties, suggest alternatives for settling the jurisdictional disputes, and identify all roadways whose jurisdiction is in question using data supplied by state and county authorities.

This report is organized into six chapters. Chapter 1 discusses the nature and scope of the study. Chapter 2 describes the problem and the positions taken by the State and the counties. Chapter 3 contains a historical analysis of the problem, including the legislative history of the relevant statutes. This chapter also discusses and analyzes the positions of the parties. Chapter 4 discusses the solutions proposed by the State and the counties. Chapter 5 divides the problem into five basic components and suggests ways to resolve each aspect. Last, chapter 6 makes findings and recommendations.

Appendix B contains a listing of specific disputed roads according to state and county lists.

#### **ENDNOTE**

1. 2 Haw. App. 387, 633 P.2d 1118 (1981).

## **Chapter 2**

### **HOW THE PROBLEM AROSE**

The responsible government has a duty  
to keep its highways  
in reasonably safe condition.<sup>1</sup>

For residents throughout the State, attempts to get certain roads maintained, repaired, or improved end in frustration. When calls for assistance are made to the county, the county refers them to the State. When calls are made to the State, the State refers them back to the county. The jurisdiction over these roads remains in dispute, and it is the residents who pay the price.

This jurisdictional dispute was characterized in H.R. No. 38, the resolution requesting this study during the 1989 legislative session, as arising from the State Legislature's 1963 decision to divide the roads into two categories, state and county. However, the real roots of the problem reach back much further than that, and a more detailed analysis of roads in Hawaii is necessary to understand the scope of the problem and possible solutions.

Confusion over who owns roads in Hawaii stems from several sources. First, there is no complete and accurate list of roads in the State. In preparation for this study, the Bureau contacted the departments of public works for all four counties as well as the state Departments of Transportation (DOT), and Land and Natural Resources (DLNR). The DOT has a complete list of state highway roads only. The DLNR has a partial list of disputed roads on Oahu compiled by the City and County of Honolulu and has no list at all for the other counties.<sup>2</sup> Lists received from the counties were not complete. A listing of the disputed roads, as far as is ascertainable, is contained in Appendix B. As all roads in the State are not known, it is not surprising that disputes as to ownership -- be it State, county, or private -- have occurred.<sup>3</sup>

Second, ownership of government roads is complicated by the varied ways that a road can become public. If the State or a county chooses to create a planned public road, no dispute as to ownership would exist. In some situations, however, a public road can be forced on the government. A private party developer can construct a road in compliance with county standards, and, pursuant to statute, turn the roads over to the county upon completion without the need for county approval.<sup>4</sup> Also, and more troublesome, if a private road or parcel of property is used consistently by the public, an unplanned public road by easement could be created.<sup>5</sup> This category of roads is not within the scope of this report as these roads are not "public highways" under the statute.<sup>6</sup> Roads created by easement generally have other problems also, such as a lack of an accurate metes and bounds description.<sup>7</sup>



## HOW THE PROBLEM AROSE

Third, some public roads are not formally recorded, so that their existence or exact location may not be known by the government.<sup>8</sup> Even for roads whose boundaries are known, there may be a dispute as to the road's ownership and exact dimensions because the road has no metes and bounds description. The lack of a metes and bounds description is generally a characteristic of the disputed roads. When the Highways Act was enacted in 1892, it declared as public highways all roads existing at that time, even those built by private parties who had dedicated, surrendered, or abandoned the roads to the government.<sup>9</sup> The government thus obtained title to many roads without having a complete description or metes and bounds survey. In other cases, the roads may have been obtained at a time when the need for a complete and expensive metes and bounds survey may not have been as apparent as it is today, or, in some instances, because title documentation has been lost.

Different branches of the government may have jurisdiction over, or other ties to, public roads. Roads under the jurisdiction of the State fall into several categories. The most prominent of these is roads under the jurisdiction of the state Department of Transportation. These are the roads that comprise the state highway system,<sup>10</sup> and there is no dispute as to their ownership: the State owns and maintains them. The Department of Hawaiian Home Lands owns title to roads under its jurisdiction, but these roads are to be maintained by the counties pursuant to the State Constitution.<sup>11</sup> Other state agencies, such as the Department of Corrections, also have roads on land under their jurisdiction, but these roads are not in dispute.

The roads that are in dispute fall nominally within the jurisdiction of the Department of Land and Natural Resources (DLNR). The DLNR apparently has paper title to many of these roads, which are also referred to as the "old government roads." The counties generally consider these roads to be state-owned since that is what the title documents reflect. The State, however, relies on a series of statutes that will be described in chapter 3 for the proposition that these roads have become county property by operation of law.<sup>12</sup> The counties, on the other hand, take the position that the State cannot thrust responsibility for these roads on them without the counties' approval, and that unless the county does accept a particular road, that road remains with the State.

Some efforts have been made to alleviate the problem, such as a pilot project consolidating maintenance of all roads with the counties,<sup>13</sup> or by policy meetings<sup>14</sup> or other studies,<sup>15</sup> but these efforts have not produced a lasting result.

These positions have the practical effect of leaving a significant number of roads in all four counties in substandard conditions and without routine maintenance because no government body will accept responsibility for them. Occasionally, the State or county will perform minimal maintenance on a road, largely due to community pressure, but will do so only as a humanitarian gesture while still disclaiming ultimate responsibility.<sup>16</sup>

This situation has negative effects for all who use or depend on these disputed roadways throughout the State. An individual cannot get a pothole patched or a needed guardrail installed.<sup>17</sup> All drivers who use these unmaintained roads (some of which are frequent commuter routes) face the slow traffic occasioned by poor roads and experience extra costs from wasted fuel, excessive tire wear, and extra vehicle repairs.<sup>18</sup> Society as a whole also suffers when roadway jurisdiction is in dispute as these roads are less likely to be cared for than roads over which there is no dispute, and this situation can eventually lead to a breakdown in the infrastructure.<sup>19</sup>

The roadway jurisdiction problem is not simply one of statutory interpretation, and will not be solved merely by more legislation without considering the components of the problem. These components, which will be discussed in detail in the ensuing chapters, are the historical background, the legislative history, and five practical considerations: liability for traffic accidents, road title, metes and bounds description, maintenance responsibilities, and, most importantly, funding. Only when all or most of these factors are considered in the context of this problem will a workable solution occur.

### ENDNOTES

1. Breed v. Shaner, 57 Haw. 656, 562 P.2d 436 (1977).
2. Memorandum from Mike K. Shimabukuro, Department of Land and Natural Resources, to Johnson Wong, Senior Deputy Attorney General, dated February 3, 1988: "The listing [of roads whose fee title has not been transferred to the county] was compiled by the City and County of Honolulu. We do not have any listing for any of the neighbor island Counties."
3. Some of these roads are prominent and well used. For example, in the City and County of Honolulu, parts of Kamehameha IV Road, Kapolani Boulevard, Nuuanu Avenue, and Piikoi Street are in dispute. On Kauai, information on the ownership and the builder of the main road from Kekaha Town to Kokee is unknown. Conversation with Michael Belles, County Attorney, on June 9, 1989.
4. Hawaii Rev. Stat., §264-1(c).
5. These roads are on private land and have been so widely used by members of the public that the public has gained the right to travel over them by easement.
6. These roads are not state roads under the statute, because they are not within the state highway system. They are also not county roads, because a private road can become a county road only upon acceptance by the county council or compliance with county standards (Hawaii Rev. Stat., §264-1). These roads appear to be privately-owned public roads, although there is no specific provision for such in the statutes. It is presumed that the private owner or owners of the road are responsible for their maintenance even though they may be absentee owners unaware of the road's existence, may not have the funds to maintain the road, and may desperately want to close the road to the public or give it to the government. These privately-owned public roads may often be unmaintained and in poor condition. The Legislature may want to consider the plight of these roads in conjunction with its undertaking to resolve the subject of this study.
7. A metes and bounds description is a formal and legal method of surveying boundaries.

## HOW THE PROBLEM AROSE

8. Problems with formal recordation of public roads occurred almost as soon as the Mahele. It was the practice of the Land Commission administering the land distribution and quieting title "not to include the location of...public roads within large land grants (ahupuaa) because (1) these roads were both known and reserved [to the public] and (2) many large grants were adjudicated in name only and detailed surveys were not immediately done until long after the Land Commission was disbanded." Memorandum from William M. Tam, Dona L. Hanaike, and Beatrice K. Dawson, Deputy Attorneys General, to Deputy Attorneys in the Land/Transportation Division, dated April 26, 1985, p. 2.
9. In re Application of Kelley, 50 Haw. 567, 579, 445 P.2d 538 (1968).
10. See Hawaii Rev. Stat., §264-1 and chapter 264, part III.
11. The Hawaiian Homes Commission Act has been integrated into the State Constitution pursuant to Article XII. These roads do not fall strictly within the bounds of this study as their ownership is not disputed, but will be discussed because their maintenance responsibility is.
12. For example, one such old government road is the Old Pali Highway. According to the State, DLNR held title to the property and DOT had control over the road. When the new Pali Highway was completed, that road took the old road's place in the state highway system. The old road thus was no longer under DOT control, and reverted back to DLNR. The state position is that, at that point, the statute giving to the counties all roads not on the state highway system became effective, automatically transferring ownership of the Old Pali Highway to the City and County of Honolulu. Conversation with Fred Shinsato, Department of Transportation, May 24, 1989.
13. This consolidation occurred in 1968-69, and is described in chapter 4.
14. E.g., the recent Governor's Task Force on State-County Relations. The Task Force issued a draft report. The City and County of Honolulu reported that the counties did not agree with many of its recommendations, so no legislation was introduced. Committee Report 130 on City and County of Honolulu Resolution 88-425, adopted on November 2, 1988. At least one smaller-scale meeting on this issue has been called. Representative Bunda, Senator Hagino, and Councilwoman Rene Mansho held a meeting during the fall of 1989 with representatives from state and county offices to try to resolve roadway jurisdiction for California Road in Wahiawa.
15. See Office of the Ombudsman, Report #18, Fiscal Year 1986-87, at chapter II.
16. See, e.g., "Governor Agrees to Fund Repair of Waianae Road," Honolulu Star-Bulletin, December 15, 1983, p. A-3.
17. Recently the State and the counties have announced a "Pothole Patrol" campaign in which residents can report potholes to a hotline and have them repaired. "Pothole patrol asks public to phone for puka patching," Honolulu Advertiser, August 31, 1989, p. A-3. As the hotline has separate numbers for state and county roads, it remains to be seen whether this service will provide help to the disputed roads.
18. "Bad roads seen costing motorists millions," Honolulu Advertiser, February 2, 1981, p. A-8.
19. This problem has been recognized for many years. Twenty-seven years ago, in discussing this issue, a report stated that improving roadway facilities would benefit everyone: "Highway users benefit through time savings, increased travel convenience, decreased cost of motor vehicle operation, and, in the case of commercial operators, increased profits. Property owners benefit by improved access to their land, and, in the case of agricultural and industrial properties, by improved access to markets. The general public, in

## ROADS IN LIMBO: ANALYSIS OF STATE-COUNTY JURISDICTIONAL DISPUTE

addition to its role as road users or property owners, benefits...through better service from such public vehicles as fire trucks, police cars, ambulances, mail trucks, and school buses, and also from increased economic activity." (Emphasis in original) Public Administration Service, State and Local Government Relations in the State of Hawaii (Chicago: 1962), p. 211 (prepared for the Department of Budget and Review, State of Hawaii).



## Chapter 3

### HISTORICAL AND LEGAL BACKGROUND

1913

Ever since the beginning of county government...there has been a great deal of confusion in regard to the streets, roads, etc.... This bill is designed to place the entire matter in the hands of the Boards of Supervisors of the several counties...where it properly belongs, thus doing away with all confusion and conflict of authority.<sup>1</sup>

1947

The purpose of this bill is to clarify, without extending, the provisions of the present law relating to public highways...and the provisions concerning who shall be in charge of them.<sup>2</sup>

1965

This bill would erase any doubt as to the intent of the Legislature in 1963 when it passed Act 190 to turn over title to county highways.<sup>3</sup>

1966

There presently exists an uncertainty of jurisdiction and responsibility between the State and the several counties in the areas relating to highway ownership, maintenance and repairs[.]... The present Bill would clearly define the counties' responsibility[.]<sup>4</sup>

1981

The purpose of this bill is to clarify the assignment of responsibility for all county highways...to the several counties.<sup>5</sup>

The statements quoted above aptly illustrate the length of time that confusion between the State and the counties has continued about roadway jurisdiction and maintenance for certain disputed roads. The primary source of this confusion has been the statutory law.

One aspect of the problem caused by the statute concerns the definition of "public highway," as the counties contend that it permits the State to classify the roads arbitrarily, and to the disadvantage of the counties. Another aspect arises from the fact that, for many years, ownership of the county roads and responsibility for their maintenance were divorced from each other, with the State holding title while the counties maintained the roads. When

the State sought to rectify this situation, it met strong opposition by the counties to the imposition of additional responsibilities on them.

### Definition of State and County Roads

Prior to the Mahele of 1848, all roads in the Kingdom of Hawaii belonged to the people through the sovereign.<sup>6</sup> After the Mahele, while private roads could be constructed on private property, roads that were formerly public remained so.<sup>7</sup> The Highways Act of 1892 stated that: "All roads...whether now or hereafter opened, laid out or built by the Government, or by private parties, and dedicated or abandoned to the public as a highway, are hereby declared to be public highways."<sup>8</sup>

The counties were established in 1905,<sup>9</sup> and while the counties were given certain rights and duties over roads in the ensuing years, it was not until 1947 that the legislature divided the broad category of public highways into two types: territorial or federal aid highways, and county highways.

It is important to note that no functional distinction between the two kinds of highways was codified in the statute: the territorial or federal aid roads were merely defined as "all those under the jurisdiction of the territorial highways engineer or the superintendent of public works pursuant to chapter 89 or any other law."<sup>10</sup> This lack of a functional definition would continue and contribute substantially to the counties' perception of unfairness in the division of roadway responsibility.

The law today substitutes the State for the Territory<sup>11</sup> and is codified in section 264-1(a), Hawaii Revised Statutes:

All roads, alleys, streets, ways, lanes, bikeways, and bridges in the State, opened, laid out, or built by the government are declared to be public highways. Public highways are of two types:

- (1) State highways, which are all those under the jurisdiction of the department of transportation; and
- (2) County highways, which are all other public highways.<sup>12</sup>

This definition still does not include a functional division of roads in determining classification as a state or county road. Its failure to do so opens the definition to charges of arbitrariness. In contrast, in some states the definition of what constitutes a state or local road is functional. State roads can be categorized as main arteries between populated areas such as cities and towns and those leading to public recreational areas. Local roads

## HISTORICAL AND LEGAL BACKGROUND

encompass feeder routes and residential streets. This type of definition is desirable in that it (1) limits the different types of roads that each governmental body must maintain, (2) enables residents to easily ascertain which governmental body to contact for repairs and accidents, and (3) provides for easier identification of the responsible governmental body when a new road is created.

In contrast, Hawaii's system places all choice over road designation with the state DOT, while forcing the county to accept all roads not selected by the DOT for the state highway system. The statutes do not articulate a functional division of responsibility that is perceived as fair by the counties, who shoulder most of the burden of roadway upkeep and maintenance.<sup>13</sup> The apparent arbitrariness of the designation process is a source of concern to the counties, as will be discussed in chapter 4.

### Maintenance Responsibilities

In 1892, the only existing governmental entity was the Kingdom of Hawaii, and the supervision, charge, and control of all public highways was assigned to the Minister of the Interior.<sup>14</sup> The counties were established in 1905, and in the same year the territorial superintendent of public works was substituted for the Minister.<sup>15</sup> However, shortly thereafter, in 1913, the maintenance functions of all public highways was transferred to the boards of supervisors of the respective political subdivisions (i.e., the counties).<sup>16</sup> Maintenance of Hawaiian Home Lands was added to the counties' duties in 1941.<sup>17</sup>

In 1947, the public highways were divided into two classes: territorial or federal aid, and county highways.<sup>18</sup> The county boards of supervisors were given supervisory (i.e., maintenance) authority over the county highways, although the legislative history indicates that the boards of supervisors of the counties previously had this authority.<sup>19</sup>

This section was codified into chapter 265, which was repealed in 1981.<sup>20</sup> In its place, section 265A-1 was enacted,<sup>21</sup> which currently states that:

The several councils or other governing bodies of the several political subdivisions of the State shall have the general supervision, charge, and control of, and the duty to maintain and repair, all county highways[.]

Despite this language, the counties are in fact not maintaining all roads designated as county highways. The continuing confusion over maintenance duties has led to proposed legislation such as Senate Bill No. 738 (1987), in which the maintenance duties were sought to be clarified again. Part of the reason for the continuing confusion lies in the ownership of the roads.

### Ownership of Public Highways

As discussed above, all public highways were originally owned by the Kingdom (later, Republic and Territory) because no other governmental body existed.<sup>22</sup> Although maintenance responsibilities were transferred to the counties in 1913, title to all public highways remained with the State. Even after public highways were divided into two classes in 1947, territorial/federal aid and county roads, the classification was in name only: the roads still belonged to the State. Any private party who wanted to turn over a private road to a county was required to name the State, not the county, as grantee.<sup>23</sup>

The State eventually found this practice inequitable,<sup>24</sup> and attempted in 1963 to remedy the situation. The original intent of Act 190 of the 1963 legislative session was "to provide for the retention of ownership of all county highways by the respective counties[.]"<sup>25</sup> Section 2 of the Act read that "[t]he ownership of all public highways...shall be in the government in fee simple. The term 'government' as used herein shall mean the State with reference to state highways and shall mean the respective counties with reference to county highways[.]" However, an amendment made as the bill passed through the Legislature added section 4, which narrowed the scope of the statute by stating: "The ownership of all county highways heretofore acquired by the counties by eminent domain, purchase, dedication or surrender is hereby transferred to and vested in the respective counties[.]"<sup>26</sup> The definition in section 4 excludes the large category of roads denominated county roads by the State in 1947. The reason for the restriction of ownership to certain county roads does not appear in the committee report. Although section 4 was only a session law, it was codified as a second paragraph to section 142-2 of the Revised Laws of Hawaii 1955.

The inconsistency between the broad language of section 2 and the more narrow scope of section 4 apparently caused some confusion between the State and the counties. The legislature attempted two years later to resolve the conflict between sections 2 and 4 of Act 190 in favor of the broader provision. The legislature enacted Act 221, Session Laws of Hawaii 1965, which deleted the second paragraph of section 142-2 (the prior section 4) and added "the ownership of all county highways is hereby transferred to and vested in the respective counties." (Emphasis added). Senate Standing Committee Report No. 488 on H.B. No. 364, Third Legislature, 1965, which ultimately became Act 221, stated that "[t]his bill would erase any doubt as to the intent of the Legislature in 1963 when it passed Act 190 to turn over title to county highways.... If enacted [this bill] will turn over to the counties title to all county highways."

Another committee report elaborated on the reasons for the transfer:

Your Committee recognizes that the counties have the general supervision and control over and the duty to maintain and repair county highways. The counties also use their own funds to condemn and buy private property for purposes of road widening and



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realignment. It seems inequitable under these circumstances to have the State retain ownership of those county highways.<sup>27</sup>

While this provision appears equitable, it should be noted that this Act also provided that if any county road constructed in whole or in part with state or federal funds should be sold, all of the proceeds were to go to the State. One committee report<sup>28</sup> indicated that amendments were made to transfer the proceeds, up to the amount of federal funds expended, to the state highway fund, which would leave the remainder to the counties. However, the final form of the bill gave all the proceeds to the State.<sup>29</sup>

The legislative history does not indicate the reason for the objection of the counties to the transfer of title to them. The counties already had the duty to maintain and repair the county highways, and in fact prior to 1947 ~~has~~ maintained all public highways. The privilege of owning property that they were bound to care for escaped them, however, because in 1966 the state legislature enacted additional legislation to force the counties to accept title to county highways.

This new legislation, styled an "urgency measure," provided that the Governor could, by executive order, turn over state land in fee simple to any county for use as a county highway, and the county involved would thereafter be responsible for its repair and maintenance as a county highway. The committee reports make the reason for enacting this urgency measure clear. According to committee reports, "[t]his [bill] will solve the problem that arose in the problem of Salt Lake Boulevard Bridge where the county refused to maintain and repair the road because it did not meet county standards."<sup>30</sup> Other problems, including one at Fort Ruger, were also mentioned.<sup>31</sup> The committee report stated that the intent of the legislation was "to provide a mechanism to enable the Governor and the Department of Transportation to establish a coordinated and consistent highway policy."<sup>32</sup>

From these comments, it can be deduced that at least the City and County of Honolulu did not believe that the 1965 Act mandated it to accept at least some of the county roads. However, even if this was their position, the counties were still required to maintain the county roads -- no matter who owned them -- under section 265A-1, Hawaii Revised Statutes. The counties' refusal to maintain all county roads thus denies the impact of two statutes, section 265A-1 giving them maintenance duties and section 264-1 giving them ownership.

With the benefit of hindsight, it appears that the State may have made a tactical error in passing this urgency measure instead of insisting, perhaps through the courts, that the previous legislation bound the counties. The counties could now use the 1966 legislation to logically infer that the 1963 and 1965 legislation was not effective in transferring title by operation of law, because the 1966 legislation would not have been necessary if maintenance duties and ownership had in fact passed to the counties in 1963 and 1965. The fact that the provisions relating to executive orders can be applied to the creation of new roads does not

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negate this inference since the legislative history clearly states that the law was enacted in response to an ongoing refusal by the counties.

Another problem with the 1966 Act establishing the executive order provision is its indecisiveness in whether to force the roads on the counties. As initially introduced, the Act had the phrase, "and the county involved shall have no discretion but shall accept such land as a county highway," thus making it quite clear that the Governor's order was binding on the counties without their consent. This phrase was deleted in the Senate,<sup>33</sup> but restored in the House.<sup>34</sup>

There was some floor debate on the issue of forcing acceptance of the roads on the counties, in which one legislator criticized the bill as allowing the State to:

..."pass the buck" to all counties of this State to allow any road, any bridge, any state highway, to run down into a deplorable condition and then...to turn over and mandate the counties to assume this responsibility without putting it up to the conditions that the various counties decided the road should be, without giving the proper money for any consideration for maintenance, but it will give the administration the power to say, "You will take it because we say so."<sup>35</sup>

It is unclear whether this discussion had an impact on the final version of the bill, for while the version that came out of the Conference Committee emerged without the added language stating that the county would have no discretion to deny acceptance of the road, the word "shall" was retained in the phrase, "and the county involved shall thereafter be responsible for its repair and maintenance," which would indicate that the county was still mandated to accept the road. To further confuse matters, the explanation of the Conference Committee's action contradicts the plain meaning of the word "shall": Representative Oshiro, when asked if the term "shall" still remained in the draft, replied:

Yes, except this -- in the report that we have adopted in the conference committee report, we had the concept of the executive order. As a result, there is no mandate involved in the executive order and furthermore, although there is a word "shall" the "shall" is on the assumption that the executive order is accepted by the counties. (Emphasis added)<sup>36</sup>

It is questionable, however, whether one legislator's contrary explanation would overcome the plain meaning of the bill enacted by the whole Legislature.

The result of the 1966 Act was to complicate the issue and give some support to the counties in their attempts to limit their responsibility for county highways.