

ALAN M. ARAKAWA
Mayor



BRIAN T. MOTO
Corporation Counsel

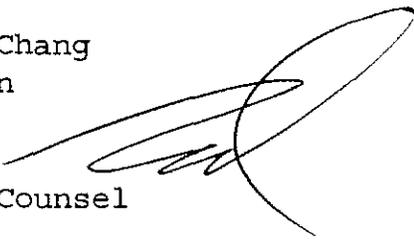
DEPARTMENT OF THE CORPORATION COUNSEL

COUNTY OF MAUI
200 SOUTH HIGH STREET
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TELEPHONE: (808) 270-7740
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January 31, 2006

MEMO TO: George Y. Tengan, Director
Department of Water Supply

ATTENTION: Alva Nakamura/Herb Chang
Engineering Division

F R O M: Ed Kushi, Jr. 
Deputy Corporation Counsel

SUBJECT: REQUEST FOR DETERMINATION AS TO WHICH PROPERTY/PREMISE
THE 5/8 " METER (ACCOUNT NO. 1012742/SERVICE NO. 926-
02300) SHOULD BE ASSIGNED

First, my apologies for not responding sooner to your request of October 4, 2005.

BACKGROUND/DEPARTMENTAL RECORDS.

In reviewing the information provided with your October 4, 2005 request, we understand that a 5/8" water meter, identified by DWS records as Account No. 1012742/ old Service No. 926-02300 ("Subject Meter"), was initially opened and registered in the name of Hideaki Hiromoto, as the Service Holder in 1967. Subsequently, in 1977 the Service Holder changed to Joseph Perreira. Thereafter, in 1983 Sam Viveiros became the Service Holder, as a "Lessee", pursuant to a certain Lease dated June 20, 1983, by Mervin P. Gilliland, Leroy K. Gilliland, and Richard C. Lowry, as "Lessors". The Lease covered those certain parcels identified as TMK: (2) 2-7-012:033 (41.96 acres owned by Mervin and Leroy Gilliland ("Parcel 33")), and TMK: (2) 2-7-012:085 (36 acres owned by Lowry ("Parcel 85")). Thereafter, in 1993

George Y. Tengan

January 31, 2006

Page 2

Tom Morrow became the "Lessee" under said Lease and the subject account was transferred and registered in Morrow's name. Lastly, DWS records reveal mesne transfers in 1998 to Sharon Freitas, and, in September 2005, to the current registered service holder, Guy Gilliland.

Of greater relevance and import than the history of the registered service holder of the Subject Meter is the status and history of the real property(ies) that the Subject Meter served. According to your records and information, the Subject Meter initially served Parcel 33 and Parcel 85. Subsequently, Parcel 33 underwent a series of "family" subdivisions in 1983 (SD No. 83-52), in 1993 (SD No. 92-5), and in 1996 (SD No. 96-44). As a result thereof, from the initial two parcels (*i.e.*, Parcels 33 and 85), there currently are seven parcels.

Attached hereto as Exhibit "A" is a copy of a 1983 tax map which depicts Parcels 33 and 85 in yellow. Attached hereto as Exhibit "B" is a copy of a 2005 tax map, which depicts the current seven parcels in pink. Lastly, attached hereto as Exhibit "C" is a copy of the subdivision plan from SD No. 96-44, the notes of which state: "Existing water meter to be relocated to new service connection to Lot 1-B"; and "Reinstall existing water meter from Lot 1-A". As noted and depicted on said plans, and further documented by DWS' files, Lot 1-B-1 is currently identified as TMK: (2) 2-7-012:166 ("Parcel 166"), and the Subject Meter is physically located on said parcel.

QUESTION.

To which property/parcel is the Subject Meter assigned?

SHORT ANSWER.

Lot 1-B-1 of SD. No 92-5, further identified as TMK (2) 2-7-012:166 (5.0 acres).

DISCUSSION AND APPLICABLE DWS RULES.

Water service means the provision for delivering water to any premises.¹ Premises means a parcel of real property and any structures thereon which has water service, will require water service or requires additional water service and does not exclude subdivisions of a parcel of real property.² Water meter means a device that measures the volume of water delivered to any premises.³ Privileges may be granted only to property owners.⁴ There shall be one meter for each service, unless the department, because of operating necessity, installs two or more meters in parallel.⁵ All meters shall be installed along the property boundary or where reasonably feasible, unless the department, because of operating necessity, installs the meter elsewhere.⁶ The penalty for providing water service to lots other than the lot to which the service is assigned is removal of the meter.⁷

When premises with existing water service are subdivided, the owner may request relocation of the existing meter or a reduced-size meter upon payment of relocation costs. All new premises resulting

¹Section 16-108-2, Definitions, Rules for Water System Development Fees (effective 4/26/93).

²*Id.*

³*Id.*

⁴Section 3-4(a), Application for Water Service and Service Connection, Rules and Regulations of the Department of Water Supply ("DWS Rules") (effective 1/7/77).

⁵Section 3-5(a), Installation of New Water Service, DWS Rules (effective 1/7/77).

⁶Section 3-5(g), Installation of New Water Service, DWS Rules (effective 1/7/77).

⁷Section 16-7-4(f), Water Service Rates, Rules for Charges for Water Service (effective 6/16/97).

George Y. Tengan

January 31, 2006

Page 4

from the subdivision of the original premises are required to have separate water service.⁸

Based on our review and understanding of the facts and historical background, in 1967 the Subject Meter was initially assigned to serve Parcel 33 and Parcel 85. As noted, the DWS Rule penalizing sharing of water service by meter removal was not adopted until 1997 (see note 7). Further, the DWS Rule requirement that new premises resulting from a subdivision obtain separate water service was adopted in 1993 (see note 8). Accordingly, we do not believe that the Subject Meter, which dates from 1967 and is physically located on, and assigned to, Parcel 166, should be removed for violating Section 16-7-4(f) of the Rules for Charges for Water Service, nor should Parcel 85 be required to apply for and obtain separate water service. Although the sharing of water service from the Subject Meter between Parcel 166 and Parcel 85 may prove operationally, financially and/or logistically difficult, we do not believe DWS has the authority to remove the Subject Meter in the circumstances.

CONCLUSION.

The Subject Meter, identified by DWS' records as Account No. 1012742/old Service No. 926-02300, registered in the name of Guy Gilliland, as the service holder, should be assigned to the premises identified as Parcel 166 (i.e., TMK: (2) 2-7-012:166).

Pursuant to DWS Rules, water meters properly applied for, and issued and installed by, DWS attach to, and "run" with, the real property or "premises", irrespective of who, at any point in time, owns or possesses the premises.

We are aware of a contrary position espoused by a certain owner of a lot or lots resulting from the family subdivisions of Parcel 33, which position, in summary, is that DWS water meters should be assigned to the registered service holder, and not to any specified premises. We do not believe such a position is supported or intended by DWS Rules. Further, such a position may result in the untenable

⁸Section 16-108-5(e), Water Service, Rules for Water System Development Fees (effective 4/26/93).

George Y. Tengan
January 31, 2006
Page 5

situation, wherein, for example, a service holder of a water meter serving premises in Central Maui would be able to terminate such service and thereafter transfer such service to premises in Upcountry Maui.

Call if further discussion/clarification is needed.

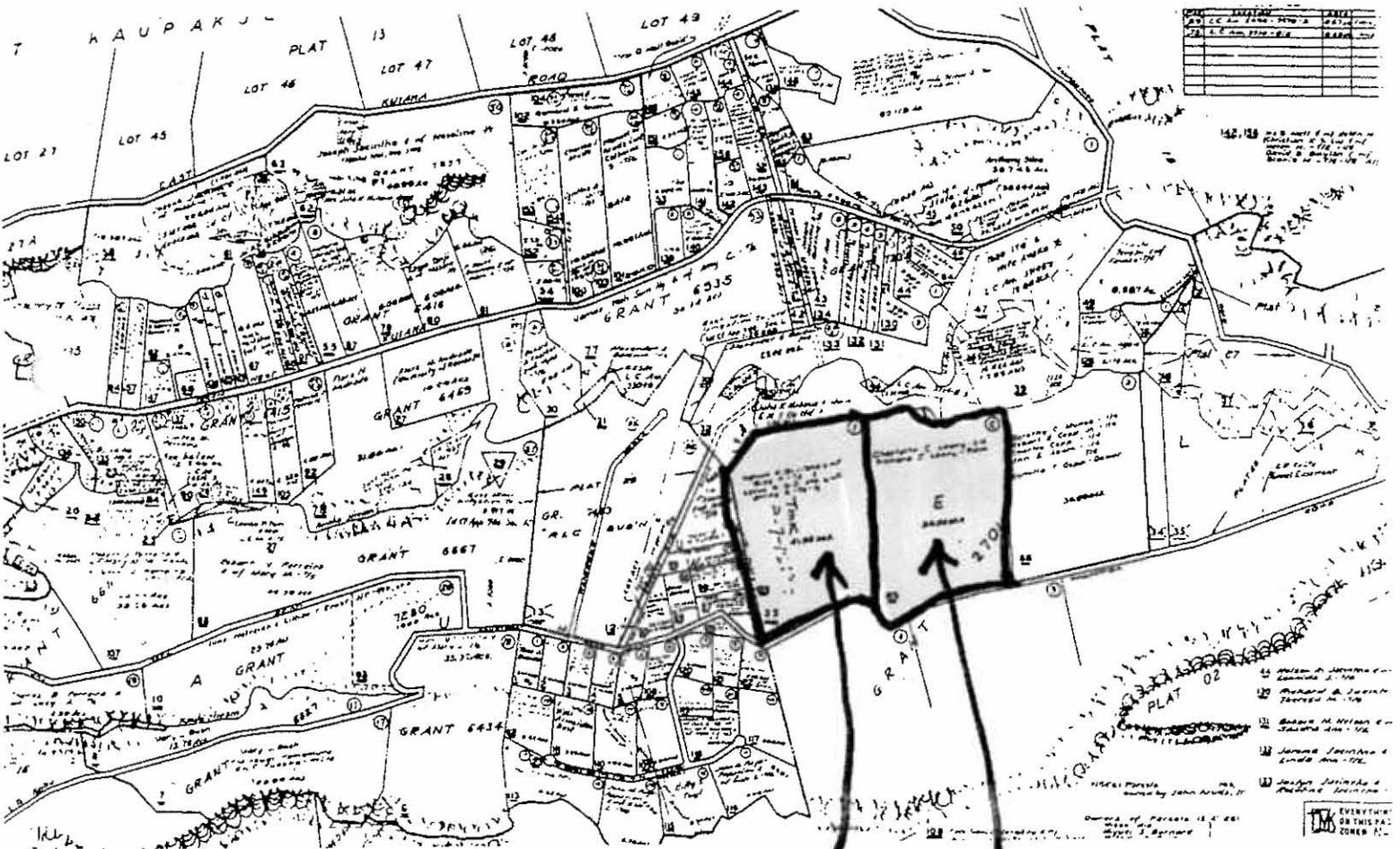
APPROVED FOR TRANSMITTAL:



BRIAN T. MOTO
Corporation Counsel

S:\ALL\Advisory\ESK\memo to gyt re gilliland meter.wpd

cc: Mayor Alan M. Arakawa
Michele White, Legal Assistant

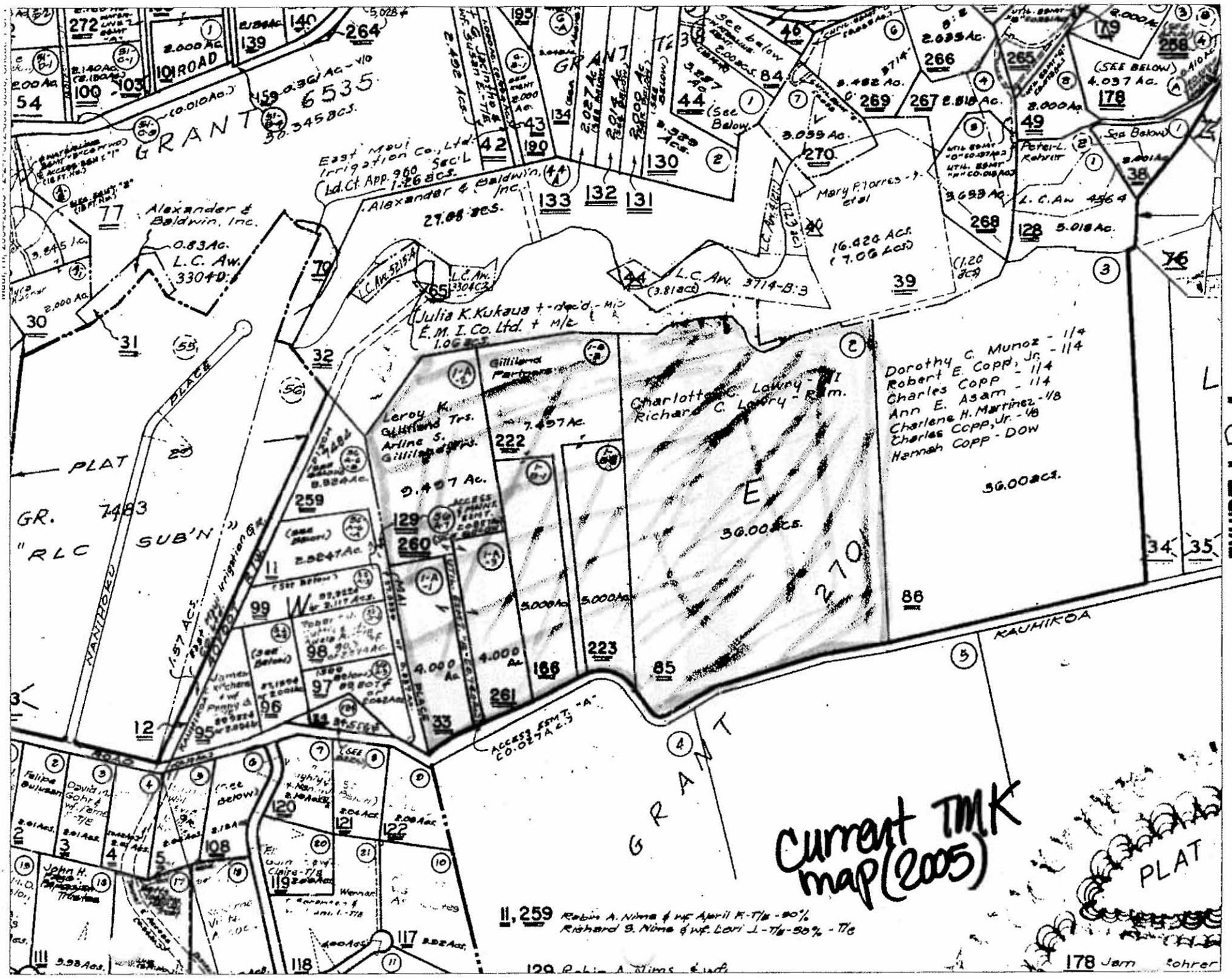


TMK
2-7-12:33

TMK 2-7-12:05

EXHIBIT 'A'

1983 TMK



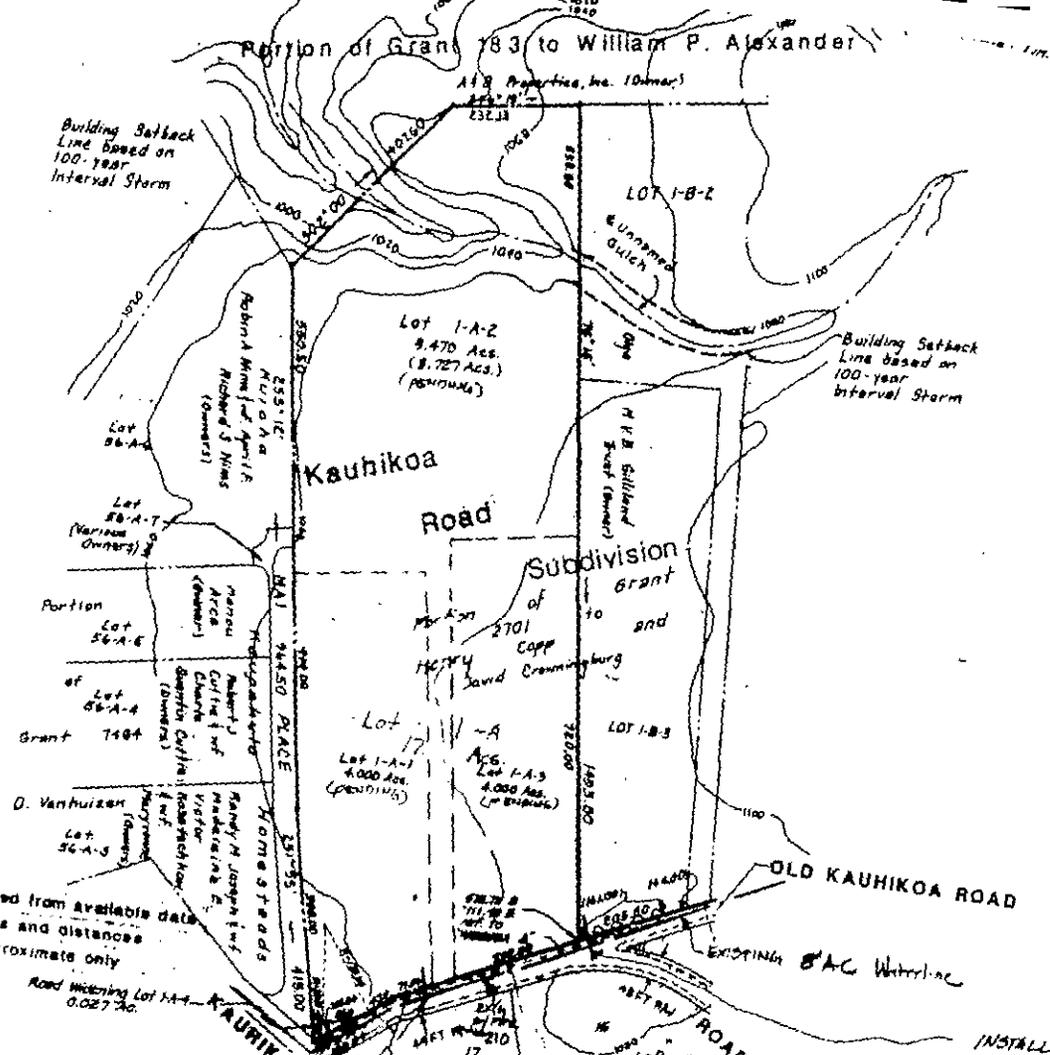
EUBERT R

Current TMK map (2005)

11, 259 Robin A. Nims & wf April E-T/8-90%
Richard S. Nims & wf Lori J-T/8-90% -T/6

129 Robin A. Nims & wf

178 Jam Sohrer



- NOTES:
1. Compiled from available data
 2. All areas and distances are approximate only

EXIST'G WATER MAIN (36") SERVING LOT 1-B. THIS SERVICE WILL BE USED FOR LOT 1-A. SERVICE LATERAL TO BE UPGRADED, IF IT DOES NOT COMPLY TO D. W. S. STANDARDS. EXIST'G WATER MAIN TO BE RELOCATED TO NEW SERVICE CONNECTION TO LOT 1-B

KAHIKOA ROAD SUBDIVISION (PENDING)
 SUBDIVISION OF LOT 1-A
 OF KAHIKOA ROAD SUBDIVISION
 INTO LOTS 1-A-1, 1-A-2, 1-A-3, AND 1-A-4
 BEING A PORTION OF GRANT 2701 TO HENRY
 COPP AND DAVID CROWNINGBURG
 AT PAUWELA, MAKAWAO, MAUI, HAWAII
 LEROY K. GILLILAND TRUST
 ARLINE S. GILLILAND TRUST
 scale: 1 in = 200 ft.

INSTALL 1" SINGLE WATER
 SERVICE LATERAL FOR LOT 1-B
 (TYPE A, 5/8") STANDARD DETAILS BIR
 COPPER TUBING ONLY
 STANDARDS DETAILS FOR WATER
 SYSTEM CONSTRUCTION 1985
 VOLUME 2. REINSTALL
 EXISTING WATER MAIN FROM LOT 1-A

EXHIBIT - C

enlargement of
 sheet 2

