



NA ALA HELE
Hawaii Trail & Access System

January 14, 2019

Ref: M17:06 Makena

TO: Torrie Nohara, Trails Specialist

FROM: D. Moana Rowland, Abstractor *DMR*

SUBJECT: Disposition of "Old Aupuni Road" leading from Makena Landing mauka to Ulupalakua through Tax Plats 2-1-7 and 2-1-8

Research has been completed on the subject trail known as the "Old Aupuni Road" ("Old Government Road"), "Makena Road" and "Makena-Ulupalakua Road". This old road identified on various maps began in the vicinity of the Makena landing at the seashore and traveled upland through the land of Papaanui to Ulupalakua. Records fail to disclose the government has relinquished its interest in this historic road feature.

The earliest depiction of this Old Government Road (OGR) is shown on Grant No. 234 sold by the government to Linton L. Torbert and William Wilcox on March 4, 1850. (Exhibit A) This grant issued in the Hawaiian language cites the OGR in the metes and bounds description as "alanui aupuni kahiko" translated as "old government road." A translation of the metes and bounds description was provided by J. Richardson, a government surveyor who also prepared a sketch of the land sold in Grant 234. (Exhibit B). Survey Notes of this land show the alignment of the OGR began at the seashore and terminated at Ulupalakua in land owned by Calyer.

The OGR leaves the boundaries of Grant 234 and enters land sold to D.K. Calyer in Grant 119 dated April 12, 1849. The signature page for this grant indicates L.L. Torbert paid the consideration of Fifty Six Dollars and Seventy Five cents on behalf of D.K. Calyer for the 75 acre parcel at Ulupalakua. Written in the Hawaiian language the metes and bounds description and Survey Notes (Exhibit C) for this land do not show the OGR crossing Calyer's land grant.

Although not shown in Grant 119, numerous other maps delineate the OGR as shown on Grant 234. An undated map (Exhibit D) filed as Registered Map No. 1202 (RM 1202) titled "Torbert's Map of Ulupalakua", was most likely done sometime in 1850 when Torbert purchased Grant 234 and paid for Grant 119. RM 1202 provides more detail than shown in Grant 234 and clearly shows the road Torbert built is not the same as the OGR. Registered Map No. 791 (Exhibit E) titled "Map of the Makee Plantation, Honuaula, Maui" dated January 1880 identifies the OGR as the "Makena Road." Registered Map No. 1763 (Exhibit F) titled "Map of Honuaula, Maui" originally surveyed

by government surveyor W.D. Alexander in 1866-1879 and by F.S. Dodge in 1881 and E.D. Baldwin in 1883 depicts the OGR as shown on Grant 234.

By the year 1889 the OGR fell into disrepair and the need for a new road was requested by W.H. Cromwell, Chairman of Makawao Road Board to L.A. Thurston, Minister of Interior in a letter that stated in part:

...When ever it would be convenient to you, we would like to have the Engineer come up to lay out the new road from Ulupalakua to Makena. The old road needs repairing, but we would much prefer making a new one...[Hawaii State Archives, Interior Department files].

A portion of a map filed at the State Archives (Exhibit G) titled "Map of Proposed New Road from Makena to Kula, Maui" April 1896 by Hugh Howell indicates the location of the proposed main road as well as existing roads and trails. The existing OGR is shown in the same general location as the previously described Registered Maps. As time went on the OGR fell out of use when another less precipitous road was built to accommodate travel from the ocean to the uplands of Ulupalakua.

Based on the map evidence above, pursuant to the Highways Act of 1892, the State of Hawaii through its Board of Land and Natural Resources may claim fee simple interest in the OGR identified above. This claim has not been affirmed by legal analysis, and all readers of this abstract must understand that only a court can make such a determination. The following discussion will outline the issues that must be addressed before this program can encourage public use, maintenance or construction activities.

Na Ala Hele Administrative Rules

Trails that can be claimed in fee simple by the Department of Land and Natural Resources are under the jurisdiction of the Land Division. Pursuant to Hawaii Administrative Rules 13-130, the Board of Land and Natural Resources (BLNR) must review and approve to designate the trail or trail section as part of the NAH Program. This requires preparation of a Board Submittal that is presented at a public meeting.

Legal Analysis

Generally speaking, the State's position is that if a road or trail existed in 1892, the State (or a county) still owns the feature in fee simple. Ownership is not affected by non-use, no matter how long the non-use has continued. Any claim by the State of Hawaii to a historic or ancient trail is subject to challenge by adjoining landowners, which may require civil action to resolve. If however, the adjoining landowner is convinced of the State's claim based on the evidence provided, ownership of the trail is no longer an obstacle to development.

Physical Location

It is recommended that the trail alignments' physical location be confirmed through a metes and bounds or centerline survey to exactly describe the public access corridor through adjoining lands. This would require a notice be sent to adjoining

landowners informing them of the date(s) and time(s) the survey would be conducted and seek permission to enter upon their land. If a private survey company performs the survey, a copy must be provided to the State Survey Division for their review.

Historic and Archaeological Features

Assistance from Historic Preservation (HP) is necessary to identify any archaeological or burial sites that may be within the trail corridor and determine the proper treatment of the same. This would include the preparation of a Historic Preservation Management Plan (HPMP) on historic and archaeological features located along the corridor. The scope of the HPMP will be determined jointly by HP and NAH staff utilizing existing HP data (if available), collection of information from adjacent private landowners and input from the local community.

The HPMP may be produced by either 1) NAH staff in consultation with HP staff, 2) through contracting a private consultant, or 3) by the developer if there is a related development. The HPMP would be subject to review and approval by HP.

Trail Maintenance and Development

It is necessary to determine and document through a Memorandum of Agreement (MOA) that trail maintenance and stewardship will be conducted by either:

- 1) Adjacent landowners/developers where the trail is bordered on either side by private land;
- 2) Interested community members/organizations, or
- 3) Existing Division of Forestry and Wildlife and Na Ala Hele staff. If either 1 or 2, NAH will draft MOA on trail stewardship.

Trail development includes, but is not limited to: brushing the trail of encroaching vegetation, trail reconstruction, and installation of appropriate informational and directional signage and other mitigative measures for public safety and cultural resource protection. Trail improvements and signage are intended to keep the public along the State owned trail corridor and off any adjacent private property, in addition to deterring the public from investigating or tampering with historic or archaeological sites located along the trail on the adjacent private property (where applicable).

Na Ala Hele Advisory Councils

Comprised of trail user groups and constituents, these councils have been established statewide to provide a venue for public input on implementing the program. NAH's Hawaii Island Advisory Council has adopted Guidelines for the Treatment of Historic Hawaiian Trails, a copy of which is available for review upon request.

Once all the issues above are addressed, the trail corridor (or segment) can be opened for managed public use and recreation.

Helu 234 ✓

PALAPALA SILA NUI.

Ma keia palapala Sila Nui ke hoika aku nei o Kamohamohu III., ko Alii nui a ke Akua i kona lokomaikai i hoonoho ai maluna o ko Hawaii I'no Ahua, i na kanaka a pau, i keia la, nōnā iho, a no kona mau hōpo Alii, ua hūawi lilo loa aku oia ma ke ano alōlo la Linton L. Torbert and William Wilson i kona mau kōnaka i mānoo pono ia ia, i kela āpana nua a pau o waiho la ma Honuaula, ma ka Mokupuni o Māui

n penei hoi ka waiho ana o na Mokuna: Lo hōmaka ana ma ka kiki Kom. Ahau
o ka aina o Mos, a e holo ana ma ka aoao makai o ka aina
mua o Linton L. Torbert i ka Ahau 39° 35' Kom. 14 24/100 kaul.
a hiki iluna o ka puni ma ka paha, alaila holo no ma
ka aoao makai o ka aina mua o Linton L. Torbert i ka Ahau
37° Kom. 29 29/100 kaul. a hiki i kahi hale kahiko, alaila holo
no ma ka aoao makai o ka aina mua o L. L. Torbert i ka
Ahau 40° 40' 74 49/100 kaul. a hiki ma ka aoao Ahau o kahi
awawa ma kahi pāpua kahiko, alaila He. 78° 40' Kom.
e holo pololei ana i kahi a hiki i kahi lae pohaku ma
kahakai o Poolemalama ka inoa, e kōkoke ana i na
laau nui a ulu ana, 219 7/100 kaul. alaila holo ma
kai i ka Hema 3° 41' 58 29/100 kaul. a hiki i ka kiki
lae pohaku ma ka awa o Makana, alaila He. 11° 40'
kaul. a hiki i ka aoao Ahau o kahi loko ia ma Apua
Holo pololei inka ma ka lae pohaku kahiko i ka
He. 88° 30' 41' 196 7/100 kaul. alaila He. 11° 41' 14 29/100 kaul. a hiki
i ka kiki Kom. Ahau Hema o ka aina o Samuel Calson alaila
Ahau 58° 30' 41' 58 7/100 kaul. hiki i kahi i hōmaka

Ua kōkoke nāe ke kai, ke awa, a me ka kula ana o
na hāwaka a pau ma ka aina, a me kahi pae inka ma
ke awa, a me 60 ānāia ma ka kai a o ka awa inka

Grant 234

Torbert & Wilcox

Begin at N.W. L of Moo & m

N 39 30 W	14.20	437	Torbert's former purchase.
			top of hill, by sheep pen.
N 37 00 W	29.82	1464	Makai side of Torbert's former
			purchase to an old house.
N 40 1 E	74.40	4910	along same to N. side of a
			gulch by old masonry wall
S 78 40 W	219.06	14453	to a rocky cape, called
			Poolenalina, near coconut h
S 3 00 E	56.29	3715	Sea shore to rocky cape
			at Makena bay.
S 11 00 E	19.09	1260	to N. side of a fish pond
			at Apuakehan.
S 88 20 E	196.35	12454	old Govt. road.
S 11 00 E	14.26	441	to S.W. L of D. balyis to
N 56 30 E	35.96	233	to S. Pt.

2103 ares.

J. Richardson

68 ares in road & landing place
49 " " Govt. Reserve
<u>117</u>
2103
<u>1986</u> ares remaining.

This is a

Res. in G. A.

Ua ke nae ke kai, ke awa, a me ke kulan
 o na kanala a paan. ma ia aina, a me kahi pae
 iuka ma ke awa, a me 60 anana ma ke kai ea o
 ke awa iuka

Calapogon

1. *Thana* 29, 30, 31. *Thana* 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

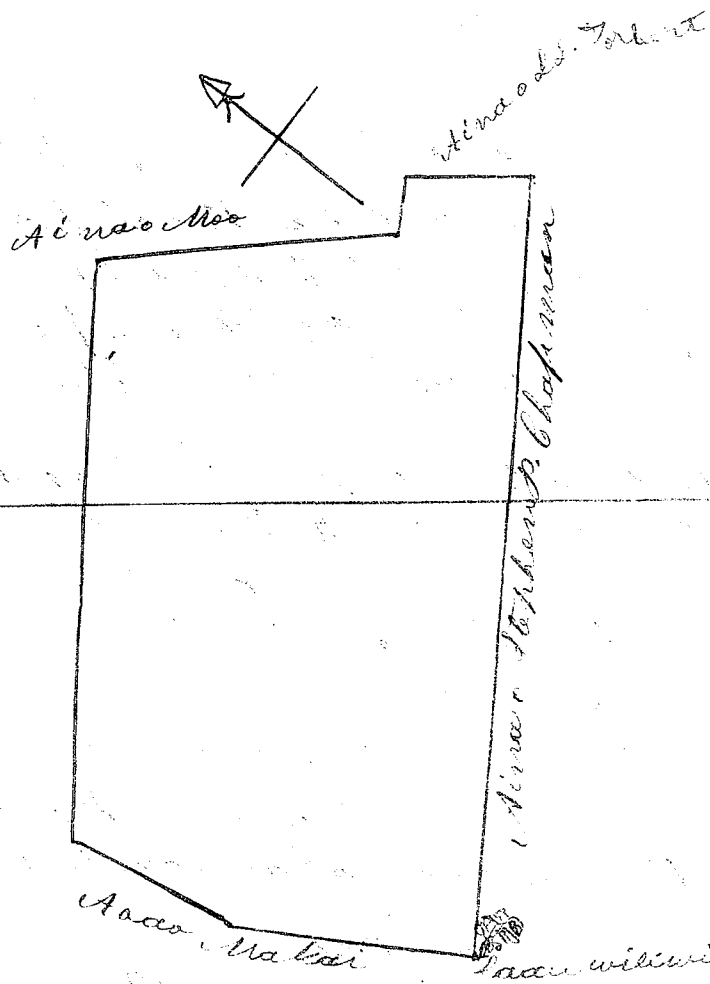
[illegible]

ROYAL PATENT.

Kamehameha III., By the grace of God, King of the Hawaiian Islands, by this his Royal Patent, makes known unto all men, that he has for himself and his successors in office, this day granted and given, absolutely, in Fee Simple unto _____, his faithful and loyal subject for the consideration of _____, paid into the Royal Exchequer, all that certain piece of Land, situated at _____, in the Island of _____, and described as follows:

Containing _____ Acres, more or less, exceeding and reserving to the Hawaiian Government, all mineral or metallic Mines of every description. To have and to hold the above granted Land in Fee Simple, unto the said _____, Heirs and Assigns forever, subject to the taxes to be from time to time imposed by the Legislative Council equally upon all landed Property held in Fee Simple. And I hereby certify, I have witnessed the signing and sealing of the said Patent, and caused the Great Seal of the Hawaiian Islands to be affixed, at Honolulu, this _____ day of _____, 1854.

Witnessed at the Palace of the King, at Honolulu, this _____ day of _____, 1854.
By the King, Kamehameha III.
By the Minister of the Interior, _____
By the Minister of Finance, _____



Aina o Daniel Calyer aia ma Ulupolekua
Kua i Komanula Mami.

E noomaka ana i Ke ana ma
aia ma Kai o Ka Aina o L. T. T. T.
e Mili ana hoi i Ka Aina o Stephen
P. Chapman Kahi i noomaka
a holo a ku la mara ana o Kai
o Stephen P. Chapman a me Keiaia
o Ka Aina o L. T. T. T. ... 53 Kaula
26 Kapua, a hiki i Ka pu laan
miliavili e kua ana i Ke Kahi Koa
o Ka Aina o Stephen P. Chapman, a
hiki i Ka Aka 27, 30 Koma 12 Kaula
26 Kapua, hiki i Ka Aka 11 Koma
8 Kaula aia 54 Kapua, aia ku aia

ma Kai o Keia aina, a hiki i ka
 pahu a ku ana i ke kiti Kona
 o Keia aina, huli i ka ika 56.36'
 hikiina 32 Kaula has 64 Kapu ai a hit
 i ka aina o Moa, a malaila aku, ho
 nua wale oia aina, a me Keia, i ka
 Kema 40° hikiina 11 Kaula has 45 Kapu
 huli i ka Aka 56 hikiina 3 Kaula has
 a hiki i ka aoao makai o ka aina o
 L.S. Forbert, alaila, huli a holo i ka
 i hoo makai Ke ana ana i ka Kema
 40° hikiina 6 Kaula has 542 Kapu ai;

Eia hoi ka ilimalo ko o Keia
 aina 15 Eka 3 Kaula has, 104 tusua kua

Anaia Feburary 2, 1849

Wm. Richardson

Ke ana o ka aina o Daniel Calyer
ma Ulupalakua, Honuaulu, Waiau

E hoomaka i ke ana ma ka aoao
makai o ka aina o L. L. Torbert e pili ana
me ka aina o Stephen P. Chapman, a e
hola ana Nema $56^{\circ}30'$ Kom. 43 Kaul. 26 Kap.
mawaena o Keia a me ka Stephen P. Chapman
a hiki i ka Laau wiliwili ma ke Komohana
o ka aina, - Alaila Akau $29^{\circ}30'$ Kom. 12 Kaul.
46 Kap. Akau 11° Kom. 8 Kaul. 54 Kap. ma
ka aoao makai o Keia aina a hiki i ka
pahu ma ke kahi Komohana o Keia, - Alaila
Akau $56^{\circ}30'$ Hikina 32 Kaul. 64 Kap. a hiki
i ka aina o Moo, - Alaila Nema 40° Hikina
11 Kaul. 45 Kap. mawaena o Keia a me ka
Moo, - Alaila Akau 56° Hikina 3 Kaul. a hiki
i ka aoao makai o ka L. L. Torbert aina, -
Alaila Nema 40° Hikina 6 Kaul. $54\frac{1}{2}$ Kap.
a hiki i kahi i hoomaka'i.

75 Eka 3 Kaul. 104 Anana

No. 7

12

Map of the
Mahe Plantation

Honolulu, Hawaii

Scale 1:24000

Revised by
Antiquity

Jan 1890

S. J. Q.

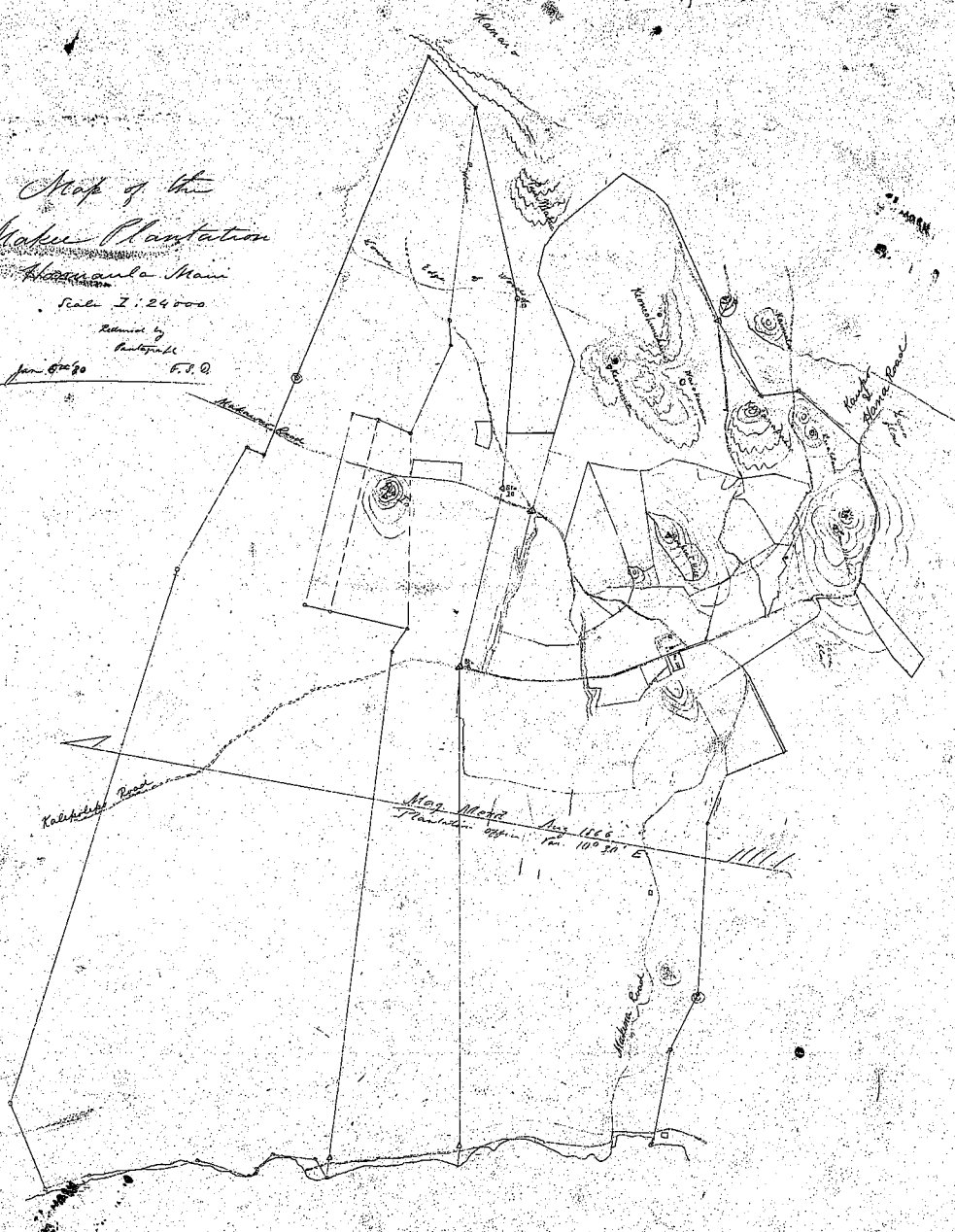
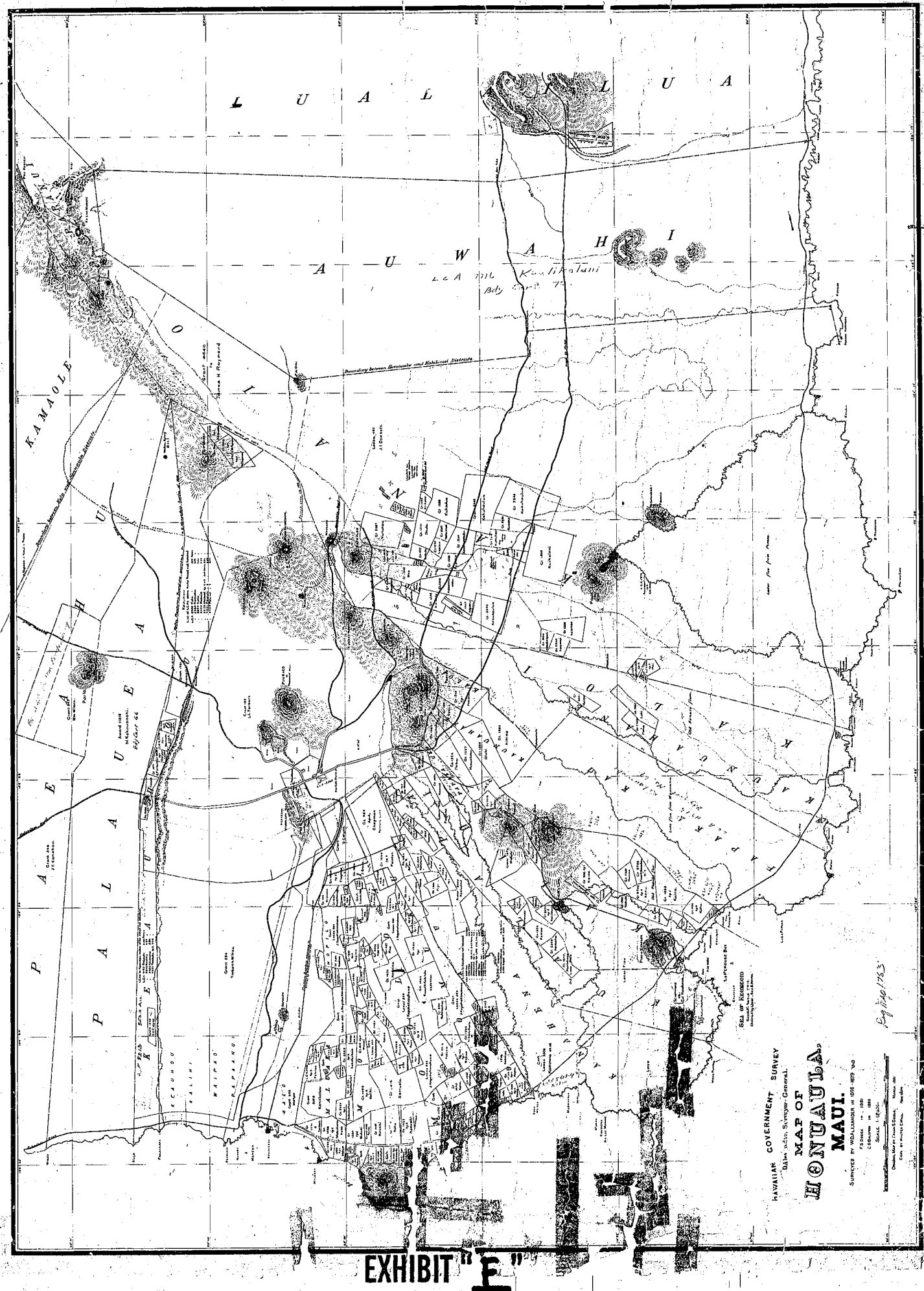


EXHIBIT "E"

Register - 191
Drawer - 5
No. - 17

HAWAIIAN GOVERNMENT SURVEY	
Register No.	191
Drawer	5
Number	17



MAP
OF
PROPOSED NEW ROAD
FROM
MAKENA
TO
KULA
MAUI.

LAND LINES and EXISTING ROADS TRACED FROM
H.G.S. MAP of MAUI.

April, 1896. Hugh Howell

- PROPOSED MAIN ROAD
- - - - - " FUTURE EXTENSIONS
- - - - - EXISTING ROADS & TRAILS
— LAND BOUNDARIES.

SCALE OF MILES

ONE INCH REPRESENTS 5000 FEET.

Puu Olai
or
Miller's Hill

KALUAHAKOKO

KEAWAKAPU

MAKENA

Maluaka
Mooiki

Mooloa
Moomuku
Nau

Papahakai

Kaunuahe
Kalo

Kalihi
Various
Grants

Puu K
Various

Portion of map on file at the State Archives catalogued as
MAP G4382.M3:2K78
1896 H6

EXHIBIT "G"