D-6

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

February 11, 2010

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Land Patent Grant S-14,229
Land Office Deed S-22,518
Hawaii

Amend Prior Board Action of September 25, 2009, Item D-8, Consent to Subdivision – Timothy McCullough, Karen McCullough, Corey McCullough, Jeff McCullough and Colleen McAluney, Land Patent Grant S-14,299 [sic], Land Office Deed S-22,518, Lot 25, Lalamilo Farm Lots, Lalamilo, South Kohala, Hawaii, Tax Map Key: 3rd/ 6-6-5:10.

BACKGROUND:

At its meeting of September 25, 2009, Item D-8, the Board of Land and Natural Resources approved the request of the above-named Applicant for consent to the subdivision of Applicant's property at Lalamilo Farm Lots.

REMARKS:

In the further processing of Applicant's request, staff noticed an error in the submittal's reference to the Land Patent Grant number for the property. The correct number is Land Patent Grant S-14,229, not 14,299 as indicated in several places in the initial submittal.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of September 25, 2009, under agenda item D-8 by correcting the reference to the Land Patent Grant number to Land Patent Grant S-14,229 wherever the correction is required in the initial submittal.

2. All terms and conditions listed in its September 25, 2009 approval to remain the same.

Respectfully Submitted,

Kevin E. Moore
District Land Agent

APPROVED FOR SUBMITTAL:

Laura H. Thielen, Chairperson

D-8

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

September 25, 2009

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Land Patent Grant S-14,299
Land Office Deed S-22,518
Hawaii

Consent to Subdivision – Timothy McCullough, Karen McCullough, Corey McCullough, Jeff McCullough and Colleen McAluney, Land Patent Grant S-14,299, Land Office Deed S-22,518, Lot 25, Lalamilo Farm Lots, Lalamilo, South Kohala, Hawaii, Tax Map Key: 3rd/ 6-6-5:10

APPLICANT:

Timothy McCullough, Karen McCullough, Corey McCullough, Jeff McCullough and Colleen McAluney, whose address is c/o Gregory Mooers, P.O. Box 1101, Kamuela, Hawaii 96743.

LOCATION:

Former Government land situated at Lalamilo Farm Lots, Lalamilo, South Kohala, Hawaii, identified by Tax Map Key: 3rd/ 6-6-5:10, as shown on the attached map labeled Exhibit A.

AREA:

40.552 acres, more or less.

ZONING:

State Land Use District:	Agriculture
County of Hawaii CZO:	A-5a

REMARKS:

The Lalamilo Farm Lots subdivision was developed by the State as an agricultural homestead subdivision at Lalamilo, South Kohala, Hawaii, with access to irrigation water through a State-established Irrigation District. At its meeting of January 30, 1961, the Board of Land and Natural Resources approved the sale of the farm lots through a lottery process. The lands within the project were partially acquired by land exchange with

APPROVED BY THE BOARD OF LAND AND NATURAL RESOURCES AT ITS MEETING HELD ON September 25, 2009

Parker Ranch and as a result many of the lots were conveyed by the State to the lottery winners by both land patent grant and deed. These conveyance documents included restrictions that limited uses to agriculture defined as truck and orchard crops. The restrictions also required Board consents for non-agricultural uses as well as additional dwellings beyond the owner's principal dwelling.

The subject property is Lot 25 consisting of 40.552 acres originally sold to Christopher Henderson by way of Land Patent Grant S-14,229 and Land Office Deed S-22,518 in 1964. Mr. Henderson built a first dwelling on the parcel some time before June 14, 1968. At its meeting of June 14, 1968, Item F-35, the Board authorized Mr. Henderson to construct a second dwelling for employee housing purposes. However, the record indicates that dwelling was not constructed.

In approximately 1971, Applicants' father, Reynolds W. McCullough, acquired the property. At its meeting of October 22, 1971, Item F-3, the Board authorized Mr. McCullough to construct a second dwelling on the property in lieu of the employee housing proposed in 1968, subject to restrictions on building size and materials and the limitation that the structures on the property not be used for rental purposes. At its meeting of November 30, 1979, Item F-25, the Board approved Mr. McCullough's request to build a third dwelling on the parcel. The Board imposed the same conditions on the approval as were required for the second dwelling.

Neither Mr. McCullough nor the prior owner, Mr. Henderson, requested approval of the subdivision of the property in conjunction with the construction of the additional dwellings. In fact, the 1979 submittal before the Board included a statement that "Reynolds McCullough does not intend to subdivide his lot...." Upon the death of Mr. McCullough and his wife, the property was conveyed to his children, Applicants herein.

Applicants have applied to the County of Hawaii Planning Department for approval to subdivide the property into two lots, Lot 25-A and Lot 25-B, each of which will have an area of 20.276 acres. See preliminary subdivision map attached hereto as Exhibit B. As indicated on the map, Lot 25-A will have a dwelling and a warehouse on it. Lot 25-B will have a dwelling, a garage, a warehouse and packing shed, a second shed, a greenhouse, and a combination workers' housing and warehouse building.

At its meeting of June 27, 1986, Item F-3, the Board adopted a policy with respect to subdivision of lots and requests for construction of dwellings on the Lalamilo Farm Lots. The Board submittal stated:

> The Board establishe[s] minimum requirements for the application to construct a dwelling on a subdivided parcel as follows:
>
> 1. The applicant shall be a bonafide, full-time farmer for not less than three (3) years prior to the date of the application;

2. The applicant shall have farmed on the site for not less than one (1) year prior to the date of the application;

3. The applicant must earn the majority portion of his income from the farming activity established thereon;

4. The subdivided parcel shall have a minimum lot size of ten (10) acres and shall not be further subdivided so long as the dwelling is used for residential purposes. A restrictive covenant to this effect shall be recorded with the Bureau of Conveyances.

Staff believes the policy is applicable to the present request for subdivision even though no new dwelling construction is proposed. Otherwise, a Lalamilo Farm Lot owner would be able to circumvent the Board policy by omitting any mention of an intent to subdivide at the time the owner sought Board approval for the construction of additional dwellings.

By letter dated July 14, 2009, Applicants' consultant provided information on each of the four policy items to staff as follows:

1. Mr. McCullough and the Applicants actively farmed the property for 37 years, since shortly after Mr. McCullough acquired the property in 1971. In that time, the McCulloughs received many awards related to their efforts, including an award from the Department of Land and Natural Resources in recognition of soil and water conservation accomplishments for the year 1976-77, and several awards from the from the Mauna Kea Soil and Water Conservation District. Applicant Timothy McCullough was a bonafide, full-time farmer for more than three years prior to 1979. Since 1979, Timothy McCullough has assumed a supervisory role of the farm operations, supervising lessees farming the property. Currently, a portion of the premises is leased out to J & D Mah farm.

2. As indicated in the preceding paragraph, the Applicants continue to use the property for agricultural purposes, most recently, the growing of ornamental flowers for the cut flower industry and for supplying lei makers. Accordingly, Applicants meet the one-year minimum threshold for farming operations on the site.

3. The Applicants currently lease a portion of the property to J & D Mah farm for its flower growing business. A majority of the Applicants' income is derived from the property, from the agricultural lease to J & D Mah, and from their own business activities on the property. The Applicants have maintained an office space on the property for over thirty years to manage their Protea cut flower cultivation and sales, their vegetable farming and sales and previously the family's retail clothing business. The clothing business has been sold and the offices for that endeavor are being moved to Oahu.

4. The proposed lot sizes are in excess of 20 acres, which is twice the minimum lot size stated in the Board policy.

Staff is recommending that the Board approve the subdivision conditioned upon the recordation of a restriction prohibiting any further subdivision of Lot 25-A and Lot 25-B without the Board's prior written consent.

By memorandum dated August 19, 2009, comments were solicited from the following federal, State and County of Hawaii agencies with the following results.

Agency	Comments
DLNR – Engineering	No objections. The property is located in Flood Zone X, for which the National Flood Insurance Program has no regulations.
Department of Agriculture	No objections.
Mauna Kea Soil and Water Conservation District	No response
Planning Department, County of Hawaii	No objections, but Applicants must comply with Ch. 23 of the Hawaii County Code.
Natural Resource Conservation Service	No response

RECOMMENDATION: That the Board:

1. Approve and consent to the subdivision Lot 25 of the Lalamilo Farm Lots identified as Tax Map Key No: 3rd/ 6-6-5:10 into Lot 25-A and Lot 25-B, each with an area of 20.276 acres, subject to the following terms and conditions:

   A. There shall be a restrictive covenant recorded with the Bureau of Conveyances prohibiting the further subdivision of Lot 25-A and Lot 25-B without the Board of Land and Natural Resources' prior written consent;

   B. Review and approval by the Department of the Attorney General; and

C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Kevin E. Moore
District Land Agent

APPROVED FOR SUBMITTAL:

Laura H. Thielen, Chairperson

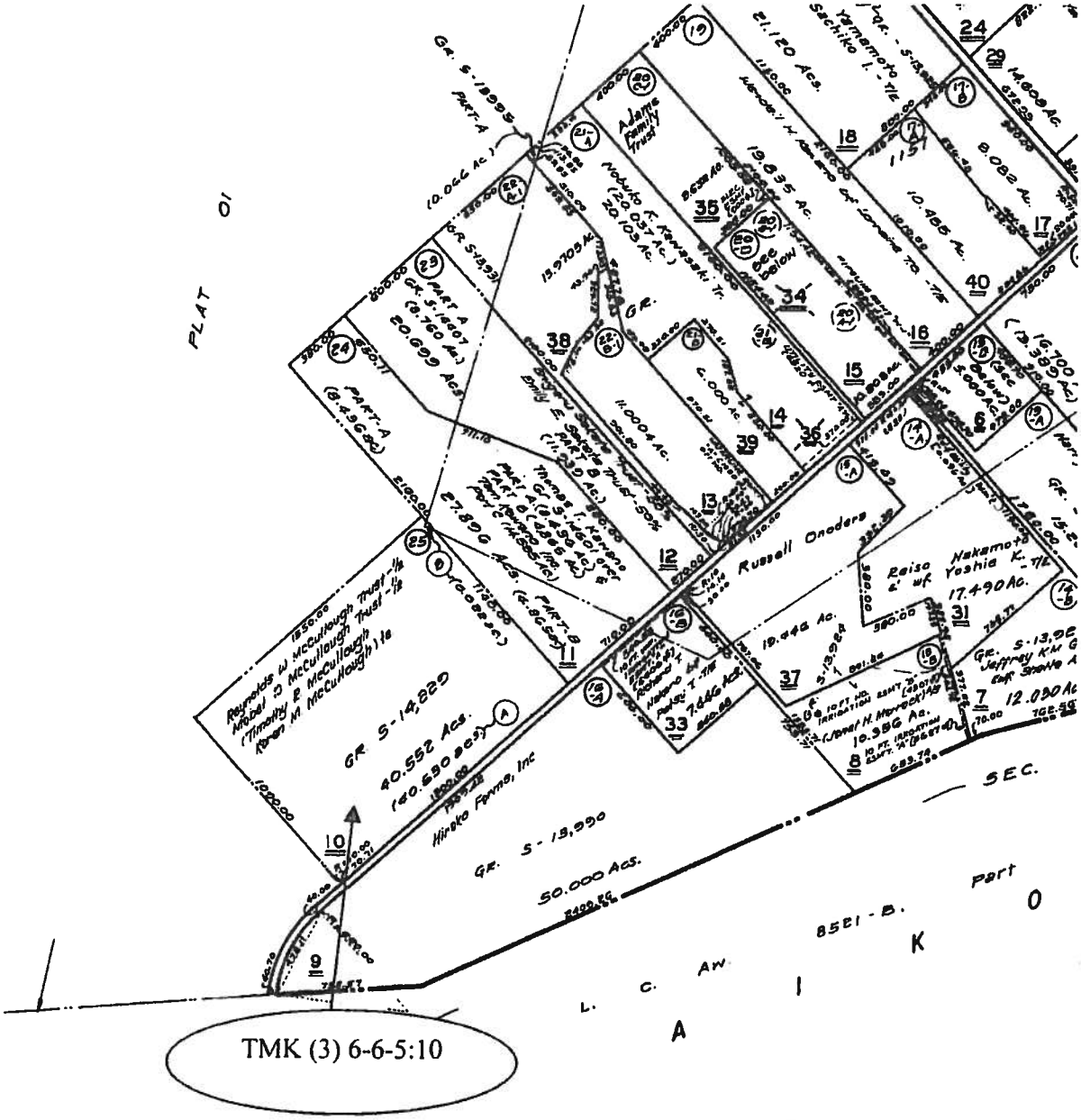
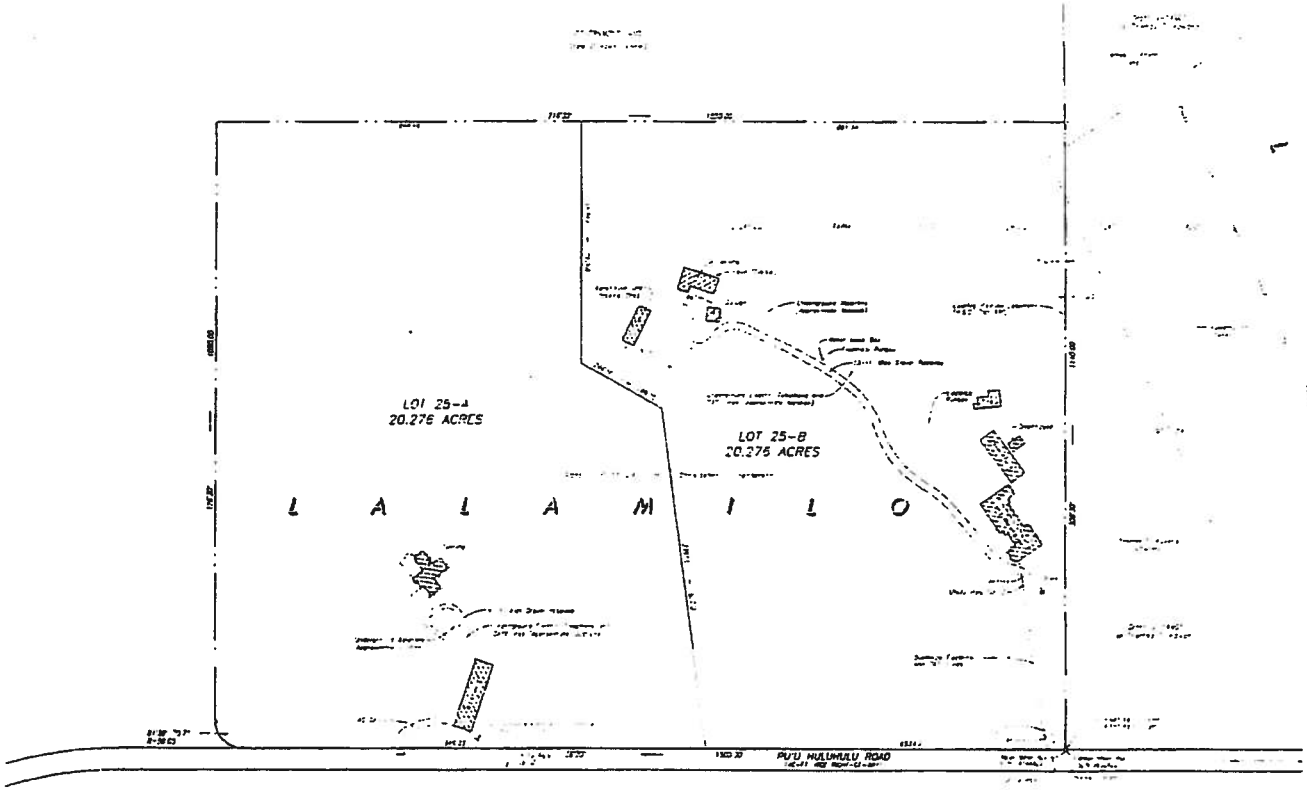
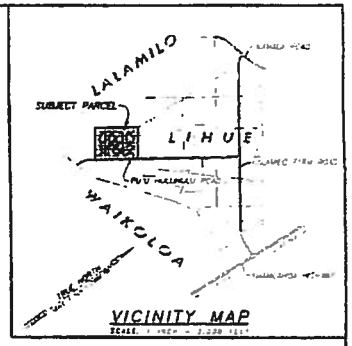

PLAT 01
GR. S-14,229
40.552 Acs.
Hiroko Farms, Inc
GR. S-13,990
50.000 Acs.
Russell Onodera
Reiso Nakamoto
17.490 Ac.
SEC.
L. C. AW.
8521-B.
Part
A I K O
TMK (3) 6-6-5:10

EXHIBIT A

EXHIBIT B





PRELIMINARY

MAP SHOWING
SUBDIVISION OF LOT 25
OF LALAMILO FARM LOTS (H.S.S. PLAT 420)

Being the Whole of Grant S-14,229 to Christopher Henderson
and Being a Portion of
Grant 1157 to George W. Macy and James Louzada

INTO LOTS 25-A AND 25-B

At Lalamilo and Lihue, Waimea, South Kohala
Island and County of Hawaii, State of Hawaii

WES THOMAS ASSOCIATES